

Business Matters

Spring 2004

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OOPS! I MISSED THE DEADLINE

We've all done it... glanced at the calendar and realized an important date has somehow passed us by. Such innocent mistakes can unfortunately wind up being rather costly. Here are some examples of the penalties for late filing that CCRA is imposing:

<u>Returns</u>	<u>Deadline</u>	<u>Penalties</u>
Personal Tax Returns	<ul style="list-style-type: none"> ◦ April 30 ◦ June 15 for self-employed 	<ul style="list-style-type: none"> ◦ 5% of balance due for 1st month, plus 1% for every full month return is late to maximum of 12 months. ◦ 2nd offence, within 3 years of 1st offence, 10% of balance due for 1st month, plus 2% for every full month return is late to maximum of 20 months.
Goods and Services Tax		
<ul style="list-style-type: none"> ◦ Monthly/Quarterly filers ◦ Annual filers 	<ul style="list-style-type: none"> ◦ 1 month after the end of the reporting period ◦ 3 months after the end of the reporting period 	<p>Approximately .02% per day/ 6% per annum</p> <p>Approximately .02% per day/ 6% per annum</p>
Corporate Tax Returns	<ul style="list-style-type: none"> ◦ 6 months after year-end 	Same penalties as personal tax returns
Payroll Source Deductions	<ul style="list-style-type: none"> ◦ 15th of the following month for remittances <\$15,000 ◦ 10th and 25th of following month for remittances between \$15,000-\$50,000 ◦ Remittances > \$50,000-3 days after last pay period. 	<ul style="list-style-type: none"> ◦ < 4 days, 3% of remittance ◦ 4 or 5 days, 5% ◦ 6 or 7 days, 7% ◦ 8 days or more, 10%
T4/T4A/NR4/T5 Filing	<ul style="list-style-type: none"> ◦ Last day of February 	\$25/day (minimum of \$100 to maximum of \$2,500)
Foreign Reporting Forms		
T1134A & T1134B	<ul style="list-style-type: none"> ◦ 15 months after year-end returns 	\$25/day (minimum of \$100 to maximum of \$2,500)
T1135 & T1142	<ul style="list-style-type: none"> ◦ April 30 ◦ June 15 for self-employed 	\$25/day (minimum of \$100 to maximum of \$2,500)

There are also gross negligence penalties for false statement or omission, which are not outlined in this article, that range from 5% to 50% of the related amounts. Interest computed at prescribed interest rates on the penalties amount must also be paid. CCRA may consider waiving penalties if the taxpayer can demonstrate that undue hardship or circumstances beyond their control caused them to file late. CCRA's Voluntary Disclosure Program deals with taxpayers who have not filed returns for several years and have not had a demand to file. For more information on this please refer to the article in this newsletter.

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Unfortunately, Innocent mistakes can windup being rather costly.

- **CCRA changes name to CRA (see Page 4)**
- **RRSP deadline is March 1, 2004**
- **Personal Tax Return deadline is April 30, 2004**

Negligence... How Gross Is That?



These provisions impose penalties on taxpayers for “knowingly” or “under circumstances amounting to gross negligence.”



The gross negligence penalty is a monetary penalty equal to 50% of the assessed income tax, plus interest.

In 1996, the Technical Committee on Business Taxation of the Department of Finance commissioned a study on the compliance issues for small business and the corporate income tax system. The report stated, “The panel also noted that Revenue Canada appears quick to threaten to assess gross negligence pen-

alties under Subsection 163 (2) during the audit process, when the intent of the party was not a deliberate avoidance of tax. It was thought that the threat of these penalties was being ‘thrown around’ too readily, and was being used as a scare tactic by Revenue Canada.” This trend seems to have resurfaced over the past few years.

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The provisions are intended to penalize taxpayers where there is an element of intentional wrongdoing involved. These provisions impose

penalties on taxpayers for “knowingly” or “under circumstances amounting to gross negligence” making, participating in, assenting to or acquiescing in the making of a false statement or omission.

Case law has established that CCRA must prove the taxpayer has been grossly

negligent in the conduct of their affairs. CCRA has lost several cases by not having sufficient evidence to prove gross negligence. Justice Strayer indicated in the Venne case, “With respect to the possibility of gross negligence, I have with some difficulty come to the conclusion that this has not

been established either. ‘Gross negligence’ must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting; an indifference as to whether the law is complied with or not.”

CCRA promotes the taxpayer/client rights at www.ccradrc.gc.ca/agency/fairness/rights-e.html.

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Voluntary Disclosure Come Clean With No Penalty

In 1999, CCRA moved the Voluntary Disclosure Program "VDP" administration from Special Investigations to the Appeals Division. This has resulted in a drastic increase in the number of Canadian taxpayers volunteering to report undisclosed tax liabilities to CCRA and the relevant province.

Voluntary disclosure provides the taxpayer a methodology to come forward and correct errors and deficiencies to comply with their income tax, GST, customs and duty legal obligations.

CCRA Appeals enlisted the services of practicing tax lawyers and accountants to review and improve VDP. As a result of the consultation process, CCRA revised Information Circular IC00-1R on the Voluntary Disclosure Program. A copy is on CCRA's website at www.ccr-aadrc.gc.ca/agency/fairness/vdp-e.html.

Why come forward? A proper voluntary disclosure will result in CCRA and the province waiving penalties. The penalties include late filing penalties, gross negligence penalties (50% of the overall tax liability), and criminal prosecution. Depending on the case, it may also be possible to reduce the actual taxes payable.

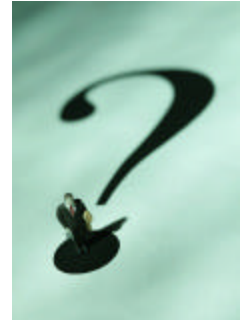
One of the major changes implemented was the formalization of the "No Name" voluntary disclosure. A taxpayer can engage a tax lawyer or an accountant to present the facts in the case, without providing the taxpayer's name, with a goal to come to an acceptable monetary settlement. If the client accepts the settlement, their name is disclosed to CCRA. If the client does not accept the settlement, the file is closed on the "No Name" basis.

For substantial voluntary disclosures, we recommend using a lawyer, since accountants do not have client

privilege and could be forced to disclose information in court. If the lawyer hires an accountant to assist on the case, the client privilege flows down to the accountant (assuming it is not the client's current accountant).

You cannot abuse the program. When you come clean, you must come clean with respect to your past and future obligations. CCRA has not designed the program for repeat offenders.

Based on our experience, there is no better way to correct errors and deficiencies with CCRA. You may think you can hide the problem; however, only the Voluntary Disclosure Program will make it disappear!



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Reasonable Expectation of Profit (REOP)

Taxpayers won several tax cases on the reasonable expectation of profit (REOP). The Supreme Court stated the REOP test had no application unless there was a personal use related to the property. On October 31, 2003, the Federal government decided to change the rules, effective in 2005.

The proposed REOP rule is an annual evaluation of your business or property to determine whether it is reasonable to expect that you, "the taxpayer," will realize a cumulative profit.

The cumulative profit would apply from the time you have carried on, or could reasonably be expected to carry on that business, or have held, and can reasonably be expected to hold, that property. For example, in the year 2008, if you could not reasonably project a future cumulative profit for the business or property, you cannot deduct the 2008 loss. The prior years' losses are still deductible.

The proposal also makes it clear that capital gains are not included in the cumulative profit. So, be cautious of what you own today or purchase in 2004.

CCRA has hindsight in their favour. CCRA will set their own standards, leaving the taxpayer to defend the proposed REOP assessments.

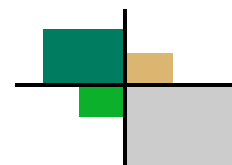
If there is a positive side to the proposed legislation, the Federal Government is forcing you to do

and document strategic planning and financial forecasting of your future profits.

CCRA has also released its new Interpretation Bulletin IT-533: Interest Deductibility and Related Income, which is available on their website at <http://www.ccr-aadrc.gc.ca/E/pub/tp/it533/README.html>.

We will address the interest deductibility changes in our Spring 2004 Newsletter.

If you are planning on borrowing a large sum of money for business or investment purposes, give us a call to review the changes.



CCRA Name Change

On December 12, 2003, Canada Customs and Revenue Agency (CCRA) announced that they have changed their name to the Canada Revenue Agency (CRA). The customs program is now part of the new Canada Border Services Agency (CBSA). Until Parliament approves the name change, it will remain CCRA. For further information go to their website at the following <http://www.ccr-aadrc.gc.ca/agency/namechange-e.html>



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