

NEWS ALERT: CRA Reconsiders New Voluntary Disclosures Policy August 2010

In our June newsletter we announced that the Canada Revenue Agency's (the "CRA") Voluntary Disclosures Program had issued a directive to its agents that a new policy would be implemented in respect of unreported offshore bank accounts.

The new policy would tax the actual income earned in an account over the previous 10 year period and calculate the compound interest payable at prescribed rates throughout the period. The most important change in the new policy was that taxpayers making a voluntary disclosure would no longer be taxed on the value of the account balance at the start of the 10 year period (the "opening capital").

We have recently learned that the CRA is reconsidering the formal implementation of this new policy. As a result, any disclosures relying on the new policy are "on hold" pending clarification of the CRA's position

The reasons for this about-face are unknown, however, there is speculation that fear of a negative public reaction to the proposed change in the policy prompted the Minister of National Revenue to reconsider approving the change without further study.

Until the policy is clarified, CRA agents will not finalize any voluntary disclosure requests,

whether filed before or after the issuance of the internal directive regarding the new policy.

If the old voluntary disclosures policy is reinstated, taxpayers will be taxed on both the income earned during a 10 year period and the opening capital in the account (to the extent that the opening capital has not previously been taxed). However, the compound interest charged on the taxpayers' tax payable will be reduced by 4 percentage points in respect of statute-barred years.

Quebec

As previously noted, Revenue Quebec had not committed to adopting the new CRA policy. Now, given the present uncertainty regarding the new CRA policy, it is extremely unlikely that Revenue Quebec will make any changes to its own voluntary disclosure program, at least in the short term. Revenue Quebec's voluntary disclosure policy taxes both the income and the untaxed opening capital in the taxpayer's offshore account. However, Revenue Quebec only charges compound interest in respect of the balance of the taxes payable starting in non-statute-barred years. Revenue Quebec also applies a preferential exchange rate to the opening capital.

The material contained herein is necessarily of a general nature and cannot be regarded as legal advice. The members of our firm would be pleased to provide additional information. You may reach us at (514) 849-1188 or by e-mail as follows:

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