

REPORT ON RECENT DEVELOPMENTS

June 2010

Voluntary Disclosures: New Policies

Does Canada have the HSBC data?

In March, HSBC confirmed that a theft of client data from its Swiss bank by a former employee contained information concerning 24,000 accounts.

France has agreed to make the data available to foreign tax authorities that request it. Italy was the first country to gain access to the information, initiating an investigation into its taxpayers' nearly 7000 HSBC accounts in mid-May. A Canada Revenue Agency ("CRA") spokesperson confirmed in April that it has made a formal request for the data. It is not yet known whether this request has been granted. However, given France's willingness to share the information, it may be simply a matter of time before Canada obtains the data.

UBS Developments

Meanwhile, the Swiss drama concerning the surrender of 4,450 UBS client accounts to U.S. tax authorities ("I.R.S.") continues. After several false starts, both houses of the Swiss parliament have approved legislation that will allow for the transfer of client data to the I.R.S. A referendum will not be held on the issue and, as a result, the data should be surrendered before the August 2010 deadline for disclosure. Canada has also expressed an interest in obtaining information regarding Canadian UBS Swiss account holders.

Changes to Canada's Voluntary Disclosure Rules May Provide HSBC Clients with Greater Incentive to Come Forward

Canada's voluntary disclosure program has gone through important policy shifts in the past few years. The most recent change has yet to be officially announced but has been confirmed with CRA officials. It is hoped that the new rules will act as an incentive to taxpayers who were discouraged by a policy introduced in 2009 (the "2009 policy"), which dramatically increased the cost of disclosures involving offshore accounts.

Prior to the 2009 policy, cases involving the repatriation of capital were generally settled at approximately 38% of the adjusted current value of the account, including taxes and interest, federal and Quebec combined. The 2009 policy introduced a straightforward tax on the income earned in an account during a minimum of each of the previous 6 years, up to a maximum of 10 years. In addition, the value of the account at the start of the 6 or 10 year period was also taxed (to the extent that tax had not been paid on the capital). The only concession offered to taxpayers in the 2009 policy was a reduction of 4 percentage points on interest charged in respect of statute-barred years.

The most recent changes to the federal voluntary disclosures policy take a step away from the 2009 policy but do not revert back to the policy of flat rate disclosures. Under the new policy, the CRA will tax the actual income earned in an account over the previous 10 year period. Taxpayers making a voluntary disclosure will not be taxed on the

value of the account at the start of the 10 year period. However, the new policy has abolished the 4% interest rate reduction in respect of statute-barred years; interest will be charged at the prescribed rates for the entire 10 year period. Taxpayers will bear the burden of proving the adjusted cost base of the portfolio (whether or not previously taxed) for the purpose of establishing capital gains during the 10 year period covered by the disclosure and for future dispositions.

Taxpayers whose voluntary disclosure files are currently in process with the CRA may choose between the 2009 policy and the new policy.

Quebec

Revenue Quebec's current voluntary disclosure program is similar to the CRA's 2009 policy, with some differences. Revenue Quebec reduces the compound interest charged on income earned in statute-barred years. Taxpayers are taxed on the capital held at the beginning of the ten-year calculation period. Revenue Quebec also applies a preferential exchange rate to the opening capital. Revenue Quebec has not announced whether it intends to align its voluntary disclosure policy with the revised federal policy.

Example:

The following example will demonstrate both the impact of the change in the federal policy and a comparison with the Quebec policy:

1. Mr. X has an offshore bank account worth \$5 million today.
2. The account was worth \$4,975,000 on December 31, 2009.
3. The account has earned an average of \$75,000 of net taxable income per year consistently over the last 10 years.
4. On December 31, 1999, the account was worth \$4,500,000.
5. Mr. X has withdrawn a total of \$25,000 in the last 10 years.
6. No tax was paid on the capital initially invested.
7. Assumption: We have used the current federal and Quebec top marginal tax rates for the 10 year period: 24.22% (federal) and 24% (Quebec).
8. Note: Interest on tax debts compounds daily. The prescribed interest rates ("PIR") are updated on a quarterly basis. The approximate average annual PIR are set out below as an illustration of the changing interest rates over time.

Please see interest and comparison tables below.

Approximate Average Annual Prescribed Rate of Interest

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Federal	9.75%	9.5%	6.75%	7.25%	6.75%	7%	8%	9%	7.5%	5.25%	5%
Quebec	9.75%	9.75%	8.75%	7.5%	7%	7%	8.5%	9%	8.5%	5.78%	5%

SWEIBEL NOVEK

S.E.N.C.R.L. • L.L.P.

- 3 -

FEDERAL RULES	HISTORICAL POLICY	2009 POLICY	NEW POLICY
CAPITAL	$\begin{array}{r} \$4,975,000 \\ \text{(value Dec. 31, 09)} \\ + \\ \$25,000 \\ \text{(withdrawn amount)} \\ \hline \$5,000,000 \end{array}$	$\begin{array}{r} \$4,500,000 \\ \text{(initial untaxed capital)} \\ \times \\ 24.22\% \\ \hline \$1,089,900 \end{array}$	Not subject to tax
INCOME	19% x \$5,000,000	$\begin{array}{r} \$750,000 \\ \text{(total income over 10 yrs)} \\ \times \\ 24.22\% \\ \hline \$181,650 \end{array}$	$\begin{array}{r} \$750,000 \\ \text{(total income over 10 yrs)} \\ \times \\ 24.22\% \\ \hline \$181,650 \end{array}$
INTEREST (COMPOUNDED DAILY)	Included in the 19% rate	$\begin{array}{r} \$1,089,900 \\ + \\ \$18,165/\text{yr} \\ \times \\ \text{(PIR - 4\%)} \times 7 \text{ yrs} + \text{PIR} \times 3 \text{ yrs} \\ \hline \$606,012 \end{array}$	$\begin{array}{r} \$18,165/\text{yr} \\ \times \\ \text{PIR} \times 10 \text{ yrs} \\ \hline \$76,058 \end{array}$
TOTAL TAX PAYABLE TO FEDERAL AUTHORITIES	\$950,000	$\begin{array}{r} \$1,089,900 \\ + \\ \$181,650 \\ + \\ \$606,012 \\ \hline \$1,877,562 \end{array}$	$\begin{array}{r} \$181,650 \\ + \\ \$76,058 \\ \hline \$257,708 \end{array}$

QUEBEC RULES	HISTORICAL POLICY	2009 POLICY	IMPACT IF QUEBEC ELIMINATES CAPITAL INCLUSION
CAPITAL	$\begin{array}{r} \$4,975,000 \\ \text{(value Dec. 31, 09)} \\ + \\ \$25,000 \\ \text{(withdrawn amount)} \\ \hline \$5,000,000 \end{array}$	$\begin{array}{r} \$4,500,000 \\ \text{(initial untaxed capital)} \\ \times \\ 24\% \\ \hline \$1,080,000 \end{array}$	Not subject to tax
INCOME	19% x \$5,000,000	$\begin{array}{r} \$750,000 \\ \text{(total income over 10 yrs)} \\ \times \\ 24\% \\ \hline \$180,000 \end{array}$	$\begin{array}{r} \$750,000 \\ \text{(total income over 10 yrs)} \\ \times \\ 24\% \\ \hline \$180,000 \end{array}$
INTEREST (COMPOUNDED DAILY)	Included in the 19% rate	$\begin{array}{r} \$1,080,000 \\ + \\ (\$18,000 \times 7) \times \text{PIR} \times 1 \text{ yr} \\ + \\ \$18,000/\text{yr} \times \text{PIR} \times 3 \text{ yrs} \\ \hline \$338,111 \end{array}$	$\begin{array}{r} (\$18,000 \times 7) \times \text{PIR} \times 1 \text{ yr} \\ + \\ \$18,000/\text{yr} \times \text{PIR} \times 3 \text{ yrs} \\ \hline \$39,280 \end{array}$
TOTAL TAX PAYABLE TO QUEBEC AUTHORITIES	\$950,000	$\begin{array}{r} \$1,080,000 \\ + \\ \$180,000 \\ + \\ \$338,111 \\ \hline \$1,598,111 \end{array}$	$\begin{array}{r} \$180,000 \\ + \\ \$39,280 \\ \hline \$219,280 \end{array}$

Aggressive Tax Planning Proposals – Federal & Quebec

As announced in the 2010 federal Budget, proposals targeting aggressive tax planning ("ATP") were recently released for comment. This coincides with the introduction of Quebec's ATP legislation in May in furtherance of proposals tabled in 2009.

The proposals at both levels of government require taxpayers to report avoidance transactions that bear certain specified hallmarks of ATP. Taxpayers who fail to report such transactions on time face the imposition of severe penalties and other sanctions.

An avoidance transaction will be a "reportable transaction" under the federal ATP proposals where it bears two of the following specified hallmarks:

- 1) A promoter is entitled to fees that are contingent on either the transaction's tax benefit or the number of participating taxpayers;
- 2) A promoter requires "confidential protection" with respect to the transaction; or
- 3) The taxpayer or his agent obtains "contractual protection" in respect of the transaction.

In addition to the new mandatory disclosure rule, which applies only to specific types of transactions, the new Quebec measures expand the definition of the general anti-avoidance rule ("GAAR"), extend the normal reassessment period for assessments based on GAAR, and impose penalties on both taxpayers and promoters where GAAR applies (regardless of whether any of the hallmarks described above are present). The penalties and extended reassessment period may be avoided by filing a preventative disclosure.

Revenue Quebec has issued a prescribed form on which mandatory and preventative disclosures of ATP must be made. Among other things, the form requires the disclosure of information regarding all parties to the arrangement. Taxpayers must describe all of the tax benefits and consequences that flow from the arrangement as well as each step of the transaction and all of the legislative provisions that apply or were avoided as a result of the ATP.

Disclosures will be processed by special divisions of the CRA and Revenue Quebec specially created to combat ATP.

Sweibel Novek News

We are pleased to announce that Jennifer Leach recently joined our firm. Jennifer is a member of the Ontario Bar and previously worked in tax planning for firms in Toronto.

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:

Sydney Sweibel	ssweibel@sweibelnovek.com	Barbara L. Novek	bnovek@sweibelnovek.com
Douglas Yip	dyip@sweibelnovek.com	Jack Boidman	jboidman@sweibelnovek.com
Denis A. Lapierre	dlapierre@sweibelnovek.com	Konstantinos Voggas	kvoggas@sweibelnovek.com
Carol Rabbat	crabbat@sweibelnovek.com	Marcie Akerman	makerman@sweibelnovek.com
Jennifer Leach	jleach@sweibelnovek.com	Erica Stermer	estermer@sweibelnovek.com
Ryan Rotchin	rrotchin@sweibelnovek.com		

or visit our website at www.sweibelnovek.com