IN FACT AND IN LAW

Taxation

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It Pays to Declare! Voluntary Disclosure

By Yves St-Cyr

Several years ago, the Quebec Ministry of Revenue ("QMR") as well as the Canada Customs and Revenue Agency ("CCRA") set up a voluntary disclosure program for taxpayers who failed to declare income or taxes, contrary to what they were required to do under federal and provincial tax laws. For example, taxpayers with foreign property may have failed to declare the income earned from that property. Also, certain taxpayers did not always remit the goods and services tax ("GST/ HST") and the Quebec Sales Tax ("QST") which was collected or collectible, as the case may be, although they are legally required to remit the tax whether or not they have collected it.

In order to recover undeclared income and sales taxes which has not been remitted to the tax authorities, the QMR and the CCRA have set up an incentive policy for the disclosure of income and taxes which have not been declared to the tax authorities. The policy covers, among other things, federal and provincial income tax, the GST/HST and the QST.

In all cases of voluntary disclosure, the taxpayer is not assessed a penalty. What is more, depending on the specific facts of each file, an agreement may be entered into between the tax authorities and the taxpayer to reduce the overall amount owed depending on the taxation year or the reporting period.

Accordingly, for taxpayers who inadvertently failed to declare certain income or taxes to the tax authorities, or who intentionally failed to declare it but who fear being turned in by a third party or found out by the QMR or the CCRA, or who wish to have peace of mind or protect their estate, coming forward under the voluntary disclosure program could be a very wise decision.

According to the QMR and the CCRA, experience has shown that the Crown benefits by settling taxpayers' files by coming to an agreement with them, even if those agreements result in the reduction of the amounts which would otherwise be owed. In fact, the incentive to settle allows the QMR and the CCRA to achieve two key goals: the collection of income taxes and sales taxes which the tax authorities may otherwise never have recovered and the assurance that, in the future, the taxpayers will declare all their income and taxes.

Obviously, certain conditions must be met for voluntary disclosure to be validly filed with the QMR and the CCRA, including the proviso that no staff of those tax authorities have previously communicated with the taxpayer in any manner whatsoever. Needless to say, any voluntary disclosure must be complete, otherwise the agreement between the tax authorities and the taxpayer runs the risk of being cancelled for the purposes of the application of the voluntary disclosure policy.

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It is interesting to note that any voluntary disclosure may be made anonymously, that is, without the name of the taxpayer being revealed before the agreement is finalized. It is therefore advisable for any taxpayer wishing to disclose his tax situation to consult a professional to represent him before the QMR and the CCRA in order to allow him, on the one hand, to reach the best possible agreement and, on the other, to determine whether this agreement is acceptable to him, before his name is revealed to the tax authorities.

You may be interested to know that, according to the QMR, for its fiscal year ended March 31, 2001, approximately $30 million worth of income tax, sales tax and interest was collected through voluntary disclosure. As for the CCRA, for the Montreal/Montérégie office alone, $37.5 million was added to the Crown's coffers for fiscal years 2000 and 2001.

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