

Canadian Cross-Border Business: Tax Authorities Focus Attention on Offshore Assets



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During the last twelve months, the Canadian government has significantly intensified its enforcement of securities legislation and has implemented new measures against tax evasion. There is a general consensus that the combination of a desire to replenish government coffers and the success of the U.S. government in obtaining substantial back taxes has encouraged the Canadian Revenue Agency (CRA) to be far more assertive and proactive than in the past.

New reporting requirements

The enhanced T-1135 form (Foreign Income Verification Statement), applicable to the tax years ending in June 2013 and onward, requires Canadian taxpayers (individuals as well as corporations and trusts) to disclose detailed information about their investments abroad including the location and bank(s) where their investments are held. This information combined with intelligence gathered from the exponentially increasing number of voluntary disclosures of previously undis-

closed assets will provide the CRA with data that will most likely be used to effectively target undeclared assets.

Aggressive strategy

The increasingly proactive stance targeting international tax evasion has led to the adoption of strategies similar to those used by the IRS in the U.S. New measures include the Offshore Tax Informant Program (OTIP) and the creation of a dedicated team focusing on “international tax evasion and aggressive tax avoidance”. Paying for information, in the form of a percentage of taxes collected, marks a dramatic shift in the government’s strategy for dealing with tax avoidance. The OTIP hotline went live on 15 January 2014. The significant change in the government’s stance on taxation is further illustrated by compliant tax optimization structures such as immigration trusts coming under pressure and losing their tax-exempt status.

The Voluntary Disclosure Program (VDP)

The good news for Canadian taxpayers who have committed tax errors or omissions is that the CRA promotes voluntary compliance with its tax laws. Unlike in the U.S., the VDP is open to Canadian taxpayers on an ongoing basis. Furthermore taxpayers can, through a legal representative, approach the CRA on a no-name basis to better understand if they are eligible for the VDP and to potentially negotiate the relief available to them.

Incentive for the taxpayer

The incentive to enter the VDP lies largely in the amnesty from criminal prosecution under the Canadian Income Tax Act as well as relief from any applicable fines based on the amount of under- or unreported capital gains and income. Generally, the federal level of tax is settled first; most provinces have a similar process and take a per-

centage of the federal taxes levied, whereas Québec has a more complex policy, which can significantly impact the amount of taxes owed at the provincial level. For undeclared accounts in Switzerland, the CRA generally taxes the income and capital gains on assets for a period dating back ten years. The overall cost of a VDP varies greatly on a case-by-case basis and is dependent on factors such as historical asset allocation, the manner in which assets were expatriated and the province of residency among others.

What can be done?

As one of only a select group of financial firms outside of Canada registered as a Portfolio Manager, Dynamic Tree provides investment management services through licensed advisors who can offer objective advice on the options available to Canadian individuals and companies with assets in Switzerland and can recommend the most suitable solution on a case-by-case basis. Dynamic Tree only deals with assets that are declared or have already been accepted into the VDP. However, in situations where there are tax-related issues with assets, Dynamic Tree can, upon request, refer individuals to a network of experienced tax professionals who are best suited to advise on tax-related issues and the VDP in the relevant province.

Ever-increasing transparency, the pending automatic exchange of tax information and the rising penalties for tax non-compliance together with the CRA’s fair approach toward taxpayers who want to declare previously undisclosed assets provide compelling grounds not to delay any further. Given the current situation and outlook for Canadian taxpayers with undeclared funds, now is genuinely the best time to seek professional advice on regularizing any such assets and begin the VDP process.

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