

Marmer Penner Inc. Newsletter

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Changes to the Voluntary Disclosure Program Bring More Clarity

One draws skeptical views about the honesty of the typical Canadian taxpayer when one practices business valuation for matrimonial litigation purposes. It seems a disproportionate number of cases that land on our desks involve unreported income, fabricated expenses and hidden assets. As officers of the court and chartered professional accountants, it is our duty to recommend that a taxpayer who has been less than forthright with Canada Revenue Agency ("CRA") make a voluntary disclosure. It may also be the prudent approach from a matrimonial litigation standpoint. Your client would be unwise to ignore this advice for the following reasons:

- (a) Going into court without "clean hands" puts that spouse at a disadvantage as far as the court's likely view of him or her;
- (b) The voluntary disclosure allows the spouse to avoid penalties as CRA promises to waive these if full disclosure is made before CRA commences an investigation;
- (c) Crystallizing the tax liability at the valuation date allows the tax-delinquent spouse to share the liability as it reduces his or her NFP;
- (d) Except in unique circumstances, only a fool believes that his or her former spouse will never turn him or her in after the case settles. There is no statute of limitations for tax evasion and former spouses tend to anger easily; and

- (e) For support purposes, the voluntary disclosure may eliminate the income tax gross-up often applied to increase the support-payer's income.

The Voluntary Disclosure Program ("VDP") allows taxpayers to correct previously filed or unfiled information with respect to income tax and HST. Remember that when your client fails to report \$10,000 in cash income, your client may be deemed to have collected \$8,850 plus \$1,150 in HST depending on the nature of the unreported income. Accordingly, the combined taxes owing can be \$5,887 based on Ontario's 53.53% highest marginal income tax rate.

New provisions for the VDP take effect on March 1, 2018. Hard as it may seem to believe, the old rules still permit someone to make a no-name voluntary disclosure first to CRA to help them decide within a prescribed time period whether to make a complete voluntary disclosure. This will no longer be the case in a few weeks. In the recent *Colivas* decision, the husband failed to report \$331,000 of income in 2010 and V-Day was in 2011. A few weeks before his trial in 2016, he made a no-name voluntary disclosure and claimed the tax liability even though he had not disclosed his identity to CRA nor had he made any attempt at payment. The court allowed the liability. Did Mr. Colivas ever actually pay the actual income tax he swore he was about to pay? We likely won't ever find out, but, what do those in the know say about leopards and their spots?

In addition to eliminating the no-name voluntary disclosure, the new rules will require a VDP applicant to actually pay the estimated taxes on filing an application. The old rules allowed an applicant to 'fess up but still not pay, likely creating a difficult decision for a court determining whether the liability being claimed would, in fact, be paid.

Hopefully, these new rules will not discourage would-be applicants from paying overdue taxes and will also bring much-needed clarity to courts when deciding whether a contentious tax liability should be considered in calculating net family property.

This newsletter is not intended to substitute for proper professional planning. It is intended to highlight areas where professional assistance may be required or enough to discuss at the next hoedown. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.