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How the CRA will Uncover Your Offshore Assets & What You Should Do About It

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In the past, financial secrecy was common. The world has changed. The Organisation for Economic Co-operation and Development's (the "OECD") Tax Evasion Initiatives and the Canada Revenue Agency's ("CRA") audit power will continue to expand to reveal hidden offshore tax non-compliance and tax evasion. Foreign governments and foreign financial institutions will no longer refuse to disclose foreign income and assets to tax authorities. In fact, foreign governments and financial institutions are committed to disclosing this information to tax authorities, and the CRA has stated that it will "prosecute people to the full extent of the law". Canadians that have failed to report foreign bank accounts or other property face two unpleasant alternatives:

1. continue to attempt to hide offshore bank accounts and assets in the hope that CRA will not uncover the tax non-compliance, impose civil gross-negligence penalties, and lay criminal tax evasion charges; or

2. reveal non-compliance now under the Voluntary Disclosures Program, minimize tax payable, and avoid civil gross-negligence penalties and criminal prosecution.

Canadian taxpayers that do not disclose offshore accounts and assets are playing a dangerous game. Canadians with foreign bank accounts or assets should choose the safe path. We recommend that taxpayers consult with a tax lawyer to discuss and identify – with the protection of solicitor-client privilege – any potential non-compliance. In appropriate cases, we will strongly recommend that non-compliant taxpayers safely, and judiciously, disclose the non-compliance under the Voluntary Disclosures Program to avoid civil penalties and criminal prosecution.

Background

In 2012, the Organization for Economic Co-operation and Development ("OECD"), and its 34 member countries began taking aggressive steps to uncover and share information related to tax non-compliance and tax evasion. The OECD member countries include Canada, Switzerland, Austria, Barbados, and the Cayman Islands. In 2013, Parliament announced the Stop International Tax Evasion Program providing the CRA with $30 million in additional funding and more powerful tools to uncover tax non-compliance and tax evasion. CRA renewed its efforts to target Canadians that have failed to disclose specified foreign property, *e.g.*, funds held in foreign bank accounts, real property, interests in non-resident trusts, and shares of foreign non-residence corporation. In 2014, 51 countries and jurisdictions endorsed the OECD Declaration on Automatic Exchange of Information and Tax Matters. These countries and jurisdictions signed a multilateral agreement implementing the Standard for Automatic Exchange of Financial Information in Tax Matters (the "AEoI"). Stated simply, the AEoI will compel financial institutions in more than 51 countries and jurisdictions to collect client information and lead to the automatic exchange of that client information with foreign governments.

The Impact of the AEoI & CRA's New Power

In 2015, the AEoI and the CRA's new tools directly impact Canadian financial institutions and taxpayers in five ways. First, Canada is negotiating more Tax Treaties and Tax Information Exchange Agreements ("TIEA") to gain increased access to Canadian taxpayer offshore information and expand Canada's ability to collect tax, penalties, and interest. At this time, the CRA can use its power under Canada's 92 treaties and 22 TIEAs to obtain information about Canadians' offshore bank accounts and foreign assets. Second, the CRA has established the Offshore Compliance Division. The Offshore Compliance Division employs 70 CRA employees dedicated to uncovering offshore tax non-compliance and tax evasion. The CRA has trained the Offshore Compliance Division employees in data analysis and created an online internal networking space, see the CRA's WiKi, to share efficiently findings with other CRA compliance branches. Third, in January 2015, Canadian banks began reporting to the CRA the details of incoming and out-going International Electronic Funds Transfers ("EFT") of $10,000 or more. Fourth, the CRA has begun, through its Office Audit Letter Campaign, to send "educational letters" to "remind select taxpayers" of the requirement to file Form T1135 Foreign Income Verification Statements and the significant penalties associated with the same. The CRA Office Audit Letter Campaign reminds select taxpayers that the CRA may impose a penalty equal to the greater of either $24,000 or 5% of the cost or fair market value of the property for each year that the taxpayer failed to file a Form T1135 Foreign Income Verification Statement. Also, the CRA may impose other civil penalties and lay criminal tax evasion charges. Fifth, in July 2015, the CRA began conducting financial institution mandatory risk assessment audits to ensure that Canadian financial institutions are in compliance with the AEoI, and that these financial institutions are collecting account holder information including, but not limited to, information related to international electronic funds transfers.

Foreign Financial Institutions are Collecting Canadian Foreign Account Holder Information

In accordance with the AEoI, foreign financial institutions are sending Canadian account holders information requests and warnings. The frequency, scope, and language contained in these information requests and warnings is is alarming. The four following information requests and warnings are representative of the letters that foreign financial institutions are sending to Canadian account holders.

1. Union Bancaire Privee in Switzerland has sent Canadian account holders a "Statement of Tax Compliance" that requires that clients certify that the "assets deposited on the account(s) and ..... the income and gains generated by those assets are and shall remain declared with all competent tax authorities, and in particular those of the Beneficiary's country(-ies) of domicile. ... The Representative and the Beneficiary hereby undertake to indemnify the Bank for any damages, penalties, and costs, direct or indirect, which the latter might incur as a result of the failure by the holder(s)/beneficial owner(s) of the deposited assets to comply with their tax obligations in relation to the assets deposited with the Bank." [underlining added]

2. Valartis Bank (Austria) AG in Austria has sent its Canadian account holders a "Consent to Report to Authorities & Other Institutions for Canadian Individuals" that requires these account holders to certify that Valartis Bank "might be obliged to report certain data regarding [the client's] banking relationship with the Bank to Canadian depositories, issuers, authorities and/or other parties" and requiring that the account holder "expressly release the Bank from banking secrecy pursuant to Section 38(2) item 5 of the Austrian Banking Act (Bankwesengesetz). Additionally [the client] acknowledge[s] and release[s] the Bank from maintaining banking secrecy vis-a-vis Valartis Group AG as the main shareholder of Valartis Bank (Austria) AG" (*sic*). [underlining added] Moreover, Valartis Bank has confirmed that – if an account holder fails to satisfy the bank's release and compliance requirements – Valartis will close the account and compel the account holder to transfer the funds to some other party or financial institution.

3. Vontobel Private Banking in Switzerland sent foreign account holders an AEoI Information Sheet advising these clients to "check their possibilities to regularize their past tax liabilities" and that "[v]arious EU member states have launched regularization programs or stepped them up in recent years".

4. Credit Suisse AG in Switzerland is taking matters a step further. Credit Suisse AG sent its Canadian account holders a letter that requires the account holder "to provide [Credit Swisse] with evidence of tax compliance regarding each beneficial owner resident in Canada of the assets held with Credit Suisse AG". [underlining added] Surprisingly, Credit Suisse AG is requiring its Canadian account holders to cause an independent and registered Chartered Professional Accountant to certify that the account holder has complied with Canadian tax obligations along with a "Tax or Legal Advisor Conformation Regarding Tax Compliance Form" that the CPA must complete.

The frequency, scope, and language contained in foreign financial institutions information requests and warnings confirm that these foreign financial institutions are getting ready to share Canadian foreign account holder information with the Canadian government and the CRA.

The Other Ways that CRA is Targeting Offshore Bank Accounts & Collecting Information

The CRA has uncovered, and continues to uncover, information about offshore bank accounts and tax non-compliance through various sources including, but not limited to: (1) offshore data leaks (*e.g.*, the International Consortium of Investigative Journalist Leaks Database and the Liechtenstein list); (2) the CRA's Offshore Tax Informant Program that rewards individuals who come forward with information on major cases of tax evasion; and (3) the information that the CRA regularly obtains from taxpayers that disclose offshore accounts, structures, and information through the Voluntary Disclosures Program (jointly referred to as the "Offshore Information"). The CRA is using the Offshore Information to analyze and target countries, banks, and schemes to uncover other non-compliant taxpayers quickly and efficiently. In addition, the Parliament and the CRA are using the Offshore Information to prioritize the countries with which Canada intends to negotiate TIEAs. At this time, Parliament is negotiating TIEAs with Antigua and Barbuda, Belize, Cook Islands, Gibraltar, Liberia, Montserrat, and Vanuatu. At the Standing Committee on Public Accounts, 16th Meeting that discussed the Auditor General of Canada's 2013 Fall Report, Chapter 9 – Offshore Banking, Mr. Richard Montroy (Assistant Commissioner, Compliance Programs Branch, Canada Revenue Agency) confirmed that the Canadian government intends to negotiate TIEAs with Bahamas, Bermuda, Jersey, Guernsey, and the British Virgin Islands.

The Future

The CRA is turning the Offshore Information into tax revenue. The CRA's Annual Report to Parliament 2013-2014 reveals that 1,125 Canadian taxpayers filed offshore disclosures under the Voluntary Disclosures Program between

April 2006 and April 2007 and 5,248 between April 2013 and April 2014. These offshore voluntary disclosures represent over $2 billion in total unreported income since 2006-2007. In addition, *the CRA has stated its offshore tax non-compliance, and tax evasion rate of return is approximately 8:1 to 10:1, based on a conservative estimate*. The Offshore Information is providing the CRA with unprecedented access and insight that will allow the CRA to target better Canadian taxpayers that are non-compliant or evading tax. The CRA's ability to access offshore information will continue to grow. In 2017, the AEoI will activate. At that time, 40 early-adopter countries and jurisdictions will begin automatically exchanging information. In 2018, Canada will join the AEoI process, and *the CRA will automatically access – without any notice or judicial oversight – account holders names, transaction participants, the location of offshore assets, and foreign income*.

It is Time to Disclose Foreign Income & Assets

We appreciate that choosing to disclose is not pleasant. However, if the CRA initiates any inquiry or investigation, taxpayers with undisclosed offshore accounts and assets will lose the ability to seek protection and qualify under the Voluntary Disclosures Program. A simple CRA computer-generated letter can constitute enforcement action, invalidate a voluntary disclosure and, at a minimum, significantly increase the tax, penalties and interest payable. Canadian taxpayers with offshore accounts and assets have a window of opportunity. We recommend that these taxpayers take this opportunity to disclose offshore non-compliance under the Voluntary Disclosures Program before the CRA uses its current powers, or upcoming automatic access, to reveal offshore bank accountants and other property. In the current climate, the appropriate course of conduct is clear. A safe, judicious, and tax-effective voluntary disclosure is the best way to avoid imposition of civil gross-negligence penalties and criminal prosecution. If you are interested in learning more about the agreements and legislation that underlie the OECD's Tax Initiatives & CRA's audit powers, click this link to review our timeline supplement.