PRENTICE YATES & CLARK
CHARTERED PROFESSIONAL ACCOUNTANTS

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110 Sheppard Ave. East,
Suite 800
Toronto, Ontario
M2N 6Y8

(416) 366-9256
1 (800) 265-7818
Fax: (416) 366-9171
Web: www.pyc.net

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info@pyc

the newsletter of Prentice Yates & Clark

Voluntary Disclosures Program

The Canada Revenue Agency (CRA) refers to the Voluntary Disclosures Program (VDP) as a second chance to correct your taxes. The program has both income tax and GST/HST streams.

Income tax stream

VDP applications in the income tax stream may cover:

- omitted or underreported income
- expenses claimed in error
- failure to remit source deductions
- failure to file an information return

For an application to be accepted, one condition is that it must be *voluntary.* In other words, you must have disclosed the error before the CRA has taken any enforcement action or been informed – for example, through a leak of offshore financial information – that you did not comply with its regulations.

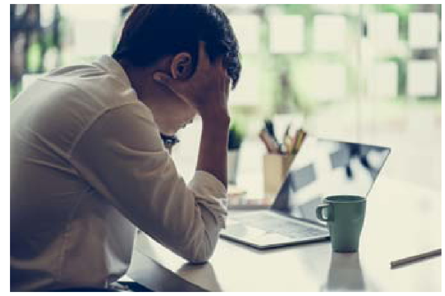
Other guidelines to note are that the application must:

- be complete
- involve a penalty that may be applied
- include information that is at least one year past due
- include the payment of the estimated tax due

The VDP was changed after March 1, 2018 to create two separate programs: a General Program and a Limited Program.

General Program
The General Program is for unintentional errors. If the CRA accepts your application, you will not be charged penalties or face criminal prosecution. You will be required to pay full interest on amounts due for the three most recent years, but you may be granted partial relief of interest for the years before then.

Limited Program
The Limited Program applies to those who intentionally avoided their tax obligations. If the CRA accepts your application, you will not be charged gross negligence penalties or be referred for criminal



prosecution. However, you will have to pay other penalties and all interest as required.

The other factors that affect which of the two programs your application will be considered for include whether you made efforts to avoid detection (such as through offshore vehicles, recalling our earlier example), the number of years you did not comply and amounts involved, and how sophisticated the CRA perceives you to be – to what degree do you appear to have made efforts to "work the system" to your benefit? For example, you may be denied acceptance into the Limited Program if you only disclosed the error after the CRA announced that it would be focusing its compliance efforts on an area that applied to your situation.

Generally, taxpayers are allowed to avail themselves of the VDP only once.

GST/HST stream

The GST/HST stream includes three programs: Wash Transactions, General and Limited.

Wash Transactions Program
The Wash Transactions Program applies when the supplier failed to charge and collect the GST/HST from a registrant who is entitled to a full input tax credit. This program may provide full relief from interest and penalties.

General Program
As with the income tax stream, the General Program applies to those who want to correct unintentional errors. If the CRA accepts your application, you will not be referred for criminal prosecution or charged penalties and may be eligible for relief of 50 per cent of the applicable interest.

Limited Program
The Limited Program provides limited relief for those who intentionally avoided their tax obligations. If the CRA accepts your application, you will not be referred for criminal prosecution or charged gross negligence penalties, but there is no relief from other penalties or interest.

Voluntary Disclosure Program - continued

In considering whether there was an intention to avoid tax obligations, the CRA asks these questions about a case:

- Was the GST/HST collected, but just not remitted?
- Did the taxpayer make efforts to avoid detection?
- Was there deliberate or wilful default or carelessness that amounted to gross negligence?

Similar to the income tax stream, the CRA also decides on which program applies to you based on the number of years you did not comply and amounts involved, how sophisticated they perceive you to be and how quickly you acted to correct their non-compliance.

And again, you may be denied acceptance into the Limited Program if you only disclosed an error after the CRA has announced that it will be focusing its compliance efforts on an area that applied to your situation.

Typically, this program will automatically apply to applications by large corporations with more than $250 million in revenue in two of their last five taxation years.

Recent court cases

Under section 220(3.1) of the *Income Tax Act,* the CRA can waive or cancel any part of the penalties or interest otherwise payable within a ten-year limit from the relevant taxation year. It had been the CRA's common practice not to reach beyond the period covered by the VDP to reassess any prior years' tax returns, but there seems to be a shift to a more aggressive approach, as noted in the *Gaultier v. Canada (National Revenue)* (2017 FC 1173) case.

The taxpayer in this case had transferred $300,000 to a Bahamian bank in 1978. Many years later, he wanted to set his affairs in order so as not to pass on his tax problems to his heirs, and made an application to the VDP for 2005 – 2014, within the normal ten-year period for which interest and penalties could be waived.

The CRA accepted the application and provided relief from penalties and interest for those taxation years, but they also used the information from the VDP application to reassess taxation years going back to 1980, since they considered that the taxpayer's inability to provide support for the initial transfer of the funds was a misrepresentation attributable to neglect, carelessness, wilful default or fraud.

This gave them the authority to assess taxation years beyond the normal limitation period. Penalties and interest were assessed on the unreported income and failure to file information returns for the relevant years. Gaultier's request for judicial review of CRA's application of a discretionary policy to reassess years prior to those covered by the VDP was denied.

Even good intentions may have consequences – so be diligent

Given the proliferation of tax information exchange agreements with countries that are considered to be tax havens in recent years, this tightening of the VDP program may become increasingly common.

Another recent court case dealt with the requirement for individuals to file a T1135 information return if they have specified foreign property worth more than $100,000. The penalties for failing to file this return are $50 per day to a maximum of $2,500 for each property, with additional gross negligence penalties possible.

In the case of *Moore v. The Queen* (2019 TCC 141) the taxpayer received shares in the U.S. parent company of his employer through an employer-sponsored share purchase plan. In 2016, the taxpayer realized that the cost of these shares had passed the $100,000 limit during 2015, and that he should have filed the T1135 for 2015. Unaware of the VDP, he completed the T1135 for both 2015 and 2016 and sent a letter to the CRA to inform them of his mistake. The CRA charged him the $2,500 penalty for late-filing the 2015 return.

In ruling on this case, the judge noted that the taxpayer had been diligent in reporting the employment benefit and the income from these shares in his tax return for both years in question, and thereafter. The judge further noted that the guidance contained in the 2015 *Income Tax Guide* was not clear about what was included in specified foreign property, or about the VDP application being the only way one could seek relief from penalties. In this case, the taxpayer was able to use a due diligence defence and the judge noted the unclear administrative guidance from the CRA. However, if you discover inadvertent mistakes on your prior tax returns, be sure to file the RC199 VDP Application Form without delay.

In conclusion, the VDP provides many benefits for those who need to "correct their taxes" – relief from prosecution and penalties, and potential reduction in interest. It can also provide peace of mind. Mistakes in the application process can be costly though. If in doubt, consult with legal and accounting professionals.

To learn more about the VDP, see: **www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/voluntary-disclosures-program-overview.html** ◆

Cleaning out your financial closet under quarantine

Sheltering in place has been tough; not being able to meet with family or friends, nor being able to step outside your home for a break required us all to adjust. There were some positives to the lockdown, though, including finishing off home projects you've been putting off. Another "to-do" that you might want to think about is whether there have been changes in priorities that could impact your financial affairs.

If you haven't addressed this yet while spending more time at "home base," here are some recommendations which I hope will inspire you to get organized, feel empowered and emerge confident in your financial future.

Review your spending, saving and cash on hand

The recent pandemic and the economic shock that ensued certainly made clear that having an emergency cash on reserve for times like this is highly important. The idea behind an emergency fund is to see you through a period of uncertainty concerning your employment or health, without the need to run up debt or tap into your retirement savings.

Cleaning out your financial closet under quarantine - continued

For the size of your emergency fund, recommendations vary from three months to a year of expenses. The amount will vary based on your specific circumstances; however, at a bare minimum, you should store away three months of spending for a "rainy day," like the type of events we've seen during COVID.

Building an emergency fund and creating sustainable wealth requires that you calculate and understand the most material parts of your cash flow situation. Here is an example of how to make this calculation, along with some comments to make the process easier.

An easy way to calculate your cash flow

Annual estimate	Cash flow example	Adam's comment
Income $	$100,000	T4 income on your last tax return will do, or you can calculate annual income based on your most recent pay stub
Taxes $	$23,708*	Use the Ernst & Young combined income tax calculator to calculate your expected taxes based on your income estimate
Savings $	$12,000	You might save a monthly amount, say, of $1,000 per month, or instead do a lump sum for $12,000 at the RRSP deadline each year
Spending $	**$64,292**	**(Assuming you are not hiding money under your mattress), this figure is the result after deducting your taxes and savings from your annual income**

* This tax figure is for an Ontario resident in the 2020 tax year

Revisit your investment plan

You are likely contributing the savings you are setting aside to a Registered Retirement Savings Plan (RRSP) or a Tax-Free Savings Account (TFSA). These are tax-efficient investment accounts and a good place to grow your savings.

If the recent downturn in the stock market had you up all night, then it's likely that your investment plan does not fit your expectations. Your investment plan should be based on two key, interrelated factors: your ability to tolerate risk (facts about you, such as your age) and your willingness to tolerate risk (feelings you have, such as whether investment risk makes you anxious).

If you set your investment plan up correctly, then even in challenging markets like we had recently, being clearer on your expectations should help quell any anxiety.

Protect your family through an insurance and estate plan

Protecting your family from the COVID-19 virus has been a priority for many parents and families recently. Purchasing face masks, hand sanitizer and disinfecting wipes are some of the investments many have made to combat the virus. Over the long term, life insurance coverage is something that can protect your family as well.

Although we don't like to ponder our mortality, the recent pandemic has obviously made us hyperaware of the fragility of life. Given the current situation, today, many insurance companies are providing life insurance coverage faster and easier than ever before. Since having a paramedical nurse come to your house to take your blood, etc. is no longer acceptable in the time of COVID, you can now acquire up to $2 million in life insurance coverage simply through a telephone review with a nurse.

Are your documents in order and easy to find?
Just as you would organize the garage or kitchen cupboard, make sure you sort and store your financial records (i.e., will, insurance policies, investment statement and online passwords) in a safe place. Why is this important? If you happen to pass away, your loved ones and executors will need to be able to retrieve these documents to deal with your estate efficiently.

If you have been avoiding completing or updating your will and power of attorney, now is always the right time to engage a lawyer to help you complete those critically important documents. A will and power of attorney don't just protect and organize your financial assets; they also ensure that any dependents you have (your children) go to the care givers you designate.

Also, make sure to review the beneficiaries on your registered investment accounts (RRSP, TFSA, etc.) to ensure that you have designated a specified living beneficiary. Updating this information could save your estate and loved ones thousands of dollars in unnecessary tax.

Take the next steps – a financial advisor can help

Not comfortable cleaning out your own financial closet? Don't have an investment plan in place? Now's a good time to get one! Then, consider meeting with a financial professional who can establish a financial and investment plan so that you will know what to expect.

At my investment practice, we create financial and investment plans for each of our clients. As a result, our clients understand what they can expect from their wealth in challenging times and the potential risks to their plans. In the end, our clients are more confident in their future and walk away with the "peace of mind" of knowing they can weather future events like COVID-19.

To learn more about how you can become more confident and comfortable in your financial future, contact a financial advisor. ◆

Inside PYC

The annual Ontario Non-Profit Association (ONPHA) conference will be held virtually on November 4th. PYC is a gold sponsor this year and J.J. Pauze and Viola Bardhoshi will be attending the online Trade Show.

Congratulations to Gayan Premachandra who has recently completed all the requirements for his designation as a chartered professional accountant.

How to avoid common scams during COVID-19

As most of the Canadian workforce has now moved to remote work in response to the COVID-19 pandemic, we are increasingly being targeted by fraudsters. This article outlines some of the most common scams we have seen during the current pandemic and suggests steps you can implement to keep your hard-earned dollars safe during these uncertain times.

Their goal remains the same: Divert funds, extort a ransom payment or steal data (which they can later sell on the Dark Web). At first glance, their schemes may appear legitimate and reasonable under the current COVID-19 circumstances.

Common scams

Here are some of the most common scams that have been reported:

- Fraudsters posing as a representative of a **loan or financial services company** may offer loans, debt consolidation and other financial assistance services. These imposters will typically ask for your personal information, such as your Social Insurance Number and other financial data, for the "application process." Their ultimate goal is to steal your identity.
- Callers purporting to be calling on behalf of **heating or cleaning companies** will offer duct cleaning services or air filters so that you can protect yourself against COVID-19. Others will pretend to be your electricity provider and threaten to disconnect your power, given your high usage. In both cases, they will ask for an immediate credit card payment. Needless to say, no product or service will be forthcoming even after you've paid. Their goal is to steal your credit card information and make unauthorized purchases.
- Some callers will pretend to be calling from the **Public Health Agency of Canada** claiming that they have results confirming that you have tested positive for COVID-19. They will ask you to provide your health card and credit card numbers for the purposes of sending over prescription medication. Again, their goal is to steal your data.
- In some cases, you will receive "phishing" emails that seem to come from the **Canadian government (or a government agency)**. These emails will have a COVID-19 theme and will encourage you to open attachments, click on a link or share personal data. The goal of the sender can range from installing malware on your computer to tricking you into sharing your personal information.
- Others will contact you pretending to be calling from the **Red Cross or other known charities** and will ask you for donations (all via credit card payment) to help provide medical kits to vulnerable individuals in retirement homes or in other parts of the country. They will not give you the option to make a donation online.
- Other scammers will claim to be calling from **a vendor who has not been paid** for over 90 days and requires immediate payment. They will provide "new" banking details and attempt to pressure you into making a quick payment.

In all of these cases, the fraudster will appear to be genuine, referencing COVID-19-related facts that appear to give credence to their claim that what they are offering or asking for is likely legitimate. Further, they will emphasize the need to act quickly and may even adopt an aggressive tone if you question them.

How to protect yourself

There are several ways you can protect yourself and your organization from these fraudsters' attempts to scam you. The key is to use the resources available to you to check the validity of the claim being made.

For example, for scams related to government offers or services, visit the Government of Canada's COVID-19 health, financial and security resources website. For claims related to your health and where fraudsters ask for your health information, decline the request and contact your public or private insurance service provider.

In terms of phishing emails, make sure you have the latest version of anti-virus software installed and keep your operating system up to date. Also, do not open documents or click on links from suspicious emails. If an email claims to provide "important information," consider whether the purported sender would have your email address in the first place. If the sender claims to be from a government department, contact Service Canada or your provincial government services department.

Lastly, when it comes to wire transfers, double-check every request and consider an "analog" verification technique – e.g., picking up the phone and calling the vendor to validate the request. Electronic confirmations can be falsified, especially if the fraudster was able to compromise your vendor's email account.

During these uncertain times, one thing that remains a constant is the fraudsters' desire to scam well-intentioned individuals into sharing personal information or redirecting funds. While sophisticated in some regards, these scams can be easily thwarted by some basic due diligence.

If in doubt, challenge the fraudster and check trusted resources provided by the government, including those offered by the Canadian Anti-Fraud Centre. ◆

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Prentice Yates & Clark,
Chartered Professional Accountants

Phone: 416-366-9256 / Toll Free: 1-800-265-7818

Fax: 416-366-9171

CONTACT	EXT.	E-MAIL
Partners		
Tom McGivney	233	tom.mcgivney@pyc.net
J.J. Pauze	230	jj.pauze@pyc.net
Paul Jaroszko	227	paul.jaroszko@pyc.net
Dionne Reid	232	dionne.reid@pyc.net

visit our website

www.pyc.net

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