

Canadian tax authorities come to the rescue of Swiss bankers



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Introduction

It should come as no surprise that Swiss bankers have been increasingly in the spotlight concerning their relationship with clients residing in other countries. Following leaks and information exchanges, many countries have become aware of assets held in Swiss accounts that belong to resident taxpayers of their country and have begun coordinated efforts to require greater disclosure aimed at preventing tax evasion. Swiss bankers and advisers who have dealings with Canadian residents should be aware of the issues involved and the solutions available to minimize and resolve related risks. In this article, we will present:

- (i) the current approach to information sharing between Switzerland and Canada;
- (ii) the exposure and risk of Swiss bankers;
- (iii) Canada's approach to the disclo-

sure process and the proposed solution, resulting in the protection of Swiss bankers;

- (iv) Canadian regulatory issues.

Exchange of information

Over the past few years, the U.S. and Canadian governments have made great strides in improving their access to information concerning the offshore assets of their taxpayers, and the focus has often been on offshore accounts in Switzerland.

In addition to automatic information exchange agreements, the U.S. and Canada have adopted whistleblower reward provisions, which, in combination with other sources of leaked information, may provide a substantial volume of information concerning taxpayers in those countries. For example, in February 2015 the Canadian authorities confirmed having received 1,349 bank files concerning accounts held by Canadians at HSBC, of which 396

were "high-risk accounts" with substantial balances, which have since been earmarked for audit and investigation.

Exposure

Canadian taxpayers who have assets (including bank accounts) outside Canada having a total cost of \$100,000 or more are required to disclose such assets in form T-1135 – Foreign Income Verification Statement. All income and gains derived from such foreign assets must also be reported in the taxpayers' regular income tax returns.

Failing to declare foreign income and to file Form T-1135 exposes taxpayers to significant penalties:

- Gross negligence relating to unreported income and gains can result in a penalty equal to 50% of the tax related to the unreported income.
- Gross negligence in failing to file the required foreign reporting forms or in failing to disclose all reportable assets

on these forms can result in a penalty of up to 5% of the cost of the undeclared assets for each year in which the negligence occurred.

- Criminal prosecution for tax evasion.

According to Canadian legislation, the threat of prosecution can also extend to third parties (such as advisers and bankers) who participated in the misrepresentations made to the Canadian tax authorities.

Nevertheless, the focus of Canadian tax authorities has thus far been the taxpayers themselves. Perhaps this can be explained by the sizeable sums the Canada Revenue Agency (CRA) has been able to recover through the voluntary disclosure process described below.

Voluntary disclosures

Canada has chosen a pragmatic and lucrative approach to allow taxpayers to come forward and correct any past inaccuracies or failures in filing and/or reporting.

As noted above, taxpayers who have in the past been falling short in reporting all sources of their income must be conscious of the serious risk they hold of being found out through one of the many channels now open to tax authorities.

Canadian taxpayers who wish to correct any past reporting deficiencies can now do so through a voluntary disclosure process (VDP), whereby they freely come forward to 'make amends' and fulfil their reporting obligations.

The benefits of electing to participate in this process include *reducing or eliminating* income tax, interest and penalties in respect of taxes for unreported income and inaccurate filings and, even more importantly, avoiding the risk of *prosecution*.

Three conditions must be met to be eligible to carry out a VDP:

(i) Disclosure must be voluntary. The taxpayer must not be aware of or have knowledge of an audit, investigation or other enforcement action set to be conducted by any tax authority or administration with respect to the information being disclosed to the Canadian authority. It is thus crucial to start the dis-

closure process as soon as possible before being contacted by a tax authority. (ii) The taxpayer must provide full and accurate facts and documentation for all taxation years or reporting periods where there was previously inaccurate, incomplete or unreported information relating to any and all tax accounts with which the taxpayer is associated. (iii) Disclosure must involve the application or potential application of a penalty. The penalty type may be a late filing penalty, a failure to remit penalty, an instalment penalty or a discretionary penalty, such as an omission penalty or a gross negligence penalty.

Disclosures can initially be made on an anonymous basis, to provide an opportunity for preliminary discussions with a tax officer to confirm principles and relief that may be applicable in each particular case.

We have carried out a large number of VDPs, ranging from the simple to the very complex, both in terms of structure and other elements and involving relatively small to very substantial amounts of assets. It is usually possible to restrict disclosure to a certain number of years and still benefit from blanket protection for all information, thus materially reducing exposure and cost.

We can safely say that in all cases, the total cost of carrying out a VDP (including income tax, interest, legal and accounting fees) is by far outweighed by the savings in tax, penalties and interest, not to mention eliminating the risk of criminal prosecution.

In all cases, using the services of an expert attorney also provides a level of peace of mind for taxpayers and their Swiss bankers or advisers. A reputable and experienced attorney will see that the interests of all parties involved – the Swiss banker, the adviser and the Canadian taxpayer – are protected and can properly assess exposure and reduce the overall cost and risk of uncertainty.

Taxpayers rarely get a second chance, and with successive leaks and the pending transmission of information, tomorrow may already be too late.

Exposure to prosecution, income tax, interest and penalties becomes

increasingly real as each day passes. Taxpayers and their advisers (and bankers) cannot afford to postpone dealing with this matter, especially considering the affordable cost of remedying ensuring protection to both taxpayers and their advisers or bankers.

Regulatory issues

Of equal importance to the regularization of previously undisclosed assets is ensuring compliance with Canadian securities legislation. Dynamic Tree Asset Management AG (Dynamic Tree) is a specialist investment manager that since 2010 has been delivering long-term investment solutions that comply with securities and tax regulations for clients residing in Canada. Over the last five years, Dynamic Tree has developed and continues to amass robust in-house expertise and experience related to all aspects of serving Canadian clients. An important element of Dynamic Tree's comprehensive service offering is its collaboration with leading tax specialists and law firms to deliver wealth structuring services and, where necessary, to advise on and manage VDPs. Dynamic Tree is thus able to provide complete solutions for institutions and advisers in Switzerland throughout the regularization process, thereby increasing efficiency and expediting the procedure. As Dynamic Tree is also a registered portfolio manager, its advisers are able to meet with clients in Canada regularly and support them through the entire transition process.

Over the past several years, Dynamic Tree has collaborated with numerous institutions and independent asset management companies to offer the best solution for all parties involved, including firms, advisers and clients. As the Canada Revenue Agency and provincial securities regulators continue to increase pressure on taxpayers in the light of pending automatic information exchange, it is imperative for both firms and advisers to seek future-oriented, fully compliant solutions for their Canadian clients.

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