

Penalties are Steep and Layered for Taxpayers

With the April 30 filing deadline just around the corner, now is a good time to review two essential questions with taxpayers:

- Is the taxpayer aware of the penalties and offences for non-compliance with CRA?
- Has the taxpayer reported all income and deducted/claimed only legitimate amounts during form filing?

It's important to stay on the right side of CRA, as the agency is empowered to impose a variety of punishments on taxpayers who fail to comply with the *Income Tax Act*. And of course, it's important to note at the outset that, under S. 18(1)(t) fines for charges levied under the *Income Tax Act* are not deductible. Here's what taxpayers and their advisors need to know:

Layers of Penalties Exist. Penalties are charged under S. 162 and 163 prior to the commencement of criminal prosecution proceedings, which are undertaken in cases where a taxpayer has intentionally participated in tax evasion. In such cases, the consequences of successful prosecution are covered under the charging sections of the *Income Tax Act* in S. 238 and 239, *Offences and Punishment*.

If a taxpayer is convicted of an offence under S. 238, the penalties under S. 162 and 163 may not be subsequently applied. However, if the penalties were assessed before the complaint gave rise to a conviction, **both** penalties and offences may be charged. It is therefore common practice for CRA to issue a reassessment notice with penalty charges assessed under S. 163 prior to prosecution proceedings.

Cost of Penalties. Common administrative penalties levied by CRA for non-compliance, excerpted from

- **Failure to file a return on time** – 5% of unpaid taxes plus 1% per month up to a maximum of 12 months from filing due date, which is June 15 for unincorporated small businesses
- **Subsequent failure to file on time within a 3-year period** — 10% of unpaid taxes plus 2% per month to a maximum of 20 months from filing due date
- **Failure to provide information on a required form** — \$100 for each failure
- **Failure to provide Social Insurance Number** - \$100 for each failure unless the number is applied for within 15 days of the request
- **Failure to make partnership information return** — For each such failure, the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100 during which the failure continues.
- **Repeated failure to file partnership information return** — For each such failure, the greater of \$100 for each member of the partnership for each month or part month not exceeding 24 months during which the failure continues.

- **Failure to provide information with regard to a foreign-held property** — \$500 per month for a maximum of 24 months; \$1,000 a month for a maximum of 24 months if there is a failure to respond to a demand to file plus an additional penalty of 5% of the value of the property transferred or loaned to a foreign trust or the cost of the foreign property where failure to file exceeds 24 months
- **Gross negligence:** false statement or omission of information in the return - 50% of tax on understated income with a minimum \$100 penalty. This penalty will also apply to a false statement relating to the GSTC.
- **False statements or omissions with regard to foreign properties** — 5% of the fair market value of contributions made to the property, minimum of \$24,000 (Note: the burden of proof for establishing facts leading to penalties is on the Minister)
- **Effect of carryback of losses** — Deemed not deductible to reduce penalties under S. 163(2.1) S. 163(4)
- **Late or insufficient instalments** — 50% of interest payable exceeding \$1,000 or 25% of interest payable if no instalments were made, whichever is greater.
- **Misrepresentation by a Third Party:** penalty for tax planning arrangements or valuation activities — the greater of \$1,000 and the total of gross entitlements from the plan or in all other cases, \$1,000
- **Third party Participation in make of false statements** — greater of \$1,000 and the lesser of the penalty to which the taxpayer is liable to under S. 163(2) and the total of \$100,000 plus the person's gross compensation
- **Failure to deduct or remit source deductions** — 10% of amount not withheld, or remitted
- **Second such failure in same year** — 20% of amount not withheld or remitted if this was done knowingly or through gross negligence.

Cost of Offences and Additional Punishment. Convictions under S. 238 and 239 result from criminal prosecution. The taxpayer must be found guilty beyond a reasonable doubt in order to be charged with these consequences. The taxpayer's advisors can also be found guilty and charged under these sections. Here are some of the consequences:

- **Failure to make or file a return as required** — A fine of not less than \$1,000 and not more than \$25,000 or both fine and imprisonment for a term not exceeding 12 months.
- **Tax Evasion** including making of false, deceptive statements, in a return, certificate, statement or answer, destroying, altering, mutilating, books or records, assenting to false or deceptive entries, or otherwise willfully evading tax or conspiring to commit tax evasion with any person — A fine of not less than 50% and not more than 200% of the amount of tax sought to be evaded or both the fine and imprisonment of not more than 2 years.
- **Tax Evasion**, but relating to the claiming or refunds or credits - A fine of not less than 50% and not more than 200% of the amount of tax sought to be evaded or both the fine and imprisonment of not more than 2 years.
- **Prosecution on indictment:** any person charged with an offence under 239(1) or 239(1.1) may be prosecuted at the election of the Attorney General of Canada to a

further penalty — in addition to any other penalty. — A fine of not less than 100% and not more than 200% of the amount of tax sought to be evaded or credits sought to be obtained.

- **Providing incorrect tax shelter number to another person** - A fine of not less than 100% and not more than 200% of the cost of that other person's interest in the tax shelter .
- **Contravening an order not to communicate confidential information** by government official — A fine of not more than \$5,000 or imprisonment of up to 12 months or both.
- **Communication of taxpayer's SIN** — A fine of not more than \$5,000 or imprisonment of up to 12 months or both.

Remember, it is every taxpayer's legal right and duty to arrange financial affairs within the framework of the law to pay the least amount of taxes possible. But if your intent is to defraud, or if you are negligent, there can be a very steep price to pay.