

Informant program a detailed exercise



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By
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It's a Small World After All was the theme song written by brother duo Robert and Richard Sherman in the wake of the Cuban Missile Crisis, for the Walt Disney attraction at the 1964 New York City World's Fair. The song and the attraction were meant to symbolize how the people and nations of the world could unite as one. For many in the tax community this has become a reality as the nations of the globe begin to share information on the financial affairs of each other's citizens, and it goes across jurisdictions.

What inspired me to think of that song was a discussion of the federal government's Economic Action Plan I had at the 2013 National Society of Trust and Estate Practitioners Conference in Toronto. The plan introduced measures to address international tax evasion, and the aggressive tax avoidance of some Canadians and non-Canadian residents. The offshore tax informant program (OTIP), a cornerstone of the government's stepped-up initiative, is keeping tax specialist Ian Morris very busy these days. Morris is the founding partner of Morris Kepes Winters, a boutique tax law firm.

Under OTIP, the Canada Revenue Agency is allowed to make financial awards for information related to major international non-compliance that results in collection of taxes owing. The threshold for compensation begins when \$100,000 of assessed federal tax, excluding interest and penalties, is collected, and the non-compliant taxpayer has exhausted all rights of appeal.

According to Morris, eligibility is not restricted to Canadian citizens. However, there are instances when an individual will not

qualify: (a) the informant is involved in the non-compliance and has been convicted of tax evasion for the matter, (b) the individual is the authorized representative of the taxpayer involved, (c) the informant is already obligated to disclose the information to the CRA, and (d) the information lacks integrity or is already in the possession of the CRA.

Also, a person will not be entitled to a reward if the information was obtained from someone who is ineligible. And as Morris points out, "The information cannot be offered anonymously since the informant must provide his or her name, date of birth, social insurance number, and a designated mailing address."

The CRA maintains that it will protect the identity of an informant as much as possible. Keep in mind that all information shared with the CRA is subject to the confidentiality rules in the *Income Tax Act*, and to applicable privacy legislation. However, says Morris, "if it is determined that the informant is an essential witness or might be subpoenaed, the CRA acknowledges it may not be possible to proceed without revealing the person's identity. In such a case, this will be canvassed with the informant before a decision is made to move forward under the OTIP."

The CRA is open for business, with regards to enforcing OTIP, by creating a confidential, toll-free number (1-855-345-9042) for queries. The initial call to discuss an individual's eligibility and nature of the information can be done on a no-name basis. However, if the individual wants to make a disclosure, Morris emphasizes that he or she must provide the following information to CRA:

- Legal name, date of birth, and social insurance number;
- Contact information (including street address, city, province, country, phone);
- Where applicable, legal representative for the claim and their contact information;
- An indication of interest to participate in the OTIP and be eligible for a reward;
- Complete description of the nature of the relationship with

the alleged non-compliant taxpayer; and,

- Previous submissions to the OTIP.

In addition, other information pertaining to the subject of the submission, and to the extent known, must be completed. This includes legal name and aliases, date of birth, SIN number or business number, occupation, marital status, and pertinent information about the spouse. But that isn't all.

The informant also has to include specific, credible and detailed information about facts relating to the alleged tax non-compliance. An example he used concerns unreported income or non-filing of tax returns. An informant should also disclose the tax years involved, and if known, the potential amounts owing from the non-compliance, and where applicable, a description of how the transactions contravene Canadian tax law.

An informant should submit all relevant documents (i.e., financial data) in his or her possession, and support eligibility under OTIP. This should include a description of how the informant learned of the non-compliance and obtained this information, and if the person has knowledge of certain documents supporting the submission but does not have possession of these documents. If such is the case, the informant must include a description and precise location. Finally, if reporting information concerns more than one taxpayer, the informant must clearly identify which documents pertain to which taxpayer.

Once the information is reviewed by an OTIP analyst and a recommendation is made to include the matter in the program, the informant and the CRA enter into a contract. "The information is then handed over to the CRA for investigation, which does not necessarily mean the informant is entitled to payment," says Morris. The contract could be terminated if the CRA already has the required information, the amount assessed for international non-compliance is less than \$100,000, or less than \$100,000 is collected in respect of the debt, ostensibly because the tax debtor does not have sufficient assets or the CRA is not able to seize and

realize on the assets.

"Should the OTIP analyst decide that the information does not meet the program's requirements, the CRA can still choose to use the information for an audit, and the information can be sent to the informant leads program," Morris says. "If this happens, the informant's name will not be disclosed in court proceedings, unless required by law."

If the informant is eligible for a payment, the amount of the award will be between five and 15 per cent of the federal tax collected (that is a function of the international non-compliance). The percentage is based on such factors as the quality and relevance of the information, co-operation of the informant, and value of the information to the CRA. The CRA website sets out a table that will be

used to establish the appropriate award rate.

"In a somewhat ironic twist, the CRA takes the position that rewards are taxable income for the informant," says Morris.

As my own education on OTIP came to a close, I asked Ian how much of an increase he's seen in the CRA's penalizing of taxpayers. "In my 25 years as a lawyer in tax, I have never been so busy," he says.

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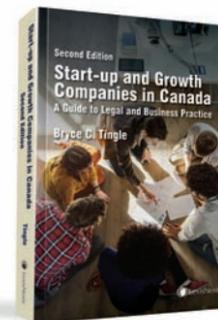
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Reports differ on audit quality

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together inspection findings. "They are only just now getting close to a consistent reporting methodology for the firms so that they can actually look at what are the systemic problems that exist on a global scale."

Also, some issues are country-specific, he said. "A lot of the inspection findings for the firms in the U.S. were related to internal

control over financial reporting — stemming from a [Sarbanes-Oxley Act] requirement. That same standard on internal control does not exist elsewhere."

McInnis is "pleased that IFIAR is raising this level of attention on the topic of audit quality," noting that there are other players involved as well.

"The International Auditing and Assurance Standards Board has issued an audit quality frame-

work — that's another global effort to increase audit quality. The International Organization of Securities Commissions is also considering what we can do collectively to contribute to audit quality. There is a lot of attention being focussed on audit quality and that's a very positive step globally," but, he stressed, "it's really up to the audit firms to address these concerns about audit quality."