



DRAFT – For discussion purposes only

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**INFORMATION CIRCULAR 01-1
- THIRD-PARTY CIVIL PENALTIES**

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Introduction

1. This information circular outlines the Canada Customs and Revenue Agency's guidelines and processes for the application of the third-party civil penalties in section 163.2 of the Income Tax Act (ITA) and section 285.1 of the Excise Tax Act (ETA). The term "taxpayer" used within this circular also applies to "registrant" under the ETA.
2. The Canadian tax system is based on the principle of self-assessment. Taxpayers are responsible for filing their tax returns accurately, truthfully, and on time. Tax legislation contains various measures to encourage compliance, including penalties for taxpayers who provide false or misleading information relating to tax matters. However, prior to enactment of the third-party civil penalties which came into force on June 29, 2000, there was no civil penalty provision that applied to those who counsel others to file their returns based on false or misleading information.
3. The objective of the third-party civil penalties is to deter third parties from making false statements or omissions in relation to income tax or GST/HST matters. These penalties are directed at ensuring tax compliance and deterring inappropriate behaviour.
4. The Canadian tax system has benefited from a cooperative relationship between professional advisors and Canada's tax administration, the Canada Customs and Revenue Agency (the CCRA). Since that relationship is critically important to all Canadians, and to the continued health of our taxation system, the CCRA is committed to applying the penalties fairly, consistently and only when clearly justified. The CCRA recognizes that tax professionals have a responsibility to act in the best interests of their clients and this includes the right to minimize their tax liability within the law.

Principles of Application

5. Given the stated purpose of the third-party civil penalties, administrative principles have been formulated to ensure that the penalties are applied in a fair and reasonable way. These principles are as follows:

Principle No. 1

6. The legislation is intended to apply mainly to arrangements and plans that contain false statements, often without the knowledge of the client. These are marketed typically as tax shelter and tax-shelter like arrangements that may be defective because of overvaluations of property, excessive or inflated costs, or lack of actual or intended business activity. Tax-shelter like arrangements are those arrangements that do not fit into the definition of a “tax shelter” in subsection 237.1(1) of the ITA, but they provide similar tax benefits.

Principle No. 2

7. Tax-planning arrangements that comply with the law are not affected by these penalties. The legislation is intended to apply to those advisors, tax return preparers and promoters who make (or participate in the making of) false statements knowingly or in circumstances amounting to culpable conduct. Such behaviour goes beyond the bounds of the law in search of a result that under-reports tax payable or overstates a refund or rebate claim. The legislation is designed to ensure the integrity of the tax law by deterring inappropriate behaviour.

Principle No. 3

8. The legislation is intended to apply to those tax return preparers and advisors who counsel and assist others in making false statements when they file their returns. It also applies to advisors and tax return preparers who are wilfully blind to obvious “errors” when preparing, filing or assisting a taxpayer in filing a return.

Principle No. 4

9. The legislation is not meant to impede regular day-to-day business activities and conventional tax-planning involving the application of the law to issues such as estate freezes, rollovers, reorganizations, amalgamations and owner/manager remuneration. These activities will not be impeded as long as they do not contain a false statement made knowingly or with culpable conduct.

Principle No. 5

10. The legislation is not intended to apply to honest mistakes, oversights and errors in judgment. Evidence concerning a person's conduct will be gathered to determine whether the error was made honestly (with good faith) or dishonestly (with bad faith, or with a wilful, reckless or wanton disregard of the law).

Principle No. 6

11. The legislation is not intended to apply to differences of interpretation where a reasonable argument (an argument that is not obviously wrong) exists as to the application of the law. The case law will often indicate whether such an uncertainty exists.
12. Similarly, the penalty would not be applied to honest differences of opinion on such issues as:
 - capital expenditures vs. repairs;
 - capital gains vs. income;
 - personal vs. business expense determinations; and
 - taxable status of a particular good or service for GST/HST purposes;

Issues such as these have been traditional sources of disagreement. However, application of the penalty will be considered where an interpretative position is taken that is clearly contrary to the established industry practice, the Agency's public position, or the case law, and for which no reasonable argument can be made.

Principle No. 7

13. The legislation is not intended to create additional audit or verification work for accountants and lawyers who conduct their affairs in accordance with their professional standards. Advisors and tax return preparers are entitled to rely in good faith on information provided to them by a client, or another person acting on the client's behalf, that is not obviously incorrect, misleading or contradictory to other information. However, this reliance in good faith does not apply to a person who is also selling or promoting tax shelters or tax-shelter like arrangements, since this is defined as an excluded activity (explained in paragraphs 38 to 40) in the legislation.

Principle No. 8

14. These penalties are not intended to apply to activities that are administratively acceptable to the CCRA as the correct application of the law. Examples include paying a bonus to the principal shareholder-manager or other key employees to reduce small business income to the Small Business Deduction limit; and making an immaterial adjustment to a GST/HST return for a filing period which is subsequent to the filing period in which the transaction giving rise to the adjustment took place.
15. In summary, the legislation is designed to deter inappropriate behaviour. These principles of application will be the gauge against which behaviour will be considered. The penalties do not apply to those advisors and planners who act honestly in discharging their professional responsibilities. Since substantially all professionals act responsibly, it is expected that very few will ever be faced with a third-party penalty assessment. It is in the joint interests of both the CCRA and tax professionals that the inappropriate behaviour addressed by these penalties must not be condoned.

The Law

16. The legislative structures under section 163.2 of the ITA and section 285.1 of the ETA are very similar. For each subsection under section 163.2 of the ITA there is a corresponding subsection under section 285.1 of the ETA. Therefore, as a general rule, this circular will refer to the relevant subsection or paragraph only. For example, subsection 163.2(2) of the ITA and subsection 285.1(2) of the ETA will be referred to as subsection (2) of each Act. Where there are differences between the two Acts, a complete reference will be given and the differences will be discussed.
17. Both section 163.2 of the ITA and section 285.1 of the ETA provide for two penalties, one directed primarily at those who prepare (or participate in), sell or promote tax shelters or tax-shelter like arrangements; and the other directed at those who provide tax-related services to particular taxpayers. The first of these two penalties will be referred to as the “planner penalty” and the latter will be referred to as the “preparer penalty” for the rest of this circular.

Planner penalty

18. Subsection (2), the planner penalty, provides for a penalty on a person who makes, furnishes, participates in the making of, or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by another person for a purpose of the ITA/ETA. Unlike the preparer penalty (defined in paragraph 20), the person who could use the false statement does not need to be identified in order to apply this penalty. Examples of when this subsection could be applicable are:
- tax-shelter promoters holding seminars or presentations to provide information in respect of a specific tax shelter; and
 - appraisers and valuers preparing a report for a proposed scheme/shelter that could be used by unidentified investors.

Penalty amount

19. Subsection (3) provides that the penalty to which a person is liable under subsection (2) for a false statement is \$1,000. However, when a false statement is made in the course of a planning activity or a valuation activity, the penalty amount is the greater of \$1,000 and the total of the person's gross entitlements for the planning or valuation activity (calculated at the time at which the notice of assessment of the penalty is sent to the person).

Tax-related services (preparer) penalty

20. Subsection (4), the preparer penalty, provides for a penalty on a person who makes, or participates in, assents to, or acquiesces in the making of a statement to, by or on behalf of another person that the person knows, or would reasonably be expected to know, but for circumstances amounting to culpable conduct, is a false statement that could be used by or on behalf of the other person for a purpose of the ITA/ETA. Subsection (4) would be applicable to the tax return preparer for each investor or taxpayer that can be identified. Examples would include:
- a tax preparer preparing a tax return for a specific taxpayer;
 - a tax advisor providing tax advice to a specific taxpayer; and
 - an appraiser or valuator preparing a report for a specific taxpayer or a number of persons who can be identified.

Penalty amount

21. For a penalty levied under the ITA , subsection 163.2(5) provides that the penalty to which a person is liable under subsection (4) in respect of a false statement is the greater of:
- a) \$1,000, and
 - b) the lesser of:
 - i) the penalty to which the other person (i.e. the person who could use the false statement for a purpose of the ITA) would be liable under subsection 163(2) if the other person made the statement in a return filed for the purposes of this Act and knew that the statement was false; and
 - ii) the total of \$100,000 and the person's gross compensation, at the time at which the notice of assessment of the penalty is sent to the person, for the false statement that could be used by or on behalf of the other person.
22. For a penalty levied under the ETA, subsection 285.1(5) provides that the penalty to which a person is liable under subsection (4) in respect of a false statement is the greater of:
- a) \$1,000, and
 - b) the lesser of:
 - i) the total of \$100,000 and the person's gross compensation, at the time at which the notice of assessment of the penalty is sent to the person for the false statement; and
 - ii) 50% of the decrease in the tax liability or increase in the net refund or rebate claim caused by the reporting of a false statement by the other person.
23. Subsections (2) and (4), the planner and the preparer penalties, could both apply to the same false statement. However, subsection (14) provides that a person who is liable to pay penalties under both subsections (2) and (4) for the same false statement is required to pay penalties that are not more than the greater of the penalty under subsection (2) and the penalty under subsection (4). Examples would include:
- a broker remunerated for promotional presentations of a tax shelter that is used by investors that can be identified; and
 - tax planners, appraisers and/or valuers preparing a report for a proposed scheme/shelter that is used by investors who can be identified.

Interpretation and discussion

False statement

24. A false statement is an incorrect statement, including a statement that is misleading because of an omission from the statement, regardless of whether the person making, participating in, or assenting to the making of, the statement has any intention to deceive. However, in order for the third-party civil penalties to be considered, a person must know, or be reasonably expected to know, but for circumstances amounting to culpable conduct, that the statement is a false statement that could be used for a purpose of the ITA/ETA. The meaning of a false statement is also modified by subsection (8) to deem two or more false statements to be one false statement in cases when there is one or more planning activities that relate to a particular arrangement (such as a tax shelter, a tax-shelter like arrangement or flow-through shares) or a valuation activity that relates to a particular property or service. This deeming provision does not apply to subsections (4) and (5), the preparer penalty.

Statement

25. “Statement” includes an oral or documentary representation. Examples include information provided on: tax returns, election forms, correspondence, invoices, donation receipts, statements, valuation reports, certifications, financial statements and their notes, contracts, prospectuses, selling documents, and other publications.

Culpable conduct

26. “Culpable conduct” must be present in the absence of actual knowledge of a false statement, in order for the third-party civil penalties to be considered. Culpable conduct refers to conduct that is not simply an honest error of judgement or failure to exercise reasonable care (i.e., ordinary negligence). It refers to conduct (an act or a failure to act) that is tantamount to intentional conduct, shows an indifference as to whether the ITA/ETA is complied with, or shows a wilful, reckless or wanton disregard of the law.

Tantamount to intentional conduct

27. The expression “tantamount to intentional conduct” in the definition of culpable conduct means conduct that is equal in effect, to intentional conduct, i.e., a person’s conduct (an act or failure to act) shows that the person must have intended to make (or participate in or assent to the making of) a false statement.

Indifference

28. The expression “shows an indifference as to whether this Act is complied with” in the definition of culpable conduct describes the passive aspect of culpable conduct. The expression means that the person’s actions or failure to act indicate that the person was wilfully blind regarding the application of the tax legislation. The person suspects that the situation demands that certain questions be asked. However, inquiries are not made because that would fix the person with knowledge. This behaviour was addressed in *Sirois (L.C.) v. Canada*, 1995 CarswellNat 555, [1995] 2 C.T.C. 2648 (TCC) which relates to subsection 163(2) of the ITA, gross negligence on the part of the taxpayer. The court described the taxpayer’s behaviour as “He buried his head in the sand.”
29. The “indifference standard” is considered to be greater than ordinary negligence. It is more or less equivalent to the standard used to measure the purposeful act of wilful, reckless or wanton disregard of the law. As stated in *Gerald Malleck v. Her Majesty the Queen*, 98 DTC 1019 (TCC) at page 1021 “There is, however, little, if any, difference between approaching “the willful, the reckless, the wanton”, and “indifference as to whether the law is complied with or not”.”

Wilful, Reckless, or Wanton Disregard of the Law

30. The expression “shows a wilful, reckless or wanton disregard of the law” in the definition of culpable conduct points to the situation where a reasonable, prudent person would know that his or her actions would result in a false statement but purposely continues with the chosen course of action. For example, an accountant would reasonably be expected to have knowledge of a particular issue that was dismissed at the Supreme Court level but decides to file on a basis that disregards the findings of that Court. The accountant would be demonstrating wilful or wanton disregard of the law if he or she counsels a filing position that is clearly contrary to the Supreme Court decision.

Participate

31. The definition of “participate” includes causing a subordinate to act or to omit information; and to know of, and to not make a reasonable attempt to prevent, the participation by a subordinate in an act or omission of information.

Subordinate

32. The definition of “subordinate” relating to a particular person includes not only employees, but also other persons over whose activities the particular person has direction, supervision or control. For example, if a particular person provides directions to, supervises or controls the activities of another person who is not an employee of the particular person, the other person would be considered to be a subordinate of the particular person for the purpose of determining whether the particular person participated in making a false statement. This provision may apply in a situation where a promoter, advisor or tax return preparer carves out certain activities relating to the making of a false statement and subcontracts these activities to an apparently unrelated person (e.g., in order to maintain that he or she did not participate in the making of the false statement).

Clerical or Secretarial Services

33. Subsection (9) provides that a person is not considered to have made or furnished, or participated in, assented to or acquiesced in the making of, a false statement solely because the person provided clerical services (other than bookkeeping services) or secretarial services relating to the statement.
34. For the purposes of the third-party civil penalties, clerical and secretarial duties do not include any involvement in the preparation of financial accounts. This is true, unless if it is of an administrative nature such as typing or formatting without having any regard to content other than the accurate reproduction of originals that are prepared by others. Bookkeeping services would include recording business accounts and transactions.

Good faith reliance

35. Subsection (6) provides for an exception in the application of the third-party civil penalties for reliance in good faith. This exception provides that an advisor who acts on behalf of the other person (i.e. the person who could use the false statement for a purpose of the ITA/ETA) is not considered to have acted in circumstances amounting to culpable conduct relating to a false statement solely because:
- the advisor relied, in good faith, on information provided to the advisor by, or on behalf of, the other person; and
 - because of such reliance, failed to verify, investigate, or correct the information (i.e., did not look into the accuracy of the information).

36. Good faith is described as “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder on inquiry.” The good faith reliance exception is available when the information used by the advisor or tax return preparer is not obviously unreasonable to a prudent person and does not raise questions in the mind of the advisor or tax return preparer. The good faith reliance exception is restricted to a person who acts on behalf of the other person, (i.e., taxpayer).
37. Per subsection (7), the reliance in good faith exception does not apply to a statement that a person makes in the course of an “excluded activity”, as defined in paragraph 38 below. As a result, the good faith reliance exception is not applicable to a person who is selling or promoting, or accepting consideration for the promotion or sale of the arrangement.

Excluded activity

38. The definition of “excluded activity” is included in subsection (1). The term generally means the activity of promoting or selling (whether as a principal or agent, or directly or indirectly) an arrangement where it can reasonably be considered that the arrangement concerns a flow-through share, a tax shelter, or a tax-shelter like arrangement. It also includes accepting (whether as a principal or agent, or directly or indirectly) consideration for the sale of, or participation in, such an arrangement. Since tax shelters and flow through shares are not relevant for the purposes of GST/HST, these terms are not included in the definition of “excluded activity” in subsection 285.1(1) of the ETA.
39. Generally, the use of rollover provisions, estate freezes and other conventional tax-planning techniques are not considered excluded activities when the activity is carried on for a fee for a specific client. The client receives advice that is tailored to their facts, circumstances and needs. However, if a tax plan is prepared for a specific client and is subsequently promoted or sold to other clients, it may fall within the ambit of excluded activity since it would no longer be client-specific advice.
40. When an activity is an “excluded activity” the “in good faith” defense is not available. However, determination of whether the civil penalties would apply would still depend on the existence of a false statement and the knowledge thereof, or the reasonable expectation of such knowledge but for culpable conduct.

Two or more false statements

41. Subsection (8) treats two or more false statements made or furnished by a person in the course of one or more planning activities (or a valuation activity) as one false statement for the purpose of applying the planner penalty relating to the person's false statements. This is the case when a person made or furnished false statements in the course of one or more planning activities that are for a particular arrangement, entity, plan, property, or scheme or in the course of a valuation activity that is in respect of a particular property or service. For example, a tax-planning scheme could include two false statements, the over-valuation of property, and the overstatement of expenses. These two statements would be deemed to be one false statement for the purposes of applying the planner penalty. However, this treatment is not available for the application of the preparer penalty. Therefore, when the same false statement is used in the tax returns of more than one individual, a separate penalty would be applicable to the false statement in each return (subject to the other limits stated in subsection (5)).

Special rules for valuation activities

42. Subsection (10) provides a special rule that applies to a statement made by a person who expresses an opinion on the value of a property or service (refer to as the “stated value”) or by a person who uses that “stated value” in the course of an excluded activity. A statement as to the “stated value” is deemed to be a false statement that the person made in circumstances amounting to culpable conduct if the stated value is outside (either higher or lower than) a range of values.
43. The bottom of this range is created by the results of multiplying the prescribed percentage referred to in paragraph (10)(a) and the fair market value. The top of this range is created by the results of multiplying the prescribed percentage referred to in paragraph (10)(b) and the fair market value.
44. For example, assume that the prescribed percentage in paragraph (10)(a) is 75%, and the fair market value of a property used in an excluded activity is \$100,000. The lower limit of the range would be $100,000 \times 75\% = 75,000$. Assume the prescribed percentage in paragraph (10)(b) is 133%. The upper limit of the range would be $100,000 \times 133\% = 133,333$. The resulting range, in this case, would be \$75,000 to \$133,333.

45. Despite the facts used in the above example, note that the regulations prescribing percentages have not yet been issued. If the stated value is in the range described in paragraph 43, the onus is on the CCRA to prove the existence of a false statement made with knowledge or in circumstances amounting to culpable conduct. Factors to be considered in determining whether penalties would be assessed include factors such as those listed in paragraph 67. However, if the stated value is outside of the range, the reverse onus rule applies.

Reverse onus rule

46. As stated in the preceding paragraph, if the stated value of a property or service lies outside the range, a “reverse onus” rule will apply, which means the valuation will be deemed to be a false statement made with culpable conduct unless the person establishes that the valuation was reasonable in the circumstances and made in good faith and not based on unreasonable or misleading assumptions.
47. Until the prescribed percentages are stipulated by the regulations, the deeming provision is not effective. This means the CCRA will have to demonstrate that a false statement was made either knowingly, or in circumstances amounting to culpable conduct.

Multiple assessments

48. Subsection (12) provides rules for the purpose of applying the third-party civil penalty rules in section 163.2 of the ITA or section 285.1 of the ETA to a person.
49. First, paragraph (12)(a) concerns cases in which a person is assessed a planner penalty at a particular time regarding a specific planning or valuation activity and another assessment of the penalty is made at a later time regarding the same activity. If the penalty is reassessed because the gross entitlements of the person are greater at the subsequent time, then under subparagraph (12)(a)(i) the reassessment of the penalty at that later time is considered to be a separate penalty (for an example see paragraph 51). In any other case, the notice of assessment of the earlier penalty is deemed not to have been sent for the purpose of applying section 163.2 of the ITA or section 285.1 of the ETA (see subparagraph (12)(a)(ii)). This deeming provision is relevant in the calculation of the gross entitlements for the purpose of that later assessment. The calculation is provided for in paragraph (12)(b).

50. Paragraph (12)(b) excludes certain amounts from a person's gross entitlements (in respect of a planning or a valuation activity in which there is a false statement made or furnished by the person). In general, this rule operates to base each assessment of a penalty under the planner penalty for a false statement on the gross entitlements of the person not counted in calculating the amount of the person's penalty(ies) previously assessed for the false statement. However, when subparagraph (12)(a)(ii) applies (i.e., the first notice of assessment is deemed not to have been sent), paragraph (12)(b) does not apply to reduce the amount of the second assessment since the original notice of assessment is deemed not to have been sent. As a result, the penalty amount on the second assessment in that case is based on the person's total gross entitlements at the time the notice of that assessment is sent.
51. As an example, presume that a person is assessed a planner penalty at a particular time in the amount of \$10,000, which represents the amount of the person's gross entitlements from a planning activity at that time. At a later time, it is discovered that the person's gross entitlements from the same planning activity have increased to \$25,000 and another assessment of a penalty is made at that later time, under subsection (2) against the person. The effect of subparagraph (12)(a)(i) in these circumstances is to deem the second assessment to be the assessment of a second penalty, and the effect of paragraph (12)(b) is to reduce the person's gross entitlements at the later time to \$15,000, in order to take into account the previous assessment of \$10,000. Thus the end result is that the person is liable to pay two penalties: one of \$10,000 as of the particular time, and another of \$15,000 as of the later time.
52. As another example, suppose that the facts are the same as above, except that at the time of the first assessment the person's gross entitlements were \$700. In that case, the person would have been assessed \$1,000 under paragraph (3)(a) at that time. When the person is assessed at the later time, paragraph (12)(b) reduces the person's gross entitlements at that later time by \$1,000, the amount of the previous assessment of the penalty. As well, subparagraph (12)(a)(i) deems the second assessment to be the assessment of a second penalty. In these circumstances, the person would be liable to pay a penalty of \$1,000 as of the time of the first assessment and would be liable to pay a second penalty of \$24,000 as of the later time.
53. In short, the amount of the gross entitlements used for the calculation of the second assessment is calculated by totalling the gross entitlements to date and reducing that amount by the penalty(ies) already assessed (and not vacated).

54. Subsection (12)(c) deals with the calculation of a preparer penalty. The amount of the gross compensation relating to the false statement is the total of the gross compensation to date less the amount of the preparer penalty already assessed (and not vacated).

Exemption for employees

55. Subsection (15) provides that the third-party civil penalty provisions do not apply to an employee of the “other person” (i.e., the person who could use the false statement) referred to in the planner or preparer penalties. That is, an employee is protected by this exemption only for his employer’s tax returns or information. The exemption in subsection (15) does not extend to employees who are engaged in excluded activities or who are specified employees (see paragraph 56). Under subparagraph (15)(b), the conduct of the employee is attributed to the employer for the purpose of applying subsection 163(2) of the ITA or subsection 285 of the ETA (the gross negligence penalties) to the employer.
56. “Specified employee” is defined in subsection 248(1) of the ITA to mean an employee of the person who is a specified shareholder of the person, or who does not deal at arm’s length with the person. Essentially, a specified shareholder of a corporation is a person who owns, directly or indirectly, 10% or more of the issued shares of any class of the capital stock of the corporation or a related corporation.
57. For certain corporate groups, employees of one corporation maintain the accounting records and do tax-planning and tax return preparation for the entire corporate group. Such employees are not technically covered by the exemption provided in subsection (15) for their work related to other members of the corporate group. However, in such a situation, the CCRA would generally assess the preparer penalty against the employer and not the employee since the employee would be considered to have engaged in conduct that resulted in a penalty situation in the course of the employee’s employment duties. This policy will also apply to other groups of organizations that have consolidated their accounting or tax functions in one of the member organizations.

Burden of proof

58. Under subsection 163(3) of the ITA and subsection 285.1(16) of the ETA, the burden of proof of the applicability of the third-party civil penalties will lie with the CCRA. The standard of evidence used for these third-party penalties is the balance of probabilities with the benefit of the doubt going to the third-party (see paragraph 63 for additional comments). Specifically, there must be more evidence to indicate that the penalty should be applied than there is evidence to indicate that the penalty should not be applied.

Other issues

Professional standards

59. Professionals are expected to act in accordance with the code of ethics and rules of professional conduct of their governing bodies. The wording of the rules may differ but the professions generally require that their members not associate themselves with any information that they know, or should know, is false or misleading. The third-party civil penalty provisions do not impose a higher standard.
60. The accountants' Notice to Reader communication, as described in the CICA Handbook, is not considered to be an admission of indifference as to whether the ITA/ETA is complied with. In order for the civil penalties to apply, there must be a false statement made knowingly, or in circumstances amounting to culpable conduct. This determination would be made based on the facts. The Notice to Reader standard acknowledges that, generally, the public accountant is not required to make inquiries or perform other procedures to verify, corroborate or review information provided. However, when there are obvious inconsistencies, the public accountant may become aware that the information supplied is obviously incorrect, incomplete or otherwise unsatisfactory with the result that the financial statements may be false or misleading. In this case, he or she could be exposed to the civil penalties if additional or revised information was not requested and acted upon.
61. A disclaimer of the tax return preparer's responsibility for information received from the client does not absolve the preparer from the penalties if the conditions for applying the penalties exist (described in paragraphs 18 and 20).

62. Failure to meet professional standards that give rise to sanctions by professional bodies or financial liabilities to a client because of negligence or malpractice would not necessarily result in the application of the third-party civil penalties. Each situation will have to be considered individually before any penalty assessment occurs. The CCRA would still have to prove that the person knew, or would reasonably be expected to know, but for circumstances amounting to culpable conduct, that there is a false statement capable of being used for a purpose of the ITA/ETA.
63. As stated in paragraph 58, the burden of proof lies with the CCRA. The CCRA has to prove that an advisor or tax return preparer knew of the false statement or that culpable conduct existed in a given situation. This can only be established by reviewing the facts of the situation. Certain measures taken by an advisor or tax return preparer can assist the CCRA in determining whether the knowledge of a false statement or circumstances amounting to culpable conduct existed in a given situation. These include a systematic approach to inquiring about questionable statements, following up and resolving such inquiries, and retaining evidence of such actions.
64. If a person exercises due diligence, the third-party penalty cannot be applied.

Application of the legislation

65. The third-party civil penalty provisions apply to statements made after June 29, 2000. The penalties may apply to any false statement made after this date. There is no statutory limitation regarding the time period during which an assessment of these penalties has to be issued.
66. When two or more persons are involved in the making of a false statement, the CCRA may apply the penalties to each of the persons.
67. Whether penalties will be assessed in a given situation will depend upon the facts of the situation. Factors that may be relevant include:
 - whether the false statement compromises the integrity of Canada's self assessment system of taxation by eroding the tax base;
 - whether the false statement is widespread and/or abusive;
 - whether the amount of taxes sought to be avoided by the taxpayer or by the other taxpayers affected by the false statement is significant;
 - evidence to the effect that the advisor or tax return preparer or valuator has made false statements in the past;
 - the advisor's knowledge of the taxpayer's business, financial, and/or personal circumstances; and
 - experience of the advisor or tax return preparer.

False statements in prior years

68. If an advisor or tax return preparer finds himself in a situation where he or she discovers that another person had made a false statement for tax purposes (e.g., he or she obtains a new client and finds that the previous accountant has made a false statement), the new advisor or tax return preparer would be expected to rectify the situation to the extent that the false statement affects the tax return of the current year. The advisor or preparer should advise his or her client to make a voluntary disclosure as described in Information Circular (IC) 00-1, *Voluntary Disclosures Program*, for the prior years or file amended returns for each of the affected years. If the client does not follow this advice, the advisor or preparer is not exposed to the third-party civil penalties in respect of prior years. If the current-year return not reflect the corrections because the taxpayer did not agree to it, and the advisor or preparer prepared the return knowing of the discrepancy, the advisor or preparer as well as the taxpayer may be subject to penalties. The advisor would be subject to the third-party civil penalties, and the taxpayer to a gross negligence penalty (subsection 163(2) of the ITA and section 285 of the ETA).

Persons subject to penalties

69. The CCRA will look closely at the source of culpable conduct to determine who should be subject to the penalties. Generally, the CCRA will seek to apply the penalties to the person(s) directly involved in causing the false statement to be made. A corporation acts through its officers. Subject to the exception for employees mentioned previously and described in subsection (15), if the officers knew of the false statement, or were reasonably expected to know but for culpable conduct, both they and the corporation might be exposed to the penalties. For example, a corporation may be engaged in planning and/or promoting or selling an abusive tax shelter with overvaluations or inflated costs. In the likely situation that these activities are conducted by the officers of the corporation, the officers and the corporation would be exposed to the third-party civil penalties. In another situation, an employee may be engaged in a situation subject to third-party penalties, without the knowledge of the employer. In this case only the employee will be subject to the penalties. It should be noted that subsection 163(2.9) of the ITA allows for a partnership to be assessed the third-party civil penalties as an entity. In a partnership, only those partners who are engaged in an activity subject to third-party penalties would be assessed a penalty rather than the other partners.

Price Adjustment Clause

70. Interpretation Bulletin IT-169, *Price Adjustment Clauses*, states that when a property is transferred in a non-arm's length transaction, the parties often include a price adjustment clause in the covering agreement under which the parties may agree that if the CCRA determines that the fair market value of the property is greater or less than the price otherwise determined in the agreement, that price will be adjusted to take into account the excess or the shortfall, provided that all of the following conditions are met:
- The agreement reflects a bona fide intention of the parties to transfer the property at fair market value and arrives at that value for the purposes of the agreement by a fair and reasonable method.
 - Each of the parties to the agreement notifies the CCRA by a letter attached to the return for the year in which the property was transferred
 - that he or she is prepared to have the price in the agreement reviewed by the CCRA according to the price adjustment clause,
 - that he or she will take the necessary steps to settle any resulting excess or shortfall in the price, and
 - that a copy of the agreement will be filed with the CCRA if and when demanded.
 - The excess or shortfall in price is actually refunded or paid, or a legal liability therefore is adjusted.
71. If all the above conditions are met, there would not be a false statement made with actual knowledge or in circumstances amounting to culpable conduct. Hence, the third-party civil penalties would not be applicable.

Notices of Objection and Appeals to the Court

72. If after careful consideration of the representations made by the third-party, it is decided that a third-party penalty is warranted and an assessment against the third-party is issued, the normal objection and appeal procedures will apply.
73. The role of the Appeals Branch is to carry out fair and impartial reviews of objections to the CCRA's assessments. In the event that the penalty is confirmed, the third-party has the option of appealing to the Tax Court of Canada and, as applicable, to higher courts.

74. There is no third-party penalty in the absence of a false statement. Where the taxpayer has filed a Notice of Objection relating to an assessment arising from a false statement (for which the planner or preparer has been penalized), the CCRA may hold the advisor's or tax return preparer's Notice of Objection in abeyance pending the outcome of the taxpayer's objection or appeal, if the following conditions are met:
- the assessment related to the false statement is already under objection by the taxpayer; and
 - the advisor or tax return preparer has requested in writing that consideration of his or her objection be held in abeyance pending the outcome of his or her client's case.

The General Anti-Avoidance Rule

75. The penalties are not intended to apply to arrangements by reason only of a determination that they are subject to the application of the General Anti Avoidance Rule (GAAR). The GAAR applies only if an arrangement is otherwise technically effective. This means that the particular filing position is based on true statements rather than false statements. Thus, the penalties cannot apply. However, if the courts have decided a GAAR case in favor of the Crown and an identical plan is then proposed by the advisor, the penalties may apply.

Non Residents

76. The third-party civil penalties can be applied to non-resident advisors. For example, where a non-resident parent caused a Canadian company to file a return containing a false statement, the non-resident will be subject to the penalties.

Process

77. Should circumstances necessitating the consideration of the application of the third-party civil penalties arise, the CCRA intends to strictly control the application of these penalties. Procedural checks and balances are in place to ensure that no one person can direct the application of the penalties or otherwise inappropriately apply the penalties.
78. The audit and referral process requires senior management involvement of the field office and Headquarters to ensure that the penalties are appropriately applied.

79. When an auditor first considers the possibility of applying the third-party civil penalties and prior to any discussion with the affected third party, both the management of the field office and Headquarters will be consulted to determine whether to pursue the matter further.
80. After initial consultations with Headquarters the field office management will discuss the issue with the affected third-party. The purpose of these discussions will be to inform the third party that consideration is being given to applying the penalties and to solicit representations from the third party that could be included in a potential referral of the issue to Headquarters. Based on the information provided, field office management may determine the penalties are not warranted, and advise Headquarters accordingly. Alternatively, the issue, along with any representation received from the third party would be referred to Headquarters.
81. Headquarters will review the facts of each case before a penalty proposal is made to a third party. To this end, a Penalty Review Committee (PRC) at Headquarters will meet as necessary to consider third-party civil penalty referrals. The PRC will include, for the foreseeable future, senior representatives from the CCRA's Compliance Programs Branch and Policy and Legislation Branch, and representatives from the Departments of Finance and Justice.
82. Subsequent to the issuance of a proposal letter, the CCRA will invite further written representations by, or on behalf of, the third party for consideration by the PRC.
83. The CCRA is prohibited by section 241 of the ITA and section 295 of the ETA from disclosing to the taxpayer any information relating to the advisor or tax return preparer. Consequently, at no time will the taxpayer be informed that the CCRA is gathering information to determine whether the taxpayer's advisor or tax return preparer could be subject to the third-party civil penalties. However, the CCRA will, in appropriate cases, gather information from all relevant sources including from a third party's client.

Periodic Update

84. The CCRA is committed to providing the tax community with periodic updates on the CCRA's experience in applying the penalties either directly at practitioner events, or through information provided to various groups in writing.

Appendix A - Examples

The following examples consider only the possible application of the third-party penalties. As a result, we are limiting our comments. Any other tax issues that may arise out of these examples are not considered.

Example One: Good faith reliance

A newly acquired client, who is self-employed, brings to his accountant a listing of his business expenses. The client also provides the accountant with a figure for his total revenue. He instructs his accountant to prepare an income statement and his tax return based on this information. The accountant has a quick look at the expenses. The expenses seem to be related to the type of business of the client and nothing stands out as obviously unreasonable. After the client's income statement is prepared, it reflects \$80,000 of revenue and \$55,000 of expenses and the income tax return is filed on that basis.

Upon audit, the CCRA finds a large proportion of the expenses claimed cannot be substantiated by adequate documentation and may not have been incurred. Furthermore, the reported revenue is only half of actual revenue.

Comments

There was nothing in the income statement that would have made the accountant question the validity of the information provided to him. Therefore, he could rely on the good faith defense and would not be subject to the preparer penalty.

Example Two: Reliance in good faith on another professional

An accountant relies on the financial statements prepared by another professional accountant to report his client's self-employment income. The statements were not obviously unreasonable. The CCRA conducts an audit and discovers that the income statement contained material misrepresentations.

Comments

Although the tax return contains one or more false statements, the accountant would be entitled to the good faith defense since he relied, in good faith, on information provided by another professional on behalf of the client that was not obviously wrong. Therefore, he would not be subject to the preparer penalty.

The third-party penalties may be applied to the other accountant if he knew or would be expected to know, but for circumstances amounting to culpable conduct, that the financial statements contained a false statement.

Example Three: Honest error

Near the midnight deadline on April 30, a T1 is prepared and filed. Due to the hurry in meeting the statutory deadline, and confidence in the qualifications of the senior personnel who prepared the return, the return is filed without normal review. During an audit, it is discovered that carrying charges were misstated because of an apparent recording error. The actual amount of \$1,098 was claimed as \$10,098.

Comments

The tax return preparer would not be subject to the third-party penalties. While the preparer might have been negligent in making the error, his actions were, in the circumstances, neither tantamount to intentional conduct nor was he showing an indifference as to whether the law was complied with.

Example Four: Failure to ask questions

An accountant who lives in an expensive neighborhood notices that the house next door has just been sold. It was listed for \$1 million. The accountant introduces himself to the new neighbor and they become friends. At tax time the friend comes in and hires the accountant to prepare his return. The accountant is given a T4 with \$25,000 in income reported. Thinking that the gross income is on the low side, the accountant asks if this is all the income he has and the friend replies that it is so. The accountant does not ask any further questions but prepares and files the return. When the taxpayer is audited it is discovered that he has over \$200,000 in income.

Comments

The accountant could be subject to the penalties for assisting in the understatement of a tax liability. The filing was highly suspect and even though the accountant asked one question, the response did not address the concern. An advisor or a tax return preparer who has knowledge of the personal circumstances of a client is expected to recognize obvious inconsistencies in the information provided by the client. In this case the accountant could not rely on the good faith defense. The accountant was in effect turning a “blind eye” to the false filing by not asking questions and obtaining plausible answers to the question of how the client could afford a house worth a million dollars despite having such a small income.

Example Five: Indifference as to whether the tax legislation is complied with

An accountant has several clients who have been reassessed for a tax shelter. The accountant knows that the CCRA is challenging the tax benefits claimed for the tax shelter on the basis that the shelter is not a business, is based on a significant overvaluation of the related property and, alternatively, is technically deficient.

The Tax Court of Canada, in a test case (general procedure), denies deductions claimed for the tax shelter in a previous year by a client of the accountant. The client's appeal is dismissed. The case is not appealed and the accountant is aware of the Court's decision.

The accountant prepares and files a tax return on behalf of a different client that includes a claim for the same tax shelter that the Tax Court determined was ineffective.

Comments

On these facts, the CCRA would consider assessing the accountant with the preparer penalty. However, if the accountant had determined, and was able to demonstrate that there was a reasonable basis upon which the Tax Court decision could be overturned by a higher court, the penalty would not apply.

Example Six: Indifference as to whether the ITA is complied with

A taxpayer approaches a tax return preparer to prepare and e-file his tax return. Prior to this, the tax return preparer and his firm did not provide any services to the taxpayer and they did not know each other.

The taxpayer provides the tax return preparer with a T4 slip indicating that the taxpayer has \$32,000 of employment income.

The taxpayer tells the tax return preparer that he made a charitable donation of \$60,000 but forgot the receipt at home. The taxpayer asks that the tax return preparer immediately prepare and e-file the tax return without obtaining the receipt.

Comments:

On these facts, if the tax return preparer were to prepare and e-file the taxpayer's return without obtaining the charitable donation receipt, the CCRA would consider assessing the tax return preparer with the preparer penalty. Given that the quantum of the deduction is so disproportionate to the taxpayer's apparent resources as to defy credibility, to proceed unquestioningly in this situation would show wilful blindness and thus an indifference as to whether the ITA/ETA is complied with.

Example Seven: Tax-shelter like arrangement

A promoter sells a tax-shelter like arrangement to individual taxpayers involving 10,000 pieces of art.

Each taxpayer acquires one piece of art for its fair market value of \$100. The valuator is aware of this information but agrees to appraise each art piece at \$1,000.

Concurrently, the promoter solicits a registered charity that agrees to accept the art as charitable donations and issue a charitable donation receipt in the amount of the appraised value (\$1,000 per artwork). This charity immediately auctions off the art to the highest bidder, and the price paid reflects the \$100 value per piece.

A tax return preparer, who does not have any direct knowledge of the false statement, prepares the income tax return of his client, who had acquired and donated art making use of the above-mentioned arrangement.

The CCRA conducts a review of the client's return and determines that it contains a false statement (the overvaluation of the property donated).

Comments

The promoter organized an arrangement that he or she knew included a false statement (e.g., about both the \$100 value of the art and the issuance of \$1,000 charitable donation receipts) and is, therefore, liable to the penalties.

The valuator has furnished false statements knowingly relating to the arrangement and is liable to the penalties unless he can prove the stated value was reasonable in the circumstances and that the statement was made in good faith.

If the charity knew, or would have reasonably been expected to know but for circumstances amounting to culpable conduct, that the valuations were incorrect, it would be liable for the penalties for issuing false receipts.

Although the tax return did contain a false statement, the tax return preparer did not know of the false statement, nor would he reasonably be expected to know but for circumstances amounting to culpable conduct. As a result, the preparer would not be assessed a third-party civil penalty.

Example Eight: Personal expense recorded as business expense

An accountant receives a box of personal and business receipts from his client and agrees to prepare a business expense statement for him. The accountant includes the \$10,000 cost of the client's family vacation (which he knew to be a non-deductible personal expense) as a business expense in the client's tax return.

The accountant prepares and finalizes the client's tax return and advises the client that he will be receiving a \$5,000 tax refund. The client files the tax return.

The CCRA conducts an audit and discovers the \$10,000 of personal expenses deducted in the client's tax return. The auditor also discovers that the families of the accountant and the client vacationed together. Therefore, the accountant knew the expense was personal at the time he included it in the business expenses.

Comments

The CCRA would consider assessing the accountant with the preparer penalty because the return was prepared and filed despite his knowledge of the false statement.

Example Nine: Bonus down to small business deduction limit

Xco is a small business, usually with less than \$200,000 annual income. When preparing financial statements, the external accountant determines taxable income to be \$250,000 and books a bonus payable of \$50,000 to be paid after the year end to the principal shareholder-manager. The tax return is prepared and filed on this basis since the general practice of the corporation is to distribute the profits in the form of bonuses.

Comments

In general, the CCRA does not challenge the reasonableness of salaries and bonuses paid to the principal shareholder-managers of a corporation when:

- (a) the general practice of the corporation is to distribute the profits of the company to its shareholder-managers in the form of bonuses or additional salaries; or
- (b) the company has adopted a policy of declaring bonuses to the shareholders to remunerate them for the profits the company has earned that are, in fact, attributable to the special know-how, connections, or entrepreneurial skills of the shareholders.

Bonuses paid to shareholders other than principal shareholder-managers will be subject to the normal test of reasonableness.

In view of the above, the preparer penalty would not apply.

Example Ten: Salaries paid to family members

Financial statements and tax returns for Familyco are prepared by an accountant with a small practice. Familyco pays salaries to all family members, two of which are in University and one of which lives outside Canada. The taxpayer informs the accountant that the family meets a few times a year to discuss company business.

Comments

Generally, reasonableness of salaries to family members who provide services in the course of the business is not an issue that would be subject to the third-party civil penalties. In extreme situations these penalties may apply. Where family members have provided no services and the accountant knows this fact, third-party civil penalties would be considered.

If the accountant knew that no services were provided by the family members to Familyco, but filed the T2 return that included a deduction for such payments, he would have participated in making a false statement and as such could be liable to a preparer penalty.

If the accountant did not know, but would be reasonably expected to know of the false statement, one needs to determine if the accountant's action resulted in culpable conduct. Facts to be considered with regard to whether the penalties will be applied include those listed in paragraph 67.

Example Eleven: Inflated royalties

A tax advisor is one of the partners in a firm that has a particular corporate client. The client has recently increased the royalty payments to its non-resident parent company as instructed by its parent company. The tax advisor suspects that the corporate client is deducting inflated royalties. The tax advisor discusses the concerns with a specialist in the firm who confirms the suspicions. Nonetheless, the tax advisor files the client's tax return based on this information, since the Vice-President of the corporate client alluded to the fact that its significant business could be taken to a competitor who is willing to file on that basis. None of the other partners in the partnership are aware of the tax advisor's actions.

Comments

The tax advisor was very suspicious of the information provided by the client. By having his suspicions confirmed, the advisor arguably knew that there was a false statement and he participated in using the false statement for tax purposes. Therefore, applying the criteria listed in paragraph 67 to the facts, the CCRA would consider applying the preparer penalty to the tax advisor who participated in making the false statement and the gross negligence penalty (subsection 163(2) of the ITA and section 285 of the ETA) to the corporate client in whose return the false statement was made. As per paragraph 69, only the tax advisor involved in the making of the false statement would be assessed the third-party civil penalty rather than the other partners. The penalty amount is calculated in accordance with paragraph 21. Presumably, the gross compensation would be the fees from the amounts to which the tax advisor or partnership is entitled to receive for the activity.

Example Twelve: Estate planning

An accountant refers his client to a tax practitioner who specializes in estate freezes. The client informs the tax practitioner that he purchased the shares of his company 20 years ago for \$2 million and that his accountant had told him that the shares were now worth \$15 million (based on a casual comment). The rollover was executed by the specialist using this information. A subsequent review by the CCRA shows that both the adjusted cost base (ACB) and the fair market value (FMV) were incorrect. The client had paid only \$150,000 for the shares. The other \$1,850,000 was to pay for the balance in the shareholder's loan account. It was also discovered that there was no systematic approach to determining the FMV of the shares. The CCRA's valuation determined that the FMV of the shares was \$20 million, and the valuation was not contested.

Comments

The tax specialist is involved in a planning activity as the term is defined in subsection (1) of the tax legislation. However, he is not involved in an excluded activity but in conventional tax-planning.

It is reasonable to expect that a tax practitioner specializing in estate freezes would request source documents or take other steps to verify the ACB of the shares prior to executing a rollover. The practitioner knew that the shares were acquired 20 years ago and that there was a good chance that the client did not know the meaning and implication of the term "ACB". Given the likelihood that the verbal answers he would get could be wrong, the practitioner would be exposed to the penalties without further corroborative evidence. With respect to the FMV of the shares, if the tax specialist had no reason not to believe the information given by the client or on the client's behalf, the specialist would not be exposed to the penalties since the good faith reliance defense would be available to the specialist.

The accountant, who provided the valuation opinion for the shares, could be subject to the penalties if the accountant knew that the valuation was false or would reasonably be expected to know that the valuation was false. This can only be determined by reviewing the facts. If the valuation is within the range described in paragraph 43, then the CCRA is required to determine that there was a false statement made with knowledge or in circumstances amounting to culpable conduct. However, if the other hand the valuation is outside the range, then the accountant would be deemed to have made a false statement that he would reasonably be expected to know, but for circumstances amounting to culpable conduct, is a false statement. However, the accountant will be able to rely on the soundness of the assumptions used as a defense.

Example Thirteen: Transfer pricing

An advisor is responsible for the filing of returns of a group of related subsidiary companies. He is employed by one of the companies (a Canadian company) in the group. The transfer prices used have been provided by the foreign parent and may not be appropriate for Canadian income tax purposes. The internal advisor suspects that the transfer pricing may be incorrect but he doesn't know. He makes a request to each Canadian company to provide details of their pricing decisions. Some companies respond that they keep records for transfer pricing purposes in accordance with subsection 247(4) of the ITA, while others inform the internal advisor that although they do not keep records in accordance with subsection 247(4), they would be able to defend their transfer pricing decisions.

Upon audit of one of the Canadian companies, it is determined that the non-resident related supplier did not keep records in accordance with subsection 247(4) and the CCRA made an adjustment of more than 10% to the transfer prices.

Comments

Whether the penalties are applied would depend on whether there is culpable conduct. The criteria stated in paragraph 67 will be used to determine if the penalties are applicable. In the situation at hand, the advisor knew that certain members of the related group were not complying with the documentation requirements of subsection 247(4). While the internal advisor made some inquiries, he could have made some more, (e.g., discussions with the management of the affected Canadian companies). The employer of the internal advisor is at risk if his employee (the internal advisor) knew that the transfer prices were incorrect and the return was filed notwithstanding that knowledge.

Regarding the applicability of the employee exemption, the internal advisor is not an employee of the company that was reassessed. Therefore, in law, the subsection 163.2(15) exemption would not be available to the internal advisor. However, if a penalty were to be applied, it would not be applied to the internal advisor but to his employer as per paragraph 57.

The subsection 247(3) penalty applies to situations that are unreasonable. The CCRA would not normally consider applying a penalty under the third-party civil penalty provisions unless the unreasonable situation is extreme in quantum and methods used. In those cases, we would consider applying both the subsection 247(3) penalty on the taxfiler and the third-party penalties on the person advising or counseling on the transfer prices.

Regarding the application of the civil penalties to the non-resident personnel, the non-resident company (through its employees) appears to be the person that recommended or decided the transfer prices that were used by the Canadian company. Therefore it could be subject to the penalties as discussed in paragraph 76.

Example Fourteen: Abusive tax shelter

A company is selling units in a limited partnership tax shelter. The company had acquired software for \$50,000 on the open market and transferred it to the limited partnership on the same day for \$10,000,000. The prospectus prepared by the company states that the fair market value of the software is \$10,000,000 and is supported by an appraisal. The tax shelter is registered with the CCRA and is available as an investment opportunity in the current year. The company's gross entitlements are \$2,000,000.

The CCRA reviews the tax shelter and determines that the fair market value of the software on the day of transfer into the limited partnership is \$50,000. The appraisal supporting the \$10,000,000 value was prepared by an apparently independent appraiser. However, it was not prepared using normal valuation principles. The appraiser informed the CCRA that all his calculations were based on the assumptions and other relevant facts provided to him by the company. The appraiser was paid \$75,000 for the appraisal.

Comments

The prospectus prepared by the company contains a false statement (overstated fair market value of the software) that could be used for tax purposes. The company knew or would reasonably be expected to know that the fair market value of the software was a false statement. Since the company is engaged in an excluded activity, it cannot rely on the good faith defense with respect to the valuation. The CCRA would consider assessing the company with third-party penalties in the amount of \$2,000,000. The CCRA would also consider assessing the appraiser with third-party civil penalties. The amount of the penalty would be his gross entitlements from the valuation activity, which is \$75,000.

Example Fifteen: Estimated information on GST return

An annual GST return filer informs her accountant that she had not kept records of the GST paid or payable on her business purchases for the year. The accountant informs her that he would make an ITC claim based on the financial statements of her business.

The accountant applies a factor of 7/107 to all expenses shown in the income statement. This includes the cost of sales and all acquisitions shown in the balance sheet. The amounts are reasonable and have been incurred. The income statement includes a large amount of payroll expenses and interest expense on which GST is not paid or payable.

The cost of sales includes a large proportion of purchases that are zero-rated. The accountant applies the 7/107 factor to payroll, interest, and zero-rated purchases. This results in an overstatement of input tax credits reported on the GST return.

Comments

The factors in paragraph 67 would be considered in determining whether the preparer penalty would be applied. The accountant is expected to know that GST is not payable in respect of payroll expense, interest expense and zero-rated purchases. In filing a claim that includes the above items, the accountant made a false statement, either knowingly, or in circumstances amounting to culpable conduct. Consequently the CCRA would consider assessing the accountant with the third-party civil penalty, specifically, the preparer penalty.

Example Sixteen: Promotion involving false statement

A person is selling GST exemption cards to consumers. For a payment of \$150, a consumer would receive a card that states that the cardholder is entitled to purchase goods and services free of GST.

Comments

The person selling the GST exemption cards is reasonably expected to know that the GST exemption card does not entitle the consumers to purchase goods and services free of tax. In providing such assurance and issuing the card, the person is making a false statement either knowingly or in circumstances amounting to culpable conduct. Consequently, the CCRA would consider assessing the person with the third-party civil penalties. Specifically, the planner's penalty since the false statement is not included in the tax return of another person. The person's gross entitlements are the total of all amounts he is entitled to collect from the sale of the GST exemption cards.

Example Seventeen: Unreasonable argument

An organization is advocating that GST is unconstitutional, and, therefore people should not pay, collect, or remit the GST. The organization makes presentations and publishes a number of publications containing statements of that nature.

Comments

The statement that the GST is unconstitutional is clearly a false statement. A person would know or would reasonably be expected to know that the statement is a false statement. The CCRA would consider assessing the person who has made the false statement with the third-party civil penalty. In the absence of gross entitlements (e.g., revenues from the sale of publications containing false statements), the minimum penalty amount of \$1,000 would apply.