

Germany: Stricter requirements for the voluntary self-disclosure of tax evasion

28/01/2015 Dr. Judith Taic

The German Fiscal Code provides for the possibility of a voluntary self-disclosure of tax evasion. Taxpayers are able to correct or complete their own incorrect tax returns. In such cases, if certain conditions have been met, the taxpayer will be exempt from criminal prosecution for tax evasion in respect for the previous incomplete or incorrect particulars.

The German Bundestag and Bundesrat have agreed to tighten the rules for voluntary disclosure in the event of tax evasion. The new stricter requirements entered into force on January 1, 2015.

Tax evasion is considered a criminal offence in Germany and punishable by a fine or a period of imprisonment ranging from 6 months to 10 years. Furthermore, the evaded taxes must be paid.

- I. Under the previous legal system**, in order to enjoy the statutory exemption from criminal prosecution, the delinquent taxpayer had to give complete and fully correct data and figures to the competent authority in order to enable the authority to assess all tax owed. Since 2011 a partial self-disclosure is impermissible. Voluntary self-disclosure had to cover the complete period of time for which criminal prosecution is not barred by the statute of limitation for criminal prosecution. This period is 5 years for minor cases (e.g. taxes owed are less than 50,000 Euro) and ten years in more serious cases. The tax to be corrected has to be in any case for a period of ten years, also in minor cases. To receive exemption from criminal prosecution the tax owed has to be paid within the deadline set by the revenue authorities. In addition interest of 6 % per year on the amount of tax owed has been charged. The self-disclosure is only valid if it has been made prior to discover of the offence. If taxes owed were in excess of 50,000 Euro for each year, there has been a penalty surcharge of 5 per cent of the tax owed.

- II.** These rules for voluntary self-disclosure have been tightened with effect on January 1, 2015.

It is considerable more difficult and expensive for tax evaders to return to a state of tax compliance by means of voluntary disclosure. Primarily, the conditions from criminal prosecution has been changed and tightened.

1. **Completeness and extent of correction**
The correction period has been extended to ten years in all cases. A taxpayer who files for voluntary disclosure will only escape criminal prosecution if he provides complete and fully correct data for a period

of 10 years. Even though the normal criminal statute of limitation of five years and the statute of limitation of 10 years in most serious cases has not been changed, information from the past 10 years which is relevant from the perspective of tax law must be known to the tax authorities. It will thus become substantially more difficult to submit a voluntary declaration which will be considered complete and effective. The incompleteness with respect to one action is sufficient to exclude the exculpatory effect of the whole voluntary disclosure.

2. Blocking events
3. Penalty Surcharge
4. Extended payment requirements

III. Commencement of limitation period for tax assessment has been changed

The period of tax assessment for taxes with respect to certain foreign investment income which originate from non- EU countries or FFA or countries with which Germany does not have an automatic exchange of information agreement in place, commences with the end of the calendar year in which the tax authority has knowledge from the income item but not later than 10 years after the tax liability arises. In case of interest income from Israel for example the tax liability can be assessed up to 20 years after tax liability incurred.

The price for the return to the tax compliance has been increased. On one side because of the stricter payment requirements and of the increased penalty surcharges and on the other side because of the creation of additional blocking events. The new rules having made the voluntary self-disclosure considerably more difficult to comply and small mistakes can result in the voluntary declaration becoming ineffective. Nevertheless the return to tax compliance is still possible and the possibility for voluntary self-disclosure is still open.