

By PwC Deutschland | 03 May 2011

Conditions tightened for tax evader immunity

The "Black Money Act" requiring rueful tax evaders to come forward at an earlier stage with a full admission of their misdeeds is now in force.

Traditionally, tax evaders have been able to claim immunity from conviction by coming forward of their own volition and paying the tax evaded within the term set by the authorities. This amount also bears simple interest at 0.5% for each month of the period of evasion. The idea is to allow evaders to own up to their misdeeds without fear of criminal charges while the authorities were still unaware of a discrepancy. However, recent events, including improvements in the information exchange between tax authorities and the sale of personal bank customer details to the German tax authorities by disgruntled employees of Swiss and Liechtenstein banks, have prompted a flood of admissions in circumstances where the evader could reasonably assume a high probability of detection. The government has reacted by tightening the conditions for immunity. Henceforth:

1. Immunity in respect of any one tax will be conditional on full admission of all relevant matters that are not yet statute-barred (generally 10 years from the year the misstatement was made). Thus "piece-meal" admissions of a fraud about to be revealed will no longer protect the offender if he fails to disclose the remainder of his misconduct.
2. The latest point in time for an admission with immunity entitlement has been brought forward from the start of an audit or investigation of a taxpayer's records to the announcement of the impending measure.
3. If the evasion exceeds € 50,000 for any one tax and year, immunity will be further conditional on an additional payment of 5% of the amount defrauded. The new legislation came into force on May 3, 2011 and applies to admissions made on or after April 29. The finance ministry has announced that "minor discrepancies" in the admission will not imperil the immunity under the full disclosure requirement; however, there is no statutory basis for such leniency.

Keywords

evader, evasion, immunity