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Rules on tax evaders coming forward to be tightened

The finance ministry has drafted legislation to tighten and streamline the rules under which tax evaders who come forward can avoid prosecution.

Originally, the law granted tax evaders who came forward of their own volition immunity from prosecution, provided they fully disclosed their misdeeds and paid the tax together with evasion interest of 6% (simple) p.a. These provisions stemmed from the days in which the German authorities had little hope of discovery of evasion on deposits abroad unless the miscreant attempted to repatriate the capital. However, with improved systems of information exchange and of detection, the situation has progressively improved from the point of view of the authorities. Progressive tightening of the disclosure rules has been the result. The federal finance ministry agreed in the spring with the provincial finance ministries to tighten them still further and has now published draft legislation to put this agreement into effect. The salient points are:

- The statutory period for raising an assessment on previously unreported investment income from states without an automatic information exchange agreement with Germany is not to run until the end of the year in which the offence becomes known to the authorities or until 10 years following the year of its perpetration. This means that an evader with funds parked in an uncooperative tax haven must live for up to 20 years in uncertainty following the year of his last offence.
- The level of fraud below which immunity from prosecution is assured by full and complete voluntary disclosure by an evader of his wrongdoing is to be reduced from €50,000 to €25,000. On the other hand, an evader of sums higher than €25,000 will not be prosecuted if he pays an additional penalty within the period set by the authorities for the payment of the tax at issue and the interest thereon. This penalty is 10% of the tax evaded up to €100,000. If the evasion was more, but not more than €1 m, the rate is 15%. If more than €1 m is at stake, the penalty rate is 20%. Evasion interest at 6% p.a. continues to be due.
- If the attempt to avoid a criminal prosecution is unsuccessful (this is not infrequently the case, usually because of shortcomings in the accuracy or completeness of the disclosure), the penalty payment will not be refunded. However, the courts are at liberty to credit it against a fine. Obviously, it will be for the judiciary to interpret this provision when the time comes, although it presumably means that an offender will not be able to buy himself out of a prison sentence.
- The conditions for coming forward are to be further tightened in detail, in particular to exclude unwarranted advantages for the offender from incomplete disclosure or from delaying disclosure until a tax audit has started and he can see the direction of the auditor's investigations.
- Special rules govern disclosure of fraud in connection with monthly or quarterly VAT and wages withholding tax returns.
- The proposal is to take effect from January 1, 2015.

Keywords

prosecution, tax evaders, unreported investment income