



Global Tax Update

Netherlands

Deloitte Tohmatsu Tax Co.

June 2015

Reversal of and more onerous burden of proof because the required tax return has not been filed

A recent judgment shows that the Dutch Supreme Court quickly assumes that the required tax return has not been filed. Additional tax payable of EUR 2,101 – or 19% in excess of the amount declared – was enough to reach that conclusion.

(1) Introduction

Tax law includes sanctions for a taxpayer who fails to observe requirements regarding tax returns or providing information. According to one of those sanctions a taxpayer may be faced with a reversal of and a more onerous burden of proof in objection or appeal proceedings. This may occur in situations where a taxpayer has failed to file the required tax return, or it has been established that a taxpayer has failed to comply with information requirements following an irrevocable decision requiring information.

A reversal of and a more onerous burden of proof mean that tax assessments or decisions on objections are maintained, unless a taxpayer can demonstrate (as opposed to providing reasonable arguments) that such tax assessments or such decisions, respectively, are incorrect and to what extent. In proceedings such a sanction will usually lead to an unfavorable judgment, so taxpayers will go to great lengths to

prevent a reversal of and a more onerous burden of proof. Recently, the Supreme Court had to assess whether in this respect the required tax return had been filed.

(2) Case

The interested party had declared an amount of EUR 33,225 income from employment in 2008. The income tax due on this amounted to EUR 8,938. On the back of the outcome of a tax audit the inspector imposed an additional tax assessment. The Den Bosch Court of Appeal considered it plausible that the non-disclosed income had amounted to at least EUR 5,000, but it considered the defect in the tax return not to be such as to justify a reversal of and a more onerous burden of proof.

Earlier on, the Supreme Court has ruled that the required tax return is not filed if, by applying the regular rules governing the obligation to furnish facts and the burden of proof, it has been established that one or more defects will lead to the tax due according to the tax return being considerably lower than the actual tax due, in both absolute and relative terms. An additional condition applies in that when the taxpayer filed the tax return it knew, or should have known, this would result in a considerable amount of tax due

not being levied.

The dispute in this case dealt with whether the first criterion had been met. The Supreme Court established that the 2008 income tax due was EUR 11,039. This is EUR 2,101 more tax than had been declared by the interested party, or 19%. The Supreme Court considers this to be a considerable amount, in both absolute and relative terms. The interested party failed to file the required tax return. The Supreme Court refers the case to the Arnhem-Leeuwarden Court of Appeal for further treatment and a decision.

Newsletter Archives

To see past newsletters, please visit our website.
www.deloitte.com/jp/tax/nl/eu

Contacts

Deloitte & Touche (Amsterdam)

Kazuki Fujio, Manager

KaFujio@deloitte.nl

Misaki Kawabata

MiKawabata@deloitte.nl

Issued by

Deloitte Tohmatsu Tax Co.

Tokyo Office

Shin-Tokyo Building 5F, 3-3-1, Marunouchi,
Chiyoda-ku, Tokyo 100-8305, Japan

T e l: +81 3 6213 3800

email: tax.cs@tohatsu.co.jp

Corporate Info.:

www.deloitte.com/jp/en/tax

Tax Services:

www.deloitte.com/jp/tax/s/en

All of the contents of these materials are copyrighted by Deloitte Touche Tohmatsu Limited, its member firms, or their related entities including, but not limited to, Deloitte Tohmatsu Tax Co. (collectively, the "Deloitte Network") and may not be reprinted, duplicated, etc., without the prior written permission of the Deloitte Network under relevant copyright laws.

These materials describe only our general and current observations about a sample case in accordance with relevant tax laws and other effective authorities, and none of Deloitte Network is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. The opinions expressed in the materials represent the personal views of individual writers and do not represent the official views of Deloitte Network. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Deloitte Tohmatsu Group (Deloitte Japan) is the name of the Japan member firm group of Deloitte Touche Tohmatsu Limited (DTTL), a UK private company limited by guarantee, which includes Deloitte Touche Tohmatsu LLC, Deloitte Tohmatsu Consulting LLC, Deloitte Tohmatsu Financial Advisory LLC, Deloitte Tohmatsu Tax Co., DT Legal Japan, and all of their respective subsidiaries and affiliates. Deloitte Tohmatsu Group (Deloitte Japan) is among the nation's leading professional services firms and each entity in Deloitte Tohmatsu Group (Deloitte Japan) provides services in accordance with applicable laws and regulations. The services include audit, tax, legal, consulting, and financial advisory services which are delivered to many clients including multinational enterprises and major Japanese business entities through over 7,900 professionals in nearly 40 cities throughout Japan. For more information, please visit the Deloitte Tohmatsu Group (Deloitte Japan)'s website at www.deloitte.com/jp/en.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 210,000 professionals are committed to becoming the standard of excellence.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.