



Global Tax Update

Germany

Deloitte Tohmatsu Tax Co.

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New regulations of the possibility of voluntary disclosure of tax offences.

The legislative regulations of the possibility of voluntary disclosure of tax offences according to the German fiscal code have been changed recently and will be in force from January 1, 2015.

After the regulations of the possibility of voluntary disclosure of tax evasion have been changed in April 2011, the German legislator is currently planning to implement new regulations of voluntary disclosure of tax evasion. The essential changes are described below:

According to the current law it is necessary to provide the finance office with comprehensive information about all tax offences for the relevant tax type, which are not barred by the limitation period for criminal prosecution, to gain impunity with the disclosure letter. After the new regulations come into force in January 2015, it will be required to disclose all tax offences at least for a period of the last 10 years, even if the criminal limitation period is shorter.

Several modifications relate to the new rules of preclusion from impunity:

- Firstly, comparable with the current regulation, a voluntary disclosure won't be valid, if the audit order has been announced to the criminal offender or his representative. Additionally the preclusion from impunity will be effective if the audit order has been sent to any other involved person, such as instigator or assistant or any other person, which

benefits from the tax evasion.

- In the future it will be possible to disclose such tax offences, which are not subject to the temporal and material scope of the tax audit. This implies that the partial voluntary disclosure will be valid in these cases in the future.

A similar new regulation has been made for the appearance of the public official for tax audit. The voluntary disclosure will be so far effective, as it includes tax offences, which are not subject to the temporal and material scope of the tax audit.

- Furthermore there have been made changes in the area of VAT advance return and monthly wage tax return. In the future it will be possible to correct only the annual VAT returns in order to obtain criminal impunity. A correction of monthly VAT advance returns for the current year won't be necessary. The correction of monthly wage tax returns will also be possible partially.
- Additionally a voluntary disclosure won't be valid, if the initiation of criminal proceedings or proceedings for the imposition of administrative fine has been announced to the criminal offender, as it has been regulated in the current law as well, or to any other involved person.

- If the amount of avoided taxes for each tax offence is higher than €25,000 it will be also necessary to pay a surcharge for each of these tax offences. The volume depends on the amount of avoided taxes. If the amount is lower than € 100,000, a payment of 10 % is required. If the amount is higher than € 100,000 but lower than € 1 Mio. it is necessary to pay a surcharge of 15 % and if it is higher than € 1 Mio. a surcharge of 20 % has to be paid by every criminal offender or participant in order to abstain from the criminal prosecution.

As opposed to the current regulation it is moreover required not only to pay the avoided taxes to the finance office, it is although crucial to pay the interest in order to obtain criminal impunity.

As shown above the new regulations lead to various changes of voluntary disclosure, which have to be considered within the legal consultation.

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