

TaxPage, June 2025

Non-punishable voluntary disclosure

Introduction

On 13 June 2025, by 113 votes to 59, the National Council refused to act on a parliamentary initiative aimed at abolishing the possibility for taxpayers, or their heirs, to make a non-punishable voluntary disclosure in order to regularise a previously non-compliant tax situation. It is worth recalling here the conditions imposed by law for such regularisation to be carried out without penalty.

Issue

If a taxpayer intentionally or negligently fails to declare certain items of taxable income or wealth, he is guilty of tax evasion and is liable to a fine (art. 175 para. 1 FDTA; art. 56 para. 1 HDTA). The fine may be set at between one-third and three times the amount of tax evaded, depending on the seriousness of the offence. That said, every taxpayer has a once in a lifetime "get out of jail free" card they may use to repent of such tax evasion without any fine being imposed.

Conditions

Pursuant to Articles 175 para. 3 FDTA and 56 para. 1bis HDTA, the tax authorities waive criminal prosecution provided that:

- The taxpayer is making such self-disclosure for the first time;

It should be noted that if the facts also meet the conditions for other tax offences, these acts will not be prosecuted, but the benefits unduly received will have to be returned. In the event of a subsequent self-disclosure which meets the other conditions listed below, criminal proceedings will not be waived, but the fine will be reduced to one-fifth of the tax evaded (art. 175 para. 4 FDTA; art. 56 para. 1ter HDTA).

- The tax authorities were not already aware of this;

This condition requires several clarifications. First, this condition is not met if the tax authorities were already investigating the taxpayer's case. Secondly, since the automatic exchange of information on financial accounts came into force, the tax authorities are deemed to have been aware of the information as of 30 September of the year in which the information is sent to the FTA as part of the automatic exchange of information.

- The taxpayer cooperates unreservedly with the tax authorities to determine the amount of tax owed;

- The taxpayer endeavours to pay the tax owed.

If the taxpayer meets all the conditions but does not do everything in his power to pay the tax that he would be able to pay, for example by allowing himself to be served with a claim for payment, the exemption may be revoked.

Consequences

If all these conditions are met, no criminal proceedings are brought against the taxpayer, who therefore escapes the fine. However, the tax authorities will issue a tax reminder to the taxpayer for the amount of tax evaded over the last ten years (art. 152 para. 1 FDTA; art. 53 para. 2 HDTA). The taxpayer is also required to pay default interest on these amounts.

Simplified regularisation for heirs

An heir who satisfies the last three conditions listed above may request a so-called simplified regularisation, which limits the recovery of taxes to the three tax periods preceding the year of death (art. 153a FDTA; art. 53a HDTA). In this type of announcement, it is not necessary for it to be the first occurrence, even if the deceased had already used his own "get out of jail free" card during his lifetime.

Please do not hesitate to contact us if you have any questions.

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