

The New French Voluntary Disclosure Program

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On 21st June 2013, the French tax authorities issued the long-awaited circular in respect of the new voluntary disclosure program for undeclared foreign assets. As anticipated this is neither a tax amnesty nor a very generous program as compared to what has been put in place by some other European countries. Although the former tax regularisation unit (“regularisation cell”) created in 2009 is not reactivated, the amended tax returns will be dealt with by one of the central services of the French tax authorities (DNVSF) and not with the taxpayer’s local tax office.

As opposed to the former program, the taxpayer does not have the option to come forward on a no-name basis to receive an indication of the consequences of the disclosure. The reporting should take place before any audit or reassessment program has started.

The taxpayers should voluntarily disclose all their undeclared foreign assets and the corresponding income and/or gains.

As a general rule, the unreported income and assets will be fully taxed based on the rectified tax returns as from 2006 as regards income tax, and 2007 as regards wealth tax, inheritance and gift tax.

The taxpayer will also have to pay interest (at 4.8% per year) and penalties in addition to the unpaid taxes.

As opposed to the former program the tax authorities will not, as a general rule, have any discretionary power in applying the penalties and interest. The circular provides that a distinction is made between two categories of taxpayers. The first category principally concerns taxpayers who have inherited foreign bank accounts and former expatriates who still have assets in their former countries of residence that were not declared after returning to France. The second category concerns other taxpayers including those who have generated offshore assets while residents of France. As a general rule the penalty is reduced from 40% to 15% in the first case and to 30% in the second case.

The new specific penalty for not reporting foreign assets, which is applicable as from 2012, is reduced from 5% of the market value of the assets on 31st December to 1.5% for the first category of taxpayers and to 3% for the second category.

Although this is not specifically confirmed in the circular, which is unfortunate, we are confident that the taxpayers who make a voluntary disclosure will be protected against criminal prosecution. Hopefully this will be confirmed.

Even if the above-mentioned service dealing with the program does not seem to have much discretion in applying the penalties we recommend being particularly cautious in drafting the letter explaining the specific circumstances of each case as well as the origin of the assets subject to the regularisation procedure.

In any case we strongly recommend that the taxpayers who did not take advantage of the much more favourable 2009 program do not miss this new opportunity. It is very unlikely that a better one will be offered in the future whereas one should expect the tax authorities to apply very aggressively the very stringent anti-avoidance measures against tax fraud to be adopted shortly by the French Parliament.