



Deloitte Legal Newsflash

Tax Dispute Resolution

Tax authorities launch new wave of foreign account audits. How far can they go back?

Many taxpayers recently received a questionnaire from the tax authorities concerning their foreign financial accounts and holdings. The tax authorities ask extensive questions about foreign accounts, foreign life insurances and real estate abroad. Furthermore, in many cases, the authorities request information for income years dating back to 2012. Is such a position in line with the statute of limitations on tax audits and investigations?

Context

The current audit wave relies on the Common Reporting Standard legislation (CRS), an international framework for the automatic exchange of foreign account information, in place since 2016. In accordance with the CRS, Belgium is not only informed of the existence of foreign accounts in the name of Belgian nationals but also of the balance on these accounts (or their value in case of financial instruments such as quoted shares), as well as interests, dividends and other financial income received on these accounts.

In order to use such foreign information for audit and taxation purposes, the Belgian legislator provided for a special

investigation and assessment period. The normal three-year assessment and investigation period, when no tax fraud is present, allows the tax authorities to tax income from 2017-2018-2019 during calendar year 2020.

On top of that, the authorities are given a 24 month- window, as from the date on which the Belgian administration becomes aware of the foreign information, to carry out an investigation and issue an assessment when the information received from the foreign tax authorities indicates that income was not declared in the 5 years before that information was received.

In the current audit wave, the tax authorities invoke information received in September 2018 through the CRS and therefore want to audit and assess income not declared in the 5 preceding years (2013-2017). This is how the tax authorities are still investigating income from 2012 (to be declared in 2013) in calendar year 2020.

The indication concept

As explained earlier, the special audit and assessment period applies if the foreign information received "indicates" that Belgian income was not declared.

Given the fact that this special audit and assessment period is an exception to the general rules, it has to be interpreted in a narrow sense, as already confirmed by the Constitutional Court (case n° 186/2005) and other case law.

In particular, 'to indicate' must be construed in its usual meaning and implies that the failure to declare the income was brought to light by the foreign information. Even though the foreign information must not constitute the actual proof of that income, it must still reveal the income. Moreover, this implies that the administration had no previous knowledge of this information.

The question then becomes whether information on foreign accounts held by a taxpayer in the year 2017 or 2018 "indicates" that Belgian income was not declared in the preceding years. Based on relevant case law, it can certainly be argued that this is not automatically the case and will depend on each individual situation.

Conclusion

Taxpayers should carefully review their personal situation when confronted with such information requests before deciding on how to answer them. Several elements will be important, such as previous compliance with all requirements related to foreign financial accounts (declaration in the tax return, central point of foreign accounts, ...).

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