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Newsflash

Annulment of internal instruction concerning undeclared income: ineffective measure?

During the week of 14 March 2016, it was announced that the Council of State annulled the so-called ‘internal instruction’ concerning the spontaneous regularisation of undeclared income with the tax administration. Some press articles suggested that taxpayers who had disclosed undeclared income based on the principles set out by this internal instruction could now face even higher fines.

The instruction

Until the end of 2013, a taxpayer could disclose undeclared taxable income by either declaring the income directly to the tax administration, or by following a voluntary disclosure procedure with the *Contactpunt Regularisaties* (“CPR”), in accordance with the Act of 27 December 2005. However, as of 1 January 2014, the opportunity for voluntary disclosure with the CPR was abolished by legislation. From this moment on, the only possibility available to the taxpayer is to spontaneously declare income to the tax administration. The handling of these declarations by the local tax administrations varied considerably from one region to another. In order to level out these differences, the Minister of Finance issued on 29 January 2015 an internal circular letter which put forward a basic outline for the treatment of voluntary disclosure files. The main object

was the rate of the applicable tax increase, which was fixed at 50% for the non-barred income and at 10% for the so-called fiscally unjustified capital. The actual ‘cost’ of such a regularisation of unjustified income was thus in line with the tax rates as applied by the CPR.

Some opposition parties have submitted a petition for the internal instruction’s annulment to the Council of State for tax law infringement, a petition which has turned out to be successful.

Consequences for the agreements?

The tax administrations have concluded many agreements with taxpayers, which are explicitly or implicitly based on the annulled internal instruction. Therefore, the question now arises whether or not the tax administration can contest these agreements and claim a higher tax increase.

In practice, this does not seem very realistic. Even if the tax administration would levy a supplementary assessment in order to apply a higher tax increase (fine), this will have no impact in practice. The tax increase is only calculated on the undeclared income of the supplementary assessment. Assuming that the taxpayer previously disclosed all unreported income, there is no basis of undeclared income on which to apply a higher penalty rate. Taxpayers who have in the past entered into an agreement should therefore not be alarmed by the Council of State’s decision.

New regularisation campaign approved

For those taxpayers who still consider a voluntary disclosure, this also means they can no longer rely on the system set out by the internal instruction. With every spontaneous declaration, each local tax administration can now individually determine the applicable penalty rate. However, the uncertainty will not last very long as the government has recently adopted a new system of tax voluntary disclosure. It is expected that the parliament will soon debate this legislation. Taxpayers who still have undeclared income, will therefore soon be able to enjoy more legal certainty.

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