



Q&A

Regarding: Dutch voluntary disclosure scheme
Date: 02 - September - 2010

Below you will find our answers to the most common questions on the voluntary disclosure scheme.

Question 1

What does the voluntary disclosure scheme entail?

Dutch tax payers with undisclosed income or assets that the Dutch tax authorities have not yet discovered (and will not be discovered) to the knowledge of the taxpayer, can still fix their errors by declaring the undisclosed income by providing all the relevant information. On the tax due there will be levied interest (2,50%-8%). The interest is levied on the tax payable to compensate the tax authorities for the loss of interest.

Question 2

Will the Dutch tax authorities impose a fine on people applying for voluntary disclosure?

People willing to apply for voluntary disclosure will still have to pay all taxes over the last 12 years, which they would have paid if the assets would not have been taken out of the sight of the tax authorities. Before January 1, 2010 this was possible without a fine. However, as of January 1, 2010, the regulations are tightened and a fine of 15 percent was introduced. This fine has been doubled as of 1 July, 2010. This means that people that make use of the regime of voluntary disclosure after July 1 face a fine of 30 percent.

People not applying for voluntary disclosure will face a fine with a maximum of 300%, if the tax authorities discover the undisclosed income.

Question 3

Is there a deadline for the voluntary disclosure scheme?

Recently, the voluntary disclosure scheme was amended. After January 1, 2010 all tax returns can only be voluntarily disclosed without fines within 2 years after the false or incomplete tax returns have been filed. If voluntarily disclosed after this 2 year period it will only be considered as a circumstance that could lower the fine. Thus voluntary disclosure without a fine can (after January 1, 2010) only be done within 2 years after filing the tax return. For tax returns older than two years on January 1, 2010 this will mean that it will not be possible to voluntarily disclose without a fine after December 31, 2009.



Question 4

Concerning which foreign assets is a Dutch resident taxable in the Netherlands?

- Foreign bank account
- Foreign investments
- Foreign immovable property

Question 5

Is it possible to voluntarily disclose when you are already under investigation of the Dutch tax authorities?

No. One can only voluntarily disclose when the Dutch tax authorities have not yet discovered the undisclosed income, and the taxpayer has no knowledge that the tax authorities will discover the income at short notice.

Question 6

Do the assets have to be transferred to the Netherlands?

After the voluntary disclosure the assets can still be kept abroad. However, from this moment on the assets will have to be included in the filed tax returns. It does not matter where these assets are kept.

Question 7

What is the period of limitation?

For foreign income and assets the current period to make an additional assessment relating to previous years is restricted to 12 years (excluding possible obtained extensions on filing of the tax returns, in practice this term could therefore be longer than 12 years). The 12-year term is longer than the recovery term for domestic income and assets, which is 5 years. Based on recent jurisprudence of the European Court of Justice there has to be made distinction between two situations.

The first is where the Netherlands does not have any indications that there is concealed foreign income or assets which can be investigated. If this is the case the extended period of 12-years for recovery of tax relating to previous years is justified.

In the second situation the tax authorities of the Netherlands do have indications that there is concealed foreign income or assets which could be investigated (for example, the Dutch tax authorities get information within the 5 year period from a foreign bank about several bank accounts). In this situation the extended period of 12-years for recovery of tax relating to previous years is in principle not justified.

In other words, if the tax authorities do not have indications that there is foreign income or assets, then, based on this jurisprudence, the tax authorities may recover tax relating to previous years for the extended period of 12 years (excluding obtained extensions on filing of the tax returns).



Question 8

Is it for the Dutch tax authorities possible to use the recovery term of 12 years to tax income that is earned in the Netherlands 5 years ago?

In our opinion this is not possible, because the Dutch tax authorities had the possibility to gather information about the period in which the income was on a Dutch bank account. However, the tax authorities do not agree on this point.

Question 9

Which information is needed for the use of the voluntary disclosure scheme?

In principle all bank statements and asset overviews of the last 12 years are needed. Usually, the foreign banks can only provide information for the last 10 years. The information on the two missing years can often be discussed with the Dutch tax authorities.

Question 10

Is it true that the Dutch tax authorities no longer ask for the origin of a fund, if this origin occurs outside the recovery period of 12 years?

No, it is possible that information should be provided about events occurring outside the recovery period. The importance is for example related to understanding of any in the past divided inheritance.

Question 11

Which information can be demanded by the Dutch tax authorities?

All information that could be relevant for the levying of tax. Information on the disclosed bank account that is in the possession of the taxpayer or could be in the possession of the tax payer should be provided. If they will not be provided, the tax authorities may impose estimated assessments and the burden of proof could be reversed with increased requirements.

Question 12

Is it possible that agents, other than accountholders, can be approached by the Dutch tax authorities about providing information with respect to a voluntary disclosure?

The Tax review is based on credibility and likelihood of the facts presented. Further research is in general not addressed.

Question 13

What is the attitude of the tax authorities regarding the handling of a voluntary disclosure case?

The tax authorities in most cases are keen to take a pragmatic position with respect to for example the lack of data. However, it is important that the person applying for the voluntary disclosure takes a justifiable position regarding deposits, withholding taxes and income and deductible costs (for the period of 1997 till 2000).



Question 14

What are the consequences if you do not disclose in time?

If the filing of false or incomplete tax returns is discovered by the tax authorities before the voluntary disclosure scheme is used, then fines can be imposed and criminal prosecution could be instituted. The fine for filing false or incomplete tax returns before July 1, 2009 can be 100% of the tax payable at a maximum. Recently, there has been an amendment for tax returns filed after July 1, 2009. The fine has been increased and can be 300% of the tax payable at a maximum.

For criminal prosecution we refer to question 8.

Question 15

Does it matter for the voluntary disclosure scheme where the money originates from?

If the money originates from illegal income there are possibly three offences: the general offence (for example violation of the Law on narcotics), tax fraud and money launder. When the voluntary disclosure scheme is used in case of tax fraud there will be no report to the Public Prosecutor for this tax fraud (though taxes will be levied depending on the origin of the money). However, the general offence and the money launder will be reported to the Public Prosecutor.

If the money originates from legal income then, besides tax fraud, it could also be a case of money laundering.

When the voluntary disclosure scheme is used in this case there will be no reporting to the Public Prosecutor.

Furthermore, the origins of the money are also important to determine which taxes must still be paid. (For example Tax on Succession, Personal Income Tax, Corporate Income Tax etc).

Question 16

Does it matter that my tax advisor is an attorney?

In principle, tax advisors have to report all unusual transactions to the Bureau of Financial Supervision (Bureau Financieel Toezicht). This includes tax fraud and money laundering. For an exploratory meeting there is no duty to report. If the procedure for the voluntary disclosure scheme is started after the exploratory meeting there is a duty to report for the tax advisor of a voluntary disclosure. However, for attorneys it has been made clear in a court ruling that they have to observe their secrecy and they have to appeal their right of non-disclosure, also in procedures for the voluntary disclosure scheme.

Question 17

Can I voluntary disclose alone?

In principle the voluntary disclosure scheme is personal. This means that other people who are "accessory" to the tax fraud cannot benefit from the voluntary disclosure if they



do not voluntarily disclose at the same time. It would therefore be wise that for example a heir of an undisclosed foreign bank account informs the other family members of the intention of voluntary disclosure. Because of the complete disclosure of all information the tax authorities may become aware of the names of the other family members. In that case the other family members cannot benefit from the voluntary disclosure of the heir if they have not voluntarily disclosed themselves. The advice would be in this case to let them voluntarily disclose at the same time.

Question 18

What happens if the money is transferred to a bank account of the children?

The consequences are unsure. The question that needs to be answered is whether it was the intention of the parents to donate money to the children. It must be made clear if the parents still are authorized to use the money and if the money is transferred to an 'and/or- bank account'.

Question 19

How do the tax authorities deal with assets which are kept in foreign trusts and other legal entities?

One of the biggest bottlenecks in relation with foreign trusts and other legal entities concerns the Dutch qualification of such a trust or legal entity. A foreign qualification is not automatically followed by the Dutch tax authorities. The qualification takes place on a case-by-case basis. If, based on the Dutch regulations, the trust or legal entity is to be seen as transparent, the beneficiaries should be taxed instead of the trust or legal entity. If they are non-transparent, the trust or legal entity should be taxed itself. The main point is that the situation of each case must be assessed individually.

Question 20

What is the financial impact of a voluntary disclosure?

The cost of a voluntary disclosure depend strongly on the question what the origin of this money is.

As from 2001 the average value of the money on the accounts per year will be taxed against 1.2% (30% tax on a notional return of 4%). For earlier years (1997 up to 2000) the interest and dividend will be taxed against the maximum of 60% Personal Income Tax, and another 0,08% Property Tax. There are several exemptions. For example, after 2001 there is an exemption for about € 20.000. Furthermore, other taxes could also be applicable depending on the origin of the money. For example if the money was a result of succession upon which Succession Tax should be levied. On the tax due there will also be levied interest.



Question 21

Is it possible to get indication of the (financial) impact of voluntary disclosure in advance?

VMW Taxand has extensive experience in assisting taxpayers who think about applying for voluntary disclosure . It is possible that a scheme of an indication of the consequences is provided in advance.



VMW TAXAND

Chris van Wijngaarden

Belastingadviseur / Tax lawyer

Van Mens & Wisselink N.V. Advocaten · Belastingadviseurs · Notariaat

Piet Heinkade 55

P.O. Box 2911, 1000 CX Amsterdam, The Netherlands

T: +31 20 757 09 40, M: +31 6 464 065 87, F: +31 20 301 66 22

E: chris.vanwijngaarden@vmwtaxand.nl

www.vmwtaxand.nl

