

Temporary relaxation and subsequent tightening of penalty regime for voluntary disclosure

On 2 September 2013, the Dutch State Secretary of Finance issued a Decree on temporary relaxation - and subsequent tightening - of the penalty regime for individuals who voluntarily disclose hidden assets and hidden income.

In the pending legislative proposal on the simplification of tax procedures, the statute of limitations for re-assessment of taxpayers acting in bad faith is extended from 5 years to 12 years. This extension will become effective immediately upon adoption of the legislative proposal. As a transitional measure, allowing taxpayers to anticipate on the re-assessment extension, the penalty regime for voluntary disclosure will be relaxed temporarily until 1 July 2014. From 1 July 2014 until 1 July 2015, the current penalty regime for voluntary disclosure will be resumed. After 1 July 2015, the (minimum) penalties will be doubled.

Current penalty regime

A disclosure only qualifies as a *voluntary* disclosure if the disclosure takes place before the taxpayer knows or should reasonably suspect that the tax inspector is aware or will become aware of the hidden income or hidden assets. There are two types of voluntary disclosure: within two years and after two years from the ultimate date on which the taxpayer should have fully reported - or provided full and correct information on - his income or assets.

Under the current penalty regime for voluntary disclosure, no penalty shall be imposed upon the taxpayer who voluntarily discloses his income or assets within the two year period.

If the voluntary disclosure is undertaken after this two year period, the maximum penalty of 300% of tax deficiency can be reduced to 30% of the tax deficiency in case of hidden savings and passive investments, and can be reduced to 90% of the tax deficiency in all other cases (hidden income from labor or other personal income, business income, and substantial interest).

Temporary penalty regime

All voluntary disclosures, also voluntary disclosures initiated before the date of this Decree which have not yet resulted in final penalty decisions from the tax inspector, undertaken before 1 July 2014 shall not result in penalties. From 1 July 2014 until 1 July 2015, the current penalty regime will be resumed.

Future penalty regime

From 1 July 2015 onwards, voluntary disclosures within the two year period shall still not result in penalties. Maximum penalties of 300% of the tax deficiency for voluntary disclosures after the two year period, can be reduced to 60% of the tax deficiency in case of hidden savings and passive income, and can be reduced to 180% of the tax deficiency in all other cases (hidden income from labor or other personal income, business income, and substantial interest income).

Should you have any questions please do not hesitate to contact the tax advisors at Otterspeer, Haasnoot & Partners