

NewsLetter No.90 December 2009

Swiss Tax Amnesty



By Stephan Neidhardt, lic. iur., LL.M., Attorney at Law,
Certified Tax Expert, Partner
+41 44 498 95 70, sneidhardt@wvp.ch



and Tina Shih-Thurnheer, lic. iur., Attorney at Law
+41 44 498 96 26, tshih@wvp.ch

On 1 January 2010, the Swiss Federal Law on the Simplification of Additional Taxation for Inheritances and the Introduction of Self-Reporting without punishment will enter into force. This Newsletter deals with specific issues in this regard.

After the lapse of the referendum deadline without a referendum, the Federal Council has set 1 January 2010 as the effective date for the Federal Law on the Simplification of Additional Taxation for Inheritances and the Introduction of Self-Reporting without punishment. As a result, the Federal Law on the Direct Federal Tax and the Federal Law on the Harmonization of the Direct Taxes of the Cantons and Municipalities, as well as the cantonal laws must be amended by this date.

In the case of the tax amnesty, the amnesty is an individual amnesty and not a comprehensive tax amnesty without additional taxes and tax penalties, as it was in the past (1940, 1945, and most recently, 1969).

Scope of application

The tax amnesty applies to direct federal taxes and the income and wealth taxes of the cantons and municipalities. All other unpaid taxes and charges, such as, for example, value-added tax, withholding tax, inheritance and gift tax, and required contributions for social insurance are outside the scope of the tax amnesty and are still owed with interest charges.

Simplified additional inheritance tax

The objective of the tax amnesty is to create an incentive for the heirs of assets that were not reported by the decedent to bring them and their income into the legal economy. For that reason, the time period subject to procedures for the collection of additional taxes was reduced from ten to three years. The additional taxes, including interest on late payments, can only be imposed for the last three tax years before

the year of the death of the decedent. In addition, tax penalties for related punishable offenses do not apply.

In order to take advantage of the simplified additional tax procedure for inheritance tax, three prerequisites must be fulfilled: (i) the tax authorities must not already know about the tax evasion, (ii) the heirs must fully assist the tax authorities in investigating the undisclosed assets and income (and in particular submit a complete and accurate inventory of the estate) and (iii) make serious efforts to pay the additional taxes. If the tax authorities come to the conclusion that these three prerequisites have not been cumulatively fulfilled, then normal additional taxation applies for a maximum of the last ten years. The taxpayer can, in addition, be subject to criminal prosecution.

Introduction of a general self-reporting without punishment

In order to increase the incentive to disclose to the tax authorities previously undisclosed assets and their income, the legal procedure for self-reporting without punishment was introduced for direct federal taxes and the cantonal and municipal income and wealth taxes. Now, no fine will be imposed on a taxpayer who reports himself or herself for the first time. As a result, the previously applicable fine in the amount of one-fifth of the evaded tax does not apply. Further, criminal prosecution also does not apply to other punishable offenses which were committed in furtherance of the tax evasion (e.g., tax fraud and falsification of documents). The normal additional taxes, including interest, will nevertheless be imposed for up to ten years.

The parliament conferred this privilege only for the first instance of self-reporting. Each additional instance of self-reporting results in the normal additional taxes, late payment interest charges and the previously applicable fine in the amount of one-fifth of the evaded tax.

As in the case of the simplified additional inheritance tax, the privilege of self-reporting without punishment is available only under the following conditions: (i) the tax authorities must not already know about the tax evasion, (ii) the taxpayer must fully assist the tax authorities in investigating the undisclosed assets and income (and, among other things, submit all documents for the last ten years needed for the calculation of the additional tax) and (iii) make serious efforts to pay the additional taxes. If the tax authorities reach the conclusion that the tax evasion was more extensive than disclosed in the self-reporting, then in addition to the additional tax and late payment interest, a fine in the amount of one-fifth of the evaded tax is also applicable. The taxpayer can also be subject to criminal prosecution.

Those who arranged, assisted or participated in the tax evasion can also take advantage of the self-reporting without punishment. If self-reporting is made, they will be excused from the fine, as well as joint and several liability for the evaded taxes.

Finally, the legal procedure for self-reporting without punishment applies not only to natural persons but also to legal entities. Self-reporting without punishment is made by the directors and officers or their representatives, who will also be exempted from criminal prosecution as well as the joint and several liability for the evaded taxes. Because legal entities can undergo changes in their legal characteristics and assets (e.g., changes of domicile, changes in legal form or liquidation and reincorporation), there can be difficulties in limiting the amnesty to the first instance of self-reporting and there is a potential for abuse.

Final considerations

Although the tax amnesty offers taxpayers a path back to highly recommended honesty and legality in tax matters, this step should be planned with the utmost care. This is especially true in respect of the required completeness of the reporting and because of the limited scope of application of the tax amnesty and the wide-ranging consequences of the self-reporting for other taxes and charges (e.g., required social insurance contributions) and various governmental benefits for citizens (e.g., subsidized health

insurance premiums). Timing also requires careful planning. The simplified additional taxation of inheritances applies only to estate administration proceedings that are opened after 1 January 2010. The legal procedure for self-reporting without punishment, as a moderating law (a so-called "lex mitior"), also applies to tax evasions after 1 January 2010 which were committed while the previous law was in effect and were self-reported. In this regard, waiting or the assertion of a legal remedy in a pending proceeding can be beneficial.

Only time will tell whether the tax amnesty can create the desired incentive for increased honesty in tax matters and an increase in tax receipts or whether the change in law leads to less honest reporting and therefore a decrease in tax receipts. Taxpayers should, in any case, be aware of the positive effects of self-reporting – having in the future the feeling of no longer being subject to unexpected tax or criminal proceedings.

The ww&p NewsLetter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this NewsLetter should seek specific advice on the matters which concern them.

© Walder Wyss & Partners Ltd., Zurich, 2009

ww&p

**Walder Wyss & Partners
Attorneys at Law**

Walder Wyss & Partners Ltd.
Seefeldstrasse 123
P.O. Box 1236
CH-8034 Zurich
Phone +41 44 498 98 98
Fax +41 44 498 98 99
www.wwp.ch