

Voluntary disclosure of tax evasion

Comparison of rules in various countries

Oliver Biernat

Benefitax GmbH/Germany

What do you know about the Hoeneß case? (1)

- Uli Hoeness, former soccer player and currently Bayern Munich president, filed a voluntary disclosure in January 2013 that showed he had not paid tax on investment income from a Swiss bank account. He is said to owe between €3.2 million and €7 million in taxes to the German state.
- After a widespread and public discussion over the issue of taxation in Germany and whether or not Hoeness' position at Bayern remained tenable, prosecutors charged the 61-year-old with tax evasion in late July 2013.

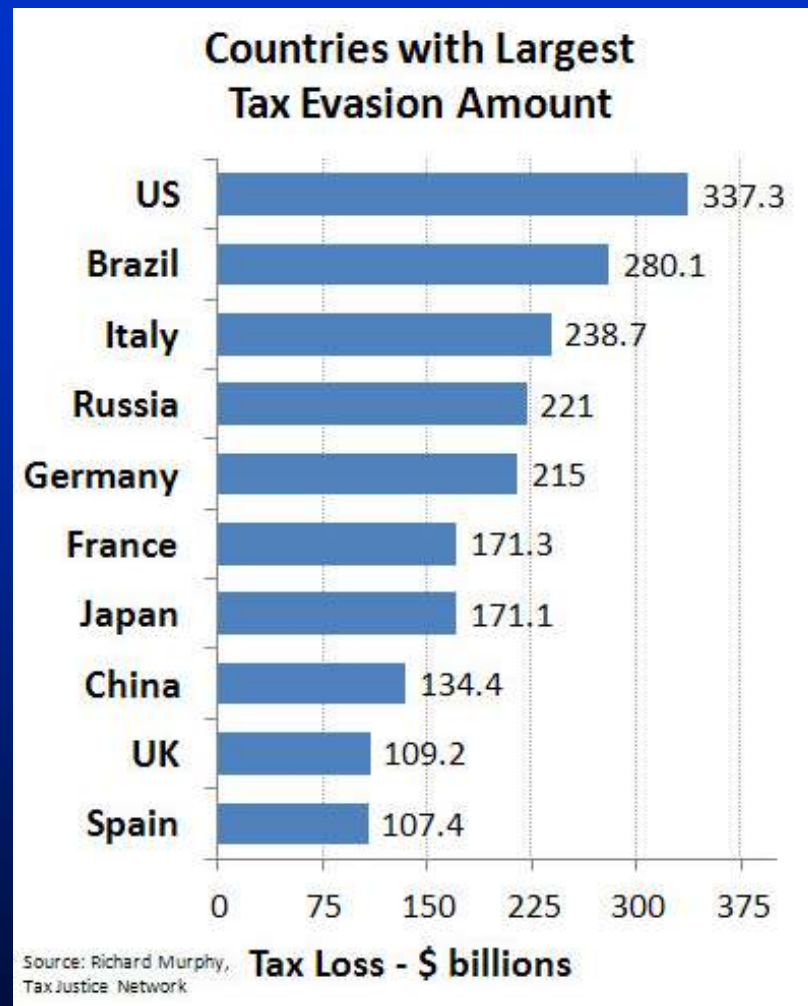
What do you know about the Hoeneß case?(2)

- Hoeness' defence had argued that the voluntary disclosure in January could lead to impunity, although it was incomplete. Under German law, filing a voluntary disclosure usually allows the alleged offender to avoid punishment. However, if it is not filed correctly or is incomplete, prosecutors are able to press charges.
- Prosecutors from Munich carried out raids in offices of two Bavarian tax offices after Hoeneß filed a complaint because information on his case was given to the press (tax secrecy). Despite increasing public criticism, Hoeneß has remained in his position as president and chairman of the supervisory board of Bayern Munich.
- Hoeneß has been sent to trial for tax evasion. The trial is scheduled to begin on 10 March 2014.

Why should we discuss this?



- Does the automatic bank data transfer, (illegal) purchase of CD ROM's with bank customers data, FATCA, TIEA's, BEPS, etc. mean the end of tax havens and tax evasion?
- Clients with black money or tax evasion strategies get nervous
- We as tax experts are expected to give answers
- If we know/suspect about tax evasion of our clients, can we protect ourselves without loosing the client?



- **Tax evasion** is the illegal evasion of taxes by individuals, corporations and trusts.
- Tax evasion often entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, or overstating deductions.
- In contrast, **tax avoidance** is the legal use of tax laws to reduce one's tax burden.
- Both tax evasion and avoidance can be viewed as forms of tax noncompliance, as they describe a range of activities that intend to subvert a state's tax system.

- **Voluntary disclosure of tax evasion** retroactively eliminates criminal liability. It honours the will of the taxpayer to become tax honest.
- **Tax amnesty** is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties) relating to a previous tax period or periods and without fear of criminal prosecution. It typically expires when some authority begins a tax investigation of the past-due tax. In some cases, legislation extending amnesty also imposes harsher penalties on those who are eligible for amnesty but do not take it.

- Role of tax evasion
- Tax amnesty
- Rules if tax evaders are caught
- Rules for voluntary disclosure of tax evasion
- Development of voluntary disclosure of tax evasion
- Liability issues for tax experts

Panelists



France (Viviane Moro)

Germany (Oliver Biernat)

India (Ashish Bairagra)

Italy (Sergio Finulli)

Switzerland (Abdullah Demir)

UK (Julie Bryant)

USA (Stanley C. Ruchelman)

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **France** : for both individual and corporations

- The French state has implemented a lot of measures to fight against tax evasion, concerning individuals and/or corporations :
- Obligation for individuals to declare their financial assets situated abroad, declaration of trusts
- New obligations of information concerning transfer prices
- Possibility for the tax administration to require to third parties the transmission of the bank account of a French taxpayer
- Possibility for the tax authorities to use information regardless of their origin (cf. list HSBC)

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **Germany**:

Having undeclared funds in Switzerland, Luxemburg, Austria or Liechtenstein was a kind of public sports for wealthy people for many decades. Since some years the government is chasing such black money. Re. companies bigger companies prefer tax avoidance but smaller (esp. craftsmen) often work without invoice.

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **India**: Tax evasion (black money) is a major issue in India. A 2011 estimate stated that Indians have 'undeclared' wealth of US\$ 2.1 bn in Swiss banks alone. Some media reports put the total amount of 'black money' owned by Indians at US\$ 1.4 trillion, which are held within as well as outside India.

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **Italy**:

The Bank of Italy estimates that 27,4% of the Italian economy avoids taxation.

Income tax rate of an average company is about 68% (corporate + regional tax): no surprise that many small and medium-sized business operate on a strictly cash basis without issuing invoices.

Question 1:

Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **Switzerland**:

- Tax evasion can be committed by private individuals and by corporate entities.
- Tax fraud only by private individuals.

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **UK**:

Yes, mainly for individuals. HM Revenue & Customs (“HMRC”) estimate £10.5 billion income lost each year due to tax evasion.

2,343 individuals prosecuted in the last three years.

Question 1:



Is tax evasion an issue in your country for

- a) private individuals
- b) corporations?

Answer for **USA**:

- Yes for individuals and much less for large corporations
 - The I.R.S. has spent hundreds of millions of dollars to force the closure of tax avoidance schemes using offshore accounts by individuals and their privately held companies; the incoming Commissioner of the I.R.S. advises that the I.R.S. will continue to direct its resources at closing
 - For larger companies, auditors are required to evaluate uncertain tax positions under FIN 48 before a tax benefit is recognized on financial statements.
 - This is accompanied by a comparable tax obligation imposed on larger corporations to prepare form UTP as part of the corporate tax return.
 - In both, the tax position must be correct based on a more likely than not standard. If not, the financial statements will not provide benefit and the transaction must be identified in Schedule UTP and the Notes to the financials

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **France**:

- France doesn't want to offer a tax amnesty program.
- But a special program of regularization has been set up in June 2013 by mean of a ministerial circular (Bernard Cazeneuve).
- This program, still in force today, allows individual taxpayers to regularize their (not declared) assets held abroad, without criminal penalties. It allows them to reduce the amount of penalties (but not the taxes or late interest).

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **Germany**:

Tax amnesty between 23. Dec. 2003 and 31 March 2005.

When paying 25% (35% in 2005) of a tax basis within 10 days all tax liabilities between 1993-2002 were cancelled.

The tax basis was 60% of income liable of (corporate) income taxes, 10% of income liable for trade tax, 20% of the basis for inheritance tax and 30% for the basis for VAT (max. total was 100%).

Few people made use of it and additional taxes were reported to be 1.24 bn. € (expected were 5 bn. €).

A planned tax evasion treaty between Germany and Switzerland (scheduled to come into effect 2013) was prevented by the center-left opposition in German parliament as the planned tax payment was considered too little. It was planned to tax retroactively undeclared assets of German taxpayers that have been invested in accounts or deposits in Switzerland at a rate of between 21% and 41%. The exact rate was dependent on the holding period and the amount of the investment.

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **India**: India launched 'voluntary disclosure of income schemes' approx. once in every 10 years. The last one was in 1997 where more than 350,000 people declared their undisclosed income. Under the scheme taxpayers could disclose their 'undeclared' income of any previous years by only paying the income tax without any interest or penalty.

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **Italy**:

2001-2003 "Tax Shield" amnesty: 2,5-4% global rate

2009-2010 "Tax Shield" amnesty: 5-7% global rate

2014-2015 Voluntary disclosure program: full payment of taxes and reduced penalties

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **Switzerland**:

- Currently there is no tax amnesty planned.
- The last general tax amnesty was in 1969.
- Since 2010 we have a mini-tax amnesty.

Question 2:

Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **UK**:

HMRC run various campaigns, which have included:

- VAT Initiative Campaign
- Tax Return Initiative
- Tax Health Plan
- Offshore Disclosure Facility
- Offshore New Disclosure Opportunity

Generally the tax is still due but penalties may be reduced.

Question 2:



Has there been or will there be a tax amnesty and how did/will that look like?

Answer for **USA**:

- Yes, the I.R.S. has an offshore voluntary disclosure program in place since 2009; its goal is to encourage noncompliant taxpayers to come forward, pay a penalty, and become compliant without the expense of identifying them and prosecuting them. In general, the taxpayer never sees the I.R.S.
- In lieu of a myriad of penalties, some small, some large, the program is as follows:
 - File amended returns for 8 years; pay all taxes due on amended return
 - Pay 20% accuracy penalty on previously unpaid tax plus interest
 - Pay a penalty of 27.5% of the highest balance in unreported foreign financial accounts
 - Come into compliance for state and local taxes

Question 3:



What are the rules if tax evaders are caught
(crime, minor breach of the law)?

Years covered:

Tax and interest:

Monetary penalties:

Imprisonment:

Question 3:



What are the rules if tax evaders are caught (crime, minor breach of the law)?

Answer for **France**:

Years covered: 3 to 10 (depending taxes and situation)

Tax and interest: Default Interest at the rate of 0.40 % / month (4.80 % / year) calculated on the basis of taxes owed

Monetary penalties: from 500 000 € to 2 000 000€

Imprisonment: from 5 to 7 years

Question 3:

What are the rules if tax evaders are caught
(**crime**, minor breach of the law)?

Answer for **Germany**:

Years covered: tax evasion 10-13 years, Understatement of tax through gross negligence 5-8 years.

Tax and interest: all taxes due and interest at 0.5% per month

Monetary penalties: no limit

Imprisonment: up to 10 years (depending on how severe and on amount of evasion)

Question 3:

What are the rules if tax evaders are caught
(crime, minor breach of the law)?

Answer for **India**:

Years covered: re-assessment of last 6 years for domestic and last 16 years for foreign 'undeclared' incomes

Tax and interest: Tax at 30%, Interest upto 1.5% per month

Monetary penalties: Penalty can be upto 100% of the tax payable.

Imprisonment: Can be upto 7 years

Question 3:

What are the rules if tax evaders are caught
(crime, minor breach of the law)?

Answer for **Italy**:

Years covered: 4/5 doubled in case of tax crimes depending taxes

Tax and interest: full amount of tax and interest must be paid

Monetary penalties: 100/200% for an unfaithful tax return;

120/240% for the failure to file a tax return;

3/30% of undeclared assets for failure to report foreign assets.

Imprisonment: in several cases (thresholds provided for the law)

Question 3:

What are the rules if tax evaders are caught
(crime, minor breach of the law)?

Answer for **Switzerland**:

Tax evasion is a breach. □ Is punished only by a fine.

Tax fraud is an offence. □ Is punished with imprisonment or a penalty payment, and additionally with possible fines. In addition to the conviction due to tax fraud there will also be a punishment due to willful tax evasion.

Years covered: The last 10 tax periods/years before the opening procedure

Tax and interest: yes

Monetary penalties: One-third to three-times of the evaded tax amount

Imprisonment: Only tax fraud (up to three years)

Question 3:

What are the rules if tax evaders are caught
(crime, minor breach of the law)?

Answer for **UK** :

Usually civil rather than criminal proceedings

Years covered: Up to 20 years for fraud

Tax and interest: Late payment interest at 3%

Monetary penalties: Up to 100% of underpaid tax, can be doubled for offshore evasion; rates reduced for good conduct

Imprisonment: only in cases where HMRC wants to send a strong deterrent message or the conduct involved means it is appropriate

New "name and shame" list publishing details of deliberate tax defaulters

Question 3:



What are the rules if tax evaders are caught: Answer for **USA**:

Criminal Penalties

- Filing False Return: (\$250,000 fine) and up to 3 years in prison
- Failure to File Tax Return: (\$100,000 fine) and up to 1 year in prison
- Failure to file FBAR: (\$500,000 fine) and up to 10 years in prison

Civil Penalties

- Tax Evasion: (\$250,000 fine) & up to 5 years in prison
- Failure to pay penalty: Up to 25%
- Failure to file tax return penalty: Up to 25%
- If Fraud, up to 75% of unpaid tax
- Failure to File FBAR: Greater of \$100,000 or 50% of the total balance of each unreported foreign account for each year

Question 4:



Rules in case of voluntary disclosure of tax evasion

Legal basis (general law, special program):

Years covered:

Tax and interest:

Asset repatriation:

Due date:

Monetary penalties:

Imprisonment :

Question 4:

Rules in case of voluntary disclosure of tax evasion

Answer for **France**:

Legal basis : special program of regularization (ministerial circular)

Years covered:10 years (beginning in 2006)

- inactive tax evaders(non-declaration of assets received by donation or heritage, or accumulated when the person was not resident in France): Fine of 1.5% of assets (instead of 5%) and penalty of 15% of the taxes evaded (instead of 40%)

- active tax evaders (excluding money laundering or hidden activities): Fine 3% of assets (instead of 5%) and penalty of 30% of the taxes evaded (instead of 40%)

Imprisonment :NO

Question 4:



Rules in case of voluntary disclosure of tax evasion

Answer for **Germany**:

Legal basis: Voluntary disclosure of tax evasion codified in Sec. 371 AO

Years covered: all disclosed

Tax and interest: all taxes due and interest 0.5% per month of outstanding tax

Asset repatriation: not required

Due date: no due date but must be disclosed before authorities know or could know

Monetary penalties: none

Imprisonment: no

Question 4:

Rules in case of voluntary disclosure of tax evasion

Answer for **India**:

Legal basis (general law, special program): As per the 1997 VDIS scheme – this was a special program

Years covered: any number of years

Tax and interest: 30% Tax, no interest, no penalty

Asset repatriation: not required

Due date: 31st December 1997

Monetary penalties: No penalties

Imprisonment : No imprisonment

Question 4:



Rules in case of voluntary disclosure of tax evasion

Answer for **Italy**:

Legal basis: Special program (Government Decree)

Years covered: 4/5 doubled in case of tax crimes

Tax and interest: full amount of tax and interest must be paid

Asset repatriation: not mandatory, for assets held in black list countries it allows the reduction of penalties

Due date: voluntary disclosure is open until 30th Sept. 2015

Monetary penalties: reduction of ordinary penalties from 25 to 50%

Imprisonment: breach of tax fraud and money laundering laws

Question 4:



Rules in case of voluntary disclosure of tax evasion

Answer for **Switzerland**:

If a tax evader or defrauder discloses himself for the first time there won't be any criminal prosecution and consequently no punishment.

Second voluntary disclosure:

Tax evasion: There will be a fine of one-fifth of the evaded tax amount.

Tax fraud: The usual range (1/3 to 3x) of punishment is applicable but the voluntary disclosure is individually taken into account for setting the amount of the penalty.

Legal basis (general law, special program): Tax law

Years covered: The last 10 tax periods/years before the opening procedure

Tax and interest: Yes

Asset repatriation: No

Due date: Anytime

Monetary penalties: As above mentioned

Imprisonment : As above mentioned

Question 4:

Rules in case of voluntary disclosure of tax evasion

Answer for **UK**:

Contractual Disclosure Facility ("CDF")

- Contract with HMRC; taxpayer to disclose all details < 60 days
- Tax and interest must be paid; penalties should be closer to minimum levels
- Protection from criminal investigation

Question 4:



Rules in case of voluntary disclosure of tax evasion

Answer for **USA**:

- There is no set deadline for the voluntary disclosure program to end but the program is subject to change at any time
- Years covered are the most recent eight tax years for which the due date to file has already passed (does not include compliant years)
- Some people believe it will end FATCA based FFI reporting begins in 2015

Question 5:



Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Question 5:



Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **France**:

The special program of regularization applies only in case of voluntary tax disclosure. Not available in case of undeclared income coming from hidden activities, or funds derived from illegal activities or money laundering

Question 5:



Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **Germany**:

Correct or supplement incorrect or incomplete particulars held by the revenue authority or furnish previously omitted particulars

Exemption from punishment shall not apply where

- 1. before the correction, supplementation or subsequent furnishing of omitted particulars
 - a) a public official at the revenue authority has already appeared for the purpose of carrying out a tax audit or of investigating a tax crime or a tax offence, or
 - b) the perpetrator or his representative has been notified of the initiation of criminal proceedings or proceedings for the imposition of administrative fines resulting from the act, or
- 2. the act had been already fully or partially detected at the time of the correction, supplementation or subsequent furnishing of omitted particulars and the perpetrator was aware of this or should have expected this upon due consideration of the facts of the case.
- (3) Where tax has already been understated or tax advantages have already been derived, any person involved in this act shall be exempt from punishment only insofar as he pays the taxes which were evaded to his benefit within the reasonable period of time allowed to him for that purpose.

Question 5:



Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **India**: There were no specific conditions that were required for the VDIS 1997 since the aim was to bring to account as much 'undeclared' income as possible.

Question 5:

Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **Italy**:

No tax audit already open: program valuable for taxpayers possibly subject to investigation for tax evasion

(Example: Fashion Company agreed to relocate to Italy companies based in the Netherlands and Luxembourg and pay backdated tax after negotiations with Italian tax authorities)

It is also valuable for undeclared assets deriving from inheritance

Question 5:



Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **Switzerland**:

- One Time in Life
- The tax authorities must not know about the tax evasion already.
- The voluntary tax evader or defrauder has to provide the tax authorities with all information and has to collaborate with the tax authorities in setting the additional tax amount.
- He needs to strive seriously towards the paying of the additional taxes (installment payment is accepted, no payment without any reason will lead to possible fines).

Question 5:

Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **UK**, the taxpayer must:

- Tell HMRC about the tax that has been evaded within 60 days
- Sign a statement that accurate and complete details of the tax fraud have been provided
- Pay all taxes, duties, interest and penalties due
- Stop any fraud immediately

Question 5:

Which conditions have to be met in order to profit from the relieves of voluntary disclosure of tax evasion?

Answer for **USA**:

- File amended returns for 8 years; pay all taxes due on amended return
- Pay 20% accuracy penalty on previously unpaid tax plus interest
- Pay a penalty of 27.5% of the highest balance in unreported foreign financial accounts
- Cooperate with the I.R.S. in compiling a data base on financial institutions, bank executives, and domestic and foreign advisers who participated in the plan; also cooperate in prosecutions of advisers and banks
- Come into compliance for state and local taxes

Question 6



What kind of changes can be expected with these rules in the future?

Question 6



What kind of changes can be expected with these rules in the future?

Answer for **France**:

- We have no information about the possible closure of the special program of regularization .
- The French government has excluded any measure of tax amnesty.

Question 6



What kind of changes can be expected with these rules in the future?

Answer for **Germany**:

- Initiated by the Hoeneß case, offshore leaks, etc. discussions are going on in Germany whether the rules of voluntary disclosure of tax evasion shall be cancelled or tightened (just for small cases)

CDU: remain the law as it is

SPD: cancel the rules

Greens: just for small cases

Question 6



What kind of changes can be expected with these rules in the future?

Answer for **India**: When the Indian government tried to launch this scheme once again in 2007 (10 years after the last one in 1997 as per the trend), a Public Interest Litigation (PIL) was filed, and the Supreme Court of India made the Indian government sign an Affidavit that in the future no government will launch any such scheme because such schemes tantamount to a 'premium for tax evasion'.

Question 6



What kind of changes can be expected with these rules in the future?

Answer for **Italy**:

To be successful the program seems to require changes:

- Simplification of the procedure
- No – name discussions
- Issue of incomplete records
- Flat rate and lump-sum calculations of the amounts due for the assets up to a certain amount
- Exclusion of criminal prosecution as in the previous tax shields
- Exclusion of anti-money laundering penalties for consultants

Question 6



What kind of changes can be expected with these rules in the future?

Answer for **Switzerland**:

Currently none foreseen.

Question 6:

What kind of changes can be expected with these rules in the future?

Answer for **UK**:

HMRC is committed to tackling tax evasion using a range of tools:

- New regional taskforces
- Campaigns for specific trades and professions
- Publicity campaign
- Offshore agreements with tax authorities
- Placing known evaders under closer scrutiny
- Expanding specialist teams
- Hi-tech data analysis tools

Question 6



What kind of changes can be expected with these rules in the future?

Answer for **USA**:

- Expect disclosures to increase as financial institutions begin identifying U.S. citizens pursuant to FATCA and G-20 initiative
- Expect arrangements similar to the one between the DOJ and Swiss banks, in which over one-third of Swiss banks have agreed to turn over information on U.S. owned accounts

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **France**:

2009 : a program of regularization allowed the state to recover 1 billion €

Current program of regularization :

- - 15813 individuals have announced their intention to regularize their situation
- - 2621 complete records (corresponding to assets of € 2.4 billion) filed and allowed the state to recover 230 million € . Only 241 cases have been fully processed .

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **Germany**:

2010: 26.000 disclosures, approx. 1.8 bn. €

2012: 8.000 disclosures

2013: 26.000 disclosures

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **India**: It is estimated that in the VDIS 1997, more than 350,000 people came forward and disclosed their 'undeclared' incomes. It is estimated that from that scheme the Indian government received INR 78 billion (approx. US\$ 2.45 billion at that time) in taxes.

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **Italy**:

2001-2003 "Tax Shield": € 76,7 billions disclosed

2009-2010 "Tax Shield": € 105,5 billions disclosed

2014-2015 Voluntary disclosure program: no data available

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **Switzerland**:

3'900 tax evaders have been reported in 2012 in Switzerland – 600 less than in 2011. With the new voluntary disclosure cantons, local authorities and the federal government could collect a total of 170 million Swiss francs in form of additional taxes. In the previous year there were approx. 250 millions (approx. 2/00 of tax income) due to the mini-tax amnesty.

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **UK**:

Data not available; CDF only introduced in 2012

Question 7:



How many people made use of voluntary disclosure of tax evasion in the past and which additional tax volume was raised by that?

Answer for **USA**:

- As of December 2012, the I.R.S raised \$5.5 billion in revenue (taxes, interest and penalties) with 39,000 disclosures. With the imposition of FATCA, more disclosures may be coming.

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **France**:

- Accounting professionals and tax experts can be considered accomplices
- The accountants risk a fine of € 4,500 and (or) imprisonment for 5 years if they take part in the preparation of falsified accounting documents .
- French accountants are required to disclose the operations of money laundering or the unexplained transfer of funds, that they notice in the accounts or documents transmitted by their clients.
- French Accountants have also an obligation of professional confidentiality . They also have a duty to advise about risks (they may be held liable if they have not respected this duty)

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **Germany**:

- Certified Tax Experts, Chartered Accountants, Lawyers etc. and their staff can be accused of helping their client with tax evasion, which may result in the same punishments (fines, imprisonment) as the taxpayer faces himself. The tax consultant is then also liable for the taxes his client owes. In severe cases an occupational sentences reach from a warning over a fine of up to 50,000 € to an occupational ban of up to 5 years or even forever.
- Vs. professional secrecy and obligation to reduce taxes for client
- You better not know or have reason to assume your client is not telling the truth.

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **India**: If a tax expert knows about a tax evasion, he is not obligated by law to disclose it to the authorities. If a tax expert helps the client evade taxes, he may face professional misconduct charges by the Institute of Chartered Accountants of India.

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **Italy**:

Tax expert can be deemed responsible for monetary and crime penalties together with the client.

It can be avoided denouncing the client!

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **Switzerland**:

Tax consultants and tax representatives as well as other third parties (e.g. business partners, insurance companies, banks ..) which contribute willfully to the tax evasion of a taxpayer are punished for aiding and abetting in tax evasion with a fine up to CHF 10'000.00, in extreme cases up to CHF 50'000.00. In addition, they become jointly and severally liable for the additional tax of the taxpayer.

If a taxpayer commits tax fraud and a third party contributes willfully, the third party can be punished for incitement or for aiding and abetting (accordingly to the rules of the general criminal law).

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **UK**:

Tax experts can be prosecuted if helping client to evade tax.

Ethics of professional accountancy bodies state that tax advisors must advise client to “come clean” and may be required to cease acting.

May need to make report under anti-money laundering rules.

Question 8:



What are the rules if a tax expert knows about tax evasion or even helps the client to evade taxes? How can this be avoided?

Answer for **USA**:

- Both tax preparer and taxpayer can be convicted of tax fraud.
- Avoidance of tax – no liability for attorney
- Evasion of Tax – prosecution; one question on OVDP intake letter requests information on advisers that have assisted in setting up hidden accounts
- Ethical Rules: Lawyers must advise client if law is being broken and may withdraw if client insists on proceeding
- Attorney-Client privilege applies only if client intends to come into compliance. It is lost when attorney becomes a “co-conspirator”

Question 9:

What are the sentences for various crimes in your country? Do you feel that is fair and adequate?

Answer for **Germany**:

- Sexual assault- not less than 1 year imprisonment
- Rape: not less than 2 years imprisonment
- Rape while threatening with a weapon: not less than 5 years imprisonment
- Rape when a weapon is used: not less than 5 years imprisonment
- Tax evasion of more than 100.000 €: suspension of sentence on probation (imprisonment 6 months to 5 years)
- Tax evasion of more than 1.000.000 € - Imprisonment 6 months to 5 years
- Heavy tax evasion of more than 1.000.000 € - Imprisonment 6 months to 10 years
- Manslaughter 5-15 years imprisonment
- Murder 3-15 years imprisonment
- Heavy sexual abuse of children: imprisonment 1-15 years
- Aggravated assault: imprisonment 1-10 years

Q&A:



Other questions from the audience?

Summary?

Outlook?

Thank you for your attention!



Oliver Biernat

Benefitax GmbH

Steuerberatungsgesellschaft Wirtschaftsprüfungsgesellschaft
(Tax Consultants and German Public Auditors)

Darmstädter Landstraße 125

60598 Frankfurt am Main

Tel. 069 – 25 62 27 60

Fax 069 – 25 62 27 611

info@benefitax.de

www.benefitax.de

