



With the upcoming international automatic exchange of information, taxpayers worldwide are concerned about the changing tax climate. Therefore they more often seek to comply with their tax obligations by voluntarily declaring undeclared income and assets to the tax administration. This factsheet gives an overview of the characteristics of the Belgian voluntary disclosure regime, aimed at obtaining a certificate that provides fiscal and criminal immunity towards the disclosed income and assets. Note that this is never an obligation, but rather an opportunity for taxpayers seeking to regularise their tax situation.

## 1. History

The voluntary disclosure procedure anno 2018 is very complex to say the least. In earlier days, we had different laws on the voluntary disclosure procedure, the so-called 'EBA-legislation'<sup>1</sup>. Nowadays, the legal basis of the new permanent regime, is the law of 21 July 2016.

The competent authority to deal with the voluntary disclosure declarations is the central Voluntary Disclosure Unit or VDU ('Contactpunt Regularisaties').

## 2. Definition

The new procedure gives taxpayers the possibility to spontaneously declare previously non-declared breaches in income tax or VAT.

In an official agreement, a solution for inheritance taxes has been agreed upon with the regional legislators (Flemish, Walloon, Brussels region). As a result, previously undeclared elements relating to inheritance tax and/or registration duties can now also be declared (for the Flemish region the competent authority is the Flemish Tax Authorities ('Vlabel')). Note that, contrary to the 'permanent' federal regime, a voluntary disclosure procedure that includes federal and regional taxes can only be filed until 31 December 2020.

As only a full and complete voluntary disclosure declaration can be supported, such a disclosure should cover all non-reported income for the previous not statute-barred years. It should as well all unreported assets and income obtained in the years which are 'fiscally prescribed' (= income and assets for which the fiscal statute of limitations has been reached) according to Belgian tax law (e.g. in general up to 7 years in income taxes and VAT). Assets or income left undeclared, will expose the taxpayer to criminal law risk and he will of course not be able to invoke the voluntary disclosure file in relation to other income.

<sup>1</sup> The law of 31 December 2004, 27 December 2005 and 11 July 2013.

## 3. Scope

A voluntary disclosure procedure can be submitted by individuals and legal entities subject to Belgian income taxes, regardless of their tax residency.

A voluntary disclosure request can only be done one time per taxpayer, although that the new procedure is again available for people who submitted a voluntary disclosure request in the past under a previous voluntary disclosure scheme.

However, this declaration has to be filed spontaneously. This means that if prior to the filing of the voluntary disclosure declaration, the taxpayer has already been informed of a specific tax or legal investigation by certain Belgian authorities, the voluntary disclosure will no longer be an option.

## 4. Application procedure

There are standard forms available on the website of the central VDU for the taxpayer to submit.

Probably the most controversial novelty in the new procedure is the obligation for taxpayers to actively prove that income or assets that are not submitted in the voluntary disclosure declaration originate from fully taxed income/assets in the past. Proof will in principle have to be provided on the basis of written documents. Proof by oath or witnesses is not allowed. It goes without saying that this burden of proof is not always feasible. Often funds find their origin decades ago.

The taxpayer has to add two annexes to the declaration:

- (1) A fraud scheme; and
- (2) The amounts, origin of the disclosed income and assets, the period and the financial accounts used for the non-declared assets.

After submission of the voluntary disclosure declaration, the VDU will:

- Confirm in writing the receipt of the declaration;
- Check the submitted file and calculate the levy due if the declaration is considered admissible and complete;
- Invite the taxpayer to pay the levy within 15 days after receipt of the invitation;
- Consider the payment as final and definitive;
- Issue a voluntary disclosure certificate that provides fiscal and criminal immunity towards disclosed income and assets for the taxpayer.

## **5. Rates**

The voluntary disclosure imposition is determined by taxing the previously undeclared income and assets at the rate that would have been applicable upon correct filing, increased with a penalty which will increase every year (e.g. the regular tax rate increased with a substantial increase of the tax rate with 23% for 2018 (to be increased annually up till 25% in 2020)).

For fiscally prescribed capital a fixed levy of 38% in 2018 applies. For the year 2019, a fixed levy of 39% will be applied and will even increase to 40% as of 2020.

## **6. Criminal prosecution**

Regularisation of fiscally prescribed capital is often a necessity, bearing in mind potential criminal law consequences in relation to undeclared income or assets and also the very severe approach set forward by Belgian banks when asked to accept funds returning to Belgium.

As mentioned above, taxpayers are obliged to actively provide proof of the nature and origin of the income and if the income have been subject to the applicable taxation. The burden of proof on the taxpayers may cause difficulties in particular for the fiscally prescribed capital caused by the lack of supporting documents.

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