Bloomberg BNA International Tax Monitor™

Source: International Tax Monitor: News Archive > 2017 > October > 10/02/2017 > Lead Report > Netherlands: New Dutch Law Leaves Repentant Taxpayers Out in the Cold

Netherlands

New Dutch Law Leaves Repentant Taxpayers Out in the Cold

By Linda A. Thompson

The abolition of a scheme allowing Dutch taxpayers to fess up to their tax sins and avoid criminal charges is likely to discourage high-net worth individuals from ever disclosing money hidden abroad to local authorities, practitioners say.

Snapshot

- End of voluntary disclosure program exposes taxpayers to criminal charges
- Low or zero tax rates won't be considered

Deputy Minister of Finance Eric Wiebes announced that it was time to draw the curtain on the country's voluntary disclosure scheme in a Sept. 19 press conference. He said bank secrecy was "as good as gone" and that Dutch tax officials have increasingly more information at their disposal to track down hidden accounts.

"If you kept quiet about your hidden account for years and you risk being found out, you should simply pay a full fine," he said in response to a question from Bloomberg BNA.

The country's voluntary disclosure program, which was enshrined in the country's General Tax Act in 1998, permitted lower fines for taxpayers who alerted Dutch tax authorities that they filed an incorrect or incomplete tax return within two years after submission. However, the most critical aspect of this scheme hinged not on the lower fines, but in the legal ramifications of reporting undeclared assets—or rather the absence of such ramifications.

Under the scheme, which will be abolished Dec. 31, 2017, taxpayers who notified officials they hadn't been fully honest in their returns were able to avoid criminal charges. The draft law detailing the abolition of the scheme, however, stipulates that taxpayers who disclose hidden income to officials may also be criminally prosecuted —which practitioners are calling a critical mistake.

"The government is taking away people's opportunity to make amends, and that means you're pushing people deeper underground," said Mark Hendriks, a partner at law firm Jaegers & Soons.

Taxpayers who alert officials to their incorrect returns could face criminal prosecution for instance tax fraud, money laundering, or the falsification of documents, Hendriks said Sept. 26. "People have no idea what will happen; they're being declared outlaws," he told Bloomberg BNA.

He advised all taxpayers with undeclared income who want to voluntarily disclose after Jan. 1, 2018, to seek assistance from a lawyer with attorney-client privilege for this reason. A lawyer, he said, might be able to cut a deal with the tax administration and the prosecutor's office. "If they go it alone, there will be no way back," Hendriks said, pointing to the risk of criminal prosecution.

150 Billion Euros

Hendriks noted that neighboring countries Belgium, Italy and Germany had introduced tax amnesty systems that temporarily offered taxpayers an opportunity to "confess their sins" for the duration of a couple of months. The Netherlands never introduced such a system precisely because it had its own voluntary disclosure scheme, he said.

"With the Netherlands now having scrapped this scheme, the Netherlands is in my view going beyond what other countries are doing because it is no longer offering something that other countries offered on an occasional basis," he said.

Other practitioners are warning that the government's decision to abolish the country's voluntary disclosure scheme, announced Sept. 19 as part of the tax proposal accompanying the 2018 Dutch budget, reduces the incentive for taxpayers to declare hidden assets and undisclosed earnings.

Vanessa Huygen van Dyck-Jagersma, a partner at the Jaeger Advocaten Belastingkundigen firm, said that abolition of the measure drastically increased the stakes for taxpayers who fail to come forward before the end of year. She said that repentant individuals who notify authorities that they filed incorrect tax returns after Jan. 1, 2018, might face criminal prosecution. "They'll of course think twice before coming forward because they'd be tying their own noose."

Dutch taxpayers are estimated to have stashed some 150 billion euros ($177 billion) abroad, with 80 percent of this figure hidden from the country's tax administration, according to experts interviewed as part of a Dutch investigative parliamentary inquiry in June into profit shifting by high-net-worth individuals in the Netherlands.

One Disclosure Per Day

Most everyone agrees that the voluntary disclosure scheme has been extraordinarily successful. The scheme raised 1.9 billion euros in fines and back taxes handed out by tax officials between 2002 and July 1, 2016, according to a 2016 report from the Dutch Tax Administration. Some 17,662 taxpayers have disclosed assets under the scheme since 2011, and they declared on average 410,000 euros. Most of the repentant taxpayers were aged over 60, and disclosed profits hidden in Switzerland, Luxembourg and Belgium.

The government's announcement in the wake of the Panama Papers revelations that it would raise the fines for taxpayers who alert officials to incorrect returns within two years after submission from 60 to 120 percent of the sum of taxes owed, made the scheme even more popular. In May and June of 2016, 495 taxpayers disclosed hidden assets to officials, with 167 of those contacting the tax administration in the last week of June, just days before the more stringent penalty would take effect on July 1, 2016. From July 1 onward, one taxpayer per day on average disclosed hidden assets to authorities, the report also states.

Quick Action

In a press conference and in written statements to Dutch lawmakers, Wiebes explained his decision to scrap the popular measure by pointing to increasing exchange of financial information agreements. He also highlighted the ever greater likelihood that taxpayers with undisclosed income will be caught by officials.

But practitioners disagree. Hendriks said that the government is for instance ignoring all the high-net worth individuals who took quick action when it became obvious that increasingly more bank information would be exchanged in the coming years. "There are a lot of people who quickly closed their Swiss or Luxembourg accounts before 2013 and moved their money to a country with which the Netherlands is not yet exchanging bank information," he said.

This view was echoed by Huygen, who said that taxpayers might moreover try to escape the scrutiny of officials by choosing a particular country or corporate structure —rather than using a straightforward bank account—in which to stash their income or assets. "There will always be ways to circumvent" the exchange of financial information provisions, she said.

Business Owners

A second group of taxpayers escaping the scope of the OECD's Common Reporting Standard, which provides for automatic exchange of individuals' financial account information between countries, are resident business owners. According to Peter Kavelaars, tax partner at Deloitte in Rotterdam, they are only declaring part of their turnover in their tax returns. "This is simply undeclared turnover, so a simply domestic affair. All these automatic exchange-of-information provisions simply don't apply here," he said.

He added that the past had demonstrated that such business owners haven't been "sensitive" to the voluntary disclosure scheme, which he said had mostly swayed taxpayers to disclose savings accounts held abroad. "They'll say: 'We haven't been caught in the past. Why would we now be caught?" he told Bloomberg BNA Sept. 26, adding that the risk of being audited by Dutch tax administration was "low."

Paul van der Zanden, a spokesperson for Wiebes, rejected the notion that the measure should have been preserved so as to persuade such resident business owners to right their wrongs. He told Bloomberg BNA Sept. 28 that this type of fraud falls well within the scope of the tax administration's audits. "The tax administration conducts regular and thorough audits and we use risk-focused enforcement based on the data at our disposal," he said.

Continued Incentive

Kavelaars expects the abolition of the voluntary disclosure scheme to likely sway "some people" to become compliant. But, he said, "my assessment is that the large majority of people who want to voluntarily disclose have already done so."

Still, Huygen said the "club" of people still interested in disclosing income under the soon-to-be-scrapped scheme shouldn't be underestimated. "You would think that at a certain point this would simply dry up, but I still get calls almost every week from people who tell me: 'I have wealth or income abroad and I want help.'"

For those taxpayers who fail to notify officials before the end of year and who again file an incorrect return after Jan. 1, 2018, this measure will have an "impact" given the new risk of criminal prosecution, she said.

However, Van der Zanden noted that taxpayers would do well to report hidden earnings or income even after Jan. 1, 2018, as those who do so will face a fine that can go up to a maximum 120 percent of the sum of taxes owed, while taxpayers whom the Dutch Tax Administration catches red-handed can face fines of up to 300 percent.

"There will still be an incentive that promotes voluntary disclosure over waiting until the tax administration comes knocking on your door," he said.

The measures will have to be ratified by the House before Dec. 31, as they would introduce changes to tax rules that enter into force Jan. 1.

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ISSN 1535-7783