

Penalty-Free Voluntary Declarations



Swiss tax law allows taxpayers to make a single penalty-free voluntary declaration to the tax authority. Our experts recommend taking advantage of this option and will be happy to help you prepare a full voluntary declaration. In doing so, they will also analyze any side effects outside the scope of income tax law.

Principle

Natural persons and legal entities can submit a penalty-free voluntary declaration to the tax authority, but this option may only be used once in a lifetime. Persons who have evaded tax or inherited undeclared assets can declare these assets for subsequent taxation without punishment.

What Are the Conditions for a Penalty-Free Voluntary Declaration?

If the taxpayer informs the tax authority him-/herself of the evasion of tax for the first time, he/she will be exempt from punishment pursuant to Art. 175(3) of the Direct Federal Taxation Act (penalty-free voluntary declaration) if (cumulatively):

- a. no tax authority is aware of the tax evasion;
- b. the taxpayer helps the tax authority without reservation to calculate the supplementary tax;
- c. the taxpayer makes serious efforts to pay the outstanding supplementary tax.

Any fine levied for past tax evasion usually equals the amount of evaded tax. If the taxpayer is only slightly at fault, the fine can be reduced to a third, and if he/she is seriously at fault, it can be tripled. If a penalty-free voluntary declaration is submitted to the tax authority, no fine is levied, and for every

subsequent voluntary declaration the fine is reduced to one-fifth of the evaded tax. Any heirs can again submit a voluntary declaration once in their lifetime.

The same conditions apply for natural persons and legal entities. Legal entities can also submit a voluntary declaration:

- a. after the company name is changed or the registered office is relocated inside Switzerland;
- b. after a conversion pursuant to Art. 53 to 68 of the Federal Act on Merger, Demerger, Conversion and Transfer of Assets and Liabilities (Merger Act) of October 3, 2003, by the new legal entity for tax evasion before the conversion;
- c. after an absorption (Art. 3(1)(a) Merger Act) or spin-off (Art. 29(b) Merger Act) by the continuing legal entity for tax evasion before the absorption or spin-off.

If all conditions are met, no fine will be levied for tax evasion and no punishment for tax fraud and the related forgery of documents will be imposed. The exemption from punishment also applies to the other participants (e.g. aiders and abettors). Regardless of this, the taxpayer must pay the ordinary supplementary tax (incl. interest on arrears) for ten tax periods at most.

Special Rules for Inheritance Cases

When a taxpayer dies, an inventory of the estate is usually drawn up. The heirs are obliged to provide comprehensive information on all circumstances that could be relevant to the determination of the tax factors. Assets that are only discovered subsequently must be reported to the authority preparing the inventory without delay.

If a voluntary declaration is submitted for an inheritance ("simplified supplementary taxation of heirs"), the supplementary tax and interest on arrears are only levied for the last three tax periods before the death of the taxpayer (simplified supplementary taxation of heirs pursuant to Art. 153(a) of the Direct Federal Taxation Act).

What Are the Risks and What Else Must Be Taken into Account?

- The voluntary declaration does not affect any other taxes (e.g. value-added tax, withholding tax, real estate transfer tax, property gains tax, and inheritance tax) or any social insurance contributions (social security, unemployment insurance, etc.), which still have to be paid. In addition, any subsidies granted in the past (e.g. health insurance contributions by the canton) may subsequently prove to be unjustified, which could lead to additional costs.
- The surviving spouse must prove that he/she did not know about the assets. If this proof cannot be provided, the

surviving spouse will not benefit from the legal privileges granted on inheritances (reduction of supplementary tax to the last three tax periods before the death of the spouse).

- Most cantons have issued an information brochure on penalty-free voluntary declarations, and this should be observed.
- It should be noted that the inclusion without comment of previously undeclared income and assets in the tax return does not qualify as a voluntary declaration.
- To secure the chain of evidence, it is a good idea to submit the voluntary declaration in writing. The cantonal information brochures should be consulted in this regard.

Contact Us

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