



# An entente cordiale with the taxman

ALAIN MOREAU AND JEAN-LUC BOCHATAY EXAMINE THE FRENCH VOLUNTARY DISCLOSURE REGIME

Unlike other European countries, France prevaricated for quite some time before establishing an efficient and stable procedure for voluntary disclosure of foreign assets. This procedure, a result of the ministerial decision of 21 June 2013, is now in full swing, and has yielded results beyond the tax administration's expectations.

Some figures:

- There are 35,000 registered files.
- Eighty employees are involved.
- EUR900,000 is disclosed on average.
- Eighteen months is the average duration of the procedure.
- The average amount of taxes levied on disclosed assets is 25–35 per cent.

## WHY SUCH SUCCESS?

This success is certainly not due to the French government, but rather to the persuasive work of professionals in the banking industry, who were themselves under latent pressure from the regulator.

The implementation of increasingly severe tax and criminal measures against holders of undisclosed foreign assets has also added to the momentum of regularisation in France. In this regard, it is worth noting:

- the existence of tax police with extensive investigation powers, focused on the search for foreign assets, and also involved in the fight against laundering of tax fraud proceeds;
- the considerable increase in fines for non-disclosure, from EUR750 per undisclosed account to 5 per cent of the amount of the assets (and even 12.5 per cent in the case of assets held via a trust);
- the increased severity of criminal sanctions. A maximum of seven years' imprisonment and/or a EUR1 million fine, applies to fraud committed through a non-cooperative state. The fine rises to EUR2 million where there are aggravating

circumstances, i.e. fraud committed by an organised group (with the assistance of third parties, such as lawyers, bank employees, external asset managers, fiduciaries, etc); where there are fictive or artificial intermediate structures; or where there is fictive or artificial tax relocation abroad;

- the implementation of a 'sanction tax' of 60 per cent on non-verifiable bank credits.

France has thus amassed a repressive arsenal that is highly dissuasive for:

- taxpayers, who risk losing all their non-disclosed assets (even sometimes endangering their disclosed assets) and being criminally punished (by imprisonment and/or a large fine); and
- professionals – indeed, the new measures in the fight against tax fraud focus on service providers and their involvement in the commission of offences.

By initiating a voluntary disclosure procedure, the taxpayer may be able to circumvent these new sanctions and settle past affairs amicably, removing the prospect of litigation. Indeed, through the payment of the following taxes, the taxpayer and the tax administration enter into a transactional agreement:

- income tax from 2006 to 2013;
- wealth tax from 2007 to 2014;
- social contributions from 2006 to 2013;
- non-prescribed inheritance taxes (death occurred as from 31 December 2006) or gift taxes (if applicable);
- negotiated late interest, penalties and fines.

This agreement brings a definitive end to any risk of tax litigation, as regards the same periods and the same taxes. From a practical point of view, it also brings an end to any criminal proceedings on the grounds of tax fraud (or laundering of tax fraud proceeds) *vis-à-vis* the taxpayers and, in most cases, the service providers likely to be involved – as participants or co-authors – in this context.

## A CHANCE WORTH TAKING

Although the voluntary disclosure procedure for French taxpayers may sometimes prove more expensive than other similar procedures in Europe, it remains a real opportunity. Above all, it represents the last chance for amicable resolution before the application of highly punitive measures.

This procedure is also an opportunity to be seized by private-banking service providers. It allows them, on one hand, to carry on their role as managers, advisors or custodians of their clients (non-tax-compliant asset management having become almost impossible in Switzerland), even if they must face new constraints resulting, in particular, from their clients' domestic tax regimes. On the other hand, they can avoid the risk of being sued for complicity in tax fraud or laundering of tax fraud proceeds.

With automatic exchange of information imminent, a growing number of requests for exchange of information by France, and the implementation of procedures for collective applications, voluntary disclosure is the most obvious solution.



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