

French Tax Authority launches a new voluntary disclosure service

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Executive summary

On 12 March 2019, the French Government published on the government website (impots.gouv.fr) a circular, dated 28 January 2019, establishing a tax voluntary disclosure service for companies (voluntary disclosure service).

The publication of the circular follows a public consultation on the service, which was open from 26 July 2018 to 14 October 2018.

This Alert summarizes the key provisions of the new service.

Detailed discussion

Background

The voluntary disclosure procedure, created by the Government, is part of the search to balance the fight against tax fraud with an open, transparent and trust-based relationship between the French tax authorities (FTA) and taxpayers.¹ Through such a relationship, the FTA hopes to be able to better target its resources towards high risk taxpayers. It is one of the seven pillars set out by the French Minister for Public Action and Accounts on 14 March 2019 at the conference "For a new relationship of trust between companies and the French Tax Authorities."²

Scope of the new procedure

The voluntary disclosure service will only be able to address new disclosure and settlement requests. All companies subject to a tax audit, ongoing investigation, or subject to a tax audit notice, are therefore excluded from the procedure.

The scope of the service is also limited to cases of new disclosure requests relating to:

In general:

- ▶ Tax anomalies discovered by new owners and buyers of a company
- ▶ All illegal or abusive arrangements covered in a fact sheet published on the "economie.gouv.fr" website
- ▶ Any transaction likely to fall under one of the sanctions provided for in the event of abuse of law,³ fraudulent activities⁴ or concealed activities⁵

With respect to international tax law:

- ▶ Undeclared activities in France constituting a permanent establishment
- ▶ The deduction of all or part of the interest on a loan granted by a foreign company in breach of the provisions of Article 212 of the French Tax Code (FTC)

With respect to the taxation of executives:

- ▶ The tax regime for repatriates provided for in Article 155 B of the FTC
- ▶ Non-compliance with the requirements of a "Dutreil" agreement, as provided for in Article 787 B of the FTC
- ▶ The wrongful non-subjection of a capital gain on the sale of shares
- ▶ Abusive management package schemes and abusive use of stock-savings plan, as described on the "economie.gouv.fr" website

The limitations on the competence of the service to the above-mentioned cases do not appear to be in line with the proclaimed objectives of establishing a relationship of trust and exchange with the administration. It is worth stressing that the procedure is not open to cases where bad faith penalties would be applicable, while those penalties are becoming applied by the FTA more and more often.⁶

From a practical point of view, it should be noted that it is not specified what will happen to the files submitted and considered "out of scope" by the French tax authorities.

A double risk could arise, both from the rejection of the request for settlement and from the use that could be made of the request by the French tax authorities, especially in the context of a tax audit, or via exchange of information with other countries.

Settlement request process

Taxpayers must initiate a proposal to settle the situation covered by the voluntary disclosure request and file with the DGE,⁷ which will act as a single access point to the voluntary disclosure service, a complete file containing the following documents:

- ▶ The voluntary disclosure and settlement request
- ▶ A written statement containing a precise and detailed description of the issue covered by the request, accompanied by any supporting documents
- ▶ Corrective declarations covering the entire non-prescribed period
- ▶ Supporting documents relating to the amounts regularized that enable calculation to ensure the accuracy of the figures
- ▶ A statement by the taxpayer that he filed a truthful request

The onus of this formal process may be mitigated by the possibility to file, by way of exception and in certain specific cases, corrective declarations and supporting documents relating to regularized amounts within six months of the submission of the tax settlement request.

Nonetheless, it is not clear what the consequences would be if such time limit is exceeded.

In addition, prior to the submission of a request, a dialogue may be initiated between the FTA's voluntary disclosure service and taxpayers on the tax treatment to be given to the situation they wish to rectify. Once the file has been submitted, the service may also request additional information from the taxpayer.

Finally, the circular specifies that the guarantees granted to the taxpayer in the context of a tax audit will be transposed to the voluntary disclosure procedure. Taxpayers will thus have the opportunity to benefit from two levels of appeal: (i) to a higher administrative authority; and (ii) to refer the matter to the national or departmental Commission on direct taxes and turnover taxes, the conciliation Commission or the Committee on the abuse of tax Law.

Consequences of a settlement request

Statute of limitations

The circular provides that the limitation period under ordinary law will apply, in particular the extended period of 10 years in the event of the exercise of a concealed activity (Art. L. 169 of the Code of Fiscal Procedures (LPF)).

However, it is not specified what effect such a request will have on the limitation period of the French tax authorities. Since the presentation of the file could be considered as an acknowledgement of a debt by the taxpayer, it may lead to an interruption of the limitation period.⁸

Payment of additional taxes and penalties

With regard to the payment of additional taxes, taxpayers will have to pay in full the additional taxes for which they are responsible, or undertake to pay them in accordance with a schedule agreed with the French tax authorities.

With respect to penalties and late-payment interest, their amount may be adjusted by a settlement as provided for in Article L. 247 of the LPF and in accordance with the following indicative scales, which will be applied according to the circumstances leading to the settlement request:

Ordinary tax rate	Regularization rate	Late-payment interest
80%	30%	40% reduction
40%	15%	40% reduction
10%	0%	50% reduction

However, it is specified that when the amount of the settlement discount exceeds €200,000, the proposed settlement will be submitted to the opinion of the Tax, Customs and Exchange Disputes Committee.

Finally, it should be noted that the conclusion of a settlement prevents the taxpayer from subsequently challenging the rights or penalties before the tax judge (Art. L. 251 of the LPF).

Future tax audits

The French tax authorities will have the right to initiate a tax audit in the event of a disagreement with the taxpayer on the conditions for settlement.

Specific case of buyers of a company acting within 12 months of an acquisition

The draft identifies three situations depending on whether the beneficiary benefits from a seller's warranty:

- Where the tax consequences of settlement are borne in full by the transferor (total seller's warranty), penalty discounts cannot be applied
- Where the tax consequences of settlement are borne in part by the transferor (partial seller's warranty), penalty reductions will be applied to the extent of the proportion provided for in the seller's warranty, with the remainder payable by the transferee
- Where the tax consequences of settlement are borne exclusively by the transferee, the scale will be applied in full

Duration of the voluntary disclosure service

No specific operating period has yet been announced for the tax voluntary disclosure service. However, it is expected that the system will be reviewed for possible adjustments after one year of operation.

Endnotes

1. The law for a State at the service of a trusted society, dated 10 August 2018 aimed to introduce such a relationship.
2. <https://www.economie.gouv.fr/colloque-entreprises-administration-fiscale-nouvelle-relation-confiance>.
3. Article 1729, b of the French Tax Code.
4. Article 1729, c of the French Tax Code.
5. Article 1728, c of the French Tax Code.
6. Article 1729, a of the French Tax Code.
7. Direction Générale des Grandes Entreprises, 8 rue Courtois, 93505 Pantin Cedex.
8. Article L. 189 of the Code of Fiscal Procedures.

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