KÜFFNER MAUNZ LANGER ZUGMAIER

KMLZ VAT NEWSLETTER

New regulations for voluntary self disclosures as of 1 January 2015

Substantial tightening regarding voluntary self disclosures – some relief regarding VAT

Since 1 January 2015, the right to voluntary disclosure has been substantially tightened by extending the period of adjustment up to 10 years as well as by increasing penalties in accordance with sec. 398a of the German General Fiscal Code. There is relief regarding VAT as the previous legal situation is partially set back to resemble the situation prior to the coming into force of the Illegal Earnings Combat Act. It is now once again possible to make several corrections regarding monthly VAT returns. However, this does not apply to annual VAT returns.

Since 1 January 2015, new regulations regarding the German General Fiscal Code and the Introductory Act to the German General Fiscal Code have been implemented. The regulations for a voluntary self disclosure have again been substantially tightened, albeit partially. However, there is also some necessary relief for companies regarding VAT returns.

1. Overview of the most important changes

- “decriminalization“ regarding VAT
- extension of exclusions regarding voluntary self disclosures
- increase in penalties in accordance with sec. 398a of the German General Fiscal Code
- extension of the period of adjustment up to 10 years

2. Legal situation prior to the Illegal Earnings Combat Act

The initiation of criminal tax offences due to the late submission or correction of VAT returns was rather unusual and restricted to individual cases prior to the implementation of the Illegal Earnings Combat Act on 3 May 2011. This approach by the tax authorities made sense and was practicable as there was often a great necessity for correction regarding company VAT returns and annual VAT returns.

3. Problems since the Illegal Earnings Combat Act

However, this changed fundamentally when the Illegal Earnings Combat Act was implemented and so-called “partial disclosure” was abolished. The correction of VAT returns could have been seen as voluntary self disclosures which need to be complete. Furthermore, there is the problem of exclusion, which made further voluntary self disclosures impossible.

4. Partial disclosures for monthly VAT returns possible again since 1 January 2015

The legislature has recognized the difficulties facing companies regarding the Illegal Earnings Combat Act and added a new paragraph in sec. 371 of the German General Fiscal

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Code. Sec. 371 para. 2a of the German General Fiscal Code sets the legal situation partially back to the way it was "before the Illegal Earnings Combat Act". Thus, subsequent or corrected monthly VAT returns are deemed as effective partial disclosures and do not need to be complete. The detection of the evasion does not exclude a further voluntary self disclosure if it is based on belated or corrected VAT returns. Therefore, from now on, several corrections of monthly VAT returns are possible. Additionally, it is not necessary for the correction of an annual VAT return for the previous year to correct the monthly VAT returns of the current year.

5. No relief for annual VAT returns

However, there have been no changes to the legal situation regarding annual VAT returns. Annual VAT returns still need to be complete and voluntary partial disclosures will remain to be impossible. Therefore, the "actual impossibility" of companies, especially larger or medium sized companies, from submitting voluntary self disclosures continues to exist: This is because it is not possible to ensure complete information for any previous five year period; in fact the period has even been extended to 10 years, due to the variety and complexity of current business transactions.

6. Extension of the period of adjustment of up to 10 years

The originally intended extension of the limitation of criminal proceedings for tax evasion to ten years is no longer included in the new regulations. The limitation remains at five years. However, the period of adjustment for voluntary disclosures has been extended to ten years. It is now necessary to provide comprehensive information concerning all tax offences for the relevant tax type, which are not barred by the limitation period for criminal prosecution. At least, however, regarding all tax offences for the relevant tax type within the last ten calendar years.

7. Extension of exclusion

The legislature has substantially tightened the exclusion of voluntary disclosures. Therefore, it is now already a problem if the "persons involved in the action" are informed about the audit. In the past, such information was only a problem for the "offender". Additionally, a VAT review, in the sense of sec. 27b of the German VAT Act, leads to an exclusion. Until now, this was only the case if a VAT audit took place. Upon completion of the review, there is again the possibility for a voluntary disclosure. The legislature also offers some necessary relief for the practice: The exclusion during the announcement of a tax audit or a VAT audit is now limited in scope and to time periods stated in the audit order.

8. Amendments of sec. 398a of the German General Fiscal Code

According to the new regulations, penalties, in accordance with sec. 398a of the German General Fiscal Code, will be imposed if the evaded amount of VAT exceeds EUR 25,000 (until 2014 this amount has been set at EUR 50,000). Furthermore, the penalties to be paid (until 2014: 5% of the VAT amount evaded) have been increased significantly and staggered: The penalties are 10% for evasion amounts below EUR 100,000, 15% for evasion amounts between EUR 100,000 and EUR 1,000,000 and 20% for evasion amounts exceeding EUR 1,000,000.