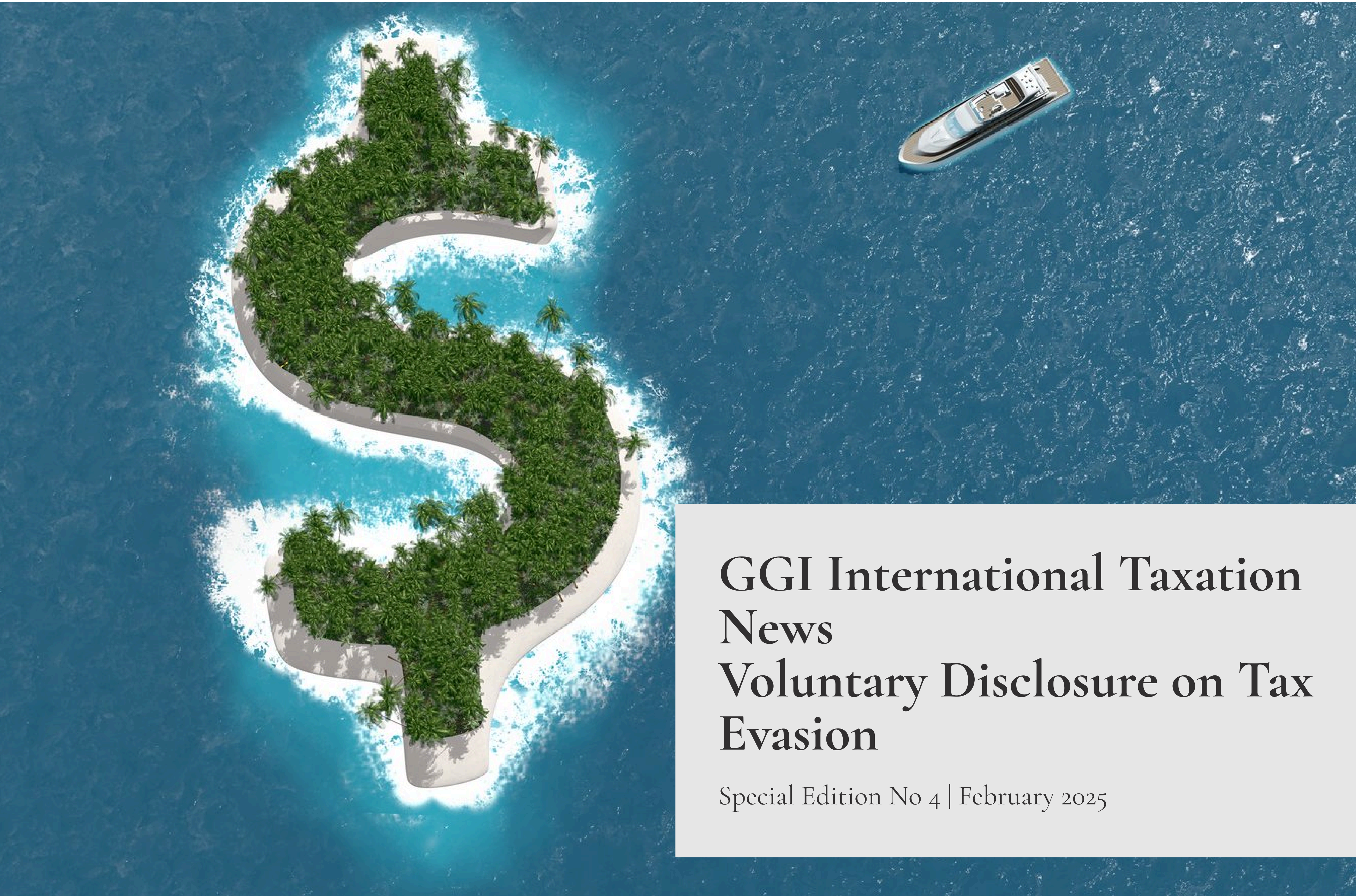
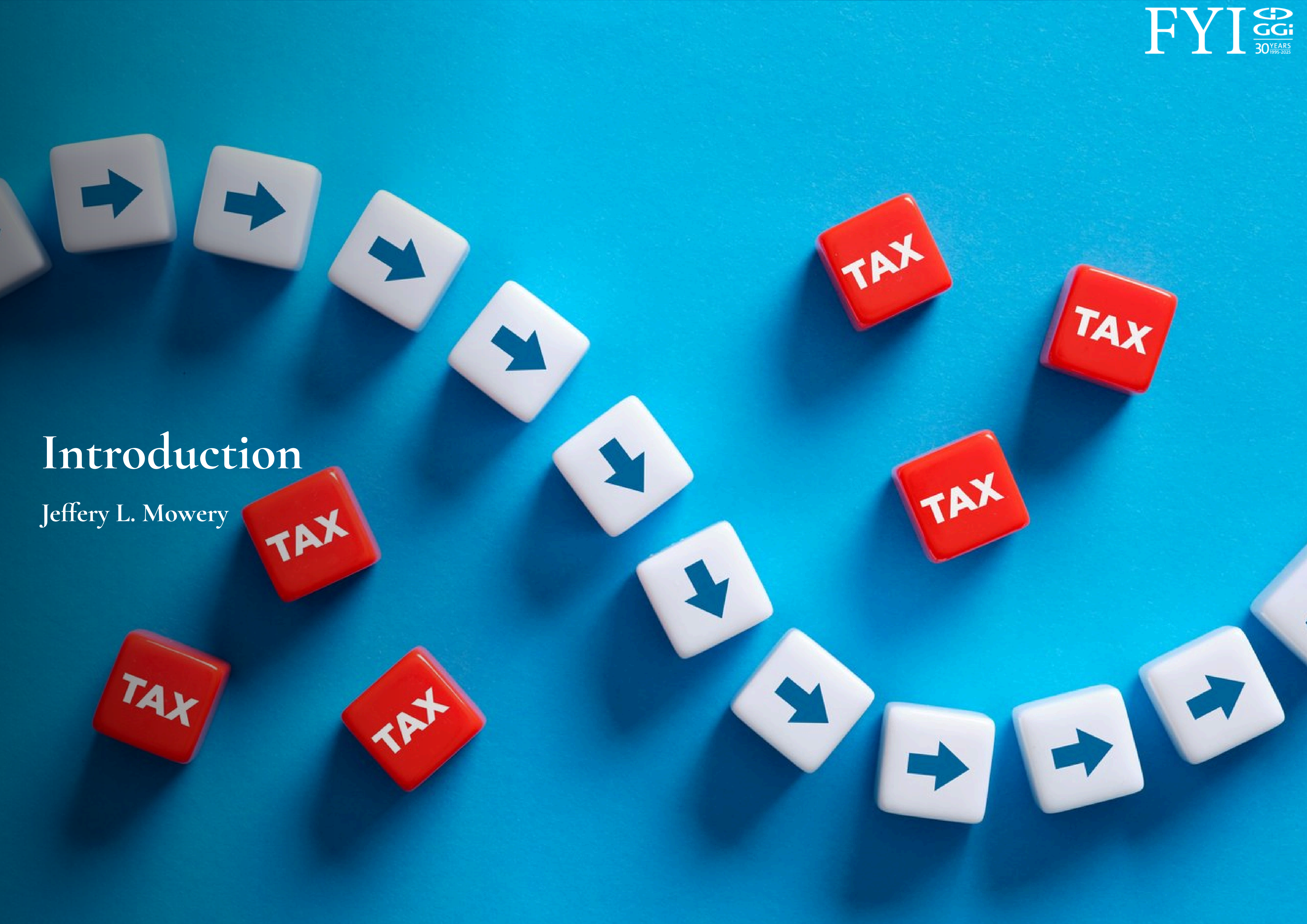


# GGI International Taxation News
# Voluntary Disclosure on Tax Evasion

Special Edition No 4 | February 2025




# Introduction

Jeffery L. Mowery

# INTRODUCTION

by **Jeffery L. Mowery**

**Jeffery L. Mowery** is the Managing Partner and co-founder of Mowery & Schoenfeld. He specializes in solving tax and strategic business problems for his clients, with expertise in complex taxation issues for entrepreneurial businesses. He holds a Bachelor and Master of Science in Accountancy from the University of Illinois Urbana-Champaign; a Juris Doctorate of Law from Loyola University; and a Master of Laws in Taxation from DePaul University.
**Contact Jeffery L. Mowery**.

Tax evasion is a global issue. Whether it's underreporting income, inflating deductions, or sheltering assets to reduce tax obligations, the effects of tax evasion are felt throughout the global economy. The complexity of tax laws and regulations, both ever-changing and intricate, can easily lead someone to unknowingly make mistakes that could be interpreted as tax fraud. Even straightforward errors, such as misinterpreting tax codes or failing to meet new compliance standards, can have serious consequences.

As an accountant living in the United States, I am acutely aware that the trust placed in our profession is built on transparency and compliance. Tax evasion undermines both. Beyond the financial risks of heavy fines as well as the legal penalties, businesses exposed in tax evasion scandals often suffer a loss of client and investor confidence, which can have a lasting impact on their operations and brand reputation.

However, there's an opportunity for taxpayers to correct their mistakes before matters escalate: voluntary disclosure.

Voluntary disclosure is a crucial tool in the tax system. It provides taxpayers with a chance to come forward, correct past errors, and avoid criminal prosecution. While voluntary disclosure does not guarantee immunity from all consequences, it can substantially reduce the severity of the outcome. As tax professionals, we are uniquely positioned to guide our clients through this process, and ensure they take the right steps to bring their tax affairs into compliance.

In this special edition of International Taxation News, we are looking at the voluntary disclosure policies of seventeen countries. GGI is examining this issue to better understand how different countries define and address tax evasion, as well as the conditions, benefits, and limitations of voluntary disclosure processes. Ultimately, the goal of this newsletter is to share the legal frameworks and practices that guide individuals and professionals in resolving tax violations across jurisdictions – to understand our commonalities, as well as our differences.

As we strive to connect our clients with reputable service providers across borders, it's essential that we address the legal and fiscal challenges that come with achieving compliance. By ensuring our members are equipped with the knowledge to navigate international tax laws, we help protect both businesses and individuals from potential risks while maintaining the integrity of our cross-border networks.

Mowery & Schoenfeld is proud to sponsor this publication, which we hope will help GGI members navigate the complexities of voluntary disclosure in their day-to-day work as well as spark conversation about the practice as a whole. Thank you to everyone who contributed to this ITPG special edition newsletter. Everyone's commitment and passion for their work is what keeps GGI strong.

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# Welcome

## Alan Rajah

# Dear Reader

**Alan Rajah** joined Lawrence Grant LLP in 1994 and he is involved in all areas of general practice, specialising in cross border tax planning, due diligence, mergers and acquisitions and inheritance tax planning. His client portfolio includes UK and overseas companies and individuals. Alan is the Global Vice Chair of the GGI International Tax Practice Group (ITPG) and a Trustee of British Foundation for International Reconstructive Surgery & Training (BFIRST). **Contact Alan**.

I am delighted that GGI International Tax Practice Group (ITPG) has produced this fourth edition of the FYI – International Taxation Newsletter on **Voluntary Disclosure on Tax Evasion**.

In an era where financial transparency and tax compliance are more critical than ever, voluntary disclosure programmes have become essential tools for fostering trust and integrity in tax systems worldwide. Voluntary disclosure programmes play a pivotal role in enhancing tax compliance and fostering integrity. They provide a valuable opportunity for individuals and businesses to correct past errors, and contribute positively to public trust and fiscal responsibility. This approach underscores the importance of transparency and accountability in our financial systems.

Whether you are a policymaker, tax professional, legal expert or business leader, your role in shaping ethical tax practices is invaluable. In this edition, we are pleased to present insights from GGI ITPG members from around the world, offering a diverse and comprehensive view of how voluntary disclosure is evolving on a global scale.

From policy frameworks to the challenges faced by different countries, this collection

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highlights the successes, challenges, and future of voluntary disclosure programmes worldwide. Our contributors –renowned tax experts – provide invaluable analyses that shed light on the global movement toward fiscal responsibility and ethical tax practices.

The International Monetary Fund (IMF) has stated that billions of dollars of potential tax revenue remain uncollected each year in many countries around the world due to poor tax system design or weaknesses in tax administration.

Governments worldwide face many challenges in implementing voluntary disclosure programmes (VDPs) to address tax evasion.

Key obstacles include:

1. **Lack of public trust**
   Many taxpayers are sceptical about VDPs, fearing that disclosure of past non-compliance could lead to penalties, audits, or even legal consequences. If governments fail to ensure confidentiality and fairness, participation rates may remain low.

2. **Balancing leniency and enforcement**
   Authorities must strike a balance between offering attractive incentives such as reduced penalties, and maintaining strong enforcement against tax evasion. Too much leniency may encourage non-compliance, while excessive penalties may discourage voluntary disclosures.

3. **Cross-border tax evasion and offshore accounts**
   With globalisation, many tax evaders hide assets in foreign jurisdictions. Governments often struggle to enforce VDPs when taxpayers have undisclosed offshore accounts, especially in countries with strict banking secrecy laws.

4. **Lack of international cooperation**
   Despite agreements like the Organization for Economic Cooperation and Development (OECD)'s Common Reporting Standard (CRS), not all countries cooperate fully on

tax matters. Some tax havens still provide limited financial transparency, making it difficult for governments to track hidden wealth.

5. **Administrative and Resource Constraints**
Managing a successful VDP requires significant resources, including trained personnel, digital systems, and legal expertise. Developing countries, in particular, may struggle with limited infrastructure to process disclosures efficiently.

6. **Uncertain legal frameworks**
Inconsistent or unclear legal provisions on voluntary disclosure can deter


taxpayers from participating. Frequent policy changes or a lack of clear guidelines may create confusion and reduce the effectiveness of VDPs.

7. **Political and public pressure**
Governments often face criticism from the public and opposition parties when offering amnesties or

reduced penalties to tax evaders. Some view VDPs as rewarding dishonest taxpayers while law-abiding citizens continue to pay their fair share.

8. **Lack of awareness and outreach**
Many potential participants remain unaware of VDPs or do not fully understand their

benefits. Governments must invest in awareness campaigns to encourage disclosures and ensure transparency about the process.

9. **Technology and digital challenges**
With the rise of cryptocurrencies and other digital assets, tracking undeclared income is becoming increasingly complex. Many tax authorities lack the necessary technological tools to detect and verify such assets effectively.

10. **Ensuring long-term compliance**
A successful VDP should not only recover lost revenue, it

should also encourage long-term tax compliance. Without proper follow-up measures, some taxpayers may return to non-compliant behaviour after taking advantage of the programme.

Despite the challenges faced by governments around the world, several major global companies have been caught in tax evasion scandals over the years. Here are some notable examples:

### Apple (Ireland tax case – 2016)

The European Commission ruled that Apple owed **EUR 13 billion (USD 14.5 billion)** in unpaid taxes to Ireland due to illegal tax benefits. Apple had allegedly used a complex structure to shift profits and avoid paying higher taxes. After years of legal battles, Apple won an appeal in 2020, overturning the ruling. However, in September 2024, the Court of Justice of the European Union ordered Apple to pay the money with interest (so about EUR 14 billion).

### Google (France – 2019)

Google agreed to pay **EUR 965 million (USD 1.1 billion)** in fines and back taxes to France. The French government accused the tech giant of avoiding taxes by routing profits through Ireland. This settlement ended a long-running tax dispute between Google and French authorities.

### Amazon (Luxembourg tax case – 2017, 2021)

In 2017, the European Commission ordered Amazon to repay **EUR 250 million (USD 295 million)** in back taxes to Luxembourg. The EU found that Luxembourg had granted Amazon illegal tax advantages. However, Amazon won an appeal in 2021, with the court ruling in its favour.

### Facebook (Italy – 2018)

Facebook agreed to pay **EUR 100 million (USD 117 million)** in back taxes to Italy. The company was accused of failing to declare profits made in Italy and instead routing them through Ireland.

### Microsoft (United States – 2023)

The IRS accused Microsoft of owing nearly **USD 29 billion** in back taxes. The case involved Microsoft allegedly shifting profits to low-tax jurisdictions. Microsoft disputed the claim and is currently challenging the IRS ruling.

### McDonald's (France – 2022)

The fast-food giant agreed to pay **EUR 1.25 billion (USD 1.3 billion)** to settle a tax dispute in France. Authorities accused McDonald’s of shifting profits to Luxembourg to avoid higher taxes in France.

### Starbucks (United Kingdom – 2012)

Investigations revealed that Starbucks had paid almost no corporate tax in the UK for years. The company used legal loopholes to shift profits overseas. Public outrage led Starbucks to voluntarily pay

**GBP 20 million (USD 26 million)** in taxes over two years.

**Nike (Netherlands – 2020)**

The EU investigated Nike for allegedly avoiding taxes by shifting profits through the Netherlands. The company used complex royalty agreements to reduce its taxable income. In 2021 Nike lost its appeal to the European General Court to halt the EU state aid investigation into its tax arrangements in the Netherlands.

These cases highlight the challenges governments face in tackling corporate tax avoidance and evasion.

This special newsletter issue would not have been possible without contributions from all the GGI ITPG authors whose commitment to financial transparency and responsible tax practices has helped bring these discussions to the forefront, as well as the generous support of our sponsor, Jeff Mowery of Mowery & Schoenfeld LLC. Special thanks also goes to Oliver Biernat of Benefitax, whose vision and dedication to this topic have played a key role in shaping this issue.

Your efforts have enabled us to present a comprehensive publication on voluntary disclosure and its vital role in ensuring a fair and transparent financial system.

We hope this issue serves as an insightful resource and inspires continued dialogue on fostering compliance and accountability worldwide. We encourage you to contact the respective authors if you have any specific question about any particular jurisdiction.

Should you have any questions on this subject, I would be delighted to answer them.

**Alan Rajah**
**Responsible Editor & Global Vice Chair of the GGI ITPG**

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# Australia

Ross Forrester

# AUSTRALIA

by Ross Forrester

Ross Forrester is a director of Westcourt, a leading tax advice practice in Australia. He is the Regional Chair Asia-Pacific for the GGI International Taxation Practice Group (ITPG) and is also the State Chair for The Tax Institute of Australia.

Contact Ross.

**Tax evasion** occurs when a taxpayer commits a blameworthy act or omission to avoid paying their tax obligations. **Tax fraud**, on the other hand, is more serious. It involves a taxpayer knowingly making a false statement to the Australian Taxation Office (ATO) about their tax affairs or showing reckless disregard for whether their statements are true or false.

Examples of tax fraud or evasion include:

- Recklessly claiming deductions the taxpayer is not entitled to;
- Failing to provide required information to the ATO or neglecting to keep accurate records;
- Submitting false, backdated, or altered documents;
- Paying wages in cash and not reporting them to the ATO;
- Failing to remit GST, pay-as-you-go withholdings (PAYGW), or superannuation guarantee contributions;
- Making false statements in tax returns; or
- Disguising personal expenses as business expenses.

A criminal investigation may happen for knowingly or recklessly acting with dishonesty to obtain a lower payment or refund from the ATO.

### How the ATO uncovers tax evasion

The ATO has sophisticated mechanisms to identify tax evasion.

This includes:

1. Data matching: Property transactions, share registers, payment platforms, banks and other registers (e.g. boat registrations) are notified to the ATO.

2. Cross-agency collaboration: The ATO works with other government agencies like the Australian Federal Police (AFP) and state revenue offices.

3. AI and machine learning: AI can be used to detect income mismatches from known sources, unexplained changes in activity, and deductions disproportionate to income.

4. Audits and reviews: Wealthy family groups undergo routine and ongoing reviews.

5. Public tip-offs: The ATO operates a Tax Integrity Centre that provides anonymity for reported tax evasion.

6. Industry focus: The ATO has a higher focus on some industries like construction and cryptocurrency traders.

7. International agreements: The ATO can access international information through the Common Reporting Standard (CRS) for offshore accounts, Automatic Exchange of Information (AEOI) agreements, and double taxation agreements.

8. Unexplained wealth: The ATO investigates taxpayers with unexplained wealth and purchase activity, including purchasing luxury cars or boats.

A recent prominent case was

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Project Wikenby. A Swiss tax advisor had their laptop seized at the airport and client information was retrieved from the laptop. The Australian government was informed by whistleblowers, Australian Transaction Reports and Analysis Centre, and potentially information from Switzerland.

## The options to declare income

Where a taxpayer has engaged in fraud or evasion, they and the ATO have an unlimited time frame to amend tax returns and declare income.

If a taxpayer has not engaged in fraud or evasion, they may amend tax returns for up to 4 years from the date of lodgement.


## The conditions for voluntary disclosure of tax evasion

The circumstances vary depending on the amount of tax underpaid.

If a tax review has not yet started, the best approach is to contact the ATO and notify them of the potential shortfall amount, the misleading nature of the statement, and the anticipated time frame within which the taxpayer will make the complete disclosure.

Advising the ATO of the evasion quickly is important to pre-empt a review.

The voluntary disclosure, be it through an amended tax return, a formal letter advising of the adjustment, or a late return lodged, is best communicated through a tax agent or directly to the ATO through its secure portal.

In rare instances where the undisclosed liability is significant, an approach can be made to the ATO on an anonymous basis to negotiate the tax impact of the fraud and the effect of voluntary disclosure. When multiple tax return years are outstanding, and it is challenging to prepare returns for previous decades, a negotiation can happen for a set number of years to be lodged without further request.

## Voluntary disclosure before a tax review starts

If a voluntary disclosure occurs before a tax review starts the taxpayer is in a much stronger position with the following benefits:

1. Significantly lower likelihood of criminal prosecution;
2. Reduction of tax penalties by up to 80%;
3. Possible remission of the ATO interest charged;
4. Improved working relationship with the ATO; and
5. Greater chance of a payment arrangement for the ultimate tax assessed.

## Voluntary disclosure during a tax review

If a voluntary disclosure happens **during** a tax review, it is still better for the taxpayer to disclose than if the matter is identified by the ATO resulting from the review.

The following factors are at play:

1. If the disclosure happens earlier during a review, it is considered more favourably.
2. If the disclosure is not related to the item in review, it is considered more favourably.
3. If the disclosure is full and clear, and the taxpayer works with the ATO to provide information, it is also treated more favourably.

The ATO has a form to complete for voluntary disclosure during a tax review. The benefits of voluntary disclosure before a review are still relevant, but they are fewer than if the disclosure is made before the review or investigation starts.

## When voluntary disclosure is no longer possible

Voluntary disclosure is not possible if the disclosure is not voluntary.

Anecdotally, we have assisted clients in difficult positions and presented information as a voluntary disclosure (even when the disclosure was not **that** voluntary), which, surprisingly, has assisted in future negotiations.

It is rare for a client to be forced to present information. Ordinarily, a functional relationship is encouraged between the client and the ATO to facilitate a short review. Sometimes, information is withheld from the ATO, but it is rare.

## The main areas where voluntary disclosure plays a major role

Typically, taxpayers who have committed tax evasion have an aggressive view of their affairs.

The desire to make a voluntary disclosure has arisen from a life event or a gradual change in risk profile.

In our experience, the voluntary disclosure of tax evasion occurs when another person takes control of the taxpayer's affairs, such as the executor of an estate who is uncomfortable managing the tax risk of the estate, or passing tax due diligence for a sale.

## Often overlooked by foreigners but considered tax evasion by the ATO

The primary area where we encounter tax fraud or evasion as a practice is tax residency. A taxpayer can have significant worldwide assets, while wishing to live in Australia and generate wealth from Australia and not be subject to the Australian tax system.

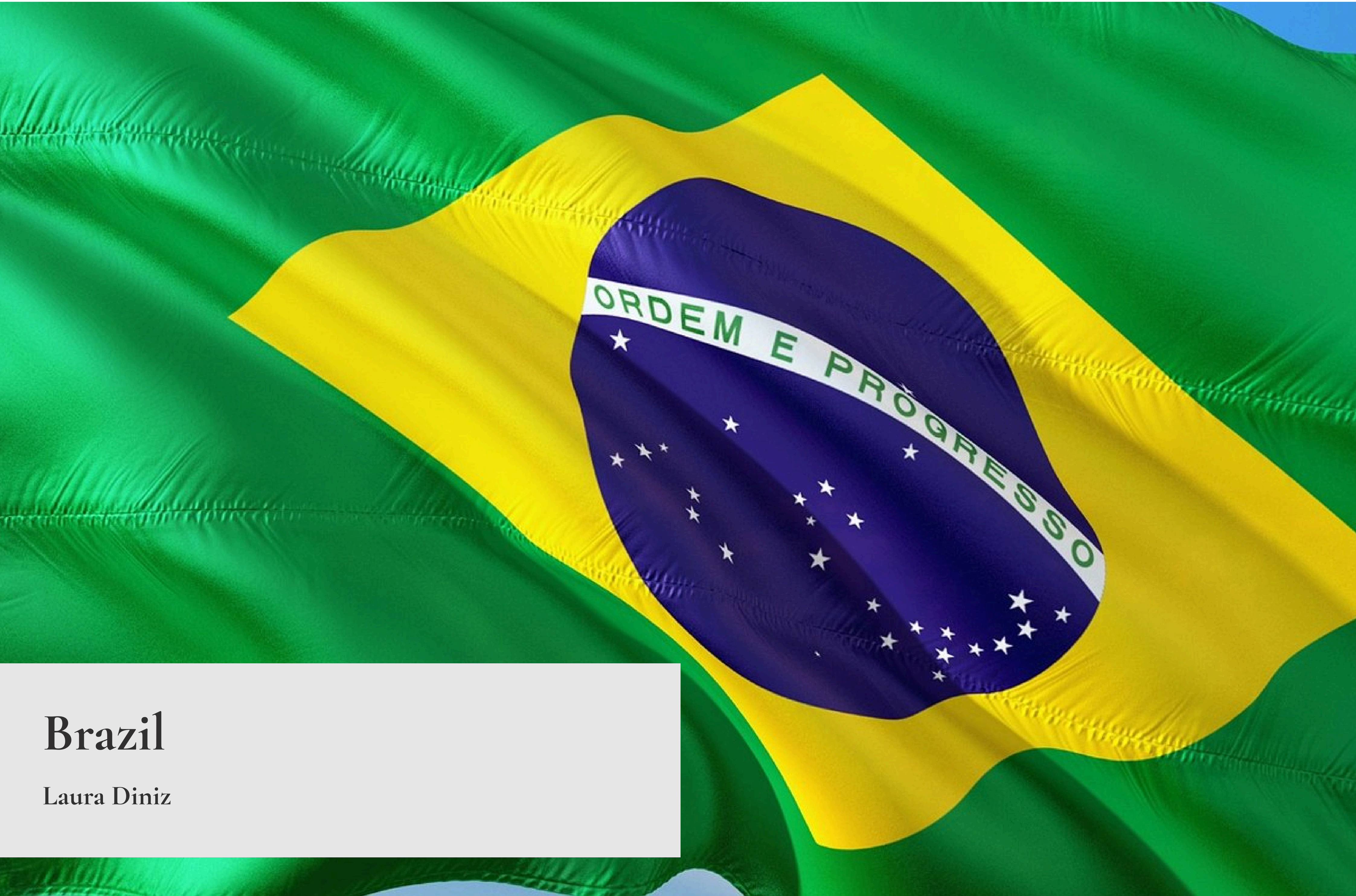
Intentionally disregarding the Australian tax system and assuming that tax residency is offshore is tax evasion.

## Recommendations to clients who have committed tax evasion

The ATO is surprisingly cooperative with taxpayers who come forward and want to pay their share of Australian tax. The ATO's primary emphasis is encouraging a corporative approach, and significant progress has been made in engaging with taxpayers.

Being upfront and honest about the past is essential.

If a taxpayer is combative, fraudulent, and evasive in their dealings, the approach is significantly different, costly and criminal prosecutions can happen. The same principles apply to Australia's state revenue offices.




# Brazil

Laura Diniz

# BRAZIL

by **Laura Diniz**

In Brazil, tax evasion is identified in cases where the taxpayer (i) generates the taxable event of a specific tax and evades its payment; and (ii) fails to pay the tax due to acts characterised by simulation, concealment, forgery, or other fraudulent actions.

If detected by the tax authorities, tax evasion results in the issuance of an infraction notice for the collection of the tax that the taxpayer failed to remit, plus interest and a fine, typically ranging from 75%, 100%, to 150%[1] of the owed tax, depending on the circumstances[2]. The 75% fine applies in cases of mere non-compliance with tax obligations; the 100% fine applies in cases of evasion, fraud, or collusion; and the 150% fine applies in cases of recidivism in evasion, fraud, or simulation.

According to the legislation, **tax evasion** involves any fraudulent action or omission aimed at preventing or delaying the tax authority's awareness of the occurrence of the taxable event or relevant circumstances affecting its assessment. An example of tax evasion is declaring a lower tax amount to the tax authority through ancillary obligations than what is actually owed.

**Laura Diniz** is a partner at Martinelli Law Firm, specialising on domestic and cross-border transactions, focusing on developing solutions for complex tax issues. Laura holds a degree from the Federal University of Minas Gerais (UFMG) and a master's in Tax Law from the State University of Rio de Janeiro (UERJ). **Contact Laura**.

**Fraud** is defined as any fraudulent action or omission intended to (i) prevent or delay the occurrence of the taxable event ,or (ii) exclude or modify the essential characteristics of the tax obligation to reduce the amount owed or defer its payment. An example of fraud is the forgery of documents to exclude or reduce tax liability.

**Collusion** refers to a fraudulent agreement between two or more parties aimed at achieving any effect of evasion or fraud.

Regarding the 100% fine for cases of evasion, fraud, or collusion, it should be noted that until 31 December 2023, the legislation mandated a 150% fine. This 150% fine was frequently imposed by Brazilian tax authorities, but taxpayers consistently challenged it in court, arguing that fines exceeding 100% would violate the constitutional principle against confiscation. In this context, the Federal Supreme Court upheld the taxpayers' position on several occasions, leading to the amendment of the legislation to reduce the fine to 100%[3]. The reduced 100% fine has been applied retroactively, allowing taxpayers to claim refunds for amounts previously collected that exceeded this threshold.

When it comes to taxes owed by legal entities, if the tax authorities re able to demonstrate the personal involvement of the company's directors in the aforementioned conduct, the directors may be held personally liable for the excluded or reduced taxes[4].

In addition to tax consequences, **forgery** may also be characterised as a crime against the tax order, subjecting the offender to imprisonment. Generally, the payment or instalment of tax liabilities extinguishes or suspends the criminal process.

Finally, it is worth noting that there is still no clear definition in Brazil on whether abusive tax planning can be characterised as simulation, and thus subject to the application of the aforementioned 100% fine.

In general terms, abusive tax planning is characterised by the exclusion or reduction of owed tax through manipulation of legal forms[5].

Although this matter is not new and has been extensively discussed in doctrine and by administrative and judicial courts, uncertainty remains regarding whether abusive tax planning should (i) be classified as tax avoidance (legal tax planning); (ii) be equated with tax evasion in the form of simulation; or (iii) constitute a distinct third category from tax evasion and tax avoidance, which could be disregarded by tax authorities but subject to a 75% fine instead of 100%.

The first approach is related to a more formalistic view of tax law, which prevailed in Brazil until the mid-2000s, while the second represents the reaction of the tax authorities and part of the academic community to this formalistic view. The third approach has prevailed in the administrative courts, but the issue has not yet been settled.

## How Brazilian tax authorities typically discover tax evasion

The assessment of the main taxes in Brazil is computerised, and taxpayers are required to submit detailed electronic declarations of tax obligations to federal, state, and municipal tax authorities, as well as notary offices, banking, financial, and foreign trade authorities, as applicable. In this context, a significant portion of tax evasion is detected through audit measures initiated by cross-referencing the information provided by taxpayers themselves.

Tax audits may also be conducted spontaneously by the tax authorities, regardless of irregularities identified through the cross-checking of ancillary obligations, whether as a result of complaints or due to audit targets defined by the authorities themselves.

Furthermore, annually the Brazilian Federal Revenue Service publishes a report setting out the priority measures to promote tax compliance. These measures can be structuring, facilitating, assisting, or coercive. For 2024, some of the topics are:

1. New legislation on transfer pricing, investment funds, and interest on equity;
2. Misappropriation of Social Integration Program (PIS) and Contribution for the Financing of Social Security (COFINS) credits; and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3. Misuse of tax losses when calculating corporate income tax (IRPJ); among others[6].

## Options to amend tax declarations or declare additional income

The amendment of tax returns, including to declare additional income, is available for all types of taxes, as long as the tax authorities have not yet implemented any enforcement measures related to the tax infraction.

## Conditions needed for voluntary disclosure of tax evasion

In Brazil, voluntary disclosure is characterised by payment of the outstanding tax, followed by amendment of the tax return. For voluntary disclosure to produce the intended effect of excluding the fine, the tax must be paid before the ancillary obligations are amended.

## Consequences of voluntary disclosure of tax evasion

Voluntary disclosure by paying the outstanding tax entails waiving the fine.

## When is voluntary disclosure of tax evasion no longer possible?

Voluntary disclosure is no longer possible once the Brazilian tax authority has initiated any inspection measures related to the infraction. Examples of inspection measures are notification to the taxpayer of the first written official act carried out by a competent official to inform of the existence of the tax obligation; the seizure of goods, documents, or books; and the start of customs clearance of imported goods.

## What are the main areas where voluntary disclosure of tax evasion plays a major role?

Voluntary disclosure is widely used by taxpayers who are required to provide frequent evidence of tax compliance in order to maintain contracts with public authorities, obtain financing and enjoy tax benefits.

## What is often overlooked by foreigners but is considered tax evasion in Brazil?

As mentioned above, there is no clear definition in Brazil on whether abusive tax planning constitutes tax evasion. Depending on the situation, a specific assessment of administrative and judicial case law involving the intended tax planning is recommended to assess the risk of it being classified as tax evasion and the application of a 100% fine.

**What do you recommend to clients who have committed tax evasion?**

The Brazilian tax system is extremely complex, leading to numerous and lengthy discussions with the tax authorities. It is not uncommon for infraction notices to be overturned in the administrative and judicial spheres. In many situations it is recommended that taxpayers wait for the assessment and defend themselves later.

When the prospects of an administrative or judicial dispute look negative, but the taxpayer has not yet been assessed, we recommend evaluating the possibility of using a voluntary disclosure. As a last resort, if there is already an ongoing inspection measure or infraction notice, or if the taxpayer is not in a position to make a voluntary disclosure, we recommend evaluating the possibility of including the tax debt in a settlement programme. Settlement programmes are often granted in Brazil mainly by the federal and state governments.

[1] These are the parameters for levying a fine at federal level. In the case of municipal and state taxes, the amount of the fine may vary.

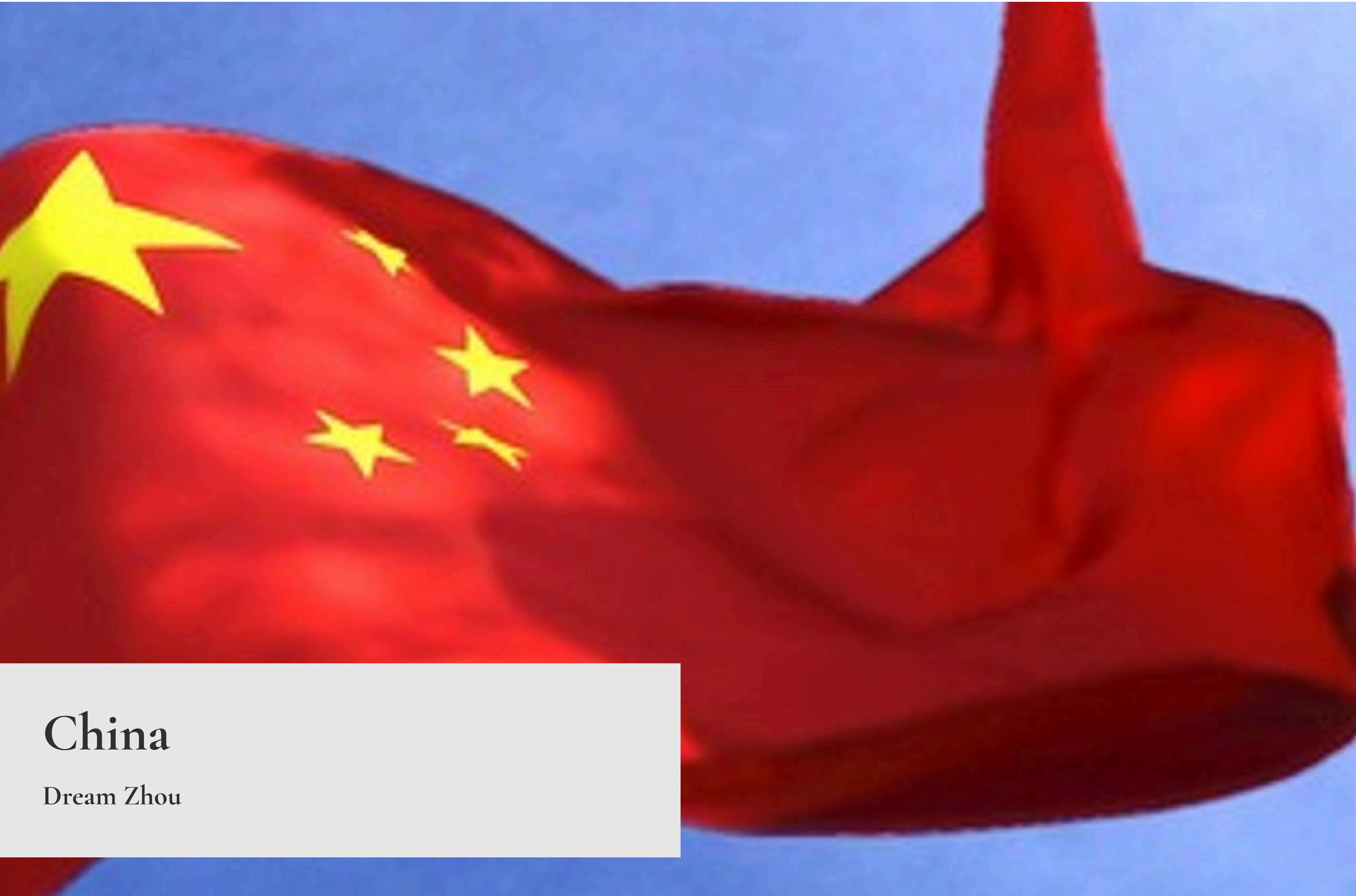
[2] Art. 44 of Law No. 9430/1996.

[3] Law 14.689/2023.

[4] Art. 135 of the National Tax Code.

[5] Manipulation of legal forms is understood to be the use of certain legal acts or transactions aiming to produce effects that are not inherent to them. In summary, the analysis of tax planning from this perspective requires acknowledging (i) that legal acts or transactions have specific properties, and (ii) that the existence of specific purposes and objectives in the rules defining legal acts and transactions limits the production of practical effects, including for tax purposes.

[6] file:///C:/Users/ldss/Downloads/Relat%C3%B3rio%20Anual%20Fiscaliza%C3



# China

Dream Zhou

# CHINA

by [Dream Zhou]

With nearly a decade of experience in accounting, **Dream** is a Partner at MSA. Her expertise lies in tax and HR, where she plays a key role helping clients navigate complex challenges. She also assists in other areas such as payroll compliance, corporate tax, and social security contributions. **Contact Dream**.

Tax evasion remains a significant concern for governments worldwide, and China is no exception. To address this issue, the country has put in place legal mechanisms and systems to detect, penalize, and sometimes even offer an avenue for taxpayers to voluntarily correct their tax filings before facing severe penalties. This article outlines the legal definition of tax evasion in China, its consequences, how tax authorities detect violations, and the possibility of voluntary disclosure to mitigate penalties.

### Definition of Tax Evasion and Detection

According to the Tax Collection Administration Law of the People's Republic of China (2022), tax evasion is defined as the deliberate act of taxpayers forging, altering, concealing, or arbitrarily destroying accounting records and vouchers, overstating expenses, or failing to report income. This also includes instances where taxpayers refuse to file returns or submit false tax returns after being notified by the tax authorities, resulting in the non-payment or underpayment of taxes owed. The law applies to both domestic tax residents and foreigners with tax obligations in China. The detection of tax evasion is increasingly facilitated by technological advancements. The Chinese tax authorities primarily rely on the *Golden Tax Phase IV System (金税四期系统)*, a robust data analytics platform that compares invoices, bank transactions, contracts, and other relevant data points to identify discrepancies and signs of tax evasion.

### Consequences of Tax Evasion

The consequences of tax evasion in China are severe and multi-faceted. Under Article 63 of the *Tax Collection*

*Administration Law*, if tax evasion is detected, the tax authorities are empowered to recover the unpaid taxes, impose late fees, and levy fines ranging from 50% to five times the amount of unpaid taxes. If the violation constitutes a criminal act, the taxpayer may also face criminal prosecution in accordance with Chinese law, with potential imprisonment ranging from 3 to 7 years. Tax evasion thus poses not only financial risks but also potential legal ramifications, including criminal charges for repeated or large-scale violations.

### How Tax Authorities Detect Tax Evasion

Tax authorities in China employ sophisticated tools to detect tax evasion. The *Golden Tax Phase IV System* plays a central role in this effort. By analyzing vast amounts of data such as invoices, bank transactions, and contracts, the system cross-references information to identify inconsistencies, anomalies, or deliberate omissions that may suggest tax evasion. This data-driven approach allows tax authorities to detect irregularities more efficiently and accurately than traditional methods. Additionally, since 2018, China has also been receiving automatic exchanges of financial account information (AEOI) from financial institutions in a vast number of countries, which helps uncover unreported offshore financial assets and income.

## Amending Tax Declarations: Voluntary Disclosure

One of the key provisions within China's tax law allows taxpayers the opportunity to amend their declarations voluntarily before the tax authorities detect the violation. If taxpayers proactively come forward and pay the underpaid taxes before they are discovered by tax authorities, they generally face reduced penalties. In practice, taxpayers may only be required to pay a late fee, calculated at 0.05% of the underpaid tax amount per day of delay. However, once the tax authorities have issued a formal recovery notice, the opportunity for reduced penalties becomes more limited. In such cases, taxpayers who voluntarily pay the due taxes and late fees—while having already faced administrative penalties—may avoid criminal liability. This is contingent on the absence of prior criminal punishment for tax evasion or more than two administrative penalties within the past five years.

## Conditions for Voluntary Disclosure of Tax Evasion

While the Tax Collection Administration Law does not explicitly provide a formal framework for voluntary disclosure, customs regulations outline specific conditions applicable to tax matters. Under these regulations, if voluntary disclosure occurs within six months of the tax underpayment, taxpayers may benefit from the waiver of late fees. If disclosure is made between six months and one year after the underpayment, and the underpaid taxes do not exceed 30% of the payable amount, taxpayers may be eligible for a reduction or waiver of late fees.

This framework offers an opportunity for taxpayers who have made honest mistakes or wish to correct past errors without facing the full extent of legal penalties. Additionally, in certain circumstances, Chinese authorities may implement grace periods for specific industries, allowing taxpayers to disclose non-compliance

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without facing sanctions. This regulatory flexibility encourages voluntary compliance and helps taxpayers resolve discrepancies.

### Consequences of Voluntary Disclosure

As mentioned before, if the taxpayer voluntarily discloses tax evasion, the authorities may reduce or waive the penalties typically associated with tax evasion. However, it depends on the specific circumstances, including the severity of the noncompliance and whether the taxpayer has made a full disclosure. Criminal penalties may be waived, but this is not guaranteed. Voluntary disclosure allows taxpayers to correct their noncompliance without facing the full penalties that could result from being caught through an investigation.

### Too Late for Voluntary Disclosure

Naturally, voluntary disclosure is no longer possible when the authorities have initiated an audit or investigation into the taxpayer's affairs. Once the taxpayer is under investigation or has been notified of an inspection, they typically cannot benefit from voluntary disclosure policies.

### Main Fields and Overseen Fields

Voluntary disclosure plays a major role in fields involving income tax, customs duties, and currency exchange control violations. Taxpayers with undeclared offshore assets or income, for example, may use voluntary disclosure schemes to correct their filings. Compliance with respect to offshore assets or income is often overseen as well. Additionally, failure to comply with currency exchange control rules may be overlooked.

### Suggestions for Taxpayers

For businesses and individuals in violation of tax laws, the best course of action is to stop illegal activities and take immediate steps to rectify the situation. Engaging professional advisors, such as tax consultants or legal experts, is critical to ensure the voluntary disclosure process is handled properly. A professional team can help navigate the complex regulatory landscape, assess potential risks, and determine the most effective strategy for minimizing penalties. Taxpayers should also consider proactively monitoring their tax compliance practices to avoid future violations and ensure adherence to all applicable laws and regulations.

In conclusion, while tax evasion carries significant legal consequences in China, voluntary disclosure offers an opportunity for taxpayers to correct mistakes with reduced penalties. By understanding the legal framework surrounding tax evasion, the detection mechanisms, and the conditions for voluntary disclosure, businesses can better protect themselves against the risks associated with tax non-compliance. Taking timely and informed action can safeguard both a company's financial stability and its reputation.

# France

Claudine Heinrich

# FRANCE

by Claudine Heinrich

## Definition of tax evasion and consequences of its detection by the tax authorities

In France, tax evasion is defined by Article 1741 of the General Tax Code (CGI) as a deliberate act aimed at evading sums owed to the tax authorities. It includes the deliberate omission of declarations, the concealment of income, the use of false documents, and the implementation of fraudulent manoeuvres. Penalties vary according to the seriousness of the offence, with fines of up to EUR 500,000, tax increases of up to 80%, and, in the case of aggravated fraud, a prison sentence of up to seven years. Specific penalties also apply to certain circumstances such as the failure to declare foreign bank accounts (CGI article 1649 A).

**French tax authorities use sophisticated methods to detect tax evasion.** The automatic exchange of financial information at an international level under the Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA) agreements is also an essential tool for identifying undeclared foreign assets. Targeted tax audits, whistleblowing (e.g. by employees and business partners), and bank transaction analysis are also common tools.

## Possibilities of amending declarations or declaring additional income

Taxpayers have a three-year period (10 years for undeclared foreign income) under Article 169 of the Livre des procédures fiscales (LPF).

This can be done by filing an amended tax return. In some cases, taxpayers may voluntarily declare their undeclared income and negotiate reduced penalties.

## Conditions for voluntary disclosure of tax evasion

Since the closure of the Service de Traitement des Déclarations (STDR) in 2017, taxpayers have been able to voluntarily declare their undeclared income and negotiate reduced penalties, and voluntary declarations of tax evasion in France are now directly controlled by the tax authorities. Voluntary declarations must be voluntary, complete, and made prior to any tax or judicial investigation

(Article 62 of the LPF). The aim is to encourage taxpayers to regularise their tax affairs, while ensuring tax fairness.

## Consequences of voluntary disclosure of tax evasion

Taxpayers who opt for voluntary disclosure are generally entitled to more favourable treatment. Penalties for late payment and bad-faith actions (Articles 1728 and 1729 of the CGI) are greatly reduced and may be waived if good faith is proven. Criminal prosecution can also be avoided if the return is found to be complete and compliant. However, regularisation does not exempt the taxpayer from payment of the tax due or interest for late payment.

## When the option for voluntary disclosure cease?

Voluntary disclosure is no longer possible once a tax audit has been initiated, or evidence of tax fraud has been obtained by the tax authorities. This provision is designed to prevent abuse and encourage voluntary disclosure.

## The main areas where voluntary disclosure plays a major role

The main areas of voluntary disclosure in France are:

- Undeclared foreign bank accounts (Article 1649 A of the CGI);
- Trusts and other complex wealth structures;
- Abusive financial arrangements; and
- Omission of property or capital income.

These areas represent major tax issues for the authorities, particularly in the fight against illicit financial flows.

## Common practices by foreigners considered to be tax evasion in France

Non-residents and foreign investors often underestimate their tax obligations in France. The most common errors are failure to declare rental income from French real estate, failure to declare real estate capital gains, and failure to comply with obligations relating to foreign bank accounts.

**Claudine Heinrich** is a highly skilled chartered accountant with a strong background in European tax law. With years of experience in financial management and accounting, she is dedicated to helping businesses—from startups to large corporations—navigate complex financial and tax regulations with confidence. Her expertise spans tax optimisation, regulatory compliance, financial analysis, and strategic business consulting. **Contact Claudine**.

These failures are punishable by lump-sum fines and substantial surcharges.

## Advising clients who have evaded tax and the role of the professional

It is essential to take a proactive approach to clients who have evaded tax. A tax lawyer or chartered accountant is able to:

- Analyse the client's tax situation in detail and assess the risks and obligations of regularisation;
- Emphasise the long-term benefits of tax compliance and encourage full transparency in voluntary disclosures;
- Negotiate with tax authorities to minimise penalties while ensuring compliance with legal obligations; and
- Anticipate regulatory developments, particularly in the field of international taxation, to avoid the pitfalls associated with increased transparency in information exchange.

## Conclusion

Voluntary disclosure is an opportunity for taxpayers to improve their situation while limiting penalties. For foreign tax advisors, understanding French specificities is crucial not only to advise clients effectively, but also to identify opportunities for cross-border cooperation.

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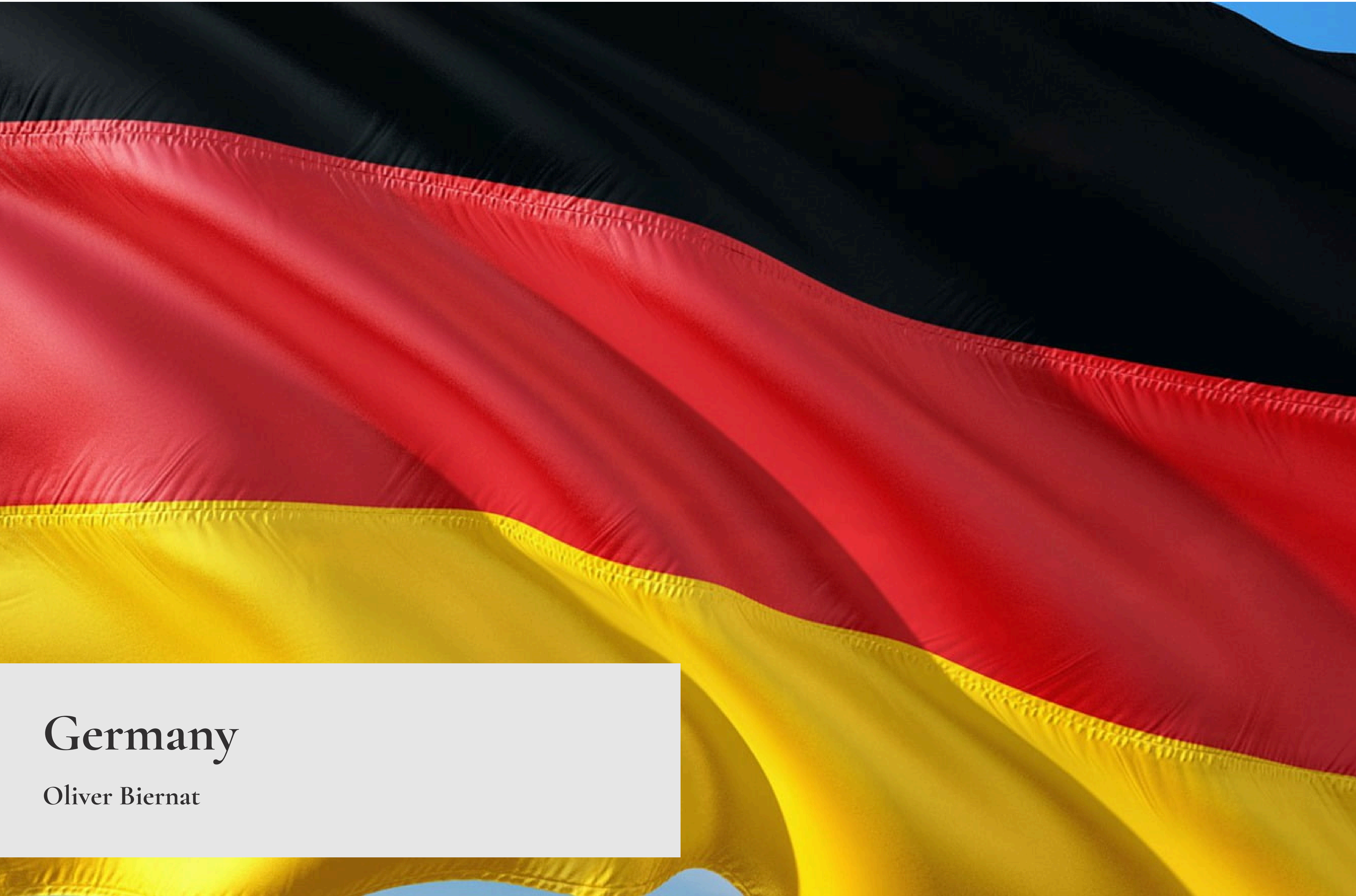

# Germany

Oliver Biernat

# GERMANY

by Oliver Biernat

In Germany, tax evasion is defined activity by “someone [who]

1. Provides the tax authorities or other authorities with incorrect or incomplete information about tax-relevant facts;
2. Fails to inform the tax authorities of tax-relevant facts in breach of duty; or
3. Fails to use tax stamps in breach of duty,

and thereby reduces taxes or obtains unjustified tax advantages for himself or another person”.

The consequence is usually a monetary fine, but this may go up to imprisonment for up to 10 years in particularly serious cases such as reducing taxes on a large scale. In less severe cases of recklessly committing one of the acts described above, a monetary fine of up to EUR 50,000 will be assessed.

In addition to the taxes and interest to be paid, monetary fines between 10% and 20% of the evaded tax will be assessed in cases where the authorities decide to refrain from criminal proceedings.

The following table can serve as a general guideline of what you can expect in case of a first-time tax evasion:

| Amount of evaded tax | Expected penalty |
|---|---|
| Up to EUR 1,000 | Discontinuation of proceedings against conditions |
| Up to EUR 50,000 | Monetary fine |
| More than EUR 50,000 | Monetary fine or imprisonment suspended on probation |
| Up to EUR 1 million | Imprisonment suspended on probation, possibly with an additional fine |
| More than EUR 1 million | Always imprisonment without probation |

**Open full table in browser:**

https://ggi.turtl.co/story/ggi-itpg-special-edition-news-no-4-or-feb-2025-or-voluntary-disclosure-on-tax-evasion/page/9/1

## How do German authorities typically find out about tax evasion?

Germany has implemented a large number of reporting requirements for banks, insurance companies, social security carriers, brokers, cryptocurrency exchanges, online rental portals such as Airbnb, notaries, intermediaries, and foreign tax authorities which must report certain matters automatically or upon request.

German tax authorities also carry out tax field audits and report findings to respective tax offices. In some cases, they have bought data from whistleblowers such as the famous CDs with lists of Germans with Swiss bank accounts, or the Panama papers.

## What are the opportunities to amend tax declarations or declare additional income?

When a taxpayer realises before the period

for assessment has elapsed

1. That a return previously submitted (by the taxpayer directly or on their behalf) is unintentionally incorrect or incomplete, and that this could lead or has already led to an understatement of tax; or
2. That a tax amount payable by way of tax mark or tax stamp was not paid in the correct amount;

and indicates this information to the authorities without undue delay and effects the necessary corrections, the taxpayer may report a mere correction. However, in case of tax evasion with intention, it is only possible to make a "voluntary disclosure of tax evasion".

### What are the conditions for voluntary disclosure of tax evasion?

The information provided in the voluntary disclosure must cover all tax crimes for one type of tax that have not become time-barred, and at least all tax crimes for one type of tax within the last 10 calendar years.

Where tax has already been understated, or tax advantages have already been derived, exemption from punishment will be granted to the person involved in the act only if the taxpayer pays, within the reasonable period of time allowed to him, the taxes which were evaded to their benefit through the perpetration of the act and the interest payable on the evaded taxes.

### What are the consequences of voluntary disclosure of tax evasion?

Those who fully correct the incorrect particulars submitted to the revenue authority (in relation to all tax crimes for a type of tax), and supplement the incomplete particulars submitted to the revenue authority or furnishes the revenue authority with the previously omitted particulars, shall not be punished pursuant to Section 370 on account of these tax crimes, i.e. no imprisonment, but taxes, interest, and monetary fines will still arise.

### When is voluntary disclosure of tax evasion no longer possible?

Indemnity will not be granted if:

1. Prior to the correction the person(s) involved were notified of a tax field audit order, the initiation of criminal proceedings or administrative fine proceedings, or a public official from the revenue authority had already appeared for the purpose of carrying out a tax audit, VAT, or wages tax inspection, or investigating a tax crime or tax-related administrative offence.

2. One of the tax crimes had already been fully or partially detected at the time of the correction, supplementation, or subsequent furnishing of particulars, and the perpetrator knew this, or should have expected this upon due

consideration of the facts of the case.

3. The understated tax or the unwarranted tax advantage exceeds EUR 25,000 per act; or

4. A particularly serious case exists.

**What are the primary areas in which voluntary disclosure of tax evasion plays a major role?**

The German Federal Ministry of Finance compiles annual statistics on the results of the prosecution of criminal tax offenses and administrative tax offenses as well as the results of tax investigations. In 2023, there was an approximate total of 47,900 criminal proceedings for tax offenses nationwide. In addition, around 5,000 fine proceedings were concluded and fines totalling around EUR 16 million were imposed.

In the same period, the tax investigation department dealt with a total of 34,600 cases nationwide. Additional taxes amounting to around EUR 2.5 billion were identified, and prison sentences totalling 1,460 years were imposed. The majority of cases concerned non-disclosed income and VAT matters.

**What is often overlooked by foreigners but considered tax evasion in Germany?**

Tax evasion requires that the person acted deliberately, but it is often underestimated by foreigners that deliberation also includes not knowing for sure but accepting that there may be a tax duty without verifying, e.g. by asking an expert. Not knowing does not help if the taxpayer has the money to pay an expert and the matter is complex.

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**What do you recommend to clients who have committed tax evasion?**

- Get professional advice. Find a tax advisor or criminal defence lawyer who is an expert in that matter.
- If you have inherited assets with non-declared income in the past, the

obligation to report such income passes on to you. Failing to report such income makes the heir a tax evader too.

- Act immediately. If tax evaders or consultants wait too long the opportunity for voluntary disclosure may expire. One day earlier can save the neck.
- Engage a tax consultant or lawyer who was not involved in the tax evasion beforehand.
- In a voluntary self-disclosure do not "forget" to report any income as this will make the whole declaration invalid.
- Make sure to have funds available to make the expected payments for taxes, interest, and fines within 4–6 weeks after filing the disclosure. Non-payment will make the disclosure invalid.
- The disclosure must enable the tax office to assess taxes without any further requests. If you are not sure about the amount, estimate an amount that exceeds the amount you can imagine it to be. An estimation which is too low will make the disclosure invalid.
- Don't commit suicide! There is a way out.

**Oliver Biernat** is the founder and managing partner of Benefitax. He is a German chartered accountant, certified tax advisor, and specialist advisor for international taxation, with more than 20 years of experience. Since 2008, he has chaired GGI's International Taxation Practice Group (ITPG), increasing its size to more than 570 experts from 90 countries in the process. **Contact Oliver**

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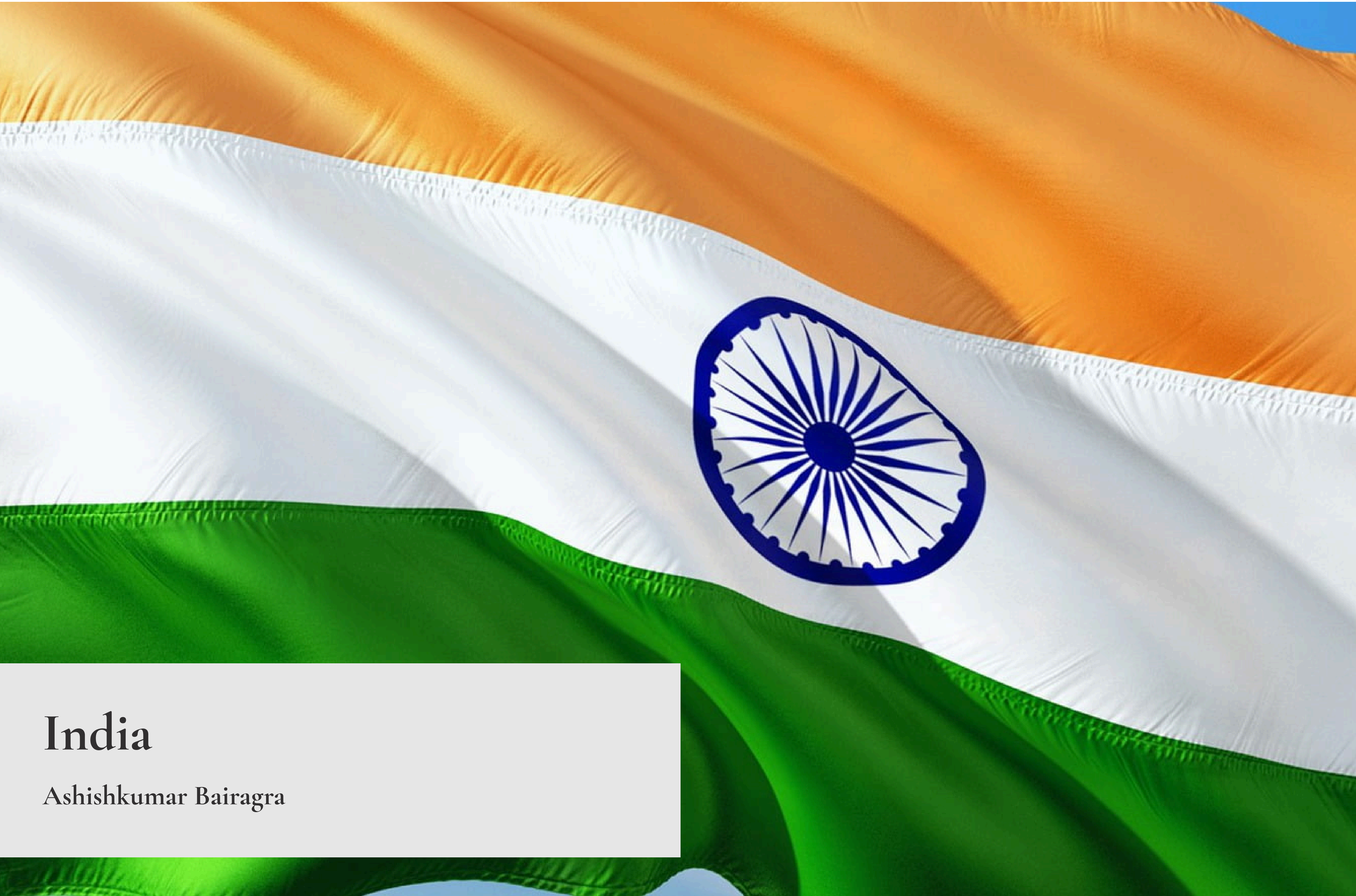

# India

Ashishkumar Bairagra

# INDIA

by Ashishkumar Bairagra

**Ashishkumar Bairagra** has been in practice and a partner of M L Bhuwania and Co LLP since 2001. He handles international taxation matters, inbound and outbound investments, and consulting assignments. He offers consulting services to various family businesses and high-net-worth individuals on transition, expansion, exits, and entrepreneurship. Ashishkumar is the Global Vice Chair of GGI's International Taxation Practice Group (ITPG). **Contact Ashish**.

Tax evasion in India is the illegal act of intentionally avoiding tax payments by misreporting or under-reporting income, concealing assets, falsifying records, or making false claims. This issue is significant in India, where tax compliance has long been a challenge. To tackle this, the Indian government has introduced voluntary disclosure schemes, which allow taxpayers to come forward, disclose undisclosed income or assets, and pay outstanding taxes without facing severe penalties or criminal prosecution.

This article explores the definition of tax evasion in India, its consequences, methods of detection, voluntary disclosure programmes, and professional advice for clients involved in tax evasion.

In India, it's a known principle that tax evasion is distinct from tax avoidance, which involves using legal methods to reduce tax liability. Evasion, on the other hand, violates tax laws and leads to legal consequences.

## Consequences of tax evasion in India

India takes tax evasion seriously, and several penalties apply if the evasion is detected by tax authorities. These consequences may include:

1. Penalties: Taxpayers who evade taxes can face heavy fines. Penalties can reach up to 300% of the tax due, depending on the nature of the evasion.

2. Interest: In addition to penalties, interest is levied on unpaid taxes. The rate of interest is typically 1% per month or part of a month, compounding over time.

3. Prosecution: Tax evasion is a criminal offense in India. If significant fraud is involved, the offender could face imprisonment, potentially lasting up to 7 years.

4. Seizure of assets: In extreme cases, tax authorities may seize assets or freeze bank accounts to recover unpaid taxes.

These penalties make it highly risky for individuals and businesses to engage in tax evasion, as the financial and legal consequences are severe.

**How do Indian authorities usually find out about tax evasion?**

Tax authorities in India employ various methods to detect tax evasion. These include:

1. Audits: Tax authorities conduct audits on individual and corporate tax returns. During audits, discrepancies between reported income and lifestyle indicators (like spending patterns, assets, and bank balances) are examined.
2. Information sharing: The Indian government collaborates with other countries under international agreements, such as the Common Reporting Standard (CRS), to exchange financial information including real asset purchases or high value item purchases. This helps detect unreported foreign assets.
3. Technology and data analytics: The Indian tax department uses data mining and machine learning to identify patterns and detect anomalies in tax filings. This helps identify cases where individuals or entities are likely evading taxes.
4. Third-party information:

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Information gathered from third parties, such as financial institutions or banks, can help uncover evasion. Tax authorities often compare data from different sources to detect discrepancies.

5. Whistleblower complaints: Anonymous tips from insiders or the public about undeclared income or assets often prompt investigations by tax authorities.

## Opportunities to amend tax declarations or declare additional income

India offers avenues for taxpayers to amend their tax filings or declare additional income, allowing them to comply with the law without facing severe penalties. These options include:

1. Revised returns: Under Section 139(5) of the Income Tax Act, individuals can file revised returns if they discover that their original return was incomplete or incorrect. This allows for the rectification of errors or the declaration of additional income.

2. Income Declaration Scheme (IDS) 2016: The IDS, launched in 2016, allowed taxpayers to disclose previously undeclared income or assets by paying tax at a concessional rate (45%), which included tax, surcharge, and penalty. This scheme offered immunity from prosecution for those who came forward voluntarily.

3. Pradhan Mantri Garib Kalyan Yojana (PMGKY) 2016: This scheme was introduced after demonetisation to encourage individuals to declare unaccounted cash holdings. The scheme allows taxpayers to deposit unaccounted-for cash into government accounts with minimal penalties.

4. Black Money (Undisclosed Foreign Income and Assets) Act, 2015: This act allows taxpayers to disclose foreign income or assets that were not previously reported. It imposes a 30% tax on the undisclosed foreign assets and an additional 30% penalty, with immunity from prosecution.

These provisions give taxpayers the opportunity to correct their mistakes or declare additional income without facing the full force of penalties or prosecution.

## Conditions for voluntary disclosure of tax evasion

Taxpayers seeking to benefit from voluntary disclosure programmes must meet specific conditions. These typically include:

1. Timing: Voluntary disclosure is only possible during a specified time window. Once the window closes, taxpayers can no longer participate in these schemes and must face the full consequences of evasion.

2. Full disclosure: Participants must disclose the complete extent of their unreported income or assets. Partial disclosure or concealing part of the evaded taxes may disqualify taxpayers from benefiting from these schemes.

3. Payment of taxes and penalties: Taxpayers must pay the outstanding taxes, interest, and penalties as per the scheme. The amount will be substantially lower than the penalties that would be imposed if the evasion were detected by the authorities rather than voluntarily disclosed.

4. Immunity from prosecution: Voluntary disclosure usually provides immunity from criminal prosecution, protecting taxpayers from potential jail time and other legal consequences. However, this immunity is contingent on full compliance with the programme's requirements.

## Consequences of voluntary disclosure of tax evasion

When taxpayers voluntarily disclose their evaded taxes, several positive consequences follow:

1. Reduced penalties: Voluntary disclosure allows taxpayers to pay a reduced penalty compared to what they would face if the evasion was detected by the authorities. In some cases, the penalty may be waived entirely.

2. Immunity from prosecution: One of the main benefits of voluntary disclosure is immunity from criminal prosecution. Taxpayers who disclose their evasion are not subject to criminal charges or imprisonment, provided

they comply with all requirements.

3. Rectification of financial affairs: By disclosing hidden income and assets, taxpayers can regularise their financial affairs, ensuring they are in full compliance with tax laws moving forward.

4. Confidence in the system: Coming forward under a voluntary disclosure scheme enhances the taxpayer's credibility and can prevent future issues with the tax authorities.

### When is voluntary disclosure no longer possible?

Voluntary disclosure is no longer possible in the following circumstances:

1. Completion of the statutory time limit: Once the authorities initiate an investigation or issue an assessment, voluntary disclosure becomes impossible. In such cases, the taxpayer must face the full penalties and potential criminal charges.

2. End of the scheme window: Every voluntary disclosure programme, such as IDS or PMGKY, has a fixed time frame. Once the scheme ends, taxpayers can no longer benefit from the reduced penalties or immunity.

3. Detection by authorities: If the authorities have already discovered the tax evasion, taxpayers can no longer take advantage of voluntary disclosure schemes. They will be subjected to full penalties and possible legal action.

### Tax evasion issues often overlooked by foreigners

Foreigners, or even Indian residents with foreign income or assets, often overlook the requirement to disclose their offshore wealth. In India, residents are taxed on their global income, meaning that failing to report foreign assets constitutes tax evasion.

Many individuals with foreign bank accounts or properties fail to disclose these holdings, assuming that they are outside the scope of Indian tax laws. However, the Indian government has made significant efforts to detect undisclosed foreign assets through international agreements and tax treaties. Similarly foreigners who sell foreign entities which derive significant value from an Indian asset or investment may be liable to pay taxes in India on the sale of such foreign entity.

### Recommendations for clients who have committed tax evasion

As tax professionals, our best advice to a client who has committed tax evasion is to encourage them to come forward and disclose their evasion voluntarily. Here's how professionals should act:

1. Provide legal and financial advice: Counsel the client on the benefits of voluntary disclosure, emphasising the reduced penalties and


immunity from prosecution. It's essential to help clients understand the full scope of their obligations.

2. Ensure full disclosure: Advise clients to disclose all undisclosed income or assets. Partial disclosure can disqualify them from the benefits of the scheme.

3. Act promptly: Encourage clients to act within the window provided by the disclosure scheme to avoid penalties and criminal charges that may arise if authorities detect the evasion later.

4. Prepare for future compliance: Once clients disclose their evasion, they should ensure future tax filings are accurate and timely to avoid repeating the same mistakes.

## Conclusion

Voluntary disclosure of tax evasion schemes in India provides taxpayers with a chance to regularise their financial affairs and avoid severe penalties or criminal prosecution. These schemes, while offering leniency, require full disclosure, prompt action, and compliance with all conditions.

For tax professionals, guiding clients through the voluntary disclosure process is crucial to helping them overcome past mistakes and reintegrate into the formal economy. Ultimately, these programmes play an essential role in improving tax compliance, reducing black money, and contributing to the overall health of the Indian economy.

# Italy

Daniela Canossa

# ITALY

by Daniela Canossa

Daniela Canossa is a chartered accountant and statutory auditor, specialising in transfer pricing, international tax structures, and tax advisory. A member of the international tax department, she assists Italian and foreign-based multinational groups.
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In Italy, tax evasion includes failing to declare taxable income, underreporting earnings, and inflating deductions. Offenses such as making fraudulent declarations (Articles 2 and 3 of DLgs. 74/2000), issuing false invoices, and failing to file tax returns can result in fines, criminal charges, and imprisonment for severe cases. Businesses risk reputational damage, loss of trust, and exclusion from public contracts.

## How authorities detect tax evasion

Italian tax authorities employ a combination of advanced tools to detect tax evasion. These include AI-driven data analysis, cross-referencing financial transactions with declared income, and real-time reporting mechanisms introduced under the European Union's VAT directives.

Information-sharing agreements under the Organization for Economic Cooperation and Development (OECD)'s Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) provide insight into offshore accounts and international financial activities.

Traditional audits, whistleblower reports, and financial institution oversight complement these modern methods. Authorities also leverage media and social media analyses to identify lifestyle inconsistencies with declared income. This multifaceted approach ensures high detection rates and highlights the inevitability of scrutiny.

## Voluntary disclosure

In the past, Italy introduced specific voluntary disclosure programmes, such as the ones launched in 2014 and 2017, which provided taxpayers with a formal and structured framework to regularise undeclared income and assets, particularly those held abroad. These programmes offered reduced penalties, immunity from criminal prosecution, and a clear deadline for participation.

In contrast, the current system relies on the “ravvedimento operoso” mechanism – voluntary settlement of tax paid late – which allows taxpayers to voluntarily correct irregularities in their tax position without a set time-limited programme. While it still provides reduced penalties and often avoids criminal liability, the process applies to a broader range of violations but lacks the comprehensive scope and immunity guarantees of earlier voluntary disclosure initiatives.

## Opportunities to amend tax declarations

Taxpayers can voluntarily amend their filings before formal investigations begin, thereby minimising penalties. The sooner the amendment is made, the lower the penalties, with adjustments ranging from minimal fines for corrections made within 30 days to higher penalties for longer delays.

Tax declarations can generally be amended within six years, specifically by the end of the fifth year following the year in which the return was originally filed.

It is important to note that if a taxpayer fails to file a tax return within the statutory deadline, they must submit it within 90


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days of that deadline. Beyond this period, the *ravvedimento operoso* mechanism is no longer available, penalties cannot be reduced, and the tax return is classified as "unfiled", leading to more severe consequences.

### Conditions for voluntary disclosure of tax evasion

In Italy, voluntary disclosure of tax evasion is currently based on the *ravvedimento operoso* mechanism, which allows taxpayers to amend past tax returns or other relevant filings, as well as to rectify errors, omissions, non-payments, or underpayment of taxes. This procedure is open to all taxpayers and is not contingent upon specific prerequisites, other than adherence to statutory deadlines and the condition that no audits, investigations, or inspections have already commenced.

To benefit from this process, taxpayers must ensure full and accurate disclosure, make timely payments of outstanding taxes (including interest and reduced penalties), and submit corrected declarations before any formal proceedings are initiated. The flexibility of this mechanism makes it a key tool for addressing a wide range of tax irregularities, and encourages proactive compliance.

### Consequences of voluntary disclosure

Amending past tax returns or other relevant tax filings, as well as rectifying errors, omissions, or cases of non-payment or underpayment of taxes, allows taxpayers to regularise their tax position. This process provides the benefit of reduced penalties, often resulting in substantial savings compared to the standard penalties imposed for irregularities detected by the authorities. In most cases, criminal liability is avoided, provided the taxpayer complies with all applicable conditions.

For businesses, voluntary disclosure can also help safeguard credibility and facilitate smoother operations, particularly when eligibility for public contracts or adherence to regulatory compliance is critical.

### When voluntary disclosure Is no longer possible

Voluntary disclosure, including the use of *ravvedimento operoso*, becomes inadmissible if the taxpayer is already under investigation, has received official notice of imminent audits or inspections, or if procedural deadlines for amendments have expired.

It is crucial to act promptly to address tax irregularities. Delays limit available options and can lead to harsher penalties. In severe cases, prolonged inaction could expose taxpayers to criminal liability for significant or intentional non-compliance.

### Key areas of concern for voluntary disclosure

Frequent areas of evasion include undeclared offshore accounts and assets, income from international investments or business activities, misrepresentation in VAT filings, transfer pricing discrepancies, and omission of significant domestic income, such as rental income or capital gains. These areas often involve complexities that taxpayers might overlook, leading to unintentional evasion. Italy's active participation in international tax cooperation has increased scrutiny on cross-border transactions, making compliance in this area a priority for multinational businesses and expatriates.

### Common oversights by foreigners leading to tax evasion in Italy

Foreign nationals living in Italy often misinterpret the country's residency-based taxation system, which requires tax residents to report their worldwide income.

Non-compliance frequently arises from failing to:

- Declare income from foreign investments, real estate, or inheritances; or
- Disclose the value of foreign investments and assets.

If such assets are held in tax havens, penalties and time limits for challenging assessments are doubled. Short-term rental income is another area where foreigners may inadvertently breach tax laws. Additionally, a lack of understanding of Italy's VAT obligations for goods and services within its borders can lead to significant penalties.

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### Professional recommendations

Swift and informed action is crucial for suspected tax evasion. Consulting a qualified tax advisor is the first step in assessing the scope of non-compliance and developing a tailored strategy for resolution. Advisors can assist in gathering necessary documentation, preparing accurate declarations, and navigating the voluntary disclosure process.

Transparency and cooperation with authorities are essential to achieving favourable outcomes. Beyond addressing immediate concerns, professionals should educate clients on compliance requirements, particularly for cross-border transactions and residency-based taxation. This proactive approach not only mitigates risks but also fosters trust and long-term compliance.

# Mexico

Prof Sergio Guerrero Rosas

# MEXICO

**by Prof Sergio Guerrero Rosas**

**Prof Sergio Guerrero Rosas**, managing director at **Guerrero y Santana**, has over 25 years' experience advising companies from SMEs to multinationals, and individuals, on tax and estate planning. He is also the Latin American chairman of GGI's International Taxation Practice Group (ITPG) and global vice chairperson of the Trust and Estate Planning Practice Group. **Contact Sergio**.

Tax evasion in Mexico involves deliberately underreporting or omitting income, overstating deductions, or failing to pay taxes due, as defined in the Federal Fiscal Code (Código Fiscal de la Federación). If detected by the tax administration service – Servicio de Administración Tributaria (SAT), the consequences include:

- **Fines** ranging from 55% to 75% of the omitted tax.
- **Interest accrual** on unpaid taxes until full payment is made.
- **Criminal liability** – severe cases may result in imprisonment, with penalties ranging from 3 months to 9 years, depending on the amount evaded.

### How do authorities typically discover tax evasion?

The Mexican tax authorities employ various mechanisms to uncover tax evasion, including:

1. Automatic Exchange of Information (AEOI): Under agreements like the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA), financial institutions report cross-border accounts and assets.

2. Electronic invoicing – the Comprobante Fiscal Digital por Internet (CFDI), also known as a digital tax receipt, ensures transparency in transactions.

3. Data cross-referencing compares declared income with third-party reports and bank transactions.

4. Audits and investigations: Targeted reviews based on risk indicators or irregular

patterns.

One of the most prominent examples of tax evasion by foreigners in Mexico involves individuals who own rental properties in popular tourist destinations such as Cancún, Playa del Carmen, Puerto Vallarta, or Los Cabos. These properties are often rented out on platforms like Airbnb, VRBO, or Booking.com, generating significant income that often is not declared to the Mexican tax authorities.

In recent years, SAT has aggressively targeted foreign property owners who fail to report their rental income. A notable case involved a US citizen who owned a beachfront villa in Puerto Vallarta. The villa was listed on Airbnb and generated an estimated USD 500,000 annually in rental income. The property owner did not declare this income in Mexico, believing their US tax filings were sufficient.

### What opportunities are available to amend tax declarations or declare additional income?

Taxpayers in Mexico may amend their declarations voluntarily by:

- Filing complementary tax returns ("declaraciones complementarias") to correct errors or omissions.
- Declaring previously unreported income before an official audit or investigation begins.
- Taking advantage of specific amnesty or regularisation programmes when available.

### What are the conditions for voluntary disclosure of tax evasion?

To benefit from voluntary disclosure:

1. Disclosure must be made before the SAT initiates an audit or investigation;
2. Taxpayers must provide complete and accurate information; and
3. Payment of outstanding taxes, penalties, and interest is required, although

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transactions.

3. Incorrect deductions or credits: Improperly claimed benefits.

## What is often overlooked by foreigners but considered tax evasion in Mexico?

penalties may be reduced.

## What are the consequences of voluntary disclosure of tax evasion?

Voluntary disclosure can lead to:

- Reduced penalties: Depending on the programme, penalties may be reduced by up to 100% for specific periods.
- Avoidance of criminal charges, provided the disclosure is made in good faith and fully satisfies legal requirements.
- The opportunity to regularise compliance, and restore the taxpayer's good standing with tax authorities.

## When is voluntary disclosure of tax evasion no longer possible?

Disclosure is no longer an option once an audit, investigation, or legal proceeding has been initiated, or when the authorities have independently identified the evasion through cross-referencing or third-party reporting.

## What are the main areas where voluntary disclosure of tax evasion plays a major role?

1. Offshore income and assets, especially under the CRS framework.

2. Unreported domestic income – e.g. rental income or informal business

Foreigners living in or investing in Mexico often unintentionally commit tax evasion due to a lack of understanding of local tax obligations. While ignorance of the law is not an acceptable defence, many of these issues stem from lack of due diligence rather than deliberate evasion. Below are some common scenarios where foreigners unknowingly evade taxes and the implications of such actions.

### Failure to declare rental income from Mexican properties

Foreigners who own properties in Mexico often rent them out through platforms like Airbnb, VRBO, or even via direct agreements. While this can be a lucrative income source, many fail to realise that rental income from properties located in Mexico is taxable in Mexico, even if the owner resides abroad. Taxes such as income tax (ISR) and value-added tax (IVA) are applicable on short-term rentals, and non-payment constitutes tax evasion.

### Misreporting residency status

Foreigners may inadvertently evade taxes by misunderstanding Mexico's tax residency rules. According to Mexican law, an individual is considered a tax resident if:

- They spend more than 183 days in Mexico within a calendar year; or
- Their primary centre of vital interests (e.g. business, family, or significant economic activities) is in Mexico.

Foreigners who qualify as tax residents but fail to declare their global income to the SAT are in violation of Mexican tax laws. For example, an American who spends the majority of the year in Cabo San Lucas or San Miguel de Allende, conducts business remotely, and maintains a Mexican bank account is likely a tax resident of Mexico. If they only report income in the United States, they risk significant penalties in Mexico.

### Unreported capital gains on property sales

Another common issue arises when foreigners sell properties in Mexico and fail to pay the required capital gains tax (ISR por enajenación de inmuebles). While many rely on their notary public to calculate and withhold the tax, some bypass this process or underreport the sale price to reduce their tax liability.

### Non-compliance with VAT on services

Foreigners operating businesses or providing services in Mexico – such as consulting, coaching, or renting equipment – often overlook their obligation to charge and remit VAT (IVA). For example, a US-based consultant conducting workshops in Mexico may assume their earnings are only subject to US tax law. However, as the service is performed in Mexico, it is subject to local VAT regulations. Non-compliance can result in back taxes, interest, and penalties.

### Lack of asset reporting

Foreigners with significant assets in Mexico, such as bank accounts or trusts, may be unaware of mandatory reporting requirements. For instance:

- Bank accounts exceeding USD 30,000 must be disclosed to the SAT.
- Trusts (“fideicomisos”) holding real estate – e.g. for beachfront properties – may require annual reporting.

## Overlooking social security obligations

Foreigners who hire domestic workers, such as housekeepers or gardeners, often fail to register them with Mexico's social security institute (IMSS). This is considered tax evasion as employers are required to register employees and pay contributions to the IMSS and other applicable labour taxes.

## What do you recommend to clients who had committed tax evasion and how do you act as a professional in these cases?

As a tax professional, it is crucial to conduct a thorough review of the client's financial and tax records, advise immediate voluntary disclosure if conditions allow, negotiate payment plans or settlements with the SAT to mitigate financial strain and finally maintain confidentiality while ensuring full compliance with ethical and legal obligations.

Acting as a professional, you must provide clear, timely advice on risks and benefits, assist in preparing and filing accurate voluntary disclosures, collaborate with legal counsel if criminal liability is a concern, and emphasise long-term compliance to avoid recurrence.

We are responsible for guiding clients through the legal and financial implications of their actions and also for promoting a culture of compliance and responsibility. This dual approach safeguards the client's long-term interests while reinforcing trust in our profession and adherence to ethical standards.

**Guerrero y Santana, S.C**. provides its clients with a wide range of tax, legal, and consulting services. The firm makes comprehensive evaluations of its clients' businesses and draws on the expertise of its professionals to offer the best solution available.

# The Netherlands

Carijn van Helvoirt-Franssen

# THE NETHERLANDS

by Carijn van Helvoirt-Franssen

**Carijn van Helvoirt–Franssen** completed her tax master's degree in 2014 and has worked in the (international) tax advisory practice for over 10 years. In 2020, she joined EJP and in daily practice, she focuses on (international) tax advice, M&A for larger SME companies in the Netherlands and abroad. **Contact Carijn**.

*"The difference between tax evasion and tax avoidance is the thickness of a prison wall."*

Denis Healy, former Chancellor of the Exchequer, HM Treasury

Tax evasion is a global issue. Zooming in on the Netherlands, fighting tax evasion became a top priority in recent years due to our country's reputation as a "tax haven". Therefore, the Dutch government made it a top priority and a task force was put into place to address this matter.

## Tax filings – the ground rules

Under the General State Taxes Act (in Dutch, "de Algemene Wet op de Rijksbelastingen"), taxpayers are required to file their tax returns "firm, complete, and unreserved".

Whilst tax returns can on occasion be accidentally incomplete or incorrect, this is not considered tax evasion. Instead, such cases are treated as defaults and generally result in less severe penalties. However, deliberate non-compliance with tax laws to reduce tax payments constitutes tax evasion, subject to criminal penalties and classified as fraud.

Gross negligence, defined as culpable carelessness or negligence bordering on intent, is also considered a form of tax evasion and can result in delinquency fines.

### Appearances of tax evasion

Tax evasion generally manifests in two ways:

1. Non-compliance with the letter of the law; and

2. Non-compliance with the purpose and scope of the law (known as "fraus legis").

Non-compliance with the letter of the law is the most straightforward form of tax evasion. For example, failing to disclose a foreign bank account on a personal income tax return is a clear violation.

Fraus legis refers to schemes that lack any purpose other than to reduce tax liability. A common example is setting up a "letterbox company" to avoid withholding taxes on dividends or royalties. While fraus legis can be subjective, it is often clear when the construction lacks rational economic purpose.

### How tax evasion comes to light and what to expect

Tax evasion can come to light in various ways, such as through information exchanged between foreign tax authorities, tax audits, investigations by the Dutch fiscal intelligence unit, or whistleblowers. Third-party investigations or journalistic efforts can also help uncover tax evasion.

If tax evasion is detected, the Dutch tax authorities will conduct a thorough investigation, leading to a determination of the evaded taxes. A tax assessment will be issued, along with interest and fines. Fines can be as high as 300% of the evaded taxes. The amount varies based on the circumstances and facts of each case.

### Amendments of tax filings and voluntary disclosure

If the Dutch tax authorities have not yet discovered the evasion, it is possible to file an amended tax return or use a voluntary disclosure form.

Not all filings qualify as voluntary disclosures. To be considered as such, the taxpayer must know (or reasonably should know) that the Dutch tax authorities suspect underreporting of income, inheritance, or assets. In cases of qualifying voluntary disclosure, fines can be reduced, potentially to zero.

Value-added tax is a field in which voluntary disclosure is common practice, namely the supplementary VAT return. In the Netherlands, you must file a supplementary VAT return if you know that the difference between the payable/receivable on the VAT return and the actual payable is > EUR 1,000. This supplementary VAT return should be filed as soon as it is known that the wrong amount of VAT has been reported.

In relatively recent history, voluntary disclosure of foreign bank accounts was a hot topic, as fines on these types of disclosure were temporarily reduced. A few years ago, these lower fines were increased back to the normal level.

## Tax evasion overseen by foreigners

As mentioned, gross negligence is also considered an offence and therefore could be considered tax evasion. Therefore, in the international context, it is plausible that, if for example employees are working from the Netherlands as representatives of the company, the levy of payroll tax and even corporate income tax are overlooked. Also, the consequences for social security premiums of cross-border commuters can be overlooked.

Even in situations when there is in principle no intent, however, it is considered non-compliance when the taxpayer had the

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obligation to know better; and therefore, non-compliance could potentially be considered gross negligence.

### Obligations of advisors

Based on the Dutch anti-money laundering legislation, a tax advisor has two options after an introductory meeting with a prospective client:

1. Make the prospect a client and help them come clean with the Dutch tax authorities before providing other services; or

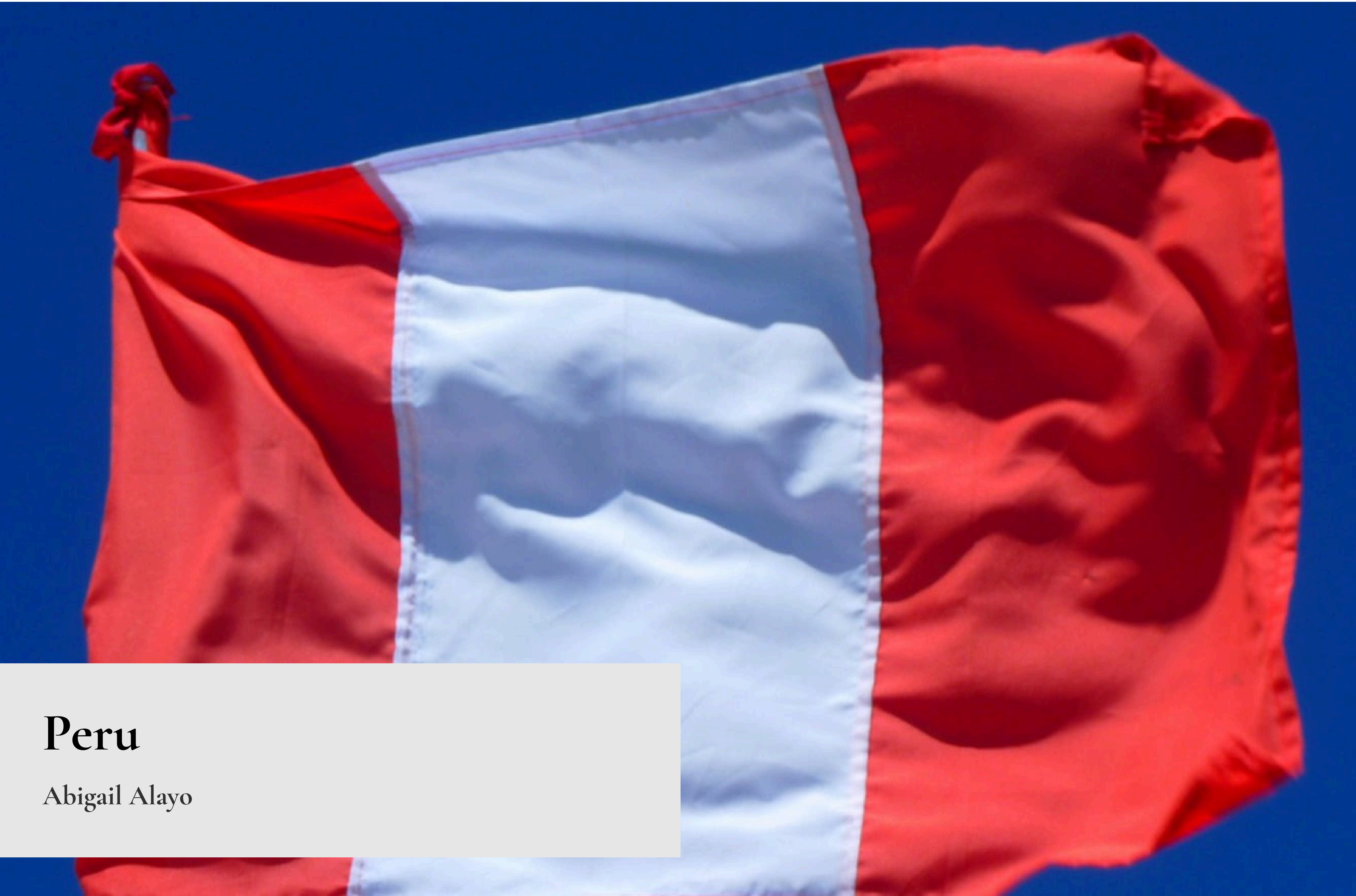
2. If the prospect is not willing to come clean with the Dutch tax authorities, refuse to provide them with any services.

If there is a client relationship (in any form) and it turns out there has been undeclared income or wealth, or there is tax evasion in any other form, a discussion with the client is necessary. If the client intends to voluntary disclose and come clean with the tax authorities there is no issue. However, if there is an issue, it is necessary to notify the financial intelligence unit. Whether the client relationship can stay in place is open for discussion, but in general, this relationship must be ended.

### Long story short

Tax evasion, intentional or not, leads to a whole lot of trouble with the Dutch tax authorities. In order to prevent endless discussions and legal proceedings, it is advisable to

consult a local tax advisor if there are any cross-border transactions.



# Peru

Abigail Alayo

# PERU

by Abigail Alayo

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Imagine a country trying to build better schools, hospitals, and roads, but finding its wallet half empty. This is the reality faced by the Peruvian tax administration – the Superintendencia Nacional de Aduanas y de Administración Tributaria, also known as ***SUNAT*** – whose main objective is to ensure the sustainability of resources needed to finance public spending and the country's development process. However, tax evasion represents one of the most significant challenges for the Peruvian government.

## What is tax evasion?

Tax evasion is the illegal practice where taxpayers deliberately conceal their assets to avoid paying taxes to the government. This occurs when individuals or companies intentionally misrepresent their income, inflate expenses, or hide wealth from tax authorities. It represents a criminal offense that can result in severe penalties and even imprisonment when significant amounts are involved. While tax avoidance involves using legal loopholes to minimise tax obligations, tax evasion is a direct violation of the law that undermines the government's ability to fund essential public services.

## Legal tax framework in Peru

In Peru, tax fraud is regulated through Legislative Decree No. 813, which combines tax and criminal law provisions to combat tax evasion. The law establishes clear penalties for those who use deceptive means or schemes to avoid tax payments: offenders face prison sentences of 5 to 8 years. More severe cases, such as simulating insolvency to evade tax collection or obtaining tax benefits through fraudulent means, carry heavier sentences of 8 to 12 years.

Beyond imprisonment, the law implements additional sanctions designed to ensure compliance. These include professional disqualification, temporary or permanent closure of business establishments, licence revocation, and in the most serious cases, the dissolution of the legal entity.

## Detection methods used by tax authorities

Peruvian tax authorities use special tools and databases to spot suspicious tax patterns. They look closely at company transactions that seem unusual or don't make business sense. SUNAT has created a catalogue of 24 common tax avoidance schemes to help identify red flags. For example, when a Peruvian company suddenly starts routing its mineral sales through a newly created intermediary in a tax-advantaged jurisdiction, or when companies segment their operations artificially to apply different transfer pricing methods, these transactions are flagged for further investigation.

Tax authorities also work together across different countries to share information about suspicious activities. This cooperation helps them see the complete picture when companies operate in multiple countries.


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## Double taxation agreements and tax evasion

**Vargas Alencastre, García & Asoc. S.C.R.L. - Auditores y Consultores** is a multidisciplinary organisation employing more than 80 professionals. They are more than 25 years in the market offering auditing, tax, business consulting, and transfer pricing study services.

As part of its international tax framework, Peru has signed double taxation agreements (DTAs), preventing taxpayers from paying duplicate taxes. Currently there are 8 agreements signed, and Peru is expected to sign one with China shortly. However, DTAs could be misused by some taxpayers to pay less tax, as has happened in other countries.

It is crucial that the taxpayers that apply the DTA operate with total transparency and with a clear record of their activities. The significance of this compliance is highlighted by the fact that entities from countries with DTAs generate approximately PEN 4,270 million (Peruvian soles) in annual income within Peru, making any misuse potentially devastating for tax revenue collection.

## Foreign taxpayers

Foreign taxpayers often make the mistake of overlooking the fact that when they become tax residents in Peru, they are obliged to declare and pay taxes on their worldwide income, not only on income generated within Peru. To not do so constitutes tax evasion.

Another common mistake is not to include in annual tax returns foreign-source income such as dividends from foreign companies, rentals of properties abroad, or investment income, even when these have already been taxed in the taxpayer's country of origin.

## Administrative mechanisms for regularisation

To reduce tax evasion, SUNAT has been significantly evolving its detection system, making it easier to identify operations prone to tax evasion, especially for income tax (IR) and value-added tax (VAT).

At the administrative level, however, there are mechanisms to help the taxpayer to avoid the commission of infractions. To help taxpayers avoid infractions, SUNAT issues "inductive letters" – friendly notices outside the audit process that encourage voluntary tax regularisation without imposing penalties.

If taxpayers find errors after filing, they can submit corrections. Peru offers a tax regularisation program that allows taxpayers to resolve outstanding obligations under three conditions:

1. The taxpayer must voluntarily declare unpaid taxes before any investigation;
2. The entire debt must be paid in full, including taxes, fines, and interest; and
3. This must be done before SUNAT reports potential tax crimes to prosecutors.

This regularisation process is particularly relevant for corporations with complex structures and it represents an opportunity to correct errors while avoiding major complications.

### Benefits and consequences of voluntary disclosure

Tax rectification declarations represent a valuable opportunity offered by the Peruvian tax system. This tool, based on Article 88 of the Tax Code, is particularly relevant for companies with complex structures that may face challenges in their initial declarations.

The process works in two main ways: when a taxpayer acknowledges a higher tax payment, the rectification is accepted immediately, rewarding transparency and facilitating voluntary regularisation. In contrast, if a lower tax is declared, SUNAT has 45 business days to verify the information, establishing a balance between flexibility and control.

It's important to note that while SUNAT facilitates these corrections, it maintains its authority for subsequent auditing, especially in cases where a previous review existed. This supervision ensures the integrity of the tax system while promoting transparency and voluntary compliance.

In view of these situations, taxpayers who have incurred tax evasion are advised to immediately regularise their obligations through a voluntary declaration before SUNAT. This implies preparing complete documentation of all undeclared income, including foreign source income, to determine the correct tax obligation, including the applicable penalties.

# Poland

Norbert Tulak

# POLAND

by Norbert Tulak

Norbert Tulak is a tax advisor and lawyer, continuing his studies as a doctoral student and student of the Executive MBA programme conducted by the Warsaw School of Economics. He is the author of various publications on civil and tax law in academic journals and specialist presses, including the tax section of Forbes magazine.
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Tax evasion in Poland is defined in the Fiscal Penal Code as the failure to disclose the object or basis of taxation by the taxpayer, or by failing to file a tax return, thereby exposing the tax to loss. The object of protection is the property of the State Treasury, local government units and the European Union (EU). The purpose of this provision is to secure the timeliness of reporting the object of taxation, primarily the submission of tax returns.

The commission of the basic type of offence is punishable by an alternative-cumulative penalty, i.e. a fine of up to 720 daily rates or imprisonment of between 5 days and 5 years. It is possible to impose these penalties jointly. The privileged type and the tax offence are sanctioned by imposing a fine. The court is also authorised to impose penal measures, such as the imposition of a ban on business activity or a ruling on the forfeiture of objects.

## How do the authorities usually find out about tax evasion?

An important area of activity for the Polish National Revenue Administration (KAS) is conducting analytical forecasting, research activities, and risk analysis. The aim of this analysis is to prevent the risk of taxpayers failing to fulfil their tax and customs obligations, as well as to select entities for tax and customs and fiscal inspections.

A significant role in the activities carried out by KAS is played by the “System Teleinformatyczny Izby Rozliczeniowej” (Teleinformatic System of the Clearing House in English), otherwise known as the STIR system, which is used to detect suspicious VAT refunds, and to identify and interrupt carousel chains or freeze taxpayers' bank accounts. KAS also uses data analysis of tax returns, information provided by banks and financial institutions, and international information exchange.

Tax audits may be initiated on the basis of anonymous submissions, whistleblowers, as well as data from other taxpayers collected in the course of ongoing audits or law enforcement agencies.

### Opportunities to amend tax declarations or declare additional income

In Polish fiscal penal law, priority is given to the purpose of enforcement before repression, manifested by regulations stipulating that timely correction of tax offences may result in a reduction of the penalty or even exemption from fiscal penal liability.

Taxpayers have the opportunity to make corrections to their tax return if errors are made or if full income is not reported. The correction may be submitted at any time before the expiry of the statute of limitations on tax liability. In addition, if taxpayers wish to disclose untaxed income, they may use the mechanism of voluntary disclosure, which allows taxpayers to avoid fiscal criminal liability, provided the correction is submitted before the commencement of audit or fiscal criminal proceedings.

### Conditions for voluntary disclosure of tax evasion

Voluntary disclosure is a mechanism applied before criminal proceedings are initiated and guarantees impunity for the perpetrator of a fiscal offence. It is important that the notification is made before the tax authorities take control measures against the taxpayer, because once an audit has been initiated, voluntary disclosure does not provide protection against fiscal criminal liability. The taxpayer submits a notice to the authority disclosing the circumstances of the act, in particular, any complicit persons. Notice must be given in writing, electronically or orally, and on the record. The perpetrator is obliged to pay the whole of the outstanding public receivable depleted by the criminal act ,or to deposit the object subject to forfeiture or its monetary equivalent.

### Consequences of voluntary disclosure of tax evasion

A taxpayer who voluntarily discloses untaxed income and corrects their declaration avoids fiscal criminal liability as long as the notification is made before proceedings are initiated. However, it should be borne in mind that mere disclosure does not release the taxpayer from the obligation to pay outstanding taxes and interest on arrears. In the case of larger arrears, the tax office may carry out an additional inspection to verify the correctness of the declaration.

## When is voluntary disclosure of tax evasion no longer possible?

The voluntary disclosure process cannot be used if, in connection with the control procedure initiated, the tax authority already has information about the crime committed or if the offender's act consisted in directing, ordering, or inducing other persons to commit a crime, and if the offender organised a criminal group. In such cases, the possibility of avoiding responsibility by submitting a correction to the declaration (in an administrative procedure) is activated.

## Main areas where voluntary disclosure of tax evasion plays an important role

Voluntary disclosure is most commonly used in cases of undeclared foreign income, incorrect VAT accounting, concealment of business income, or undeclared rental income from real estate. In addition, this mechanism is often used for the self-employed and small businesses that have previously failed to comply with their tax obligations. Those investing in cryptocurrencies and other digital assets are increasingly taking advantage of voluntary disclosure due to tightening regulations in this area.

## What is often overlooked by foreigners but considered tax evasion in Poland?

One of the most common cases is the failure of foreigners to declare income earned in Poland, in particular with regard to the rental of real estate, income from digital platforms (e.g. Uber, Airbnb), and work performed under civil law contracts. Tax authorities often monitor these areas using information from banks and public registers. The authorities are increasingly on the lookout for foreign holding structures that can be used to avoid taxation in Poland. It is a common mistake for foreigners to incorrectly determine their tax residency, which can lead to evasion of tax obligations in Poland.

## Recommendations for clients who have engaged in tax evasion and how to act as a professional in this case

As a tax adviser, I recommend that clients first analyse their tax situation and assess the risks. If undeclared income or errors in declarations are found, the best solution is to voluntarily report the deficiencies and pay the tax owing. It is also important to implement effective compliance procedures to avoid similar situations in the future. Cooperation with an experienced tax adviser will help avoid the risk of criminal and tax proceedings and limit possible financial consequences. In some cases it is worth considering negotiations with the tax authorities in order to obtain more favourable conditions for the repayment of tax liabilities.

Poland is an attractive place to establish and develop branches of foreign companies. However, the complexity of the Polish tax system and the procedure for action by the tax authorities can be a challenge. We recommend that the decision to establish a company in Poland should be preceded by a consultation with a tax law expert who will assist in setting up the entity, fulfilling all registration obligations, and ensuring the reliable provision of ongoing legal and tax services.

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# South Africa

Graeme Saggers

# South Africa

by Graeme Saggers

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The Income Tax Act does not define "tax evasion," the South African Revenue Services (SARS) thus uses the Organisation for Economic Cooperation and Development (OECD) definition. The OECD defines "tax evasion" as the use of illegal means to hide or reduce tax liability, thereby allowing a taxpayer to pay less than duly obligated. The overstatement of deductions, the non-disclosure of income and the manipulation of books are examples of tax evasion.

## Consequences

(According to the definition of an understatement, tax evasion is an understatement)

Tax evasion is a punishable criminal offence. Individuals may be fined or imprisoned for a period not exceeding 5 years.

In addition to the punishment, a taxpayer may become liable for an understatement penalty, charged at 150% for standard cases and 200% for repeat cases.

## How do authorities usually find out about tax evasion?

SARS uses various data from both domestic and international sources for risk profiling and, case selection. These sources include banks, the properties deeds office, companies' registration and the National Treasury central supplier data base. Using the data from these sources, SARS is able to issue automatic assessments, thereby having information that taxpayers may omit in an attempt to evade taxes. International sources include the automatic exchange of information of South Africans with offshore assets from almost 100 jurisdictions.

Additionally, SARS encourages public participation by encouraging the public to report suspicious activities on their website or phoning their hotline.


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**What are the possibilities to amend tax declarations or declare additional income?**

Taxpayers have an opportunity to amend or declare additional income through a Request for Correction (RFC). The RFC can be filed with SARS to amend an error, or declare additional income made during a tax declaration. The request may only be made within three years from when the initial tax declaration was submitted.

If a tax declaration has already been finalised, taxpayers may make use of the Voluntary Disclosure Programme which is a legislated mechanism that grants taxpayers immunity from criminal prosecution and either full or partial relief from understatement penalties.

**What are the conditions for voluntary disclosure of tax evasion?**

For a voluntary disclosure to be a valid, the disclosure must.

1. Be voluntary.
2. Involve the prior submission of inaccurate or incomplete information to SARS, or the failure to submit information. The declaration must not be like any other declaration that has been disclosed within the past five years.
3. Include all material information relating to the disclosure.
4. There must have been a substantial understatement, a lack of reasonable care in completing a return, gross negligence, or intentional tax evasion.

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5. Not result in a refund payable by SARS
6. Be in the prescribed form and manner.

### What are the consequences of voluntary disclosure of tax evasion?

Once a taxpayer has submitted a valid voluntary disclosure, SARS is prohibited from pursuing any criminal prosecution for a tax related offence in relation to that submitted disclosure.

Taxpayers are further granted relief in respect of any understatement penalty that relates to a voluntary disclosure. If the disclosure of tax evations is submitted before the commencement of an audit or criminal investigation, the penalty is charged at 10% of the amount payable to SARS. If a disclosure is made after the commencement of an audit or an investigation, the disclosure will only be allowed if what is disclosed would not have been easily detectible during the audit however, a penalty of 75% is charged. If the voluntary disclosure is made on other categories of understatement behaviour, the relief is more generous and in certain circumstances 100% relief is granted on understatement penalties. The onus is on SARS to prove the penalty attributable and thus the behaviour that has been performed.

100% relief is granted to taxpayers in respect of administrative non-compliance penalties, excluding a penalty for late submission.

### When is a voluntary disclosure of tax evasion no longer possible?

A voluntary disclosure of tax evasion is not possible, if a taxpayer is voluntarily disclosing defaults of a similar nature within a five-year period. Furthermore, a taxpayer cannot apply for a voluntary disclosure after the conclusion of an audit or criminal investigation.

It is important to note that the voluntary disclosure programme by SARS is a permanent programme, taxpayers have access to it until such time that they are compliant.

### What are the main fields in which voluntary disclosure of tax evasion plays a major role?

- **Foreign income:** SARS has continuously emphasized closing in on high-net-worth individuals, these individuals normally earn foreign income, making foreign income one of the most significant areas where voluntary disclosure is crucial.
- **Corporate:** The VDP plays a major role with regards to SMMEs, these enterprises cannot afford to be audited for tax on account of wanting to upkeep their credibility for current and future clients. Additionally, the high penalties and fines associated with tax evasion are likely to result in a significant negative impact on profit made by SMMEs.
- **Individual compliance:** Online trading has seen significant growth in the past decade, with individuals being exposed to foreign markets and trading, they may not be aware of the tax implication that comes with online trading such an income and capital gains tax.

### What is often overseen by foreigners but is considered as tax evasion?

South Africa applies a tax residency system; this means an individual can be a tax resident in RSA and a citizen in another country.

To determine tax residency the ordinarily residence test is employed, it assesses factors such as the place an individual considers to be their fixed and settled residence, where their investments and properties are located and the place to which they return to from their wanderings, among other factors.

Individuals can still be recognised as tax residents if they spend a significant amount of time in the country.

The most common mistake then that foreign nationals do, is spend time in South Africa, meet either the physical presence test or the ordinarily residence test and not submit their returns. Once either test is satisfied, foreign nationals are tax residents and are therefore taxed on their worldwide income.

Another common mistake foreign nationals do, is not declare capital gains on disposed permanent

establishments in the country. If a foreign national holds shares in a company that mainly deals with immovable property in the Republic, the disposal of such shares triggers a capital gains tax.

**What do you recommend to clients who have committed tax evasion and how do you have to act as a professional in this case?**

If an individual or entity has committed tax evasion, the best cause of action is to seek professional help from a Tax Advisor. A Tax Advisor would be able to determine if a transaction/s would be valid for voluntary disclosure, allowing a quick response time to avoid additional penalties, a fine or imprisonment.


# Spain

Carlos Frühbeck

# SPAIN

by Carlos Frühbeck

Carlos Frühbeck Olmedo is a member of the Spanish Official Register of Chartered Accountants. He speaks English and German fluently and is currently Managing Partner of Ficesa Treuhand, S.A.P. Carlos is also Regional Vice Chair Europe of the GGI International Taxation Practice Group (ITPG). Contact Carlos.

Tax evasion in Spain is regulated in Article 305 of the Spanish Criminal Code. Tax evasion in the Code is defined is as being committed by anyone who, by action or omission, defrauds the public treasury; eludes the payment of taxes or amounts withheld, or that should have been withheld; unduly obtains refunds or enjoys tax benefits, provided that the amount of taxes not paid, or tax refunds unduly obtained, or benefits unduly enjoyed exceeds EUR 120,000 per tax year.

Tax evasion is punishable with a prison sentence of one to five years and a fine of one to six times the unduly evaded or obtained amount, unless the taxpayer voluntarily discloses their tax situation and pays the taxes due. The taxpayer is considered to have voluntarily disclosed the tax situation when they complete an updated declaration and payment of the outstanding taxes before the tax administration has notified the initiation of verification or investigation actions, or, in the case that such actions have not taken place, before the Public Prosecutor's Office, or the State Attorney or the procedural representative of the autonomous administration, files a claim against the taxpayer.

The statute of limitations for tax evasion is five years from the date on which the corresponding tax return was filed or should have been filed.

### How do authorities usually find out about tax evasion?

Tax authorities become aware of possible tax evasion through the inspections regularly carried out on taxpayers. If, during a tax inspection, the inspector obtains evidence that tax evasion has taken place, they must immediately inform the Public Prosecutor's Office, which will initiate the corresponding criminal proceeding.

The initiation of criminal proceedings immediately paralyses the administrative procedure by the tax office. If, once criminal proceedings have been completed, the court does not determine the taxpayer's criminal liability, the tax office must continue with its administrative proceedings.

## What are the possibilities to amend tax declarations or declare additional income?

Once criminal proceedings have been initiated, any tax returns the taxpayer submits or any payments they voluntarily make to the public treasury have no effect on the qualification of the tax offense. Therefore, it is essential, if a taxpayer wants to voluntarily disclose his situation with the Spanish tax office, for the taxpayer to file supplementary tax returns and pay any outstanding taxes before a criminal proceeding is initiated. Once a criminal procedure is initiated, voluntary tax disclosure is no longer possible.

## What are the conditions for voluntary disclosure of tax evasion?

If the tax office has not yet initiated an inspection of the period in which the tax evasion has taken place, or the Public Prosecutor's Office has not yet initiated criminal proceedings, the taxpayer may voluntarily submit supplementary tax returns and pay the outstanding taxes to the tax office. In this case, the taxpayer is completely exonerated from criminal liability.


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**Ficesa Treuhand, S.A.P.** is an accounting, auditing, and fiscal advisory company founded in 1978. The company currently has five offices in Spain, located in Madrid, Barcelona, Marbella, Palma de Mallorca, and Gran Canaria. The firm specialises in providing services to Spanish subsidiaries of multinational groups. The staff speak German, English, and French, in addition to Spanish.


### What are the consequences of voluntary disclosure of tax evasion?

Late voluntary submission of tax returns gives rise to the imposition of a general surcharge of 15% and interest on late payment. The 15% surcharge includes interest for the first year of delay, and interest for late payment accrues from the second year of delay until the date of submission of the supplementary tax returns. The currently applicable rate of interest for late payment is 4.0625% per annum.

If the amount paid is significant, there is a high risk that the tax office may initiate a tax audit. If the tax audit reveals that the taxpayer has not declared all income correctly, tax evasion proceedings could be initiated if the unpaid taxes exceed EUR 120,000 per tax year.

### When is voluntary disclosure of tax evasion no longer possible?

As indicated previously, if the tax office has notified the initiation of investigation proceedings, or if the Public Prosecutor's Office or the State Attorney has filed a claim against the taxpayer, it is no longer possible to carry out a voluntary tax disclosure.

Any declaration submitted by the taxpayer has no effect on the qualification of the tax evasion offence.

### In which areas does voluntary disclosure of tax evasion play a major role?

The controls imposed by the Spanish tax authorities on income earned in Spain are very strict. For example, all financial institutions and companies in general are obliged to report to the tax office any remuneration paid to professionals and entrepreneurs as well as any other transaction carried out with other companies that exceeds an annual amount of EUR 3,000. As a result, the possibility of concealing income generated in Spain from the Spanish tax authorities is very low, since, in general, the tax authorities have knowledge of such income.

Voluntary tax disclosure is mainly applied when taxpayers have obtained and concealed assets and income abroad, where such assets or income would have resulted in additional tax in Spain exceeding EUR 120,000 per tax year.

### What is often overlooked by foreigners but is considered tax evasion in Spain?

It is very common for foreign taxpayers who own real estate in Spain, and who rent these properties to third parties or use them personally, to omit filing the corresponding tax returns on income obtained in Spain, under the false assumption that the income is taxed only in their country of residence.

Although it is difficult in these cases for the undeclared income or wealth to generate taxes exceeding EUR 120,000 per tax year, from a theoretical point of view, the failure to file such declarations in Spain could result in a case of tax evasion.

### What do you recommend to clients who have committed tax evasion and what is your professional stance in these cases?

My urgent recommendation to taxpayers who may have committed a tax evasion offence in Spain is to immediately contact a Spanish tax advisor, who will calculate the amount of tax due and file the supplementary tax returns voluntarily.

As mentioned above, voluntary filing of tax returns nullifies any criminal liability and any penalties the tax office may impose are limited to a maximum amount of 15% of the outstanding taxes. This amount will increase based on any interest that may accrue from the second year of delay in filing the returns. The voluntary filing of tax returns nullifies any criminal liability for the taxpayer.

FICESA TREUHAND, S.A.P.
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# Switzerland

Philipp Tschenett

# SWITZERLAND

by Philipp Tschenett

**Philipp Tschenett** works as a client manager in the tax department of Mattig-Suter & Partner. He specialises in providing comprehensive tax advice to companies and private individuals on direct and indirect tax matters.

**Contact Philipp**.

In Switzerland, tax evasion is committed by anyone who intentionally or negligently acts in such a way that they are not fully fiscally assessed. Obtaining an unlawful refund or unjustified remission of tax is treated the same as tax evasion. In addition to the tax avoided, the penalty for tax evasion is generally equal to the amount of tax evaded.

A deviation from this standard penalty depends on the culpability of the offender. In the case of minor culpability or the existence of mitigating circumstances, the fine may be reduced to one third of the tax evaded, and in the case of serious culpability or the existence of aggravating circumstances, the fine may be increased to three times the tax evaded.

Generally, Swiss tax authorities become aware of a committed tax evasion through the automatic exchange of information with other authorities/countries, or through voluntary disclosure by the taxpayer.

### Amending tax returns

In Switzerland, it is possible to amend or correct tax returns as long as they have not been finally assessed by the relevant tax administration. In Switzerland, taxpayers are required to file a tax return and the authorities then assess the tax based on the return. While the assessment is not final, the taxpayer may file a corrective tax return – a so-called rectificate – without adverse tax consequences or penalties. Once a tax return has been finally assessed by the tax authorities, the only way to report a tax evasion is to make a voluntary disclosure.

### Voluntary disclosure

If a taxpayer reports their own tax evasion, they will not be penalised for the first-time tax evasion. Only the additional tax and interest on arrears will be charged. In order for non-punishable voluntary disclosure to be valid in Switzerland, the following conditions must be met:

1. Voluntariness: The tax authority must not yet be aware of the misconduct. If the authority already has a suspicion (e.g. announcement of an investigation), in principle, a voluntary disclosure without penalty is no longer possible. According to the Federal Tax Administration (FTA), the requirement of voluntariness is no longer fulfilled if an account is subject to the automatic exchange of information and the tax authority gains knowledge of this account as a result. Listing previously undeclared assets and earned income in the tax return without comment does not constitute a voluntary disclosure.

2. Unconditional support: The taxable person (or the taxpayer's advisors) must actively and unconditionally support the tax authority in determining the previously undeclared values. This may be done, for example, by providing the necessary documents or processing information for tax purposes.

3. Serious efforts must be made to pay the additional tax and interest thereon.

4. First time disclosure: The non-punishable voluntary disclosure is only applicable once; subsequent disclosures can be made – but with penalties.

It is also advantageous if the voluntary disclosure is easily understood by the tax authorities and prepared for tax purposes.

The voluntary disclosure does not need to be in writing. However, for the purposes of documentation and traceability, it is strongly recommended to submit a written voluntary disclosure. Finally, it is advantageous to submit a complete voluntary disclosure, as otherwise the undisclosed values will no longer be covered by the immunity.

The effect of non-punishable voluntary disclosure applies to everyone involved in tax evasion – instigators, aiders and abettors, or collaborators can make use of the non-punishable voluntary disclosure under the same conditions as the taxpayer.

In Switzerland, a 10-year retroactive period applies. For example, if a return is filed in

**Treuhand- und Revisionsgesellschaft Mattig-Suter & Partner**, in the Canton of Schwyz, has been conducting business since 1960 and employs around 90 staff. The partnership provides market services in the areas of auditing, finance and accounting, tax consulting, business consulting, as well as legal consulting, and its size means it has highly qualified specialists in all areas.

2025, the tax years 2015–2024 will be adjusted retroactively. In Switzerland, private capital gains are generally tax-free. Income from the sale of business assets, on the other hand, is subject to income tax and must therefore also be declared retroactively.

There is also a possible non-punishable voluntary disclosure in the case of inheritances – the so-called inheritance amnesty. In an inheritance amnesty, subsequent taxation is reduced for the three tax years preceding the year of death. Interest on tax arrears is also charged, but no fines are due.

## Biggest risks for unintentional tax evasion

In Switzerland, it is mandatory for individuals to declare worldwide income and assets if there is a tax liability in Switzerland. This could be due to residency, ownership of real estate in Switzerland, a stay in Switzerland for 30 days (with employment) or 90 days (without employment) during a calendar year, or owning or being a partner or beneficiary of a business in Switzerland.

Determining the limit on the number of working and non-working days in Switzerland can be complicated, especially if there is no double taxation agreement with taxpayer's country of permanent residence. It is advisable to check this if you are planning to stay in Switzerland for a longer period of time.

People also often forget to declare all their foreign bank accounts, shareholdings, etc., or income that is already taxed in another country. This must be declared even if the right to tax such income is in another country. This is important because global income and assets are necessary to determine the correct tax rate, as Switzerland has progressive tax rates.

Unintentional tax evasion can occur easily and very quickly, so it is crucial to review the tax laws in Switzerland in detail, as there are 26 different cantons, each with its own tax law. It is best to consult a tax advisor if you have a complex international income and asset structure. Tax advisors in Switzerland can advise on the need for a voluntary disclosure and assist in filing one.

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# United Arab Emirates

**Dr Peter Wilson & Iliyana Panova**

# UNITED ARAB EMIRATES

by **Dr Peter Wilson** and **Iliyana Panova**

Iliyana Panova

Dr Peter Wilson

Tax evasion as a concept in the United Arab Emirates (UAE) was first introduced in 2017 when the UAE introduced federal taxes for the first time. The concept was introduced in the VAT law. Tax evasion was defined to mean "the use of illegal means resulting in the reduction of the amount of the due tax, non-payment thereof, or a refund of a tax that a person does not have the right to have refunded under any tax law".[1] Tax law is further defined as any federal law pursuant to which a tax is imposed. Currently, in the UAE this means excise taxes, VAT, and the recently introduced tax on business profits of corporations and certain business activities of individuals.

Tax evasion is an extremely serious offense, and the UAE Federal Tax Authority (FTA) is very proactive to discourage such behaviour and penalise when tax evasion is identified. Although the UAE tax system is still young, multiple criminal prosecution cases and judgements in tax evasion cases are in evidence.

Where intent to avoid taxes leads to tax evasion, if convicted, the accused may face both criminal charges and fines.

The penalty for evasion isn't limited to the person who carried out the evasion, as tax evasion penalties may be attached to accomplices as defined in the penal law statute. This approach follows the UAE criminal law rules which deem an accomplice punishable with the same penalty as the perpetrator unless stipulated otherwise by the law.

If an accomplice is found criminally responsible for a tax evasion offense, that person will be held jointly and severally liable with the taxpayer for any penalties and outstanding tax.

**How do authorities usually find out about tax evasion?**

The FTA continuously monitors tax returns of taxable persons to identify breaches of compliance.

Tax evasion may be detected during a tax audit or when the FTA receives leads about suspected tax evasion, such as when a registrant lists false information in a tax return, or a taxable person evades tax by failing to register for tax, or through a whistleblowing mechanism.

In April 2022, to improve efficiency in UAE tax collections, the FTA launched "Raqeeb", a whistleblower initiative under which individuals can report tax violations and evasion. Any person can report tax irregularities or non-compliances through the Raqeeb programme. The programme aims to raise the level of tax compliance and reduce tax evasion in the UAE

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**PB First Global Tax** is a Dubai based global tax advisory. Whether a multinational corporation looking to optimise their global tax strategy or an ultra high net worth individual seeking simplification and tax neutrality, we are here to guide our clients through the intricate landscape of tax regulations and help them achieve your anticipated taxation outcome.

**Iliyana Panova** is an international tax professional with more than 17 years of experience including cross-border M&A, indirect and corporate tax advisory, tax risk and operating model strategy and transformation. Holder of an LLM degree in Taxation, Iliyana also has an Advanced Diploma in International Taxation (ADIT). Her professional experience includes working for a Big4 practice in the EU and MENA in roles focused on indirect, corporate and international tax advisory, as well as leading the MENA VAT function for a major international bank, and most recently with the Tax Policy and International Relations Department of the UAE Federal Tax Authority. **Contact Iliyana**.

by granting monetary rewards to any informant whose report leads to the collection of tax amounts worth more than AED 50,000 (approximately USD 14,000).

The FTA may use information provided by the informant to detect violations and tax evasion. The FTA requires the informant to provide proof, verification, and documentation, the provision of which is intended to reduce the duration of potential investigations. Using this additional evidence, the FTA is able to test the taxpayer's records.

## What are the opportunities to amend tax declarations or declare additional income?

If a taxpayer identifies an error in their corporate tax return or VAT return, they may submit a voluntary disclosure which discloses errors in submitted tax declaration and provides the FTA with the additional information used by the taxpayer to calculate the tax shortfall. A voluntary disclosure applies to tax evasion as much as it does to avoidance or a simple return error.

The main benefit to the taxpayer of making a voluntary disclosure is that they should expect a less stringent penalty or, in certain circumstances, a penalty waiver.

**Dr Peter Wilson** is an international taxation adviser with more than 44 years of experience. He has a PhD in international tax law, qualified as a chartered accountant in Australia and the United Kingdom, has two master's degrees in tax, and is legally qualified. He is also the UAE Ministry of Economy's (via the ACCA) subject matter expert on UAE corporation tax. He is a cross-border tax adviser with in-depth knowledge of the tax laws in GCC countries and over the last 10 years has advised on tax laws in more than 75 countries. **Contact Peter**.

## What are the conditions for voluntary disclosure of tax evasion?

Tax evasion typically involves intention and deliberate actions, and such cases may trigger imprisonment and a monetary penalty not less than the amount of the evaded tax and not exceeding three times the tax that was sought to be avoided.

Strictly speaking, the non-payment of due taxes and administrative penalties, or the deliberate non-disclosure of errors in tax submissions, constitutes tax evasion. Making voluntary disclosure is strongly encouraged to avoid more stringent monetary penalties and imprisonment.

In a decision of the UAE Federal Supreme Court in 2020, it was held that a voluntary disclosure rectifying mistakes in tax submissions may mitigate criminal changes and even help avoid criminal prosecution.

The FTA is expanding the instances in which voluntary disclosure is required. In a recent decision[2], the FTA explained that it now requires the filing of a voluntary disclosure as a way to correct a tax return even if there is no tax impact or underpayment of tax (e.g. zero-rated and exempt supplies). This widening of the voluntary disclosure circumstances is designed to ensure compliance with UAE tax laws even where there is no tax leakage.

## What are the consequences of voluntary disclosure of tax evasion?

Penalties will be applied at a reduced rate if the voluntary disclosure is filed before the FTA identifies the evasion through an audit. The voluntary disclosure programme also encourages a taxpayer to disclose and correct errors sooner in order to attract less harsh penalties, e.g. if a taxpayer submits a voluntary disclosure within one year from the original submission date of the tax return in which the 5% VAT should have been charged, the penalty is limited to 5% of the VAT amount which should have been charged. The percentage increases progressively if the voluntary disclosure is submitted in any subsequent year.

A taxpayer may also request that the FTA waive a penalty if the taxpayer is able to demonstrate that they voluntarily corrected the errors of previous submissions, where typically such errors are due to omissions or the incorrect application of the law and not due to any intent to evade taxes. Also, the circumstances which occurred and which resulted in the underpayment of tax neatly fit into one of the specified categories.

## When is a voluntary disclosure of tax evasion no longer possible?

Voluntary disclosure may be filed at any time before a tax audit is initiated by the FTA. If a taxpayer does not submit a voluntary disclosure and the error is discovered during an audit, then a different and higher set of penalties are potentially applicable.

For example, if the taxpayer does not submit a voluntary disclosure and the absence of payment comes to light during an audit, the potential penalty is 50% of the VAT amount (instead of 5% if the disclosure is made before an audit). A penalty of 4% per month of the tax shortfall will also be imposed for every month or part of the month from the date the payment is due for the relevant tax period until the date of receipt by the FTA of the shortfall amount.

### What are the main areas in which voluntary disclosure of tax evasion plays a major role?

The latest FTA and court practices demonstrate that any error in tax compliance may result in penalties, and even criminal charges for alleged tax evasion.

The FTA confirmed the importance of accurate tax compliance in its recent decision requiring voluntary disclosure of any errors in a tax return or in information submitted even if doing so did not result in the underpayment of taxes.

### What is often overlooked by foreigners but is considered as tax evasion by the UAE?

Anyone conducting a business in the UAE should be aware of the circumstances which may give rise to tax evasion. UAE Tax Procedures Law stipulates that the following instances constitute tax evasion:

1. Deliberately failing to settle any payable tax.
2. Deliberately understating the actual value of a business or revenues, or failing to consolidate related businesses (intentional fragmentation to allow each so-called separate business to exceed the AED 375,000 (approximately USD 100,000) tax-free threshold as specified in the UAE tax law.
3. Deliberately imposing and collecting funds as tax without being registered for VAT.
4. Deliberately decreasing the due tax, or participating in any form of tax evasion.
5. Deliberately committing or omitting any other act which may constitute tax evasion under this decree-law or UAE tax law.

More stringent penalties (including a fine of up to AED 1 million) apply for the following offenses:

1. Deliberately providing false information, data, or incorrect documents to the FTA.

2. Deliberately concealing or destroying documents, information, data, or other material that the taxpayer is

required to keep and provide to the FTA.

3. Stealing documents or other materials that are in the possession of the FTA, or deliberately misusing or destroying them.

4. Deliberately preventing or hindering FTA employees from performing their duties.

**What do you recommend to clients who have committed tax evasion and what is your role as a professional in such cases?**

UAE tax laws are relatively new and tax auditing practice as well as case law are still evolving. Nonetheless, the FTA has demonstrated that it fights tax evasion very seriously and in the case of suspected tax evasion, it may initiate and conduct a tax audit within 15 years from the end of the tax period during which the suspected tax evasion occurred (as opposed to the normal 5-year statute of limitations).

Engaging a tax consultant as early as possible will therefore not only help to ensure accurate compliance when returns are filed, but also minimise exposure to monetary penalties and criminal charges.

The Federal Supreme Court (Cassation Appeal 227/2020) states "the taxpayer is obliged to rectify mistakes in his tax return to maintain the interests of the state or else will be criminally liable for tax evasion crime and thus the voluntary disclosure by the taxpayer is to rectify his personal mistake shielding him from criminal liability".

It follows from this that one main benefit of making a voluntary disclosure regarding a potential tax evasion offense is that the taxpayer (and any associated accomplices) may avoid prosecution.

1 Federal Decree-Law No. 28 of 2022 – Issued 30 Sep 2022 (Effective 01 Mar 2023)

2 Federal Tax Authority Decision No. 8 of 2024 – Issued 01 November 2024 – (Effective from 01 January 2025)

# United Kingdom

Alan Rajah

# UNITED KINGDOM

by Alan Rajah

Alan Rajah joined Lawrence Grant LLP in 1994 and he is involved in all areas of general practice, specialising in cross-border tax planning, due diligence, mergers and acquisitions, and inheritance tax planning. His client portfolio includes UK and overseas companies and individuals. Alan is the Global Vice Chair of the GGI International Taxation Practice Group (ITPG). **Contact Alan**.

Tax evasion occurs when a person deliberately avoids paying tax by failing to declare income, underreports earnings, inflates expenses, or hides assets. This is different from tax avoidance, which involves legally minimising tax liabilities. As tax evasion is treated as intentional dishonesty, it is classified as a criminal offence.

The penalties in the United Kingdom depend on the severity of the offence and may include:

- **Financial penalties**: Penalties can reach up to 200% of the unpaid tax, particularly in cases involving offshore assets or income.
- **Interest charges**: His Majesty's Revenue & Customs (HMRC) applies interest on unpaid tax from the date it was due until full payment is made.
- **Criminal prosecution**: Serious cases can lead to prison sentences of up to seven years and asset confiscation.
- **Public naming and shaming**: If a person evades more than GBP 25,000 in tax, HMRC may publish their details as a deliberate tax defaulter.

The risks of detection are high as HMRC has access to vast amounts of financial data and sophisticated tools to identify discrepancies.

### How do UK tax authorities detect tax evasion?

HMRC uses an advanced AI system called **Connect**, which cross-references data from multiple sources to detect potential tax evasion. This includes bank and financial records, property transactions, employer payroll data, and even social media activity that suggests a lifestyle inconsistent with reported income.

HMRC has agreements with over 100 jurisdictions through the **Common Reporting Standard (CRS)**, which provides automatic access to offshore bank accounts, investments, and income belonging to UK residents. This makes it increasingly difficult to hide income abroad.

HMRC encourages people to report suspected tax evasion via its **Tax Evasion Hotline**. Employees, former spouses, business associates, and even neighbours have provided information leading to investigations. Whistleblowers may receive financial rewards for doing so.

## Why it's better to disclose voluntarily than be found out by HMRC

If HMRC discovers tax evasion first, penalties are significantly higher, and there is a greater risk of prosecution. However, voluntarily disclosing undeclared income before HMRC initiates an investigation can lead to:

- **Lower penalties**: Typically between 0% and 30% of the unpaid tax, instead of up to **200%**.
- **Avoidance of criminal prosecution** in most cases.
- **A private resolution** rather than the risk of public exposure.

Voluntary disclosure is always preferable to HMRC uncovering an issue, as it reduces penalties and lowers the risk of prosecution.

## Conditions for voluntary disclosure

To qualify for reduced penalties, a voluntary disclosure must meet the following conditions:

1. **Timing**

   The disclosure must be made before HMRC contacts the taxpayer about a possible investigation. If HMRC has already opened an enquiry, voluntary disclosure is no longer available. As such, it is more difficult to appeal to HMRC

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to reduce any potential penalties that it may charge.

2. **Accuracy**

   The taxpayer must disclose all undeclared income, gains, and tax liabilities. Any attempt to provide incomplete or misleading information may result in increased penalties or, in some cases, criminal prosecution.

3. **Full payment of charges**

   All tax owed must be paid, along with interest on late payments. Penalties are dependent on why the tax was underpaid in the first place:

- **Careless mistakes**: 0% to 30% if disclosed promptly.

- **Deliberate underpayment**: 20% to 70%, but this could be higher if HMRC had to investigate.
- **Offshore tax evasion**: Penalties can be between 100% to 200% if the disclosure is not made voluntarily.

## When is voluntary disclosure no longer possible?

Once HMRC has started an investigation or issued an enquiry letter, voluntary disclosure is no longer an option. At this stage, penalties are higher, and prosecution becomes more likely. If the evasion relates to fraudulent tax schemes under active HMRC investigation, voluntary disclosure may not provide immunity from prosecution.

## Key areas where voluntary disclosure is crucial

Voluntary disclosure is particularly important in areas where people frequently underreport or omit income.

One of the most significant areas is **offshore income**. Many UK tax residents receive foreign earnings or dividends and mistakenly believe these do not need to be declared in the UK, especially if tax has already been paid abroad. However, the UK operates on a **worldwide taxation basis**, meaning UK residents must declare all income, regardless of where it is earned.

**Rental property income** is another common issue. Many landlords, particularly those with overseas properties or short-term lets through platforms such as Airbnb, fail to declare rental earnings correctly. HMRC has been targeting undeclared rental income aggressively in recent years.

Finally, the rise of **cryptoassets** and digital earnings has led to increased scrutiny by HMRC. Many individuals assume profits from cryptocurrencies or online trading do not need to be declared, when in reality, they fall under UK tax laws and must be reported.

## Common tax evasion mistakes made by foreigners

Many foreign nationals unintentionally commit tax evasion due to misunderstandings of UK tax laws.

One common mistake is **assumingforeign income does not need to be declared**. UK tax residents must declare their **worldwide income**, even if it has already been taxed abroad. While the UK has double taxation agreements (DTAs) with many countries to prevent double taxation, this does not mean foreign income is exempt from UK tax. Individuals may be eligible for foreign tax credits, but they still need to report their income.

A similar misunderstanding occurs with **overseas capital gains**. Many people wrongly believe that if no capital gains tax (CGT) is paid in the country where the asset is sold, then none is due in the UK. However, UK tax residents must declare all capital gains, including those relating to overseas property sales.

An individual's tax residency status is determined by the UK Statutory Residence Test (SRT), which assesses factors such as time spent in the UK, personal and economic ties, and overall circumstances. Misinterpreting or deliberately misrepresenting residency status, such as reporting that you are tax resident in a more favourable tax jurisdiction, can lead to significant tax liabilities, penalties, and potential legal consequences.

## Advice for those who have committed tax evasion

If an individual has undeclared income, they should act quickly. The sooner they disclose, the lower the penalties. HMRC offers disclosure facilities such

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as the **Digital Disclosure Service (DDS)** for UK tax issues, and the **Worldwide Disclosure Facility (WDF)** for offshore matters.

Seeking professional advice is highly recommended, as tax specialists can help navigate the disclosure process and ensure full compliance. Cooperation and complete honesty are crucial – deliberately omitting information can make matters worse. Delaying action can lead to higher penalties and increased scrutiny from HMRC. Consulting a tax specialist early ensures a smoother disclosure process and a better outcome.

If HMRC accepts a voluntary disclosure, criminal prosecution is usually avoided, unless the case involves serious fraud.

## Conclusion

HMRC is becoming increasingly sophisticated in detecting tax evasion, using AI-driven systems like Connect and international data-sharing agreements. The consequences of being caught are severe, but voluntary disclosure offers a chance to correct past mistakes while significantly reducing penalties and avoiding criminal charges. Anyone with undeclared income should take action before HMRC contacts them, as making the first move always results in a more favourable outcome.

# USA

Derek Morgan

# USA

by Derek Morgan

Derek Morgan is a Senior Manager in the firm's International Tax services department. He has almost 20 years of experience working in and leading the tax practices of various companies and CPA firms. He specializes in identifying and managing the foreign tax compliance process for clients in the contracting, manufacturing, distribution, professional service, and finance industries. Derek holds a Master of Accountancy and a Bachelor of Science in Accounting from the University of Alabama. Contact Derek.

## IRS Voluntary Disclosure Program: Obligations and benefits

### An examination of tax compliance and legal safeguards

The United States Internal Revenue Service (IRS) Voluntary Disclosure Program is a critical mechanism for taxpayers who have failed to report income or pay taxes due to errors or omissions. This practice provides a structured avenue for individuals and entities to voluntarily resolve their tax issues, and thereby potentially avoid severe penalties and criminal prosecution. This article discusses the IRS Voluntary Disclosure Program, outlining its obligations and exploring the benefits it offers to taxpayers.

### IRS Voluntary Disclosure Program

The IRS Voluntary Disclosure Program is an initiative administered by the IRS that allows taxpayers to voluntarily disclose previously unreported income and tax liabilities. It is designed to encourage compliance with tax laws by providing a mechanism for taxpayers to correct past tax errors without facing the full extent of legal consequences.

### Eligibility criteria

To qualify for the IRS Voluntary Disclosure Program, taxpayers must meet certain criteria. Firstly, the disclosure must be voluntary, meaning it must not be prompted by the IRS or any other authority. Secondly, the disclosure must be timely, meaning it should come before the IRS initiates any investigation, audit, or receives information indicating the taxpayer's non-compliance. Finally, the disclosure must be complete and truthful, providing all necessary information about the taxpayer's income, assets, and liabilities.


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## Types of disclosures

The Voluntary Disclosure Program encompasses various types of disclosures, including domestic and offshore disclosures. Domestic disclosures pertain to unreported income and tax liabilities within the United States, while offshore disclosures involve foreign income, assets, and accounts. Each type of disclosure has specific reporting requirements and procedures that taxpayers must follow to ensure compliance.

## Procedural steps

The process of making a voluntary disclosure involves several steps. Taxpayers must first submit a preclearance request to the IRS Criminal Investigation (CI) Division, providing preliminary information about their undisclosed assets and income. If the preclearance request is approved, taxpayers must then submit a detailed disclosure, including amended tax returns and payment of back taxes, interest, and applicable penalties. The IRS will review the disclosure and determine whether to accept it under the Voluntary Disclosure Program.

## Obligations of taxpayers

Participating in the Voluntary Disclosure Program entails several obligations for taxpayers. These obligations ensure that the disclosure is complete, accurate, and in compliance with IRS requirements.

## Full disclosure

Taxpayers must provide full and truthful disclosures of all previously unreported income,

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assets, and tax liabilities. This includes submitting amended tax returns for all years in which non-compliance occurred, as well as providing detailed information about foreign accounts, trusts, and other offshore entities.

### Payment of taxes and penalties

A key obligation is the payment of all taxes due, along with interest and applicable penalties. While the Voluntary Disclosure Program may mitigate some penalties, taxpayers are still responsible for settling their tax debt in full. Failure to pay the required amounts may result in the rejection of the disclosure and potential legal consequences.

### Cooperation with the IRS

Taxpayers must cooperate fully with the IRS throughout the disclosure process. This includes providing any additional information or documentation requested by the IRS, attending meetings or interviews, and responding promptly to inquiries. Cooperation is essential to ensure that the disclosure is processed

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smoothly and favourably.

## Benefits of the Voluntary Disclosure Program

The Voluntary Disclosure Program offers several significant benefits to taxpayers who choose to come forward and rectify their tax affairs. These benefits can provide substantial relief and protection from severe penalties and legal repercussions.

### Mitigation of penalties

A primary benefit of the Voluntary Disclosure Program is the potential reduction or elimination of certain penalties. While taxpayers are still required to pay back taxes and interest, the IRS may waive or reduce penalties for late filing, late payment, and accuracy-related issues. This can result in significant financial savings for taxpayers.

### Protection from criminal prosecution

Another critical benefit is protection from criminal prosecution. By voluntarily disclosing their tax non-compliance, taxpayers can avoid criminal charges related to tax evasion, fraud, and other offenses. This protection is contingent upon the disclosure being complete, truthful, and timely. The assurance of not facing criminal charges is a powerful incentive for many taxpayers to participate in the programme.

## Opportunity to rectify tax affairs

The IRS Voluntary Disclosure Program allows taxpayers to rectify their tax affairs and come into compliance with tax laws. This opportunity to correct past mistakes and avoid future legal issues is invaluable. Once the disclosure process is complete, taxpayers can move forward with a clean slate, knowing they have fulfilled their tax obligations.

## Restoration of taxpayer credibility

By participating in the Voluntary Disclosure Program, taxpayers can restore their credibility with the IRS. Voluntary compliance demonstrates a willingness to adhere to tax laws and rectify past non-compliance. This can improve the taxpayer's standing with the IRS and reduce the likelihood of future audits or investigations.

## Resolution of offshore tax issues

For taxpayers with offshore accounts and assets, the Voluntary Disclosure Program provides a pathway to resolve complex international tax issues. By disclosing foreign income and assets, taxpayers can avoid the severe penalties associated with the Foreign Account Tax Compliance Act (FATCA) and the Report of Foreign Bank and Financial Accounts (FBAR) requirements. This can also help taxpayers repatriate funds and bring their financial affairs into compliance with US tax laws.

## Conclusion

The IRS Voluntary Disclosure Program is an essential tool for taxpayers seeking to correct past tax non-compliance and avoid severe penalties and legal consequences. By understanding the obligations and benefits associated with the programme, taxpayers can make informed decisions about whether or not to participate. The programme offers a unique opportunity to rectify tax affairs, restore credibility, and achieve peace of mind. Ultimately, the Voluntary Disclosure Program underscores the importance of tax compliance and the IRS's commitment to encouraging voluntary adherence to tax laws.

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# Voluntary Disclosure on Tax Evasion

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