

December 2019

Is unreported income not covered under the Statute of Limitations? A reminder before the end of the Voluntary Disclosure Program

Reading Time: 2.5 minutes

The District Court recently dismissed a motion to approve a Class Action against the Israel Tax Authority (the *Nukrai Case*) ("ITA"), ruling that the civil statute of limitations period that is set forth in the Income Tax Ordinance does not apply to income that has not been reported.

In the course of voluntary disclosure proceedings, the ITA generally collects tax on income that has been generated in the last ten years, and also on the value of the undeclared assets of the taxpayer as it was ten years ago, unless it has been proven that these assets are attributable to income that was not subject to tax or that the tax thereon was duly paid.

In the motion to approve the Class Action, it was claimed that since the criminal limitation period in respect of income tax is ten years, the ITA is precluded from imposing tax on assets that were accumulated more than ten years ago, including in the framework of a voluntary disclosure proceeding.

The Court, however, accepted the ITA's position and dismissed the motion to approve the Class Action. The court ruled that even though there is no dispute that a taxpayer cannot be indicted for concealing income that was generated more than ten years ago, it cannot be established that the tax in respect of such income should not be collected.

While it is true that taxpayers who failed to report their income are subject to statute of limitations for the purpose of the filing of a criminal indictment, nevertheless, in situations in which no report was filed and the income has not been reported at all, it has been determined that there is no restriction on the statute of limitations period from the civil aspect. Therefore, in that case it is possible to demand reports, to issue assessments, and to collect taxes in respect of the above-mentioned income, needless to say, subject to the rules of reasonableness as required of any state authority by administrative law.

The Court also ruled that the ITA's policy to impose tax at a low rate on income from old tax years, the source of which is very difficult to prove, is reasonable, given that it is done within the framework of a voluntary disclosure agreement and in exchange for immunity from a criminal proceeding.

Finally, the Judge emphasized that as the charging of tax in the course of the voluntary disclosure proceeding is done at the taxpayer's request, it is possible to allow the ITA to extend the civil statute of limitation in order to issue an assessment.

While it is true that the judgment discussed the specific issue of the collection of tax in the course of voluntary disclosure proceedings, nevertheless, it may well have much broader implications, due to the determination that under certain circumstances, it is possible to demand tax returns, to issue assessments and to collect taxes in respect of income that was generated more than ten years ago, provided that this falls within the range of reasonableness.

we note that the Voluntary Disclosure Program ends on December 31, and this would be the last chance to settle any reports and tax payment under the Voluntary Disclosure regime.

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