

TaxPage, April 2026

Tax evasion – can the taxpayer claim good faith?

Introduction

Taxpayers who are subject to unlimited tax liability in Switzerland are required to declare their total worldwide income and assets in their annual tax return. Failure to do so may constitute tax evasion and result in a fine.

The issue of negligence

For tax evasion to be established, the objective element of the offence – namely, unlawful conduct on the part of the taxpayer resulting in a financial loss to the public purse – must first be present. This element is relatively easy to identify, as it amounts, in other words, to the taxpayer's breach of their obligation to declare their income and assets in their tax return, with the consequence that the State does not collect tax on these items.

Furthermore, the subjective element – namely a certain degree of intent – must be present. Under the law, tax evasion may be committed intentionally or through negligence (Art. 175(1) of the Federal Income Tax Act; Art. 56(1) of the Tax Harmonisation Act). Whilst intent is relatively easy to identify, the same cannot necessarily be said of negligence. According to case law, a person acts negligently if, through culpable lack of foresight, they fail to realise or consider the consequences of their act. Carelessness is culpable where the perpetrator has failed to take the precautions required by the circumstances and by their personal situation, by which is meant their education, intellectual abilities and professional experience (BGer 9C_583/2023).

What about good faith?

The Federal Supreme Court recently ruled on a case involving foreign taxpayers resident in Switzerland who held foreign life insurance policies and had not declared them in their annual tax returns. The taxpayers argued, with supporting evidence, that their wealth manager of a non-Swiss bank had confirmed that these life insurance policies were subject to tax only abroad. Throughout the proceedings and up to the Federal Supreme Court, they emphasised their good faith, denying that they had committed any form of tax evasion, even by negligence. The Federal Judges dismissed this argument, noting, first, that the assurance received from their manager postdated the filing of the incomplete tax returns and that, in any event, that they could not reasonably have been unaware that they could not rely on it. In case of doubt, their duty of care should have led them to seek advice from a specialist in Switzerland or, at the very least, to inform the tax authority of their doubts. By failing to do so, the

taxpayers had acted with culpable negligence (BGer 9C_653/2025).

Consequences

In the event of tax evasion, the taxpayer must pay the evaded tax amounts as a back-tax assessment, plus interest. The tax authority may, reopen tax assessments for the previous ten years. Furthermore, the taxpayer is liable to a fine ranging from one-third to three times the amount of tax evaded, depending on the seriousness of the offence (Art. 175(2) FTA; Art. 56(1) in fine THA).

When determining the fine, the tax authorities must take into account the degree of fault, with negligence constituting a mitigating factor. The same applies to the taxpayer's cooperation during the proceedings, which must also be considered as a mitigating circumstance. Conversely, the fact that the evasion was committed over several tax periods constitutes an aggravating factor. In the aforementioned case, the fine was set at half the amount of tax evaded, taking into account the taxpayers' negligence and their cooperation as factors for reducing the penalty. The judges justified departing from the statutory minimum of one-third of the evaded tax on the grounds that the evasion spanned five tax years, which constituted an aggravating factor.

Conclusion

Taxpayers have a duty of care to seek advice from a qualified specialist or the competent tax authority in case of doubt. Taxpayers cannot rely solely on information obtained from foreign advisers. Failure to do so may have significant consequences, as the tax authorities may reassess the previous ten years and impose an additional fine.

Please do not hesitate to contact us if you have any questions — we will be happy to assist you.

valfor TaxTeam

Daniel Gatenby

Attorney, LL.M. Tax

daniel.gatenby@valfor.ch

Regina Schlup Guignard

Attorney, certified tax expert

regina.schlup@valfor.ch