



CONFEDERATION
FISCALE
EUROPEENNE

CFE Professional Affairs Committee

National Reports

September 2013

17th Meeting

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Austria

Report on recent developments in professional affairs (tax advisers) 2012/2013

Public Accountants' Statute of Professional Practice (Wirtschaftstreuhandberufsgesetz, WTBG)

No changes in 2011 and 2012.

As of Jan 1, 2013:

- membership: change of optional membership for professional group "Management Accountants" (Bilanzbuchhalter) to Chamber of Public Accountants (Kammer der Wirtschaftstrehänder, KWT) or Austrian Economic Chamber (Wirtschaftskammerorganisation, WKO) to now mandatory membership for Management Accountants to Austrian Economic Chamber.
- scope of authority:
 - authority for Management Accountants to draw up balance sheets for up to medium sized companies
 - authority for Management Accountants to draw up employees' tax declaration exclusive counselling and signing the declaration on behalf of the client

A comprehensive modernisation of the professional law for tax advisers and auditors in Austria is in the pipeline. Implementation is possible in 2014/2015.

Directive on the practice of the Public Accounting Profession (Wirtschaftstreuhandberufs-Ausübungsrichtlinie, WT-ARL)

- Continuing Professional Development
no change in amount (120 hours within 3 years with at minimum 30 hours per year)
 - limitation on credits for self study
 - credits for professional lectures and publication
 - compulsory notification to KWT and obligation to present supporting documents

Weber/Benesch, 6.9.2013

Belgium

The most relevant developments can be summarised as follows.

- In September 2012, attempts have been made by a member of the Belgian Government to implement a provision of the Belgian Government Agreement according to which « Professional bodies » should be split up. The three professional bodies concerned expressed their skepticism about the benefits of such a reorganisation and their position was supported by other stakeholders as well. So far, no further progress has been announced about this topic.
- Several legal provisions have been adopted in order to restrain the possibilities of « fiscal optimisation » and to enhance the results of the fight against tax fraud :
 - o introduction of the « una via » principle for the prosecution of fiscal offences (aiming at enhanced cooperation between the Tax Administration, and the Courts) ;
 - o a new provision extending the statutes of limitation for the establishment and the use of false documents in fiscal matters ;
 - o a new criminal offence has been introduced in the law for tax matters : the concept of « serious fraud » that can be punished with a prison sentence of 5 years and/or a fine up to € 3.000.000,00 ;
 - o money laundering: with respect to tax fraud, the obligation of reporting vis-à-vis the antimony laundering authorities was so far only applicable in case of “serious and organized fraud”; as from 29th July 2013, the scope of such provision has been extended and the said reporting obligations apply in case of “serious fraud”. The definition of “serious fraud” is not yet clear and is giving rise to a large doctrinal debate.
- Pursuant to a judgment rendered by the Belgian Constitutional Court on 9th July 2013, all the « liberal professions” are now subject to the same rules as other enterprises, with respect to the market practices and the consumers’ protection.
- With respect to the access to the title of “tax advisor”, the law of 22nd April 1999 has been amended by the law of 2nd June 2013 in order to facilitate and simplify the access to such title (the 3-years training period is no longer applicable for candidates who can demonstrate that they have at least 7 years of relevant experience).

30th September 2013.

Czech Republic

National Report on recent developments professional affairs policy – the Chamber of Tax Advisers of the Czech Republic (2013)

The General Assembly of the Chamber was held in November 2012, according to new rules introduced by the Act no. 523/1992 Coll., on tax advisory services and on the Chamber of Tax Advisers of the Czech Republic (without the condition of quorum and with limitation of the number of powers of attorney granted to one tax adviser for representing at the General Assembly to five), which elected, after one year and also according to the new rules, the new Presidium of the Chamber and approved the amendment to the Statutes and Disciplinary Rules of the Chamber.

The Ministry of Finance, whose competence covers the Act no. 523/1992 Coll., on tax advisory services and on the Chamber of Tax Advisers of the Czech Republic, has finalised the draft version of a comprehensive amendment to this Act. The draft amendment was discussed with the Chamber of Tax Advisers at a detailed level, and the Chamber has managed to achieve a compromise solution in certain points (e.g. the Ministry of Finance took back its proposal according to which also external experts could become members of the Disciplinary Commission).

The main objectives of the draft amendment included modifications of the position of legal entities performing tax consultancy (the term “tax advisory company” has newly been introduced for them), unification of procedural provisions with changes in the rules of administrative procedure and regulation of the General Assembly organisation, nevertheless the draft amendment contained other points as well.

The part of the draft amendment relating to tax advisory companies is based on the following principles:

- Like now, the companies will not be members of the Chamber, but the Chamber will register them into a register and will perform supervision over them
- The companies will have a procedural position of a tax adviser
- The Act determines stricter conditions for registration into the register of companies
- At least one member of the statutory body of the company must be a tax adviser
- The rights and obligations of the company are set in a way similar as the rights and obligations of a tax adviser
- Besides tax advisers, also companies will be subject to disciplinary proceedings in the case of a breach of legal regulations

After the Government’s demission and dissolution of the Chamber of Deputies of the Parliament of the Czech Republic, the legislative procedure concerning this draft amendment was terminated, nevertheless, the Ministry of Finance continues to proactively work with this draft amendment and its effort is to reintroduce it back into the legislative procedure. This means that at present other consultations with the Chamber of Tax Advisers take place, regarding the form of the draft amendment.

The Ministry of Justice prepared, at the end of 2012 and on the initiative of the Ministry of Finance, a draft amendment to the Criminal Code, which newly establishes criminal liability of a person already for the phase of preparation of the offence of tax evasion (in the case of tax evasion from EUR 200,000, and following the commentary proceedings this financial limit has been reduced to EUR 20,000). The Chamber was actively opposed to this draft, together with the Czech Bar Association, and tried to achieve at least the situation when the new regulation would not affect tax advisers and attorneys-at-

law, or that it would concern excise duties only. Also in the case of this draft amendment, the legislative procedure was terminated due to the dissolution of the Chamber of Deputies of the Parliament of the Czech Republic.

In 2012, the OECD Global Forum on Transparency and International Exchange of Information for Tax Purposes drew up an assessment report concerning also the profession of tax advisers and their professional confidentiality obligations. The report draws attention to the very extensive (from the point of view of the assessors) confidentiality obligations of attorneys-at-law and tax advisers in legislation of the Czech Republic and states that the extent of this privilege for these professions in the Czech Republic is markedly higher than the one of “the privilege provided according to international standards” and that this extent could hinder effective exchange of tax information.

The Chamber filed principal objections against the conclusions of the assessment report. After the discussion of these objections with the Ministry of Finance, an agreement was made on preparation of an international analysis of the concepts of tax advisers’ confidentiality obligation. The assignment was formulated on the basis of cooperation of the Chamber with the Ministry of Finance. At the decision about preparation of this analysis, both the Chamber and the Ministry expected that the results of this international analysis would disprove some of the conclusions of the assessment report concerning the extent of the tax advisers’ confidentiality obligation. The C.F.E. provided assistance with distribution of the questionnaire relating to the tax advisers’ confidentiality obligations in individual countries, and it distributed the questionnaire to all member organisations of the C.F.E. The results of the questionnaire survey were presented at the Professional Affairs Committee meetings on 18 and 20 September 2013 in St Petersburg.

The Chamber forbade temporary or occasional performance of tax consultancy in the territory of the Czech Republic to a tax adviser from Italy who has announced the occasional performance of tax consultancy already for the third year in a sequence, always in regular two-week intervals in each calendar month. The prohibition was justified, also after consultations with the Ministry of Education, Sports and Youth whose competence covers this area, by the fact that this particular case does not meet legal conditions of temporary or occasional performance of activity anymore.

The Chamber has recorded, in the part of tax administrators, an increased tendency of filing complaints against tax advisers and their clients, even in cases when there was only a different legal interpretation between the tax administrator on the one side and the taxpayer and their tax adviser on the other side.

Germany

Current professional legal developments in Germany

1. German Tax Advisers Remuneration Act (Steuerberatervergütungsverordnung)

In November 2012 the legislator adopted a revised German Tax Advisers Remuneration Act. It regulates the remuneration of all legal activities reserved for tax advisers (tax advice, tax declaration, payroll accounting, preparation of the annual financial statement, etc.). The Act is legally binding unless a written remuneration agreement is procured between the tax adviser and his clients. The Act provides several fee types. These are defined either as fixed (time based fee) or sliding-scale fees. The sliding-scale fees are either dependent on the value of the subject matter or case, so-called sliding-scale rate fees, or on a minimum and maximum amount, so called sliding-scale sum fees. The amount of the fee dependent on the subject matter is taken from the fee table and issued as an annex to the Act. The increase in costs by the revision is approximately 15 % in total. The functional revision after 14 years became necessary because of modifications of the national German tax law and the increased costs of living.

2. Change of Partnership law

Finally in June 2013, after a long discussion, the German legislator adopted a new legal form for firms for the cooperation between tax advisers, lawyers, etc. Because of the increased amount of judgements by the Federal Court of Justice concerning the liability of an entity using the legal form of a partnership and the fact that especially big law firms choose more often the legal form of the British LLP, the legislator wants to offer a national alternative to the British LLP. With an amendment of the already existing Partnership Society law (Partnerschaftsgesellschaftsgesetz PartGG) it is foreseen to create the possibility to limit the liability of a partnership on the assets of the partnership for damages or financial losses resulting from a malpractice of tax advice. Simultaneously the partnership will be obligated to have an indemnity insurance which covers the risk of a malpractice. The exact amount of the minimum sum insured by the indemnity insurance is 1 million € for a partnership with tax advisers and 2, 5 millions € for a partnership with lawyers. The liability limitation will be introduced as an option for the partnership societies. A choice will be granted for the already existing partnership societies to make use of the limitation to the company assets with the result that they have to conclude professional liability insurance with a higher minimum coverage or to keep with the personal liability with their partners.

Ireland

Report on Irish tax developments in the period since September 2012

Anti Money Laundering

The Criminal Justice Act 2013 was enacted in June 2013, and it made a number of minor amendments to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. Some of the amendments involve requiring “designated persons” such as tax advisers to put additional internal policies and procedures in place, e.g. to take measures to prevent the risk of money laundering which may arise from technological developments. The amendments also allow tax advisers to keep records outside the State, provided they can be produced in the State to the police.

Register of lobbyists

In our previous national report, we noted that the Department of Public Expenditure and Reform had published policy proposals for the regulation of “lobbying”. The Department proposes that a regulatory system be introduced, which would include:

- A statutory definition of lobbying
- Disclosure requirements for lobbyists
- A statutory register of lobbyists
- An oversight body
- A code of conduct

In April 2013, the Government published the general scheme, i.e. an outline of the main matters to be included in a “Regulation of Lobbying Bill 2013”. The purpose of the Bill is to “provide for a register of lobbying to make information available to the public on the identity of those communicating on specific policy, legislative matters or prospective decisions with designated public officials or office holders as well as providing a framework for holding those engaged in lobbying accountable for the manner in which they conduct the activity”.

At the time of writing, the draft heads of the Bill have yet to be converted into a final Bill.

Russia

Federal Tax Service of Russia has prepared a draft law "On tax consulting in Russia."

In late 2012, the Federal Tax Service of Russia offered a new form of business tax control, concluding with some of the largest taxpayers ("RusHydro", Inter RAO, MTS, Ernst & Young) agreement on enhanced information interaction - the so-called horizontal monitoring. The agreement provides a new level of tax administration and creating new mechanisms for effective interaction between taxpayers and tax authorities.

The state is interested in cooperation in the first place with the largest taxpayers. This is mainly due to the amount of tax deducted, the Federal Tax Service of Russia on labor input tax administration taxpayers. And the business community in such cooperation is most interested largest taxpayers. In addition to the obvious advantages of cooperation with the tax authorities that the agreement is for them a kind of confirmation of the legitimacy and transparency of the company, which, of course, is reflected in its investment appeal, including to foreign capital.

The segment of small and medium enterprises to cooperate with the tax authorities, as a rule, use the institution of intermediaries. These intermediaries are usually the accredited consulting and auditing company. This approach is closely dependent on the degree of trust in the tax authority the mediator, as well as the transparency of its work. The introduction of horizontal monitoring in Russia in this way can have a positive impact on the quality of the services of tax consultants, a positive decision on their liability insurance, etc.

First of all, the fate of this institution in Russia depends on the interests of the taxpayers. It is sad, but we still do not understand all the advantages of a transparent business. For example, among small businesses is still practiced tax evasion using phony companies and others not quite legitimate methods. In any case, the horizontal monitoring is one of the possible options to improve relations with regulators taxpayers. However, the concrete prospects for its implementation in Russia will depend on the results of the experiment, as well as the willingness of the major players in the sector consulting services to take this segment of the market.

Slovakia

Country Report on Professional affairs

In the beginning of 2013 the Slovak Ministry of Finance received a letter from the European Commission stating that the Professional Qualifications Directive 2005/36/EC has not been adopted into the Slovak law on tax advisers properly and therefore the EC urged the Ministry to amend the law as soon as possible. The Ministry of Finance promised to change the situation by the end of the year 2013.

Therefore it prepared an amendment to the existing law which was adopted by the Slovak Government in July and by the Slovak Parliament in September in its first reading. The second and third reading of the Act (amendment) is expected to take place in October 2013. The amendment should become effective on 1 January 2014.

The most important changes as proposed in the amendment are as follows:

- Besides the legal form of partnership and limited partnership a tax advisory firm should be allowed to have a legal form of limited company or joint-stock-company
- The tax advisory firms (legal persons) will not have to be mandatorily listed in the list of tax advisors (they will not need to be members of the Chamber of Tax Advisors), it is sufficient that they have the tax advisory activity listed in the Register of Companies and have at least one person acting for the company who is registered as tax advisor in the Chamber of Tax Advisors. However the tax advisory firms should be voluntarily allowed to register in the list of tax advisory companies led by the Chamber of Tax Advisors, however then the tax advisors need to have at least 50 % of voting rights or shares in the company (this is a reduction from 75 % to 50 %). This is an absolutely confusing provision, which will create two types of tax advisory firms, namely one that is not member of the Chamber and has actually no professional obligations and one that has to fulfill lots of professional obligations, is under sanctions from the Chamber and has to conclude mandatory indemnity insurance. This proposed provision is highly criticized by the members of the Chamber and the Chamber itself. There are efforts to amend this proposed provision.
- For tax advisers from other member states it will be allowed to carry out the activity as tax advisors in Slovakia permanently (after passing the aptitude test and being taken into the list of tax advisors by the Chamber of tax advisors). Tax advisers from other member states who would like to carry out the tax advisory activity only temporarily will be registered in the list of the Chamber without any further preconditions.
- In the amendment there is a new definition of tax advisory services which is quite narrow and does not exclude other types of professions, like accountants from preparing for example the tax returns.

We will inform you on the further developments with the adoption of this new amendment.

Prepared by: Branislav Kovac
Bratislava, 14 September 2013

The Netherlands

The Netherlands, 2012-2013

As a result of the FATF country review the Dutch implementation of the 3rd EU Anti Money Laundering Directive was amended. Some of the changes were inspired by the draft 4th AML Directive. The changes came into force per 1 January 2013. Highlights are a tailored approach for the identification and verification of partnerships which ensures that only the managing partners have to be identified. A partner which has a position comparable with a ultimate beneficial owner (UBO), for instance because he financial interest of more than 25% should also be identified. The representative of a client should be identified and verified and his power to act on behalf of the client should be determined. Also it should be determined whether the client acts on behalf of another natural or legal person. If there is a UBO it should be checked whether this a politically exposed person (PEP). If this is the case the source of the assets of the PEP and of the funds involved in the transaction should be determined. A transaction is an act or a complex of acts for the benefit of a client which has come to the attention of the accountant or tax advisor for the purpose of rendering services to the client.

As from 1 January 2016 an auditor of a public entity may not provide other services to his client. This applies both to the PIE and to its Dutch group companies, irrespective of which part of the firm's network provides the services, and it also applies to other services provided by the network's Dutch member firm to foreign group companies of the PIE client. The Dutch regulator and the Dutch Professional Organisation of Accountants NBA are looking into how these requirements will be applied on an extraterritorial basis. Until this investigation has been completed, there are no restrictions on services provided by foreign network firms to a PIE's foreign group companies, except for those already included in the current IESBA Code of Ethics.

United Kingdom

2013 Report by the Chartered Institute of Taxation (CIOT) for the CFE Professional Affairs Committee

1. Tax avoidance, tax evasion and Professional Conduct in relation to Taxation

Tax avoidance has been a very prominent topic in the UK press this year with some profitable household names (eg Starbucks and Amazon) being accused of paying little or no corporation tax in the UK. Representatives from the Big 4 accountancy firms were questioned by the Government's Public Affairs Committee about attitudes to tax avoidance.

Partly in response to the increased public debate CIOT together with ICAEW, STEP and a couple of other tax/accountancy professional bodies have been updating guidance for members entitled Professional Conduct in relation to Taxation. The draft update includes a greatly expanded chapter on Tax Planning, Tax Avoidance and Tax Evasion. It makes clear that tax evasion is illegal and members must have no involvement with it. Tax avoidance is legal and if a client wishes to engage in it the member must ensure the client is made fully aware of the potential risks and consequences.

2. Her Majesty's Revenue and Customs Agents On Line Self Serve

HMRC continues working on its Agents On Line Self Serve project which will allow tax advisers to register for access to enhanced on line services. Full details of which advisers will be allowed access are still to be finalised. The professional bodies are actively engaged with HMRC on this.

3. Mehjoo case [Mehjoo v Harben Barker \(A Firm\) &Anor \[2013\] EWHC 1500 \(QB\) \(05 June 2013\)](#)

The media reporting of the above case caused some unnecessary alarm amongst tax advisers. The headlines suggested that, as a result of this case, tax advisers would be under a duty to advise all their clients about tax avoidance schemes and that if they do not do so they could be held to be negligent and potentially suffer serious financial consequences. However the real message from the case was that an adviser must

- be able to identify when he is out of his depth and refer his client to an appropriate specialist; and
- be aware of assuming responsibility for giving advice, which is beyond the scope of the engagement letter, by his actions

Very briefly the tax adviser involved failed to appreciate the significance of his client's non domicile status when advising him on tax planning opportunities on the sale of his business. The

adviser unsuccessfully argued that he had not been engaged to provide capital gains tax (CGT) planning advice.

The judge confirmed there was no general obligation to provide advice as and when needed (unless the engagement letter provided for this). However, in this case he found that the adviser assumed (albeit unwittingly) the duty to provide advice by his actions. He had arranged and attended meetings to discuss CGT planning and had previously set out the tax implications of proposed transactions. The judge held that in view of his actions, including suggesting tax planning measures, the adviser had assumed responsibility.

The judge also held that notwithstanding the fact that the firm was a firm of generalists they should have been sufficiently aware of the significance of non-UK domiciled status and the tax planning benefits it can offer. The failing was not that the adviser had not recommended possible tax planning schemes but rather that he had failed to refer the client to a domicile specialist who would have been able to provide best advice. Interestingly the judge made reference to the Professional Conduct in relation to Taxation guidance (see 1 above) as being a relevant and appropriate code of conduct for tax advisers.

4. Prudential case

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0215_Judgment.pdf

The decision in the Supreme Court Prudential case which concerned the extension of legal professional privilege to advice given by accountants and tax advisers was given in January 2013. The judges voted by 5 votes to 2 not to extend privilege and made it clear that they considered that it was a matter for Parliament and not the courts.

5. Anti money laundering (AML)

In common with other member states the UK is required to carry out a National Risk Assessment. The CIOT and ICAEW have been participating in this process.

The CIOT and ICAEW are AML Supervisory Authorities and attend a quarterly Supervisors' Forum to discuss developments in AML. Each year HM Treasury produces a report on the Supervisors' performance; this is made available here [Anti-money laundering and counter terrorist finance supervision reports - Publications - GOV.UK](#)

6. Will writing, probate and estate planning

Last year the Legal Services Board put forward proposals recommending the regulation of will writers and estate planners. This could have had widespread implications for tax advisers assisting clients in these areas, for example, giving advice on the tax consequences of Inheritance

Tax planning or preparing accounts and tax returns for a deceased's estate. After much consultation the LSB submitted its proposals to the Lord Chancellor. To many people's surprise the Lord Chancellor did not accept the proposals and for now there will be no change.

Heather Brehcist

27 August 2013
