CONFEDERATION FISCALE EUROPEENNE

CFE Professional Affairs Committee

National Reports

September 2012

15th Meeting

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Czech Republic

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

The amendment to the Act no. 523/1992 Coll. on tax consultancy and on the Chamber of Tax Advisers of the Czech Republic entered into force in August 2012. This amendment modified the rules governing the General Meeting in a new way - the quorum precondition has been omitted and the number of powers of attorney granted to one tax adviser for representation at the General Meeting has been limited to five.

The Ministry of Finance which is the competent authority for the Act no. 523/1992 Coll. on tax consultancy and on the Chamber of Tax Advisers of the Czech Republic, has prepared the first version of the draft comprehensive amendment to this Act on which the Chamber currently provides its comments.

The main objectives of the draft comprehensive amendment include the regime of the position of legal entities carrying on tax consultancy (they are newly referred to as a "tax advisory company", unification of the process stipulations with the modification of the Rules of Administrative Procedure and modification of the rules governing the General Meeting.

The draft regime of the tax advisory companies is based on the following principles:

- The companies will not be members of the Chamber in the future, nevertheless the Chamber will register them in the list and will carry out supervision over them
- The companies will have a process position of a tax adviser
- The Act specifies stricter conditions for registration into the list of companies
- The rights and obligations of a company are set up in a similar way as the rights and obligations of a tax adviser
- Besides tax advisers, also companies will be subjected to disciplinary proceedings in the case of a breach of the Act

In the course of September 2012, the Chamber took part in the comment proceedings organized by the Ministry of Finance with regard to the Measures resulting from Recommendations of the Evaluation Report of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes drawn up for the Czech Republic (this concerns the 1st phase - legal and legislative framework). The Evaluation Report objected too extensive confidentiality on the part of tax advisers and attorneys-at-law in the Czech Republic, and the Ministry of Finance originally proposed, on the basis of conclusions of the Evaluation Report, an amendment to the Tax Consultancy Act and to the Act on the Attorney-at-law Profession. Both the Chamber of Tax Advisers and the Czech Bar Association raised fundamental objections against that Report, which the Ministry of Finance has accepted and decided in the first phase about the drawing up of an analysis of the extent of confidentiality in the Member States of the European Union.

The Chamber takes part in consultations organised by the Ministry of Education, Youth and Sports during preparation of the proposal for amendment to the Directive 2005/36/EC on the recognition of

professional qualifications. The Chamber has presented its comments within the framework of the activities of the CFE Professional Affairs Committee.

The Act newly establishing criminal liability of legal entities which affects also the companies providing tax consultancy has become effective since 1 January 2012.

"Common quality inspection

Based on the conditions given by the working arrangements pursuant to Section 49(1)(d), the Council can permit the carrying out of the common quality inspection with participation of persons authorised by the relevant authorities from third countries. The common quality inspection takes place under the leadership of the Council. The Council shall specify the term of implementation and the extent of the common quality inspection in accordance with the working arrangements."

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Germany

Current professional legal developments in Germany

1. Change of partnership law

The German legislator will introduce, probably by the beginning of next year, a new legal form for firms for cooperation between tax advisors, lawyers, etc. Because of the increased 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 (Partnerschaftsgesell-schaftsgesetz PartGG) it is foreseen to create the possibility to 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 exactly amount for the minimum sum insured by the indemnity insurance is yet not clarified. 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 a professional liability insurance with a higher minimum coverage or to keep with the personal liability with its partners.

2. Legal aid by tax advisors

Because of a judgement of the Federal Constitutional Court tax advisors are now also involved in the legal aid procedure, supported and financed by the state in the takeover of costs of the legal assistance and the Court. Before the financed legal aid procedure was only offered by lawyers.

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Ireland

Report on Irish tax developments in the period since September 2011

Anti Money Laundering

Under Ireland's anti money laundering legislation, the Department of Justice and Equality has responsibility for regulating certain members of the Irish Tax Institute in terms of their compliance with their anti money laundering obligations. In recent weeks, the Department wrote to a number of tax advisers requesting information on clients with whom the advisers have a business relationship. The Department plans to conduct 80 to 100 audits before the end of the year.

Register of lobbyists

In July, the Department of Public Expenditure and Reform 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 register of lobbyists
- An oversight body
- A code of conduct

Preparation of draft legislation has commenced and it is planned that a Bill will be published in early 2013. The Irish Tax Institute met with a representative of the Department to discuss the practical implications for the Institute of being termed a lobbyist under the new proposals.

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Poland

Partial deregulation of tax advisory activities

Tax advisers are within the ambit of the extensive deregulation plans of the Polish government. The draft amendment to the Act on Tax Advisory of 5 July 1996 (consolidated version: Journal of Laws of 2011, No. 41, item 213) to this effect is to be released soon.

According to available informal information, deregulation is to pertain not to tax advisers' profession, but rather to tax advisory activities. Among the envisaged changes the most important one consists in dividing such activities into two distinct categories: reserved and unreserved ones. Upon the amendment coming into force only representing the Clients before the tax administration and the tax courts will remain the reserved activities, to be performed solely by tax advisers (and other entitled professionals: lawyers and certified auditors). Giving tax advice, tax bookkeeping and giving auxiliary tax advice in this connection, as well as preparing and filing tax returns and giving auxiliary tax advice in this connection, though still considered tax advisory activities, will be open for rendering by any entity (i.e., will belong to the 'unreserved' category, as entirely liberated).

A tax adviser will not only remain entitled to perform reserved tax advisory services, but his/her professional status will still be characterised by further privileges and duties: i) the right to use professional title of a 'tax adviser'; ii) the obligation to abide by the rules of profession, including the duty of professional confidentiality, professional indemnity insurance cover, continuing professional development, etc.; iii) the entitlement to certify the authenticity of documents filed in the tax or court proceedings; iv) mandatory membership in the National Chamber of Tax Advisers. These characteristics represent our competitive advantage and are hoped to serve as an encouragement for a Client to use the services of a tax adviser even after the partial deregulation becomes a reality.

Other changes currently under consideration by the government include:

- shortening the pre-entrance professional training of a tax adviser-to-be (from two years to 6 months; the training will be executed with a tax adviser as a tutor or in a tax advisory company);
- enabling performing tax advisory activities in the capacity of an in-house tax adviser;
- introducing the partial exemption from the entrance examination for a candidate to the profession – to the extent in which the scope of this examination corresponds to his/her university education.

Given the current stage of the process the legislative change is likely to come into force not earlier than in the second quarter of 2013.

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The Netherlands

Recent developments in professional affairs policy and legislation, and case law

1. National developments on anti-money laundering

The September 2011 report mentions that the Netherlands has been evaluated by the Financial Action Taskforce. A number of shortcomings were found in the Money Laundering and Terrorist Financing Prevention Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*; "WWFT"). These shortcomings also relate to elements of the client audit that is to be performed by institutions falling under the scope of the WWFT. A bill currently pending before the Lower House includes a number of amendments to the WWFT, to ensure that it is more in line with the recommendations made by the FATF. The Dutch Association of Tax Advisors ("NOB") has commented on the bill, stating that the bill will significantly increase the administrative burden for these institutions, while the amendments will only have a limited effect on combating money laundering and the financing of terrorism . The outcome of the legislative process remains to be seen.

2. Horizontal monitoring

The horizontal monitoring process set up by the Dutch Revenue has been reviewed by an independent committee. In November 2011, this committee was asked to evaluate the effectiveness and efficiency of horizontal monitoring by the Dutch Revenue, identify the problem areas and vulnerabilities, and to present proposals for the further development of horizontal monitoring. The committee reported back in June 2012. The NOB provided input to the committee and drew up a list of problems areas and areas for improvement, based on the experience of its members.

Some of the results of the committee's evaluation are :

"1. It is essential that the Dutch Revenue is transparent, if it is to act as a reliable partner within a horizontal monitoring relationship. The Dutch Revenue must be clear and consistent when embedding horizontal monitoring in the tax system, both with regard to content (clear criteria), and to procedures (clear division of responsibilities, processes and methods). For example, one area where clarity and consistency are required is in the definition of segments, in particular for the middle market.

2. Horizontal Monitoring increases the risk of a merging of interests; the employees of the Dutch Revenue must not lose their objectivity when entering into a relationship of trust and must show an understanding of the taxpayer's interests. This requires the creation of additional guarantees and the adoption of a complementary policy by the Dutch Revenue.

3. It is important that the employees of the Dutch Revenue can unambiguously indicate – within a certain margin - which level of internal control should be achieved for the purposes of the tax control framework, and what this will mean for the modified monitoring. This requires that familiar and workable tools be developed.

4. The meta and system monitoring as it applies to horizontal monitoring requires more attention, and needs to include reality checks, whereby it is important to clarify what is required for each level of internal control.

5. Internationally, the Dutch Revenue plays a leading role in the development of horizontal monitoring (referred to internationally as 'enhanced relationship'). The further development of horizontal monitoring must be primarily carried out in the interests of very large/large companies in cooperation with foreign tax authorities.

6. The Dutch Revenue must make a business case for each segment (ZGO, MGO and SME), which shows that horizontal monitoring will benefit all parties involved, i.e. taxpayers, financial service providers, and the Dutch Revenue. To this end, it is essential to show that horizontal monitoring will achieve higher compliance and that no revenue will be lost. Moreover it is important to clarify what income and expenses (not only quantifiably, but also qualitatively) are associated with horizontal monitoring.

7. In addition, it would be advisable for the Dutch Revenue to carry out a baseline measurement for each segment, so that, as of the present moment, a time period comparison can be made in respect of the development of the compliance level and the impact of horizontal monitoring on other quantifiable effects. In line with this is the development of a coherent set of indicators for each segment with which (1) the input (in terms of people and financial resources), (2) the quality of the activities performed, (3) the output (number of activities and results), and (4) the effects for compliance (for example, the improvement of compliance indicator scores and the reduction of errors) can be measured. Moreover, it should be explicitly stated how and to what degree reality checks (for all segments) have been carried out by the Dutch Revenue, what their findings were, and what can be done to improve the situation (based on errors detected). The Dutch Revenue also needs to gather information that will verify whether the assumptions or hypotheses on which a certain type of horizontal monitoring per segment is based, are and will remain to be in accordance with the actual situation. This means that the measuring of effects must be based on goals/sub goals for each segment, clarifying, for example:

- the improvement in the work relation (in terms of understanding, trust and transparency);
- the realization of benefits (receiving certainty sooner, preliminary discussions, a more realistic approach);
- improving the availability of and access to information (internal control, internal and external audit)
- lessening the degree for monitoring (reducing monitoring costs)."

The NOB has commented on the report. *"The good news for the Dutch Revenue is that the Stevens Committee clearly states that the Dutch Revenue is on the right track by adding Horizontal Monitoring to its means of enforcement. However, it comes as a shock to read that the Dutch Revenue is reproached for having little insight into the costs to be incurred and income to be achieved from horizontal monitoring. We realize that it will be difficult to retrieve this information, but it is essential. The committee has made clear that Horizontal Monitoring must place more emphasis on 'reality checks'."*

Amstelveen, September 14, 2012
Dutch Association of Tax Advisors (*de Nederlandse Orde van Belastingadviseurs*)
Dick Barmentlo

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UNITED KINGDOM

1. **Her Majesty's Revenue and Customs' (HMRC) Tax Agents' Strategy**

HMRC continue to progress their Agent Strategy as part of their drive for greater efficiencies. They are about to trial 'Agent View', which will give HMRC a view of the performance of agents based on the compliance record of their clients. The CIOT and other tax professional bodies continue active discussions with HMRC over the development of Agent Strategy, including how HMRC will act on information coming out of Agent View.

2. **Anti money laundering (AML) - changes to Money Laundering Regulations 2007 (MLR)**

The changes to the MLR 2007 arising from the government's review in 2009 will take effect from 1 October 2012. The main change affecting tax advisers concerns the Reliance provision. From October a member of a professional body recognised as a Supervisory Authority in MLR will be able to rely on the Customer Due Diligence carried out by another member of a professional body Supervisory Authority (subject to the usual consents). Previously only a limited number of Supervisory Authorities were recognised in this way.

Perhaps of more note were the changes the Government did not make

- It decided against the introduction of a de minimis limit of €15000 because "the risk of money laundering and terrorist finance is not related to the size of a business and there is significant evidence that criminals often operate through smaller businesses".
- It did not remove criminal sanctions for breach of MLR. The government was persuaded by the argument that the criminal sanctions represent a powerful deterrent and enforcement tool for AML Supervisors and MLROs . They also help convey the importance the Government attaches to AML matters. There was concern that their removal could send the "wrong message "to businesses

Other issues have been postponed until the EU AML review is finalised, such as amending the definition of 'Politically Exposed Persons' and introducing a requirement to keep identity records of beneficial owners as well as those relating to clients.

3. **Engagement letters**

An updated edition of the Engagement letter guidance which is drafted by all the major UK tax and accounting bodies was issued in May 2012. New subjects covered were:

- The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008
- Consumer Protection (Distance Selling) Regulations 2000

- Services Directive
- iXBRL tagging (Corporation Tax Returns must be filed online with accounts and computations in iXBRL format)
- Disengagement Letters

4. Will writing, probate and estate planning

Following a detailed review of the will writing, probate and estate administration market the Legal Services Board has put forward proposals which could have a wide reaching impact on tax advisers in England and Wales. Under the proposals anyone wishing to offer those services and/or related ancillary activities would have to be regulated by an approved regulator. It is not yet clear which bodies would act as regulators. For most tax advisers it is the related ancillary activities eg advising on the tax consequences of a will, assisting with probate forms, preparing estate accounts and tax returns rather than the main activity of drafting a will or administering an estate which would potentially bring them within the scope of regulation. The first round of consultation is complete and a formal response from the Legal Services Board is expected later this month.

5. Licensing agreements

The CIOT has entered in to licensing agreements with the Irish Tax Institute and the Australian Tax Institute. Under these agreements members of the Irish and Australian Institutes may, under certain circumstances, use the designatory title Chartered Tax Adviser.

6. Merger of the Chartered Institute of Taxation with the Institute of Indirect Taxation

In August 2012 the CIOT and the IIT merged. The combined body has a membership in excess of 16500 members.

Heather Brehcist, CIOT

11/09/2012

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