



CONFEDERATION  
FISCALE  
EUROPEENNE

# CFE Professional Affairs Committee

## National Reports

Developments in national professional affairs

September 2013 - 2014



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## BELGIUM

The most relevant developments can be summarized as follows.

- In February 2014, the Belgian tax administration published the list of targets for determining tax audits in 2014.

### **For individuals**

Individuals have an increased exposure to a tax audit if they claim an exemption from personal income tax for salary income from foreign source or if their tax file has not been audited for a certain period (the length of which is not specified in the communication from the Ministry of Finance).

### **For companies**

As far as companies are concerned, there is an increased probability of tax audit if:

- The ratio turnover/expenses has increased in an abnormal manner or does not correspond to the similar ration of taxpayers who are in a similar situation.
  - The profit margin is lower the usual profit margin of taxpayers in a similar situation, or has decreased in a manner that cannot be explained.
  - There are elements leading to think that taxpayers have made purchases for private purposes whereas these are purchases for business purposes and that those taxpayers have thereby possibly tried to develop a “black” circuit.
  - There are presumptions that the taxpayer has incorrectly claimed or imputed a VAT credit.
  - The file has not been audited for a certain period (the length of which is not specified).
- Since the beginning of 2014, every quarter, the Chairman and Vice-Chairman of the Institute have the opportunity to meet with representatives of the Ministry of Finance in order to exchange information namely on the functioning of tax tools (electronic tax returns, ...) and on recent technical developments that create problems of applications (for example, recently, the application of fines by the VAT administration).

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## CZECH REPUBLIC

### **National report on recent developments in professional affairs policy – the Chamber of Tax Advisers of the Czech Republic (2014)**

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 a 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 the international standards” and that this extent could hinder effective exchange of tax information.

The Chamber filed principal objections against the conclusion of the assessment report. After the discussion of these objections with the Ministry of Finance and the Czech Bar Association, an agreement was made on preparation of an international analysis of the concepts of tax advisers’ confidentiality obligation. A questionnaire processed in cooperation with the C. F. E. was replied to by eight member organisations of the C. F. E. The results of this international analysis disprove some of the conclusions of the assessment report concerning the extent of the tax advisers’ confidentiality obligation. The results state that: *“On the basis of this analysis and the results of the international comparative examination the Ministry of Finance has reached the conclusion that the extent of the confidentiality obligations of tax advisers in the legislation of the Czech Republic is at least comparable to the legal extent of the professional confidentiality obligations in the neighbouring Member States.”*

Following the conclusions of the analysis the Ministry of Finance prepared a response to the assessment report for the OECD Global Forum. A visit of the representatives of the OECD Global Forum within the framework of the peer review – Phase 2 – has been scheduled on September 24<sup>th</sup>. The matters of professional confidentiality obligations shall be then discussed again in consultation with the General Financial Directorate, the Ministry of Finance and the representatives of the Chamber of Tax Advisers of the Czech Republic and the Czech Bar Association.

In the follow-up measures to its policy statement, the new Czech government intensified the combat against tax crime. As a result, Czech tax advisers come into more frequent contact with the law enforcement authorities, most often as witnesses, during the investigation of individual criminal cases.

In connection with the government’s efforts another discussion re-emerged concerning the criminalisation of the preparation of tax evasion. The Chamber forwarded its opinion to the respective ministries expressing concern over the criminalisation of the business sector and of the tax advisory and legal services in general, suggesting a further substantial discussion on the matter prior to drafting any amendments to the legislation.



The Chamber is prepared not to impede the amendment of the Criminal code concerning the criminalisation of the preparation of tax evasion provided that the criminal liability does not cover cases of preparation of tax evasion in general, but the legislation targets offences related to specific kinds of taxes only (e. g. the excise duties).

The draft amendment of the Consumer Protection Act implementing a European directive brings new responsibilities for tax advisers (yet only in case of business-to-consumer relationships, as opposed to business-to-business relationships). It also imposes a new obligation on the Chamber to supervise the tax advisers' compliance with the act. The jurisdiction over disputes between tax advisers and consumers shall be exercised by the Czech Trade Inspection Authority.

Representatives of the Chamber became members of a working group for the implementation of the Directive 2013/55/EU set up by the Ministry of Education, Youth and Sports. The group discusses and draws up the implementation of the Directive at a national legislative level. The Directive brings no substantial changes in the legal position of the Chamber or the nationals of other Member States providing tax advisory services in the Czech Republic.

This year, the Chamber has registered a Czech citizen to the list of the visiting tax advisers, who proved to deliver tax advisory services in Netherlands in a working relationship in accordance with the national legislation.

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## IRELAND

### **Report on Irish professional affairs developments in the period since September 2013**

#### *Register of lobbyists*

In our previous national report, we noted that the Department of Public Expenditure and Reform had published the general scheme of a new bill for the regulation of “lobbying”.

The Registration of Lobbying Bill 2014 has since been published and, at the time of writing, is working its way through the Irish legislative process.

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”.

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## MALTA

### **National Report on Professional Affairs developments in Malta since September 2013**

Developments with respect to professional affairs in relation to the exercise of the tax advisor profession per se, have not taken place in the past year. However there have been a few developments which may be of interest to the tax advisor, being that tax advisors in Malta are usually accountants or advocates. These amendments are the following:

Minor changes have been made in relation to anti money laundering regulations. What one may have seen, as in any other jurisdiction is the continuous FATF identification of jurisdictions with strategic deficiencies and national risk assessments which Malta had to take note of.

In July 2014 there a white paper has been drafted on more effective EU Merger control by the EU which Malta being a member state is implementing too.

In April 2014 there have been various amendments to the Trust & Trustees Act on applicability, right of beneficiaries, duration of trusts, settlor reserved powers, introduction of the office of 'Enforcer'. Particular amendments have also been made for trustees to be insured, who may act as a qualified person, concept of family trust and the duty of the auditor.

A major development which has occurred in Malta during 2013/2014 is the introduction of new rules for company service providers.

In terms of Article 3 of the Companies Services Providers Act 2013, "any person resident or operating in or from Malta who acts as a company service provider by way of business, shall apply to the Authority for registration."

Persons who are licensed, authorised or recognised by the Authority in terms of any one of the laws for the purposes of which the MFSA has been designated as competent authority are still subject to registration in terms of the Act. However, given that these persons are already subject to the "fit and proper" test by the Authority, they shall be required to apply for registration to the Authority by means of a notification letter which shall include details regarding the type of licence/authorisation already held, the company services to be offered, the target market for such services and the expected level of company service business. This notification letter should be accompanied by the prescribed application fee.

These persons would still be subject to these Rules insofar as their provision of company services by way of business.

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## POLAND

The economic and political transformation which started in Poland in 1989 also changed the perspectives on taxation. All this resulted in first tax consultancy firms springing up in Poland after 1990 as a natural response to the market demand. The efforts of organisations advocating for the establishment of a regulatory framework for the profession of tax adviser as a position of public trust were crowned with the enactment of the Tax Consultancy Act on 5 July 1996.

Tax advisers provide advice, opinions and explanations of tax and customs obligations and in matters of the related administrative enforcement proceedings and they keep tax ledgers. In addition, they may represent their clients in proceedings before tax authorities of all instances, as well as before administrative courts. Moreover, their tax consultancy services include settlement of other public dues (such as social insurance contributions).

In order to be registered as a tax adviser, an individual must hold a university degree, pass a state examination and complete an apprenticeship. Every tax adviser is legally obliged to partake in continuing professional development. Furthermore, advisers are bound by a duty of confidentiality with respect to all information and facts they have become aware of while practising their profession. The professional secrecy obligations are not time-restricted and survive expiration of any contract with a client or withdrawal from professional practice. A court may release a tax adviser from his/her obligations of professional secrecy only if it is indispensable for the sake of the administration of justice and the relevant circumstances may not be otherwise ascertained by evidence.

All tax advisers must abide by codified standards of professional ethics. Those regulations set out the rules relating to the practice of the profession and govern the matters of professional secrecy and privilege, communications and advertising, and continuing professional development; they also address relations with clients, institutions and courts, as well as with other members of the professional self-governing bodies.

Tax advisers must ensure that they maintain a certain level of compulsory professional liability insurance against losses caused while providing their professional services. Compliance with the insurance obligation is monitored by the Polish National Council of Tax Advisers (*Krajowa Rada Doradców Podatkowych, KRDP*), which may disqualify a tax adviser by removing his/her name from the register if the tax adviser fails to take out or maintain the compulsory insurance. The safety of services provided by tax advisers is further guaranteed by the fact that they are subject to disciplinary liability for errors or omissions in their legally designated professional duties and for acts in violation of their professional ethics.





The Act of 9 May 2014 on Facilitating Access to Certain Regulated Professions introduced new provisions in the existing Tax Consultancy Act which may provoke a change in the perception of the tax adviser profession in Poland. Now, keeping accounts and tax ledgers for and on behalf of tax payers, tax

remitters or tax collectors remains to be responsibility of tax advisers but with the introduced changes, this may also be performed by individuals who register their business and produce a clean criminal record check. Furthermore, the current 24-month term of apprenticeship for candidates for the profession has been reduced; now, the period of induction into the profession will only be 6 months.

When looking just at some of the introduced changes, it can be clearly noted that the tax consultancy market in Poland has opened even to individuals who do not have the relevant qualifications or experience in the field. Further to the point, individuals who do have the appropriate qualifications and seek registration as tax advisers are required to demonstrate much less hands-on experience than their peers who sought such registration before the Act of 9 May 2014 took effect.

In view of the said changes, the Polish self-governing body of tax advisers (*Krajowa Rada Doradców Podatkowych, KRDP*) will endeavour to have the previously applicable eligibility criteria and requirements for the profession of tax adviser reinstated. Tax advisers in Poland do hope for support and assistance in those efforts from CFE.

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## UNITED KINGDOM

### Report by CIOT on Professional Affairs developments in the UK

#### 1. HMRC initiatives to counter tax evasion and tax avoidance

HMRC has been adopting an increasingly aggressive approach against tax evasion, tax avoidance and even straightforward underpayment of tax. Recent examples of this include:

- Proposed powers to take money direct from taxpayers' bank accounts without the taxpayers' consent. CIOT has expressed concern about this not least because of the risk of HMRC taking money which is not due.
- Finance Act 2014 gives HMRC the power to demand payment upfront of disputed tax in certain cases. The legislation applies to arrangements entered into before the date the new rules came into effect (17 July 2014), as well as arrangements entered into after that date. HMRC has announced that accelerated payment notices will be sent over a 20-month period starting in August 2014.
- HMRC is consulting on changes intended to improve the information available to it under the Disclosure of Tax Avoidance Schemes (DOTAS) rules. The proposed measures include changes to the descriptions of schemes required to be disclosed, the penalties applicable to those who fail to notify their use of a scheme and the introduction of protection for those who wish to provide information about potential avoidance but who are prevented from doing so by governance or confidentiality requirements.
- As part of its offshore evasion strategy, HMRC is consulting on the introduction of a new strict liability criminal offence of failing to declare taxable offshore income and gains. In addition, HMRC is looking at options to strengthen civil sanctions for those evading tax by using non-UK territories to hide taxable income, gains and assets offshore.

#### 2. HMRC and reporting misconduct of members

HMRC are actively looking at ways of enabling reports of misconduct by members of professional bodies to be made to the professional bodies. The legislation exists in principle and it is a question of now ensuring that all the relevant criteria can be satisfied.

#### 3. Anti money laundering (AML)

The UK is preparing for its Mutual Evaluation Review by FATF (Financials Action Task Force). Although this is potentially 3-4 years away HM Treasury has been visiting all the AML Supervisors (including the professional bodies such as CIOT and ICAEW) to discuss their approach to supervision. We have also been participating in the UK National Risk Assessment alongside other supervisors and law enforcement agencies.



#### **4. Professional Conduct in relation to Taxation (PCRT)**

The main tax and accounting bodies in the UK issued the latest version of PCRT in February 2014. The guidance was endorsed by HMRC and it sets out the ethical code for tax advisers and their clients in their dealings with HMRC. As a reflection of the ever-changing climate in taxation, work has already started on the next edition.

#### **5. Trusted tax Advisers**

In response to the media coverage regarding tax avoidance including the participation by celebrities in tax avoidance schemes there have been a couple (at least) of initiatives by various bodies/individuals to create confidence in tax advisers eg

- a Trusted Tax Adviser designation for firms of accountants and tax advisers designed to indicate that the adviser will not engage in aggressive tax planning; and
- Fair Tax mark for businesses to show that the business pays the fair amount of tax

These have yet to gain any significant traction. Using the services of a member is of a professional body which requires members to pass exacting exams, update their knowledge annually, hold PII and adhere to a stringent ethical code is still regarded as providing clients with the safeguards and reassurance they need in respect of their tax affairs.

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