



# CFE Professional Affairs Committee

## National Reports

Developments at national level  
in tax advisers' professional affairs

September 2015 - 2016

## Table of Contents

Czech Republic.....	3
Ireland .....	4
Netherlands.....	5
Slovakia.....	7
United Kingdom.....	8
No changes: Belgium	

## CZECH REPUBLIC

1 July 2016, an amendment of the Criminal Code became effective which re-establishes the mere preparation of tax evasion as a crime punishable by law. This change raises concerns about possible criminalization of Czech business environment. The Chamber of Tax Advisers did not succeed in preventing the adoption of the amendment, despite the cooperation on this matter with the Czech Bar Association. The result is that the preparation of tax evasion over CZK 500 000 or the preparation of tax evasion committed by a transnational organized crime group is now punishable under Czech law. On the other hand, the representatives of the Chamber achieved a trade-off in the process of negotiation over these changes as the sponsors of the legislation agreed that the crime of tax evasion would no longer be listed in Section 367 of the Criminal Code. This means that the obligation to prevent a crime witnessed in progress will no longer apply to tax evasion in general.

The changes in substantial law were followed by changes in criminal procedure and the expansion of the jurisdiction of tax and customs authorities.

The Chamber published a Financial Crime Risks Guideline for Tax Advisers to assist tax advisers to handle potential crime risks.

This year, the Chamber also continued to communicate with the Financial Analytical Unit (FAU) of the Ministry of Finance, set up to combat money laundering. The Chamber provided the FAU with statistical data during the process of national risk assessment of money laundering and terrorist financing, and commented on the amendment of the Act on Selected Measures against Legitimization of Proceeds of Crime and Financing of Terrorism, which is due to be enacted till the end of the year. The Chamber is now planning to perform the first audits of compliance with the Anti-Money Laundering legislation among tax advisors and tax advisory companies.

A substantial amendment of the Consumer Protection Act stated that most consumer-protection rules apply to the provision of tax advisory services. As a follow-up, the Chamber adjusted the recommended templates of tax advisory services contracts according to the new legislation.

A new Presidency of the Chamber was elected at the last General Meeting in November 2015. Petra Pospíšilová became President and Martin Tuček became Vice President. The General Meeting successfully used an SMS voting system for the first time. This year, the electronic system is ready to be used for the election of subsidiary organs of the General Meeting.

The Chamber prolonged the registration of a guest tax adviser providing temporary or occasional services in the Czech Republic for the second year. The adviser is a Czech citizen who proved that he provides tax advisory services as an employer in Netherlands in accordance with local regulations.

The Ministry of Finance prepares a new law on income taxes and claims that it intends to simplify the tax system, yet so far it only comes with proclamations and no results. After the introduction of mandatory electronic filing of specified returns last year, the digitalization of tax administration further intensifies.

An obligation to file VAT ledger statements was introduced as a new measure aimed against tax evasion. The obligation applies to all VAT taxpayers. Furthermore, a new law on the electronic register of sales was adopted. The obligation to register sales does not apply to all businesses at once, but it arises in different time phases for different types of businesses. The rules apply first to accommodation and food services from 1 December 2016. There is also a draft act on proving the source of property in the legislative process. This was already approved by both chambers of the Parliament and it is yet to be signed by the President. The threshold value of property subject to the act is CZK 5 million. All these laws bring more red tape for taxpayers, and more repressive tools.

Unfortunately, a rising unwillingness of the tax administration to communicate with taxpayers and the Chamber can be perceived.

*the Chamber of tax advisers of the Czech Republic (2016)*

## IRELAND

### **Register of lobbyists**

The Regulation of Lobbying Act commenced on 1st September 2015.

The purpose of the Act is to provide for a Register of Lobbying to make information available to the public on the identity of those communicating with designated public officials on specific policy, legislative matters or prospective decisions. The Act also provides restrictions and conditions on the taking up of certain employments by certain designated officials for a specified period of time where a possible conflict of interest arises.

Where tax policy matters are discussed with politicians or senior Government officials (e.g. from the Revenue Commissioners or Department of Finance) they must be disclosed in the lobbying return. Returns are filed every four months and are published online.

### **Revenue release updated Code of Practice for Revenue Audits**

In December, Revenue published its updated Code of Practice for Revenue Audit and Other Compliance Interventions. It is effective from Friday 20 November 2015. The Audit Code outlines Revenue's approach to audits and interventions. Two updates to the code are relevant in the context of professional affairs;

### **1. Cooperation**

Irish legislation provides for mitigation of a tax-geared penalty where a taxpayer cooperated fully with any Revenue investigation or inquiry etc. Revenue has placed a focus on the importance of “full” cooperation in the revised Audit Code, both in the text and penalty tables.

Revenue highlights the risk that the benefits of penalty mitigation for cooperation could be lost in certain circumstances. Revenue’s examples of what may be considered a “failure to cooperate fully” are wide ranging and subjective.

### **2. Reporting of members to professional bodies**

Under Irish legislation a Revenue officer may disclose taxpayer information to report a tax practitioner to his/her professional body where the Revenue officer is satisfied that the work of the tax practitioner does not meet the professional standards of that professional body. Revenue has included a reference to this reporting mechanism, which will apply to all of the professional bodies, in the updated Code.

Revenue has been developing its internal procedures for reporting members to their professional bodies in very particular circumstances, such as fraud. Member reporting is subject to the following procedures;

- Reports must be approved at Assistant Secretary level
- Only serious cases can be reported
- A report cannot be made while the compliance intervention is open

### **FATF Review**

As part of its fourth round of Mutual Evaluation Reviews, FATF will visit Ireland in November 2016. The review will focus on the anti-money laundering and countering the financing of terrorism (AML/CFT) framework in place, including the role of various professional bodies / firms in adhering to this framework.

## **NETHERLANDS**

The NOB (de Nederlandse Orde van Belastingadviseurs) and RB (Register Belastingadviseurs) have asked their members to respond to a questionnaire regarding the relationship of their members with the Dutch

Tax Administration. This was the third questionnaire of NOB, RB has joined this time. The questionnaire deals with subjects as the present and the preferred channel for contacting the tax administration (presently telephone, email comes in second), the ease of establishing contact (diminishing unless there is a contact person), the appreciation of the tax administration (has declined to a 5,9 on a scale of 10), the appreciation of cooperative compliance (mainly appreciated because it involves a standard contact within the tax administration). The organisations feel that the Dutch tax administration shields itself from contact with the public and tax advisers for fear of being overwhelmed. However, the MO's feel this is counterproductive as the appreciation for the tax administrations suffers and the efficiency for the members and for the tax administration goes down. The MO's have discussed this with the director-general of the tax administration and offered their help in trying to improve this situation.

The implementation of the 4th EU AML Directive has been discussed with the Ministry of Finance. The implementation has been split into two bills, one regarding the UBO-register and one regarding the other subjects. For the last bill a consultation document has been made public before summer. NOB has taken the lead in commenting on this together with the professional organisations of solicitors and barristers (NOVA), of notaries public (KNB), of accountants (NBA), of trust organisations (Holland Questor) and of real estate agents (NVM). The organisations have pointed out that the administrative burden on the organisations will be increased by the proposal of the EU and the Dutch government but that the Dutch government does not match the efforts and costs involved. By moving from a principle to a rule based approach the relationship with the actual risks of money laundering or terrorist financing is weakened and the burden especially for doing international business is increased. However, on the side of the government the capacity to follow up on reports of unusual transactions (Dutch approach which entails a broader definition than the suspect transactions) remains the same. Also, government bodies are not subject to the same legislation.

The UBO (ultimate beneficial owner) register bill is not in consultation yet, but will probably be maintained by the Dutch Chamber of Commerce. It will be open to the public as it is practically impossible to discern between those with a legitimate interest on those who have none. The information in the public part of the register will be limited (name, birth month and year, nationality, country of residence and the nature and percentage of the interest held by the UBO) and there will be an access fee as a threshold. So far the professional organisations mentioned feel this approach is moving in the right direction. However, the recently announced change to the 4th AML Directive may turn this subject into a cumbersome bill also.

NOB has started a project to apply the model tax payer charter in the Netherlands by matching the principles laid down with the Dutch tax laws and regulations to map the issues.

The impact of the EU Regulation 537/2014 d.d. 16 April 2014 on auditor independence has begun to have its toll for the Dutch tax practice. The Netherlands is one of the 4 countries which have not opted for derogation of any kind, the other countries being Portugal, France and Italy. This means that Dutch tax advisors may not render services to controlled or controlling related entities in the Netherlands of a

PIE audit client of the network of their firm. Firms in other EU member states are often not aware of this, as it is expected that the regime of the member state where the PIE has its seats is leading. The Netherlands already had a ban on these services in case of a PIE audit client of the network situated in the Netherlands. Therefore, situations where a PIE audit client is situated in other EU member states are now up for the ban starting the first bookyear after 16 June 2016. The rotation period for the audit firm in the Netherlands is now 10 years, it used to be 8 since 2014.

The Panama Papers have resulted in a hearing of experts by a parliamentary commission on 12 September 2016. This is a preliminary hearing to investigate whether a formal parliamentary investigation will be held. This so-called 'mini-enquête' is a more practical form of a full fledged inquiry which according to parliamentarians takes too long in preparation, investigation and reporting. At this moment it is not certain whether the investigations will be held, the first informal hearing made it clear that the reality of international taxation is far more complex and nuanced than the one-liners which politicians and press were using. However, as 2017 will be an election year, chances are that politicians will want to have a stage to showcase their opinions. The Panama Papers themselves seem not very interesting from a Dutch perspective as there are hardly interesting cases found and they seem primarily to be tax evasion schemes which nobody wants to defend. Therefore, the subject is expanded to international tax evasion.

In the meantime, the Dutch tax administration is in dire straits, with failing IT systems, a very high average age of their employees of over fifty, a much to successful exit arrangement for senior personnel and the difficulties of international tax evasion while the present tax system seems to be outdated.

## SLOVAKIA

### **Developments in in professional and regulatory matters**

In August 2016, the Act on Registration of Public Sector Partners was adopted. This change involve also tax advisors who are given new specific role. The new Act aims to prevent so-called letterbox companies entering into a legal relationship with the state and municipalities where public resources and funds are used. Legal persons applying for public resources need to be now included in the Register of Public Sector Partners and disclose their ownership structure up to the beneficial owners (natural persons) level. The accuracy of the provided information needs to be guaranteed by an authorised person – among others by tax advisors (other authorized persons can be advocates, auditors, or banks). There is severe sanction system for providing false information including deprivation of illegally obtained economic advantages from lawbreakers and fines in range from €10,000 to € 1,000,000). The legislation will be in effect from 1 January 2017.

### **Proposed changes in tax administration affecting taxpayers**

There are several important changes to tax administration in the legislative pipeline with proposed effect from 1 January 2017:

**Shortened tax assessment procedure** - a new shortened tax assessment procedure shall be introduced. This procedure should apply to cases when a taxpayer does not correct mistakes or eliminate doubts raised by the tax authority, within the deadline set in its request, and the tax authority does not initiate a tax audit. Tax will be assessed by the tax authority, based on evidence which has emerged in the course of tax administration. The taxpayer can appeal against the assessment order within 15 days of its receipt. Appeal will automatically lead to opening of tax audit.

### **Right of lien – based on proposed Tax Administration Act amendment**

A lien can also be established for future tax receivables in case tax authorities doubt that the tax is paid correctly by the taxpayer and that it will be paid to the state revenues after correction.

## **UNITED KINGDOM**

### **Introduction**

2016 has been a year of change and challenge for the UK. The EU referendum resulted in a Leave vote and we await to see the consequences of that decision. One immediate outcome was the resignation of the Prime Minister David Cameron and the appointment of Theresa May. This means that, for the first time ever, the leaders in parliament in the Scottish and the Northern Irish Assemblies are all women – Theresa May, Nicola Sturgeon and Arlene Foster respectively.

### **Tax**

The tax profession continues to be in the spotlight both in the media with failed aggressive avoidance schemes (most recently film schemes) and in parliament. The professional bodies have worked closely to present a joint response to the government's challenge in 2015 to 'take a greater lead and responsibility in setting and enforcing clear professional standards around the facilitation and promotion of tax avoidance'. We understand that the professional bodies' proposals have been favourably received by HMRC. However, progress has been delayed somewhat by the change of government – watch this space.

Various measure designed to combat avoidance and in particular those who enable tax avoidance have been put forward:



- **Civil penalties for enablers of offshore evasion** (broadly provision for penalties of up to the greater of £3000 and 100% of the potential tax loss)
- **Legislation and guidance for a corporate offence of failure to prevent the criminal facilitation of tax evasion** (penalties yet to be determined)
- **Penalties for enablers of tax avoidance which is defeated** (penalties yet to be determined but suggestions are stringent and wide reaching)

HMRC is pressing ahead with its Making Tax Digital programme. Its aim is for the UK to have 'one of the most digitally advanced tax administrations in the world by 2020'. In August this year it launched no fewer than 6 consultation documents on this area:

- Bringing business tax in to the digital age  
<https://www.gov.uk/government/consultations/making-tax-digital-bringing-business-tax-into-the-digital-age>
- Simplifying tax for unincorporated businesses  
<https://www.gov.uk/government/consultations/business-income-tax-simplifying-tax-for-unincorporated-businesses>
- Simplified cash basis for unincorporated property businesses  
<https://www.gov.uk/government/consultations/business-income-tax-simplified-cash-basis-for-unincorporated-property-businesses>
- Voluntary Pay As You Go  
<https://www.gov.uk/government/consultations/making-tax-digital-voluntary-pay-as-you-go>
- Tax Administration  
<https://www.gov.uk/government/consultations/making-tax-digital-tax-administration>
- Transforming the tax system through better use of information  
<https://www.gov.uk/government/consultations/making-tax-digital-transforming-the-tax-system-through-the-better-use-of-information>

While a more digitally efficient system is to be welcomed there are real concerns about the magnitude of the project and the inevitable teething problems. It is also vital that those who are unable to access the internet for whatever reason (eg disability or poverty) are not disadvantaged by this initiative.

### **Anti-money laundering**

The UK continues with its preparations for a FATF peer review which will probably take place in 2018. As part of this exercise the UK undertook a national risk assessment  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468210/UK\\_NRA\\_Oct](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_Oct)

[ober\\_2015\\_final\\_web.pdf](#) which identified the legal and accounting sector as high risk for money laundering as this table shows:

**Table 1.A: National risk assessment on money laundering**

National risk assessment on money laundering						
Thematic area	Total vulnerabilities score	Total likelihood score	Structural risk	Structural risk level	Risk with mitigation grading	Overall risk level
Banks	34	6	211	High	158	High
Accountancy service providers	14	9	120	High	90	High
Legal service providers	17	7	112	High	84	High
Money service businesses	18	7	119	High	71	Medium
Trust or company service providers	11	6	64	Medium	64	Medium
Estate agents	11	7	77	Medium	58	Medium
High value dealers	10	6	56	Low	42	Low
Retail betting (Unregulated gambling)	10	5	48	Low	36	Low
Casinos (regulated gambling)	10	3	32	Low	24	Low
Cash	21	7	147	High	88	High
New payment methods (e-money)	10	6	60	Medium	45	Medium
Digital currencies	5	3	15	Low	11	Low

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