

**European Professional Affairs Handbook  
for Tax Advisers**



# **European Professional Affairs Handbook**

for Tax Advisers

Second edition 2013

by the CFE Professional Affairs Committee  
edited by Rudolf Reibel



Confédération Fiscale Européenne

© 2013 Confédération Fiscale Européenne (CFE)  
Avenue de Tervuren 188 A  
B-1150 Brussels

### **Disclaimer**

This Handbook has been designed as an overview and a starting point for professionals looking for information on the conditions of practicing their profession in another CFE country. It can only provide a general picture of the legal situation in the countries concerned and cannot cover the complexity of national regulation referred to. Furthermore, some of the Directives mentioned are still in the process of implementation which may lead to changes in national laws in the near future. Therefore, neither CFE, its representatives and staff, nor its member organisations accept any responsibility for the content of this Handbook.

Where photocopying of parts of this publication is permitted under article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprorecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

ISBN 978-90-8722-181-2  
NUR 826

---

## Foreword

The first edition of this Handbook was supplied by CFE to European Institutions, national governments, international organisations and other stakeholders. It was sold to practitioners throughout Europe and beyond.

We were pleased to note that the Handbook triggered global interest in countries as diverse as Australia, Chile, Japan, Thailand, Canada and the United States. The very positive reception given to the book encouraged us to develop the concept and produce a second edition. We have structured the Handbook as a versatile compendium and have added four new countries: Croatia, Poland, Portugal, and Ukraine.

It serves as a guideline for tax practitioners interested in providing services cross-border. They will find information on existing requirements for tax advisers in other European States as well as specific contact points in the 23 Country Sheets included in the second part of book.

It provides an overview for governments, European institutions and international organisations by listing facts on how the tax profession operates within a particular State and in particular whether it is regulated or not.

The Handbook explains to CFE member organisations and interested practitioners how EU policy, legislation and case law impact on the way the profession operates at national level. Our passion is to inspire professional bodies in and beyond Europe to build or reform the tax profession in their country. We do this by showing approaches other countries have taken in response to common professional issues.

It is clear from the 23 Country Sheets that the way tax advisers are regulated throughout Europe differs widely. Nonetheless, it is noted that qualification requirements, professional principles and ethics are indeed consistent and very similar, indifferent of the fact whether the profession is regulated by law or not. This is in part a result of CFE Guidelines on professional standards which present a common ground for CFE members and in part a common commitment by our member bodies to a continuing and high standard of professional excellence.

We have taken the opportunity in this second edition to examine a number of issues more closely, in particular the tax adviser's right of non-disclosure, the approach to anti-money laundering legislation and the relation of tax

## Foreword

---

advisers to other professions with similar or shared competences like lawyers, accountants and auditors. In addition the edition dedicates a section to examining current policy developments in professional affairs specifically reacting not only to State efforts to raise tax revenues but also to the European Commission's effort to stimulate economic growth through deregulation of services.

We believe that this Handbook is an important step towards the attainment of a truly European tax profession and can, through the support given by tax advisers to their client businesses, contribute to the development of cross border supplies and services and the completion of the internal market.

We will follow a similar distribution programme to that of the first edition and will include CFE's partner organisations in Asia, Oceania and West Africa. We intend to increase visibility for all CFE member organisations and highlight tax advisers as members of a diverse, distinct and ethical global profession.

We would like to thank our member bodies for their contributions to this work and, especially, we would like to thank our cooperation partner, IBFD, for their generous support in making this Handbook available.

*Ian E. Hayes, Chairman of the CFE Professional Affairs Committee,  
2011-2012*

*Dick G. Barmantlo, Chairman of the CFE Professional Affairs Committee*

---

## **From the idea to the Handbook: The methodology of the project**

Like the first edition of this Handbook published in December 2010, this second edition is based on a survey on the organisation of the tax profession in CFE countries. Work on this update started in April 2012 with the development of an extended questionnaire covering most of the issues addressed in the 2010 Handbook but putting more emphasis in particular on topical issues like the right of non-disclosure and anti money laundering, political developments like new approaches of “enhanced cooperation” between taxpayers, tax authorities and tax advisers and the relation between tax advisers and neighbouring professions like lawyers, accountants and auditors.

Input to the draft questionnaire has been provided by PAC members Hanna Filipczyk (Poland), Heather Brehcist and Terry Davies (both UK) and Moritz Alt (Germany).

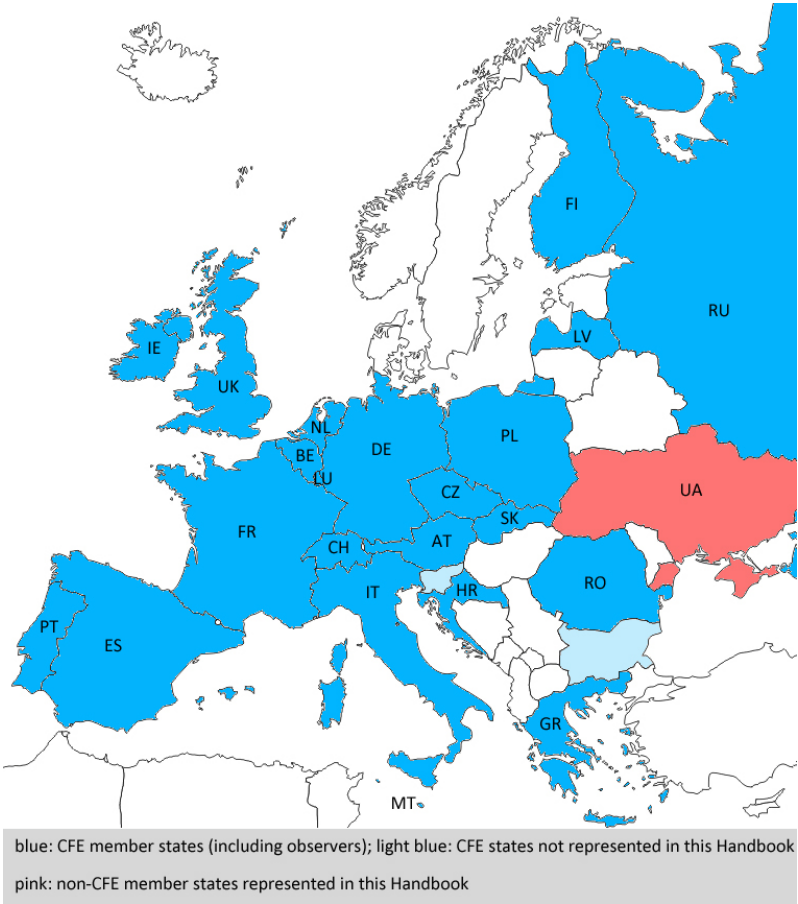
The questionnaire contained 71 questions plus related sub-questions in multiple choice format with space for additional explanations. It was e-mailed to the members of the CFE Professional Affairs Committee, the 32 CFE member and observer organisations and three tax professional bodies outside the CFE in May and June 2012. Responses from 23 countries were received by December 2012. In most countries, the answers were given by tax practitioners, in other countries by staff of the professional bodies. While some member organisations have formally approved their answers through their governing bodies, other responses may reflect individual views of the responding person. The responses were reviewed by the editor for consistency but generally not for accuracy of content. Where necessary, requests for clarification of single answers were sent to respondents. On the basis of responses and clarifications received and supplemented by publically available data, 23 Country Sheets (Part II of this Handbook) were drafted and sent to respondents in November and December 2012 for final review. Editorial deadline was 21 December 2012.

In parallel, Part I of this Handbook was drafted as a “horizontal” part, summarizing and analysing the information received topic by topic and setting out the EU law context and its impacts on regulation at national level. Answers have been grouped and presented in coloured charts to better display common elements and divergences.

This Handbook has been the first and is, to our knowledge, still the only comprehensive overview on how the tax profession is organised throughout

Europe. Other surveys dealing with similar topics have been conducted in the meantime, e.g. the European Commission’s *Performance Check – Business Services* (see Section 14.1.1 in Part I of this Handbook).

The data in this Handbook has been collected from scratch, not taking over information from the 2010 edition (except for Italy and Luxembourg where the 2010 information has been checked and updated and Malta where the 2010 information has been re-used). It has also been collected independently, not relying on data gathered in any surveys by other organisations.





It goes without saying that any attempt to visualise a highly complex matter such as different regulation in different countries will imply a certain degree of simplification. When interpreting the answers, an editor has a degree of latitude on how to classify them into easy-to-display and easy-to-compare categories. To this end, it is essential to have a background understanding of the situation of the profession in the countries surveyed. The work previously undertaken by CFE has been very valuable in creating awareness in this regard.

*Rudolf Reibel, LL.M., CFE Fiscal and Professional Affairs Officer*



## Member and Observer Organisations of the CFE

### Member Organisations

|           |   |
|-----------|---|
| <b>AT</b> | Kammer der Wirtschaftstreuhänder  |
| <b>BE</b> | Institut des Experts-Comptables et des Conseils Fiscaux de Belgique / Instituut van de Accountants en de Belastingconsulenten           |
| <b>CH</b> | Treuhand-Kammer / Chambre Fiduciaire  |
| <b>CZ</b> | Komora Daňových Poradců ČR  |
| <b>DE</b> | Bundessteuerberaterkammer<br>Bundesverband der Steuerberater e.V.<br>Deutscher Steuerberaterverband e.V.                                |
| <b>ES</b> | Asociación Española de Asesores Fiscales<br>Registro de Economistas de Asesores Fiscales  |
| <b>FI</b> | Suomen verokonsulttien Yhdistys Ry.<br>Suomen Veroasiantuntijat ry  |
| <b>FR</b> | Institut des Avocats Conseils Fiscaux<br>Union Professionnelle des Sociétés d'Avocats<br>Association des Avocats Conseils d'Entreprises |
| <b>GR</b> | P.O.F.E.E. The Hellenic Federation of Self-employed Tax Consultants   |
| <b>IE</b> | The Irish Taxation Institute  |
| <b>IT</b> | Associazione Nazionale Tributaristi Italiani  |
| <b>LU</b> | Ordre des Experts-Comptables  |
| <b>LV</b> | Latvijas Nodokļu Konsultantu Asociācija   |
| <b>MT</b> | Malta Institute of Taxation   |
| <b>NL</b> | De Nederlandse Orde van Belastingadviseurs<br>Register Belastingadviseurs   |
| <b>PT</b> | Associação Portuguesa de Consultores Fiscais  |
| <b>PL</b> | Krajowa Izba Doradców Podatkowych   |
| <b>RO</b> | Camera Consultantilor Fiscali   |
| <b>RU</b> | Palata Nalogovykh Konsultantov  |
| <b>SL</b> | Zbornica Davcnih Svetovalcev Slovenije  |
| <b>SK</b> | Slovenská komora danových poradcov  |
| <b>UK</b> | The Chartered Institute of Taxation Institute of Chartered Accountants in England and Wales, Tax Faculty                                |

### Observers

|           |                                   |
|-----------|-----------------------------------|
| <b>BG</b> | Bulgarian Chamber of Tax Advisors |
| <b>HR</b> | Udruga Poreznih Strucnjaka        |



## Delegates of the CFE Professional Affairs Committee of the CFE (as of 1st January 2013)

**Chairman** – Dick Barmentlo

Delegates

|                   |   |
|-------------------|---|
| <b>AT</b>         | Friedrich Rödler                          |
| <b>BE</b>         | Christine Cloquet<br>Philippe Vanclooster |
| <b>CH</b>         | Walo Stählin                              |
| <b>CZ</b>         | Radek Neuzil<br>Vladimir Sefl             |
| <b>DE (BStBK)</b> | Herbert Becherer<br>Moritz Alt            |
| <b>DE (DStV)</b>  | Axel Pestke                               |
| <b>ES (REAF)</b>  | Leopoldo Pons                             |
| <b>ES (AEDAF)</b> | Andrés Diaz                               |
| <b>FR (UPSA)</b>  | Yves de Sevin                             |
| <b>FR(IACF)</b>   | Jean-Charles Flatres                      |
| <b>FR (ACE)</b>   | Jean-Yves Mercier<br>Philippe Rochmann    |
| <b>GR</b>         | Vasilios Kampanis<br>Theo Vassilopoulos   |
| <b>HR</b>         | Dunja Hitrec                              |
| <b>IT</b>         | Ricardo Bordoli<br>Luciano Olivieri       |
| <b>IE</b>         | Cora O'Brien                              |
| <b>LU</b>         | John Hames                                |
| <b>LV</b>         | Ilze Birzniece                            |
| <b>MT</b>         | Damien Fiott<br>Jonathan Abela            |
| <b>NL (NOB)</b>   | Wim Gohres                                |
| <b>NL (RB)</b>    | Sylvester Schenk<br>Peter van den Berg    |
| <b>RO</b>         | Ionut Stefan<br>Ionelia Visan             |
| <b>RU</b>         | Mikhail I. Milovidov                      |
| <b>SK</b>         | Branislav Kovác<br>Lubomir Alezar         |
| <b>SI</b>         | Darko Koncan                              |

**UK (CIOT)**            John Roberts  
                                 Heather Brehcist  
                                 Terry Davies

## Table of Contents

|  |      |
|--|------|
| <b>Foreword</b>  | v    |
| <b>From the idea to the Handbook: The methodology of the project</b>                               | vii  |
| <b>Member and Observer Organisations of the CFE</b>  | xi   |
| <b>Delegates of the CFE Professional Affairs Committee of the CFE<br/>(as of 1st January 2013)</b> | xiii |

### PART I THE TAX PROFESSION IN EUROPE

|   |    |
|---|----|
| <b>1. Picture of the profession in Europe</b>                 | 1  |
| <b>2. The EU law context</b>                                  | 7  |
| <b>3. Qualification</b>                                       | 15 |
| <b>4. The activities of tax advisers</b>                      | 19 |
| <b>5. Professional conduct</b>                                | 25 |
| <b>6. Protection and disclosure of client information</b>     | 29 |
| <b>7. Professional indemnity insurance</b>                    | 35 |
| <b>8. Advertising and pricing</b>                             | 37 |
| <b>9. Contractual and consumer issues</b>                     | 41 |
| <b>10. The firm of the tax adviser</b>                        | 47 |
| <b>11. Cross-border mobility, general aspects</b>             | 51 |
| <b>12. Temporary and occasional cross-border mobility</b>     | 57 |
| <b>13. Permanent activity in another country</b>              | 65 |
| <b>14. Recent developments in professional affairs policy</b> | 73 |
| <b>15. Useful weblinks and case law</b>                       | 81 |

**PART II  
COUNTRY SHEETS**

|                       |     |
|-----------------------|-----|
| <b>Austria</b>        | 91  |
| <b>Belgium</b>        | 101 |
| <b>Croatia</b>        | 113 |
| <b>Czech Republic</b> | 121 |
| <b>Finland</b>        | 131 |
| <b>France</b>         | 139 |
| <b>Germany</b>        | 151 |
| <b>Greece</b>         | 165 |
| <b>Ireland</b>        | 173 |
| <b>Italy</b>          | 185 |
| <b>Latvia</b>         | 191 |
| <b>Luxembourg</b>     | 199 |
| <b>Malta</b>          | 207 |
| <b>Netherlands</b>    | 213 |
| <b>Poland</b>         | 225 |
| <b>Portugal</b>       | 237 |
| <b>Romania</b>        | 247 |
| <b>Russia</b>         | 257 |
| <b>Slovakia</b>       | 263 |
| <b>Spain</b>          | 273 |
| <b>Switzerland</b>    | 281 |
| <b>Ukraine</b>        | 293 |
| <b>United Kingdom</b> | 299 |
| <b>Glossary</b>       | 311 |



Part I

The tax profession in Europe

*by Rudolf Reibel, LL.M.*



# Chapter 1

## Picture of the profession in Europe

About 180,000 tax professionals in Europe are member of a CFE member organisation. As there is no EU legislation providing for harmonization<sup>1</sup>, the tax profession is diverse in form and density of regulation, professional activities and competences.

### 1.1 Defining “tax adviser”

#### 1.1.1 Tax advice

A tax adviser in the understanding of CFE is an individual who is entitled under the law of his country to carry out, as his main activity, the full range of tax advisory activities for his clients, both businesses and individuals. These include in particular the rendering of advice in tax matters (e.g. tax planning), the filing of tax returns and other compliance obligations and the representation of the client before the tax authorities (e.g. in the course of a tax audit or an appeal procedure) and in some countries legal representation in tax courts or tribunals.

In some countries where there is no distinct profession of tax adviser, this book refers to members of those professions which may carry out the above activities and who specialise in tax when using the term “tax adviser”. These can be lawyers (as in France) or accountants (as in Portugal).

#### 1.1.2 The concept of liberal profession

The idea of liberal professions is widely spread across Europe. *Liberal* is not to be mistaken for unregulated but refers to a certain degree of professional freedom from state interference which is considered essential for the exercise of the activity in the interest of the client. This might to some extent be opposed to the interest of the state (e.g. it is recognized that a doctor shall prescribe the medical treatment that is best for the patient even if the health insurance fund would have an interest in a cheaper treatment; a lawyer shall

---

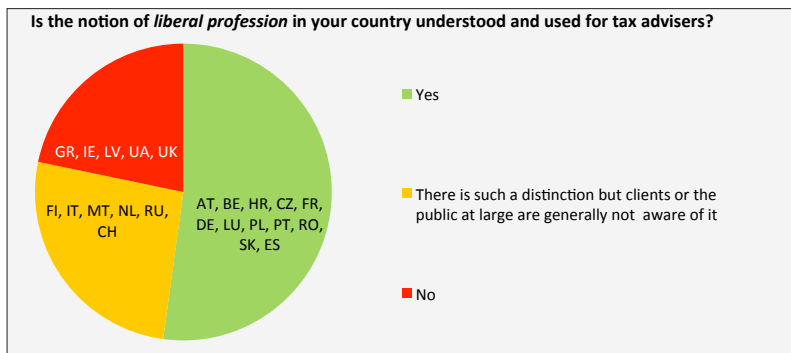
1. Indeed the only piece of EU legislation mentioning specifically tax advisers is the Anti Money Laundering Directive 2005/60/EC, but tax advisers are regularly referred to as a distinct profession in communications of the European Commission.

## Part I – The Tax Profession in Europe

---

ensure that the procedural rights of the suspected person are respected even though the police may have an interest in keeping him in custody).

Article 57 lit.d. of the Treaty on the Functioning of the EU expressly mentions the liberal professions (while the English version uses only the term *professions*, most language versions refer to *free* or *liberal professions*) as a group of professions distinct from commercial, industrial and craftsmen's activities.



European legislation recognises the concept of liberal professions by referring to them (Recital 43 of the Professional Qualifications Directive 2005/36/EC) as

*“those [professions] practised on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public. The exercise of the profession might be subject in the Member States, in conformity with the Treaty, to specific legal constraints based on national legislation and on the statutory provisions laid down autonomously, within that framework, by the respective professional representative bodies, safeguarding and developing their professionalism and quality of service and the confidentiality of relations with the client”*

but does not use *liberal profession* as a technical term.

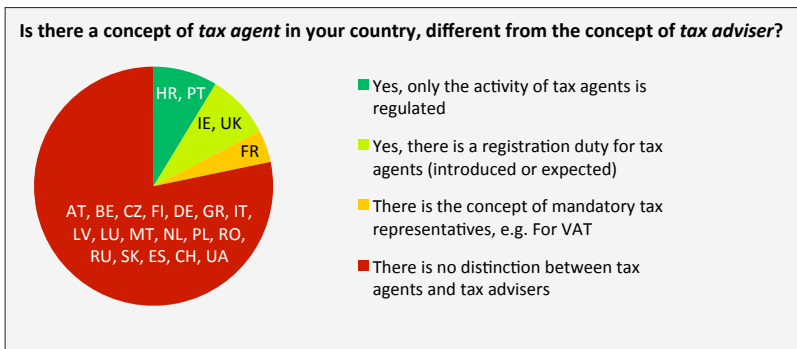
12 of 23 responding countries (AT, BE, HR, CZ, FR, DE, LU, PL, PT, RO, SK, ES) have answered that the concept of liberal professions (*public trust professions* in Poland) is commonly known and understood by clients and the general public. 6 countries (FI, IT, MT, NL, RU, CH) replied that such a concept exists but clients or the general public may not be aware of it. In

5 countries (GR, IE, LV, UA, UK), the concept of tax advisers as a liberal profession is unknown.

As liberal professions are generally highly qualified professions, liberal and regulated professions often coincide but they are not necessarily the same (see Section 2.2.1 for the concept of regulated professions).

### 1.1.3 The concept of tax agents

Different from the concept of “tax adviser” applied in this Handbook (see 1.1.1), some countries distinguish between the concepts of tax advisers and tax agents, tax agents being allowed to represent a client or to file a tax return while tax advisers would only give advice and not interact with the authorities. In practice, most tax advisers would also be tax agents but tax agents could also be e.g. friends and family of a taxpayer. In Croatia and Portugal, only tax agents have a regulated qualification. France has the concept of mandatory tax representatives for filing specific tax returns like VAT (see Country Sheet France). Ireland has a registration duty for tax agents.



### 1.1.4 Overlaps with other professions

Tax advisers are generally not restricted from holding more than one professional qualification (however, there is a rule in Belgium whereby tax advisers may not be lawyers, auditors or bookkeepers). There are significant overlaps especially where tax advisers are not a regulated profession of their own and where one qualification is usually obtained “on top” of another (Example: many UK professionals have become accountants before qualifying as tax advisers; many German auditors have first become tax advisers. For profes-

sional bodies, being aware of such overlaps is important to understand the interest of their individual members.



## 1.2 Different forms of regulation

Access to tax advisory activities has been regulated in very different ways across Europe. While some countries have enacted laws which reserve access to these activities to holders of certain professional qualifications and which regulate professional conduct, others have opted to leave regulation of qualifications and conduct to professional associations with voluntary membership. In a third group of countries, no regulation of tax advisers exists but tax advisers are generally members of another regulated profession like lawyers or accountants. Indeed Finland and Russia are the only countries where all three professions of tax advisers, accountants and lawyers (in taxation) are not regulated.

Hence, depending on the country where a tax adviser is from, the title *tax adviser* may refer to a particular qualification or may be purely functional, describing one of the activities carried out by a person who is member of another profession.

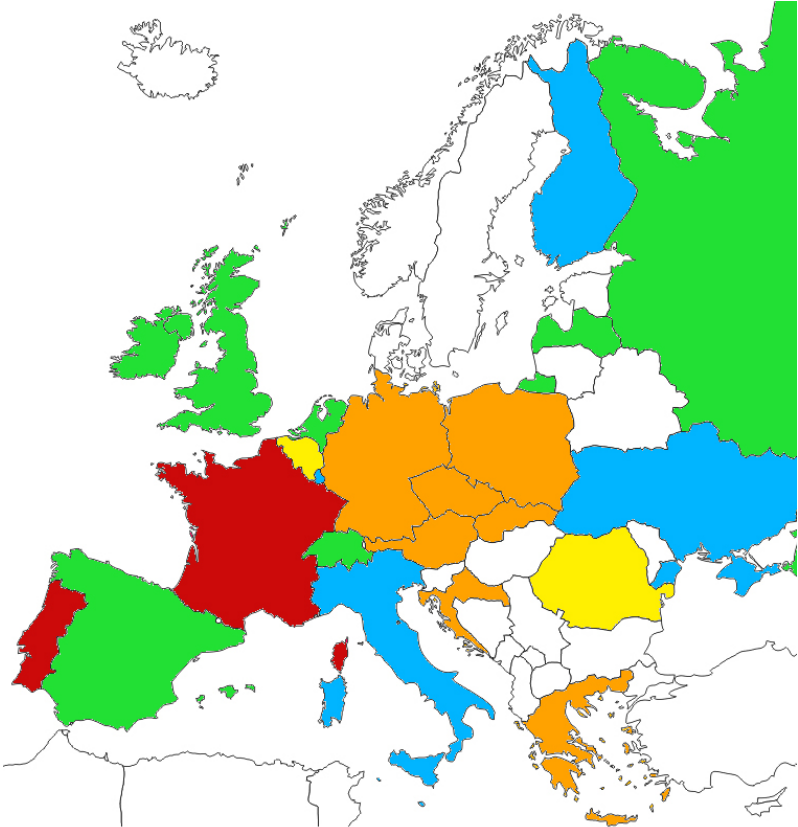
The regulation models can be categorised as follows:

- **Regulation as lawyers or accountants** (France, Portugal): Tax advice is regulated as a part of the legal or accounting activity. Tax professionals are mandatory members of professional chambers.
- **Tax profession is regulated on its own** (Austria, Croatia, Czech Republic, Germany, Greece, Poland, Slovakia): The rendering of tax advice requires a particular qualification. Tax advisers are mandatory members of professional chambers.
- **Only title is regulated** (Belgium, Romania): The use of the title tax adviser requires a particular qualification and membership in a professional body but the activity of giving tax advice is not regulated.

- **Voluntary acceptance of qualification requirements** (Ireland, Latvia, Netherlands, Russia, Spain, Switzerland, UK): There is no particular qualification required by law for giving tax advice or using the title tax adviser. Membership of professional associations is voluntary.
- **No specific qualification requirements** (Finland, Italy, Luxembourg, Malta, Ukraine): no particular qualification is required for giving tax advice or using the title tax adviser. Professional associations with voluntary membership do not impose qualification requirements. Persons who give tax advice are usually members of another regulated profession such as accountants or lawyers.

A higher degree of regulation often coincides with wider competences of tax advisers, see Section 4.1.

Part I – The Tax Profession in Europe



red: tax advisers regulated as lawyers or accountants; orange: tax profession is regulated of its own;  
yellow: only title is regulated; green: voluntary acceptance of qualification requirements;  
blue: no specific qualification requirements; tax advisers often members of other regulated professions



## Chapter 2

### The EU law context

#### 2.1 Treaty on the Functioning of the EU

The fundamental freedoms of the internal market concern goods, services, workers, establishment and capital. The latter four may become relevant in case of tax advice. Although the PQ Directive and the Services Directive deal more specifically with these freedoms, the TFEU continues to apply and may provide a fallback solution where the Directives do not apply.

##### 2.1.1 Freedom to provide services

Art.56 ff TFEU applies to both self-employed persons and companies (Art. 54, 62 TFEU) that intend to provide services in another EU member state on a temporary basis (see 11.2 for the distinction of temporary services and permanent establishment). It also applies to employees who are posted (seconded) by their company to carry out work in another member state on a temporary basis. In this case, the *Posting of Workers Directive 96/71/EC* contains specific rules.

Specific provisions on temporary services can be found in Art.16 ff Services Directive and Art. 5 ff PQ Directive.

The wording of Art.57 TFEU suggests that the freedom to provide services is a mere non-discrimination rule. It is however established case law of the ECJ that Art.57 TFEU contains a general rule that restrictions to the free movement of services, even when not discriminatory, must be justified by overriding reasons of the public interest and be proportionate.

##### 2.1.2 Freedom of establishment

Art.49 ff TFEU apply to self-employed persons and companies that intend to operate permanently in another EU member state (see 11.2 for the distinction of temporary services and permanent establishment). Specific provisions on establishment can be found in Art. 9 ff Services Directive and Art. 10 ff PQ Directive.

### 2.1.3 Free movement of capital

Art. 63 ff TFEU become relevant where capital is invested in a tax adviser company in another member state without obtaining control. If control is gained, the freedom of establishment provisions apply.

### 2.1.4 Free movement of workers

Art.45 ff TFEU apply to *employees* that intend to permanently move to another EU member state, in other words, that intend to enter the labour market of another member state to take up work immediately or to look for a position. It does not apply to posted workers (because in that case, it is the business which exercises its freedom to provide services through its employees).

The PQ Directive does not distinguish between self-employed and employees. The Services Directive applies to self-employed only.

### 2.1.5 Antitrust law

Antitrust rules (Art. 101 TFEU) apply where associations of undertakings take decisions that may affect trade between member states and restrict competition within the internal market. Those agreements are prohibited and null and void if they cannot be justified.

The ECJ has ruled that professional associations and chambers are associations of undertakings (C-51/96 and 191/97, *Deliege* and C-309/99, *Wouters*) and consequently, antitrust law may apply to professional regulations adopted by them.

Antitrust law does not apply to rules adopted by the state (in that case, the TFEU fundamental freedoms apply). Where both professional bodies and the state are involved in a decision, the question as to how a rule or a decision is adopted and whether the final decision remains in the hand of the state is crucial.

Antitrust rules have become relevant in the following cases concerning professional law:

- (1) Restrictions from offering particular services: In the *Wouters* case (C-309/99), the ECJ decided that rules of a bar association restricting lawyers from cooperating with other professions could be justified to ensure the orderly exercise of the profession.
- (2) Professional entry exams: Where members of a profession are part of an examination board that decides on the admission of a candidate to the profession, the examination board members and the candidate are potential future competitors. In the case *Mauri* (C-250/03), the ECJ decided that where two examination board members were members of the same bar that the successful candidate would belong to while the other two committee members were judges, where all committee members were appointed by the state, where the state could control the examination and intervene if necessary and the decision could be challenged before a court, the final decision had still been in the hands of the Italian state so antitrust rules did not apply.
- (3) Price regulation: In the case *Arduino* (C-35/99), the ECJ decided that fee regulations are not the decision of associations of undertakings where they need to be approved by a minister who may demand changes to the regulations and where exceptions from the regulations can be made where justified.

The state may not surrender its responsibility to private operators. Where the state creates or favours a situation in which private operators violate Art.101 TFEU, the state violates EU law too, see Art.4 (3) subpara.2 EU Treaty (case C-198/01, *CIF-Consortio Industrie Fiammiferi*).

## 2.2 Secondary EU law

Apart from the Treaty on the Functioning of the EU, a number of European directives have an impact on the tax profession as they set out the above-mentioned freedoms of the TFEU in a more detailed way.

### 2.2.1 The Professional Qualifications Directive

The Professional Qualifications (PQ) Directive 2005/36/EC applies where

- (1) *An individual* (2) *with a professional qualification* (3) *from an EEA country or Switzerland* (4) *seeks to exercise a professional activity* (5) *in another EEA country or Switzerland where* (6) *the same profession* (7) *is regulated.*

### 2.2.1.1 “An individual...”

As the Directive concerns qualification, it can only apply to individuals and not to corporates.

The Directive applies only to EEA and Swiss citizens. This does not prevent a member state from granting an equally favourable treatment to other nationals.

Although they may have no EU nationality, the following persons benefit from the Directive, provided that they hold a qualification obtained or recognised in an EU country:

- Family members of EU citizens (Directive 2004/38/EC);
- Refugees from non-EU-countries in the country where they have refugee status (Directive 2004/83/EC);
- Long-term residents from non-EU countries only as regards permanent establishment but not concerning temporary cross-border services (Directive 2003/109/EC) and not if they wish to practice in the UK, Ireland or Denmark;
- holders of EU “blue cards” (Directive 2009/50/EC), which can be certain holders of higher education diploma with a job offer (only activities as employees); this does not apply to Denmark, Ireland and the UK.

### 2.2.1.2 “...with a professional qualification...”

For some professions (a number of medical professions and architects), the Directive has established a special regime, granting automatic recognition, others have been dealt with by specific EU legislation which applies instead of the PQ Directive (like the Directive 2006/43/EC on statutory audit) or which is complemented by the PQ Directive (like the Directives 1977/249/EEC and 1998/5/EC for lawyers). Tax advisers are within the *general* system, meaning professions which are not specifically regulated.

The Directive applies only to fully qualified professionals. For trainees, Art.45, 49 TFEU apply directly, meaning, according to the ECJ, that knowledge, experience and competence of the applicant have to be taken into account by the competent authority without requiring any particular formal qualification, see case C-313/01, *Morgenbesser*.

The European Commission has proposed to extend the scope of the PQ Directive to trainees. The amendment proposal is still in the legislative procedure, see 14.1.3.

The Directive concerns professional qualification and not authorisation to practice. Where no (additional) professional qualification has been obtained in a member state different from the one where recognition is sought, the Directive does not apply (see the 2011 ECJ decision in case C-118/09, *Robert Koller*).

*Example: A German citizen who studies economics in Germany but fails the German Steuerberater exam, then establishes himself in the Netherlands as a belastingadviseur (for which no particular qualification is required) and comes back to practice in Germany cannot rely on the Directive unless he has obtained an additional professional qualification in the Netherlands.*

#### 2.2.1.3 “...from an EEA country or Switzerland...”

These can be qualifications either obtained in an EEA/CH country or obtained in another country and having been recognised by an EEA/CH country. The Directive does not apply to diplomas obtained in other countries when recognition by an EEA/CH country is sought for the first time. Recognition is then a matter of national law. Once an EEA/CH country has recognised a non-EEA/CH qualification, the Directive applies. If there should be doubt in which country a particular qualification has been obtained, see questions 7 and 8 of the “66 Questions guidebook”, see link in Chapter 15.

#### 2.2.1.4 “...seeks to exercise a professional activity in another EEA country or in Switzerland”

The Directive applies irrespective of the duration of the professional activity.

The Directive 2005/36/EC applies in all EEA countries (EU plus the EFTA countries Norway, Iceland and Liechtenstein). For Switzerland, only the rules of the Directive on permanent activity (see Chapter 13) apply. As the revision of the PQ Directive which is currently underway is a piece of EU legislation, it will not apply in the EFTA countries and Switzerland before an agreement between these countries and the EU is concluded. Until then, current PQ Directive will continue to apply.

The Directive does not apply where a tax adviser gives advice without entering the territory of another member state, e.g. by giving tax advice by letter, on the telephone or by internet (see Section 12.1)

### 2.2.1.5 “...where the same profession...”

The Directive applies only if the profession that the person wishes to practice in another member state is the same profession for which he is qualified in his member state. This is the case if the activities covered are comparable (Art.4 (2)).

*As in France, tax advice unrelated to accountancy may only be given by lawyers and the activities that lawyers and tax advisers may exercise differ significantly, a Portuguese Técnico Oficial de Contas could not benefit from the Directive to give tax advice as a principal activity in France. However, he should be able to benefit from the Directive if he intends to provide accounting services with a tax element as these may be provided by French accountants and Portuguese T.O.C. may exercise essentially the same activities as French accountants.*

### 2.2.1.6 “...is regulated.”

A profession is regulated in the sense of the PQ Directive where persons that exercise a particular activity or one of its modes of pursuit (e.g. the use of the professional title) are required to have a specific professional qualification. Starting from the definition followed in this book that tax advice (at least) encompasses also the filing of tax returns and other compliance obligations and the representation before fiscal authorities, one would consider that the tax profession is also regulated in a country where one of these activities is subject to qualification requirements.

A profession is *treated as regulated* where the profession is exercised by members of the organisations listed in Annex I (Art.3 (2)). This is, for the activity of tax advice, the Irish Taxation Institute and the Chartered Institute of Taxation (UK). This obliges the listed professional bodies to apply the rules of the PQ Directive when a professional from another EEA/CH country applies for membership.

### 2.2.2 The Services Directive

The Services Directive (2006/123/EC) applies in all EU countries, dealing with cross-border as well as purely domestic situations. It seeks to facilitate both temporary cross-border services and establishment of service providers in other member states by removing legislative and administrative barriers. It also contains rules to increase the confidence of services recipients in service providers from other member states, e.g. through information duties or rights of service recipients. Member states are required to establish close and effective administrative cooperation and to set up “points of single contact” (see 11.3).

The Services Directive applies to tax advisers, irrespective of whether the profession is regulated in a given country or not. The terms used in the Directive are service provider (the tax adviser) and recipient (the client). Recipients may be consumers or enterprises. The service providers may be corporates or individuals. Unlike the PQ Directive, the Services Directive is only relevant for companies and self-employed.

### 2.2.3 The Lawyers Directives

In France, providing the full range of tax advisory services is reserved to lawyers. There are two EU Directives covering temporary services (1977/249/EEC) and establishment (1998/5/EC) of lawyers. For permanent activity of lawyers from other member states in France, the PQ Directive applies next to the Lawyers Directives, creating an additional form of integration into the legal profession to the options described in Art.4 and 10 of the Directive 1998/5/EC (see Recital 42 PQ Directive). The Services Directive continues to apply in areas not regulated by the Lawyers Directives.

### 2.2.4 The Anti Money Laundering Directive

Directive 2005/60/EC explicitly names tax advisers as a profession obliged to assist in the fight against money laundering and terrorist financing. The Directive contains a number of obligations for tax advisers, in particular to identify a client and to report indications of money laundering and terrorist financing. The role of tax advisers in the fight against money laundering is dealt with in Section 6.4. Section 14.4 deals with the planned revision of the Directive.

### 2.2.5 The Consumer Rights Directive

Directive 2011/83/EU comes into play where tax advisers have consumer clients. The specific information duties and the consumer's right of withdrawal will be dealt with in Chapter 9.

### 2.2.6 The e-Commerce Directive

Directive 2000/31/EC applies to cross-border tax advisory services where they can be defined as *information society services* in the meaning of Art.3 of this Directive; see Section 12.1.2.



## Chapter 3

### Qualification

#### 3.1 Qualification requirements

##### 3.1.1 Qualification required to become a tax adviser

In 20 of 23 countries surveyed, qualification requirements for tax advisers exist (FI, IT and LU being the exception), although, as set out above, the tax adviser qualification is regulated by law only in 11 of them. In the remaining countries, professional bodies have introduced qualification requirements for their members. Among the qualification requirements, a number of common elements can be observed (for the sake of comparability, for IT and LU, the requirements for accountants have been looked at, as tax advisers are often accountants in these countries):

1. All 22 qualifications require three years or more of academic training in economics or law, most of these referring to university training or equivalent;
2. Practical training is required in 19 countries, the duration ranging from 1.5 to 5 years. Most common is a 3-year period;
3. The training is usually completed by a professional exam (19/22 countries);
4. After obtaining the license to practice or membership of a professional body, there is an obligation to engage in continuing professional development (CPD) in 17/20 countries.
5. In all countries but Russia where the entry exam has to be repeated every two years, the qualification, once obtained, is normally valid lifelong, provided that professional duties are observed of which the obligation to engage in CPD is usually one.

##### 3.1.2 Continuing professional development

In of 13.5/20 countries, detailed rules on the amount and/or kind of CPD to be undertaken exist (AT, BE, FR, IE, LV, NL (RB members), PL, PT, RO, RU, SK, CH, UA, UK). 2.5 countries (DE, LU, NL (NOB members)) have a general obligation to engage in CPD but leave the amount and form of CPD to the professional responsibility of the tax adviser. 4 countries (CZ, HR,

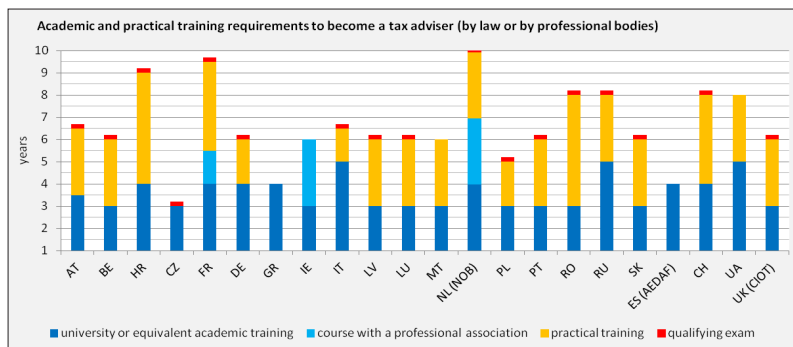
GR, ES) do not impose CPD. In the Czech Republic, there are CPD rules only for tax advisers who opt to take part in a CPD scheme.

### 3.2 Qualification requirements and EU law

The PQ Directive refrains from harmonising the tax adviser qualification and most other professional qualifications. As a rule, for persons established in its territory, it is up to a member state to reserve the activity of tax advice to persons that meet certain qualification requirements (Recital 11):

*“In the case of the professions covered by the general system for the recognition of qualifications, hereinafter referred to as ‘the general system’, Member States should retain the right to lay down the minimum level of qualification required to ensure the quality of the services provided on their territory. [...]”*

This is confirmed by Art.17 (6) Services Directive: Temporary cross-border service providers are bound by “requirements in the Member State where the service is provided which reserve an activity to a particular profession”.



However, qualification requirements must be compatible with EU law. As they restrict the freedom of establishment (or, for employee tax advisers, the free movement of workers), they must serve an overriding reason of public interest, they may not discriminate against professionals from other member states and they must be proportionate, meaning they must be suitable and not go beyond what is necessary to achieve their objective. The protection of clients from financial losses as a result of erroneous advice is a reason of public interest. As regards proportionality, the ECJ has decided that it was not proportionate to reserve certain purely administrative activities to

“Tax Advice Centres” in Italy (C-451/03, *Servizi Ausiliari Dottori Commercialisti*). However, the fact that the qualification requirements in one member state may be stricter than in another member state does not allow the conclusion that the stricter qualification requirements are disproportionate (C-3/95, *Reisebüro Broede*).



## Chapter 4

### The activities of tax advisers

The common ground of the professionals in the CFE member organisations is that they give independent tax advice as defined in Section 1.1.1.

#### 4.1 Representation before court

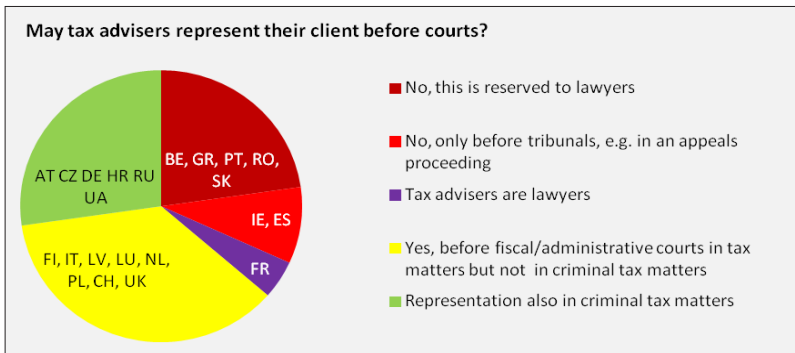
In 7/22 countries (BE, ES, GR, IE, PT, RO, SK), tax advisers may not represent their clients before tax (or, where applicable, administrative) courts as this can only be done by lawyers; in Ireland and Spain however tax advisers may represent clients before tribunals in an appeals procedure.

In 8 countries (FI, IT, LV, LU, NL, PL, CH, UK), tax advisers may represent their clients before court in fiscal matters but not in criminal tax matters (in Luxembourg, this refers to representation by accountants before the court in first instance).

In 6 countries (AT, CZ, DE, HR, RU, UA), tax advisers may also represent their clients in criminal tax matters (although that does not take place in practice in CZ and HR).

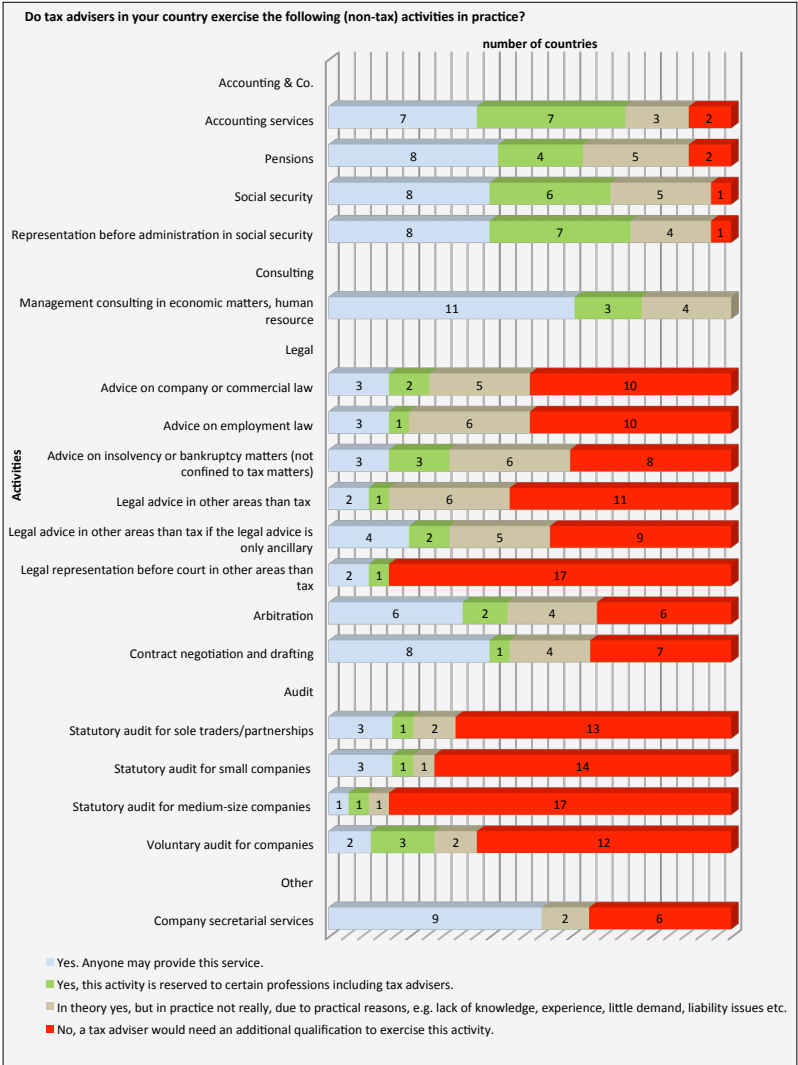
In 8 countries (AT, DE, FI, LV, NL, PL, RU, UA), tax advisers may represent their clients before the Supreme Court in tax matters while Austria and Finland point out that this applies only to the Supreme Administrative Court.

In France, tax advisers are lawyers.



### 4.2 Other services frequently provided

Whether or not tax adviser is a separate profession in a country, few tax advisers practice exclusively in tax. As tax is often related to other areas, it is common that tax advisers provide services in these fields as well.



The non-tax services most frequently provided by tax advisers are management consulting in economic matters or human resource (in 14/18 countries) social security and accounting (14/20 countries each). Fourth is advice on pensions (12/21 countries).

By contrast, only in a few countries, tax advisers are allowed to audit annual accounts, even though EU law currently would not prevent tax advisers from providing audit services to sole traders, full liability partnerships and small companies. According to the Audit Directive revision proposed by the European Commission in November 2011 (Section 14.4), these audits and even voluntary audits for which there is no obligation whatsoever would have to be reserved to auditors.

### 4.3 The concept of compatible activities

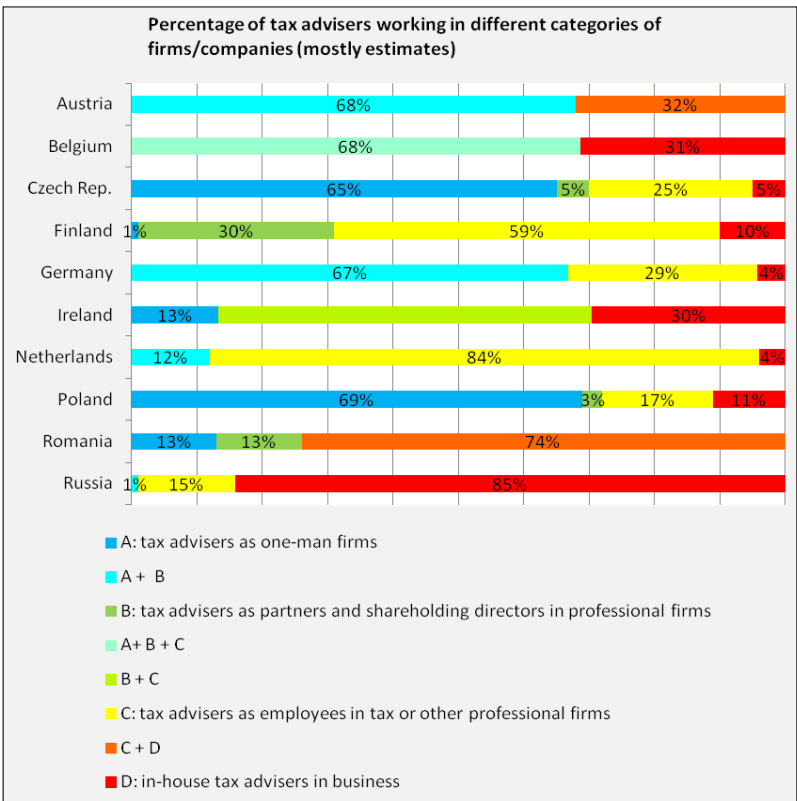
Some countries or CFE member organisations have rules on activities considered incompatible with the activity of giving tax advice, to ensure that professional duties are not compromised due to conflicting obligations or interests. In most countries, these rules are of a general nature, requiring the professional to decide responsibly in the individual case.

In some countries that know the concept of *liberal professions* (Section 1.1.2), “commercial activities” are seen as potentially harmful to the special responsibility of the liberal professional for the public interest as they consider that commercial activities are characterised by stronger profit seeking. These countries have restricted the range of services that tax advisers may offer: Belgian tax advisers and French tax lawyers may not engage in commercial activities but only in activities considered compatible like teaching and consulting. Belgian tax advisers are also prohibited from being lawyers, auditors or bookkeepers. In Germany, commercial activities are prohibited but tax adviser chambers will grant exemptions in individual cases if a violation of professional duties is not anticipated. All other 20/23 countries generally allow tax advisers to engage in commercial activities. In Austria, tax advisers must only refrain from any activity on a commission basis. In Austria and Poland, tax advisers must notify collateral activities to the professional Chamber.

## 4.4 Tax advisers as employees

### 4.4.1 Self-employed and employed tax advisers

In some countries, tax advisers are typically self-employed while in others, most professionals are employees in tax, law, audit or accounting firms or even in-house tax advisers in other businesses. The numbers in the chart below can only provide a general idea, as some organisations do not have statistics on employment of their members and in countries that have statistics, the categories of data collected differ.





#### 4.4.2 In-house tax advisers

In 18 jurisdictions, tax advisers can work as in-house tax advisers employed by any business, provided that this does not affect compliance with professional obligations (AT, BE, HR, DE, FI, IE, IT, LV, MT, NL, PT, RO, RU, SK, ES, CH, UA and UK). In Germany, individual authorisation by the tax adviser chamber is needed and will be given if certain arrangements are in place to ensure that the obligations from the employment contract do not hinder the actual exercise of the tax adviser profession and that the tax adviser remains fully available for his/her clients and professional confidentiality is guaranteed. In the Czech Republic, tax advisers may be employed by any other business but that activity would not be considered tax advice. Greece only considers self-employed to be tax advisers. France does not allow in-house (tax) lawyers; the same applies for accountants in Luxembourg and tax advisers in Poland who would in that case have to suspend their professional status.

#### 4.4.3 Tax advisers as public servants or employees of the state

Clients expect tax advisers to represent their interest which can be contrary to the interest of the tax revenue authorities. This is why in many countries, practicing as tax adviser and working for the state at the same time is perceived as a situation likely to cause a conflict of interest. Indeed many countries or CFE member organisations do not allow tax advisers to be public servants or to be employed by the state at the same time. This is the case in 15/22 countries (AT, CZ, FR, DE, GR, IE, IT, LV, LU, MT, NL, PL, RO, SK, ES) while 6/22 countries have no restrictions in this regard (FI, PT, RU, CH, UA, UK).

In Belgium, tax advisers may work for the state but not in fiscal administration; Ireland points out that public servants may have a tax adviser qualification but would not give tax advice to the public.



## Chapter 5

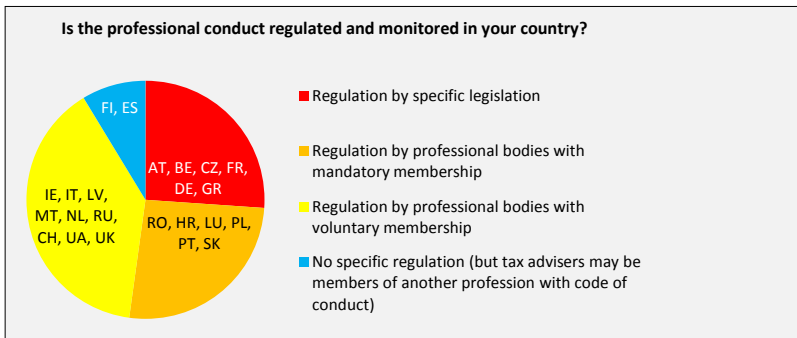
### Professional conduct

Professional conduct of tax advisers is always subject to rules be they general provisions of the law, specific legislation for the profession(s) or codes of conduct that voluntary members of professional associations have to accept.

#### 5.1 Regulation of professional conduct

Professional conduct means the professional behaviour of the tax adviser towards (potential, actual and former) clients, tax authorities, courts, colleagues and, as the case may be, other persons or the public in general. Rules on professional conduct shall ensure that the basic principles of the tax adviser profession as pronounced in the *CFE Guidelines* are respected: Independence, personal responsibility and liability, care and conscientiousness and confidentiality.

Where tax advice is regulated by law, the law often contains specific provisions on professional conduct. This is the case in 6 countries (AT, BE, CZ, FR, DE, GR). In 6 more countries (RO, HR, LU, PL, PT, SK), there is no specific legislation but by-laws adopted by professional bodies contain such rules to which to all tax professionals, due to mandatory membership in these bodies, have to adhere (in LU, this applies only to tax advisers who are experts-comptables). In 9 countries (IE, IT, LV, MT, NL, RU, CH, UA, UK), professional associations have introduced rules on professional conduct for their members. In Finland and Spain, there are no specific rules on conduct for tax advisers.



## 5.2 Sanctions

Observance of rules of professional conduct is best guaranteed if there is a deterrent in the form of sanctions. This paragraph deals solely with disciplinary sanctions not with criminal sanctions that exist in member states like the prohibition to practice a profession (e.g., in DE and NL) or with civil liability sanctions.

8 countries (CZ, DE, GR, AT, IE, PT, SK, UK) provide for monetary sanctions, the maximum sanctions ranging from € 3,300 (Slovakia) to 50,000 (Germany) per infraction. In 18 of 22 countries (AT, BE, HR, CZ, FR, DE, GR, IE, LV, MT, NL, PL, PT, RO, SK, CH, UA, UK), a professional can be excluded from the professional organisation which corresponds, in regulated countries, with the prohibition to provide tax services to clients or use the title tax adviser. But even in countries where tax advice requires no permission, the exclusion from their professional body may have severe consequences: It does not only constitute a loss of prestige but may result in the loss of certain competences, e.g., in Ireland, to represent clients before tribunals. In the Netherlands, members of NOB or RB may no longer collaborate with tax advisers excluded from their respective organisation.

Tax adviser bodies from IT, FI, RU and ES do not impose sanctions on their members but tax advisers may well be members of other professions whose bodies provide for sanctions.

## 5.3 Conflicts of interest

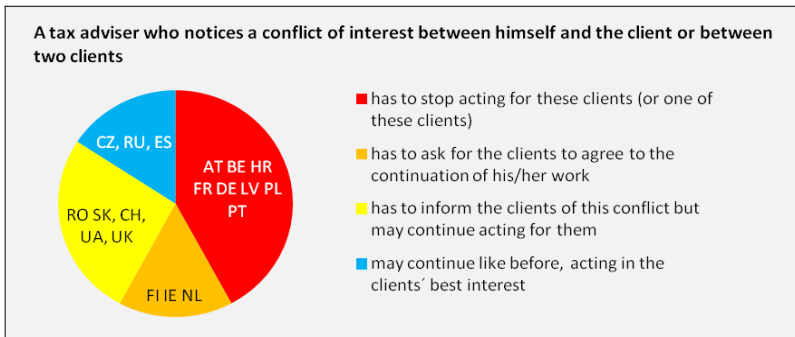
Conflicts of interest are a major risk to the independence of the tax adviser. Some countries have enacted rules that seek to avoid such situations at an early, abstract stage by preventing situations in which conflicts of interest might arise, e.g. by barring tax advisers from commercial activities to prevent them becoming their clients' competitors (Section 4.3) or by preventing non-professionals from owning shares in tax adviser companies to prevent any pressure on a tax adviser to give precedence to profit over the client's interest (Section 10.2).

Other countries have only regulated the situation where a tax adviser becomes aware of an actual conflict of interest. Such conflicts can take the form that the tax adviser finds that his client's interest would go against his own personal interest or that the interest of two or more clients may contravene one

another. There are divergences in the behaviour expected from a tax adviser who notices a conflict of interest:

8/19 countries (AT, BE, HR, FR, DE, LV, PL, PT) expect the tax adviser to cease to act for one or all of the parties involved. In the case of conflicting interests between several clients, Austria would allow the tax adviser to continue as a mediator and Germany would allow him/her to continue if the clients agree. Belgium stresses that it would depend on the nature of the conflict and the threat to the independence whether the tax adviser should merely inform the client or cease to act. France distinguishes between an actual and a potential conflict; in the latter case, it would be sufficient to ask for the clients' agreement.

3 countries (FI, IE, NL) require that the tax adviser obtains the approval of his client(s) to continue; 5 countries (RO, SK, CH, UA, UK) consider that informing the client(s) is sufficient; CIOT (UK) specifies that this applies only if the conflict is resolved or suitable safeguards are put in place. 3 countries (CZ, RU, ES) do not prescribe a particular behaviour of the tax adviser which does not dispense him/her from acting in the client's best interest.



## 5.4 Receipt of commissions

A conflict of interests arises where the tax adviser is promised an advantage from a third party for a particular advice given to the client, e.g. an insurance company promises the tax adviser a commission for selling an insurance product. A less stark example is the situation that a tax adviser advises a client to consult a fellow tax adviser with specialist knowledge in a particular area, e.g. investment in China. 10/20 countries (CZ, FI, GR, LV, RO, RU, SK, ES, CH, UA) would allow the tax adviser to obtain a commission from the fellow practitioner. CIOT (UK) obliges the tax adviser to disclose the

**Part I – The Tax Profession in Europe**

---

commission to the client. According to the Irish Institute, it would depend on the circumstances of the case if the receipt of the commission would be considered unprofessional conduct and therefore unacceptable. 8 countries (AT, BE, HR, FR, DE, NL, PL, PT) responded that the receipt of any such commission is prohibited by law or the rules of their professional body.



## Chapter 6

### Protection and disclosure of client information

Obtaining information about the financial and legal situation of the client is essential for giving tax advice. However, a client is only willing to provide such information to a tax adviser if the confidentiality of this information is protected. A client may have an interest in protecting confidential data from other private parties (e.g. competitors) but also from the state that should not obtain more information than needed for determining the fair tax burden.

For the purpose of this Handbook, the issue of protection and disclosure of client information will be looked at in the following aspects:

- protection of client data vis-à-vis private parties (herein referred to as client confidentiality)
- protection of client data vis-à-vis the state (herein referred to as right of non-disclosure)
- obligation to report tax avoidance schemes
- obligation to report indications of money laundering.

#### 6.1 Client confidentiality

Tax advisers are obliged to treat confidentially information received in the course of their engagement. This principle is contained in the *CFE Guidelines*. It is understood that this duty does not expire after the end of the engagement. As the client is the owner of the information, it is his decision whether to release the tax adviser from his obligation or not. An exception to this exists for Czech tax advisers who may be required to withhold the information despite the client's agreement, if this is in the client's interest.

In 11/23 countries, client confidentiality rules for tax advisers are contained in legislation (AT, BE, HR, CZ, FR, DE, IT, LV, MT, PL, SK). In 8/23 countries, violation of such duties can even be considered a criminal or administrative offence (AT, BE, FR, DE, LU, NL, PL, PT). In 3 countries (LU, PT, RO), there is no specific legislation but professional bodies with mandatory membership have adopted confidentiality rules (LU: for tax advisers who are accountants). In 6 countries, professional associations with voluntary membership have established such rules (FI, IE, NL, RU, CH, UK). In 3 countries (GR, ES, UA), there are no specific confidentiality rules in place; however, the client information may still be protected by general provisions

of the law or client confidentiality may be considered an implied term of the contract.

14 countries have confirmed that tax advisers may reveal confidential information to defend themselves in judicial proceedings (AT, BE, FR, DE, IE, LV, MT, NL, PT, RO, RU, SK, CH, UK) It is understood that this may only be a last resort.

### 6.2 Right of non-disclosure

The right not to disclose client information requested by the state is standard for the legal profession and therefore often referred to as (part of) *legal professional privilege*. In criminal proceedings, this principle is recognised as part of the right to a fair trial (Art. 6 of the European Convention on Human Rights) which includes the right of an individual to defend himself through seeking legal assistance. This can only be guaranteed if incriminating information held by a defendant does not have to be disclosed.

Consequently, in countries such as AT, CZ and DE, where tax advisers may represent their clients even before criminal courts, and in France, where tax advisers are lawyers, they enjoy by law a right of non-disclosure towards fiscal authorities, public prosecutors, tax courts and criminal courts. This right is equally strong in PL.

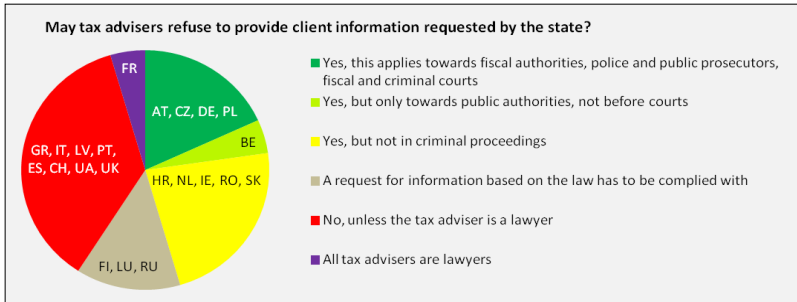
In 5/22 countries (HR, NL, IE, RO, SK), tax advisers have a right of non-disclosure (in NL: by case law, in the other four by legislation) but it is very limited or does not apply in criminal proceedings; thus, in these countries, clients will have to engage a lawyer when criminal proceedings are opened.

In 8/22 countries (GR, IT, LV, PT, ES, CH, UA, UK), a right of non-disclosure for tax advisers does not exist unless they are lawyers. In the UK, a case on legal privilege of accountants is currently pending before the Supreme Court (*Prudential* Case). A judgment is expected in early 2013. Professionals estimate that the Supreme Court will not overturn the decisions of the previous instances denying legal privilege for accountants.

In Belgium, there is a right of non-disclosure but it appears that it cannot be invoked in front of a court. Three countries (FI, LU, RU) responded that a request for information based on the law had to be complied with but it is not quite clear whether this refers only to exceptional cases like serious crimes or is more commonplace.



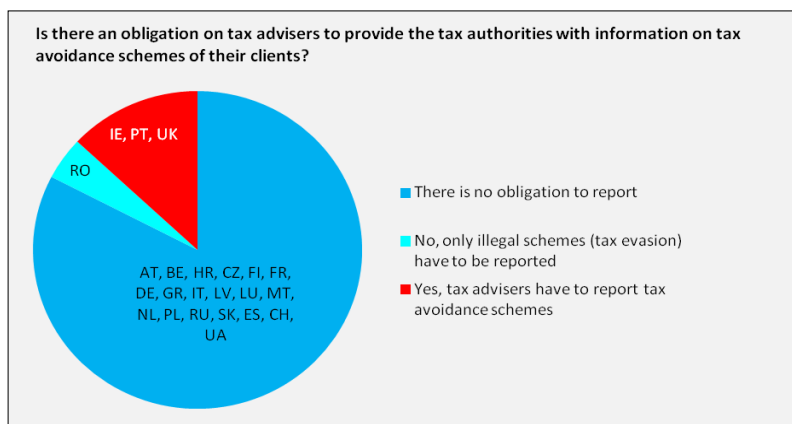
Different levels of legal privilege for different professions concerned with a case may become a problem in practice: In criminal tax cases, it is often the accountant or tax adviser who has better knowledge of the client data than the defense lawyer.



### 6.3 Obligation to report tax avoidance schemes

Tax advisers in Europe are generally not under an obligation to report of their own accord (spontaneously) to the tax authorities tax avoidance schemes that they learn of during their work. This is the case in all surveyed countries except Ireland, Portugal and the UK (20 countries). Tax avoidance schemes in the meaning of this Handbook are measures aimed at reducing the taxpayer’s tax burden that are *within* the law, in contrast to illegal tax evasion. Indeed in Romania, only illegal schemes have to be reported on request of the tax authorities. In the UK, for VAT, this responsibility lies with the client. In the Netherlands, taxpayers can choose to enter a “horizontal monitoring” agreement with the fiscal authorities obliging the tax adviser to monitor compliance with tax laws and to share relevant fiscal information with the fiscal authorities on a voluntary basis.

Tax avoidance disclosure duties have first surfaced in the UK in 2004. In the recent months and years, initiatives of the OECD and the European Commission to trace untaxed moneys (e.g. the Communication of 6 December 2012, COM(2012)722, see link in Chapter 15) have gained pace, some of them eroding the distinction between legal and illegal action by equalling “aggressive tax planning” to tax evasion and fraud. In the light of this development, there is a possibility that member states will increasingly hold tax advisers as “promoters” of tax schemes liable. This raises the fundamental issue of the tax adviser’s role as representative of his/her client or as intermediary between the client and the state.



### 6.4 Reporting of money laundering

EU anti money laundering rules are contained in the 3<sup>rd</sup> Anti Money Laundering Directive 2005/60/EC which applies in all EEA countries. If tax advisers know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing has been, is being or will be committed, tax advisers are obliged to inform the *Financial Intelligence Unit* (FIU) set up for that purpose by the member states. If a tax adviser is asked to carry out a transaction, in principle, the report has to be submitted before carrying out the transaction.

National law may also require that tax advisers cease to act for such clients (Art.24 (1)). This is dealt with very differently under national law: In 8 member states (BE, CZ, FR, LV, MT, PT, SK, CH), the professional must stop acting for the client; although he may be required to continue working for the client if an immediate termination of the engagement would tip off the client. 3 countries (DE, LU, UK) require that the tax adviser awaits the competent authority's approval before s/he may continue acting. After tax advisers have fulfilled their duty to report, 5 countries (AT, NL, PL, RO, ES) impose no further obligations on them or indeed allow them to continue serving the client if due diligence is increased, provided this would not assist in criminal activity. Ireland specifies that tax advisers who arrange for their clients a voluntary disclosure to the tax authorities are deemed to have complied with their AML obligations.

Member states may also oblige tax advisers to inform a self-regulating body instead of the FIU who will forward the information to the FIU (Art.23 (1)).

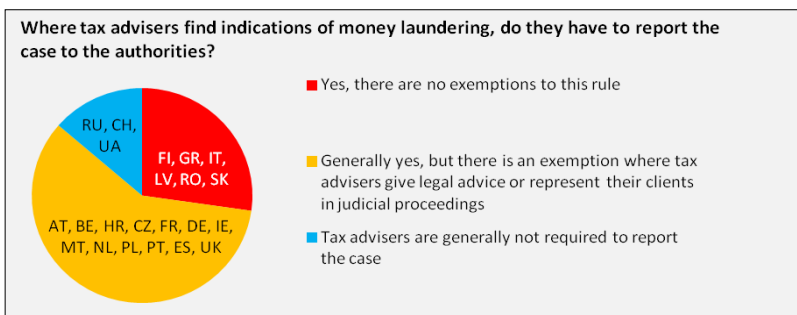
A list of all FIUs that are member of the *Egmont group* can be found here: <http://www.egmontgroup.org/about/list-of-members>.

An important exemption for the tax profession is Art.23 (2):

*“Member States shall not be obliged to apply the obligations laid down in Article 22(1) to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.”*

This is relevant *“in order to ensure the respect of the rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Treaty on European Union”*, see the ECJ judgment in case C-305/05 of 26 June 2007 and Recital 21 of the Directive.

13 of 20 countries that have a reporting obligation (AT, BE, HR, CZ, FR, DE, IE, MT, NL, PL, PT, ES, UK) have opted for this exemption while in 6 countries (FI, GR, IT, LV, RO, SK), all indications of money laundering must be reported. In Russia, Switzerland and Ukraine, no money laundering reporting obligation exists but the *Russian Chamber* strongly advises its members to refrain from any involvement in money laundering.



See Section 14.3 for the current revision of the AML Directive.

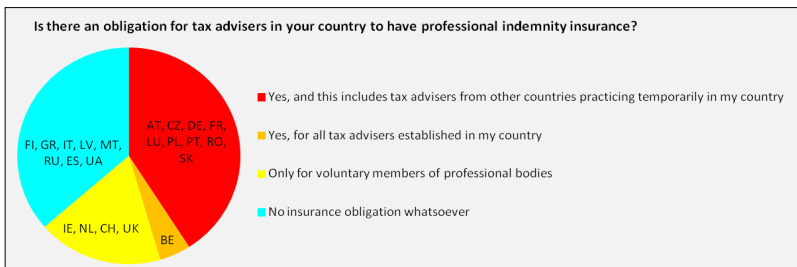


## Chapter 7

### Professional indemnity insurance

#### 7.1 The situation in CFE countries

10/22 countries (AT, BE, CZ, DE, FR, LU, PL, PT, RO, SK) require professional indemnity insurance (PII) for tax advisers established on their territory. All of these except for Belgium also require insurance from tax advisers from other EU member states providing services temporarily (for Luxembourg and Portugal, this will only be the case if they practice as accountants, which is necessary in Portugal to file tax returns or represent clients before authorities). In 4 countries, professional associations impose insurance requirements on their voluntary members (IE, CH, NL, UK). There are no insurance requirements in 8/22 countries (FI, GR, IT, LV, MT, RU, ES, UA), but it should be pointed out that in these countries, many tax advisers also hold other qualifications like accountant or lawyer for which insurance may well be required. The Malta Institute states that it recommends their members to obtain PII.



#### 7.2 Professional indemnity insurance and EU law

##### 7.2.1 In domestic situations

EU law does not require tax advisers to have professional indemnity insurance. Art.23 (1) Services Directive states that member states may decide to require from services providers established on their territory to have professional indemnity insurance if the service presents a risk for the financial security of the recipient which is defined in Art. 23 (5) as “*the prevention of substantial losses of money or of value of property*”. This is the case for tax advice. If a tax adviser who establishes on the territory of another member

states is obliged to have professional indemnity insurance, this member state must recognise existing insurance in the home member state of the tax adviser, see Art.23 (2).

### 7.2.2 In cross-border situations

Tax advisers practicing in another member EU state on a temporary basis must inform clients as to whether they have professional indemnity insurance and the relevant details such as contact details of the insurance company and the territorial coverage (Section 9.2).

There is no EU legislation expressly saying member states may or may not require professional indemnity insurance from temporary service providers. According to the European Commission, member states may not require professional indemnity insurance from temporary services providers: Art.16 Services Directive allows restrictions of temporary cross-border mobility only if they are based on the reasons set out in Art.16 (1) lit.b. As an insurance obligation for tax advisers does not serve public security, public policy, public health or the environment, it could not be imposed on temporary cross-border tax advisers. According to the Commission's interpretation of Art.17 (6) Services Directive and Art.5 (3) PQ Directive, this is not different for regulated professions because an insurance requirement is not "directly related to professional qualifications" (see Section 12.3).

In 2009, the ECJ decided on an Austrian requirement for patent lawyers to have professional indemnity insurance (C-564/07). The ECJ ruled that an insurance requirement was better placed to protect the clients than a duty to inform them about the existence or non-existence of insurance cover and was therefore justified. Since that judgment however, the legal situation has changed due to the entering into force of the Services Directive with its specific rule in Art.23.

In its Communication COM(2012)261 of 8 June 2012, the Commission stated that it preferred a negotiated solution to this question, together with the insurance industry. According to a CFE enquiry conducted in October 2012, PII covering tax advice provided in another European country in the law of that country is readily available on the insurance market in at least 7 countries: These are AT, CZ, DE, IE, SK, ES and UK.

## Chapter 8

### Advertising and pricing

#### 8.1 Advertising bans

All responding countries allow tax advisers to advertise. Where there is specific legislation or codes of conduct for tax advisers, rules on advertising are common. However, in most cases such restrictions relate to advertising that is wrongful, misleading, insulting, likely to cause public offence or otherwise inappropriate and therefore do not go beyond what is prohibited also to other professionals. Some codes also refer to the preservation of dignity of the profession and the clients' confidence in the profession.

In PL, PT, RO and SK, comparative advertising is prohibited; in FR, DE, PL and PT, specific forms of cold-calling that are considered particularly intrusive are banned: In France, the practice of directly addressing a client to offer him services (canvassing, FR: *démarchage*, in contrast to mere information about the tax adviser's activities) is not allowed; in Germany, directly addressing a client is considered intrusive only where the tax adviser knows that the client is in a situation where s/he needs fiscal advice. The choice of media used is limited in France and Portugal. In all other 17 countries, there are no noticeable restrictions.



Absolute prohibitions of commercial communications for tax advisers are contrary to EU law (Art.24 (1) Services Directive). The same applies for prohibitions against using certain media (Recital 100 Services Directive). Restrictions relating to the content of the commercial communication may however be justified by an overriding reason of the public interest provided they do not discriminate and are proportionate. Art.24 lists the independence,

dignity, integrity and secrecy of the profession as reasons for restrictions. This enumeration is not exhaustive (see wording “*in particular*”).

Unsolicited direct marketing through e-mail and telephone calls may be restricted; those practices are dealt with by specific EU legislation: Directives 2000/31/EC (“e-Commerce Directive”) and 2002/58/EC.

In a case concerning French accountants, the ECJ ruled in 2011 that the French prohibition of canvassing (*démarchage*) contravenes Art.24 (C-119/09, *Société Fiduciaire d’Expertise Comptable*).

## **8.2 Price regulation**

The *CFE Guidelines* state that clients have the right to know in advance the basis on which fees will be calculated. Calculation of fees shall be based on the degree of responsibility of the tax adviser, the nature and importance of the matter and the time involved.

None of the surveyed countries has fixed prices for services offered by tax advisers but in Germany, the price has to be within a fee margin determined by a decree-law. Tax advisers and client may exceed the upper margin by written agreement. As the price always has to be reasonable, a tax adviser may, in a specific case, be obliged to go below the lower margin.

In 6 countries (BE, FR, LU, NL, CH, UK), there are general guidelines on what criteria should be taken into account when determining the price, however the decision is left to the tax adviser and the client. In Greece, non-binding price recommendations exist. In the remaining 15 countries surveyed, no pricing rules or guidelines whatsoever exist for tax advisers.

As set out before (see 2.1.5), price regulations are a matter of antitrust law if they are adopted by professional bodies and the final decision does not remain within the hands of the state; otherwise, price regulations are a restriction to the free provision of services (if they apply to temporary cross-border services) or to the freedom of establishment (if they apply only to established tax advisers), see ECJ case C-35/99, *Arduino*.

In a judgment delivered on 29 March 2011 (case C-565/08), the ECJ held that a binding schedule of lawyers’ fees in Italy does not constitute a restriction where it provides for sufficient flexibility to take into account the specific circumstances of the case and to deviate from that scheme if those circum-

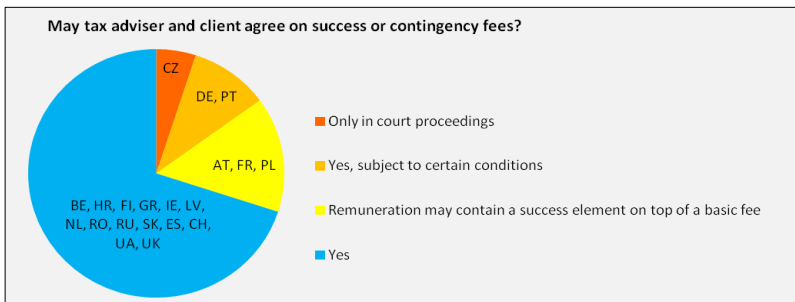


stances required that. Thus, the fact that the lawyer and the client were not able to freely negotiate the remuneration was not found sufficient to assume a restriction. It remains to be seen whether this case law will be upheld.

Where there is a restriction, pricing rules that apply also on temporary cross-border services can no longer be justified because Art.16 (3) of the Services Directive does not allow restrictions to temporary cross-border services on grounds other than public policy, public security, public health or the environment (see also 12.3).

Price restrictions for established tax advisers can still be justified by the protection of services recipients from low-quality services, see Art. 15 (2) lit.g), (3) Services Directive. The protection of service recipients is recognised as an overriding reason of public interest, see Services Directive, Recital 40.

In the case *Cipolla* (C-94 and 202/04), the ECJ had to decide on minimum prices for legal services in Italy that applied also to temporary cross-border services. The Court considered that it is possible that, depending on the particularities of a given market, minimum prices could help to prevent a price competition harmful to the quality of services. The judgment however concerned the legal situation before the entering into force of (Art.16 of) the Services Directive. Today, as concerns temporary services, a different outcome of the case would be likely.



### 8.3 Success and contingency fees

Sometimes, mainly in cases with an uncertain outcome, the client and tax adviser may agree that a fee will only be paid if there is a successful outcome to the case. Indeed the case may be that the client cannot afford the services of a tax adviser and might be prevented from seeking legal protection if he cannot agree a success fee (the German Constitutional Court has decided that

an exemption from a general prohibition of success fees had to be created for such cases, case reference: 1 BvR 2576/04).

In this Section, success fee shall mean that the tax adviser is paid only if the client wins the case (no win no fee); contingency fee shall mean that the tax adviser is paid a percentage of the client's net recovery.

In none of the 20 jurisdictions that provided information, such agreements are completely prohibited but some countries impose safeguards on them as they consider that success or contingency fees can be a wrong incentive to a tax adviser who might feel inclined to neglect his/her duty to respect the law and professional ethics over the promise of a high remuneration (or the threat of no remuneration): In the Czech Republic, success fees may only be agreed in court proceedings. In Germany, success fees are admissible under the condition that the client, taking account of his/her economic situation, would be prevented from seeking legal protection if the possibility of a success fee did not exist. There seem to be conditions to success fees in Portugal as well. In 3 countries (AT, FR, PL), fees may contain a success element on top of a basic fee, but “all or nothing fees” would be prohibited.

## Chapter 9

### Contractual and consumer issues

#### 9.1 Formal requirements and engagement letters

Formal requirements relating to the engagement are not common. Some member states or member organisations require their practitioners to provide engagement letters to the client, usually defining the scope of the engagement, the team of tax advisers involved, the applicable general terms of the tax advisory firm and the applicable rates.

If the client is a consumer client and the engagement is a *distance* or *off-premises* contract (see 9.3), Art.7, 8 Consumer Rights Directive impose additional formal requirements. In off-premises situations, the consumer has to receive the obligatory information and a copy of the signed contract on paper or (if he agrees) another durable medium.

Dutch law extends some consumer protection requirements on SMEs.

Few member states require that tax advisers sign their letters or important documents. In Austria, tax adviser companies have to give the client the name of the individual who will provide the advice.

#### 9.2 Client information

Apart from information that may have to be submitted to the authorities or professional bodies in EEA countries where the profession is regulated, EU law provides for pre-contractual information duties designed to protect the client. Those are contained in (1) the Services Directive, (2) the PQ Directive and, (3) if the client is a consumer, the Consumer Rights Directive 2011/83/EU.

1. The information in Art.22 Services Directive (see table below) must be given by all self-employed tax advisers or tax firms in EU countries (including tax lawyers in France and accountants in Portugal), whether giving cross-border advice or not.

The information can be given, at the choice of the tax adviser

- on his/her own initiative;
- by making it easily accessible to the client at the place where the service is provided or the contract is concluded;
- electronically by providing a link to a relevant website;
- or in any information documents sent to the client which set out a detailed description of the service.

Member states may introduce further information duties for tax advisers established in their territory (Art.22 (5)).

2. In contrast, the information in Art.9 PQ Directive must be given only

- if temporary cross-border services are performed
- in an EEA/CH country where the profession is regulated,
- and this is required by national law,
- but also by employed tax advisers.

3. The information contained in Art.5 Consumer Rights Directive (herein-after CR Directive) must be given

- in domestic and cross-border situations in all EU countries;
- in contracts concluded with a consumer, being defined as “any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession”
- before the consumer is bound by the contract.

There are stricter information requirements (Art.6) if the contract is a *distance contract* or an *off-premises contract*. Distance contracts (see Art.2 (7) and Recital 21 CR Directive for a definition) require “*an organised distance [...] service-provision scheme*”, hence a tax adviser would not fall under this category only by giving advice by telephone and e-mail. *Off-premises contracts* (see Art.2 (8) and Recital 21 CR Directive for a definition) include contracts concluded e.g. at the consumer client’s home or place of work, even if the meeting as been requested by the client. However, if the meeting at the client’s home or workplace has only informational purposes and the consumer is given appropriate time to consider the offer, this will not be considered an off-premises contact. For *distance* and *off-premises contracts*, there are additional formal requirements (Art.7, 8 CR Directive and Section 9.3 in this Handbook); member states may introduce additional information duties for providers established on their territory (Art.6 (8) CR Directive, 22 (5) Services Directive).

The CR Directive has to be implemented into national law by 13 June 2014. Member states may not introduce stricter consumer information requirements.

4. For information requirements if tax is provided by e-mail of internet, see Section 12.1.2.

| Overview : Client information duties contained in EU Directives  |   |   |   |
|--|---|---|---|
| Kind of information  | Art.22 Services Directive: To be provided by all tax advisers in the EU | Art.9 PQ Directive: May, in regulated EEA countries, be required from tax advisers providing temporary cross-border services* | Art.5,6 Consumer Rights Directive: To be provided by all tax advisers in the EU when concluding contracts with consumers* |
| Name, legal status and form, geographic address of establishment, direct contact details (phone, fax, e-mail)  | X   |   | X   |
| Where applicable, name of public register where the tax adviser is registered and entry number or equivalent   | X   |   |   |
| Where tax advice is subject to an authorisation scheme, name and address of the competent (supervisory) authority or the Point of Single Contact                         | X   | X   |   |
| Where tax advice is regulated, any professional body with which the provider is registered, the professional title and the member state where the title has been granted | X   | X   |   |
| The existence of relevant codes of conduct and how copies of them can be obtained  |   |   | X**   |

**Part I – The Tax Profession in Europe**

| Overview : Client information duties contained in EU Directives  |   |   |   |
|--|---|---|---|
| Kind of information  | Art.22 Services Directive: To be provided by all tax advisers in the EU | Art.9 PQ Directive: May, in regulated EEA countries, be required from tax advisers providing temporary cross-border services* | Art.5,6 Consumer Rights Directive: To be provided by all tax advisers in the EU when concluding contracts with consumers* |
| Where no professional title exists, the formal qualification of the tax adviser and the member state in which it was awarded   | X   |   |   |
| VAT identification number  | X   | X   |   |
| Details of any insurance cover or other means of personal or collective protection with regard to professional liability, territorial coverage, contact details of the insurer | X   | X   |   |
| General conditions and clauses, if any, used by the provider including clauses concerning the law applicable to the contract and/or the competent courts                       | X   |   |   |
| The possibility, if any, of having recourse to an out-of-court complaint and redress mechanism, to which the tax adviser is subject, and how to access it.                     |   |   | X**   |
| Price of the service or the manner in which it is calculated   | X   |   | X   |
| Main features of the service, if not apparent from the context   | X   |   | X   |
| The time by which the tax adviser undertakes to perform the service  |   |   | X   |

| Overview : Client information duties contained in EU Directives   |   |   |   |
|---|---|---|---|
| Kind of information   | Art.22 Services Directive: To be provided by all tax advisers in the EU | Art.9 PQ Directive: May, in regulated EEA countries, be required from tax advisers providing temporary cross-border services* | Art.5,6 Consumer Rights Directive: To be provided by all tax advisers in the EU when concluding contracts with consumers* |
| The conditions, time limit and procedures for exercising the right of withdrawal, as well as a model withdrawal form (Annex I B)  |   |   | X**   |
| That, if the consumer exercises the right of withdrawal after having requested performance of the service before expiry of the 14-day period, the consumer is liable to pay a reasonable share of the costs for services already rendered |   |   | X**   |
| * Selection only of information duties foreseeably relevant for tax advisers<br>** only in case of an off-premises or distance contract   |   |   |   |

### 9.3 The consumer client’s right to withdraw

If the client is a consumer and the contract is a *distance* or *off-premises* contract (see 9.2), the client has the right to withdraw from the contract within 14 days without giving reason. If the tax adviser omits to inform the client of this right, the period ends after one year + 14 days; if the consumer has been informed belatedly, the period ends 14 days after the consumer has received the information.

If the consumer expressly requests that the tax adviser starts performing the service before expiry of the 14-day period, s/he will, in case of withdrawal, have to pay (part of) the agreed remuneration for services preformed until the exercise of the right of withdrawal, if s/he has been informed of this consequence. These rules have to be implemented into national law by 13 June 2014. They apply in all EU countries in domestic and cross-border situations.





## Chapter 10

### The firm of the tax adviser

#### 10.1 Legal form

When setting up a tax firm, in 20 responding countries, tax advisers may choose between all legal forms available under national law or at least between a broad range of legal forms including general and limited liability partnerships and private and public limited companies. Only in Croatia and Slovakia, are tax advisers restricted to (general or limited liability) partnerships. In Portugal, in addition to partnerships, accountant may set up private limited companies.

Where a tax firm wants to open an office in another country to provide tax advice on a permanent basis, the question arises whether this can be done in the form of a branch, without having to set up a subsidiary in that country. Where a firm wants to move entirely to another country, the question is whether it can maintain its legal form or whether it has to create a new company under the law of the destination country and comply with the local requirements, e.g. on shareholding.

According to the case law of the ECJ (*Centros*, C-212/97; *Überseering*, C-208/00; and *Inspire Art*, C-167/01), a company may move to another member state than the one where it has been established, maintaining its legal form. This case law however does not concern the case where national law requires a professional firm to have a particular legal form. One may argue that at least where national law does not restrict the choice of legal forms available, there would be no reason not to accept a professional firm with a foreign legal form.

Further information on this issue can be found in the Country Sheets in this Handbook or in the European Commission working paper of 28 February 2012, see the link in Chapter 15.

#### 10.2 Ownership and control

Tax advisers must remain fully independent when advising their clients. Independence from third parties becomes an issue where the advice given

to a client affects the position of a third party which has control over the tax firm (Example: A financial institution controlling the tax firm benefits from a particular investment advice given to a client). Independence is generally dealt with by rules of law or codes of conduct by professional bodies (see Chapter 5). In addition, some member states have rules that reserve ownership or voting rights or positions in the management of tax firms to tax advisers or members of other professions like lawyers or auditors who need to observe similar independence rules. The rationale behind this is to avoid situations that typically bear a risk for the tax adviser's independence, given that influence is usually hard to measure.

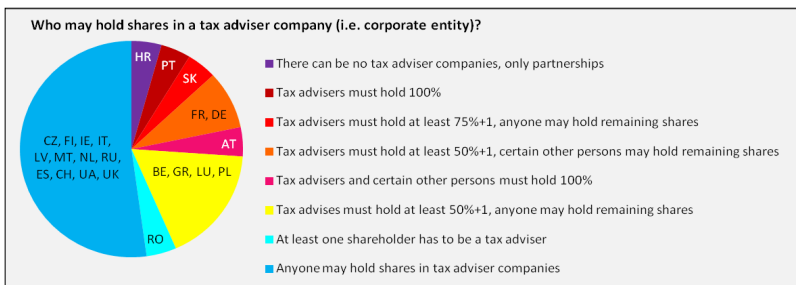
Portugal reserves ownership of accounting companies exclusively to accountants. Austria reserves all shares to an exclusive group of persons in which tax advisers do not need to have a majority. 7 countries (DE, FR, DE, GR, LU, PL, SK) reserve a majority of shares to tax professionals. While BE, GR, LU and PL do not limit who may own the remaining 50%-1, in France and Germany, these minority shares may only be held by an exclusive group of people. In Slovakia, 75+1% have to be owned by tax advisers (while 25%-1 may be held by anybody). In Romania, at least one (minority) shareholder has to be a tax adviser. 12 countries do not have any mandatory ownership requirements. There are however requirements by professional associations in IE, NL, CH and UK on the composition of the partners/shareholders if the company wants to make reference to the professional association.

Rules on ownership restrict the establishment of tax firms in another EU member state. The Services Directives has a specific rule in Art.15 (2) b) according to which such rules can be justified by an overriding reason of public interest as long as they are non-discriminatory and proportionate meaning suitable to achieve their objective and do not go beyond what is necessary. Rules that seek to limit influence on the independence of professionals are rules that protect the recipient of services. This objective has been recognised by the ECJ.

In a case concerning ownership of pharmacies, the ECJ has decided that a German rule requiring that pharmacies be completely owned by pharmacists is justifiable (C-171 and 172/07, *Apothekerkammer Saarland*), assuming that owners who are not members of the profession would be more likely to influence the exercise of the profession and that the ownership requirement is particularly effective to safeguard independence as professionals who breach professional rules risk not only financial sanctions but also their professional career. However, the reasoning also mentions risks that are particular to pharmaceuticals and underlines that member states enjoy

discretion as to how they organise their health system so a court case on tax firm ownership might well have a different outcome. In a case concerning opticians in Greece, the ECJ (C-140/03) considered that an ownership requirement was disproportionate.

In the audit profession, EU legislation requires a certain degree of ownership and control to remain in the hands of the profession to insure the auditor’s independence (see Art.3 (4) b) and c) in Directive 2006/43/EC). However, the European Commission has proposed to abolish ownership rules for audit firms in general (but to introduce ownership requirements for audit firms providing audits of public interest entities).



### 10.3 Multiprofessional firms

Through cooperation with other professions, tax advisers may offer a broader range of services. Such cooperation can take many different forms: case-by-case cooperation, sharing of office facilities or the setting up of joint firms. As the latter form is the closest form of multidisciplinary cooperation, it is the most regulated across CFE member states and the only one dealt with in this Handbook.

Joint practices in this context should be understood as a permanent form of cooperation between members of different professions that includes the acceptance of joint assignments under joint responsibility. The following overview is based on the assumption that measures have been taken so that the cooperation does not impede compliance with professional duties.

It can be observed that often, restrictions on multiprofessional firms do not exist on the tax advisers’ side but do exist in the regulation of other professions such as lawyers and auditors. Therefore, also in countries where the tax profession is not regulated, possibilities for multiprofessional firms can be very limited.

**Part I – The Tax Profession in Europe**

In at least 12 of 22 (AT, BE, HR, FR, DE, GR, LV, PL, PT, RU, SK, ES) countries, the professions with which tax advisers may set up joint firms are restricted: Croatia, France and Portugal do not allow any joint firms. In AT, BE, GR, SK and LV, joint tax-law firms are prohibited; In GR and ES, joint tax-audit firms are restricted. In Poland, joint tax-accounting firms are not allowed. In Germany and Russia, these neighbouring professions are the only professions that may set up joint firms with tax advisers (note that in Germany, there is no profession corresponding to accountant). Only CZ, FI, IE, IT, MT, NL, RO, CH, UA and UK did not report any restrictions to professions that may set up joint firms with tax advisers.

Art.25 Services Directive deals with multidisciplinary activities, relating to case-by-case cooperation between different professions, shared offices and joint firms or partnerships. For regulated professions, Art.25 (1) lit.a) allows restrictions by professional codes to ensure the independence and impartiality of the professional. Moreover, Art.25 (2) obliges member states to make sure that such codes prevent conflicts of interest and incompatibilities and to secure the independence and impartiality and that the rules are compatible especially regarding professional secrecy.



## Chapter 11

### Cross-border mobility, general aspects

#### 11.1 The relevance of cross-border activity for tax advisers

##### 11.1.1 Perceived obstacles to cross-border mobility

Reliable figures on cases of cross-border activity are available only for few countries. These numbers are very low. According to practitioners, cross-border tax advice in the form of a professional going to another member state to advice in the law of that state, as foreseen in the PQ Directive, is very rare. It is much more common that advice in another country's tax law is given by a locally qualified tax adviser, recommended by or member of the same professional network as the first tax adviser. The first tax adviser would assist but will not give the actual advice.

To assess to what extent the efforts of the European Commission to remove regulatory obstacles are likely to encourage cross-border tax services, it seems worth examining what the main obstacles to cross-border activity of tax advisers are. Countries responding to the CFE survey were asked what relevance they attribute to a list of obstacles to cross-border tax advisory services.

| Relevance of obstacle, all respondents (17 countries) |   |
|---|---|
| 8.8/10:   | lack of knowledge of tax law in other countries                         |
| 7.9/10:   | no contacts to clients in other countries                               |
| 6.8/10:   | no contacts to colleagues or cooperation partners                       |
| 6.7:  | lack of knowledge of foreign languages                                  |
| 6.7:  | no information on conditions of practicing in other countries           |
| 6.3:  | lengthy and complicated procedures of being admitted in another country |
| 5.7:  | they experienced that clients were not interested                       |
| 5.4:  | rules in other countries do not allow them to practice                  |
| 4.3:  | not profitable because of geographical distance                         |

Among the 17 countries that responded, seven are unregulated; three of these are non-EU (Russia, Switzerland, Ukraine). Regulated and unregulated countries agree that the two main obstacles are the lack of knowledge in other countries' tax law (regulated: 9.0/10, unregulated: 8.4/10) and the lack of contacts to clients in other countries (regulated: 7.4/10, unregulated: 8.6/10). Both groups also agree that geographical distance is the least relevant of the named obstacles. Neither of the groups identified regulation as one of the Top3 burdens but estimations differ on the significance of regulation as an obstacle: Lengthy and complicated procedures score 7.2/10 in the estimation of unregulated countries (4<sup>th</sup> place) but only 5.7/10 among regulated (7<sup>th</sup> place). Legal prohibitions to practice score 6.3/10 in the view of the unregulated (7<sup>th</sup> place) and 4.8/10 in the view of the regulated (8<sup>th</sup> place) countries. These numbers might indicate a slight bias in favour of regulation among the regulated countries but should be treated with caution, considering that "lack of information on the conditions of practicing in other countries" (6.7/10) is common and may influence the perception of the regulatory conditions in other countries.

Respondents were also asked to what extent they agree to the two statements that (1) cross-border activity takes place quite often, but mostly informally, to avoid complications (4.5/10 in both groups) and (2) whether tax advisers refer work to colleagues in offices based in the other country, which was agreed with a score of 7.9/10.

### 11.1.2 Cross-border services tax advisers are interested in offering

Participating countries were asked to estimate the relevance of a selected number of cross-border activities for their tax advisers. Eight answers were received with estimates differing widely. The overall results suggest that tax advisers would be most interested in advising incoming foreign clients in the law of their country. Slightly less would be interested in supporting their domestic clients' foreign business activity. There seems to be much less interest in physically going abroad, dealt with by the PQ Directive.

|       |   |
|-------|---|
| 53.1% | Advising a client from another country who opens a PE (permanent establishment) or a subsidiary in your country |
| 52.5% | Advising a client from another country in their dealings with your country                                      |
| 48.1% | Advising a client from your country in their cross-border dealings  |

|       |  |
|-------|--|
| 40.6% | Advising a client from your country who opens a PE or a subsidiary abroad                                |
| 40.0% | Offering cross-border services by means of distance communication (e-mail, phone, internet, letter)      |
| 16.5% | Physically going to another country to practice (temporarily)  |
| 12.7% | Opening an office in another country where to practice under your existing professional title            |
| 7.8%  | Opening an office in another country where you would have to obtain the local professional qualification |

## 11.2 Temporary / occasional versus permanent activity

The question on the temporary (Art. 56 ff TFEU) or permanent (Art.49 ff TFEU) nature of a professional activity in another member state is crucial for determining what rules tax advisers have to observe and which administrative procedures to follow. The requirements that may be imposed on permanently established tax advisers can be higher because unlike a temporary tax adviser who is just a visitor, a permanently established tax adviser fully integrates into the host country's economy. The landmark judgment to distinguish both forms of activity in another member state was made in the Gebhard case (C-55/94) concerning a German practicing lawyer in Italy. In *Gebhard*, the ECJ found that:

*“The temporary nature of the activities in question has to be determined in the light of its duration, regularity, periodicity and continuity. This does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question.”*

The assessment has to be made based on the facts of the individual case (Art.5 (2) PQ Directive) and can be difficult in practice. The following can serve as indications:

- The notion of establishment in the sense of Art.49 TFEU is unrelated to the legal seat or the headquarters of a company, to the residence of an individual, to the question where the business is taxable or to the question whether it is a legal entity of its own. Consequently, one person or company can be established in more than one member state.
- An office which may not conclude contracts and may not address clients in the member state where it is located (e.g. through advertising) would not be an establishment. This probably would not change if the office had a secretarial staff.

- The fact that a professional is a member in a professional body or that a business is entered in a public register does not mean they are established in that member state. Vice versa, the failure to register in another member state does not exclude permanent establishment.
- A one-time assignment in another member state would remain a temporary activity even if it lasted for several months (in C-215/01, Schnitzer, the Court considers that in certain sectors like construction, a temporary activity could even last for several years).

There is no express answer from the ECJ on the question whether an engagement in another member state of an indefinite duration would have to be regarded as establishment. In the Schnitzer case, the ECJ points out that temporary services may include those

*“which a business established in a Member State supplies with a greater or lesser degree of frequency or regularity, even over an extended period, to persons established in one or more other Member States, for example the giving of advice or information for remuneration”*

which suggests that an assignment to regularly prepare accounts and tax returns for a client in another member state would still be considered a temporary provision of services.

Please note that the ECJ case law applies only in relation to EU countries.

It should be noted however that a tax adviser who has most of his clients in one other country, serving them on a temporary or occasional basis, would probably be considered circumventing the rules of the clients’ country.

### 11.3 Points of Single Contact

EU member states have established so-called Points of Single Contact (Art.6 ff Services Directive) for service providers who intend to provide services temporarily or permanently on their territory. The idea is that cross-border service providers will only have to deal with one contact point that will assist them in completing all procedures and formalities for access to the activity in a given member state.

Points of Single Contact do not give legal advice in individual cases (Art.7 (6) Services Directive) and do not have to deal with tax questions of the cross-border service provider. Taxes are excluded from the scope of the Services Directive (see Art.2 (3)) but tax advisory services are not:



*Example: If a tax adviser from Italy practices in Spain, the Services Directive applies regarding her access to the Spanish market and professional conduct but it would not deal with the question where her income from this activity has to be taxed. If her income is taxable in Spain, the Spanish Point of Single Contact would not be obliged to accept her tax declaration.*

Points of Single Contact should allow on-line completion of all formalities (see Art.8 (2) for very few exceptions). The service of Points of Single Contact may be charged.

The EU portal to the Points of Single Contact can be found under this web address: [http://ec.europa.eu/internal\\_market/eu-go/](http://ec.europa.eu/internal_market/eu-go/). All Points of Single Contact are now operational but there are still large differences in the quality of information provided, foreign language availability and the range of procedures that can be completed online. In its Communication COM(2012)261 and accompanying document SWD(2012)148 of 8 June 2012 (Links in Chapter 15), the European Commission presented an assessment of the practical functionality of the different Points of Single Contact.

## 11.4 Language skills

Persons who exercise a professional activity must master the local language to the extent necessary for the exercise of the profession (see Art.53 PQ Directive for EEA/CH countries where the profession is regulated). This means that language requirements must be proportionate in relation to the activity to be carried out in the individual case. The case may be that no knowledge of the local language is required (*e.g. if the client is an international company in Finland in which English is commonly used or where a French tax lawyer and his German client both speak Turkish*).

Consequently, the host member state may ask a tax adviser for proof of his language skills (e.g. through certificates) but may not systematically ask him/her to sit a language test. Any requirement to prove language skills must not be connected with the recognition of professional qualifications. Recognition of professional qualifications cannot be denied for lack of language skills.



## Chapter 12

### Temporary and occasional cross-border mobility

#### 12.1 Cross-border correspondence services

##### 12.1.1 Restrictions to cross-border correspondence services

This section shall apply to all occasional cross-border services not provided in the territory of another country, e.g. advice by letter, fax or telephone but also the filing of tax returns or distance communication with tax authorities in other countries.

*Example: A tax adviser from EU member state A has a client in A who has to file tax returns in member states W, X, Y and Z as he has exercised some activity there. When filing the returns with the tax authorities of W, X, Y and Z, he is turned down in W on the grounds that he does not have professional indemnity insurance required in W; in X, he is turned down on the grounds that he does not have the qualification required in X; in Y, he is turned down on the grounds that he did not notify the competent authorities of his activity in Y and in Z, he is turned down on the grounds that he does not have an authorisation as tax agent in Z.*

It should be noted that although these are temporary services within the meaning of 56 TFEU, the rules of the PQ Directive in temporary and occasional services do not apply, as they require that the tax adviser moves physically to the other member state. Therefore, for such services, it cannot be required that tax advisers make notification in the sense of Section 12.2 or have their qualification recognized in the sense of Section 13.2. *In the above example, member state Y should have accepted the tax filing.*

The Services Directive applies to such services as it is not limited to cross-border services physically rendered in the host country. It also applies in EU countries where the profession is not regulated. Art.16 Services Directive only allows restrictions that serve public policy, public security, public health and the environment. *In the above example, the insurance requirement in W serves the financial security of the client which is none of the afore-mentioned justification grounds, so he should not have been refused in country W. Concerning country Z, authorization schemes for temporary*

*or occasional services are a black-listed requirement, see Art.16 (2) lit.b. The tax authorities of Z may not refuse the tax return from tax adviser A.*

Art.17 (6) Services Directive allows countries to impose on temporary or occasional services “*requirements in the Member State where the service is provided which reserve an activity to a particular profession*”. It is noteworthy that this is mentioned separately from the rules of the PQ Directive on temporary and occasional services, suggesting that the host country may still reserve activities to certain professions even where the PQ Directive does not apply. There is no ECJ case law however confirming this view. *In the above example, this would mean that the tax authorities of X may have had a valid reason to refuse the tax return of A.*

From the answers received in the survey, it is not entirely clear which of the regulated countries ask providers of cross-border correspondence services from other member states to follow the procedures provided by the PQ Directive. The European Commission working document of 28 February 2012 (link in Chapter 15) addresses this question, containing the views of the Commission services.

### 12.1.2 Tax advice as e-commerce

While statutory audit is considered an activity that by nature cannot be rendered electronically (Recital 18 of the e-Commerce Directive 2000/31/EC), tax advice must be seen as a potential *information society service*, if provided by e-mail or other internet means. Directive 2000/31/EC contains no provision indicating that tax advice or comparable activities should be excluded from its scope. Art.2 lit.a. refers to a definition of *information society services* according to which legal counsel provided by telephone or fax should not be considered an *information society service* (in the following: e-service). In the view of the author, this suggests that the e-Commerce Directive applies on cross-border tax advice by means of the internet.

As a general rule, e- service providers are only subject to the professional rules in the country where they are established (Art.3). This means that for e-services, qualification or authorisation requirements in the recipient’s member state do not apply. However, where tax advisers conclude on-line contracts with consumers, the law of the country where the consumer has its habitual residence would usually apply (Art.3 (3), Annex of the e-Commerce Directive, Art.6 of Regulation 593/2008, “Rome I Regulation”). The law of

the client's country can also be chosen by agreement with the client (Art.3 (3), Annex).

Tax advisers providing advice over the internet must provide the information listed in Art.22 Services Directive (see Section 9.2). In addition, if they are subject to any professional rules in their home member state, they have to make reference to these rules and provide a link to a relevant website.

There is no ECJ case law yet on tax advice as an e-service.

Just like for other cross-border correspondence services, it is not entirely clear from the answers received in the survey which of the regulated countries ask providers of cross-border e-services from other member states to follow the procedures provided by the PQ Directive, see the European Commission working document of 28 February 2012 (link in Chapter 15). It should be noted that the European Commission has expressly criticised the lack of compliance with the e-Commerce Directive by member states who regulate professional services in its Communication of 8 June 2012 (link in Chapter 15).

## 12.2 Temporary or occasional activity – professional qualifications issues

In EEA countries where the exercise of the profession or the use of the title require a minimum qualification, the host country can ask a temporary cross-border tax adviser from another country to demonstrate that his qualification and experience meet certain conditions by making a notification or registration, providing the necessary documents. If this is the case, the tax adviser may start practising without having to await a response.

Authorisation requirements however may not be imposed on temporary services from another EU member state. This also applies in countries that have a registration duty for *tax agents*, like Ireland (see Chapter 1.1.3). If the tax agent cannot start his activity before being given e.g. an ID number, a user name or an access code, this may be considered an authorisation regime.

This Section does not apply to France. In France where the tax profession is part of the legal profession, the Lawyers Directive 77/249/EEC applies instead.

### 12.2.1 Existing establishment in an EEA country

Only persons or companies legally established in an EEA country for the purpose of exercising the profession can benefit from the opportunity to provide services temporarily in another member state. This does not require that a person is currently practising but they must be allowed to practice at the time they provide their services in another EEA country. In countries where this requires membership of a professional body, they must be a member. Also employees are established in the sense of the PQ Directive.

### 12.2.2 Professional experience requirement

Tax advisers with a qualification from another EEA country may be required by the host country to prove at least two years of professional experience during the previous ten years (Art.5 (1) lit.b PQ Directive) only if they

- come from a country where the profession is not regulated and
- cannot document regulated education or training at secondary course level, referring to any training specifically geared to the pursuit of the tax profession and which comprises courses and where appropriate, practical training (details: Art.3 (1)e, 11 (b), 13 (2) PQ Directive).

Not regulated in the meaning of the first bullet point means that there is not a legal qualification requirement. Applicants who hold a qualification from the CIOT, the ICAEW or the Irish Taxation Institute fall under this category (see ECJ judgment of 5 April 2011 in case C-424/09, *Toki*).

Tax advisers with a qualification from a non-EEA country but recognised by another EEA country can be required to prove at least three years of professional experience in that other member state, two of which must have been during the previous ten years (see Art.2 (2), 3 (3) PQ Directive).

All other tax advisers with a qualification from another EEA country may start practicing directly in the host member state.

### 12.2.3 Professional title

When temporarily practicing in another EEA country where the profession is regulated, tax advisers must use their title in the official language (or one of the official languages) of the home member state in a way that does not create confusion with a title of the host member state.

*Example: An Austrian Steuerberater temporarily practicing in Germany would have to make clear in his title that he holds an Austrian qualification as the name for the profession is the same in both countries.*

When temporarily practicing in another EEA country where the profession is not regulated, tax advisers may by the rules of their home country be obliged to use their home country professional title but otherwise they are free to choose a title used in the host country. They should however be careful not to wrongly create the impression to be member of a local professional association as this may be considered misleading advertising by the host member state.

*An Austrian Steuerberater who is not a member of the CIOT could call himself “Tax Adviser” or “Tax Consultant” in the UK but must not use the protected title “Chartered Tax Adviser”. Also a similar title like “Registered Tax Adviser” could be considered misleading.*

#### 12.2.4 Information to authorities

Among the countries with a regulated tax profession, 5 countries (CZ, FR, DE, PL, SK) oblige tax advisers who provide services on a temporary or occasional basis to make notification or registration with the competent authority. In France, this rule relates to (tax) lawyers. 4 countries (AT, BE, LU, RO) have opted against such requirement. 2 countries (GR, PT) currently do not allow temporary or occasional cross-border services which contradicts Art.5 PQ Directive. For countries where the tax profession is not regulated, this question does not apply.

Switzerland requires from EEA nationals or companies a registration with the Federal Office for Migration in case of temporary activity of more than 8 days per year which is however unrelated to professional qualifications.

If registration or pro-forma membership in a professional body is required for temporary services, they must be free of charge and must not delay or complicate the taking up of the activity (Art.6 lit.a PQ Directive).

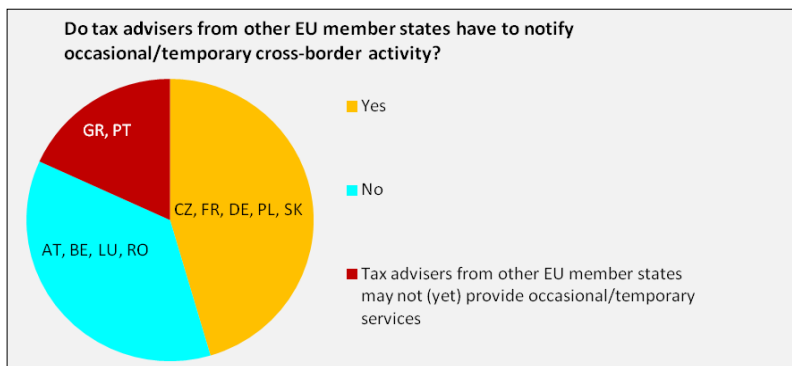
Information that the competent authority in the host country may require:

- name and contact details (address, phone, e-mail) and name of the profession the person seeks to practice;

- it is advisable to mention whether this is a first-time notification or an annual renewal;
- proof of nationality (Art.7 (2) lit.a PQ Directive);
- attestation certifying that the tax adviser is legally established in the home EEA member state for the purpose of giving tax advice and that he is not prohibited from practising, even temporarily, at the moment of delivering the attestation (Art.7 (2) lit.b PQ Directive)
- evidence of establishment can be provided by all suitable documents, e.g. copy of professional license, trade register extracts, certificates of professional organisations, employer’s certificates, social security or tax documents.
- evidence of professional qualifications (Art.7 (2) lit.c PQ Directive);
- proof of professional experience, under the conditions set out in 12.2.2.
- information on whether professional indemnity insurance exists and, where relevant, information on the insurance cover, company and territorial coverage (Art.7 (1) PQ Directive)
- although no registration with a social security body in the host member state may be required (Art.6 lit.b), firms that perform their services through employees must inform the social security body of the activities pursued in the host member state, if possible, before beginning of the activity.

The following may *not* be required:

- to make a declaration a number of months or days in advance;
- to specify the client, the nature of the assignment or the date or place where the service is provided.





Form and procedure:

The declaration must be in writing; e-mail or fax declaration is sufficient. See the Country Sheets for the relevant contact points.

The applicant does not have to wait for a “green light”. Practitioners should however bear in mind that they carry the risk of non-compliance with the law of the host member state if they do not leave the host member state sufficient time to examine the case and react if necessary. Tax advisers can make the declaration before knowing whether they will actually practice in the member state in question.

The host member state may ask for documents proving the information submitted; for the most important documents only, it can also ask for certified copies and certified translations. This cannot be required for standard documents (passport, ID card). No original documents may be required. If the information cannot be provided by the tax adviser, the host member state’s competent authority must try to obtain this information from the home member state’s authorities, e.g. through using the IMI (Internal Market Information) system, a communication and translation tool used among the EU member states’ authorities.

A declaration made remains valid for one year, irrespective of how often a tax adviser practices in the host country; after one year or when the information provided requires updating, a renewed declaration must be made.

### **12.3 Application of host country rules**

As a general rule, Art. 16 Services Directive states that EU service providers who provide services in another EU member state on a temporary basis are subject only to the rules of their home country but not to restrictions that apply in the host country.

To this rule, there are some important exemptions:

- (1) Where the profession is regulated, those rules of the host country that are directly linked to professional qualifications such as the definition of the profession, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety, as well as disciplinary provisions which are applicable in the host member state to professionals who pursue the same profession in that member

- state and rules that reserve an activity to a particular profession (Art.17 (6) Services Directive, Art.5 (3) PQ Directive).
- (2) Rules of the host country that serve public policy, public security, public health and the environment (Art.16 (3) Services Directive). It seems hard to imagine that they would become relevant for tax advisory services;
  - (3) Where the service is carried out by employed tax advisers: Employment conditions of the host country, including collective agreements (Art.16 (3) Services Directive); for posted workers see Art.17 (2) Services Directive and Directive 96/71/EC.
  - (4) In France, tax professionals are lawyers. Art.4 of the Lawyer’ Directive 77/249/EEC deals with this question specifically for lawyers, (see Art.17 (4) Services Directive).

The definition “*directly linked to professional qualifications*” in Art. 5(3) PQ Directive could be understood meaning all requirements that specifically apply to members of a regulated profession, even if the rule itself does not deal with qualifications.

*Examples: A tax adviser from member state A practicing in member state B can be sanctioned for using a title for which he lacks the relevant qualification. But can he also be sanctioned for disregarding an advertising rule or a price regulation existing in member state B?*

The European Commission favours a restrictive interpretation of Art.5 (3) PQ Directive, meaning only host country rules on serious professional malpractice and disciplinary provisions that concern professional qualifications like rules on practicing without the required qualification or misuse of titles would apply on temporary services but not pricing or advertising rules (Chapter 7.1.4 of *EU Commission Services Directive Implementation Handbook*; see link in Chapter 15 of this book).

## Chapter 13

### Permanent activity in another country

For the distinction between temporary and permanent activity, see Section 11.2.

#### 13.1 Authorisation and work permits

##### Authorisation requirements

EU member states may require that tax advisers or firms that permanently establish on their territory apply for an authorisation (Art.9 ff Services Directive) which must be given in a non-discriminatory way, justified by a reason of public interest, suitable to reach this aim and proportionate.

Art.9 ff Services Directive deal with authorisation procedures and what may be required. Unlike for temporary or occasional cross-border services, authorisation requirements are not per se prohibited, but they must be justified.

Also an *authorisation* requirement for tax agents would fall under this category. A justification for a tax agents authorisation requirement could be the prevention of fraud, e.g. through the creation of false taxpayers through unverified tax agents.

As a general rule, authorisations may not be limited in time or geographical scope and must include the creation of subsidiaries and other offices (Art.10 (4), 11 (1) Services Directive). Art.13 Services Directive deals with the authorisation procedure, obliging the host country to respond within a certain amount of time; Art. 14 lists requirements that are always prohibited. These include, inter alia,

- the obligation for the tax adviser, the employees, the shareholders or management of the firm to be resident of the country where the permanent establishment is set up (Art.14 (1) lit.b)
- a restriction of the choice which establishment should be the principal or a secondary one (Art.14 (3)).

In the event of the creation of subsidiaries which require authorisation and if the conditions for authorisation are no longer met, the Single Point of Contact has to be informed (Art.11 (3) Services Directive).

### Work permits

Tax advisers from Romania or Bulgaria who wish to permanently practice in another country as employees still need work permits in a number of countries (AT, BE, FR, DE, LU, MT, NL, ES, CH, UK). This requirement may not be extended beyond the end of 2013 (in CH: 31.5.2016).

Annex V to the Treaty on the Accession of Croatia stipulates that current EU member states apply transitional measures restricting full access of Croatian employees to their labour markets until 30 June 2015. They may maintain these measures until 30 June 2018, in exceptional circumstances for a further two years.

## **13.2 Recognition of professional qualifications**

Where a tax adviser seeks to practice permanently in another member state, the most relevant rules concern the recognition of his/her professional qualification in EEA/CH countries where the profession is regulated. In those countries only, the following applies. In Ireland and the UK, the following applies only if the tax adviser applies for membership with the ICAEW or CIOT.

In a nutshell, member states may impose the following (cumulative) conditions:

- (1) The applicant is legally established in another EEA/CH member state and entitled to give tax advice in that country (see 13.2.3)
- (2) An applicant from a country where the profession is not regulated may, under certain conditions, be required to prove professional experience (see 13.2.4)
- (3) The applicant holds professional qualification of a particular level/duration (see 13.2.5)
- (4) The applicant takes compensation measures to bridge the difference between the qualification in his home and the host country (see 13.2.6).

### 13.2.1 Documents to be submitted

Member states may require that the following information be submitted either to the single point of contact (for EU countries) or (at the choice of the tax adviser) to the contact points for professional qualifications (for all EEA/CH countries):

- Proof of nationality
- Proof of establishment in another EEA/CH member state
- Documents concerning professional qualifications, competences and experience:
  - Attestation of competence or evidence of formal qualification that proves post-secondary professional education of one year minimum (see Section 13.2.5), issued by a competent authority in the home member state. If the profession is regulated in the home member state, this relates to the attestation required by that member state.
  - Proof of professional experience (see Section 13.2.4, 12.2.2). If the profession is not regulated, there are often no specific documents proving the pursuit of a profession. In this case, the applicant would have to choose the best means of providing his/her activity, e.g. by submitting copies of pay slips or employers' attestations. The host member state has to show some flexibility and to decide in a proportionate manner on possible additional measures to compensate e.g. for a lack of practice, e.g. by asking the applicant to take an additional traineeship or training course if necessary.

The host country may also require the following documents (if required also for the host country's own nationals):

- proof of good character, good repute, no bankruptcy
- medical certificate of fitness
- financial standing and insurance cover

The host member state may ask for documents proving the information submitted; for the most important documents only, it can also ask for certified copies and certified translations. This cannot be required for standard documents (passport, ID card). No original documents may be required. If the information cannot be provided by the tax adviser, the host member state's competent authority must try to get this information from the home member state's authorities, e.g. through using the IMI (Internal Market Information) system, a communication and translation tool used among the EU member states' authorities.

According to a European Commission working document of 28 February 2012 (Link in Chapter 15), some member states require more or different documentation.

### 13.2.2 Procedure

Within one month, the competent authority has to acknowledge receipt of the documents. The deadline for the authority to grant recognition or (which is most likely to be the case for tax advisers) decide that an aptitude test is necessary is four months. If the authority fails to meet that deadline, see question 63 in the “66 questions guide” (Chapter 16).

Member states may make entry to the profession conditional on a solemn oath or a sworn statement but this may not have the effect of preventing other nationals from applying (Art. 50 (4) PQ Directive).

### 13.2.3 Legal establishment in another member state

Chapter 12.2.1 applies, with the proviso that the rules concerning permanent activity also apply to Switzerland and Swiss professionals.

### 13.2.4 Professional experience requirements

Chapter 12.2.2 applies, with the proviso that the rules concerning permanent activity also apply to Switzerland and Swiss professionals.

### 13.2.5 Qualification levels

The PQ Directive provides for five qualification levels, contained in Art.11. In all responding EEA/CH countries where the profession is regulated or treated as regulated (AT, BE, CZ, FR, DE, GR, IE, LU, PL, PT, RO, SK, UK), the required qualification for tax advisers is a diploma of post-secondary level education of 3-4 years, corresponding to level d) in Art.11. Applicants from another EEA/CH country who wish to establish in these countries as tax advisers (or, in the case of Ireland and the UK, become members of ITI or CIOT), may be asked to prove as a minimum

*“training at post-secondary level [...] of a duration of at least one year or of an equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education or the completion of equivalent school education of the second secondary level, as well as the professional training which may be required in addition to that post-secondary course” (Art. 11 lit.c) PQ Directive).*

For persons that do not satisfy the above criteria but are nevertheless allowed to practice tax in a country that regulates the profession, Art.12 PQ contains a specific rule.

It has also been pointed out by the European Commission that Art.49 TFEU obliges member states to consider the recognition of professional qualifications even of applicants that do not meet the above criterion (Communication COM(2011)367 of 22 June 2011).

### 13.2.6 The aptitude test

On the basis of the information provided, the competent authority (in Ireland and the UK, the ITI/CIOT), will determine which qualification differences have to be bridged by compensation measures. As the activity of giving tax advice always requires knowledge of the national law (Art.14 (3) PQ Directive), they may decide to ask applicants to sit an aptitude test (see 12.2.6).

The “66 questions guide” (link in Chapter 15) gives detailed explanations on the recognition procedure. Please note that the guide contains views of the European Commission.

The aptitude test is a test designed to bridge the difference in knowledge necessary to permanently practice the profession in the host member state. It can be considered an abridged entry exam. Such test can be imposed by an EEA/CH country where the profession is regulated on applicants from other (regulated or non-regulated) EEA/CH member states who seek to practice the profession on their territory on more than just a temporary basis. An aptitude test is defined as

*“ a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State. In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant,*

*are not covered by the diploma or other evidence of formal qualifications possessed by the applicant.” (Art.3 (1) lit.h) PQ Directive)*

When determining the scope of the aptitude test, the competent authority must, next to formal qualification, also take into account knowledge that the applicant has obtained through other means like practical experience (Art. 14 (5) PQ Directive, ECJ case C-313/01 *Morgenbesser*).

In the view of the Commission, the host member state should organise at least two aptitude tests a year (see question 58 in the “66 questions guide”, link in Chapter 15).

A fee for the procedures and for taking the aptitude test can be charged provided it does not exceed the actual cost of the service and does not discriminate in comparison to nationals of the host country in similar situations (see question 62 in the “66 questions guide”).

### 13.2.7 Professional title

Upon successful completion of the aptitude test, a tax adviser may exercise the activity under the same conditions as a tax adviser with a domestic qualification. The professional rules of the host member state are fully applicable. The tax adviser must use the professional title of the host country (Art. 52 PQ Directive) when practicing there.

### 13.2.8 Partial access to a regulated profession

Where a professional from another member state is qualified only in some of the areas covered by the profession in the host member state, partial access to the profession limited to those fields in which the applicant is qualified is an option. This issue is not dealt with in the PQ Directive but in case C-330/03, *Colegio de Ingenieros de Caminos*, the ECJ says that if compensation measures are sufficient to bridge the differences in the applicant’s qualification, member states *may* but do not have to grant partial access to the profession.

By contrast, partial access to the profession *must* be granted if the compensation measures would be so extensive that this would practically amount to obtaining a new professional qualification. In *Colegio de Ingenieros de Caminos*, the Court named as a condition for this that the activity for which the applicant is qualified can objectively be separated from the activities for



which he is not qualified. If the activity could be exercised autonomously and independently in the home member state, this is seen as an indication.

The Court considered that the risk of “splitting” the profession through granting partial access must be accepted. The uncertainty for clients could be avoided through rules on the use of professional titles. There is no ECJ case law on the question as to whether a splitting of the tax profession into different activities (e.g. accounting, out-of-court tax advice, representation before court) is considered possible. Indeed this may vary from country to country. In a country where tax accounting and balance sheet accounting largely follow the same rules, one might argue that the activities cannot be split.

The European Commission has proposed (proposal COM(2011)883 of 19 December 2011 for a modernised PQ Directive) including partial access as a regular tool in the Directive. Although it is currently unclear whether the definition of when an activity shall be deemed separable will exactly follow the *Colegio de Ingenieros* decision, the inclusion of partial access in the Directive will probably come.



## Chapter 14

### Recent developments in professional affairs policy

#### 14.1 Regulation and deregulation

The European Commission believes that growth in services is hindered by excessive regulation of the professions. Apart from legislative action, the Commission regularly issues papers calling for the abolition of regulatory requirements, mostly in the context of the follow-up to the implementation of the Services Directive, or mandates studies in this area.

##### 14.1.1 The European Commission in the implementation of the Services Directive

###### Implementation of the Services Directive and follow-up

The Services Directive was to be implemented into national laws by 28 December 2009. In its role as “guardian of the Treaties”, the Commission has been monitoring the implementation and the follow-up process foreseen by the Directive itself:

Art.39 of the Directive provides for a *mutual evaluation* process in which authorisation schemes, requirements for the establishment of service providers and rules on multidisciplinary activities that member states have decided to keep in place are evaluated between member states in a peer review process. The result of this evaluation was presented in the Communication “[...] *Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive*” COM(2011)20 of 27 January 2011 (Link in Chapter 15).

The main points criticised were

- the number of regulated professions
- legal form and capital ownership requirements for professional firms
- insurance requirements for cross-border services, and
- advertising and pricing restrictions.

This Communication was followed by a questionnaire titled “*Performance Check – Business Services*” (Link in Chapter 15) sent in summer 2011 to

EEA member states and specifically geared to existing requirements for tax advisers, with a special focus on the interaction between the PQ Directive, the Services Directive and the e-Commerce Directive. The document describes a fictitious case of a tax firm which does not meet a number of existing requirements in member states, willing to provide cross-border services. The information collected in this survey was presented to the member states at a meeting on 28 February 2012 (Link in Chapter 15).

On 8 June 2012, the Commission presented its Communication “[...] *on the implementation of the Services Directive. A partnership for new growth in services 2012-2015*”, supplemented a.o. by working documents containing detailed country-by-country information on the implementation of the Services Directive and the results of the performance checks (Links in Chapter 15). In its Communication, the Commission announced a “zero tolerance policy” towards establishment requirements and total bans on advertising and urges member states to comply with the e-Commerce Directive. In areas where member states have been left a certain degree of discretion like on shareholding and company forms, they are asked to nevertheless relax restrictions. Concerning insurance requirements for cross-border services, the Commission announced an initiative for a practical solution, involving the insurance industry.

In autumn 2012, the Commission opened another peer review process focusing specifically on legal form and shareholding requirements, fee regulations and authorisation schemes for temporary cross-border services for a number of professions including tax advisers and accountants. The objective is “*to reach a common understanding of the regulatory balance and options chosen by Member States and to share experiences*”. The process is scheduled to be finished by June 2013.

The Commission has also started including liberalisation of services as a topic in its *Annual Growth Surveys* and *Country-specific recommendations* in the context of its yearly cycle of policy coordination, the *European Semester* (Links in Chapter 15).

### Studies on professional services

- On 14 February 2012, the Commission has published a study on reserved activities and their economic impact. The study focuses on 13 countries and on “business services” containing tax advice, legal advice and accountancy and seeks to measure the degree of restriction through re-

- served activities and to assess whether an impact on productivity in these sectors and any knock-on effects on other sectors can be observed. However, the summary suggests that the findings on interrelation between reserved activities and productivity are not particularly conclusive and should be treated with caution. The Annexes to the study contain lists of reserved activities, including tax advice, in the countries surveyed.
- In summer 2012, the Commission awarded a contract to compile an “*inventory of legal form and shareholding requirements in the EU services sector and their economic assessment*”.
  - In March 2012, the *Institute of Advanced Studies* (IHS – *Institut für Höhere Studien*) in Vienna sent a questionnaire to organisations representing the professions, announcing the carrying out of a survey “*Index of Regulation – 2<sup>nd</sup> EU-wide survey on professional services*”, as a follow-up to the IHS Study of 2003 which had at the time been criticised for its methodology.

Weblinks to all of these studies can be found in Chapter 15.

### 14.1.2 Deregulation at national level

Despite the initiatives taken by the European Commission, a general trend towards deregulation cannot be observed. Countries participating have been asked whether they identify a trend at national level towards deregulation of the profession, e.g. as a response to the economic crisis. Austria reported that there have been recent changes. In Poland and Greece, changes have been proposed and are currently discussed. In Poland, this concerns the release of compliance and bookkeeping from the tax advisers’ reserved activities. The majority of responding countries (CH, DE, ES, FI, HR, IE, NL, PT, RO, RU, SK) say there is no trend whatsoever while five countries (CZ, FR, LV, UA, UK) actually report an increase of regulation. In Latvia, a draft law on tax advice is currently considered.

### 14.1.3 Split of the profession

Countries have been asked whether they see a possible split of the tax profession into a highly qualified profession to deal with complex tax issues like tax planning and representation before court and a less qualified profession to do the day-to-day work like compliance and bookkeeping, or whether such split is already reality.

While nine countries (CZ, DE, FI, IE, LV, RO, SK, UA, UK) do not see this possibility, ten countries (AT, BE, CH, FR, ES, HR, NL, PL, RU) believe that to some extent, a split already exists, for regulatory or practical, market-related reasons:

In Austria, a split of the professional activities can be observed, as following the relaxation of requirements for accounting and bookkeeping, some SME clients tend to move to less qualified operators. The same development is expected in Poland where the removal of bookkeeping and compliance from the list of reserved activities, considering that already today the majority of tax advisers also hold an accounting degree and mainly provide bookkeeping and compliance services. In the Netherlands, the emergence of such a split is not due to regulation but to a broader application of *horizontal monitoring* (Section 14.2) which may result in a division between tax advisers engaged in setting up and maintaining *tax control frameworks* and those involved in tax planning and litigation.

In Belgium, the split has purely regulatory reasons: tax advisers may not provide bookkeeping services or indeed be bookkeepers, putting them at a disadvantage where tax services also involve bookkeeping. In France, there is both a regulatory split between activities as tax advice as a principal activity may only be provided by lawyers (while accountants may provide tax advice related to accounting) and a market-related split due to the diversification of tax lawyers. A wide diversification in the market is also mentioned as the reason for such split in Spain. In Greece, the introduction of an additional exam for highly complex activities may entail a further split of the profession in the future.

### 14.1.4 Proposal for a revised Professional Qualifications Directive

On 19 December 2011, the European Commission proposed a modernization of the PQ Directive (Link in Chapter 15), containing the following main changes for tax advisers:

- Partial access to a regulated profession: The Commission’s proposal would codify the possibility of partial access into the Directive, granted by ECJ case law (case C-330/03 *Colegio de Ingenieros*; see Section 13.2.8). The approach of the ECJ is adapted in so far as an activity is deemed to be separable (resulting in partial access to that activity) in the *host* member state if it is exercised as an autonomous activity in the

home MS. According to the ECJ, this would only be one indication but in itself not sufficient. Indeed, the question whether e.g. certain accounting tasks can be separated from tax tasks depends on the interrelation between tax and accounting rules and differs from country to country.

- The Commission has proposed the introduction of *European Professional Cards* for certain professions to facilitate cross-border mobility by speeding up administrative procedures for professionals that opt for a card. The decision to introduce cards for a given profession would be taken by the Commission through implementing acts (Art. 291 TFEU).
- For professions for which *Professional Cards* are introduced, in case of permanent mobility, the competent authority of the host member state would have to decide within two months on an aptitude test or other compensation measures to be taken. Failure to take a decision would be considered a tacit authorisation, allowing the professional to practice in the host MS. This means that the risk of a professional practicing without a recognised qualification would be shifted to the client in the host member state.

The plenary vote in the European Parliament is scheduled for 12 March 2013 but may still be postponed. If adopted, the changes will have to be implemented into national laws, according to the current proposal, at the latest two years after the Directive's entry into force. This will not be before April 2015.

## **14.2 Enhanced cooperation between taxpayers, tax authorities and tax advisers**

In the past years, countries have introduced a number of measures aimed at increasing taxpayers' compliance and revenues and a more effective use of the tax administration's resources. While some concern internal measures of the tax administration like risk management, grouping taxpayers or (informally) tax advisers into more or less compliant players, other measures take a co-operative approach, offering the client something in return. This may be practical facilitations like prolonged deadlines or access to the tax administration's database. Some measures are aimed at establishing a relationship of mutual trust. Where these measures involve tax advisers, this raises the question of the position of tax advisers as an "intermediary" between the taxpayer and the tax authorities and his independence.

Risk management as an internal process is carried out by six countries (AT, FI, FR, LV, NL, RO). “Horizontal monitoring” carried out by tax advisers for their clients and similar cooperative approaches to increase compliance exist in five countries (AT, FR, IE, NL, RO). In Austria, this is at the stage of a pilot project and in Croatia, it is still under discussion; in Ireland, “cooperative compliance” agreements are offered by the tax authorities to large businesses and high net worth individuals. Four countries (DE, ES, NL, SK) encourage (certain groups of) taxpayers to make data available electronically. The Netherlands offer pre-completed tax returns. In the UK, the introduction of a registration regime for tax agents is currently under discussion. In Romania, there is new legislation obliging certain types of companies to have their profit tax and other tax returns verified by a tax adviser but its implementation has been postponed.

While the Netherlands apply four of the mentioned measures, no such measures exist in seven countries (CH, CZ, GR, PL, PT, RU and UA).

Asking what tax advisers get in return for their cooperation, four countries (AT, FR, LV, NL) responded that they get a specific contact person assigned; three countries reported a quicker handling of the case by the tax authorities (AT, LV, NL). France noted more flexible or extended deadlines while Austria noted a more generous handling as a result of enhanced trust. In the UK, it is currently discussed to give registered tax agents the possibility to edit data in the tax authorities’ database.

CFE member organisations have mostly favourable views on enhanced cooperation as they are generally in favour of good relations between taxpayer, tax adviser and tax authorities. Reservations have been expressed in so far as such cooperation should create win-win situations, also for taxpayers. This was not be the case where electronic communication tools are not user-friendly and serves only the tax administration. One view emphasized that tax advisers should remain on their client’s side, as their representatives, another stressed that a cooperative approach should not weaken the position of the taxpayer. Finally, it was recommended that clients consult a tax adviser prior to entering into enhanced cooperation with the tax authorities.

### **14.3 Anti Money Laundering**

The European Commission is expected to present a proposal for a revised (Forth) Anti-Money-Laundering (AML) Directive in early 2013. The Com-



mission has issued a Communication on 11 April 2012 (COM(2012)168; see link in Chapter 15) indicating possible changes.

The proposal is expected to be along the lines of the February 2012 Recommendations of the FATF (*Financial Action Task Force*), an inter-governmental body with 36 members, including the world's largest economies, several EU member states and the European Commission. Associate organisations cover other regions of the world. The FATF can be considered the global standard setter in AML.

Money laundering is the laundering of the proceeds of a criminal activity which is defined in Art.3 (4) as involvement in the commission of a *serious crime*. The FATF recommends including tax crimes as *predicate offences*, meaning offences whose proceeds are laundered. It remains to be seen whether the Commission maintains the serious crime approach of the AML Directive also for tax crimes. The inclusion of tax crimes may require tax advisers to be more vigilant in the future and could imply an extended reporting obligation for tax advisers in case a client may be involved in a tax crime. Practical difficulties may arise from the fact that the “proceeds” of illegally unpaid tax (other than e.g. the cash proceeds from a drug deal) can be difficult to identify. If the acceptance of any remuneration for advice given to a person who has committed a tax crime would constitute money laundering, this would create a serious deterioration in the legal protection of the taxable person.

## 14.4 Audit Directive and Regulation

On 30 November 2012, the European Commission proposed a revision of the Audit Directive 2006/43/EC containing rules for all audits and a new Audit Regulation that would contain specific rules for audits of public interest entities (COM(2012)778 and 779, see links in Chapter 15).

The scope of the amended Directive would be extended to all audits, including audits not required by EU- but by national law and voluntary audits which would mean that tax advisers could no longer provide these services unless they are auditors. The proposal also contains the abolishment of any requirements in “normal” audit firms reserving ownership of shares or voting rights to professionals, while the current Audit Directive required member states to introduce voting rights requirements. Furthermore, the proposal contains a further shift of responsibilities from professional self-regulation to state regulation.

The Regulation proposal provides for mandatory rotation of audit firms and audit partners. There is also a prohibition on audit firms giving tax advice as this is considered to entail a conflict of interest; however, the extent of this prohibition is not quite clear when comparing different language versions of the proposal. Moreover, there is a prohibition on audit firms/networks that exceed certain thresholds (namely, to generate more than 1/3 of their audit revenues from large public interest entities and that have € >1.5 billion audit revenues) from providing other services than audit in the EU and an introduction of ownership rules for these firms.

Notably the Regulation proposal is heavily disputed. Whether or not one considers the proposed measures suitable to achieve the desired policy results, one must note that they would force the audit market to reorganise with possible repercussions also on tax advisers who have an audit qualification or who practice with auditors in one firm. The creation of a different regulatory environment for firms that offer tax advice, audits for non-public interest companies and audits for public interest companies will lead to the split markets, entailing a reduction of competition which is contrary to the objectives pursued by the European Commission in other sectors of the internal market.

## Chapter 15

### Useful weblinks and case law

For links relating to a particular country, please consult the relevant Country Sheet in Part II of this handbook.

#### Recognition of professional qualifications

- Directive 2005/36/EC on the recognition of professional qualifications (consolidated version of 24 March 2011):  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2005L0036:20110324:EN:PDF>
- User guide “66 questions - 66 answers” by the European Commission:  
[http://ec.europa.eu/internal\\_market/qualifications/docs/guide/users\\_guide\\_xx.pdf](http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_xx.pdf)
- Regulated professions database by the European Commission: Search function by country and by name of the profession:  
[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?fuseaction=regProf.indexCountry](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=regProf.indexCountry)
- General information on the PQ Directive  
[http://ec.europa.eu/internal\\_market/qualifications/future\\_en.htm](http://ec.europa.eu/internal_market/qualifications/future_en.htm)
- Proposal COM(2012)883 of 19 December 2011 for a modernised PQ Directive:  
[eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=883&RechType=RECH\\_naturel&Submit=Suche](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=883&RechType=RECH_naturel&Submit=Suche)

#### Services Directive / cross-border services

- Services Directive 2006/123/EC:  
[http://eur-lex.europa.eu/Result.do?T1=V3&T2=2006&T3=123&RechType=RECH\\_naturel&Submit=Suche](http://eur-lex.europa.eu/Result.do?T1=V3&T2=2006&T3=123&RechType=RECH_naturel&Submit=Suche)
- Points of Single Contact portal:  
[http://ec.europa.eu/internal\\_market/eu-go/index\\_en.htm](http://ec.europa.eu/internal_market/eu-go/index_en.htm)

- Services Directive Handbook:  
[http://ec.europa.eu/internal\\_market/services/services-dir/handbook\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/handbook_en.htm)
- General information on the Services Directive: [http://ec.europa.eu/internal\\_market/services/services-dir/guides\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/guides_en.htm)
- “Your Europe Advice” portal:  
[http://ec.europa.eu/citizensrights/front\\_end/index\\_en.htm](http://ec.europa.eu/citizensrights/front_end/index_en.htm)
- SOLVIT – network administered by the European Commission to find short-term solutions to Internal Market problems relating to administrative procedures  
<http://ec.europa.eu/solvit/>

### Anti money laundering

- Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (“3<sup>rd</sup> AML Directive”; consolidated version of 1 April 2011):  
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0060:en:NOT\\_](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0060:en:NOT_)
- List of “Financial Intelligence Units” for reporting of money laundering  
<http://www.egmontgroup.org/about/list-of-members>
- Financial Action Task Force:  
<http://www.fatf-gafi.org>
- Report from the European Commission of 11 April 2012 on the application of the 3<sup>rd</sup> AML Directive:  
[http://ec.europa.eu/internal\\_market/company/docs/financial-crime/20120411\\_report\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/financial-crime/20120411_report_en.pdf)
- FATF Recommendations of 16 February 2012:  
<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>

## EU Anti tax fraud and tax evasion policy

- European Commission website “*Fight against tax fraud and tax evasion*”, including Communication COM(2012)722 of 6 December 2012 “*An Action Plan to strengthen the fight against tax fraud and tax evasion*”:  
[http://ec.europa.eu/taxation\\_customs/taxation/tax\\_fraud\\_evasion/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/index_en.htm)

## Recent EU developments in professional affairs policy (Part I, Section 14.1)

- Communication COM(2011)20 of 27 January 2011 “Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive”:  
[eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=20&RechType=RECH\\_naturel&Submit=Suche](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=20&RechType=RECH_naturel&Submit=Suche)
- Questionnaire “*Performance Check – Business Services*”:  
[ec.europa.eu/internal\\_market/services/docs/services-dir/mutual-evaluation/performance-check-business\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/mutual-evaluation/performance-check-business_en.pdf)
- Performance Checks, Background note for the Expert Group Meeting of 28 February 2012:  
[ec.europa.eu/internal\\_market/services/docs/services-dir/performance-check/business-sector\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/performance-check/business-sector_en.pdf)
- Communication COM(2012)261 of 8 June 2012 “*on the implementation of the Services Directive. A partnership for new growth in services 2012-2015*”:  
[eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=261&RechType=RECH\\_naturel&Submit=Suche](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=261&RechType=RECH_naturel&Submit=Suche)
  - related working document SWD(2012)148 containing detailed country-by-country information on the implementation of the Services Directive  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0148:FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0148:FIN:EN:PDF)
  - results of the performance checks (SWD(2012)147):  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0147:FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0147:FIN:EN:PDF)

- *Annual Growth Surveys* ([http://ec.europa.eu/europe2020/making-it-happen/annual-growth-surveys/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/annual-growth-surveys/index_en.htm)) and *country-specific recommendations* ([http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm)) in the context of its yearly cycle of policy coordination, the *European Semester*
- 2012 Study on reserved activities:  
[http://ec.europa.eu/internal\\_market/qualifications/docs/news/20120214-report\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf)
- Public tender for the compilation of an inventory of legal form and shareholding requirements in the EU services sector and their economic assessment:  
[ted.europa.eu/udl?uri=TED:NOTICE:241419-2012:TEXT:EN:HTML](http://ted.europa.eu/udl?uri=TED:NOTICE:241419-2012:TEXT:EN:HTML).
- 2012 IHS Questionnaire:  
[http://ec.europa.eu/competition/sectors/professional\\_services/studies/studies.html](http://ec.europa.eu/competition/sectors/professional_services/studies/studies.html)

### Audit

- Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (consolidated version of 21 March 2008):  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0043:20080321:EN:PDF>
- Directive and Regulation proposals of 30 November 2011 (COM(2012)778 and 779):  
[http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=778&RechType=RECH\\_naturel&Submit=Suche](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=778&RechType=RECH_naturel&Submit=Suche)

### CFE

- CFE Website:  
<http://www.cfe-eutax.org>
- CFE Guidelines, *Professional qualifications and ethics of tax advisers in Europe*:  
<http://www.cfe-eutax.org/sites/default/files/guidelinesen2005.pdf>

- CFE Manifesto: *Tax advisers are highly qualified, independent liberal professionals in Europe*:  
[http://www.cfe-eutax.org/sites/default/files/Manifesto\\_Paris%202009\\_final.pdf](http://www.cfe-eutax.org/sites/default/files/Manifesto_Paris%202009_final.pdf)

## European Court of Justice case law in professional affairs

- Decisions and related Advocate General opinions may be found via the ECJ search engine:  
[http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/)

| Case reference     | Case name (not official)                        | Subject of the decision   | Section in Part I of this Handbook referring to the decision |
|--------------------|---|---|--|
| C-51/96 and 191/97 | <i>Deliège</i>                                  | Professional bodies as associations of undertakings in antitrust law, Belgium   | 2.1.5  |
| C-309/99           | <i>Wouters</i>                                  | Professional bodies as associations of undertakings in antitrust law; justification of restrictions to multiprofessional cooperation, Netherlands | 2.1.5  |
| C-250/03           | <i>Mauri</i>                                    | Antitrust aspects of professional entry exams, Italy  | 2.1.5  |
| C-35/99            | <i>Arduino</i>                                  | Price regulation and antitrust law, Italy   | 2.1.5, 8.2   |
| C-198/01           | <i>CIF</i>                                      | Responsibility of the state not to create or favour a situation in which antitrust law is violated, Italy   | 2.1.5  |
| C-313/01           | <i>Morgenbesser</i>                             | Recognition of qualifications outside the scope of the PQ Directive, for trainees, Italy  | 2.2.1.2, 13.2.6  |
| C-118/09           | <i>Robert Koller</i>                            | Application of the PQ Directive, qualification obtained in another member state, Austria  | 2.2.1.2  |
| C-451/03           | <i>Servizi Ausiliari Dottori Commercialisti</i> | Proportionality of professional qualification requirements at national level, Italy   | 3.2  |

## Part I – The Tax Profession in Europe

| Case reference                     | Case name (not official)                               | Subject of the decision   | Section in Part I of this Handbook referring to the decision |
|------------------------------------|--|---|--|
| C-3/95                             | <i>Reisebüro Broede</i>                                | Proportionality of professional qualification requirements at national level, Germany   | 3.2  |
| C-305/05                           | <i>Ordre des barreaux francophones et germanophone</i> | Anti money laundering reporting and the human right to a fair trial, Belgium  | 6.4  |
| C-564/07                           | <i>Commission v. Austria (patent lawyers)</i>          | Professional indemnity insurance requirements for temporary cross-border services of patent agents in Austria                 | 7.2.2  |
| C-119/09                           | <i>Société Fiduciaire d'Expertise Comptable</i>        | Anti canvassing rules for French accountants as a total ban on advertising  | 8.1  |
| C-565/08                           | <i>Commission v. Italy (lawyers maximum fees)</i>      | Maximum fees for temporary cross-border services of lawyers in Italy  | 8.2  |
| C-94 and 202/04                    | <i>Cipolla</i>   | Minimum fees for temporary cross-border services of lawyers in Italy  | 8.2  |
| C-212/97;<br>C-208/00;<br>C-167/01 | <i>Centros; Überseering; Inspire Art</i>               | Legal form of companies moving to another member state  | 10.1   |
| C-171 and 172/07                   | <i>Apothekerkammer Saarland</i>                        | Ownership requirements for pharmacies, Germany  | 10.2   |
| C-140/03                           | <i>Commission v. Greece (opticians)</i>                | Ownership requirements for opticians, Greece  | 10.2   |
| C-55/94                            | <i>Gebhard</i>   | Distinction between temporary and permanent cross-border services of lawyers, Italy   | 11.2   |
| C-215/01                           | <i>Schnitzer</i>                                       | Temporary cross-border activity of a long duration  | 11.2   |
| C-424/09                           | <i>Toki</i>  | Qualification with a UK professional institute as a qualification obtained in a country where the profession is not regulated | 12.2.2   |



---

| Case reference | Case name (not official)                | Subject of the decision                  | Section in Part I of this Handbook referring to the decision |
|----------------|---|--|--|
| C-330/03       | <i>Colegio de Ingenieros de Caminos</i> | Partial access to a regulated profession | 13.2.8,<br>14.1.3  |



## Part II

### Country Sheets





**Austria** Österreich AT

## **1. Picture of the tax profession in Austria**

### a) General characteristics of the profession

The name of the profession is Steuerberater. The number of tax advisers in Austria is 4,807. Tax advisers are a regulated profession. All tax advisers are mandatory members of “Kammer der Wirtschaftstreuhänder” (KWT).

Apart from being self-employed or partners or directors in professional firms, tax advisers may be employed in a tax, law or audit firm or in any business, under the condition that the activity exercised is a relevant tax advisory activity. This requires that the in-house tax adviser exercises the same activities as an independent tax adviser, meaning s/he could work e.g. as head of the tax department of a larger enterprise.

1,523 (32%) of tax advisers work as employees in professional firms or as in-house tax adviser in other businesses. The remainder are self-employed, partners in firms and retired tax advisers. Any self-employed or employed activity has to be reported to KWT. Tax advisers may not be public servants or be employed by the state.

Apart from tax advisers, auditors (*Wirtschaftsprüfer*) and lawyers (*Rechtsanwälte*) may give tax advice. In the area of accounting, there are three professions: management accountant (*Bilanzbuchhalter*), bookkeeper (*Buchhalter*) and payroll accountant (*Personalverrechner*). All before-mentioned professions are regulated by law. The law governing the accounting professions has been amended, the changes being effective as of 1 January 2013.

Please note that although some professional titles equal those used in other German-speaking countries, the qualifications and competences may differ.

Tax advisers in Austria are commonly viewed as a liberal profession.

### b) Professional qualification

A minimum qualification is required both for the exercise of tax advisory activity and for the use of the professional title.

To become tax adviser, a person needs to gather a minimum of 800 tuition credits (ECTs) at university level in the fields of accounting (national and international accounting regulations), Austrian and international tax law, law and economics.

There is also a possibility to replace this academic education by five years of on-the-job experience as management accountants.

The academic education is followed by three years of practical training as a trainee tax adviser.

On completion of the practical training, the applicant needs to pass a professional entry exam held by KWT. The fee for taking this exam is € 690. Once obtained, the exam will normally be valid lifelong.

KWT rules oblige tax advisers to take part in continuing professional development (CPD): Tax advisers must take 120 hours in three years with a minimum of 30 hours per year. KWT offers CPD but professionals are free to take part in CPD offered by other operators as long as they meet the required standards.

There are specialisation titles in the area of tax, e.g. “zertifizierter Finanzstrafrechtsexperte” (certified expert of fiscal criminal law) or “Professional Master of Business Administration (Management in Tax Accountancy)”, both awarded by *WT Akademie*, the education institute of KWT. These titles are not regulated by law.

### c) Activities of tax advisers

Austrian tax advisers are active in the following fields:

- |        |   |
|--------|---|
| Green: | Yes, this activity is reserved to certain professions including tax advisers.   |
| Red:   | No. A tax adviser would need an additional qualification to exercise this activity.   |
| Beige: | In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc. |

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                           |  |
| Representation of clients before tax courts                                |  |
| Representation of clients before criminal courts in tax matters            |  |
| Representation of clients before your Supreme Court in tax matters         | before Supreme Administrative Court (Verwaltungsgerichtshof) |
|  | before Constitutional Court (Verfassungsgerichtshof)         |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| Consulting   |  |
| Management consulting in economic matters                                  |  |
| Legal  |  |
| Advice on company or commercial law  |  |
| Advice on employment law   | In the context of payroll accounting for the client          |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |

| Audit   |  |
|---|--|
| Statutory audit for sole traders/partnerships |  |
| Statutory audit for small companies           |  |
| Statutory audit for medium-size companies     |  |
| Voluntary audit for companies                 |  |

Apart from tax, tax advisers may generally engage in any other lawful activities that do not affect their independence. However, activities on a commission-base are not allowed. Any activities must be reported to KWT but no express permission is required. There is no rule saying tax must be the main business of tax advisers.

### d) Professional conduct and quality management

Professional conduct is regulated by specific legislation and by a KWT code of conduct.

#### Sanctions

Breaches of professional rules can be sanctioned with a monetary penalty up to € 14,536 and violation of requirements for official appointment may even cause loss of the permission to practice as a tax adviser in Austria.

#### Conflicts of interest

If the tax adviser notices a conflict of interest between him/herself and the client or between two clients, s/he either has to stop acting for these clients (or one of these clients) or may continue, acting as a mediator.

#### Commissions

Tax advisers may not receive commissions, e.g. for recommending a client to a fellow tax adviser. Indeed any activity on a commission-base is prohibited by law.



## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

Austrian legislation obliges tax advisers to treat confidentially client information they have obtained in the course of their engagement. Violation of this duty can be considered a disciplinary and administrative offence and sanctioned by the professional bodies and administration. Confidentiality is subject to no time limit and can only be waived by the client. To defend themselves in legal proceedings against them, tax advisers may reveal confidential client information.

### Right of non-disclosure / legal professional privilege

Tax advisers in Austria may refuse to provide client information requested by the state. This right which is stated in legislation applies before authorities (fiscal authorities as well as the police and public prosecutor) and before courts (both fiscal and criminal courts). It also prohibits the confiscation and seizure of communication in the tax adviser's office and client's premises.

If tax advisers are suspected or accused of collaboration in fiscal fraud or professional misconduct, they may refuse to provide client information that may incriminate themselves.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Indications of money laundering have to be reported but there are exceptions where tax advisers give legal advice or represent their clients in judicial proceedings. Tax advisers have to stop any action that could be deemed assistance to a criminal activity. In case of concern regarding the engagement or a specific transaction, the tax adviser may consult the anti money laundering office (*Geldwäschemeldestelle*) at the *Federal Ministry of the Interior*.

#### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information, but there may be a recourse if the tax adviser has made a mistake.

Tax adviser and client can limit liability by individual agreement or general terms and conditions, within the boundaries of contract law. The parties may exclude slight negligence. Liability may also be limited to a certain amount.

Tax advisers practicing in Austria need professional indemnity insurance cover. The minimum amount is € 72,673 for each case. Tax adviser companies need separate insurance cover. This insurance covers all directors and employed tax advisers working in the company. In-house tax advisers employed in other business do not need insurance cover.

#### g) Advertising and pricing

Advertising is generally allowed. There are no specific advertising rules for tax advisers.

There is no price regulation in Austria. Contingency fees are not allowed if they are the only form of remuneration.

#### h) Contractual issues and formal requirements

Austrian tax advisers are recommended to provide engagement letters defining the scope of the engagement. If the service is provided by a tax adviser company, the client has to be informed in writing of the name of the individual tax adviser taking care of the engagement.

#### i) The firm of the tax adviser

Tax firms can take the legal forms of sole ownership, partnerships, private and public limited liability companies.

Apart from tax advisers, shareholders of tax adviser companies may only be the following:

- auditors
- tax and audit firms
- spouses and children of tax adviser or auditor shareholders
- tax advisers and auditors with a foreign qualification and similar professional education, provided that their capital share and voting rights do not exceed 25% and Austrian professionals enjoy the same rights in the country of the foreign shareholder.

If the firm is a public limited company, shares must be registered with restricted transferability.

Tax adviser companies may only be managed by tax advisers and auditors while tax advisers need to have the majority in the management.

It must be clear from the firm's name that it is a tax firm. If ownership and management structures as well as other requirements for the official recognition comply with the law, KWT will officially recognise the tax firm.

Multiprofessional firms may be set up with accountants, auditors and members of any other regulated profession with equivalent professional rules but not with lawyers. Notification to KWT has to be made if the tax adviser is actively involved in the business of this firm.

#### j) Registration or other requirements before commencing work as a tax adviser

Tax advisers have to become member of KWT. The fee for the appointment of a tax adviser is € 286. The annual fee for this is 0.43% of the fees earned from tax services, with a minimum of € 250.

Apart from professional qualifications, tax advisers have to provide proof of good character and repute and absence of bankruptcy. They have to swear a professional oath or make a solemn declaration.

## 2. Cross-border activity of tax advisers from other countries in Austria

### a) Online and other correspondence services

Tax advisers providing online or other correspondence services into Austria or involving Austrian authorities or courts without entering Austrian territory will be subject to the same rules as tax advisers practicing on Austrian territory. For tax advisers from EEA countries, it depends on the nature and duration of the service to determine whether the rules for temporary or for permanent activity apply.

### b) Temporary or occasional activity

Tax advisers from other EEA member states exercising their activity on a temporary or occasional basis in Austria may exercise the same scope of activities that they may carry out in their home country. No notification has to be made to Austrian authorities for the provision of tax advice. They must use their title in the official language (or one of the official languages) of their home member state. Should the tax adviser come from a German-speaking country, they must include an indication of the country where the qualification has been obtained.

They will need professional indemnity insurance cover that satisfies the insurance requirements of Austrian tax advisers (see paragraph 1, lit.f).

Tax advisers from non-EEA countries need to obtain a professional license in Austria.

### c) Permanent activity

This section applies to tax professionals who intend to give tax advice in Austria on a *permanent* basis. Tax advisers that are permanently active in Austria need a professional license and have to become members of KWT.

Please note that employees from Bulgaria and Romania need a work permit in Austria until the end of 2013; all other EU nationals need no work permit.

Professional qualifications obtained or recognised in other EEA countries can be recognised in Austria. The KWT is the competent authority for the recognition procedure. Applicants from EEA countries and Switzerland have to pass an aptitude test upon proof that they are entitled to the profession in their home country. The cost of the aptitude test is € 410.

More information on the recognition procedure can be found in Chapter 13.2.

Applicants from non-EEA countries must obtain the Austrian license without the possibility of an aptitude test.

Tax advisers from other countries will need professional indemnity insurance cover. Existing insurance in other EU member states will be recognised if it satisfies the insurance requirements of Austrian tax advisers (see paragraph 1,lit.f).

### 3. Professional bodies

All tax advisers are members of *Kammer der Wirtschaftstreuhänder (KWT)*, a self-regulatory body set up by public law.

Next to 4,807 tax advisers, 2,733 trainee tax advisers and auditors and 1,625 tax adviser companies are members of KWT. Auditors are mandatory members of KWT as well.

KWT's activities are:

- appointing and dismissing tax advisers
- holding qualifying exams
- developing codes of conduct/ethics
- supervising the compliance of members with professional obligations and, if necessary, disciplinary sanctions
- supervising compliance with anti money laundering legislation
- providing education and CPD courses to professionals and their staff
- publishing tax reviews and other relevant technical information
- mediating between professionals
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning
- To some extent, KWT is also active
- in developing software or online tools for tax advisers and
- acting as a mediator between tax advisers and tax authorities.

KWT is a member of the CFE.

## 4. Practical information

### a) Contacts

|  |   |
|--|---|
| <p><b>KWT – Kammer der Wirtschaftstreuhand</b></p> <p>Schönbrunnerstraße 222-228,<br/>Stg.1/6.Stock (U4 Center),<br/>1120 Vienna</p> <p>Tel: +43 1 8 11 73 0<br/>Fax: +43 1 8 11 73 100<br/>office@kwt.or.at<br/>www.kwt.or.at</p> | <p><b>Professional qualifications contact point</b></p> <p>Mrs Irene Linke<br/>Bundesministerium für Wirtschaft,<br/>Familie und Jugend<br/>(Federal Ministry of Economy, Family<br/>and Youth)<br/>Department I/7, Industrial Law<br/><i>Stubenring 1<br/>1010 Wien</i></p> <p>Tel: +43 1 71100 5446<br/>Fax: +43 1 71100 935446<br/>Irene.linke@bmwfj.gv.at<br/>www.bmwfj.gv.at</p> |
| <p><b>Point of Single Contact</b></p> <p><a href="http://www.eap.gv.at/index_en.html">www.eap.gv.at/index_en.html</a></p>  |   |

### b) Sources of law

Legislation: Wirtschaftstreuhandberufsgesetz – WTBG (Public Accountants’ Statute of Professional Practice):

[www.ris.bka.gv.at/Bundesrecht/](http://www.ris.bka.gv.at/Bundesrecht/) (search for: “WTBG” in field “Titel/Abkürzung”)

- Richtlinie des Vorstandes der Kammer der Wirtschaftstreuhand über die Ausübung der Wirtschaftstreuhandberufe, Wirtschaftstreuhandberufs-Ausübungsrichtlinie – WT-Arl (directive on the practice of the public accounting professions): [www.kwt.or.at/de/PortalData/2/Resources/downloads/WT-ARL2003\\_konsolidiert\\_ABI-KWT2-2008.pdf](http://www.kwt.or.at/de/PortalData/2/Resources/downloads/WT-ARL2003_konsolidiert_ABI-KWT2-2008.pdf)



## Belgium België Belgique Belgien BE

### 1. Picture of the profession in Belgium

#### a) General characteristics of the profession

In Belgium, 5,016 individuals and 2,175 companies are tax advisers. As only the use of the title tax adviser but not the activity of giving tax advice is regulated, the actual number of individuals and companies practicing in tax may be higher.

The name of the profession is *Belastingconsulent* in Dutch, *Conseil Fiscal* in French and *Steuerberater* in German.

The use of the professional title is only allowed to tax adviser members of the *Institut des Experts-Comptables et des Conseils Fiscaux / Instituut van de Accountants en de Belastingconsulenten* (hereinafter *Institute*). This is regulated by law (see paragraph 4).

75% of Belgian tax advisers are also registered as accountants (*Accountant* in Dutch/*Expert-Comptable* in French). Only these tax advisers may provide accounting services. None of the Belgian tax advisers are lawyers, auditors (*Bedrijfsrevisor/Réviseur d'entreprises*) or bookkeepers (*Boekhouders/Comptables*). Although these professions, like anyone, may give tax advice, they may not hold the title tax adviser. Tax advisers may not provide bookkeeping services. Like the profession of tax adviser, the professions of lawyer, auditor, accountant and bookkeeper are regulated by law.

Tax advisers may be self-employed or employed in professional firms or as in-house tax advisers in any other business. Amongst the individual tax advisers in Belgium, 68% work in professional firms, either as self-employed, partners/directors or as employees. 31% are in-house tax advisers employed by other business. Tax advisers may be public servants or be employed by the state but not within the tax administration.

Tax advisers are viewed by their clients and the public as a liberal profession.

## b) Professional qualification

As the use of the title requires a minimum qualification, the profession is regulated in the sense of the EU Professional Qualifications Directive.

Members of the *Institute* must have completed three years of studies either at a university or academic studies mainly in the field of economics, accounting, bookkeeping and law at a *higher school at university level*. This must be followed by three years of practical training which includes tax advice to taxpayers, assistance in the fulfilment of their tax reporting obligations and representation vis-à-vis the tax administration. At the end of the training, candidates have to pass a qualifying exam held by the *Institute*. Once obtained, the qualification is normally valid lifelong.

Tax advisers are obliged by law and by rules of the *Institute* to take part in continuing professional development (CPD). These contain detailed rules on the number of hours, the kind of study and the subjects.

CPD must be obtained with operators or in courses or seminars accredited by the *Institute*. The *Institute* offers CPD only occasionally.

There are no more specialisation titles in the field of tax.

## c) Activities of tax advisers

Belgian tax advisers are active in the following fields:

- Blue: Yes. Anyone may provide this service.  
Red: No. A tax adviser would need an additional qualification to exercise this activity.  
Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax   |  |
|---|--|
| Advice in domestic tax law                                      |  |
| Advice in foreign tax law                                       |  |
| Tax returns/declarations  |  |
| Representation of clients before tax authorities                |  |
| Representation of clients before tax courts                     |  |
| Representation of clients before criminal courts in tax matters |  |



|  |  |
|--|--|
| Representation of clients before your Supreme Court in tax matters         |  |
| <b>Accounting &amp; Co.</b>  |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Self-employed tax advisers may not engage in commercial activities but only in other “compatible” activities like teaching or consulting. There can be no exemptions from this rule; however, there is no quantitative requirement that tax must be the main business of tax advisers.

There is no law obliging a client to seek assistance from a tax adviser before fiscal authorities. Before courts, clients must generally be represented by a lawyer as the latter has the monopoly of pleading.

### d) Professional conduct and quality management

Professional conduct is regulated by a Royal Decree and supervised by the *Institute*.

#### Sanctions

Breaches of deontological rules can be sanctioned by reprimand or even by exclusion from the *Institute* and thus the loss of the right to use the title tax adviser. The tax administration has the possibility to deprive someone from the right to represent taxpayers.

#### Conflicts of interest

If a tax adviser notices a conflict of interest between himself and the client or between two clients, depending on the nature of this conflict and the threat to the independence of the tax adviser, s/he (1) has to inform the clients of this conflict of interest or (2) even may have to stop acting for these clients or one of these clients.

#### Commissions

Member of the *Institute* are not allowed to receive a commission whatsoever for recommending a client to a fellow tax adviser.

#### Certification and quality benchmarking

In the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information), quality certification is offered by commercial operators. The *Institute* is currently setting up a mandatory “quality review” of the members offices.

Quality benchmarking in the form of consumer organisations, media, clients or professional bodies rating tax firms is not common.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

Belgian law obliges tax advisers to treat confidentially information they have obtained in the course of their engagement. This is subject to no time limit and can be waived by the client to some extent.

*There is a distinction between tax advisers working, independently or as employees, in public practice and in-house tax advisers in business: Tax advisers in public practice are subject to professional secrecy while in-house tax advisers are (only) subject to a confidentiality duty. While a breach of the confidentiality duty is an infringement of the ethical principles and can be sanctioned by the *Institute*, a breach of *professional secrecy* is also a criminal offence.*

Tax advisers may reveal confidential information to defend themselves in legal proceedings against them.

### Right of non-disclosure / legal professional privilege

The legislation granting professional secrecy also prevents the tax adviser from providing client information to the state, also on request from tax authorities. There are exceptions in legislation and where the professional needs to be heard as a witness by a court.

The state is also prevented from seizing or confiscating client documents, data or communication in the tax adviser's office.

if tax advisers are suspected or accused of collaboration in fiscal fraud or professional misconduct, they may refuse to provide client information that may incriminate themselves.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report but an exemption applies where tax advisers give legal advice or represent their clients in judicial proceedings.

When finding such indications, tax advisers may continue to serve this client while increasing due diligence, but only to the extent that laying down the engagement would make the client suspicious and might jeopardise investigations.

### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

The possibility of tax advisers to limit their professional liability by agreement with the client has been introduced in 2010. Tax advisers are free to limit professional liability, within the boundaries of contract law.

Professional indemnity insurance is mandatory only for members of the *Institute* that are self-employed or partners or directors of tax firms. All tax adviser companies need insurance cover as well. Employed tax advisers need no separate insurance as they are covered by their company's insurance. In-house tax advisers in business do not need insurance. The amount that must be covered is € 2.5 million per case.

### g) Advertising and pricing

Advertising is generally allowed. Specific advertising rules for tax advisers exist but these are not really stricter than the general advertising rules. There are no restrictions as to what kinds of advertising or media are used. However, advertising should only contain “verifiable” information and the way of communication should stay in accordance with the principle of dignity of liberal professions.

There is no price regulation but general guidelines as to what criteria should be taken into account when determining the fees. Contingency fee agreements are allowed.

### h) Contractual issues and formal requirements

Members of the *Institute* are obliged to provide engagement letters defining the scope of the engagement. The tax administration too requires a

formal engagement from any person representing a taxpayer vis-à-vis the tax authorities for several interventions like the submission of a tax return or the filing of an appeal.

#### i) The firm of the tax adviser

There are no legal restrictions relating to the company form.

If the company is established as a tax adviser company, tax advisers or accountants that are members of the *Institute* must hold the majority of the shares and have the majority in the management. A minority of shares and voting rights can in principle be held by anyone, provided such minority shareholders or company officers do not damage the reputation of tax advisers. Membership of the *Institute* is no prerequisite for a company to provide tax advice but for the use of the title tax adviser company.

Such company may only perform non-commercial activities. The *Institute* will check compliance of the incorporation deed with several specific recommendations of the Institute.

Tax advisers may set up a firm with auditors, bookkeepers and accountants. Lawyers are prevented from setting up joint firms with tax advisers .

#### j) Registration and other requirements

Enterprises that establish in Belgium must register with the Crossroads Bank for Enterprises (see contacts) and with the social security funds if the firm has employees. This does not apply to enterprises that operate in Belgium on a temporary basis.

Belgian Institute:

Apart from the abovementioned conditions, to become member of the *Institute*, applicants must have an office in Belgium. Moreover, they need to provide a proof of good character, repute and absence of bankruptcy and to swear a professional oath or make a similar solemn declaration. Annual registration fees with the *Institute* are (2012) € 635.53 € for tax advisers in public practice and € 422.42 € for in-house tax advisers.

## 2. Cross-border activity of tax advisers from other countries in Belgium

### a) Online and other correspondence services

A tax adviser with a qualification not obtained or recognised in Belgium who gives advice, files a tax return or represents clients before Belgian tax authorities without entering Belgian territory, e.g. by e-mail, telephone or letter, does not need registration, authorisation, professional indemnity insurance or recognition of his/her qualifications in Belgium, provided that the client has a post address in Belgium.

### b) Temporary or occasional activity

The same (lit.a) applies to tax professionals with a non-Belgian qualification who give tax advice in Belgium on a *temporary or occasional* basis.

These must use their title in the official language (or one of the official languages) of their home member state in a way that avoids confusion with Belgian titles. For example, a French *Expert-Comptable* or a Dutch *Belastingadviseur* should add their country to their professional title.

There is no insurance requirement for temporary services.

### c) Permanent activity

Tax professionals who intend to give tax advice in Belgium on a *permanent* basis have to become members of the *Institute* (only) if they wish to use the title tax adviser.

Employees from Bulgaria and Romania still need a work permit in Belgium until the end of 2013 at the latest.

Professionals who want to use the title tax adviser have to become members of the *Institute* and meet the *Institute's* qualification requirements. The Institute is the *competent authority* in the sense of the EU Professional Qualifications Directive.

Professional qualifications obtained or recognised in other EEA+CH countries can be recognised in Belgium. An applicant who can prove post-secondary

level professional education of one year minimum can take an aptitude test with the *Institute*. The aptitude test is an oral exam. The cost of the aptitude test is around € 250 including the filing costs. There is no recognition procedure for qualifications not obtained or recognised in EEA+CH countries. More information on the recognition procedure can be found in Chapter 13.2 of Part 1.

Tax adviser companies from other countries who wish to open an office in Belgium or move their firm to Belgium may maintain their foreign corporate form but will have to align their structure with the legal requirements of Belgian law, in terms of ownership and management requirements (see paragraph 1 lit.i) if they want to operate under the title tax adviser company.

### 3. Professional bodies

All persons that use the professional title tax adviser must be members of the *Institut des Experts-Comptables et des Conseils Fiscaux / Instituut van de Accountants en de Belastingconsulenten* which is a self-regulatory body set up by public law. Apart from tax advisers, only accountants can be members of the *Institute*. The membership of the *Institute* is 5,016 individuals and 2,175 companies.

The oversight body is the High Council of the Economic Professions (CSPE).

The activities of the *Institute* are:

- developing codes of conduct / ethics
- appointment and dismissal of tax advisers
- supervising the compliance of members with professional obligations and imposing, if necessary, disciplinary sanctions
- holding qualifying exams
- carrying out joint projects with the fiscal administration and other authorities in matters like e-invoicing and e-government
- acting as anti money laundering supervisor

To some extent, the *Institute* is

- providing education and CPD courses to tax advisers and staff
- publishing of tax reviews and other relevant technical information
- mediating between professionals
- mediating between professionals and their clients
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning

The *Institute* is a member of the CFE.

## 4. Practical information

### a) Contacts

|  |  |
|--|--|
| <p>Institut des Experts-Comptables et des Conseils Fiscaux / Instituut van de Accountants en de Belastingconsulenten (IEC-IAB)</p> <p>Boulevard Emile Jacqmain 135<br/>1000 Brussels</p> <p>Tel :: +32 2 543 74 90<br/>Fax: +32 2 543 74 91<br/>info@iec-iab.be<br/>www.iec-iab.be</p>   | <p>Point of Single Contact: “Business Belgium”</p> <p><a href="http://business.belgium.be">http://business.belgium.be</a></p>  |
| <p><b>Professional Qualifications contact points</b></p> <p><b>French-speaking:</b></p> <p>Ministère de la Fédération Wallonie-Bruxelles,<br/>Direction générale de l'Enseignement non obligatoire et de la recherche scientifique,<br/>Mme Chantal Kaufmann<br/>Directrice générale<br/>Rue Adolphe Lavallée 1<br/>1080 Bruxelles</p> <p>Tel: +32 2 690 87 02<br/>Fax : +32 2 690 87 60<br/>chantal.kaufmann@cfwb.be www.enseignement.be/infosup</p> <p><b>Dutch-speaking:</b></p> <p>Vlaams Ministerie van Onderwijs en Vorming,<br/>Agentschap voor Kwaliteitszorg in Onderwijs en Vorming,<br/>NARIC-Vlaanderen<br/>Hendrik Consciencegebouw,<br/>Toren C 2<br/>Koning Albert II-laan 15<br/>1210 Brussel<br/>Tel: +32 2 553 89 58</p> <p>naric@vlaanderen.be<br/>www.naric.be</p> | <p><b>Crossroads Bank for Enterprises</b></p> <p>EN: <a href="http://business.belgium.be/en/managing_your_business/setting_up_your_business/main_steps/company_number/">http://business.belgium.be/en/managing_your_business/setting_up_your_business/main_steps/company_number/</a></p> <p>BCE website (French):<br/><a href="http://economie.fgov.be/fr/entreprises/BCE/">http://economie.fgov.be/fr/entreprises/BCE/</a>;</p> <p>KBO website (Dutch):<br/><a href="http://economie.fgov.be/nl/ondernemingen/KBO/">http://economie.fgov.be/nl/ondernemingen/KBO/</a></p> |



## b) Sources of law

- Law of 22 April 1999 on the accountancy and tax professions:  
FR:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&la=F&cn=1999042236&table\\_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(“\)\)](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=1999042236&table_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(“)))  
NL:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=nl&la=N&cn=1999042236&table\\_name=wet&&caller=list&N&fromtab=wet&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(“\)\)](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&la=N&cn=1999042236&table_name=wet&&caller=list&N&fromtab=wet&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(“)))
- Royal decree of 1998, 1th of March fixing the deontology rules of the accountants:  
FR (for NL, see language button on top of page):  
[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?DETAIL=1998030133%2FF&caller=list&row\\_id=1&numero=11&rech=13&cn=1998030133&table\\_name=LOI&nm=1998016071&la=F&chercher=t&dt=ARRETE+ROYAL&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi\\_all&sql=dt+contains++%27ARRETE%27%2526+%27ROYAL%27+and+dd+%3D+date%271998-03-1%27and+actif+%3D+%27Y%27&ddda=1998&tri=dd+AS+RANK+&trier=promulgation&dddj=1&dddm=03&imgcn.x=50&imgcn.y=6](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1998030133%2FF&caller=list&row_id=1&numero=11&rech=13&cn=1998030133&table_name=LOI&nm=1998016071&la=F&chercher=t&dt=ARRETE+ROYAL&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&sql=dt+contains++%27ARRETE%27%2526+%27ROYAL%27+and+dd+%3D+date%271998-03-1%27and+actif+%3D+%27Y%27&ddda=1998&tri=dd+AS+RANK+&trier=promulgation&dddj=1&dddm=03&imgcn.x=50&imgcn.y=6)
- NL:  
[http://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=nl&la=N&cn=1998030133&table\\_name=wet&&caller=list&N&fromtab=wet&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(“\)\)](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=nl&la=N&cn=1998030133&table_name=wet&&caller=list&N&fromtab=wet&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(“)))
- French texts on the Institute’s website:  
<http://www.iec-iab.be/fr/membres/publication/Lois-et-arretes-royaux/pages/default.aspx>





## Croatia Hrvatska HR

### 1. Picture of the tax profession in Croatia

#### a) General characteristics of the profession

The Croatian name for tax adviser is *Porezni Savjetnik*, or *Ovlašteni Porezni Savjetnik* for *Certified Tax Adviser*. While the number of certified tax advisers is 29, there are no estimates of the number of uncertified tax professionals. While tax advice may be given by anyone, representation of the taxpayer before the tax authorities is only permitted to certified tax advisers (as well as to lawyers and auditors). Accountants may represent taxpayers in payroll matters. The legal and audit profession are regulated by law as well.

Of the 25 certified tax advisers, it is estimated that 15 are one-man firm and 10 are partners or share owning directors in professional firms. Many tax practitioners work as in-house tax advisers in companies.

It is estimated that of the 4,182 lawyers in Croatia, 10% are providing tax services, so are 70% of the 269 registered audit companies. Payroll tax advice is often given by accounting firms.

The term “liberal profession” is commonly understood and used also for tax advisers.

#### b) Professional qualification

Registered tax adviser is a regulated profession in the sense of the EU Professional Qualifications Directive as a certain qualification is required by law.

To become a certified tax adviser, an applicant has to prove university education of four years in law or economics plus five years of post-graduate practical training. After completion of the practical training, there is a professional entry exam held by the *Chamber of Tax Advisers*. The fee for taking

## Part II – Country Sheets

---

the exam is 6,000 HRK (€ 800). Once obtained, the exam will normally be valid lifelong.

There are no requirements relating to continuing professional development (CPD) prescribed in the legislation. It is expected this will be dealt with by the Chamber of Tax Advisors.

There are no more specialisation titles in the field of tax.

### c) Activities of tax advisers

Croatian certified tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.  
Red: No. A tax adviser would need an additional qualification to exercise this activity.  
Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |       |
|--|-------|
| Advice in domestic tax law   | Green |
| Advice in foreign tax law  | Beige |
| Tax returns/declarations   | Green |
| Representation of clients before tax authorities                   | Green |
| Representation of clients before tax courts                        | Beige |
| Representation of clients before criminal courts in tax matters    | Beige |
| Representation of clients before your Supreme Court in tax matters | Beige |
| Accounting & Co.   |       |
| Accounting services  | Beige |
| Pensions   | Beige |
| Social security  | Beige |
| Representation before administration in social security            | Beige |
| Consulting   |       |
| Management consulting in economic matters, human resource          | Beige |

| Legal  |  |
|--|--|
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| Audit  |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| Other  |  |
| Company secretarial services   |  |

Certified tax advisers are generally allowed to engage in any other lawful activities, provided that their professional duties are observed.

#### d) Professional conduct and quality management

Professional conduct is regulated by the Code of Conduct of the Chamber of Tax Advisors. Many tax advisers are also member of professions in which professional conduct is regulated.

#### Sanctions

The *Chamber of Tax Advisors* may exclude members from the profession in case of breaches of professional duties.

### Conflicts of interest

If a tax adviser notices a conflict of interest between himself and the client or between two clients, s/he has to stop acting for these clients (or one of these clients).

### Commissions

There is a prohibition for tax advisers to receive a commission for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

Quality benchmarking exists in the form of consumer organisations or similar organisations rating tax firms but there is no official data publically available.

## e) Protection and disclosure of client data

### Client confidentiality /professional secrecy

Croatian law obliges tax advisers (both in-house and in tax firms) to treat confidentially information they have obtained in the course of their engagement. Exceptions apply in accordance with specific regulations. Violation of client confidentiality, if not in accordance with specific regulations, can be sanctioned by the *Chamber of Tax Advisers*.

### Right of non-disclosure / legal professional privilege

The exact extent of the right of non-disclosure is not entirely clear, as due to the small number of certified tax advisers, there have been few cases in practice and no case law is known.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report. Whether there is an exemption where tax advisers give legal advice or represent their clients in judicial proceedings, cannot be reported with certainty.

#### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to a recourse if the tax adviser has made a mistake.

Tax advisers are free to limit professional liability, within the boundaries of contractual law. This can be done by individual agreement or general terms and conditions.

There appears to be a professional indemnity insurance requirement for certified tax advisers. This applies also to tax adviser companies. The insurance of the company covers the insurance of all partners/directors and employed tax advisers. In-house tax advisers in business do not need professional indemnity insurance.

#### g) Advertising and pricing

There are no specific advertising rules for tax advisers.

It appears that there is no regulation on tariffs currently in force. Success fees and contingency fees are allowed and applied in practice.

#### h) Contractual issues

Tax advisers have to provide engagement letters defining the scope of the engagement.

#### i) The firm of the tax adviser

There are no tax adviser companies. Tax advisers may only practice in partnerships. The most common form used is the general private partnership (*društvo osoba*).

j) Registration and other requirements

Mandatory memberships include membership of certified tax advisers, lawyers and auditors in professional bodies. There is also a duty of businesses, including tax businesses, to register with the chambers of commerce.

**2. Cross-border activity of tax advisers from other countries in Croatia**

a) Online and other correspondence services

There is no information available on rules on cross-border on-line or correspondence services.

For tax advisers not established in Croatia, it is not possible however to file a tax return or represent clients before tax authorities.

b) Temporary or occasional activity

Tax advisers not established in Croatia may not file a tax return or represent clients before tax authorities. Otherwise, there are no specific requirements for the giving of tax advice.

As of 1 July 2013 when it will become member of the EU, Croatia will have to allow the representation of clients and the filing of tax returns by tax advisers with a qualification from another EEA member state on a temporary or occasional basis.

c) Permanent activity

Foreign tax firms, like any foreign businesses, need to register when establishing themselves or opening an office in Croatia.

There is no recognition procedure for professional qualifications from other countries. Tax advisers who intend to represent clients or otherwise interact with the tax authorities will normally have to complete the full set of studies and practice described in paragraph 1b).



---

As of 1 July 2013 when it will become member of the EU, Croatia will need to have a recognition procedure for qualifications from other EEA countries in place.

More information on the recognition procedure can be found in Chapter 13.2 of Part 1.

### 3. Professional bodies

All 29 certified tax advisers are member of the *Croatian Chamber of Tax Advisers*.

Apart from mandatory membership in the *Chamber of Tax Advisers*, certified tax advisers can choose to become member of UPS (*Udruga Poreznih Strucnjaka*), the *Association of Tax Professionals* which is an association of private law with six members, five individuals and one tax firm.

UPS is active in

- mediating between professionals
- mediating between professionals and tax authorities
- mediating between professionals and their clients

and, to some extent,

- giving opinions in tax matters to the tax administration and politicians  
and
- lobbying and campaigning.

UPS is a member of the CFE.

## 4. Practical information

### a) Contact

Udruga poreznih strucnjaka /  
Association of Tax Professionals

Dobojska 28  
10000 Zagreb

Tel: + 385-1-3098 356  
Fax: +385-1-3098 358  
upsp@upsp.info  
www.upsp.info/

### b) Further weblinks

- Croatian Ministry of Finance: [www.porezna-uprava.hr](http://www.porezna-uprava.hr)



## Czech Republic    Česká Republika    CZ

### 1. Picture of the profession in the Czech Republic

#### a) General characteristics of the profession

4,427 individuals and 733 companies practice as tax advisers. The professional title is *Daňový Poradce*. All tax advisers are mandatory members of the *Czech Chamber of Tax Advisers*.

Tax advisers can be self-employed or employees in professional firms. In-house tax advisers are not considered tax advisers and are thus not members of the *Czech Chamber*. It is estimated that 70% of Czech tax advisers are self-employed, 65% working as one-man firms and 5% as partners or shareholding directors in professional firms. 25% are employees in tax, law, audit or accounting firms while 5% are in-house counsels employed in business.

7% of tax advisers also practice as auditors, only a very small fraction (0.25%) are lawyers. Apart from tax advisers, lawyers are allowed to provide the full range of tax advisory services. Some tax-related operations may also be done by accountants and auditors as part of their professional activities. Tax advice is a reserved activity only if given in a structured and profit-seeking manner; any natural person may give non-profit tax advice.

Like tax advisers, lawyers and auditors are also regulated by specific legislation. There is no specific law on the profession of accountant, only requirements related to professional experience, contained in the general *Trade Licensing Act*. There is no distinct profession of bookkeeper.

Tax advisers are commonly regarded as a liberal profession.

## b) Professional qualification

The tax profession is regulated in the sense of the EU Professional Qualifications Directive as there is a minimum qualification by law for the use of the title tax adviser and tax advisory activity.

Becoming a tax adviser requires a university degree obtained after three years of studies but no particular practical experience. In addition, candidates must pass an exam held by the *Czech Chamber*. The cost of this exam is CZK 5,000 (€ 200). Once obtained, the qualification will normally be valid lifelong.

Continuing professional development (CPD) is not obligatory in the Czech Republic but the *Czech Chamber* offers participation in a CPD programme. Members who choose to sign up for this programme are obliged to engage in CPD. Tax advisers are free to obtain their CPD from other operators than the *Czech Chamber* that meet the required standards.

There are no further specialisation titles in the field of tax.

## c) Activities of tax advisers

Czech tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.
- Blue: Yes. Anyone may provide this service.
- Red: No, a tax adviser would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax   |                                      |
|---|--------------------------------------|
| Advice in domestic tax law  |                                      |
| Advice in foreign tax law   |                                      |
| Tax returns/declarations  |                                      |
| Representation of clients before tax authorities                  |                                      |
| Representation of clients before tax courts                       | this refers to administrative courts |
| Representation of clients before criminal courts in tax matters   |                                      |
| Representation of clients before the Supreme Court in tax matters | lawyers                              |

| Accounting & Co.   |  |
|--|--|
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| Consulting   |  |
| Management consulting in economic matters, human resource                  |  |
| Legal  |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| Audit  |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| Other  |  |
| Company secretarial services   |  |

Tax advisers may engage in any lawful activities if this does not affect compliance with professional duties.

#### d) Professional conduct and quality management

Professional conduct is regulated by specific legislation containing the essential rights and obligations. In addition, the *Czech Chamber* has a *Disciplinary Code* and an *Ethical Code*, the latter being obligatory only for tax

advisers who have agreed to it. Professional conduct is supervised by the *Czech Chamber*.

### Sanctions

In case of non-compliance with professional duties, the *Czech Chamber* can impose reprimands, monetary penalties (with a maximum of CZK 100,000 (€ 4,000)) per infraction, temporary suspension and exclusion from the tax profession.

### Conflicts of interest

There is no specific rule for conflicts of interest between the tax adviser and the client or between two clients. The tax adviser has to carefully consider the appropriate action, as he may not cause damage to any of his/her clients.

### Commissions

There is no rule preventing a tax adviser from receiving a commission for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

In the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information), quality certification is offered by commercial operators.

Quality benchmarking in the form of consumer organisations, media, clients of professional bodies rating tax firms is not common.

## e) Protection and disclosure of client data

### Client confidentiality /professional secrecy

Czech law obliges tax advisers to treat confidentially information they have obtained in the course of their engagement. Violation of this duty can be sanctioned by the *Czech Chamber*.

This confidentiality is subject to no time limit and can only be waived by the client but even in that case, the tax adviser may be obliged to withhold the information if this is in the client's interest. However, there are reporting obligations for certain crimes.

### Right of non-disclosure / legal professional privilege

The legislation granting professional secrecy also gives the tax adviser the right to refuse to give information requested by the state. This applies to tax authorities, police, public prosecutors and administrative and criminal courts.

Information however may not be refused in case of serious crimes, in particular in tax fraud amounting to more than CZK 5 million (€ 200,000) which has to be reported to the police.

If tax advisers are suspected or accused of collaboration in fiscal fraud or professional misconduct, they may (indeed they are obliged to, if not released by the client) refuse to provide client information that may incriminate themselves.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report but an exemption applies where tax advisers give legal advice or represent their clients in judicial proceedings. Where they need to report the case, tax advisers may not continue to serve this client.

### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Client and tax adviser cannot agree to limit the tax adviser's liability.

Tax advisers and tax adviser companies are required to have professional indemnity insurance. There is no minimum amount specified. The insurance of the company covers all partners, directors and employed tax advisers. In-house tax advisers in other businesses are not considered tax advisers and therefore do not need insurance.

### g) Advertising and pricing

Advertising is generally allowed. There are no specific rules for tax advisers.

There is no price regulation. Prices are usually calculated per hour. Agreements whereby the remuneration is a share of the tax reduction, saving or relief obtained as well as success fees are prohibited and invalid while in court proceedings, success fees can be agreed.

### h) Formal requirements and contractual issues

As to formal requirements, administrative actions addressed to the tax authorities have to be signed by the tax adviser by hand or electronically.

### i) The firm of the tax adviser

There are no restrictions to the legal form tax adviser companies may use or to shareholding or management of tax adviser companies as long as the advice is given by a tax adviser.

Tax advisers may enter partnerships or set up joint companies with any professions as long as the tax adviser's professional duties are observed.

### j) Registration requirements

Tax advisers are mandatory members of the *Czech Chamber*, tax adviser companies are not considered members but have to register with the *Czech Chamber*. The annual contribution is CZK 4,000 (€ 160). This does not apply to tax advisers from other member states who register in the Czech Republic to practice on a temporary or occasional basis.



## 2. Cross-border activity of tax advisers from other countries in the Czech Republic

### a) Online and other correspondence services

There are no particular requirements for a tax adviser from another EEA country rendering services to a client in the Czech Republic without entering Czech territory, e.g. by e-mail, telephone or letter. Such tax adviser may also file a tax return or represent a client vis-à-vis Czech tax authorities but the tax adviser will only be considered as a person allowed to assist the taxpayer, not as a professional tax adviser.

### b) Temporary or occasional activity

Tax advisers from other EEA countries may provide temporary or occasional services in the Czech Republic. Their scope of activities is the same as of Czech tax advisers. They are referred to as *Guest Tax Advisers* and must use their title in the official language of their host member state.

Notification of cross-border services has to be made with the *Czech Chamber*. This should happen before the beginning of the activity but there is no waiting period before the activity may begin, neither does the tax adviser have to await the Chamber's approval. Online notification is possible.

The possibility to provide temporary or occasional tax services does not exist for tax advisers with a qualification not obtained or recognised in an EEA country.

Tax advisers from other member states need professional indemnity insurance in the Czech Republic but existing insurance in another member state that covers the activity in the Czech Republic will be accepted.

### c) Permanent activity

Tax professionals who intend to give tax advice in the Czech Republic on a *permanent* basis have to become members of the *Czech Chamber* which is also the competent authority for the recognition of qualifications. Professionals with a qualification obtained or recognised in the EEA may take

an aptitude test which is an abridged qualifying exam the cost of which is CZK 2,000 (€ 80).

More information on the recognition procedure can be found in Chapter 13.2 of Part 1.

Existing professional indemnity insurance in another member state that covers the activity in the Czech Republic will be recognised.

A tax adviser company from another EU member state that wants to open an office in the Czech Republic may run this office in the form of an *organisational component*, so it is not required to create a new company under Czech law or even change the structure of the “parent”. However, if a company moves into the Czech Republic, it must re-establish using a legal form provided by Czech law.

### 3. Professional bodies

All 4,427 individual tax advisers are mandatory members of the *Czech Chamber of Tax Advisers (Komora Daňových Poradců České Republiky -KDP ČR)* which is a self-regulatory body set up by public law. There are 733 tax adviser companies which are not members but registered with the *Czech Chamber*. Retired tax advisers may register with the Chamber, too.

The activities of the *Czech Chamber* are:

- developing codes of conduct and ethics
- appointment and dismissal of tax advisers
- supervising the compliance of members with professional obligations and disciplinary sanctions
- holding qualifying exams
- acting as anti money laundering supervisor
- providing education and CPD courses to tax advisers and staff
- mediating between professionals
- giving opinions in tax matters to the tax administration and politicians.

To some extent, the *Czech Chamber* is

- publishing of tax reviews and other relevant technical information
- mediating between professionals and their clients
- offering online tools for tax advisers (intranet of the Czech Chamber).

The *Czech Chamber* is a member of the CFE.

## 4. Practical information

### a) Contacts

|   |   |
|---|---|
| <p>Komora Daňových Poradců České Republiky (KDP ČR) / Chamber of Tax Advisers of the Czech Republic</p> <p>Kozi Street 4<br/>60200 Brno</p> <p>Tel: +420 5 4242 2311<br/>Fax: +420 5 4221 0306<br/>kdp@kdpcr.cz<br/>www.kdpcr.cz/</p> | <p>Professional qualifications contact point</p> <p>Ministerstvo školství, mládeže a tělovýchovy odbor pro záležitosti Evropské unie / Ministry of Education, Youth and Sports, Department for EU Affairs</p> <p>Karmelitská 7<br/>118 12 Praha 1</p> <p>Tel: +420 257 193 376,<br/>+420 257 193 579<br/>Fax: +420 257 193 397<br/>qualifications@msmt.cz<br/>www.msmt.cz</p> |
| <p>Point of Single Contact:<br/>“BusinessInfo”</p> <p><a href="http://www.businessinfo.cz/en/">www.businessinfo.cz/en/</a></p>  |   |

### b) Sources of law

- Zákon č. 523/1992 Sb. o daňovém poradenství a Komoře daňových poradců ČR / Act No. 523/1992 Coll. on Tax Consultancy and on the Chamber of Tax Advisers of the Czech Republic:  
EN: [www.kdpcr.cz/default.asp?nDepartmentID=90&nLanguageID=2](http://www.kdpcr.cz/default.asp?nDepartmentID=90&nLanguageID=2)
- Stanovy KDP ČR / Statutes of the Chamber of Tax Advisers of the Czech Republic:  
EN: [www.kdpcr.cz/default.asp?nDepartmentID=91&nLanguageID=2](http://www.kdpcr.cz/default.asp?nDepartmentID=91&nLanguageID=2)
- Disciplinární řád KDP ČR / Disciplinary Code:  
EN : <http://www.kdpcr.cz/default.asp?nDepartmentID=93&nLanguageID=2>
- Etický kodex KDP ČR / Code of Ethics:  
EN: <http://www.kdpcr.cz/default.asp?nDepartmentID=92&nLanguageID=2>





## Finland Suomi FI

### 1. Picture of the tax profession in Finland

#### a) General characteristics of the profession

The Finnish name of the profession is *Veroasiantuntija*. An estimate of 1000 individuals and 30 companies provide tax advisory services in Finland.

The Finnish tax profession in itself is not regulated and there is no mandatory membership of professional bodies for tax advisers. However, most Finnish tax professionals also hold a qualification as auditors, accountants or lawyers (ca. 30% each). For those other professionals, different professional regulations may apply. Auditors are regulated by law. Lawyers, accountants and bookkeepers are regulated by charter of a professional body with voluntary membership. This Country Sheet shall refer to the situation of persons that are “only” tax advisers, i.e. who do not hold additional qualifications.

As a general rule, tax advisers can be employed in any professional firm or business and may also be public servants or employed by the state. An estimated 60% of Finnish tax advisers are employed in tax firms, while 30% are partners or directors in tax firms, 1% being one-man firms. 10% are in-house tax advisers in other enterprises.

The idea of tax advisers as a liberal profession exists but clients or the public at large may not be aware of it.

#### b) Professional qualification

Neither the activity of giving tax advice nor the use of the professional title is regulated in the sense of the Professional Qualifications Directive, meaning they do not require a minimum qualification.

## Part II – Country Sheets

---

For membership of the professional association *Suomen Veroasiantuntijat*, there are no particular qualification requirements but members must have practiced as tax advisers for at least two years.

There is no obligation to take part in continuing professional development.

Specialisation titles in the field of tax do not exist.

### c) Activities of tax advisers

Finnish tax advisers are active in the following fields:

- Blue: Yes. Anyone may provide this service.  
Red: No, a tax adviser would need an additional qualification to exercise this activity.  
Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |                              |
|--|------------------------------|
| Advice in domestic tax law   |                              |
| Advice in foreign tax law  |                              |
| Tax returns/declarations   |                              |
| Representation of clients before tax authorities                   |                              |
| Representation of clients before tax courts                        |                              |
| Representation of clients before criminal courts in tax matters    |                              |
| Representation of clients before your Supreme Court in tax matters | Supreme Administrative Court |
|  | Supreme Court: only lawyers  |
| Accounting & Co.   |                              |
| Accounting services  |                              |
| Pensions   |                              |
| Social security  |                              |
| Representation before administration in social security            |                              |
| Consulting   |                              |
| Management consulting in economic matters, human resource          |                              |

| Legal  |  |
|--|--|
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| Audit  |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| Other  |  |
| Company secretarial services   |  |

Tax advisers may engage in any lawful activities if this does not affect compliance with professional duties. There is no quantitative requirement that tax must be the main business of tax advisers.

Tax advisers are not restricted from giving legal advice but in practice, few do.

#### d) Professional conduct and quality management

There is no specific regulation of professional conduct of tax advisers in the law but *Suomen Veroasiantuntijat* has developed codes of ethics applying to its members. Moreover, most tax advisers are members of other professions which are governed by a code of conduct.

#### Conflicts of interest

If a tax adviser notices a conflict of interest between him/herself and the client or between two clients, s/he has to inform the clients of this conflict. If the

client(s) agree(s), the tax adviser may continue acting for them; otherwise, s/he has to stop acting for these clients (or one of these clients).

### Commissions

There is no prohibition preventing tax advisers from receiving a commission for recommending a client to a fellow tax adviser.

### Quality benchmarking

It is not common that consumer organisations, media, professional bodies or clients in web portals rate the quality of services provided by tax firms but international organisations like Legal 500 conduct benchmarking.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There is no provision in the law on professional secrecy of tax advisers but *Suomen Veroasiantuntijat* has established rules in this regard. According to these rules, tax advisers (both in-house and tax firms) must treat confidentially information they have obtained in the course of their engagement. Confidentiality is also considered a contractual obligation towards the client.

Confidentiality is subject to no time limit and can only be waived by the client.

### Right of non-disclosure / legal professional privilege

Tax advisers in Finland may refuse to provide client information (also documents, data, communication etc.) requested by the state unless the law provides for a duty to disclose information.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.



Indications of money laundering have to be reported; from this duty, there are no exemptions.

#### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Tax advisers are free to limit professional liability by individual agreement with the client or by general terms and condition, within the boundaries of contract law.

There is no obligation for tax advisers to have professional indemnity insurance.

#### g) Advertising and pricing

Advertising is allowed. There are no specific advertising rules for tax advisers. There is no fee regulation either. Tax advisers and their clients may also agree on success and contingency fees.

#### h) Contractual issues

There is no obligation to provide a client with an engagement letter defining the scope of the engagement.

#### i) The firm of the tax adviser

Tax advisers are free to choose the legal form of their firm among all company forms available under Finnish law. For tax firms that are limited companies, the minimum share capital is 2,500 €. There are no restrictions on shareholding or management.

Tax advisers may set up a firm with any other professionals.

## 2. Cross-border activity of tax advisers from other countries in Finland

No registration or notification has to be made and no authorisation is required for offering tax advice in Finland, neither is there a requirement to be registered with the tax administration to file tax returns or to represent clients. Professional indemnity insurance is not required.

## 3. Professional Bodies

### Suomen Veroasiantuntijat

is a self-regulatory body of private law that offers membership exclusively to tax advisers. There are 161 voluntary individual members.

*Suomen Veroasiantuntijat* is active in

- giving opinions in tax matters to the tax administration and politicians
- mediating between professionals
- mediating between professionals and tax authorities.

To some extent, *Suomen Veroasiantuntijat* is

- developing codes of conduct and ethics
- providing education and CPD courses to professionals or staff
- lobbying and campaigning.

### Suomen Verokonsulttien Yhdistys (SVK)

is a private association whose members are mainly auditors. The objectives of SVK are to keep Finnish tax consultants up-to-date in different areas of national and international tax legislation as well as to contribute to the development of national legislation.

Both SVK and Suomen Veroasiantuntijat are members of the CFE.

## 4. Contacts

|  |   |
|--|---|
| <p><b>Suomen Veroasiantuntijat Ry</b><br/> c/o Timo Matikkala<br/> KPMG Tax<br/> P.O. Box 1037<br/> 00101 Helsinki Finland<br/> Tel: +358 9 207 603 000<br/> Fax: +358 9 6939 7887<br/> timo.matikkala@kpmg.fi<br/> www.veroasiantuntijat.fi</p> | <p><b>Suomen Verokonsulttien Yhdistys Ry (SVK)</b><br/> c/o Merimaa Accounting Services OY<br/> PL 35<br/> 00401 Helsinki Finland<br/> Tel: +358 9 777 1460<br/> Fax: +358 9 777 146 11<br/> kari.alhola@pretax.net</p>   |
| <p><b>Point of Single Contact</b><br/> Enterprise Finland:<br/> <a href="http://www.yrityssuomi.fi">http://www.yrityssuomi.fi</a></p>  | <p><b>Professional qualifications contact point</b><br/> Finnish National Board of Education (Opetushallitus)<br/> PO Box 380<br/> FI00531 Helsinki<br/> SUOMI/FINLAND<br/> – Tel: +358 40 348 7555<br/> – Fax: +358 40 348 7865<br/> – E-mail: <a href="mailto:recognition@oph.fi">recognition@oph.fi</a><br/> – Website: <a href="http://www.oph.fi/recognition">www.oph.fi/recognition</a></p> |





## France France FR

### 1. Picture of the profession in France

#### a) General characteristics of the profession

In France, the full range of tax advisory services may be offered by lawyers only. While all lawyers are allowed to practice in tax, only those with an additional specialisation may call themselves *Avocat spécialiste en droit fiscal et droit douanier*, the name commonly used is *Avocat fiscaliste* or *Avocat Conseil fiscal*. These are herein referred to as “tax lawyers”. There are about 54,000 lawyers in France of which an estimate of 3,000 practices in tax. Not all of these are *Avocats fiscalistes*. There is mandatory membership of lawyers in a bar association.

Lawyers are to be distinguished from accountants (*Experts-Comptables*) who may provide tax advice only to a limited extent:

- Firstly, accountants may only provide tax advice to clients for which they do accounting. This includes the preparation of tax returns which is a main activity of accountants;
- Secondly, the main activity of accountants must remain accountancy, meaning tax advice can only be ancillary. Where this country sheet refers to tax advice, it is referring to the full range of tax advisory services and not to the limited activities allowed to accountants.

Also notaries and auditors may provide tax advice in connection with their activities.

Lawyers, accountants and auditors are regulated by law and charter of their respective professional bodies. There is no regulated profession of book-keeper or accounting technician.

Lawyers can be employees of a (tax) law firm but may not be employed in other professional firms or businesses. They may not be public servants or employed by the state.

Although the concept of *tax agents* is not known in France, in certain circumstances and for certain taxes, it is mandatory to appoint a specific *tax representative* to file tax returns (e.g., VAT, capital gain tax for non-residents). Certain companies specialise in tax representation. It is a commercial activity, not regulated by the code of conducts of lawyers.

Tax lawyers are viewed by their clients and the public as a liberal profession.

### b) Professional qualification

To become a lawyer, university education of at least four years is required. This must be supplemented by an 18-month course with schools supervised by the bar associations. This course includes internships.

In addition, four years of post-graduate practical experience in the area of law are required. This can be obtained anywhere in the world, as long as it is relevant for the profession in France.

There is no specific education requirement for lawyer to practice in tax. However, lawyers that wish to be awarded the title *Avocat fiscaliste* must obtain, in addition to their qualification as a lawyer, a *tax certificate*. The relevant exams are organised by the bar associations.

After having gained access to the profession, tax lawyers have to take part in continuing professional development (CPD). The minimum amount is 20 hours per year (for tax lawyers, 5 hours must be in tax; in their first two years in the profession, 10 hours must also be in ethics). CPD may also include articles written for professional publication or being a speaker in tax conference. Tax lawyers are free as to where to obtain their CPD as long as it meets the required standards.

Apart from *Avocat spécialiste en droit fiscal et droit douanier*, there are no additional specialisation titles for lawyers in the area of tax.

### c) Activities of tax lawyers

French tax lawyers are active in the following fields:

Green: Yes, this activity is reserved to certain professions including tax lawyers.  
Blue: Yes. Anyone may provide this service.

Red: No, this activity is reserved to certain professions excluding tax lawyers. A tax lawyer would need an additional qualification to exercise this activity.  
 White: No information

| <b>Tax</b>   |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities   |  |
| Representation of clients before tax courts  |  |
| Representation of clients before criminal courts in tax matters                              |  |
| Representation of clients before your Supreme Court in tax matters                           |  |
| <b>Accounting &amp; Co.</b>  |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                                      |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                                    |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)                     |  |
| Legal advice in other areas than tax   |  |
| Legal advice in other areas than tax if the legal advice is only ancillary to the tax advice |  |
| Legal representation before court in other areas than tax                                    |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships  |  |
| Statutory audit for small companies  |  |

## Part II – Country Sheets

---

|   |  |
|---|--|
| Statutory audit for medium-size companies |  |
| Voluntary audit for companies             |  |
| <b>Other</b>                              |  |
| Company secretarial services              |  |

Commercial activities are considered incompatible with the legal profession but activities like teaching or consulting are allowed.

### d) Professional conduct and quality management

Professional conduct is regulated by specific legislation and also by the bar associations.

#### Sanctions

In case of non-compliance with professional duties, bar associations may impose sanctions on their members. These contain reprimands or even exclusion from the bar organisation, resulting in the loss of the permission to practice as a lawyer in France. These sanctions are imposed by the bar association, with a right to appeal before the Court of Appeal and the Supreme Court

#### Conflicts of interest

Where a tax adviser notices an existing conflict of interest between himself and the client or between two clients, s/he is not allowed to represent the clients. If the conflict is only potential, s/he may represent the clients provided they agree.

#### Commissions

A tax adviser may not receive a commission for recommending a client to a fellow tax adviser. This is forbidden by law.



## Certification and quality benchmarking

In the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information), ISO 9001 certification is offered by commercial operators.

Quality benchmarking in the form of media rating tax firms is common in France.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There is specific legislation providing for the protection of client data. Violation of this duty by the tax lawyer is considered a criminal offence and can be sanctioned by the professional bodies. Tax lawyers suspected or accused of collaboration in fiscal fraud or professional misconduct may reveal confidential client information to defend themselves.

### Right of non-disclosure / legal professional privilege

French law grants legal privilege to (tax) lawyers. This extends to information requested by the fiscal administration, the police, public prosecutors or fiscal and criminal courts. It also prevents the seizure of documents, data or communication in the (tax) lawyer's office. It does not apply to in-house legal counsels. Tax advisers suspected or accused of collaboration in fiscal fraud or professional misconduct may refuse to provide client information that may incriminate themselves. However, upon order of a judge, the premises of a lawyer may be searched and documents that bring evidence that the lawyer was part to a tax fraud may be seized.

### Tax avoidance and money laundering reporting

There is no obligation to report tax avoidance schemes to the fiscal authorities.

Lawyers are obliged to report indications of money laundering to the *bâtonnier* (head of the bar association) who in return reports as need be to the authorities. There is however an exemption where the lawyer is ascertaining the legal position of the client or represents the client in judicial proceedings.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Client and lawyer may limit liability by individual agreement subject to certain limitations: (1) validity of such a limitation is doubtful for services rendered to individuals, (2) if the cap is too small it is null and void (there is no fixed amount, this matter is to be determined by courts), (3) gross negligence cannot be excluded.

Lawyers are obliged to have professional indemnity insurance. The amount is set by each bar association. In Paris, the minimum amount to be covered is € 3 million per claim.

A (tax) lawyer company needs insurance which then covers the activity of its partners, directors and employed tax advisers. In-house counsels do not need insurance cover.

## g) Advertising and pricing

Advertising is generally allowed. There are specific advertising rules for lawyers. These do not allow advertising in certain media and comparative advertising. Potential clients may not directly be offered personalised services (canvassing, FR: *démarchage*).

There is no fee regulation in France, only general guidelines on what criteria should be taken into account when determining the fees (time devoted to the case, value and complexity of the case, etc.). Success fees are allowed but must be agreed in writing and come on top of the fees computed on a time spent basis.

## h) Formal requirements and contractual issues

There are no particular formal requirements to the contract with the client. Engagement letters defining the scope of the engagement are not compulsory but highly recommended.

### i) The firm of the tax lawyer

French law offers a range of company forms available to lawyers: These are general partnerships with full liability of all partners (SCP: *sociétés civiles professionnelles*, SEP: *sociétés en participation*, AARPI: *association d'avocats à responsabilité professionnelle individuelle*), private limited companies devoted to liberal professions (SEL: *société d'exercice libéral*; with the following sub-forms: SELARL - *société d'exercice libéral à responsabilité limitée*, SELAFA - *société d'exercice libéral à forme anonyme*, SELAS - *société d'exercice libéral en commandite par actions*).

In partnerships, only lawyers who perform their professional activities in the partnership may own an interest.

In corporations (*sociétés d'exercice libéral*), lawyers who perform their activities in the corporation must own at least the majority of the capital and the voting rights; the remainder may be owned by certain specific categories of persons (e.g. other lawyers, retired lawyers previously working in the corporation, heirs). A financial investor cannot hold an interest in a lawyers' corporation.

Also the management of a law firm must be in the hand of lawyers.

Lawyers may not enter into partnerships or set up joint companies with other professions like accountants, auditors and others.

### j) Registration and other requirements

Lawyers have to be members of one of the 181 local bar associations in France. The annual membership fee is set by the local bar associations.

Lawyers are required to swear a professional oath or make a similar solemn declaration.

## **2. Cross-border activity of tax advisers from other countries in France**

This section applies to persons from other countries that intend to provide the full range of tax advisory services. As this is only permitted for lawyers,

only members of a profession corresponding to *Avocat* may provided these services. A list containing the names of the lawyers' qualifications in the EU member states can be found in Art.1 (2) of the Directive 77/249/EEC (consolidated version: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1977L0249:20070101:EN:PDF>). For lawyers from other EEA countries, the rules of the Professional Qualifications Directive and of the two Lawyers Directives 1977/249/EEC on temporary services and 1998/5/EC on establishment apply.

### a) Online and other correspondence services

There are no specific rules on cross-border services provided without entering French territory (e.g. by letter, e-mail, internet, telephone).

### b) Temporary or occasional activity

Lawyers that provide temporary activity in France must use their title in the language (or one of the languages) of their member state of establishment with an indication of the professional organisation by which they are authorised to practice or the court before which they are authorised to practice.

When representing clients in legal proceedings or before public authorities, lawyers from other EEA countries are subject to the professional regulations both of *Avocats Fiscalistes* (with the exception of those rules relating to residence or registration in France) and of lawyers in their home country. For all other activities, they must, next to the professional rules of their home member state, observe the regulations for *Avocats Fiscalistes* on compatibility of activities, professional secrecy, relations to colleagues, conflict of interest and advertising to the extent it is possible and justified for lawyers not established in France (see Art.4 of Directive 1977/249/EEC).

It is recommended that EEA lawyers work in conjunction with an *Avocat Fiscaliste*.

EEA lawyers must notify the local bar associations before the beginning of their professional activity in France and await their approval.

---

Documents to be submitted are:

- details of any insurance cover or other means of personal or collective protection with regard to professional liability insurance cover (certified photocopies)
- proof of nationality
- attestation certifying that the holder is legally established in a member state for the purpose of pursuing the activities concerned and that he is not prohibited from practicing at the moment of delivering the attestation (certified photocopies)
- evidence of professional qualifications (certified photocopies).

Also lawyers that provide tax advisory services temporarily need professional indemnity insurance cover. The amount is set by each bar association. Existing insurance or guarantee in the home member state that is essentially comparable is recognised, depending on the amount covered.

### c) Permanent activity

EEA lawyers who intend to give tax advice in France on a *permanent* basis have to become members of the local bar association. They have to submit to the bar association a certificate proving their registration with the competent authority in their home country.

### Recognition of professional qualification

As the profession of tax lawyers is part of the legal profession, only tax professionals who are lawyers in an EEA country can have their professional qualifications recognised to exercise the same activities as *Avocats Fiscalistes*.

EEA lawyers can choose whether they prefer

- 1) to have their qualification immediately recognised and then carry the title of *Avocats Fiscalistes*,
- 2) to permanently practice in the host member state using the professional title from their home member state (e.g. *Rechtsanwalt, Solicitor, Avvocato* etc.),
- 3) to practice in the host member state using the professional title from their home member state for a transitional period.

In the first case, the general rules in the Professional Qualifications Directive apply. An EEA lawyer who can prove post-secondary level professional education of one year minimum should be able to take the French aptitude test. More information on the recognition procedure can be found in Chapter 13.2 of Part I.

In the second case, EEA lawyers are recognised automatically, without any administrative procedure (Art.5 (1) Directive 1998/5/EC). No more examination or recognition procedure is necessary.

In the third case (Art. 10 (1) of Directive 1998/5/EC), the lawyer would have

- to practice in France for three years effectively and regularly in French or EU law under the title of his home member state and then provide proof of this activity, in particular of the number and nature of matters dealt with, to the bar association. The bar association will decide whether the tax lawyer can be exempted from a qualifying exam;
- or to practice in France for three years effectively and regularly (but for a lesser period in French and EU law) under the title of his home member state. (S)he can be exempted from a qualifying exam by decision of the bar association after an interview and after the tax lawyer has provided the necessary evidence of his/her activity, knowledge and experience in French law including professional law and attendance of seminars and courses.

The tax lawyer from a member state who has been allowed to use the title *Avocat Fiscaliste* may choose to continue using his home member state title additionally.

Employees from Bulgaria and Romania still need to obtain a work permit in France until the end of 2013 at the latest.

### 3. Professional bodies

All lawyers are mandatory members of the local bar associations (*barreaux d'avocats*) of which there are 181. The *barreaux d'avocats* are responsible for the appointment and the dismissal of lawyers and monitor compliance with professional obligations. The *bâtonnier* (head of the bar association) may impose sanctions on professionals that violate these obligations.

The *Conseil de l'Ordre des Avocats* is a body at national level that adopts professional regulations.

ACE (*Association des Avocats Conseils d'Entreprises*), IACF (*Institut des Avocats Conseils Fiscaux*) and UPSA (*Union Professionnelle des Sociétés d'Avocats*) are associations of private law with voluntary membership. ACE is the largest association of business lawyers with 250 tax lawyers. IACF is the largest association of tax lawyers with 1200 members. UPSA represents the interest of the most important French law firms in their capacity as employers. Its 13 member firms employ about 3,000 lawyers dealing with business matters, mainly tax.

The three organisations are active in:

- Providing education and CPD courses to professionals and staff
- Publishing tax reviews and other relevant technical information
- Mediating between professionals
- Mediating between professionals and tax authorities
- Giving opinions in tax matters to the tax administration and/or politicians
- Lobbying and campaigning

ACE, IACF and UPSA are members of the CFE.

## 4. Practical information

### a) Contacts

|  |   |
|--|---|
| <p><b>Association des Avocats Conseils d'Entreprises (ACE)</b></p> <p>5 rue Saint Philippe du Roule<br/>75008 Paris</p> <p>Tel: +33 1 47 66 30 07<br/>s.lagorce@avocatline.com<br/>www.avocats-conseils.org/</p>   | <p><b>Institut des Avocats Conseils Fiscaux (IACF)</b></p> <p>9, rue Chevalier de Saint George<br/>75008 Paris</p> <p>Tel: +33 142 601 018<br/>Fax: +33 142 605 493<br/>iacf@wanadoo.fr<br/>www.iacf.asso.fr/</p> |
| <p><b>Union Professionnelle des Sociétés d'Avocats (UPSA)</b></p> <p>14 Boulevard du Général Leclerc<br/>92527 Neuilly sur Seine cedex</p> <p>Tel: +331 4738 5400<br/>Fax: +331 4738 5499<br/>christine.ameil@fidal.fr<br/>www.upsa-syndicat-avocats.fr/</p> | <p><b>Point of Single Contact</b></p> <p><a href="http://www.guichet-entreprises.fr/mgun_accueil/accueil.jsf">http://www.guichet-entreprises.fr/mgun_accueil/accueil.jsf</a></p>                                  |

|  |  |
|--|--|
| <p>List of bar associations in France</p> <p><a href="http://www.conferencedesbatonniers.com/La_liste_des_Barreaux-163.html">http://www.conferencedesbatonniers.com/La_liste_des_Barreaux-163.html</a></p> | <p>Professional qualifications contact point</p> <p>Mme Myriam Leroux<br/>Centre ENIC/NARIC France<br/>Centre international d'études pédagogiques (CIEP)<br/>1 avenue Léon Journault<br/>92318 Sevres Cedex<br/>FRANCE<br/>Tel: +33 1 70 19 30 31<br/>Fax: +33 1 45 07 63 02<br/>E-mail: <a href="mailto:enic-naric@ciep.fr">enic-naric@ciep.fr</a><br/>Website: <a href="http://www.ciep.fr/enic-naricfr/index.php">http://www.ciep.fr/enic-naricfr/index.php</a></p> |
|--|--|

## b) Sources of law

- Loi n°71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques / Law n°71-1130 of 31 December 1971 on certain legal and judicial professions:  
FR: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000508793&fastPos=6&fastReqId=1593432460&categorieLien=cid&oldAction=rechTexte](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000508793&fastPos=6&fastReqId=1593432460&categorieLien=cid&oldAction=rechTexte)
- Règlement intérieur du Barreau de Paris (the internal regulations of the Paris bar association):  
FR: [www.avocatparis-bdd.org/RIBP.htm](http://www.avocatparis-bdd.org/RIBP.htm)





## Germany Deutschland DE

### 1. Picture of the profession in Germany

#### a) General characteristics of the profession

The German name of the profession is *Steuerberater*. There are 80,764 tax advisers in Germany. This number includes 2,110 *Steuerbevollmächtigte*, a profession almost identical to *Steuerberater* in which qualification is no longer possible. For the purpose of simplification, both *Steuerberater* and *Steuerbevollmächtigte* shall be referred to as tax advisers. There are 8,655 tax adviser companies.

All tax advisers and tax adviser companies are mandatory members of one of the 21 regional tax adviser chambers.

70% of all tax firms are firms owned by one tax adviser (while s/he may have other tax advisers employed), 13.6% are partnerships (private partnership or *Partnerschaftsgesellschaft*, which is a partnership designed for liberal professions) while 16.3% are tax adviser companies.

Two thirds of tax advisers are self-employed. 29.1% of tax advisers work as employee in a professional firm and 4.3% work as in-house tax advisers in other businesses.

A tax adviser may be employed by a professional firm or as in-house tax adviser by any other business. They may however not be public servants or employed by the state. In-house tax advisers in business (*Syndikus-Steuerberater*) are considered self-employed tax advisers who exercise their employed activity alongside their self-employed activity. Consequently, any advice to other persons than the employer may not be given through the employer's business but only in their capacity as independent tax adviser. German law contains a number of provisions to ensure that the in-house tax adviser is actually working for his/her employer in taxation matters and that the employed activity does not prejudice the exercise of the independent tax advisory activity.

12.3% of tax advisers also hold a qualification as auditors; 4.8% are also lawyers. Apart from tax advisers, the following professions may give comprehensive tax advice: lawyers, auditors and sworn accountants (*vereidigte Buchprüfer*, a profession in which qualification is no longer possible and that is entitled to do SME audits).

Like tax advisers, the professions of lawyers and auditors are regulated by law. The profession of accountant or bookkeeper (*Buchhalter*) is not regulated, only the title of *geprüfter Bilanzbuchhalter* (certified management accountant) is protected.

Tax advisers are viewed by their clients and the public as a liberal profession.

### b) Professional qualification

The German tax profession is regulated in the sense of the EU Professional Qualifications Directive as the use of the title and the exercise of tax advisory activities require a particular qualification.

To qualify for the profession, there is an academic and a non-academic path: The academic path requires completion of four-year university education in economics or law plus practical training of two years or, alternatively, a shorter university education plus three years of practical training. The practical training must take place after completion of the university studies (or after reaching bachelor level).

The non-academic path requires professional training in a commercial profession or equivalent education plus ten years of practical experience in tax (seven years for people who have qualified as certified management accountant or tax clerk or have worked in a comparable position in the tax administration).

After this, candidates have to pass a qualifying exam. Certain exemptions from taking the qualifying exam apply to former fiscal judges, higher-level former civil servants or professors in tax. The fee for taking this exam is usually € 1,200 (€ 200 registration fee + € 1,000 exam fee) but may vary, depending on the regional chamber. In addition to that, the regional chambers may charge administrative fees for the appointment.

## Continuing professional development and specialisation

Tax advisers are obliged by law to take part in continuing professional development (CPD) but it is within their professional responsibility to decide on the amount and the measures necessary. Both tax adviser chambers and tax adviser associations as well as many private operators offer CPD for tax advisers. Professionals are free where to obtain their CPD.

*Fachberater* designations indicating specialisations in the fields of *international tax law* and *customs and consumption taxes* are awarded by the regional tax adviser chambers.

Additionally, DStV (see below paragraph 3) awards specialisation designations in eight areas of compatible activities, e.g. *redevelopment and insolvency administration* (A full list of DStV *Fachberater* designations can be found on [www.dstv.de/fuer-die-praxis/fachberater](http://www.dstv.de/fuer-die-praxis/fachberater)).

### c) Activities of tax advisers

German tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.  
 Blue: Yes. Anyone may provide this service.  
 Red: No, a tax adviser would need an additional qualification to exercise this activity.  
 Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax   |  |
|---|--|
| Advice in domestic tax law  |  |
| Advice in foreign tax law   |  |
| Tax returns/declarations  |  |
| Representation of clients before tax authorities                  |  |
| Representation of clients before tax courts                       |  |
| Representation of clients before criminal courts in tax matters   |  |
| Representation of clients before the Supreme Court in tax matters |  |
| Accounting & Co.  |  |
| Accounting services   |  |

## Part II – Country Sheets

|  |  |
|--|--|
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary | Other professions than lawyers may provide legal services to the extent they are only ancillary to their main activity (details: § 5 RDG – Legal Services Act) |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  | only if the service is ancillary, see above  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              | Not applicable: no statutory audit   |
| Statutory audit for small companies  | Not applicable: no statutory audit   |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Apart from taxation, tax advisers may engage in other non-tax activities that are deemed compatible such as e.g. business advice. Beyond compatible activities, commercial activities are in principle prohibited and need

authorisation by the regional tax adviser chamber which will assess whether in the individual case, compliance with professional duties would be at stake.

Clients need no representation before tax courts; representation is required only before the *Federal Court of Finance*.

#### d) Professional conduct and quality management

Apart from the *Act on Tax Advice (Steuerberatungsgesetz, StBerG)*, more detailed rules on professional conduct are set out in the *Professional Statutes for Tax Advisers (Berufsordnung)*.

##### Sanctions

The regional tax adviser chamber may reprimand a member for a breach of deontological rules. Further sanctions including monetary penalty (maximum of € 50,000 per infraction), a suspension of the right to practice for up to 5 years and even the permanent exclusion from the tax profession.

##### Conflicts of interest

If a tax adviser notices a conflict of interest between him/herself and the client, the tax adviser has to stop acting for this client. If a conflict of interest between two clients arises, the tax adviser has to inform the clients of this conflict but may continue acting for them.

##### Commissions

A tax adviser is prohibited by law from receiving a commission for recommending a client to a fellow tax adviser.

##### Certification and quality benchmarking

In the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information), specific quality certification for tax advisers is offered by professional bodies and commercial operators. There are discounts in the professional indemnity insurance for tax advisers who undertake quality certification (e.g. the quality label *Qualitätssiegel* offered by the German Association of Tax Advisers, DStV) .

Rating of tax firms (e.g. in the media, by consumer organisations, professional bodies, by clients through web portals) is not common in Germany.

### e) Protection and disclosure of client data

#### Client confidentiality / professional secrecy

There is legislation obliging the tax adviser to treat confidentially client data. Violation of this duty can be considered a criminal offence and can also be sanctioned by the tax adviser chambers. Tax advisers may however reveal confidential information as a last resort to defend themselves in legal proceedings.

#### Right of non-disclosure / legal professional privilege

The tax adviser may refuse to provide client information requested by the state. This applies towards the fiscal authorities, police or public prosecutor and before both fiscal and criminal courts.

#### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report to the *Federal Chamber of Tax Advisers* but an exemption applies where tax advisers give legal advice or represent their clients in judicial proceedings. If the tax adviser is asked by the client to carry out a transaction, this transaction may be carried out after sending of the report, (1) when approval has been given by the public prosecutor, (2) after a period of two working days or (3) in case the delay would hinder criminal prosecution.

### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of the information but s/he may have right to recourse if the tax adviser has made a mistake.

Tax adviser and client can limit liability by individual agreement (up to € 250,000 per case) or by general terms and conditions (up to € 1 million for a case, provided that insurance cover exists). They can exclude slight negligence and even gross negligence.

Tax advisers need professional indemnity insurance covering a minimum amount of € 250,000 for each case. Tax adviser companies also need insurance. This insurance covers all directors and employed tax advisers active in the firm. As they are considered self-employed, also in-house tax advisers need professional indemnity insurance.

### g) Advertising and pricing

Advertising is generally allowed. Specific advertising rules for tax advisers exist but these are not really stricter than the general advertising rules. Tax advisers may not directly address a potential client to obtain a particular engagement if they know that this client is in need for tax advice.

There is a binding regulation on fees (*Steuerberater-Vergütungsverordnung, StBVV*) charged by tax adviser, applicable to all regulated activities. This Regulation does not set fixed tariffs but a fee margin for the different activities in the area of tax advice. The amount of the fee follows an overall assessment of e.g. the scale, the value, the complexity or the risk of the engagement, leaving a margin for competition. The maximum fees may be exceeded by written agreement. The tax adviser may charge less than the legal minimum fees where in the individual case, a lower fee would be appropriate.

Contingency and success fees may be agreed under the condition that the client, taking into account his/her economic situation, would not reasonably seek assistance from a tax adviser if the possibility of a contingency or success fee did not exist.

### h) Contractual issues

There are no formal requirements relating to the engagement.

i) The firm of the tax adviser

Tax adviser companies may choose all company forms available under German law. An additional legal form, a limited liability partnership, has been proposed by the German government in 2012.

In tax adviser companies, all shares must be held by members of professions entitled to give tax advice or by tax adviser companies. However, highly competent persons from other professional backgrounds can ask to be admitted as shareholders of tax adviser companies by the regional tax adviser chamber; in this case, the majority of shares must still remain with persons (or companies) that may give tax advice.

Managers of tax adviser companies must be tax advisers, members of other tax advising professions or highly competent persons referred to in the previous paragraph. The number of non-tax adviser managers may not be higher than the number of tax adviser managers.

It must be clear from the firm's name that the firm is a tax firm.

Tax advisers may enter partnerships or set up joint companies with lawyers (including patent lawyers and lawyer-notaries) and auditors (including the profession of *vereidigter Buchprüfer*) only. Less close forms of cooperation (like shared office facilities) are allowed with a number of other professions.

j) Registration and other requirements

Tax advisers have to be members of the regional tax adviser chamber where they are established (which is no geographical limitation of their activities). They are formally appointed by the regional chamber. The regional chamber may charge an administrative fee for the appointment (commonly around € 150). The annual membership fees for individual tax advisers range between € 264 to 600.



## 2. Cross-border activity of tax advisers from other countries in Germany

### a) Online and other correspondence services

Cross-border tax services provided into Germany (e.g. by letter, phone, e-mail, internet) are considered temporary or occasional activity, see below.

### b) Temporary or occasional activity

Tax practitioners with a qualification from another EEA country or Switzerland may practice temporarily or occasionally in Germany, pursuing the same activities that they may carry out in their home country. They may file tax returns or represent clients before tax authorities. These must use their title in the official language (or one of the official languages) of their home member state in a way that avoids confusion with German titles. For example, an Austrian *Steuerberater* should add his country to his professional title.

Tax practitioners from any other countries do not have the possibility to practice in Germany on a temporary or occasional basis.

Tax advisers from other EEA countries and Switzerland must notify the regional chamber of tax advisers responsible for their country in writing at the latest upon beginning of professional activity in Germany. They do not have to await an approval.

Responsibilities have been assigned as follows (the contact details of the regional chambers can be accessed via the BStBK website, see link in paragraph 4):

- Finland: Berlin,
- Poland: Brandenburg,
- Netherlands and Bulgaria: Düsseldorf,
- Sweden and Iceland: Hamburg,
- Portugal and Spain: Hesse (Hessen),
- Belgium: Cologne (Köln),
- Estonia, Latvia, Lithuania: Mecklenburg-Vorpommern,
- Italy and Austria: Munich (München),
- UK: Lower Saxony (Niedersachsen),
- Romania and Liechtenstein: Northern Baden (Nordbaden),
- Czech Republic: Nuremberg (Nürnberg),

- France: Rhineland-Palatinate (Rheinland-Pfalz),
- Luxembourg: Saarland,
- Hungary: Saxony (Sachsen),
- Slovakia: Saxony-Anhalt (Sachsen-Anhalt),
- Denmark and Norway: Schleswig-Holstein,
- Greece: Stuttgart,
- Switzerland: South Baden (Südbaden),
- Malta and Slovenia: Thuringia (Thüringen),
- Ireland: Westfalia-Lippe (Westfalen-Lippe).

For documents that may be required please see Part I, Chapter 12.2.4.

The notification is valid for one year and has to be renewed when the tax adviser intends to further provide services in Germany on a temporary or occasional basis. The renewal must include the abovementioned document referring to the legal establishment and information on the insurance cover. Notification is free of charge.

Temporary tax advisers need professional indemnity insurance but existing insurance cover in another member state that covers the activity in Germany is recognised if it meets the German requirements, see paragraph 1 lit.f.

### c) Permanent activity

Employees from Bulgaria and Romania may be required to apply for a work permit in Germany until the end of 2013. According to information from the European Commission, Germany has eased requirements for skilled workers with university degree whose employment corresponds to their qualification.

Tax advisers who are permanently active in Germany have to be appointed as members of the regional chamber of tax advisers. Professional qualifications obtained or recognised in other EEA countries or Switzerland can be recognised in Germany.

German law requires an aptitude test which is an abridged qualifying exam. The fee is the same as for the full exam. Applicants from a country where the profession is regulated have to prove post-secondary level professional education of one year minimum to take the German aptitude test. Professionals from non-regulated countries may also have to prove three years of professional experience. Tax advisers from other countries than EEA and

Switzerland will have to pass the full tax adviser exam (see also Section 13.2 for the recognition procedure).

Professional indemnity insurance is required but existing insurance in another country that meets the German requirements will be recognised.

### 3. Professional bodies

There are three national professional bodies of tax advisers:

BStBK (*Bundessteuerberaterkammer*), the *Federal Chamber of Tax Advisers*, is a self-regulatory body of public law and the umbrella organisation of the 21 regional tax adviser chambers which too are self-regulatory bodies of public law. All tax advisers and tax adviser companies are member of the regional chamber in whose territory they are established. In total, the tax adviser chambers have 80,764 individual and 8,655 company members. Only tax advisers and tax adviser companies may become members of tax adviser chambers.

DStV (*Deutscher Steuerberaterverband*), the *German Association of Tax Advisers*, is an association of private law and the umbrella association of the 15 regional tax adviser associations. In total, the number of tax advisers represented by DStV is 34,247. All individuals or companies entitled to give tax advice in Germany can become member of a tax adviser association.

BVStB (*Bundesverband der Steuerberater*), the *Federal Association of Tax Advisers*, is another association of private law with 2,788 members.

The activities of BStBK and DStV (StBK and StV relating to their respective regional member bodies) are as follows:

- Appointment and dismissal of tax advisers: StBK
- Holding qualifying exams: StBK (together with the state)
- Developing codes of conduct/ethics: BStBK
- Supervising the compliance of members with professional obligations and, if necessary, imposing disciplinary sanctions: StBK
- Acting as anti money laundering supervisor: StBK
- Providing education and CPD courses to professionals and staff: BStBK, StBK, DStV, StV
- Publishing tax reviews and other relevant technical information: BStBK (to some extent), DStV, StV
- Mediating between professionals: StBK

- Mediating between professionals and their clients: StBK
- Giving opinions in tax matters to the tax administration and/or politicians: BStBK, DStV, StV
- Lobbying/campaigning: BStBK, DStV, StV
- Developing software or online tools for tax advisers: DStV (to some extent)

BStBK, DStV and BVStB are members of the CFE.

## 4. Practical information

### a) Contacts

|   |   |
|---|---|
| <p><b>Bundessteuerberaterkammer (BStBK) / Federal Chamber of Tax Advisers</b></p> <p>Behrenstrasse 42<br/>10117 Berlin</p> <p>Tel: +49 30 24 00 87 0<br/>Fax: +49 30 24 00 87 99<br/>zentrale@bstbk.de<br/>www.bstbk.de</p> <p><b>Map of regional Tax Adviser Chambers:</b></p> <p><a href="http://www.bstbk.de/de/bstbk/organisation/steuerberaterkammern/">www.bstbk.de/de/bstbk/organisation/steuerberaterkammern/</a></p> | <p><b>Deutscher Steuerberaterverband e.V. (DStV) / German Association of Tax Advisers</b></p> <p>Littenstraße 10<br/>10179 Berlin</p> <p>Tel: +49 30 278 76 2<br/>Fax: +49 30 278 76 799<br/>dstv.berlin@dstv.de<br/>www.dstv.de (see left column for map of regional Tax Adviser Associations)</p>   |
| <p><b>Bundesverband der Steuerberater e.V. / Federal Association of Tax Advisers</b></p> <p>Uhlandstraße 97<br/>10715 Berlin</p> <p>Tel: +49 30 84478510<br/>Fax: +49 30 84478555<br/>info@bvstb.de<br/>www.bvstb.de</p>  | <p><b>Point of Single Contact</b></p> <p>DE (“Dienstleiten leicht gemacht”): <a href="http://www.dienstleiten-leicht-gemacht.de">www.dienstleiten-leicht-gemacht.de</a></p> <p>EN (“Ixpos”): <a href="http://www.ixpos.de/IXPOS/Navigation/EN/Your-business-in-germany/Eu-service-market/points-of-single-contact.html">www.ixpos.de/IXPOS/Navigation/EN/Your-business-in-germany/Eu-service-market/points-of-single-contact.html</a></p> |

**Professional qualifications contact point**

Dr. Hendrik Kaelble  
Bundesministerium für Wirtschaft  
und Technologie  
Referat EB2  
Scharnhorststraße 34–37  
10115 Berlin

Tel: +49 30 2014 7666  
Fax: +49 30 2014 5379  
diplomerkennung@bmwi.bund.de  
[www.bmwi.de/go/berufsanerkennung](http://www.bmwi.de/go/berufsanerkennung)

**b) Sources of law**

- Steuerberatungsgesetz (Act on Tax Advice):  
<http://www.gesetze-im-internet.de/stberg/index.html>
- Steuerberater-Vergütungsverordnung (Regulation on Tax Advisers' Remuneration):  
<http://www.gesetze-im-internet.de/stbv/index.html>
- Steuerberater-Durchführungsverordnung (Tax Advisers Implementing Regulation):  
<http://www.gesetze-im-internet.de/stbdv/>
- Berufsordnung (Professional Statutes of Tax Advisers):  
[http://www.bstbk.de/export/sites/standard/de/ressourcen/Dokumente/04\\_presse/publikationen/03\\_berufsrecht/02-Berufsordnung.pdf](http://www.bstbk.de/export/sites/standard/de/ressourcen/Dokumente/04_presse/publikationen/03_berufsrecht/02-Berufsordnung.pdf)





## Greece Ελλάδα GR

(Please note that the legal requirements for regulated professions in Greece are currently undergoing substantial changes and therefore some information in this Country Sheet may soon be outdated. A law on professional freedom covering tax advisers (law 3919/2011) has been adopted but implementation and adoption of the sector-specific changes is still ongoing.)

### 1. Picture of the profession in Greece

#### a) General characteristics of the profession

Tax adviser in Greek is φοροτεχνικός-λογιστής (forotecnikos-logistis). There are about 3,200 self-employed tax advisers who are mandatory members of POFEE (see paragraph 3). Employed tax advisers or persons working in the public sector cannot be members of POFEE but, together with POFEE members and economists not practicing in tax, they are part of the 14,000 members of the *Economic Chamber*.

Like the tax profession, the professions of lawyer, auditor and accountant are regulated by law. There is no distinct profession of bookkeeper. A large number of POFEE members also provide accountancy. Independent accountants may give tax advice as well. Lawyers and auditors may give tax advice but may not file tax returns. Apart from accountants, it is very unusual that tax advisers are members of any other professions.

The term *liberal profession* is not commonly used for tax advisers in Greece.

#### b) Professional qualification

The activity of giving tax advice is regulated in the sense of the EU Professional Qualifications Directive, meaning a particular qualification is required by law.

## Part II – Country Sheets

---

POFEE awards three different levels of professional qualification, *level c* being the entry level and *level a* being the highest. Depending on the qualification level, tax advisers may serve companies with an annual balance sheet total of up to € 400,000 (*level c*), up to € 600,000 (*level b*) or above (*level a*). There are no categories for tax advice provided to private individuals.

Upon completion of four years of studies at university or an equivalent technical institution, a person can become member of POFEE at *level c*. *Level b* can be obtained after two years of work experience and *level a* after another two years. For each level, a seminar with POFEE has to be attended the cost of which is around € 100-150. Once obtained, a qualification will normally be valid lifelong.

There are no specific requirements to engage in continuing professional development (CPD) but POFEE is very active offering CPD. CPD can also be obtained with other operators which meet the required standards.

There are no more specialisation titles in the field of tax.

### c) Activities of tax advisers

Greek tax advisers are active in the following fields:

Green: Yes, this activity is reserved to certain professions including tax advisers.  
Red: No, a tax adviser would need an additional qualification to exercise this activity.  
White: No information.

| Tax  |       |
|--|-------|
| Advice in domestic tax law   | Green |
| Advice in foreign tax law  | Green |
| Tax returns/declarations   | Green |
| Representation of clients before tax authorities                   | Green |
| Representation of clients before tax courts                        | Red   |
| Representation of clients before criminal courts in tax matters    | Red   |
| Representation of clients before your Supreme Court in tax matters | Red   |
| Accounting & Co.   |       |
| Accounting services  | Green |



|  |  |
|--|--|
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Tax advisers may engage in any other lawful activities as long as this does not affect compliance with professional obligations.

#### d) Professional conduct and quality management

There is specific legislation regulating professional conduct of tax advisers. POFEE supervises compliance with professional duties.

### Sanctions

Breaches of deontological rules can be sanctioned by reprimand or even by exclusion from POFEE which is equivalent to the loss of the permission to practice as self-employed tax adviser.

### Conflicts of interest

If a tax adviser notices a conflict of interest between himself and the client or between two clients, ...

### Commissions

Tax advisers are not prevented from receiving a commission for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

Certification in the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information) for tax advisers and quality benchmarking in the form of consumer organisations, media, clients or professional bodies rating tax firms is not common in Greece.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There is no obligation in the law for tax advisers to protect client data from third parties but this is considered to be part of the tax adviser's engagement.

### Right of non-disclosure / legal professional privilege

Tax advisers do not have the right to withhold client information requested by the state.

## Tax avoidance and money laundering reporting

Tax advisers are not under an obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report the case to the competent anti money laundering body; there are no exemptions from this obligation.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of the information but s/he may have right to recourse if the tax adviser has made a mistake.

Tax advisers are free to limit professional liability, within the boundaries of contract law. There is no obligation to have professional indemnity insurance.

## g) Advertising and pricing

Advertising is generally allowed. There are no specific advertising rules for tax advisers.

There is no price regulation but an indicative recommendation from which tax advisers are free to deviate. Contingency and success fees can be agreed.

## h) Contractual issues and formal requirements

There are no particular formal requirements; tax advisers are not required to provide engagement letters defining the scope of the engagement.

## i) The firm of the tax adviser

There are no legal restrictions relating to the company form. The majority (50%+1) of shares in a tax adviser company has to be held by tax advisers. There are no restrictions as to who may hold the remaining 50%-1. In tax adviser companies, there is no rule on who can be a manager or director.

Tax advisers may set up joint professional firms with accountants but not with auditors or lawyers.

## j) Registration and other requirements

Tax advisers have to be member of the *Economic Chamber*, and, if they are self-employed, also of POFEE. Registration with the tax authorities has to be made to use the online portal *taxisnet*. Apart from this, the firm has to register with the tax authority in its capacity as taxpayer and with the social security funds if the firm has employees.

## 2. Cross-border activity of tax advisers from other countries in Greece

### a) Online and other correspondence services

A tax adviser with a qualification not obtained or recognised in Greece who wishes to advise a client in Greece without entering Greek territory, e.g. by e-mail, telephone or letter, does not need registration, authorisation, professional indemnity insurance or recognition of his/her qualifications in Greece. However, s/he would not be able to file a tax return or represent this client before Greek tax authorities.

### b) Temporary / occasional and permanent activity

The provision of cross-border tax services on a temporary or occasional basis by professionals who do not hold the required Greek qualification is not permitted as Greek law does not distinguish between temporary / occasional and permanent services. This is criticised heavily as an infringement of EU law in the European Commission's staff working document SWD(2012)148, pp.137 of 8 June 2012 ([link](#)).

Tax professionals who intend to give tax advice in Greece on a *permanent* basis need to have their qualification recognised. The *Economic Chamber* is the *competent authority* in the sense of the EU Professional Qualifications Directive.

---

Professionals with a qualification obtained or recognised in another EEA country can take an aptitude test which is an abridged qualifying exam. Professionals with a non-EEA professional qualification must complete the full set of studies required in Greece.

More information on the recognition procedure can be found in Chapter 13.2 of Part 1.

Tax firms from other countries who wish to open an office in Greece or move their firm to Greece have to choose a company form provided by Greek law.

### 3. Professional bodies

The *Economic Chamber* is a body with mandatory membership which unites all economists in Greece.

In addition, self-employed tax advisers also have to be member of POFEE, the *Panhellenic Federation of Self-Employed Tax Consultants*. POFEE is a self-regulatory body set up by public law. The membership of POFEE is 3,200.

The activities of POFEE are:

- holding qualifying exams (seminars)
- developing codes of conduct / ethics
- providing education and CPD courses to tax advisers and staff
- publishing of tax reviews and other relevant technical information
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning.

To some extent, POFEE is

- supervising the compliance of members with professional obligations and disciplinary sanctions
- mediating between professionals
- mediating between professionals and their clients
- developing software or online tools for tax advisers.

POFEE is a member of the CFE.

## 4. Practical information

### Contacts

|  |   |
|--|---|
| <b>Panhellenic Federation of Self-Employed Tax Consultants (POFEE)</b><br>Ioulianou 42-46<br>10434 Athens<br>Tel: +30 2 108 253 445<br>Fax: +30 2 108 253 446<br>pofee@otenet.gr<br>www.pofee.gr | <b>Professional qualifications contact point</b><br>Ms Athina Plessa-Papadaki<br>Director<br>Ministry of National Education and Religious Affairs, Directorate for European Union Affairs<br>37, Andrea Papandreou Street<br>15180 Αθήνα/Athens<br>Tel: +30 210 34 43631<br>Fax: +30 210 34 42473<br>eudir@ypepth.gr<br>www.ypepth.gr |
| <b>Point of Single Contact: “Ermis” web portal</b><br>www.ermis.gov.gr/portal/page/portal/ermis/   | <b>Online Portal “Taxisnet”</b><br><a href="http://www.gsis.gr/">http://www.gsis.gr/</a>  |
| <b>Economic Chamber of Greece</b><br>www.oe-e.gr/oe_eng.htm  |   |



## Ireland Eire IE

### 1. Picture of the profession in Ireland

#### a) General characteristics of the profession

There is no single title for tax professionals in Ireland. Members of the *Irish Tax Institute* (hereinafter *Institute*) may carry one of several titles referring to the *Institute* (for details, see paragraph 3). The *Institute* has over 4,800 individual members which represent a large but unmeasured proportion of tax practitioners in Ireland. There are 440 AITI *Chartered Tax Adviser* (CTA) firms.

The activity of giving tax advice and representing clients in tax matters is not regulated by law. There is no mandatory membership in professional bodies. However, *tax agents* who file tax returns or represent their clients before tax authorities need to register with the tax authorities and obtain their approval.

Of the *Institute's* members in practice, over 450 are active as sole practitioners, over 900 are employed in smaller practices, almost 800 are employed in "Big 4" firms, and approximately 230 are employed in legal practices. Approximately 1,000 are employed in the corporate sector, for example, in in-house tax roles. The remainder of the *Institute's* membership may be retired, working in the public sector, working in the education sector or otherwise employed.

Tax advisers in Ireland can be employed by professional firms or any other kind of business. Public servants can be qualified as tax advisers but would not give tax advice to the public.

As to the neighbouring professions, lawyers and auditors are regulated by law. Accountants and bookkeepers who are members of professional bodies with voluntary membership are regulated by those bodies.

The concept of liberal profession is not commonly known or understood in Ireland.

## b) Professional qualification

The tax profession in Ireland is not regulated in the sense of the Professional Qualifications Directive, as neither the activity of giving tax advice nor the representation of clients require a particular qualification.

It is however *considered* regulated according to this Directive because the *Institute* ensures a certain standard of qualification and ethics for its members and enjoys special recognition by the Irish State (see Art.3 (1)a, (2) and Annex I of the Directive).

To enrol on the *AITI Chartered Tax Adviser (CTA)* course, an applicant must hold, at a minimum, an undergraduate degree at honours level or equivalent. Candidates who do not hold an honours degree or equivalent may be considered on a case-by case basis, through the recognition of work based learning.

A candidate has to perform a three-part course with the *Institute*, which generally takes three years. Two exam sittings are held each year. Persons who already have a relevant education can be exempted from taking the first part of the three-part course and in that case they can become an *AITI Chartered Tax Adviser (CTA)* within two years. The *Institute* also awards the title of *Tax Technician* which requires approximately one year of studies with the *Institute*.

The *Institute* imposes detailed continuing professional development (CPD) requirements on its *Associates* and *Fellows* who work in a tax role. Members who do not work in a tax role but wish to use the designation *AITI Chartered Tax Adviser (CTA)* are also subject to CPD requirements. A mandatory scheme containing a minimum number of hours of structured (interactive) and unstructured (personal research, reading etc.) training has been adopted. *Tax Technician* members of the *Institute* must also undertake CPD.

Tax advisers may be members of other professional bodies, which may have their own CPD requirements, or they may not be a member of any professional body.

There are no more specialisation titles in the field of tax.



### c) Activities of tax advisers

Irish tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.  
 Blue: Yes. Anyone may provide this service.  
 Red: No, a tax adviser would need an additional qualification to exercise this activity.  
 Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                   |  |
| Representation of clients before tax courts                        | Representation at tribunal level (i.e. the <i>Appeal Commissioners</i> ) is reserved to member of the Institute and members of the legal profession. |
|  | Representation in higher courts is reserved to members of the legal profession.  |
| Representation of clients before criminal courts in tax matters    |  |
| Representation of clients before your Supreme Court in tax matters |  |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   | Restrictions can apply for certain specific investment advice  |
| Social security  |  |
| Representation before administration in social security            |  |

**Part II – Country Sheets**

|  |   |
|--|---|
| <b>Consulting</b>  |   |
| Management consulting in economic matters, human resource                  |   |
| <b>Legal</b>   |   |
| Advice on company or commercial law  |   |
| Advice on employment law   |   |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |   |
| Legal advice in other areas than tax                                       |   |
| Legal advice in other areas than tax if the legal advice is only ancillary |   |
| Legal representation before court in other areas than tax                  |   |
| Arbitration  |   |
| Contract negotiation and drafting  |   |
| <b>Audit</b>   |   |
| Statutory audit for sole traders/partnerships                              |   |
| Statutory audit for small companies  |   |
| Statutory audit for medium-size companies                                  |   |
| Voluntary audit for companies  |   |
| <b>Other</b>   |   |
| Company secretarial services   | The company secretary of a public limited company must meet certain qualification or experience requirements. |

There is no restriction on tax advisers engaging in other lawful activities outside of their activities as a tax professional.

**d) Professional conduct and quality management**

The professional conduct of AITI *Chartered Tax Advisers* (CTA) is regulated by the *Institute’s Code of Professional Conduct and Recommended Best Practice Guidelines* (in the following: *The Institute’s Code*).

## Sanctions

Disciplinary procedures and sanctions for Institute members are set out in the *Institute's Code* and in the *Institute's Bye Law No. 1*. Possible sanctions include suspension of membership for a period not exceeding 5 years, a reprimand, a fine of a sum not exceeding € 15,000, or ultimately, exclusion from membership of the *Institute*.

## Conflicts of interest

The *Institute's Code* provides that conflict issues are primarily a matter for professional judgment, based upon the precise circumstances of each case.

General guidance provided by the Institute states that the member should acknowledge the conflict to the relevant clients as soon as it occurs. The member should immediately address the conflict and seek a solution that is compatible with high professional standards and the duty that he owes to his client or clients. Should he wish to continue to act despite the conflict (or potential conflict), he must ensure that the client or clients for whom he is acting are advised of the situation so that they can consider the need to obtain independent advice.

A member should not normally act for parties on different sides of a transaction. However, this may present particular difficulties if both the parties are existing clients. The member cannot give preference in providing services to one client rather than the other. He must act in the best interests of both.

## Commissions

The *Institute's Code* does not prohibit the receipt of commissions per se, but it does specify that the giving of any commission, fee or reward to a third party to induce a prospective client to breach a previous professional relationship would be regarded as unprofessional conduct.

The *Institute's Code* also provides that members should neither obtain nor seek professional work for either himself or another member in a manner that is unprofessional. The question as to what constitutes unprofessional conduct can be determined only in the light of all the relevant facts and circumstances.

## Certification and quality benchmarking

Tax professionals may apply for ISO 9001 certification if they wish. The *Institute* does not oblige its members to undertake ISO certification. However, the *Institute's Code* contains guidelines for members in relation to the maintenance of working papers, adequate systems for completing compliance procedures for clients, time recording, retention of working papers, internal review systems and client confidentiality.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There is no specific legislation in Ireland on client confidentiality for tax advisers but the *Institute* requires that its members (both in-house and in practice) treat information they have obtained in the course of their engagement as confidential. This confidentiality is subject to no time limit; consent to disclose information can be given by the client, employer or other proper source. Tax advisers may reveal confidential information to defend themselves in proceedings against them.

Tax advisers are also required to comply with general data protection legislation, which requires organisations to protect personal data which they hold in respect of individuals.

### Right of non-disclosure / legal professional privilege

Tax law contains provisions which protect the following categories of information:

- Information with respect to which a claim to legal professional privilege could be maintained in legal proceedings,
- Information of a confidential medical nature, and
- Professional advice of a confidential nature given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose).

The tax authorities have certain statutory powers to obtain client information from tax advisers, and tax advisers are obliged to comply with such requests. Also, in a criminal case, the judge can ask for this information and the tax adviser is obliged to provide it.

## Tax avoidance reporting

Ireland has had a *Mandatory Reporting* regime since 2010. The rules require the mandatory reporting of certain transactions to the tax authorities, namely transactions with characteristics perceived to suggest tax avoidance. The rules apply to *promoters*, i.e. tax advisers and certain financial institutions. Promoters are required to submit two types of reports under the regime. The first report must outline the nature of the transaction and the second report must contain details of the persons to whom the transaction in question was made available for implementation.

## Money laundering reporting

In cases of suspected money laundering, tax advisers must report the case to the police and to the tax authorities. An exemption however applies for advice subject to legal privilege or given in the course of ascertaining the legal position for a client. Advisers who arrange for their clients to make a voluntary disclosure to the tax authorities are deemed to have complied with their anti money laundering obligations.

## f) Liability and insurance

Prima facie, the client is responsible for the accuracy and completeness of the return. However, tax advisers are subject to statutory regulatory obligations which include a prohibition on assisting taxpayers filing incomplete or incorrect tax returns and a prohibition on directly or indirectly assisting a tax payer to evade tax.

Any contract between the tax adviser and client will be subject to national and EU consumer law (as applicable) and contract law.

There is no legal obligation for tax advisers in Ireland to have professional indemnity insurance. However, the *Institute* requires its members in private practice, whether solely or in partnership or in corporate practice, to ensure that adequate professional indemnity insurance or self-insurance cover is held by them or by the business entity through which they practise. There is no minimum sum specified, but the *Institute* requires that the cover be adequate. The *Institute's* website provides a portal so that members can obtain guidance as to what level of cover would be adequate for them.

Tax adviser firms that are members of the *Institute* will generally arrange separate insurance cover for the firm which then covers the activity of all partners/directors and employed tax advisers. AITI *Chartered Tax Advisers* (CTA) employed in professional firms in which they are practising tax (e.g. an accounting firm, a legal firm) are required to have adequate insurance cover. In-house tax advisers would generally not require insurance cover.

### g) Advertising and pricing

Advertising for tax advisers is no stricter than for any other profession. Members should follow the standards laid down by the *Advertising Standards Authority for Ireland*. All advertisements should be legal, decent, honest and truthful. There are no restrictions as to what kinds of advertising or media are used.

In the *Institute's Code* for members there are provisions against the use of inappropriate advertising.

The *Institute* provides that every member is responsible for setting his own fees and the manner in which those fees are calculated. It does not recommend any particular method of charging or any fee scales. Members should ensure, however, that the letter of engagement clearly sets out an estimate of the proposed fees and the method for calculating those fees. Success and contingency fees may be agreed.

### h) Contractual issues and formal requirements

Under the *Institute's Code*, tax advisers who are members are advised to issue a letter of engagement defining the scope of the engagement upon accepting instructions from a client.

### i) The firm of the tax adviser

There are no regulations governing legal form, ownership or management of tax adviser firms in Ireland. In practice, tax advisers generally operate as sole practitioners, general partnerships or limited liability companies.

Tax advisers may enter partnerships or set up joint companies with any other professions as long as the professional duties are observed. If the firm

wishes to be known as firm of AITI *Chartered Tax Advisers*, the majority of the principals of the firm who primarily provide tax advice must have the corresponding qualification.

## j) Registration and other requirements

If the firm has employees, registration with the Department of Social Protection is required.

Tax advisers or firms, like all other taxpayers, are required to register with the tax authorities for the purposes of complying with their *own* direct and indirect tax obligations. Tax advisers who act as tax agents, i.e. filing tax returns on behalf of their clients, are required to separately register as such with the tax authorities.

## 2. Cross-border activity of tax advisers from other countries in Ireland

Tax advisers from other countries may provide cross-border tax services in Ireland or (e.g. by letter, e-mail, internet or telephone) into Ireland. If they intend to file tax returns or represent their clients before tax authorities as *tax agents*, they need to register with the tax authorities (see paragraph 1, lit.a and j).

Although the tax profession is not regulated in Ireland, the recognition procedure described in the EU Professional Qualifications Directive applies to the *Institute*, as this organisation is listed in Annex I of the Directive. The Irish Tax Institute is the competent authority for tax advisers in Ireland under the EU Directive on the Recognition of Professional Qualifications. If a tax adviser holds a taxation qualification from another EU Member State, an EEA territory or Switzerland, which is recognised under the Directive, they may apply to the Institute to have their qualification assessed for equivalency in the Irish context, see also Section 13.2 of Part I for the recognition procedure.

There is an insurance requirement for members of the *Institute*, see paragraph 1 lit.f.

A tax adviser company from another member state may open an office in Ireland as a branch which would not be a legal entity taking a specific form.

When a subsidiary is set up, it will have to choose one of the forms available under Irish law.

### 3. Professional bodies

The *Irish Tax Institute* is a self-regulatory body set up by private law with over 4,800 voluntary full members, made up of Associates, Fellows, and Tax Technician Members. In addition, there are 1,400 student members.

Most tax professionals in Ireland have opted to qualify as either *Fellow*, *Associate* or *Tax Technician* members of the *Institute*. *Associates* and *Fellows* of the *Institute* may use the title AITI *Chartered Tax Adviser* (CTA) or FITI *Chartered Tax Adviser* (CTA), as appropriate, provided they are compliant with the *Institute's* CPD requirements as set out in the *Institute's Code*.

*Associates* and *Fellows* of the *Institute* who do not work in a tax role, and are therefore under no obligation to complete CPD, are entitled to use the designation “AITI” (*Associate of the Irish Tax Institute*) or “FITI” (*Fellow of the Irish Tax Institute*) as appropriate.

The activities of the *Institute* are:

- holding qualifying exams
- developing codes of conduct / ethics
- supervising the compliance of members with professional obligations and, if necessary, imposing disciplinary sanctions
- providing education and CPD courses to tax advisers and staff
- publishing of tax reviews and other relevant technical information

To some extent, the *Institute* is involved in

- mediating between professionals
- mediating on matters of general application to the tax administration system between professionals and tax authorities
- giving opinions in tax matters to the tax administration and politicians
- developing software or online tools for tax advisers

The *Institute* is a member of the CFE.



## 4. Practical information

### a) Contacts

|   |   |
|---|---|
| <p><b>Irish Tax Institute (ITI)</b></p> <p>South Block<br/>Longboat Quay<br/>Grand Canal Harbour<br/>Dublin 2</p> <p>Tel: +353/1/6631700<br/>Fax: +353/1/6688387<br/>info@taxireland.ie<br/><a href="http://www.taxinstitute.ie/">http://www.taxinstitute.ie/</a></p> | <p><b>Professional qualifications contact point</b></p> <p>Mr Hugh Geoghegan<br/>Higher Executive Officer,<br/>Qualifications Section,<br/>Department of Education and<br/>Science Block<br/>2, Marlborough Street<br/>Dublin 2</p> <p>Tel: +353 1 88 96 539<br/>Fax: +353 1 80 95 048<br/>hugh_geoghegan@education.gov.ie<br/><a href="http://www.education.gov.ie">www.education.gov.ie</a></p> |
| <p><b>Point of Single Contact</b></p> <p><a href="http://www.pointofsingletcontact.ie/">www.pointofsingletcontact.ie/</a></p>   |   |

### b) Sources of law

- ITI Code of Professional Conduct and Recommended Best Practice Guidelines:  
<http://taxinstitute.ie/Portals/0/About%20Us/20120314%20Code%20of%20Conduct%20final.pdf>





**Italy Italia IT**

## **1. Picture of the tax profession in Italy**

### **a) General characteristics of the profession**

The profession of tax adviser (*Consulente Fiscale* or *Tributarista*) is not regulated, meaning anyone may provide tax advice. Most tax professionals are also members of the regulated accountancy professions *Dottori Commercialisti* and *Esperti Contabili* or of the audit profession (*Revisori Contabili*) and mandatory member of their respective professional bodies. The number of *Dottori Commercialisti* and *Esperti Contabili* is about 112,000. For professionals who practice only in tax, there is no mandatory membership in professional bodies.

Tax advisers may be self-employed or employed in a professional firm or as in-house tax advisers in any kind of business. Tax advisers may set up a firm with any other profession. Active tax advisers may not be public servants or be employed by the state.

Tax advisers are seen as a liberal profession but the public and clients may generally not be aware of this distinction.

### **b) Professional qualification**

The tax profession is not regulated in the sense of the Professional Qualifications Directive, meaning there is no qualification requirement for the use of the title tax adviser or the activity of giving tax advice.

The qualification requirement to become *Esperto Contabile* is a bachelor degree in economy (three years of studies), eighteen months of practical training and completion of a state exam. To become *Dottore Commercialista*, a master degree in economy (five years of studies) is needed plus eighteen months of practical training and a state exam.

## Part II – Country Sheets

There are no specialisation titles in the field of tax.

### c) Activities of tax advisers

Italian tax advisers are active in the following fields:

- Blue: Yes, anyone may provide this service.  
 Red: No. A tax adviser would need an additional qualification to exercise this activity.  
 White: No information.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                           |  |
| Representation of clients before tax courts                                |  |
| Representation of clients before criminal courts in tax matters            |  |
| Representation of clients before your Supreme Court in tax matters         |  |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| Consulting   |  |
| Management consulting in economic matters, human resource                  |  |
| Legal  |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |

|   |  |
|---|--|
| Legal representation before court in other areas than tax |  |
| Arbitration   |  |
| Contract negotiation and drafting                         |  |
| Audit   |  |
| Statutory audit for sole traders/partnerships             |  |
| Statutory audit for small companies                       |  |
| Statutory audit for medium-size companies                 |  |
| Voluntary audit for companies                             |  |
| Other   |  |
| Company secretarial services                              |  |

Apart from tax, tax advisers may generally engage in any other lawful activities that do not affect compliance with their professional obligations. Clients must be represented by a tax adviser or a lawyer before a fiscal court or tax authorities if the amount in dispute is higher than € 2,500.

#### d) Professional conduct and quality management

Professional conduct is regulated by the professional association A.N.T.I. for its members.

#### e) Protection and disclosure of client data

##### Client confidentiality / professional secrecy

Italian law obliges tax advisers (both in-house and tax firms) to treat confidentially information they have obtained in the course of their engagement.

##### Right of non-disclosure / legal professional privilege

Tax advisers do not have the right to refuse to provide client information requested by the state.

## Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities but they are advised to have such schemes approved.

Indications of money laundering have to be reported to the competent authorities. There are no exceptions to that rule.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information, but there may be a recourse if the tax adviser has made a mistake.

The tax adviser is fully liable to the client without possibility to limit liability. There is no obligation to have professional indemnity insurance for members of A.N.T.I. or tax advisers generally. *Esperti Contabile* and *Dottori Commercialisti* need insurance cover for certain activities (after August 2013, insurance cover will be mandatory for all activities).

## g) Advertising and pricing

Advertising is generally allowed. There are no specific advertising rules for tax advisers.

There is no price regulation in Italy.

## h) Contractual issues and formal requirements

There are no specific formal requirements. Engagement letters describing the scope of the engagement are not mandatory.

## i) The firm of the tax adviser

There are no restrictions relating to the legal form of a tax firm, ownership of the shares or management of a tax adviser company.

---

Tax advisers may enter partnerships or set up joint companies with any professions, as long as the tax adviser's professional duties are observed.

j) **Registration or other requirements before commencing work as a tax adviser**

There are no particular registration requirements before taking up work as a tax adviser.

## **2. Cross-border activity of tax advisers from other countries in Italy**

There are no particular requirements concerning notification, registration, recognition of professional qualifications or insurance for tax advisers from other countries who want to practice taxation in Italy. Tax advisers from other countries are free to use the professional title of their home country or to choose an Italian title.

## **3. Professional bodies**

There is no mandatory membership in professional bodies for tax advisers. *Associazione Nazionale Tributaristi Italiani* (A.N.T.I.) is an association of private law with 996 voluntary members some of which are also lawyers, accountants, academics or even persons working in revenue bodies but all of them have to specialise in tax. To become member of A.N.T.I., a recommendation of two A.N.T.I. members is needed.

A.N.T.I. is active in:

- Publishing tax reviews and other relevant technical information
- giving opinions in tax matters to the tax administration and politicians.

A.N.T.I. is a member of the CFE.

## 4. Practical information

### a) Contacts

Associazione Nazionale Tributaristi Italiani (A.N.T.I) / National Association of Italian Tax Advisers

Piazza della Croce Rossa n. 2  
00161 Roma

Tel: +39 06 452 14794  
segrgenerale@  
associazionetributaristi.it  
www.associazionetributaristi.it/

Professional qualifications contact point

Presidenza del Consiglio dei Ministri,  
Dipartimento Politiche Comunitarie,  
Ufficio Mercato Interno e Competitività

Piazza Nicosia 20  
00186 Roma

Puntonazionaleidiconattoqualifiche  
professionali@politicheeuropee.it  
www.politichecomunitarie.it

Contact person:  
Mrs Maria Giuseppina Castellano  
Tel: + 39 06 677 92 548  
Fax: + 39 06 677 95 064  
g.castellano@governo.it

Point of Single Contact: “Impresa in un giorno”

[www.impresainungiorno.gov.it/](http://www.impresainungiorno.gov.it/)





## Latvia Latvija LV

### 1. Picture of the tax profession in Latvia

#### a) General characteristics of the profession

The profession of tax adviser (*Nodokļu Konsultants* in Latvian) is not regulated, meaning anyone may provide tax advice. 1,218 individuals have registered as tax advisers with the tax authorities. Membership of professional organisations is voluntary.

In practice, tax advice is also given by accountancy firms. The profession of accountant is regulated by charter of professional body with voluntary membership while lawyers and auditors are regulated by law.

Tax advisers may be self-employed or employed by any professional firm or (as in-house tax advisers) other businesses. They may not be public servants or employed by the state.

The term “liberal profession” is not used for tax advisers.

#### b) Professional qualification

The tax profession is not regulated in the sense of the Professional Qualifications Directive, meaning there is no qualification requirement for the use of the title tax adviser or the activity of giving tax advice. However, only certified members of the *Latvian Tax Consultant Association (LNKA)* may use the title *Certified Tax Adviser*.

To become member of LNKA, a (university) bachelor’s degree in law or economics is required. Afterwards, applicants need to acquire three years of work experience as a tax adviser. LNKA is holding an entry exam the fee for which is 90 Lats (€ 128). Once, obtained, this qualification is normally valid lifelong.

## Part II – Country Sheets

---

Member of LNKA are obliged to engage in continuing professional development (CPD) the minimum amount of which is set at 20 academic hours of tax training courses a year. LNKA itself offers CPD but members are free to obtain their CPD with other operators that meet the required standards.

There are no specialisation titles in the field of tax.

### c) Activities of tax advisers

Latvian tax advisers are active in the following fields:

Blue: Yes, anyone may provide this service.  
Red: No. A tax adviser would need an additional qualification to exercise this activity.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                         |  |
| Representation of clients before tax courts                              |  |
| Representation of clients before criminal courts in tax matters          |  |
| Representation of clients before your Supreme Court in tax matters       |  |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                  |  |
| Consulting   |  |
| Management consulting in economic matters, human resource                |  |
| Legal  |  |
| Advice on company or commercial law                                      |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters) |  |

|  |   |
|--|---|
| Legal advice in other areas than tax                                       |   |
| Legal advice in other areas than tax if the legal advice is only ancillary |   |
| Legal representation before court in other areas than tax                  |   |
| Arbitration  |   |
| Contract negotiation and drafting  |   |
| <b>Audit</b>   |   |
| Statutory audit for sole traders/partnerships                              |   |
| Statutory audit for small companies  | <p>If the company meets two of the following requirements:</p> <ol style="list-style-type: none"> <li>1) Balance sheet total not exceeding 250,000 LVL (€ 357,000)</li> <li>2) Net revenue not exceeding 500,000 LVL (€ 714,000)</li> <li>3) Average number of employees not exceeding 25.</li> </ol> <p>If at least two of the above thresholds are exceeded, an auditor's report is required.</p> |
| Statutory audit for medium-size companies                                  |   |
| Voluntary audit for companies  |   |
| <b>Other</b>   |   |
| Company secretarial services   |   |

Apart from tax, tax advisers may generally engage in any other lawful activities that do not affect compliance with their professional obligations.

#### d) Professional conduct and quality management

Professional conduct is regulated by LNKA for its members. The LNKA ethics committee is responsible for reviewing ethics violations on a case by case basis.

##### Sanctions

Breaches of professional rules can be sanctioned by exclusion from LNKA.

##### Conflicts of interest

If the tax adviser notices a conflict of interest between him/herself and the client or between two clients, s/he has to stop acting for these clients (or one of these clients).

##### Commissions

There is no rule prohibiting a tax adviser from receiving a commission, e.g. for recommending a client to a fellow tax adviser.

##### Certification and quality benchmarking

Quality benchmarking in the form of consumer organisations, media, clients or professional bodies rating tax firms is not common in Latvia.

#### e) Protection and disclosure of client data

##### Client confidentiality / professional secrecy

Latvian legislation obliges tax advisers to treat confidentially client information they have obtained in the course of their engagement. Tax adviser may however reveal confidential information to defend themselves in legal proceedings.

## Right of non-disclosure / legal professional privilege

Tax advisers do not have the right to refuse to provide client information requested by the state.

## Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Indications of money laundering have to be reported to the competent authorities. There are no exceptions to that rule. From a practical risk perspective, tax advisers are required to stop acting for the clients concerned.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information, but there may be a recourse if the tax adviser has made a mistake.

Tax adviser and client can limit liability by individual agreement, within the boundaries of contract law. There is no obligation to have professional indemnity insurance for members of LNKA or tax advisers generally.

## g) Advertising and pricing

Advertising is generally allowed. There are no specific advertising rules for tax advisers.

There is no price regulation in Latvia. Success fees or contingency fees may be agreed.

## h) Contractual issues and formal requirements

There are no specific formal requirements. Engagement letters describing the scope of the engagement are not mandatory.

i) The firm of the tax adviser

There are no restrictions relating to the legal form of a tax firm, ownership of the shares or management of a tax adviser company.

Tax advisers may enter partnerships or set up joint companies with any professions, as long as the tax adviser's professional duties are observed. There are however restrictions preventing lawyers from entering partnerships with other professions.

j) Registration or other requirements before commencing work as a tax adviser

Tax advisers need to register with the tax authorities and with the competent anti-money laundering body. There is no membership of professional bodies required.

## **2. Cross-border activity of tax advisers from other countries in Latvia**

Latvian law does not distinguish between cross-border services of tax advisers provided (1) online or by means of distance communication (phone, letter, e-mail) into Latvia, (2) on a temporary or occasional basis in Latvia or (3) permanently in Latvia.

No authorisation is required for providing tax services but for filing a tax return for a client or representing a client before Latvian tax authorities, tax advisers from other countries would need to obtain an authorisation from the Latvian authorities.

There is no requirement for tax advisers from other countries to obtain professional indemnity insurance. They have to register however with the Latvian anti-money laundering body.

## **3. Professional bodies**

There is no mandatory membership of professional bodies for tax advisers. The *Latvian Tax Consultant Association (Latvijas Nodokļu Konsultantu*

*Asociācija, LNKA*) is a self-regulatory body set up by private law with 160 voluntary members. There is no membership of companies, students or any other persons than tax advisers with LNKA.

LNKA's activities are:

- holding qualifying exams
- developing codes of conduct/ethics
- providing education and CPD courses to professionals and their staff
- mediating between professionals and tax authorities, and
- giving opinions in tax matters to the tax administration and politicians.

To some extent, LNKA is also active in

- supervising the compliance of members with professional obligations and, if necessary, disciplinary sanctions
- mediating between professionals.

LNKA is a member of the CFE.

## 4. Practical information

### Contacts

|   |   |
|---|---|
| <p>Latvijas Nodokļu Konsultantu Asociācija (LNKA) / Latvian Tax Consultant Association</p> <p>Brīvības gatve 224/5<br/>1039 Rīga</p> <p>Tel: +371 202 70 533<br/>lnka@lnka.lv<br/><a href="http://www.lnka.lv/">http://www.lnka.lv/</a></p> | <p>Professional qualifications contact point</p> <p>Academic Information Centre</p> <p>Postal address:<br/>Valņu iela 2<br/>Rīga, LV1050</p> <p>Office address:<br/>Brīvības iela 33, 4th floor<br/>Rīga, LV1050<br/>Tel: + 371 67225155<br/>Fax: + 371 67221006<br/><a href="mailto:aic@aic.lv">aic@aic.lv</a> / <a href="mailto:diplomi@aic.lv">diplomi@aic.lv</a> / <a href="http://www.aic.lv">www.aic.lv</a></p> |
| <p>Point of Single Contact</p> <p><a href="https://www.latvija.lv/EN/WebLinks/Portal/">https://www.latvija.lv/EN/WebLinks/Portal/</a></p>   |   |







## Luxembourg Luxembourg Lëtzebuerg Luxemburg LU

### 1. Picture of the profession in Luxembourg

#### a) General characteristics of the profession

There is not a distinct tax profession in Luxembourg. The title of tax adviser is not regulated. However, the majority of tax practitioners in Luxembourg are members of a regulated profession, including chartered accountants (FR: *Experts-Comptables*, EC).

While there is no mandatory membership of professional bodies for professionals using the title tax adviser, the profession of *Expert-Comptable* is a regulated profession with mandatory membership of the *Ordre des Experts-Comptables* (OEC).

Apart from *Expert-Comptable*, there is the regulated profession of *Comptable*, the distinction being that *Comptables* may do accountancy only for enterprises with a balance sheet total of not more than € 2.305 million and a net turnover of not more than € 4.61 million in two consecutive years. *Comptables* are not mandatory members of a professional body. ECs may only practice as self-employed or employees in a professional firm. ECs are regarded as a liberal profession in Luxembourg.

#### b) Professional qualification

No particular qualification is required for providing tax advice but for accountancy which is reserved to ECs, a regulated profession in the sense of the EU Professional Qualifications Directive.

To be eligible to become an EC, applicants must have a bachelor's degree (3 years) in economy, finance, management, business law or equivalent issued by a higher education establishment recognised by the state in which the establishment is located and registered in the register of certificates.

After having obtained the diploma, a 3-year practical professional experience in the industry is required, at least one year of which was spent with a duly-established EC.

Finally, an additional training course for candidates organised by the University of Luxembourg has to be completed successfully, including a professional exam.

In the specific area of tax, ECs have no continuing professional development (CPD) obligation, however, the OEC recommends that members also take tax courses in the frame of their continued professional development. Also, according to the accountant's code of ethics, ECs have to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service.

### c) Activities of accountants

The activities of ECs in Luxembourg include:

- organisation, assessment and adjustment of accounting entries and accounts of any kind;
- drafting financial statements and analysis, through the use of accounting techniques, of the economic and financial situation and operation of businesses and other institutions;
- bookkeeping, domiciliation, provision of all services related to the calculation of salaries and social secretariat;
- tax advice and preparation of tax returns or contractual control of the accounts.

ECs may represent clients in dealings with the tax authorities, including direct tax litigation before the tax court in first instance (*Tribunal administratif*).

In general, ECs may engage in incidental lawful activities as long as this does not create any conflict of interest or loss of professional independence.

### d) Professional conduct

Each tax practitioner is submitted to the specific regulation on the professional conduct of his/her profession; if s/he practices solely in tax, there is no specific professional code.

The OEC is in charge of the supervision of the profession of ECs. It is also entitled to take some disciplinary actions and impose sanctions. The OEC has adopted a professional code based on the Code of Ethics of the *International Federation of Accountants* (IFAC).

#### e) Protection and disclosure of client data

##### Client confidentiality / professional secrecy

Specific professional secrecy rules are applicable to tax practitioners, according to the profession they are member of. ECs are submitted to professional secrecy, the violation of which is a criminal offence. There are no specific rules for tax advisers.

##### Right of non-disclosure / legal professional privilege

ECs do not have the right not to disclose client information that may be requested by an administration, a public prosecutor or a court, as long as the request is supported by legal rules.

##### Tax avoidance and money laundering reporting

In accordance with EU directives, as implemented into Luxembourg law, indications of money laundering and terrorism financing must be reported to the Luxembourg authorities who may instruct the EC to carry on or not to carry on the unsound operation or the mission.

#### f) Liability and insurance

Obligation for a tax practitioner to have professional indemnity insurance is depending on the specific rules of the profession the tax practitioner is a member of. No insurance is required if only tax services are offered but ECs must have appropriate professional liability insurance, i.e. corresponding to their actual sphere of activity. There is no legal specification on limiting professional liability.

g) Advertising and pricing

Each regulated profession has its specific rules with respect to advertising, most of which are restrictive rules. There are no specific rules for tax advisers.

Advertising is generally allowed for accountants. When advertising, ECs remain bound by their professional code of ethics and should therefore not bring their profession into disrepute, not make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained and not denigrate the work of other ECs.

There is no price regulation in Luxembourg. Nevertheless, the ECs' professional code of ethics contains rules with respect to fees, which should be a fair reflection of the value of the professional services performed for the client, taking into account the skill and knowledge required for the type of professional services involved, the level of training and experience of the persons necessarily engaged in performing the professional services, the time necessarily occupied by each person engaged in performing the professional services and the degree of responsibility that performing those services entails.

h) Formal requirements and contractual issues

Engagement letters and OEC terms and conditions are mandatory for ECs when performing most of their activities.

i) The firm of the tax adviser or accountant

Freedom to choose the legal form of their firm as well as possible restrictions on shareholding or management are depending on the rules of the profession a tax practitioner is a member of. There are no specific rules for firms offering only tax services.

For EC firms, the legal form can be freely chosen but:

- a majority of their directors must be ECs (as defined by the law of June 99), and
- a majority of the voting rights attached to the firm's share capital must be held by ECs.

j) Registration requirements

In order to operate as an EC or accountant in Luxembourg, a business permit is required. This has to be applied for with the *Ministry, of Small and Medium Sized Businesses (Ministère des Classes Moyennes)*.

**2. Cross-border activity of tax advisers or accountants from other countries in Luxembourg**

a) Temporary or occasional activity

There are no requirements relating to professional qualifications or insurance for tax advisers from other countries rendering only tax services in Luxembourg.

Accountants who are legally established on the territory of the Swiss Confederation or in a country of the EEA may provide temporary and occasional accounting services in Luxembourg without business permit and without giving prior notification. However, they are still subject to the rules applicable to accountants in Luxembourg, such as ethical provisions.

b) Permanent activity

Accountants or ECs who wish to settle in Luxembourg must obtain a business permit. ECs must register as member of the OEC. If they register solely in tax, there is no mandatory membership with professional bodies.

Citizens of EEA states and Switzerland (with the exception of Bulgaria and Romania) do not need a work permit to perform their professional activities in Luxembourg. Citizens of Bulgaria and Romania are still required to hold a work permit during a transitional period extending until 31 December 2013 if they work as employees. In principle, citizens from all other countries need a work permit before their entry into Luxembourg.

Professionals who intend to practice solely in tax do not need to have their qualification recognised.

ECs with a qualification obtained or recognised in another UE country who seek to practice as ECs in Luxembourg will need to have their qualification

recognised in accordance with the Professional Qualifications Directive. The *Ministry of the Middle Classes, Tourism* is the competent authority for matters concerning the recognition of professional qualifications. This will require an aptitude test consisting of 3 papers (Questions are in French but answers can also be given in German or English). ECs from non-UE countries will need to pass an aptitude test consisting of 5 papers.

A company from another EU member state providing accounting services that wants to open an office in Luxembourg does not necessarily have to set up a company under Luxembourg law but the business will need to satisfy the requirements mentioned in paragraph 1 lit.i) to obtain a license. This would not apply for a company providing solely tax advice. The law does not specify whether a firm from another member state that wants to move to Luxembourg will have to set up a new company under Luxembourg law. It is recommended to consult the Ministry upfront.

### 3. Professional bodies

The OEC (*Ordre des Experts-Comptables*) is one of the largest professional bodies for tax practitioners in Luxembourg with 1,000 individual members and 450 member firms. OEC members are exclusively ECs. The *Ministry of the Middle Classes, Tourism* is the oversight authority for OEC.

The OEC is active in:

- supervising the compliance of members with professional obligations and disciplinary sanctions;
- supervising compliance with the anti money laundering and terrorism financing legislation;
- defending the profession’s rights and interests;
- monitoring other services that support the ECs’ activity;
- publishing of newsletters and other relevant information.

The OEC is further:

- providing education and continued professional development courses to ECs;
- preventing and conciliating possible disputes between ECs or between ECs and clients;
- giving opinions in any matter impacting the profession.

The OEC is a member of the CFE.

## 4. Practical information

### a) Contacts

|   |  |
|---|--|
| <p><b>Ordre des Experts-Comptables (OEC)</b></p> <p>7, Rue Alcide de Gasperi<br/>1615 Luxembourg<br/>Luxembourg</p> <p>(+352) 291 333<br/>(+352) 291 334<br/>contact@oec.lu<br/>www.oec.lu</p>  | <p><b>Ministry of the Middle Classes, Tourism and Housing, Department of Small and Medium-Sized Businesses (Departement des Classes Moyennes)</b></p> <p>19-21, boulevard Royal<br/>2449 – Luxembourg</p> <p>Tel: (+352) 247-84715<br/>Fax: (+352) 247-84740<br/>info@mcm.public.lu<br/>www.mcm.public.lu/en/</p> <p>Opening hours:<br/>Monday - Friday 8.00 – 12.30</p>   |
| <p><b>Professional qualifications contact point</b></p> <p>Centre de Documentation et d'Information sur l'Enseignement supérieur (CEDIES)</p> <p>209, route d'Esch<br/>1471 Luxembourg</p> <p>Tel: (+352) 247 88664<br/>Fax: (+352) 26 19 01 04<br/>cedies@mcesr.etat.lu<br/>www.cedies.public.lu</p> <p>Contact person:<br/>M. Raymond Harsch:<br/>raymond.harsch@mesr.etat.lu</p> | <p><b>Point of Single Contact: “De Guichet”</b></p> <p><a href="http://www.guichet.public.lu">www.guichet.public.lu</a></p> <p>Specific page for Accountants in EN:<br/><a href="http://www.guichet.public.lu/en/entreprises/creation-developpement/autorisation-etablissement/profession-liberale/comptable/index.html">www.guichet.public.lu/en/entreprises/creation-developpement/autorisation-etablissement/profession-liberale/comptable/index.html</a></p> |
| <p><b>Luxembourg Association of Accounting and Tax Consultants / Association Luxembourgeoise des Conseils Comptables et Fiscaux</b></p> <p>18, Avenue Marie-Thérèse<br/>2014 - Luxembourg</p> <p>Tel: (+352) 29 13 33<br/>Fax: (+352) 29 13 34</p> <p>Website: <a href="http://www.alcomfi.lu">www.alcomfi.lu</a></p>   |  |

**b) Sources of law**

- Relevant legislation and professional regulation of Experts-Comptables:  
<http://www.oec.lu/index.php?id=40>
- Compilation of legislation relevant for EC:  
[http://www.oec.lu/fileadmin/media/publications/ESPACE\\_PUBLIC/acces\\_%C3%A0\\_la\\_profession/LOI\\_DU\\_10\\_JUIN\\_1999\\_TQ\\_MODI-FIEE\\_MARS\\_2011.pdf](http://www.oec.lu/fileadmin/media/publications/ESPACE_PUBLIC/acces_%C3%A0_la_profession/LOI_DU_10_JUIN_1999_TQ_MODI-FIEE_MARS_2011.pdf)
- IFAC Code of Ethics:  
<http://www.ifac.org/publications-resources/2012-handbook-code-ethics-professional-accountants>





## Malta MT

### 1. Picture of the profession in Malta

#### a) General characteristics of the profession

There is no specific professional title for tax advisers in Malta. While anyone may practice in tax and no membership of tax advisers in professional bodies is required, most of the estimated 400 tax professionals are members of the *Malta Institute of Taxation* (MIT) and hold a qualification as lawyer or accountant. Therefore, in addition to rules imposed by the MIT, most tax advisers are subject to the rules which apply for lawyers or accountants.

Tax advisers may be self-employed, employed by a professional firm or as in-house tax advisers in any business. They may however not be public servants or employed by the state.

The notion of tax advisers as a liberal profession exists although clients or the public at large may not be aware of it.

#### b) Professional qualification

The tax profession in Malta is not regulated in the sense of the EU Professional Qualifications Directive as persons who wish to advise in tax matters or use the title tax adviser need no particular qualification by law.

Persons who want to become a *Certified Public Accountant* have to obtain a bachelor degree in accountancy or complete an equivalent recognised course of theoretical instruction. In addition, applicants must acquire three years of work experience one of which must be postgraduate.

MIT membership is open to persons whose field of specialisation, whether academic or practical, is taxation in general.

MIT encourages continuing professional development.

Master in taxation courses are currently being developed as a joint venture between the Malta University and the MIT.

c) Activities of tax advisers

Tax advisers may engage in any other lawful activities as long as this does not affect compliance with their professional duties.

d) Professional conduct and quality management

Professional conduct of MIT members is regulated by an *MIT Code of Conduct and Ethics*. In addition, tax advisers may be subject to the specific rules of other professions they are members of.

Sanctions

Breaches of deontological rules can be sanctioned by exclusion from MIT.

e) Protection and disclosure of client data

Client confidentiality / professional secrecy

While there is no specific law for tax advisers, Maltese law obliges lawyers, accountants and similar professions to treat confidentially information they have obtained in the course of their engagement. This applies to both in-house tax advisers in business and firms. Client confidentiality is subject to no time limit and can only be waived by the client. Tax advisers may however reveal confidential information to defend themselves in legal proceedings against them. MIT members are further subject to confidentiality clauses contained in the *MIT Code of Conduct and Ethics*.

Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities. Cases of suspected money laundering have to be reported and the tax adviser must cease to act for that client but there are exemp-

---

tions where tax advisers give legal advice or represent clients in judicial proceedings.

#### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of the information, but there may be a recourse if the tax adviser has made a mistake.

Tax adviser and client can limit liability by individual agreement.

Tax advisers are not required by law to have professional indemnity insurance. Although the *MIT Code of Conduct and Ethics* does not specifically require MIT members to have a professional indemnity insurance cover, it considers adequate professional indemnity insurance to be part of a member's arrangements to achieve professional independence. Insurance may be required by bodies of other professions the tax adviser may be a member of.

#### g) Advertising and pricing

Advertising is generally allowed. Lawyers and accountants are subject to different rules on advertising. The *MIT Code of Ethics* states that although members do not normally advertise for their services, promotional material must in no way, explicitly or implicitly, belittle the services offered by other members. Furthermore, promotional material must also seek to promote and enhance the MIT's and its members' image as professional of repute and integrity.

There is no price regulation in Malta.

#### h) Contractual issues and formal requirements

There are no specific formal requirements. Engagement letters defining the scope of the engagement are not mandatory.

i) The firm of the tax adviser

Tax advisers may choose the legal form of their firm. There are no restrictions of shareholding or management. Legal form and shareholding requirements however exist for lawyers and *Certified Public Accountants*.

Tax advisers may set up a joint firm with any other professionals as long as this does not impede compliance with their professional duties.

j) Registration and other requirements

There are no particular registration requirements when taking up a tax adviser business in Malta.

## **2. Cross-border activity of tax advisers from other countries in Malta**

There are no particular requirements (e.g. relating to professional indemnity insurance, authorisation or recognition of professional qualifications) for tax advisers from other countries that wish to practice in Malta.

This may be different if they wish to exercise activities reserved to certain professions like lawyers and accountants. In this case, information can be provided by the respective professional bodies and the *Point of Single Contact*, see paragraph 4.

For tax advisers who wish to become members of the MIT, the MIT decides on an individual basis on the recognition of qualifications obtained in other countries. The MIT points out that a thesis in international tax matters may allow entry but knowledge of Maltese law is also important.

Work permits are still required for employees from Bulgaria and Romania until the end of 2013 at the latest.

## **3. Professional bodies**

The Malta Institute of Taxation (MIT) is a self-regulatory body set up by private law with 365 voluntary individual members with different professional

backgrounds. While many are lawyers or accountants, some members are ex-bankers with tax expertise as well as senior government officials employed within the various tax departments. MIT also offers student membership.

The MIT is given official recognition by its inclusion as a qualifying body in legislation concerning the submission of electronic tax returns and the submission of tax opinions in connection with the reduction of penalties.

The MIT is active in

- supervising the compliance of members with professional obligations and, if necessary, imposing disciplinary sanctions
- providing education and CPD courses to tax advisers and staff
- publishing of tax reviews and other relevant technical information
- mediating between professionals and tax authorities
- lobbying and campaigning.

To some extent, the MIT is

- holding qualifying exams
- mediating between professionals.

The MIT is a member of the CFE.

## 4. Practical information

### a) Contacts

#### Malta Institute of Taxation (MIT)

66 Mosta Road  
Attard ATD1430

Tel: +356 2131 4653  
Fax: +356 2143 0070  
mit@maintax.org  
www.maintax.org/

Point of Single Contact: “Business First”

[www.businessfirst.com.mt/en](http://www.businessfirst.com.mt/en)

|   |  |
|---|--|
| <p><b>Professional qualifications contact point</b></p> <p>Ms Shirley Micallef, Recognition officer<br/>Malta Qualifications Council</p> <p>Casa Leoni, 476 St. Joseph High Road<br/>St. Venera SVR 1012<br/>Tel: +356 27 540 051, +356 21 801 411<br/>Fax: +356 21 808 758<br/>shirley.micallef@gov.mt</p> | <p><b>The Chamber of Advocates</b></p> <p>Superior Courts, The Law Courts,<br/>Republic Street,<br/>Valletta VLT2000</p> <p>Tel: +356 21248601<br/>Fax: +356 21223904<br/>info@avukati.org<br/>www.avukati.org</p> |
| <p><b>The Malta Institute of Accountants</b></p> <p>Level 1, Tower Business Centre<br/>Tower Street<br/>Swatar BKR 4013</p> <p>Tel: +356 2258 1900<br/>Fax: +356 2132 3906<br/>info@miamalta.org<br/>www.miamalta.org/</p>  |  |

**b) Sources of law**

- MIT Statute and Code of Ethics:  
<http://www.maintax.org/maintax/images/stories/mit%20%20statute%202011.pdf>



## Netherlands Nederland NL

### 1. Picture of the profession in the Netherlands

#### a) General characteristics of the profession

The name of the profession most commonly used is *Belastingadviseur*. Neither the tax advisory activity nor the use of the title is regulated. There are 18,000 tax advisers and 1,500 tax adviser companies in the Netherlands (estimates). About half of the individuals are voluntary members of one of the two main professional bodies, NOB (*Nederlandse Orde van Belastingadviseurs*) and RB (*Register Belastingadviseurs*), see paragraph 3.

An estimated 83% of Dutch tax advisers work as employees with professional firms while 12% are self-employed or partners or share owning directors in professional firms. 4.4% work as in-house tax advisers in business. Tax advisers may work in any firm or business but may not be public servants or employed by the state. NOB requires that its members, if employees in a tax firm, work in a NOB-recognised firm (see below lit.i).

It is estimated that 10% of Dutch tax advisers are also qualified lawyers and 3% are also accountants (the latter relates to RB members as there are no accountants within NOB). Less than 1% of Dutch tax advisers are also auditors.

Unlike the tax profession, the professions of lawyer, auditor and accountant are regulated by law. The bookkeeping profession is not regulated.

The concept for tax advisers as a liberal profession exists although clients and the public at large are generally not aware of it.

#### b) Professional qualification

No particular qualification is required for the use of the title tax adviser or for tax advisory activities. NOB and RB have introduced qualification requirements for their members, the main difference being that NOB members are required to hold a university degree while RB members are not.

**Part II – Country Sheets**

---

NOB requires a degree at master level certifying 4 years of studies in tax law or fiscal economy plus a 3 year postgraduate professional course at NOB. NOB members also have to prove 3 years of practical training in tax advice after completion of the academic degree. This practical training can be obtained anywhere in the world, as long as it is relevant for the future professional activity in the Netherlands which is to be judged by the Admission Committee of NOB. It can also be simultaneous to the postgraduate NOB course. At the end of this course, there is a professional exam to become member of NOB.

Both NOB and RB members are obliged to keep their professional knowledge up to date. There are no detailed rules for NOB members. RB members have to prove a minimum of 40 hours per year. NOB offers CPD but members are free to obtain CPD from other providers as long as they meet the required standards.

Some tax advisers use specialisation titles in the field of tax like “VAT expert”, “tax assurance provider” or “specialised in customs matters” but these are not official titles formally awarded.

**c) Activities of tax advisers**

Dutch tax advisers are active in the following fields:

- Blue: Yes. Anyone may provide this service.
- Red: No, a tax adviser would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                   |  |
| Representation of clients before tax courts                        |  |
| Representation of clients before criminal courts in tax matters    |  |
| Representation of clients before your Supreme Court in tax matters |  |



| <b>Accounting &amp; Co.</b>  |  |
|--|--|
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Dutch tax advisers may engage in any lawful activities, provided that their professional duties are observed.

#### d) Professional conduct and quality management

Professional conduct is regulated by the two professional bodies for their members.

### Sanctions

Breaches of deontological rules can be sanctioned by reprimand or even by exclusion from the two professional associations. When a tax adviser is excluded from the NOB or RB, other members of the same association are not allowed to collaborate with him/her.

A criminal court can prohibit a professional to administer his profession.

### Conflicts of interest

If a tax adviser notices a conflict of interest between himself and the client or between two clients, the clients have to declare that they agree.

The codes of conduct of the two professional bodies stipulate that it is undesirable for a member to act as a tax adviser for two parties that are negotiating with each other. If a member should do this nonetheless, the prior permission of both parties is necessary. He must constantly make sure that he does not put the interests of one party before those of the other. A member who serves two parties will also have to be completely transparent with both parties at every stage in his advisory duties. If such a situation should threaten to create a conflict of interest, the member involved must reconsider his position as a tax adviser to both parties. He may have to terminate the advisory relationship with one of the clients if necessary.

### Commissions

Members of NOB and RB are restricted by Code of Conduct from receiving a commission whatsoever for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

In the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information), quality certification is offered by professional bodies and commercial operators.

Quality benchmarking in the form of international media rating tax firms is common in the Netherlands.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

Dutch tax advisers are obliged to protect client information from third parties. There is no legislation specifically for tax advisers but professional associations have enacted client confidentiality rules, Violation of client confidentiality can be sanctioned by the professional bodies and is even a criminal offence. This applies also to in-house tax advisers. Tax advisers may however reveal confidential information to defend themselves in legal proceedings.

### Right of non-disclosure / legal professional privilege

There is no legislation protecting the communication between a client and his/her tax adviser but such privilege is recognised by case law which points out that the principle of fair play, which is one of the general principles of due administration, precludes tax inspectors from exercising their power to demand access to reports and other documents prepared by third parties such as tax advisers for the purpose of explaining or advising on a taxpayer's tax position. This preclusion extends to those parts of documents that contain factual or descriptive information serving that same purpose. Any other parts, not serving that purpose, will have to be disclosed, if requested, which may render it necessary for the document to be split up or be cleaned.

This applies to tax authorities and fiscal courts but not in criminal proceedings where information has to be provided to the police, public prosecutor or court.

If tax advisers are suspected or accused of collaboration in fiscal fraud or professional misconduct, they may refuse to provide client information that may incriminate themselves.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, they have to report the case to the authorities but there is an exemption where tax advisers give

legal advice or represent their clients in judicial proceedings. They may continue serving this client if due diligence is increased.

### f) Liability and insurance

If a tax adviser assists a client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Tax advisers are free to limit or not to limit professional liability, within the boundaries of contract law. This means liability may be limited by individual agreement or general terms and conditions and liability for slight negligence may be excluded.

Professional indemnity insurance is mandatory for members of the NOB and RB. There is no minimum sum for each case or a minimum annual sum, but a member is obliged to ensure that the risk of his professional liability is covered by ‘adequate’ insurance. The definition of ‘adequate’ insurance depends on the sort of practice, the clients and the interests involved. As membership of professional bodies is on a personal basis, only persons are obliged to have adequate insurance. This also applies to in-house tax advisers. In practice, the insurance premium is generally incurred by the company and covers all partners, directors and personnel.

### g) Advertising and pricing

Advertising is allowed. There are no specific rules for the profession, only the general legislation (on misleading and unfair advertising etc.).

There are no binding rules on fees either, only general guidelines on what criteria should be taken into account when determining the price (time devoted to the case, value and complexity of the case, etc.). Contingency and success fees are allowed as long as there is a reasonable relationship between the hours worked and the nature and importance of the case.

### h) Contractual issues

There are no specific formal requirements for contracts with the client.

It should be noted that specific consumer protection rules are also applicable if the client is an SME (companies which are not required to publish their financial statements or which never undertake publication and have fewer than 50 employees). In this case, clauses in the general conditions of a tax adviser can be declared void if:

- in view of the nature and the other content of the agreement, the way in which the conditions were realised, the mutual apparent interest of the parties and other circumstances of the case are unreasonably onerous to the other party; or
- the party that utilises the general conditions has not given the other party a reasonable opportunity to examine them.

### i) The firm of the tax adviser

There are no restrictions in the law relating to the legal form, ownership or management of tax adviser companies.

However, if NOB members are partners in a tax firm, the firm must be recognised by the NOB. Recognition of the tax firm takes place by the NOB Board and is, in principle, only possible if the tax adviser partners are or become NOB members.

While collaboration with other tax advisers is subject to restrictions, NOB members are permitted to collaborate with practitioners of other *professions* provided that the NOB member may practice his profession in freedom and independence and that this collaboration is not in conflict with the honour and dignity of the profession. If other professionals participate or hold shares in a multidisciplinary collaborative partnership, this partnership or company must accept the NOB *Charter of Independence* to guarantee the NOB members' freedom and independence.

### j) Registration and other requirements

Although there is no obligation to register as tax adviser with the tax authorities, most tax advisers opt for such registration for their compliance activities and to benefit from an extension of the term for filing tax returns.

Apart from this, registration with social security funds is required if the firm has employees.

## 2. Cross-border activity of tax advisers from other countries in the Netherlands

### a) Online and other correspondence services and temporary or occasional activity

There are no specific requirements for tax advisers from other countries that provide online or correspondence services into the Netherlands or that practice only on a temporary or occasional basis.

### b) Permanent activity

Tax advisers from other countries may permanently practice in the Netherlands. As the profession is not regulated, there is no procedure for recognition of professional qualifications from other countries to be followed. Both NOB and RB have an Admission Committee to decide on the eligibility of prospective members.

The following answers relate to criteria to be fulfilled by professionals who choose to become members of NOB:

A tax adviser who has successfully completed a university study programme at graduate (doctoraal) or Master's level in a main subject relevant to the practice of the profession at a foreign university qualifies for the membership of the NOB, provided that he:

- qualifies, according to the applicable rules in the country under whose law he has taken the relevant study programme, for membership of an association or organisation operating in that country in which tax advisers are organised at university level; and
- has acquired sufficient basic knowledge of and practical experience in Dutch tax law to be able to responsibly practice the profession of tax adviser in the Netherlands; this experience can be obtained through a supervised adaptation period.

Employees from Bulgaria and Romania still need a work permit in the Netherlands until the end of 2013 at the latest.

### 3. Professional bodies

The two main professional bodies of tax advisers are Nederlandse Orde van Belastingadviseurs (NOB) and Register Belastingadviseurs (RB). Both are self-regulatory bodies of private law.

The NOB has 3,700 full members and 1,100 candidate members while the RB has 5,000 full and 2,000 candidate members. Both accept former tax practitioners as members (NOB: under certain conditions, extraordinary member).

The activities of NOB and RB are:

- developing codes of conduct / ethics (both)
- supervising the compliance of members with professional obligations and disciplinary sanctions (RB)
- holding qualifying exams (RB)
- acting as anti money laundering supervisor (RB)
- providing education and CPD courses to tax advisers and staff (NOB)
- publishing of tax reviews and other relevant technical information (both)
- mediating between professionals (RB)
- mediating between professionals and tax authorities (RB)
- mediating between professionals and their clients (RB; NOB: to some extent)
- giving opinions in tax matters to the tax administration and politicians (both)
- lobbying and campaigning (RB; NOB: to some extent)
- developing software or online tools for tax advisers (RB: to some extent)

NOB and RB are both members of the CFE.

## 4. Practical information

### a) Contacts

|   |  |
|---|--|
| <p><b>De Nederlandse Orde van Belastingadviseurs (NOB)</b></p> <p>Postbox 2977<br/>1000 CZ Amsterdam<br/>The Netherlands</p> <p>Tel: +31 205 141 880<br/>Fax: +31 205 141 889<br/>nob@nob.net<br/>www.nob.net</p>   | <p><b>Register Belastingadviseurs (RB)</b></p> <p>Brenkmanweg 6<br/>4105 DH Culemborg<br/>The Netherlands</p> <p>Tel: +31 34 554 7000<br/>Fax: +31 34 554 7015<br/>rvangasteren@rb.nl<br/>www.rb.nl/</p> |
| <p><b>Professional qualifications contact point:</b></p> <p>NUFFIC<br/>Postbus 29777<br/>2502 LT Den Haag<br/>The Netherlands</p> <p>Tel: +31 70 426 02 60<br/>Fax: +31 70 426 03 99<br/>www.nuffic.nl<br/>www.beroepserkenning.nl<br/>www.professionalrecognition.nl</p> <p>Contact person:<br/>Ms. Kitty Wigleven<br/>Tel: +31 70 426 02 86<br/>Fax: +31 70 426 03 95<br/>Email: wigleven@nuffic.nl</p> | <p><b>Point of Single Contact: “Answers for Business”</b></p> <p>www.answersforbusiness.nl</p>   |

### b) Sources of law

- Reglement Beroepsuitoefening NOB / NOB Code of professional conduct:  
EN: [www.nob.net/system/files/Code+of+professional+conduct+%28version+15+June+2011%29.pdf](http://www.nob.net/system/files/Code+of+professional+conduct+%28version+15+June+2011%29.pdf)
- Statuut van Onafhankelijkheid NOB / NOB Statute of Independence:  
EN: <http://www.nob.net/system/files/Statute+of+Independence.pdf>
- Statuten NOB / NOB Charter of the Dutch Association of Tax Advisers:  
EN: [www.nob.net/system/files/Charter+of+the+Dutch+Association+of+Tax+Advisors.pdf](http://www.nob.net/system/files/Charter+of+the+Dutch+Association+of+Tax+Advisors.pdf)



- Statuten RB / RB Charter and Regulations:  
NL: [www.rb.nl/over\\_rb/statuten\\_en\\_reglementen/](http://www.rb.nl/over_rb/statuten_en_reglementen/)





## Poland Polska PL

### 1. Picture of the profession in Poland

#### a) General characteristics of the profession

The Polish name for tax adviser is *Doradca Podatkowy*.

In Poland, 7,885 individuals and 410 companies actively practice as tax advisers.

The use of the title tax adviser and activities in the area of tax advice (see paragraph 1.lit.b) are regulated. Tax advisers are mandatory members of the *National Chamber of Tax Advisers, Krajowa Izba Doradców Podatkowych* (KIDP, see paragraph 4).

Amongst Polish tax advisers, approximately 60% also hold a qualification as accountants while 4% are also qualified lawyers or legal counselors and 2% are also auditors (estimates).

Tax advice may also be given by lawyers (*adwokat*), legal counselors (*radca prawny*) and to some extent by certified auditors (*biegły rewident*), the latter however may not represent clients in proceedings. Therefore, the number of persons that actually practice in tax is higher than the number of tax advisers. Like tax advisers, the professions of lawyer, accountant and auditor are regulated by law. Bookkeepers providing internal services are not regulated.

68% of Polish tax advisers are one-man firms; 3% are partners or directors of professional firms and 17% are employed in professional (tax, law or audit) firms (estimates). Tax advisers that practice as in-house tax adviser in other businesses have to suspend their professional status and are considered *inactive*. In-house tax advisers form a significant portion of the 1,020 *inactive* tax advisers in Poland (11% of all tax advisers). Tax advisers may not be public servant or employed by the state either.

The term “liberal profession” is not common in Poland but the Polish constitution recognises “public trust professions” which corresponds to the notion of liberal professions and is commonly understood.

### b) Professional qualification

Tax advisory activities, both for employees and self-employed, require a particular qualification. These are, for example, tax opinions and representation of clients before tax authorities and tax courts, bookkeeping and preparing and filing tax returns and auxiliary tax advice related to these activities. The profession in Poland is regulated in the sense of the EU Professional Qualifications Directive.

To become a tax adviser in Poland, a person must have completed three to four years of post-secondary studies (not necessarily a university degree) and two years of practical training in tax which may be obtained before or after the academic degree.

This is followed by a state exam before the *State Commission on Tax Advisory Matters* appointed by the Ministry of Finance, composed of 20 representatives of the Ministry, 10 administrative court judges elected by the President of the Supreme Administrative Court, 10 academics/scholars and 20 tax advisers elected by the *National Council of Tax Advisers*.

The fee for taking the exam is 900 PLN (ca.221 €) and 600 PLN (ca.147 €) for a repeated exam. An additional fee of 900 PLN is charged for including a tax adviser in the list (which is mandatory). The qualification is normally valid lifelong.

Tax advisers are obliged by the *KIDP's Principles of Ethics* to take part in continuing professional development (CPD). These contain detailed rules on the number of hours, the kind of study and the subjects. CPD can be obtained the KIDP or other operators.

There are no more specialisation titles in the field of tax.

### c) Activities of tax advisers

Polish tax advisers are active in the following fields (legal situation as of 2013):

Green: Yes, this activity is reserved to certain professions including tax advisers.  
 Blue: Yes. Anyone may provide this service.  
 Red: No, a tax adviser would need an additional qualification to exercise this activity.

| <b>Tax</b>   |       |
|--|-------|
| Advice in domestic tax law   | Green |
| Advice in foreign tax law  | Green |
| Tax returns/declarations   | Green |
| Representation of clients before tax authorities                           | Green |
| Representation of clients before tax courts                                | Green |
| Representation of clients before criminal courts in tax matters            | Red   |
| Representation of clients before your Supreme Court in tax matters         | Green |
| <b>Accounting &amp; Co.</b>  |       |
| Accounting services  | Green |
| Pensions   | Green |
| Social security  | Green |
| Representation before administration in social security                    | Green |
| <b>Consulting</b>  |       |
| Management consulting in economic matters, human resource                  | Blue  |
| <b>Legal</b>   |       |
| Advice on company or commercial law  | Red   |
| Advice on employment law   | Red   |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   | Red   |
| Legal advice in other areas than tax                                       | Red   |
| Legal advice in other areas than tax if the legal advice is only ancillary | Red   |
| Legal representation before court in other areas than tax                  | Red   |

**Part II – Country Sheets**

---

|   |  |
|---|--|
| Arbitration                                   |  |
| Contract negotiation and drafting             |  |
| <b>Audit</b>                                  |  |
| Statutory audit for sole traders/partnerships |  |
| Statutory audit for small companies           |  |
| Statutory audit for medium-size companies     |  |
| Voluntary audit for companies                 |  |
| <b>Other</b>                                  |  |
| Company secretarial services                  |  |

Tax advisers may engage in any other lawful activities alongside their activity as tax adviser if professional rules and ethics are not compromised. The *National Council of Tax Advisers* needs to be notified of such collateral activities but no individual permission is required.

**d) Professional conduct and quality management**

Professional conduct is regulated by KIDP.

**Sanctions**

Breaches of deontological rules can be sanctioned by reprimand, by temporary suspension or even by loss of the right to practice the profession of tax adviser. KIDP has a disciplinary court to deal with professional sanctions. KIDP (in disciplinary proceedings) and a criminal court (in criminal proceedings) may exclude a tax adviser from the profession.

**Conflicts of interest**

If a tax adviser notices a conflict of interest between him/herself and the client or between two clients, s/he has to stop acting for these clients (or one of these clients) or to take other steps aimed at eliminating the conflict of interest.

---

## Commissions

Members of the Institute are not allowed to receive a commission whatsoever for recommending a client to a fellow tax adviser. This is against the ethical rules by KIDP which are based on Polish legislation.

## Certification and quality benchmarking

Quality benchmarking in the form of media rating tax firms is common in Poland. Participation of firms is generally voluntary.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

Polish law obliges tax advisers to treat confidentially information they have obtained in the course of their engagement. Violation of client confidentiality is a criminal offence and can also be sanctioned by KIDP.

### Right of non-disclosure / legal professional privilege

The law also prevents tax advisers from providing client information to the state, also on request from tax authorities, police or public prosecutors. Information protected by professional secrecy cannot be used as valid evidence. Therefore, in practice, authorities and courts refrain from such requests.

The state is also prevented from seizing or confiscating client documents, data or communication in the tax adviser's office. If the tax adviser claims that the documents subject to seizure contain information protected by professional secrecy, the police should pass these documents to the prosecutor or the court without reading them, in a closed container.

The court, in criminal proceedings, may lift professional secrecy (1) if necessary in the interest of justice and (2) the given fact cannot be established by using another proof. This decision is subject to appeal.

Professional secrecy does not protect tax advisers who are suspects themselves.

## Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report but an exemption applies where tax advisers give legal advice or represent their clients in judicial proceedings which include proceedings with the tax administration. The law gives no indication under which circumstances the tax adviser may continue serving the client.

### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client is liable for the accuracy and completeness of information, but there may be a civil law recourse if the tax adviser has made a mistake.

Tax advisers are free to limit or not to limit professional liability, within the boundaries of contract law. This can be done by individual agreement or general terms and conditions. Liability for slight negligence, and in theory also for gross negligence, can be excluded; the latter however would be considered dubious from an ethical point of view.

Professional indemnity insurance is mandatory when providing tax advisory activities. The minimum sum for single events is (the equivalent of) 10,000 €. Tax adviser companies need insurance cover as well. This insurance covers all partners, directors and employed tax advisers. In-house tax advisers need no insurance cover as they are not considered tax advisers (their profession being suspended, see lit.a).

### g) Advertising and pricing

Advertising is generally allowed but specific advertising rules for tax advisers exist which are somewhat stricter than general advertising rules: Comparative advertising is restricted and potential clients may not be addressed directly. Tax advisers may not promise success to the client, make reference to their contacts in the tax administration or position in the tax advisers' governing bodies, and must advertise their services in a way reflecting the dignity of the profession.



---

Tax advisers are free to negotiate fees but they should, as a rule, agree on the fees before providing the service, preferably in writing. The fees cannot be charged *solely* as a success or contingent fee but a certain success element may be included in the agreement; i.e. it is quite common that only a minimum fixed fee is agreed with a success fee on top, in particular in litigation cases.

## h) Contractual issues and formal requirements

Engagement letters defining the scope of the engagement are not obligatory but recommended.

A tax adviser is obliged to indicate his/her name, number or entry in the tax adviser register and the place of the business on any documents rendered in connection with the exercise of the profession.

The *Principles of Ethics* state a number of other tax adviser's duties vis-a-vis their clients (e.g., the duty to inform the clients regularly on the status of the case and its result and on the remedies available, to show them upon request the professional indemnity insurance documents, not to leave them without proper representation when cancelling the engagement, etc.).

## i) The firm of the tax adviser

Polish tax advisers may use all company forms available under Polish law.

### Partnerships:

Conducting business activities through a partnership is considered a form of individual activity of a tax adviser. Partners (or full liability partners, as the case may be) need to be tax advisers, lawyers, foreign lawyers practising in Poland on a permanent basis, certified auditors or patent agents. Multi-professional partnerships are uncommon in Poland.

### Tax adviser companies (corporations):

Other persons than tax advisers may hold < 50% of the voting rights. Also the majority of managers and supervisory board members have to be tax advisers. In public limited companies, all shares must be registered; disposal

of shares or pledging them requires authorisation of the company's management board. These criteria will be checked by the *National Council of Tax Advisers* when registering the firm.

## j) Registration and other requirements

Apart from membership with the *Polish Chamber of Tax Advisers* and standard registration duties applicable to all entrepreneurs, there are no registration requirements for tax businesses in Poland.

## 2. Cross-border activity of tax advisers from other countries in Poland

### a) Cross-border online and other correspondence services

A tax adviser with a non-Polish qualification rendering services to a client in Poland, filing a tax return or representing Polish clients before Polish tax authorities without entering Polish territory, e.g. by e-mail, telephone or letter, is subject to the Polish rules for tax advisers, like a tax adviser that practices on Polish territory. As the case may be, the rules for temporary or permanent activity apply.

### b) Temporary or occasional activity

Tax professionals with a qualification from another EEA country or Switzerland who give tax advice in Poland on a *temporary or occasional* basis need to make notification to the *Polish Council of Tax Advisers* before taking up the activity, to be repeated on an annual basis. The tax adviser does not have to await permission.

The declaration must contain information on insurance policy. The *Polish Council of Tax Advisers* may request additional information including documents confirming citizenship, professional qualifications, exercise of the profession in the home state for at least 2 years, etc. The scope of their activities in Poland is the same as the scope of activities of Polish tax advisers.

They must use their title in the official language (or one of the official languages) of their home member state.

Tax advisers from another EU member state will need professional indemnity insurance that covers their activity in Poland. It will be recognised if it meets the Polish requirements.

For tax advisers with a qualification not obtained or recognised in a EEA country or Switzerland, this possibility of providing temporary or occasional services in Poland does not exist; they will have to register in Poland. This is only possible if they have a long-term residence permit in the EU.

### c) Permanent activity

Tax professionals who, either as self-employed or as employees, intend to give tax advice in Poland on a *permanent* basis have to obtain the Polish professional title and become members of the *Polish Chamber of Tax Advisers*. Persons from non-EEA countries (other than Switzerland) need a long-term residence permit in the EU.

### Recognition of qualifications received in other countries

Professional qualifications obtained or recognised in other EEA countries or Switzerland can be recognised in Poland. Professionals need to pass an aptitude test where (1) the duration of education or training of the applicant is shorter by at least one year than the duration of corresponding education or training required in Poland; (2) there is a substantial difference in education or training; or (3) the scope of the professional activities that a tax adviser may exercise in his home state is different from the scope of activities in Poland, this difference being related to a certain education or training in Poland.

The fee for taking this aptitude test depends on the scope of the test. If it is not more than 50% of the scope for the normal Polish professional exam, the fee is reduced to 50%, meaning 450 PLN (110 €).

The National Council of Tax Advisers is the *competent authority* in the sense of the PQ Directive.

There is no recognition procedure for qualifications not obtained or recognised in EEA countries or Switzerland.

More information on the recognition procedure can be found in Chapter 13.2 of Part 1.

### 3. Professional bodies

All tax advisers must be members of the *National Chamber of Tax Advisers* which is a self-regulatory body set up by public law and accepts only tax advisers as members.

The membership of the Chamber is 7,885 active and 1,020 inactive individuals and 410 companies.

There is a one-time registration fee of 900 PLN (220 €) for individuals and 8,000 PLN (1,950 €) for companies. Annual fees are 960 PLN (234 €) for active individuals and 192 PLN (47 €) for inactive individuals. There are no annual charges for tax adviser companies.

The activities of the National Chamber are:

- developing codes of conduct and ethics
- appointment and dismissal of tax advisers
- supervising the compliance of members with professional obligations and disciplinary sanctions
- providing education and CPD courses to tax advisers and staff

To some extent, the National Chamber is

- holding qualifying exams
- mediating between professionals
- mediating between professionals and their clients
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning
- developing software or online tools for tax advisers

The Polish National Chamber of Tax Advisers is a member of the CFE.

## 4. Practical information

### a) Contacts

|   |  |
|---|--|
| <p>Krajowa Izba Doradców Podatkowych (KIDP) / National Chamber of Tax Advisers</p> <p>Bitwy Warszawskiej 1920 roku nr 3/310<br/>02-362 Warszawa</p> <p>Tel. +48/22/578 50 00<br/>Fax. +48/22/578 50 09<br/>biuro@kidp.pl<br/>www.kidp.pl/</p> | <p>Professional qualifications contact point</p> <p>Ministerstwo Nauki i Szkolnictwa Wyższego / <i>Ministry of Science and Higher Education</i>,<br/>Departament Nadzoru i Organizacji Szkolnictwa Wyższego / <i>Department of Higher Education Organisation and Supervision</i>,</p> <p>ul. Hoża 20<br/>00529 Warszawa<br/>Tel: +48 22 628 67 76<br/>Fax: +48 22 628 35 34</p> <p>kwalfikacje@mnisw.gov.pl<br/>www.mnisw.gov.pl</p> |
| <p>Point of Single Contact</p> <p>www.eu-go.gov.pl</p>  |  |

### b) Sources of law

- Act of 5 July 1996 on tax advice (Ustawa z dnia 5 lipca 1996 r. o doradztwie podatkowym):  
[www.krdp.pl/files/user/Ustawodastwo/ustawaodoradztwie.pdf](http://www.krdp.pl/files/user/Ustawodastwo/ustawaodoradztwie.pdf)
- Statute of the National Chamber of Tax Advisers (Statut Krajowej Izby Doradców Podatkowych):  
[http://www.krdp.pl/strona.php/1030\\_statut\\_krajowej\\_izby\\_doradcow\\_podatkowych\\_\\_tekst\\_ujednolicony.html](http://www.krdp.pl/strona.php/1030_statut_krajowej_izby_doradcow_podatkowych__tekst_ujednolicony.html)
- Principles of Ethics of Tax Advisers (Zasady Etyki Doradców Podatkowych):  
[http://www.krdp.pl/strona.php/1032\\_zasady\\_etyki.html](http://www.krdp.pl/strona.php/1032_zasady_etyki.html)





## Portugal Portugal PT

### 1. Picture of the profession in Portugal

#### a) General characteristics of the profession

The Portuguese name for tax adviser is *Fiscalista*. Tax adviser is not a separate regulated profession in Portugal, the number of individuals and companies that provide tax services is therefore unknown. If tax advice involves the interpretation of tax law, the activity is reserved to lawyers (*Advogados*), if it involves the filing of tax returns, it is reserved to accountants (*Técnicos Oficiais de Contas* -TOC). Lawyers, accountants or auditors (*Revisores Oficiais de Contas*) may represent a client before the tax authorities. Most tax advisers are therefore members of one of these professions which are regulated by law with mandatory membership of professional Orders.

Tax advisers can be employed by any firm or business; they can even be public servants or employed by the state.

Tax advisers are commonly viewed as a liberal profession.

#### b) Professional qualification

Although the title tax adviser is not protected, most tax advisory activities are reserved to persons holding certain qualifications. Therefore, the profession in Portugal is regulated in the sense of the EU Professional Qualifications Directive.

Commonly, tax advisers have a university degree in law, economics or similar, awarded after 3-4 years of study. This is followed by 3-4 years of post-graduate training in law or economics. The Portuguese Orders of lawyers, accountants and auditors hold professional entry exams. The fees for taking these exams are 1,500 € for lawyers, 1,000 € for auditors and 400 € for accountants. It has been pointed out, particularly in the case of audit, that preparatory courses, although not formally required, will signifi-

cantly add to these costs. The qualifications obtained are normally valid lifelong.

Members of the auditors’ or accountants’ professional orders have to engage in continuing professional development (CPD) provided or recognised by their professional orders. There are detailed rules on the CPD to be taken.

The *Order of Lawyers* offers a specialisation in tax; the *Order of Accountants* offers specialisation in consumption tax, income tax and wealth tax.

### c) Activities of tax advisers

Portuguese tax advisers are active in the following fields (assuming that the tax adviser is an accountant):

- Green: Yes, this activity is reserved to certain professions including accountants.
- Blue: Yes. Anyone may provide this service.
- Red: No, an accountant would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |  |
|--|--|
| Advice in domestic tax law   | lawyers, accountants, auditors (if this involves complex legal issues, only lawyers) |
| Advice in foreign tax law  |  |
| Tax returns/declarations   | accountants  |
| Representation of clients before tax authorities                   | lawyers, accountants, auditors (if this involves complex legal issues, only lawyers) |
| Representation of clients before tax courts                        | lawyers  |
| Representation of clients before criminal courts in tax matters    | lawyers  |
| Representation of clients before your Supreme Court in tax matters | lawyers  |
| Accounting & Co.   |  |
| Accounting services  | accountants  |



|  |  |
|--|--|
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |

Tax advisers may engage in any other lawful activities, provided that their professional duties are observed.

#### d) Professional conduct and quality management

Professional conduct is not regulated specifically for tax advisers but most tax advisers are member of professions in which professional conduct is regulated.

### Sanctions

Breaches of professional rules can be sanctioned by the professional Orders. Possible sanctions are reprimand, monetary penalties (up to 30,000 € for lawyers, 10,000 € for auditors and 2,500 € for accountants) or even loss of the right to practice the respective profession.

### Conflicts of interest

If a lawyer, accountant or auditor notices a conflict of interest between himself and the client or between two clients, s/he has to stop acting for these clients (or one of these clients).

### Commissions

Receiving a commission whatsoever for recommending a client to a fellow tax adviser is considered to be against the ethical rules of lawyers, accountants and auditors.

### Certification and quality benchmarking

It is common that consumer organisations or similar organisations rate tax firms.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

Tax professionals (both in-house and in tax firms) have to treat confidentially information they have obtained in the course of their engagement. Violation of this duty is a criminal offence; it can be sanctioned by the professional Orders if tax advisers are lawyers, accountants and auditors. Tax professionals may however reveal confidential information to defend themselves in legal proceedings.

## Right of non-disclosure / legal professional privilege

Where tax advisers are lawyers, they have a right not to provide client information to the state. This applies to requests by the police or public prosecutors and by the judge in criminal proceedings but not in fiscal proceedings. This does not apply to tax advisers who are accountants or auditors.

If tax advisers are suspected or accused of collaboration in fiscal fraud or professional misconduct, they may refuse to provide client information that may incriminate themselves.

## Tax avoidance and money laundering reporting

Tax advisers have to report tax avoidance schemes to the fiscal authorities. However, there is no need to await the authorities' approval.

Where tax advisers find indications of money laundering, there is an obligation to report but an exemption applies where tax advisers give legal advice or represent their clients in judicial proceedings.

When finding such indications, tax advisers may not continue to serve this client.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Tax advisers are free to limit or not to limit professional liability, within the boundaries of contract law but in practice, there should be very few cases where tax advisers limit their responsibility.

Professional indemnity insurance is mandatory for lawyers, auditors and accountants. Their professional companies need insurance cover as well. Employed tax professionals and in-house tax professionals in business do not need separate insurance. The amount that must be covered is € 50,000 for accountants and € 500,000 for auditors for each case.

**g) Advertising and pricing**

Advertising is generally allowed. Specific advertising rules for lawyers, auditors and accountants exist, restricting comparative advertising, forms of directly addressing potential clients and advertising in certain media.

There is no price regulation in Portugal but general guidelines as to what criteria should be taken into account when determining the fees. Contingency and success fee agreements are allowed under specific conditions.

**h) Contractual issues and formal requirements**

Tax advisers are obliged to provide engagement letters defining the scope of the engagement. There is also a rule that communication with clients and tax authorities must name the author.

**i) The firm of the tax adviser**

Tax firms which are law or audit firms must be (either limited or unlimited liability) partnerships. Accounting firms can also be limited liability corporations. For limited partnerships of lawyers and auditors (but not for accounting firms), there is a minimum capital requirement of 5,000 €.

In partnerships, all partners must be members of the profession. There are however no restrictions as to who may be manager of a professional company. Auditors may set up joint partnerships or companies with members of other professions but accountants and lawyers may not.

The firm must obtain permission from the competent professional Order. The name of the firm must contain the name of at least one partner.

**j) Registration and other requirements**

Auditors, accountants and lawyers are mandatory members of professional Orders. The annual costs are 370 € for lawyers, 300 € for auditors (which is the minimum fee; the actual fee depends on the number of companies audited) and 144 € for accountants.

---

Tax advisers must register their business with the tax authorities and with the social security funds if they have employees.

## 2. Cross-border activity of tax advisers from other countries in Portugal

### a) Online and other correspondence services

There is no specific provision on services provided over a distance (e.g. by e-mail, telephone or letter), without entering Portuguese territory. Filing tax returns or representing taxpayers before the fiscal authorities however requires an establishment as an accountant in Portugal.

### b) Temporary or occasional activity

Lawyers with a qualification obtained or recognised in another EU country have to make notification to the *Order of Lawyers* but no authorisation is required. Accountants have to become member of the professional Order to provide services in Portugal. The same applies for auditors who provide services other than statutory audit. Statutory audit may not be provided on a temporary or occasional basis. According to the European Commission (staff working document SWD(2012)148 of 8 June 2012), a distinction between temporary/occasional and permanent cross-border activity was traditionally not drawn in Portuguese law but is currently being introduced which will make temporary or occasional services less burdensome.

Lawyers, accountants or (when providing other services than statutory audit) auditors must use their title in (one of) the official language(s) of their home member state.

### c) Permanent activity

Tax professionals that intend to give tax advice in Portugal on a *permanent* basis have to become members of the professional Orders of lawyers, accountants or auditors. These are also the *competent authorities* in the sense of the Professional Qualifications Directive.

The recognition of a foreign audit qualification in Portugal is not possible. Professional qualifications of tax advisers, lawyers or accountants obtained or recognised in other EEA countries can be recognised in Portugal.

For lawyers, EU law offers three ways of recognition:

- Automatic recognition without examination or formal recognition procedure (see Art.5 (1) of the Lawyer’s Establishment Directive), giving the right to practice under the foreign professional title (i.e. Rechtsanwalt, Solicitor, Avvocato etc.)
- Recognition with the right to practice as Advogado after a period of three years, upon proof of knowledge and professional experience (see Art.10 (3) of the same Directive)
- Recognition according to the EU Professional Qualifications Directive (see below).

The procedure under the EU Professional Qualifications Directive provides for an aptitude test which is an abridged professional exam. There is no recognition procedure for qualifications not obtained or recognised in EEA countries. Auditors from non-EEA countries may register in Portugal if their country grants reciprocity to Portuguese auditors.

For more details on the recognition procedure in the EU Professional Qualifications Directive, see Chapter 13.

### 3. Professional bodies

Apart from the professional Orders for lawyers, accountants and auditors with mandatory membership, *Associação Portuguesa de Consultores Fiscais* (APCF) is the professional body specifically for tax professionals. APCF is an association of private law with voluntary membership with 179 individual members; there is no company or student membership.

The activities of the APCF are:

- mediating between professionals
- mediating between professionals and tax authorities
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning

To some extent, APCF is active in

- developing codes of conduct / ethics

- publishing of tax reviews and other relevant technical information and
- mediating between professionals and their clients

APCF is a member of the CFE.

## 4. Practical information

### a) Contacts

|   |  |
|---|--|
| <p><b>Associação Portuguesa de Consultores Fiscais (APCF) / Portuguese Association of Tax Advisers</b></p> <p>Av. Republica, 6, 7 esq.,<br/>1050-191 Lisbon<br/>Tel. +351 213 303 763<br/>office.apcf@gmail.com<br/>www.apcf.eu/</p>  | <p><b>Point of Single Contact: “Portal da Empresa”</b></p> <p>www.portaldaempresa.pt</p>   |
| <p><b>Professional qualifications contact point</b></p> <p>Ms Isilda Maria da Costa Fernandes,<br/>Ministério do Trabalho e da Solidariedade Social,<br/>Direcção-Geral do Emprego e Relações de Trabalho,<br/>Directora de Serviços de Emprego e Formação Profissional,<br/>Praça de Londres, n.º 2, 5.º andar<br/>1949-056 Lisboa</p> <p>Tel: +35 1 21 844 15 01<br/>Fax: +35 1 21 844 14 25<br/>isilda.c.fernandes@dger.mee.gov.pt</p> | <p><b>Ordem dos Técnicos Oficiais de Contas / Portuguese Order of Accountants</b></p> <p>Avenida Barbosa du Bocage, 45<br/>1049-013 Lisboa</p> <p>Tel : +351 217 999 700<br/>geral@otoc.pt<br/>www.otoc.pt/pt/english/</p> |
| <p><b>Conselho Distrital de Lisboa da Ordem dos Advogados / Portuguese Bar Association, Lisbon Chapter</b></p> <p>Rua dos Anjos, n.º 79<br/>1150-035 Lisboa</p> <p>Tel: +351 21 312 98 50, servicos.administrativos@cdl.oa.pt</p>   | <p><b>Ordem dos Revisores Oficiais de Contas / Portuguese Order of Auditors</b></p> <p>Rua do Salitre, n.º 51/53<br/>1250-198 Lisboa</p> <p>Tel: +351 213536158<br/>sec.OrgSociais@oroc.pt</p>                             |

## b) Sources of law

- Estatuto da Ordem dos Advogados / Lawyers Statute:  
PT: [http://www.oa.pt/Conteudos/Artigos/detalhe\\_artigo.aspx?idc=30819&idsc=128](http://www.oa.pt/Conteudos/Artigos/detalhe_artigo.aspx?idc=30819&idsc=128)
- Estatuto da Ordem dos Técnicos Oficiais de Contas / Accountants Statute :  
PT: <http://www.otoc.pt/pt/a-ordem/estatuto-e-codigo-deontologico/estatuto/>  
EN: <http://www.otoc.pt/pt/english/>
- Estatuto da Ordem dos Revisores Oficiais de Contas / Auditors Statute:  
PT : <http://www.oroc.pt/fotos/editor2/224.pdf>  
EN: <http://www.oroc.pt/fotos/editor2/Tecnico/2010/estatutosEN.pdf>





## Romania România RO

### 1. Picture of the profession in Romania

#### a) General characteristics of the profession

The Romanian name of the profession is Consultant Fiscal. There are 5,516 individuals and 450 companies registered as tax advisers.

The profession is regulated by law because the use of the title tax adviser requires a minimum qualification. Tax advisers must be member of the *Romanian Chamber of Tax Advisers (Camera Consultantilor Fiscali din Romania, CCFR)*, see paragraph 3.

Tax advisers in Romania can be employed in a professional firm or as in-house tax advisers by any other business. Tax advisers may be public servants or be employed by the state. In this case however, their right to practice as a tax adviser is suspended. Amongst the individual tax advisers, 13% are one-man firms while another 13% are partners or share-owning directors in professional firms. The remaining 74% are tax advisers employed in professional firms while or in-house tax advisers working in business. These figures are estimates.

5.3% of tax advisers are estimated also to have a qualification as accountants, an estimated 2.6% have a qualification as auditors. It is very uncommon that professionals are qualified both as tax adviser and lawyer.

Apart from tax advisers, lawyers, accountants and auditors may give tax advice, as part of their respective professional activities. These services may overlap with the services tax advisers provide. Lawyers, accountants and auditors are regulated by law. Bookkeepers are part of the accounting profession.

Tax advisers are seen by their clients and the public as a liberal profession.

## b) Professional qualification

Romanian tax advisers hold a degree certifying completion of three years of university education in economics and have completed, after having obtained this degree, five years of practical training in the area of finance and accounting. The practical experience can be obtained in other countries as long as it is relevant for the future professional activity in Romania. In order to obtain the title of tax adviser, applicants have to pass an entry exam held by CCFR. The qualification is normally valid lifelong. There is a fee of 500 RON (approx. 110 €) for taking the exam.

Tax advisers are obliged to engage in continuing professional development (CPD). Active tax advisers have to attend 30 hours, inactive tax advisers 15 hours per year. CCFR publishes an annual CPD programme including the relevant subjects. As a general rule, tax advisers have to obtain their CPD with CCFR. However, some internal CPD measures provided by firms, by tax authorities for public servants or tax-related CPD by the Chamber of Auditors are recognised through bilateral agreements with CCFR.

There are no specialisation titles for tax advisers.

## c) Activities of tax advisers in Romania

Romanian tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.  
 Red: No, a tax adviser would need an additional qualification to exercise this activity.  
 Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.  
 White: No information.

| Tax   |         |
|---|---------|
| Advice in domestic tax law                                      |         |
| Advice in foreign tax law                                       |         |
| Tax returns/declarations  |         |
| Representation of clients before tax authorities                |         |
| Representation of clients before tax courts                     | lawyers |
| Representation of clients before criminal courts in tax matters | lawyers |

|  |                                     |
|--|-------------------------------------|
| Representation of clients before your Supreme Court in tax matters         | lawyers                             |
| <b>Accounting &amp; Co.</b>  |                                     |
| Accounting services  | chartered accountants               |
| Pensions   |                                     |
| Social security  |                                     |
| Representation before administration in social security                    |                                     |
| <b>Consulting</b>  |                                     |
| Management consulting in economic matters, human resource                  |                                     |
| <b>Legal</b>   |                                     |
| Advice on company or commercial law  | lawyers                             |
| Advice on employment law   | lawyers                             |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   | lawyers or insolvency practitioners |
| Legal advice in other areas than tax                                       | lawyers                             |
| Legal advice in other areas than tax if the legal advice is only ancillary | lawyers                             |
| Legal representation before court in other areas than tax                  | lawyers                             |
| Arbitration  |                                     |
| Contract negotiation and drafting  | lawyers                             |
| <b>Audit</b>   |                                     |
| Statutory audit for sole traders/partnerships                              | auditors                            |
| Statutory audit for small companies  | auditors                            |
| Statutory audit for medium-size companies                                  | auditors                            |
| Voluntary audit for companies  | auditors                            |
| <b>Other</b>   |                                     |
| Company secretarial services   | lawyers                             |

Apart from tax, Romanian tax advisers may engage in any other lawful activities if this does not affect compliance with their professional duties. There is no rule saying tax must be the main business of tax advisers.

#### d) Professional conduct and quality management

Professional conduct of tax advisers is regulated by CCFR.

##### Sanctions

CCFR may impose sanctions on breaches of professional duties. These include a reprimand and an exclusion from CCFR resulting in the loss of the permission to practice as a tax adviser in Romania.

##### Conflicts of interests

There is no clear indication on the required action if the tax adviser notices a conflict of interest between himself and the client or between two clients. CCFR recommends that the tax adviser notifies the client(s) and asks CCFR for advice.

##### Commissions

There is no prohibition preventing a tax adviser from receiving a commission for recommending a client to a fellow tax adviser.

##### Certification and quality benchmarking

No certification is offered for tax advisers in Romania in the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information).

Quality benchmarking in the form of consumer organisations, media, clients of professional bodies rating tax firms is not common in Romania.

#### e) Protection and disclosure of client data

##### Client confidentiality /professional secrecy

There is no specific legislation on professional secrecy but CCFR has adopted such rules. These apply to in-house tax advisers in business as well. This confidentiality is subject to no time limit and can be waived by

the client. Tax advisers may also reveal confidential client information to defend themselves in judicial proceedings.

### Right of non-disclosure / Legal professional privilege

Tax advisers have a right not to disclose confidential client information requested by financial authorities in *regular* tax inspections. This right is contained in legislation. However, authorities may decide to further pursue the matter and send a *formal request* (e.g. in *criminal investigations*) through their investigation bodies to the tax adviser which with he should comply.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities; only illegal schemes must be reported, upon the request of a state authority.

Tax advisers offer compliance monitoring as a service to their clients.

Indications of money laundering have to be reported. To this rule, there are no exceptions. Tax advisers may continue acting for this client if due diligence is increased.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information, but there may be a recourse if the tax adviser has made a mistake.

Client and tax adviser are entirely free to limit liability, within the boundaries of contract law. This can also be done by general terms and conditions.

Established tax advisers need to have professional indemnity insurance although there is no minimum sum required. This does not apply to persons practicing in tax but not using the title tax adviser. Tax adviser companies also need insurance cover which includes the insurance of partners/directors and employed tax advisers. In-house tax advisers in other businesses need no insurance cover.

g) Advertising and pricing

Advertising is generally allowed but comparative advertising is restricted. There are no specific rules for tax advisers but there are specific advertising rules for other professions of which some tax advisers are member as well.

There are no rules governing the fees charged by tax advisers. Success fees and contingency fees may be agreed.

h) Contractual issues and formal requirements

Engagement letters defining the scope of the engagement are mandatory.

i) The firm of the tax adviser

Tax firms may use all company forms available under Romanian law. At least one shareholder and one administrator in the management has to be a tax adviser. The company structure has to be approved by CCFR.

Tax advisers may set up a firm with any professions as long as this does not impede compliance with their professional duties.

j) Registration or other requirements

Apart from membership with CCFR, no other memberships or registrations are necessary.

The annual contribution to CCFR is

- For individuals: A flat contribution of 210 RON (ca. € 47) for active tax advisers and 70 RON (ca. € 15) for inactive tax advisers and a variable contribution of 0.35% of turnover.
- For companies: A flat contribution of 350 RON (ca. € 78) for active tax advisers and a variable contribution of  
0.35% for turnover up to € 100,000  
0.7% for turnover up to € 1m  
1.05% for turnover exceeding € 1m.

The one-time registration charge is 1,000 RON (ca. € 225) for individuals and 2,000 RON (ca. € 450) for companies.

---

## 2. Cross-border activity of tax advisers from other countries in Romania

### a) Online and other correspondence services

There are no specific rules on services provided cross-border without entering Romanian territory. A tax adviser providing such services would be considered practicing temporarily or occasionally in Romania.

### b) Temporary or occasional activity in Romania

A tax adviser from another country may represent clients before the Romanian tax authorities but may not file tax returns. Apart from this restriction, tax advisers from another country may exercise the same activities.

A registration or notification is not necessary. There is no obligatory membership or registration.

Tax advisers from other member states must use their title in the official language (or one of the official languages) of their home member state.

Professional indemnity insurance is required but any existing insurance in another country that covers the activity in Romania is accepted.

### c) Permanent activity in Romania

Professionals that are permanently active as tax advisers in Romania have to become members of CCFR, regardless of the legal status of their Romanian office. This is not the case if they do not use the title tax adviser.

Professional qualifications obtained or recognised in other EEA countries can be recognised in Romania. The procedure follows the EU Professional Qualifications Directive and includes an aptitude test which is an abridged qualifying exam. For EEA tax advisers, there is no fee for taking the aptitude test. More information on the recognition procedure can be found in Chapter 13.2.

Professional qualifications from non-EEA countries cannot be recognised.

A tax adviser from another country providing permanently services in Romania needs professional indemnity insurance cover but any existing insurance in another country that covers the activity in Romania will be recognised.

A tax adviser company from another EEA country can permanently practice in Romania without having to change their legal form or set up a company under Romanian law.

### **3. Professional bodies**

All tax advisers that permanently practice in Romania are mandatory members of the Romanian Chamber of Tax Advisers (CCFR, Camera Consultantilor Fiscali din Romania), a self-regulatory body set up by public law.

CCFR has 5,516 individual and 450 company members. The individuals include 1,316 “inactive” tax advisers. These are e.g. individuals temporarily suspended from practicing as tax advisers because they work in the tax administration or tax advisers temporarily inactive for other reasons like maternity leave.

CCFR does not accept members other than tax advisers.

The activities of CCFR are:

- holding qualifying exams
- supervising the compliance of members with professional obligations and disciplinary sanctions
- appointment and dismissal of tax advisers
- providing education and CPD courses to professionals or staff
- developing codes of conduct and ethics
- mediating between professionals
- publishing of tax reviews and other relevant technical information
- lobbying and campaigning

CCFR is a member of CFE.



## 4. Practical information

### a) Contacts

|   |   |
|---|---|
| <p><b>Camera Consultanților Fiscali / Romanian Chamber of Tax Advisers</b></p> <p>17 Apolodor street<br/>2nd Floor, Room 468,<br/>Sector 5<br/>București</p> <p>Tel: +40 21 335 20 95<br/>Fax: +40 21 310 60 94<br/>office@ccfiscali.ro<br/>www.ccfiscali.ro/</p> | <p><b>Professional qualifications contact point</b></p> <p>National Centre for Recognition of Diplomas Granted Abroad<br/>Ms Gianina Chirazi<br/>Director Gen.</p> <p>Berthelot Street, 28–30 Sector 1<br/>București<br/>Tel: +40 21 405 56 70<br/>Fax: +40 21 313 10 13<br/>gianina.chirazi@medu.edu.ro<br/>www.cnred.edu.ro</p> |
| <p><b>Point of Single Contact: eDirect</b></p> <p>www.edirect.e-guvernare.ro/<br/>PISEGWeb/PISEGPortal.portal</p>   |   |

### b) Sources of law

- Ordonanța nr.71/2001 – privind organizarea și exercitarea activității de consultanță fiscală / Government Ordinance no. 71/2001 concerning the tax consultancy activity:  
RO: <http://www.ccfiscali.ro/despre-ccf/legislatia-ccf/legislatia-care-reglementeaza-activitatea/847-ordonanta-nr-71-2001-privind-organizarea-si-exercitarea-activitatii-de-consultanta-fiscala-text-actualizat>
- EN: available from CFE on request (please refer to PAC Handbook, Romania): [brusselsoffice@cfe-eutax.org](mailto:brusselsoffice@cfe-eutax.org)





**Russia** Россия RU

## **1. Picture of the profession in Russia**

### **a) General characteristics of the profession**

The name of the tax adviser profession is *Налоговый консультант* (Nalogovyi Konsultant). The profession is not regulated. Anyone may provide tax advice or call themselves tax adviser but only members of the *Russian Chamber of Tax Advisers* may call themselves *Registered Tax Advisers*. The *Russian Chamber* has 4,630 individual members. As there is no mandatory membership of tax advisers in professional bodies, the number of persons practicing in tax is unknown.

Tax advisers may be self-employed, employed with professional firms or practice as in-house tax advisers in any other business. They can also be public servants or employed by the state. By far, most tax advisers work as in-house tax advisers in business (85%), 14% work as employees in a professional firm while only 1% are self-employed (figures are estimates of 2010).

There is no regulation of the professions of lawyer (at least, not to the extent they practice in tax), auditor or accountant.

Tax advisers are a liberal profession but this term is not commonly used and understood among clients or the public at large.

### **b) Professional qualification**

There is no minimum qualification by law for the use of the title tax adviser or for providing tax services.

To become member of the *Russian Chamber*, five years of university education in the field of law or economics are required, followed by three years of practical experience. After this, there is an entry exam by the *Russian Chamber*. The fee for taking this exam is 3,000 Rubles (€ 75). This exam

has to be repeated every two years. The *Russian Chamber* has introduced a three-step qualification scale for its members, with “1” showing the highest degree of expertise.

Members of the *Russian Chamber* are obliged to take part in continuing professional development (CPD), the required amount is 72 hours in 2 years. The *Russian Chamber* offers CPD but professionals may also obtain CPD from other operators as long as they fulfill the required standards.

There are no specialisation titles in the field of tax.

### c) Activities of tax advisers

Members of the *Russian Chamber* are active in the following fields:

Green: Yes, this activity is reserved to certain professions including tax advisers.  
Blue: Yes, anyone may provide this service.

| Tax  |       |
|--|-------|
| Advice in domestic tax law   | Blue  |
| Advice in foreign tax law  | Blue  |
| Tax returns/declarations   | Green |
| Representation of clients before tax authorities                   | Green |
| Representation of clients before tax courts                        | Blue  |
| Representation of clients before criminal courts in tax matters    | Green |
| Representation of clients before your Supreme Court in tax matters | Green |

Tax advisers may engage in any lawful activities provided that this does not affect compliance with professional duties.

### d) Professional conduct and quality management

#### Conduct and sanctions

Professional conduct is regulated by the *Russian Chamber* through a *Professional Ethic Code of Conduct* for its members. The *Russian Chamber* has issued recommended professional standards and monitors compliance with

the *Code*, notably with the obligation to take part in continuing professional development. The *Russian Chamber* does not impose disciplinary sanctions.

### Conflicts of interest

Where a tax adviser notices a conflict of interest between him/herself and the client or between two clients, there are no specific rules preventing him from serving the client(s).

### Commissions

A tax adviser is allowed to receive a commission for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

Quality benchmarking in the form of consumer organisations or media rating tax firms exists in Russia.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There is no specific legislation providing for the protection of client data from third parties but the *Russian Chamber* has rules in this regard. Tax advisers may however reveal confidential information to defend themselves in legal proceedings.

### Right of non-disclosure / legal professional privilege

Legal privilege, i.e. the right to withhold client information requested by the state, exists for lawyers but not for tax advisers. Tax advisers must provide information if the state's request is based on a provision of the law.

### Tax avoidance and money laundering reporting

There is no obligation to report tax avoidance schemes to the fiscal authorities.

There is no money laundering reporting duty in the law but the *Russian Chamber* strongly discourages members from carrying out transactions for clients suspected of money laundering.

**f) Liability and insurance**

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Client and tax adviser are however free to limit liability, within the boundaries of contract law.

There is no requirement in the law or by the *Russian Chamber* for tax advisers to have professional indemnity insurance but it is recommended as best practice and considered a sign of reliability of a firm.

**g) Advertising and pricing**

Advertising is generally allowed. There are no specific rules for tax advisers.

There is no price regulation. Success fees are allowed.

**h) Contractual issues and formal requirements**

There is an obligation of members of the *Russian Chamber* to provide engagement letters defining the scope of the engagement.

**i) The firm of the tax adviser**

There are no restrictions to the legal form tax adviser companies may use or to shareholding or management of tax adviser companies.

Members of the *Russian Chamber* may enter partnerships with lawyers, accountants and auditors.

## j) Registration requirements

There are no specific registration requirements in Russia before taking up tax advisory activity.

## 2. Cross-border activity of tax advisers from other countries in Russia

There are no specific requirements for tax advisers from other countries that wish to practice in Russia. No authorisation, recognition of foreign professional qualifications or proof of insurance is necessary.

For tax advisers from other countries who want to become members of the *Russian Chamber*, there is no general rule on recognition of qualifications. Cases are examined on an individual basis.

A tax firm from another country that wants to open an office in Russia or to move to Russia may maintain its foreign legal form.

## 3. Professional bodies

The main professional body for tax advisers in Russia is the *Russian Chamber of Tax Advisers* (*Палата Налоговых консультантов / Palata Nalogovych Konsultantov*) which is an association of private law with 4,630 voluntary members. The *Russian Chamber* has accredited 93 educational organisations that provide professional education to tax advisers.

The activities of the *Russian Chamber* are:

- holding qualifying exams
- developing codes of conduct / ethics
- supervising the compliance of members with professional obligations
- mediating between professionals
- mediating between professionals and their clients, and
- giving opinions in tax matters to the tax administration and politicians.

To some extent, the *Russian Chamber* is also active in

- providing education and CPD courses to professionals and staff
- publishing of tax reviews and other relevant technical information

- mediating between professionals and tax authorities, and
- developing software or online tools for tax advisers.

The *Russian Chamber* is a member of the CFE.

## **4. Practical information**

### **Contact**

Palata Nalogovych Konsultantov  
(Палата Налоговых консультантов)  
/ Russian Chamber of Tax Advisers

Yaroslavskaya st., 8  
building 4  
Moscow, 129164

Tel: +7 495 749 3610  
Fax: +7 495 749 3610  
president@palata-nk.ru  
<http://www.palata-nk.ru/>





## Slovakia Slovensko SK

### 1. Picture of the profession in Slovakia

#### a) General characteristics of the profession

The Slovak name for tax adviser is *Daňový Poradca*. The profession is regulated by law. Tax advisory activities are reserved to tax advisers and lawyers. The 808 tax advisers and 90 tax adviser companies are mandatory members of the *Slovak Chamber of Tax Advisers*.

Tax advisers may be self-employed or employed by a professional firm or as in-house tax advisers by any other business. It is understood however that in-house tax advisers may not provide tax services on behalf of a non-tax business. Tax advisers may not be public servants or employed by the state.

A significant number of tax advisers also hold a qualification as accountant (49% of individuals and 45% of companies) or auditor (26% of individuals and companies).

Like tax advisers, lawyers and auditors are regulated by law. Accountants are regulated by charter of a professional body with voluntary membership. Bookkeeper or accounting technician are unregulated titles in Slovakia.

A person who is not a tax adviser may act as an agent for a taxpayer, filing a tax return for this taxpayer or representing him/her before tax authorities. This is however limited to the representation of one person.

Tax advisers are commonly referred to as a liberal profession.

#### b) Professional qualification

The profession is regulated in the sense of the EU Professional Qualifications Directive meaning there is a qualification requirement in Slovak law for the activity of giving tax advice. Anyone who uses the title tax adviser

without holding this qualification would be considered breaching rules of competition law.

To become a tax adviser, university education of three to five years in law or economics is required, followed by three years of practical experience as a tax adviser’s assistant or five years of practice in law or economic matters. After this, applicants have to pass a professional entry exam held by the *Slovak Chamber*. The cost for taking the exam is € 330. After successful completion, the certificate will be awarded. Once obtained, the qualification will normally be valid lifelong.

After having obtained the certificate, tax advisers are obliged to engage in continuing professional development (CPD). The *Slovak Chamber* organises mandatory training courses 50% of which have to be attended. CPD cannot be obtained with other operators than the *Slovak Chamber*.

There are no specialisation titles in the field of tax.

### c) Activities of tax advisers

Slovak tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.
- Blue: Yes. Anyone may provide this service.
- Red: No, a tax adviser would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                   |  |
| Representation of clients before tax courts                        |  |
| Representation of clients before criminal courts in tax matters    |  |
| Representation of clients before your Supreme Court in tax matters |  |
| Accounting & Co.   |  |
| Accounting services  |  |

|  |  |
|--|--|
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Tax advisers may engage in any lawful activities provided that this does not affect compliance with professional duties and the relevant trade license for these activities is obtained.

#### d) Professional conduct and quality management

Professional conduct is regulated by charter of the *Slovak Chamber*.

### Sanctions

In case of non-compliance with professional duties, the *Slovak Chamber* can impose sanctions on its members. These include reprimands, monetary penalties up to € 3,300, the suspension of the permission to provide tax advisory activities for up to one year and exclusion from the *Slovak Chamber* which is equivalent to the loss of the permission to practice in taxation in the Slovak Republic.

### Conflicts of interest

Where a tax adviser notices a conflict of interest between him/herself and the client or between two clients, s/he has to inform the clients of this conflict of interest but may continue acting for them.

### Commissions

A tax adviser is generally allowed to receive a commission for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

In the area of process and quality management, quality certification is offered by commercial operators. Quality benchmarking in the form of consumer organisations, media, clients of professional bodies rating tax firms is not common in Slovakia.

### e) Protection and disclosure of client data

#### Client confidentiality / professional secrecy

Tax advisers in Slovakia are obliged by legislation to protect client data vis-à-vis third (private) parties. Violation of this duty can be sanctioned by the professional bodies. Tax advisers may however reveal confidential information to defend themselves in legal proceedings.

## Right of non-disclosure / legal professional privilege

The legislation granting professional secrecy also prevents the tax adviser from providing client information to the tax authorities or to a court. Communication between a client and a tax adviser and documents in the tax adviser's office may not be seized. This right however does not apply towards the police or public prosecutor in criminal proceedings and to criminal courts. If tax advisers are suspected or accused of collaboration in fiscal fraud or of professional misconduct, they may refuse to provide client information that may incriminate themselves.

## Tax avoidance and money laundering reporting

There is no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is an obligation to report the case to the authorities. There are no exemptions to this rule. Tax advisers may continue to serve the client only to the extent that laying down the engagement could make the client suspicious and jeopardise investigations.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Client and tax adviser are however free to limit liability, within the boundaries of contract law.

Tax advisers are obliged to have professional indemnity insurance. This also applies to tax adviser companies. The insurance of the company covers all its partners, directors and employees. In-house tax advisers are not required to have insurance as long as they only advise their employer. If, alongside to their occupation, they give advice to clients, they need insurance cover.

There is no minimum sum specified but the insurance cover must be appropriate to the risk.

g) Advertising and pricing

Advertising is generally allowed. There are some specific rules in the ethical code for tax advisers to prevent some practices or to preserve professional dignity but these are not really stricter than the general advertising rules. However, advertising containing direct comparison with other tax advisers is not allowed.

There is no price regulation in Slovakia. Contingency fee agreements are allowed.

h) Formal requirements and contractual issues

Tax advisers must provide engagement letters to their clients defining the scope of the engagement.

i) The firm of the tax adviser

Tax adviser companies may only be partnerships. These can either be general partnerships with full liability of all partners or limited liability partnerships with full liability of some and limited liability of other partners.

Only 25% of a tax adviser company's capital may be owned by persons who are not tax advisers. A limited partner must contribute a guaranteed amount of at least € 250.

There are no restrictions relating to the management of tax adviser companies.

Tax advisers may enter partnerships or set up joint companies with any professions as long as the tax adviser's professional duties are observed. Lawyers however are restricted from entering into partnerships or joint companies with tax advisers.

j) Registration requirements

Apart from mandatory membership of the *Slovak Chamber* and the necessity to obtain a VAT identification number, there are no formal registration requirements for a tax firm.

The costs for obtaining the tax adviser license are € 660, in addition to the cost of the qualifying exam. The annual contribution is € 233 for individuals and € 83 for assistants. Corporates pay 1% of their revenues of the preceding period, with a minimum of € 664.

## **2. Cross-border activity of tax advisers from other countries in Slovakia**

### **a) Online and other correspondence services**

There are no specific rules on what conditions a person who provides online or distance tax advisory services into Slovakia has to fulfill.

### **b) Temporary or occasional activity**

Tax advisers with a qualification from another EEA country practicing in Slovakia on a temporary or occasional basis may exercise the same scope of activities as Slovak tax advisers.

Notification has to be made to the *Slovak Chamber*. This notification has to contain contact details (name, address, telephone number and e-mail). This has to take place at the latest upon beginning of the activity. The *Slovak Chamber* recommends that professionals await the *Chamber's* approval but there is no rule to do so. There is no provision in the law on temporary or occasional mobility of professionals with a non-EEA qualification.

Professional indemnity insurance is also required for temporary or occasional activity in Slovakia but existing insurance in another country that covers the activity in Slovakia is accepted.

### **c) Permanent activity**

Tax advisers from other countries who wish to become Slovak tax advisers have to take the full professional entry exam. The possibility of an aptitude test for professionals with a qualification from another EEA country is not yet in place. For recognition of professional qualifications, see Section 13.2 of Part I.

Professional indemnity insurance is required but existing insurance in another country that covers the activity in Slovakia will be accepted.

A tax firm from another country that wants to open an office in Slovakia or to move to Slovakia will have to set up a new firm under Slovak law which would have to be a partnership which meets the requirements set out in paragraph 1, lit.i.

### **3. Professional bodies**

The *Slovak Chamber of Tax Advisers (Slovenská Komora Daňových Poradcov, SKDP)* is a self-regulatory body set up by public law. Membership is mandatory. SKDP has 808 individuals as full members, 207 assistant tax adviser members and 90 company members.

The activities of the SKDP are:

- holding qualifying exams
- appointing and dismissing tax advisers
- developing codes of conduct / ethics
- supervising the compliance of members with professional obligations and disciplinary sanctions
- providing education and CPD courses to professionals and staff
- mediating between professionals and tax authorities
- publishing of tax reviews and other relevant technical information
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning
- developing software or online tools for tax advisers.

To some extent, SKDP is

- acting as anti money laundering supervisor, and
- mediating between professionals.

The *Slovak Chamber of Tax Advisers* is a member of the CFE.



## 4. Practical information

### a) Contacts

|  |  |
|--|--|
| <p><b>Slovenská Komora Danových Poradcov (SKDP) / Slovak Chamber of Tax Advisers</b></p> <p>Námestie SNP 7, P.O. Box 54<br/>974 01 Banská Bystrica</p> <p>Tel: +421 48 4124 393 (94)<br/>Fax: +421 48 4125 899<br/>bystrica.skdp@skdp.sk<br/>www.skdp.sk</p> | <p><b>Professional qualifications contact point</b></p> <p>Mrs Eva Kaczova<br/>Ministerstvo školstva Slovenskej republiky Stredisko na uznávanie dokladov o vzdelaní / Ministry of Education<br/>Centre for recognition of diplomas<br/>Stromová, 1<br/>813 30 Bratislava 1</p> <p>Tel: +421 2 59 238 121<br/>Fax: +421 2 59 238 124<br/>eva.kaczova@minedu.sk<br/>www.minedu.sk</p> |
| <p><b>Point of Single Contact</b></p> <p><a href="http://www.minv.sk/?information-portal-of-point-of-single-contact">http://www.minv.sk/?information-portal-of-point-of-single-contact</a></p>   | <p><b>Bratislava District Trade Register</b></p> <p>Obvodný úrad Bratislava<br/>Odbor živnostenského podnikania<br/>Staromestská 6<br/>814 40 Bratislava</p> <p>Tel: +421 2 9312 321<br/>ozpo@ba.vs.sk</p>   |

### b) Sources of law

- Act No. 78/1992 Coll. on Tax Advisers and the Slovak Chamber of Tax Advisers / Zákon č. 78/1992 Zb. o daňových poradcov a Slovenskej komore daňových poradcov:  
EN: [www.skdp.sk/webnew/main\\_en.nsf/9e7a1391fcd49656c12576a5002e473a/3d84a953a75eb9c9c1256d8f004e231a?OpenDocument](http://www.skdp.sk/webnew/main_en.nsf/9e7a1391fcd49656c12576a5002e473a/3d84a953a75eb9c9c1256d8f004e231a?OpenDocument)
- Tax Adviser's Code of Practice / Kódex daňového poradcu:  
EN: [www.skdp.sk/webnew/main\\_en.nsf/%200/0047C73725E83829C1256D8F004E231B](http://www.skdp.sk/webnew/main_en.nsf/%200/0047C73725E83829C1256D8F004E231B)





## Spain España ES

### 1. Picture of the profession in Spain

#### a) General characteristics of the profession

The Spanish name for tax advisers is “Asesor Fiscal”. The profession is not regulated, hence the number of persons providing tax services, as a main activity or as part of another professional activity, is probably higher than the number of individual members of the two large professional associations AEDAF and REAF which is 6557.

Indeed most Spanish tax advisers are members of the legal (65%, estimate) or accounting (35%, estimate) profession. The legal and audit professions are regulated by law while the accounting profession is regulated by charter of a professional body with voluntary membership. The profession of bookkeeper is not regulated.

Tax advisers can be employed in tax, law or accounting firms or in any other business but not in audit firms. Being public servant or employed by the state is seen incompatible with being a tax adviser. This however does not apply to university professors.

Tax advisers are commonly viewed as a liberal profession.

#### b) Professional qualification

Neither the activity of giving tax advice nor the use of the professional title are regulated in the sense of the EU Professional Qualifications Directive, meaning they do not require a minimum qualification. Professional associations impose qualification requirements on their members. AEDAF membership requires a university degree of four years (which in most cases is law, economics or business administration but other degrees may be accepted). There is no specific requirement of practical experience or another entry exam, apart from the university degree, to become AEDAF member.

Continuing professional development is not mandatory.

There are no titles indicating further specialisation in the field of tax.

### c) Activities of tax advisers in Spain

Asesores Fiscales (assuming they do not hold an additional qualification like lawyer) are active in the following fields:

- Blue: Yes. Anyone may provide this service.  
 Red: No, a tax adviser would need an additional qualification to exercise this activity.  
 Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.  
 White: No information.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                   |  |
| Representation of clients before tax courts                        | <p>Before regional or federal <i>Tribunales Económico-Administrativos</i>, which are appellate bodies with the Ministry of Finance that have to be consulted in tax matters prior to the courts of justice</p> |
|  | courts of justice: only lawyers  |
| Representation of clients before criminal courts in tax matters    | lawyers  |
| Representation of clients before your Supreme Court in tax matters | lawyers  |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |

|  |         |
|--|---------|
| Representation before administration in social security                    |         |
| <b>Consulting</b>  |         |
| Management consulting in economic matters, human resource                  |         |
| <b>Legal</b>   |         |
| Advice on company or commercial law  |         |
| Advice on employment law   |         |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |         |
| Legal advice in other areas than tax                                       |         |
| Legal advice in other areas than tax if the legal advice is only ancillary |         |
| Legal representation before court in other areas than tax                  | lawyers |
| Arbitration  |         |
| Contract negotiation and drafting  |         |
| <b>Audit</b>   |         |
| Statutory audit for sole traders/partnerships                              |         |
| Statutory audit for small companies  |         |
| Statutory audit for medium-size companies                                  |         |
| Voluntary audit for companies  |         |
| <b>Other</b>   |         |
| Company secretarial services   | lawyers |

Representation before courts is reserved to lawyers but legal advice may also be given by tax advisers, although this is seldom done.

Tax advisers may engage in any lawful activities if this does not create a conflict of interest. There is no quantitative requirement that tax must be the main business of tax advisers.

#### d) Professional conduct and quality management

There is no specific regulation of professional conduct of tax advisers in Spain.

### Conflicts of interest

There are no specific instructions for a tax adviser who notices a conflict of interest between himself and the client or between two clients. The tax adviser may continue to work for these client(s), assuming s/he will act responsibly.

### Commissions

The same applies for the receipt of a commission for recommending a client to a fellow tax adviser: The tax adviser is assumed to act responsibly although there is no explicit prohibition or instruction.

### Certification and quality management

There is no specific certification for tax advisers in the area of process and quality management.

It is common that media rate large tax firms based on turnover, number of professionals, and in some cases based on internet surveys about quality, although these are not reliable as participants are anonymous and do not have to prove that they have actually been a client.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There is no specific regulation on client confidentiality of tax advisers, only general data protection legislation. Confidentiality however may be required by the rules of other professions tax advisers are a member of.

### Right of non-disclosure / legal professional privilege

Legal professional privilege protection the communication between the professional and the client only exists for lawyers.

## Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where there are indications for money laundering, the tax adviser is obliged to report the case to the authorities but there is an exemption where the tax adviser gives legal advice or represents a client in judicial proceeding. A tax adviser may continue acting for this client if due diligence is increased.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, only the client is liable for the accuracy and completeness of information, but there may be a recourse if the tax adviser has made a mistake. Client and tax adviser are free to limit liability, within the boundaries of contract law.

There is no obligation for tax advisers to have professional indemnity insurance.

## g) Advertising and pricing

There are no specific advertising rules but many tax advisers are bound by specific rules of other professions of which they are member.

There are no rules concerning the fees charged by tax advisers. Success fees and contingency fees can be agreed. There may be restrictions to such fees for lawyers acting before court but not for tax planning of representation before the tax authorities.

## h) Contractual issues and formal requirements

Engagement letters defining the scope of the engagement are not mandatory. However, a tax adviser who wants to represent a client before the tax authorities (e.g. by filing tax returns) needs to submit a written representation.

i) The firm of the tax adviser

Tax advisers may choose all company forms available under Spanish law. There are no restrictions of shareholding or management of the firm.

Tax advisers may enter partnerships or set up joint companies with lawyers, accountants or any other profession as long as the tax adviser's professional duties are observed, but not with auditors.

j) Registration or other requirements

Tax advisers have to register with the tax authorities (in their capacity as taxpayer), with the anti-money laundering body (SEPBLAC -*Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias*) and, if the firm has employees, with the social security funds.

## **2. Cross-border activity of tax advisers from other countries in Spain**

a) Online and other correspondence services; temporary or occasional activity

For giving tax advice to Spanish clients, no registration or notification has to be made to Spanish authorities. However, to file a tax return or represent clients before tax authorities in your country, a tax adviser with a qualification from another country needs to be established in Spain, as Spanish law requires that s/he has a Spanish Tax ID number. This means that these activities cannot be carried out cross-border on a temporary or occasional basis or by online or other correspondence services.

There are no requirements related to professional qualifications or insurance.

b) Permanent activity

To file a tax return or represent clients before tax authorities in your country, a tax adviser with a qualification from another country need a Spanish Tax ID number.



There are no requirements related to professional qualifications or insurance.

Spanish labour market restrictions for Romanian employees have been extended until 31 December 2013.

### 3. Professional bodies in Spain

In Spain, there are two professional associations of tax advisers: Both the *Asociación Española de Asesores Fiscales* (AEDAF) and the *Registro de Economistas de Asesores Fiscales* (REAF) are self-regulatory bodies of private law with voluntary membership. REAF represents approximately 4,500 tax professionals while AEDAF has 2,057 individual members (which also includes former members of the profession). There is no AEDAF membership for companies.

AEDAF is active in

- providing education and CPD courses to professionals or staff
- publishing of tax reviews and other relevant technical information
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning
- developing software or online tools for tax advisers.

To some extent, AEDAF also mediates between professionals and tax authorities.

AEDAF and REAF are members of the CFE.

### 4. Practical information

#### Contacts

##### Asociación Española de Asesores Fiscales (AEDAF)

C/Claudio Coello, 106 - 6ºDcha  
28006 Madrid

Tel: +34 915 325 154  
Fax: +34 915 323 794  
sedecentral@aedaf.es  
www.aedaf.es/

##### Registro de Economistas de Asesores Fiscales (REAF)

Claudio Coello, 18 - Principal 1. A  
28001 Madrid

Tel: +34 915 772 727  
Fax: +34 915 778 097  
reaf@reaf.es  
www.reaf.es/

|  |  |
|--|--|
| <p><b>Point of Single Contact</b><br/><a href="http://www.eugo.es/">www.eugo.es/</a></p> | <p><b>Professional qualifications contact point</b></p> <p>Ms Leticia Gamo Martín<br/>Dirección General de Política Universitaria,<br/>Ministerio de Educación,<br/>Subdirección General de Títulos y Reconocimiento de Cualificaciones</p> <p>Paseo del Prado, 28<br/>28014 Madrid</p> <p>Tel: +34 91 506 5636<br/>Fax: +34 91 506 5706<br/><a href="mailto:leticia.gamo@educacion.es">leticia.gamo@educacion.es</a><br/><a href="http://www.educacion.gob.es">www.educacion.gob.es</a></p> |
|--|--|



**Switzerland** Schweiz Suisse Svizzera CH

## **1. Picture of the profession in Switzerland**

### **a) General characteristics of the profession**

The term for tax adviser is *Steuerberater* in German, *Conseiller Fiscal* in French or *Consulente Fiscale* in Italian, a title which is not protected. However, only tax advisers that hold the protected title *Eidgenössisch Diplomierter Steuerexperte / Expert Fiscal Diplômé / Esperto Fiscale Diplomato* (in the following: *Certified Tax Expert*) may become regular members with tax specialisation of *Treuhand-Kammer / Chambre Fiduciaire / Camera Fiduciaria* (in the following: *Swiss Chamber*).

As estimated 20,000 – 25,000 individuals and 6,000 companies give tax advice. 5,670 individuals and 1,180 companies are member of the *Swiss Chamber*; 840 of these individuals are *Certified Tax Experts*.

*Certified Tax Experts* can be self-employed or employed by any professional firm or as in-house tax advisers by any business. They can also be public servants or be employed by the state.

As to the neighboring professions, lawyers and auditors are regulated by law while accountants and bookkeepers are regulated by charter of a professional body with voluntary membership.

The notion of liberal profession exists although clients and the general public may not be aware of it.

### **b) Professional Qualification**

There are no qualification requirements in Swiss law for giving tax advice or using the title tax adviser but the *Swiss Chamber* has introduced requirements for its members: These are required to prove four to five years of university education in law or economics plus four years of practical experience in the

field of tax advice. In case of lower former qualification, longer practical experience is required.

Following this, the *Swiss Chamber* holds a qualifying exam for professionals that wish to obtain the title *Certified Tax Expert*.

After having obtained this qualification, *Certified Tax Experts* have to undertake a minimum of 30 hours of continuing professional development per year.

There are also other titles indicating specialisation in tax law: *Kalaidos University of Advanced Science* offers a Master, Diploma or Certificate of Advanced Studies in VAT and in Taxation.

### c) Activities of tax advisers

*Certified Tax Experts* are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.
- Blue: Yes. Anyone may provide this service.
- Red: No, a tax adviser would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                   |  |
| Representation of clients before tax courts                        |  |
| Representation of clients before criminal courts in tax matters    |  |
| Representation of clients before your Supreme Court in tax matters |  |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security            |  |

| Consulting   |  |
|--|--|
| Management consulting in economic matters, human resource                  |  |
| Legal  |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| Audit  |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| Other  |  |
| Company secretarial services   |  |

*Certified Tax Experts* are generally allowed to exercise any lawful activities, provided that they do not conflict with professional duties.

#### d) Professional conduct and quality management

Professional conduct is regulated by the *Swiss Chamber* for its members.

#### Sanctions

The *Swiss Chamber* may exclude members for breaches of deontological rules.

### Conflicts of interest

If a member of the *Swiss Chamber* notices a conflict of interest between himself and the client or between two clients, the tax adviser has to inform the client(s) of this conflict but may continue acting for them.

### Commissions

There is no rule prohibiting member of the *Swiss Chamber* from receiving a commission for recommending a client to a fellow tax adviser.

### Certification and quality benchmarking

In the area of process and quality management (e.g. use of IT, documentation, safekeeping of client information), quality certification specifically geared for the tax profession exists.

Quality benchmarking in the form of media rating tax firms or client ratings in web portals is common in Switzerland.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

Members of the *Swiss Chamber* are obliged to treat confidentially information they have obtained in the course of their engagement. Confidentiality is also considered a contractual obligation towards the client. Tax advisers may however reveal confidential information to defend themselves in legal proceedings against them.

### Right of non-disclosure / legal professional privilege

Tax advisers do not enjoy a right of non-disclosure of client information towards the state unless they are lawyers.

## Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, they are generally not required to report the case. However, they may not continue serving that client, otherwise they would risk losing their membership of the *Swiss Chamber*.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Tax advisers and their clients are free to limit professional liability (by individual agreement or general terms and conditions), within the boundaries of contract law. Liability for slight negligence can be excluded.

Members of the *Swiss Chamber* need professional indemnity insurance cover. The minimum sum to be covered is CHF 500,000 per year. The insurance of a tax adviser company covers the insurance of all partners/directors and employed tax advisers.

## g) Advertising and pricing

Advertising is generally allowed. There are no specific advertising rules for tax advisers but for other professions of whom tax advisers are often members.

There are no specific rules on pricing, only general guidelines on what criteria should be taken into account when determining the price (time devoted to the case, value and complexity of the case, etc.). Contingency fees or success fees are not prohibited but uncommon.

#### h) Contractual issues and formal requirements

Tax returns must be signed by hand. The *Swiss Chamber* obliges members to clearly define their assignment.

#### i) The firm of the tax adviser

There are no restrictions relating to the company form or concerning who may be shareholder or manager of tax adviser companies. For member firms of the *Swiss Chamber*, there is the requirement that the majority of the managers are personal members of the *Swiss Chamber* and that they hold 20% of the firm's capital.

#### j) Registration and other requirements

There are no registration or other requirements for tax firms or tax advisers before starting to practice in Switzerland. Members of the *Swiss Chamber* have to pay an annual contribution based on their number of employees.

## **2. Cross-border activity of tax advisers from other countries in Switzerland**

For the permission to work in Switzerland, Swiss law distinguishes between short-term and long-term activity rather than between temporary / occasional and permanent activity like EU law. On 1 May 2011, unrestricted rights of free movement have been extended to all countries that have joined the EU in 2004 and now cover all EU and EEA nationals with the exception of Romanians and Bulgarians. These will remain subject to restrictions until 31 May 2016 at the latest.

#### a) Online and other correspondence services

There are no requirements whatsoever for tax advisers from other countries who provide online or correspondence tax services to clients in Switzerland or who file a tax return for a client or represent a client before Swiss tax authorities.



## b) Short-term activity

The Swiss regime on registration and authorisation distinguishes between self-employed activity, posted employees and employees with Swiss enterprises, between the nationality of the person and between the duration of his/her professional activity in Switzerland. It can be briefly characterised as follows (for details, please consult the links below):

For an activity of no more than 8 days per calendar year, no registration or authorisation are required for self-employed and posted employees (if the firm is established in an EU25 or EEA country).

If they take up employment with a Swiss firm, nationals of EU25 and EEA countries must register with the *Federal Office for Migration* (FOM, see contact details below). All other nationals also need a work permit if they take up employment with a Swiss firm.

For a self-employed activity from 9-90 days per calendar year, nationals of EU25 (EU excluding BG and RO) and EEA countries must register with FOM but need no permit. Nationals of any other countries need a permit. The same applies to posted employees of EU25 or EEA -established firms or employees with a Swiss firm.

Registration with FOM has to be made eight days (also counting weekends/public holidays) in advance. On-line registration is possible.

A tax adviser with non-EU25/EEA nationality who is posted by an EU25/EEA firm must have been permitted to work in the EU25/EEA member state where his/her firm is established for 12 months.

Self-employed professionals must be able to prove their status as self-employed.

For permits, see lit.d).

For details see No.4.8.2 in the administrative guidelines (links below).

There is no insurance requirement for temporary or occasional activity.

### c) Long-term activity

An activity exceeding a total of 90 days/year requires authorisation by the cantonal authorities. According to Swiss law (Art.21 ff Foreigners Act), as a general rule, work permits are only given to executive, specialist or other qualified staff; Swiss and EEA citizens enjoy a priority over other nationals but there are facilitations for executive and highly qualified staff, see Art.46 Ordinance on admission, residence and employment.

As of 1 May 2012, the Swiss authorities reintroduced quotas for residence permits to be issued to citizens of Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic, and Hungary. This exceptional measure will expire on 30 April 2013 and applies to persons who come to live in Switzerland to become self-employed and to persons who possess an employment contract in Switzerland that is valid for a year or more.

For details see No.4.7.2 in the administrative guidelines (links below).

Tax advisers who wish to become members of the *Swiss Chamber* will need to prove insurance cover but existing insurance cover in another country that covers the activity in Switzerland will be recognised.

A tax firm from another country that wants to open an office in Switzerland may open a permanent establishment in Switzerland. When moving completely to Switzerland, however, the company will have to be re-established under Swiss law.

## 3. Professional bodies

The tax professional body in Switzerland is the *Swiss Chamber of Certified Accountants and Tax Consultants* (Treuhand-Kammer / Chambre Fiduciaire / Camera Fiduciaria), a self-regulatory body of private law with voluntary membership. 5,670 individuals and 1,180 companies are members of the *Swiss Chamber* of whom 840 are *Certified Tax Experts*. The *Swiss Chamber* also has 20 professors and experts as honorary members.

The activities of the *Swiss Chamber* are:

- holding qualifying exams
- developing codes of conduct / ethics
- supervising the compliance of members with professional obligations and disciplinary sanctions

- providing education and CPD courses to tax advisers and staff
- publishing of tax reviews and other relevant technical information
- giving opinions in tax matters to the tax administration and politicians
- lobbying and campaigning
- developing software or online tools for tax advisers

The *Swiss Chamber* is a member of the CFE.

## 4. Practical information

### a) Contacts

|   |  |
|---|--|
| <p><b>Treuhand-Kammer / Chambre Fiduciaire / Camera Fiduciaria / Swiss Chamber of Certified Accountants and Tax Consultants</b></p> <p>Limmatquai 120 Postfach 1477<br/>8021 Zürich</p> <p>Tel.: +41 44 267 75 75<br/>Fax.: +41 44 267 75 85<br/>dienste@treuhand-kammer.ch<br/>www.treuhand-kammer.ch</p>  | <p><b>FOM - Federal Office of Migration: Bundesamt für Migration / Office federal des migrations / Ufficio federale della migrazione</b></p> <p>Quellenweg 6<br/>3003 Bern-Wabern</p> <p>Tel. +41 31 325 1111<br/>www.bfm.admin.ch</p> <p>On-line registration with FOM:<br/><a href="https://meweb.admin.ch/meldeverfahren/login.do">https://meweb.admin.ch/meldeverfahren/login.do</a></p> |
| <p><b>Professional qualifications contact point</b></p> <p>Mr Frédéric Berthoud<br/>Coordinateur pour la reconnaissance des diplômes,<br/>Office fédéral de la formation professionnelle et de la technologie (OFFT),</p> <p>Effingerstrasse 27<br/>3003 Bern<br/>Tel: +41 31 322 28 26<br/>Fax: +41 31 322 75 50<br/>Frederic.Berthoud@bft.admin.ch<br/>www.bft.admin.ch</p> |  |

## b) Sources of law

- Foreigners Act:  
DE: [www.admin.ch/ch/d/sr/142\\_20/index.html](http://www.admin.ch/ch/d/sr/142_20/index.html)  
FR: [www.admin.ch/ch/f/rs/142\\_20/index.html](http://www.admin.ch/ch/f/rs/142_20/index.html)  
IT: [www.admin.ch/ch/i/rs/142\\_20/index.html](http://www.admin.ch/ch/i/rs/142_20/index.html)
- Ordinance on admission, residence and employment:  
DE: [www.admin.ch/ch/d/sr/142\\_201/index.html](http://www.admin.ch/ch/d/sr/142_201/index.html)  
FR: [www.admin.ch/ch/f/rs/142\\_201/index.html](http://www.admin.ch/ch/f/rs/142_201/index.html)  
IT: [www.admin.ch/ch/i/rs/142\\_201/index.html](http://www.admin.ch/ch/i/rs/142_201/index.html)
- Administrative guidelines:  
DE (FR and IT versions): please copy link and change last letter “d” to “f” or “i” respectively: [www.bfm.admin.ch/content/dam/data/migration/rechtsgrundlagen/weisungen\\_und\\_kreisschreiben/weisungen\\_auslaenderbereich/aufenthalt\\_mit\\_erwerbstaetigkeit/4-aufenthalt-mit-erwerb-d.pdf](http://www.bfm.admin.ch/content/dam/data/migration/rechtsgrundlagen/weisungen_und_kreisschreiben/weisungen_auslaenderbereich/aufenthalt_mit_erwerbstaetigkeit/4-aufenthalt-mit-erwerb-d.pdf)

## c) Further weblinks

- Free movement of persons (EEA countries): [www.bfm.admin.ch/bfm/en/home/themen/fza\\_schweiz-eu-efta.html](http://www.bfm.admin.ch/bfm/en/home/themen/fza_schweiz-eu-efta.html)
- Legal basis for access to the Swiss labour market by foreign (non EEA-) nationals:  
[www.bfm.admin.ch/bfm/en/home/themen/arbeit/nicht-eu\\_efta-angehoerige/grundlagen\\_zur\\_arbeitsmarktzulassung.html](http://www.bfm.admin.ch/bfm/en/home/themen/arbeit/nicht-eu_efta-angehoerige/grundlagen_zur_arbeitsmarktzulassung.html) (EN, DE, FR, IT)
- Procedure (non EEA applicants): [www.bfm.admin.ch/bfm/en/home/themen/arbeit/nicht-eu\\_efta-angehoerige/verfahrensablauf.html](http://www.bfm.admin.ch/bfm/en/home/themen/arbeit/nicht-eu_efta-angehoerige/verfahrensablauf.html) (EN, DE, FR, IT)
- Documents (non EEA applicants): [www.bfm.admin.ch/bfm/en/home/themen/arbeit/nicht-eu\\_efta-angehoerige/gesuchsunterlagen.html](http://www.bfm.admin.ch/bfm/en/home/themen/arbeit/nicht-eu_efta-angehoerige/gesuchsunterlagen.html) (EN, DE, FR, IT)
- Instructions for filling the notification form:  
DE: [www.bfm.admin.ch/content/dam/data/migration/schweiz\\_-\\_eu/wegleitung\\_endsendete/wegleitung\\_entsendungarbeitsnehmer-d.pdf](http://www.bfm.admin.ch/content/dam/data/migration/schweiz_-_eu/wegleitung_endsendete/wegleitung_entsendungarbeitsnehmer-d.pdf)

- FR: [www.bfm.admin.ch/content/dam/data/migration/schweiz\\_-\\_eu/wegleitung\\_endsendete/wegleitung\\_entsendungarbeitnehmer-f.pdf](http://www.bfm.admin.ch/content/dam/data/migration/schweiz_-_eu/wegleitung_endsendete/wegleitung_entsendungarbeitnehmer-f.pdf)
- IT: [www.bfm.admin.ch/content/dam/data/migration/schweiz\\_-\\_eu/wegleitung\\_endsendete/wegleitung\\_entsendungarbeitnehmer-i.pdf](http://www.bfm.admin.ch/content/dam/data/migration/schweiz_-_eu/wegleitung_endsendete/wegleitung_entsendungarbeitnehmer-i.pdf)
- Federal Tax Administration: [www.estv.admin.ch/index.html?lang=en](http://www.estv.admin.ch/index.html?lang=en) (EN, DE, FR, IT)
  
  - Federal Social Insurance Office: [www.bsv.admin.ch/index.html?lang=en](http://www.bsv.admin.ch/index.html?lang=en) (EN, DE, FR, IT)
  
  - Federal Office for Professional Education and Technology (Recognition of Diplomas): [www.bbt.admin.ch/index.html?lang=en](http://www.bbt.admin.ch/index.html?lang=en) (EN, DE, FR, IT)





## Ukraine Україна UA

### 1. Picture of the profession in Ukraine

#### a) General characteristics of the profession

The name of the tax profession is Консультант по налогам и сборам (Kon-sultant po nalogam i sboram).

260 individuals are *Certified Tax Advisers* and voluntary members of the *Union of Tax Advisers of Ukraine*. As the activity of giving tax advice is not regulated and most tax professionals are also member of other professions, the actual number of persons practicing in tax is higher. Most tax advisers are member of a profession that is regulated by law: 60% of the members of the *Union of Tax Advisers* hold a qualification as auditors, 40% are qualified as accountants and 10% as lawyers. Lawyers, auditors, accountants and bookkeepers are regulated by law.

Tax advisers may be employed by any professional firm or business. They may also be public servants or be employed by the state.

#### b) Professional qualification

There is no minimum qualification required by law. The following information relates to the qualification required by the *Union of Tax Advisers*.

Its members must have completed a university education in law, accounting or economics (usually five to six years), followed by three years of work experience in the same fields. To become *Certified Tax Advisers* which is voluntary, member of the *Union of Tax Advisers* need to acquire five years of work experience. Afterwards, they have to pass an exam by the *Union of Tax Advisers*. This exam has to be repeated every 5 years.

The *Union of Tax Advisers* obliges its members to take part in continuing professional development once a year.

There are no further specialisation titles in the field of tax.

**c) Activities of tax advisers**

Ukrainian tax advisers are active in the following fields:

- Green: Yes, this activity is reserved to certain professions including tax advisers.
- Red: No, a tax adviser would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.
- White: No information.

| Tax  |  |
|--|--|
| Advice in domestic tax law   |  |
| Advice in foreign tax law  |  |
| Tax returns/declarations   |  |
| Representation of clients before tax authorities                         |  |
| Representation of clients before tax courts                              |  |
| Representation of clients before criminal courts in tax matters          |  |
| Representation of clients before your Supreme Court in tax matters       |  |
| Accounting & Co.   |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                  |  |
| Consulting   |  |
| Management consulting in economic matters, human resource                |  |
| Legal  |  |
| Advice on company or commercial law                                      |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters) |  |
| Legal advice in other areas than tax                                     |  |



|  |  |
|--|--|
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Self-employed tax advisers may engage in any lawful activities as long as professional duties are observed.

#### d) Professional conduct and quality management

Ukrainian law does not specifically regulate professional conduct of tax advisers but most tax advisers are members of professions in which professional conduct is regulated. Furthermore, the *Union of Tax Adviser* has developed a code of professional conduct.

#### Sanctions

Breaches of deontological rules can result in exclusion from the *Union of Tax Advisers*.

#### Conflicts of interest

There is no specific regulation covering the situation that a tax adviser notices a conflict of interest between himself and the client or between two clients. The tax adviser is expected to inform the client(s) concerned. In practice, the clients often agree to allow the tax adviser to continue his engagement.

## Commissions

There is no prohibition preventing a tax adviser from receiving a commission for recommending a client to a fellow tax adviser.

## e) Protection and disclosure of client data

### Client confidentiality / professional secrecy

There are no specific rules but client confidentiality is considered a contractual obligation towards the client.

### Right of non-disclosure / legal professional privilege

A tax adviser's right of non-disclosure of client information requested by the state is not recognised.

### Tax avoidance and money laundering reporting

Tax advisers are under no obligation to report tax avoidance schemes to the fiscal authorities.

Where tax advisers find indications of money laundering, there is generally no obligation to report the case to the authorities.

## f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake. There may be deviations from this, depending on the specific engagement.

Tax advisers are free to limit professional liability, within the boundaries of contract law.

There is no requirement for tax advisers to have professional indemnity insurance.

### g) Advertising and pricing

Advertising is generally allowed. There are no specific rules on advertising of tax advisers but for other professions of which many tax advisers are members. There is no price regulation whatsoever. Contingency fees and success fees may be agreed between tax adviser and client.

### h) Contractual issues and formal requirements

Tax advisers are obliged to provide engagement letters defining the scope of the engagement. There are also obligations that communication to the client must be made in writing and letters to the client must be signed by hand. Digital signature for electronic communication is however not required.

### i) The firm of the tax adviser

Tax adviser companies may take all forms available under Ukrainian law. There are no restrictions as to who may own a tax adviser company or shares thereof or who may be the manager of a tax adviser company.

Tax advisers may enter partnerships or set up joint companies with any professions, as long as the tax adviser's professional duties are observed.

## **2. Cross-border activity of tax advisers from other countries in Ukraine**

For giving tax advice to Ukrainian clients, no registration or notification has to be made to Ukrainian authorities.

To file a tax return or represent clients before tax authorities, a tax adviser with a qualification from another country needs to designate a person authorised to receive official communications (receiving agent) in Ukraine.

There are no requirements relating to professional qualifications for tax advisers from other countries that wish to practice in Ukraine.

A tax firm from another country that wants to open an office in Ukraine or move to Ukraine would need to create a new company under Ukrainian law.

### 3. Professional bodies

The *Union of Tax Advisers of Ukraine* is an association of private law with 364 voluntary individual members of which 260 are *Certified Tax Advisers*, the remainder being well-reputed professionals in accounting, law, audit or economy who have not (yet) obtained certification. Membership is open to anyone who shares the interests of tax advisers.

The activities of the *Union of Tax Advisers* are:

- developing codes of conduct / ethics
- holding qualifying exams
- providing education and CPD to tax advisers and staff
- mediating between professionals
- mediating between professionals and tax authorities
- developing software or online tools for tax advisers

To some extent, the *Union of Tax Advisers* is

- publishing of tax reviews and other relevant technical information
- mediating between professionals and their clients
- lobbying and campaigning

The *Union of Tax Advisers of Ukraine* is not a member of the CFE but has taken a decision to apply for CFE membership.

### 4. Practical information

#### Contacts

Спілка податкових консультантів  
України /  
Ukrainian Union of Tax Advisers  
(SPKU)

вул. Горького, 13, оф. 7  
01004 м. Київ (Kiev)

Tel: +380 44 289-35-93  
Fax: +380 44 287-36-70  
spku@ukr.net  
<http://www.taxadvisers.org.ua/>



## United Kingdom UK

### 1. Picture of the profession in the United Kingdom

#### a) General characteristics of the profession

There is no single professional title for tax professionals. The title most commonly used is “tax adviser” (though some advisers will call themselves “Tax Accountant” or simply use the practising name of a non-tax specialist qualification such as Solicitor or Chartered Accountant). As the tax profession is not regulated by law and there is no mandatory membership in professional bodies, the number of tax advisers is unclear. It is estimated that 123,000 individuals provide tax advice in one form or another. The two main professional associations, the *Chartered Institute of Taxation (CIOT)* and *Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW)* have enacted regulation for their own members.

Tax advisers in the UK may practice independently, in a professional firm or any other business and may even be public servants, employed by the state. Many work in commerce and industry as in-house tax advisers.

Lawyers and auditors are regulated by law and accountants by charter of professional bodies with voluntary membership (one of which is the ICAEW). Accounting technicians and bookkeepers are not regulated and may choose to affiliate with a number of professional bodies.

#### Tax agents

Apart from tax advisers, the concept of *tax agents* exists. Tax agents represent clients before fiscal authorities and file tax returns. Most tax advisers are *tax agents* but not all *tax agents* are also tax advisers.

For VAT, there is a difference between acting as agent for a UK based VAT registered person and acting as agent for a non established person:

A VAT agent for a UK based company may be an adviser and is able to negotiate with the UK tax authority (HMRC) on behalf of the taxpayer. A VAT agent may sign a VAT return on behalf of the taxpayer when submitting VAT returns electronically – providing specific authority has been granted.

For VAT, for non-UK based persons, a tax adviser can be appointed as a tax agent or tax *representative*. These appointments empower the tax adviser to sign VAT returns on behalf of their client, which may be convenient if the client is not physically present to sign returns within the timescale required. Appointment as tax *representative* for VAT means that the tax adviser becomes jointly and severally liable for his client's VAT debts. The tax adviser should consider carefully whether he/she is prepared to take on such responsibilities. As an alternative, the tax adviser may decide that appointment simply as a tax agent for VAT is preferable, as this does not make him/her jointly and severally liable for his/her client's VAT debts.

Tax agents who wish to deal on their client's behalf with HMRC have to submit a signed authority to HMRC. HMRC believe there are 43,000 individual advisers and firms who act for clients on a paid basis, with up to a further 80,000 agents dealing with family and friends only.

The concept of “liberal profession” is not commonly known in the UK.

### b) Professional qualification

The tax profession is not regulated in the sense of the EU Professional Qualifications Directive, meaning there is no required qualification by law for the use of the title tax adviser or the tax advisory activity. Professional bodies like the CIOT and the ICAEW however have set qualification requirements for their members.

There is no prescribed academic qualification to become a member of the CIOT but to be eligible to sit the exams a student must hold another recognised professional qualification e.g. ACA (chartered accountant); ACCA (chartered certified accountant); ATT (taxation technician). In addition, s/he must prove three years of recent relevant professional experience (not limited geographically). Afterwards, there is an exam held by CIOT. The participation fee is £ 200 to register and further £ 610 for taking the exam (altogether approx. € 1,000). Once obtained, this qualification will normally be valid lifelong

There are also no proscribed academic qualifications to become a member of ICAEW and qualification is by way of 15 exam modules each of which includes an ethics element. Having said that, most entrants are graduates and the qualification is viewed as a Master’s level degree. There is also a requirement for 300 or 450 technical days’ experience.

CIOT rules on continuing professional development (CPD) require that members undertake a minimum of 90 hours per calendar year of which at least 20 should be non-reading. The CIOT itself does not offer CPD. Members are free as to where to obtain their CPD as long as it meets the required standards.

ICAEW requires its members to maintain and develop their professional skills and to confirm each year that they have done so. There are no laid down set hours or points but ICAEW will check a number of its members’ CPD records each year to ensure that the CPD they have carried out is appropriate to their jobs and responsibilities.

There are no specialisation titles in the field of tax in the UK.

### c) Activities of tax advisers

UK tax advisers (this refers to CIOT members) are active in the following fields:

- Blue: Yes. Anyone may provide this service.
- Red: No, a tax adviser would need an additional qualification to exercise this activity.
- Beige: In theory yes, but in practice not really, due to practical reasons, e.g. lack of knowledge, experience, little demand, liability issues etc.
- White: No information

| Tax   |  |
|---|--|
| Advice in domestic tax law                                      |  |
| Advice in foreign tax law                                       |  |
| Tax returns/declarations  |  |
| Representation of clients before tax authorities                |  |
| Representation of clients before tax courts                     |  |
| Representation of clients before criminal courts in tax matters |  |

## Part II – Country Sheets

|  |  |
|--|--|
| Representation of clients before your Supreme Court in tax matters         |  |
| <b>Accounting &amp; Co.</b>  |  |
| Accounting services  |  |
| Pensions   |  |
| Social security  |  |
| Representation before administration in social security                    |  |
| <b>Consulting</b>  |  |
| Management consulting in economic matters, human resource                  |  |
| <b>Legal</b>   |  |
| Advice on company or commercial law  |  |
| Advice on employment law   |  |
| Advice on insolvency or bankruptcy matters (not confined to tax matters)   |  |
| Legal advice in other areas than tax                                       |  |
| Legal advice in other areas than tax if the legal advice is only ancillary |  |
| Legal representation before court in other areas than tax                  |  |
| Arbitration  |  |
| Contract negotiation and drafting  |  |
| <b>Audit</b>   |  |
| Statutory audit for sole traders/partnerships                              |  |
| Statutory audit for small companies  |  |
| Statutory audit for medium-size companies                                  |  |
| Voluntary audit for companies  |  |
| <b>Other</b>   |  |
| Company secretarial services   |  |

Tax advisers may engage in any lawful activities provided that this does not affect compliance with professional duties, e.g. not to bring the profession into disrepute.



## d) Professional conduct and quality management

Professional conduct is regulated by the professional bodies for their members.

### Sanctions

In case of non-compliance with professional duties, professional bodies can impose sanctions on their members. The sanctions, imposed by the *Taxation Disciplinary Board* on behalf of the CIOT, are reprimands, monetary penalties and exclusion from the organisation. A tax adviser excluded from the CIOT would still be allowed to provide tax advice but may not make reference to the CIOT any longer or use the designatory “CTA” initials.

ICAEW has its own disciplinary procedures but more serious cases, which raise issues of public interest, may be referred to the *Accountancy and Actuarial Discipline Board* which is an independent body which has a range of sanctions including exclusion of the member from ICAEW.

### Conflicts of interest

Where a tax adviser notices a conflict of interest between himself and the client or between two clients, but the tax adviser may continue to act only if suitable safeguards are put in place to protect the tax adviser’s independence. If this is not possible the tax adviser must cease to act.

### Commissions

A tax adviser who is member of the CIOT is allowed to receive a commission for recommending a client to a fellow tax adviser under the condition that s/he discloses to the client the amount of any commission to be received.

### Certification and quality benchmarking

There is a legal requirement under the Data Protection Act 1998 to be registered with the Information Commissioner’s Office if holding client data. There are a number of legal obligations to protect that information under the Act.

Quality benchmarking in the form of consumer organisations, media, clients of professional bodies rating tax firms is not common in the UK.

### e) Protection and disclosure of client data

#### Client confidentiality / professional secrecy

There is no specific legislation providing for the protection of client data from third parties but the CIOT has rules in this regard, applying to tax advisers in tax firms and in-house tax advisers in business alike. Violation of these rules can be sanctioned. Tax advisers may however reveal confidential information to defend themselves in legal proceedings.

#### Right of non-disclosure / legal professional privilege

A tax adviser may refuse to provide client information to the state only if s/he is a lawyer. A landmark decision of the Supreme Court on the issue of legal professional privilege for accountants is expected in early 2013 (*Prudential* case).

#### Tax avoidance and money laundering reporting

There are two different regimes obliging the taxpayer to disclose tax avoidance schemes to HMRC:

Under the tax avoidance scheme for VAT, responsibility lies with the *taxpayer* to make the disclosure; for other taxes, the responsibility lies with the *promoter* of the scheme, e.g. the tax adviser. Disclosure and registration of a tax avoidance scheme with HMRC is not a clearance or approval process; such registration does not imply HMRC's acceptance of a scheme.

Where tax advisers find indications of money laundering, there is an obligation to report to the Serious Organised Crime Agency (SOCA). An exemption applies where a tax adviser is a *relevant professional adviser* and gives legal advice or is also a professional legal adviser. Not all tax advisers are *relevant professional advisers* but members of the CIOT meet the criteria.

A tax adviser who is a CIOT member would be required to consider whether ethically s/he can continue to act for a client where there is knowledge or suspicion of money laundering and whether if s/he continued to do so there

would be a risk of them being considered to be assisting a money launderer. In cases of tax evasion the CIOT states that its members may only act for a client if the client is prepared to make a full disclosure to HMRC.

Where the tax adviser has been asked to take action which s/he thinks may facilitate money laundering or is concerned that s/he may be paid out of proceeds of crime, the member should seek consent to continue acting from SOCA. If consent is given, s/he may continue to act, subject to the aforementioned ethical considerations.

#### f) Liability and insurance

If a tax adviser assists the client in preparing a tax return, the client remains liable for the accuracy and completeness of information but s/he may have right to recourse if the tax adviser has made a mistake.

Client and tax adviser are however free to limit liability, within the boundaries of contract law.

Tax advisers who are members of the CIOT and their tax adviser companies need professional indemnity insurance. The insurance of the company covers all partners/directors and employed tax advisers. In-house tax advisers in business do not need insurance.

The recommended minimum level of cover is £1 million for each and every claim but firms with a turnover not exceeding £ 400,000 (ca. € 500,000) may have a lower level of cover: the greater of 2.5 x the gross fee income and £ 100,000 (ca. € 125,000).

#### g) Advertising and pricing

Advertising is generally allowed. There are no specific rules for tax advisers.

There is no price regulation, only general guidelines for CIOT members on what criteria should be taken into account when determining the price. Both contingency and success fees are generally allowed although there may be instances where there may be legal or regulatory restrictions to contingency fees.

#### h) Formal requirements and contractual issues

There are no particular formal requirements to the contract with the client.

#### i) The firm of the tax adviser

There are no restrictions to the legal form tax adviser companies may use or to the shareholding or management of tax adviser companies but there are rules on the number of non-CIOT members if a firm wishes to describe itself as firm of Chartered Tax Advisers.

Tax advisers may enter partnerships or set up joint companies with any professions as long as the tax adviser's professional duties are observed. Existing restrictions for lawyers have recently been lifted in the course of the implementation of the Legal Services Act.

#### j) Registration requirements

Tax advisers who act as *tax agents* (see paragraph 1 lit.a)) have to register with the tax administration. Registration of *tax agents* is free of charge. It does not require a permission or clearance by the tax administration but merely enables the tax administration to monitor the activities of the tax agent.

Furthermore, tax firms have to register with an anti money laundering supervisor if they are considered to be in business and to provide tax services in the UK (irrespective of the place where the client is based or operates from). Professional bodies like the CIOT are recognised as anti money laundering supervisors. If the tax adviser is not a member of one of these professional bodies, registration has to be made with the tax administration. The annual fee for anti money laundering supervision with the tax administration is £ 110 (€ 137).

## **2. Cross-border activity of tax advisers from other countries in the United Kingdom**

There are no additional requirements for tax advisers from other countries who render services in the UK or to a client in the UK. For filing tax returns or representing clients before HMRC, also by e-mail, telephone or letter,

registration with the tax administration as a *tax agent* is required (see paragraph 1, lit.a) and j)).

If a tax adviser is considered to be in business in the UK and providing tax services in the UK, registration with an anti money laundering supervisor is required (see paragraph 1 lit.j).

The scope of activities of tax advisers from other countries in the UK is the same as for UK tax advisers.

There are no professional indemnity insurance requirements unless the tax adviser decides to become member of a professional association that imposes such requirements.

The UK requires Bulgarian and Romanian employees to have a work permit. The employer must apply for the permit (except for certain categories of employment) and the employee must apply for an “accession worker card”. In addition to this, there is a “Highly Skilled Migrant Programme” which however is currently closed, see links below in “contacts”. These restrictions may not be extended beyond 31 December 2013.

Professionals with a qualification obtained or recognised in the EEA who want to become member of the CIOT may take an aptitude test with CIOT which is an abridged qualifying exam. The applicant will typically be asked to sit one or more CIOT examination papers the cost of which is £ 120 (€ 148) each.

Although the tax profession is not regulated in the UK, the recognition procedure described in the EU Professional Qualifications Directive applies to the CIOT, the ICAEW and ACCA, as these three organisations are listed in Annex I of the Directive. More information on the recognition procedure can be found in Chapter 13.2 of Part 1.

Tax adviser companies from other countries may continue using their legal form when moving to the UK or opening an office there.

### **3. Professional bodies**

The CIOT (*Chartered Institute of Taxation*) is a self-regulatory body set up by Royal Charter. It has 16,600 individuals as full members and 3,600 student members. Membership is voluntary. There is no company membership

with CIOT. Occasionally, honorary membership may be awarded to senior public figures who have been prominently involved in the field of taxation. Members of the CIOT can use the title “Chartered Tax Adviser” and the designatory letters “CTA”.

In August 2012, the *Institute of Indirect Taxation* (IIT) and the CIOT merged.

The activities of the CIOT are:

- holding qualifying exams
- developing codes of conduct / ethics
- supervising the compliance of members with professional obligations and disciplinary sanctions
- acting as anti money laundering supervisor
- publishing of tax reviews and other relevant technical information
- contributing to consultations on changes to the tax system by the tax administration and other sections of government
- raising practical issues and concerns over the workings of the tax system, often through matters raised by members in practice
- generally working towards a better tax system in the UK.

There is also the *Tax Disciplinary Board* which is an independent body set up by the CIOT to administer disciplinary sanctions in case of complaints against members of the CIOT

Another tax professional body is the *Tax Faculty* of the ICAEW (*Institute of Chartered Accountants in England and Wales*). All of ICAEW’s 136,615 worldwide members are chartered accountants. The ICAEW *Tax Faculty* hosts 8,200 professionals who specialise in taxation.

The CIOT and the ICAEW *Tax Faculty* are members of the CFE.

## 4. Practical information

### a) Contacts

|  |  |
|--|--|
| <p><b>The Chartered Institute of Taxation (CIOT)</b></p> <p>1st floor, Artillery House<br/>11-19 Artillery Row<br/>London, SW1P 1RT</p> <p>Tel: +44 207 340 0550<br/>Fax: +44 207 340 0599<br/>technical@tax.org.uk<br/>http://www.tax.org.uk/</p>             | <p><b>Tax Faculty / Institute of Chartered Accountants in England &amp; Wales (ICAEW)</b></p> <p>Chartered Accountants' Hall, P.O. Box 433, Moorgate Place<br/>London EC2P 2BJ</p> <p>Tel: +44 2 079 208 593<br/>Fax: +44 2 079 208 780<br/>tdtf@icaew.com<br/>http://www.icaew.com/</p>                       |
| <p><b>Professional qualifications contact point</b></p> <p>ECCTIS Ltd.<br/>Oriol House<br/>Oriol Road<br/>Cheltenham<br/>Gloucestershire GL50 1XP</p> <p>Tel: +44 871 226 2850<br/>Fax: +44 871 330 7005<br/>info@ukncp.org.uk<br/>http://www.ukncp.org.uk</p> | <p><b>Home Office – UK Border Agency</b></p> <p>Work permits for employees from Bulgaria and Romania:<br/>http://www.ukba.homeoffice.gov.uk/eucitizens/bulgaria-romania/work-permits/applying</p> <p>Highly skilled migrant programme:<br/>www.ukba.homeoffice.gov.uk/visas-immigration/working/tier1/hsm/</p> |
| <p><b>Point of Single Contact: “UK Welcomes”</b></p> <p>https://www.gov.uk/ukwelcomes</p>  |  |

### b) Sources of law

- CIOT Professional Rules and Practice Guidelines: <http://www.tax.org.uk/Standards/PRPG>
- CIOT “Professional Conduct in relation to taxation”: <http://www.tax.org.uk/PCRT>





## Glossary

|                               |  |
|-------------------------------|--|
| AML                           | Anti money laundering  |
| aptitude test                 | examination that may be required from a professional who wishes to practice permanently in another EEA member state where the profession is regulated (see Part I, 13.2.6)   |
| bookkeeper                    | here referred to as an accounting profession with a lower qualification who typically performs simpler accounting tasks, as opposed to accountant  |
| company secretarial services  | assuring the compliance of a business with publication and registration duties, e.g. through keeping trade register entries up-to-date   |
| correspondence services       | all services rendered by means of distance communication like letter, telephone/fax, e-mail, internet  |
| CFE countries / member states | referring to full and observer members of the Confédération Fiscale Européenne: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Switzerland, United Kingdom |
| CFE guidelines                | “Professional Qualifications and Ethics of Tax Advisers in Europe”, declaration of the Confédération Fiscale Européenne containing the basis professional principles of CFE member organisations.  |
| CPD                           | continuing professional development, sometimes also referred to as post qualification education, meaning any education that is obtained after having qualified as member of the profession or a professional association. CPD requirements seek to ensure that the knowledge of the professional is up-to-date.              |

## Glossary

---

|                         |  |
|-------------------------|--|
| CR Directive            | EU Consumer Rights Directive 2011/83/EU, see Section 9.2 and 9.3 of Part I.  |
| ECJ                     | Court of Justice of the European Union   |
| EEA                     | European Economic Area, consisting of Iceland, Liechtenstein and Norway and the EU countries (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Slovakia, Slovenia, Spain, Sweden, United Kingdom). EEA/CH shall refer to the EEA and Switzerland. |
| HMRC                    | Her Majesty's Revenue and Customs (UK tax administration)  |
| home country            | in cross-border situations referring to the country where the tax adviser is established or has obtained his/her professional qualification  |
| host country            | in cross-border situations referring to the country where the tax adviser seeks to provide temporary services or wishes to establish   |
| Lawyers Directives      | The EU Directives 1977/249/EEC and 98/5/EC on free movement and establishment of lawyers. The term "Lawyer" in this Handbook is used in the sense of "Solicitor" or "Attorney" referring to a member of the legal profession.  |
| liberal profession      | The concept of liberal profession is set out in 1.1.2 of Part I  |
| occasional activity     | see temporary activity.  |
| permanent activity      | Permanent activity in the sense of Art.49 TFEU, as opposed to temporary activity (Art.56 TFEU) in another member state, see Section 11.2 in Part I   |
| Point of Single Contact | Contact point for cross-border service providers, to be set up by EU member states, see Section 11.3 of Part I.  |

|                      |  |
|----------------------|--|
| PQ Directive         | EU Directive on the Recognition of Professional Qualifications 2005/36/EC, see Section 2.2.1 of Part I   |
| regulated profession | A professional activity access to which or exercise of which (including the use of the title) requires a particular professional qualification in a given EEA member state, see Part I, Section 2.1. |
| Services Directive   | EU Directive 2006/123/EC on Services in the Internal Market  |
| tax agent            | The concept of tax agent is set out in 1.1.3 of Part I   |
| temporary activity   | Occasional or temporary activity (Art. 56 TFEU) as opposed to permanent establishment (Art.49 TFEU) is described in Section 11.2 of Part I   |
| TFEU                 | Treaty on the Functioning of the European Union. Until 2009, before amended by the “Lisbon Treaty”, EC Treaty  |

