CONFEDERATION FISCALE EUROPEENNE

CFE Professional Affairs Committee

National Reports

September 2011

13th Meeting

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Belgium

Report on recent developments with respect to professional affairs in Belgium

1. Legislation

Due to the Belgian political situation characterized by the stand-by of the discussions to set up a government after the elections of June 2010, no significant law or royal decree was adopted regarding the profession of tax advisor.
However, an important decision was made by the national Constitutional Court[1]: she stated that the Belgian law of April 6, 2010, on market practices and consumer protection violates the Belgian Constitution as professionals exercising a "liberal (civil) profession" are not falling in its scope. This applies to lawyers, doctors, but also to tax advisers and accountants.
The traditional distinction made in the Belgian law order between "liberal professions" and "tradesmen" is at stake.

2. Professional affairs policy

a. Anti-money laundering measures

Pursuant to the law of January 18, 2010, implementing the third "anti-money laundering" directive 2005/60/EC of October 26, 2005 and the directive 2006/70/EC of August 1, 2006 into Belgian law, the IEC-IAB adopted:

- a mandatory "standard" detailing the obligations foreseen in chapter II of the Law,
- an informative paper, explaining and completing the above mentioned "standard".

Both documents will apply as from October 1, 2011.

b. Other measures

During the examined period, IEC-IAB consistently carried on with its efforts leading towards:

- The implementation of the new "education standard" adopted in 2009 and applying from September 1, 2009,
- The drawing up and working out of a quality control policy.

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[1] Decision of the Constitutional Court of April 6, 2011, n° 55/2011 - www.const-court.be.

Czech Republic

Report on latest development in professional affairs
Czech Republic, September 2011

Introduction

The Chamber of Tax Advisers of the Czech Republic is a profesional organisation established by Act no. 523/1992 Coll. on Tax Advisory and the Chamber of Tax Advisers CR. The chamber associates all tax advisers in the Czech Republic, whereby the term „tax adviser" is by law on tax advisery reserved only for members of the Chamber – as of 8.9.2011 it associates 4286 tax advisers – physical entities. In addition, the Chamber keeps records of legal entities authorised to provide tax advice, and who although not members of the Chamber, must comply with professional standards, for which tax advisers through whom such companies provide tax advice are responsible for this. As of 8.9.2011 the Chamber recorded 686 legal entities.

Tax Regulations

On 1.1.2011 came into effect new legislation regulating the tax process – Tax Regulation, which also regulates the position of a tax adviser in tax proceedings. For taxpayers represented by a tax adviser, the Tax Regulation also shifts the deadline for filing income tax submission (by 3 months), on the other hand, it removes the exclusive authorization of a tax adviser to represent multiple tax payers before one tax authority. At the same time the Tax Regulation to a certain extent reinforces confidentiality of the tax adviser insofar as when tax authority enters tax adviser's facility, a representative of the Chamber must be present to this act. The latest addition is the newly established institutes of an ex offo tax adviser.

Data Boxes

Currently, data boxes are being set up for tax advisers, on request, which are used for electronic communication with public authorities via internet. As of 1.7.2012, tax advisers will be obligated to communicate with the tax authority only electronically via the data boxes. Following an agreement with the responsible Ministry of the Interior, the Chamber now on request sets up these data boxes for tax advisers.

Mutual recognition of qualifications

The government rejected an amendment of the Act on recognition of professional qualifications, which would have granted professional chambers the authority to deal

with violation of the Act on recognition of professional qualifications. Professional chambers will therefore still have no jurisdiction to conduct proceedings in the event of violations. These proceedings will continue to be conducted in the general regime of misdemeanours by public authorities under the Act on misdemeanours before authorities of of municipalities and cities, therefore in a general regime of dealing with misdemeanours.

Professional regulation

In the first half of the year a discussion commenced on changes of professional regulation of tax advisery. Working group of the Chamber prepared a draft of a comprehensive amendment of the Act on tax advisery, which in particular, clarifies the position of legal entities registered by the Chamber (for instance confidentiality), their rights and obligations to the chamber and clients, and enforceability of compliance with professional regulations. The draft also deals with disciplinary authority of the Chamber over legal entities.

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GERMANY

Current professional legal developments 2010/2011

1. Reinforcement of the requirements to combat money laundering

The Financial Action Task Force (FATF), an international body for combating money laundering, has carried out a country review in Germany in 2009 to verify the implementation of the international standards for combating money laundering and financing of terrorism set by them. In the report published in February 2010, FAFT identified numerous deficits in the implementation in Germany. The German Government plans to eliminate these deficits and presented a draft of the "Law for the optimisation of the Money Laundering Prevention" early April 2011.

The bill provides the introduction of additional legal money laundering requirements, which include new duties for the tax advising profession. For instance special supervisory obligations if dubious or unusual transactions and business relationships occur. Another example is the requirement to report cases, where the tax adviser cannot identify the client and beneficial owner and would therefore not be able to comply with the requirement of professional diligence.

The draft legislation is of particular importance for the profession, as it extends the supervisory control of the local chambers of tax advisers. For the first time it would allow the local chambers a case-independent preventive supervision of their members. It is also envisaged that the Chamber staff or other instructed persons may enter and check the business premises of the professionals. Currently supervision depends on concrete incidents which come to the knowledge of the chamber.

Thus it should be mentioned that Tax Advisers as well as other liberal professions might be excluded from this legislation.

2. Change of the Partnership Law

In view of the increased judgements concerning the liability of an entity using the legal form of a partnership and the fact that international law firms choose more and more the legal form of the English LLP, it is considered to change the partnership law. Through an amendment of the Partnership Law (PartGG) it is envisaged to limit the liability of a partnership on the assets of the partnership for damages resulting from incorrect practice of professionals. At the same time the partnership will be obliged to conclude indemnity insurance. Such an amendment is in particular required by the bar associations.

It is expected that the liability limitation will be designed as an option, i.e. a choice will be granted to the existing partnership companies, to make use of the limitation of liability to the company's assets with the result that they have to conclude a professional liability insurance with higher minimum coverage or to keep with the personal liability with its partners.

Further details of the statutory regulation (such as the amount of the minimum insurance coverage) are still open.

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Italy

National Report on recent developments in professional affairs policy and/or legislation on professional affairs since September 2010

In Italy, the tax adviser activity is not regulated by law.
The Parliament is going to approve some important liberalization about all professional activities.

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Luxembourg

Ordre des Experts Comptables_Luxembourg
Main developments in legislation
September 2010 – September 2011

Within developments in Luxembourg legislation on professional affairs, during the period September 2010-September 2011, the following can be noted:

Anti money laundering and terrorism financing

« Loi du 27 octobre 2010 portant renforcement du cadre légal en matière de lutte contre le blanchiment et contre le financement du terrorisme; (…) », published on November 3rd, 2010.

This act complements and modifies the existing rules in criminal law as well as in the financial and the insurance sectors or in regulated professions including « experts-comptables ».

It also brings into effect 2 other acts :

- One defining the controls on physical transportation of cash money entering, transiting or leaving Luxembourgish territory,
- Another one allowing the direct implementing of the UN Security Council and EU Council decisions relating to financial sanctions and restrictive measures within the context of combating the financing of terrorism.

Introduction of international accounting standards for companies

"Loi du 10 décembre 2010 relative à l'introduction des normes comptables internationales pour les entreprises (…) » published on December 17th, 2010.

Banks and insurance companies already had the option of preparing their financial statements according to international accounting standards (IFRS). From the entering into force of this act, commercial companies, European Economic Interest Groupings (EEIG), economic interest groupings as well as tradesmen are given the same option.

IFRS is not mandatory, except for the consolidated statements of companies listed on an EU regulated market.

Establishment Act

An overhaul of the establishment legislation will come into force. It affects, in particular, the access to different professions such as craftsman, tradesman, industrialist and a number of liberal professions among which, “experts-comptables”.

Transposition of the “Services” Directive

Luxembourg is also aiming at finalizing the transposition of the “Services” Directive by detailing some additional measures. Different bills are currently ongoing in this respect.

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The Netherlands

Recent developments in professional affairs policy, legislation, and case law
The Netherlands, September 2011

1. Anti-money laundering

1.1. Evaluation by the FATF

The Netherlands has been evaluated by the Financial Action Taskforce (FATF). The results of this evaluation are contained in its report dated February 25, 2011. A copy is attached to this memorandum. Some of the key findings of the FATF are:

1. Indicators suggest that the Netherlands is susceptible to money laundering, because of its large financial center, openness to trade, and the sheer volume of proceeds from crime.

2. The Netherlands has criminalized money laundering in line with the requirements under the Vienna and Palermo Conventions. The Criminal Code does not provide for the autonomous offense of 'terrorism financing', but criminalizes such conduct based on the offense of 'preparation to commit a serious crime' and 'participation in a terrorist organization'. Discussions held with various different law enforcement authorities have made clear that not having an autonomous terrorism financing offense negatively impacts the effective investigation of terrorism financing activities.

3. The Dutch Financial Intelligence Unit (FIU) is one the founding members of the Egmont Group and its professionalism has long been highly respected, both domestically and internationally. The delays in its reorganization as FIU-Netherlands have eroded its operational independence and affected its effectiveness. A new governance model was agreed in September 2010, but it is rather complex and should be streamlined by reducing the number of institutions to which the FIU is accountable and by simplifying the reporting lines.

4. Financial investigations use aggressive and effective approaches, resulting in a relatively high number of prosecutions for money laundering and other offences. However, to what extent the analytical work of the FIU has significantly contributed to investigations and prosecution of money laundering cases is unclear.

5. The Netherlands has long had a system of preventive measures in place. Although this legal framework is modern and comprehensive for both financial and non-financial institutions, in certain areas it falls short of international standards, for example, as regards the verification of beneficial owners and simplified due diligence.

6. The Anti-Money Laundering and Combating the Financing of Terrorism Law (AML/CFT) should be amended to improve the reporting regime, for example, by requiring the immediate reporting of suspicious transactions. Measures should also be taken to ensure quality reporting by all financial and non-financial institutions.

7. The Criminal Procedure Code (CPC) should be revised to enable the Netherlands to assist any foreign country in searching for and seizing evidence in money laundering cases, and to make money laundering an extraditable offense, regardless of the predicate offense involved. Statistics should be used to demonstrate that the AML/CFT legal framework has been implemented effectively.

8. The legal framework for customer due diligence is generally adequate, but a number of provisions remain problematic. These include: the definition of beneficial owner which, inter alia, does not include the person that can exercise ultimate effective control over a legal arrangement; the broad exemptions for specified low risk customers; treating all EU/European Economic Area (EEA) Member States and jurisdictions as well as certain other countries as a single risk category when determining certain low risk scenarios; the transitional regime envisaged by the WWFT in respect of existing customers, which relies on a de jure presumption of compliance with the CDD requirements, and the limited scope and enforceability of countermeasures in respect of countries that do not or inadequately apply the FATF Recommendations. Of particular concern is the requirement to verify the identity of the beneficial owner, which, along with the obligation to understand the ownership and control structure of the customer, is only applicable in high risk scenarios. Furthermore, there is no obligation for financial institutions to determine whether the beneficial owner of a customer is a politically exposed person.

1.2. National developments on anti-money laundering

1.2.1. Consultation on a new AML/CFT law

In June 2011, the Ministry of Finance issued a request for consultation among interested parties, including tax advisers, on proposed amendments to the AML/CFT law which, while similar to last year's consultation, also adopts some of the recommendations from the FATF evaluation. One of the amendments relevant for tax advisers is the redefinition of the term 'transaction'. This term plays a role in the identification of unusual transactions that will need to be reported. It has been proposed that 'transaction' be defined as an action or group of actions of which the party reporting the case has taken note within the context of providing a service to a client. This change is in response to a recent judgment by the Appeals Board for Trade and Industry (the highest court in the Netherlands for certain administrative law proceedings). On the basis of the legislative texts applicable at the time, the Appeals Board ruled that the obligation to report unusual transactions only arises if and when the unusual transaction relates to the professional or commercial service that is being provided.

It has also been proposed to tighten the definition of the term 'politically prominent person' (PPP) in terms of the length of the period during which a person qualifies as a

PPP. Under the current definition, a person who has not been active as a politically prominent person for at least one year no longer has to be qualified as a PPP. It has been proposed to extend that period to five years, on the grounds that a PPP who has resigned from office may still dispose of assets obtained through illegal activities more than one year after their resignation. since the moment of resignation. On basis of the FATF evaluation is an obligation for financial institutions has been proposed to determine whether a PPP is also an ultimate beneficial owner (UBO). Also it has been propose to apply the AML/CFT law not only to PPP's living outside the Netherlands but also to Dutch residents irrespective of their nationality. Further on the AML/CFT law will contain the obligation to investigate the origin of all the possessions of the PPP and not only the possessions involved in the business relationship of the transaction relevant for AML/CFT law purposes.
These changes will significantly increase the burden of identifying PPPs.

Two other relevant proposals are:

- Verification of the identity of a representative of a client (instead of at present only identification. Also it has to be determined whether the representative is duly authorised, for example on basis of the register of the chamber of commerce or by proxy;
- The reporting regime will also include a reporting obligation in case of insufficient client identification.

1.2.2. New supervisor for tax advisers, auditors, and legal counsel?

In April 2011, the Ministry of Justice proposed that the Dutch Revenue take over the role of AML/CFT supervisor for tax advisers, auditors, and legal counsel, which is currently held by the Ministry of Justice's Bureau Financial Supervision (BFT). The proposed change would enhance the supervision of compliance with AML/CFT law. The Dutch Association of Tax Advisers strongly opposes this proposal as the Dutch Revenue is not an independent body, which is one of the requirements for a supervisory authority, but on the contrary is regarded as opposing taxpayers and their advisers. Moreover, because the General Administrative Law Act grants the AML/CFT supervisor the right to carry out inspections of tax advisers, auditors, and legal counsel, this change would jeopardize the informal right of non-disclosure which tax advisers can invoke against the Dutch Revenue.

2. Horizontal monitoring

The process of horizontal monitoring launched by the Dutch Revenue several years ago has been further expanded in 2011. To date, the Dutch Revenue has concluded a large number of covenants with large taxpayers, branch organizations, tax advisers, and professional tax advisory organizations, lower governmental organizations (provinces and municipalities), and other organizations. In addition, the Dutch Revenue has also concluded covenants with other central governmental bodies with regard to joint advocacy of regulations and the mutual exchange of information.

The Dutch Revenue has published guidelines for tax advisers and auditors on the application of horizontal monitoring for small and medium-sized businesses. The following basic assumptions apply:

- Collaboration is based on mutual trust, understanding, and transparency (i.e. conduct);
- The collaboration is governed by agreements on, for example, mutual contacts, evaluation, etc.;
- In respect of tax issues which could result in a difference of opinion, the parties will inform each other in advance of their position;
- A lesser form of horizontal monitoring will take place retroactively. During the period that the covenant is valid, monitoring will take place on the basis of a six-step procedure (*metatoezicht*) (see below) ;
- The tax adviser has a professional infrastructure in place to ensure the quality of the organization and the services it provides;
- The tax adviser is able to ensure the quality of its services by way of periodic reviews;
- A tax adviser affiliated with a professional organization can place part of the quality assurance with the professional organization;
- The Dutch Revenue will only conclude covenants with tax advisers in respect of personal income tax, corporate income tax, payroll tax and social security contributions, and VAT;
- Rights and obligations pursuant to laws and regulations will apply in full.

In principle, the abovementioned *metatoezicht* takes place at the level of the tax adviser. It is divided into six steps/key activities:

1. covenant discussion and the conclusion of a covenant;
2. registration and assessment of the covenant;
3. prior consultation;
4. filing and processing of covenant returns;
5. random checks of tax returns;
6. monitoring and evaluation of the covenant.

It is envisaged that horizontal monitoring will be extended in the future and will significantly affect the work and role of tax advisers.

3. Proposed legislation

The new tax legislation proposed for 2012 mentions two relevant changes:

- a proposal for public hearings in tax courts;
- an increase in court fees to bring them to a break-even level.

Regarding the proposal for public hearings in tax courts, the Ministry of Justice initiated an internet consultation in April 2011. Currently, hearings in Dutch tax courts are not open to the public and rulings are published anonymously. The Dutch Association of Tax Advisers strongly opposes this proposal. It argues that, contrary to the situation in other areas of law, the taxpayer is an inescapable part of the judicial process as far as taxation is concerned. In criminal and civil proceedings, the taxpayer can exercise a certain degree of control over its participation. Because a taxpayer is generally obliged to pay tax, it has no option other than to legally challenge such tax if it does not agree with it. In addition, the tax law dimension is different: private – government. In this respect, criminal law is of another dimension, despite the private – government relationship. The Dutch Association of Tax Advisers considers the basic principle of anonymity in tax proceedings to be paramount. The taxpayer, in deciding whether or not to challenge a tax assessment, must be able to rely on the fact that its privacy will be respected. If a taxpayer chooses not to instigate legal proceedings because the court hearing was public, this would seriously damage the proper administration of justice, which is contrary to the basic principle of legal protection laid down in Article 6 European Convention on Human Rights (ECHR).

Regarding the proposed increase in court fees to bring them to a break-even level, the Ministry of Justice has asked relevant professional organizations what their opinion is on this issue. The Dutch Association of Tax Advisers strongly opposes this proposal. It considers that the increase would act as a disincentive to instigate legal proceedings. Case law has ruled that this measure may be contrary to Article 6 ECHR.

4. Relevant criminal case law

In its judgment of July 7, 2011, the Higher Tax Court of Amsterdam ruled on the position and responsibilities of a Dutch tax adviser who was suspected of tax fraud together with his client. The Court ruled that where a tax adviser has evidence which he intends to use to support the position taken against the Dutch Revenue, such action cannot be regarded as a defensible position if the tax adviser, taking into account the professionalism that can be expected of him, after properly researching the facts known to him, or that should have been known to him, began to reasonably doubt the validity of the position to such an extent that he could not accept that position as correct. The Court further ruled that the facts available to the tax advisor should, after proper research, have caused him to seriously question the validity of his client's position. Furthermore, the tax adviser did not make his intentions clear in his letter to the Dutch Revenue.

Amstelveen, September 24, 2011
Dutch Association of Tax Advisers (*de Nederlandse Orde van Belastingadviseurs*)
Dick Barmentlo

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UNITED KINGDOM

National report on recent developments in professional affairs

***The Chartered Institute of Taxation* (CIOT)**

1. Her Majesty's Revenue and Custom's (HMRC) Agents' Strategy

In its Agents' Strategy HMRC proposes a number of changes in the way in which it works with tax agents. These include:

- A system of enrolment for professional tax agents;
- A 'self-serve' facility for enrolled agents with direct access to HMRC systems online;
- Agent self-authorisation;
- Ability to see the full range of clients' payments and liabilities on HMRC systems;
- Ability to amend clients' tax codes; and
- HMRC forming an 'agent view' which will determine how HMRC interacts with the agent.

Many aspects of the proposed Strategy are welcome but the CIOT considers there is still much work to be done to build in appropriate safeguards. It has substantial concerns about the detail over issues including security, costs and IT systems, together with how the Third Sector and unrepresented will fit into any new system. The first stage of the consultation process closes on 16 September but the CIOT and other professional bodies are continuing in talks with HMRC. The CIOT/ATT joint submission is available at http://www.tax.org.uk/tax-policy/public-submissions/2011/TAS_CIOT_ATT.htm?WBCMODE=PresentationPublished.rss

2. Professional conduct in relation to Taxation

Professional Conduct in relation to taxation is guidance concerning the relationship between the tax adviser, the client and the tax authorities. It was written and adopted by seven major tax and accounting professional bodies in the UK. HMRC reviewed it before publication. It covers issues such as:

- what to do if a client refuses to make a full disclosure to HMRC;
- when client confidentiality can be overruled;
- the need or otherwise to audit or verify figures in a tax return;
- reliance on HMRC rulings and clearances.

3. Anti money laundering (AML) - review of the Money Laundering Regulations 2007 (MLR)

HM Treasury issued a consultation document with proposals for the reform of the MLR. This followed a review in 2009. The main proposals which could potentially affect tax advisers are

- the introduction of a de minimis limit of €15000. Businesses with a turnover of less than €15000 would not have to comply with the MLR but would still have to comply with the Proceeds of Crime Act which contains the predicate money laundering offences and the requirement to report knowledge or suspicion of money laundering.
- removal of criminal sanctions for breach of MLR. There is a concern that the threat of a criminal record for failing to comply has compromised the risk based approach. If accepted the Supervisory Authorities (which includes CIOT and ICAEW) would be responsible for enforcing compliance with MLR by their members.
- a member of a professional body recognised as a Supervisory Authority in MLR would be able to rely on the Customer Due Diligence carried out by another member of a professional body Supervisory Authority (subject to the usual consents). Currently, for historical reasons reliance is restricted to certain legal and accounting professional bodies.

The outcome of the consultation should be known later this year.

4. Bribery Act

The Bribery Act 2010 ('the Act') was introduced to update and enhance UK law on bribery, including foreign bribery, and came into force on 1 July 2011. The Act:

- established two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage and a discrete offence of bribery of a foreign public official;
- created a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it will be a defence if the organisation has adequate procedures in place to prevent bribery);
- required the UK government to publish guidance about procedures that relevant commercial organisations can put in place to prevent bribery on their behalf.

The Act covers both UK companies operating at home and abroad as well as overseas companies with a presence in the UK. Penalties on conviction of a bribery offence have increased to up to ten years' imprisonment and/or an unlimited fine for an individual; or an unlimited fine for a company. Directors convicted of bribery offences are also likely to be disqualified from acting as directors for significant periods.

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UNITED KINGDOM

National report on recent developments in professional affairs

The Institute of Indirect Taxation (IIT)

It has been a fairly uneventful year in the UK indirect tax world. We had a general election, a new government and three budgets in 2010 – one in March by the outgoing government, one in June by the new, and the main budget in October – and the normal single ne in March 2011. However between all of them the only major indirect tax change was an increase in the rate of VAT to 20% from 17.5%.

There were two major consultations, the European Commission Green Paper on the future of VAT and a UK consultation on Establishing the Future Relationship between the Tax Agent Community and HMRC, both of which took up a great deal of time in framing a response. The latter makes three main proposals: the enrolment of agents with HMRC, limited access by agents to the HMRC computer system and maintaining and evaluation of agents' performance. The last is clearly fairly controversial, but there are indications that HMRC may be prepared to work with the professional bodies where they have concerns about the performance of one of their members.

There have been various initiatives to tackle fraud, including VAT fraud. These are now increased penalties where evaded funds are moved overseas; a disclosure initiative for evaded funds held in Liechtenstein and a recently negotiated (but not yet published) one for such funds held in Switzerland; the setting up of a number of task forces to target evasion by small businesses in specific trades carried on in a limited geographic area; and a disclosure opportunity for businesses that are registered with HMRC for direct taxes but not for VAT (and which ought to be VAT registered).

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