

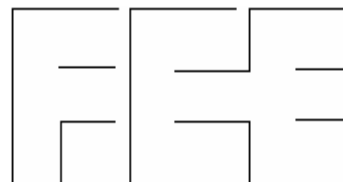
Date
15 November 2007

Le Président

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des Experts
Comptables
Européens
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By e-mail: Chris.Davidson@hmrc.gsi.gov.uk
cc David Butler david.butler@oecd.org

Dear Mr. Davidson,

Re: OECD Tax Intermediaries Study – Working Papers 1 to 6

FEE (Fédération des Experts Comptables Européens) is the representative organisation for the accountancy profession in Europe. FEE's membership consists of 44 professional institutes of accountants from 32 countries, which represent more than 500,000 accountants in Europe.

FEE has considered the following Working Papers published on the OECD website in connection to the OECD Tax Intermediaries Study:

Working Paper 1: How the study team is working
Working Paper 2: Draft framework for the report
Working Paper 3: Overview – the emerging direction of the study
Working Paper 4: Placing Risk Management and the Enhanced Relationship in context
Working Paper 5: Risk Management
Working Paper 6: The Enhanced Relationship

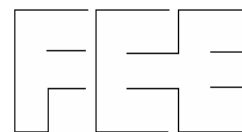
We are aware that the OECD study team produced five further draft papers¹ which are, however, not published on the OECD website. We would welcome the opportunity to comment on these additional papers when they are published.

FEE appreciates the overall aim of the study to enhance the tripartite relationship between revenue bodies, taxpayers and tax intermediaries.

We have however identified some particular concerns on behalf of the accountancy profession, which we have set out in this letter.

These concerns mainly relate to the idea of a risk assessment of tax intermediaries, an allegation of undesirable motives on the part of the accountancy profession and the role of tax intermediaries in the "enhanced relationship".

¹ See ICAEW TAXREP 64/07 – Paper submitted on 1 October 2007 by the ICAEW tax faculty to the OECD tax intermediaries study team, <http://www.icaew.com/index.cfm?route=151776>.



1. The accountancy profession

The OECD Tax Intermediary Study examines the role of tax intermediaries within tax systems. Tax intermediaries are defined to include accounting firms and other professionals.²

In our comments on Working Papers 1 to 6 we refer to the accountancy profession we represent in instances where the term tax intermediary is used in the OECD Working Papers.

2. Risk assessment

In Working Paper 5 the OECD study team provides ideas for a risk assessment of taxpayers and suggests that revenue bodies could make use of national and international risk profiles of tax intermediaries for generating taxpayers' risk profiles.

From our point of view, risk assessment of the accountancy profession is not appropriate at all because there is no chance to set objective criteria for risk profiling. Failures in risk assessment would have potentially disastrous effects on the proper functioning of the market for the profession.

a) Requirement of risk assessment

Risk assessment of the accountancy profession is redundant, since the accountancy profession is a regulated profession and already bound to high legal, professional and ethical standards.

First of all, accountants have to observe the applicable commercial and tax law. In relation to larger incorporated clients the task of the accountancy profession is to audit the financial statements of a taxpayer. In case these are not in accordance with commercial and tax law or relevant accounting standards, the accountant has to inform the taxpayer and request him to adjust the financial statements as appropriate. Where the taxpayer does not take the necessary action, the accountant has to qualify the audit certificate.

Furthermore, the accountancy profession has to observe the professional law of the country where they carry out their business and contravention is punished. For example, the accountancy profession has to assure independence and objectivity in providing assurance services, tax advice and other services.

Moreover, the accountancy profession is bound to the requirements set forth by regulators and those require extensive risk management procedures before accepting a client and while working for a client.

In addition, professional accountants must follow a code of ethics, and will generally follow the code of ethics established by IFAC³ and which will have been adopted by their national professional body. The code of ethics generally binds the accountants to high standards of integrity, objectivity, professional competence, diligence, confidentiality and professional behaviour.

² Working Paper 2, Section II, No. 6b.

³ See IFAC code of ethics, <http://www.ifac.org/Members/Pubs-Details.tml?PubID=10456070402914590&Category=Ethics>.

b) Criteria and consequences

First of all, it seems to be impossible to set objective criteria for a risk profile of the accountancy profession, since the scale of the firms providing accountancy service goes from single practitioners via small and medium sized practices to the “Big Four”. Any risk assessment has to take into account a number of factors, like the size of a firm and of its clients, the characters of the service or advice provided, the degree of specialisation of the firm and so on. Therefore, any assessable model for risk assessment would be very complex and difficult to implement in a practicable way.

Furthermore – even if any criteria for an objective risk assessment could be found – risk assessment would be a system, which is error-prone. It would be carried out by inspectors of the revenue body with the support of computer programs and may even be implemented cross-border – already three possible sources for failures resulting from human behaviour, the use of Information Technologies and foreign influence. Failures in the risk assessment or any intended or unintended publication of the classification of a tax intermediary would affect the reputation of the respective representative of the accountancy profession and could have disastrous effects on his business. Therefore, such failures would also affect all of his clients.

Additionally, implementing any risk assessment procedure would lead to an increased workload and to high costs for the revenue body as well as for the accountancy profession and the taxpayer. We assume that risk assessment might fail to produce higher revenues than the absence of a risk assessment procedure and therefore lead to economic losses on all sides.

3. Allegation of undesirable motives

In the Working Papers the OECD study team assumes that tax intermediaries pose risks in developing “unacceptable tax minimization arrangements”⁴. Furthermore, in Working Paper 5 it is stated that they may “design, identify or provide favourable opinions on tax planning options leading to unintended and unexpected tax revenue consequences and/or act as advocates for their clients where there is disagreement over the interpretation of the law”⁵.

Since these statements are not defined further in the Working Papers, the OECD study team seems – from our point of view – to allege that tax intermediaries may have undesirable motives and may assist their clients to create major risks to the stability of the tax system.

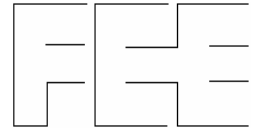
First of all, it needs to be stressed and repeated that the accountancy profession is bound to high legal, professional and ethical standards (see paragraph 2.a above) and has no intention to assist any client in tax evasion. Assistance in tax fraud is punished as a criminal offence in most countries.

Furthermore, tax minimisation arrangements and tax planning are legal means to minimise the taxpayer’s tax liability and have to be strictly differentiated from tax evasion.

Whether the tax minimisation arrangement and tax planning is unacceptable for the revenue body or leads to unexpected tax revenue consequences is not a risk produced by the accountancy profession but results from inaccuracies or loopholes in the law issued by the legislative body. Revenue body, tax intermediaries and taxpayers have to live with it.

⁴ Working Paper 2, Section II, no. 6c and Section IV, no. 10.

⁵ Section 2, no. 22.



The accountancy profession, in particular, has the contractual relationship only with the respective client – the taxpayer – and has to provide the client with appropriate and professional advice taking into account the law as well as administrative guidelines interpreting that law and the decisions of the courts.

Administrative guidelines, however, are issued by the executive and are only binding for the revenue body but not for the other parties within the tripartite relationship. Indeed, the rule of law is a general constitutional principle in all jurisdictions. Therefore, the profession is of course allowed to give advice deviating from administrative guidelines where appropriate. And there are numerous cases where decisions of Tax Courts interpret the law in a way different from the interpretation given in administrative guidelines and where the revenue body had to reconsider its position.

Moreover, the taxpayer is the person who is responsible for his tax affairs in relation to the revenue body. Only the taxpayer can decide which kind of interpretation of the law he wants to follow for his own tax affairs. The accountancy profession can only explain all possible views to the taxpayer, but not make the decision for him.

4. Disclosure

In Working Paper 6 the OECD study team promotes an “enhanced relationship” between revenue bodies, taxpayers and tax intermediaries.

We welcome the approach that the revenue body intends to enhance their commercial awareness, impartiality, proportionality, disclosure, transparency and responsiveness.

However, we have concerns about the role of tax intermediaries in the enhanced relationship as far as the disclosure is concerned and where tax intermediaries are invited to influence taxpayer behaviour⁶.

We would like to stress again that the accountancy profession is required to act in the best interests of their clients and not those of the revenue body. The accountancy profession can only inform the client about his own obligation to co-operate with the revenue body, provided that such obligation of the taxpayer for disclosure has a legal basis within the law of the respective country. In addition, the accountancy profession may be required to report some matters to the appropriate regulatory body in accordance with the relevant Money Laundering Regulations.

We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,

Jacques Potdevin
President

Ref: DTA/SS/PW-MH/JP

⁶ Working Paper 6, no. 47 and no. 52.