

## **International tax services and professional liability**

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### **Using the example of Germany**

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Rechtsanwalt

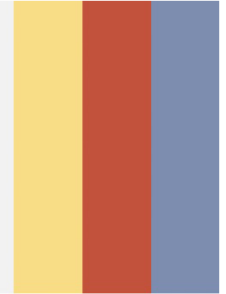
Wirtschaftsprüfer

Steuerberater

Fachanwalt für Steuerrecht

Wirtschaftsmediator

**Warsaw 21. April 2016**



- I. Tax advising over the border**
  - 1. Tax adviser**
  - 2. National activity**
  - 3. Cross-border activities**
  - 4. Violations**
  
- II. Civil liability
  1. Possible claimants
  2. Range of responsibilities
  3. Breach of duty
  4. Causality, Damage, Imputability
  5. Liability in tort
  6. Contributory negligence
  
- III. Responsibility for criminal offence
  
- IV. Limitation of claim
  1. statutory limitation
  2. contractual limitation
  
- V. Liability limitation
  
- VI. Insurability
  
- VII. Dos and Donts



## **I. Tax advising over the border**

### 1. Defining “tax adviser”

“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.”

part of legal service  
interdiction/permission

Legal service risky business

Tax service risky (ad-)venture

# **SUPERMAN** TAX ADVISER



Computer  
Law  
Intelligence  
Energy  
Effort



## 2. National activity

Worldwide role

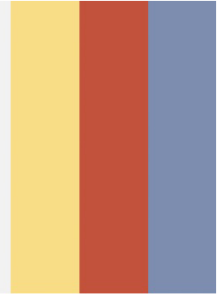
National qualification requirements in EU

academic training

practical training

professional exam

Reservation of authorization for tax advising



### 3. Cross border activities

#### a) appearances

##### ⇒ Outbound advising into other states

advice to non-residents in the home country of TA

- national law

- foreign law

⇒ advice to non-/residents in national/foreign law by the outside TA physically provided abroad

⇒ mixed case: telecommunication delivering advice from home country TA

#### b) EU

temporary/occasional vs. permanent

allowed vs. not allowed

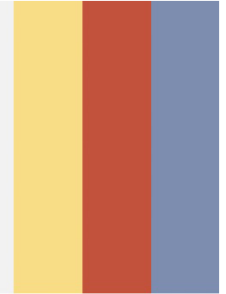
c) Tax consultation from abroad - not allowed

#### 4. Violations

- prohibited
- rejection
- punishable
- liabilities
- loss of insurance
- loss of remuneration

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## **II. Civil liability**

### 1. Possible claimants

#### a) Mandator

- sole proprietor
- business partnership
- corporate enterprise

#### b) Non-mandators

- partners
- shareholders
- ex-partners
- obligees of participators
- acquirors, their credit granters
- insolvency administrators
- directors
- banks

## 2. Range of responsibilities

### a) in the item of mandate

**Jurisdiction:** The tax consultant is obliged to advise the client in a comprehensive manner without having been asked and to inform about all tax-related details and their consequences.

**Risks:**

- burden of proof at tax consultant
- need of instruction is to assume
- under instruction of the safest way

### b) outside mandate

**Jurisdiction:** The tax consultant has to safeguard the client from damage, even inform outside the mandate

**Risks:**

- extensive
- unasked
- presenting the safest way
- in assumed need of instruction

### c) Limits

### 3. Breach of duty

Contractual basis for claim

- a) breach of contract obligations
- b) special information contract
- c) quasi contractual liability
- d) obligation of information during the crisis of mandator
- e) thirds - secondary obligations
- f) statutory basis for claim  
special legislations
- g) culpability  
Germany: liability for presumed fault

4. Causality, Damage, Imputability

5. Liability in tort

Risk: no limitation of liability

6. Contributory negligence

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**III. Responsibility for criminal offence**

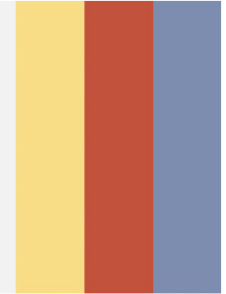
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### **III. Responsibility for criminal offence**

- Complicity of tax fraud
- Complicity in bankruptcy
- Criminal fraud, credit fraud
- Infidelity fraud

Risks: - no limitation of liability

- no insurance,
- liability to client,
- liability directly to tax authorities and to third parties

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#### **IV. Limitation of claim**

1. statutory limitation
2. contractual limitation



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## **V. Liability limitation**

- a) mitigating by legal form
- b) general terms and conditions
- c) individual contract

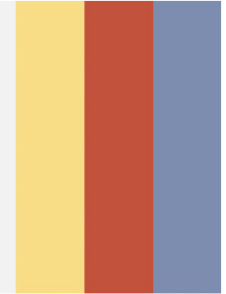
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## **VI. Insurability**

- a) Minimum amounts of liability insurance
- b) Not covered exclusions
- c) New partners
- d) Extra coverage
- e) Nerves, uninsurable, invaluable

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## VII. Dos and Donts

- Consider the involvement of third persons.
  - Try to exclude third-party-liability in terms.
  - Think of the possible replacing of the client by an insolvency administrator.
  - Don't be too close to the bank of your client.
  - Never act as an accomplice of your client.
  - Do not delete your files too hastily.
  - Avoid personal liability. Be well insured.
  - Have a liability limited legal form.
  - Look for extra coverage for extra risks.
  - Have a good insurance.
  - Never advise in an other countries tax law.
  - And when you do so recommend a locally qualified tax advisor.
  - Avoid the liability for subcontractors,
  - Assist and don't give actual advice.
  - Take someone out of your professional network.
- Watch out for a specialized lawyer and litigator, with experience, knowledge in tax law and process of consulting, best all in one person!



*Coram iudice et in alto mare in manu dei soli sumus*  
Before the court and on the high seas one is in God's hands

**Many thanks for your attention!**

**Dr. Thomas Ditges**

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