

By PwC Deutschland | 01 October 2015

German restrictions on tax consultancy excessive?

An ECJ advocate general has suggested the court hold that the German insistence on tax consultancy businesses being led by individuals with German professional qualifications to be excessive in view of the legitimate interests of the state and of clients in the availability of accurate and appropriate professional advice.

A former German tax consultant (he lost his professional qualification in 2000) resident in Belgium together with a professionally unqualified associate resident in Germany set up a tax consulting company under English law operating through Dutch and Belgian branches. The two partners claimed to be offering consulting services from Holland, an unregulated environment, on German tax issues for German clients. A German tax office refused to accept tax returns prepared with their assistance and they claimed this refusal to be an unjustified restriction on their freedom to provide services from one member state to clients in another. This service provision was legitimate in Holland and could not be restricted by German professional rules.

Despite considerable uncertainties on the facts of the case, including, in particular, the place and method of operating, the responsible advocate general has suggested the court hold in favour of the service providers. His view is based on the contention that although the German restrictions serve a legitimate purpose, they go beyond the extent necessary to achieve their object. In particular, they insist upon management of consultancy practices regularly operating in Germany by holders of German professional qualifications and upon prior registration by the holders of foreign qualifications wishing to operate occasionally in Germany. There is thus little or no scope for those who do not meet the formal German requirements to demonstrate their competence in other ways. However, the advocate general also points to the number of organisations and individuals permitted to offer tax advice despite lack of professional qualifications. The list includes trade associations, actuaries, employers, carriers, patent lawyers and foreign banks. However, the advocate general does not mention that those on this list are not permitted to offer general tax consultancy, but are only able to apply the rules for those taxes (such as employee withholding taxes) for which they are directly responsible. Possibly, this omission could be seen as weakening his argument.

The ECJ case reference is C-342/14 *X Steuerberatungsgesellschaft* opinion of October 1, 2015.

Keywords

professional qualification, tax consultancy