LAW FIRMS MAY CONSIDER CUTTING TAX TEAMS DUE TO REPUTATIONAL RISK

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Fears that tax-related legal advice could be interpreted as tax evasion, with the result that law firms could suffer irreparable damage to their reputation

Concerns are growing among some lawyers in Spain and Portugal about the financial and reputational risks associated with providing tax advice. With a number of high-profile tax cases receiving widespread media coverage – such as those involving Real Madrid star Cristiano Ronaldo and Barcelona player Lionel Messi – there are fears that tax-related advice provided by law firms could potentially be interpreted as tax evasion, for which lawyers could potentially be held liable.
One tax partner at a leading law firm in Spain admits that being a tax lawyer is a "risky job". He acknowledges that law firms are potentially liable for the tax advice they provide and hints that having a tax department could ultimately be too great a risk for law firms. "Firms may in future have to make a decision about the risk of having tax departments," he says.
The idea that law firms may ultimately consider hiving off their tax departments because the associated risk is too great is shared by a number of tax lawyers. One leading tax partner at a major

international firm says some firms may be considering whether they are "more exposed by having a tax department, and may wonder whether they would be better off without a tax group". Some tax lawyers have also raised concerns that firms will stop investing in their tax teams because of the associated liabilities.

However, there is another view that law firms run a greater risk by scrapping their tax departments in that they may subsequently provide clients with inadequate advice that may be interpreted as tax evasion. "Having advice interpreted as tax evasion by the authorities is theoretically as possible as another scenario, in which, in the absence of tax capacity, the advice provided gives rise to inadvertent tax evasion," says Eduardo Gracia, Madrid-based partner at Ashurst and the firm's head of tax for EMEA & the US.

Tiago Marreiros Moreira, partner at Vieira de Almeida in Lisbon, acknowledges that law firms face the same risks as other professional services firms "if the advice provided crosses certain lines".

Although lawyers say there have been very few cases of law firms being sued for unlawful practices relating to tax fraud, it is acknowledged, as tax administrations become more active, that the "naming and shaming" of companies and their tax advisors is unavoidable. However, Fernando Castro Silva, head of tax at Garrigues in Lisbon, says this does "not mean there is a growing movement in tax evasion". Instead, he argues tax regulations often lack clarity and consequently this can blur the "line between tax minimalisation and evasion". Therefore, there needs to be more clarity about the difference between tax planning and tax evasion, argues Pedro Pais de Almeida, partner at Abreu Advogados. Castro Silva adds: "The shift in clients' tax profiles reflects the positioning of tax affairs as clearly more than tax compliance, with potential effects on corporate reputation and brand."

Public misconception

Fernando Castro Silva, Garrigues

In terms of how to minimise the risk for law firms, lawyers say tax must be treated as a core area rather than a specialised field. This requires having a "limited but highly-skilled" tax team in place, says Gracia. It also means law firms need controls in place that clearly define rules of conduct for tax lawyers, sources say. In addition, with the distinction between legal and illegal tax arrangements increasingly subtle – and often misunderstood by the general public, according to some lawyers – there is a greater need for law firms to assess and identify risks associated with providing tax advice. Gracia says the provision of tax advice has changed in that it is "more about avoiding risks for clients and defending them [in disputes with tax authorities], than it is about designing creative structures, which on many occasions were not substantiated in practice".

Tax lawyers say law firms must not stop providing independent tax advice and should continue investing in their tax departments. "Tax work is one of the most profitable areas in the firm," says Ashurst's Gracia. A lack of investment in its tax department would be worse for a firm than not having one, according to Pais de Almedia: "It would be best to close it, otherwise it increases the risks involved in tax advice." Sonia Velasco, partner at Cuatrecasas, Gonçalves Pereira in Barcelona sums it up thus: "The role of our tax department is to minimise risks for our clients and not to create new risks for them."