

# General terms and conditions for German tax advisors (*Steuerberater, Steuerbevollmächtigte*) and firms of tax advisors (*Steuerberatungsgesellschaften*)

as of November 2016

These "general terms and conditions" shall govern contracts between tax advisors (*Steuerberater, Steuerbevollmächtigte*) as well as firms of tax advisors (*Steuerberatungsgesellschaften*) (hereinafter collectively referred to as the 'Tax Advisors', and each of them a 'Tax Advisor') and their clients (*Auftraggeber*), unless otherwise expressly agreed in text form (*Textform*) or prescribed by law.

## 1. Scope and execution of the engagement

- (1) The scope of the services to be rendered by the Tax Advisor shall be governed by the specific engagement. The engagement shall be executed in accordance with the principles of proper professional practice and in compliance with the relevant rules of professional conduct and professional obligations (cf. German Act Regulating the Profession of Tax Advisors [*Steuerberatungsgesetz – StBerG*], German Professional Code of Conduct for Tax Advisors [*Berufsordnung der Steuerberater – BOSTB*]).
- (2) Foreign law shall only be taken into account if this has been expressly agreed in text form.
- (3) In the event that the legal position changes after a matter has been conclusively completed, the Tax Advisor shall not be under any obligation to alert the client to such change or the resulting implications.
- (4) The review of the documents and figures provided to the Tax Advisor, in particular the accounts and balance sheet, with regard to accuracy, completeness and conformity with applicable rules shall not form part of the engagement unless otherwise expressly agreed in text form. The Tax Advisor will assume that the information provided by the client, in particular the figures, is correct and will use it as a basis for his/her work. To the extent that he/she detects any evident inaccuracies, the Tax Advisor shall be obliged to point them out.
- (5) The engagement shall not be deemed to constitute an authorization to represent the client before public authorities, courts and other bodies. Such authorization would need to be granted separately. Where, owing to the client's absence, it proves impossible to coordinate with him/her as to the filing of legal remedies, the Tax Advisor shall be deemed, in case of doubt, to be both authorized and obliged to take action with a view to meeting a deadline.

## 2. Duty of confidentiality

- (1) In accordance with the law, the Tax Advisor shall be under a duty to maintain confidentiality with regard to all facts that have come to his/her attention in connection with the execution of the engagement unless the client releases him/her from this duty. The duty of confidentiality shall continue even beyond a termination of the contractual relationship. The duty of confidentiality shall apply, to the same extent, to the Tax Advisor's staff.
- (2) The duty of confidentiality shall not apply to the extent that a disclosure is necessary in order to protect the Tax Advisor's legitimate interests. Furthermore, the Tax Advisor is hereby released from the duty of confidentiality to the extent that, under the terms and conditions of his/her professional liability insurance, he/she has a duty to provide information and cooperate.
- (3) The foregoing shall not affect any statutory rights to refuse to provide information or to refuse to testify under sect. 102 German General Tax Code (*Abgabenordnung – AO*), sect. 53 German Code of Criminal Procedure (*Strafprozessordnung – StPO*) and sect. 383 German Code of Civil Procedure (*Zivilprozessordnung – ZPO*).
- (4) The Tax Advisor is hereby released from the duty of confidentiality to the extent that (i) this is necessary for purposes of carrying out a certification audit in the Tax Advisor's firm and (ii) the individuals who are acting in this regard, for their part, have been instructed as to their duty of confidentiality. The client hereby agrees that the person carrying out the certification/audit may inspect the client file which was created and is being maintained by the Tax Advisor.

## 3. Involvement of third parties

The Tax Advisor shall be entitled to involve staff, third-party experts as well as data-processing companies for purposes of executing of the engagement. When bringing in third-party experts and data-processing companies, the Tax Advisor shall ensure that they give an undertaking to maintain confidentiality in accordance with clause 2(1) above. Under no circumstances shall the Tax Advisor bear any liability in relation to the services provided by anyone brought in; for purposes of liability law, those brought in shall not constitute 'persons employed in performing a contractual obligation for whom the Tax Advisor is vicariously liable' (*Erfüllungshelfen*) (hereinafter the 'vicarious agents'). Where the Tax Advisor has recommended the involvement of a third party whom the Tax Advisor has identified by name, the Tax Advisor shall only be liable for his/her having duly selected the person who was brought in.

## 3a. Electronic communication, data protection

- (1) In the context of the engagements, the Tax Advisor shall be entitled to electronically collect personal data of the client and the client's staff and to process such data in an automated file or to transmit such data to a service computer center for further processing of the data related to the engagement.
- (2) In order to satisfy his/her obligations under the German Federal Data Protection Act (*Bundesdatenschutzgesetz – BDSG*), the Tax Advisor shall be entitled to appoint a data-protection officer. Unless this data-protection officer is already subject to a duty of confidentiality under clause 2(1) sent. 3 above, the Tax Advisor shall ensure that the data-protection officer, upon taking up his/her activity, shall undertake to maintain data secrecy.
- (3) By providing a fax number or an email address to the Tax Advisor, the client agrees — until further notice or until express instruction to the contrary — to the Tax Advisor using these contact details to send any information related to the engagement to the client without any restrictions. The client hereby warrants that only he/she or individuals mandated by him/her has/have access to the receiving/sending device and/or the email account and that he/she will check the same for incoming messages on a regular basis. The client shall be obliged to notify the Tax Advisor of any restrictions, e.g. if the receiving/sending device and/or the email account is only intermittently checked for incoming messages or if transmissions are desired upon prior notice only. The Tax Advisor does not accept any liability for the security of any data and information transmitted via unencrypted emails nor shall he/she be liable for any loss/damage suffered by the client in this respect. To the extent that the client possesses the technical means for the use of signature procedures and encryption procedures and wishes that they be used, he/she shall notify the Tax Advisor accordingly in a timely manner; any resulting costs incurred by the Tax Advisor (e.g. for acquiring and setting up any necessary software/hardware) shall be borne by the client.

## 4. Remedying of deficiencies

- (1) The client shall have a right to demand that any deficiencies be remedied. The Tax Advisor must be afforded an opportunity to take remedial action. If and to the extent that the engagement constitutes a contract for services (*Dienstvertrag*) within the meaning of sects. 611, 675 German Civil Code (*Bürgerliches Gesetzbuch – BGB*), the client may refuse any remedial action by the Tax Advisor if the engagement is terminated by the client and the deficiency is detected only after the engagement has been validly terminated.
- (2) Should the Tax Advisor fail to remedy the asserted deficiencies within a reasonable period or refuse to remedy the deficiencies, then the client may, at the Tax Advisor's expense, have the deficiencies remedied by another Tax Advisor and/or — at the client's choice — demand a reduction of the fees or rescission of the contract.
- (3) The Tax Advisor may at any time, also vis-à-vis third parties, correct obvious inaccuracies (e.g. clerical errors, or errors in calculation). Other deficiencies may be corrected by the Tax Advisor vis-à-vis third parties subject to the client's consent. Such consent shall not be required where the Tax Advisor's legitimate interests take precedence over the client's interests.

## 5. Liability

- (1) The liability of the Tax Advisor and his/her vicarious agents for any loss/damage resulting from one breach of duty or — in the context of a uniform injurious effect (*einheitliche Schadensfolge*) — from several breaches of duty on the occasion of executing an engagement shall be capped at EUR \_\_\_\_\_<sup>1)</sup> (in words: \_\_\_\_\_ euros). The limitation of liability shall apply in relation to negligence only; liability for intent shall not be subject to such limitation. Liability claims in relation to any loss/damage arising from injuries to life, body or health shall be excluded from this limitation of liability. The limitation of liability shall apply to the Tax Advisor's entire activity for the client, i.e. also, in particular, to an extension to the scope of the engagement; in this regard, there shall be no need for agreeing the limitation of liability again. The limitation of liability shall also apply in the case of the establishment of a joint practice (*Sozietät*)/partnership company (*Partnerschaft*) and assumption of the engagement by the joint practice/partnership company

1) Please insert amount as appropriate. In order to be able to take advantage of this provision, an amount of at least EUR 1 million must be specified, and the contractual amount insured must be at least EUR 1 million for the individual damage event; otherwise para. 1 needs to be deleted. Please also refer to the further comments contained in instruction leaflet no. 1001.



as well as for partners who join the joint practice/partnership company. Furthermore, the limitation of liability shall also apply vis-à-vis third parties to the extent that these fall within the scope of protection of the engagement; in this regard, sect. 334 German Civil Code is expressly not waived. Any agreements, contained in individual contracts, providing for a limitation of liability shall take precedence over this provision but — unless otherwise expressly stipulated — shall not affect the validity of this provision.

- (2) Provided there was a sufficiently high insurance cover in place, the limitation of liability shall apply retroactively from the beginning of the engagement or, as the case may be, from the point of taking out higher insurance cover. If the scope of the engagement is subsequently modified or expanded, then the limitation of liability shall also extend to these cases.

#### 6. Duties on the part of the client; client's failure to cooperate and client's default of acceptance

- (1) The client shall be obliged to cooperate to the extent that this is necessary in order for the engagement to be duly executed. In particular, he/she shall submit to the Tax Advisor, unprompted, a complete set of all documents necessary in order to execute the engagement; such submission shall occur in such a timely manner as to afford the Tax Advisor a reasonable processing time. The same shall apply with regard to briefings about all events and circumstances which may be of importance for purposes of executing the engagement. The client shall be obliged to take note of all written and oral communications issued by the Tax Advisor and to consult him/her when in doubt.
- (2) The client shall refrain from anything that may prejudice the independence of the Tax Advisor or the Tax Advisor's vicarious agents.
- (3) The client hereby undertakes to pass on the results of the Tax Advisor's work only with the Tax Advisor's consent unless the consent to such results being passed on to a specific third party already flows from the content of the engagement.
- (4) Should the Tax Advisor employ data-processing programs at the client's premises, then the client shall be obliged to comply with the instructions by the Tax Advisor with regard to installation and application of such programs. In addition, the client shall be obliged to only use the programs within the scope prescribed by the Tax Advisor, which shall also be the scope of use to which the client is entitled. The client must not disseminate the programs. The Tax Advisor shall remain the owner of the rights of use. The client shall refrain from anything which constitutes an obstacle to the exercise by the Tax Advisor of the rights of use with regard to the programs.
- (5) Should the client fail to comply with a duty to cooperate incumbent on him/her under clause 6(1)–(4) or as provided for elsewhere or be in default of acceptance in relation to the services tendered by the Tax Advisor, then the Tax Advisor shall have the right to terminate the contract without notice (cf. clause 9(3)). This shall not affect the Tax Advisor's claim to be compensated for the additional expenses incurred by him/her owing to the client's default or failure to cooperate as well as for any loss/damage caused, even in the event that the Tax Advisor opts not to exercise his/her right of termination.

#### 7. Copyright protection

The services rendered by the Tax Advisor constitute his/her intellectual property. They are protected by copyright. Beyond their intended use, work results may be passed on only upon prior written consent by the Tax Advisor.

#### 8. Fees, advance payment and offsetting

- (1) The Tax Advisor's fees (professional fees and reimbursement of out-of-pocket expenses) for his/her professional activity in accordance with sect. 33 German Act Regulating the Profession of Tax Advisors shall be determined pursuant to the German Regulation on Tax Advisors' Fees (*Steuerberatervergütungsverordnung – StBVV*). Fees above or below the statutory fees may be agreed in text form. Agreeing fees below the statutory fees is permissible in out-of-court matters only. Such lower fees must bear an adequate relation to the services, responsibility and liability risk of the Tax Advisor (sect. 4(3) German Regulation on Tax Advisors' Fees).
- (2) For activities not dealt with in the Regulation on Fees (e.g. sect. 57(3) nos. 2 and 3 German Act Regulating the Profession of Tax Advisors), the applicable fees shall be those agreed; otherwise, the fees determined by statute for such activity; or else the customary fees (sects. 612(2) and 632(2) German Civil Code).
- (3) Only claims that are undisputed or have been determined with final and absolute effect (*rechtskräftig*) may be set off against a fee claim of the Tax Advisor.
- (4) The Tax Advisor shall be entitled to request an advance payment for professional fees and out-of-pocket expenses already incurred or expected to be incurred. In the event that the requested advance payment is not made, the Tax Advisor may, upon prior notice, cease working for the client until the advance payment is received. Where a cessation of work may adversely affect the client, the Tax Advisor shall be obliged to notify the client, in a timely manner, of the Tax Advisor's intention to cease working.

#### 9. Termination of the contract

- (1) The contract shall terminate upon completion of the services, upon expiry of the agreed term, or by giving notice. The contract shall not terminate upon the client's death or upon the client becoming legally incapacitated or, in the case of a company, upon the company's dissolution.
- (2) If and to the extent that the contract constitutes a contract for services within the meaning of sects. 611, 675 German Civil Code, either party may terminate the contract for cause (*außerordentlich*) except in the case of a service relationship with fixed earnings (*Dienstverhältnis mit festen Bezügen*), sect. 627(1) German Civil Code; notice must be given in text form. Any deviation from the foregoing in individual cases shall require an agreement to be negotiated between the Tax Advisor and the client.
- (3) In order to prevent legal disadvantages for the client, upon termination of the contract by the Tax Advisor the Tax Advisor must, in any event, still take those actions which may reasonably be expected of him/her and which ought not to be postponed (e.g. application for the extension of a deadline which is about to expire).
- (4) The Tax Advisor shall be obliged to hand over to the client anything the Tax Advisor receives or has received for purposes of executing the engagement and anything the Tax Advisor obtains in the context of the management of the affairs of another (*Geschäftsbesorgung*). In addition, the Tax Advisor shall be obliged, upon request, to provide the client with a progress report and to render account for the Tax Advisor's activities.
- (5) Upon termination of the contract, the client must promptly hand over to the Tax Advisor the data-processing programs employed at the client's office for purposes of executing the engagement, including any copies created, as well as any other program documents, and/or delete them from the hard drive.
- (6) Upon termination of the engagement, the documents must be collected from the Tax Advisor.
- (7) In the event that the engagement terminates before it has been completed, the Tax Advisor's fee claim shall be governed by statute. Any deviation from the foregoing in individual cases shall require a separate agreement in text form.

#### 10. Storage, delivery and right of retention with regard to work results and documents

- (1) The Tax Advisor must store the client files for a period of ten years after the engagement has terminated. However, this obligation shall expire before the above period has elapsed if the Tax Advisor has asked the client to take receipt of the client files and the client has failed to comply with such request within six months of having received it.
- (2) 'Client files' within the meaning of para. 1 shall only include such documents as have been obtained by the Tax Advisor, on the occasion of his/her professional activity, from or for the client; by contrast, they shall not include the correspondence between the Tax Advisor and his/her client and the documents which the client has already received in the original or as a copy as well as the working papers produced for internal purposes (sect. 66(3) German Act Regulating the Profession of Tax Advisors).
- (3) At the request of the client, but no later than after termination of the engagement, the Tax Advisor shall hand over the client files to the client within a reasonable period. The Tax Advisor may create and retain copies or photocopies of documents which he/she returns to the client.
- (4) The Tax Advisor may refuse to hand over the client files until his/her fees and out-of-pocket expenses have been settled. This shall not apply to the extent that withholding the client files and the individual documents would be unreasonable under the circumstances (sect. 66(2) sent. 2 German Act Regulating the Profession of Tax Advisors).

#### 11. Miscellaneous

The engagement, its execution and the claims resulting therefrom shall be exclusively governed by German law. The place of performance shall be the client's place of residence unless he/she is a merchant (*Kaufmann*), legal person under public law, or special fund (*Sondervermögen*) under public law; otherwise, the place of performance shall be the professional establishment of the Tax Advisor. The Tax Advisor is — not — prepared to participate in dispute-resolution proceedings before a consumer conciliation body (sects. 36, 37 German Act on Alternative Dispute Resolution in Consumer Matters [*Gesetz über die alternative Streitbeilegung in Verbrauchersachen – VSBG*]).<sup>2)</sup>

#### 12. Validity in the event of partial nullity

Should individual provisions of these terms and conditions of engagement be or become invalid, then this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision which most closely reflects the intended objective.

2) Where it is desired for dispute-resolution proceedings to be carried out before the consumer conciliation body, delete the word 'not'. In this case, the relevant consumer conciliation body, along with its physical address and website, needs to be specified.