

# General Contractual Conditions for German Tax Advisers (Steuerberater, Steuerbevollmächtigte) and Tax Advising Companies with Declaration of Assent

as of December 2012

The following "General Contractual Conditions" apply to contracts between tax advisers and tax advising companies (hereinafter called "tax adviser") and their clients, unless otherwise expressly provided in writing or compulsorily required by law.

## 1. Scope and Execution of the Contract

- (1) The contract with the tax adviser determines the scope of his services. The contract is carried out according to the principles of normal practice of the profession in accordance with the relevant professional legal standards and obligations (StBerG – Act Regulating the Profession of Tax Advisers, BOSTB – Professional Code of Conduct for Tax Advisers).
- (2) The tax adviser needs to receive the complete range of documents and all clarifications. The verification of the documents and figures submitted with regard to accuracy, completeness and conformity with the relevant regulations, in particular of the bookkeeping and balance sheet, requires a specific written agreement to be part of the contract. The tax adviser will take the facts he received from the client, and in particular all transmitted figures, as a correct basis for his work. Should he become aware of any evident inaccuracies he is obliged to report them.
- (3) The contract does not represent a power of attorney for representation at government offices, courts and other places. This would require a special mandate. If the absence of the client prevents him and the tax adviser from reaching agreement on whether to file an appeal, the tax adviser is entitled and obliged, if in doubt, to take action before expiry of the deadline.

## 2. Obligation of Secrecy

- (1) As stipulated by law the tax adviser is obliged to maintain secrecy regarding all data brought to his knowledge during the carrying out of the contract, except when he is released from this obligation by the client in writing. The obligation of secrecy continues after termination of the contract. The staff of the tax adviser are likewise bound to secrecy.
- (2) Should disclosure be necessary to protect the legitimate interests of the tax adviser, the obligation of secrecy does not apply. If the conditions of his professional liability insurance require information and co-operation from the tax adviser he is also released from the obligation of secrecy.
- (3) The legal right to refuse to give information or to testify according to § 102 tax code (AO), § 53 code of criminal procedure (StPO), § 383 judicial code (ZPO) remains unaffected.
- (4) The tax adviser is entitled to enter into his computer system the personal data of the client and his employees relating to the contract and to process them in a computerized file or to transfer them to a computer service center for further processing.
- (5) The tax adviser may hand over to a third party reports, expert opinions and other written opinions on the results of his activities only with the consent of the client. In addition there is no obligation of secrecy in the event that a certification audit is necessary in the premises of the tax adviser, provided the persons involved were already advised on their obligation of secrecy. The client agrees to allow the certifying person/auditor access to his file created and worked on by the tax adviser.
- (6) When forwarding or transmitting papers, documents, work results, etc. in printed or electronic form the tax adviser has to observe the obligation of secrecy. For his part the client guarantees that he as the addressee takes all precautionary measures that the papers or data forwarded to him do not reach others than the competent persons. This refers in particular to the dispatch of documents by fax or email. To protect the delivered documents and data the appropriate technical and organisational measures have to be taken. If special precautions are required exceeding the normal standard, an appropriate written agreement has to be concluded with regard to additional precautionary measures, especially whether the electronic exchange of documents will require encoding.

## 3. Co-operation with Third Parties

- (1) To carry out the contract, the tax adviser is entitled to consult with co-operators, specialist third parties and data processing companies. When using the services of specialist third parties and data processing companies the tax adviser shall ensure that these commit themselves to the obligation to secrecy according to no. 2 paragraph 1.
- (2) In the event of their appointment, the tax adviser may allow general representatives (§ 69 StBerG) as well as practice trustees (§ 71 StBerG) access to the file as defined by § 66 paragraph 2 StBerG.
- (3) To meet the requirements of the Federal data protection law the tax adviser may appoint a data protection official. If he is not yet obliged to secrecy according to no. 2 paragraph (1) the tax adviser must ensure that he does so in relation to the data he has access to in the course of his duties.

## 4. Remedy of defects

- (1) The client may ask for remedy of possible defects. Opportunity for amendment is to be given to the tax adviser. Provided the mandate is defined as a contract for services according to §§ 611, 675 civil code (BGB), the client is entitled to refuse the amendment by the tax adviser, if the client terminates the mandate and the defect is ascertained by another tax adviser after valid termination of the mandate, only.
- (2) If the tax adviser does not remedy the defects identified within an appropriate period or if he refuses to remedy them, the client can, at the tax advisers' expense, appoint another tax adviser to remedy them or, at his discretion, ask for a reduction of his fee or cancellation of the contract.
- (3) Obvious errors (e.g. spelling, arithmetical errors) may be remedied at any time by the tax adviser, including via third parties. Rectification of other defects via third parties is subject to the consent of the client. The consent of the client is not required when the legitimate interests of the tax adviser take precedence over the interests of the client.

## 5. Liability

- (1) The tax adviser is responsible for his own faults as well as for those of his employees.
- (2) The claim of the client against the tax adviser for compensation for negligently caused damage shall be limited to 1.000.000, — €  
(in words: One Million €).
- (3) An exception to this rule in individual cases, in particular if the liability amount is to be limited to a sum below the amount indicated in paragraph 2, would require written agreement, which is to be provided separately and given to the client together with these general contractual conditions.
- (4) Unless a claim for damage by the client is not subject to a shorter limitation period by law it becomes statute-barred a) after three years from the time the claim arose, and the client became aware of the circumstances supporting the claim and of the identity of the liable party, or would have obtained such knowledge, had he not acted with gross negligence, b) after five years from the time the claim arose, without taking the knowledge into account or the ignorance of gross negligence and c) after ten years from the commission of the action, the breach of duty, or any other event triggering the damage, without taking into consideration its origin and the knowledge or the ignorance arising from gross negligence. The shortest period applies.
- (5) The rules indicated in paragraphs 1 to 4 apply also to persons other than the client, if, by way of exception, in individual case contractual or non-contractual relations have been set up, too, between the tax adviser and these persons.
- (6) The limitation of liability does not extend to claims injuring life, body or health.

## 6. Duties of the client; failure to co-operate

- (1) The client is obliged to co-operate as far as is necessary for the orderly completion of the contract. In particular, in order to give to the tax adviser an appropriate period of time, he has to hand over to him on time and unsolicited a complete set of all documents necessary for the execution of the contract. This also ap-

1) Use amount please if necessary. (To be able to apply this rule the liability amount of tax advisers agreed by contract has to be at least 1 million per damage, otherwise paragraph 2 has to be deleted.)



plies to information concerning all matters and circumstances relevant to the execution of the contract. The client is obliged to record all oral and written information from the tax adviser and to consult him in doubtful cases.

- (2) The client has to refrain from everything that might interfere with the independence of the tax adviser or his employees.
- (3) The client undertakes to pass on the results of the tax adviser's work only with his written consent, unless it is not already agreed in the contract, that the results can be passed on to named third parties.
- (4) If the tax adviser installs data processing programs in the client's office, the client will be obliged to fulfil the requirements of the tax adviser with regard to installation and use of the programs. The client is further obliged and entitled to copy the programs subject to the limits prescribed by the tax adviser. The client shall refrain from distributing the programs. The tax adviser remains the owner of the user rights. The client shall also refrain from interfering with anything which opposes the exercise of the tax adviser's user rights with regard to the programs.
- (5) If the client fails to co-operate, as determined in no. 6 (1) to (4) or elsewhere, or in default of acceptance regarding the performance of the tax adviser, the tax adviser shall be authorized to determine an appropriate term, declaring that he will not continue the contract after expiry of the term. If the time expires without a successful outcome, the tax adviser shall be entitled to cancel the contract without notice (cf. no. 8 paragraph 3). This shall not affect the tax adviser's right to reimbursement of his additional expenditure as well as of the damage incurred by default or by a failure of the client to co-operate, irrespective of whether the tax adviser avails himself of the right to give notice of termination.

#### 7. Calculation of remuneration, payments in advance

- (1) The remuneration (fees and reimbursement of expenses) of the tax adviser for his professional services, according to § 33 StBerG, is calculated according to the scale of fees for tax advisers and tax advising companies, unless a higher remuneration had been agreed according to § 4 StBVV.
- (2) Professional services not covered by the scale of fees (e.g. § 57 paragraph 3 no. 2 and 3 StBerG) are subject to remuneration by agreement, alternatively to the legally foreseen remuneration for this service, otherwise to the usual remuneration (§ 612 paragraph 2 and § 632 paragraph 2 of the German Civil Code – BGB).
- (3) Only undisputed or non-appealable validly determined claims may be deducted from the reimbursement due to the tax adviser.
- (4) The tax adviser is entitled to ask for payment on account to cover fees and expenses already accrued or expected. If the client does not pay the advance claimed, the tax adviser shall be entitled, subject to prior announcement, to stop his services for the client until he receives the advance. If the cessation of service is expected to disadvantage the client, the tax adviser is obliged to inform him in good time about the intention to stop his services.

#### 8. Termination of the contract

- (1) The termination of the contract is subject to the performance of the agreed services, to the expiry of the agreed term or to notice of termination. The contract does not expire in case of death, occurrence of legal incapacity of the client, or, in the case of a company, of its dissolution.
- (2) The contract shall be subject to an extraordinary termination by each of the contracting parties, according to § 627 of the German Civil Code (BGB), provided that the agreement constitutes a contract of services according to §§ 611, 675 of the German Civil Code (BGB); the notice of termination is required in writing. An exception to this regulation in individual cases would require a written agreement, which is to be provided separately and given to the client.
- (3) If notice of termination of the contract is given by the tax adviser, he will be obliged to perform in every case those services which remain outstanding and which are appropriate and cannot be delayed without incurring loss for the client (e.g. application for extension of time limit in the event of an imminent deadline). The tax adviser is also liable for these acts, according to no. 5.
- (4) The tax adviser is obliged to return to the client everything he has received for the execution of the contract. Further, the tax adviser is obliged to give the client any information required, when requested about the current state of affairs and to comply with his duty to give an account of his services.
- (5) Upon termination of the contract the client must return to the tax adviser without delay the data processing programs used in his office for the execution of the contract, including any copies, and/or other related documentation, or to delete them from the hard disc.
- (6) Upon termination of the mandate the documents must be collected from the tax adviser.

#### 9. Claim for remuneration upon early termination of the contract

In the event of termination of the contract before complete execution, the remuneration of the tax adviser shall be subject to the statutory regulations. Any exception to this regulation in individual case requires written agreement, which is to be provided separately and given to the client.

#### 10. Storage, surrender and right of retention of work results and documents

- (1) The tax adviser must store the file for a period of ten years after termination of the contract. However, this obligation will lapse before the end of this period, if the tax adviser has asked the client in writing to take back the file and if the client failed to comply with this request within 6 months after notification.
- (2) The file includes – according to this regulation – all the documents the tax adviser received from the client or on his behalf to fulfil his professional obligation. However, this does not relate to the correspondence between the tax adviser and his client or to those documents the tax adviser already received in the original or in duplicate, or to those working papers created for internal use.
- (3) Upon the request of the client, at the latest after termination of the contract, the tax adviser shall return the file to the client within an appropriate period. The tax adviser is entitled to create and to retain duplicates or copies of the documents he returns to the client.
- (4) The tax adviser is entitled to refuse to return his work results and files before complete settlement of his fees and expenses. This does not apply insofar as retention would contravene the principles of good faith, in particular when the amount due is an insignificant proportion of the whole. The client is entitled to retain an appropriate part of the remuneration until any defects reported by him in good time have been remedied.

#### 11. Applicable law and place of performance

- (1) Only German law shall be applicable with regard to the contract, its execution and the claims arising therefrom.
- (2) If the client is not a businessman as defined by the German Commercial Code, the place of performance shall be his place of residence otherwise the seat of the tax adviser.

#### 12. Validity in case of partial invalidity; modifications and amendments

- (1) If individual regulations of these contractual conditions are or become invalid this shall not affect the validity of the other regulations. The invalid regulation shall be replaced by a valid one, which comes as close as possible to the intended aim.
- (2) Modifications and amendments to these contractual conditions shall be in writing.

The Signer/s,

\_\_\_\_\_  
(name and address)

acting on his/their own behalf /on behalf of

\_\_\_\_\_  
(name and address)

declares/declare that he/they read the above General Contractual Conditions and that they were explained to him/them, alternatives were discussed and on all questions he/they raised he/they received comprehensive and sufficient answers. By his/their signature he/they confirms/confirm to accept fully the content of the General Contractual Conditions.

\_\_\_\_\_  
(date/signature/s)

\* delete or fill in