



TAX ADVISORY SERVICES IN POLAND

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ABSTRACT

This article describes tax advisory services. The profession, defined by legal regulations in Poland, was established 16 years ago and it was subject to partial deregulation. The article includes requirements that should be met by a candidate applying for a professional certificate in the field of advisory services under legal regulations and professional self-government functioning.

INTRODUCTION

The profession of a tax adviser was formed in Poland in 1989, just after the political and economic transitions when lots of taxpayers were obliged to provide what was then known as “self-calculation” of tax. In the early Nineties, the first offices and companies specializing in tax consulting were gradually established. In order to regulate the profession of tax advisers, the Sejm passed the Tax Consulting Act on 5 July 1996. The profession of tax advisers has officially existed in Poland since January 1, 1997.

CANDIDATE REQUIREMENTS

The profession of tax adviser is part of the group of liberal professions in public confidence area. The profession requires high qualifications, which include university education, expertise and extensive experience in terms of a broad understanding of financial legislation and other areas of law. However, apart from the extensive professional knowledge, the applicant for the title of a tax adviser is required to have the appropriate personality traits that will guarantee a proper performance of the profession. Pursuant

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to the provisions of Article 6 Section 1 of the Act on Tax Consulting, applicant requesting to be recorded in the register of tax advisers, must meet the following conditions:

- Possess full legal capacity;
- Enjoy full public rights;
- Be of impeccable moral character and express behavior warranting a proper performance of the profession;
- Be a university graduate;
- Have at least a two-year work experience in Poland;
- Successfully pass the examination for tax advisers;
- Submit an application to be recorded in the register of tax advisers no later than three years from passing the exam.

In addition, applicants can be recorded in the register of tax advisers if they:

- Are members of the State Examination Commission for Tax Advisers, or
- Have a post-doctoral degree of legal science or economic science in the field of financial law or finance.

The path to the profession of tax adviser can be depicted in 4 stages: the completion of the state exam, apprenticeship, taking the oath and registration in the register of tax advisers.

Candidates who have passed said exam must complete a six-month apprenticeship with qualified tax advisers or tax consulting companies. The substantive scope of the practice includes tax advisory services in order to put theoretical knowledge into practice

A professional practice is equivalent to an employment under the following conditions:

- A minimum six-month practice in entities authorized to perform tax consulting referred to in Articles 3 and 4 of the Tax Consulting Act of July 5, 1996, if the candidate's responsibilities were to apply the provisions of tax law on behalf of a client;
- At least a year: in the Tax Office, Tax Chamber, Tax Inspection Office, Customs Office, Customs Chamber, the Ministry of Finance, local government financial services, Local Government Appeals Court, if the candidate's responsibilities were to apply the provisions of tax law in connection with the ongoing tax proceedings or inspections;
- At least a year:
 - As a prosecutor or judge,
 - In the position where the bookkeeping activities are carried out, or in a position entitling them to carry out inspections under the cooperative law,
 - As Chief Accountant in companies obliged to maintain bookkeeping under applicable laws;
 - As a municipal treasurer;
- At last two years in the capacity of a researcher, an academic or a teacher, in accordance with higher education regulations, dealing with areas which include tax law.

Professional practice is considered equivalent to at least six months' work experience as a lawyer or legal adviser or an expert auditor.

The entry in the register of tax advisors is made upon taking the oath before the President of the National Council of Tax Advisers or a person authorized by them.

Tax advisers are bound by the professional secrecy principle to maintain secrecy of all facts and information obtained in connection with their occupation. In addition, they should also follow the rules of professional ethics as provided by the resolution of the 1st National Congress of Tax Advisers.

The register of tax advisers includes all individuals legally admitted to provide advisory services, announced to the public in order to guarantee the safety of the public using these services. Maintaining this register is the responsibility of the National Council of Tax Advisers (Trzaska D., p. 63).

A tax adviser may be struck from the register at the request of another adviser or under his/her own motion or at the request of the Minister of Finance in the event of losing the right to practice the profession, or the adviser's death.

Tax advisers bear the disciplinary liability for non-performance or the improper performance of professional duties as defined by applicable law and for acts contrary to the principles of professional ethics. Therefore, they are subject to compulsory civil liability insurance. The detailed coverage of the insurance, the term of the obligation of insurance and the minimum amount of coverage is determined by the regulation of the minister responsible for financial institutions. In the event of failing to fulfil the obligation of insurance, tax advisers shall be subject to disciplinary action.

DEREGULATION OF A TAX ADVISER PROFESSION.

Deregulation of the profession entered into force on August 10, 2014. The law changed the legal status of numerous professions including the profession of tax advisers. Table 1 presents a range of activities which a tax adviser is required to perform. The middle column illustrates the legal status that was in force under the old Act, and the right column introduces the legal status of deregulation.

The profession of tax advisers, despite its clear name and legal regulations belongs to interdisciplinary professions. It has a lot in common with the professions of an accountant and lawyer. Unfortunately, deregulation does not provide a meaningful specification of the tasks and competences of the profession. It only provides a "broad line" separation of the two.

Witold Modzelewski divides the tax advisory market into four distinctly separate segments. The first segment is relatively small and connected with the services benefiting foreign companies operating in Poland and large State Treasury companies. The second is represented by approx. 8.5 thousand active certified tax advisers. They are engaged in both maintaining the accounting records and tax advising. Approximately 25% of the revenue of most offices come from tax advising and the remainder from keeping tax records. One thing is obvious: income from tax accounting and bookkeeping is very important to advisers. However, according to W. Modzelewski, this second segment of the market is shrinking. The third largest segment of the market consists of

Table 1. The scope of activities in the field of tax advisory services reserved for certain entities in the pre- and post-legal status

The scope of activities	Group of entities authorized to pursue the profession in the prior legal status	Group of entities authorized to pursue the profession after the changes
provide taxpayers, payers and tax withholding agents, at their request or on their behalf, advice, opinion and explanation in respect of their tax and customs duties, and in administrative execution matters relating to these obligations;	natural persons recorded in the register of tax advisers; lawyers and legal advisers; expert auditors;	natural persons recorded in the register of tax advisers; lawyers and legal advisers; expert auditors;
keep tax records and other tax accounting records on behalf of and for the benefit of the taxpayers, payers and tax withholding agents, and provide assistance in this respect;	natural persons recorded in the register of tax advisers; lawyers and legal advisers; expert auditors;	all (deregulated activity)
prepare, on behalf of and for the benefit of taxpayers, payers and tax withholding agents, tax returns and tax declarations or provide advice in this respect;	natural persons recorded in the register of tax advisers; lawyers and legal advisers; expert auditors;	all (deregulated activity)
represent taxpayers, payers and tax withholding agents in the proceedings before public administration bodies and in terms of judicial review of decisions, resolutions and other administrative acts.	natural persons recorded in the register of tax advisers; lawyers and legal advisers.	natural persons recorded in the register of tax advisers; lawyers and legal advisers.

Source: own study based on the Act of May 9, 2014 on *facilitating access to perform certain regulated professions* (Journal of Laws of 2014, Item 768), Article 3; http://www.podatki.biz/artykuly/deregulacja-zmiany-w-ustawie-o-doradztwie-podatkowym_23_23821.htm, (26.03.2015).

about 18 thousand accounting offices, which deal mainly with keeping tax records for small and medium-sized enterprises. The fourth segment is comprised of legal advisers and lawyers dealing mainly with legal and tax advice, most commonly if there is a dispute between a taxpayer and tax authorities.

Service prices are severely impacted by a huge competition. It is possible to find a small business bookkeeping offer for just PLN 100. Customers are unwilling to pay reasonable fees even for advice provided on complex tax issues. Most clients think that paying PLN 250 for a piece of advice is far too much. In 2011, Modzelewski and Partners Institute of Tax Studies analyzed the size of certified tax advisers market. While estimating the size of the market, the sector of accounting offices was deliberately omitted. Poles submit 24 million annual tax returns. There are 1.6 million of entities in Poland

that are VAT payers, about 300 thousand companies that are legal entities and 700 thousand sole traders. W. Modzelewski estimates that 30–33 percent of taxpayers use the services of tax advisers. However, the customers' needs vary. According to Tomasz Michalik, President of the National Council of Tax Advisers, for the owner of a news agency, it is important that the tax books are kept correctly and the tax settlements with the Tax Office are carried out in a competent and timely manner. In addition, the possibility of the adviser's support during tax audit is also essential. On the other hand, individual customers who do not engage in business operations, need the help of a tax adviser only in several situations: when they fill in the annual PIT tax return, when they have to settle the foreign revenue and recently, even more often, when considering how to best transfer the accumulated wealth to their heirs. In practice, large companies do not perform any significant operations without consulting a tax advisor. The Polish accession to the European Union and the need to comply with the EU regulations as well as the development of foreign business contributed significantly to the demand for tax advisory services. Wrong assessment of tax effects can mean not only financial losses but also criminal and tax consequences for those who are most often responsible, namely, members of the management boards of companies. At one point the expectations of different customers concerning tax advisers are similar. Since tax regulations in Poland undergo frequent changes, customers expect tax advisers to keep up with these changes and take them into account in the context of different economic operations.

THE SCOPE OF TAX ADVISERS' ACTIVITY. PROFESSIONAL SELF-GOVERNMENT

The object of business activities of professional tax advisers are all matters relating to the practical application of tax law and applicable procedures, in particular:

- Provide taxpayers, payers and tax withholding agents, at their request or on their behalf, advice, opinion and explanation in respect of their tax and customs duties, and in administrative execution matters relating to these obligations;
- Keep tax records and other tax accounting records on behalf of and for the benefit of the taxpayers, payers and tax withholding agents and provide assistance in this respect;
- Prepare, on behalf of and for the benefit of taxpayers, payers and tax withholding agents, the tax returns and tax declarations or provide advice in this respect;
- Represent taxpayers, payers and tax withholding agents in the proceedings before public administration bodies and in terms of judicial review of decisions, resolutions and other administrative acts.

The above-described activities also include those performed for the benefit of the legal successors of taxpayers, payers and tax withholding agents, under the Act of August 29, 1997 – Tax Ordinance and third-party liability for taxpayer's arrears. Tax adviser may conduct his own business activity or be employed, wherein the activity or the employment:

- does not cause conflict of interest and lack of compatibility among different types of business or employment,
- does not affect the independence and impartiality of the tax adviser's profession,
- is not in contradiction with the principles of tax adviser's professional.

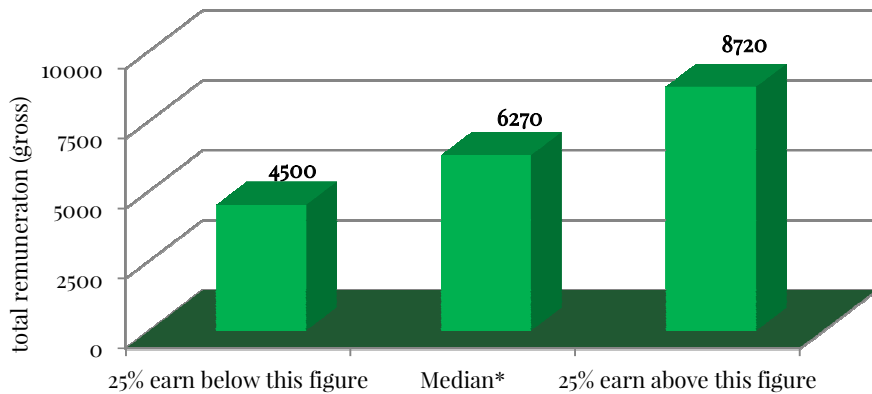
No provider of tax advisory services can be promoted by the following entities: tax authorities and the employees of tax authorities, fiscal control authorities, the employees of tax inspection authorities, the minister responsible for public finances and employees in the ministry. The rules and methods of advertising tax advisory services provided for in the principles of professional ethics apply to the entities referred to in Article 4 Section 1 Item 3 of the Act on Tax Consulting, i.e., limited liability companies and joint-stock companies.

Poland currently has approximately 9,000 tax advisers. The highest number of professional advisers provide services in the Mazowieckie Voivodeship (2,385 persons), with the lowest number in Świętokrzyskie Voivodeship (124 persons).

The list of advisers is published in the Notice of the Minister of Finance of December 18, 2014 on the publication of data relating to persons recorded in the register of tax advisers and data relating to deletions from the register of tax advisers.

Under Polish law, no regulations exist concerning the minimum or maximum prices for particular activities of tax advisers. The remuneration for the advisory services is usually determined by negotiations and agreement with the customers. Tax advisers are developing their own price lists, according to the size of the business, the scope of services, and their own operations as well as economic specificities of the region of the country.

Figure 1 and Figure 2 illustrate the salaries earned by Polish tax advisers. Figure 1 presents data from the National Remuneration Research conducted by Sedlak&Sedlak. The calculations are based on 202 responses. Figure 2 shows the average monthly income of advisers in relation to the average monthly salary in the enterprise sector in the years 2005–2009.



* Median - this value divides all the data into two equal sets. Below and above the median is exactly 50% results collected in the survey. In the case study of salaries it means that half of the respondents earn less than the median and half earn more.

Figure 1 Distribution of tax advisers' earnings.

Source: http://www.wynagrodzenia.pl/moja_placa.php?s=258, (25.03.2016).

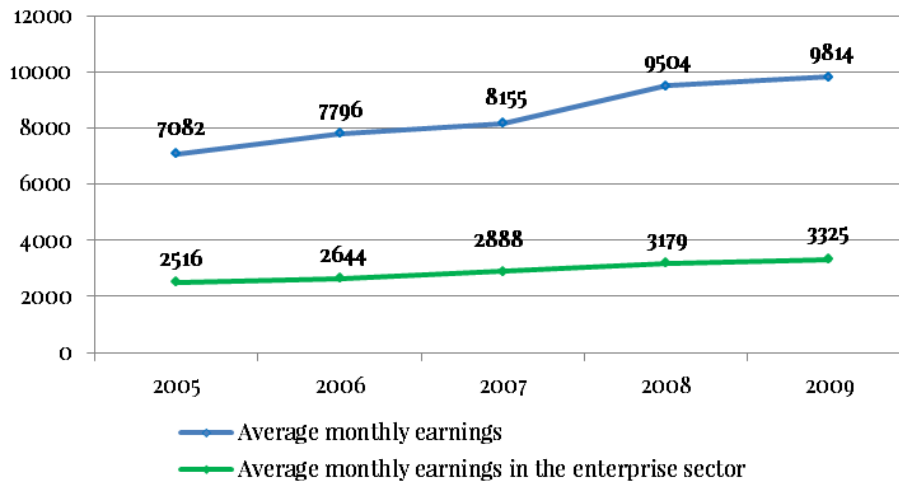


Figure 2 The average monthly income of tax advisers against average monthly salary in the enterprise sector in 2005-2009.

Source: http://www.wneiz.pl/nauka_wneiz/obrona_dr/sobieska/Sobieska_autoreferat.pdf, (25.03.2016); The Announcement of the President of the Central Statistical Office *on the average monthly salary in the enterprise sector in the years: 2005, 2006, 2007, 2008, 2009*, successively (CSO Official Journal of 2006, No. 1, Item 4, CSO Official Journal of 2007, No. 1, Item 5, CSO Official Journal of 2008, No. 1, Item. 5, CSO Official Journal of 2009, No. 1 Item 5, CSO Official Journal of 2010, No. 1, Item 5).

The monthly salary (median) of a tax adviser currently equals PLN 6,270. The total earnings of 50% of tax advisers range from PLN 4,500 to PLN 8,720. The bonus represents an average 4% of the total salaries of a tax advisor, while 96% is the base pay.

The regulation of the Minister Justice of January 31, 2011 describes in detail the matter of remuneration for tax advisers' activities in the proceedings before administrative courts and the cost of legal assistance provided by public tax consultants.

The National Chamber of Tax Advisers is the professional self-government, operating under the law on advisory services. It has legal personality and may perform publishing, educational and training activities. Membership in the Chamber of Tax Advisers is compulsory and accession is complete upon the record in the register of tax advisers. In carrying out its responsibilities, the professional self-government of tax advisers is independent and subject only to the applicable law. The Minister of Finance supervises the legality of operations of the National Chamber of Tax Advisers.

The Chamber has the following bodies:

- The National Convention of Tax Advisers – the legislative body;
- The National Council of Tax Advisers – the executive body;
- The National Audit Control – audit institution;
- High Disciplinary Court – adjudicating disciplinary body;
- Disciplinary Court – adjudicating disciplinary body;
- Disciplinary Spokesman – investigatory and prosecutorial disciplinary body.

CONCLUSION

Tax advisory institution has been operating in Poland for many years, establishing a strong presence in the changing economic, financial and social conditions. Polish tax system is considered to be extremely complicated and it is hard for taxpayers to acquire the necessary knowledge about the whole – thus the profession of tax advisers is vital in the contemporary circumstances. Tax advisers carry out their work on many levels, ranging from services for individual taxpayers and natural persons to legal entities.

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