

General Contractual Conditions for German Tax Advisers (Steuerberater, Steuerbevollmächtigte) and Tax Advising Companies

as of April 2016

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 proper 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 application of foreign law requires an explicit written agreement.
- (3) If after final completion of a matter the legal situation has changed, the tax adviser is not obliged to inform the client on the modification or the consequences thereof.
- (4) 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.
- (5) 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. 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.
- (7) The cession or transfer of fee of the tax adviser to third parties (such as to debt-collection agencies) requires the explicit written agreement of the client; a cession or transfer to a person or association entitled to provide unrestricted assistance in tax matters may also be executed without the consent of the client (§ 64 paragraph 2 s 1 StBerG).

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 s. 3 the tax adviser must ensure that said data protection officer commits to maintaining data secrecy upon the commencement of his work.

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 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 2.000.000,00 €¹⁾
(in words: two million €).
- (3) The limitation of liability applies retroactively from the beginning of the mandate and extends to those cases in which the scope of the contract is subsequently modified or extended.
- (4) The rules indicated in paragraphs (1) to (3) 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. A liability in relation to third parties is excluded, if working results of the tax adviser have been passed on to third parties without his written consent, unless the consent with the above results directly from the contract (re no. 6 paragraph 3).
- (5) The claim for damage by the client 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 ten years from the time the claim arose, without taking the knowledge into account or the ignorance of gross negligence. The shortest period applies.

1) Please use amount, if appropriate. To be able to apply this rule, an amount of at least 1 million € must be indicated and 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. Reference is made to further instructions in data sheet 1001.



6. Duties of the client; failure to co-operate and default of acceptance of the client

- (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 applies 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 use 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 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 terminate the contract without previous notice [cf. no 9 (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. Copyright protection

The services of the tax adviser are his intellectual property. They are content protected by copyright. Outside the intended use, the disclosure of working results requires the previous written consent of the contractor.

8. Calculation of remuneration, payments in advance and set-off

- (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 deviating a separate agreement has been made (e.g. higher remuneration, flat-rate fee). In extrajudicial matters a lower than the legal fee may be agreed, provided the fee is proportionate to service, responsibility and liability risk of the tax adviser.
- (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.

9. 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, provided that the agreement constitutes a contract of services according to §§ 611, 675 of the German Civil Code (BGB), unless the contract is an employment relationship with a fixed salary according to § 627 paragraph 1; 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).
- (4) The tax adviser is obliged to return to the client everything he has received for purposes of executing the contract and that has resulted from the business activities. Further, the tax adviser is obliged to give to 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.
- (7) 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 of time. 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 of files and documents would be considered inappropriate in the given circumstances (§ 66 paragraph 2 s 2 StBerG).

11. Applicable law and place of performance

Only German law shall be applicable with regard to the contract, its execution and the claims arising therefrom.

If the client is not a business man, a legal entity of public law or of special fund under public law, the place of performance shall be his place of residence otherwise the professional seat of the tax adviser.

12. Validity in case of partial invalidity

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.