



DANGEROUS **LIAISONS**

Lawyers must exercise caution when advising clients on tax matters, but businesses' increasing need for 'trusted advisers' means there are significant opportunities for law firms to grow their revenue streams

Tax lawyers must take extreme care when engaging with their clients. While businesses have serious concerns about incurring the wrath of the tax authorities, there is also widespread concern among lawyers about the possibility of being seen as facilitating crimes if inspectors consider companies to have underpaid on their tax. As one partner succinctly puts it, tax planning is now considered a "hazardous sport". However despite these fears, there is a wealth of opportunities for law firms with accomplished tax practices, because, in this risky environment, clients need the assurance of being able to rely on a "trusted adviser" more than ever. In particular, clients want lawyers with an in-depth understanding of international tax issues, especially given the ongoing internationalisation of Spanish businesses and foreign investors' growing appetite for investment in Portugal.

Ashurst partner Eduardo Gracia says that tax authorities are not only adopting a "very aggressive approach towards corporates and funds" but also, increasingly, towards tax lawyers. He adds: "Tax lawyers must be

more cautious than ever under the threat of being entangled in civil or even criminal proceedings because of the reassessment made to the tax payer and client (as another way to put pressure on the taxpayer to accept the reassessment).” Gracia continues: “The upcoming legislation implementing DAC 6 in Spain (the amendment to the Directive on Administrative Cooperation which obliges all sorts of ‘tax intermediaries’ to report to the tax authorities what the Directive deems as ‘tax aggressive arrangements’ as soon as put at the disposal of the client) will only enhance the aforementioned trend.” Tax planning has now become a “hazardous sport”, according to **Diego de Miguel Hernando, partner at CMS Albiñana**



“THERE NEEDS TO BE AN URGENT CLARIFICATION OF THE REAL ESTATE FUNDS’ CAPITAL GAINS TAX REGIME BECAUSE SEVERAL BIG INVESTORS ARE WAITING FOR THIS.”

Tiago Marreiros Moreira,
Vieira de Almeida



& Suárez de Lezo. He adds: “Nowadays, the biggest challenge for tax lawyers would be to protect themselves and their clients’ interest in a scenario full of legal uncertainty, where the rules continuously change, sometimes even retroactively.” Another major challenge currently faced by tax lawyers is the “increasing complexity of tax regulations and their interpretation”, says **Uriá Menéndez tax partner Rafael García Llana**. He adds: “Regulations have expanded from domestic codes of law to an international standard of ‘soft law’, well represented by the OECD’s BEPS initiative.” García Llana continues: “Also, there will be a higher level of review and scrutiny of certain transactions by tax authorities and by tax courts which will be, in certain cases and considering the changing environment, difficult to foresee.” Consequently, tax lawyers will need to be more experienced and better prepared to challenge the “uncertainty of complex matters in an evolving international environment”, he says. **Garrigues partner Eduardo Abad** says the current tax environment requires companies “not to engage in tax-driven transactions and to adopt a socially-responsible tax policy, especially at the time of allocating profits to Spain”. In this context, Abad says transfer pricing has become a common source of concern for clients, which are responding by “increasing functions (and profits) attributable to the Spanish entities”. Tax frameworks at a national and international level are becoming increasingly complex and challenging for taxpayers,



“TAX LAWYERS MUST BE MORE CAUTIOUS THAN EVER UNDER THE THREAT OF BEING ENTANGLED IN CIVIL OR EVEN CRIMINAL PROCEEDINGS.”

Eduardo Gracia,
Ashurst



according to **Allen & Overy senior associate Ishtar Sancho.** He adds: “The huge amount of information which is now being shared with the competent authorities and among the tax authorities of different jurisdictions has made the tax audits and investigations much more complex, making the role of the tax adviser key.” Sancho adds that, in such an environment, the role of ‘trusted adviser’, in the sense of providing “ongoing advice and assistance to clients, with a deep understanding of the client’s business and needs”, has become more important than ever. Consequently, a “strong tax practice at a law firm can achieve and develop, strengthen and consolidate long term relationships with clients,



“LAWYERS NEED TO CHANGE THE CLIENT’S MIND ON HOW TAXES SHOULD BE APPROACHED.”

Enrique Ortega,
Gomez Acebo & Pombo



providing clients not only with the tax advice required on a project, deal or investment, but also adding value to their day to day activities and to the business’ success.”

The impact of legislative and digital tax changes has an “important correlation with a company’s reputational needs”, says **Deloitte partner Brian Leonard**. He adds: “This gives a platform of opportunity to law firms to help such companies establish and maintain a transparent reputation in terms of regulatory compliance and to avoid reputational risk when they are faced with tax inconsistencies or discrepancies.” New rules coming into force during 2019, such as UNE 19602, DAC 6, CbC, ATAD I and II, will make lawyers jobs more difficult, according to **Enrique Ortega, partner at Gomez Acebo &**

Pombo. These new measures will mean existing corporate tax structures will need to be adapted, and it will also involve “changing the client’s mind on how taxes should be approached, providing certainty to clients and anticipating any possible change that could make a tax impact,” he says.

While political uncertainty can pose challenges for tax lawyers and their clients, it also represents a significant opportunity, says **Marta Esteban, of counsel at Herbert Smith Freehills**. “It’s an opportunity for law firms to approach clients regarding tax and ensure that they are aware of potential changes in their tax position and properly consider all alternatives when analysing a transaction,” she explains.

Alberto Ruano, partner at King & Wood Malleons, says anticipating the changing social and political circumstances will be a key challenge for lawyers. “In this regard, the tax compliance obligations pursuant to Council Directive (EU) 2018/822 of 25 May 2018 (amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements) will be a critical challenge.”

Advising clients on the digital transformation of tax functions is a significant opportunity for law firms, according to **Alberto Estrelles, managing partner at KPMG Abogados**. “There will also be significant opportunities arising from the internationalisation of Spanish companies – these opportunities will be related to tax controversy, transfer-pricing, BEPS, tax governance, Brexit and ex-pat issues.”

PORTUGAL: TAX ADVISERS IN DEMAND

Morais Leitão partner

Bruno Santiago says there is considerable appetite for investment in Portugal among foreign private equity houses and investors. He adds that, the fact they need “efficient corporate structures”, represents an opportunity for lawyers in terms of finding the most adequate structure and incorporating it. In addition, the transposition of the EU anti-tax avoidance directive will also generate significant work for firms because “existing solutions will no longer be valid”, Santiago says. He also says that the government proposal to allow taxpayers to appeal arbitral decisions in the Supreme Court “could also be a rich source of work for lawyers”.

Clients are reluctant to go to arbitration when it comes to resolving tax disputes because



“UNFORTUNATELY THERE IS A LACK OF COMMUNICATION BETWEEN TAXPAYERS AND THE TAX AUTHORITIES.”

Alexandra Courela,
Abreu Advogados



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there is uncertainty as similar cases in the past have resulted in different decisions, according to **Abreu Advogados partner Alexandra Courela**. However, she adds that there are considerable opportunities for tax lawyers related to Brexit, for example, particularly with regard to the restructuring of “banking activity within the EU”. In addition, the application of tax to digital business, as well as the tax issues affecting cryptocurrency and blockchain are other trends that lawyers will be following closely, according to Courela. She adds that “unfortunately there is a lack of communication between taxpayers and the tax authorities as the tax authorities generally refuse to communicate”.

The large number of private clients moving to Portugal represents a major opportunity for tax lawyers, says **Vieira de Almeida partner Tiago Marreiros Moreira**. “Private clients are owners of businesses and they are incorporating new companies in Portugal, which means there are a lot of start-ups,” he adds. Meanwhile, the new legal framework for Portuguese real estate investment trusts (SIGIs) in Portugal is also generating work for lawyers but “there needs to be an urgent clarification of the real estate funds’ capital gains tax regime because several big investors are waiting for this”, Marreiros Moreira says. He adds that the signing of the Portugal-Angola double tax treaty provides a platform for investment and a further source of work for tax lawyers. **Diogo Bernardo Monteiro, partner at FCB Sociedade de Advogados** also



ALBERTO ESTRELLES

Partner

Main Practice Areas
Tax and Legal

☎ +34 91 456 34 00
@ aestrelles@kpmg.es - home.kpmg/es/es/home.html
📍 **KPMG Abogados**
🌐 Paseo de la Castellana, 259C - Torre de Cristal 28046 Madrid - Spain



ALBERTO RUANO

Partner

Main Practice Areas
Tax

☎ + +34 91 426 00 50
@ alberto.ruano@eu.kwm.com - www.kwm.com
📍 **King & Wood Mallesons**
🌐 Goya 6 - 28001 Madrid - Spain



BRIAN LEONARD

Partner

Main Practice Areas
Tax Advisory, International Tax, International Tax Structuring, Mobile Service Providers

☎ +34 914381023
@ bleonard@deloitte.es - www.deloittelegal.es
📍 **Deloitte Legal**
🌐 Plaza de Pablo Ruiz Picasso - Torre Picasso - 28020 Madrid - Spain



BRUNO SANTIAGO

Partner

Main Practice Areas
Tax

☎ + 35 1213817400
@ brunosantiago@mlgts.pt - www.mlgts.pt
📍 **Morais Leitão, Galvão Teles, Soares da Silva & Associados**
🌐 Rua Castilho, 165- 1070-050 Lisboa - Spain



CARLOS LÓPEZ

Partner

Main Practice Areas
International Tax, M&A, Real Estate, Corporate Income Tax
Customs & Duties, Indirect Taxes, Expatriates and Transfer Pricing

☎ +34 91 436 41 95
@ carlos.lopez@bdo.es - www.bdo.es
📍 **BDO Abogados y Asesores Tributarios**
🌐 Paseo Recoletos 37-41 - 28004 Madrid - Spain



ERNESTO LACAMBRA

Partner

Main Practice Areas
Tax, Commercial and Corporate Law, Foreign Investment
and Real Estate, Private Client, High net worth individuals

☎ +34 93 611 92 32
@ ernesto.lacambra@caseslacambra.com - www.caseslacambra.com
📍 **CASES&LACAMBRA**
🌐 Avenida Pau Casals 22 - 08021 Barcelona - Spain

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**IGNACIO GOYTISOLO
MARQUÍNEZ**

Partner

Main Practice Areas
Public Law, Tax, Corporate, Commercial and M&A,
Dispute Resolution, Employment Law, Compliance

☎ Barcelona: +34 93 3634000 - Madrid: +34 91 700 21 00
✉ igoytisol@todanelo.com - www.todanelo.com
📍 **Toda & Nel-lo**
🌐 Barcelona: Av. Diagonal, 520, 5º (08006)
Madrid: C/ de Almagro, 44, 3º (28010)



**JAVIER FERNÁNDEZ
CUENCA**

Partner

Main Practice Areas
International Taxation and Tax

☎ + 34 91 391 20 66
✉ javierfernandez@lener.es - www.lener.es
📍 **Lener**
🌐 Paseo de la Castellana 23 - planta 1 - 28046 Madrid



**JAVIER GONZALEZ
CARCEDO**

Partner

Main Practice Areas
Tax, transfer pricing

☎ + 34 91 56 84 222
✉ javier.gonzalez.carcedo@pwc.com
📍 **PwC Tax & Legal**
🌐 Torre PwC, Pso Castellana 259 B - 28046 Madrid - Spain



**JOAQUIM PEDRO
LAMPREIA**

Partner Tax

Main Practice Areas
Tax, Tax Litigation, International Tax Planning,
Transfer Pricing and Financial Transactions

☎ +351 21 311 3485
✉ jpl@vda.pt - www.vda.pt
📍 **Vda**
🌐 Rua Dom Luís I, 28 - 1200-151 Lisbon - Portugal



**JORDI
CAPELLERAS**

Partner

Main Practice Areas
Tax

☎ +34 93 415 00 88
✉ Jordi.capelleras@fieldfisher.com
www.fieldfisherjausas.com
📍 **Fieldfisher JAUSAS**
🌐 Passeig de Gracia 103 - 08008 Barcelona - Spain



**JOSÉ SUÁREZ
AGAPITO**

Partner

Main Practice Areas
Tax and Tax Litigation

☎ +34 914 23 67 41
✉ jsuarez@perezllorca.com - www.perezllorca.com
📍 **Pérez-Llorca**
🌐 Paseo de la Castellana 50 - 28010 Madrid - Spain

highlights the tax issues related to REITs, as well as the Portugal-Angola tax treaty as significant opportunities for lawyers. With regard to rivalry in the market from the 'Big Four', Monteiro says that they are not direct competition in the sense that law firms are able to differentiate themselves by offering more strategic advice. Meanwhile, he adds that businesses often have to deal with the "prejudice with which the tax authorities approach clients". Monteiro continues: "The tax authorities can be rude and this is unacceptable."

João Maricoto Monteiro, partner at **SRS Advogados**

says a key concern for tax lawyers is the issue of money laundering and specifically the interpretation of the courts: "If there is a suspicion of a crime, there can be an investigation, there will be lots of checking of the origin of funds." Another problem is the expectation that lawyers, when handling client matters, should analyse and make a decision on whether a financial crime has taken place: "This violates lawyer-client privilege." Maricoto Monteiro adds that such trends mean that lawyers are increasingly becoming more like auditors in the role they play.

Increasingly tax work is intersecting with work for private clients, according to **Garrigues partner Tiago Cassiano Neves**. "In the old days, you would not see tax teams involved with individuals," he says. Cassiano Neves adds that this is an opportunity for lawyers to develop their understanding of international tax. Real estate-related tax is also a significant source of work for law firms, he adds. "There

was €3 billion worth of real estate transactions last year [in Portugal], there's a lot of interest in changing fund structures to REITs," Neves says.

Filipe Romão, partner at Uría Menéndez says firms with offices in both Spain and Portugal face a "double issue" with regard to compliance rules in terms of what to report in each country when disclosing tax planning. He adds that, in Portugal, one of the issues is: "Do we have to only disclose according to Portuguese rules?" Another challenge for law firms is the need to better integrate economic and legal expertise when tackling issues such as transfer-pricing. However, Romão says that Portugal is an attractive country in terms of investment, which means there is lots of work for all legal practitioners.

DLA Piper partner António Moura Portugal says frequent changes in tax law are a concern for clients, who are seeking stability. He adds that there is increasing demand from clients for law firms that are able to offer an integrated global tax advisory service. He adds that competition from the 'Big Four' is a big challenge for law firms because the auditors have an in-depth knowledge of their clients business.

Clients' biggest concerns with regard to tax relate to tax planning and the protection of tax-related data, says **Inês Pisco Bento, associate at Linklaters**. She adds: "Clients are increasingly worried about public opinion regarding their businesses and their 'tax behaviour' and therefore seem to be adopting a much more conservative approach to business decisions that may impact their reputation." ■

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**LOURDES
PÉREZ-LUQUE**

Partner

Main Practice Areas
Commercial & Corporate, Dispute Resolution, Tax,
Employment, Air Transport, Insolvency, New Technologies

☎ +34 91 5217818
@ madrid@vg-li.com - venturagarceslopezibor.com
📍 **Ventura Garcés & López-Ibor**
🌐 López de Hoyos 35, 3º - 28002 Madrid - Spain



**MATTHIEU
LE ROUX**

Head of Practice Partner OHADA Jurisdictions

Main Practice Areas
Tax, Corporate & Commercial, Customs, Oil&
Gas in French-speaking sub-Saharan Africa

☎ +351 21 311 3382
@ mlr@vda.pt - www.vda.pt
📍 **VdA**
🌐 Rua Dom Luís I, 28 - 1200-151 Lisbon - Portugal



**RAÚL
SALAS LÚCIA**

Partner

Main Practice Areas
Tax, Transfer pricing

☎ +34 91 78 19 760
@ r.salas@rocajunyent.com - www.rocajunyent.com
📍 **Roca Junyent**
🌐 José Abascal 56, 7º - 28003 Madrid - Spain



**SAMUEL FERNANDES
DE ALMEIDA**

Partner Tax

Main Practice Areas
International Tax, Tax Litigation,
Transfer Pricing and Oil & Gas

☎ +351 21 311 3675
@ sfa@vda.pt - www.vda.pt
📍 **VdA**
🌐 Rua Dom Luís I, 28 - 1200-151 Lisbon - Portugal



**TIAGO CAIADO
GUERREIRO**

Partner

Main Practice Areas
International Tax, Tax Restructuring and Tax
Litigation

☎ +351 21 371 70 00
@ tguerreiro@caiadoguerreiro.com - www.caiadoguerreiro.com
📍 **Caiado Guerreiro**
🌐 Rua Castilho 39, 15 - 1250-068 Lisbon - Portugal



**TIAGO MARREIROS
MOREIRA**

Group Executive Partner Corporate Advisory & Tax
Head of Practice Partner Tax

Main Practice Areas
International Taxation, Corporate Tax,
Private Wealth Management and Transfer Pricing

☎ +351 21 311 3485
@ tm@vda.pt - www.vda.pt
📍 **VdA**
🌐 Rua Dom Luís I, 28 - 1200-151 Lisbon - Portugal