

## **Stellungnahme im Rahmen der OECD-Konsultation zur Anzeigepflicht für CRS-Umgehungsmodelle**

Die WPK hat mit Schreiben vom 15. Januar 2018 im Rahmen der Konsultation der OECD zu einer Anzeigepflicht für CRS-Umgehungsmodelle wie nachfolgend wiedergegeben Stellung genommen.

The Wirtschaftsprüferkammer (Chamber of Public Accountants) is a corporation under public law, whose members are all Wirtschaftsprüfer (Professional Accountants in Public Practice), vereidigte Buchprüfer (Sworn Auditors), Wirtschaftsprüfungsgesellschaften (audit firms) and Buchprüfungsgesellschaften (firms of sworn auditors) in Germany. The Wirtschaftsprüferkammer is headquartered in Berlin and is competent throughout Germany for its more than 21,000 members. Its legally defined tasks are described in detail at [www.wpk.de](http://www.wpk.de). The Wirtschaftsprüferkammer is entered in the Transparency Register of the European Commission with the number 025461722574-14.

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### **1. Content of the proposal**

The draft proposes a disclosure requirement for intermediaries in the context of “CRS Avoidance Arrangements” and “Offshore Structures”. CRS Avoidance Arrangements are being identified by generic and specific hallmarks covering arrangements that have features which take the arrangement outside the scope of CRS reporting as well as arrangements that may result in no reporting or the reporting of inaccurate or incomplete CRS information. Its aim is to strengthen the CRS-System and thus the tax compliance in cross-border cases. In its very core, so-called “intermediaries” shall be obliged to disclose information about the arrangement or structure and certain persons involved.

## 2. Relevance for the profession of Professional Accountants in Public Practice and Sworn Auditors

In the current state of the proposal Professional Accountants in Public Practice and Sworn Auditors would be obliged to file information as intermediaries as well.

According to the proposed definition, “intermediary” means a person who is responsible for the design or marketing of a CRS Avoidance Arrangement or Offshore Structure (so-called “Promoter” – Chapter 3, No. 5.1 of the Model Rule) or any person who provides Relevant Services in respect of a CRS Avoidance Arrangement or Offshore Structure in circumstances where the person providing such services could reasonably be expected to know that the Arrangement is a CRS Avoidance Arrangement or an Offshore Structure (so-called “Service Provider” – Chapter 3, No. 5.4 of the Model Rule).

Professional Accountants in Public Practice and Sworn Auditors are authorised to advise and represent their clients in tax issues (§ 2 Sec. 2 of the Public Accountant Act – Wirtschaftsprüferordnung – WPO). Thus the unlimited authorization to provide commercial assistance in tax issues (§ 3 No. 1 of the Tax Advisors Act – Steuerberatungsgesetz – StBerG) is one of the formative tasks for the profession of the Professional Accountants in Public Practice and Sworn Auditors.

## 3. Criticism and demand

The proposal **conflicts with fundamental professional duties** of the profession of Professional Accountants in Public Practice and Sworn Auditors.

Professional Accountants in Public Practice and Sworn Auditors are subject to an extensive **professional secrecy**. According to German professional law they have to practice their profession with independence, conscientiousness, **confidentiality** and on their own responsibility (§ 43 Sec. 1 WPO). The confidentiality is elementary for the profession and serves to keep the trust of the clients and the public into the profession. In terms of the professional law the meaning of legal secrecy is shown in the fact that Professional Accountants in Public Practice and Sworn Auditors besides the – passive – confidentiality – actively – have to take care for secret facts and circumstances not to become known to unauthorized parties (§ 10 of the Professional Charter for Professional Accountants in Public Practice/Sworn Auditors – Berufssatzung für Wirtschaftsprüfer/vereidigte Buchprüfer – BS WP/vBP).

Breaches of the professional secrecy can be sanctioned by **criminal laws**. The unauthorised disclosure of information gained in the professional context by a Professional Accountant in Public Practice or a Sworn Auditor is a criminal offense that could lead to a fine or even imprisonment (§ 203 Sec. 1 of the German Criminal Code – Strafgesetzbuch – StGB; § 333 HGB).

Plus, Professional Accountants in Public Practice and Sworn Auditors must not breach their obligation to observe confidentiality even in case of public prosecution and before court. Therefore they are allowed to refuse to bear witness over circumstances gained during their professional practice which is an important exception from the obligation to testify before court (§ 53 Sec. 1 No. 3 of the German Code of Criminal Procedure – Strafprozessordnung - StPO).

According to the current proposal there is no obligation to disclose to the extent the information is covered by professional secrecy (Chapter 4, No. 2 of the Model Rule). This does affect communications between an attorney, solicitor or another admitted legal representative and his client. **Professional Accountant in Public Practice or a Sworn Auditor should not be obliged as well.**

Therefore we propose to **form Chapter 4, No. 2.1 of the Model Rule** as follows:

*„The Intermediary shall not be required to disclose any information set out under Section 1 above to the extent that the disclosure would reveal confidential communications [...] where such communications are [...] protected from disclosure under domestic law.”*

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We would appreciate it if our suggestion is taken into account during the course of further proceedings. We have limited the contents of our statement to questions which affect the professional position and character of our members.

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