
Pitfalls for accountants undertaking legal work

Published 10 February 2017

In the aftermath of the implementation of the Legal Services Act (the "Act"), accountancy firms of all sizes are considering the creation of alternative business structures, particularly in areas of business advice traditionally provided by law firms.

In January 2016, the ICAEW issued guidance to all members regarding the legal services they can provide in the context of the two categories under the Act: 'reserved legal activities' which may only be provided by a specific group of authorised individuals, and 'legal activities' which can be undertaken by non-lawyers. One year on from that guidance, it is apparent that accountants are reaping the benefits of the legislative changes but care needs to be taken.

One issue that often arises in the course of advice given by accountants is whether it is subject to legal professional privilege. Privilege attaches to a communication between a client and his legal adviser which is made either for the purpose of enabling the adviser to give, or the client to receive, legal advice. The position, as decided by the Supreme Court, is that legal professional privilege applies only to legal advice given by lawyers and not to advice given by accountants (or indeed other professionals).

Whilst the courts have expressed sympathy with the position of accountants, who routinely are requested to provide legal advisory services to their clients, the extension of the age-old doctrine of legal advice privilege to professionals other than lawyers is a matter for Parliament to decide.

In light of this position, accountants need to remain wary of the risk that, whilst their clients may consider the advice being provided to be "legal" in nature and therefore expect that privilege applies, that may not be the case. The advice may be disclosable to, for example, HMRC with potentially serious consequences.

Accountants also need to be aware of "mission creep" whereby the professional strays into providing advice not intended or anticipated by the original instruction. Whilst accountants are traditionally more aware of the pitfalls of this than other professionals, it still needs to be borne in mind in for activities undertaken under the Act; inadvertently straying from conducting authorised 'legal activities' into 'reserved legal activities' is a recipe for disaster for accountant and client alike.

Accountants should therefore continue to ensure that the scope of the engagement is plain, and that clear retainer letters are issued for each instruction. Moreover, accountants must ensure that their insurers are aware of the types of work being undertaken and that mission creep doesn't result in practitioners straying into providing advice that they are not authorised to give and for which appropriate insurance arrangements may not be in place. In the unfortunate event of a complaint or claim by a client, the last thing that a professional wishes to hear is that there is doubt as to whether the situation is covered by insurance.

The minimum terms are due to be amended later this year and any amendments will need to be reviewed carefully by practitioners to ensure that insurance arrangements in place are appropriate.

Authors



Ross Risby

London - Walbrook

rrisby@dacbeachcroft.com