No Privilege for Accountants

The Court of Appeal has confirmed that advice given by an accountant is not protected by legal professional privilege.

What is legal professional privilege?

Legal professional privilege is a protection enjoyed by everyone who seeks legal advice on the law and/or advice about what they should do (or not do) in the legal context of an issue or problem. Essentially, the law recognises that when a person seeks legal advice, whatever they tell their legal advisor will remain confidential. The client must know that neither party can be forced to divulge that confidential information. That rule has very limited exceptions.

What does the Court of Appeal decision mean for accountants?

In a recent judgment by the Court of Appeal in the case of Prudential v Special Commissioner of Income Tax [2010] EWCA Civ 1094, Prudential sought to argue that tax advice given by its accountants, PricewaterhouseCoopers, was covered by legal professional privilege. The Court of Appeal disagreed and held that legal professional privilege did not apply to advice given by non-lawyers (even if the same advice would have been privileged had it been given by a lawyer). The judgment is a firm reminder (not only to accountants, but to all professions other than lawyers) that advice and information given and received by non-lawyers and their clients is not protected in the way that it would be if the same information and/or advice was given by a lawyer.

Will anything change?

The ICAEW has confirmed that in light of the finding by the Court of Appeal it is reviewing its options in relation to the issue of legal professional privilege. A spokesperson for the ICAEW commented:

“Naturally we are disappointed with the decision.... Whether they consult lawyers or chartered accountants, in our view clients who seek professional tax advice should be treated in the same way, irrespective of the qualification of the person”

Whilst many in non-legal professions will be disappointed by the Court of Appeal's recent ruling, it seems clear that the scope of legal professional privilege will not be changed by the courts. If things are to change, it will almost certainly take an Act of Parliament. It seems doubtful that altering such a fundamental legal principle would be high on the government's agenda in the current climate.

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18 October 2010