

## [#39: Blinded by the cause](#)

From the previous Lawlunches it becomes clear that the fight against (tax) fraud is fierce. “Facilitators”, such as tax advisors and financial institutions, are targeted by the various government institutions as described in [Lawlunch #33](#). In [Lawlunch #37](#) we concluded from the annual report of the FIOD (the Dutch tax intelligence and investigative unit) that this fight against fraud by going after facilitators will continue. We also concluded that this annual report lacks a very important topic: the rights of the accused.

Some recent cases reveal that the rights of the accused seem to be forgotten by the investigative authorities at time. The rights ended up in the ‘blind spot’ of the authorities as they have only eye for proving ‘their’ case. This happened for instance in the case we wrote about in [Lawlunch #30](#). In this case the Prosecutors Office abused their power from the Criminal Procedural Code by interfering in the tax law system. The Prosecutors Office in that case was declared inadmissible in their prosecution by the court.

Recently the “College van Beroep voor het Bedrijfsleven (CBB)”. spoke out against the prosecutors office in a public decision. This institution judges amongst others in disciplinary cases against accountants. Even though this institution cannot declare the Prosecutors Office inadmissible, the judgement does not beat about the bush.

In this disciplinary case against an accountant published on [29 January 2019](#) the CBB had to decide upon the quest if he helped a client with money laundering. During various raids in the criminal case against this client invoices were seized. These invoices showed a claim of € 100.000 of the accountant on this specific client. For this claim a payment agreement was made, where various credit invoices were sent to various

companies of this client, based in the Netherlands and abroad. The prosecutor's office suspects the accountant of forging these invoices . Based on this facts the Prosecutor's Office started a criminal investigation against the accountant and filed a disciplinary complaint against the accountant based on the same suspicions. The complaint reads that the accountant acted in breach of the fundamental principles of integrity and professional behavior. From the decision of the CBB it can be established that the criminal case had not yet been judged by a criminal court.

The disciplinary body for accountants decided that the complaint was unfounded by its decision of 30 April 2018. The body argued that the accountant denied the accusations against him and that the prosecutors office was not able to show that accountant actually was involved in falsely crediting the invoices. The body also pointed out that the account manager of the specific accountants office, who was in charge of the client relationships, was not interviewed by the prosecutors office even though this was very relevant. His statement could be of relevance by answering the question whether or not the invoices were false and whether the suspect had a role in this process.

The CBB came to the same conclusion in the appeal case. The CBB points out that the prosecutor's office has to state facts and circumstances showing that the accountant did not comply with his professional rules. Also the CBB states that the disciplinary complaint filed by the prosecutors office is a severe action and that the CBB may expect from the prosecutor's office as complainant that they investigate in a careful way without any prejudice. And that from that investigation it should show serious signs of breach of the professional rules before filing a complaint.

The CBB states that apparently the prosecutor's office did not find it necessary to do further investigation, even after the disciplinary body on [30 April 2018](#) stated that important

witnesses had not been interviewed. The CBB states that the prosecutor's office in the criminal case seems to only have been searching for information which would confirm their belief that the accountant had deliberately produced the false invoices.

The CBB clearly states that the prosecutors office was blinded by its cause. We believe this is a correct decision of the CBB. In such a procedure – which has immense impact on someone's personal and professional life – the prosecutors office should have decent arguments to substantiate their claim. Especially considering one of the persons filing the claim on behalf of the prosecutors office is subject to the same disciplinary laws as the accountant who the complaint was filed against. Moreover, our law system in the Netherlands prescribes that the Prosecutor's Office should also investigate exculpatory evidence. The Prosecutor's Office should thus prevent that it blinded by its 'cause'.

If you have any questions about the foregoing, please feel free to contact us via [boezelman@hertoghsadvocaten.nl](mailto:boezelman@hertoghsadvocaten.nl) and [boer@hertoghsadvocaten.nl](mailto:boer@hertoghsadvocaten.nl).