Exposure Draft

Proposed Changes to EP 100
Code of Professional Conduct and Ethics

Comments are requested by 10 December 2024.

Once issued, the proposed changes are effective as of 1 July 2025.

REQUEST FOR COMMENTS

This Exposure Draft of ISCA was approved for publication in November 2024. This Exposure Draft may be modified in light of comments received before being issued in its final form. Comments should be submitted so as to be received by 10 December 2024, preferably by e-mail. All comments will be considered a matter of public record. Email responses should be sent to professionalstandards@isca.org.sg.

PROPOSED CHANGES TO EP 100
CODE OF PROFESSIONAL CONDUCT AND ETHICS

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EXPLANATORY MEMORANDUM

Introduction

1. Members of the Institute of Singapore Chartered Accountants (ISCA) must adhere to Ethics Pronouncement (EP) 100 *Code of Professional Conduct and Ethics* (the Code or EP 100). EP 100 is modelled after the *International Code of Ethics for Professional Accountants (including International Independence Standards)* issued by the International Ethics Standards Board for Accountants (IESBA) of the International Federation of Accountants (IFAC).

2. EP 100 also encompasses locally developed SG provisions included in the *Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities* issued by the Accounting and Corporate Regulatory Authority (ACRA). SG provisions (designated with the letters "SG" in EP 100 and ACRA Code) are local adaptations of the IESBA Code to serve the public interest in Singapore and to conform to Singapore's regulatory environment and statutory requirements.

3. This memorandum provides background to ISCA's Exposure Draft (ED), and an explanation of the proposed changes to EP 100.

Background

4. EP 100, revised on 8 August 2024 and expected to be effective 15 December 2024, is based on the *Handbook of the International Code of Ethics for Professional Accountants, 2023 Edition* of the IESBA, published by the IFAC in September 2023.

5. In April 2024, IFAC published the final pronouncement, *Revisions to the Code Addressing Tax Planning and Related Services* (Tax Planning FP). If adopted, EP 100 would contain new Sections 280 and 380 and consequential amendments to section 321.

Consultation

6. This consultation seeks feedback on the proposed changes to EP 100 in this ED to adopt the Tax Planning FP in entirety. No changes to SG provisions are necessary for purposes of local adaptation as EP 100.

7. The key elements of the proposed changes to EP 100 are highlighted in the section that follows below.

Key Elements of the Proposed Changes to EP 100

8. The Tax Planning FP introduces two new sections to EP 100 to address tax planning (TP) and related services[1]:
   - Section 280 to guide judgements and decisions when professional accountants in business (PAIBs) perform TP activities for employing organisations.
   - Section 380 to guide judgements and decisions when professional accountants in public practice (PAPPs) provide TP services to clients.

9. Sections 280 and 380 establish a comprehensive ethical framework to guide PAIBs and PAPPs when performing TP activities or providing TP services. Among other matters, the proposed ethical framework:

[1] Sections 280 and 380 contain descriptions and examples of TP services and related services to circumscribe the scope of TP activities and services that the Code would address.

- Establishes the principle that PAIBs and PAPPs recommend or otherwise advise on a TP arrangement only if they have determined that there is a credible basis in laws and regulations for it.
- Requires consideration of the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the TP arrangement before determining whether to proceed with the recommendation or advice.
- Provides guidance to assist PAIBs and PAPPs in navigating situations of uncertainty when performing TP activities or providing TP services.

Effective Date

10. The proposed changes to Sections 280, 321 and 380 of EP 100 in this ED will be effective as of 1 July 2025.
11. For TP activities or services commenced before the effective date of 1 July 2025, such services or activities may be continued and be completed under the extant provisions of the Code.
12. Early adoption is permitted.

Useful Resource

13. The Staff of IESBA has issued Basis for Conclusions which relate to but does not form part of the Tax Planning FP. This Basis for Conclusions explain how the IESBA has addressed the significant matters raised on exposure.
14. The Basis for Conclusions relating to the Tax Planning FP issued in April 2024 may be downloaded from the IESBA website using this link.

PROPOSED CHANGES TO EP 100

MARK-UP FROM EXTANT VERSION

SECTION 280

TAX PLANNING ACTIVITIES

Introduction

280.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

280.2 Performing tax planning activities might create self-interest, self-review, advocacy or intimidation threats to compliance with the fundamental principles.

280.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the performance of tax planning activities. This section also requires a professional accountant to comply with relevant tax laws and regulations when performing such activities.

Requirements and Application Material

General

Professional Accountants' Public Interest Role in Relation to Tax Planning Activities

280.4 A1 Professional accountants play an important role in tax planning by contributing their expertise and experience to assist employing organisations in meeting their tax planning goals while complying with tax laws and regulations. In doing so, accountants help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.

280.4 A2 Employing organisations are entitled to organise their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, employing organisations have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to use their expertise and experience to assist their employing organisations in achieving their tax planning goals and meeting their tax obligations. However, when accountants provide such assistance, it might involve certain tax minimisation arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.

280.4 A3 It is ultimately for a tribunal, court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.

Description of Tax Planning Activities

280.5 A1 Tax planning activities are advisory activities designed to assist an employing organisation in planning or structuring its affairs in a tax-efficient manner.

280.5 A2 Tax planning activities cover a broad range of topics or areas. Examples of such activities include:

- Advising management on structuring the employing organisation's international operations to minimise its overall taxes.
- Advising on the structuring of transfer pricing arrangements, taking into account tax-related transfer pricing guidelines.
- Advising management on the utilisation of losses in a tax-efficient manner for

the employing organisation.

- Advising the employing organisation on the structuring of its capital distribution strategy in a tax-efficient manner.
- Advising management on structuring the employing organisation's compensation strategy for senior executives to optimise the tax benefits for the employing organisation.
- Advising a non-profit employing organisation on how to structure its business to avoid breaching its non-profit status.
- Advising management on structuring the employing organisation's investments to take advantage of tax incentives offered by jurisdictions or localities.

280.5 A3 Tax planning activities do not include activities that are generally referred to as tax compliance or tax preparation, which are activities to assist the employing organisation in fulfilling its filing, reporting, payment and other obligations under tax laws and regulations. However, if a tax activity comprises both tax planning and tax compliance, the portion that relates to tax planning is covered by this section.

280.5 A4 This section applies regardless of the nature of the employing organisation, including whether it is a public interest entity.

Related Activities

280.6 A1 There might be circumstances where a professional accountant is involved in performing a related activity for an employing organisation that is based on or linked to a tax planning arrangement developed by a third-party provider. In such circumstances, the provisions of this section apply to the underlying tax planning arrangement.

280.6 A2 Examples of such related activities include:

- Assisting the employing organisation in resolving a dispute with the tax authority on the tax planning arrangement.
- Representing the employing organisation in administrative or court proceedings regarding the tax planning arrangement.
- Implementing the tax planning arrangement for the employing organisation.
- Advising the employing organisation on an acquisition where the valuation depends on the tax planning arrangement established by the target.

Compliance with Laws and Regulations

280.7 A1 This section does not address tax evasion, which is illegal.

Anti-avoidance Laws and Regulations

R280.8 Where there are laws and regulations, including those that might be referred to as anti-avoidance rules, that limit or prohibit certain tax planning arrangements, a professional accountant shall obtain an understanding of those laws and regulations and advise the employing organisation to comply with them when performing tax planning activities.

Non-compliance with Tax Laws and Regulations

280.8 A1 If, in the course of performing a tax planning activity, a professional accountant becomes aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by an employing organisation, management, those charged with governance or other individuals working for or under the direction of the employing organisation, the requirements and application material set out in Section 260 apply.

Responsibilities of Management and Those Charged with Governance of the Employing Organisation

280.9 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:

- Ensuring that the employing organisation's tax affairs are conducted in accordance with the relevant tax laws and regulations.
- Maintaining all the books and records and implementing the systems of internal control necessary to enable the employing organisation to fulfil its tax compliance obligations.
- Engaging experts to advise on relevant aspects of the tax planning arrangement.
- Deciding whether to accept and implement the professional accountant's recommendation or advice on a tax planning arrangement.
- Authorising the submission of the employing organisation's tax returns and dealing with the relevant tax authorities in a timely manner.
- Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any tax planning arrangements.
- Making appropriate disclosure of tax strategy, policies or other tax-related matters in the financial statements or other relevant public documents in accordance with applicable reporting requirements.
- Ensuring that the employing organisation's tax planning arrangements are consistent with any publicly disclosed tax strategy or policies.

Responsibilities of All Professional Accountants

R280.10 As part of performing a tax planning activity for an employing organisation, the professional accountant shall obtain an understanding of the nature of the tax planning activity, including:

(a) The purpose, facts and circumstances of the tax planning arrangement; and
(b) The relevant tax laws and regulations.

280.11 A1 A professional accountant is expected to apply professional competence and due care in accordance with Subsection 113 when performing a tax planning activity. The accountant is also expected to have an inquiring mind and exercise professional judgement in accordance with Section 120 when considering the specific facts and circumstances relating to the tax planning activity.

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

R280.12 A professional accountant shall recommend or otherwise advise on a tax planning arrangement for an employing organisation only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement.

280.12 A1 The determination of whether there is a credible basis involves the exercise of professional judgement by the professional accountant. This determination will vary from jurisdiction to jurisdiction based on the relevant laws and regulations at the time.

280.12 A2 If the professional accountant determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R280.12 does not preclude the accountant from explaining to the accountant's immediate superior or other responsible individual within the employing organisation the accountant's rationale for the determination or advising on an alternative arrangement that has a credible basis.

280.12 A3 Paragraph R280.12 also does not preclude the professional accountant from assisting the employing organisation to remediate or rectify a tax planning arrangement which lacks a credible basis. Such type of activity is a related activity as described in paragraphs 280.6 A1 and A2. This includes, for example:

- Assisting the employing organisation to restructure a tax planning arrangement to achieve a credible basis as part of a tax dispute resolution activity.
- Agreeing with the employing organisation appropriate changes to the tax planning arrangement to achieve a credible basis as part of representing the employing organisation in administrative or court proceedings.

280.12 A4 Examples of actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:

- Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.
- Assessing the reasonableness of any assumptions.
- Reviewing the relevant tax legislation.
- Reviewing legislative proceedings that discuss the intent of the relevant tax legislation.
- Reviewing relevant literature such as court decisions, professional or industry journals, and tax authority rulings or guidance.
- Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.
- Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.
- Consulting with legal counsel or other experts within or outside the employing organisation regarding what a reasonable interpretation of the relevant tax laws and regulations might be.
- Consulting with the relevant tax authorities, where applicable.

R280.13 If the professional accountant becomes aware of circumstances that might impact the previous determination of the credible basis, the accountant shall re-assess the validity of that basis.

Consideration of the Overall Tax Planning Recommendation or Advice

R280.14 In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgement and consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

280.14 A1 The reputational and commercial consequences might relate to personal or business implications to the employing organisation or implications to the reputation of the employing organisation and the profession of a prolonged dispute with the relevant tax or other authorities. The implications to the employing organisation might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the employing organisation.

280.14 A2 An awareness of the wider economic consequences might take into account the professional accountant's general understanding of the current economic environment and the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the employing organisation operates.

R280.15 If, having considered the matters set out in paragraph R280.14, the professional accountant decides not to recommend or otherwise advise on a tax planning arrangement that the employing organisation would like to pursue, the accountant shall inform management and, if appropriate, those charged with governance, of this and explain the basis for the accountant's conclusion.

Tax Planning Arrangements Involving Multiple Jurisdictions

280.16 A1 There might be circumstances where a professional accountant becomes aware that an employing organisation is obtaining a tax benefit from accounting for the same transaction in more than one jurisdiction, especially if there is no tax treaty between the jurisdictions. In such circumstances, while the employing organisation might be in compliance with the tax laws and regulations of each jurisdiction, the accountant might advise management to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.

280.16 A2 Relevant factors the professional accountant might consider in determining whether to make such disclosure include:

- The significance of the tax benefit in the relevant jurisdictions.
- Stakeholders' perceptions of the employing organisation if the facts and circumstances were known to the stakeholders.
- Whether there are globally or nationally accepted principles or practices regarding disclosure of similar situations to the tax authorities in the relevant jurisdictions.

Circumstances of Uncertainty

280.17 A1 In determining whether there is a credible basis for the tax planning arrangement, a professional accountant might encounter circumstances giving rise to uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations. Such uncertainty makes it more challenging for the accountant to determine that there is a credible basis in laws and regulations for the tax planning arrangement and might, therefore, create threats to compliance with the fundamental principles.

280.17 A2 Circumstances that might give rise to uncertainty include:

- Difficulty in establishing an adequate factual basis.
- Difficulty in establishing an adequate basis of assumptions.
- Lack of clarity in the tax laws and regulations and their interpretation, including:
    - Gaps in the tax laws and regulations.
    - Challenges to previous court rulings.
    - Conflicting tax laws and regulations in different jurisdictions in circumstances involving cross-border transactions.
    - Innovative business models not addressed by the current tax laws and regulations.
    - Recent court or tax authority rulings or positions that cast doubt on similar tax planning arrangements.

  - Complexity in interpreting or applying the tax laws and regulations from a technical or legal point of view.
  - Lack of a legal precedent, ruling or position.
- Lack of clarity regarding the economic purpose and substance of the tax planning arrangement.
- Lack of clarity about the ultimate beneficiaries of the tax planning arrangement.

R280.18 Where there is uncertainty as to whether a tax planning arrangement is or will be in compliance with the relevant tax laws and regulations, a professional accountant shall discuss the uncertainty with management and, if appropriate, those charged with governance.

280.18 A1 The discussion serves a number of purposes, including:

- Explaining the professional accountant's assessment about how likely the relevant tax authorities are to have a view that supports the tax planning arrangement where there is a lack of clarity in the interpretation of the relevant tax laws and regulations.
- Considering any assumptions made when establishing the basis on which the tax planning advice is provided.
- Obtaining any additional information from management and, if appropriate, those charged with governance that might reduce the uncertainty.
- Discussing any reputational, commercial or wider economic consequences in pursuing the tax planning arrangement.
- Discussing potential courses of action to mitigate the possibility of adverse consequences for the employing organisation, including consideration of disclosure to the relevant tax authorities.

Potential Threats Arising from Performing a Tax Planning Activity

280.19 A1 Performing a tax planning activity for an employing organisation might create a self-interest, self-review, advocacy or intimidation threat. For example:

- A self-review threat might be created when a professional accountant has recently performed a valuation activity for the employing organisation for tax purposes, the output of which is then relied upon or is a key input to a tax planning activity for the employing organisation.
- A self-interest threat might be created when a professional accountant's career advancement prospects depend on developing a creative tax planning arrangement for which the interpretation of the relevant tax laws and regulations is unclear.
- A self-interest threat might be created when a professional accountant participates in an incentive compensation scheme impacted by the accountant's design of a tax planning arrangement.
- A self-interest threat might be created when a professional accountant is in possession of confidential information obtained from the accountant's involvement in formulating or drafting tax policy, laws or regulations for a government agency and the confidential information would be valuable in advising the accountant's employing organisation in its tax planning arrangements.
- Self-interest and advocacy threats might be created when a professional accountant advocates an employing organisation's position in a tax planning arrangement which the accountant previously advised on before a tax

authority when there are indications that the arrangement might not have a credible basis in laws and regulations.

- Self-interest and intimidation threats might be created when a dominant owner or leader of the employing organisation exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant faces potential dismissal over the position the employing organisation is insisting on pursuing regarding a tax planning arrangement.

280.19 A2 Factors that are relevant in evaluating the level of such threats include:

- The degree of transparency regarding the underlying business transaction or circumstances, including, where applicable, the identity of the ultimate beneficiaries.
- Whether the tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.
- The nature and complexity of the underlying business transaction or circumstances.
- The complexity or clarity of the relevant tax laws and regulations.
- Whether the professional accountant knows, or has reason to believe, that the tax planning arrangement would be contrary to the intent of the relevant tax legislation.
- The number of jurisdictions involved and the nature of their tax regimes.
- The extent of the professional accountant's expertise and experience in the relevant tax areas.
- The significance of the potential tax savings.
- The nature and significance of any incentives offered to the professional accountant to develop the arrangement.
- The extent to which the professional accountant is aware that the tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities.
- Whether there is pressure being exerted on the professional accountant.
- The degree of urgency in implementing the tax planning arrangement.
- Whether it is a tax planning arrangement used for multiple clients with little modification for the employing organisation's specific circumstances.
- The organisational culture of the employing organisation.

280.19 A3 Examples of actions that might eliminate such threats include:

- Advising the employing organisation to structure the tax planning arrangement so that it is consistent with an existing tax interpretation or ruling issued by the relevant tax authorities.
- Obtaining an advance ruling from the relevant tax or other authorities, where possible.
- Advising management not to pursue the tax planning arrangement.

280.19 A4 Examples of actions that might be safeguards to address such threats include:

- Establishing the identity of the ultimate beneficiaries.

- Advising the employing organisation to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.
- Advising the employing organisation to structure the tax planning arrangement based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities.
- Consulting with a legal counsel or other expert within or outside the employing organisation in the relevant tax areas.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances.
- Having a tax expert, who is not otherwise involved in the tax planning activity, review any work performed or conclusions reached by the professional accountant with respect to the tax planning arrangement.
- Having the employing organisation provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ultimate beneficiaries of the tax planning arrangement.

280.19 A5 Examples of steps a professional accountant might take to establish the identity of the ultimate beneficiaries include:

- Making inquiries of management and others within or outside the employing organisation having regard to the principle of confidentiality.
- Reviewing the employing organisation's tax records, financial statements and other relevant corporate records.
- Researching relevant public records.

Communication of Basis of the Tax Planning Recommendation or Advice

R280.20 A professional accountant shall explain to management and, if appropriate, those charged with governance the basis on which the accountant recommended or otherwise advised on a tax planning arrangement to the employing organisation.

Disagreement on the Tax Planning Arrangement

R280.21 If the professional accountant disagrees with the accountant's immediate superior or other responsible individual within the employing organisation that a tax planning arrangement that the employing organisation would like to pursue has a credible basis, the accountant shall:

(a) Inform the immediate superior or other responsible individual within the employing organisation, and if appropriate, those charged with governance, of the accountant's assessment;
(b) Communicate to them the potential consequences of pursuing the arrangement; and
(c) Advise them not to pursue the arrangement.

R280.22 If the immediate superior or other responsible individual within the employing organisation decides to pursue the tax planning arrangement, despite the professional accountant's advice to the contrary, the accountant shall consider:

(a) Taking steps to have the details of the arrangement and the difference of views communicated with the next higher level of authority within the employing organisation and, if appropriate, those charged with governance;

(b) Advising the employing organisation to make full disclosure of the arrangement to the relevant tax authorities; and

(c) Communicating the details of the arrangement and the difference of views to the employing organisation's external auditor, if any.

280.22 A1 In light of the response of the immediate superior or other responsible individual within the employing organisation to the professional accountant's advice, the accountant might also consider whether there is a need to resign from the employing organisation.

280.22 A2 Many employing organisations have established protocols and procedures regarding how to raise ethical or other concerns internally. These protocols and procedures include, for example, an ethics policy or internal whistle-blowing mechanism. Such protocols and procedures might allow matters to be reported anonymously through designated channels.

Documentation

280.23 A1 When performing a tax planning activity, a professional accountant is encouraged to document on a timely basis:

- The purpose, circumstances and substance of the tax planning arrangement.
- The identity of the ultimate beneficiaries.
- The nature of any uncertainties.
- The accountant's analysis, the courses of action considered, the judgements made, and the conclusions reached in advising the employing organisation on developing the tax planning arrangement.
- The results of discussions with the accountant's immediate superior and appropriate levels of management, those charged with governance and other parties.
- The response of the accountant's immediate superior, management and, where applicable, those charged with governance to the accountant's advice.
- Any disagreement with the accountant's immediate superior, management and, where applicable, those charged with governance.

280.23 A2 Preparing such documentation assists the accountant to:

- Consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.
- Develop the accountant's analysis of the facts, circumstances, relevant tax laws and regulations and any assumptions made or changed.
- Record the basis of the professional judgements at the time they were made or changed.
- Support the position if the tax planning arrangement is challenged by the relevant tax authorities.
- Demonstrate that the accountant has complied with the provisions in this section.

SECTION 321

SECOND OPINIONS

…

Requirements and Application Material

General

321.3 A1 A professional accountant might be asked to provide a second opinion on the application of tax laws and regulations, and accounting, auditing, reporting or other standards or principles to (a) specific circumstances, or (b) transactions by or on behalf of a company or an entity that is not an existing client. A threat, for example, a self-interest threat to compliance with the principle of professional competence and due care, might be created if the second opinion is not based on the same facts that the existing or predecessor accountant or other service provider had, or is based on inadequate evidence.

…

321.3 A3 Examples of actions that might be safeguards to address such a self-interest threat include:

- With the client's permission, obtaining information from the existing or predecessor accountant or other service provider.
- Describing the limitations surrounding any opinion in communications with the client.
- Providing the existing or predecessor accountant or other service provider with a copy of the opinion.

When Permission to Communicate is Not Provided

R321.4 If an entity seeking a second opinion from a professional accountant will not permit the accountant to communicate with the existing or predecessor accountant or other service provider, the accountant shall determine whether the accountant may provide the second opinion sought.

[Other paragraphs of extant Section 321 remain unchanged.]

SECTION 380

TAX PLANNING SERVICES

Introduction

380.1 Professional accountants are required to comply with the fundamental principles and apply the conceptual framework set out in Section 120 to identify, evaluate and address threats.

380.2 Providing tax planning services might create self-interest, self-review, advocacy, or intimidation threats to compliance with the fundamental principles.

380.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the provision of tax planning services. This section also requires a professional accountant to comply with relevant tax laws and regulations when providing such services.

Requirements and Application Material

General

Professional Accountants' Public Interest Role in Relation to Tax Planning Services

380.4 A1 Professional accountants play an important role in tax planning by contributing their expertise and experience to assist clients in meeting their tax planning goals while complying with tax laws and regulations. In doing so, accountants help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.

380.4 A2 Clients are entitled to organise their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, clients have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to use their expertise and experience to assist their clients in achieving their tax planning goals and meeting their tax obligations. However, when accountants provide such assistance, it might involve certain tax minimisation arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.

380.4 A3 It is ultimately for a tribunal, court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.

Description of Tax Planning Services

380.5 A1 Tax planning services are advisory services designed to assist a client, whether an individual or an entity, in planning or structuring the client's affairs in a tax-efficient manner.

380.5 A2 Tax planning services cover a broad range of topics or areas. Examples of such services include:

- Advising an individual to structure their tax affairs to achieve investment, retirement or estate planning goals.
- Advising an individual business owner on structuring their ownership and income from the business to minimise their overall taxes.
- Advising an entity on structuring its international operations to minimise its overall taxes.
- Advising on the structuring of transfer pricing arrangements, taking into account tax-related transfer pricing guidelines.
- Advising on the utilisation of losses in a tax-efficient manner.

- Advising an entity on the structuring of its capital distribution strategy in a tax-efficient manner.

- Advising an entity on structuring its compensation strategy for senior executives to optimise the tax benefits.

380.5 A3 Tax planning services do not include services that are generally referred to as tax compliance or tax preparation, which are services to assist the client in fulfilling the client's filing, reporting, payment and other obligations under tax laws and regulations. However, if a tax service comprises both tax planning and tax compliance, the portion that relates to tax planning is covered by this section.

380.5 A4 This section applies regardless of the nature of the client, including whether it is a public interest entity.

Related Services

380.6 A1 There might be circumstances where a professional accountant is engaged to provide a related service to a client that is based on or linked to a tax planning arrangement developed by the client or a third-party provider. In such circumstances, the provisions of this section apply to the underlying tax planning arrangement.

380.6 A2 Examples of such related services include:

- Assisting the client in resolving a dispute with the tax authority on the tax planning arrangement.

- Representing the client in administrative or court proceedings regarding the tax planning arrangement.

- Implementing the tax planning arrangement for the client.

- Advising the client on an acquisition where the valuation depends on the tax planning arrangement established by the target.

- Advising the client on estate planning based on a tax planning arrangement established for the client's business.

Compliance with Laws and Regulations

380.7 A1 This section does not address tax evasion, which is illegal.

Anti-avoidance Laws and Regulations

R380.8 Where there are laws and regulations, including those that might be referred to as anti-avoidance rules, that limit or prohibit certain tax planning arrangements, a professional accountant shall obtain an understanding of those laws and regulations and advise the client to comply with them when providing tax planning services.

Non-compliance with Tax Laws and Regulations

380.8 A1 If, in the course of providing tax planning services, a professional accountant becomes aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by a client, management, those charged with governance or other individuals working for or under the direction of the client, the requirements and application material set out in Section 360 apply.

Responsibilities of Management and Those Charged with Governance

380.9 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:

- Ensuring that the client's tax affairs are conducted in accordance with the relevant tax laws and regulations.

- Maintaining all the books and records and implementing the systems of internal control necessary to enable the client to fulfil its tax compliance obligations.
- Making available all the facts and other relevant information needed to enable the professional accountant to perform the tax planning service.
- Engaging experts to advise on relevant aspects of the tax planning arrangement.
- Deciding whether to accept and implement the professional accountant's recommendation or advice on a tax planning arrangement.
- Authorising the submission of the client's tax returns and ensuring that any matters raised by the relevant tax authorities are addressed in a timely manner.
- Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any tax planning arrangements.
- Making appropriate disclosure of tax strategy, policies or other tax-related matters in the financial statements or other relevant public documents in accordance with applicable reporting requirements.
- Ensuring that the client's tax planning arrangements are consistent with any publicly disclosed tax strategy or policies.

Responsibilities of All Professional Accountants

R380.10 As part of providing a tax planning service, a professional accountant shall obtain an understanding of the nature of the engagement, including:

(a) Knowledge and understanding of the client, its owners, management and those charged with governance, and its business activities;
(b) The purpose, facts and circumstances of the tax planning arrangement; and
(c) The relevant tax laws and regulations.

380.10 A1 The requirements and application material in Section 320 apply with respect to client and engagement acceptance.

380.10 A2 A professional accountant might be engaged to provide a second opinion on a tax planning arrangement. In addition to the provisions in this section, the requirements and application material in Section 321 also apply in such circumstances.

380.11 A1 A professional accountant is expected to apply professional competence and due care in accordance with Subsection 113 when providing a tax planning service. The accountant is also expected to have an inquiring mind and exercise professional judgement in accordance with Section 120 when considering the specific facts and circumstances relating to the tax planning service.

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

R380.12 A professional accountant shall recommend or otherwise advise on a tax planning arrangement to a client only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement.

380.12 A1 The determination of whether there is a credible basis involves the exercise of professional judgement by the professional accountant. This determination will vary from jurisdiction to jurisdiction based on the relevant laws and regulations at the time.

380.12 A2 If the professional accountant determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R380.12 does not preclude the accountant from explaining to the client the accountant's rationale for the determination or advising on an alternative arrangement that has a credible basis.

380.12 A3 Paragraph R380.12 also does not preclude the professional accountant from being engaged by the client, or otherwise assisting the client, to remediate or rectify a tax planning arrangement which lacks a credible basis. Such type of service is a related service as described in paragraphs 380.6 A1 and A2. This includes, for example:

- Assisting the client to restructure a tax planning arrangement to achieve a credible basis as part of a tax dispute resolution service.
- Agreeing with the client appropriate changes to the tax planning arrangement to achieve a credible basis as part of representing the client in administrative or court proceedings.

380.12 A4 Examples of actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:

- Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.
- Assessing the reasonableness of any assumptions.
- Reviewing the relevant tax legislation.
- Reviewing legislative proceedings that discuss the intent of the relevant tax legislation.
- Reviewing relevant literature such as court decisions, professional or industry journals, and tax authority rulings or guidance.
- Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.
- Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.
- Consulting with legal counsel or other experts within or outside the professional accountant's firm regarding what a reasonable interpretation of the relevant laws and regulations might be.
- Consulting with the relevant tax authorities, where applicable.

R380.13 If, during the course of the engagement, the professional accountant becomes aware of circumstances that might impact the previous determination of the credible basis, the accountant shall re-assess the validity of that basis.

Consideration of the Overall Tax Planning Recommendation or Advice

R380.14 In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgement and consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

380.14 A1 The reputational and commercial consequences might relate to personal or business implications to the client or implications to the reputation of the client and the profession from a prolonged dispute with the relevant tax or other authorities. The implications to the client might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the client's business.

380.14 A2 An awareness of the wider economic consequences might take into account the professional accountant's general understanding of the current economic environment and the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the client operates.

R380.15 If, having considered the matters set out in paragraph R380.14, the professional accountant decides not to recommend or otherwise advise on a tax planning arrangement that the client would like to pursue, the accountant shall inform the client of this and explain the basis for the accountant's conclusion.

Tax Planning Arrangements Involving Multiple Jurisdictions

380.16 A1 There might be circumstances where a professional accountant becomes aware that a client is obtaining a tax benefit from accounting for the same transaction in more than one jurisdiction, especially if there is no tax treaty between the jurisdictions. In such circumstances, while the client might be in compliance with the tax laws and regulations of each jurisdiction, the accountant might advise the client to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.

380.16 A2 Relevant factors the professional accountant might consider in determining whether to advise the client to make such disclosure include:

- The significance of the tax benefits in the relevant jurisdictions.
- Stakeholders' perceptions of the client if the facts and circumstances were known to the stakeholders.
- Whether there are globally or nationally accepted principles or practices regarding disclosure of similar situations to the tax authorities in the relevant jurisdictions.

Circumstances of Uncertainty

380.17 A1 In determining whether there is a credible basis for the tax planning arrangement, a professional accountant might encounter circumstances giving rise to uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations. Such uncertainty makes it more challenging for the accountant to determine that there is a credible basis in laws and regulations for the tax planning arrangement and might, therefore, create threats to compliance with the fundamental principles.

380.17 A2 Circumstances that might give rise to uncertainty include:

- Difficulty in establishing an adequate factual basis.
- Difficulty in establishing an adequate basis of assumptions.
- Lack of clarity in the tax laws and regulations and their interpretation, including:
  - Gaps in the tax laws and regulations.
  - Challenges to previous court rulings.
  - Conflicting tax laws and regulations in different jurisdictions in circumstances involving cross-border transactions.
  - Innovative business models not addressed by the current tax laws and regulations.
  - Recent court or tax authority rulings or positions that cast doubt on similar

tax planning arrangements.

  - Complexity in interpreting or applying the tax laws and regulations from a technical or legal point of view.
  - Lack of a legal precedent, ruling or position.
- Lack of clarity regarding the economic purpose and substance of the tax planning arrangement.
- Lack of clarity about the ultimate beneficiaries of the tax planning arrangement.

R380.18 Where there is uncertainty as to whether a tax planning arrangement is or will be in compliance with the relevant tax laws and regulations, a professional accountant shall discuss the uncertainty with the client.

380.18 A1 The discussion serves a number of purposes, including:

- Explaining the professional accountant's assessment about how likely the relevant tax authorities are to have a view that supports the tax planning arrangement where there is a lack of clarity in the interpretation of the relevant tax laws and regulations.
- Considering any assumptions made when establishing the basis on which the tax planning advice is provided.
- Obtaining any additional information from the client that might reduce the uncertainty.
- Discussing any reputational, commercial or wider economic consequences in pursuing the tax planning arrangement.
- Discussing potential courses of action to mitigate the possibility of adverse consequences for the client, including consideration of disclosure to the relevant tax authorities.

Potential Threats Arising from Providing a Tax Planning Service

380.19 A1 Providing a tax planning service to a client might create a self-interest, self-review, advocacy or intimidation threat. For example:

- A self-review threat might be created when a professional accountant has recently provided a valuation service to a client for tax purposes, the output of which is then relied upon or is a key input to a tax planning service for the client.
- A self-interest threat might be created when a professional accountant has a direct financial interest in a client and the accountant is involved in designing a tax planning arrangement that has an impact on the client's financial situation.
- Self-interest and advocacy threats might be created when a professional accountant actively promotes a particular tax position a client should adopt.
- A self-interest threat might be created when a professional accountant is in possession of confidential information obtained from the accountant's involvement in formulating or drafting tax policy, laws or regulations for a government agency and the confidential information would be valuable to the accountant in advising other clients on their tax planning arrangements.
- A self-interest threat might be created when a professional accountant accepts a fee that might be perceived to be excessive for an engagement to develop a tax planning arrangement for which the interpretation of the relevant tax laws and regulations is uncertain or unclear.

- Self-interest and advocacy threats might be created when a professional accountant advocates a client's position in a tax planning arrangement which the accountant previously advised on before a tax authority when there are indications that the arrangement might not have a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant provides services to a client who exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis for the arrangement in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant is threatened with dismissal from the engagement or the accountant's firm concerning the position a client is insisting on pursuing regarding a tax planning arrangement.

380.19 A2 Factors that are relevant in evaluating the level of such threats include:

- The degree of transparency of the client, including, where applicable, the identity of the ultimate beneficiaries.
- Whether the tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.
- The nature and complexity of the underlying business transaction or circumstances.
- The complexity or clarity of the relevant tax laws and regulations.
- Whether the professional accountant knows, or has reason to believe, that the tax planning arrangement would be contrary to the intent of the relevant tax legislation.
- The number of jurisdictions involved and the nature of their tax regimes.
- The extent of the professional accountant's expertise and experience in the relevant tax areas.
- The significance of the potential tax savings.
- The nature and amount of the fee for the tax planning service.
- The extent to which the professional accountant is aware that the tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities.
- Whether there is pressure being exerted by the client or another party on the professional accountant.
- The degree of urgency in implementing the tax planning arrangement.
- Whether it is a tax planning arrangement used for multiple clients with little modification for the client's specific circumstances.
- The known previous behaviour or reputation of the client, including its organisational culture.

380.19 A3 Examples of actions that might eliminate such threats include:

- Referring the client to an expert outside the professional accountant's firm who has the necessary expertise and experience to advise the client on the tax planning arrangement.
- Advising the client to structure the tax planning arrangement so that it is consistent with an existing interpretation or ruling issued by the relevant tax

authorities.

- Obtaining an advance ruling from the relevant tax or other authorities, where possible.
- Advising the client not to pursue the tax planning arrangement.

380.19 A4 Examples of actions that might be safeguards to address such threats include:

- Establishing the identity of the ultimate beneficiaries.
- Advising the client to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.
- Advising the client to structure the tax planning arrangement based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities.
- Consulting with a legal counsel or other expert within or outside the professional accountant's firm in the relevant tax areas.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances.
- Having an appropriate reviewer, who is not otherwise involved in providing the tax planning service, review any work performed or conclusions reached by the professional accountant with respect to the tax planning arrangement.
- Having the client provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ultimate beneficiaries of the tax planning arrangement.

380.19 A5 Examples of steps a professional accountant might take to establish the identity of the ultimate beneficiaries include:

- Making inquiries of management and others within the client.
- Making inquiries of others within or outside the firm who have dealt with the client, having regard to the principle of confidentiality.
- Reviewing the client's tax records, financial statements and other relevant corporate records.
- Making inquiries of registrars where the client or entities within its legal structure are incorporated concerning the relevant shareholders.
- Researching relevant public records.

Communication of Basis of the Tax Planning Recommendation or Advice

R380.20 A professional accountant shall explain the basis on which the accountant recommended or otherwise advised on a tax planning arrangement to the client.

Disagreement on the Tax Planning Arrangement

R380.21 If the professional accountant disagrees that a tax planning arrangement that a client would like to pursue has a credible basis, the accountant shall:

(a) Inform the client of the basis of the accountant's assessment;
(b) Communicate to the client the potential consequences of pursuing the arrangement; and
(c) Advise the client not to pursue the arrangement.

R380.22 If the client decides to pursue the tax planning arrangement despite the professional accountant's advice to the contrary, the accountant shall advise the client to:

(a) Communicate internally to the appropriate level of management the details of the arrangement and the difference of views;
(b) Consider making full disclosure of the arrangement to the relevant tax authorities; and
(c) Consider communicating the details of the arrangement and the difference of views to the external auditor, if any.

380.22 A1 As part of communicating the matters set out in paragraphs R380.21 and R380.22, a professional accountant might consider it appropriate to raise the relevant matters with those charged with governance of the client.

R380.23 In light of the client's response to the professional accountant's advice, the accountant shall consider whether there is a need to withdraw from the engagement and the professional relationship.

Tax Planning Products or Arrangements Developed by a Third Party

R380.24 If a client engages a professional accountant to advise on a tax planning product or arrangement developed by a third party, the accountant shall:

(a) Inform the client of any professional or business relationship the accountant has with the third-party provider; and
(b) Apply the provisions in this section with respect to the tax planning product or arrangement.

R380.25 If a professional accountant recommends or refers a client to a third-party provider of tax planning services, the accountant shall inform the client of any professional or business relationship the accountant has with the third-party provider.

380.25 A1 Where the professional accountant only recommends or refers a client to a third-party provider of tax planning services, the provisions of this section do not apply.

380.25 A2 If a professional accountant receives a referral fee or commission from the third-party provider, the provisions in Section 330 apply.

Documentation

380.26 A1 When providing a tax planning service, a professional accountant is encouraged to document on a timely basis:

- The purpose, circumstances and substance of the tax planning arrangement.
- The identity of the ultimate beneficiaries.
- The nature of any uncertainties.
- The accountant's analysis, the courses of action considered, the judgements made, and the conclusions reached in advising the client on the tax planning arrangement.
- The results of discussions with the client and other parties.
- The client's response to the accountant's advice.
- Any disagreement with the client.

380.26 A2 Preparing such documentation assists the accountant to:

- Consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.
- Develop the accountant's analysis of the facts, circumstances, relevant tax laws and regulations and any assumptions made or changed.
- Record the basis of the professional judgements at the time they were made or changed.

- Support the position if the tax planning arrangement is challenged by the relevant tax authorities.
- Demonstrate that the accountant has complied with the provisions in this section.

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