

Agenda Item 3-B

MARKED UP FROM SEPTEMBER 2023

PART 3 – PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

PROPOSED 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, ~~particularly the principles of integrity, objectivity, professional competence and due care, and professional behavior.~~
- 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 organize 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 minimization 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 ~~comprise a broad range of~~ 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.

Commented [CV1]: Suggestion from a Board member which the Task Force accepted.

Commented [CV2]: During the September 2023 Board meeting, the Task Force was encouraged to consider providing further clarification regarding the distinction between tax planning and compliance services.

Commented [CV3R2]: Task Force Response:
Preparation of a tax return without providing tax planning advice is an example of a tax compliance service that is outside the project's scope.

The Task Force proposes to clarify this via new application material paragraph 380.5 A3.

The Task Force proposes that this also be explained in the Basis of Conclusion document.

The TF notes that the PA would still be required to apply the conceptual framework to identify, evaluate, and address any threats to the PA's compliance with the fundamental principles when providing a tax compliance service.

Commented [CV4]: Comments from a Board member:

1) In section 604.2 A1, we refer to both tax planning and tax advisory services.

2) This section is designed from the perspective of PAs who provide advice, rather than from the perspective of PAs who are directly involved in the development of TP arrangements (TP planners) for the client. In particular, the addition of the term "advisory" highlights this issue or question.

Commented [CV5R4]: Task Force Responses:

1) Tax Advisory and Tax Planning are not mutually exclusive.

- Some tax advisory services are not tax planning services

- However, tax planning services are advisory services, which is reflected in paragraph 380.5 A1.

2) The Task Force does not believe that the concept of providing advice precludes the PA from being directly involved in the development of the TP arrangement. The advice can consist of the design of the TP arrangement for the client's consideration.

380.5 A2 Tax planning services cover a broad range of topics or areas. Examples of tax planning services 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 minimize their overall taxes.
- Advising an entity on structuring its international operations to minimize its overall taxes.
- Advising on the structuring of transfer pricing arrangements, taking into account tax-related transfer pricing guidelines.
- Advising on the utilization 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 optimize the tax benefits.

Commented [CV6]: During the September 2023 meeting, the Task Force was requested to clarify that advising on a transfer pricing arrangement is not a tax compliance service.

Commented [CV7R6]: Task Force Response:

The Task Force has amended the bullet point to make it clearer that this example falls within the scope of this section.

The Task Force proposes that the Basis of Conclusion explain that while this standard does not address tax compliance services, if the PA is engaged to perform a service that comprises both tax planning and tax compliance, it is a service that is covered under this section.

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 would be covered by this section.

380.5 A43 This section applies regardless of the nature of the client, including whether it is a public interest entity.

Related Services

380.26 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.

380.26 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

R380.68 This section does not address tax evasion, which is illegal. In some jurisdictions, Where there are laws and regulations, including those that might be are often 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

380.78 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

380.98 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 fulfill 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 external 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.
- Submitting the client'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.

Commented [CV8]: Query from a board member:
This new sentence appears very odd in particular, given that this para is a requirement. What about moving this para down and combining it with para 380.7 A1?

Commented [CV9R8]: Task Force Response:
The Task Force proposes to move the statement to a separate application material paragraph 380.7 A1.

Commented [CV10]: Query from board member:
The management responsibility is linked to the responsibility for the client's tax compliance, including the content of and timely submission of relevant returns and filings. The mere submission is not per se a management responsibility, as it may be delegated to a PA in the tax compliance activity.

Commented [CV11R10]: Task Force Response:
The Task Force proposes no change as management has a responsibility to submit the client's tax return. Management may, however, engage a PA to assist management in making the submission to the tax authority.

Commented [CV12]: The Task Force is proposing this addition in response to a comment from the PIOB that the proposed text could go further in promoting transparency by guiding PAs to encourage and promote the appropriate disclosure of tax-related matters in the financial statements or other relevant public documents, in accordance with applicable reporting requirements.

The Task Force believes that the promotion of transparency of tax-related matters in the client's financial statements or other public documents is truly a matter for reporting frameworks to address. It is beyond the remit of the Code to address such reporting matters. However, the Task Force proposes that the transparency point be explicitly acknowledged as a management responsibility in this paragraph.

- Ensuring that the client's tax planning arrangements are consistent with any publicly disclosed tax strategy or policies.

Responsibilities of All Professional Accountants

R380.910 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.

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

380.910 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.

380.101 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 judgment 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

R380.142 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.

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

380.124 A2 If the professional accountant determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R380.142 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. 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 appropriate changes to the tax planning arrangement with the client to achieve a credible basis as part of representing the client in administrative or court proceedings.

Commented [CV13]: Comments from a Board member:

I think that "Advise on" 380.12 is not sufficiently clear. As this is a requirement, I think that the Code should be clear that the PA cannot advocate such a tax planning, while they can advise as explained in the application material.
The text would be clearer if "or otherwise advise on" would be changed with "or provide advice recommending" or something similar.

Commented [CV14R13]: Task Force Response:

This was the wording the Board approved in the ED. Respondents generally supported it. The Task Force is of the view that "provide advice recommending" is no different from "recommend". More importantly, limiting the advice to only recommendations would be unduly limiting as the advice might not be in the form of a recommendation. The Task Force therefore does not propose any change.

Commented [CV15]: Comment from a Board member:

I agree with the TF clarifications. On the other hand the BfC should also include the other examples included in the EM (ie ... the client may advise the PA of a transaction that has already occurred that does not have a credible basis in laws and regulations and therefore needs advice on how to address it (e.g., complying with relevant disclosure requirements under the law)

Commented [CV16R15]: Task Force Response:

Point accepted. See new application material paragraph 380.12 A3, also added in response to stakeholder feedback on outreach.

380.1²⁴ A⁴³ 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 ~~tax laws~~ and regulations might be.
- Consulting with the relevant tax authorities, where applicable.

R380.1³² 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

R380.1⁴³ In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgment and consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

380.1³⁴ 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 of 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.

380.1³⁴ 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.

R380.1⁴⁵ If, having considered the matters set out in paragraph R380.1³⁴, 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.

Commented [CV17]: Comment from a Board member:

The fact that there are challenges, it is not per se a decisive argument. Such challenges may or may not be - at the end - supported by courts. I think that this should be factored in, by adding some clarifications. A viable alternative may be "has not been successfully challenged by...."

Commented [CV18R17]: Task Force Response:

The Task Force notes that the wording of the bullet point is from the ED and was approved by the Board. Respondents broadly supported it. The bullet point states that the practice is already *established*. To limit consideration of the action to only circumstances where courts have affirmed the practice would be unreasonable. Not every established practice needs to have been vetted by the courts if it is generally accepted practice. The Task Force therefore proposes no change.

Tax Planning Arrangements Involving Multiple Jurisdictions

380.156 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.

380.156 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

380.176 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.

380.176 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.

R380.187 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.

380.187 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 that 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

380.198 A1 Providing a tax planning service to a client might create a self-interest, self-review, self-interest, 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-review threat might be created when a professional accountant also provides other services to the client, such as a valuation service for tax consolidation purposes, the outcome of which will be relied upon when providing the tax planning service.
- 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.
- A self-interest or 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 advises a government agency on tax policy, laws or regulations and the confidential information the accountant obtains from that work would be valuable in advising other clients on their tax planning arrangements.

Commented [CV19]: Query from member:
Please elaborate on the phrase and the BFC should include materials and clarifications on the meaning of this circumstance.

Commented [CV20R19]: Task Force Response:

The Task Force is of the view that the concept of "ultimate beneficiaries" is generally understood from its plain English wording.

Commented [CV21]: Comment from a Board member:

My perception is that this may result in being misunderstood. Is it sufficiently clear that this statement is not intended to direct PA and clients to assume a behaviors to deliberately circumvent laws and regulations? Someone could argue that this could be construed as a license to act in such a way.

Commented [CV22R21]: Task Force Response:

The Task Force notes that this bullet point was broadly supported by respondents to the ED. The Task Force, however, made editorial changes in response to comments received from respondents.

The Task Force believes that it would not be appropriate to suggest that the Code would direct a PA to encourage a client to deliberately circumvent laws and regulations, i.e., commit tax evasion.

Commented [CV23]: Comment from a Board member:

This new bullet says that a self-review threat is created if the PA relies on the outcome of the other services in providing the TP service. In other words, this is an example where the other services create the SRT to the TP service.

However, given the main body of this para stating that "Providing a TP service to a client might create a self-review...", I am of the view that this bullet should address the circumstances where providing a PT service creates a SRT.

Commented [CV24R23]: Task Force Response:

The Task Force has reworded the example for clarity.

Commented [CV25]: Query from a Board member:

This bullet should exemplify a threat that is created by the provision of a TP service. I believe that the term "advising on" fits better.

Commented [CV26R25]: Task Force Response:

The Task Force notes that designing is an example of providing advice on a TP arrangement. This was also the wording in the ED and respondents did not raise any concerns it was unclear.

Commented [CV27]: The Task Force is proposing adding this example to explicitly recognize that this threat situation might occur in practice, as has arisen recently with the high-profile tax case involving one of the large firms in Australia. The addition of this material would make the Code stronger and more responsive to this type of issue that, if it occurs, would significantly undermine public trust in PAs' involvement in tax planning.

- 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.

380.198 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 **pre-packaged tax planning arrangement from an off-the-shelf package with little that has been modified** for the client's specific circumstances.

Commented [CV28]: Comment from a Board member:

The term "excessive" is too generic to convey the Task Force's intent. The concept of "excessive" is very judgmental, never used in the Code and with no definition. Accordingly, in order to avoid unintended consequences the TF shall provide clear indications and clarifications in the BfC on how to use and apply such term."

Commented [CV29R28]: Task Force Response:

The Task Force notes that what is excessive should be assessed through the objective lens of a reasonable and informed third party. The exercise of professional judgment will be essential, taking into account the facts and circumstances.

Commented [CV30]: Comment from a Board member:

I am of the view that the PA should take an appropriate and also ethical action when they become aware that the TP arrangement they previously advised on might not have a credible basis.

In this regard, I am of the view that the PA's advocacy of the client's position is not an appropriate action to take and that this bullet is not an appropriate example of a self-interest or advocacy threat.

Commented [CV31R30]: Task Force Response:

The Task Force notes that this bullet point is largely unchanged from the ED (except for a minor clarifying edit). Respondents were broadly supportive of it. The paragraph states that these are threats that **might** (not will) be created. The Task Force believes it would detract from building comprehensive guidance in the Code if this type of threat situation is not highlighted. Accordingly, the Task Force proposes no change.

Commented [CV32]: Comment from a Board member:

The fact that there are challenges, it is not per se a decisive argument. Such challenges may or may not be - at the end - supported by courts. I think that this should be factored in, by adding some clarifications.

Task Force Response:

See response to similar comment raised on paragraph 380.12 A4.

- The known previous behavior or reputation of the client, including its organizational culture.

380.198 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.
- Not pursuing, or advising the client not to pursue, the tax planning arrangement.

380.198 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.

380.198 A5 Examples of Steps a professional accountant might take to establish the identity of the ultimate beneficiaries include, for example:

- 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.

Commented [CV33]: Query from member: Why is there an emphasis on external expert?

It does not consider the reality of the professional organizations where multiple expertise are inside the organization and the various reporting lines, governance and chain of command may well serve to ensure objectivity.

Commented [CV34R33]: Task Force Response:

The Task Force's notes that this is just an example of an action to eliminate threats. It is speaking about an external referral as opposed to an internal firm consultation. It would be generally expected that the PA would draw on any internal firm resources (including internal experts) when advising the client.

The Task Force proposed no change.

Commented [CV35]: Suggestion from a Board member:

I am of the view that this bullet contains 2 different elements. What about breaking this bullet down into two? For instance;
1. Advising the client not to pursue the TP arrangement.
2. Not pursuing the TP service.

Commented [CV36R35]: Task Force Response:

The Task Force notes that the Board approved the wording of this bullet point in the ED. Respondents did not raise any significant concerns about it. Making the suggested change would introduce a substantive change from not pursuing the TP arrangement to not pursuing the TP service. The PA may retain the service but advise on an alternative TP arrangement. Also, terminating the service is one of the options to address threats under the conceptual framework. The Code generally does not repeat it in lists of actions to address threats.

- Researching relevant public records.

Communication of Basis of the Tax Planning ~~Arrangement Recommendation or Advice~~

R380.20~~19~~ A professional accountant shall explain the basis on which the accountant recommended or otherwise advised on a tax planning arrangement to the client.

Disagreement with ~~the~~ Client

R380.21~~0~~ 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~~1~~ If the client decides to pursue the tax planning arrangement, despite the professional accountant's advice to the contrary, ~~the accountant shall take steps to disassociate from the engagement. In doing so,~~ the accountant shall ~~consider advising~~ 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 ~~Make~~ full disclosure of the arrangement to the relevant tax authorities, ~~where applicable~~; and
- (c) Consider communicating ~~Communicate~~ the details of the arrangement and the difference of views to the external auditor, ~~where applicable if any~~.

380.22~~1~~ A1 As part of communicating the matters set out in paragraphs R380.20~~1~~ and R380.22~~1~~, a professional accountant might consider it appropriate to raise the relevant matters with those charged with governance of the client.

R380.23~~2~~ 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~~3~~ If a client ~~engages approaches~~ a professional accountant ~~for a recommendation or 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 ~~professional~~ 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~~4~~ 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.

Commented [CV37]: Comment from a Board member:

Having removed "take steps to disassociate" suggest this should be "advise" rather than "consider advising". That would also tie in better with R380.23 below - otherwise if the PA "considers" and then doesn't give the advice, R380.23 becomes non-applicable.

Commented [CV38R37]: Task Force Response:

The Task Force accepted the comment but proposes edits to R380.22 by retaining the consideration for bullets (b) and (c).

Commented [CV39]: Comment from a Board member:

See comment above re R380.22 - if that remains as "consider advising" this requirement should be strengthened by deleting the words before the comma to ensure the consideration of withdrawal is always required

Commented [CV40R39]: Task Force Response:

See response to comment on R380.22.

380.25~~4~~ 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 However, the provisions in Section 330 are relevant if the a professional accountant receives a referral fee or commission from the third-party provider, the provisions in Section 330 apply.

Documentation

380.26~~5~~ 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 judgments made, and the conclusions reached in advising the client on the ~~proposed~~ 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~~5~~ 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 judgments 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.

Related Services

~~380.26 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.~~

~~380.26 A2 Examples of such related services include:~~

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

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- ~~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.~~