



**ACCOUNTANCY
EUROPE.**

IESBA CODE REVISIONS ON TAX PLANNING– KEY CHANGES FOR ACCOUNTANTS

Information paper

FACTS.

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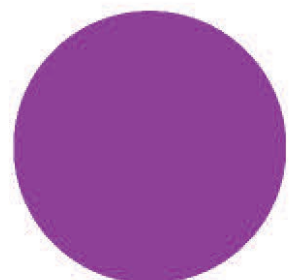
HIGHLIGHTS

The IESBA has revised its *Handbook of the International Code of Ethics for Professional Accountants* to provide an ethical framework for tax planning and related services.

The revisions require that professional accountants assess their competency to provide tax planning advice, that the advice has a credible basis under existing law and that they perform a “stand-back” test that will consider the broader ramifications of that advice.

They also include communication requirements when the client or employer goes against the advice and when the accountant is involved in advice to the client from third parties.

This publication considers the revisions to the Code in the context of a typical workflow for tax advisory services and its interactions with other requirements that the professional accountant may face.



INTRODUCTION

BACKGROUND

Since the financial crisis, there have been concerns about professional accountants' role in advising on tax planning arrangements that, while being legal, have been variously described as 'aggressive' or 'abusive.' This led to Accountancy Europe publishing *Accountants and Tax (2020)*, that sets out our views on the principles professional accountants should apply when providing tax services.

The Board of The International Code of Ethics for Professional Accountants (IESBA) also launched an initiative to determine whether the [Handbook of the International Code of Ethics for Professional Accountants](#) ("the Code") should have a specific section on tax services. They issued [the final pronouncement](#) in April 2024, revising the Code to address Tax Planning and Related Services ('the revisions'). An IESBA [factsheet](#) highlights the drivers behind the project and ethical framework's key elements.

OBJECTIVE

This paper summarises the Code revision's main requirements based on a typical workflow for tax advisory assignments. It links to legal requirements, such as anti-money laundering legislation, as well as other Accountancy Europe papers on the subject. The revisions cover both professional accountants in public practice and those working in industry. The provisions are broadly similar and this publication will concentrate on those specific requirements that relate to professional accountants in public practice.

THE REVISIONS' SCOPE AND TIMELINE

The revisions will impact professional accountants who give tax advice or other tax related services, whose:

- professional body is a member of IFAC (members of IFAC are expected to incorporate the Code into the ethical requirements imposed on their membership) and
- whose national Public Oversight Body for auditors has adopted the revisions.

The revisions apply with effect from **1 July 2025**.

Professional accountancy firms that are Members of the Forum of Firms will need to consider the revisions to Code insofar as it relates to the conduct of transnational audits.

The revisions cover professional accountants that provide tax services in public practice and professional accountants in business.

Tax advisors who are not professional accountants and do not work for a firm bound by the Code can choose to adopt the revisions voluntarily – the IESBA Board supports such adoption.

ACTIVITIES

- ✓ The tax services covered by the revisions are defined as "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".
- ✓ If a tax service contains a mixture of tax planning and tax compliance, the services related to the planning are covered by the revisions.
- ✓ The revisions also apply to 'related services' – a service linked to a tax planning arrangement. Examples of such work are in sub-section **380.3 A2** of the Code and cover such services as assisting the client in resolving a dispute with a tax authority on the tax planning arrangement.
- ✗ If the tax service consists solely of tax compliance or tax return preparation services to assist a client in fulfilling its obligations to submit a tax return, pay tax etc., it is not covered by the revisions.

IMPACT ON THE EUROPEAN ACCOUNTANCY PROFESSION

EUROPEAN CONSIDERATIONS

The tax advisory landscape in Europe is not homogenous. In some countries, tax services provisions are regulated with strict legal requirements. In others, the accountancy profession has issued a national code of conduct covering tax services. The larger accounting firms have their own codes of conduct.

In addition, tax services are regulated activities in the EU for the purposes of the Anti-Money Laundering (AML) Regulation and some AML requirements may interact with the revisions to the Code – for example, in respect of Know Your Client (KYC) procedures.

It should be noted that if a firm falls under the aegis of the Code, then these revisions will apply to all staff working in tax planning services irrespective of whether they are professional accountants themselves.

NATIONAL SPECIFICITIES

We recommend that professional accountants pay close attention to information provided by their member body as to how the revisions to the Code impact at national level.

This is particularly important in those countries that have an existing code of conduct or specific legal requirements covering the provision of tax services by accountants. In such cases, the national code or legal provisions may be broader in scope and more onerous than the requirements introduced by the revisions to the Code. In such circumstances, the IESBA revisions may supplement rather than replace the existing national requirements.

THE BASICS

WHERE TO FIND THE REVISIONS OF THE CODE?

- section **280** for professional accountants in business
- section **380** for professional accountants in public practice

WHAT ARE THEY BUILT ON?

The revisions build on the fundamental principles embedded in the Conceptual Framework and in section **120**, that assist professional accountants to identify, evaluate and address potential threats to their integrity.

WHAT ARE THE KEY CHANGES?

The revisions apply to **legal** tax planning arrangements and services.

Professional accountants should never knowingly become involved in tax evasion or tax fraud. Section **360** of the Code, *Responding to non-compliance with laws and regulations*, contains requirements that a professional accountant must follow if they become aware of tax evasion or suspected tax evasion, or other non-compliance in the course of providing tax planning services.

Section **380** now contains:

- 11 requirements on tax advisory services provided directly to the client (p.3-9)
- 2 requirements on tax planning products or arrangements developed by a third party (p.10)

TAX ADVISORY SERVICES DIRECTLY TO THE CLIENT

CONSIDERATIONS APPLYING TO ALL ACCOUNTANTS

Sub-section **380.4 A2** highlights that certain “*tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.*”

The fundamental principles are found in sub-section 110.1 A1 of the Code.

IESBA considers that performing tax planning activities might cause the following threats to the fundamental principles:

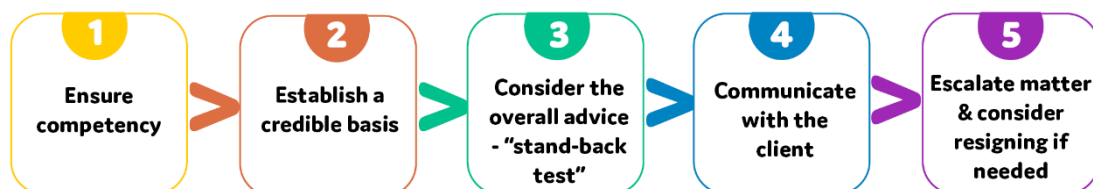
- self-interest,
- self-review,
- advocacy or
- intimidation threats.

Examples of these threats are given in sub-section **380.19 A1**.

The revisions contain considerable guidance as to how such threats can be:

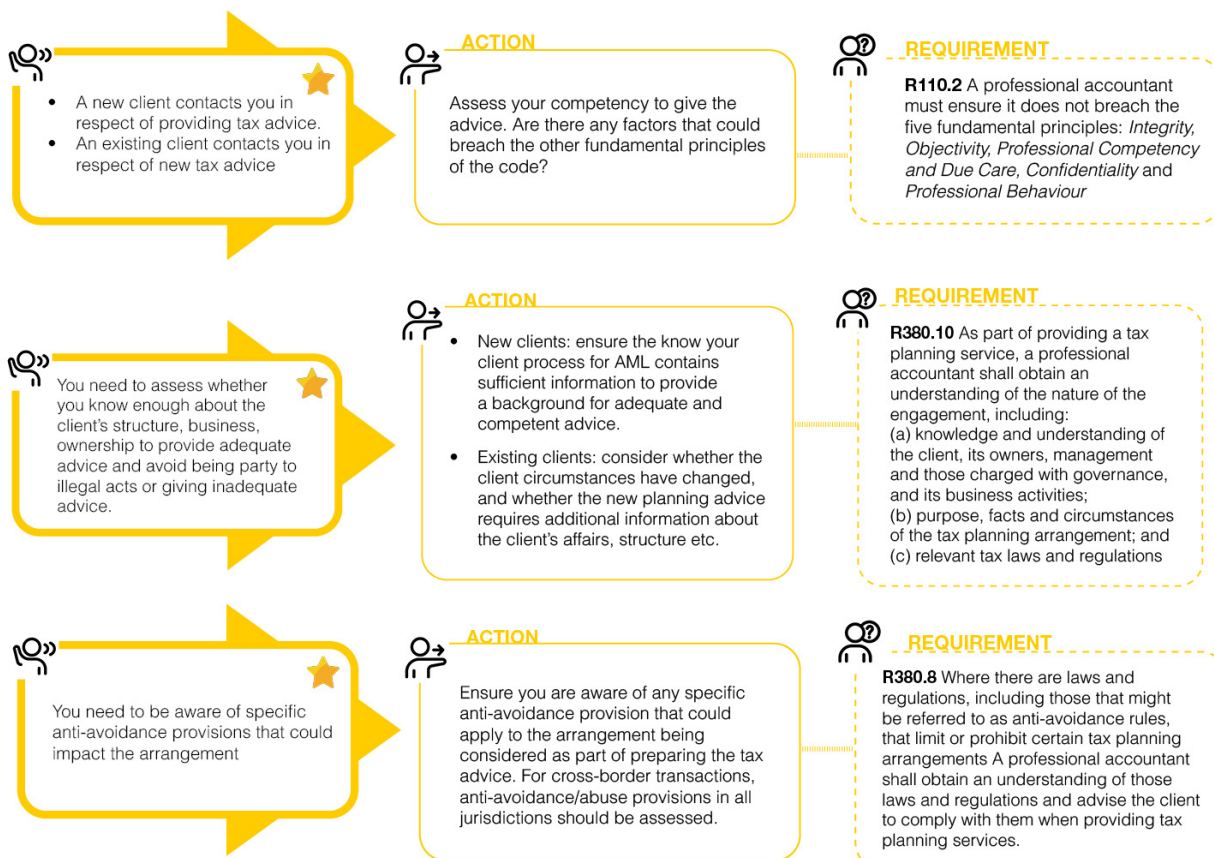
- evaluated (paragraph **380.19 A2**)
- mitigated in advance by having safeguarding procedures (paragraph **380.19 A4**), and
- eliminated (paragraph **380.19 A3**).

The main steps for providing internally generated tax advice can be summarised as follows:



We have put each of the 11 requirements in a sequence that will be familiar to many tax advisers. We put forward a scenario that the accountant may encounter, briefly consider what actions the accountant should consider taking for each scenario and then link the scenario to the relevant Requirement in the Code.

PROFESSIONAL COMPETENCE



Professional competence is one of the five fundamental principles contained in the Code. There are some elements in the revisions that touch on specific issues of competency in respect of tax advisory services.

UNDERSTAND ANTI-AVOIDANCE RULES

R380.8 specifically requires that professional accountants must obtain and understand all anti-avoidance rules that “limit or prohibit certain tax planning arrangements” – and to advise the client to comply with them.

CROSS-BORDER TAX ADVICE

The revisions recognise that tax planning involving different jurisdictions can increase uncertainty and consider tax planning arrangements involving multiple jurisdictions in sub-sections **380.16 A1** and **A2**.

Anti-avoidance provisions: provisions in law designed to stop certain arrangements that would otherwise reduce the taxpayer's tax liability. The format these take will be dependent on the national legislative environment. They may be found embedded in the legislation on which the arrangement is based or in separate legislation covering anti-avoidance rules - an example of this would be a national General Anti Abuse\Avoidance Rule (GAAR). For cross-border transactions or arrangements, multiple anti-avoidance rules may have to be considered, including such transnational provisions as the OECD's [anti-base erosion and profit shifting \(BEPS\) work](#).

For cross-border tax advice where at least one party is resident in the EU, accountants must also consider whether the tax advice or arrangement meets any of the specified hallmarks of DAC 6, an EU Directive on cross-border tax arrangements. This apply whether the arrangement had been developed by the accountant, a third party or by the client.

If any of the DAC 6 hallmarks have been met, the accountant must establish the responsibility for reporting by consulting the rules as transposed by the Member State(s) concerned, and if the accountant is responsible, must disclose the arrangement. If the client is responsible but refuses to disclose or fails to do so, the accountant should refer to the requirements in the revisions to the Code relating to disagreements with clients.

KNOW THE CLIENT

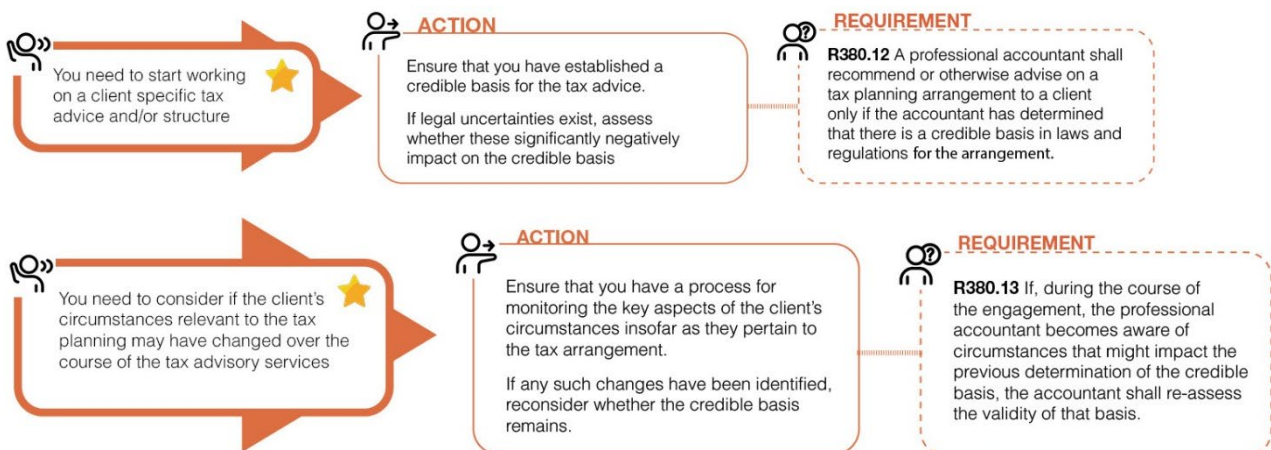
Competence in providing tax advisory services is not only dependent on technical expertise but also in having all the facts about the client relevant to the tax planning arrangement. **R380.10** emphasises the necessity that the accountant has an appropriate knowledge of the client, the purpose of the tax planning arrangement and the relevant laws and regulations.

IDENTIFY THE ULTIMATE BENEFICIAL OWNER

Identifying the ultimate beneficiary of the client entity or planning arrangement is identified as an action to provide a safeguard against potential threats to the fundamental principles.

Sub-section **380.19 A5** provides examples of actions that can be taken to help identify the ultimate beneficial owner. In the EU, and in some other countries, these actions will often interlink with Know Your Client (KYC) laws derived from anti-money laundering legislation.

CREDIBLE BASIS



A required element of the revisions is to determine a 'credible basis' in laws and regulations for the arrangement. Paragraph **380.12 A1** accepts that this will depend on the exercise of professional judgment. It also accepts that this can vary from jurisdiction to jurisdiction and can change over time.

ASSESS CREDIBILITY

Sub-section **380.12 A4** provides examples of how accountants can determine whether there is a credible basis. It highlights:

- the economic purpose and substance of the tax planning arrangement– this concept also underpins many of the international and European anti-avoidance legislation developed over the last two decades
- obtaining evidence of legislative intent - another step that an accountant could take to determine the credible basis

ALTERNATIVE ARRANGEMENTS

The accountant is still allowed to explain why they do not think that there is a credible basis for the arrangement in question and to advise on alternative arrangements that would have a credible basis – sub-section **380.12 A2**.

UNCERTAINTY

Uncertainty can be a key element to consider when considering tax planning arrangements and whether there is a credible basis for them. During development of the revisions, there was much discussion about uncertainty in tax planning leading to the so-called 'grey zone' between obviously legal and obviously illegal tax arrangements. IESBA highlights that uncertainty could lead to threats to the fundamental principles.

Sub-section **380.17 A2** provides practical examples of when uncertainty could arise and **R380.18** requires that the accountant discusses the uncertainty with the client – the client being the final arbiter of whether the tax planning arrangement proceeds or not.

Such discussions may assist in reducing the uncertainty.

Uncertainty often increases in cross-border tax planning, particularly in respect of mismatches or misalignments of different tax systems. The revisions recognise this and consider tax planning arrangements involving multiple jurisdictions in sub-sections **380.16 A1** and **A2**.

CHANGES IN CIRCUMSTANCES

It is not uncommon that the process of planning, discussing and implementing a tax planning arrangement can extend over an extended period. **R380.13** requires the accountant to consider the impact of any changes of circumstances of which they have become aware and that could influence the credibility of the advice.

This would cover changes in the client's circumstances that could impact the rationale behind the planning arrangement (e.g. a marriage or divorce impacting on an inheritance tax planning arrangement) or affect the arrangement more directly (e.g. the change in tax residence of a crucial subsidiary in a group). It would also cover changes in tax legislation in the countries covered by the arrangement (e.g. new anti-avoidance provisions or new tax incentives introduced).

The accountant should have adequate procedures in place to ensure that if any staff member becomes aware of any changes in circumstances that could affect the credible basis, these are recorded and notified to the relevant persons.

ONGOING COMPLIANCE

Although **R380.13** only requires consideration of circumstances of which the accountant becomes aware, it could be considered prudent to incorporate such a check into the stand-back test and to include a formal enquiry to the client to confirm that there have been no significant changes in their circumstances. However, the accountant need only consider potential changes of circumstances within the scope of its engagement – if the engagement is solely to provide tax advisory services, with no assistance in implementation, the accountant would not be required to check for changes in circumstances during the implementation of the advice.

STAND-BACK TEST



You need to (i) exercise professional judgment by considering how stakeholders might perceive the tax planning arrangements and (ii) where appropriate include such considerations in your tax advice and communication to the client.”



Why? Tax advice no longer exists in a bubble where only technical matters are important.



ACTION

Perform a ‘stand-back’ test.

Take a step back from the technical issues and consider the broader environment or environments that the tax planning takes place in and whether direct financial harm or indirect reputational harm could result from the client having implemented such an arrangement.

Consider obtaining a second opinion – internal or external if the potential impact could be significant.



REQUIREMENT

R380.14 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.

If the accountant has the necessary skills and knowledge to advise on the tax planning arrangement, and the arrangement has a credible basis, **R380.14** also requires that the “*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.*” – the so-called “stand-back test”.

REPUTATIONAL AND COMMERCIAL CONSIDERATIONS

During this process, the accountant should consider to what extent the reputational and commercial consequences that “*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.*”

WIDER ECONOMIC CONSIDERATIONS

Consideration of the wider economic consequences is based on the accountant’s general understanding of the current economic environment and the impacts that the tax planning arrangement could have on it. The accountant is not required to do any specific additional research, or, for example, to consider the impact of potential unforeseen legislative changes. In cross-border tax planning arrangements, the accountant should consider the situation in all the jurisdictions involved, which may have very different economic environments and societal sensitivity to tax planning.

RISKS MITIGATION

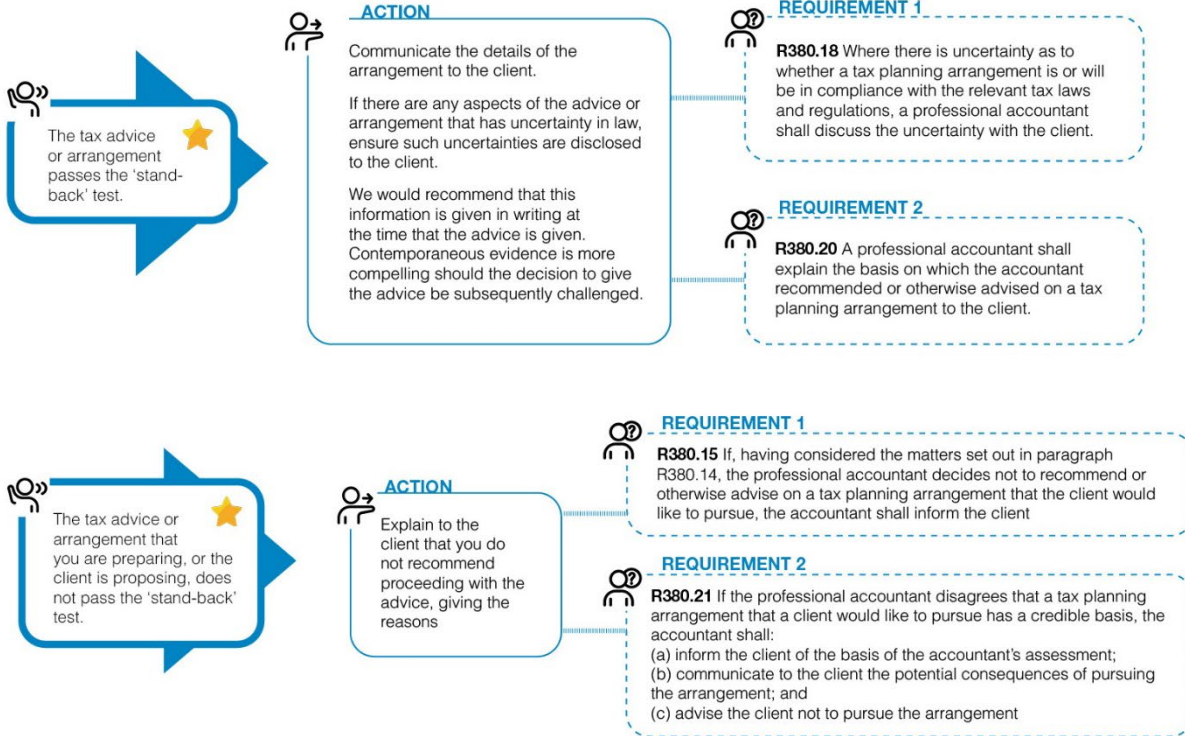
In our publication [The Role of Professional Accountants in Tax \(2017\)](#), we highlight some key issues raised by policymakers and other stakeholders that are still pertinent when considering whether a proposed tax planning structure could result in increased professional risk, in summary:

- the use of overseas jurisdictions, particularly when these are considered non-cooperative, without clear commercial objectives other than tax mitigation
- the use of structures in jurisdictions that do not require filing of beneficial ownership, and
- the use of non-transparent structures.

A stand-back test can also help reduce the risk from self-review, self-interest and advocacy threats. By examining the arrangement from the viewpoint of other potential stakeholders, the accountant is better able to apply professional scepticism to arrangements that they themselves are proposing.

As tax planning arrangements can take some time to develop and implement, a stand-back test can be useful before final implementation to ensure that the credible basis still applies, and that the economic environment hasn’t changed substantially to increase the risk to the client and the profession of implementing the arrangement.

COMMUNICATION

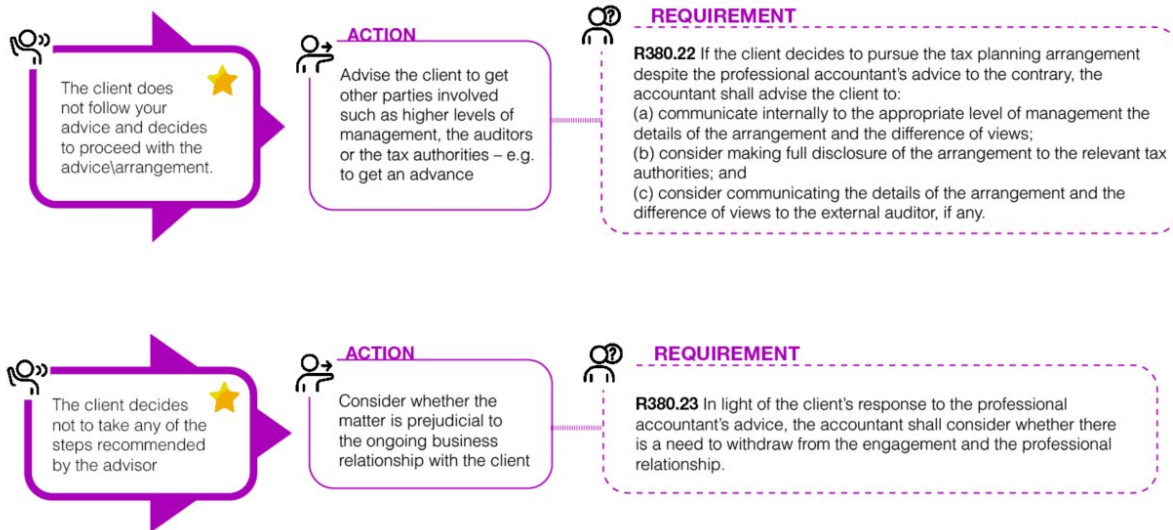


As mentioned above, accountants must communicate to their clients any uncertainty in the tax law and regulations insofar as it pertains to the arrangement in question (**R380-18**).

Where the accountant disagrees that the tax planning arrangement has a credible basis, they are required to inform the client why they believe there is no credible basis, the potential consequences of pursuing the arrangement and advise the client that they should not do so (**R380.21**).

In any event, **R380.20** requires that a professional accountant explain the basis on which they have provided the advice or recommended the tax arrangement.

DISAGREEMENT



Sub-sections **380.21 to 380.23** deal with circumstances where the client still wishes to proceed with an arrangement against the accountant's advice. The accountant is required to advise on the certain steps that should be taken and ultimately, to consider whether they should resign from the engagement and the professional relationship if the client doesn't follow the advice.

It would be normal to consult inside the organisation to determine whether such a step is necessary, but it may also be possible to consult with the professional ethics experts at the accountant's professional body without disclosing confidential client information.

It also should be noted that for profession accountants in business, the application guidance for this topic in sub-section **280.22 A1** has specific nuances to reflect, for example, the different internal reporting procedures that may apply outside of public practice.

DOCUMENTATION

Sub-section 380.26 encourages the accountant to keep appropriate documentation and provides examples where this would be appropriate.

Contemporaneous evidence: *documents, photographs, or testimonies etc created at the time of an event are considered reliable and credible in legal proceedings.*

It is strongly recommended that written, contemporaneous documentation is kept as this will provide more compelling evidence that a credible basis existed at the time that the advice was given.

Such documentation in respect of tax advice could detail:

- the client's circumstances extant at the time the advice was given
- the details of the tax planning arrangement and the roles of the client and advisor
- the relevant legislation at the time the advice is given and the arrangement's compliance with it
- the risks that may arise from the arrangement – including any specific anti-avoidance legislation that may affect the arrangement – or uncertainties in the tax legislation
- the advisor's views on whether the arrangement is suitable for the client's situation

TAX PLANNING PRODUCTS OR ARRANGEMENTS DEVELOPED BY A THIRD PARTY

When the accountant's engagement with the client involves the use of tax planning products developed by a third party, certain requirements must be met.

R380.24 states that 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.

In other words, where the accountant is advising on third party advice, or incorporating third party advice into their own advice, they are expected to follow the same procedure that they would do for advice or arrangements developed 'in-house'. Where the accountant merely refers the client to a third-party, this does not apply.

R380.25 states that 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.

If referral fees are received by the accountant from the third-party, the provisions of Section **330** *Fees and Other Types of Remuneration* of the Code apply – broadly:

- to obtain advance clearance from the client to receive such fees, or
- to disclose receipt of such fees or commission.

ANNEX: SCENARIO

1. Ensure competency



- A new client contacts you in respect of providing tax advice.
- An existing client contacts you in respect of new tax advice



ACTION

Assess your competency to give the advice. Are there any factors that could breach the other fundamental principles of the code?



REQUIREMENT

R110.2 A professional accountant must ensure it does not breach the five fundamental principles: *Integrity, Objectivity, Professional Competency and Due Care, Confidentiality and Professional Behaviour*



You need to assess whether you know enough about the client's structure, business, ownership to provide adequate advice and avoid being party to illegal acts or giving inadequate advice.



ACTION

- New clients: ensure the know your client process for AML contains sufficient information to provide a background for adequate and competent advice.
- Existing clients: consider whether the client circumstances have changed, and whether the new planning advice requires additional information about the client's affairs, structure etc.



REQUIREMENT

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) purpose, facts and circumstances of the tax planning arrangement; and
- (c) relevant tax laws and regulations



You need to be aware of specific anti-avoidance provisions that could impact the arrangement



ACTION


Ensure you are aware of any specific anti-avoidance provision that could apply to the arrangement being considered as part of preparing the tax advice. For cross-border transactions, anti-avoidance/abuse provisions in all jurisdictions should be assessed.



REQUIREMENT

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.

2. Establish a credible basis

You need to start working on a client specific tax advice and/or structure 




ACTION

Ensure that you have established a credible basis for the tax advice.
If legal uncertainties exist, assess whether these significantly negatively impact on the credible basis



REQUIREMENT

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.

You need to consider if the client's circumstances relevant to the tax planning may have changed over the course of the tax advisory services 



ACTION

Ensure that you have a process for monitoring the key aspects of the client's circumstances insofar as they pertain to the tax arrangement.
If any such changes have been identified, reconsider whether the credible basis remains.




REQUIREMENT

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.

3. "Stand back test"



You need to (i) exercise professional judgment by considering how stakeholders might perceive the tax planning arrangements and (ii) where appropriate include such considerations in your tax advice and communication to the client." 

Why? Tax advice no longer exists in a bubble where only technical matters are important.



ACTION

Perform a 'stand-back' test.

Take a step back from the technical issues and consider the broader environment or environments that the tax planning takes place in and whether direct financial harm or indirect reputational harm could result from the client having implemented such an arrangement.

Consider obtaining a second opinion – internal or external if the potential impact could be significant.



REQUIREMENT

R380.14 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.

4. Communication



The tax advice or arrangement passes the 'stand-back' test. ★



ACTION

Communicate the details of the arrangement to the client.

If there are any aspects of the advice or arrangement that has uncertainty in law, ensure such uncertainties are disclosed to the client.

We would recommend that this information is given in writing at the time that the advice is given. Contemporaneous evidence is more compelling should the decision to give the advice be subsequently challenged.



REQUIREMENT 1

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.



REQUIREMENT 2

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.



The tax advice or arrangement that you are preparing, or the client is proposing, does not pass the 'stand-back' test. ★



ACTION

Explain to the client that you do not recommend proceeding with the advice, giving the reasons



REQUIREMENT 1

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

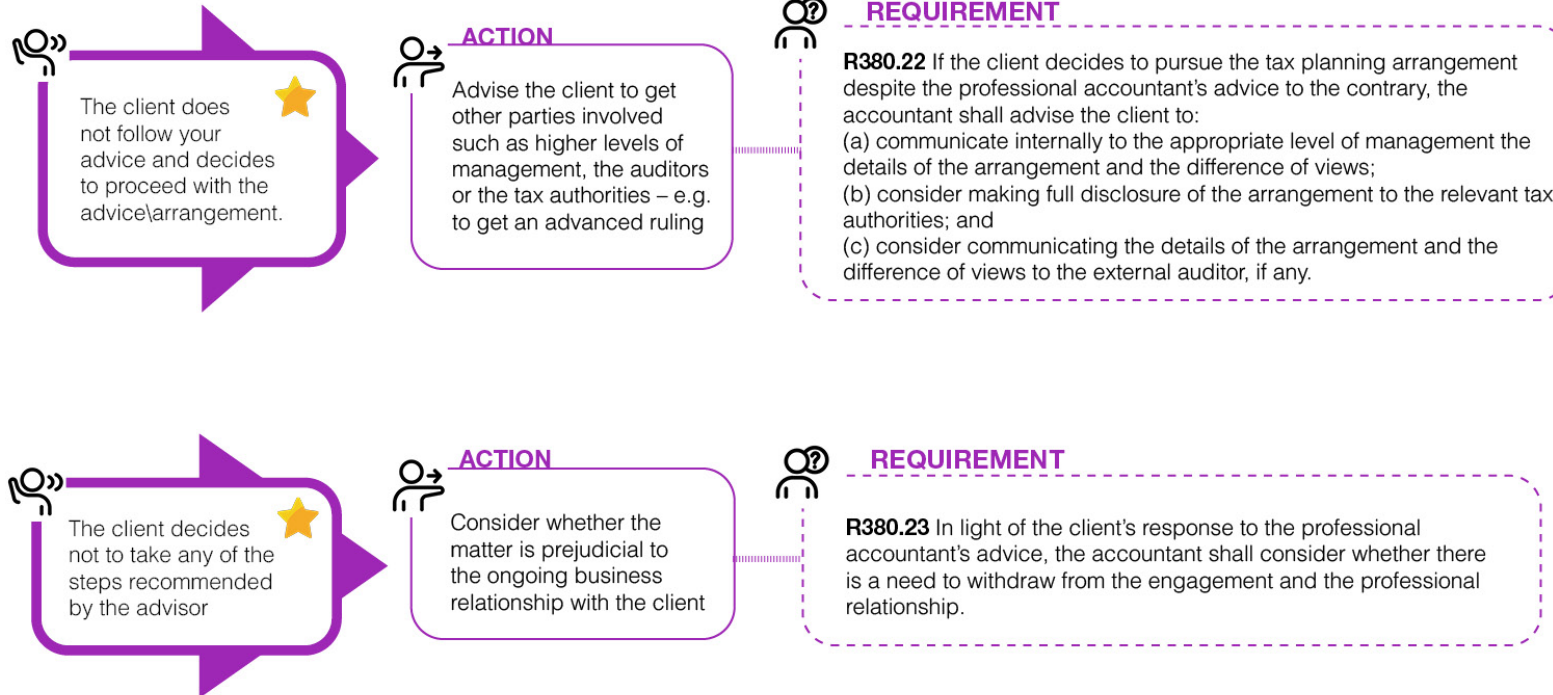



REQUIREMENT 2

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:

- inform the client of the basis of the accountant's assessment;
- communicate to the client the potential consequences of pursuing the arrangement; and
- advise the client not to pursue the arrangement

5. Escalate matter & consider resigning if needed



 Avenue d'Auderghem 22-28, 1040, Brussels www.accountancyeurope.eu +32(0)2 893 33 60 [Accountancy Europe](https://www.linkedin.com/company/accountancyeurope) accountancyeurope.bsky.social

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