

TAX GUIDELINE 1

TAX COMPLIANCE SERVICES

*Issued by the Professional Practices Board of the
Institute of Chartered Accountants of New Zealand*

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IMPORTANT NOTE:

The NZICA Code of Ethics (effective from 15 June 2019) (“revised Code of Ethics”) replaces the NZICA Code of Ethics (application 07/2017) (“extant Code of Ethics”). Consequently, any references to provisions of the extant Code of Ethics in this Professional Standard should be read as references to the equivalent provisions in the revised Code of Ethics [*noted in square brackets – for ease of reference*]. Where the text of this Professional Standard is not consistent with the revised Code of Ethics, the revised Code of Ethics shall override the text of this Professional Standard.

Introduction

Purpose

- 1 The purpose of this Tax Guideline is to provide guidance for members when providing tax compliance services. Tax compliance services comprise the preparation and filing of election notices and returns and related payments with Inland Revenue for and on behalf of a taxpayer and the review of any resulting assessments if the member is the agreed recipient of such assessments. The provision of tax compliance services can be undertaken by members in public practice and by employees on behalf of their employers.
- 2 Members providing tax compliance services act for their client or employer, who is ultimately responsible for the tax positions taken. Members have a responsibility to act in the best interests of their client or employer, who is entitled to take the best position available. However, members must provide tax compliance services within the law and their ethical obligations. In some circumstances members will face difficult decisions where they must balance the specific position of their client or employer against the wider public interest. This Guideline aims to provide a framework to assist members in such circumstances and to provide guidance to members providing tax compliance services.

Applicability

- 3 This Tax Guideline applies when a member is requested to provide, or provides tax compliance services.
- 4 While the scope of this Guideline is limited to the provision of tax compliance services, much of the guidance may be of relevance in the provision of other tax services. Members are, therefore, encouraged to apply this Guideline when providing other tax services.
- 5 In terms of paragraph 130.1(b) [NZ R113.1(b)] of the *Code of Ethics*, members must consider other Professional Engagement Standards and Guidelines that might be relevant when providing tax compliance services to a taxpayer. These other Professional Engagement Standards and Guidelines include, but are not limited to:
 - (a) SES-2: *Compilation of Financial Information*
 - (b) APS-1: *Statement of Agreed Upon Procedures Engagement Standards*
 - ~~(c) APG 1: *Guideline on Performance of an Agreed Upon Procedures Engagement*~~
 - (d) PS-1: *Quality Control*
 - (e) PS-2: *Client Monies*.

Definitions

- 6 For the purpose of this Guideline, the following terms have the meanings specified.
 - (a) *Assessment* means an assessment of tax made under a tax law by either a taxpayer or the Commissioner of Inland Revenue or an amendment made by the Commissioner or taxpayer to an assessment and includes, in the case of income tax, a net loss and any terminal tax or refund due, and in the case of goods and services tax, an assessment of any refund due.
 - (b) *Filing* means lodging notices of election and returns and related payments with Inland Revenue for or on behalf of a taxpayer.
 - (c) *Inland Revenue* means the government department responsible for administering New Zealand's tax system.
 - (d) *Return* means a complete statement of required tax information set out in a prescribed form. Examples include annual income tax returns, fringe benefit tax returns, goods and services tax returns, employer monthly schedules and any ad hoc returns required by the Commissioner of Inland Revenue.

- (e) *Tax* includes all taxes and duties covered by the Inland Revenue Acts and Regulations. Examples include income tax, fringe benefit tax, goods and services tax, payroll taxes, withholding taxes and gift duty.
- (f) *Tax compliance services* means the preparation and filing of notices of election, returns, assessments, amended assessments and related payments with Inland Revenue for and on behalf of a taxpayer, and the review of any resulting assessments if the member is the agreed recipient of such assessments.
- (g) *Taxpayer* means a member's client, any third-party recipient of a member's tax compliance services, or a member's employer.

Guidelines for Tax Compliance Services

General Principles Relating to the Provision of Tax Compliance Services

- 7 The member must perform tax compliance services in accordance with the *Code of Ethics* of the Institute.
- 8 The *Code of Ethics* contains the Fundamental Principles which guide members of the Institute in the performance of their professional responsibilities, and express the basic tenets of ethical and professional conduct. The Fundamental Principles are:
 - (a) Integrity;
 - (b) Objectivity;
 - (c) Professional Competence and Due Care;
 - (d) Confidentiality; and
 - (e) Professional Behaviour.
- 9 The member must perform tax compliance services in accordance with all the appropriate requirements of the income tax legislation.

Practice Issues

- 10 Where a firm undertakes tax compliance services, it is important that the firm maintains the appropriate structure, policies and processes, and has the necessary resources to perform the agreed services with professional competence. Professional Standard No 1: *Quality Control* (PS-1), paragraph 19, requires members to implement quality control policies and procedures at both the level of the accounting firm and for each engagement.
- 11 The duties owed by members in rendering any tax compliance services imply the need for an appropriate set of policies, an effective organisational structure, and effective processes. PS-1 requires the design and documentation of key policies as well as key processes for undertaking tax compliance services. However, despite the establishment of policies and procedures, the member's professional judgement has an overriding role in the provision of tax compliance services.

Professional Competence and Due Care

- 12 Prior to the acceptance of any appointment to provide tax compliance services, the member should consider whether, bearing in mind the nature of the services to be provided, they are capable at that time of bringing to bear the degree of specialised skill, knowledge and judgement required to perform the services in a competent and timely manner. Paragraph 130.1 [NZ R113.1] of the *Code of Ethics* requires all members to have the competence necessary to carry out their work.
- 13 In order to perform tax compliance services, the member requires specialised skills and technical knowledge which are gained through study and formal courses and from practical experience under proper supervision. The member requires a continuing awareness of

developments in tax practice, including changes to relevant pronouncements on tax matters and other regulatory and statutory requirements. Paragraph 130.3 [113.1 A2] of the *Code of Ethics* requires the member to maintain a high standard of professional competence throughout their professional career.

- 14 Where the member intends to delegate tax compliance services to employees or support staff, it is necessary to ensure that the employees or staff have the necessary skills or are adequately supervised in undertaking those services. When staff are allocated to assignments, the member should have regard to the need to match the skills and experience of their personnel with the type of technical and commercial matters being considered.

Use of Experts

- 15 Where the member is not competent to undertake professional work, paragraph 210.7 [R320.10 – 320.10 A1] of the *Code of Ethics* requires the member to obtain such advice and assistance as will enable the member to complete the assignment in an efficient, proper and timely manner. This requires the member to seek technical advice from experts such as other Chartered Accountants, lawyers and those knowledgeable in the relevant industry when the member does not have the professional competence to perform a specific part of the agreed services to be provided.
- 16 When planning to use the work of an expert, the member should assess the professional competence and objectivity of the expert.
- 17 Assessing the professional competence of an expert will involve considering the expert's:
- (a) professional certification or licensing by, or membership of, an appropriate professional body; and
 - (b) experience and reputation in the field in which the member is seeking technical advice.

Integrity and Objectivity

- 18 In terms of the *Code of Ethics*, a member must maintain integrity and objectivity in all aspects of professional work. The member performing the tax compliance services is also expected to perform the services in an unbiased and objective manner.
- 19 A member should be straightforward, honest and sincere in their approach to tax compliance services. The member should be, and appear to be, impartial, intellectually honest and free from conflicts of interest. The member should also be fair and not allow prejudice or bias to override their objectivity. In all phases of tax compliance services, the member should maintain an objective mental attitude.
- 20 Integrity, honesty and freedom from bias are of importance in tax compliance services since a member performing such services should be seen to act in the best interests of the taxpayer but within acceptable interpretation of relevant tax laws. The member should also be seen to be free from any conflicts of interest which might imply that the member acted in their own self interest.
- 21 The member is entitled to put forward the best position in favour of the taxpayer provided the service is rendered with professional competence and due care, and does not in any way impair integrity and objectivity, and is in their opinion consistent with the law. The member may resolve doubt in favour of the taxpayer if there is reasonable support for the position.
- 22 The member should not hold out to the taxpayer any assurance that the return prepared is beyond challenge. Instead, the member should ensure that the taxpayer is aware of the limitations attached to tax compliance services so that they do not misinterpret an expression of opinion as an assertion of fact.
- 23 In terms of paragraph 110.2 [R111.2] of the *Code of Ethics* the member must not be associated with any return or related information to Inland Revenue where there is reason to believe that it:

- (a) contains a materially false or misleading statement;
 - (b) contains statements or information furnished recklessly; or
 - (c) omits or obscures information required to be included where such omission or obscurity would be misleading.
- 24 The following steps should be taken in any case where the member learns of a material error, omission or obscurity in a current return or a return of a prior period (with which the member may or may not have been associated), or of the failure to file a required return.
- (a) The member should promptly advise the taxpayer of the error or omission and recommend that disclosure be made to Inland Revenue. Members are not obligated to inform Inland Revenue, nor may this be done without the client's permission.
 - (b) If the taxpayer does not correct the error, the member:
 - (i) should inform the taxpayer that it is not possible to act for them in connection with that return or other related information submitted to Inland Revenue; and
 - (ii) should consider whether to continue a professional or employment relationship with the taxpayer in any capacity.
 - (c) If the member concludes that a professional relationship with the taxpayer can be continued, all reasonable steps should be taken to ensure that the error or similar errors are not repeated in subsequent returns.

Terms of the Engagement

- 25 The member should obtain the taxpayer's agreement to the tax compliance services to be provided. This agreement should be documented and communicated to the taxpayer.
- 26 It is in the interests of both the taxpayer and the member that the member obtains agreement with the taxpayer as to the nature of the services to be provided, preferably before the commencement of the engagement. While an engagement letter is the preferred means for obtaining the taxpayer's agreement, other means of communication of the agreement are possible. For example, the terms of engagement may be agreed by way of email correspondence.
- 27 The terms of engagement should be tailored for each taxpayer and for the nature of the services to be provided. The following matters should normally be documented:
- (a) the member's acceptance of the appointment
 - (b) the objective and scope of the tax compliance services to be provided
 - (c) the timeframe within which the assignment is expected to be undertaken
 - (d) the extent of the member's responsibilities to the taxpayer and others, if any
 - (e) the member's responsibility to notify the client of taxes payable or refunds due
 - (f) the basis on which the member will be remunerated
 - (g) the method of payment of fees, particularly when the fees will be offset against refund cheques.
- 28 The terms of the engagement may also cover disclaimers in respect of limitation of liability.
- 29 Although the terms of the engagement are agreed in advance with the taxpayer, if circumstances change the member should inform the taxpayer at an early date and changed terms should be agreed and documented.
- 30 A member who undertakes or assists in the preparation of a return should advise the taxpayer that the responsibility for the content of the return rests primarily with the taxpayer.

- 31 The member should notify the taxpayer of the amount of taxes due and when they are due, and any tax refunds due.

Performance Guidelines and Procedures

Planning

- 32 A member should plan the tax compliance services to be provided so that the services will be conducted in an efficient, effective and timely manner.

Performance Guidelines

- 33 The member should take the necessary steps to ensure that the return is properly prepared based on the information received, and that the information is adequate.
- 34 In preparing a return, the member ordinarily may rely on information furnished by the taxpayer provided that the information appears reasonable. Although the examination or review of documents or other evidence in support of the information is not required, the member should encourage, when appropriate, such supporting data to be provided. In addition, the member:
- (a) should make use of returns for prior periods where relevant;
 - (b) should make reasonable enquiries where the information presented appears to be incorrect or incomplete;
 - (c) is encouraged to make reference to the accounting records of the business operations.
- 35 If the tax laws or regulations impose a condition with respect to assessability, deductibility or other tax treatment of an item, such as taxpayer maintenance of books and records or substantiating documentation to support the reported deduction or tax treatment, the member should inform the taxpayer of such condition.
- 36 The member should make use of the taxpayer's returns for one or more prior periods in preparing the current return where relevant. Reference to prior returns and discussion of prior-period tax determinations with the taxpayer may provide information to determine the taxpayer's general tax status, avoid the omission or duplication of items, and afford a basis for the treatment of similar or related transactions. As with the examination of information supplied for the current period's return, the extent of comparison of the details of income and deductions between periods depends on the particular circumstances.
- 37 The member should not recommend that a return position be taken, or prepare a return reflecting that position, with respect to any item unless the member has a good faith belief that the position is an acceptable interpretation of the relevant tax laws.

Materiality

- 38 Although the tax laws do not have a materiality concept, the general practice of tax does. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. It is appropriate to have regard to materiality and rounding when preparing returns so long as the assumptions used and basis for using them are adequately documented. The statute barring of returns is dependent on disclosing all sources of income. The omission of even a small amount of income from a return can remove statute barring protection from that return.

Documentation

- 39 Members should delineate the recording of facts, understandings and opinions in their work papers to ensure that accurate records are maintained.
- 40 The risks of not properly delineating facts, understandings and opinions in work papers could include:

- (a) arguments about what was provided;
 - (b) incorrect tax analysis; and
 - (c) lawsuits for non-verification.
- 41 The member should clearly document, either in the form of a letter or in a memorandum for the files, any issues discussed with the taxpayer and the manner in which issues raised by the taxpayer were resolved.
- 42 The letter or memorandum should be supported by properly documented work papers that provide a clear work trail and basis for conclusions reached, and should clearly indicate the following information:
- (a) the financial statements and other information supplied which the member is using in providing tax compliance services; and
 - (b) that the scope of the tax compliance services has been defined and planned, and the work of any assistants has been supervised and reviewed.
- 43 In compiling and filing work papers, members are recommended to:
- (a) clearly separate:
 - (i) factual information and documentation from opinions and advisory matters;
 - (ii) compliance matters and supporting work papers from consulting matters and related material;
 - (iii) items prepared by the member and any assistants from items provided by the taxpayer; and
 - (iv) assumptions made and/or advice given; and
 - (b) identify and clearly label items which may allow a claim of legal privilege.

Client Monies

- 44 Where the member receives refund cheques for and on behalf of the taxpayer and retains such refund cheques, the member must observe the Client Monies requirements set out in Professional Standard No. 2: *Client Monies*.