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Committee for Auditor Ethics (CFAE)

Revisions to the IRBA Code of Professional Conduct for Registered Auditors (Revised November 2024)

Tax Planning and Related Services

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SECTION 380

TAX PLANNING SERVICES

Introduction

380.1 *Registered auditors* 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 *registered auditor* to comply with relevant tax laws and regulations when providing such services.

Requirements and Application Material

General

Registered Auditors' Public Interest Role in Relation to Tax Planning Services

380.4 A1 *Registered auditors* 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, *registered auditors* 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, *registered auditors'* 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 *registered auditors* 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 *registered auditor* 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 *registered auditor* 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 registered auditor 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 fulfill its tax compliance obligations.
- Making available all the facts and other relevant information needed to enable the *registered auditor* 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 registered auditor'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 *Registered Auditors*

R380.10 As part of providing a tax planning service, a *registered auditor* 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 *registered auditor* 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 *registered auditor* is expected to apply professional competence and due care in accordance with Subsection 113 when providing a tax planning service. The *registered auditor* 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

R380.12 A *registered auditor* shall recommend or otherwise advise on a tax planning arrangement to a client only if the *registered auditor* 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 *registered auditor*. This determination will vary from jurisdiction to jurisdiction based on the relevant laws and regulations at the time.

380.12 A2 If the *registered auditor* determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R380.12 does not preclude the *registered auditor* from explaining to the client the *registered auditor'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 *registered auditor* 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 *registered auditor* 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 *registered auditor'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 *registered auditor* becomes aware of circumstances that might impact the previous determination of the credible basis, the *registered auditor* 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 *registered auditor* 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 *registered auditor'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 *registered auditor* decides not to recommend or otherwise advise on a tax planning arrangement that the client would like to pursue, the *registered auditor* shall inform the client of this and explain the basis for the *registered auditor's* conclusion.

Tax Planning Arrangements Involving Multiple Jurisdictions

380.16 A1 There might be circumstances where a *registered auditor* 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 *registered auditor* 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 *registered auditor* 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 *registered auditor* 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 *registered auditor* 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 *registered auditor* shall discuss the uncertainty with the client.

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

- Explaining the *registered auditor'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 *registered auditor* 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 *registered auditor* has a direct financial interest in a client and the *registered auditor* 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 *registered auditor* actively promotes a particular tax position a client should adopt.
- A self-interest threat might be created when a *registered auditor* is in possession of confidential information obtained from the *registered auditor's* involvement in formulating or drafting tax policy, laws or regulations for a government agency and the confidential information would be valuable to the *registered auditor* in advising other clients on their tax planning arrangements.
- A self-interest threat might be created when a *registered auditor* 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 *registered auditor* advocates a client's position in a tax planning arrangement which the *registered auditor* 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 *registered auditor* provides services to a client who exerts significant influence over the design of a particular tax arrangement, in a way that might influence the *registered auditor'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 *registered auditor* is threatened with dismissal from the engagement or the *registered auditor'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 *registered auditor* 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 *registered auditor'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 *registered auditor* 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 *registered auditor*.
- 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 *registered auditor'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 *registered auditor's* firm in the relevant tax areas.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another *registered auditor*) 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 *registered auditor* 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 *registered auditor* 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 *registered auditor* shall explain the basis on which the *registered auditor* recommended or otherwise advised on a tax planning arrangement to the client.

Disagreement with the Client

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

(a) Inform the client of the basis of the *registered auditor'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 *registered auditor's* advice to the contrary, the *registered auditor* 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 *registered auditor* 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 *registered auditor's* advice, the *registered auditor* 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 *registered auditor* to advise on a tax planning product or arrangement developed by a third party, the *registered auditor* shall:

(a) Inform the client of any professional or business relationship the *registered auditor* 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 *registered auditor* recommends or refers a client to a third-party provider of tax planning services, the *registered auditor* shall inform the client of any professional or business relationship the *registered auditor* has with the third-party provider.

380.25 A1 Where the *registered auditor* 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 *registered auditor* 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 *registered auditor* 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 *registered auditor'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 *registered auditor's* advice.
- Any disagreement with the client.

380.26 A2 Preparing such documentation assists the *registered auditor* to:

- Consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.
- Develop the *registered auditor'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 *registered auditor* has complied with the provisions in this section.

CONSEQUENTIAL AMENDMENTS TO THE CODE

(Marked-up against extant IRBA Code (Revised November 2024))

SECTION 321

SECOND OPINIONS

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Requirements and Application Material

General

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321.3 A1 A *registered auditor* 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 *relating to an entity*, or (b) transactions by or on behalf of a company or an entity that is not an existing *audit* client. *The second opinion could relate to a matter that has been considered, or might be expected to have been, or might be expected to be considered by that client's existing or predecessor accountant.* 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.

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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 *and confirming that the facts relevant to the issue are complete*.
- Describing the limitations surrounding any *second* opinion in communications with the client.
- *Having an appropriate reviewer who has not taken part in the second opinion, review the draft second opinion.*

(The following bullet has been elevated into a South African requirement R321.5 SA)

- ~~Providing the existing or predecessor accountant or other service provider with a copy of the opinion.~~

321.3 A4 SA *With the client's permission, a registered auditor may through enquiries of the client and enquiries of the existing or predecessor accountant* or other service provider*:*

- *Ascertain the circumstances surrounding the proposed engagement for a second opinion*
- *Ascertain whether the client has sought a second opinion from other registered auditor(s).*

When Permission to Communicate is Not Provided

R321.4 If an entity seeking a second opinion from a *registered auditor* will not permit the *registered auditor* to communicate with the existing or predecessor accountant or other service provider, the *registered auditor* shall *decline the appointment, unless there are exceptional circumstances of which the registered auditor has full knowledge, and the registered auditor is satisfied regarding all relevant facts, by some other means*.

Providing the Existing or Predecessor Accountant or Other Service Provider with a Copy of the Second Opinion

R321.5 SA *A registered auditor shall, in terms of the engagement with the client, provide the existing or predecessor accountant or other service provider with a copy of the second opinion, at the same time as it is given to the client.*

321.5 A1 SA *The purpose of providing the existing or predecessor accountant or other service provider with a copy of the second opinion is to ensure that the registered auditor and the existing or predecessor accountant have the same information.*

…

EFFECTIVE DATE

Section 380 and the consequential amendments to Section 321 will be effective for tax planning services beginning after 30 June 2025. Early adoption of the provisions is permitted.

Transitional Provision

For tax planning services or activities commenced before the above-noted effective date, such services or activities may be continued and completed under the extant provisions of the Code.