

Singapore Chartered Tax Professionals Limited

Code of Professional Conduct and Ethics

Effective from June 2016

*(Year 2020: Singapore Institute of Accredited Tax Professionals
is now known as Singapore Chartered Tax Professionals)*

PREFACE

The mission of the Singapore Institute of Accredited Tax Professionals (SIATP) (now known as Singapore Chartered Tax Professionals (SCTP)) is to promote, in the public interest, the standards of tax practice, and the technical competency and capability of tax professionals. It aims to be the institute for tax professionals in Singapore through the pursuit of excellence in standards, professional conduct and tax practice.

This Code of Professional Conduct and Ethics (“the Code”) establishes the fundamental principles of professional ethics for SIATP (now referred to as SCTP)’s Accredited Tax Advisors, Accredited Tax Practitioners and Accredited Tax Practitioners (Provisional).

It is modelled after the Professional Conduct in Relation to Taxation¹ (effective from 1 May 2015) and the Professional Rules and Practice Guidelines (effective from 31 March 2011), both of which are published by the Chartered Institute of Taxation and the Association of Taxation Technicians in the United Kingdom, and is revised for Singapore context.

The Code serves as a statement of principles and SCTP may issue binding written guidelines for the interpretation and application of the Code from time to time.

¹ The Professional Conduct in Relation was prepared jointly by the following organisations in the United Kingdom: Association of Accounting Technicians, Association of Chartered Certified Accountants, Association of Taxation Technicians, Chartered Institute of Taxation, Institute of Chartered Accountants in England and Wales, Institute of Chartered Accountants of Scotland and Society of Trust and Estate Practitioners.

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1 INTRODUCTION

Context

- 1.1 Tax professionals operate in a complex business and financial environment. The increasing public focus on the role of taxation in the wider society means a greater interest in the actions of tax professionals and their clients or employer.
- 1.2 A distinguishing mark of the tax profession is its acceptance of the responsibility to act in the public interest. Therefore, a tax professional's responsibility is not exclusively to satisfy the needs of a client or his employer. In acting in the public interest, an accredited tax professional shall observe and comply with the Code.
- 1.3 The Code establishes the fundamental principles of professional conduct and ethics for members of SCTP (hereinafter referred to as "members"). It sets out the hallmarks of a good member and aims to clarify a member's obligation to advise his clients or employer accurately and thoroughly of the tax and related implications of their actions, including reputational and practical aspects.
- 1.4 The Code also includes commentary to reflect the ongoing developments and the public concern about aggressive tax avoidance and evasion.
- 1.5 Tax professionals shall use professional judgment in applying this conceptual framework.

Scope

- 1.6 The issues addressed in this Code are not intended to be nor interpreted as an exhaustive list of all circumstances experienced by a member, which may pose threats to compliance with the fundamental principles. Consequently, it is not sufficient for a member to merely comply with the examples presented; rather he must consider and observe the fundamental principles in undertaking his professional work.
- 1.7 This guidance includes practical advice. If in doubt about the ethical or legal considerations of a particular case, a member should seek advice from SCTP and, where appropriate, his legal advisors. SCTP takes no responsibility for the failure of a member in seeking advice where appropriate.
- 1.8 While every care has been taken in the preparation of this guidance, SCTP and all those involved in the preparation and approval of this guidance do not undertake a duty of care or otherwise for any loss or damage occasioned by reliance on this guidance. This Code cannot and should not be taken as substitute for appropriate legal advice.

Application to All Members

- 1.9 Whilst parts of the Code are primarily for members in practice, the embodied principles apply to all members in practice and who practise tax including:
- Employees attending to the tax affairs on behalf of their employers or of their clients; and
 - Individuals dealing with their own tax affairs or the tax affairs of family members, friends, bodies to which they are associated, etc whether or not for payment; and
 - Those working in the Inland Revenue Authority of Singapore (IRAS) or other public sector bodies or government departments.
- 1.10 Where a member's employer is not prepared to follow the ethical approach set out in this Code (despite the member's reasonable attempts to persuade him to do so) the member may contact SCTP and/or seek legal advice.

Members in Employment

- 1.11 This Code also applies to an employed member whether or not his employer is a member of the SCTP. They apply to every employed member irrespective of the nature of the activities or business of his employer.

Employees Acquiring Knowledge of Default Or an Unlawful Act

- 1.12 There may be times when employed members find themselves in situations that threaten their compliance with the Code and the fundamental principles by being put under pressure to:
- Act contrary to professional standards
 - Act contrary to law/regulation.
- 1.13 If an employed member, whether working in a tax practice or in industry, acquires knowledge which suggests taxation irregularities or that his employer may have committed an unlawful act, he should seek to establish the facts and identify the affected parties so that, as far as is possible, he has a clear understanding of the situation. He should then:
- First raise any concern internally within the organisation at the appropriate level and follow the organisation's applicable procedure. The content and outcomes of any discussions held should be documented.
 - If a member is unable to raise the concern or discloses a concern internally and has reservations that he has not been dealt with seriously or handled effectively, he can contact the SCTP.

- Seek legal advice from an appropriate lawyer.
- Where possible, disassociate himself from the matter.

Interpretation

1.14 In this guidance

- 'Client' includes, where the context requires, 'former client'.
- For simplicity 'he/his' is used throughout but should be taken to include 'she/her'.

2 THE FUNDAMENTAL PRINCIPLES

Overview of the Fundamental Principles

- 2.1 Ethical behaviour in the tax profession is of paramount importance. The work carried out by a member needs to be trusted by society at large as well as by clients and other stakeholders. What a member does reflects not just on himself but on the profession as a whole.
- 2.2 A member must comply with the following fundamental principles adopted from the Handbook of the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board of Accountants' (IESBA) in 2014:
- **Integrity**
To be straightforward and honest in all professional and business relationships.
 - **Objectivity**
To not allow bias, conflict of interest or undue influence of others to override the member's own professional or business judgements.
 - **Professional competence and due care**
To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.
 - **Confidentiality**
To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the member or third parties.
 - **Professional behaviour**
To comply with relevant laws and regulations and avoid any action that discredits the profession.
- 2.3 Each of these fundamental principles is discussed in more detail below in the context of taxation services.

Integrity

- 2.4 A member must act honestly in all his dealings with his clients, all tax authorities and other interested parties, and do nothing knowingly or carelessly that might mislead any of these parties by commission or omission.

Objectivity

- 2.5 A member may be exposed to situations that could impair his objectivity. It is impracticable to define and prescribe all such situations. Relationships which bias or unduly influence the professional judgement of the member must be avoided.
- 2.6 A member must explain to his client the material risks of the tax planning or tax positions and the basis on which the advice is given.
- 2.7 A member must always disclose to his client if he is receiving commission, incentives or any other advantage and the amounts he receives from a third party relating to the matter upon which he is advising his client. He must also follow his professional body's rules on disclosure of and accounting for commission.

Professional Competence and Due Care

- 2.8 A member has a professional duty to carry out his work within the scope of his engagement and with the requisite skill and care. A member should take care not to stray beyond the agreed terms of the engagement; if he does exceed the scope he should agree revised terms with his client and check that his professional indemnity insurance covers the enhanced work.

Confidentiality

- 2.9 Confidentiality is a professional principle and is also a legally enforceable contractual obligation. It may be an express term of the engagement letter between the member and the client. Where it is not an express term, a court would in most circumstances treat confidentiality as an implied contractual term.
- 2.10 A member may only disclose information without his client's consent when there is an express legal or professional right or duty to disclose.
- 2.11 Disclosure of confidential material in a member's own interest must be made only where it is considered adequate, relevant and reasonably necessary for the administration of justice - in other words, when a member considers that it would otherwise impair the pursuit of his legitimate interests and rights if he was prevented from disclosing the information in all the circumstances. Only the minimum amount of information necessary to protect those interests may be disclosed. Examples of such circumstances may include, but are not limited to, the following:
- To enable a member to defend himself against a criminal charge or to clear himself of suspicion;
 - To enable a member to defend himself in disciplinary proceedings;
 - To resist proceedings for a penalty, or civil or criminal proceedings in respect of a taxation offence, for example in a case where it is suggested that a member knowingly engaged in dishonest conduct with a view to bringing about a loss of tax revenue;
 - To resist a legal action made against him by a client or third party;

- To enable a member to sue for unpaid fees;
 - To enable a member to sue for defamation.
- 2.12 If there is any doubt that the circumstances in 2.10 would apply, or there is the risk of challenge by a client or employer, a member is strongly recommended to seek legal advice. See also Section 10 (Irregularities).

Professional Behaviour

- 2.13 A member must always act in a way that will not bring him or his professional body into disrepute.
- 2.14 A member must behave with courtesy and consideration towards all with whom he comes into contact in a professional capacity.
- 2.15 A member must comply with all relevant legal and regulatory obligations when dealing with a client's tax affairs and assist his clients to do the same. A member who has reason to believe that proposed arrangements are or may be tax evasion must strongly advise clients not to enter into them. If a client chooses to ignore that advice, it is difficult to envisage situations where it would be appropriate for a member to continue to act other than in rectifying the client's affairs.
- 2.16 Serving the interests of his clients will, on occasion, bring a member into disagreement or conflict with IRAS. A member should manage such disagreements or conflicts in an open, constructive and professional manner. However, a member should serve his clients' interests as robustly as circumstances warrant whilst applying these principles.
- 2.17 A member should consider whether any tax arrangements with which he might be associated on his own behalf or on behalf of a client might bring the member and the profession into disrepute and take action as necessary. The member should consider carefully the appropriateness of the arrangements in question. See Section 6 (Tax Advice) for details.
- 2.18 A member's own tax affairs should be kept up to date. Neglect of a member's own affairs could raise doubts within IRAS as to the standard of the member's professional work and could bring him or his professional body into disrepute.
- 2.19 A member should ensure that his internal and external communications including those using social media are consistent with the principles in this guidance and in particular confidentiality.

3 PROVISION OF INFORMATION TO SCTP

- 3.1 A member must provide such information when reasonably requested by SCTP without unreasonable delay. A member must reply to correspondence from SCTP which requires a response and must do so without unreasonable delay.
- 3.2 Failure to respond to correspondence or to comply with an order from SCTP will in itself be a disciplinary matter.
- 3.3 A member must promptly inform SCTP if he:
- (a) Is convicted of a criminal offence;
 - (b) Is notified of disciplinary action begun against him by another professional body to which the tax professional belongs;
 - (c) Has a bankruptcy order made against him;
 - (d) Enters into a voluntary arrangement with his creditors; or
 - (e) Is disqualified as a director, or enters into a disqualification undertaking.

Compliance with the Disciplinary Process and Orders from the Disciplinary Board

- 3.4 A member is subject to the disciplinary process of the Disciplinary Committee in respect of a complaint against him. A member must comply with any order from the Disciplinary Committee including orders in respect of costs and fines. Failure to comply with such an order will in itself be a disciplinary matter.

Responses to Official Requests

- 3.5 A member owes his client or employer a contractual duty of confidentiality. It is wise to obtain the client's or employer's consent expressly if there is a doubt about the information which the tax professional proposes to disclose. When doing so, the tax professional will normally be able to advise the clients or employer whether it is in the client's or employer's best interests to disclose such information.
- 3.6 A member must be able to distinguish between an informal request for information and statutory requests for information which are made in exercise of a power to require the provision of the information requested. In general, only the latter form of request is capable of overriding the member's contractual duty of confidentiality to his client or employer.
- 3.7 Informal requests may be merely forerunners of statutory requests compelling the disclosure of such information. Consequently, it may be advisable for the client or employer to comply with such requests or persuade the regulatory authority that a more limited request would be appropriate. The member shall advise the client or employer as to the reasonableness of the informal request and likely consequences of non-compliance. The member shall provide the client or employer with advice concerning the

validity of the request, appropriate methods of complying with the request and the serious consequences of non-compliance for the latter type of requests. It is the client or employer who should make the decision on compliance. With regard to statutory requests addressed to the client or employer, the member shall advise the client or employer about the obligations to comply and the rights of appeal.

- 3.8 For statutory requests, a distinction shall be drawn between requests addressed to the client or employer and those addressed to the member. Requests addressed to the member are capable of overriding the member's contractual duty of confidentiality while requests addressed to the client or employer imposes duties on the client or employer, and not on the member.
- 3.9 A statutory request addressed to the member, if valid, imposes a set of legal obligations directly upon the member. Failure to comply with such obligations can expose the member to serious civil and criminal penalties. A member shall decide how he complies with a valid information request without requiring the consent of his client or employer, except for requests in relation to limited categories of information (for example information covered by legal professional privilege). Normally, he will be able to discuss such matters with the client or employer, unless certain powers preclude communication between the member and the client or employer.
- 3.10 With regard to statutory requests, it will normally be helpful to examine the following factors:
- a) Whether the notice issued was valid and whether the officer making the request had the necessary authority to issue the notice and had acted in accordance with the various procedural safeguards;
 - b) Whether parts of the information requested are within the ambit of the power authorising the request.
- 3.11 Given the complexity of the some of the rules relating to the scope of particular information powers, it may be appropriate to take legal advice.
- 3.12 The member remains under a duty to preserve the confidentiality of his client or employer on matters falling outside the ambit of a statutory request.
- 3.13 The member remains subject to the duty of confidentiality even after he has ceased to act for a client or ceased to be employed by the employer. The member shall refer the enquirer either to the former client, former employer or his new agent for general and statutory requests which are addressed to the former client or former employer. In relation to statutory requests addressed to the member, the termination of his professional relationship with the client or employer does not affect his duty to comply with that request.
- 3.14 The member usually does not need to disclose to the tax authority's advice provided to his client or employer, unless it is relevant to the tax treatment of the underlying transaction.

4 TAX RETURNS

Responsibilities of Members

4.1 Taxpayer's Responsibility

- 4.1.1 A taxpayer has at all times the primary responsibility to submit correct and complete returns to the best of his knowledge and belief. The return may include reasonable estimates where necessary. It follows that the final decision as to whether to disclose any issue is that of the client or employer.

4.2 Member's Responsibility

- 4.2.1 A member who prepares a return on behalf of a client or employer is responsible to the client or employer for the accuracy of the return based on the information provided.
- 4.2.2 In dealing with IRAS in relation to a client's or employer's tax affairs, a member must bear in mind his duty of confidentiality to the client or employer and that he is acting as the agent of his client or his employer. He has a duty to act in the best interests of his client or employer.
- 4.2.3 A member must act in good faith in dealings with IRAS in accordance with the fundamental principle of integrity. In particular the member must take reasonable care and exercise appropriate professional scepticism when making statements or asserting facts on behalf of a client. When acting as a tax agent or employee, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. A member should take care not to be associated with the presentation of facts he knows or believes to be incorrect or misleading nor to assert tax positions in a tax return which he considers have no sustainable basis.
- 4.2.4 When a member is communicating with IRAS, he should consider whether he needs to make it clear to what extent he is relying on information which has been supplied by the client or his employer or a third party.

Reliance on IRAS' e-Tax Guides

- 4.3 Whilst it is reasonable in most circumstances to rely on IRAS published e-tax guides, a member should be aware that the Board of Review and the courts will apply the law even if this conflicts with IRAS' e-tax guides.

5 CLIENT SERVICE

Duty of Care

- 5.1 When acting for a client or employer, a member places his professional expertise at the disposal of that client or employer and, in so doing, the member assumes a duty of care towards the client or employer which is recognised in law. A member must, therefore, exercise reasonable skill and care when acting for a client or employer. Failure to do so may result in the member being liable for a claim for professional negligence. The member must understand the duties and responsibilities in respect of the client or employer and the risks associated with a failure adequately to discharge those duties and responsibilities. The member must manage the risks associated with advising a particular client or his employer. In order to do so the member must assess his ability to discharge his duty of care to that client or employer in respect of the matters on which advice is sought or the work to be undertaken.

Professional Competence

- 5.2 A member should advise a client or employer only when he has an adequate understanding of that client's or employer's business and/or personal circumstances and tax position. In addition, the member should fully understand the issues under consideration and the objectives of the advice.

Supervision and Training

- 5.3 If a member delegates work, the member remains primarily responsible for the work and should exercise sufficient supervision to confirm that the work performed is adequate and that it is undertaken by staff that have been adequately trained to carry out the work involved.
- 5.4 The principles of 5.3 also apply to sub-contractors and consultants engaged by a member.

Use of Subcontractors

- 5.5 Due to the need to preserve client confidentiality, a member must obtain a client's consent before subcontracting work on that client's affairs to another firm. A member could consider including a clause authorising referral to a subcontractor within his engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral.

Form and Content of Advice

- 5.6 On deciding on the form of advice provided to a client or employer, a member should exercise professional judgment and should consider such factors as the following:
- the importance of the transaction and amounts involved
 - the specific or general nature of the client's or employer's enquiry

- the time available for development and submission of the advice
- the technical complications presented
- the existence of authorities and precedents
- the tax sophistication of the client or employer
- the need to seek other professional advice.

5.7 Unless set out in a separate document (such as terms and conditions or an engagement letter) an advice communication should normally set out:

- the purpose for which the advice is required and the client's or employer's objectives
- the background facts and assumptions on which the advice is based and whether or not the facts have been verified by the advisor
- the alternatives open to the client or employer
- the risks associated with the advice
- Relevant caveats and exclusions.

5.8 When formulating advice a member should refer to the relevant taxation legislation and e-tax guides and publications of IRAS. Due regard should also be given to case law.

6 TAX ADVICE

Introduction

- 6.1 Giving tax advice covers a variety of activities. It can involve advising a client or employer on a choice afforded to him by legislation, for example, whether to establish a business as a sole trader, partnership or company. It could be advising on the tax implications of buying or selling an asset or business, or advising on succession planning.
- 6.2 For the most part clients or employers are seeking advice on how to structure their affairs, either personal or commercial, in a way that is tax efficient and ensures that they comply with their legal and regulatory requirements. Transactions based on advice which are centred on non-tax objectives are less likely to attract scrutiny or criticism from stakeholders and are much more likely to withstand challenge by IRAS.
- 6.3 Tax planning is legal and clients and employers are entitled to enter into transactions that reduce tax or to take interpretations of legislation that IRAS may not agree with. If IRAS wishes to challenge a particular transaction or interpretation, it may amend the return or issue an assessment accordingly. The client or employer may then appeal against IRAS' decision through the Board of Review and courts if necessary with the associated costs and disruption. Ultimately only the courts can determine whether a particular piece of tax planning is legally effective or not. However a member should always advise the client or employer that there may be wider reputational issues in such circumstances.
- 6.4 Some tax strategies have been the subject of public debate and could give rise to ethical challenges. Involvement in certain arrangements could subject the client or employer and the member to significantly greater compliance requirements, scrutiny or investigation as well as criticism from the media, government and other stakeholders and difficulties in obtaining professional indemnity insurance cover.
- 6.5 The definition of 'avoidance' is an evolving area that can depend on the tax legislation, the intention of Parliament, interpretations in case law and the varying perceptions of different stakeholders and is discussed further below.
- 6.6 A member should consider the contents of this Chapter carefully when giving tax advice and the potential negative impact of his actions on the public perception of the integrity of the tax profession.
- 6.7 A member must never be knowingly involved in tax evasion; though this should not prevent a member from acting for a client or employer who is rectifying his affairs.

The Different Roles of a Tax Advisor

- 6.8 A member may be involved in tax planning arrangements in the following ways:
- Advising on a planning arrangement.
 - Introducing another advisor's planning arrangement.

- Providing a second opinion on a third party's planning arrangement.
- Compliance services in relation to a return which includes a planning arrangement.

The Responsibility of a Member in Giving Tax Planning Advice

- 6.9 Despite attempts by courts over the years to elucidate tax 'avoidance' and to distinguish this from acceptable tax planning or mitigation, there is no widely accepted definition.
- 6.10 Broadly, the term 'avoidance' is used in a wide range of activities, be it multinational structuring or entering contrived tax-motivated schemes. The application of this one word to a range of activities and behaviours oversimplifies the concept and has led to confusion.
- 6.11 A member is required to act with professional competence and due care within the scope of his engagement letter.
- 6.12 A member does not have to advise on or recommend tax planning which he does not consider to be appropriate or does not align with his own professional principles and ethics. This means, in this situation the member may need to ensure that the advice he does not wish to give is outside the scope of his engagement. If the member may owe a legal duty of care to the client to advise in this area, the member should ensure that he makes clear his opinion and recommend the client, if it wishes, to seek alternative advice. Any such discussions should be well documented by the member.
- 6.13 Occasionally a client or employer may advise a member that he intends to proceed with a tax planning arrangement without taking full advice from him on the relevant issues or despite the advice the member has given. In such cases the member should warn the client or employer of the potential risks of proceeding without full advice.
- 6.14 Where a client or employer wishes to involve the member in pursuing a claim for a tax advantage which the member feels has no sustainable basis the member should refer to Section 10 (Irregularities) for further guidance.
- 6.15 A member should always make a record of any advice given.

Primary Advisor on a Planning Arrangement

- 6.16 When a member advises on a planning arrangement the member should advise of the risks and implications as outlined below and should only recommend the planning for the client's or employer's consideration based on a balanced view taking into account any potential risks.
- 6.17 Any tax advice on planning should consider all the risks and implications. These may include:

6.17.1 Technical considerations

- The strength of the legal interpretation relied upon.

- The risk of counteraction. This may occur before the planning is completed or potentially there may be retrospective counteraction at a later date.
- The risk of challenge by IRAS. Such challenge may relate to the legal interpretation relied upon, but may alternatively relate to the construction of the facts, including the implementation of the planning.
- The risk and inherent uncertainty of litigation.
- The probability of the planning being overturned by the courts if litigated and the potential ultimate downside should the client or employer is unsuccessful.

6.17.2 Practical considerations

- The issues involved in the implementation of the planning arrangement.
- The implications for the client or employer, including the obligations of the client or employer in relation to their tax return.
- The reputational risk to the client or the employer and the member of the planning arrangement.
- The stress, cost and wider personal or business implications to the client or employer in the event of a prolonged dispute with IRAS. This may involve unwelcomed publicity, costs, expenses and loss of management time over a significant period.
- If the client or employer tenders for government contracts, the potential impact of the proposed tax planning on tendering for and retaining public sector contracts.
- Whether the arrangements are in line with any applicable code of conduct or ethical guidelines or stances.

6.18 A member may advise the client or his employer on the steps to take in managing the risk in a particular action or arrangement, such as in making a full disclosure of the facts before implementing the action or arrangement, even though it is not required under the law.

Introducing Another Advisor's Planning Arrangement

6.19 A member may be invited to introduce his clients to an arrangement from another source. The member would often be paid a commission for making such introductions which must be disclosed and accounted for in line with the member's professional body's rules. It should be noted that a member is not allowed to receive a commission for introducing an arrangement from another source to his employer.

6.20 If a member does not have the expertise to assess the transaction and advise the client or employer on the potential risks or if the other advisor does not release all the legal opinions and implementation details to allow the member to analyse the arrangement, the member should inform the client or employer that he is not able to advise on the

arrangement. Where appropriate the member should advise the client or employer to consider very carefully the risks.

- 6.21 The member should also consider whether including the relevant tax advantage in a tax return would have a sustainable basis. If there is no sustainable basis the member should not recommend the planning.

Providing a Second Opinion on a Third Party's Tax Planning Arrangement

- 6.22 A client or employer may ask a member to advise on an arrangement offered to the client or employer by another advisor. No commissions should be accepted where a member is providing tax advice on a third party's arrangement as it would undermine the member's objectivity.
- 6.23 The member should consider carefully whether he is qualified to advise the client or employer on the potential technical and reputational risks and rewards of the arrangement. If the member does not have the relevant experience, he should seek specialist support or recommend that the client or employer obtains advice elsewhere and/or seek a second opinion. The member may be able to advise on the practical issues involved in participation in a tax planning arrangement, whilst advising the client or employer to take advice elsewhere on the technical merits of the legal interpretation relied upon or seeks assistance from the tax authority.
- 6.24 If the member does not have the relevant expertise or if the promoter does not release all the legal opinions and implementation details to allow an assessment to be made, the member should inform the client or employer that they cannot advise on the arrangement and the member should document this.
- 6.25 In advising on the third party's arrangement the member should consider the risks and implications in 6.17.

Compliance Services In Relation to Returns that Include a Tax Advantage

- 6.26 A client or employer may have implemented an arrangement offered by another advisor and the member has not been involved in implementing the arrangement. Subsequently the client or employer may ask the member to enter the arrangement on his tax return. In this case the member is not responsible for advising the client or employer on the potential implications of having undertaken the arrangement. However, from a client or employment relationship perspective the member may wish to advise on the potential risk of a challenge.
- 6.27 A member should not include within the tax return a claim for a tax advantage which he considers has no sustainable basis based on the information provided to him.
- 6.28 If the client or employer provides inadequate information then the member should make a request for further information which will enable him to confirm that there is a sustainable filing position. If no further information is forthcoming, the member should refrain from including a claim for a tax advantage on the tax return, document his decision and explain his reasons to the client or employer. If additional information is received but it is too complex or outside the member's level of expertise to allow any

reasonable assessment to be made, he should seek specialist support or recommend that the client or employer obtains advice elsewhere.

7 TAX EVASION

- 7.1 Tax evasion is illegal and may involve understating turnover, overstating deductible expenses, false invoicing or backdating documents.
- 7.2 The member shall consider carefully the merits of arrangements which may be considered artificial by the tax authority concerned and not supported by commercial substance. Such schemes shall be considered in the light of the client's or employer's wider interests because of the risk that they may be challenged by the tax authorities. A scheme which depends fundamentally on concealment from the tax authorities may very well amount to tax evasion.
- 7.3 A dishonest intention not to pay the tax if it is ultimately shown to be lawfully due or a wilful disregard as to how the tax would be paid can be indicative of tax fraud. For such reason a legal opinion on the technical analysis does not guarantee that arrangements could not be construed as tax fraud.

8 CONFLICTS OF INTEREST

Professional Independence

- 8.1 A member must, at all times, maintain his professional independence.
- 8.2 A member must not only remain professionally independent, but particular care must be taken to preserve perceived, as well as actual, independence. A conflict of interest may impair a member's professional independence.
- 8.3 If a member becomes aware of any factor which affects or might affect his independence in respect of a matter (or which might be perceived to do so) the member should immediately take action to address that factor in order to preserve his professional independence. If no appropriate action can be taken to remove the threat to the member's professional independence, the member should refuse to act on the matters in question or, if already acting when becoming aware of the adverse factor, should cease to act.

Managing Conflicts

- 8.4 There are many circumstances in which a member in practice may be presented with an actual or potential conflict of interest.
- 8.5 Points to consider are:
- Conflicts of interest are not always easy to recognise or anticipate. However, a member should always be aware of the possibility that a conflict may arise and of the fact that this may impair the ability to give independent advice to a client or his employer.
 - A member must seek not only to avoid conflicts of interest but also to avoid situations where there may be a perceived conflict of interest. The member must consider his position and his actions in the light of his own views about whether a conflict exists and how the situation will be perceived by the client or his employer and third parties.
 - A member should acknowledge the existence of a conflict or potential conflict as soon as he becomes aware of it and should immediately seek a solution to resolve it.
 - If the conflict or potential conflict cannot be resolved the member must consider whether it is appropriate to continue to act. Often, the existence of a conflict of interest will mean that it is inappropriate to continue to act for one or more of the clients concerned. Should the member consider it appropriate to continue to act, he must inform the client of the existence of the conflict. Where appropriate, the member should advise the client to obtain independent advice on whether it is in the client's interests for the member to continue to act.
 - How the conflict is resolved should be confirmed in writing to the client, including any agreement where the member continues to act. These arrangements should be

regularly reviewed by the member.

Financial Involvement with Clients

- 8.6 Having a financial involvement with a client may be perceived as impairing a member's ability to act objectively. Even in situations where there are no regulatory restrictions on such an involvement as exist (for example in respect of the firm's audit clients) members should exercise care before entering into any kind of financial arrangement with a client. This includes, for example lending money or investing in the business of a client.

9 OTHER CLIENT HANDLING ISSUES

Referrals to Another Professional Advisor

- 9.1 A member who does not have the expertise or the staff resources available to meet his client's needs should refer the client to another professional advisor.
- 9.2 A member should take care when making referrals and should aim to give the client a choice of advisors.
- 9.3 A member should make it clear to his client that the member has no responsibility for the work undertaken by the other professional advisor.

Anti Money Laundering

- 9.4 Members are bounded by the regulations and policies in Singapore, including:
- [Corruption, Drug Trafficking and Other Serious Crimes \(Confiscation of Benefits\) Act, Cap. 65A](#)
 - [Terrorism \(Suppression of Financing\) Act, Cap. 325](#)
 - [Penal Code, Cap. 224](#)
 - [MAS Regulatory and Supervisory Framework on AML and CFT](#)
- 9.5 Members are expected to combat money laundering and terrorism financing activities. General guidance can be found in the [Anti-Money Laundering and Countering the Financing of Terrorism – Requirements and Guidelines for Professional Accountants in Singapore](#) released by the Institute of Singapore Chartered Accountants.
- 9.6 Specific guidance for members can be found in the [Appendix](#) of this Code.

10 IRREGULARITIES

Introduction

- 10.1 For the purposes of this Chapter, the term 'irregularity' is intended to include all errors whether the error is made by the client/ employer, the member, IRAS or any other party involved in a client's or employer's tax affairs.
- 10.2 In the course of a member's relationship with the client/ employer, the member may become aware of possible irregularities in the client's/ employer's tax affairs. Unless already aware of the possible irregularities in question, the client/ employer should be informed as soon as the member has knowledge of them.
- 10.3 Where the irregularity has resulted in the client/ employer paying too much tax the member should advise the client/ employer about making a repayment claim and have regard to any relevant time limits.
- 10.4 A member must act correctly from the outset. A member should keep sufficient appropriate records of discussions and advice and when dealing with irregularities the member should:
- Give the client/ employer appropriate advice;
 - If necessary, so long as he continues to act for the client or employer, seek to persuade the client/ employer to behave correctly;
 - Take care not to appear to be assisting a client/ employer to plan or commit any criminal offence or to conceal any offence which has been committed; and
 - In appropriate situations, or where in doubt, discuss the client's/ employer's situation with a colleague or an independent third party (having due regard to client confidentiality).
- 10.5 Once aware of a possible irregularity, a member must also bear in mind the legislation on money laundering and the obligations and duties which this places upon him (See [Appendix](#) of this Code).
- 10.6 In any situation where a member has concerns about his own position, he should seek specialist legal advice. This might arise, for example, where a client appears to have used the member to assist in the commission of a criminal offence in such a way that doubt could arise as to whether the member had acted honestly and in good faith.

Establishing the Facts

- 10.7 Although a member is not under a duty to make enquiries to identify irregularities which are unrelated to the work in respect of which he has been engaged, if he does become aware of any irregularity in a client's/ employer's tax affairs he should follow this guidance, whether in relation to a matter on which he has acted or not.
- 10.8 A member who suspects that an irregularity may have occurred should discuss this with

the client/ employer to remove or confirm the suspicion. He should take into account the fact that he may not be aware of all the facts and circumstances and may not, therefore, be able to reach a conclusion.

- 10.9 If the irregularity concerns the accounts but is not material from an accounting perspective in general no adjustment is needed and no further action is required.
- 10.10 Where the client/ employer provide an explanation for the apparent irregularity to the satisfaction of the member, the member is free to continue to act for that client/ employer.
- 10.11 Where the client fails to explain the apparent irregularity to the satisfaction of the member, the member should consider whether it is appropriate to continue to act. Where the member concludes that it is appropriate to continue to act he should monitor the position carefully.
- 10.12 Where the employer fails to explain the apparent irregularity, the member should cease to be involved in this project or assignment.

Disclosure

- 10.13 A member must act in good faith in dealings with the tax authorities and must take reasonable care when making statements or asserting facts on behalf of a client. The member's duty which is to try to ensure that the information provided is accurate and that relevant facts are not withheld can be challenging, especially if the client or employer does not co-operate.
- 10.14 The member shall keep copies of documents and organise his working papers to separate matters such as the preparation of accounts and tax returns from those on which audit and other opinions may be expressed, because the latter are normally protected from disclosure.

Actions where the Client Refuses to Disclose

- 10.15 If, despite being fully advised of the consequences, the client still refuses to make an appropriate disclosure to IRAS, the member must:
- Cease to act;
 - Consider withdrawing reports signed by the member;
- These obligations are set out in detail below.

Ceasing to Act

- 10.15.1 Where the member must cease to act in relation to the client's tax affairs he should inform the client in writing accordingly.
- 10.15.2 If IRAS were to realise that the member had continued to act after becoming aware of such undisclosed errors, IRAS might, in some circumstances, consider the member to be knowingly or carelessly concerned in the commission of an offence or been engaged in dishonest conduct.

- 10.15.3 The member should consider carefully whether it is appropriate to continue to act in relation to any non tax matters of the client.

Withdrawing Reports Signed by the Member

- 10.15.4 Where a member has undertaken work to verify or audit accounts or statements which carry a report signed by the member who is subsequently found to be misleading, the same principles of client confidentiality apply. If the engagement letter provides the member with the authority to notify IRAS in such circumstances, he should inform IRAS that he has information indicating that the accounts or statements cannot be relied upon.
- 10.15.5 If the member does not have his client's consent to the disclosure, he should write to the client and explicitly ask for permission to withdraw the report; if unsuccessful, he should then obtain legal advice as to what action he should take.
- 10.15.6 A member should not explain to IRAS the reasons why the returns, accounts, etc. are defective. To do so without the client's consent is more likely than not to be considered by a court of law as a misuse of confidential information and an unjustified breach of client confidentiality.

11 APPENDIX: ANTI-MONEY LAUNDERING

Introduction

This appendix is intended to focus on the impact of the Singapore's AML and CFT legislations on the professional accountants' responsibilities when providing tax services (herein referred to as "tax practitioners"). It is not standalone guidance and should be read in conjunction with the *Requirements of [Anti-Money Laundering and Countering the Financing of Terrorism – a Guide for Professional Accountants in Singapore \(Guide\)](#)*, which provides general guidance on AML and CFT compliance for all professional accountants.

General Responsibilities of a Tax Practitioner

1. Whilst the AML and CFT legislations applies to tax practitioners in the same way as it does to other individuals and organisations, it does not place obligations directly on tax practitioners in their capacity as such. Nevertheless, the nature of the work undertaken by tax practitioners may bring them into contact with terrorism financing activities or circumstances where proceeds of criminal activity is or may be laundered. Consequently, whilst in the normal course of providing tax services the matters referred to in this Supplement or in the Guide may rarely become a matter of concern, the consequences of inaction or unwise action when terrorism financing or the laundering of criminal proceeds is or may be occurring could be serious. Tax practitioners need to be aware of the appropriate actions to take.
2. The work performed by tax practitioners covers routine compliance work to complex tax planning. Whilst tax practitioners are not legally obliged to undertake work solely for the purpose of detecting money laundering and terrorism financing, they nevertheless need to be alert to the risks from transactions or proceeds linked to money laundering and terrorism activities in the course of carrying out their work.
3. Routine tax compliance work encompasses activities such as the preparation of tax computations and submission of returns to the tax authorities. Tax planning work encompasses activities such as advising on structuring of tax affairs in a tax efficient manner.
4. Tax practitioners who have knowledge of or are suspicious of proceeds derived from any crime encountered during their course of work are required to report such knowledge, suspicion, or other related information to the Suspicious Transactions Reporting Office, Commercial Affairs Department of the Singapore Police Force (STRO).
5. Tax practitioners should take proper care when assisting clients to ensure they do not become party to an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

Responsibilities of Management

6. It is management's responsibility to ensure that the entity's operations are conducted in accordance with laws and regulations. The responsibility for the prevention and detection of money laundering and terrorism financing activities rests with management through the implementation and continued operation of adequate accounting and internal control systems. Such control systems reduce but do not eliminate the possibility of money laundering and terrorism financing activities.

Money Laundering and Terrorism Financing Risks in the Tax Sector

7. The money laundering and terrorism financing risks areas that tax practitioners may encounter in practice include:
 - a. The client's wilful intent to evade tax, which can include the preparation and maintenance of false books of accounts or other records; and
 - b. Where during the course of dealing with the tax affairs of the client, it comes to their attention that the client is holding proceeds derived from illegal activities which may or may not be tax related.

Serious Tax Offences

8. Serious tax offences are designated as money laundering predicate offences in Singapore from 1 July 2013, in line with the FATF Recommendations. They are tax evasion and serious fraudulent tax evasion under Section 96 and 96A of the Income Tax Act, Cap. 134, as well as fraud and improperly obtaining refund under Sections 62 and 63 of the Goods and Services Tax Act, Cap. 117A. See 13.9 for details.
9. Tax practitioners should be alert to the risks arising from assisting or facilitating money laundering whether through tax evasion or otherwise. However, tax practitioners would be expected to be aware of the boundary between tax evasion and cases of innocent errors or genuine differences in the interpretation of the tax law.
10. The common direct tax offences are:
 - a. Failing to declare all assessable income.
 - b. Claiming deductions for expenses which are fictitious or are not legally deductible.
 - c. Claiming personal relief on fictitious dependents.
11. The common indirect tax offences are:
 - a. Claiming input tax on fictitious purchases and other expenses.
 - b. Omitting output tax charged on local taxable supplies.
12. If the client is unwilling or refuses to disclose such offences or harbours a clear intention to evade taxes, tax practitioners are required to report the incident to the firm's Money Laundering Reporting Officer (MLRO) and to the STRO as appropriate.

13. Tax practitioners should not continue to act on behalf of the client if they become aware that the client is deliberately committing serious tax offences and is unwilling to disclose such offences.

Risks Factors

14. Proceeds derived from criminal offences may become apparent to tax practitioners through the following:
- Cash movements (e.g., transfers, deposits, expenditure, currency exchange etc);
 - Increase in income and/or capital gains; and
 - Unusual possession, unusual loan arrangements and increases in income which are not proportionate to legitimate business activities and investments.
15. Tax practitioners should be alert when they come across unusual transactions, particularly those which display the following characteristics:
- Origin of funds is not clear;
 - Identities of relevant parties are not clear;
 - Transaction does not fit with knowledge of the client's background or legal sources of income; and
 - There is no economical or logical explanation for the transaction.
16. The IRAS has defined tax evasion as when someone has deliberately provided inaccurate or incomplete information about their activities to reduce his/her tax liability or obtain undue tax credits and refund.
17. Common characteristics that a client may be evading income tax are:
- Not wanting to issue a sales receipt.
 - Maintaining two sets of accounts (excluding management accounts).
 - Providing false invoices to claim fictitious expenses.
18. Common characteristics that a client may be evading GST are:
- Not wanting to issue a sales receipt or a tax invoice.
 - Maintaining two sets of accounts (excluding management accounts).
 - Providing false invoices to claim input tax on fictitious expenses or purchases.
 - Providing false export documents to support zero-rated supplies of goods.
 - Giving false information on customers and suppliers.
19. Tax practitioners should exercise caution as the above represents general guidance

only. Clients may use a variety of other methods, both simple and complex, to evade their tax liabilities.

Client Due Diligence (CDD)

20. Tax practitioners may be called upon to advise another professional firm. There must be a clear agreement between the tax practitioners' firm and the other professional firm. The tax practitioners' firm is also required to conduct CDD on the professional firm.
21. In cases where the tax practitioners' firm is involved directly with the other professional firm's client, the tax practitioners' firm is required to conduct CDD on the other professional firm's client.
22. With the designation of serious tax offences as money laundering predicate offences, the professional firm's AML/CFT system should include policies, procedures and controls to effectively detect and deter the laundering of proceeds from wilful or fraudulent tax evasion. This includes supplementing the existing client acceptance and continuance process with tax-specific red flag indicators as well as critically reviewing existing clients to assess the tax legitimacy of assets booked. Professional firms should also establish proper escalation policies for managing high-risk clients, including appropriate senior management approval procedures.

Reporting

23. Unless the privilege reporting exemption applies, tax practitioners should report actual or suspected suspicious transactions to the firm's MLRO or directly to the STRO as appropriate. Tax practitioners would need to consider carefully whether they can continue providing the tax services and should also consider obtaining legal advice and/or consulting with the STRO before undertaking further work.

TAX CRIMES DESIGNATED AS MONEY LAUNDERING PREDICATE OFFENCES

Direct tax offences under s.96 and s.96A Income Tax Act

s.96 Tax Evasion

- (1) Any person who wilfully with intent to evade or to assist any other person to evade tax:
- (a) omits from a return made under this Act any income which should be included;
 - (b) makes any false statement or entry in any return made under this Act or in any notice made under s.76(8);
 - (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or
 - (d) fails to comply with s.76(8)

s.96A Serious Fraudulent Tax Evasion

- (1) Any person who wilfully with intent to evade or to assist any other person to evade tax:
- (a) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
 - (b) makes use of any fraud, art or contrivance or authorises the use of any such fraud, art or contrivance

Indirect tax offences covered by s.62 and s.63 Goods and Services Tax Act

s.62 Tax Evasion

- (1) Any person who wilfully with intent to evade or to assist any other person to evade tax:
- (a) omits or understates any output tax or overstates any input tax in any return made under this Act;
 - (b) makes any false statement or entry in any return, claim or application made under this Act;
 - (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act;
 - (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
 - (e) makes use of any fraud, art or contrivance whatsoever or authorises the use of any such fraud, art or contrivance

s.63 Improperly Obtaining Refund

Any person who knowingly:

- (a) causes;
- (b) attempts to cause;
- (c) does any act with intent to cause; or
- (d) makes default in performance of any duty imposed upon him by this Act with intent to cause,
the refund to that person by the Comptroller of any amount in excess of the amount properly so refundable to him