Tax Planning and Related Services—Fact Finding Update

1. Introduction

In recent years, much public attention has focused on the topic of tax avoidance notwithstanding the legality of the tax mitigation schemes or related transactions to achieve desired tax outcomes. Questions have been raised regarding the ethical implications for professional behavior when professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs) are involved in developing tax minimization strategies that are perceived as "aggressive," or when firms provide advice to their clients on such strategies. The issue is of such major public interest significance that it has been discussed on the G-20 agenda. In addition, the Public Interest Oversight Board (PIOB) has attached significant public interest to the topic.

The need for transparency and better disclosure of tax practices have been a focus area for global bodies such as:

- The Organisation for Economic Cooperation and Development (OECD), which has launched the Base Erosion and Profit Shifting (BEPS) project, in partnership with the G20. The project aims to ensure that the international tax rules do not facilitate the shifting of corporate profits away from where the real economic activity and value creation are taking place.
- The World Federation of Exchanges, which has included tax transparency as a "material ESG metric" for reporting by listed companies.
- The International Federation of Accountants (IFAC), which has called for jurisdictions to share information to promote accountability and long-term global sustainability.
- The International Accounting Standards Board (IASB), which has worked on changes to tax disclosure rules.

1.1 IESBA Strategy and Work Plan 2019-2023

During the IESBA's consultation on its Strategy and Work Plan for 2019-2023 (SWP), respondents were supportive of the IESBA addressing the topic of tax planning and related services as a strategic priority. They encouraged the IESBA to carry out the associated fact finding and collaborating with other bodies to bring together different experiences and perspectives.

It was also suggested that the IESBA bring greater awareness to the application of the [fundamental] principles to "aggressive" tax avoidance. Some respondents have raised concern over creating additional standards to respond this issue due to the complexity of this topic and hence the difficulty of achieving consensus at the global level.

There is a pressing need to better understand and address the ethical implications of aggressive tax planning as it pertains to the role of professional accountants both in business and in public practice.

1.2 Purpose of this Paper

This paper pulls together some preliminary background information and relevant considerations with respect to the following matters based on the Tax Planning Working Group's initial fact-finding work:

(a) Seeking an understanding of the difference between tax planning and tax avoidance, with example case studies **(Section 2)**;

(b) Jurisdictional and international approaches to characterizing tax planning versus tax avoidance, including examples of jurisdictional strategies **(Section 3)**; and

(c) Seeking an understanding of the conduct expected of professional accountants in carrying out taxation services **(Section 4)**.

2. Tax Planning versus Tax Avoidance – Case Studies

2.1 Conventional Normative Legal Principles

Tax practitioners frequently face the question of whether certain planning strategies to reduce the tax liability of a taxpayer are legally permissible tax 'planning', tax 'avoidance' or illegal tax 'evasion'. According to published literature, the conventional view of the line between the different concepts is as follows:[1]

- Tax planning involves using tax reliefs for the purpose for which they were intended – it is not tax avoidance. For example, claiming relief on capital investment.
- Tax avoidance occurs when a taxpayer takes advantage of all legal opportunities to minimize its federal income, gift, or estate tax obligations through claiming permissible deductions and credits. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit of the law. Avoidance is considered legitimate, even if sometimes involving aggressive planning.
- Tax evasion occurs if the planning structure involves some form of deception, fraud, false statement or sham in fact, including concerted efforts to impair, impede and obstruct tax enforcement—e.g. mischaracterized transactions, false book entries, false statements made during tax examinations, and under-reporting of income.

In essence, tax avoidance is difficult to define precisely.[2] The difference between tax avoidance and tax evasion is therefore likewise difficult to identify – the Working Group will seek input on what constitutes the difference. One possibility historically raised is that the latter does not properly consider the spirit of the law.[3] The growing view is that tax planners should not engage in tax reduction strategies solely for the purpose of tax avoidance, regardless of whether the structure is legally supportable. The discussion should shift toward a consideration as to whether legally effective tax planning is also within the object and spirit of the taxing statute and thus organically "acceptable," or if it is contrary to the law's object and spirit and thus "unacceptable." There is also a debate as to whether the absence of a proscription is sufficient or even relevant to such a judgment.

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[1] See, for example, *Tackling Tax Avoidance, Evasion, and Other Forms of Non-Compliance* (March 2019), HM Revenue & Customs, HM Treasury United Kingdom

[2] *The Role of General Anti-Avoidance Rule in Protecting the Tax Base of Developing Countries* (November 2017), Capacity Building Unit, Department of Economic and Social Affairs, United Nations (www.un.org/esa/ffd/)

[3] *Corporate Tax Evasion, Avoidance and Competition: Analyzing the Issues and Proposing Solutions* (November 2013), Chartered Professional Accountants Canada.

2.2 Prominent Case Studies[4]

Selective case studies are summarized below to illustrate aggressive tax configurations or possible abuses of the law:

2.2.a Google

The tax planning technique that Google Inc. has been using to reduce its tax liability on non-US income has become known as "Double Irish Dutch Sandwich."[5] As its name implies, the "Double Irish Dutch Sandwich" involves two companies incorporated in Ireland, one IP-Holding and one Operating Company, and one Conduit Company incorporated in the Netherlands[6]. The IP-Holding Company is a direct subsidiary of the US Parent Company and the single owner of the Irish Operating Company and the Dutch Conduit Company. The IPHolding is managed and controlled in Bermuda and therefore considered resident in Bermuda for Irish tax purposes. The United States, on the contrary, treats the company as an Irish corporation because tax residency is based on jurisdiction of incorporation according to US tax law.[7]

2.2.b Amazon

Between May 2006 and June 2014, Amazon established a non-taxable limited partnership holding company as an artificially empty shell without assets, employees and physical presence in Luxembourg, which licensed Amazon's intellectual property to the operating company and, in turn, received significant royalties based on a transfer pricing agreement endorsed by the Luxemburg financial authorities (European Commission 2017a,[8] b[9]).

The tax ruling enabled Amazon to shift the vast majority of its profits from an Amazon group company that is subject to tax in Luxembourg (Amazon EU) to a company which is not subject to tax (Amazon Europe Holding Technologies). In particular, the tax ruling endorsed the payment of a royalty from Amazon EU to Amazon Europe Holding Technologies, which significantly reduced Amazon EU's taxable profits.[10]

European Commission (2017)[11]

According to the European Commission, the holding company performed no significant economic role and shouldered no material risk in relation to the management of the owned intangible assets (European Commission 2017b,[12] p. 113 f.), i.e., the economic substance criterion was not fulfilled. In relation to the

4 See https://doi.org/10.1007/s10551-018-4087-8.

5 House of Commons (2012) (https://publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf)

6 For a detailed description of the structure see also Kleinbard (2011a) pp. 707-714; Sandell (2012); Pinkernell (2012).

7 Fuest, Spengel, Finke, Heckemeyer and Nusser (2013), *Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform (http://ftp.zew.de/pub/zew-docs/dp/dp13078.pdf)*

8 European Commission. (2017a). State aid: Commission finds Luxembourg gave illegal tax benefits to Amazon worth around €250 million. Press Release, October 4 (https://ec.europa.eu/ireland/news/eu-commission-says-luxembourg-aid-to-amazon-illegal_en)

9 European Commission. (2017b). Commission decision of 4.10.2017 on state aid SA.38944 (2014/EC) (ex 2014/NN) implemented by Luxembourg to Amazon. Brussel, 4.10.2017, C(2017) 6740 final

10 https://ec.europa.eu/ireland/news/eu-commission-says-luxembourg-aid-to-amazon-illegal_en

11 https://ec.europa.eu/ireland/news/eu-commission-says-luxembourg-aid-to-amazon-illegal_en

12 European Commission. (2017b). Commission decision of 4.10.2017 on state aid SA.38944 (2014/EC) (ex 2014/NN) implemented by Luxembourg to Amazon. Brussel, 4.10.2017, C (2017) 6740 final

function and risk of the holding, the received royalties violated the arm's length principle, which has a legal basis in the tax laws of Luxembourg. Therefore, the tax ruling was qualified as "unlawfully granted selective state aid" to Amazon. In this case, the aggressive or, according to the European Commission, even abusive interpretation derives from the inadequate justification of the calculated royalties for the holding company.[13]

Commissioner Margrethe Vestager, in charge of competition policy, said "*Luxembourg gave illegal tax benefits to Amazon. As a result, almost three quarters of Amazon's profits were not taxed. In other words, Amazon was allowed to pay four times less tax than other local companies subject to the same national tax rules. This is illegal under EU State aid rules. Member States cannot give selective tax benefits to multinational groups that are not available to others.*"[14]

[13] https://link.springer.com/article/10.1007/s10551-018-4087-8

[14] https://ec.europa.eu/ireland/news/eu-commission-says-luxembourg-aid-to-amazon-illegal_en

3. Tax Planning versus Tax Avoidance – National and International Development

3.1 Jurisdictional Approaches

3.1.1 United States

U.S Congressional committees have produced research on "international tax avoidance" techniques used by companies or have required tax directors of large corporations to testify regarding their tax strategies (hearings by the Senate's Permanent Subcommittee on Investigations chaired by Carl Levin[15]). Scrutiny from US lawmakers has also arisen in response to the increase in inversions, or corporate re-domicile transactions, that have taken place over the last decade.

Circular 230, *Regulations Governing Practice Before the Internal Revenue Service* governs federal tax practice standards, which are administered by the Office of Professional Responsibility (OPR). The OPR is responsible for matters related to practitioner conduct as well as discipline, including disciplinary proceedings and sanctions. Circular 230 contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. It is divided into several parts:

- Subpart A — Rules Governing Authority to Practice
- Subpart B — Duties and Restrictions Relating to Practice Before the Internal Revenue Service
- Subpart C — Sanctions for Violation of the Regulations
- Subpart D — Rules Applicable to Disciplinary Proceedings
- Subpart E — General Provisions

As the IRS explained in its guide to frequently asked questions concerning Circular 230, the document outlines not only ethical standards that every U.S. tax professional must follow, but also the details of what constitutes a violation of those ethical codes and what sanctions may be applied as a result.

A tax professional beholden to the codes of conduct outlined in Circular 230 has three basic obligations:

- Take reasonable steps to ensure that the person or company he or she represents has procedures in place to meet all requirements of U.S. tax law.
- Take reasonable steps to ensure those procedures are followed.
- If any procedures are not adhered to, take prompt remedial action to inform the necessary people and take corrective measures.

Much of Circular 230 dictates who is not allowed to legally practice as a tax advisor or preparer in the eyes of the law, as well as disciplinary procedures the IRS and OPR will follow. Some of the most notable and flagrant violations outlined in these sections of Circular 230 include:

- Having been previously convicted of any federal tax crime, any criminal offense involving "dishonesty or breach of trust," or any state or federal felony. If any of these are applicable, the tax professional is considered unfit to practice before the IRS.
- "Contemptuous conduct in practice before the IRS," which might include using abusive language or publishing libelous material.

15 I.e. https://www.govinfo.gov/content/pkg/CHRG-113shrg89523/pdf/CHRG-113shrg89523.pdf

- Disclosing any information about an individual's tax return or otherwise violating any client's confidentiality regarding taxation or other financial matters.

However, a multitude of standards and ethics rules can apply to a member's tax practice, including the AICPA's Code of Professional Conduct, the AICPA's Statements on Standards for Tax Services (SSTSs), the Internal Revenue Code, state licensing boards, professional associations and various other laws and regulations.

3.1.2 Canada

Any income tax planning that is carried out must consider that many tax avoidance transactions are caught using specific anti-avoidance rules as set out in the Tax Act. In addition, tax planning can be thwarted by the General Anti-Avoidance Rule that can be used by Canada Revenue Agency (CRA) when there is no specific tax provision that addresses the transaction in question (Subsection 245(2) of the Income Tax Act ("ITA")).

3.1.3 United Kingdom

In 2015, the UK enacted a diverted profit tax (DPT)[16] aimed at specific tax avoidance structures (also known as the "Google Tax"). DPT applies to profits arising from 1 April 2015 and is focused on contrived arrangements designed to erode the UK tax base. Its primary aim is to ensure that the profits taxed in the UK fully reflect the economic activity in the UK itself: this is consistent with the aims of the OECD Base Erosion and Profit Shifting[17] project. Specifically, DPT aims to deter and counteract the diversion of profits from the UK by large groups that either:

(i) Seek to avoid creating a UK permanent establishment that would bring a foreign company into the charge to UK Corporation Tax; or

(ii) Use arrangements or entities which lack economic substance to exploit tax mismatches either through expenditure or the diversion of income within the group.

The General Anti-Abuse Rule (GAAR) was introduced by the Finance Act 2013, and took effect from 17 July 2013, as part of the government's wider efforts to tackle tax avoidance. Under Finance Act 2013 s 207, arrangements are 'tax arrangements' if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage was a main purpose of the arrangements. The legislation treats tax arrangements as 'abusive' if they fail a 'double reasonableness' test – i.e. if entering them or carrying them out cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions.

3.1.4 European Union

The EU Council adopted new rules to increase transparency to prevent aggressive cross-border tax planning (known as "DAC 6") in May 2018: "The directive targets intermediaries such as tax advisors, accountants and lawyers that design and/or promote tax planning schemes. It will require them to report schemes that are potentially aggressive. The information received will be automatically exchanged through a centralized database. Penalties will be imposed on intermediaries that do not comply."[18]

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16 https://www.gov.uk/government/publications/diverted-profits-tax-guidance

17 https://www.oecd.org/tax/beps/

18 http://dsms.consilium.europa.eu/952/Actions/Newsletter.aspx?messageid=21858&customerid=14561&password=enc_4345443939313146_enc

DAC 6 places an obligation on EU Member States to implement rules in their domestic law requiring qualifying intermediaries (e.g., tax advisors) and, in certain circumstances, taxpayers to disclose information about reportable cross-border arrangements to the competent authorities of one or more EU Member States. DAC 6 also requires the automatic exchange of this information among EU Member States.

These qualifying intermediaries are required to track reportable cross-border tax planning information as of June 25, 2018 and onward and report this information to the tax authorities by August 31, 2020. These reportable arrangements from June 25, 2018 need to be monitored to be ready to report in 2020.

3.1.5 Australia

Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015 came into effect on 1 January 2016 "in connection with a scheme, whether or not the scheme was entered into, or was commenced to be carried out, before that day."

The Australian measures focus on arrangements that attempt to avoid establishing a permanent establishment presence in Australia. While they were originally intended to target a group of thirty large multinational corporations, other taxpayers will still need to document whether they would be subject to the provisions, as the Australian Taxation Office would have the power to assess an administrative penalty of 100% of any calculated shortfall of tax owed, together with base tax and interest.

In the 2016 Australian federal budget, the government announced the introduction of a diverted profits tax (DPT) from 1 July 2017. The *Diverted Profits Tax Act 2017*[19] imposes a 40 percent tax on avoidance schemes entered into by significant global entities (SGEs), which are defined as global parent entities with an annual global income of A$1 billion or more.

3.2. International Development

3.2.1 Organisation for Economic Co-operation and Development (OECD)

The OECD has been campaigning against "harmful tax practices" since the late 1990s. The OECD had been commissioned by its member states to "develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases." These concerns and political pressures led to a more concerted response from an international regulatory perspective through the OECD Base Erosion and Profit Shifting (BEPS)[20] project. This project attempted the first comprehensive reform of international tax rules for over 80 years, on the basis of a consensus among nearly 50 states.

The central aim of changes to international tax rules through the BEPS project is to ensure that companies are taxed according to "where their economic activities take place and value is created." Tax authorities are given strengthened powers to assess corporate tax activity, most notably through two new and very powerful tools: country-by-country reports (CbCRs) and transfer pricing documentation.

The OECD has issued 15 Action Items to address the main areas where they feel companies have been most aggressively accomplishing this shifting of profit — addressing the digital economy, treaty abuse, transfer pricing documentation, and more. Refer to Appendix II to sight the 15 Action Items.

3.2.2 United Nations

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[19] https://www.legislation.gov.au/Details/C2017A00021

[20] https://www.oecd.org/tax/beps/

In October 2016, the UN Economic and Social Council (ECOSOC) adopted a resolution on tax matters in which it emphasized that the UN Committee of Experts on International Cooperation in Tax Matters should enhance collaboration with other organizations working in international tax cooperation, including the IMF, the World Bank and the OECD, as well as regional and sub-regional bodies. It also stressed the need for adequate funding for the Committee's subsidiary bodies.

The UN Committee of Experts on International Cooperation in Tax Matters is responsible for keeping under review and update, as necessary, the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. It also provides a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities and assesses how new and emerging issues could affect this cooperation.

On 11 July 2017, ECOSOC published the 'UN Code of Conduct on Cooperation in Combating International Tax Evasion.' The code of conduct aims to ensure that all States following it provide high levels of transparency and exchange of information in tax matters and adhere to automatic exchange of information. The code of conduct also aims to ensure that States assist in the development of international norms, practical steps and capacity-building programs that those States may follow, with a view to preventing and combating international tax evasion and protecting their tax bases from non-compliance with their tax laws.

3.2.3 G20/OECD

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAATM) was jointly developed by the OECD and the Council of Europe in 1988 to cover all forms of co-operation to tackle tax evasion and avoidance. It was amended in 2010 to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. 108 jurisdictions currently participate in the Convention, including 15 jurisdictions covered by territorial extension.

The Multilateral Competent Authority Agreement for CRS is based on Article 6 of the MCMAATM. The Multilateral Competent Authority Agreement for CRS (CRS Agreement) enables automatic exchange of information on financial account information. In total, 100 jurisdictions have agreed to start automatically exchanging financial account information (50 jurisdictions undertook their first automatic exchanges in 2017, and another 50 jurisdictions in 2018). The Global Forum oversees the implementation of this standard.

The G20/OECD Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework implementation of transparency and exchange of information for tax purposes. The Global Forum currently has 139 members, who commit to implement an international standard on exchange of information on request. The Global Forum evaluates the compliance of its member jurisdiction to its international standard, labelling them "compliant", "largely compliant", "partially compliant" or "non-compliant". It has been targeting the exchange of information for tax purposes, with the intent to achieve effective implementation of the Exchange of Information on Request (EOIR) standard across the implementing countries. This includes the elimination of strict bank secrecy for exchange of information purposes, and improved corporate transparency (through the elimination of instruments such as bearer shares).

3.2.4 European Commission

The EU Anti-Tax Avoidance Directive ("ATAD") is the European Commission's response to the relevant Action Plans of the OECD's BEPS project. There are 3 BEPS-related rules in ATAD plus an additional 2 rules which did not derive from BEPS, for a total of 5 substantive anti-tax avoidance rules. This directive is effective as of January 2019.

ATAD I established a minimum standard for Member States to implement with respect to five areas:

- General Anti-Abuse Rule (GAAR) — applies to arrangements with a main purpose of obtaining a tax advantage that circumvents otherwise applicable tax provisions and are non-genuine when considering all relevant facts and circumstances
- Interest deductibility limits — apply to limit the deduction of exceeding borrowing costs to 30% of taxable earnings before interest, taxes, depreciation and amortization (EBITDA) with several optional provisions such as grandfathering of existing loans and carryforward and carryback options
- Controlled Foreign Company (CFC) rules — apply to attribute certain income to a parent taxpayer when a subsidiary (or permanent establishment) is more than 50% controlled by the parent company and the CFC is in a lower tax regime
- Exit taxes — apply in certain circumstances in which a Member State imposes a tax equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes
- Hybrid mismatch rules — apply when a taxpayer arrangement results in a double deduction or a deduction without income inclusion due to differences in the legal characterization of a financial instrument or entity

ATAD II, a set of additional requirements over and above the original ATAD package, establishes minimum rules to neutralize hybrid mismatches where at least one of the parties is a corporate taxpayer in an EU Member State, thus expanding ATAD to third countries. ATAD II also addresses hybrid permanent establishment (PE) mismatches, hybrid transfers, imported mismatches, reverse hybrid mismatches and dual resident mismatches.

4. Code of Conduct in Taxation for Professional Accountants

4.1 ICAEW, ACCA and ICAS

"*Professional Conduct in Relation to Taxation*"[21] (PCRT) was jointly produced by Association of Accounting Technicians (AAT), Association of Chartered Certified Accountants (ACCA), Association of Taxation Technicians (ATT), Chartered Institute of Taxation (CIOT), Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), and Society of Trust and Estate Practitioners (STEP). Her Majesty's Revenue and Customs (HMRC) has incorporated this code of conduct into its own Standards for Tax Agents.

The purpose of this code of conduct is "to assist and advise members on their professional conduct in relation to taxation, and particularly in the tripartite relationship between a member, client and HMRC." PCRT has the Fundamental Principles and the Standards for Tax Planning. The Fundamental Principles are derived from the IESBA *Code of Ethics for Professional Accountants* issued in July 2009.

PCRT has guidance for tax planning arrangements, tax evasion and tax planning and advice. In its foreword, PCRT mentions that "a member must never be knowingly involved in tax evasion, although, of course, it is appropriate to act for a client who is rectifying their affairs." Additionally, it states that "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." Furthermore, PCRT shows a flowchart that summarizes the recommended steps for a member when a possible error arises.

4.2 American Institute of CPAs (AICPA)

According to the AICPA, the organization "sets ethical standards for the profession and U.S. auditing standards for private companies, nonprofit organizations, federal, state and local governments". The AICPA explained how tax professionals must remain independent, referring to the practice as a "long-standing professional requirement."

Overall, ethical rules governing tax advice pertain to written advice, oral advice, and "covered opinion." As Circular 230 and other pieces of tax law continue to be revised, the precise definitions and impacts surrounding these concepts have changed over the years.

- The written advice must be based on "reasonable factual and legal assumptions, including assumptions as to future events," and reference these facts appropriately. The advice cannot rely on outside assumptions that cannot be proven as fact, like financial forecasts or appraisals.
- A covered opinion refers to advice given either in writing or verbally that may be used in a general, informative, or educational way by its audience, but is explicitly not to be taken as a personal directive. Covered advice and the opt-out rule, for example, were the reason why any email or online article from a tax professional that could potentially contain personal advice had to include a lengthy disclaimer at the bottom.

[21] Effective from March 2017 and republished in March 2019, https://www.icaew.com/-/media/corporate/files/technical/tax/pcrt/pcrt.ashx

The AICPA issued "*The Statements on Standards for Tax Services*[22]" (SSTSs), the interpretations of SSTSs and Frequently Asked Questions. SSTSs are set as "enforceable tax practice standards for members of the AICPA" and "delineate members' responsibilities to taxpayers, the public, the government, and the profession." The SSTSs and their interpretations are intended to complement other standards of tax practice, such as Treasury Department Circular No. 230, *Regulations Governing Practice before the Internal Revenue Service*; penalty provisions of the Internal Revenue Code; and state boards of accountancy rules.

The Standards include:

- SSTS No. 1, Tax Return Positions;
- SSTS No. 2, Answers to Questions on Returns;
- SSTS No. 3, Certain Procedural Aspects of Preparing Returns;
- SSTS No. 4, Use of Estimates;
- SSTS No. 5, Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision;
- SSTS No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings; and
- SSTS No. 7, Form and Content of Advice to Taxpayers.

4.3 APESB (Australia)

The Accounting Professional & Ethical Standards Board (APESB) in Australia has issued *APES 220 Taxation Services*[23] for members of the professional accountancy bodies to "set the standards for Members in the provision of quality and ethical Taxation Services." The standard has guidance on "tax schemes and arrangements." Among other matters, the guidance states that "a Member shall not knowingly or recklessly be associated with any arrangement which involves documents or accounting entries that are intended to misrepresent a transaction, or which depend upon lack of disclosure for its effectiveness."

Furthermore, the standard has guidance on "false or misleading information" for members[24] of the professional accountancy bodies to follow when they encounter materially false or misleading information. Standard 7.6 states that "a Member in Public Practice who:

(a) Knows that a Client or the Member on behalf of the Client has filed a return or submission materially understating a tax liability to a Revenue Authority, and

(b) Finds the Client unwilling to correct such understatement,

shall consider the Firm's policies and procedures established in accordance with Acceptance and Continuance of Client Relationships and Specific Engagements of APES 320 *Quality Control for Firms* in determining whether to continue acting for the Client in a professional capacity."

[22] https://www.aicpa.org/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices.html

[23] https://www.apesb.org.au/uploads/home/09072018131941_APES_220_July_2018.pdf

[24] Of the professional bodies i.e. CPA Australia, CAANZ

APPENDIX I

The IESBA Code – Fundamental Principles

1. The IESBA Code sets out five (5) **fundamental principles** of ethics for professional accountants, which establish the standard of behavior expected of a professional accountant. The fundamental principles are:

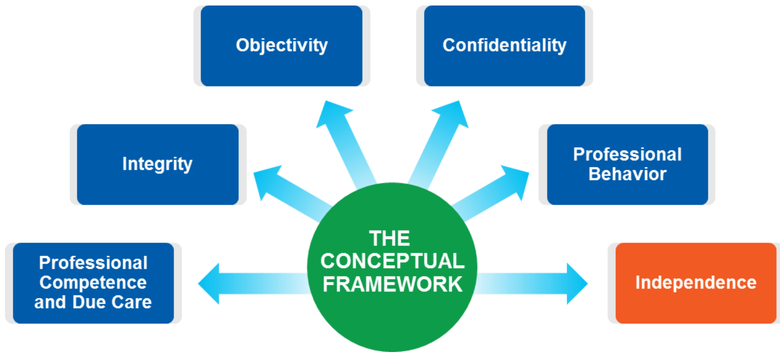
   (a) Integrity

   (b) Objectivity

   (c) Professional competence and due care

   (d) Confidentiality; and

   (e) Professional behavior



2. These fundamental principles are described in the Code as follows:

   (a) Integrity – to be straightforward and honest in all professional and business relationships.

   (b) Objectivity – not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others.

   (c) Professional Competence and Due Care – to:

      (i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and

      (ii) Act diligently and in accordance with applicable technical and professional standards.

   (d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.

   (e) Professional Behavior – to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

APPENDIX II

BEPS 15 Action Items

Action Item	Description
1	It addresses the taxation problems of digital economies world-wide, while identifying the primary issues being posed by the digitally advanced economies when it comes to applying the international taxation rules. Action-1 highlights the options that governments can use for addressing these issues, while adopting an integrated approach as well as taking both indirect and direct taxes into consideration.
2	This point aims at developing model provisions for treaty and recommends how domestic regulations should be designed for neutralizing the hybrid entities and instruments effect such as double tax deduction, double non-taxation etc.
3	This point makes recommendations about the different ways in which the CFC (Controlled Foreign Corporations) taxation rules can be strengthened.
4	This point lays down a common method by which the tax base can be prevented from erosion by using the interest expenditure. For instance, via the usage of 3rd party and related party debt for achieving additional deductions of interest or for financing the deferred or exempt income production.
5	This point redesigns the adverse taxation practices, while emphasizing on enhancing transparency.
6	Action 6 designs model provisions for treaty and also offers recommendation with regard to the creation of domestic regulations for preventing the treaty from abuse.
7	This point consists of the alterations that can be made in the permanent establishment's definition. For instance, using the commissionaire systems and similar other terms.
8	These points offer guide to transfer pricing methods that further ensure that the results of transfer pricing are in accordance with the creation of value with regard to the intangibles, such as the transactions that are highly risky and the ones that are difficult to value.
9	
10	
11	Action 11 provides different methods for collecting and analyzing data/information on Base Erosion and Profit Shifting as well as the right actions for addressing it. It also offers recommendations with regard to the indicators of economic and scale of BEPS's impact, while ensuring that all the tools for monitoring are available. It also measures whether the actions are economically impactful and effective when it comes to addressing BEPS on a consistent basis.
12	This offers recommendations around the framework of compulsory rules of disclosure for tax planning plans that are aggressive in nature, while also taking the administration costs of business and taxation administration into consideration. It also takes into account the experiences of nations that have already implemented similar rules. (aggressivetaxplanning@oecd.org)

Action Item	Description
13	It consists of revised guide around the documentation of transfer pricing, in addition to information for CbC reporting that helps in enhancing transparency and also takes compliance related costs into account.
14	Action 14 designs solutions for addressing the hindrances that restrict nations from finding adequate solutions to disputes related to treaty under Mutual Agreement Procedure, through a standard within this particular area and other acceptable practices. It also involves arbitration as one of the options for countries that are willing to address the issues.
15	This point analyzes legal problems concerning the creation of a multilateral treaty that further helps countries in developing a Multilateral Instrument to Modify Bilateral Tax Treaties.

Membership: Download the full list of all countries and jurisdictions participating in the inclusive framework on BEPS.