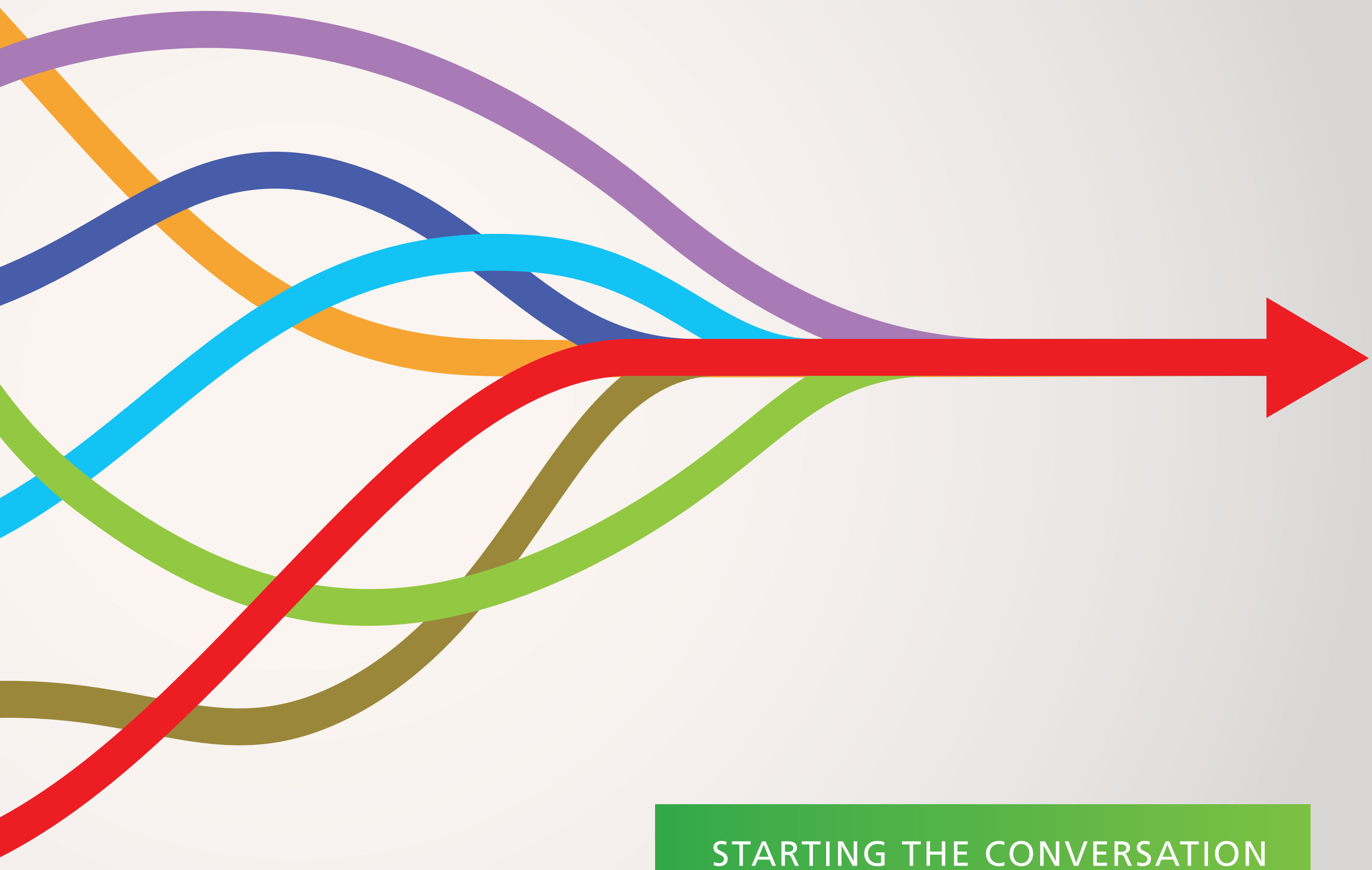
International Federation of Accountants

A GUIDE FOR PROFESSIONAL ACCOUNTANCY ORGANIZATIONS—DEVELOPING GOOD PRACTICES FOR MEMBERS PROVIDING TAX ADVICE



STARTING THE CONVERSATION

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A NOTE FROM IFAC

IFAC (International Federation of Accountants), as part of its mandate to serve the public interest by enhancing the profession's reputation, has developed this ***non-authoritative*** good practice guide to support professional accountancy organizations (PAOs) in providing guidance to their members regarding the application of the ***International Code of Ethics for Professional Accountants*** (including International Independence Standards) when providing tax advice. The guide serves to ***illustrate to PAOs*** what such guidance might entail.

The Code is issued by the International Ethics Standards Board for Accountants (IESBA). ***This guide does not amend, extend, or override the Code, the text of which alone is authoritative***. While the guide has not been endorsed by the IESBA, the IESBA has acknowledged that it is a valuable contribution to supporting implementation of the Code.[1]

This guide contains extracts from the Code for ease of reference only. ***Reading the guide is not a substitute for reading the Code***. Furthermore, the good practices are not meant to be exhaustive and reference to the Code should always be made.

The good practices are stated as "should" only to illustrate how PAOs might include them in their guidance. They should, therefore, not be interpreted as IFAC prescribing guidance for individual PAO members. PAOs using the guidance should determine the authority of such guidance in their respective jurisdictions and apply their drafting conventions when modifying the guidance to reflect such authority.

The good practices do not amend, extend, or override professional standards, laws, or regulations. The professional standards, laws, or regulations in some jurisdictions might be more stringent than these good practices.[2] The good practices will likely be most useful in jurisdictions where they are not encapsulated in professional standards, laws, or regulations.

Since tax is very jurisdiction-specific, the good practices should be modified to reflect specific country context, including professional standards, laws, or regulations.

1 The *IESBA Strategy and Work Plan*, 2019-2023 notes the following: "Further, as societal expectations evolve, there have been public concerns about perceptions of some entities employing 'aggressive tax avoidance' strategies, and whether such strategies are ethically justifiable. The questions that have been raised have implications for both professional accountants in public practice and professional accountants in business in relation to the advice or support they provide to their clients or employing organizations in the area of tax planning and related services." The IESBA has identified this as a specific area to study and commenced an initiative in 2019 to determine whether standard-setting or other action is warranted. This guide does not supersede, or preempt the outcome of, this IESBA initiative.

2 One such example is *Professional Conduct in Relation to Taxation* (PCRT) (republished on March 1, 2019), jointly produced by 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. Her Majesty's Revenue and Customs (UK) (HMRC) have incorporated PCRT into their own Standards for Tax Agents and acknowledged that it is an acceptable basis for dealings between members of these professional organizations and HMRC.

INTRODUCTION

Members of PAOs who provide tax advice operate in a complex business and financial environment and under tax systems the core purpose of which is to fund public services and ensure the good health of the economy and society.

Ethical behavior in relation to tax advice is crucial. The work carried out by a PAO member needs to be trusted by society at large as well as by clients and other stakeholders. PAOs' and their members' conduct in this regard reflects not just on themselves but also on the accountancy profession. PAOs have a responsibility to ensure that their members who provide tax advice as part of their responsibilities to serve their clients' or employing organizations' interests uphold the profession's reputation. This guide, therefore, is intended to assist PAOs in developing good practices for their members who provide tax advice.

While the good practices are written primarily in the context of PAO members in public practice, PAOs should note that they are also relevant to all PAO members who practice in tax, including:

- employees attending to the tax affairs of their employers;
- those dealing with the tax affairs of others, whether or not for payment; and
- those working in national tax authorities or other public sector bodies or government departments.

These PAO members are jointly referred to as professional tax practitioners or practitioners in this guide. In the case of PAO members not in public practice, the good practices should be considered in the context of their relationship with the recipient of the tax advice.

A New Approach to Knowledge Sharing

This guide follows IFAC's new approach to facilitate dialogue among IFAC, PAOs, and other interested parties, and to enhance knowledge sharing. The approach is designed to effectively and efficiently leverage existing knowledge through enhanced coordination and collaboration. Consequently, this guide is a living document developed with limited consultation. It will be updated with, or supplemented by, knowledge shared after its publication. PAOs are invited to join the dialogue and share relevant knowledge, including national examples and case studies, via email at ConversationsWithPAOs@ifac.org.

This guide was developed with reference to standards issued by IFAC members in the UK and US to support the implementation of their respective codes of ethics for professional accountants.

IESBA CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS—THE FUNDAMENTAL PRINCIPLES

IFAC requires its member organizations to support actively the adoption and implementation of the IESBA Code.[3] IFAC also requires that, given the importance of consistent, high-quality ethical standards, member organizations should not apply less stringent standards than those stated in the IESBA Code.

The IESBA Code specifies five fundamental principles of ethics for professional accountants: integrity, objectivity, professional competence and due care, confidentiality, and professional behavior (IESBA Code 110.1 A1). Professional accountants are required to comply with each of these principles (IESBA Code R110.2).

This section of the guide seeks to illustrate application of the five fundamental principles to tax advice. The good practices are presented after the requirements of the IESBA Code in relation to each of the principles.

Fundamental Principle from the IESBA Code

1. **Integrity—**to be straightforward and honest in all professional and business relationships. (IESBA Code 110.1 A1(a))

IESBA Code's Detailed Requirements

A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships. (IESBA Code R111.1)

A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information: (a) contains a materially false or misleading statement; (b) contains statements or information provided recklessly; or (c) omits or obscures required information where such omission or obscurity would be misleading. (IESBA Code R111.2)

When a professional accountant becomes aware of having been associated with information described above, the accountant shall take steps to be disassociated from that information. (IESBA Code R111.3)

Good Practice

PAOs are encouraged to include good practice guidance to their members along the following lines:

- Professional tax practitioners should act honestly in all their professional dealings with their clients, tax authorities, and in other professional or business relationships, and do nothing knowingly that would mislead either by commission or omission.

3 Codified in IFAC Statement of Membership Obligation 4, member organizations are required to identify and undertake actions to have the IESBA Code adopted and implemented in their jurisdictions.

Fundamental Principle from the IESBA Code

2. **Objectivity—**not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others. (IESBA Code 110.1 A1(b))

IESBA Code's Detailed Requirements

A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others. (IESBA Code R112.1)

A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgment regarding that activity. (IESBA Code R112.2)

Good Practices

PAOs are encouraged to include good practice guidance to their members along the following lines:

- Professional tax practitioners should seek to advance their clients' positions to the extent those positions and their efforts comply with applicable professional standards, laws, or regulations. Positions advocated should not result in a conflict of interest for the practitioner, compromise the credibility of the practitioner, or subordinate the judgment of the practitioner to that of their client.
- Professional tax practitioners may be exposed to situations that could impair their objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence the professional judgment of the practitioner should be avoided.
- Professional tax practitioners should explain to their clients the material risks of their advice and the basis on which the advice is given. For example, if facts and circumstances lead a practitioner to believe a tax penalty might be assessed on the client, the practitioner should advise the client and discuss any opportunities to mitigate such penalty, for example by disclosing the position on the tax return or by taking a different position.
- Professional tax practitioners should disclose to their clients if they are receiving commissions, incentives, or any other advantages, and the amounts they receive from third parties relating directly or indirectly to the matter upon which they are advising their clients.

Fundamental Principle from the IESBA Code

3. **Professional competence and due care—**to (a) 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 (b) act diligently and in accordance with applicable technical and professional standards. (IESBA Code 110.1 A1(c))

IESBA Code's Detailed Requirements

A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to: (a) 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 (b) act diligently and in accordance with applicable technical and professional standards. (IESBA Code R113.1)

In complying with the principle of professional competence and due care, a professional accountant shall take reasonable steps to ensure that those working in a professional capacity under the accountant's authority have appropriate training and supervision. (IESBA Code R113.2)

Where appropriate, a professional accountant shall make clients, the employing organization, or other users of the accountant's professional services or activities, aware of the limitations inherent in the services or activities. (IESBA Code R113.3)

Good Practices

PAOs are encouraged to include good practice guidance to their members along the following lines:

- Professional tax practitioners should clearly state the scope of their work in their terms of engagement. Practitioners have a professional duty to carry out their work within the terms of their engagement, which reflects the mutual understanding of agreed-upon work with their clients, and with the requisite skill and care. If the practitioner does exceed the scope of their work, they should agree revised terms with the client.
- When advising a client, the professional tax practitioner has a duty to serve that client's interests within the applicable professional standards, laws, or regulations.
- Professional tax practitioners should carry out their work with a proper regard for the technical and professional standards expected. The practitioner should not undertake professional work which they are not competent to perform unless they obtain appropriate assistance from a suitably qualified specialist. Where such assistance is obtained externally, due regard should be had to client confidentiality.
- Professional tax practitioners should give advice in the context of the commercial and other non-taxation objectives and the facts and circumstances of their clients.
- If there is more than one tenable interpretation of the law, the professional tax practitioner should consider each case on its own individual facts and circumstances. It is the client who makes the final decision on the alternative.

Fundamental Principle from the IESBA Code

4. **Confidentiality—**to respect the confidentiality of information acquired as a result of professional and business relationships. (IESBA Code 110.1 A1(d))

IESBA Code's Detailed Requirements

A professional accountant shall comply with the principle of confidentiality, which requires an accountant to respect the confidentiality of information acquired as a result of professional and business relationships. An accountant shall: (a) be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member; (b) maintain confidentiality of information within the firm or employing organization; (c) maintain confidentiality of information disclosed by a prospective client or employing organization; (d) not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organization without proper and specific authority, unless there is a legal or professional duty or right to disclose; (e) not use confidential information acquired as a result of professional and business relationships for the personal advantage of the accountant or for the advantage of a third party; (f) not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and (g) take reasonable steps to ensure that personnel under the accountant's control, and individuals from whom advice and assistance are obtained, respect the accountant's duty of confidentiality. (IESBA Code R114.1)

A professional accountant shall continue to comply with the principle of confidentiality even after the end of the relationship between the accountant and a client or employing organization. When changing employment or acquiring a new client, the accountant is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship. (IESBA Code R114.2)

Good Practices

PAOs are encouraged to include good practice guidance to their members along the following lines:

- Confidentiality is a professional principle, a legally enforceable contractual obligation, and a requirement subject to regulatory oversight in many jurisdictions. Professional tax practitioners should comply with applicable professional, legal, or regulatory requirements for client confidentiality, data privacy, and data protection.
- Professional tax practitioners may only disclose information without their clients' consent when there is an express legal or professional duty to disclose. In such case, and subject to the provisions of the law (e.g., in relation to "tipping off"), the practitioner should consider informing the client of such duty. Legal advice should be sought if there is any doubt regarding the disclosure of information or if there is a risk of a challenge by the client.

Fundamental Principle from the IESBA Code

5. **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. (IESBA Code 110.1 A1(e))

IESBA Code's Detailed Requirements

A professional accountant shall comply with the principle of professional behavior, which requires an accountant to comply with relevant laws and regulations and avoid any conduct that the accountant knows or should know might discredit the profession. A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles. (IESBA Code R115.1)

When undertaking marketing or promotional activities, a professional accountant shall not bring the profession into disrepute. A professional accountant shall be honest and truthful and shall not make: (a) exaggerated claims for the services offered by, or the qualifications or experience of, the accountant; or (b) disparaging references or unsubstantiated comparisons to the work of others. (IESBA Code R115.2)

Good Practices

PAOs are encouraged to include good practice guidance to their members along the following lines:

- Professional tax practitioners should act in a way that will not bring them, their professional organizations, or the profession into disrepute. This includes avoiding any tax arrangements with which they might be associated on their own behalf or on behalf of their clients that are not based on a credible interpretation of the law and that may bring them, their professional organizations, or the profession into disrepute.
- Professional tax practitioners should behave with courtesy and consideration toward all with whom they come into contact in their capacity as practitioners.
- Professional tax practitioners should comply with all applicable professional, legal, or regulatory obligations when dealing with clients' tax affairs and assist their clients to do the same. The practitioner should not tolerate and aid or abet tax evasion, which is illegal. The practitioner should strongly advise the client not to enter into any arrangements that the practitioner reasonably believes are, or may be, tax evasion. If a client chooses to ignore that advice, the practitioner should resign from the engagement.
- Professional tax practitioners should advise their clients of the potential consequences of an error or omission and recommend corrective action. They should not inform the tax authority without their clients' permission, except if required by professional standards, law, or regulation. Lacking the permission of or corrective action by the client, the practitioner should consider whether to withdraw from the engagement and discontinue any professional relationship with the client.
- Professional tax practitioners who encounter or are made aware of non-compliance or suspected non-compliance with laws and regulations in the course of advising their clients should follow the requirements of the Code relating to responding to non-compliance with laws and regulations (NOCLAR), where applicable.

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- Serving the interests of their clients will, on occasion, bring professional tax practitioners into disagreement or conflict with relevant tax authorities. Practitioners should address such disagreements or conflicts in an objective, open, constructive, and professional manner, and consider whether to consult a suitably qualified specialist. Nevertheless, practitioners should serve their clients' interests as robustly as circumstances warrant whilst applying these good practices. (See *Confidentiality* above.)
- Professional tax practitioners' own tax affairs should be kept up to date so as to reflect to tax authorities the standard of their professional work and maintain the reputation of their professional organizations.
- Professional tax practitioners should ensure that their internal and external communications, including those using social media, are consistent with these good practices, particularly those relating to confidentiality.

ADDITIONAL GOOD PRACTICES IN RELATION TO TAX ADVICE REQUIRING SIGNIFICANT JUDGMENT

The good practices in this section, similar to those in the previous section, seek to illustrate further the application of the five fundamental principles to tax advice requiring significant judgment.

PAOs are encouraged to include good practice guidance to their members along the folowing lines:

Client Specific

Tax advice should be specific to each client's facts and circumstances. Professional tax practitioners should take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to the practitioner's advice. The practitioner should document the client's commercial circumstances and broader business considerations that have been communicated by the client to the practitioner.

The practitioner should alert the client to the wider risks associated with the scope of the engagement and the implications of any suggested courses of action contemplated by the client, including reputational risk arising from the way a tax arrangement may be perceived by relevant stakeholders. These wider risks are those that are directly attributable to the advice and could be reasonably foreseeable by the practitioner. Where wider risks should be highlighted, the practitioner may either advise on them, or identify them as matters on which separate advice should be sought by the client, depending on the scope of the practitioner's practice and of the engagement.

If advice is generic, and/or depends on certain assumptions, the practitioner should highlight with sufficient prominence this fact, including the assumptions relied upon and the need for specific advice to be taken before acting to prevent any misunderstandings arising. All assumptions made in providing the advice should be reasonable in the circumstances and not contradict known facts and circumstances.

Lawful

At all times professional tax practitioners should act lawfully and with integrity and expect the same from their clients. Tax advice should be based on a realistic assessment of the facts and on a credible interpretation of the law. The practitioner's advice should consider applicable anti-avoidance measures and substance requirements.

The practitioner should draw the client's attention to where the law is uncertain and advise the client on this material uncertainty (including where the tax authority takes a different view) even if the practical likelihood of the tax authority intervening is considered low. The practitioner should tell the client what would be reasonable, at the time of the transaction, to expect the tax authority to believe the application of the law to be (assuming the tax authority was fully appraised of all the facts of the transaction). Where the likely view of the tax authority is uncertain or not known, the practitioner should explicitly highlight this fact as part of their advice.

The practitioner should advise the client on any options available to the client to reduce any material uncertainty, including seeking the opinion of the tax authority or a suitably qualified specialist.

The fact that the practitioner may disagree with the tax authority on a matter is not of itself indicative of behavior that might not be aligned with these good practices. Given the complexity of tax laws and business transactions and structures, situations can develop where the practitioner may reasonably believe that a tax authority view is wrong in law and, if so, the client should be alerted to the fact that the tax authority holds a different view of the law and advised of the risks and likely process costs and time that might be incurred to resolve any dispute.

Disclosure and Transparency

Tax advice should not rely for its effectiveness on the tax authority having less than the relevant facts. Any disclosure should fairly represent all relevant facts.

Disclosure should be made whenever required by law. What is disclosed will inevitably reflect professional judgment considering all relevant facts and law specific to the case in question. (See *Confidentiality* above.)

Professional Judgment and Appropriate Documentation

Applying these good practices to client advisory situations requires professional tax practitioners to exercise professional judgment on several matters. Practitioners should maintain contemporaneous files reflecting the basis for the judgments exercised in seeking to adhere to these good practices. Where the judgments made are reasonable, contemporaneous notes or correspondence are likely to be the most persuasive evidence of compliance with the fundamental principles after the event, to the benefit of the practitioner and the client and to satisfy any inquiries made into the subject of the advice.

Where a practitioner has a genuine and reasonable uncertainty as to whether a particular tax arrangement is in breach of these good practices, the practitioner should: (a) document the detailed reasoning and evidence sufficiently to be able to demonstrate why they took the view that the arrangement was not in breach of these good practices; (b) include in their client advice an assessment of uncertainties and risks involved in the arrangement (see *Lawful* above); and (c) include in their client advice an assessment of the relevant disclosures that should be made to the tax authority to enable it, should it wish to do so, to make any reasonable inquiries (see *Disclosure and Transparency* above).

GOOD PRACTICES IN RELATION TO QUALITY MANAGEMENT

PAOs are encouraged to include good practice guidance to their members along the following lines:

Professional tax practitioners responsible for tax practices or tax departments should develop appropriate procedures and provide adequate staff supervision to ensure that all individuals they supervise comply with applicable professional, legal, or regulatory requirements. A tax practice quality management system (such as client acceptance, concurring reviews, involvement of suitably qualified specialists, etc.) is considered a good practice. The objective of such systems is to provide reasonable assurance of compliance with applicable professional, legal, or regulatory requirements.

WHAT IS NEXT?

Key findings of the *G20 Public Trust in Tax in 2019* survey, conducted by IFAC, ACCA, and CA ANZ, found that people have the highest level of trust in professional accountants. It also found that people believe professional accountants' role contributes to better tax systems by making them more efficient, effective, and fair. Transparency is also a top issue for G20 citizens when considering tax systems; and most people are supportive of cooperation on international tax policy to create a more coherent international tax system.

Professional accountants' engagement in the tax system is critical. This is particularly relevant in the context of the Organisation for Economic Co-operation and Development (OECD)'s *Action Plan on Base Erosion and Profit Shifting*, which identifies 15 specific actions for a coordinated international approach.

IFAC will continue to explore ways to support PAOs and, through PAOs, their members in their role in tax systems. In this regard, IFAC is working on another conversation starter with PAOs in this series. The guide, which draws on widely accepted principles of good tax policies, will provide PAOs a framework for analyzing effectively proposals to change tax rules and systems.

Another important future conversation starter with PAOs is transparency and higher-risk tax positions. An OECD Action Plan recommendation is to "require taxpayers to disclose their aggressive tax planning arrangements." IFAC believes this requires increased transparency by both taxpayers and tax authorities and should be approached as part of a more fundamental shift toward an enhanced relationship between the parties based on cooperation and respect, with appropriate checks and balances. Please do not hesitate to write to ConversationsWithPAOs@ifac.org to share your views on the profession's role in this regard.

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