

APES 220 TAXATION SERVICES

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1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional standard APES 220 *Taxation Services* (**the Standard**), which is effective from 01 July 2008.
- 1.2 APES 220 sets the standards for Members in the provision of quality and ethical Taxation Services. The mandatory requirements of this Standard are in **bold** type, preceded or followed by discussion or explanations in grey type. APES 220 should be read in conjunction with other professional duties of Members, and any legal obligations that may apply.
- 1.3 **Members in Australia shall follow the mandatory requirements of APES 220 when they provide Taxation Services.**
- 1.4 **Members practising outside of Australia shall follow the provisions of APES 220 to the extent to which they are not prevented from so doing by specific requirements of local regulations and/or laws.**
- 1.5 **Members shall be familiar with relevant professional standards and guidance notes when providing Professional Services. All Members shall comply with the fundamental principles outlined in the Code.**
- 1.6 The Standard is not intended to detract from any responsibilities which may be imposed by law.
- 1.7 All references to professional standards are references to those provisions as amended from time to time.
- 1.8 In applying the requirements outlined in APES 220, Members should be guided not merely by the words but also by the spirit of the Standard and the Code.

2. Definitions

For the purpose of this Standard:

Client means an individual, Firm, entity or organisation to whom or to which Taxation Services are provided by a Member in Public Practice in respect of Engagements of either a recurring or demand nature.

Code means APES 110 *Code of Ethics for Professional Accountants*.

Employer within the context of this Standard means an entity or person that employs, engages or contracts a Member in Business.

Engagement means an agreement, whether written or otherwise, between a Member in Public Practice and a Client relating to the provision of Professional Services by a Member in Public Practice. However, consultations with a prospective Client prior to such agreement are not part of an Engagement.

Firm means (a) A sole practitioner, partnership, corporation or other entity of professional accountants;
(b) An entity that controls such parties;
(c) An entity controlled by such parties; or
(d) An Auditor-General's office or department.

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Member means a member of a professional body that has adopted this Standard as applicable to their membership, as defined by that professional body.

Member in Business means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a Member contracted by such entities.

Member in Public Practice means a Member, irrespective of functional classification (e.g. audit, tax or consulting) in a Firm that provides Professional Services. The term is also used to refer to a Firm of Members in Public Practice and means a practice entity as defined by the applicable professional body.

Professional Services means services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services.

Revenue Authorities include various levels of government authorities or similar institutions which have legislative powers to impose and/or collect taxes.

Taxation Law means a law and/or regulation of any level of government imposing a tax or otherwise dealing with tax, and includes any such laws and regulations that describe direct and indirect taxes, levies, surcharges, penalties or similar charges imposed by various levels of governments or similar institutions on economic transactions.

Taxation Services mean any services relating to ascertaining a Client's or Employer's tax liabilities or entitlements or satisfying their obligations under a Taxation Law, provided under circumstances where they can reasonably expect to rely on the services. This includes:

- preparation of a return, notice, statement, application or other document for lodgment with a Revenue Authority, and responding on behalf of a Client or Employer to requests for further information from a Revenue Authority;
- preparation of tax calculations to be used as the basis for the accounting entries in the financial statements;
- provision of tax planning and other tax advisory services; and
- assisting a Client or Employer in the resolution of tax disputes.

Writing means a mode of representing or reproducing words in a visible form, and includes words in an electronic format capable of being converted to printed text.

3. Fundamental responsibilities of Members

3.1 **Members providing Taxation Services shall at all times safeguard the interests of their Client or Employer provided that such services are delivered in accordance with Section 100 *Introduction and Fundamental Principles* of the Code and relevant Taxation Law.**

Public interest

3.2 **In accordance with Section 100.1 of the Code, Members shall observe and comply with their public interest obligations when they provide Taxation Services.**

Integrity and professional behaviour

3.3 **In accordance with the fundamental principles of integrity and professional behaviour contained in the Code, Members providing Taxation Services shall**

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ensure that their own personal tax obligations and those of any associated entities for which the Member is responsible are properly discharged.

Objectivity

- 3.4 **When providing Taxation Services Members shall be objective in accordance with Section 120 *Objectivity* of the Code. They shall maintain an impartial attitude and recommend options that meet the Client's or Employer's interests consistent with the requirements of the law.**
- 3.5 A Member may act as an advocate for a Client or Employer when representing or assisting them before certain tribunals. However, a Member acting in such a capacity before any court or tribunal should ensure that the Client or Employer is aware that the Member has an obligation not to mislead the court or tribunal and to safeguard his or her professional objectivity.

Confidentiality

- 3.6 **In accordance with Section 140 *Confidentiality* of the Code, a Member who acquires confidential information in the course of professional work for a Client or Employer shall not use that information for any purpose other than the proper performance of professional work for that Client or Employer.**
- 3.7 **Unless the Member has a legal obligation of disclosure, a Member shall not convey any information relating to a Client's or Employer's affairs to a third party without the Client's or Employer's permission.**
- 3.8 Where a Client has given a Member in Public Practice permission to disclose confidential information to a third party, it is preferable that this permission is in Writing. Where verbal permission is obtained, a contemporaneous note should be made and kept on file by the Member recording the relevant details of the Client's approval.
- 3.9 **Unless the Member has a legal obligation of disclosure, a Member shall not furnish to the Revenue Authorities any opinions or written advices of a third party who is acting in a specialist capacity on specific aspects of the Engagement, without the prior knowledge and express consent of that third party.**
- 3.10 **Where a Member provides confidential information in accordance with a legal obligation of disclosure, the Member shall notify the Client, Employer or relevant third party as soon as practical, provided that there is no legal prohibition against such notification.**

Professional competence and due care

- 3.11 **Members engaged in providing Taxation Services shall maintain professional competence and take due care in the performance of their work in accordance with Section 130 *Professional Competence and Due Care* of the Code.**
- 3.12 Competent Professional Service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Due care imposes the obligation of acting diligently in accordance with applicable technical and professional standards when providing a Professional Service.
- 3.13 Members should therefore refrain from performing any services which they are not competent to carry out, unless expert advice and assistance is obtained to ensure

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that the services are performed to a standard agreed with the Client or Employer or as required by law.

3.14 A Member shall maintain open, frank and effective communications with a Client or Employer. In this regard:

(a) where appropriate having regard to the Member's agreed scope of work, a Member shall advise a Client or Employer of both the Member's and the Client's or Employer's rights, obligations and options available under the Taxation Law. A Member shall also advise the Client or Employer of their rights or options available under Taxation Law with respect to the seeking of a private ruling and the lodging of objections and appeals against adverse positions adopted by the Revenue Authorities; and

(b) in the context of Taxation Services requested, a Member shall advise a Client or Employer on the application of the Taxation Law, including any possible penalties and other legal tax consequence, so as to allow the Client or Employer to make an informed decision of the course of action to be taken.

3.15 A Member in Public Practice shall provide a Client with a statement in Writing that:

(a) the responsibility for the accuracy and completeness of the particulars and information provided by the Client rests with the Client;

(b) any advice given to the Client is only an opinion based on the Member's knowledge of the Client's particular circumstances; and

(c) a taxpayer has obligations under self assessment to keep full and proper records in order to facilitate the preparation of accurate returns.

3.16 The communication of the matters in paragraph 3.15 to the Client in Writing need not be in the form of a letter. For example, a standard format handout, brochure, leaflet or electronic communication is also acceptable.

3.17 Where the application of the Taxation Law is not certain, a Member shall not represent to a Client or Employer that the results of a Taxation Service (such as the tax or other revenue returns which the Member prepares or assists in preparing, or the tax advice the Member offers), are beyond challenge.

4. Preparation and lodgment of returns to Revenue Authorities

4.1 A Member shall prepare and/or lodge returns and other relevant documents required to be lodged with a Revenue Authority in accordance with the information provided by a Client or Employer, their instructions and the relevant Taxation Law.

4.2 Where appropriate a Member may accept a Client's or Employer's information, and is not responsible for its veracity. However, within the agreed scope of work a Member should obtain information which is sufficient to allow the Member to form a view as to the application of the law to that information and to be able to recommend the options available to the Client or Employer on how the information provided by them may be reflected in the relevant return or other document to be lodged. Where a Member reasonably believes that the information provided by the Client or Employer may be incomplete, false or misleading, the Member should have regard to the provisions of paragraph 7.3 of this Standard and the law.

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4.3 Where a Member in Public Practice provides a tax lodgment service to another party and a significant portion of the work associated with the revenue returns and other relevant documents is not performed under the supervision of the Member in Public Practice, the Member in Public Practice shall perform sufficient reviews of the revenue returns and other relevant documents in accordance with this Standard and the Code prior to lodgment of these revenue returns.

5. Tax schemes and arrangements

5.1 The decision to enter into any tax scheme or arrangement will always be that of the Client or Employer.

5.2 Where appropriate, having regard to the Member's agreed scope of work, a Member shall give the Client or Employer sufficient information to enable the Client or Employer to be fully informed of the details of the scheme or arrangement and its current and future ramifications including the risks and uncertainties, particularly in relation to possible changes in Taxation Law.

5.3 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.

5.4 Member shall not promote, or assist in the promotion of, or otherwise encourage any tax schemes or arrangements where the dominant purpose is to derive a tax benefit and it is not reasonably arguable that the tax benefit is available under Taxation Law. Accordingly, a Member shall not provide advice on such a scheme or arrangement to a Client or Employer other than to advise that in the Member's opinion it is not effective at law.

5.5 Paragraph 5.4 does not preclude a Member from advising a Client or Employer on the resolution of such matters and providing other Taxation Services.

5.6 Provided that the provisions of paragraphs 5.3 and 5.4 do not apply, a Member may otherwise provide Taxation Services to a Client or Employer who has entered into a tax scheme or arrangement.

5.7 In respect of an entity that predominantly promotes tax schemes or arrangements, a Member shall not:

- have any financial interest in such an entity; or
- render any Professional Service to such an entity where the Member knows that the Member's immediate or close family has a financial interest.

6. Estimates

6.1 A Member shall not prepare or be associated with the preparation of returns or submissions to Revenue Authorities involving the use of estimates unless their use is generally accepted or under the circumstances it is impracticable to obtain exact data.

6.2.1 When estimates are used, a Member shall present them in such a manner as to avoid the implication of greater accuracy than in fact exists.

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6.2.2 The Member shall consider whether the use of an estimate is reasonable in the particular circumstance. Where a Member has reason to believe an estimate is not reasonable the Member shall advise the Client or Employer of the risks and consequences of using the relevant estimate in the return or submission to be lodged with the Revenue Authorities.

7. False or misleading information

7.1 A Member shall not provide a Taxation Service to a Client or Employer if the Member finds that information on which the Taxation Service is to be based contains false or misleading information or omits material information and the Client or Employer is not prepared to appropriately amend it.

7.2 A Member shall not knowingly or recklessly make a statement or cause another to make a statement in or in connection with a Taxation Service that, by its content or by an omission, is false or misleading in a material manner.

7.3 Where a Member forms the view that a Taxation Service is based on false or misleading information or the omission of material information, the Member shall discuss the matter with the Client or Employer and advise them of the consequences if no action is taken.

7.4 Where a Member finds that a Client or Employer has filed returns or submissions in previous years (with which the Member may or may not have been associated) that contain materially false or misleading information or omit material information, the Member should discuss the matter with the Client or Employer and advise them of their responsibilities.

7.5 In the event of a Member subsequently becoming aware that information previously provided to a Revenue Authority by the Member, which the Member had no reason to believe at the time to be incorrect, is false or misleading, the Member should recommend that the Client or Employer make an appropriate disclosure or, alternatively, the Member should obtain authority from them to make the disclosure on their behalf.

7.6 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 paragraphs 28-35 *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.

7.7 Where a Member in Business is faced with similar circumstances, the Member is referred to Part C: *Members in Business* of the Code.

7.8 All references to false and misleading information in this section exclude information that is of an immaterial or inconsequential nature.

8. Professional engagement matters

- 8.1 A Member in Public Practice shall provide the Client with an appropriate statement in Writing outlining the relevant terms of the Engagement to provide the Taxation Service in accordance with APES 305 *Terms of Engagement*.
- 8.2 The provision of this statement to the Client in Writing need not be in the form of a letter. For example, a standard format handout, brochure, leaflet or electronic communication is also acceptable.
- 8.3 A Member in Public Practice who is approached by a potential Client to undertake a Taxation Service shall comply with the requirements of Section 210 *Professional Appointment* of the Code.
- 8.4 A Member in Public Practice who has utilised the services of a third party in connection with the performance of a Taxation Service, such as a legal opinion to support the provision of taxation advice, shall not disclose the relevant opinion or the name of that third party without the prior consent of that party.
- 8.5 A Member consulting with others in relation to a Client's or Employer's affairs shall observe the requirements of Section 140 *Confidentiality* of the Code.

9. Client monies

- 9.1 A Member in Public Practice shall ensure prompt transmission of monies received on behalf of a Client from Revenue Authorities to the Client.
- 9.2 A Member in Public Practice shall not appropriate tax refunds to settle the fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.
- 9.3 Where funds are to be banked by a Member in Public Practice on behalf of a Client, a Member shall use a separate bank account designated as a trust account and maintained in accordance with the requirements of the professional body to which the Member belongs.

10. Professional fees

- 10.1 A Member in Public Practice providing Taxation Services shall be remunerated for such services by way of professional fees computed in accordance with Section 240 *Fees and other Types of Remuneration* of the Code.

11. Documentation

- 11.1 A Member shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Taxation Service that have been provided in Writing in accordance with this Standard, and the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Taxation Service have been made.

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- 11.2 A Member should adopt appropriate procedures for maintaining the confidentiality and safe custody of working papers and for retaining them for a period sufficient to meet the needs of the Member and in accordance with legal requirements of record retention.
- 11.3 Nothing in this Standard precludes the storage of documentation in appropriate electronic formats. Members contemplating the use of electronic storage should consider the legal implications of such forms of storage, which may vary by jurisdiction, and seek appropriate advice in this context.