



de Nederlandse Orde van Belastingadviseurs
The Dutch Association of Tax Advisers

Note on translation:

This is an English translation of a document drawn up in Dutch. Every effort has been made to render the source text as accurately as possible without compromising continuity. In the event of any disparity between the Dutch original and this translation, the Dutch text will prevail.

In this translation, Dutch legal concepts are expressed in English terms and may not necessarily be identical to the concepts described by those English terms under the laws of other jurisdictions.

Code of Professional Conduct of the Dutch Association of Tax Advisers

[Dutch Acronym: NOB]

As adopted on 2 June 2010

Article 15 amended on 15 June 2011

Explanation of Articles 4(1), 7(1) and 12(2) amended on 8 October 2014

Explanation of Article 4(1) amended on 26 November 2015

Explanation of Article 2(2) amended on 1 February 2017

Explanation of Article 2(2) and Article 4 amended on 19 April 2017

Explanation of Article 2(2) amended on 27 November 2017

Explanation of Article 1 amended on 1 October 2018

Contents:

1. Section 1. General provisions
2. Section 2. Provisions relating to services
3. Section 3. Financial provisions

Section 1. General provisions

Article 1

Honour and dignity

A member must perform his¹ work as a tax adviser in an honest, conscientious and appropriate manner and refrain from anything that is in conflict with the honour and dignity of the profession.

Explanation:

The concept of the 'honour and dignity of the profession' is the key concept in this provision and includes in any event the other standards referred to in this provision (being the requirement for the member to comply with all applicable legislation and regulations and to

¹ A member of the Dutch Association of Tax Advisers may be male or female. For readability reasons, the male form only is used in this Code of Professional Conduct.

practise the profession honestly and properly and with due care and attention). The words 'honour and dignity of the profession' also include the meaning generally attributed to these words in society and so may be subject to change.

Integrity represents an essential element of honour and dignity and requires a member to act in accordance with the values and standards he stands for. In other words, a member's work must comply at the very least with the legislation and regulations applying at the time, while also taking account of applicable case law and any advice must, at the time it is given, be based at the very least on positions that can reasonably be defended. Insofar as the intention of the legislation is known, the member must take this into account when formulating opinions and in discussions with the client. Integrity also requires the member to comply with this Code of Conduct and any other rules and regulations, including any applicable ethical values and standards.

The requirement for the member to perform his work honestly means, among other things, that the member's actions must accord with any pronouncements he makes and that, insofar as the member knows as a result, for example, of his due diligence, he must not allow any facts or circumstances to be incorrectly represented.

The word 'conscientious' refers to the duty of care as applying in civil case law; in other words, what may be expected of a reasonably competent tax adviser acting reasonably. In addition and where it can reasonably be considered necessary, the member must also take societal aspects into account in discussions with clients, insofar as the client can reasonably be expected not to be aware of such aspects and insofar as the member can be expected to be aware of them. This may mean, for example, that the member discusses stakeholders' views on a client's tax choices with the client.

The word 'appropriate' refers not only to the member's professionalism, but also in any event to the manner in which the member can be expected to deal with relationships with, for example, clients, colleagues, staff, suppliers and tax authorities; in other words, attentively and respectfully and in a manner designed to create trust and avoid, limit or resolve disputes, insofar as reasonably possible. This does not restrict the member in any way from seeking to resolve a dispute with a client by initiating legal action.

Article 2 Independence

1. A member must avoid jeopardising his freedom and independence in practising his profession.

Explanation:

A member must be mindful of his freedom and independence in relationships with clients and those with whom he works in practising his profession. With respect to this latter category, freedom and independence in practising his profession mean:

- *The right of the member to refuse an assignment;*

- *The freedom to be able to perform assignments in accordance with the member’s own professional standards and practices in terms of ethics, theory and technical expertise;*
 - *The freedom to be able to perform assignments in accordance with the professional rules of behaviour applying to NOB members, including the requirement for confidentiality;*
 - *The freedom (for NOB members who are not in permanent employment) to choose partners, fellow directors or employees in the tax advisory practice.*
2. A member is not permitted to perform work that is incompatible with a tax adviser’s independence.

*Explanation:*²

– *General*

Ancillary activities may threaten a tax adviser’s independence if they result or could potentially result in a conflict of interests. A conflict of interests, or semblance of such a conflict, arises if a tax adviser grants an assignment to himself or to colleagues on behalf of a client or assesses his own work or that of colleagues on behalf of a client. A tax adviser’s independence can also be compromised if he provides advice to parties who have a conflict with each other or are in negotiations with each other. Various situations are given below as examples of situations with which a member could be confronted.

– *Executive or supervisory director of a legal person on a client’s behalf*

A member may be appointed, on a client’s behalf, as an executive or supervisory director of a legal person, but only if the tax activities (i.e. tax advice or compliance services) provided to the relevant legal person (or affiliated entities) are performed by an office other than the member’s office. A member is not regarded as acting as a director ‘on a client’s behalf’ if the member is a director of a company or holding company for his own practice. He is, however, regarded as such if he is a director of a legal person as referred to in Article 1(d)(1) and (5) of the Trust Offices (Supervision) Act [Wet Toezicht Trustkantoren]. The same applies mutatis mutandis if a member becomes a member of a formal supervisory body of a client or if he becomes a partner in a partnership.

– *Temporary director of a STAK [Stichting Administratiekantoor] structure*

Irrespective of the provisions set out above, a member asked by a client to become a director of a STAK structure may accept this appointment even if the member provides tax-related services to the underlying NV or BV (or participating interests held by these companies), but only if the member takes adequate steps to ensure he remains independent. These steps include ensuring, for example, that the member does not have a decisive vote (either formally or otherwise) in any tax-related matters. The appointment as a director must also be of a temporary nature – to bridge a period of time between directors, for example – and must not last for longer than five years. This period may be extended, but only in the event of serious reasons and if such reasons can reasonably be considered to continue to apply.

² The explanatory notes provided in respect of Article 2(2) were made more restrictive in 2017. The NOB Board is aware that these restrictions cannot be implemented from one day to the next. Consequently and depending on the specific situation, a transitional period of, in principle, one year may be agreed with members affected by this change.

– *Administrator*

When working for major shareholders who are also directors of the company [DGA], a member may be asked to accept an appointment as an administrator, while the member (or a colleague) continues to or will perform tax-related services in respect of the assets under administration. In the event of protective administration, the tax-related services performed by the member, and the related invoices, must, by law, be assessed each year by a court. In the event of testamentary administration or administration pursuant to a gift or donation, the member's activities and invoices must, by law, be assessed each year by the entitled parties and the person(s) in whose interests the administration is being performed. A member may accept an appointment as an administrator and must then provide the highest possible degree of transparency in order for the court or the entitled/interested parties to be able to properly assess the need for, the quality of and the level of remuneration for the activities. At the end of the administration, the member must provide the same degree of transparency when accounting to the entitled or interested parties and to the member's successor as an administrator.

In view of the need to safeguard independence, the administration must not last for longer than necessary and for longer than stated when the administration began. If no duration is specified when the administration begins, the administration must not last for longer than five years except in the event of serious reasons and if such reasons can reasonably be considered to continue to apply.

– *Executor*

A member may accept an appointment as an executor. If, as a result, he (or a colleague) also provides tax-related services, this may be regarded as an assignment performed on behalf of the deceased. It is also important for these activities to be of a temporary nature and for the activities performed and the invoices to be assessed, on the basis of law, by those entitled to manage the assets after the member (this will normally be the heirs/beneficiaries or the administrator), such that the tax adviser's independence is not compromised as a result of his being an executor.

– *Executive/supervisory director, in a personal capacity, of an association, a foundation or a body pertaining to a religious denomination*

If a member is a director of an organisation in the non-profit sector, such as a sports association or public benefit organisation [ANBI], neither the member nor a colleague may perform remunerated tax-related activities for the association, foundation or body pertaining to a religious denomination (of which the member is a director). This also applies if the member is a member of a body responsible for supervising the association, foundation or body pertaining to a religious denomination. The above does not prevent a member who is an executive or supervisory director of such an organisation from using his tax expertise without remuneration.

– *Conflict of interests*

If a member is asked to represent the tax or other interests of parties who are in negotiations with each other (in the case, for example, of a divorce or the dissolution of a partnership), the member must ensure that all the parties' interests are impartially represented. The member must consequently discuss the existing conflict of interests and any that can be expected to arise with the parties, while also making it clear that he can accept the assignment only subject to the condition that he is permitted to be completely honest and open with all parties at each

stage of the advisory assignment and will act impartially. All the parties must agree to this condition in advance. Throughout the assignment the member must bear in mind his position as an impartial tax adviser to the parties and be prepared, if necessary and in consultation with the parties, to withdraw from the assignment.

Article 3

Acting capacity

1. Where necessary, a member must make it clear to clients and third parties that he is acting in the capacity of a tax adviser. If a member performs work in any capacity other than that of a tax adviser, he must avoid creating any misunderstanding among clients and third parties regarding the capacity in which he is acting in the given situation.

Explanation:

It may occur that a member is also a member of another professional group, such as if the member is also a lawyer. In such cases, the capacity in which he is acting must be clear. If, alongside his main profession of tax adviser, the member also performs work in a social context, he must take measures to avoid any confusion regarding the capacity in which he is performing this work.

2. Acting in a capacity other than that of tax adviser does not necessarily mean that the disciplinary rules of the NOB do not apply.

Explanation:

Under Article 1 of this Code of Professional Conduct, the member is never able to entirely set aside his capacity as a tax adviser and therefore also retains a responsibility to act accordingly, even though this responsibility will not extend as far in this situation.

Article 4

Confidentiality

1. A member is obliged to observe confidentiality in everything that comes to his knowledge when practising his profession. This does not apply if he has been relieved or partially relieved of this obligation by the client or if he has a legal or legally based obligation to disclose information, or if disclosing the information is necessary in order to enable the member to defend his own interests.

Explanation:

In principle, a member can be relieved of his duty of confidentiality only by his client. However, a member may be obliged to provide information covered by this duty of confidentiality to third parties without being relieved of his obligation by his client and sometimes even against the will of his client. Under the Act on the Prevention of Money-laundering and Financing of Terrorism (Wwft), for example, a member is obliged to report unusual transactions and must satisfy a request from the Wwft Reporting Office to provide further details or information.

A tax adviser may also be obliged to stand as a witness in a court of law or to cooperate in a tax audit or investigation. In such cases, the court will decide on the extent to which a member is relieved of his duty of confidentiality.

In addition, a member may be involved in, for example, a civil lawsuit, disciplinary proceedings or penalty proceedings or as an accessory in criminal proceedings and, therefore, be obliged to provide information in order to defend his own interests. In such cases, the member must confine himself, as far as possible, to a plain statement of the relevant facts and circumstances; he must not go into any more detail than is necessary for his own defence.

Personnel and colleagues of a member may become acquainted with information covered by the duty of confidentiality. The member must ensure that the duty of confidentiality is observed to a sufficient degree, also by those in the organisation who are not involved in serving the specific client. If colleagues are working together on or involved in joint discussions of a client, a member is permitted to disclose information covered by the duty of confidentiality, but only on a need-to-know basis. The member is also responsible for ensuring that any personnel and colleagues who share such information do so on this basis.

In order to observe the duty of care referred to above, the member must take any measures that can be expected of him in view of the size of the office organisation, the technical resources and the manner and type of services provided to the client.

The Netherlands Institute of Chartered Accountants (NBA) or the Netherlands Authority for the Financial Markets (AFM) and, potentially, foreign regulators, too, can request to inspect an accountant's files. As tax advisers are not subject to supervision by these regulators, NOB members working with accountants should bear in mind their non-disclosure obligation in respect of these regulators and prevent their files from being comprehensively inspected during any such inspection.

The Code of Ethics for Accountants, a regulation concerning the independence of assurance instructions (ViO) and which came into force on 1 January 2014, also makes no difference to the above. Under the ViO, an accountant must have adequate understanding of the nature, purpose and contents of the non-assurance services provided to the client in order to perform the mandatory evaluation of independence. However, this does not mean in any way whatsoever that the accountant should have full and unrestricted access to the tax advice file. The accountant may ask a member a question and, with the client's permission (either obtained under general terms and conditions or in a letter of engagement), the member may answer the question and provide information to the accountant on a need-to-know basis. The accountant may record this information directly in his own file or, if he trusts the tax adviser's recording of the information, subsequently retrieve it from the relevant tax adviser during an audit by a regulator. By following this procedure a member can provide the accountant with sufficient insight on a need-to-know basis.

If a member consults a colleague outside his own organisation, this must also be on a need-to-know basis. It will usually, therefore, be in anonymous form and with the imposition of a duty of confidentiality and the client's consent.

2. The duty of confidentiality continues after the relationship with the client ends.

Explanation:

The duty of confidentiality continues after the relationship with the client ends. This also applies if a member refuses or ceases to provide services to the client owing to a conflict with the honour and dignity of the profession. See also paragraph 3.

3. The duty of confidentiality does not constitute a hindrance to informing a succeeding tax adviser that the relationship with the client was terminated owing to indications that the service requested would lead to actions conflicting with Article 1 ('honour and dignity') of this Code of Professional Conduct.

Article 5

Professional competence

A member must maintain his professional knowledge at the required level and monitor developments in his field so that the knowledge and skills required to practise his profession remain up-to-date and at an academic level.

Explanation:

Admittance to membership of the NOB is subject to strict compliance with high educational requirements. It is the member's responsibility to keep his knowledge and skills up to the required level.

Article 6

Professional liability

A member is obliged to ensure that his professional liability risk is covered by adequate insurance.

Explanation:

The definition of 'adequate insurance' depends on the sort of practice, the clients and the interests involved.

Section 2. Provisions relating to services

Article 7

Services conforming to the honour and dignity of the profession

1. A member must establish who his client is and whether the nature and contents of the services requested are compatible with Article 1 of this Code of Professional Conduct. If there are reasonable grounds to suggest that this is not the case, a member must refrain from providing the services requested.

Explanation:

Like every other tax adviser, a member is obliged to perform due diligence in accordance with the Act on the Prevention of Money-laundering and Financing of Terrorism (Wwft). This means investigating the client before or on commencement of the service and then constantly monitoring the business relationship. The latter means that, for every service requested by the client, the member must determine whether this service matches the profile of the client and ensure that any changes in the client's capacity or circumstances are assessed for the risk of money-laundering and the financing of terrorism. For more detailed information on the Wwft, please refer to the Act itself and to the Guidelines for Interpreting the Wwft, as drawn up by the NOB in cooperation with other professional organisations.

Any services that extend to the preparation, support, execution or concealment of unlawful activities or that are in conflict with the honour and dignity of the profession in any other sense are regarded as being in conflict with Article 1 of this Code of Professional Conduct. For this reason, a member must ask the client or potential client questions in order to determine whether the services are compatible with legislation and regulations and with the honour and dignity of the profession.

A member must refrain from supplying services requested if there are any suggestions that these services may be in conflict with legislation and regulations or with the honour and dignity of the profession in any other sense. This will not be immediately clear in all cases. In the event of doubt, we recommend consulting a fellow member of the NOB (not a candidate member). If a member believes that no one in his circle of colleagues is suitable for consultation, a professional confidant can, on request, be appointed by or on behalf of the NOB Board for this purpose. The duty of confidentiality referred to in Article 4 of this Code of Professional Conduct must obviously be taken into account in the event of such consultations.

It is recommended that procedures should be devised for consulting a colleague in the office or organisation. The initiative for consultations need not necessarily come from the adviser who is in doubt as to whether he should perform or refuse an assignment. The general working procedures in an office or organisation may be arranged in such a way that consulting with colleagues on such matters is routine.

When accepting instructions, a member must verify that the specific client understands the scope of the service.

2. In the absence of any reasonable indications to the contrary, a member may assume the correctness and completeness of the information provided by the client. A member must conduct further investigations if the information gives him reason to do so.

Explanation:

In performing his work, a member depends on the information supplied by the client. In this respect, a member may generally assume the information provided to be correct and complete. However, a member must subject the information to a cursory check of its completeness and correctness. Further investigation must be carried out in the event of doubt. For this, see also the Wwft, the Wwft Guidelines and particularly the Appendix containing the 'List of indicators' for the Wwft (Implementation) Decree [Uitvoeringsbesluit Wwft] of 15 July 2008

3. A member must refrain from providing services if he has not received the information that he can reasonably be considered to need.

Explanation:

This applies both to the information needed for his own work and to the information needed for completing the client due diligence. A member must also refrain from providing services if the "further investigation" referred to above does not sufficiently remove doubts regarding the correctness and completeness of the information.

**Article 8
Expertise**

A member must not enter into a client relationship if he does not or cannot have sufficient expertise to perform the services requested by the client.

Explanation:

A member may accept an assignment only if he has sufficient expertise to perform it. This applies both in cases where he himself is an expert in a particular field or where the necessary expertise is available in his firm. In all other situations, the member must refuse the assignment unless the client agrees to consult an external expert.

**Article 9
Representation**

A member must not represent a client with regard to any authority, judicial body or third party without being authorised to do so by the client. If necessary, he must ask the client for confirmation of authorisation.

Explanation:

It is the member's responsibility to verify that the client agrees to be represented by the member in question. This Article also refers to situations in which the member has no direct contact with the client (e.g. because the member has been recruited by an investment bank, a lawyer or accountant, or a foreign branch of an international firm of accountants, tax advisers or lawyers).

In such situations in particular it is important that the member verifies that the client agrees to be represented.

Article 10
Taking over a client

1. If a member accepts an assignment from someone who is or was until recently a client of another tax adviser, the member must consult with the client about the extent and the starting date of his authority to represent the client. In the event of any confusion regarding the authority to represent, the member must ensure that the previous adviser has been informed that the assignment has been terminated and has no reason to believe that he has or could have any conflicting authority to represent the client.

Explanation:

When a client is taken over, misunderstandings must be avoided about who has authority to represent the client, and when. The member taking over the client must discuss this specifically with the client and make sure that the client has adequately informed the previous adviser regarding the termination of the assignment. If necessary, the member must contact the previous adviser himself.

2. A member remains responsible for informing the relevant parties of the extent and starting and termination dates of his authority to represent the client.
3. A member who is terminating or has recently terminated an assignment must provide information, at the request of the client or former client, and, if necessary, copies of documents (excluding internal file notes made by the former adviser). This request may be made through the new adviser. The member must not withhold any relevant information or documents, even if these have not been specifically requested. The member may charge reasonable compensation for making copies after prior consultation with the new adviser. After the client has been taken over, the former adviser must send the new adviser, as soon as possible, all the relevant correspondence that the former adviser received from authorities.

Explanation:

Usually the file will not contain any original documents that are the property of the former client. If this, however, is the case, these documents must be surrendered to the former client or, if requested, to the new adviser. If the client wishes, the member must also cooperate loyally on the transfer and provide all the relevant information needed to enable the new adviser to safeguard the interests of the client effectively. If necessary, the member will (once again) provide copies of documents that have been lost by the client and are needed by the new adviser for his work. Reasonable compensation is understood to mean compensation for copies and postage based on the cost price, as well as reasonable remuneration for the hours spent perusing the file and making and sending copies.

4. If a member discontinues an assignment on the grounds of Article 1 of this Code of Professional Conduct, he must, if possible, notify the adviser who takes over the

assignment from him that he discontinued the assignment on the grounds of Article 1 of this Code of Professional Conduct.

Explanation:

It would be undesirable for dishonest clients to be able to shop around among NOB members without hindrance. On the one hand, it is possible that the reasons why one member refused to provide services (or further services) may no longer apply. There would then no longer be any objection to another member accepting the assignment. On the other hand, NOB members in such circumstances may have every reason to want to exchange information between colleagues if an assignment has been refused or discontinued owing to a conflict with the honour and dignity of the profession. It is, moreover, the responsibility of every member to perform his own due diligence when accepting an assignment as every member is and remains personally responsible for accepting or refusing an assignment.

The words ‘if possible’ reflect the fact that the succeeding adviser may not yet be known.

5. Members are not allowed to make their cooperation on the proper transfer of work dependent on the payment of outstanding invoices.

Explanation:

The fact that a member believes that he still has claims against a former client in respect of work performed for this client is not an acceptable reason for refusing to provide information or copies of documents. Recovery of any such claims must be sought in other ways (e.g. through a civil lawsuit).

However, the fact that a former client has outstanding invoices is not covered by the member’s duty of confidentiality.

6. This provision also applies if a client has more than one adviser at the same time and changes the contents of the assignment for one or more advisers.

Article 11

Terminating assignments

1. A member is not allowed to terminate an assignment at an inopportune moment unless circumstances necessitate this.

Explanation:

An example of a circumstance that could lead to an assignment being terminated could be the client’s failure to pay an invoice following notification of default and in which a reasonable time for paying the invoice was granted.

2. A member who stops work on an assignment remains obliged to take all necessary measures to prevent damage to the client insofar as this can reasonably be expected.

Explanation:

If a member intends to stop work on an assignment when time limits are about to expire, he must inform the client, unless such notification has already been given. This is so that the succeeding adviser or the client can take appropriate action. In the meantime, the member must take all reasonable measures to prevent damage to the client. If, for example, a member wishes to discontinue an assignment while the time limit for submitting an objection or appeal is about to expire and the client has not yet found a new adviser, the member is recommended to submit a pro-forma objection or appeal in order to prevent an objection or appeal becoming time-barred. If the time limit for providing grounds for the objection or appeal is subsequently due to expire, the member must request a deferral for the client on the grounds that the member has discontinued the assignment. This should be done so as to give the client the opportunity to find a new adviser or to specify the grounds for the objection or appeal himself. In such situations, the member cannot be required to specify the grounds for the objection or appeal himself.

Section 3. Financial provisions

Article 12

Financial consequences

1. A member who accepts an assignment must consult with the client on how the work is to be performed and the fees to be charged and, if requested by the client, the frequency of invoicing.
2. If, when accepting an assignment, a member provides an estimate of the total costs involved in carrying out a specific assignment and these costs subsequently prove to have been considerably underestimated, the member must consult with the client on whether to continue the assignment.

Explanation:

When accepting instructions, a member ascertains whether the client requires an estimate of the total costs. If it becomes clear that the estimated costs will be considerably exceeded, the member must consult with the client so that the latter can decide whether to incur the extra costs.

Article 13

Fees

When setting fees, a member should take account of the nature, extent and importance of the work and the cost of consulting external experts.

Explanation:

Setting fees as a percentage of the tax saving achieved is not in conflict with this Article, providing there is a reasonable relationship between the hours worked and the nature and importance of the case. If necessary, a ceiling must be agreed for the amount to be invoiced. A member is also

allowed to reach an agreement with his client on working for a reduced fee or on not invoicing at all in the event of failure to achieve the desired result and on charging a higher fee than usual in the event of success. In the latter case, there should also be a reasonable relationship between the amount invoiced and the hours worked and the nature and importance of the case. The tax saving achieved can also be included in this calculation. In the event of a results-based fee, it is important to make firm agreements with the client in advance and for these agreements to be recorded in writing.

Article 14 **Invoice**

1. A member's invoice must clearly show what has been charged as fees, costs and VAT. If an advance payment has been received, the member must always state this separately on the invoice and deduct it from the outstanding amount.

Explanation:

Work done by external experts must be clearly stated as costs on the invoice.

2. At the client's request, a member must provide an itemised invoice. The itemised invoice must show how many hours were worked and the subject to which these related. If requested, the invoice should also state who carried out the work and for what fee.

Explanation:

A member must keep an account of the hours worked for each client and the work done.

Article 15 **Commission**

Members are not permitted to give or receive any form of remuneration for procuring an assignment unless this remuneration is for taking over or transferring all or part of a practice.

Explanation:

Members are not permitted to pay remuneration in order to procure assignments. Nor are they permitted to receive remuneration from third parties in return for referrals of clients. Remuneration comprises not only monetary payments, but also, for example, gifts, invitations, discounts and payments in kind of more than symbolic value. This prohibition does not apply to forms of remuneration that could reasonably be regarded as suitable promotional gifts that do not give rise to any moral obligation or business commitment. The prohibition also does not apply to the takeover or transfer of all or part of a practice.