

# NOB Tax Principles

## *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.*

Adopted and entering into force on May 12, 2025

## 1. Introduction

The general professional rules of conduct for members of the Dutch Association of Tax Advisers ('NOB') are recorded in the Code of Conduct. These are based on the honour and dignity of the profession that are to be observed by members. The rules in the Code of Conduct also cover various aspects of the services, including independence in relationships with clients, confidentiality, maintaining professional competence, professional liability, and financial aspects of the services provided to clients.

NOB members can be expected to provide clients with details of the relevant legal opportunities available with regard to tax and other issues raised. In doing so, members must act lawfully and with integrity at all times and expect the same from their clients. Members must never incite tax evasion when giving advice. Members may obviously support clients seeking to remedy their tax position and may provide legal assistance.

Advice given and positions adopted must be legally defensible and, insofar as possible, take account of legislation and regulations forthcoming or announced. Members must include societal aspects in their discussions with clients, wherever this can reasonably be considered necessary.

The NOB Tax Principles are intended to offer members a framework so that they and their clients can understand and appreciate the societal acceptability of tax positions.

## 2. Objective and scope of the Tax Principles

The NOB has compiled these Tax Principles to promote the quality of advice given by NOB members and to protect the reputation of members and the profession. These principles are to be observed by members when providing advice. The Tax Principles build on and supplement the general professional rules of conduct set out in the Code of Conduct.



The Tax Principles describe what is expected of members in their role as advisers. The Tax Principles apply to all individual members providing advice on tax matters, regardless of their employment relationship or membership of other professional organisations.

The professional rules and standards set out in the Code of Conduct continue to apply in full in the case of dispute-resolution support (objections and appeals). However, the nature of these activities is such that the Tax Principles do not apply in all respects.

The Tax Principles also apply to compliance services if these services include provision by the member of advice on a position to be adopted or substantiated in a tax return. Members must obviously ensure the tax return is correct and complete. Where matters are not assessed as part of the compliance services, the Tax Principles do not apply to these matters. Members must obviously always comply with their duties of investigation and care, and complete returns firmly and unreservedly.

The nature of the individual principles varies. Some principles entail a prohibition, whereas others can be seen as setting standards for conduct. In the event of a conflict with principles on agreeing an ethical stance (principles 1 and 2) or if advice is based on withholding relevant information (principle 4), a member cannot help the client to implement measures.

Despite an explanation provided in a member's advice, the client may assess the statutory duty of disclosure and the applicable reporting rules (principle 3), the real economic objective (principles 6 and 7) or the economic, business or reputational risks or stakeholders' interests (principle 8) differently from the member. In that case, the Tax Principles do not prevent an NOB member from assisting the client to implement measures. It is up to members themselves to decide whether they want to assist the client in this respect.

### **3. Tax Principles**

#### **Adopting a position**

1. Tax advice must be based on a realistic assessment of all relevant and known facts and on interpretations of the applicable national and international tax legislation and regulations that can be reasonably defended in law. Members must not recommend tax planning routes or structures that, based on the law applying at the time of the advice, conflict with the aim and purport of the law *and* are highly artificial or contrived.
2. As well as being based on relevant sources of legal opinion (in other words, the legislative text and history, case law and legal doctrine), members' advice on matters of interpretation must also take account of the legislator's intentions.

#### *Explanatory notes*

*According to the Dutch Supreme Court, a position can reasonably be defended in law if the tax return (or the advice) is based on a position deriving from a defensible interpretation of tax or other law in the sense that, at the time of completing the return and based on objective standards, the taxpayer or withholding agent could reasonably believe this interpretation to be correct ('a defensible position').*



*The position does not need to be adopted or expressed by the person submitting the return, but may also follow from other judicial pronouncements, literature or custom and practice. A position that can reasonably be defended in law may thus also exist even if the relevant taxpayer had not envisaged that position at the time of submitting the return, providing the position was objectively defensible.*

*With regard to a position that can reasonably be defended in law, it should also be taken into account that the Supreme Court has ruled that a defensible position relates exclusively to a position on interpreting tax or other law, and so exclusively to a position based – either wholly or partially – on a matter of law. This includes the legal interpretation of the facts. A dispute not relating to a matter of law, but exclusively to determining the facts may mean a position cannot be regarded as defensible (see Supreme Court (HR) 29-05-2020, ECLI:NL:HR:2020:970, BNB 2020/108 and HR 21-04-2017, ECLI:NL:HR:2017:63,8 BNB 2017/156).*

### Transparency and disclosure

3. Members must comply with all statutory duties of disclosure and reporting, and clients are also expected to do the same.
4. Members must not perform work where the advice relies on or results in relevant information consciously being withheld from tax authorities.
5. Any member entering into contact with tax authorities must correctly and fully disclose all facts relevant to the case and known to the member.

### Explanatory notes

*The obligation to be transparent towards tax authorities is not limited to the Dutch tax authorities; the Tax Principles have universal application. In the event, therefore, of international advice, the principle should also be observed regarding foreign tax authorities. Members must take account, in this respect, of the limitations regarding the principle of fair play (BNB2006/21). See also **the brochure on tax advisers' duty of confidentiality and right of non-disclosure**.*

### Real economic objective

6. Members must establish the real economic objective of the transactions to which their advice relates. If a real economic purpose is not sufficiently plausible, and achieving a tax benefit is the primary aim, members must discuss the aspects referred to in principle 8 below in their advice.
7. If no real economic purpose can be identified, but the tax benefit is explicitly envisaged or recognised by the legislator or accepted by the relevant tax authorities, members must nevertheless include the aspects referred to in principle 8 below in their advice.



#### *Explanatory notes*

*If a real economic objective exists (i.e. where reasons other than tax reasons play a role in the proposed transaction) and various routes are available for achieving that real economic objective, it is possible, in principle, to choose the route that is most advantageous from a tax perspective, based on the multi-path doctrine and with due regard for these Tax Principles.<sup>1</sup> However, an exception to this principle applies if, despite a commercial reason existing for the transaction, the chosen route disregards the aim and purport of the relevant provision and is predominantly driven by the wish to avoid tax.<sup>2</sup> The limit on the freedom to choose the route is reached if a series of legal acts includes legal acts that are not necessary for achieving the desired objective and that result in the levying of tax being arbitrarily frustrated on a continuing basis.<sup>3</sup>*

*Members are expected to demonstrate reasonable efforts to establish whether proposed transactions have a real economic objective and are not primarily designed to obtain a tax benefit.*

#### **Societal aspects**

8. As well as complying with legislation, regulations and technical standards, members' advice must also, where relevant, explicitly take economic, business and reputational risks, as well as the interests of the client's internal and external stakeholders, into account.
9. These Tax Principles do not restrict members from discussing all tax positions that can reasonably be defended in law with clients. A request for advice may even result in members having to provide information to their clients on all the possible options, with due observance of these principles.

#### *Explanatory notes*

*The most advantageous solution from a tax perspective is not always the best solution for a client if account is also taken of economic, business and reputational risks and the interests of the client's stakeholders. The overarching strategy and values and the societal responsibility of the client may also be relevant in this respect. Wherever it can reasonably be considered necessary, members must include these aspects in their discussions with clients. This can mean, for example, that members' discussions with clients have to include discussion of stakeholders' positions on clients' tax choices. Members can take account, in this respect, of the complexity of tax advice, on the one hand, and of the client's degree of organisation and the knowledge and expertise that the client can reasonably be expected to have, on the other hand.*

#### **Concurrence with other or supplementary principles**

10. In addition to the Tax Principles, members are free to apply supplementary principles if and insofar as these do not conflict with the Tax Principles.

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<sup>1</sup> See, for example, HR (Supreme Court) 13 July 1994, *BNB* 1994/269 and HR 27 November 1996, *BNB* 1997/98.

<sup>2</sup> HR 11 July 1990, *BNB* 1990/293, paras. 4.5 – 4.7.

<sup>3</sup> HR 6 September 1995, *BNB* 1996/4, para. 3.2.4 and HR 13 March 2009, *BNB* 2009/123, para. 3.3.



11. Members are free to apply other principles instead of the Tax Principles if and insofar as these other principles are fundamentally in accordance with the Tax Principles.
12. Contrary to the provisions of these Tax Principles and in the event of a conflict between these Tax Principles and the legislation and regulations specifically applying to lawyers [*advocaten*], the principles set out in the legislation and regulations applying to lawyers take precedence with regard to members acting in their capacity as lawyers rather than tax advisers.

#### Entry into force

13. The Tax Principles enter into force after being approved at the general meeting of members of the NOB. A resolution to amend the Tax Principles can be adopted only if approved by a majority of the votes cast at a general meeting of members.

#### Explanatory notes

*The Tax Principles describe what is expected of members in their role as advisers. The Tax Principles are an integral element of the professional rules of conduct and are included in compulsory continuing professional development and in the self-assessment required to be conducted from 2022 onwards. The transitional arrangements, whereby members were permitted until 31 December 2023 to apply the principle of 'comply or explain' if they believed themselves unable to comply, whether wholly or partially, with the Tax Principles, ceased to apply.*