



Guidelines - 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.

These guidelines explain and provide guidance on applying the NOB Tax Principles. As well as explaining the Tax Principles, the guidelines provide answers to many frequently asked questions so as to illustrate how the Tax Principles apply in practice.

1. Explanatory notes

Nature of the Tax Principles

The nature of these principles varies. Some principles entail a prohibition, whereas others set standards for conduct. If the Tax Principles conflict with principles on agreeing an ethical stance (principles 1, 2 and 3) or the advice is based on withholding relevant information (principle 5), you cannot help the client to implement measures.

Despite the explanation provided in your advice, the client may assess the statutory duty of disclosure and the applicable reporting rules (principle 4), the real economic objective (principles 7 and 8) or the economic, business or reputation risks or stakeholders' interests (principle 9) differently from you. In that case, the Tax Principles do not prevent you from assisting the client to implement measures. It is up to you to decide whether you want to assist the client in this respect.

Adopting a position

1. Tax advice must be based on a realistic assessment of all relevant and known facts and on defensible interpretations of the applicable national and international tax legislation and regulations.





2. As well as being based on relevant sources of legal opinion, members' advice on matters of interpretation must also take account of the legislator's intentions and the extent to which positions can reasonably be defended.
3. Tax positions adopted must at least be defensible (*pleitbaar*).

Explanatory notes

According to the Dutch Supreme Court, a position is defensible if the tax return (or, in this case, 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.

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 defensible position 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 defensible positions, 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).

Transparency and disclosure

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

Explanatory notes

The obligation to be transparent towards the relevant 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 towards the relevant foreign tax authorities.





Real economic objective

7. Members must ensure they are aware of 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 9 below in their advice.
8. 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, it may nevertheless be advisable for members to include the aspects referred to in 9 below in their advice.

Explanatory notes

A real economic objective means the transaction(s) is/are being proposed predominantly for reasons other than tax reasons. Providing, however, a real economic objective exists, it is possible to choose the route that is most advantageous from a tax perspective, based on the multi-path doctrine and in compliance with these Tax Principles.

Members are expected to demonstrate reasonable efforts in seeking to establish whether proposed transactions have a real economic objective and/or whether the primary objective is to obtain a tax benefit. Members are consequently not permitted to recommend tax planning routes or structures that conflict with the aim and purport of the law and are highly artificial or contrived.

Societal aspects

9. As well as complying with legislation and 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.
10. These Tax Principles do not restrict members from discussing all defensible tax positions with clients. A request for advice may even result in members having to provide information to their clients on the various possible options, with due observance of these principles. Details of any objections members may have to one or more of the options included in their advice will be included in the advice.

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 reputation risks and the interests of the client's stakeholders. The overarching strategy and values and the societal responsibility of the client are also 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 must 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

11. In addition to the Tax Principles, members are free to apply other principles, providing these do not conflict with the Tax Principles.
12. Members are free to apply other standards instead of the Tax Principles, providing these other standards are fundamentally in accordance with the Tax Principles.
13. Members will inform clients of the tax principles applied in the advice.

Entry into force

14. 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.
15. The Tax Principles describe what is expected of members in their role as advisers. If a member is unable to comply with the Tax Principles, the principle of 'comply or explain' applies until 31 December 2023. Members must explicitly state the extent to which they apply the principles set out in these Tax Principles and otherwise explain why and the extent to which they do not apply these principles.

Explanatory notes

The Tax Principles describe what is expected of members in their role as advisers. All members are expected to observe these principles in their advice. The Tax Principles are an integral element of the professional rules of conduct and are included in compulsory continual professional development and in the self-assessment to be conducted from 2022 onwards. Under the transitional arrangements agreed, members will be permitted to apply the principle of 'comply or explain' until 31 December 2023 if they believe themselves unable to comply, whether wholly or partially, with the Tax Principles. This may apply if, for example, an in-house tax adviser's employer does not accept the Tax Principles or in the event of a conflict with other professional rules of conduct to which the member is subject. The NOB will monitor application of the Tax Principles throughout this period as part of its supervision of members as referred to above. In certain circumstances it may be decided to clarify or amend the Tax Principles, for example for certain groups of members.





2. Frequently asked questions

1. Is it still possible to advise on tax planning?

Yes. The NOB Tax Principles are designed to promote the quality of advice given by NOB members, to protect the reputation of members and the profession, and to ensure that concerns arising in societal discussions of taxation are addressed. The central element in the Tax Principles is the adviser's conduct, not the tax result for the client. The NOB Tax Principles provide members with a framework for taking the societal acceptability of a tax position into account in their advice. The quality of advice is determined by its quality from a tax perspective. That is and remains the basis. However, the quality of advice has now also gained a broader dimension. The Tax Principles are intended to reflect this broader dimension and to result in advice of a more robust nature

2. I am an in-house tax adviser working for a company. Do the Tax Principles also apply to me?

Yes, the Tax Principles apply to all individual members providing advice on tax matters, and so also to in-house tax advisers. In the case of in-house tax advisers, references in these Tax Principles to the client mean the in-house tax adviser's principal or the company the adviser works for.

In-house tax advisers can demonstrate that their employer has a publicly consultable tax policy or applies the Tax Governance Code of the Employers' Association VNO NCW or other national or international tax principles that are in accordance with the NOB Tax Principles. In-house tax advisers whose employer has no tax policy at all will apply the NOB Tax Principles in their work.

3. How do I know whether tax planning conflicts with the legislator's intentions?

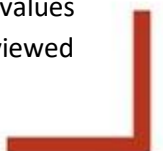
The legislative history often clearly indicates what the legislator envisaged when introducing the legislation. Establishing what legislation was intended to achieve is probably most likely to give rise to problems in the case of complex advice. In such cases, therefore, it is advisable to consult the legislative history.

4. What should I do if the only purpose of the planning is to obtain a tax benefit, but obtaining this benefit is accepted by the tax authorities or has been recognised by the legislator?

If this situation arises, it may nevertheless be advisable to discuss the broader aspects, as referred to in principle 9, with the client. We have seen numerous situations in the recent past in which certain tax structures were accepted by the tax authorities, but nevertheless gave rise to business and reputation risks.

5. I advise a client on international tax issues. Do the Tax Principles then also apply?

Yes, the Tax Principles apply to all your advisory work. In certain situations, however – for example, if a client's head office or shareholder is established abroad – cultural differences or other societal standards and values may also have to be considered. This may be because reputation and business risks, for example, are viewed





differently in the other country, either by the client or the client's stakeholders. Members will then have to provide the clients with additional details of how the Tax Principles apply.

6. I am helping an auditing colleague to assess the tax section in an annual report for an audit client. Do the Tax Principles apply to me in this relationship?

In principle, the Tax Principles apply to the advice you provide. The tax section in an annual report is normally assessed on the basis of the applicable financial reporting rules. In some cases, the member may have to assess, with the client, whether and how the tax position accords with the Tax Principles. It is then important to establish whether the client himself has applied tax principles (i.e. whether the client has been advised by an in-house tax adviser or another NOB member). If requested, members can record observations in the report sent to the auditor, but it is up to the auditor to decide whether to include them in the opinion.

7. I am preparing a client's tax return. This includes a tax position that raises questions for me, based on the Tax Principles. How should I proceed?

In principle, the Tax Principles apply to the advice you provide. In principle, they do not cover preparing a tax return that includes tax positions that have been applied in the past. Obviously, however, you need to ensure that the return is correct, complete and acceptable. Members are also expected to reflect on tax positions that do not readily accord with the Tax Principles.

In some cases, the member and the client may together have to assess whether and how the tax position implemented accords with the Tax Principles. That may be the case if, for example, the material tax position is correctly presented in the tax return, but the client has not complied with all the reporting requirements. It is important then to establish whether the client himself has applied tax principles (i.e. whether an in-house tax adviser or another NOB member is involved). The member can choose to record observations in the letter accompanying the return or draft return.

8. I am performing tax due diligence for a client's target and this includes a tax position that raises questions for me, based on the Tax Principles. How should I proceed?

In principle, the Tax Principles apply to advice you provide. In principle, they do not cover the performing of tax due diligence. Members are expected, however, to reflect on tax positions that do not readily accord with the Tax Principles. In line with the answers provided to previous questions, the member can choose to record observations in the due diligence report.

9. I am an independent tax adviser. Almost all my work involves helping personal clients with their tax returns and providing related advice. My advisory work does not involve cross-border transactions or businesses. How should I deal with the Tax Principles?

The Tax Principles apply to all NOB members. Providing the personal client understands the consequences of the advice sufficiently well and the advice is not excessively complex, the member may only need to make





relatively moderate efforts to apply the Tax Principles in practice. In the event of doubt, members are advised to make this clear to clients and, if necessary, to discuss the matter with a fellow NOB member.

10. The Tax Principles do not seem applicable to the specific advice I am dealing with.

But I have some doubts. How should I proceed?

The Tax Principles apply, in addition to the other professional rules of conduct detailed in the Code of Conduct, to all advice provided by NOB members. In the event of doubt, members are advised to make this clear to clients and, if necessary, to discuss the matter with a fellow NOB member.

