

STAFF GUIDANCE NOTE 05/2016 (Revised)

Prohibited Tax Services

The Audit Regulation prohibits the provision of certain tax services to public interest entities, which are set out in the Ethical Standard ES 5.167R (services relating to: the preparation of tax forms; payroll tax; customs duties; identification of public subsidies and tax incentives unless required of the auditor by law; support for tax inspections unless required of the auditor by law; calculation of direct, indirect or deferred tax; and the provision of tax advice). Certain of these services may still be provided subject to the derogation at ES 5.168R which applies where those services: (i) do not have a direct effect on the financial statements¹; (ii) have an indirect effect on the financial statements but that effect would be inconsequential in the view of an objective, reasonable and informed third party; and (iii) are not used to provide assurance for the purposes of the statutory audit.

The FRC has been asked whether it would be appropriate to provide information on tax services which are permitted. However, we consulted before the Audit Regulation and Directive came into force, on the principle that the FRC Ethical Standard should focus on setting out clearly those services which are prohibited, which was widely supported by stakeholders. It would not, therefore, be appropriate to provide for guidance purposes a list of permitted services.

We do, however, agree that it may be helpful to provide more guidance to practitioners on examples of those services that we consider are likely to be subject to the prohibition. The Ethical Standard lists seven tax services that the auditor of a public-interest entity may not provide, subject to the derogation.

In all cases, the examples provided are indicative and not exhaustive. The fact that a particular service or activity is not listed as an example does not mean the service is therefore permissible.

Those prohibited services are:

- a) Preparation of tax forms;
- b) Payroll tax;
- c) Customs duties;
- d) Identification of public subsidies and tax incentives unless support from the statutory auditor or the audit firm in respect of such services is required by law;
- e) Support regarding tax inspections by tax authorities unless support from the statutory auditor or the audit firm in respect of such inspections is required by law;
- f) Calculation of direct and indirect tax and deferred tax; and

¹ Appendix 1 to this SGN now provides illustrative guidance on services that are likely to have a direct effect.

g) Provision of tax advice.

a) Preparation of tax forms:

The prohibition includes: preparing the audited entity's tax returns and related filing (such as estimated payments, applications for extensions of time, claims and elections not made in a return, and other matters closely connected to the entity's tax return). Examples of tax services relating to preparation of tax forms includes:

- The collection of information from the audited entity in order to prepare the tax return;
- Calculation of estimated payments on account and final tax due;
- Completion and submission of relevant forms to the authorities;
- Review and commenting on returns prepared by the audited entity or another party, including providing explanations and technical support for the approach being taken in the return / form; and
- Assisting the audited entity with tax and other tax-related registrations

Preparation of tax forms services can apply to direct (income and corporate income) taxes, indirect taxes (for example VAT) and to other tax related compliance and to UK or non-UK filing obligations in relation to tax.

b) Payroll tax:

Payroll tax in the Ethical Standard refers to those taxes calculated through, or collected by, a payroll system. The prohibition therefore applies to any tax service relating to taxes, including social security that are calculated through or collected by an audited entity's payroll processing system. This includes:

- Performing calculations of income tax and social security deductions and employer social security contributions;
- Preparing employer payroll tax returns summarizing the tax collected through payroll deductions;
- Advisory work in relation to HMRC Real Time information and reporting; and
- Advisory engagements relating to tax implications of flexible benefits or salary sacrifice arrangements.

c) Customs duties:

The prohibition covers any tax service relating to customs duties. Examples of such services includes:

- Providing compliance-related advice, for example on tariff classification or importer self-assessment programs;
- Advising on strategies for optimising the customs value of imported goods;
- Assisting with the development and enhancement of procedures and internal controls for claiming applicable customs duty refunds; and

- Supplying tools designed to provide documentation to customers and tax authorities for example to comply with the applicable rules of origin, or to facilitate the collection of supplier information for verification purposes.

d) Identification of public subsidies and tax incentives:

This includes services relating to the identification of public subsidies and tax incentives, where the service is to identify for an entity, benefits of which it may wish to avail itself and which are provided through public subsidies and tax incentives. The prohibition also includes providing advice on how an entity can meet qualifying conditions to be eligible for the subsidy or incentive, for example through investing in certain locations or changes to its business or operating model.

e) Support regarding tax inspections by tax authorities:

The prohibition includes investigations related to the audited entity's systems, processes, and risk controls, as well as investigations related to a particular tax return. Examples of such services include:

- Responding to specific requests for information from the tax authorities (other than assisting in relation to factual accounts or testimony about services provided before the inspection / investigation began);
- Assisting in analysing tax issues that are the subject of investigation by the tax authorities;
- Providing technical advice on, or reviewing, challenging and commenting on arguments raised by the audited entity and/or by the tax authorities; and
- Attending and participating at meetings with the investigating tax authorities.

f) Calculation of direct and indirect tax and deferred tax:

This prohibition includes the calculation of the direct or indirect tax items to be included in any part of the financial statements, as well as calculations of direct, indirect or deferred tax to be included in tax computations or quarterly payment calculations. Nor is it limited to the current year – it includes calculations that would impact the financial statements in a subsequent audit period. Examples of such services include:

- Deferred tax;
- Current tax; and
- VAT and other indirect taxes, social security, payroll taxes etc.

g) Provision of tax advice:

Tax advice is not a defined term in the Ethical Standard, and therefore, this term needs to be considered broadly. Examples of such services include:

- Tax planning and structuring, including providing advice and recommendations on how to structure the entity's affairs in a tax efficient manner
- Advisory engagements that consider the tax consequences of certain actions and provide advice or recommendations for management to consider;

- Personal tax advice provided to the company in relation to directors and employees of the public-interest entity;
- Transfer pricing services; and
- Ad hoc advice on tax law in relation to current or historical transactions, and tax related benchmarking studies which produce a range of results for management to consider.

Tax services having a direct effect on the financial statements

We have since been asked for the purposes of the derogation whether we can provide further guidance on those tax services which are deemed to have a direct effect and those which have an indirect effect on a set of financial statements. This guidance has been developed in accordance with our approach to the development of other FRC guidance, which set out a prohibited (black list) of services, but does not include a permitted (white list) of services. This is consistent with the FRC's position which has been the subject of prior public consultation. Indicative examples which are not exhaustive are, therefore, provided in the table below.

The comment 'Usually, Yes' indicates the need to consider the specific facts and circumstances applicable in each case, including that other prohibitions may apply. However, a conclusion that there is no direct effect is not expected to be common.

Type of Service	Brief description	Direct effect?
Corporate Tax Compliance	Preparation or review of business income tax returns and the calculation of estimated and final tax payments and related forms preparation.	Usually, yes
Corporate Tax Advisory	Provision of tax advice, including, for example: <ul style="list-style-type: none"> • Advice on tax planning; • Providing tax opinions; and • Advice on cross-border matters. 	Usually, yes
Support regarding tax inspections by tax authorities	Tax services supporting tax inspections subject to a formal notice of inspection or investigation, for example: assisting in analysing tax issues that are the subject of investigation by the tax authorities; and providing advice on, or reviewing and commenting on arguments raised by an audited entity and/or the tax authorities.	Usually, yes
Tax advice in relation to public subsidies and incentives	The identification and calculation of the amount of subsidies and incentives for which an audited entity is eligible.	Usually, yes
Tax accrual calculations	The calculation for accounting and financial statements purposes of current tax, deferred tax, VAT and other indirect taxes and related provisions and adjustments.	Usually, yes
Advice in relation to Stamp Taxes	Services include advice in relation to SDRT and SDLT planning/liabilities including similar advice on overseas transfer duties.	Usually, yes
Tax-only valuations	Valuations performed for tax return or tax planning purposes – the valuation is not used for financial statement purposes but can affect the tax calculation (e.g. March 2002 valuations of intangibles).	Usually, yes
Share Plans - design and advice	Assisting multinational companies to effectively design, implement, communicate and administer equity-based compensation benefits for their worldwide employees. Services include the following: <ul style="list-style-type: none"> • Incentive plan design; • Feasibility and due diligence; • Corporate tax deductibility planning; • Administrative process review; 	Usually, yes

Type of Service	Brief description	Direct effect?
	<ul style="list-style-type: none"> • Employee communication creation and roll out; and • Cross-border tax planning and payroll advisory and compliance support. <p>Note: some or all of these services may be prohibited under 5.167R (k).</p>	
VAT and excise duty compliance	VAT and excise duty return preparation or review and estimated tax payment or reclaim preparation services.	Usually, yes
VAT and excise duty advisory	VAT and excise duty advisory services.	Usually, yes
Transfer Pricing and Supply Chain (Direct Tax and Indirect Tax) advice and documentation	<p>Evaluation of potential benefits of change in operating model, including analysis of transfer pricing methodologies and documentation, transfer pricing planning and advice, analyses, benchmarking, treasury services and preparation and/or review of documentation requirements.</p> <p>Note: some or all of these services may be prohibited under 5.167R (i).</p>	Usually, yes
Tax services in relation to M&A transactions	<p>Tax advice on draft sale and purchase agreements, indemnities, tax structuring and modelling effective tax rates.</p> <p>Note: some or all of these services may be prohibited under 5.167R (i).</p>	Usually, yes