Ethics in tax practice

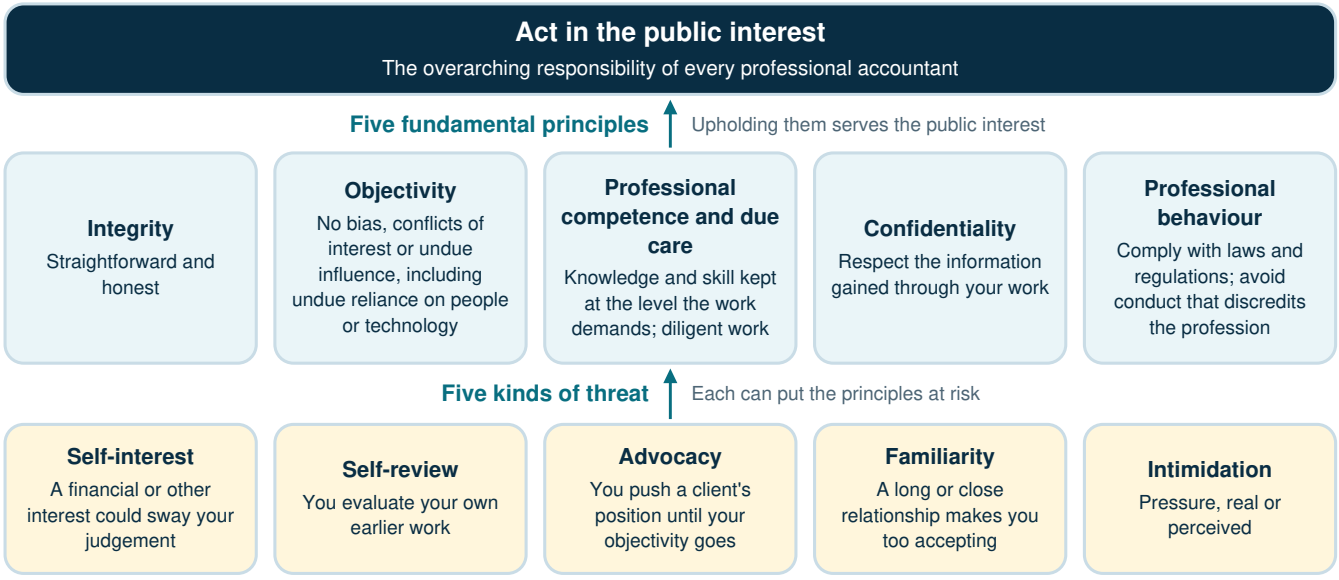
MODULE 1 | 1.3 | STUDENT COMPANION

Professional ethics are your profession's values and rules; where a professional duty conflicts with the law, the law prevails. The APESB's Code (**APES 110**) puts the **public interest** first and rests on **five fundamental principles**, which **five kinds of threat** can undermine. **APES 220** applies the Code to tax work. The **conceptual framework** and an **eight-step routine** turn principles into decisions.

Where a tax adviser's ethics come from

- **Morals and professional ethics.** Personal morals grow out of your own beliefs; professional ethics are the values and rules of your professional body. They can differ: you may disapprove of a client's lawful business and still owe that client careful, honest work.
- **If they collide,** you can protest or resign, at a professional cost, although the law gives some protection to an ethical protest. Where a professional duty conflicts with the law, **the law overrides it**.
- **The APESB** (Accounting Professional and Ethical Standards Board) was established in 2006 by CPA Australia, CA ANZ and the IPA. Its standards bind every member of those three bodies.
- **APES 110** is the Code of Ethics for Professional Accountants (including Independence Standards), based on the international code of the IESBA. **APES 220** Taxation Services (revised July 2019) applies it to tax work and is mandatory for members who provide taxation services. The TPB's own code sets out very similar principles (lesson 1.4).
- **Principles, not a rulebook,** but with teeth: on a complaint, a failure to follow the fundamental principles counts in deciding whether there is a case of professional misconduct to answer.

The Code's building blocks



The threats in a tax practice (APES 110, para 120.6 A3). Self-interest: one client pays a third of the practice's fees. Self-review: checking a restructure you designed yourself. Advocacy: overstating a client's case in a

dispute with the ATO. Familiarity: no longer asking a friend of twenty years for receipts. Intimidation: "Sign it, or I'll find an accountant who will."

What APES 220 adds for tax work

- **Scope:** fundamental responsibilities; preparing and lodging returns; tax schemes and arrangements; estimates; false or misleading information; engagement matters; client monies; fees; documentation.
- **Balance:** safeguard the interests of the client (or employer) at all times, but only within the Code and the law, tax law included. Returns are prepared and lodged from the client's information and instructions, and in line with the tax law (para 4.1).
- **False or misleading information (paras 7.1 to 7.3):** if you form the view that a tax service rests on information that is false or misleading, or omits something material, discuss it with the client and explain the consequences of doing nothing. If the client will not correct it, you **must not provide that service**.
- **NOCLAR** (non-compliance with laws and regulations, such as tax evasion; part of APES 110 since 2017, in effect in Australia from 1 January 2018). The reporting conditions: the non-compliance has a direct and material effect on the financial statements of the client or employer or, where it cannot be measured in money, is fundamental to the business and its operations; and there is credible evidence of serious negative consequences for employees, creditors, investors or the public. When they are met and disclosure is in the public interest, the accountant has a responsibility to consider disclosing the matter to a public authority.

The conceptual framework in action



The imagined case: Ingrid Farrant, Hamish Dunleavy and the missing income

Identify	Evaluate	Address
Intimidation (his ultimatum), self-interest (the fees) and familiarity (twelve friendly years)	Not acceptable: lodging a return she knows to be false fails the third-party test	Explain the consequences and ask Hamish to include the income. If the threat can't be brought down, decline or end the work

Acceptable level is judged from outside: is a reasonable and informed third party, weighing what you knew or ought to have known, likely to conclude that you were complying with the principles? **To address a threat** (para R120.10), remove its cause or apply safeguards; if neither is enough, decline or end the work.

Where conflicts come from

Four sets of values can pull against each other: **societal** (the law and the community's attitudes), **personal**, **corporate** (your organisation's own codes) and **professional** (your professional body's standards).

A conflict of interest is a threat to objectivity: you act for two parties whose interests clash, or your own interests clash with a client's. It is not wrong in itself; it becomes a problem when you know of it, don't declare it, and carry on. Take reasonable steps to identify conflicts, and stay alert as interests and relationships change.

Common roots in tax work: a request to act against the tax law or your standards; loyalty to colleagues; work beyond your expertise or experience; personal relationships with clients or staff; gifts and hospitality.

Resolving an ethical dilemma



Three quick tests for whatever you decide

Transparency
Would I be comfortable if others knew what I decided?

Effect
Have I thought about everyone my decision touches?

Fairness
Would a reasonable outsider, such as a tax authority, see it as fair?

Keep a record
Every meeting, conversation and action; then stay alert for new conflicts

Practice questions

MODULE 1 | 1.3 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - Spot the threat

For each imagined situation, name the main kind of threat and the fundamental principle most at risk.

Situation	Main threat	Principle most at risk
(a) A sole practitioner earns almost half of her fees from one family group, which now wants a doubtful deduction signed off.		
(b) A tax partner is asked for a second opinion on a trust restructure that he designed for the same client two years ago.		
(c) In a dispute with the ATO, an adviser tells the case officer that her client's records are "completely reliable", despite gaps she has seen.		
(d) An adviser has prepared his old university housemate's returns for fifteen years and no longer asks to see any records.		
(e) A finance director tells the in-house tax accountant: "Sign off the return as it stands, or forget about your promotion."		

Question 2 - Two partners, one adviser

Marit Achterberg, a CPA and registered tax agent, has acted for five years for Ferncliff Brewing, a two-person partnership, and prepares each partner's own return as well. The partners, Dario Castellano and Mele Oyelaran, have fallen out and are winding the business up. Dario phones Marit privately. He asks her to help him arrange the split of the partnership's assets so that most of the tax falls on Mele, and tells her not to mention the call to Mele. Apply the conceptual framework: (a) identify the threats and the principles at risk; (b) evaluate whether the threats are at an acceptable level; (c) say how Marit could address them, and when she must decline or stop acting.

Question 3 - A claim that doesn't match the facts

Callum Trevethan, a CPA and registered tax agent, is preparing the 2024-25 return of Freya Larkin, a wedding photographer who trades on her own. Her logbook claims that the family's only car was used 95% for her business. From their conversations, Callum knows that she drives her children to school in it every day and takes it on family holidays. When he raises it, she says: "Just put it through. Nobody checks." Resolve the dilemma using the eight steps, and say what Callum must do if Freya refuses to change the claim.

Worked answers

MODULE 1 | 1.3 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Question 1 - Spot the threat

	Main threat	Principle most at risk	Why
(a)	Self-interest	Objectivity	Her dependence on the family's fees could sway her judgement about the deduction. If the family hints at leaving, an intimidation threat is added.
(b)	Self-review	Objectivity (and professional competence and due care)	He is being asked to judge his own earlier work and is unlikely to challenge it as a stranger would.
(c)	Advocacy	Objectivity and integrity	She has moved from putting the client's case to vouching for something she doubts, which is no longer straightforward or honest.
(d)	Familiarity	Objectivity (and professional competence and due care)	The long friendship has made him too accepting, so he has stopped doing the checking that diligent work requires.
(e)	Intimidation	Objectivity and integrity	Pressure from a superior, backed by a threat to her career, is meant to stop her acting on her own honest judgement.

Question 2 - Two partners, one adviser

- **(a) Identify.** Marit acts for two clients whose interests now clash, which is a **conflict of interest** and a threat to her **objectivity**. Dario's request would have her use her position to favour one client against the other, and to hide it, so **integrity** is at risk as well. She also holds **confidential** information about each partner that must not be used for the other's benefit. A **self-interest** threat sits behind it: Dario may be the client she keeps after the split.
- **(b) Evaluate.** Not at an acceptable level. A reasonable and informed third party who learned that she was secretly helping one client shift tax onto another client would not conclude that she was objective or honest.
- **(c) Address.** She must not act on the secret request. She can **remove the circumstances** by ceasing to advise either partner on the split, so that each takes separate advice. Or she can apply **safeguards**: tell both partners that their interests now conflict (without revealing what either has told her in confidence), obtain the consent of both before doing any further joint work, limit herself to neutral work such as the final partnership return with both partners seeing the same information, and have an independent colleague review it.
- **When to stop.** If either partner will not consent, or she cannot explain the conflict without breaching a confidence, the threat cannot be brought down to an acceptable level, and she must decline or end the work for one or both of them. She should keep a record of each conversation and decision.

Question 3 - The eight steps applied

Step	Callum and Freya
1. Facts	Compare the logbook with what he knows: one family car, daily school runs, holidays. Ask Freya how the 95% was worked out, and record the answers.
2. Ethical issues	He is being asked to prepare a return that includes a claim he believes to be false or misleading.
3. A legal issue?	Yes. An overstated claim breaches the tax law and exposes Freya to an amended assessment, penalties and interest. The law overrides her instruction.
4. Principles	Integrity, objectivity, professional competence and due care, and professional behaviour. The pressure to keep a client happy is a self-interest threat.
5. Who is affected	Freya, Callum and his practice, and the wider community that relies on returns being honest (the public interest).
6. Options	Lodge as instructed (not acceptable); discuss it, explain the consequences and ask her to claim only the business use she can support; or decline to act.
7. Advice	If he is unsure, his professional body's ethics guidance, a senior colleague or a lawyer.
8. Refuse to be associated	If she will not change the claim, he steps away from it.

If Freya refuses. APES 220 leaves no room: Callum has formed the view that the return would rest on false or misleading information, he has discussed it with her and explained the consequences, and she is not prepared to correct it, so he **must not provide the service**. He does not prepare or lodge the return on that basis, and he documents what he found, what he said and what he decided. The three quick tests point the same way: he would not be comfortable with the ATO or his professional body reading the file, lodging the claim would expose Freya and his own practice to harm, and no reasonable outsider would call it fair.