



THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA

STATEMENT OF TAXATION STANDARD 9 ON TAX PLANNING

1. INTRODUCTION

- i. It is a universally accepted principle that taxpayers are entitled to order their affairs so that the tax payable under the law could be the minimal amount required by the law and nothing more. In doing so, taxpayers adopt various methods under tax planning which include optimizing available tax deductions or exempts, business restructuring model e.g. moving to low tax jurisdiction, financing option e.g. debt financing or thin capitalization.
- ii. Tax planning is designed to have tax impact on business decision-making, an arrangement of financial and economic affairs by taking legitimate benefits of allowable deductions, exemptions and allowances in line with the provision of relevant tax laws so as to reduce/minimize tax liability payable. This involves arrangements by which tax laws are fully complied with, no intention to deceive the legal spirit behind the tax law and all legal obligations and transactions are met. Knowledge of tax implications of business decisions helps businesses plan intelligently within the legal framework to encourage voluntary compliance.
This standard sets out the applicable guidance for members when assisting taxpayers in tax planning involving; tax mitigation, tax avoidance, aggressive tax avoidance and noticeable tax evasion. The choice of any of these would materially depend on the professional ethics of the tax planner under tax morality concept. Tax planning implies that a member is exploring the provisions in the tax laws to the benefit of his/its client. The application of these provisions may or may not have been intended by the legislations.
- iii. Furthermore, tax planning also involves conscious use of tax reliefs for the purpose for which they were intended. If uncontrolled by legislatures, tax reliefs may be used excessively or aggressively by others that those intended to benefit from them or in ways that clearly go beyond the intention of the law.
- iv. For the purpose of these standards, a taxpayer is a client, a member's employer, or any other third party recipient of tax services.

2. EXPLANATORY NOTES

- 2.1 Tax planning, or tax mitigation is legal and taxpayers are entitled to enter into transactions that reduces tax or rely on interpretations of legislation(s) that the tax authority may not agree with. In doing so, members should be careful not to be too aggressive in their tax planning position.
- 2.2 Tax planning can take the form of mitigation or avoidance. Tax avoidance is reducing or minimizing tax liabilities in legal ways by structuring one's affairs to take advantages of the provisions of the tax laws. All taxpayers have the right to arrange their affairs in line with the law to minimize their liability to tax. Tax avoidance may involve applying the rules of the tax system to gain a tax advantage that the legislation may not have intended. This is being discouraged globally and members are encouraged

to plan within the contemplation of the legislatures.

- 2.3 Tax mitigation is a situation where the taxpayer takes advantage of a fiscal incentive afforded to him by the tax legislation through compliance with the conditions and economic consequences that the particular tax legislation entails. A good example of tax mitigation is the setting up of a business undertaking in a Free Trade Zone (FTZ). This was within the clear and express intention of the legislature even if the taxpayer pays no taxes to the extent that all the conditions are complied with.
- 2.4 Members are encouraged not to be too conservative in exploring the possibility of taking the advantages in the tax laws that suit the client's businesses only. However, a member should always advise the client that there may be wider reputational issues in the event that the tax avoidance or aggressive tax planning is contested by the tax authority. Basic examples of legitimate tax planning would include:
- a) Taking advantage of available tax exemptions, reliefs and incentives;
 - b) Setting up a company in special economic zones/free trade zones.
- 2.5 Members may find themselves having to prepare tax mitigation structures on matters, which require specialist knowledge. In such circumstances they should be careful not to go beyond their own level of competence and, if necessary, should consult with a specialist in the field.
- 2.6 Members should consider carefully whether the planning in question is within the intention of the legislation or whether the tax authorities could successfully challenge it if not within the intention of the legislation
- 2.7 A member may explore any or all tax mitigation advantages in the law. If the tax authority wishes to challenge this, members should ensure that it has a good ground to persuade the tax authorities of its positions as more reasonable especially when an independent arbiter should arbitrate.
- 2.8 A member should consider the contents of this standard carefully when assisting a client in a tax planning arrangement and the potential negative impact of his actions on the public perception of the integrity of the tax profession. Involvement in certain arrangements could subject the client and the member to significantly greater compliance requirements, scrutiny or investigation. To this end, when issuing an opinion to reflect the results of the tax planning service, a member should observe the following:
- a) Establish the relevant background facts;
 - b) Consider the reasonableness of the assumptions and representations;
 - c) Apply the pertinent laws and judicial authorities to the relevant facts;
 - d) Consider decided cases or judicial precedents as it applies to the arrangement;
 - e) Consider the business purpose and economic substance of the transaction, if relevant to the tax consequences of the transaction;
 - f) Consider tax ethics as very important in taking a position; and
 - g) Arrive at a conclusion supported by law.

3. TAXATION STANDARDS

The following standards are expected of a member when assisting a client in a tax planning arrangement:

- 3.1 A member should never be involved in any tax evasion arrangement. Tax Evasion is where any arrangements violate or otherwise fall short of the provisions of the law. Such arrangements often involve non-disclosure or understatement of tax base on the one hand or overstatement of deductions, tax reliefs or allowances on the other hand with the intention of willfully deceiving the tax authorities or suppressing facts from it.
- 3.2 A member should not perform impermissible actions of tax avoidance or be involved at all in any abusive avoidance schemes, such as artificial or contrived arrangements, with little or no actual economic impact upon the taxpayer, that are usually designed to manipulate or exploit perceived “loopholes” in the tax laws in order to achieve results that conflict with or defeat the intention of the legislation.
- 3.3 A member should carefully consider and document the merits of an arrangement, which may be considered impermissible tax avoidance.
- 3.4 A member should not be involved in the structuring of transactions with respect to any client's planning arrangement having a potential for tax evasion.
- 3.5 A member should explain to his client the material risks of the tax planning or tax positions and the basis on which the advice is given.
- 3.6 A member should not recommend tax planning which he does not consider to be appropriate or otherwise does not align with his own business principles and ethics.
- 3.7 A member should ensure that the client is made aware of the risks, implications and rewards of any planning arrangement. It is advisable to ensure that the basis for recommended tax planning is clearly identified in documentation.
- 3.8 Members are required to maintain the confidentiality of their employer and clients. They should not disclose information to a third party without the employer or client's permission, unless there is a legal obligation to do so.

4. COMPLIANCE WITH LEGAL REQUIREMENT

A member's duty is to conform to all tax laws when acting on behalf of a client in respect of any tax planning arrangement.

5. EFFECTIVE DATE

The standard becomes effective from August 31, 2019