

**# DIFFERENCE
MAKERS**



UNDERSTANDING CREDIBLE BASIS AND “STAND-BACK” TEST IN TAX PLANNING AND RELATED SERVICES

**A PRACTICAL GUIDE FOR SAICA MEMBERS & ASSOCIATES
TO IMPLEMENT TAX PLANNING AND RELATED SERVICES CONTAINED IN
SAICA’S CODE OF PROFESSIONAL CONDUCT**

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A PRACTICAL GUIDE FOR SAICA MEMBERS AND ASSOCIATES**

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1. Introduction

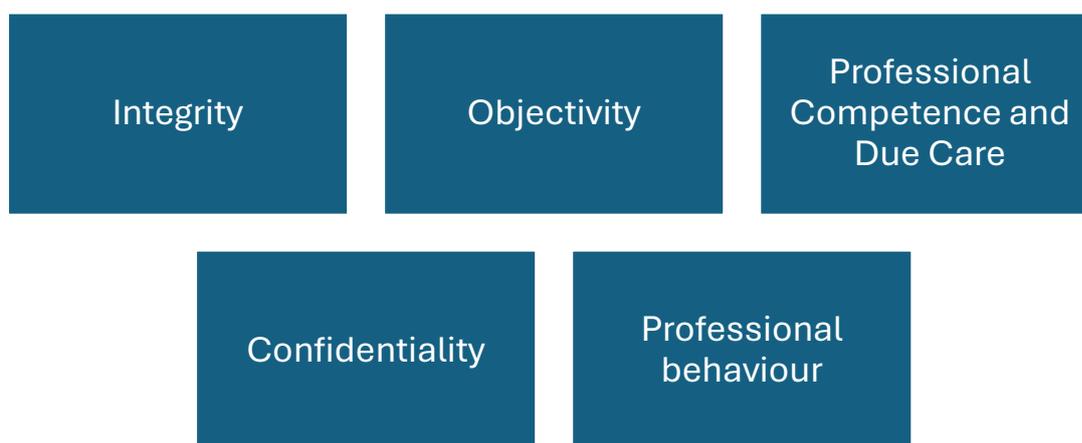
1.1. Purpose of the Guide

This guide serves as a resource for members and associates of the South African Institute of Chartered Accountants (SAICA) who provide professional services in tax planning and related services.

The SAICA Board approved the Tax Planning and Related Services revisions to the Code that is effective after **30 June 2025**.

This guide aims to support the implementation of the revisions and clarify the meaning, application, and implications of the "credible basis" and "stand-back" test requirements as stipulated in sections R280.12/R380.12 and R280.14/R380.14 of the SAICA Code of Professional Conduct (Code) respectively and **needs to be read in conjunction with the SAICA Code**.

This standard is grounded on the fundamental principles of:



Members and associates are therefore required to apply the fundamental principles when determining whether a tax planning arrangement has a credible basis and meets the "stand-back" requirement.

Members and associates are expected to act in the public interest and uphold the fundamental principles of ethics in all their professional activities. In the context of tax planning and related services, this responsibility includes ensuring that any advice or recommendation made to clients or employing organisations is:

- (a) Established upon a credible basis in the applicable laws and regulations; and
- (b) Meets the "stand-back" test requirement.

1.2. What is tax planning and related services?

Tax planning activities are advisory activities designed to assist an employing organization or client in planning or structuring its affairs in a tax-efficient manner whilst related activities refer to circumstances where a member or associate is involved in performing a related activity for an employing organization or client that is based on or linked to a tax planning arrangement developed by a third-party provider.

1.3. Applicability

This guide applies to both:

- Professional Accountants in Business (PAIBs), who perform tax planning activities for their employing organisations (R280 of the Code), and
- Professional Accountants in Public Practice (PAPPs), who provide tax planning services to clients (R380 of the Code).

It is relevant to tax planning activities and related services performed domestically and across multiple jurisdictions.

2. Understanding Credible Basis - R280.12 and R380.12

2.1. The Requirement in the Code

SAICA Code R280.12 and R380.12 states:

"A professional accountant shall recommend or otherwise advise on a tax planning arrangement only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement."

This requirement applies uniformly to:

- Members and associates involved in tax planning for their employing organisations (R280.12), and
- Members and associates providing tax planning services to clients (R380.12).



2.2. What is implied by credible basis?

The term credible basis indicates that members and associates must be satisfied, at the time the advice is given, that there is appropriate support or reasonable grounds to advance the tax planning arrangement, which they can explain if so requested or challenged, especially in circumstances of uncertainty.

The credible basis threshold is a qualitative threshold that rests on the member's or associate's professional judgment, having regard to the legal and regulatory framework and established tax practices in the relevant jurisdictions. What constitutes a credible basis will vary from jurisdiction to jurisdiction, and Paragraph 280.12 A4 and 380.12 A4 of the SAICA Code provide detailed guidance to facilitate such judgment.

The concept of a "credible basis" is rooted in legislation and professional judgement.

2.3. Evaluating Whether a Credible Basis Exists

(a) Interpret the relevant jurisdictions applicable laws and tax treaties

Members and associates should as a starting point interpret the relevant jurisdictions applicable laws and tax treaties when determining if a credible basis exists. Interpreting the relevant jurisdictions' applicable laws and tax treaties is vital for members and associates to ensure compliance with tax laws, make informed decisions and manage complexity.

Interpreting the relevant tax legislation is particularly important where the intent of the legislation is unclear or uncertain from the enacted text. In such circumstances, ensuring that the tax planning arrangement accords with the intent of the legislative body that created those laws is relevant and important. This understanding, if it is not otherwise clear, can be achieved by researching and understanding the broader policy objectives that underpin the relevant tax laws.

As a result, determining a credible basis requires members and associates to exercise professional judgement to determine whether a tax planning arrangement has a credible basis.

(b) Applying professional judgement to determine a credible basis

The following are examples (which is not an exhaustive list) of how a member or associate may apply professional judgement:

- a) Reviewing the relevant tax legislation.
- b) Reviewing legislative proceedings that discuss the intent of the relevant tax legislation.
- c) Reviewing relevant literature such as court decisions, professional or industry journals, and tax authority rulings or guidance.
- d) Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.
- e) Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.
- f) Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.
- g) Assessing the reasonableness of any assumptions.

In instances where a member or associate has applied professional judgement and there is still uncertainty or doubts that a credible basis exists in the tax planning arrangement, the member or associate may amongst others:

- (a) Consult with legal counsel or other experts within or outside the employing organisation regarding what a reasonable interpretation of the relevant tax laws and regulations might be.
- (b) Consult with the relevant tax authorities, where applicable.

Consulting with legal counsel or other experts does not diminish the member's or associate's ultimate responsibility for the tax planning advice but provides evidence to support the member's or associate's conclusion on the tax planning arrangement.

Members and associates should ensure that a credible basis exists at the finalisation of the tax planning arrangement. This implies that where the circumstance surrounding the tax

planning arrangement may have changed or where the implementation of the tax planning services occurs for an extended period, the member or associate may need to re-assess if the credible basis remains valid.

2.4. Steps to take when a tax planning arrangement does not meet a credible basis

If, after due consideration, the member or associate determines that no credible basis exists, the member or associate may amongst others:

- Advise on alternative arrangements that have a credible basis.
- Assist the organisation or client in restructuring the arrangement to achieve compliance.

It is important for members and associates to exercise professional scepticism during this process.

3. Understanding the “Stand-Back” Test- R280.14 and R 380.14

3.1. The Requirement in the Code

R280.14 and R380.14 of the Code states: *“In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountants shall exercise professional judgment and consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.”*



3.2. What does the “stand-back” test imply?

The “stand-back” test requires members and associates to consider the reputational, commercial and wider economic consequences. Members and associates should take note that the “stand-back” test is **not a requirement to perform economic analysis** but rather to apply professional judgement to consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

3.3. Work required for the application of the “stand-back” test

The extent of work effort required by members and associates in applying the “stand-back” test requires members and associates to exercise professional judgment in applying the test. The more complex the tax planning arrangement, the greater the “stand-back” consideration will be. Conversely, if the tax planning arrangement is relatively simple, there may be little consideration needed.

In making this determination in the “stand-back” test, the member or associate might consider matters such as whether:

- The member’s or associate’s own preconception or bias that might be affecting their exercise of professional judgement whilst performing the “stand-back” test.
- There is a need to consult with others with relevant expertise or experience.

In instances where a member or associate is uncertain whilst making a determination in the “stand-back” test, the member or associate should make the firm or employing organisation

and, if appropriate, relevant stakeholders aware of the inherent uncertainties or difficulties arising from the facts and circumstances.

3.4. Considering the Wider Economic Consequences

As part of the “stand-back” test, members and associates are required to consider the wider economic consequences. Members and associates **are not required to perform an economic analysis or detailed research** to determine the wider economic consequences that a tax planning arrangement may have.

Instead, members and associates should have an **awareness** of the wider economic consequences which might take into account the member’s or associate’s **general** understanding of the **current economic environment** and the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the [employing organization/client] operates.



This would require a member or associate to apply professional judgement. The more complex the tax planning arrangement the greater the consideration on the wider economic consequences will be. Conversely, if the tax planning arrangement is relatively simple, there may be little consideration needed.

Members and associates are expected to consider the perspectives of various stakeholders, when considering the wider economic consequence. However, this is dependent on the complexity of the tax planning arrangement. Stakeholders that may be considered will include amongst others:

Internal Stakeholders: *Those with a direct interest in the organisation’s operations and performance*

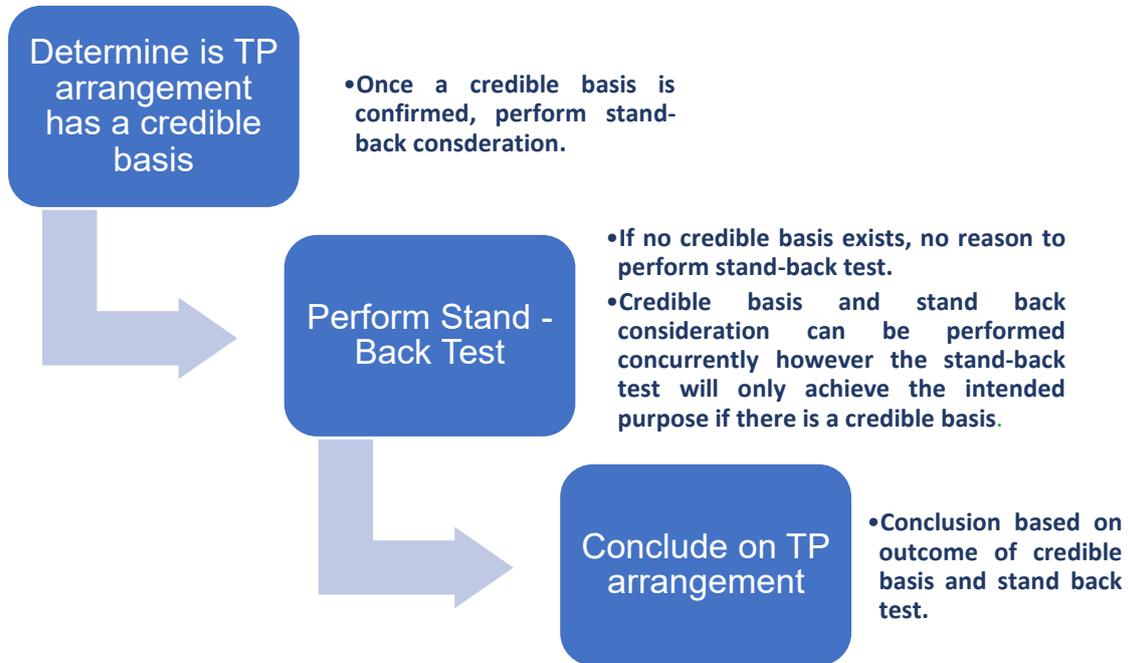
- **Investors / Shareholders** – Concerned with financial returns and reputational risks.
- **Employees** – Their job security and company culture may be affected by public scrutiny.
- **Lenders / Creditors** – Creditors are individuals or institutions that lend money or extend credit to the organisation.
- **Debtors** - Debtors are individuals or entities that owe money to the organisation.
- **Management / Executives** – Responsible for strategic decisions, including tax planning and corporate reputation.

External Stakeholders: *Those outside the organisation who are affected by or can influence its actions*

- **Tax Authorities (e.g. SARS)** – Enforce compliance and assess the legality and substance of tax arrangements.
- **Consumers / The Public** – May react negatively to perceived unfair tax practices, affecting brand trust.
- **Regulators and Government Bodies** – Oversee ethical conduct, financial disclosures, and industry compliance.

- **NGOs and Civil Society Advocates** – Promote fairness, corporate accountability, and transparency in taxation.
- **Media / Journalists** – Amplify public perception, especially in cases of tax controversy.

4. The relationship between the Credible Basis and Stand-Back Consideration



The “stand-back” test only really serves its purpose after the member or associate has determined that there is a credible basis in laws and regulations for the tax planning arrangement.

If there is no credible basis for a tax planning arrangement, there is no reason to pursue it any further and to apply the “stand-back” test, unless the arrangement is restructured or redesigned to achieve a credible basis.

The “stand-back” test need not be performed sequentially after determining whether there is a credible basis but may be performed at any time during determination. However, it will only serve its intended purpose when applied to a tax planning arrangement that has achieved that credible basis.

5. Documentation and Communication

5.1. What to Document?

Members and associates are encouraged to document their considerations in determining whether a credible basis exists in a tax planning arrangement and that the “stand-back” test has been considered. This can include amongst others:

- Description of the tax planning arrangement
- Analysis of the legal provisions relied upon
- References to court cases, rulings, and administrative guidelines

- Risk factors identified and how they were addressed
- Reputational or commercial impacts considered
- Final conclusions and recommendations

5.2. What to Communicate?

Clear communication with the client or employing organisation is necessary to:

- Explain the rationale for the conclusion regarding credible basis.
- Identify any uncertainties or limitations in the legal position.
- Provide guidance on potential alternative structures or remedies.
- Encourage disclosure to tax authorities where appropriate.

6. Conclusion

The requirement to base tax planning and related service on a credible basis in law is not merely a legal technicality. It is a cornerstone of ethical professional behaviour. Members and associates have a responsibility not only to their clients or employers but to society at large.

They must:

- Apply legal knowledge and professional judgement rigorously
- Exercise independence and objectivity
- Consider public interest and reputational risk

Glossary

Professional Accountants in Business (PAIBs): A members and associates working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer.

Professional Accountants in Public Practice (PAPPs): A members and associates, irrespective of functional classification (for example, audit, tax or consulting) in a firm that provides professional services.

Professional judgement: Professional judgement Involves the application of relevant training, professional knowledge, skill and experience commensurate with the facts and circumstances, taking into account the nature and scope of the particular professional activities, and the interests and relationships involved.

Annexure: Credible Basis Evaluation Checklist

Evaluation Criteria	Yes/No	Comments
Have you reviewed relevant tax legislation?		
Have you considered the legislative intent and the economic substance of the arrangement?		
Have you consulted relevant tax authority rulings, guidance notes, or court decisions?		
Have you assessed whether there are any significant uncertainties (e.g. due to gaps in legislation, innovative business models not addressed by the current tax laws and regulation, etc.)?		
Have you documented the assumptions, interpretations, and rationale underlying your tax position?		
Have you clearly concluded whether a credible basis in law exists for the tax position adopted?		
Have you performed a stand-back test (i.e. Have you considered how the tax position would be viewed from a public interest and reputational risk perspective)?		
Have you identified and mitigated threats to compliance with the fundamental principles (e.g. integrity, objectivity, professional competence)?		
Have you communicated material tax risks, assumptions, and limitations to management or the client in clear terms?		
If there is disagreement with the client, have you documented the differing views, steps taken to resolve them, and the professional response taken?		

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