

The ACCA logo is a red square with the letters 'ACCA' in white, bold, sans-serif font.

ACCA

A blue-tinted photograph showing the silhouettes of two people walking on a glass walkway. The walkway is reflected in the glass below, creating a symmetrical image. The background is a bright, cloudy sky.

ETHICS QUESTIONS

IN THE ATX EXAMS

Think Ahead

Ethics Questions in the ATX exam

With effect from June 2023 (December 2023 for ATX (MYS)), question 1 of all ATX exams will contain five marks for demonstrating an understanding of the key ethical principles which are relevant in the context of the provision of tax advice. This article aims to summarise the key rules and principles which are of general applicability to both ATX (UK) and all variant ATX exams. It does not cover any additional rules which may be examinable under this topic but which are specific to certain jurisdictions only, and not of general relevance across the board.

Under the ACCA Code of Ethics and Conduct (the Code), there are five fundamental principles of ethics which establish the standard of behaviour expected for a professional accountant and member of ACCA.

These are listed below – the additional relevant guidance and explanatory comment is taken primarily from the Code and is designed to assist members on how to apply the fundamental principles on a day-to-day basis in terms of the type of issues they may encounter.

You are expected to be aware of the five fundamental principles and to be able to apply them to situations which will be presented to you in the exam. You are also expected to be able to suggest safeguards where appropriate – these are actions which can be taken to minimise, or limit, the perceived risk of non-compliance with any of the fundamental principles.

There are five marks for ethics in every question¹.



¹ This will be the case for all ATX exams from June 2023, except ATX (MYS) for which it will be the case from December 2023.

1 Integrity

Being straightforward and honest in all professional and business relationships.

The Code of Conduct specifies the action to be taken if an irregularity or inaccuracy comes to light in respect of a client's submitted tax return.

- In such circumstances the professional accountant shall advise the client to make full disclosure, or to authorise the professional accountant to do so, without delay.
- If the client refuses to make or authorise disclosure, the professional accountant shall inform the client that they can no longer act for them.
- However, the accountant should not disclose (to any third parties, including the tax authorities) the reason for ceasing to act since this would amount to a breach of client confidentiality.
- Quite separately, if the default or irregularity which has occurred amounts to tax evasion, the accountant may need to consider their money laundering responsibilities.

When determining whether an irregularity or inaccuracy has occurred, the distinction between tax avoidance and tax evasion is an important one. While tax avoidance involves the legal mitigation of an individual's or a company's tax liabilities, tax evasion involves the concealment of income or information from the authorities and is therefore illegal.

The Code states that any act or omission directed to or resulting in the evasion or attempted evasion of tax may be the subject of criminal charges under both tax law and anti-money laundering legislation. Tax evasion may relate to direct tax such as income tax or corporation tax, or indirect tax such as a tax on goods and services. The proceeds of such offences, like any other crime, will be subject to the relevant anti-money laundering legislation. Professional accountants who suspect or are aware of tax evasion activities by a client may themselves commit an offence if they do not report their suspicions to the appropriate anti-money laundering authority (in addition to any notification to the tax authorities).

The tax authorities may mistakenly make an excessive repayment of tax to a taxpayer, even though full disclosure of the facts has been made to the tax authorities. Where an excessive repayment is paid directly to a client, the professional accountant shall urge the client to refund the excess sum to the tax authorities as soon as the professional accountant becomes aware of the error. A client could be committing a civil and/or criminal offence if they have knowledge of the error and fail to correct it. Should a client refuse to refund the payment to the tax authorities, the professional accountant shall consider whether, in all the circumstances, they should continue to act for the client. Where a professional accountant ceases to act, they shall notify the tax authorities that they no longer act for the client but are under no duty to give the tax authorities any further details.

2 Objectivity

Not allowing bias, conflicts of interest or undue influence of others to compromise professional or business judgements.

The Code states that, to comply with the principle of objectivity, the professional accountant must recognise circumstances or relationships such as familiarity with the client, that might compromise the accountant's professional or business judgement.

Conflicts of interest can arise when:

- A professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
- The interest of a professional accountant with respect to a particular matter and the interests of a party for whom the accountant undertakes a professional activity related to that matter are in conflict.

Before accepting a new client relationship, engagement, or business relationship, a professional accountant shall take reasonable steps to identify circumstances that might create a conflict of interest, and therefore a threat to compliance with one or more of the fundamental principles

It is generally necessary:

- To disclose the nature of the conflict of interest and how any threats created were addressed to clients affected by a conflict of interest; and
- To obtain consent of the affected clients to perform the professional services when safeguards are applied to address the threat.

Examples of actions which might be safeguards to address threats created by a conflict of interest include:

- Having separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.
- Having an appropriate reviewer, who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgements and conclusions are appropriate.

3 Professional competence and due care

To maintain professional knowledge and skill at the level required to ensure that a client or employer² receives competent professional service, based on current developments in practice, legislation and techniques and to act diligently and in accordance with applicable technical and professional standards.

According to the Code this means that a client should receive a competent and professional service, based on current technical and professional standards and relevant legislation. It requires the exercise of sound judgment in applying professional knowledge and skill when undertaking professional activities.

Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment.

Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

In complying with the principle of professional competence and due care, a professional accountant shall take reasonable steps to ensure that those working in a professional capacity under the accountant's authority have appropriate training and supervision.

Where appropriate, a professional accountant shall make clients or other users of the accountant's professional services or activities, aware of the limitations inherent in the services or activities.



² This duty may feasibly extend to others with whom the adviser comes into contact in a professional context.

4 Confidentiality

To respect the confidentiality of information acquired as a result of professional and business relationships.

This entails not disclosing any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant or third parties.

The Code reminds members that they should continue to comply with the principle of confidentiality even after the end of the relationship between the accountant and their client or employing organisation. When changing employment or acquiring a new client, the accountant is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship.



5 Professional behaviour

To comply with relevant laws and regulations and avoid any conduct that discredits the profession and avoid any conduct that the professional accountant knows or should know might discredit the profession.

A good example of professional behaviour is the processes involved in terms of taking on a new client. These are prescribed by the Code as follows:

When accepting a new engagement, a member should consider whether such an engagement would threaten compliance with the Fundamental Principles. Any threats should be evaluated; this will involve direct communication with the existing accountant.

Communication with the existing accountant is therefore not just a matter of professional courtesy. Its main purpose is to enable members to ensure that there has been no action by the client which would, on ethical grounds, preclude the member from accepting the appointment, and to establish, after considering all the facts, whether the client is someone for whom the member would wish to act. The Code states: 'The prospective accountant shall write to the existing accountant requesting all the information which ought to be made available to enable the prospective accountant to decide whether or not to accept the appointment.'

If permission to contact the existing accountant is not given, the member should seriously consider whether they should accept the engagement.

Once the new accountant has been appointed, the former accountant should ensure that all books and papers belonging to the client that are in their possession are promptly transferred (unless they claim to exercise a lien or other security over them).

On accepting an appointment, the practitioner must send the client a letter of engagement. This forms the basis of the contractual relationship between the practitioner and the client. A properly worded letter of engagement establishes the framework in which the client relationship is managed. It should set out the work that is to be performed and the basis on which the fees will be charged.

In addition, any specific money laundering responsibilities – such as obtaining and recording evidence of identity – will need to be satisfied.

Another good example of professional behaviour is in terms of the procedures followed when trying to win new business. Although a professional accountant is permitted to advertise his or her services, there is specific guidance around such advertising or other promotional material in order to ensure that the standard of professional behaviour is not breached. This specifically means that advertisements must clearly be distinguishable and must not:

- Bring ACCA into disrepute or bring discredit to another professional accountant or the accountancy profession in general
- Discredit the services offered by others (for example by claiming superiority for one's own services)
- Be misleading
- Breach local regulatory or legislative requirements

In addition, any reference to fees must make the basis upon which such fees are charged very clear and should not, in any way, be misleading. This is particularly important when making comparisons in one's promotional or advertising material to the fees charged by others.

Some illustrative examples follow.

These examples are based on past questions from the ATX(UK) exam.

They are intended to illustrate ethical principles which are examinable within all ATX exams, even though some of the specific technical aspects of the scenarios may not be relevant to all jurisdictions.

SCENARIO 1

Our firm acts as tax advisers to the X Ltd group and you have received the following from your manager.

“It has been realised by the management of X Ltd that transfer pricing adjustments should have been made in respect of the year ended 31 December 20X3 for three of the companies in the group and it is now too late to amend the submitted returns.

The tax liability of the group was understated as a result of this non-disclosure.

I have already explained the interest and penalties which may be charged in respect of this. I want you to list the other matters which need to be considered, by us, as tax advisers to the group, and by the management of the group, in relation to the disclosure or non-disclosure of this information to the relevant authorities”

Suggested response:

The key fundamental principles involved here are those of **integrity** and **professional behaviour**. The management of the X Ltd group can inform the tax authorities or may authorise us to do so. However, we must not disclose the nature of the error without permission.

We cannot continue to act for the companies unless this disclosure is made.

We should notify the group of the following consequences of not providing this information to the tax authorities:

- If they refuse to disclose the error, we will advise the tax authorities that we no longer act for them. We would not, however, give any reason for our actions.
- Non-disclosure of the error would also amount to tax evasion. This could result in criminal proceedings under both the tax and money laundering legislation.

We should consider our money laundering responsibilities as a result of this situation.

We should also ascertain how the non-disclosure occurred to determine whether there may be other matters which have been omitted from the group companies’ tax returns.

Marking guide:

Fundamental principles	2	
Disclosure	3	
Consider ML responsibilities	1	
Impact on other group tax returns?	1	
Total available	<u>7</u>	Maximum 5

SCENARIO 2

Your manager has had a meeting with Florina who is a client of our firm. Winston, Florina's father, also attended this meeting.

Winston is in very poor health and is not expected to live more than 12 months. It is estimated that the value of his estate upon his death will be very significant and he wishes to carry out some sophisticated tax planning to reduce the tax which will be payable in respect of his death estate. This may mean changing the terms of his will so as not to leave the whole of his estate to his daughter, as is his current plan.

Winston wants to appoint our firm to replace his existing tax advisors.

Explain any difficulties which we may have complying with the fundamental principles of professional ethics in relation to acting for Winston, and suggest appropriate safeguards.

Suggested response:

Professional competence

We must ensure that we have access to the appropriate expertise to carry out the sophisticated tax planning required by Winston.

Objectivity

It is possible that providing advice to Winston in connection with his estate planning could give rise to a conflict of interest, because a course of action which reduces the total death tax liability may not necessarily be beneficial for Florina.

We should obtain permission from both Florina and Winston to act for both of them and should consider making a different member of the firm responsible for each of them.

Confidentiality

Winston and Florina have attended a tax planning meeting together and so do not appear to require their affairs to be kept confidential from each other. However, we should ensure that we have clear guidelines in place in order to maintain confidentiality where necessary and we should obtain written permission to discuss the affairs of one of them with the other when it is appropriate to do so.

Marking guide:

Competence	1	
Objectivity	3	
Confidentiality		<u>2</u>
Total available		<u>6</u> Maximum 5

SCENARIO 3

Wanda is a client of our firm who has received an unexpected refund of income tax from the authorities in respect of an earlier tax year.

Prepare a summary of the actions which we should take, and the matters of which Wanda should be aware, in relation to this income tax refund.

Suggested response:

We should assist Wanda in investigating whether or not there was a valid reason for the refund of income tax which has been received.

If we are unable to identify a valid reason, we would have to conclude that the refund was made as a result of an error on the part of the tax authorities. In these circumstances we should inform Wanda:

- that the amount should be repaid immediately
- that failing to return the money would be an offence
- that the tax authorities should be informed of their error as soon as possible in order to minimise any interest and/or penalties which may become payable

If Wanda is unwilling to return the money, this poses a threat to the fundamental principle of **integrity** and we would have to consider ceasing to act as her tax advisers.

We would then have to notify the tax authorities that we no longer act for her, although we would not provide them with any reason for our action. This is in accordance with the fundamental principle of **confidentiality**. We should also consider whether or not it is necessary to make a report under the money laundering regulations.

Marking guide:

The need to repay the tax	4	
Ceasing to act	<u>3</u>	
Total available	<u>7</u>	Maximum 5

SCENARIO 4

Plad Ltd is a client of our firm. Your colleague has just discovered that a significant chargeable gain made by Plad Ltd several years ago was omitted from its corporation tax return. However, because the gain arose in respect of the sale of land, it was reported for the purposes of land transfer tax. Accordingly, your colleague assumes that we do not need to do anything and that the authorities will contact our firm about this at some point.

You are required to explain the implications for Plad Ltd, and our firm, of the failure to report the chargeable gain to the authorities. You are NOT required to address money laundering or the possibility of penalties, since these have already been discussed with the client.

Suggested response:

Plad Ltd:

- The company has a responsibility to report this omission to the authorities and to pay the outstanding corporation tax. It will be committing tax evasion, a criminal offence, if it fails to do so.
- The tax authorities will charge Plad Ltd interest on any tax which becomes payable.

Our firm:

- We should investigate how this error arose and consider whether there are likely to be further errors.
- We will not retain a client which is engaged in deliberate tax evasion, as this poses a threat to the fundamental principles of **integrity** and **professional behaviour**. Accordingly, we could not continue to act for Plad Ltd unless the chargeable gain is disclosed to the authorities.
- If we were to cease to act for Plad Ltd, we would notify the tax authorities, although we would not provide them with any reason for our action.

Marking guide:

Plad Ltd		2.5	
Our Firm	<u>4</u>		
Total available		<u>6.5</u>	Maximum 5

SCENARIO 5

Lamar is the managing director and majority shareholder in REP Ltd. Lamar and REP Ltd are clients of our firm.

Lamar is in discussion with the management of CRO Ltd regarding the establishment of a new company, JAY Ltd. This will be set up as a joint venture between REP Ltd and CRO Ltd. If it proceeds, JAY Ltd will commence trading on 1 April 20X1 and carry on its business via a permanent establishment in the country of Garia, where it will manufacture computer components.

Our firm has a number of existing clients which trade from permanent establishments situated overseas, and a few years ago we had a client in the country of Garia.

Set out the points you will make in order to explain the extent to which REP Ltd can benefit from the knowledge we have gained from advising these other clients.

Suggested response:

- We have experience of advising clients trading from permanent establishments situated overseas. We have also advised on trading in the country of Garia.
- We will be able to use this general experience and expertise for the benefit of REP Ltd.
- However, we must not use any confidential information obtained as a result of our professional and business relationships for the benefit of REP Ltd (or any other client).
- **Confidentiality** is one of the fundamental principles of ethics within ACCA's Code of Ethics and Conduct.
- This principle of confidentiality applies to confidential information obtained in respect of both ex-clients and continuing clients.

Marking guide:

One mark for each relevant point

5

Maximum 5

SCENARIO 6

Your firm has been approached by Snowdon, a potential new client.

You are required to provide a summary of the procedures which the firm should follow before agreeing to become Snowdon's tax advisers.

Suggested response:

- We must obtain evidence of Snowdon's identity and his address.
- We must have regard to the fundamental principles of professional ethics. This requires us to consider whether becoming tax advisers to Snowdon would create any threats to compliance with these principles.
- **Integrity** – we must consider the appropriateness of Snowdon's attitude to complying with the law and the disclosure of information to the tax authorities.
- **Professional competence** – we must ensure that we have the skills and competence necessary to be able to deal with the matters which may arise in connection with Snowdon's affairs.
- If any such threats are identified, we should not accept the appointment unless the threats can be reduced to an acceptable level via the implementation of safeguards.
- We should contact Snowdon's existing tax adviser(s) in order to ensure that there has been no action by Snowdon which would preclude the acceptance of the appointment on ethical grounds.
- We must carry out a review in order to satisfy ourselves that Snowdon is not carrying on any activities which may be regarded as money laundering.

Marking guide:

Identity	1	
Fundamental principles	3	
Contact existing tax advisers	1	
Money laundering	1	
Total available	<u>6</u>	Maximum 5



Contact us

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Think Ahead