



23 May 2018

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Mail to: The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne VIC 3000

18 May 2018

Proposed Standard: APES 220 Taxation Services

Dear Chairman

We welcome this opportunity comment on the Exposure Draft issued in respect of Proposed Standard : APES 220. As one of Australia's leading professional services firms, we believe we are well placed to share our perspectives on these important issues. We are committed to positively contributing to the Australian community and supporting and enabling initiatives that will strengthen the future prosperity of our country. Whilst we are supportive of the proposed revised Standard as a whole we have the following concerns regarding the "Professional Independence" section.

- 1. Our primary concern with respect to the Proposed Standard is that the Professional Independence requirements outlined in paragraphs 3.6 to 3.8 lack clarity and therefore create a risk of misapplication of the proposed obligations by members.*
- 2. Paragraph 3.6 gives a biased view as it does not address the safeguards outlined in APES 110 to reduce the independence risk to an acceptable level.*
- 3. The proposed paragraph 3.6 is not aligned with the independence obligations under the Tax Agent Services Act ("TASA") and the Code of Professional Conduct (Code).*
- 4. Paragraphs 3.7 and 3.8 merely restate well know concepts and are therefore largely redundant.*
- 5. Paragraph 3.6 creates a misleading impression that tax services are prohibited unless the auditor independence rules are applied and cleared.*

Our detailed feedback is contained in the Appendix below. We would welcome the opportunity to discuss our views further. Please contact me on (02) 8266 7999 or by email at andrew.vickery@pwc.com

Kind regards

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Appendix

Our detailed comments in respect of the proposed amendments contained in 3.6 to 3.8 of the exposure draft are as follows:

1. Lack of Clarity

Our initial observation is that there is a distinct lack of clarity as to the objective of the amendments contained in 3.6 to 3.8. The intention of the APESB in including these proposed paragraphs is not apparent particularly given the requirements around Independence are well documented in other existing Standards. The outcome is unclear and creates ambiguities, distortion and potential misapplication of the proposed obligations by members.

An example of this uncertainty is that paragraph 3.6 requires a member to comply with Independence *“when engaged to perform a Taxation Service to a Client which requires Independence”* (our emphasis). This is circular and there is nowhere in the Exposure Draft which provides clarification as to which engagements or clients require independence.

We assume that the requirement for independence is not intended to extend beyond the existing application in APES 110 which requires the member to be independent in respect of assurance engagements. However, this does not appear to be clear from the wording in the exposure draft. If our assumption is correct and the intention in paragraph 3.6 is merely to remind the reader that they have obligations in respect of independence pursuant to APES 110, this should be so stated by reference and we recommend that the paragraph be replaced with the words *“When a Member in Public Practice is providing Taxation Services and the Member in Public Practice’s Firm is also engaged to conduct an Assurance Engagement for the same Client, Members are reminded of the requirement for independence in respect of the Assurance Engagement (which is set out in detail APES 110)”*. This amendment would make the definition of independence in Section 2 redundant and therefore this definition could be removed. To further reduce any uncertainty we would also recommend changing the name of the independence sections to “Audit / Assurance independence” rather than “Professional Independence”.

As currently drafted we believe there is a risk that this could be seen to extend the independence requirements to engagements other than Audit or Assurance. We would strongly reject such an extension for the following reasons:

- There is no legislative or regulatory requirement that tax practitioners be subject to the same level of independence restrictions that apply to assurance practitioners.
- In performing taxation services members in public practice are generally acting solely for their client. This can be contrasted with assurance engagements where the work performed is designed to enhance the degree of confidence of a number of intended users. Therefore it is not appropriate to apply the same standards of independence to tax engagements as apply to assurance engagements

For these reasons we believe the independence obligations should not be extended and that paragraph 3.6 should be amended as outlined above to make it clear that it is just a reminder to tax practitioners of the independence obligations under APES 110.

2. Absence of recognition of safeguards

As noted above the current paragraph 3.6 creates ambiguities as to the obligations on the member; in particular no reference is made to the safeguards contained in 110.

APES 110 sets out a detailed framework of threats and safeguards which can apply when providing Taxation Services and gives guidance to members on how to manage independence. This framework is absent from the Exposure Draft and hence there is no clear guidance in the Exposure Draft on how to manage independence in practice nor any cross-reference to the detailed guidance in APES 110. Hence this has the risk of being interpreted as a binary application without the benefit of the context of the analysis and considerations available to members in APES 110.

It is for this reason that we have recommended above that APES 220 should merely refer Members to APES 110 rather than attempting to create its own definition of independence.

3. Overlap with TASA

The current paragraph 3.6 in the context of the obligations of TASA are now in a juxtaposition and no longer aligned.

We note that Members in Public Practice that provide Taxation Services will also be governed by the TASA and thus be subject to the Code. The Code sets down principles in 5 different categories - one of which is independence. The independence category is then broken down into the following principles:

- to act lawfully in the best interests of a client; and
- to have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities undertaken in the capacity of a registered tax agent.

Members in Public Practice are therefore already subject to requirements to be independent when providing Taxation Services. Consequently the proposed paragraph 3.6 would not be aligned with TASA and the Code. This could lead to ambiguities and a risk of misapplication of the proposed obligations by members. In our opinion, this is a further reason to make the changes to paragraph 3.6 outlined above.

4. Para 3.7 and 3.8 are unnecessary

With regard to paragraphs 3.7 and 3.8 the requirement to comply with Independence requirements when undertaking Assurance engagements is already well known. It seems unnecessary to reinforce this requirement in a standard dealing with Taxation Services when the Framework for Assurance Engagements issued by the AUASB make it clear that tax consulting and tax compliance engagements will not generally constitute an assurance engagement. The vast majority of tax engagements are carried out solely for the use and benefit of the client. If it is considered by the APESB that there are Tax Services commonly provided by Members which do constitute Assurance engagements then it would be useful to provide some guidance and examples of these services. If this is not the case then it is considered that these paragraphs are unnecessary.



5. Misleading impression that tax services are prohibited

As stated, paragraphs 3.6 -3.8 create a misleading impression that tax services are prohibited unless the auditor independence rules are applied and cleared. This is clearly a distortion and would have the unfortunate consequence of rendering the entire section on Independence irrelevant.