

9 July 2018

APESB issues revised APES 220 *Taxation Services*

Accounting Professional & Ethical Standards Board Limited (APESB) today announced the issue of the revised APES 220 *Taxation Services* (APES 220) to replace the existing APES 220 (Issued October 2015).

The key changes in the revised APES 220 consist of new or amended professional obligations in relation to:

- Members acting as an advocate before a court or tribunal must comply with professional and ethical obligations in relation to conflicts of interest of the Code;
- Members providing both Taxation Services and Assurance Engagements to the same Client are reminded of their obligations to comply with the Independence obligations in sections 290 or 291 of the Code, as applicable; and
- Members who are aware of, or suspect Non-Compliance with Laws and Regulations (NOCLAR) must comply with sections 225 or 360 of the Code, as applicable.

New application material has been incorporated to provide guidance in relation to foreign tax laws, uncertainty around the legality of a tax scheme or arrangement, outsourced services, and privacy considerations.

Please refer to Appendix 1 of this technical update for details of all the revisions. The revised APES 220 will be effective for Taxation Services commencing on or after 1 October 2018 with early adoption permitted.

The revised standard is available from APESB's website: www.apesb.org.au

– ENDS –

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Appendix 1

Revision to APES 220 (Issued October 2015)

Accounting Professional & Ethical Standards Board Limited (APESB) has approved the following revisions to APES 220 *Taxation Services* which was originally issued in October 2007 and revised in March 2011 and October 2015.

Paragraph Reference	Revisions
1.2	Accounting Professional & Ethical Standards Board Limited (APESB) has revised professional standard APES 220 <i>Taxation Services</i> (the Standard), which is effective from 1 January 2016 <u>October 2018</u> and supersedes APES 220 issued in March 2011 , <u>October 2015</u> . Earlier adoption of this Standard is permitted.
2	<p><u>Assurance Engagement</u> means an Engagement in which a Member in Public Practice aims to obtain sufficient appropriate evidence in order to express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the subject matter information (that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria).</p> <p>This includes an Engagement in accordance with the <i>Framework for Assurance Engagements</i> issued by the AUASB or in accordance with specific relevant standards, such as International Standards on Auditing, for Assurance Engagements.</p>
2	<u>AUASB</u> means the Australian statutory body called the Auditing and Assurance Standards Board established under section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> .
2	<u>Client Monies</u> means any monies (in whatever form) coming into the control of a Member in Public Practice or any of the Member's personnel which are the property of a Client and includes monies to which the Member or the Member's personnel have no present entitlement. "Control" means where a Member or any of the Member's personnel, acting either solely or in conjunction with one or more people, can authorise the transacting of Client Monies.
2	<u>Employer</u> within the context of this Standard means an entity or person that employs, engages or contracts a Member in Business.
2	<u>Taxation Law</u> means a law and/or regulation of any level of government imposing a tax or otherwise dealing with tax, and includes any such laws and regulations that describe direct and indirect taxes, levies, surcharges, penalties or similar charges imposed by various levels of governments or similar institutions on economic transactions.
2	<p><u>Taxation Services</u> means any Professional Activities performed by a Member relating to ascertaining a Client's or Employer's tax liabilities or entitlements or satisfying their obligations under a Taxation Law, provided under circumstances where they can reasonably expect to rely on the Professional Activities. This includes:</p> <p>–(a) preparation of a return, notice, statement, application or other document for lodgement with a Revenue Authority, and responding on behalf of a Client or Employer to the Revenue Authority's requests for further information;</p>

Paragraph Reference	Revisions
	<p>-(b) preparation of tax calculations to be used as the basis for the accounting entries in the financial statements;</p> <p>-(c) provision of tax planning and other tax advisory services; and</p> <p>-(d) assisting a Client or Employer in the resolution of tax disputes.</p>
2	<p><u>Those Charged with Governance</u> means the person(s) or organisation(s) (for example, a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For some entities in some jurisdictions, Those Charged with Governance may include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.</p>
3.1	<p>Members providing Taxation Services shall at all times safeguard the interests of their Client or Employer provided that such services are delivered in accordance with Section 100 <i>Introduction and Fundamental Principles</i> of the Code and relevant <u>law, including applicable Taxation Law.</u></p>
3.5	<p>A Member may act as an advocate for a Client or Employer when representing or assisting them before <u>the courts or</u> certain tribunals. However, a Member acting in such a capacity before any court or tribunal should ensure that the Client or Employer is aware that the Member has an obligation not to mislead the court or tribunal and to safeguard his or her professional objectivity.</p>
<u>3.6</u>	<p><u>If a conflict of interest arises due to the Member being asked to act as an advocate for a Client or Employer before a court or tribunal in respect of Professional Activities the Member provided, the Member shall comply with Section 100 <i>Introduction and Fundamental Principles</i> and Section 220 <i>Conflicts of Interest</i> (for Members in Public Practice) or Section 310 <i>Conflicts of Interest</i> (for Members in Business) of the Code.</u></p>
	<p><u>Independence obligations</u></p>
<u>3.7</u>	<p><u>When a Member in Public Practice is providing Taxation Services to a Client and the Member's Firm is also engaged to conduct an Assurance Engagement for the same Client, the Member shall comply with Section 290 <i>Independence – Audit and Review Engagements</i> (for audit Engagements) or Section 291 <i>Independence – Other Assurance Engagements</i> (for other Assurance Engagements) of the Code.</u></p>
<u>3.68</u>	<p>In accordance with Section 140 <i>Confidentiality</i> of the Code, a <u>A Member who acquires confidential information in the course of performing a Taxation Service for a Client or Employer shall not use that information for any purpose other than the proper performance of professional work for that Client or Employer.comply with Section 140 <i>Confidentiality</i> of the Code.</u></p>
3.79 – 3.810	<p><i>[Paragraphs 3.7 - 3.8 remain unchanged, but renumbered as paragraphs 3.9 - 3.10.]</i></p>
<u>3.911</u>	<p>Unless the Member has a legal obligation of disclosure, a Member shall not furnish to the Revenue Authorities any opinions or written advice <u>advice</u> of a third party who is acting in a specialist capacity on specific aspects of the Engagement, without the prior knowledge and express consent of that third party.</p>

Paragraph Reference	Revisions
3.102 – 3.124	<i>[Paragraphs 3.10 - 3.12 remain unchanged, but renumbered as paragraphs 3.12 - 3.14.]</i>
3.135	Members should, therefore, refrain from performing any Taxation Services which they are not competent to carry out, unless expert advice and assistance is <u>are</u> obtained to ensure that the Professional Activities are performed to a standard agreed with the Client or Employer or as required by law.
3.16	<u>If applicable to the Engagement, a Member should obtain an understanding of relevant foreign laws and regulations sufficient to enable the provision of competent Taxation Services. Where the Member does not have the necessary knowledge of the foreign laws and regulations, they should engage the services of an expert to ensure the Professional Activities are performed to the required standard.</u>
3.147	<p>A Member shall maintain open, frank and effective communications with a Client or Employer. In this regard:</p> <p>(a) where appropriate, having regard to <u>in the context of the Member's agreed scope of work, a Member shall advise a Client or Employer of both the Member's and the Client's or Employer's rights, obligations and options available under the Taxation Law. A Member shall also advise the Client or Employer of their rights or options available under Taxation Law with respect to the seeking of a private ruling and the lodging of objections and appeals against adverse positions adopted by the Revenue Authorities; and</u></p> <p>(b) <u>in the context of Taxation Services requested, a Member shall advise a Client or Employer on the application of the Taxation Law, including any possible penalties and other legal tax consequence, so as to allow the Client or Employer to make an informed decision of the course of action to be taken.</u></p>
3.158	<p>A Member in Public Practice shall provide a Client with a statement in Writing that:</p> <p>(a) the responsibility for the accuracy and completeness of the particulars and information provided by the Client rests with the Client;</p> <p>(b) any advice given to the Client is only an opinion based on the Member's knowledge of the Client's particular circumstances; and</p> <p>(c) a taxpayer has obligations under self-assessment to keep full and proper records in order to facilitate the preparation of accurate returns.</p>
3.169	The communication of the matters in paragraph 3.4518 to the Client in Writing need not be in the form of a letter. For example, a standard format handout, brochure, leaflet or electronic communication is also acceptable.
3.4720	Where the application of the Taxation Law is not certain, a Member shall not represent to a Client or Employer that the results of a Taxation Service (such as the tax or other revenue returns which the Member prepares or assists in preparing, or the tax advice the Member offers), are beyond challenge.

Paragraph Reference	Revisions
4.1	A Member shall prepare and/or lodge returns and other relevant documents required to be lodged with a Revenue Authority in accordance with the information provided by a Client or Employer, their instructions, and the relevant Taxation Law.
4.2	Where appropriate, a Member may accept a Client's or Employer's information, and is not responsible for its veracity. However, within the agreed scope of work, a Member should obtain information which is sufficient to allow the Member to form a view as to the application of the law to that information and to be able to recommend the options available to the Client or Employer on how the information provided by them may be reflected in the relevant return or other documents to be lodged. Where a Member reasonably believes that the information provided by the Client or Employer may be incomplete, false or misleading, the Member should have regard to the provisions of paragraph 7.3 of this Standard and the law
4.3	Where a Member in Public Practice provides a tax lodgement service to another party and a significant portion of the work associated with the revenue returns and other relevant documents is not performed under the supervision of the Member in Public Practice, the Member in Public Practice shall perform sufficient reviews of the revenue returns and other relevant documents in accordance with this Standard and the Code prior to lodgement of these revenue returns
5.4	A Member shall not promote, or assist in the promotion of, or otherwise encourage any tax schemes or arrangements where the dominant purpose is to derive a tax benefit, and it is not reasonably arguable that the tax benefit is available under Taxation Law. Accordingly, a Member shall not provide advice on such a scheme or arrangement to a Client or Employer other than to advise that in the Member's opinion it is not effective at law.
5.5	<p><u>If a Member is uncertain that a tax scheme or arrangement is of the type set out in paragraph 5.4, the Member should consider:</u></p> <p><u>(a) consulting with the Client, Employer, or Those Charged with Governance, as applicable;</u></p> <p><u>(b) if necessary, consulting with an in-house legal counsel or obtaining independent legal advice;</u></p> <p><u>(c) if necessary, and with the Client or Employer's consent, consulting with the applicable Revenue Authority; and</u></p> <p><u>(d) documenting the substance of the tax scheme or arrangements and key matters considered by the Member in assessing whether the tax scheme or arrangement is not of the type set out in paragraph 5.4.</u></p>
5.56 – 5.67	<i>[Paragraphs 5.5 - 5.6 remain unchanged, but renumbered as paragraphs 5.6 - 5.7.]</i>
5.78	<p>In respect of an entity that predominantly promotes tax schemes or arrangements, a Member shall not:</p> <p>←(a) have any financial interest in such an entity; or</p> <p>←(b) render any Professional Service to such an entity where the Member knows that the Member's immediate or close family has a financial interest.</p>

Paragraph Reference	Revisions
6.1	A Member shall not prepare or be associated with the preparation of returns or submissions to Revenue Authorities involving the use of estimates unless their use is generally accepted or, under the circumstances, it is impracticable to obtain exact data.
<u>7.8</u>	<u>A Member who encounters or becomes aware of instances of non-compliance or suspected non-compliance with laws and regulations when providing Taxation Services shall comply with Section 225 Responding to Non-Compliance with Laws and Regulations (for Members in Public Practice) or Section 360 Responding to Non-Compliance with Laws and Regulations (for Members in Business) of the Code.</u>
7.89	<i>[Paragraph 7.8 remains unchanged, but renumbered as paragraph 7.9.]</i>
8.6	A Member in Public Practice should consider the guidance in APES GN 30 <u>Outsourced Services</u> if the Member engages or outsources to a third party, either components or all aspects of, the Taxation Service performed for the Client.
9.1	A Member in Public Practice shall ensure prompt transmission of Client Monies received on behalf of a Client from Revenue Authorities to the Client in accordance with the requirements of APES 310 Dealing with Client Monies.
9.2	A Member in Public Practice shall not use, withhold or otherwise appropriate tax refunds to settle the fees of the Member or for any other use in lieu of their transfer directly to the Client, unless agreed to by the Client in Writing.
9.3	Where funds are to be banked by a Member in Public Practice on behalf of a Client, a Member shall use a separate bank account designated as a trust account and maintained in accordance with the requirements of APES 310 Dealing with Client Monies
11.2	A Member should adopt appropriate procedures for maintaining the confidentiality and safe custody of working papers and for retaining them for a period sufficient to meet the needs of the Member and in accordance with legal requirements of record retention <u>and privacy.</u>
11.3	Nothing in this Standard precludes the storage of documentation in appropriate electronic formats. Members contemplating the use of electronic storage should consider the legal implications of such forms of storage, which may vary by jurisdiction, and seek appropriate advice in this context. <u>Members should consider security and privacy risks over information stored electronically and adopt appropriate measures (such as the implementation of IT security controls including up-to-date security software) to address such risks.</u>
Appendix 1	Summary of revisions to the previous APES 220 (Issued in October 2015) - amended