



## **Annual Review of APES 220 *Taxation Services***

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## **1 Executive Summary**

### **1.1 Background**

Accounting Professional and Ethical Standards Board (APESB) issued APES 220 *Taxation Services* in December 2007 with an effective date of 1 July 2008. APES 220 replaced APS 6 *Statement of Taxation Standards*. In March 2011, APESB issued a revised APES 220 *Taxation Services* with an effective date of 1 May 2011.

### **1.2 Reason for this report**

In accordance with APESB's constitution, a review needs to be performed on an annual basis after a new standard is effective to identify any issues reported by stakeholders. This report presents a review of the issues reported to the APESB or identified by an internal technical review and the proposed recommendations to address the identified issues.

### **1.3 Issues identified**

*Issue carried forward from the 2009 Annual Review*

#### **Interpretation of the term "reasonable care"**

The Tax Agent Services Act 2009 (the Act) is operative from 1 January 2010. The Act includes a Code of Conduct that governs the members of the three professional accounting bodies who are registered tax agents or BAS agents. Members of the three accounting bodies are also bound by APES 110 *Code of Ethics for Professional Accountants* (APES 110) and APES 220 *Taxation Services* (APES 220).

The Act uses the term "reasonable care" which is undefined. This raises the question of whether the Act creates any additional obligations that are not addressed by APESB pronouncements.

*New issues arising*

#### **Defined terms**

The Technical Staff review identified that the definitions section of APES 220 needs to be revised as a result of the IESBA's revision of the International Code and APESB's subsequent amendments to APES 110 *Code of Ethics for Professional Accountants* (the Code).

#### **Editorial amendment**

The Technical Staff review identified a minor editorial amendment to paragraph 5.4.

## 1.4 Summary of Recommendations

*Issue carried forward from the 2009 Annual Review*

### **Interpretation of the term “reasonable care”**

In November 2013, the Tax Practitioners Board (TPB) issued the final information sheets addressing reasonable care to ascertain a client’s state of affairs (TPB(I) 17/2013) and reasonable care to ensure taxation laws are applied correctly (TPB(I) 18/2013). In both of these information sheets the TPB has referred to APES 110 and APES 220.

Technical Staff have performed a high level review of TPB (I) 17/2013 and TPB (I) 18/2013. The guidance provided in respect of the TPB’s expectations of tax agents’ professional and ethical behavior appears to be consistent with the requirements and guidance in APES 110 and APES 220. Accordingly, it is recommended that this item be closed and removed from the Issues Register.

*New issues arising*

### **Defined terms**

It is recommended that the defined terms “*Client*”, “*Member in Public Practice*” and “*Professional Services*” be revised and the defined terms “*Professional Activity*” and “*Professional Bodies*” be added to the Standard for consistency with the Code and other APESB pronouncements. This is to be done at the next revision of APES 220.

### **Editorial amendment**

It is recommended that the editorial amendment to paragraph 5.4 of the Standard be processed at the next revision of APES 220.

## 2 Review of Issues

*Issues carried forward from the 2009 Annual Review*

### 2.1 Use of the term “reasonable care” in the *Tax Agents Services Act 2009 (the Act)*

#### **Issue**

Whether the use of the term “reasonable care” in the Act potentially introduces a more stringent approach than what is required by APESB pronouncements.

#### **Analysis of the issue**

The following extracts show the two instances where the Act uses the term “reasonable care”:

Part 3 30-10(9)            You must take reasonable care in ascertaining a client’s state of affairs, to the extent that ascertaining the state of those affairs is

relevant to a statement you are making or a thing you are doing on behalf of the client.

Part 3 30-10(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.

The term “reasonable care” has not been defined in the Act which raises the issue of what constitutes “reasonable care”. Whilst use of the term “reasonable care” under the Act does not contradict the requirements of APESB pronouncements, whether or not it constitutes a more stringent approach is not clear.

The TPB has primary responsibility for the oversight and regulation of registered tax agents. It was expected that TPB will address the issue of “reasonable care” as part of their work program in due course.

#### 2010 Update

The ICAA Professional Standards Team compared APES 220 and the *Tax Agents Services Act 2009* and concluded at the time that they impose broadly equivalent obligations on members who are registered tax agents or BAS agents.

#### February 2013 Update

In December 2011, the TPB released a discussion paper on the application of subsection s30-10(9) of the *Tax Agent Services Act 2009* (TASA). In September 2012 the TPB released two exposure drafts addressing reasonable care to ascertain a client’s state of affairs and reasonable care to ensure taxation laws are applied correctly.

#### January 2014 Update

In November 2013, the TPB released the final versions of their information sheets in respect of:

- TPB(I) 17/2013 Code of Professional Conduct - Reasonable care to ascertain a client’s state of affairs (refer attachment 14(b)); and
- TPB(I) 18/2013 Code of Professional Conduct - Reasonable care to ensure taxation laws are applied correctly (refer attachment 14(c)).

The information sheets provide guidance for registered tax agents on the application of reasonable care in the Code of Professional Conduct (TASA Code items 9 and 10) under the *Tax Agent Services Act 2009*. The information sheets detail principles and elements of Code items 9 and 10 as well as practical examples and consequences for failing to comply with these TASA Code items.

Technical staff performed a high level review of TPB (I) 17/2013 and TPB (I) 18/2013 and did not identify any matters that may create inconsistencies with the requirements and guidance in APES 110 or APES 220. It is noted that both TPB (I) 17/2013 and TPB (I) 18/2013 make references to APES 110 and APES 220.

## **Impacted Stakeholders**

Members, Firms and Professional Bodies.

## **Recommendation**

Due to TPB's issue of TPB (I) 17/2013 and TPB (I) 18/2013 which refers to APES 110 and APES 220, APESB Technical Staff recommend that this item, "Use of the term "reasonable care" in the Tax Agents Services Act 2009 (the Act)" be closed and removed from the Issues Register.

*New issues arising*

## **2.2 Defined terms**

### **Issue**

The technical review identified that definitions section of APES 220 needs to be revised.

### **Definitions to be revised**

**Client** means an individual, Firm, entity or organisation to whom or to which ~~Taxation Services~~ Professional Activities are provided by a Member in Public Practice in respect of Engagements of either a recurring or demand nature.

**Member in Public Practice** means a Member, irrespective of functional classification (e.g., audit, tax or consulting) in a Firm that provides Professional Services. This term is also used to refer to a Firm of Members in Public Practice and means a practice entity and a participant in that practice entity as defined by the applicable professional body.

**Professional Services** means ~~services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.~~ Professional Activities performed for Clients.

### **Definitions to be added**

**Professional Activity** means an activity requiring accountancy or related skills undertaken by a Member, including accounting, auditing, taxation, management consulting, and financial management.

**Professional Bodies** means the Institute of Chartered Accountants Australia, CPA Australia and the Institute of Public Accountants.

Subsequent to the revision of the definitions section, consequential editorial amendments may also be required to APES 220.

**Impacted Stakeholders**

Members, Firms and Professional Bodies.

**Recommendation**

The defined terms in APES 220 should be revised in a manner consistent with the Code and other APESB standards. It is recommended that these changes and any other consequential amendments be processed at the next revision of APES 220.

**2.3 Editorial amendment**

**Issue**

The technical review identified the following minor editorial amendment required at paragraph 5.4 of APES 220:

**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.**

**Impacted Stakeholders**

Members, Firms and Professional Bodies

**Recommendation**

The editorial amendment to paragraph 5.4 can be processed at the next revision of APES 220.