

October 2007



Basis for Conclusions: APES 220 Taxation Services (Formerly APS 6)

Prepared by the Technical Staff of the Accounting Professional & Ethical Standards Board

BASIS FOR CONCLUSIONS:

APES 220 TAXATION SERVICES

This basis for conclusions has been prepared by technical staff of Accounting Professional and Ethical Standards Board (“APESB”) and has not been discussed or approved by the Board of APESB. It does not form part of APES 220.

Background

APESB considered and approved for exposure ED 01/07 dealing with Taxation Services (previously *APS 6 Statement of Taxation Standards*). APS 6 was issued in 1982 by the National Councils of The Institute of Chartered Accountants in Australia and the Australian Society of Certified Practising Accountants (now CPA Australia). Members of the National Institute of Accountants (NIA) are governed by NIA Board pronouncement 9 *Taxation Standards* which was effective from October 2002.

During the last 25 years there has been significant regulatory and legislative change that has affected professional independence, ethics, confidentiality and documentation requirements for professional accountants involved in taxation services.

The key changes in the proposed APES 220 compared to existing professional standards are:

- Mandatory requirements and guidance for members in business;
- Relevant ethical and professional standards updated to reflect *APES 110: Code of Ethics for Professional Accountants (“the Code”)*;
- Increased documentation requirements relating to terms of engagement and working papers;
- Guidance on handling client monies for members in public practice.

APESB issued an exposure draft of the proposed standard, ED 01/07, in March 2007, with a comment deadline of May 31, 2007. The APESB received 7 comment letters from a variety of respondents, including professional accounting bodies, members and firms. As a result of these comments, APESB implemented a number of changes to ED 01/07 in finalising the text of APES 220. The following summarises the more significant issues raised by respondents, and how APESB addressed and concluded on these issues.

In ED 01/07 the proposed standard was referred to as APES 460. Development of the framework for APESB pronouncements has meant that this taxation services standard needs to be reclassified to the “APES 200” series which deals with pronouncements applicable to all members. Accordingly this standard was renamed APES 220.

Effective date and applicability

APES 220 Taxation Services will be effective from 01 July 2008 for members of CPA Australia, Institute of Chartered Accountants in Australia and the National Institute of Accountants. It will replace the existing professional statements dealing with taxation services noted above.

Public Interest (Paragraph 3.2)¹

ED 01/07 proposed that members providing taxation services recognise their responsibility not to act contrary to the public interest and that they should safeguard the interests of their client or employer provided that these do not conflict with the public interest objective. Some respondents raised concerns in relation to the definition of public interest and the potential for confusion as a result of individual interpretation of what is best for the general public. In order to avoid potential confusion and misinterpretation this paragraph was reworded and linked backed to Section 100.1 of the Code which states that “a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest”. In stating this, the Code recognises that a member’s responsibility is not exclusively to satisfy the needs of an individual client or employer.

Objectivity (Paragraph 3.5)

The intent of this paragraph is to provide guidance to members when they represent or advise clients or employers during court and tribunal proceedings in respect of tax matters. Members should make their client or employer aware that they have an obligation not to mislead the court and to safeguard their professional objectivity in their role as an advocate.

Confidentiality (Paragraph 3.9 & 3.10)

In certain circumstances a member will be required to provide information they possess, relating to a client or employer, to revenue or other authorities. Whilst the information may be in the member’s possession, it may have originated from specialist third parties also acting on the engagement. Paragraph 3.9 requires that the member advise the third party and obtain their consent prior to disclosing the relevant information.

Concern was highlighted by respondents in relation to instances where members are required by law to furnish documents notwithstanding that permission has not been obtained from the third party. In this situation lack of consent from the third party does not alleviate the member of their duty to provide documents to authorities. In this instance, the member must satisfy legal obligations to supply the relevant information and is then required to advise the third party as soon as practical in accordance with the revised paragraph 3.10 as long as there is no legal prohibition against such notification.

¹ Paragraph numbering reflects the numbering in APES 220 and not the numbering in ED 01/07.

Professional competence and due care (Paragraph 3.14)

ED 01/07 proposed that members maintain open, frank and effective lines of communication with clients and employers, and advise them of their rights, obligations and options available under taxation law. Respondents raised the issue that not in all circumstances would a member need to advise on the available options as in certain circumstances a knowledgeable client or employer may have the capacity to evaluate this without the involvement of the member and further it may not be within the agreed scope of work. APESB considered this issue and redrafted the paragraph in a manner that it takes into account the scope of work agreed between the member and the client or employer.

Professional competence and due care (Paragraph 3.15)

ED 01/07 proposed that a member in public practice must provide the client with a document that clearly states the responsibilities and obligations of the member and the client. Some respondents noted that this requirement may be onerous for some practitioners who may not issue engagement letters for all engagements undertaken. APESB is of the view that documenting the terms of engagement represents best practice and will also be instrumental in resolving any disputes that may occur in relation to the engagement. APESB is not mandating the use of an engagement letter for all taxation services and other means of documenting and communicating the terms of engagement is also acceptable, depending on the circumstances.

Professional competence and due care (Paragraph 3.17)

ED 01/07 proposed that a member must not represent to a client or employer that the tax or other revenue returns which the member prepares or assists in preparing, and the tax advice the member may offer, are beyond challenge. The drafting intention was to acknowledge that the application of taxation law can be contentious and uncertain. Some respondents commented that there are many tax matters where there is certainty and only when this is not the case, must the member not represent that the results are beyond challenge. The paragraph was amended to incorporate this view in line with respondents' comments.

Tax schemes and arrangements (Paragraph 5.2)

In ED 01/07 it was proposed that a member must ensure that the client or employer is fully informed about the details of a tax scheme or arrangement and its current and future ramifications including the risks and uncertainties, particularly in relation to possible changes in taxation law. Some respondents were concerned that this duty extends to an obligation on the member to ensure that the client or employer is fully informed and in certain instances advising on the ramifications of entering schemes or arrangements may not be within the agreed scope of work.

Taxation Services (Formerly APS 6)

APESB has taken these concerns into consideration and the revised paragraph takes into account the scope of work as well as places the obligation on the member to provide sufficient information to enable the client or employer to make an informed decision in respect of the tax scheme or arrangement.

Tax schemes and arrangements (Paragraph 5.5)

Whilst tax schemes and arrangements as discussed in paragraph 5.4 are discouraged, the provision of advice to clients or employees to resolve tax matters in relation to these schemes and arrangements is not prohibited. Thus the member may provide advice on how to resolve or terminate the tax arrangement and provide other (not related to the tax scheme or arrangement) taxation services.

Tax schemes and arrangements (Paragraph 5.7)

This paragraph prohibits a member from having a financial interest in entities that predominantly promote tax schemes or arrangements. Further the member is prevented from providing professional services to such entities in which a close family member has a financial interest. The intent is to stop members from perceived and actual conflicts that arise through inappropriate associations with such entities. Some respondents raised concerns that accounting firms may be inadvertently caught by this paragraph as they will promote legitimate tax schemes or arrangements for the benefit of their clients. However, as the predominant business of accounting firms and members in public practice is providing a range of legitimate professional services, they will not be caught by this provision.

Estimates (Paragraph 6.3)

In ED 01/07 guidance was provided that a member should be satisfied that the use of estimates is reasonable in the circumstance. To ensure that members do not use estimates in a reckless manner in APES 220 a new mandatory paragraph was inserted requiring a member to consider whether the use of estimates is reasonable in the circumstance and, if not to, advise the client or employer of the risks and consequences of the use of estimates in the return or submissions.

False or misleading information (Paragraph 7.3)

In ED 01/07 this section (Section 7) was described as dealing with incorrect or misleading information. In line with Section 110.2 *Integrity* of the Code this was redrafted to deal with false or misleading information.

In paragraph 7.3 the ED proposed a mandatory requirement for the members to discuss concerns regarding false and misleading information with the client or employer and endeavour to persuade them to correct any misstatement or omission involved.

Respondents raised concerns that a coercive role to influence decisions by clients or employers should not fall within the obligations of a member and that it should be amended to reflect that the member's obligation is to advise clients or employers of the consequences of their actions or inaction.

Taxation Services (Formerly APS 6)

APESB noted the concerns raised by respondents and has modified the paragraph accordingly.

False or misleading information (Paragraph 7.6)

ED 01/07 proposed that where a client has filed a return or submission significantly understating a tax liability to a revenue authority, and the client is unwilling to correct such an understatement, then the member must not continue acting for the client in any professional capacity. Respondents commented that there may be circumstances where there may be legitimate reasons for not correcting a past error (i.e. there may be a compensating error in another return) and in certain circumstances resignation from an engagement may not be easily achievable (i.e. where the firm may be the statutory auditor). APESB noted these concerns and amended the paragraph to reflect that in accordance with APES 320 *Quality Control for Firms* a member in public practice needs to consider the engagement acceptance and continuance policies to determine whether to continue acting for the client in a professional capacity.

Professional Fees (Paragraph 10.1)

In ED 01/07 the use of contingent fee arrangements in relation to taxation services was discussed. However, as the Code deals with professional fees (including contingent fees) in a comprehensive manner, the paragraphs dealing with contingent fees were removed and a reference to Section 240 *Fees and other Types of Remuneration* of the Code was inserted.

Documentation (Paragraph 11.1)

ED 01/07 provided guidance that taxation advice or opinions of a material consequence should be documented in a letter or memorandum. Some respondents commented that in certain instances this may be beyond their scope of work. The drafting intention of the paragraph in the ED was to encourage members to appropriately document taxation advice or opinions given to a client or employer. After further consideration this paragraph was deleted as it was considered that appropriate documentation is adequately addressed in paragraph 11.1.