

4 October 2022

Mr Channa Wijesinghe
Chief Executive Officer
Accounting Professional and Ethical Standards Board (APESB)
Level 11
99 William Street
Melbourne VIC 3000

Via email: sub@apesb.org.au
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Dear Channa

Proposed Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)

Chartered Accountants Australia and New Zealand (“CA ANZ”) appreciates the opportunity to provide comments on the proposed amendments to the non-assurance services (“NAS”) provisions of APES 110 *Code of Ethics for Professional Accountants (Including Independence Standards)* (“APES 110”) (“the ED”). As it relates to NAS, auditor independence is a key consideration when it comes to securing public trust and confidence in audit. The package of new measures in relation to NAS is a major step forward in strengthening auditor independence.

We support the APESB’s proposals to incorporate the revised NAS provisions in the International Ethics Standards Board for Accountants’ *International Code of Ethics for Professional Accountants (including International Independence Standards)* (“the IESBA Code”) into APES 110. The revised NAS provisions in the IESBA Code substantially raise the bar on auditor independence with a far-reaching prohibition on audit firms from providing a NAS to a PIE audit client that *might* create a self-review threat.

With respect to tax advisory and tax planning services, we recommend the APESB consider retaining the original form of the IESBA Code to maintain international consistency. However, of the two options presented we believe only proposed Option 2 would be workable – to include guidance to clarify that the phrase “likely to prevail” is indeed a high bar, along with a requirement to document the factors considered and conclusions reached in determining that at least one of the specified conditions has been met. In relation to trans-Tasman harmonisation, we note Option 2 is consistent with the approach taken in New Zealand.

We do not support proposed Option 1 to change the phrase “likely to prevail” to “almost certain to prevail” on the basis that we do not believe that there is sufficient evidence to support Australian specific amendments to the IESBA Code in this regard. Furthermore, we believe such a change could give rise to several unintended consequences.

Appendix A provides our responses to the specific questions raised in the ED. **Appendix B** provides more information about CA ANZ. Should you have any questions about the matters raised in this submission or wish to discuss them further, please contact Zowie Pateman FCA, Deputy Leader – Reporting and Assurance at zowie.pateman@charteredaccountantsanz.com.

Yours sincerely

Simon Grant FCA
Group Executive
Advocacy and Professional Standing

Amir Ghandar FCA
Assurance and Reporting Leader

Appendix A

Responses to specific questions

Request for Specific Comment 1 – Do you support APESB’s proposed Option 1 to address concerns relating to tax services by amending the threshold to ‘almost certain to prevail’? Please provide reasons and justification for your response.

We do not support proposed Option 1 to change the threshold from “likely to prevail” to “almost certain to prevail” on the basis that we do not believe that there is sufficient evidence to support Australian specific amendments to the IESBA Code in this regard. Furthermore, we support trans-Tasman harmonisation of standards where possible - if Australia adopted this approach, it would result in divergence from the [approach taken in New Zealand](#).

We believe several unintended consequences could arise from proposed Option 1 as follows:

- Substantial work, outreach and consultation has been undertaken by the IESBA to determine the approach taken with respect to tax advisory and tax planning services. The IESBA Code has been developed holistically, with a high degree of interconnectivity including between the principles and more prescriptive aspects. When seeking to make amendments that diverge from the IESBA Code there is a risk of unintended consequences, contradictions and omission of required consequential amendments. If this were to occur this could have the overall effect of weakening confidence in audit rather than strengthening it.
- If Australia deviates from the IESBA Code (and the approach taken in New Zealand), this could cause challenges in practice in relation to group audits with entities across different jurisdictions.
- Not having a robust, demonstrable basis for the departure from the IESBA Code may impact the confidence and support of both the public and those implementing and complying with APES 110.
- It is highly unlikely that a tax opinion that requires consideration of a tax avoidance purpose would ever reach the threshold of “almost certain to prevail”. This is a complicated area of the tax law that often requires subjective weighting of objective factors and thus, by its very nature, will lack certainty except in the most simple of fact patterns.

Request for Specific Comment 2 – Do you support APESB’s proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the “firm is confident is likely to prevail” as a high threshold? Please provide reasons and justification for your response.

We recommend the APESB consider retaining the original form of the IESBA Code to maintain international consistency. However, proposed Option 2 could be workable – to provide guidance to clarify what the phrase “likely to prevail” is intended to mean. This approach would also result in trans-Tasman harmonisation, which we support, as New Zealand has adopted a similar approach. As the phrase “likely to prevail” is not commonly used in Australia to describe the strength of a tax opinion, we recommend that the APESB provide additional guidance to clarify that “likely to prevail” requires satisfaction of at least a “more likely than not” position. This would be consistent with the wording in US PCAOB’s Rule 3522, from which the proposed requirement was originally adapted.

The proposed guidance is consistent with the IESBA's intention that the firm should have a high level of confidence. The answer to question 16 of the [IESBA Staff Questions and Answers](#) says: ... "The IESBA determined that, for subparagraph 604.12 A2 (c) to apply, the firm should have a high level of confidence that the basis in tax law is "likely to prevail"."

Request for Specific Comment 3 – Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response.

We support the addition of a requirement for firms to document the factors considered and conclusions reached in determining that the firm has satisfied the conditions, in the instances where the firm determines that providing tax planning and tax advisory services is permissible.

Paragraph 113 of the [Basis for Conclusions](#) states that the IESBA envisages that a firm may choose to document, in situations that are not apparent, the factors considered in determining its confidence that the proposed treatment has a basis in applicable tax law and regulation that is likely to prevail. In addition, paragraph 600.27 A1 of the IESBA Code sets out what documentation the firm might prepare.

We do not believe this requirement would be onerous, as we understand that such documentation is consistent with current best practice in Australia in determining whether a NAS is permissible or not.

Request for Specific Comment 4 – Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response.

We do not agree that the term "tax avoidance" is inappropriate to use in APES 110. However, we would support the inclusion of an additional Australian specific guidance paragraph to support consistent application of the term in Australia as there is no globally accepted definition. Paragraph 116 of the [Basis for Conclusions](#) also states that the IESBA is of the view that National Standard Setters are well-positioned to provide additional guidance based on local tax law or regulation as appropriate to help address concerns about potential misunderstanding and inconsistent application of the term.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents 131,673 financial professionals, supporting them to make a difference to the businesses, organisations and communities in which they work and live. Chartered Accountants are known as Difference Makers. The depth and breadth of their expertise helps them to see the big picture and chart the best course of action.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with mentored practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate boldly in the public good. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations. We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 15 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

We employ more than 500 talented people across Australia, New Zealand, Singapore, Malaysia, Hong Kong and the United Kingdom.