



7 June 2010

Mark Maskell
Secretary of the Board
Tax Practitioners Board
PO Box 9825
PENRITH NSW 2740

By email: tpbwebsite@ato.gov.au

Dear Mark,

**RE: Information Sheet – Section 30-10 of the Tax Agent Services Act
2009: Code of Professional Conduct**

The Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Tax Practitioners Board's (TPB) exposure draft on *Section 30-10 of the Tax Agent Services Act 2009: Code of Professional Conduct*.

APESB's role

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, appropriate professional and ethical standards. These standards apply to the membership of the three Australian professional accounting bodies. A secondary objective of the APESB is to provide the opportunity or forum for the discussion and consideration of issues relating to professional standards for accountants. The APESB is funded by the three major accounting bodies, but has complete independence in its standard-setting activities.

Our essential function is the setting of standards, and in doing this we endeavour to incorporate a strong emphasis on professionalism and the role of sound judgement in those accountants who are obliged to follow our standards. We believe that setting high quality standards with demanding criteria contributes to the professional standing and behaviour of members of the accounting profession.

APESB's standards applicable to members who provide taxation services

Many registered tax agents are members of one of the three professional accounting bodies in Australia and therefore must comply with the standards issued by the APESB. The APESB standards that are primarily applicable to members who provide tax related services are APES 110 *Code of Ethics for Professional Accountants* (issued in 2006) and APES 220 *Taxation Services* (issued in 2007).

Accounting Professional & Ethical Standards Board Limited. ABN 63 118 227 259

Level 7, 600 Bourke Street, Melbourne, Victoria, 3000 T +61 (3) 9670 8911 F +61 (3) 9670 5611

E enquiries@apesb.org.au www.apesb.org.au

APES 110 contains the fundamental ethical principles by which all professional accountants are required to abide by and they are:

- Integrity;
- Objectivity;
- Professional competence and due care;
- Confidentiality; and
- Professional behavior.

Additionally, APES 220 specifically addresses the professional obligations of accountants who provide taxation services. In particular the following matters:

- Fundamental responsibilities of members;
- Preparation and lodgment of returns to revenue authorities;
- Tax schemes and arrangements;
- Estimates;
- False or misleading information;
- Professional engagement matters;
- Client monies;
- Professional fees; and
- Documentation.

We have reviewed the *Tax Agent Services Act 2009* and believe that the requirements of the Code of Professional Conduct contained within this Act are generally consistent with the requirements of our professional standards APES 110 and APES 220. For the TPB's information we have included this analysis as Appendix A to this submission. We believe that, as these documents have a number of consistent principles, the TPB may consider additional footnoting and references to APES 220 (and to a lesser extent APES 110) throughout the *Information Sheet – Section 30-10 of the Tax Agent Services Act 2009: Code of Professional Conduct*. APESB is pleased to offer our assistance to the TPB in this regard.

We are aware of the challenges with the term “reasonable care” in Part 3 30.10 (9) & (10) of the *Tax Agent Services Act 2009*. In our opinion the meaning of the term “reasonable care” requires additional guidance in the Information Sheet. A cross referencing or enunciation of the principles set out in the APES 220 Standard (see Appendix A) would be helpful in this regard.

Revision of APES 110 Code of Ethics for Professional Accountants

APESB is currently updating APES 110 in response to changes that occurred in 2009 to its international equivalent issued by the International Ethics Standards Board for Accountants (IESBA Code).

The IESBA Code has been revised to improve its clarity and includes new provisions which primarily deal with auditor independence. In respect of taxation services, the IESBA Code contains new provisions in relation to independence threats that are created by certain tax services provided by audit firms. A brief summary of these new provisions is included in Appendix B for your information.



Overall Comment

We support the Tax Practitioners Board's intention to publish an information sheet which clarifies the content and application of requirements of Section 30-10 of the *Tax Agent Services Act 2009: Code of Professional Conduct*. We commend the Board for publishing a draft information sheet as part of this process.

Except for the issue of cross referencing to APES 220 as noted above, we have not identified any significant issues with the exposure draft and are supportive of its contents as a whole. We have noted a few minor editorial points for your consideration in Appendix C of this submission.

If you would like to discuss further or require any additional information, please do not hesitate to contact me on 0418 836984 or Mr. Channa Wijesinghe, Technical Director on 03 96424372 or email at channa.wijesinghe@apesb.org.au.

Yours sincerely

A handwritten signature in black ink that reads "Kate Spargo". The signature is written in a cursive, flowing style.

Kate Spargo
Chairperson

APPENDIX A

Comparison of *the Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct* to APESB Pronouncements

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct		APES 220 <i>Taxation Services</i>		APES 110 <i>Code of Ethics for Professional Accountants</i>	
30-10(1)	You must act honestly and with integrity.	3	<i>Fundamental responsibilities of Members.</i>	100 110 120 150 280	Fundamental Principles Integrity Objectivity Professional Behaviour Objectivity All Services
		3.1	Requires services to be delivered in accordance with Section 100 of APES 110 and relevant Taxation Law.		
		3.2	<i>Public Interest</i> Members shall comply with their public interest obligations.		
		6	<i>Estimates</i> Members shall not be associated with estimates that may be misleading.		
		7	<i>False or misleading information</i> Members shall not be associated with false or misleading information.		
30-10(2)	You must comply with taxation laws in the conduct of your personal affairs.	3.3	<i>Integrity and professional behaviour</i> Shall ensure that the Member's personal	100 150	Fundamental Principles Professional Behaviour

Tax Agent Services Act 2009 Part 3 – <i>The Code of Professional Conduct</i>	APES 220 <i>Taxation Services</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>
	tax obligations and those of any associated entities for which the Member is responsible are properly discharged.	
30-10(3) You must account for money or other property you receive on trust from or on behalf of your clients.	<p>9 <i>Client Monies</i></p> <p>APES 220 is more detailed in relation to client monies. Professional obligations such as prompt transmission of monies, use and maintenance of separate bank accounts and appropriate use of tax refunds are addressed (Paragraphs 9.1 – 9.3).</p> <p>Further, Members of the professional accounting bodies who are in public practice will be subject to APS 10 and GN 3 dealing with Trust Accounts. The new proposed professional standard which is at exposure draft stage APES 310 <i>Dealing with Client Monies</i> will replace APS 10 in the future.</p>	<p>100 Fundamental Principles 150 Professional Behaviour 270 Custody of Client Assets</p>
30-10(4) You must act lawfully in the best interests of your client.	<p>3 <i>Fundamental responsibilities</i></p> <p>3.1 Safeguard the interests of the client provided services are delivered in accordance with Section 100 of APES 110 and relevant Taxation Law.</p> <p>3.4 Recommend options that meet client's</p>	<p>100 Fundamental Principles 150 Professional Behaviour</p>

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct	APES 220 <i>Taxation Services</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>
	<p>interests consistent with the requirements of the law.</p> <p><i>Professional competence and due care</i></p> <p>3.14 Advise clients of rights, obligations and options under Taxation Law.</p> <p>4 <i>Preparation and lodgment of returns</i></p> <p>Lodge documents in accordance with information provided by a client, their instructions and the relevant Taxation Law.</p> <p>5 <i>Tax schemes and arrangements</i></p> <p>5.2 A Member shall give the client or employer sufficient information to be fully informed of the details of a scheme, its current and future ramifications, particularly in relation to possible changes in taxation law.</p> <p>5.4 A Member shall not promote any tax schemes where the dominant purpose is to derive a tax benefit that is not available under taxation law. Where this is the case, the Member shall not provide advice except that it is not effective at law.</p>	

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct	APES 220 Taxation Services	APES 110 Code of Ethics for Professional Accountants
	7 <i>False or misleading information</i> Members shall not deal or be associated with false or misleading information.	
30-10(5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent.	No specific paragraph. However, the following sections provide requirements and guidance for the most common situations where conflicts arise in Taxation Services. 3.6 -3.10 <i>Confidentiality</i> 3.11 – 3.17 <i>Professional Competence and due care</i> 5 <i>Tax Schemes and arrangements</i> 6 <i>Estimates</i> 7 <i>False or misleading information</i> 8 <i>Professional engagement matters</i>	100.5 Conceptual framework approach. Requires a Member to identify, evaluate and address threats to compliance with the fundamental principles. 210 Professional appointment 220 Conflicts of Interest 240 Professional Fees
30-10(6) Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party.	3.7 <i>Confidentiality</i> Unless there is a legal obligation to do so, information relating to a client's or employers affairs shall not be communicated to a third party without the client's or employer's permission.	140 Confidentiality
30-10(7) You must ensure that a tax agent service provided on	3.11 – 3.17 <i>Professional competence and due care</i>	130 Professional competence and due care

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct	APES 220 Taxation Services		APES 110 Code of Ethics for Professional Accountants	
your behalf is provided competently.	4.3	<p>Members shall maintain professional competence and take due care in the performance of their work in accordance with Section 130 <i>Professional Competence and Due Care</i> of the Code.</p> <p>Where work associated with revenue returns is not performed under the supervision of the Member, the Member shall perform sufficient reviews prior to the lodgment of the returns.</p>		
30-10(8)	You must maintain knowledge and skills relevant to the tax agent services you provide.	3.11 – 3.17	<i>Professional competence and due care</i>	130 Professional competence and due care Refers to the attainment and maintenance of professional competence.
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.	3.11 – 3.17 4 4.2 5 5.2	<p><i>Professional competence and due care</i></p> <p><i>Preparation and lodgment of returns to Revenue Authorities.</i></p> <p>States that a Member is not responsible for the veracity of information. However, a Member should obtain sufficient information to form a view as to the application of the law to that information.</p> <p><i>Tax schemes and arrangements</i></p> <p>A Member shall give the client or employer sufficient information to be</p>	130 Professional competence and due care

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct	APES 220 <i>Taxation Services</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>
	<p>5.3 fully informed of the details of a scheme, its current and future ramifications, particularly in relation to possible changes in Taxation Law.</p> <p>A Member shall not knowingly or recklessly be associated with any arrangement which involves entries that are intended to misrepresent a transaction.</p> <p><i>False or misleading information</i></p> <p>7 Also Members in public practice are subject to quality control requirements of APES 320 <i>Quality Control for Firms</i>.</p>	
<p>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.</p>	<p>3.4 <i>Objectivity</i></p> <p>Members shall maintain an impartial attitude and recommend options that meet the Client's or Employer's interest consistent with the requirements of the law.</p> <p>3.11-3.17 <i>Professional competence and due care</i></p> <p>As per paragraph 3.14, Members shall maintain open, frank and effective communications with a client or employer when providing advice in relation to rights, obligations and options under taxation law and the application of</p>	<p>130 Professional competence and due care</p> <p>150 Professional behaviour</p>

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct	APES 220 <i>Taxation Services</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>
	<p>taxation law.</p> <p>4 <i>Preparation and lodgment of returns to Revenue Authorities</i></p> <p>Members shall prepare and lodge returns in accordance with information provided, client instructions and relevant taxation law.</p> <p>5 <i>Tax schemes and arrangements</i></p> <p>Where the dominant purpose is to derive a tax benefit which is not reasonably arguable under taxation law, the Member shall not provide advice except that it is not effective at law.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not be associated with false or misleading information.</p>	
30-10(11) You must not knowingly obstruct the proper administration of the taxation laws.	<p>3.2 <i>Public interest</i></p> <p>Members shall comply with their public interest obligations when they provide Taxation Services.</p> <p>4 <i>Preparation and lodgment of returns</i></p> <p>Members shall prepare and lodge</p>	<p>100 Fundamental principles</p> <p>110 Integrity</p> <p>150 Professional behaviour</p> <p>220 Conflicts of interests</p> <p>280 Objectivity All Services</p>

Tax Agent Services Act 2009 Part 3 – <i>The Code of Professional Conduct</i>	APES 220 <i>Taxation Services</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>
	<p>returns in accordance with information provided, client instructions and the relevant taxation law.</p> <p>5.4 <i>Tax schemes and arrangements</i></p> <p>The Member shall not promote or encourage 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.</p> <p>6 <i>Estimates</i></p> <p>Members shall not be associated with estimates that may be misleading.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not be associated with false or misleading information.</p>	
<p>30-10(12) You must advise clients of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.</p>	<p>3.14 <i>Professional competence and due care</i></p> <p>Members shall maintain open, frank and effective communications with a client or employer when providing advice in relation to rights, obligations and options under taxation law and the application of taxation law.</p>	<p>130 Professional competence and due care</p> <p>150 Professional behaviour</p>

Tax Agent Services Act 2009 Part 3 – <i>The Code of Professional Conduct</i>	APES 220 <i>Taxation Services</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>
	<p>5.2 <i>Tax schemes and arrangements</i></p> <p>Member shall give sufficient information to the client or employer to enable the client or employer to be fully informed of current and future ramifications of tax schemes or arrangements.</p> <p>7 <i>False or misleading information</i></p> <p>Members shall not be associated with false or misleading information. Where the Member identifies that this is an issue they need to inform the Client or Employer.</p>	
<p>30-10(13) You must maintain professional indemnity insurance that the Board requires you to maintain.</p>	<p>No specific paragraph in APES 220.</p> <p>However, APES 305 Terms of Engagement paragraph 6.1 and 6.2 addresses this in terms of the Professional Standards Legislation.</p> <p>Further, it is a requirement for Members of the three professional accounting bodies who are in public practice to hold professional indemnity insurance.</p>	<p>150 Professional behaviour</p>

Tax Agent Services Act 2009 Part 3 – The Code of Professional Conduct		APES 220 Taxation Services		APES 110 Code of Ethics for Professional Accountants	
30-10(14)	You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.	1.6	<i>Scope and application</i> Responsibilities which may be imposed by law.	110 140 150	Integrity Confidentiality Professional behaviour

Appendix B

Extract from Overview of Independence Requirements in the IESBA Code

The following is an extract from a document prepared by the IESBA staff in September 2009 to assist with implementation of the revised IESBA Code. It is a non-authoritative document issued for information purposes.

Tax Return Preparation

- Such services do not normally create threats to independence provided management takes responsibility for the returns, including any significant judgments made:
 - The services are typically provided based on facts already in existence or transactions that have already occurred;
 - Analysis and presentation of historical information under existing law;
 - Tax return is subject to whatever review or approval process the tax authority considers is appropriate.

Tax Calculations

- Non-public interest
 - Preparing calculations of current and deferred tax liabilities for the purpose of the preparation of the accounting entries may create a self-review threat. The significance of the threat will depend on:
 - Degree of subjectivity involved in the calculations; and
 - Materiality
- Public interest
 - Except in emergency situations, cannot provide service if for the purpose of preparing accounting entries that are material to the financial statements

Tax Planning and Other Advisory Services

- Self-review threat may be created when advice affects matters reflected in the financial statements. Significance depends on:
 - Degree of subjectivity and materiality
 - Level of tax expertise of client
 - Extent to which advice is supported by law or regulation
 - Whether effectiveness of the advice depends on accounting treatment and there is reasonable doubt as to the appropriateness of the treatment
- Where the effectiveness of tax advice depends on a particular accounting treatment or presentation, and
 - Reasonable doubt as to appropriateness of the related accounting treatment or presentation; and
 - Outcome of tax advice will have a material impact on the financial statements
- Self-review threat would generally be so significant no safeguards could reduce the threat to an acceptable level

Assistance in Resolution of Tax Disputes

- Advocacy threat may be created when firm represents audit client in resolution of a tax dispute once tax authorities have rejected client's argument and are referring the matter for determination in a formal proceeding. Significance depends on:
 - Whether firm has provided tax advice on the matter
 - Materiality
 - Extent to which matter supported by tax law or regulation
 - Role management plays in the resolution of the dispute
- If services involve acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter and the amounts are material to the financial statements created would be too significant
- What constitutes a public tribunal or court depends upon how the tax proceedings are heard in the particular jurisdiction.

APPENDIX C

Issues for the consideration of the Tax Practitioners Board

Exposure draft paragraph	Suggested change	Comments	
<p>Footnote 26</p>	<p>These rules include Accounting Professional and Ethical Standards Board, 'APES110 Code of Ethics for Professional Accountants' (2006) at [270.2]; <i>Guidance Note GN3 'Operation of trust Accounts'</i> issued jointly by the Institute of Chartered Accountants in Australia and CPA Australia; International Ethics Standards Board for Accountants 'Code of Ethics for Professional Accountants' (2009) at [270.2].</p>	<p>These rules include the following pronouncements: Accounting Professional and Ethical Standards Board's <i>APES110 Code of Ethics for Professional Accountants</i> (2006) at [270.2], APS 10 <i>Trust Accounts</i> and GN 3 <i>Operation of Trust Accounts</i> and the International Ethics Standards Board for Accountants 'Code of Ethics for Professional Accountants' (2009) at [270.2]. APESB has recently issued an exposure draft APES 310 <i>Dealing with Client Monies</i> which will replace APS 10.</p>	<p>As the principles and mandatory requirements are in APS 10 we believe that the reference should be to APS 10 and GN3.</p> <p>APESB is in the process of replacing APS 10 with APES 310 <i>Dealing with Client Monies</i> which is currently at exposure draft stage. APESB expects to issue the final pronouncement in the last quarter of 2010.</p>

Exposure draft paragraph	Suggested change	Comments	
57	<p>The tax agent's or BAS agent's duty not to disclose any information relating to a client's affairs continues beyond the term of the engagement with the client.</p>	<p><i>Consider the additional guidance...</i></p> <p>When employment changes or a new client is obtained, the tax agent or BAS agent is entitled to use prior professional experience to assist a client. However, the tax agent or BAS agent should not use or disclose any confidential information either acquired or received as a result of a professional or business relationship.</p>	<p>The suggested additional commentary is based on paragraph 140.6 of APES 110 <i>The Code of Ethics for Professional Accountants</i>.</p>
67	<p>The assurance of competence by a tax agent or BAS agent, in the provision of a tax agent service, requires agent:</p>	<p>The assurance of competence by a tax agent or BAS agent, in the provision of a tax agent service, requires <i>the</i> agent:</p>	<p>Editorial change only.</p>
82	<p>CPE may be considered to be further education intended for the systematic maintenance, improvement and broadening of knowledge and skills, and the development or personal qualities necessary for execution of professional and technical duties throughout the individuals working life.</p>	<p>...throughout the <i>individual's</i> working life.</p>	<p>Editorial change only.</p>