

AGENDA PAPER

Item Number: 6
Date of Meeting: 16 November 2020
Subject: Update on review of APES 220 *Taxation Services*

Action Required For Discussion For Noting For Information

Purpose

To:

- (a) provide the Board with an update on the review of APES 220 *Taxation Services*; and
- (b) seek approval for matters to be recorded on the issues register in relation to the confidentiality provisions of select APESB pronouncements.

Background

At the August 2020 Board Meeting, the Board requested Technical Staff review the confidentiality provisions of APES 220 *Taxation Services*, and other APESB pronouncements, in light of the enhanced whistleblower protections as contained in the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.

The Board requested Technical Staff provide an update on the revision of APES 220 at the November 2020 Board meeting.

Matters for Consideration

In reviewing APES 220 *Taxation Services* (APES 220) for revisions, Technical Staff considered the following key matters:

Confidentiality provisions in APES 220 (and other APESB pronouncements)

As part of the development of case studies on whistleblowing (refer to Agenda Item 8), it was noted that the confidentiality provisions of APES 220 referred to a legal obligation to disclose matters but did not include a legal right to disclose. It is important for the provisions to refer to a legal right, as whistleblowing is considered a choice by the Member and not a mandatory obligation to disclose matters.

Technical Staff have reviewed the confidentiality provisions of all APESB pronouncements. In addition to APES 220, the following pronouncements currently refer to 'a legal, regulatory or professional obligation of disclosure' which could be amended to 'a legal, regulatory, or professional right or duty to disclose':

- APES 225 *Valuation Services* (APES 225);
- APES 230 *Financial Planning Services* (APES 230);
- APES 345 *Reporting on Prospective Financial Information Prepared in connection with a Public Document* (APES 345); and
- APES 350 *Participation by Members in Public Practice in Due Diligence Committees in connection with a Public Document* (APES 350).

Apart from APES 350, the other pronouncements also include a requirement that if a disclosure is made to a third party, the client or employer must be notified of this disclosure unless there is a legal obligation not to disclose.

Technical Staff are proposing to amending these provisions to align with the requirements in the NOCLAR section of the Code where Members are required to consider whether it is appropriate to inform the client of the Member's intentions before disclosing a NOCLAR matter to a third party or appropriate authority (as per paragraph R360.37 of the Code).

Due to the other matters noted below, it is logical to defer the issue of an exposure draft on APES 220. Technical Staff are planning to present an exposure draft that proposes revisions to the confidentiality provisions of affected pronouncements for the Board's consideration and approval at either the March or June 2021 Board Meeting.

Tax lodgement services and supervision of work

In September 2020, an issue was raised with APESB Technical Staff about the interplay of paragraph 4.3 of APES 220 Taxation Services with [guidance](#) updated by the Tax Practitioners Board (TPB) in July 2020 on supervisory arrangements and supervision and control.

APES 220 paragraph 4.3 requires Members who provide a tax lodgement service to another party to ensure sufficient reviews are undertaken on the returns and documents prior to lodgement. The use of a tax lodgement service is common when a Member is gaining experience to meet the full requirements of being a tax agent and may lodge revenue returns they prepare under the supervision of a fully qualified tax agent (who may not necessarily be their employer).

In contrast, the TPB Guidance indicates that a tax agent will breach the legislative requirements if the person performing the work on the revenue returns is not an employee of the tax agent. This is due to the TPB guidance stating that section 50-30 of the *Tax Agent Services Act 2009* provides that you contravene this subsection if:

- (a) you are a registered tax agent and an individual, and
- (b) you sign a declaration or other statement in relation to a taxpayer that is required or permitted by a taxation law (other than a BAS provision), and
- (c) the document in relation to which the declaration or other statement is being made was prepared by an entity other than:

...

- (iii) another individual who is working under your supervision and control or the supervision and control of another registered tax agent who is an individual.

APESB's CEO, Channa Wijesinghe, and Senior Technical Manager, Jacinta Hanrahan, met with a Senior Policy and Legislation Adviser of the TPB, in October 2020 to discuss this issue. TPB Staff were of the view that the requirements are not necessarily inconsistent as both focus on the need for adequate supervision.

The TPB is currently undertaking a review of this guidance material. As part of this project, they expect to undertake a public consultation process in early 2021 before finalising their revised position.

Technical Staff are of this view it is important to ensure the requirements and guidance in APES 220 are consistent with the proposed TPB guidance. Therefore, Technical Staff believe the revision of APES 220 should be postponed to allow for the completion of TPB 's current project on supervision and control.

ATO engagement regarding auditor independence and best practice governance for tax practices

In September 2020, Mr Jeremy Hirschhorn (Second Commissioner of Taxation) of the Australian Taxation Office (ATO) wrote to the APESB in relation to the proposed revisions to APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code of Ethics) and to advise of current projects being undertaken by the ATO.

APESB's CEO, Channa Wijesinghe, and Senior Technical Manager, Jacinta Hanrahan, met with ATO representatives, Mr Jeremy Hirschhorn (Second Commissioner of Taxation), Ms Rebecca Saint (Deputy Commissioner - Public Groups) and Mr John Condon (Senior Director - Client Engagement Group, Public Groups & International) on 1 October 2020.

The key discussion points from the meeting included:

- An update on the proposed amendments to the Code of Ethics for the IESBA's project on Non-Assurance services.
- General discussions around the provision of services related to tax, including advocacy services.
- Proposed revisions to APES 220 relating to confidentiality and also to tax lodgement services.
- An update on an ATO project to enhance the governance of tax practices, which is expected to run over the next few months.
- A general discussion on current issues arising relating to auditor independence and disclosures relating to taxation liability disputes (in light of the issue of IFRIC 23 *Uncertainty over Tax Treatments*).

APESB and the ATO agreed to continue collaborating over the coming months in relation to each organisation's relevant projects, with the ATO undertaking to provide details on independence issues they have encountered in practice regarding tax advisory services provided by firms.

At the time of writing this report, ATO has not yet provided us with further details on the specific issues they have encountered. Technical Staff believe that these matters should be considered as part of the current review of APES 220.

Way forward

APESB Technical Staff are of the view that any proposed revisions to APES 220 should be deferred to allow for the completion of the TPB and ATO projects. These projects are due for completion in the first half of 2021 and can potentially impact the extant provisions of APES 220.

Technical Staff are proposing to present the Board with an exposure draft on APES 220 at either the March or June 2021 Board meeting, depending on the progress of the regulators' projects. Depending on the nature of the revisions, the changes to the other APESB pronouncements will either be issued as an omnibus exposure draft with APES 220 or as an exposure draft separate to APES 220.

As there is currently a project to revised APES 230, the revision to the confidentiality provisions will be included in the current revision project.

In the meantime, Technical Staff will note the issue of the revisions required to the confidentiality provisions of APES 220, APES 225, APES 230, APES 345 and APES 350 on the issues register.

Recommendations

The Board:

- (a) note the update on the review of APES 220 *Taxation Services*; and
- (b) approve the addition of matters on the APESB Issues Register for APES 220, APES 225, APES 230, APES 345 and APES 350.

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Date: 4 November 2020