

For Board discussion purposes only

Extracts of specific provisions of the proposed NAS exposure draft

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

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **04/21**
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Reasons for issuing Exposure Draft 04/21

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to amend APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to incorporate changes made by the International Ethics Standards Board for Accountants (IESBA) to the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the International Code). The proposed revisions clarify the circumstances in which firms and network firms may or may not provide a non-assurance service to an audit or assurance client.

Key requirements and guidance in Exposure Draft 04/21

This Exposure Draft sets out proposed amendments to the current version of the Code. The proposed key changes are summarised below:

- The prohibition on assuming management responsibility for all audit clients and related material is relocated from Section 600 *Provision of Non-Assurance Services to an Audit Client* to Section 400 to increase its prominence and to emphasise it relates to all aspects of Part 4A *Independence for Audit and Review Engagements* of the Code.
- A new general prohibition on the provision of non-assurance services (NAS) that creates a self-review threat to independence to a PIE audit client.
- New requirements to strengthen communications with those charged with governance (TCWG) about NAS matters provided to Public Interest Entity (PIE) audit clients including obtaining concurrence from TCWG for the provision of the NAS.
- Strengthened provisions for identifying and evaluating threats, including where multiple NAS is provided to the same audit client.
- Enhanced clarity about the relevance of materiality in applying NAS provisions and remains as a factor to consider in evaluating threats.
- Removal of the materiality qualifier for NAS provided to PIE audit clients and in a few instances for non-PIE audit clients.
- Certain prohibitions for NAS to PIE audit clients are now prohibited if it might create a self-review threat including, valuation services, acting as an advocate on a tax dispute, internal audit services, designing or implement IT systems services, litigation support services, legal advice, acting as an advocate for dispute or litigation.
- A number of new prohibitions relating to tax advisory and tax planning services, valuation for tax purposes, providing assistance in the resolution of a tax dispute, legal advice, or corporate finance services that might create a self-review threat.
- More robust provisions to address threats including new application material on how firms might deal with situations where safeguards may not be available.
- Improved, and in some cases, expanded descriptions of specific types of NAS including new application material to explain where circumstances in which a self-review threat is not created.
- Consequential amendments to Part 4B, Section 950 *Provision of Non-Assurance Services to Assurance Clients other than Audit and Review Engagements*.
- Conforming amendments to Part 4B, Section 900 *Applying the Conceptual Framework to Independence for Assurance Engagements other than Audit and Review Engagements* and Section 525.
- additional requirement paragraph AUST R600.11 to prohibit providing advice and recommendations about financial products to audited clients;
- additional guidance AUST 600.14.1 to clarify that in most instances where NAS is provided to audit clients it would be known if the NAS will affect the accounting records, internal controls or financial statements and if this is the case it is almost certain to create a self-review threat;

- amending the IESBA paragraphs R604.4, 604.4 A1 and 601.12 A2 from references to 'likely to prevail' to 'highly likely to prevail' and changing these paragraph references to AUST R604.4, AUST 604.4 A1 and AUST 601.12 A2 respectively;
- additional guidance paragraphs AUST 604.4 A2 and AUST 604.12 A4 that firms should document the factors they considered in providing tax services, tax advisory and tax planning as to why they are confident it has a basis in law that is highly likely to prevail;
- removing the IESBA paragraph 604.15 A1 which lists potential safeguards to address advocacy threats and adding a requirement paragraph AUST R604.15.1 prohibiting the provision of tax advisory and tax planning services that might create an advocacy threat to audit clients that are public interest entities; and
- additional guidance material to the IESBA paragraph 605.2 A1 to clarify that it includes services that may not necessarily be described as an internal audit service and that internal audit activities include reviewing risk culture, monitoring and compliance with applicable frameworks.

Proposed operative date

It is intended that the proposed amendments will be effective for engagements beginning or on or after 1 January 2023. Early adoption will be permitted.

SCOPE AND APPLICATION

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (**this Code**). This Code is operative from 1 January 2020 and supersedes APES 110 *Code of Ethics for Professional Accountants* (issued in December 2010 and subsequently amended in December 2011, May 2013, November 2013, May 2017 and April 2018). Earlier adoption of this Code is permitted. Transitional provisions relating to **Key Audit Partner** rotation, revisions to Part 4B, the role and mindset of **Members**, the objectivity of Engagement Quality Reviewers, and the fee-related provisions and the non-assurance related provisions apply as specified in the respective transitional provisions on page 49.

SECTION 600

PROVISION OF NON-ASSURANCE SERVICES TO AN AUDIT CLIENT

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Providing advice and recommendations

600.11 A1 Providing advice and recommendations might create a self-review threat. Whether providing advice and recommendations creates a self-review threat involves making the determination set out in paragraph R600.14. Where the **Audit Client** is not a **Public Interest Entity** and a self-review threat is identified, the **Firm** is required to apply the conceptual framework to evaluate and address the threat. If the **Audit Client** is a **Public Interest Entity**, paragraphs R600.16 and R600.17 apply.

AUST R600.11.1 A Firm or a Network Firm shall not provide advice or recommendations on financial products to an Audit Client if the provision of that service might create a self-review or self-interest threat in relation to the audit of the Financial Statements on which the Firm will express an opinion.

Multiple non-assurance services provided to the same audit client

R600.12 When a Firm or a Network Firm provides multiple non-assurance services to an Audit Client, the Firm shall consider whether, in addition to the threats created by each service individually, the combined effect of such services creates or impacts threats to Independence.

600.12 A1 In addition to paragraph 600.9 A2, factors that are relevant in a **Firm's** evaluation of the level of threats to **Independence** created where multiple non-assurance services are provided to an **Audit Client** might include whether:

- The combined effect of providing multiple services increases the level of threat created by each service assessed individually.
- The combined effect of providing multiple services increases the level of any threat arising from the overall relationship with the **Audit Client**.

Self-review threats

600.13 A1 When a **Firm** or a **Network Firm** provides a non-assurance service to an **Audit Client**, there might be a risk of the **Firm** auditing its own or the **Network Firm's** work, thereby giving rise to a self-review threat. A self-review threat is the threat that a **Firm** or a **Network Firm** will not appropriately evaluate the results of a previous judgment made or an activity performed by an individual within the **Firm** or **Network Firm** as part of a non-assurance service on which the **Audit Team** will rely when forming a judgment as part of an audit.

R600.14 Before providing a non-assurance service to an Audit Client, a Firm or a Network Firm shall determine whether the provision of that service might create a self-review threat by evaluating whether there is a risk that:

- (a) **The results of the service will form part of or affect the accounting records, the internal controls over financial reporting, or the Financial Statements on which the Firm will express an opinion; and**

- (b) In the course of the audit of those **Financial Statements on which the Firm will express an opinion**, the **Audit Team** will evaluate or rely on any judgments made or activities performed by the **Firm** or **Network Firm** when providing the service.

AUST 600.14 A1 In some instances, a Member in Public Practice will have to use professional judgement to determine whether the proposed non-assurance services will meet the criteria in paragraph R600.14 (a), while in most circumstances, the Member should be able to determine whether the proposed non-assurance service meets the criteria in paragraph R600.14(a). Where the proposed non-assurance service meets the criteria in paragraph R600.14(a), it is almost certain a self-review threat will be created.

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SUBSECTION 604 – TAX SERVICES

Introduction

604.1 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to 600.27 A1 are relevant to applying the conceptual framework when providing a tax service to an [Audit Client](#).

Requirements and Application Material

Description of Service

604.2 A1 Tax services comprise a broad range of services. This subsection deals specifically with:

- Tax return preparation.
- Tax calculations for the purpose of preparing accounting entries.
- Tax advisory services.
- Tax planning services.
- Tax services involving valuations.
- Assistance in the resolution of tax disputes.

604.2 A2 It is possible to consider tax services under broad headings, such as tax planning or compliance. However, such services are often interrelated in practice and might be combined with other types of non-assurance services provided by the [Firm](#) such as corporate finance services. It is, therefore, impracticable to categorise generically the threats to which specific tax services give rise.

Potential Threats Arising from the Provision of Tax Services

604.3 A1 Providing tax services to an [Audit Client](#) might create a self-review threat when there is a risk that the results of the services will affect the accounting records or the [Financial Statements on which the Firm will express an Opinion](#). Such services might also create an advocacy threat.

604.3 A2 Factors that are relevant in identifying self-review or advocacy threats created by providing any tax service to an [Audit Client](#), and evaluating the level of such threats include:

- The particular characteristics of the engagement.
- The level of tax expertise of the client's employees.
- The system by which the tax authorities assess and administer the tax in question and the role of the [Firm](#) or [Network Firm](#) in that process.
- The complexity of the relevant tax regime and the degree of judgement necessary in applying it.

All Audit Clients

AUST R604.4 A [Firm](#) or a [Network Firm](#) shall not provide a tax service or recommend a transaction to an [Audit Client](#) if the service or transaction relates to marketing,

planning, or opining in favor of a tax treatment that was initially recommended, directly or indirectly, by the Firm or Network Firm, and a significant purpose of the tax treatment or transaction is tax avoidance, unless the Firm is confident that the proposed treatment has a basis in applicable tax law or regulation that is **highly likely to prevail**.

AUST 604.4 A1 Unless the tax treatment has a basis in applicable tax law or regulation that the Firm is confident is **highly likely to prevail**, providing the non-assurance service described in paragraph **AUST R604.4** creates self-interest, self-review and advocacy threats that cannot be eliminated and safeguards are not capable of being applied to reduce such threats to an **Acceptable Level**.

AUST 604.4 A2 Firms should document the factors considered in determining why the Firm is confident that providing the non-assurance service described in paragraph AUST R604.4 has a basis in applicable tax law or regulation that is highly likely to prevail.

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C. Tax Advisory and Tax Planning Services

Description of Service

604.11 A1 Tax advisory and tax planning services comprise a broad range of services, such as advising the **Audit Client** how to structure its affairs in a tax efficient manner or advising on the application of a new tax law or regulation.

Potential Threats Arising from the Provision of Tax Advisory and Tax Planning Services

All Audit clients

604.12 A1 Providing tax advisory and tax planning services to an **Audit Client** might create a self-review threat when there is a risk that the results of the services will affect the accounting records or the **Financial Statements on which the Firm will express an Opinion**. Such services might also create an advocacy threat.

AUST 604.12 A2 Providing tax advisory and tax planning services will not create a self-review threat if such services:

- (a) Are supported by a tax authority or other precedent;
- (b) Are based on an established practice (being a practice that has been commonly used and has not been challenged by the relevant tax authority); or
- (c) Have a basis in tax law that the Firm is confident is **highly likely to prevail**.

604.12 A3 In addition to paragraph 604.3 A2, factors that are relevant in identifying self-review or advocacy threats created by providing tax advisory and tax planning services to **Audit Clients**, and evaluating the level of such threats include:

- The degree of subjectivity involved in determining the appropriate treatment for the tax advice in the **Financial Statements**.
- Whether the tax treatment is supported by a ruling or has otherwise been cleared by the tax authority before the preparation of the **Financial Statements**.
- The extent to which the outcome of the tax advice might have a material effect on the **Financial Statements**.

When a self-review threat for an **Audit Client** that is a **Public Interest Entity** has been identified, paragraph R604.15 applies.

AUST 604.12 A4 Firms should document the factors considered in determining why the Firm is confident that providing the tax advisory and tax planning services described in paragraph AUST 604.12 A2 has a basis in tax law that is highly likely to prevail.

When Effectiveness of Tax Advice Is Dependent on a Particular Accounting Treatment or Presentation

R604.13 A Firm or a Network Firm shall not provide tax advisory and tax planning services to an Audit Client when:

- (a) the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the **Financial Statements**; and
- (b) The **Audit Team** has doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework.

Audit Clients that are Not Public Interest Entities

604.14 A1 Examples of actions that might be safeguards to address self-review or advocacy threats created by providing tax advisory and tax planning services to an **Audit Client** that is not a **Public Interest Entity** include:

- Using professionals who are not **Audit Team** members to perform the service might address self-review or advocacy threats.
- Having an appropriate reviewer, who was not involved in providing the service review the audit work or service performed might address a self-review threat.
- Obtaining pre-clearance from the tax authorities might address self-review or advocacy threats.

Audit Clients that are Public Interest Entities

Self-review Threats

R604.15 A Firm or a Network Firm shall not provide tax advisory and tax planning services to an Audit Client that is a Public Interest Entity if the provision of such services might create a self-review threat. (Ref: Para. R600.14, R600.16, 604.12 A2).

Advocacy Threats

AUST R604.15.1 A Firm or a Network Firm shall not provide tax advisory and tax planning services to an Audit Client that is a Public Interest Entity if the provision of such services might create an advocacy threat.

~~604.15 A1 Examples of actions that might be safeguards to address an advocacy threat created by providing tax advisory and tax planning services to an Audit Client that is a Public Interest Entity include:~~

- ~~• Using professionals who are not Audit Team members to perform the service.~~
- ~~• Obtaining pre-clearance from the tax authorities.~~

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SUBSECTION 605 – INTERNAL AUDIT SERVICES

Introduction

605.1 In addition to the specific requirements and application material in this subsection, the requirements and application material in paragraphs 600.1 to 600.27 A1 are relevant to applying the conceptual framework when providing an internal audit service to an [Audit Client](#).¹

Requirements and Application Material

Description of Service

[AUST](#) 605.2 A1 Internal audit services comprise a broad range of activities, including services that may not necessarily be described as an internal audit service, and might involve assisting the [Audit Client](#) in the performance of one or more aspects of its internal audit activities. Internal audit activities might include:

- Monitoring of internal control – reviewing controls, monitoring their operation and recommending improvements to them.
- Examining financial and operating information by:
 - Reviewing the means used to identify, measure, classify and report financial and operating information.
 - Inquiring specifically into individual items including detailed testing of transactions, balances and procedures.
- Reviewing the economy, efficiency and effectiveness of operating activities including non-financial activities of an entity.
- Reviewing compliance with:
 - Laws, regulations and other external requirements.
 - Management policies, directives and other internal requirements.
- Reviewing risk culture, monitoring and compliance with applicable frameworks.

605.2 A2 The scope and objectives of internal audit activities vary widely and depend on the size and structure of the entity and the requirements of [Those Charged with Governance](#) as well as the needs and expectations of management. As they might involve matters that are operational in nature, they do not necessarily relate to matters that will be subject to consideration in relation to the audit of the [Financial Statements](#).

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¹ The [AUASB](#) has prohibited the use of direct assistance from individuals within the client's internal audit function in [Auditing and Assurance Standard ASA 610 Using the Work of Internal Auditors](#) (November 2013).