

**Roundtable Briefing Note**  
**Prepared by the Staff of the IESBA**  
*April 2022*

*International Ethics Standards Board for  
Accountants*

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## Tax Planning and Related Services

**IESBA**

International  
Ethics Standards  
Board for Accountants

## About the IESBA

The [International Ethics Standards Board for Accountants](#)<sup>®</sup> (IESBA<sup>®</sup>) is an independent global standard-setting board. The IESBA's mission is to serve the public interest by setting ethics standards, including auditor independence requirements, which seek to raise the bar for ethical conduct and practice for all professional accountants through a robust, globally operable [International Code of Ethics for Professional Accountants \(including International Independence Standards\)](#) (the Code).

The IESBA believes a single set of high-quality ethics standards enhances the quality and consistency of services provided by professional accountants, thus contributing to public trust and confidence in the accountancy profession. The IESBA sets its standards in the public interest with advice from the IESBA Consultative Advisory Group (CAG) and under the oversight of the Public Interest Oversight Board (PIOB).

# ROUNDTABLE BRIEFING NOTE: TAX PLANNING AND RELATED SERVICES

## I. Introduction

### Background

1. In recent years, much public attention has focused on the topic of tax avoidance in the light of revelations such as the "Paradise Papers"<sup>1</sup> and the "Pandora Papers,"<sup>2</sup> notwithstanding the legality of the tax mitigation schemes or related transactions to achieve desired tax outcomes. Questions have been raised regarding the ethical implications for professional behavior when individual professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs) are involved in developing tax minimization strategies that are perceived as "aggressive," or when firms provide advice to their clients on such strategies.
2. The issue is of such public interest significance<sup>3</sup> that it has been discussed on the G20 agenda. A number of global bodies have also focused on the need for transparency and better disclosure of tax practices, among other policy actions. For example:
  - (a) The Organisation for Economic Cooperation and Development (OECD) launched the [Base Erosion and Profit Shifting \(BEPS\)](#) project in partnership with the G20. The project aims to ensure that the international tax rules do not facilitate shifting corporate profits away from where the actual economic activity and value creation occur. The premise for value creation is linked to the substance over form argument, which maintains that transactions in question should not be evaluated based on their formal legal structure but instead on the tax impact from the underlying substance of the transactions.
  - (b) The World Federation of Exchanges has included [tax transparency](#)<sup>4</sup> as a "material Environmental, Social and Governance (ESG) metric" for reporting by listed companies.
  - (c) The International Federation of Accountants (IFAC) has called for jurisdictions to share information to promote [accountability and long-term global sustainability](#).<sup>5</sup>
  - (d) The International Accounting Standards Board (IASB) has worked on [changes to tax disclosure rules](#).<sup>6</sup>
3. In the light of these developments and pursuant to a commitment in its [Strategy and Work Plan 2019-2023](#), the IESBA formed a Working Group in September 2019 to (a) gather an understanding of regulatory, practice and other developments in corporate and individual tax planning by PAIBs and PAPPs, and (b) identify and analyze the ethical implications of those developments and determine whether there is a need for enhancements to the Code or further actions. In September

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<sup>1</sup> See, for example, the UK House of Commons [Briefing Paper](#), *The Paradise Papers* (November 2017).

<sup>2</sup> See, for example, <https://www.bbc.com/news/world-58780561>.

<sup>3</sup> For example, in its article [What could a new system for taxing multinationals look like?](#) the Economist noted that in 2015, the OECD estimated that tax avoidance robs public coffers of \$100-240 bn, or 4-10% of global corporation tax revenues a year.

<sup>4</sup> *Exchange Guidance & Recommendation* (October 2015), WFE Sustainability Working Group, World Federation of Exchanges.

<sup>5</sup> *G20 Public Trust in Tax – Surveying Public Trust in G20 Tax Systems* (January 2019), Association of Chartered Certified Accountants (ACCA), Chartered Accountants Australia and New Zealand (CA ANZ) and IFAC.

<sup>6</sup> IFRIC 23, *Uncertainty over Income Tax Treatments*.

2021, the Working Group submitted its final [report and recommendations](#) to the IESBA. On the basis of this report and the related recommendations, the IESBA decided to launch a standard-setting project on the topic of tax planning and related services (“tax planning”), establishing a Task Force<sup>7</sup> to take it forward.

### Rationale for Project

4. At the outset, the IESBA acknowledged that PAs play a critically important role in the public interest through providing tax planning services to employing organizations and clients. Through their involvement, they contribute to and facilitate a more efficient and effective operation of jurisdictions’ tax systems.
5. That being said, a number of considerations and desired outcomes underpinned the IESBA’s decision to start the project:
  - A view that the Code can play a more concrete and practical role in guiding PAs’ mindset and behavior when providing tax planning advice to employing organizations and clients. This recognizes that while the Code does not and cannot override laws and regulations, ethics is broader than the law and can guide behaviors and actions where the law is silent. In this regard, the notion that “what is legal is not necessarily ethical” often resonates with stakeholders and it applies to tax planning just as much as to any other professional activities PAs may pursue. Yet, beyond the fundamental principles (FPs) and conceptual framework (CF) (see Appendix 1) and specific provisions aimed at safeguarding PAPPs’ independence in the context of audit and other assurance engagements, the Code is silent on the topic. Additionally, from the perspective of impact, the IESBA agreed that the Code is better placed than non-authoritative material to influence and guide behavior because it is authoritative and enforceable.
  - A significant shift in investor concerns as well as societal expectations for companies to pursue more sustainable business models, and an increasing recognition that there is greater value in the notion of companies pursuing “profitable solutions for the people and the planet” than in serving exclusively the interests of shareholders. In this regard, tax planning has become an important part of the increasing focus among investors and other stakeholders regarding how companies measure up against Environmental, Social, and Governance (ESG) performance indicators. Additionally, there is both a greater awareness among stakeholders of what it means for a PA to act in the public interest as well as a shift in perceptions regarding what is seen as being in the public interest. In particular, what may have been regarded as creative and skillful tax planning may now be perceived differently.
  - The existence of a wide variety of frameworks and guidance materials developed by various organizations in the area of tax planning<sup>8</sup> that are not entirely consistent with each other,

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<sup>7</sup> The Task Force comprises:

- [Jens Poll](#), Chair, IESBA Member
- [Sanjiv Chaudhary](#), IESBA Member
- [Laurie Endsley](#), IESBA Member
- [Andrew Mintzer](#), IESBA Member
- [Channa Wijesinghe](#), IESBA Member

<sup>8</sup> See, for example, Sections V and VI of the IESBA Tax Planning Working Group’s [report](#).

because they address different aspects of tax planning, have different objectives or target different audiences. Outreach undertaken by the Tax Planning Working Group as part of its fact-finding work also indicates that some large accounting firms have developed proprietary guidelines on tax planning. Not all firms, however, have such guidance to assist their tax planning work, especially small and medium practices (SMPs) as they do not have the resources of the larger firms. Further, feedback from outreach indicates that there are stakeholder perceptions that the tax adviser community is not as closely regulated as the audit profession and, therefore, generally feels less constrained in the advisory services it provides. Accordingly, the IESBA believes it would be in the public interest to develop a unifying framework in the Code that would codify the relevant principles and best practices, thereby planting the guideposts to help PAs navigate the judgments and idiosyncrasies of tax planning. Such a framework would also have the benefit of providing a consistent baseline of practice for all PAIBs and PAPPs globally.

- A concern to reinforce public trust in the global accountancy profession. News headlines such as those concerning the Paradise and Pandora Papers noted above have led to public outcry about the role of professional tax advisers in enabling wealthy individuals and multi-national corporations to engage in tax avoidance or evasion. While this project is not addressing tax evasion, which is unlawful, the profession has not escaped being painted with a broad brush as an “enabler” of tax malfeasance. Public mistrust in professional tax advisers has risen to such a level that in some major jurisdictions, legislation is being considered to regulate tax advice and tax advisers.<sup>9</sup> The IESBA believes that developing an ethical framework in the Code to guide PAs’ behaviors and actions in relation to tax planning can go a long way toward protecting the profession’s role and reputation in tax planning. Such a framework can help minimize liability as well as reputational risks for PAs by supporting their judgments and actions as they navigate the often-thin dividing line between what is acceptable and unacceptable tax planning. Equally, acting in accordance with such ethical framework can indirectly assist PAs in influencing their employing organizations’ or clients’ behaviors.
6. The IESBA is not underestimating the challenges in developing an ethical framework as national legalities have become highly complicated in the borderless e-commerce economy. Given the wide diversity of tax laws and regulations, it will be important that this framework be jurisdiction-neutral (i.e., equally applicable in jurisdictions where the tax burden is high and where it is low). Likewise, it will be important to avoid the temptations of analyzing the merits of particular tax positions or strategies planned or adopted by individual or corporate taxpayers, judging the merits of the tax regimes or strategies of jurisdictions, or engaging in debates about tax policy. However, in developing this framework, the IESBA will be focused on providing *practical guidance* to PAs in helping them exercise their judgments in navigating the complexities and uncertainties of tax planning while staying true to their ethical responsibilities under the Code.

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<sup>9</sup> See, for example, [https://www.accountancyeurope.eu/tax/tax-policy-220107/?mc\\_cid=73311ac0b2&mc\\_eid=5898f32087](https://www.accountancyeurope.eu/tax/tax-policy-220107/?mc_cid=73311ac0b2&mc_eid=5898f32087).

## II. Project Objectives, Scope and Limitations

### Objective

7. The objective of the project is to develop a principles-based ethical framework, leveraging the FPs and the CF in the Code, to guide PAs' ethical conduct when providing tax planning and related services to employing organizations and clients, thereby maintaining the Code's robustness and relevance as a cornerstone of public trust in the global accountancy profession.

### Scope and Limitations

8. The scope of the project will encompass:
  - (a) Part 2 – Professional Accountants in Business; and
  - (b) Part 3 – Professional Accountants in Public Practice.

Consideration will be given to the need for any enhancements to the provisions in Part 1 – Complying with the Code, Fundamental Principles and Conceptual Framework.

9. The provisions to be developed will be applicable across individual and corporate taxpayers (from small- and medium-sized enterprises (SMEs) to large publicly traded multi-national entities).
10. At a principles level, the provisions will be equally applicable to public interest entities (PIEs) and non-PIEs. However, the distinction between PIEs and non-PIEs might be a relevant factor for a PA to consider when assessing possible actions to take, such as communication with those charged with governance.
11. PAs' responsibilities when they encounter circumstances involving actual or suspected tax evasion are addressed under the non-compliance with laws and regulations (NOCLAR) provisions of the Code (Sections 260 and 360). This project will consider appropriate references to the NOCLAR provisions.
12. Consistent with any other provisions of the Code, the provisions to be developed under this project will not override laws and regulations, including any anti-avoidance rules prevailing in a given jurisdiction. This project will respect, and not undermine, national sovereignty to enact and promulgate tax laws and regulations as each jurisdiction sees fit.
13. Further, paragraph 100.7 A1 of the Code will remain applicable, i.e., where jurisdictions have provisions that differ from or go beyond those in the Code, PAs in those jurisdictions need to be aware of those differences and comply with the more stringent provisions unless prohibited by law or regulation.
14. While a contextual understanding of tax planning methods or approaches is required for this project, the focus will be on PAs' ethical conduct.
15. This project will not address the issues of tax morality,<sup>10</sup> tax fairness<sup>11</sup> and tax justice.<sup>12</sup>

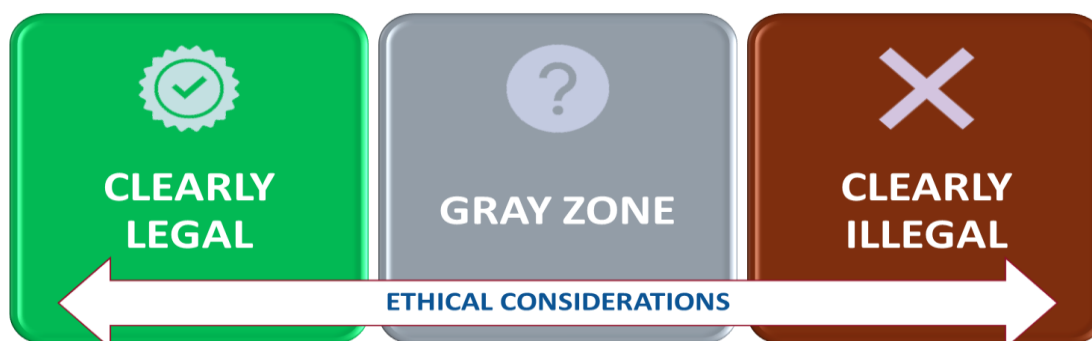
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<sup>10</sup> [Tax Morale](#), as defined by the OECD, is "the intrinsic motivation to pay taxes." This concept is vital to the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues.

<sup>11</sup> In the *Wealth of Nations* (1776) (Smith, A., & Cannan, E. (2003). *The Wealth of Nations*. New York, NY. Bantam Classic), Adam Smith argued that taxation should follow the four principles of fairness, certainty, convenience, and efficiency. Tax fairness is a concept which states that the system of taxation must be equitable to the public. A fair tax system encourages a fair contribution to the cost of maintaining public utilities and infrastructure.

### III. Gray Zone

16. Through its Working Group's fact-finding work, the IESBA noted that there are tax regulations in a number of jurisdictions to deal with unacceptable tax planning practices. These include general anti-avoidance rules and targeted anti-avoidance and mandatory disclosure rules. However, these rules do not necessarily address "aggressive" tax planning practices.
17. The IESBA also noted that jurisdictions might use several approaches to encourage legal compliance and discourage unacceptable tax planning practices and/or behavior. However, such behavior is not necessarily characterized as "aggressive" tax planning.
18. The IESBA acknowledged that it may be challenging to develop ethics provisions on tax planning for PAs in the absence of a clear definition of "aggressive tax avoidance."<sup>13</sup> Instead, some stakeholders have suggested that the IESBA explore the notion of unacceptable tax planning practices and/or behavior and consider whether it is possible to codify indicators of unacceptable tax planning by PAs.
19. In this regard, the IESBA notes that tax planning services can fall anywhere within a broad ethical spectrum from what is considered clearly legal to what is considered clearly illegal. All along this spectrum, ethical considerations apply to PAs providing tax planning services. However, the perception of PAs' unethical behavior in carrying out tax planning services that, while not illegal, are perceived as unacceptable tends to arise within the boundaries of what the IESBA has termed the "gray zone."



20. The IESBA has observed that while the gray zone is not necessarily illegal, there may be tax planning practices within that zone that can create threats to compliance with the FPs. In its preliminary discussions, the IESBA has considered that the gray zone could be further categorized into tax planning practices that are "uncertain" (i.e., they deal with situations where it is uncertain what would be considered appropriate tax planning), and those that are "improper" (i.e., the tax planning would be viewed as unacceptable from an ethical perspective).
21. The focus of the response framework is to provide practical guidance to PAs in navigating this gray zone so that they remain in full compliance with the FPs of the Code.

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<sup>12</sup> According to ActionAid, tax justice is a central concern for anyone working for social justice. Tax Justice UK sees a parallel in the movement for tax justice to the movement for women's rights and labor rights as important elements of a country's social fabric. It is a belief in genuinely progressive taxation, i.e., tax systems that generate sufficient public revenue while ensuring that this revenue is fairly redistributed and focused on rebalancing economic and gender inequalities.

<sup>13</sup> The IESBA has agreed that it would not be feasible to define "aggressive tax avoidance" on a global basis.

#### **IV. Purpose of, and Approach to, the Roundtable**

22. The roundtable aims to bring together as broad a range of stakeholders as possible globally to discuss the state of play and explore how the IESBA could formulate the response framework for PAIBs and PAPPs. The IESBA will take the feedback from the roundtable discussions into consideration as it develops the proposed ethical framework.
23. Appendix 2 sets out the agenda for the roundtable, which will be held virtually. After the welcome and opening remarks from the IESBA Chair, there will be brief remarks from representatives of a few selected organizations. These individuals and their organizations will be introduced following the IESBA Chair's remarks. Participants will then be allocated to three breakout groups to discuss a number of topics. They will then rejoin the plenary session for a high-level report-back on the key takeaways from each breakout group. There will then be an open session within the remaining time during which participants will be able to share any further comments or reactions based on what has been reported back.
24. Appendix 3 sets out the discussion topics for the breakout session. Each breakout group will be moderated by a member of the Tax Planning Task Force or IESBA staff.



### THE CODE'S FUNDAMENTAL PRINCIPLES AND CONCEPTUAL FRAMEWORK

#### Section 110 – The Fundamental Principles

110.1 A1 There are five fundamental principles of ethics for professional accountants:

- (a) Integrity – to be straightforward and honest in all professional and business relationships.
- (b) Objectivity – to exercise professional or business judgment without being compromised by:
  - (i) Bias;
  - (ii) Conflict of interest; or
  - (iii) Undue influence of, or undue reliance on, individuals, organizations, technology or other factors.
- (c) Professional Competence and Due Care – to:
  - (i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and
  - (ii) Act diligently and in accordance with applicable technical and professional standards.
- (d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.
- (e) Professional Behavior – to:
  - (i) Comply with relevant laws and regulations;
  - (ii) Behave in a manner consistent with the profession's responsibility to act in the public interest in all professional activities and business relationships; and
  - (iii) Avoid any conduct that the professional accountant knows or should know might discredit the profession.

#### Section 120 – The Conceptual Framework

120.1 The circumstances in which professional accountants operate might create threats to compliance with the fundamental principles. Section 120 sets out requirements and application material, including a conceptual framework, to assist accountants in complying with the fundamental principles and meeting their responsibility to act in the public interest. Such requirements and application material accommodate the wide range of facts and circumstances, including the various professional activities, interests and relationships, that create threats to compliance with the fundamental principles. In addition, they deter accountants from concluding that a situation is permitted solely because that situation is not specifically prohibited by the Code.

120.2 The conceptual framework specifies an approach for a professional accountant to:

- (a) Identify threats to compliance with the fundamental principles;
- (b) Evaluate the threats identified; and
- (c) Address the threats by eliminating or reducing them to an acceptable level.

...

**R120.5** When applying the conceptual framework, the professional accountant shall:

- (a)** Have an inquiring mind;
- (b)** Exercise professional judgment; and
- (c)** Use the reasonable and informed third party test described in paragraph 120.5 A6.

...

120.5 A6 The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an accountant, but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the accountant's conclusions in an impartial manner.

...

120.6 A3 Threats to compliance with the fundamental principles fall into one or more of the following categories:

- (a) Self-interest threat - the threat that a financial or other interest will inappropriately influence a professional accountant's judgment or behavior;
- (b) Self-review threat - the threat that a professional accountant will not appropriately evaluate the results of a previous judgment made, or an activity performed by the accountant or by another individual within the accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of performing a current activity;
- (c) Advocacy threat - the threat that a professional accountant will promote a client's or employing organization's position to the point that the accountant's objectivity is compromised;
- (d) Familiarity threat - the threat that due to a long or close relationship with a client, or employing organization, a professional accountant will be too sympathetic to their interests or too accepting of their work; and
- (e) Intimidation threat - the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the accountant.

**AGENDA FOR ROUNDTABLE**

**Time and format      Virtual roundtable**

The event will be divided into a main plenary session and breakout discussions (reporting back to the plenary) with breaks in between.

Welcome  
(10 minutes)                      Welcome and opening remarks from Ms. Gabriela Figueiredo Dias, IESBA Chair

Remarks  
(20 minutes)                      Remarks from selected organizations

Presentation  
(15 minutes)                      Prof. Jens Poll, Task Force Chair  
State of play today, principles-based response framework

Break  
(5 minutes)                      Short break before joining breakout groups

Breakout Discussions  
(120 minutes)                      Discussions

Break  
(10 minutes)                      Short break before rejoining plenary

Plenary Discussions  
(50 minutes)                      Report back from breakout discussions by appointed representatives and open session

Closing remarks  
(10 minutes)                      Prof. Jens Poll, Task Force Chair  
Overall summary of the roundtable and next steps

**BREAKOUT DISCUSSION TOPICS**

1. Paragraph 100.1 of the Code states that a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest.
  - (a) How would you balance a PA's responsibility to act in the client's or employing organization's interests versus their responsibility to act in the public interest when providing tax planning advice?
  - (b) What are the particular challenges PAs face when balancing the two interests?
2. Assume a PA is advising a client or employing organization on a tax planning strategy where the local tax laws are unclear.
  - (a) To what extent should the PA take into account the intent of the legislature?
  - (b) How would the PA determine if the tax advice is potentially contrary to that intent?
    - How would the PA approach the tax strategy if it concerns a cross-border transaction involving multiple jurisdictions?
    - Would their assessment change if the tax strategy could be considered to be artificial or contrived?
3. There is only one provision in the Code that deals with the topic of tax avoidance, and this is in the specific context of auditor independence. Paragraph R604.4 in the Code<sup>14</sup> prohibits a firm or a network firm from providing a tax service or recommending 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 likely to prevail.
  - (a) Assuming you are a PAPP providing tax planning advice to a non-audit client, how would you approach your advice to the client if you are uncertain that the tax treatment will prevail based on the applicable tax law or regulation?
  - (b) Assuming you are a PAIB in charge of formulating your employing organization's tax strategy, how would you approach your advice to the employing organization if you are uncertain that the tax treatment will prevail based on the applicable tax law or regulation?
  - (c) What specific factors should the PA consider in exercising their judgment?

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<sup>14</sup> See [revised Non-assurance Services \(NAS\) provisions](#), released in April 2021 and effective for audits of financial statements for periods beginning on or after December 15, 2022.

4. A firm specializes in developing tax planning products for sale to the public. Assuming you are a firm of professional accountants, and you are considering introducing your client to this other firm to meet your client's tax planning needs:
  - (a) What ethical considerations, if any, would you apply in such a situation?
  - (b) If you do introduce your client to that firm and you receive a commission or referral fee, would you disclose this to your client?
5. Assuming you are a PAPP/PAIB, what should be your responsibility and the actions you should take if your client/CEO is determined to pursue a tax strategy:
  - (a) For which you have doubts about its appropriateness?
    - Would your assessment change if there is a legal counsel's opinion which says the planning is effective?
  - (b) That you do not believe is appropriate?
  - (c) Without taking your full advice.
6. In light of the discussion we just had, is there anything else you believe the IESBA should consider in developing the ethical framework?