

Agenda Item 12(c) - Tax Advisory and Tax Planning Services Analysis New to Extant

An audit client that is a public interest entity, requests tax advice from its audit firm on a proposed transaction/arrangement and whether it is in accordance with Australian taxation law. There is no established tax authority, precedents or practice relevant to the proposed transaction/arrangement. However, the Tax partner at the audit firm has reviewed the proposed transaction/arrangement and concluded that it has a basis in tax law and is confident it is likely to prevail.

The below applies the new IESBA NAS provisions and Extant APES 110 provisions to the scenario and focuses only on self-review threat as the treatment of advocacy threats is substantively the same under the extant and new.

IESBA New NAS Provisions

Extant APES 110

C. Tax Advisory and Tax Planning Services

Description of Service		Application of Facts	Application of Facts	
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 tax law or regulation.	The tax advice relates to advising on the application of a tax law or regulation.	604.7 A2	Tax planning or other tax advisory services comprise a broad range of services, such as advising the client how to structure its affairs in a tax efficient manner or advising on the application of a new tax law or regulation.
				The tax advice relates to advising on the application of a 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.	There is a risk that the results of the service will affect the financial statements and as such might create a self-review threat.	604.7 A1	Providing tax planning and other tax advisory services might create a self-review or advocacy threat.	There is a risk that the results of the service will affect the financial statements and as such might create a self-review threat.
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 likely to prevail.	Although there is no established tax authority, precedents or practice, due to the tax partner's subjective judgement that the advice has a basis in tax law and is confident it is likely to prevail, then subparagraph 604.12 A2(c) would apply and the service is deemed to 'not create a self-review threat'. Based on IESBA's intent, for 604.12 A2(c) to be successfully applied, the firm must have a 'high level of confidence'.			

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IESBA New NAS Provisions		Extant APES 110		
604.12 A3	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>When a self-review threat for an audit client that is a public interest entity has been identified, paragraph R604.15 applies.</p>	<p>No evaluation of the self-review threat is required as paragraph 604.12 A2 applies and the service is deemed to 'not create a self-review threat'.</p>	<p>604.7 A3</p> <p>In addition to paragraph 604.3 A2, factors that are relevant in evaluating the level of self review or advocacy threats created by providing tax planning and other tax advisory services to Audit Clients include:</p> <ul style="list-style-type: none"> • 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 private ruling or has otherwise been cleared by the tax authority before the preparation of the Financial Statements. <p>For example, whether the advice provided as a result of the tax planning and other tax advisory services:</p> <ul style="list-style-type: none"> o Is clearly supported by a tax authority or other precedent. o Is an established practice. o Has a basis in tax law that is likely to prevail. <ul style="list-style-type: none"> • The extent to which the outcome of the tax advice will have a material effect on the Financial Statements. • Whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the Financial Statements and there is doubt as to the appropriateness of the accounting treatment or presentation under the relevant financial reporting framework. 	<p>The firm would need to apply professional judgement and assess the factors in evaluating the level of self-review threat. The tax advice is not clearly supported by tax authority, other precedent or established practice. Although in the tax partner's opinion it has a basis in tax law that is likely to prevail it has not 'otherwise been cleared by the tax authority'. Therefore, the threat may not be at an acceptable level. Further, it may have a material effect on the financial statements which may also increase the level of the threat.</p>
When Effectiveness of Tax Advice Is Dependent on a Particular Accounting Treatment or Presentation				
R604.13	<p>A firm or a network firm shall not provide tax advisory and tax planning services to an audit client when:</p> <p>(a) The effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements; and</p> <p>(b) The audit team has doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework.</p>	<p>Not applicable to this particular scenario.</p>	<p>R604.8</p> <p>A Firm or a Network Firm shall not provide tax planning and other tax advisory services to an Audit Client when the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the Financial Statements and:</p> <p>(a) The Audit Team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and</p> <p>(b) The outcome or consequences of the tax advice will have a material effect on the Financial Statements on which the Firm will express an Opinion.</p>	<p>Not applicable to this particular scenario.</p>

Audit Clients that are Not Public Interest Entities

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604.14 A1	<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>Not applicable as this provision only applies to audit clients that are not public interest entities.</p>	<p>604.7 A4</p> <p>Examples of actions that might be safeguards to address such threats include:</p> <ul style="list-style-type: none"> • 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. <p>In this scenario professionals who are not audit team members performed the tax advisory services. The firm would need to apply professional judgement about whether this in itself is a sufficient safeguard to reduce the threat to an acceptable level. If not, the firm may need to apply an alternative safeguard such as having an appropriate reviewer or obtaining pre-clearance from the tax authorities.</p>
<p><i>Audit Clients that are Public Interest Entities</i> Self-review Threats</p>			
R604.15	<p>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).</p>	<p>Even though the audit client is a public interest entity and the service might create a self-review threat, this prohibition does not apply as paragraph 604.12 A2 applies and the service is deemed to 'not create a self-review threat'.</p>	
<p><i>Advocacy Threats</i></p>			
604.15 A1	<p>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:</p> <ul style="list-style-type: none"> • Using professionals who are not audit team members to perform the service. • Obtaining pre-clearance from the tax authorities. 	<p>Not applicable as this analysis is focussing on self-review threat only.</p>	