

AGENDA PAPER

Item Number: 9
Date of Meeting: 23 February 2023
Subject: Update on the IESBA Project on Tax Planning & Related Services

Action Required For Discussion For Noting For Information

Purpose

To provide the Board with an update on IESBA's Project on Tax Planning & Related Services, which will impact APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) and APES 220 *Taxation Services* (APES 220) in due course.

Background

In September 2021, the International Ethical Standards Board for Accountants (IESBA) approved a [project proposal](#) on tax planning and related services. The project aims to develop a principles-based framework based on the fundamental principles and the conceptual framework in the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (IESBA Code) to guide professional accountants' ethical conduct when providing tax planning and related services to clients or their employer.

A significant impetus for this project is recent tax scandals such as the Panama Pandora and Paradise papers. These scandals have focused the public, government and regulatory bodies of multiple jurisdictions' attention on the professional practices and behaviour of professional enablers such as lawyers and accountants.

At the IESBA March 2022, the IESBA reviewed a [report](#) from the Public Interest Oversight Board (PIOB) on the public interest considerations of IESBA's current projects. The PIOB supports the IESBA's tax project noting the current global emphasis on taxation, tax avoidance and social responsibility regarding tax practices.

Technical Staff provided an update at the September 2022 Board meeting on IESBA's project, including the project scope, global stakeholder engagement, proposed definition of Tax Planning and Related Services and Sections 280 and 380 of the IESBA Code ([Agenda Item 14](#)).

APESB CEO Channa Wijesinghe has been a member of this IESBA Taskforce (in his capacity as an IESBA member) and has been involved in IESBA's developments since 1 January 2022.

IESBA Tax Planning and Related Services ED

At the December 2022 IESBA meeting, the [Board unanimously approved](#) for exposure of the proposed new Sections 280 and 380 of the IESBA Code addressing Tax Planning and Related Services (Tax Planning and Related Services ED). The proposed revisions establish an ethical framework to assist professional accountants in business and public practice to make judgements and decisions when advising on tax planning or related activities/services, including:

- the role of acting in the public interest in the context of tax planning;
- establishing a “credible basis” for recommending or otherwise advising on a tax planning arrangement;
- specifying a “stand-back” test;
- providing guidance on navigating the “gray zone” of uncertainty; and
- specifying communication expectations when there is disagreement with the employing organisation or client on a proposed tax planning arrangement.

Proposed Ethical Framework

The proposed ethical framework consists of the following elements:

- 1 **Comply – fundamental principles (FP)** and highlight the types of **threats**
- 2 **Exhibit** – mindset and behaviour expected following the **Role and Mindset** provisions of the Code
- 3 **Review** – applicable tax laws and regulations, the legislative **intent** behind the relevant laws and regulations, and the **economic purpose** and **substance** of the transaction
- 4 **Exercise** – professional judgement to establish a **credible basis** for the TP advice in circumstances of uncertainty
- 5 **Consult** – internally or externally with **qualified experts**, which might be part of specific actions to address **identified threats**
- 6 **Communicate** – relevant matters or concerns with the individual client, management or those charged with governance, including as part of an **escalation process where necessary**
- 7 **Evaluate** – need for **transparency**, having regard to professional accountants’ **duty of confidentiality** under the IESBA Code
- 8 **Develop** – an appropriate level of **documentation** throughout the process to substantiate their **judgements, decisions and actions**
- 9 **Respond** – suspected NOCLAR when encountering information that suggests tax planning might have “**stepped over the line**” into an actual or suspected breach of tax laws and regulations

Proposed Sections 280 and 380

The key proposals in the new Section 380 are summarised in the following table (note Section 280 has mirrored provisions for professional accountants in business):

Key Proposal	Summary of Proposal
Role of the professional accountant in acting in the public interest	<ul style="list-style-type: none"> Professional accountants are expected to exercise professional judgment. Should not attempt to define or describe the public interest in the context of tax planning recognising that (para 380.4 A2): <ol style="list-style-type: none"> part of acting in the public interest is to assist employing organisations/clients to comply with tax laws and regulations – professional accountants play an important role rather than <u>assuming</u> the responsibility for compliance; employing organisations/clients have an obligation to pay their legally assessed taxes; and reputational risks to employing organisations/clients and the profession are an important consideration.
Credible basis	<p>Professional accountants must only recommend or otherwise advise on a tax planning arrangement if they have concluded there is a “<u>credible basis</u> in laws and regulations” (para R380.11):</p> <ul style="list-style-type: none"> this does not preclude the professional accountant from explaining to the client the rationale for determining there is no credible basis (para 380.11 A1); and the determination of whether there is a credible basis requires the exercise of professional judgment based on (anchored in) jurisdictional tax laws and regulations (para 380.11 A2).
Consideration of the overall tax planning advice or recommendation	<p>The “stand-back” provision requires consideration by the professional accountant of the reputational, commercial and wider economic consequences that could arise from the way stakeholders might perceive the tax planning arrangement (paras R380.12 to R380.13):</p> <ul style="list-style-type: none"> This is a good faith consideration based on the professional accountant’s knowledge of the context and circumstances at the time. There is no expectation that the professional accountant will be subject to hindsight judgement. It is the professional accountant’s (and nobody else’s) judgement. It is not about tax morality or social justice.
Multi-jurisdictional tax benefit	<p>Ethical issues might arise from cross-border tax planning arrangements vs. when there are tax benefits to the client/employing organisation, which the professional accountant might advise the client to disclose to tax authorities (para 380.14 A1).</p> <p>Paragraph 380.14 A2 provides relevant factors professional accountants might consider in determining whether to make the disclosure (factors are not meant to be exhaustive).</p> <p>The involvement of external experts is outside the scope of this project.</p>
Application of the conceptual framework	

Key Proposal	Summary of Proposal
	<p>Where there is uncertainty about whether a proposed tax planning arrangement complies with tax laws and regulations, the professional accountant must discuss this with the client (para R380.16).</p> <p>Guidance is provided on:</p> <ul style="list-style-type: none"> • threats that might be created when providing a tax planning service (para 380.17 A1); • factors relevant in evaluating such threats (para 380.17 A2); • actions that might eliminate threats (para 380.17 A3); and • Actions that might be safeguards (para 380.17 A4).
<p>Disagreements</p>	<p>Requires the professional accountant to take steps if they disagree that a tax planning arrangement that a client wants to pursue has a credible basis (para R380.19).</p> <p>If the client wishes to pursue the tax planning arrangement against the professional accountant's advice, the professional accountant must consider advising the client to communicate this to management, tax authorities and the external auditor (para R380.20).</p> <p>Professional accountant to consider communicating the details of the disagreement with TCWG if deemed appropriate (para R380.20 A1).</p> <p>Depending on the client's response, the professional accountant must consider withdrawing from the engagement (para R380.21).</p> <p>Avoid inadvertently limiting the "client" to an entity – the client could be an individual.</p>

Way forward

IESBA's Tax Planning and Related Services ED is expected to be released in February 2023 with a public comment period of 90 days.

IESBA is holding the following global webinars on the Tax Planning and Related Services ED to explain the key proposals:

- Monday, 27 February 2023, 10 AM-11 AM US Eastern Standard Time (EST)
- Tuesday 28 February 2023, 4 PM-5 PM US EST – being Wednesday 1 March 2023, 8 AM-9 AM Australian Eastern Daylight Time (AEDT); and
- Tuesday 28 February 2023, 9 PM-10 PM US EST – being Wednesday 1 March 2023, 1 PM-2 PM AEDT.

APESB CEO, Channa Wijesinghe will be presenting at the webinar from 1.00 PM to 2.00 PM on 1 March 2023 in his capacity as an IESBA member.

Proposed APESB Roundtable

APESB will hold an online Roundtable on the Tax Planning and Related Services ED in mid to late April 2023 to explore the proposals with Australian stakeholders and to inform APESB's submission to IESBA on the ED. Technical Staff will also review the likely impact on APES 220.

IESBA anticipates issuing a Final Standard by the end of 2023, after which APESB will follow its normal due process and issue an exposure draft.

Technical Staff will continue to monitor the progress of the IESBA project and will update the Board on future developments.

Recommendation

The Board note the update on the IESBA's Project on Tax Planning and Related Services.

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