

IESBA's Exposure Draft on Tax Planning & Related Services

APESB Roundtable

19 April 2023



Accounting Professional & Ethical Standards Board

Welcome



Nancy Milne OAM
Chairman

APESB Roundtable - Agenda

| | |
|----------|---|
| 9.30 AM | Welcome |
| 9.35 AM | <i>IESBA's Proposed Revisions to the Code Addressing Tax Planning and Related Services ED</i> |
| 10.10 AM | Roundtable discussions – Tax Planning and Related Services |
| 11.10 AM | Break |
| 11.20 AM | Feedback Session – Tax Planning and Related Services |
| 11.45 AM | Update on IESBA's proposed Strategy & Work Plan, 2024 - 2027 |
| 11.55 AM | Closing remarks |

Headlines

- [Starbucks](#) paid just £5.4m in UK corporation tax in 2021 despite making a gross profit of £95m. In 2012, it was revealed that Starbucks had paid just £8.6m in taxes on £3bn in UK sales since 1998, when it launched its first UK coffee shop. The Starbucks brand faced years of criticism as being associated with tax avoidance.
- [Former PwC partner](#) banned for 2 years in Australia for sharing of confidential information about government plans to target multinational tax avoidance with the firm's clients.

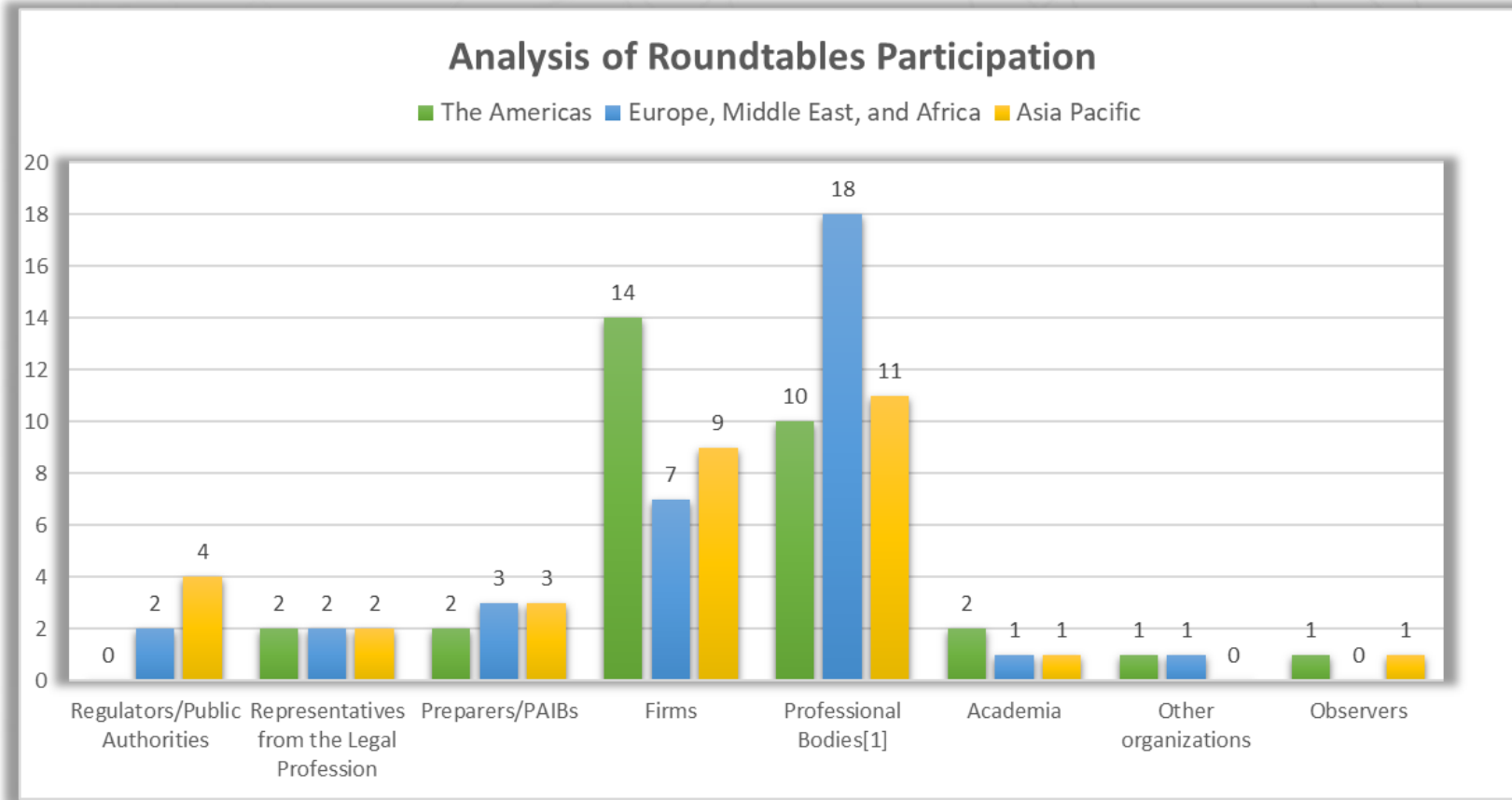


*IESBA's Proposed Revisions to the Code
Addressing Tax Planning and Related Services
Exposure Draft*



Channa Wijesinghe
APESB CEO &
IESBA Tax Planning Taskforce Member

IESBA global roundtables April 2022- participants



| The Americas | Europe, Middle East, and Africa | Asia Pacific |
|---------------|---------------------------------|------------------|
| Brazil | Belgium | Australia |
| Canada | Greece | Hong Kong SAR |
| Mexico | India | Indonesia |
| USA | Italy | Japan |
| | Netherlands | Malaysia |
| | South Africa | New Zealand |
| | UK | Singapore |

1. Some of the Professional Bodies have responsibilities for setting ethics standards in their jurisdictions

Proposed Ethical Framework

| | |
|--------------------|--|
| Comply | fundamental principles (FP) and highlight the types of threats |
| Exhibit | mindset and behavior expected following the Role and Mindset provisions of the Code |
| Review | applicable tax laws and regulations, the legislative intent behind the relevant laws and regulations, and the economic purpose and substance of the transaction |
| Exercise | professional judgment to establish a credible basis for the TP advice in circumstances of uncertainty |
| Consult | internally or externally with qualified experts , which might be part of specific actions to address identified threats |
| Communicate | relevant matters or concerns with the individual client, management or those charged with governance, including as part of an escalation process where necessary |
| Evaluate | need for transparency , having regard to PAs' duty of confidentiality under the Code |
| Develop | appropriate level of documentation throughout the process to substantiate their judgments, decisions and actions |
| Respond | suspected NOCLAR when encounter information that suggests TP might have " stepped over the line " into an actual or suspected breach of tax laws and regulations |

Key proposals in the Tax Planning & Related Services ED

ROLE OF THE PROFESSIONAL ACCOUNTANT IN ACTING IN THE PUBLIC INTEREST

CREDIBLE BASIS

CONSIDERATION OF THE OVERALL TAX PLANNING ADVICE OR RECOMMENDATION

MULTI-JURISDICTIONAL TAX BENEFIT

APPLICATION OF THE CONCEPTUAL FRAMEWORK

DISAGREEMENTS

DOCUMENTATION

Role of the Professional Accountant in acting in the Public Interest

- PAs are expected to exercise their professional judgment
- Should not attempt to define or describe the PI in the abstract in context of TP:
 - (a) Acknowledge that a large part of acting in the PI is to assist clients or employing organizations comply with tax laws and regulations – PAs play an important role rather than assuming the responsibility of ensuring compliance with tax laws and regulations
 - (b) Recognize that clients and employing organizations have a responsibility to pay their legally assessed tax dues
 - (c) Reputational risks to clients and employing organizations and to the profession are an important consideration

References: Proposed paras 380.4 A1 and 380.4 A2; 280.4 A1 and 280.4 A2

Credible Basis



Credible Basis - Proposals overview

- Clarify that a PA to only provide recommend or otherwise advice on a TP arrangement if the PA has concluded that there is a credible basis
 - to avoid misinterpretation that this provision is prohibiting a PA from engaging in any discussion with the client if the PA has determined that there is no credible basis for the TP arrangement
 - application material in paragraph 380.11 A1 complements this change
- Clarify that determining whether there is a credible basis will require the PA to exercise professional judgment based on the tax laws and regulations prevailing at the time of the assessment
 - TF also believes that a credible basis must ultimately be anchored to the relevant tax laws and regulations, hence the phrase "credible basis in laws and regulations"

Determining credible basis

- When determining whether there is a credible basis (proposed para R380.11 and 380.11 A2):
 - Use professional judgement
 - Must be based on tax laws and regulations prevailing at time of the assessment
 - Consider jurisdictional variations.
- If there is no credible basis, should explain rationale to client (proposed para 380.11 A2).



Potential actions to establish credible basis

- Review facts & circumstances (including economic purpose & substance of arrangement)
- Review relevant literature (e.g., court decisions & tax authority rulings)
- Consider if common practice not challenged by relevant tax authorities
- Likelihood of acceptance by tax authorities based on all relevant facts and circumstances
- Consult with experts
- Consult with relevant tax authorities

References: Proposed para 380.11 A3

Consideration of the Overall Tax Planning Advice or Recommendation



Consideration of the Overall Tax Planning Advice or Recommendation

- Intent of paragraph R380.12: the stand-back provision is a consideration by the PA of the reputational, commercial and wider economic consequences that could arise relative to how stakeholders might perceive the TP arrangement
 - This is a good faith consideration based on PA's knowledge of the context and circumstances at the time
 - No expectation that the PA will be subject to hindsight judgment
 - It is the PA's (and not someone else's) judgment
 - It is not about tax morality or social justice

Consideration of the Overall Tax Planning Advice or Recommendation

- Having established a credible basis, PA now performs stand back test.
- Critical public interest test which also has the PIOB's support
- Stand back test involves considering reputational and commercial risks, and wider economic consequences.
- Consider adverse implications such as negative publicity, fines or penalties.
- Consider the tax base of the jurisdiction(s) – OECD BEPS
- Communication of final basis of PA's conclusion.

References: Proposed paras R380.12 to R380.13; R280.12 to R280.13

Multi-jurisdictional Tax Benefit

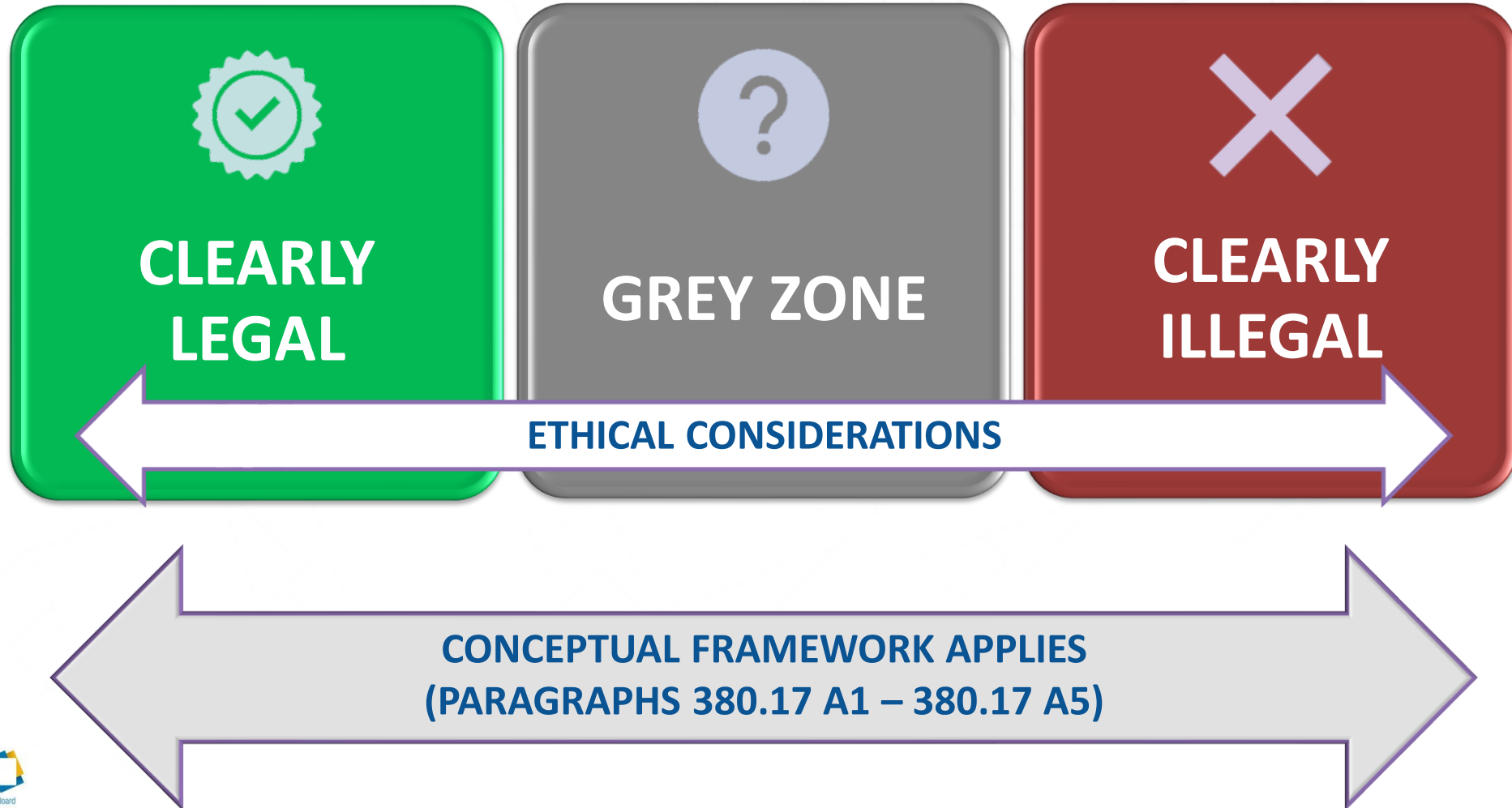
- Helps to clarify what ethical issue might arise from cross-border TP arrangements vs. when there are tax benefits to the client/employing organization
- Proposed guidance in 380.14 A2 describes:
 - Relevant factors PAs might consider in determining whether to make the disclosure noted in paragraph 380.14 A1
 - Examples of factors provided are not meant to be exhaustive
- A question raised about involvement of external experts – out of scope of this project



Application of Conceptual Framework



Recap: Broad Spectrum of Tax Planning



Grey Zone – Circumstances of Uncertainty

380.15 A2 Circumstances that might give rise to uncertainty include:

- Difficulty in establishing an adequate factual basis.
- Difficulty in establishing an adequate basis of assumptions.
- Lack of clarity in the tax laws and regulations and their interpretation, including:
 - Gaps in the tax laws and regulations.
 - Challenges to previous court rulings.
 - Conflicting tax laws and regulations in different jurisdictions in circumstances involving cross-border transactions.
 - Innovative business models not addressed by the current tax laws and regulations.
 - Recent court or tax authority rulings or positions that cast doubt on similar tax planning arrangements.
 - Complexity in interpreting or applying the tax laws and regulations from a technical or legal point of view.
 - Lack of a legal precedent, ruling or position.
- Lack of clarity regarding the economic purpose and substance of the tax planning.
- Lack of clarity about the ultimate beneficiaries of the tax planning arrangement.

Grey Zone – Discussing Uncertainty with the client

Circumstances of Uncertainty

...

R380.16 Where there is uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations, a professional accountant shall discuss the nature of the uncertainty with the client.

- 380.16 A1 The discussion serves a number of purposes, including:
- Explaining the professional accountant's assessment about how likely the relevant tax authorities are to have a view that supports the proposed tax planning arrangement where there is a lack of clarity in the interpretation of the relevant tax laws and regulations.
 - Considering any assumptions that might need to be made or changed.
 - Obtaining any additional information from the client that might reduce the uncertainty.
 - Discussing any reputational, commercial or wider economic consequences in pursuing the proposed tax planning arrangement.
 - Discussing potential courses of action to mitigate the possibility of adverse consequences for the client, including consideration of disclosure to the relevant tax authorities.

Gray Zone - proposed clarifications to guidance

- Some clarifications to guidance on types of threats that might be created when providing a TP service
 - Paragraph 380.17 A1
- Some clarifications to guidance providing examples of:
 - Actions that might eliminate threats (paragraph 380.17 A3)
 - Actions that might be safeguards (paragraph 380.17 A4)

Disagreements

- Guidance on:
 - Sequence of steps PA should take if disagreement with client arises
 - The circumstance is about a disagreement over a TP arrangement the client wishes to pursue against PA's advice
 - Avoid inadvertently limiting the “client” to an entity – the client could be an individual
 - Include guidance for PA to consider communicating the details of the disagreement with TCWG if deemed appropriate

References: Proposed paras R380.19 to R380.21

Documentation

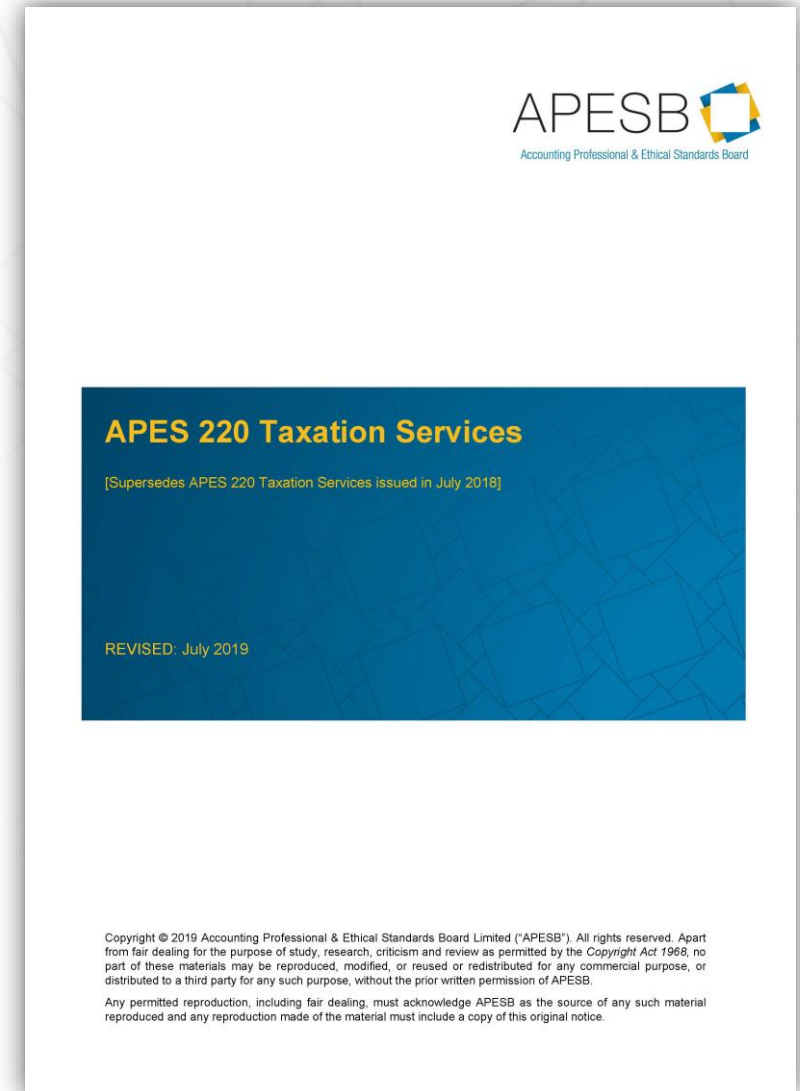
- Proposal to encourage, but not require, that PAs prepare documentation
- Consistent with Sections 2 and 3 of the Code
- Documentation is a matter of quality management or engagement performance rather than an ethical behavior issue
 - Importance of documentation (see paragraphs 380.23 A1 and 280.21 A1)
 - how such documentation will assist PAs (see paragraphs 380.23 A2 and 280.21 A2)

Considerations for *APES 220 Taxation Services*



APES 220 Taxation Services

- Covers a broader range of tax services than the proposed ED
- Provisions that may be impacted:
 - Section 5 – Tax schemes and arrangements
 - Section 7 – False and misleading information
- Project to review APES 220 expected to recommence in late 2023



Important dates – IESBA Tax Planning and Related Services ED

| Consultation process | Date |
|--|---------------|
| Online roundtable | 19 April 2023 |
| Local stakeholders' submissions to APESB | 4 May 2023 |
| Submissions due to the IESBA on the Tax Planning and Related Services ED | 18 May 2023 |

Roundtable Discussions Tax Planning and Related Services



Matters for discussion – Group 1

Proposed New Sections 380 and 280

1. Do you agree with the IESBA's approach to addressing tax planning by creating two new sections (380 and 280) in the Code?

Description of Tax Planning and Related Services

2. Do you agree with the IESBA's description of tax planning as set out in the exposure draft?

Role of the Professional Accountant in Acting in the Public Interest

3. Do you agree with the IESBA's proposals in the exposure draft regarding the role of the professional accountant in acting in the public interest in the context of tax planning?

Matters for discussion – Group 1

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

4. Do you agree with the IESBA's proposals regarding the thought process for professional accountants to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a tax planning arrangement to a client or an employing organisation?
5. Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?

Consideration of the Overall Tax Planning Recommendation or Advice

6. Do you agree with the proposals regarding the stand-back test as described in the exposure draft?

Matters for discussion – Group 2

Describing the Grey Zone and Applying the Conceptual Framework to Navigate the Grey Zone

7. Do you agree with the IESBA's proposals describing the grey zone of uncertainty and its relationship to determining that there is a credible basis for the tax planning arrangement?
8. In relation to the application of the conceptual framework, is the proposed guidance on
 - a) The types of threats that might be created in the grey zone;
 - b) The factors that are relevant in evaluating the level of such threats;
 - c) The examples of actions that might eliminate threats caused by circumstances of uncertainty; and
 - d) The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate?

Matters for discussion – Group 2

Disagreement with Management

9. Do you agree with the proposals in the exposure draft which set out the various actions professional accountants should take in the case of disagreement with the client or with the professional accountant's immediate superior or other responsible individual within the employing organisation regarding a tax planning arrangement?

Documentation

10. Do you agree with the IESBA's proposals regarding documentation?

Tax Planning Products or Arrangements Developed by a Third Party

11. Do you agree with the IESBA's proposals addressing tax planning products or arrangements developed by a third party provider?

Multi-jurisdictional Tax Benefit

12. Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as outlined in the exposure draft?

Break



Roundtable Feedback Tax Planning and Related Services



IESBA's Consultation Paper

Proposed Strategy and Work Plan 2024 - 2027



Channa Wijesinghe
APESB CEO &
IESBA Planning Committee Member

STRATEGIC THEMES

STRATEGIC DRIVERS

Enhancing trust in sustainability reporting and assurance

- Rapidly Growing Market Demand for Sustainability Information
- Heightened Stakeholder Expectations for Greater Timeliness

Strengthening the Code or responding in other ways in areas beyond sustainability reporting and assurance

- The Expanding Roles of PAIBs
- Ongoing Impact of Technological Transformations
- Heightened Stakeholder Expectations for Greater Timeliness
- Trust Crisis and Other Repercussions from Recurring High-profile Corporate Failures

Further enhancing the diversity of stakeholder perspectives and the global operability and acceptance of the IESBA's standards

- The Imperatives of Quality and Global Acceptance of the IESBA's Standards
- Global Operability of the IESBA's Standards

Widening the influence of the IESBA's standards through a continued focus on adoption and implementation

- Further Increasing Global Adoption of the Code and Supporting Its Effective Implementation

Strategic Work Plan

Ongoing

New

Pre-commitment

| Table A | |
|--|-----------------------------------|
| Ongoing Projects and Work Streams | Anticipated Status Q1 2024 |
| Sustainability <ul style="list-style-type: none">• Work Stream 1 – Independence• Work Stream 2 – Ethics | Exposure draft |
| Use of Experts | Exposure draft |
| Collective Investment Vehicles, Pension Funds & Investment Company Complexes | Information gathering |
| Post-Implementation Review – NOCLAR | Information gathering |

Strategic Work Plan

Ongoing

New

Pre-commitment

Table B

Potential Work Streams Under Consideration

Role of CFOs and Other Senior PAIBs

Business Relationships

Audit Firm – Audit Client Relationship

Definitions and Descriptions of Terms

Custody of Data

Communication with Those Charged with Governance

Strategic Work Plan

Ongoing

New

Pre-commitment

| Table C | Anticipated Demand on Resources | Possible Start Date |
|---|--|----------------------------|
| Pre-committed Work Streams | | |
| Post-Implementation Review – Long Association Phase 2 | Medium | Q4 2024 |
| Post-Implementation Review – Restructured Code | Medium | Q1 2025 |
| Post-Implementation Review – Non-Assurance Services & Fees | High | Q4 2027 |
| Post-Implementation Review – Definition of Public Interest Entity | Medium | Q4 2027 |

Important dates – IESBA Consultation Paper SWP 2024 - 2027

| Consultation process | Date |
|--|---------------|
| Briefing of Consultation Paper | 19 April 2023 |
| Local stakeholders' submissions to APESB | 9 June 2023 |
| Submissions due to the IESBA on the Consultation Paper | 7 July 2023 |

Closing remarks



Nancy Milne OAM
Chairman

Further Information

For more information:

www.apesb.org.au

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Purpose & Disclaimers

This set of PowerPoint slides has been developed by APESB Technical Staff and the IESBA Technical Staff on the exposure draft relating to Tax Planning and Related Services for the *International Code of Ethics for Professional Accountants (including International Independence Standards)* and the Consultation Paper on Proposed IESBA Strategy and Work Plan, 2024 -2027.

These slides provide only an *overview* of the proposals in the exposure draft and consultation paper and do not purport to present all the detailed changes. The slides should be read in conjunction with the exposure draft and the consultation paper. These slides do not form part of the Code, the text of which is authoritative.

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