

7 October 2022

Chief Executive Officer
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne Victoria 3000

Via email: sub@apesb.org.au

Dear Channa,

Exposure Draft 04/22 - Proposed Amendments to Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)

We appreciate the opportunity to comment on Exposure Draft 04/22 Proposed Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards) ("the Australian Code") issued by the Accounting Professional & Ethical Standards Board (APESB) in July 2022 (the ED).

Deloitte Australia ("Deloitte") is supportive of the adoption in Australia by the APESB of the International Code of Ethics for Professional Accountants (including International Independence Standards) ("the International Code"). As stated in our correspondence on previous revisions to APES 110, we support the Australian Code reflecting the wording and structure of the International Code, preferably with no changes, unless changes are required for legislative or regulatory reasons.

Please find below our responses to the request for specific comments in the ED:

1. *Request for Specific Comment 1 – Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'?*

Deloitte does not support Option 1.

Using the term "almost certain to prevail" creates a different standard to that required under Australian income tax law which considers that an entity will not meet its tax obligations unless the position taken is "reasonably arguable". The Taxation Administration Act states that 'a matter is reasonably arguable if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is *about as likely to be correct as incorrect, or is more likely to be correct than incorrect*'.

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Accordingly, a position of “almost certain to prevail” is incongruent with the standard currently applicable within Australian tax law and would necessitate separate processes and thresholds to be applied for tax advice provided to audit clients. This would also represent a challenge for tax agents in meeting their obligations to audit clients, as they have a statutory duty to act in the client’s best interests in providing advice based on Australian tax laws. Furthermore, implementing Option 1 would create Trans-Tasman differences given the New Zealand Auditing and Assurance Standards Board (NZAuASB) has adopted a different approach in its Ethics Code.

2. *Request for Specific Comment 2 – Do you support APESB’s proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the ‘firm is confident is likely to prevail’ as a high threshold?*

Deloitte is supportive of APES 110 remaining consistent with the International Code and is not aware of evidence to suggest the need for Australian specific changes to be made. If the Board believes further guidance is required, then we do not object to Option 2, as it retains the “likely to prevail” wording used in the International Code and adds guidance consistent with current IESBA Staff guidance (Ref: Q16 in the IESBA Staff Questions & Answers on the Revised Non-Assurance Services Provisions of the Code which sets out that the firm should have a “*high level of confidence that the basis in tax law is likely to prevail*”). Option 2 is also more closely aligned with the NZAuASB’s position and therefore would create a harmonised Trans-Tasman approach.

3. *Request for Specific Comment 3 – Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1?*

Deloitte does not see the need for documentation paragraphs additional to those already in the Code, however we do not foresee any practical challenges in implementing the proposed paragraphs.

4. *Request for Specific Comment 4 – Do you agree that the term ‘tax avoidance’ is inappropriate to use in proposed paragraph AUST R604.4?*

Deloitte does not agree that the term tax avoidance is “inappropriate” to use in the Australian Code. Broadly, the various anti-avoidance provisions in Australian taxation law already prohibit tax treatments that have a “*principal purpose of tax avoidance*”. Therefore, in Australia, if tax advice is provided that has a significant purpose of tax avoidance, it will not likely prevail in a court and would therefore not meet the threshold of having a basis in law that is “likely to prevail”.

Other comments

Effective Date and Transitional Provision

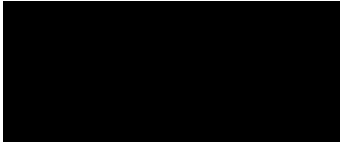
We note the APESB has amended the effective date and transitional provision for these amendments from 15 December 2022 to 1 July 2023, with earlier adoption permitted. While we appreciate the APESB is looking to provide firms with more time to implement changes, this could create confusion in the market. As a member of an international network of firms, we are required to comply with the 15 December 2022 effective date and transitional provision in the International Code and have been communicating with our PIE audit clients and establishing concurrence processes based on this effective date. The Board could consider including a reference about the Australian Code’s departure from the effective date of the International Code.

Clarity of amendments

We request that the Board include in, or refer to, a marked-up version of the proposed amendments in future exposure drafts to provide appropriate transparency as well as easier comparability and evaluation of the Board's proposals by the reader. We also request the Board consider specifically highlighting which of the proposed amendments differ from, or are additional to, relevant international pronouncements or amendments.

We would be pleased to discuss our comments with you. If you wish to do so, please feel free to contact me at (02) 9322 5258.

Yours sincerely



Marisa Orbea

Partner

Deloitte Touche Tohmatsu