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Mr Channa Wijesinghe
Chief Executive Office
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne, Victoria 3000

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Submitted via: <http://apesb.org.au/current-projects/>

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

Dear Channa,

EY welcomes the opportunity to comment on ED 04/22.

EY is supportive of the Accounting Professional & Ethical Standards Board's (APESB) efforts to enhance the Non-Assurance Services provisions of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110), aligning with the International Ethics Standards Board for Accountants' (IESBA) amendments. We broadly agree that APESB's proposed changes will reinforce and strengthen auditor independence, and in turn promote increased confidence in financial reporting.

EY strongly believes the provision of permissible Non-Assurance Services (NAS) strengthens stakeholder value and can result in improved audit quality – providing such services do not impair, or appear to impair, the objectivity and impartiality of the auditor. We are therefore supportive of APESB's decision not to propose a prohibition on tax services in Exposure Draft 04/22 and agree there is insufficient evidence to support a complete prohibition of tax advisory and tax planning services to PIE audit clients.

However, overall, we are concerned there is insufficient evidence that the Australian-specific amendments proposed in both Option 1 and Option 2 are necessary or beneficial to the public interest. We are further concerned these amendments may lead to unintended consequences and require further amendments as IESBA's position evolves. As they stand, whilst Option 2 is EY's preferred approach, we emphasise that retaining IESBA's approach best serves the public interest.

We also take this opportunity to request APESB make available marked-up versions of their Exposure Drafts, both from the previous standard and from the IESBA Code (where relevant) to improve stakeholder transparency and understanding of the proposed changes.

Finally, where there are Australian-specific amendments to IESBA provisions, we encourage APESB to adopt similar effective dates to IESBA to minimise disruption for firms.



Detailed responses to the specific questions posed by APESB are provided in Appendix 1.

We would be pleased to discuss our comments with the Board and with technical staff. Should you wish to do so, please contact me at leigh.walker@au.ey.com or on 03 9288 8454.

Yours sincerely

Leigh Walker
Partner
Oceania Risk Management and Independence Leader

Appendix 1: Specific Comments Table

	EY response
<p>Request for Specific Comment 1</p> <p>Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response.</p>	<p>EY does not support proposed Option 1 as we consider it beneficial to have minimal amendments to IESBA's language to reduce inconsistencies between jurisdictions. Further, EY is concerned there is a lack of clear evidence of a compelling reason for APESB to deviate from IESBA in this instance.</p> <p>We further note such amendments would create inconsistencies between the approach adopted by the New Zealand Auditing and Assurance Standards Board (NZAuASB). Whilst we recognise Australia and New Zealand are unique countries and our respective Codes of Ethics are promulgated by separate Boards, EY strongly believes Trans-Tasman accord is the preferred outcome for these proposals.</p> <p>Finally, EY is concerned an "almost certain to prevail" threshold may, in practice, never be able to be achieved in the absence of ATO rulings or court declarations being sought for every tax position being advised on for an audit client. Such a threshold could inadvertently serve as equivalent to a prohibition on tax advisory services.</p>
<p>Request for Specific Comment 2</p> <p>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? Please provide reasons and justification for your response.</p>	<p>The amendments proposed in Option 2 are consistent with the NZAuASB's approach and therefore minimise Trans-Tasman discrepancies.</p> <p>For this reason, and for the reasons outlined above, we support APESB's proposed Option 2 to include guidance to clarify the high threshold level imposed by this requirement, as outlined in the IESBA Staff Q&A on this topic.</p> <p>However, we emphasise our belief that the public interest is best served by adopting IESBA's amendments without the proposed Australian-specific amendments.</p> <p>As additional feedback relating to Option 2, EY requests the Board consider including further guidance on the minimum steps firms should undertake to satisfy this level of confidence. Such an inclusion would serve to increase understanding and compliance with these</p>

	EY response
	<p>provisions and is not incompatible with the Code's principles-based approach.</p> <p>We would also encourage APESB to work with IESBA to make this guidance globally relevant to address concerns regarding independence when audit firms provide tax advice or planning services to their public interest entity audit clients.</p>
<p>Request for Specific Comment 3</p> <p>Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response.</p>	<p>We are supportive of paragraphs AUST R604.4.1 and AUST R604.12.1 to require firms to document their conclusions when determining a particular tax treatment, or tax advisory or planning service, is permissible.</p> <p>We recognise the broad consistency between this requirement, the NZAuASB's approach, and the consideration given to documentation by IESBA in their Basis for Conclusions. We further note the expansion to tax treatment proposed in AUST R604.4.1 and do not believe this to be prohibitive in the Australian context.</p>
<p>Request for Specific Comment 4</p> <p>Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response.</p>	<p>EY is supportive of consistency between the IESBA Code and APES 110. We therefore do not agree the term 'tax avoidance' is inappropriate to use in AUST R604.4. However, additional application material clarifying the meaning of this term in the Australian context may be beneficial to support consistent application of the term. Such an inclusion consistent with IESBA's intentions in their Basis for Conclusions.</p>