

## AGENDA PAPER

**Item Number:** 6  
**Date of Meeting:** 24 August 2023  
**Subject:** Update on developments relating to IESBA's Project on Tax Planning & Related Services

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Action Required     For Discussion     For Noting     For Information

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### Purpose

To provide the Board with an update on the 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 employers.

The recent global tax scandals, such as the Panama, Pandora and Paradise papers, were a significant impetus for the project. 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.

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

The IESBA released an [exposure draft](#) (ED) on Tax Planning and Related Services in February 2023, with a comment period that closed on 18 May 2023.

At the February 2023 APESB Board Meeting ([Agenda Item 9](#)), Technical Staff provided an update on the proposed amendments in the IESBA exposure draft, including the purpose of the proposed revisions, key elements of the proposed ethical framework and a summary of key proposals in the new section 380 (note Section 280 has mirrored provisions for professional accountants in business).

APESB held a virtual roundtable on 19 April 2023 on the IESBA's Tax Planning and Related Services ED to seek stakeholder feedback on the revisions (the presentation is available on APESB's [website](#)). The roundtable was attended by 30 participants from professional bodies, firms (including SMPs), and regulators. The discussion helped inform APESB's submission to the IESBA's Tax Planning and Related Services ED.

In the [submission](#), APESB strongly supported the IESBA's project to revise Tax Planning and Related Services due to its public interest imperative. In addition, APESB provided recommendations and encouraged the IESBA to consider incorporating additional guidance on key matters within the ethical framework to assist professional accountants implement the proposals.

### Update on the IESBA's Tax Planning and Related Services Project

At the June 2023 IESBA Board meeting, the IESBA considered an [update](#) on the Task Force's activities and an overview of the preliminary significant matters raised in the submissions received on the Tax Planning and Related Services ED. It was noted that representatives of the Task Force have participated in various outreach activities relating to the project, including the APESB roundtable and meetings with the European Commission and CFE Tax Advisers.

A high-level overview of the respondents' comments on the IESBA ED is summarised in the table below.

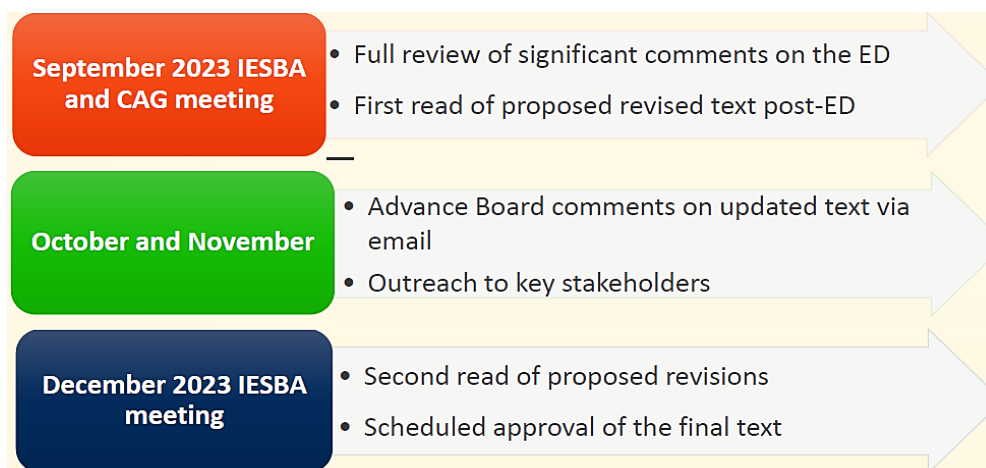
Key areas of concern	A high-level overview of respondent's comments
<b>Description of Tax Planning</b>	Broadly supportive of the direction of the Task Force's proposals but key concerns/themes raised included: <ul style="list-style-type: none"> <li>• The description is too broad and extends beyond the issue of aggressive tax minimisation, which may inadvertently create onerous requirements.</li> <li>• The definition of Tax Planning should reflect the description used by Organisation for Economic Co-Operation and Development (OECD).</li> <li>• Confusion regarding the terms used – “tax minimisation” versus “tax efficient”.</li> <li>• Recommendation to either refrain from including “related services” within the scope or to clarify “tax advisory” versus “tax compliance”.</li> <li>• Clarification is needed on which parties are captured in the term “another party”.</li> <li>• Clarification on the inclusion of transfer pricing arrangements as an example.</li> <li>• Concerns on the monitoring &amp; enforceability of the provisions relating to related services as the description is unclear.</li> </ul>
<b>Role of the Professional Accountant in Acting in the Public Interest</b>	Broadly supportive of the direction of the Task Force's proposals. Key concerns/themes raised included: <ul style="list-style-type: none"> <li>• It is the Professional Accountant's responsibility to determine public interest.</li> </ul>

Key areas of concern	A high-level overview of respondent's comments
	<ul style="list-style-type: none"> <li>• Challenges for cross-border transactions to ascertain who is the public and whose interest is being upheld.</li> <li>• Concerns that PAs would be placed in an unfair competitive advantage compared to other professions, such as lawyers.</li> <li>• Further clarity on drafting the public interest considerations, particularly whether a PA has the necessary skill set to consider global public interest considerations.</li> <li>• Recommendation to not refer to the term “tax evasion.”</li> </ul>
<b>Credible Basis</b>	<p>Generally supportive of the direction of the Task Force's proposals. Key concerns raised were:</p> <ul style="list-style-type: none"> <li>• The term credible basis is subjective and may present practical challenges.</li> <li>• A credible basis should include an assessment of facts and circumstances to which laws and regulations need to be applied.</li> <li>• Difficult to articulate the appropriate basis in the tax code as it varies by jurisdiction</li> <li>• Different jurisdictional terminology will create confusion in terms of monitoring and enforceability.</li> <li>• Further clarification is needed on whether the credible basis determination should be reconsidered when circumstances change and what matters indicate that there is no credible basis.</li> <li>• Tax law is complex and different interpretations could be argued as credible even if they do not meet the tax law's intent.</li> </ul>
<b>Stand-back Test</b>	<p>Supportive of the direction of the Task Force's proposals subject to a few concerns. Key concerns raised were:</p> <ul style="list-style-type: none"> <li>• The description is too broad and concerned with consideration of the wider economic consequences.</li> <li>• Codifying an exercise of professional judgement could result in uncertainty, confusion, and second-guessing of PA's judgement.</li> <li>• Concerns have been raised that using such a test may raise expectations for PAs' roles and responsibilities, which may end up hurting the profession's role and reputation.</li> <li>• Recommendation to reframe the stand-back test to focus on the consequences for the PA and the firm rather than the client and develop additional guidance on: <ul style="list-style-type: none"> <li>a) clearly delineating the responsibilities of the taxpayer and the professional accountant; and</li> <li>b) potential actions a professional accountant can take to meet the requirements of the stand-back test.</li> </ul> </li> </ul>
<b>Disagreements</b>	<p>Generally supportive of the direction of the Task Force's proposals. Key concerns raised were:</p> <ul style="list-style-type: none"> <li>• Advising a client to fully disclose an arrangement to a tax authority or external audit might create an expectation that a PA may breach client confidentiality. Disclosure may not be permitted in some jurisdictions.</li> </ul>

Key areas of concern	A high-level overview of respondent's comments
	<ul style="list-style-type: none"> <li>• Further clarification is required on paragraphs R380.20 and R280.20 to “take steps to disassociate from the engagement/arrangement.”</li> <li>• Clarification is sought as the action required from a PA in public practice (to consider withdrawing from the engagement in paragraph R380.21) does not seem proportionate when compared with the potentially more extreme action proposed for a PA in business (to consider resigning from employment in paragraph 280.20 A1).</li> </ul>
<b>Documentation</b>	<p>Generally supportive of the direction of the Task Force’s proposals. Key concerns raised were:</p> <ul style="list-style-type: none"> <li>• Stakeholders believe documentation should be a requirement – especially for the consideration of whether advice has a credible basis and for performing the stand-back test.</li> <li>• Documentation should be required for at least circumstances with uncertainty associated with the tax planning advice or the engagement is considered high risk, if it is challenging to introduce documentation requirements globally.</li> <li>• Documentation for activities within scope captures simple transactions and may be too onerous.</li> </ul>

### Way forward

IESBA’s timeline for its next steps in issuing the Final Standard is set out in the diagram below:



The 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 in due course.

**Recommendation**

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

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**Date:** 14 August 2023