

24 January 2024

TPB Code feedback  
Law Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

Via Email: [TPBCode@treasury.gov.au](mailto:TPBCode@treasury.gov.au)

Dear Sir/Madam,

## **Consultation on Response to PwC – Tax Agent Services (Code of Professional Conduct) Determination 2023**

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Treasury's draft *Tax Agent Services (Code of Professional Conduct) Determination 2023* (the Exposure Draft).

APESB is an independent entity with the primary purpose of developing, issuing, and maintaining high-quality professional and ethical pronouncements for the Australian accounting profession in an independent manner with a public interest focus.

APESB's pronouncements apply to the members of the three major Australian professional accounting bodies; Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA). This requirement to apply APESB pronouncements is extended to accounting firms established by members and all professional services they provide to clients, which include the public sector.

In Australia, APESB issues [APES 110](#) *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) and a suite of [20 pronouncements](#) on a range of professional services provided by professional accountants. Key pronouncements applicable to members who provide taxation services include APES 110, [APES 220](#) *Taxation Services* and [APES 320](#) *Quality Management for Firms that provide Non-Assurance Services*.

### **Overall Comments**

APESB is supportive of the proposed amendments to strengthen the regulations governing tax professionals in Australia. We believe the revisions will uphold the public interest and ensure that high-quality professional services are being provided to clients, including the Government and the broader community.

In considering the revisions, APESB found the material in the explanatory memorandum exposure draft extremely useful. We believe it would be a useful ongoing resource for practitioners and would support its publication in an information sheet or other type of guidance publication.

APESB believes it is important to maintain consistency, where possible, between the tax practitioners' Code of Professional Conduct and APESB's suite of professional standards. Many tax practitioners are also members of the professional accounting bodies, and it is important to avoid situations where regulatory arbitrage may be created.

In light of this, APESB have considered the amendments in the exposure draft against relevant sections in APES 110, for example Subsection 114 *Confidentiality* and Section 310 *Conflicts of Interest*, and have formed the view that the Codes will remain generally consistent. While the proposed positions in the exposure draft for Sections 20 and 25 relate specifically to the government, the drafting of the requirements in APES 110 focuses on the provision of tax services to all clients and employers, meaning the provision of services to the government would be captured in the requirements. However, upcoming revisions to APES 110 will incorporate a specific example of tax planning services for government clients, as set out below.

### Tax Planning Services

APES 110 is based on and adapted from the *International Code of Ethics for Professional Accountants (including International Independence Standards)* ([International Code](#)) issued by the International Ethics Standards Board for Accountants ([IESBA](#)). Over the last four years, the IESBA have been working on a [project](#) to strengthen ethical behaviour in tax planning. This was in response to heightened public concerns in light of high-profile revelations about tax avoidance schemes in several jurisdictions, such as the [Paradise and Pandora papers](#). APESB's CEO Channa Wijesinghe is an IESBA Board Member and is a Member of the IESBA's Tax Planning Taskforce since 1 January 2022.

At its December 2023 Board meeting,<sup>1</sup> the IESBA approved final revisions to the International Code for tax planning services. The revisions establish an ethical framework in the public interest to guide professional accountants in making judgments and decisions when providing tax planning services.<sup>2</sup> The revisions apply to both professional accountants in business and public practice.

The ethical framework:

- Explains the types of threats to compliance with the fundamental ethics principles of the International Code that might be created when professional accountants are involved in tax planning.
- Sets a clear principle that professional accountants recommend or otherwise advise on a tax planning arrangement only if they have determined that there is a credible basis in laws and regulations for it.
- Requires consideration of the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the tax planning arrangement before determining whether to proceed with the recommendation or advice.
- Provides practical guidance to assist professional accountants in navigating situations of uncertainty when carrying out tax planning.

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<sup>1</sup> [December 2023 IESBA Meeting Highlights.pdf \(ethicsboard.org\)](#)

<sup>2</sup> [IESBA Announces Successful Completion and Approvals of Sustainability Exposure Draft and Tax Planning-related Ethics Standard \(ethicsboard.org\)](#)

- Deals with other practical matters, including disagreement with the client or management or those charged with governance and documentation.

In light of the ethical issues that have occurred in Australia during the specific timeframe of this global project, the IESBA have incorporated specific guidance into the International Code on working with Governments. The new [paragraph 380.19 A1](#) recognises that self-interest threats may arise when accountants deal with government policy information and the accountant must address this threat when dealing with tax planning services.

The IESBA's final pronouncement is pending certification by the [Public Interest Oversight Board](#) (PIOB) and is expected to be issued in mid-April 2024. APESB intends to adopt these revisions into APES 110 and incorporate consequential amendments to APES 220 Taxation Services after the completion of APESB's due process.

### Reporting of breaches of the Code

APESB is aware of the new mandatory notification requirements coming into effect on 1 July 2024 for registered tax agents to report significant breaches of the Code of Professional Conduct by themselves or by another registered agent.

In the second half of 2023, APESB received a request from Chartered Accountants Australia and New Zealand (CA ANZ) to consider whether APES 110 should include a requirement that would require members of a professional accounting body to report the unethical behaviour of other members to the applicable professional body. APESB considered this matter at its November 2023 Board Meeting and requested that Technical Staff prepare a project proposal for the Board's consideration at the Q1 2024 Board Meeting.<sup>3</sup>

### **Concluding Comments**

APESB would welcome the opportunity to discuss upcoming developments to its existing accounting professional and ethical standards (APES 110 and APES 220) due to the global developments with respect to Tax Planning Services noted on page 2 and to ensure consistency with the reforms being considered by the Treasury and the Tax Practitioners Board for taxation professionals.

Please note that APESB's submissions are public documents, and we request that this Submission be shared publicly on your website.

We trust you find these comments useful in your deliberations. If you wish to discuss this further or require additional information, please get in touch with APESB's Chief Executive Officer, Channa Wijesinghe, at [channa.wijesinghe@apesb.org.au](mailto:channa.wijesinghe@apesb.org.au).

Yours sincerely



Nancy Milne OAM  
**Chairman**

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<sup>3</sup> [November 2023 APESB Meeting Highlights.pdf \(apesb.org.au\)](#)