

AGENDA PAPER

Item Number: 7
Date of Meeting: 5 March 2024
Subject: Proposed revisions to APES 110 for Tax planning services

Action Required For Discussion For Noting For Information

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 aimed 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.

In February 2023, the IESBA released an [exposure draft](#) (IESBA ED) on Tax Planning and Related Services with a comment period that closed on 18 May 2023. A summary of the purpose and the proposals in the ED were presented to the APESB Board by Technical Staff at the February 2023 Board Meeting ([Agenda Item 9](#)).

In APESB's [submission](#), APESB strongly supported the IESBA's project to revise Tax Planning and Related Services due to its public interest imperative. However, APESB did raise recommendations encouraging the IESBA to consider incorporating additional guidance on key matters within the ethical framework.

A summary of the responses to the IESBA ED was provided to the APESB Board at their September 2023 Board Meeting ([Agenda Item 6](#)).

Update on the IESBA's Tax Planning & Related Services Project

At its December 2023 Board Meeting, the IESBA unanimously [approved](#) the revisions to the *International Code of Ethics for Professional Accountants (including International*

Independence Standards) (the IESBA Code) relating to the provision of tax planning activities by professional accountants.

APESB Technical Staff have reviewed the papers presented to the IESBA at their December 2023 Board meeting. We have noted that for the Tax Planning Final Pronouncement, the IESBA has made the following revisions from the ED version:

- Clarified the descriptions of Tax Planning and related services by:
 - removing related services from the phrase to avoid misinterpretations and misapplications of the requirements in the new sections 280 and 380;
 - providing further clarification regarding the distinction between tax planning and compliance services; and
 - providing additional guidance on related services based on or linked to a tax planning arrangement in paragraphs 380.6 A1 and 280.6 A1 and providing examples of such related services in paragraphs 380.6 A2 and 280.6 A2.
- Clarified illustrative examples of tax planning services in paragraphs 380.5 A2 including advising on the structuring of transfer pricing arrangements taking into account tax-related transfer pricing guidelines.
- Clarified the guidance related to establishing a credible basis, including:
 - specifying the provisions do not act as a barrier to the Professional Accountant (PA) being engaged by the client or otherwise assisting the client in remediating or rectifying a tax planning arrangement that lacks a credible basis (new paragraph 380.12.A3);
 - new paragraph R380.13 with additional guidance that credible basis needs to be reassessed when the PA becomes aware of any circumstances that might impact the previous determination of the credible basis; and
 - that in determining credible basis, the PA should consider circumstances that give rise to uncertainty as to whether the proposed tax planning arrangement will comply with the relevant laws and regulations (paragraph 380.17 A1).
- Specified that self-review threats could arise when providing a tax planning service and provided illustrative examples of self-review and self-interest threats with a specific example of tax planning services for government clients.
- Clarified the actions the professional accountant can undertake when a disagreement arises with the client.
- The provisions addressing circumstances where the professional accountant has been engaged to advise on a tax planning product or arrangement developed by a third party were clarified in paragraph R380.24.
- Provide clearer guidance when the professional accountant is engaged to advise on a tax planning arrangement developed by a third party. Paragraphs 380.25 A1 and 380.25 A2 state that Sections 380 or 280 do not apply when the professional accountant only recommends or refers a client to a third-party provider of tax planning services unless the professional accountant receives a referral fee or commission from the third-party provider.
- Further guidance on determining disclosure requirements on tax planning arrangements involving multiple jurisdictions, including whether there are globally or nationally accepted principles or practices regarding disclosure of similar situations to the tax authorities in the relevant jurisdictions.

These changes are largely similar to section 280 for the provision of tax planning and related services by professional accountants in business.

Technical Staff were pleased to note that many of the concerns raised in APESB's submission on the IESBA's ED have been addressed in the final pronouncement, including clarity on the scope and application of the provisions to 'related services and additional guidance on uncertainty, the credible basis and referrals.

Subject to certification by the Public Interest Oversight Board (PIOB), the final pronouncement is expected to be issued by mid-April 2024. The pronouncement will be effective for tax planning activities or services beginning after June 30, 2025, with early adoption permitted.

Impact on APESB pronouncements

Once the IESBA final pronouncement is released, APESB Technical Staff will consider the amendments and how they should be included in the Australian pronouncements. This will impact both APES 110 and APES 220, especially the extant section in APES 220 on tax schemes and arrangements.

Technical Staff are planning to present a draft exposure draft with changes to APES 110 to the Board for their consideration at the June 2024 Board Meeting. Subject to any matters raised during the exposure draft due process, the Technical Staff are aiming to have the relevant Australian Amending Standard approved at the November 2024 Board meeting.

In relation to APES 220, Technical Staff will review expected impacts and commence stakeholder engagement on revisions driven by the IESBA final pronouncement as well as other issues noted on APESB's Issues Register. Technical Staff will provide an update to the Board on this engagement and will present a draft exposure draft at either the June or August 2024 Board Meeting.

Recommendation

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

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Date: 23 February 2024