

## AGENDA PAPER

**Item Number:** 5  
**Date of Meeting:** 26 June 2024  
**Subject:** Proposed revisions to APES 110 for Tax Planning and Related Services

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**Action Required**     **For Discussion**     **For Noting**     **For Information**

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### Purpose

To seek the Board's approval, subject to the Board's feedback and review comments, to issue the Exposure Draft *Proposed Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (APES 110) Addressing Tax Planning and Related Services*.

### 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 August 2022, the ATO published the [Australian Large Market Tax Advisory principles](#). This is a voluntary framework developed by the Big 4 Accounting firms with input from the Australian Tax Office and the Tax Practitioners Board (TPB). All firms offering tax advisory services may choose to adopt the principles. Adopting the framework provides confidence the firm has processes in place aimed at preventing it from being involved in proscribed engagements and particular governance arrangements for when it is advising on higher risk engagements. Refer to Agenda paper 6 *Proposed Revised APES 220 Taxation Services* of this Board Meeting for further details of this framework.

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. Technical staff presented a summary of the purpose and the proposals in the ED to the APESB Board at the February 2023 Board Meeting ([Agenda Item 9](#)).

In APESB's [submission](#) to the IESBA's Exposure Draft, APESB strongly supported the IESBA's project to revise Tax Planning and Related Services due to its public interest

imperative. However, APESB did encourage the IESBA to consider incorporating additional guidance on key matters within the proposed ethical framework.

Further updates on the IESBA's project were provided to the APESB Board at their August 2023 Board Meeting ([Agenda Item 6](#)) and March 2024 Board Meeting ([Agenda Item 7](#)).

In April 2024, the IESBA issued the final pronouncement [Revisions to the Code Addressing Tax Planning and Related Services](#). The pronouncement will be effective for engagements commencing after 30 June 2025. Early adoption is permitted.

## **Matters for Consideration**

To maintain alignment with the IESBA Code, APESB Technical Staff propose to issue an Exposure Draft for revisions to APES 110 Addressing Tax Planning and Related Services. The key proposals in the Exposure Draft are summarised below:

- New Sections 280 and 380 will assist Members in Business and Members in Public Practice in identifying and evaluating threats to the fundamental principles when engaging in tax planning. The new sections set out:
  - a description of tax planning activities or services (proposed paragraphs 280.5 A1 to 280.5 A4, and 380.5 A1 to 380.5 A4);
  - that the scope includes related services that are based on or linked to a tax planning arrangement developed by a third-party provider (proposed paragraphs 280.6 A1, 280.6 A2, 380.6 A1, and 380.6 A2);
  - the exclusion of illegal tax evasion practices (proposed paragraphs 280.7 A1 and 380.7 A1);
  - requirements on understanding applicable tax laws and regulations and advising employing organisations or clients to comply with them (proposed paragraphs R280.8 and R380.8);
  - References to Sections 260 and 360 when responding to non-compliance with tax laws and regulations (proposed paragraphs 280.8 A1 and 380.8 A1);
  - the responsibilities of management and Those Charged with Governance in relation to tax planning (proposed paragraphs 280.9 A1 and 380.9 A1);
  - requirements for Members to exercise professional judgement to establish a credible basis for tax planning advice in circumstances of uncertainty (proposed paragraphs R280.12, R280.14, R380.12 and R380.14);
  - new guidance for situations in relation to multi-jurisdictional tax benefits (proposed paragraphs 280.16 A1, 280.16 A2, 380.16 A1 and 380.16 A2);
  - new examples and factors to consider when identifying and evaluating threats arising from tax planning, including actions and safeguards to address such threats (proposed paragraphs 280.19 A1 to 280.19 A5, and 380.19 A1 to 380.19 A5);
  - New requirements and guidance on possible actions a Member can take when a disagreement arises with the client (proposed paragraphs R280.21 to 280.22 A2, and R380.21 to R380.23);
  - requirements and guidance where Members in Public Practice advise on a tax planning product or arrangement developed by a third party (proposed paragraphs R380.24 and R380.25); and

- Consequential amendments to Section 321 when Members of Public Practice provide a second opinion on the application of tax laws and regulations (proposed paragraphs 321.3 A1, 321.3 A3 and R321.4).

#### Proposed Australian-specific revisions

In addition to the revisions above to align with the IESBA Code, APESB Technical Staff propose to include the following revisions in the exposure draft:

- Inclusion of a footnote to paragraphs R280.12 and R380.12, which refers to the promoter penalty regimes in Australia set out in Division 290 of Schedule 1 of the *Taxation Administration Act 1953*;
- Mandate the documentation of specific information relating to tax planning services (i.e., proposed paragraphs AUST R280.23 and AUST R380.26) to align with the extant requirements in APES 220 *Taxation Services* that requires Members to appropriately document the work performed when providing a Taxation Service; and
- An editorial amendment to the Conformity Section to include ASQM 1 in the list of additional definitions contained in APES 110 compared to the IESBA Code.

The proposed exposure draft *Proposed Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services* is presented as clean and marked-up versions at Agenda Items 5(a) and (b), respectively.

Technical Staff recommend that the Exposure Draft be released for a 60-day public comment period. Based on this timeframe, the review of the outcome of the exposure draft due process will be presented to the Board at the November 2024 Board Meeting.

#### **Impact on other APESB pronouncements**

The proposed revisions to APES 110 addressing Tax planning and related services will impact APES 220 *Taxation Services* (APES 220), especially the extant section in APES 220 on tax schemes and arrangements. Refer to Agenda Item 6 of this Board meeting for proposals to revise APES 220 to remain aligned with APES 110.

#### **Recommendation**

That the Board approve, subject to the Board's feedback and review comments, the release of the proposed Exposure Draft *Proposed Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services*.

#### **Materials presented**

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| Agenda Item 5(a) | Draft ED Revisions to APES 110 Addressing Tax Planning and Related Services (clean)     |
| Agenda Item 5(b) | Draft ED Revisions to APES 110 Addressing Tax Planning and Related Services (marked-up) |

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