

AGENDA PAPER

Item Number: 6
Date of Meeting: 26 June 2024
Subject: Proposed revisions to APES 220 Taxation Services

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

Purpose

To seek the Board's approval, subject to the Board's feedback and review comments, to issue the Exposure Draft *Proposed Standard: APES 220 Taxation Services*.

Background

APESB originally issued APES 220 *Taxation Services* (APES 220) in October 2007, and it was revised in March 2011, October 2015 and July 2018. The current version of APES 220 *Taxation Services* was released in July 2019, and revisions were incorporated to align with the restructured APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110).

In August 2020, the Board requested that Technical Staff review APES 220 Taxation Services and other APESB pronouncements in light of the enhanced whistleblower protections contained in the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.

Technical Staff reported to the Board in November 2020 ([Agenda Item 6](#)) on the impact of the new whistleblowing legislation on the confidentiality provisions in APESB pronouncements and current projects undertaken by the Australian Taxation Office (ATO) and the Tax Practitioners Board (TPB). As a result, the Board agreed to defer the revisions to APES 220 to encompass any necessary outcomes from these stakeholder projects.

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.

At the June 2022 ([Agenda Item 7](#)) Board meeting, Technical Staff updated the Board on the TPB's guidance on supervisory arrangements and supervision and control and its potential impact on extant paragraph 4.3 of APES 220. The Board noted that the ATO's project on a governance framework for tax practitioners and firms was progressing and was expected to be finalised by the end of the year.

The [Australian Large Market Tax Advisory](#) principles were published in August 2022. This is a voluntary framework developed by the Big 4 Accounting firms with input from the Australian Tax Office (ATO) and the Tax Practitioners Board (TPB). All firms offering tax advisory services may choose to adopt the principles. Adopting the framework provides confidence that 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.

In April 2024, the IESBA issued the final pronouncement [Revisions to the Code Addressing Tax Planning and Related Services](#). APESB is proposing to issue an exposure draft, subject to Board review and comments, to revise the APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) to adopt the IESBA's amendments to the Code addressing tax planning and related services.

Matters for Consideration

APESB Technical Staff propose to issue an Exposure Draft for revisions to APES 220 to address the following matters.

Revisions to APES 110 addressing Tax Planning and Related Services

Revisions are required to APES 220 to incorporate the proposed Tax Planning and Related Services amendments to APES 110 (listed as Issue 220.5 on APESB's Issues Register).

The proposed revisions to APES 110 include requirements and guidance for Members in Business (Section 280) and Members in Public Practice (Section 380) when providing tax planning activities or services and will align with revisions to the International Code issued by the IESBA.

The proposed Exposure Draft for APES 110 is at Agenda Item 5 of this Board Meeting (BM126 June 2024).

In relation to APES 220, Technical Staff are of the view that the extant Section 5 *Tax schemes and arrangements* should be amended to incorporate the proposed revisions to APES 110 addressing tax planning and related services by:

- adding a new proposed requirement and guidance for Members to comply with Section 280 *Tax Planning Activities* (for Members in Business) and Section 380 *Tax Planning Services* (for Members in Public Practice) in APES 110 when providing tax planning activities or services (proposed paragraph 5.2);
- Adding a guidance paragraph to outline the scope and provisions in the new Sections in APES 110, including the guidance on Members not being precluded from assisting their Client or Employer to rectify a tax planning arrangement that lacks a credible basis or from providing other Taxation Services to the Client or Employer. (proposed paragraph 5.3);
- deleting extant guidance paragraphs 5.5 to 5.7, which are addressed more comprehensively in the new Section 280 and 380 in APES 110 as noted in the new proposed paragraph 5.3; and
- renumbering extant paragraphs 5.2, 5.3, 5.4 and 5.8.

APESB Technical Staff are of the view that the effective dates for the revisions to APES 110 and APES 220 should be aligned and, therefore, propose an effective date for the revised APES 220 of 1 July 2025.

Revisions for conforming amendments to APESB pronouncements

In reviewing the provisions in the extant APES 220, APESB Technical Staff have reviewed the consistency of these provisions with APES 110 and APESB's other pronouncements. As a result of this review, Technical Staff propose the following amendments to the extant APES 220:

- Amendments to the definition of *Assurance Engagement* to align with the definition in APES 110;
- Adding the definition of *Confidential Information* to align with APES 110;
- Amendments to extant paragraphs 3.9 and 3.12 to align with the provisions in Section 114 *Confidentiality* of APES 110 by including a reference to a duty or right to disclose confidential information (listed as Issue 220.1 on APESB's Issues Register) and to incorporate provisions that allow reporting for NOCLAR (listed as Issue 220.2 on APESB's Issues Register); and
- amending paragraph 7.6 to update the title of APES 320 to *Quality Management for Firms that provide Non-Assurance Services* (noted as Issue 220.4 on the APESB Issues Register).

TPB guidance on supervision of work and the impact on tax lodgement services

Technical Staff have reviewed extant paragraph 4.3 of APES 220 in light of the revised guidance issued by the TPB on supervisory arrangements ([TPB Information Sheet TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#)). There was a concern that the draft guidance was indicating that a tax agent would breach legislative requirements if the person performing the work on the revenue returns was not an employee of the tax agent (listed as Issue 220.3 on APESB's Issues Register).

The final guidance clarifies that there is no need to have an employer/employee relationship with the person performing the services as long as there is adequate supervision. The tax agent needs to direct, oversee and check the services provided on their behalf.

To address the revised guidance, APESB Technical Staff proposes amending paragraph 4.3 to remove the reference to work not being performed under the supervision of the Member and to include a reference to relevant laws and regulations. Technical Staff also recommend that a footnote referring to the TPB guidance be included in this paragraph. The proposed revised drafting is set out below:

- 4.3 Where a **Member in Public Practice** provides a tax lodgement service to another party and a significant portion of the work associated with the revenue returns and other relevant documents is performed by the other party, the **Member** shall perform sufficient reviews of the revenue returns and other relevant documents in accordance with laws and regulations¹ and **Professional Standards** prior to lodgement of these revenue returns.**

Footnote 1: For example, [Members](#) should consider the *Tax Agent Services Act 2009* or the *Tax Agent Services Regulations 2022* and information in the [Tax Practitioners Board \(TPB\) Information Sheet TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#).

ATO best practice governance for tax practices

The Australian Tax Advisory Firm Governance Best Practice principles were published in August 2022. The Big Four Accounting Firms in Australia have released their versions of these principles (accessible from the [ATO website](#)).

The principles are:

- Principle 1 – Proscribed engagements
- Principle 2 – Governance of higher risk engagements
 - 2.1 – Higher risk engagements
 - 2.2 – Engagement acceptance
 - 2.3 – Critical tax sensitive facts and circumstances
 - 2.4 – Supporting advice and legal opinions
 - 2.5 – Reasonably arguable positions
 - 2.6 – Documenting the advice provided to the client
 - 2.7 – Independent review process
- Principle 3 – Consequences for failing to adhere to the principles
 - 3.1 – Failure to adhere to the principles
 - 3.2 – Partner competence
- Principle 4 – Quality management and process review
 - 4.1 – Design effectiveness review
 - 4.2 – Operational effectiveness review process
 - 4.3 – Annual confirmation

APESB Technical Staff have reviewed the principles against provisions in APESB pronouncements and note that the principles are already covered by provisions in APES 220, APES 320 *Quality Management for Firms that provide Non-Assurance Services* or the new proposed Sections 280 and 380 in APES 110. As such, no amendments to APES 220 are considered necessary to align with the Governance Best Practice Principles.

Based on the revisions listed above, APESB Technical Staff have drafted a proposed exposure draft *Proposed Standard: APES 220 Taxation Services*, with clean and marked-up versions presented at Agenda Items 6(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.

Recommendation

That the Board approve, subject to the Board's feedback and review comments, the release of the Exposure Draft *Proposed Standard: APES 220 Taxation Services*.

Materials presented

Agenda Item 6(a) Draft ED Revisions to APES 220 Taxation Services (clean)
Agenda Item 6(b) Draft ED Revisions to APES 220 Taxation Services (marked-up)

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