

AGENDA PAPER

Item Number: 10
Date of Meeting: 9 December 2024
Subject: Proposed revisions to APES 110 for Tax Planning and Related Services

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

Purpose

To:

- provide the Board with details of submissions received on Exposure Draft ED 03/24 *Proposed Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services*; and
- seek the Board's approval, subject to the Board's review comments and editorials, to issue the Amending Standard *Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services* and related Basis for Conclusions.

Background

In September 2021, the International Ethics 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.

Technical Staff provided updates on the IESBA's project to the APESB Board in August 2023 ([Agenda Item 6](#)) and March 2024 ([Agenda Item 7](#)).

In August 2022, the big four firms published the [Australian Large Market Tax Advisory principles](#). This is a voluntary framework developed by the Big 4 Accounting firms with input from the 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 when it is advising on higher-risk engagements. Further details of this framework were provided to the Board at the June 2024 Board meeting ([Agenda Item 6](#)).

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.

To maintain alignment with the IESBA Code, the Board [approved](#) the release of the Exposure Draft (ED) at the June 2023 Board Meeting ([Agenda Item 5](#)). The ED 03/24 [Proposed Revisions to APES 110 Code of Ethics for Professional Accountants \(including Independence Standards\) Addressing Tax Planning and Related Services](#) was released on 11 July 2024 and was open for public comment until October 2024.

Matters for Consideration

APESB received seven submissions on [ED 03/24](#) from three professional bodies, three accounting firms and a regulator (the TPB).

The submissions from six stakeholders are tabulated in General and Specific Comments Tables at Agenda Item 10 (a) and 10 (b), respectively.

The TPB's confidential comments are set out at Agenda Items 10 (c) and 10 (d) – Confidential for the Board's consideration only.

Key matters raised and the Technical Staff responses are summarised below.

Definition of “credible basis”

Proposed paragraphs R280.12 and R380.12 require Members to determine whether there is “credible basis” in laws and regulations for the tax planning advice.

Two respondents were concerned about the clarity of the term “credible basis,” highlighting the uncertainty in its interpretation by tax practitioners. One respondent proposed referencing the term “*Reasonably Arguable Position*” used in the existing Australian tax regime.

The Australian tax regulators supported this approach, noting it as a well-understood concept for tax practitioners in Australia.

This term is also defined in section 284-15 of the [Tax Administration Act 1953](#) as

“A matter is *reasonably arguable* if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is as likely to be correct as incorrect, or is more likely to be correct than incorrect”.

It was noted that in New Zealand, the relevant standard would include a definition of “credible basis” that links to the relevant NZ tax laws and regulations. Technical Staff agree that the term could also be clarified for the Australian environment by linking it to the term “*Reasonably Arguable Position*” to assist Members providing tax services in understanding and implementing proposed revisions.

As such, Technical Staff are proposing to include an Australian application paragraph in both Sections 280 and 380. The proposed new paragraphs are set out below:

[AUST 280.12 A1.1](#) [For tax planning arrangements that require advice or recommendations in respect of Australian tax laws and regulations.](#)

[a credible basis means a reasonably arguable position as defined in section 284-15 of the Tax Administration Act 1953.](#)

[AUST
380.12 A1.1](#)

[For tax planning arrangements that require advice or recommendations in respect of Australian tax laws and regulations, a credible basis means a reasonably arguable position as defined in section 284-15 of the Tax Administration Act 1953.](#)

The stand-back test

One respondent raised concerns about the application of the stand-back test required by proposed paragraph R380.14. Their concerns included the limited professional skills of professional accountants (PAs), the inappropriateness of placing PAs in a quasi-management role, and that the assessment should be the role of the client. Technical Staff note that the respondent has also raised these comments with the IESBA as part of the global due process.

The IESBA provided its rationale in paragraphs 93 to 110 of [IESBA's Basis for Conclusions](#) for the drafting of the stand-back test requirements and application guidance. The Basis clarified in paragraph 104 that the stand-back test requires PAs to *consider* reputational, commercial and wider economic consequences and have an “awareness” of these wider economic consequences. However, the PA does not have to perform economic analysis or conduct extensive research on the full impact of the tax planning arrangement on the relevant jurisdiction’s economy.

Regarding the comments about placing PAs in quasi-management roles and imposing additional obligations on PAs, the IESBA reaffirmed that PAs have a duty to act in the public interest, not only considering the preferences or requirements of a client. Further, the stand-back test is consistent with the PA’s duty to comply with the fundamental principle of professional competence and due care, by providing clients with information to make an informed decision about the tax planning arrangement, as outlined in paragraphs 106 and 107 of [IESBA's Basis for Conclusions](#). Additionally, the IESBA clarified the role of management and Those Charged with Governance in paragraph 380.9 A1.

The same respondent was also concerned that proposed paragraph 380.14.A2 (refer below) in an Australian context may put the PAs in breach of their obligations under the TPB’s Code of Professional Conduct (TPB Code).

“An awareness of the wider economic consequences might take into account the Member in Public Practice’s general understanding of the current economic environment and the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the client operates”.

Technical Staff reviewed the proposed paragraph 380.14.A2 and found no conflicting positions between the proposals for APES 110 and the requirements in the TPB Code.

Another respondent suggested including a lens of materiality or significance as a factor when performing the stand-back test. The IESBA has revised the requirement on the stand-back test so that it is considered by the Members when applying their professional judgement (refer to paragraph 108 of [IESBA's Basis for Conclusions](#)). Accordingly, Technical Staff do not support the inclusion of materiality or significance as a specific factor in the stand-back test.

Technical Staff have also considered the confidential comments made by the TPB (refer to Agenda Item 10 (e)) and the discussion held with representatives of the ATO on 18 November 2024.

Based on the review of the TPB Code and the IESBA's rationale provided regarding the stand-back test, Technical Staff do not propose further amendments to the proposed tax planning and related services provisions for these comments raised by the respondents.

Documentation requirements

Proposed paragraphs AUST R280.23 and AUST R380.26 mandate the documentation of specific information relating to tax planning services.

Three respondents do not support the documentation requirements, noting that the IESBA position of voluntary documentation for tax planning and related services should be maintained in APES 110.

Technical Staff have considered the position taken by the IESBA and existing requirements in other professional standards applicable to Members in Public Practice in Australia, as set out below:

- **The IESBA's position**

The IESBA did consider making documentation mandatory in relation to tax planning and related services at their [September 2023 meeting](#). However, they acknowledged this could cause difficulties for some countries that adopted the Code and decided to maintain the voluntary documentation position.

In the [IESBA's Basis for Conclusions](#), the IESBA noted that the position it adopted does not preclude jurisdictions from establishing documentation requirements as they see fit for their national circumstances and noted the UK Professional Conduct in Relation to Taxation (PCRT) requirements (paragraph 141) that are applicable to members of the UK professional accounting organisations; and that documentation may also be established in relevant professional standards in some jurisdictions, in which the IESBA quoted the documentation requirement of APES 220 *Taxation Services* (paragraph 142).

- **Documentation requirement of APESB pronouncements**

Since [APES 220 Taxation Services](#) was first issued by the APESB in 2007 (and effective from 1 July 2008), it has required Members to document the work performed in relation to the taxation service or activity, including calculations, determinations or estimates used (paragraph 11.1 of APES 220).

Members must also comply with the documentation requirements as part of the firm's quality management system and risk management framework, as outlined in paragraph 3.6 of [APES 320 Quality Control for Firms that Provide Non-Assurance Services](#) and paragraph 6.1 of [APES 325 Risk Management for Firms](#).

- **Record keeping requirements of the TPB Code**

Section 30 *Keeping of proper client records* of [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (Determination) requires registered tax practitioners to keep proper client records, including all advice provided to the client. The records must include the relevant facts, assumptions, and reasoning underpinning any provided,

including the basis and method used for any calculations, determinations, or estimates. Accordingly, the Determination establishes a local legislative obligation to prepare documentation.

Based on the above considerations, the technical staff consider that members in public practice in the Australian environment have a long-standing requirement to document the work they have performed regarding taxation services.

Nevertheless, Technical Staff note the respondent concerns raised (SC 10 – 13), in particular the concern that the drafting of proposed paragraphs AUST R280.23 and AUST R380.26 broadens the extant requirement due to the inclusion of the seven matters listed.

Technical Staff agree that the proposed draft could be read in a manner that alters the extant requirement. As such, the Technical Staff are proposing to split the proposed paragraphs AUST R280.23 and AUST R380.26 into a requirement paragraph that aligns with the extant APES 220 requirement and an application paragraph that lists the seven matters a member might consider documenting with respect to a Tax Planning Service.

The proposed amendments are set out below:

AUST R280.23 **When providing a tax planning service, a Member shall document the work performed in accordance with the requirement in paragraph 11.1 of APES 220 Taxation Services on a timely basis.**

AUST R280.23 A1 **In complying with paragraph AUST R280.23, a Member might consider documenting the following matters:**

- **The purpose, circumstances and substance of the tax planning arrangement.**
- **The identity of the ultimate beneficiaries.**
- **The nature of any uncertainties.**
- **The Member's analysis, the courses of action considered, the judgements made, and the conclusions reached in advising the employing organisation on developing the tax planning arrangement.**
- **The results of discussions with the Member's immediate superior and appropriate levels of management, Those Charged with Governance and other parties.**
- **The response of the Member's immediate superior, management and, where applicable, Those Charged with Governance to the Member's advice.**
- **Any disagreement with the Member's immediate superior, management and, where applicable, Those Charged with Governance.**

AUST R380.26 **When providing a tax planning service, a Member in Public Practice shall document the work performed in accordance with the requirement in paragraph 11.1 of APES 220 Taxation Services on a timely basis.**

AUST
R380.26 A1

In complying with paragraph AUST R380.26, a Member in Public Practice might consider documenting the following matters:

- The purpose, circumstances and substance of the tax planning arrangement.
- The identity of the ultimate beneficiaries.
- The nature of any uncertainties.
- The Member's analysis, the courses of action considered, the judgements made, and the conclusions reached in advising the client on the tax planning arrangement.
- The results of discussions with the client and other parties.
- The client's response to the Member's advice.
- Any disagreement with the client.

Other Matters Raised by Respondents

Incorporating references to relevant tax practitioners' laws and regulations

One respondent suggested that APES 110 refer to obligations in the [Tax Agent Services Act 2009](#) (TASA) and the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (Determination), which could apply to Members when providing taxation services. Technical Staff also note the comments provided by the TPB, regarding the alignment between APES 110 and the TPB Code (Agenda Item 10 (c) and (d)).

Technical Staff concur with the suggestion to include references to external obligations for registered tax practitioners in the new sections in APES 110. This would enhance the usability of the Code and provide a reminder of the obligations under TASA, the Determination and the TPB regulations.

As such, Technical Staff are proposing to add a footnote to proposed paragraph 380.3 to include specific references to relevant laws and regulations, including TASA, [Tax Agent Services Regulations 2022](#) and the Determination, as set out below:

380.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the provision of tax planning services. This section also requires a Member to comply with relevant tax laws and regulations when providing such services.³

Footnote 3 Members who are registered tax practitioners need to consider their obligations under the Tax Agent Services Act 2009, the Tax Agent Services Regulations 2022 and the Tax Agent Services (Code of Professional Conduct) Determination 2024 when providing a tax planning or related service.

Development of guidance materials

Technical Staff note respondents' request for APESB to develop additional guidance in particular areas, including the credible basis test, the stand-back test, and second opinion requirements.

Technical Staff is aware that the IESBA is developing guidance material (in the form of Technical Staff Q&As) for these revisions that is scheduled to be issued in Q1 of 2025. After the IESBA releases its guidance materials, APESB will consider whether further Australian guidance materials are necessary.

Engagement with the TPB and ATO

The TPB provided a confidential submission on proposed amendments to APES 110 and APES 220. Overall, the TPB supports the proposed revisions, with key comments summarised at Agenda Item 10 (e).

Technical Staff also met with ATO representatives on 18 November 2024 to discuss the proposed revisions to APES 110 and APES 220, which address tax planning and related services. The ATO expressed support for the proposed revisions, including the credible basis, the stand-back test and the proposed Technical Staff documentation requirement in AUST R280.23 and AUST R380.26.

Other Editorial Amendments

During the preparation of the Compiled Code, Technical Staff have identified the following editorial amendments required to the following definitions in the Glossary:

- [AUST] Auditing and Assurance Standards – to update the standard name for ASA 101;
- [AUST] Australian Accounting Standards – to update the interpretation name;
- Engagement Team – to include the standard names for ASA 220, ASA 610 and ASA 620.

[AUST] Auditing and Assurance Standards

The [AUASB](#) standards, as described in ASA 100 *Preamble to AUASB Standards*, ASA 101 *Preamble to ~~Australian Auditing Standards~~ [AUASB Standards](#)* and the *Foreword to AUASB Pronouncements*, issued by the [AUASB](#), and operative from the date specified in each standard.

[AUST] Australian Accounting Standards

The Accounting Standards (including ~~Australian Accounting Interpretations~~ [AASB Interpretations](#)) promulgated by the AASB.

Engagement Team¹

All partners and staff performing the engagement, and any other individuals who perform procedures on the engagement, excluding [External Experts](#).

In Part 3, the term "Engagement Team" refers to individuals performing procedures on assurance or non-assurance engagements.

In Part 4A, the term "Engagement Team" refers to individuals performing audit or review procedures on the [Audit or Review Engagement](#), respectively. This term is further described in paragraph 400.9.

ASA 220 ~~(Revised)~~ [Quality Management for an Audit of a Financial Report and Other Historical Financial Information \(Compiled 2023\)](#) provides further guidance on the definition of Engagement Team in the context of an audit of [Financial Statements](#).

ASA 620 [Using the Work of an Auditor's Expert \(Compiled 2022\)](#) defines an auditor's expert as an individual or organisation possessing expertise in a field other than accounting or auditing, whose work in that field is used by the auditor to assist the auditor in obtaining sufficient appropriate audit evidence. ASA 620 deals with the auditor's responsibilities relating to the work of such experts.

ASA 610 [Using the Work of Internal Auditors \(Compiled 2022\)](#) deals with the auditor's responsibilities if using the work of internal auditors.

In Part 4B, the term "Engagement Team" refers to individuals performing assurance procedures on the [Assurance Engagement](#).

Proposed Amending Standard and Basis for Conclusions

As limited changes are being proposed to the Amending Standard, Technical Staff have not replicated the full version of the Standard in this agenda paper. It is the same as the proposed revisions set out in the [Exposure Draft](#), apart from the changes being suggested by Technical Staff as set out above:

- New application paragraphs AUST 280.12 A1.1 and AUST 380.12 A1.1 – to clarify the term "credible basis";
- Proposed amendments to paragraphs AUST R280.23 and AUST R380.26, and new application paragraphs AUST R280.23 A1 and AUST R380.26 A1 – to address stakeholders' concerns raised regarding the documentation requirements;
- Addition of footnote to paragraph 380.3 – to include references to relevant tax practitioners' laws and regulations; and
- Editorial amendments to the Glossary,

Technical Staff seek the Board's approval to issue the Amending Standard as proposed, subject to the editorials noted above and the related Basis for Conclusions set out at Agenda Item 10 (f). The proposed effective date of the Amending Standard is 1 July 2025, with early adoption permitted.

Impact on APES 220 *Taxation Services*

The proposed revisions to APES 110, which address Tax Planning and Related Services, will impact APES 220, especially the extant Section 5 on tax schemes and arrangements. The consequential amendments to APES 220 will be considered at Agenda Item 11 of this Board meeting.

Recommendations

The Board:

- note the submissions received on ED 03/24; and
- approve, subject to the Board's review comments and editorials, the issues of the Amending Standard *Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services* and related Basis for Conclusions.

Materials presented

Agenda Item 10 (a)	General Comments Table ED 03/24
Agenda Item 10 (b)	Special Comments Table ED 03/24
Agenda Item 10 (c)	TPB Comments on APES 110 Tax Planning Provisions – Confidential
Agenda Item 10 (d)	TPB Additional comments on APES 110 and APES 220 – Confidential
Agenda Item 10 (e)	Analysis of TPB Comments – Confidential
Agenda Item 10 (f)	Draft Basis for Conclusions for Tax Planning Revisions

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