

Review of Submissions - Specific Comments				
Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services				

Note: General comments relating to Exposure Draft 03/24 are addressed in a separate table. This table excludes minor editorial changes.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
1	Section 321, R380.12, and R380.14 - 380.16 A2	EY	<p>Appendix A</p> <p>Particular areas of additional guidance required for new code items</p> <p>We recommend that additional detailed guidance is developed by APESB to address issues with complying with the following new code items:</p> <ul style="list-style-type: none"> • The credible basis test (section R380.12) • The stand-back test (sections 380.14 to 380.16) • Second opinion requirements (section 321). <p>The following draws from our previous submission on the draft IESBA code proposals with references updated to the proposed APES 110 changes. The issues identified reflect the matters on which we consider supplementary guidance should be provided by APESB.</p>	No
2	321.3 A1 321.3 A3 R321.4	EY	<p>Second opinion requirements (section 321)</p> <p>We submit that section 321 is appropriate in certain circumstances but does not allow for the range of circumstances in which a second opinion may be sought.</p> <p>We consider the provisions are valid if the client is 'opinion shopping' in search of a favourable opinion, i.e. the client received a negative opinion from one PA and is looking for a favourable opinion from second to use that opinion to support a transaction the first PA advised was not credible.</p> <p>However, where the second opinion is being sought for other reasons, we believe guidance should be provided on how the PA is to navigate this requirement. An example is if the client is seeking a true second opinion to support a transaction. That is, where a PA or other advisor has provided advice in relation to a transaction which they consider to be credible, but the client is seeking further comfort in</p>	No

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			<p>relation to the transaction. In this instance, it may be inappropriate to require the PA to review the original opinion and interact with the initial PA or other advisor, as this runs the risk of the second advisor being tainted by the views of the first advisor rather than forming a truly independent opinion. In doing so, this could create a self-interest threat in it may encourage the second advisor to 'be consistent' so as to not upset the client. It may also create an intimidation threat if the primary advisor is seen as someone of 'greater' standing in the relevant community than the PA providing the second opinion. Guidance should be provided on how to manage these threats.</p> <p>We are further concerned and believe additional guidance should also be provided on how to manage the requirement that the opinion be based on the same facts. Our concern is that in forming an opinion, a PA is likely to ask for factual information from the client. If they assess that additional facts are required, they should not be precluded from seeking these in order to form their opinion. We agree that there is an issue if they have fewer facts but the guidance seems to limit the ability to base the opinion on broader or greater facts. We believe guidance should be provided on how to manage this.</p>	
3	R280.12 R380.12	Deloitte	<p>We have the following additional comments:</p> <p><i>Credible Basis for Tax Planning Advice</i></p> <p>Paragraphs 280.12 and 380.12 require the Member to determine whether there is a "credible basis" in laws and regulations for their tax advice. While there is no definition of credible basis, Australia's tax regime does have a similar and well-established concept known as the "Reasonably Arguable Position". It is defined as, ".....in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect." Where there is uncertainty in tax interpretation, tax practitioners use this standard to assess the appropriateness of their tax advice. There is also case law, and tax office guidance that assists tax practitioners in applying this standard. Accordingly, we consider this is likely to be referred to by tax practitioners in establishing a credible basis, as it is a well understood and accepted concept.</p> <p>Therefore, we suggest the Board consider including a footnote referring to the consideration of the Reasonably Arguable Position when determining whether there is a credible basis for the tax advice. Alternatively, the Board could consider including a definition of credible basis, similar to that proposed by the NZ Regulatory Board in "ED 2024-3: Proposed 2025 Update to NZICA Code of Ethics – Tax planning and Related Services" as follows (with suggested changes for the Australian context):</p>	Yes – new proposed paras AUST 280.12 A1.1 and AUST 380.12 A1.1.

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			<p>“For tax planning arrangements that require advice or recommendations in respect to <u>Australian New Zealand</u> tax laws and regulations, means an <u>reasonably arguable acceptable tax</u> position as defined in section <u>284-15</u> 3 of the Tax Administration Act <u>1953 1994</u> (NZ). For tax planning arrangements that require advice or recommendations in respect to the tax laws and regulations of a jurisdiction other than <u>Australia New Zealand</u>, is what is commonly understood and accepted as a “credible basis” in that jurisdiction.”</p>	
4	T h e R380.12 - R380.13	EY	<p>Credible basis test (section R380.12)</p> <p>We are concerned that the lack of clarity around the level at which this threshold is met may create further uncertainty. While the (<i>IESBA</i>) explanatory material suggests this is a standard lower than ‘likely to prevail’, this is not currently clear from the (draft) standard itself. We suggest this should be made clear. As this is not included in the standard, we would suggest that further guidance should be provided which addresses the operations of this test.</p> <p>While the guidance in section 380.12.A4 is useful in outlining the sources of information the professional accountant (PA) may use to form this view we consider there should also be guidance on:</p> <ol style="list-style-type: none"> 1. A list of factors which should not be relied upon by the PA in forming the view. This may include: <ul style="list-style-type: none"> • The potential for the transaction underlying the advice not being reviewed by a revenue authority • The potential for the transaction not being detected or identified by a revenue authority • The reliance on a transaction being presented in a manner which knowingly disguises the true nature or parties to the transaction • The reliance on assumptions concerning knowingly incorrect facts. 2. Guidance on how to balance the factors listed and how to determine if the threshold has been met or failed. Currently this appears to be left to the PA’s professional judgement. Given the potential for sanctions, we think guidance to assist with this professional judgement would be useful. 	Yes – new proposed para AUST 380.12 A1.1.

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
5	R380.14 - 380.16 A2	EY	<p>Stand-back test (sections 380.14 to 380.16)</p> <p>The additional requirement for the PA to consider all the consequences goes beyond what an advisor would typically be expected to do. There is a need for guidance to be provided given it requires the PA to form views over areas in which they may have little or no professional skill.</p> <p>We consider further guidance should be provided on the weighing of the type of factors listed in section 380.14 given this would normally be a role for management of the client not the PA.</p> <p>Based on the current wording, there appears to be some ambiguity with regard to the communication of the result of applying the test to the client. Further guidance on this should be provided.</p> <p>On one construction, it would seem that section R380.15 requires the PA to not recommend (i.e. abstain from providing the advice), or to recommend against, a transaction where there is a credible basis for the transaction but the PA has formed a view that other factors weigh against it. We are concerned that this may be placing the PA in a quasi-management role, which we consider to be inappropriate. Guidance should be provided on how this can be navigated.</p> <p>We are also concerned with the list of other factors which are required to be considered and the absence of guidance on how to weight such factors, creating further challenges for the stand-back test. Guidance on this should be provided.</p> <p>An example of this is the requirement to consider the impact on the tax base of a particular jurisdiction. While this may have social impacts on that jurisdiction or impact on multiple jurisdictions, such impact may be negative in some jurisdictions and positive in others. How a PA would do this assessment given the conflicting factors is left unexplained; is the PA required to carry out some form of mathematical assessment, i.e. negative impact in Jurisdiction A is less or more significant than the positive impact in Jurisdiction B; is a positive impact to be discounted or assessed in equal terms? Or is it to be assessed only on the basis of the Jurisdiction in which the PA is located?</p> <p>Our view is that such assessment should be the role of the client not the PA but the operation of the standard will impose that obligation on the PA, as a result, they should be provided with guidance on how to appropriately assess this.</p>	No

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			We are concerned that section 380.14.A2 in an Australian context may put the PA in breach of their obligations under the Tax Practitioners Board (TPB) code of conduct. Accordingly we believe guidance should be provided on this, with confirmation that actions taken under this will not place the PA in breach of their obligations under this code of conduct, or acknowledges that the TPB code of conduct which has legislative force should take precedence.	
6	R380.14	KPMG	<p>Additional recommendations</p> <p>We have reviewed the submission provided to IESBA from KPMG International, which can be publicly accessed here. That submission makes a number of salient points which, while not taken up by IESBA in finalising its revisions to the Code, we nonetheless suggest should be considered by APESB, as follows:</p> <ul style="list-style-type: none"> • A lens of materiality or significance should be added as a factor to consider when performing the stand-back test (R380.14). This is appropriate given the possible consequences are relative to the significance of the arrangement. 	No
7	380.16 A1	EY	<p><i>Multiple Jurisdictions</i></p> <p>It is unclear if section 380.16.A1 is intended to form guidance for the stand-back test or to be independent guidance - we believe this should be clarified in additional guidance.</p>	No
8	380.16 A1	KPMG	<ul style="list-style-type: none"> • Multi-jurisdictional tax benefit (380.16 A1) – the drafting of this section is insufficiently specific and further guidance should be provided to support the determination of a 'tax benefit' required under this section. In addition, from an Australian perspective there are a number of domestic and tax treaty provisions which aim to address such multi-jurisdictional tax benefits, and in certain cases can operate to neutralise tax benefits (e.g. hybrid mismatch rules). As such, it should be confirmed that this section does not apply where one of more of these integrity provisions have application. Further, we suggest that the section be updated to clarify that disclosure does not need to be considered in circumstances where there is an existing disclosure of the arrangement to revenue authorities. From an Australian perspective, this would include the substantive disclosures required as part of the income tax return (e.g. International Dealings Schedule and Reportable Tax Positions Schedule). 	No
9	380.22 A1 and R380.23	KPMG	<ul style="list-style-type: none"> • Disagreement with management – this would benefit from additional guidance which acknowledges that in some circumstances there may be uncertainty in the tax law which leads to differences of opinion between a Member and the client. In this case, it is reasonable that the Member may 	No

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			<p>determine that it is not necessary to raise the matter with Those Charged With Governance (380.22 A1) or withdraw from the engagement or professional relationship (R380.23). This clarification serves the public interest by ensuring the relationship between client and Member does not become <i>adversarial</i>.</p>	
10	AUST R280.23 AUST R380.26	Deloitte	<p><i>Documentation Requirements</i></p> <p>As stated in our correspondence on previous revisions to APES 110, we consider that the Australian Code should reflect the wording and structure of the International Code, preferably with no changes, unless changes are required for legislative or regulatory reasons. In relation to AUST paras 280.23 and 380.26 we do not support the APESB's proposal to make documentation a requirement, departing from the IESBA's approach to encourage documentation, as there is no local legislative or regulatory reason to do so.</p> <p>We note the APESB indicated the reason for making this change was to align with APES 220 documentation requirements. However, APES 220 (paragraph 11) has a much narrower scope limited to documenting the work performed and therefore rather than aligning, in our view the APESB's proposal significantly expands existing obligations without any basis for doing so. The documentation requirement in APES 220 does not extend to other aspects covered in APES 110 paragraphs 280.23 and 380.26, such as documenting beneficiaries, uncertainties, and discussions with, responses from, and disagreements with the client.</p> <p>This would be an example of APES 220 creating duplication and inconsistencies with other standards and laws, and we refer to our comment about considering the withdrawal of APES 220. We suggest aligning APES 110 paragraphs 280.23 and 380.26 with the International Code, and to address the APESB's concerns, consider including an Australian paragraph, similar to the approach in the NZ Regulatory Board proposal, such as:</p> <p>“Members might also be required to prepare such documentation to comply with technical and professional standards and laws and regulations”</p>	Yes, Revision to AUST R380.26 and new application paragraph AUST 380.26 A1

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
11	AUST R380.26	EY	<p><i>1. Alignment with IESBA</i></p> <p>There is significant benefit from having APES 110 aligned with IESBA pronouncements without variation (other than on terminology as necessary). This is consistent with APESB’s approach to the IESBA Code.</p> <p>We recommend that APES 110 section (R)380.26 should be aligned with the IESBA section 380.26 to specify that a PA in public practice “is encouraged to” (reflecting the terminology in the IESBA standard) document the items listed rather than that they “shall document” (as contained in the current APES draft), so as to achieve consistency with the IESBA code but also as the PA may not be in a position to document all of the listed items on each piece of advice.</p> <p>A “shall” requirement assumes that the advice will always be given in a context where the PA is in a position to judge and document all seven of the bulleted points.</p> <p>If there is an ongoing relationship with the client, it may be possible to prepare such a range of documentation, as the client is more likely to provide feedback on the advice. However, there is no obligation on the client to respond or share their response to the advice with the PA.</p> <p>In other engagements, the PA may have no interactions with the client after the delivery of their final advice which completes the engagement. As such, they may not be in a position to address (for instance) the last three bullet points in the provision.</p> <p>An “encouraged” requirement, supported by appropriate guidance, would allow some flexibility such that particular documentation applies only where interactions are within the scope of the engagement or a broader relationship of the PA with the client. This would ensure these points are not seen as obligating the PA to take steps beyond their engagement and where they may have no capacity to complete the requirement in any case.</p> <p>In contrast, a “shall” requirement may be difficult to comply with in cases where a particular listed item is not relevant to the services provided and the information is not readily available. We point in particular to the item to document “The identity of the ultimate beneficiaries”. This information may not have been provided for the purpose of the services provided if the services did not impact such parties. Further, in many cases it can be difficult to identify the ultimate beneficiaries, for example where entities are not</p>	<p>Yes, Revision to AUST R380.26 and new application paragraph AUST 380.26 A1</p>

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			held through transparent entities. Finally, if the client does not accept the advice, but does not reveal this to the PA, the PA would be unable to discharge the obligation to document such disagreement with the client.	
12	AUST R380.26	KPMG	<p>Documentation</p> <p>The ED proposes a divergence from the IESBA code to mandate the documentation of specific information relating to a tax planning service per paragraph AUST R380.26.</p> <p>The corresponding IESBA code provides for the 'encouragement' of such documentation.</p> <p>The Agenda Paper for the ED notes that documentation of specific information relating to tax planning services is mandated to align with APES 220 Taxation Services, which requires the appropriate documentation of the work performed when providing a Taxation Service (see extract of relevant provision included in the Appendix).</p> <p>We consider that the proposed requirements in AUST R380.26 go beyond the existing obligations in APES 220 as well as other existing documentation requirements. These include the Non-Assurance Services provisions in APES 110, and the record keeping requirements in the <i>Tax Agent Services (Code of Professional Conduct) Determination 2024</i>, and the <i>Australian Tax Advisory Firm Governance – Best practice principles</i> (see extracts of the provisions included in the Appendix for comparative purposes).</p> <p>Taken together, these existing obligations broadly require documentation at a level which is appropriate and relevant to the nature of the tax service being provided, with greater documentation being required for more complex or material matters.</p> <p>However, AUST R380.26 requires documentation for all tax planning services and is prescriptive, by providing a detailed list of items which must be addressed (e.g. identity of ultimate beneficiaries, courses of action considered etc.). This is likely to create a significant burden for Members, particularly noting the broad definition of 'tax planning services' will mean that tax advice on less complex / 'business-as-usual' matters (e.g. client query on purchase of depreciating asset which may be eligible for a tax incentive) will fall within APES 110. We also suggest any documentation of ultimate beneficiaries aligns with proposed anti-money laundering and counter-terrorism financing (AML/CTF) legislation expected to apply to the tax and accounting profession in Australia in 2026¹.</p>	Yes, Revision to AUST R380.26 and new application paragraph AUST 380.26 A1

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			<p>We agree with one of the approaches suggested by APESB in its submission to IESBA. While the APESB preferred mandating a global documentation requirement, in the alternative it recommended documentation be required for uncertain circumstances or higher-risk tax planning services. We consider this would better align with existing documentation requirements and hence recommend that AUST R380.26 be updated to this effect.</p> <p>¹ Introduction of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 Our ministers – Attorney-General's portfolio (ag.gov.au)</p>	
13	AUST R380.26	KPMG	<p>Appendix: Other documentation obligations for tax practitioners</p> <p>APES 220</p> <p>11.1 A Member shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Taxation Service that have been provided in Writing in accordance with this Standard, and the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Taxation Service have been made.</p> <p>APES 110 (tax advisory and tax planning services to audit clients)</p> <p>AUST R604.4.1 The Firm shall document the factors considered and conclusions reached in determining that the tax treatment satisfies the conditions described in paragraph AUST R604.4.</p> <p>AUST R604.12.1 The Firm shall document the factors considered and conclusions reached in determining that the tax advisory and tax planning service satisfies one or more of the conditions described in paragraph 604.12 A2.</p> <p>Section 30 Tax Agent Services (Code of Professional Conduct) Determination 2024</p> <p>30 Keeping of proper client records</p>	Yes, Revision to AUST R380.26 and new application paragraph AUST 380.26 A1

Exposure Draft 03/24: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard?
			<p>(1) You must keep records that correctly record the tax agent services you have provided, or that are provided on your behalf, to each of your clients, including former clients.</p> <p>(2) The records must:</p> <p>(a) be in English, or readily accessible and easily convertible into English; and</p> <p>(b) be retained for at least 5 years after the service has been provided; and</p> <p>(c) show the nature, scope and outcome of the tax agent service provided; and</p> <p>(d) include all relevant information considered in the provision of the tax agent service (including information exchanged with the client, advice provided to the client, and for more complex matters: the relevant facts, assumptions and reasoning underpinning any advice provided to the client).</p> <p>Australian Tax Advisory Firm Governance – Best Practice Principles (Large Market Tax Adviser Principles)</p> <p>Principle 2.6 – Documenting the advice provided to the client</p> <p>1. A written note is made of all final advice provided to the client including (as materially relevant) facts, assumptions, reasoning or analysis undertaken to reach the conclusion.</p>	
14	Transitional Provisions paragraph 11	IPA	IPA also supports the proposed effective date of 1 July 2025, with earlier adoption permitted.	No

RESPONDENTS

1	Deloitte	Deloitte Touche Tohmatsu
2	EY	Ernst & Young
3	IPA	Institute of Public Accountants
4	KPMG	KPMG
5	CA ANZ	Chartered Accountants Australia and New Zealand
6	CPAA	CPA Australia