

AGENDA PAPER

Item Number: 11
Date of Meeting: 9 December 2024
Subject: Proposed revised APES 220 *Taxation Services*

Action Required For Discussion For Noting For Information

Purpose

To seek the Board's approval, subject to the Board's review comments and editorials, to issue a revised APES 220.

Background

APESB originally issued 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, with the key revisions being 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 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.

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.

In 2023, the media exposed the ethical failings of a tax partner at PwC, who shared confidential information on proposed changes to Australia's anti-avoidance tax laws with his colleagues at PwC (Refer to the Senate report [PwC – A calculated breach of trust](#)).

The discovery of this matter has led to intense public scrutiny of the accounting profession and multiple parliamentary inquiries of the regulatory structures and monitoring mechanisms in place to regulate, monitor and enforce the ethical behaviour of accountants and consultants, including tax practitioners. A Parliamentary Joint Committee Report was issued in November 2024 (refer to Agenda Item 12 of this meeting) that made 40 recommendations.

In April 2024, the IESBA issued the final pronouncement [Revisions to the Code Addressing Tax Planning and Related Services](#). In July 2024, APESB issued an exposure draft to revise APES 110 to adopt the IESBA's amendments to the Code addressing tax planning and related services. The outcome of this exposure draft due process is set out in Agenda Paper 10 of this Board meeting.

At the June 2024 Board Meeting ([Agenda Item 6](#)), the Board approved the release of [ED 02/24](#), which proposed revisions to APES 220 to incorporate proposed Tax Planning and Related Services amendments to APES 110, and to address matters on the APESB Issues Register relating to quality management-related conforming amendments and revised guidance issued by the TPB regarding supervisory arrangements.

The exposure draft was issued on 28 June 2024, and the comment period closed on 27 September 2024.

In July 2024, the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination) was issued. The Determination sets out 8 additional obligations that tax practitioners need to comply with, in addition to the existing obligations under the TPB's Code of Professional Conduct. An update on the new obligations for tax practitioners was provided to the Board in [Agenda Paper 14](#) of the 3 September 2024 Board Meeting.

Matters for Consideration

APESB received five submissions on [ED 02/24](#) from three professional bodies, an accounting firm and a regulator (the TPB). The submissions from four stakeholders are tabulated in General and Specific Comment Tables at Agenda Items 11(a) and 11(b), respectively. The confidential submission from the TPB is included at Agenda Item 11(c) for the Board's consideration only.

The stakeholders were generally supportive of the proposed revisions to APES 220, although two stakeholders questioned the standard's ongoing relevance. One of those stakeholders requested that the APESB consider withdrawing the Standard.

The key matters raised by the respondents are set out below.

The Scope of APES 220

One respondent questioned the continuing need for APES 220 due to likely duplication with the proposed revisions to APES 110 for tax planning and related services (being considered by the Board at Agenda Item 10 of this Board Meeting) and recent amendments to the Tax Practitioners Board's Code of Professional Conduct (the TPB Code).

The same respondent requested the Board consider the withdrawal of APES 220 *to '...avoid duplication, reduce potential inconsistencies, and make it simpler for tax practitioners to understand and comply with their ethical requirements'* (per General Comment Item 7 in Agenda Item 11(a)).

In consideration of this request, Technical Staff have reviewed the scope of APES 220. The extant scope of APES 220 is broad as it applies to all Members who provide taxation services, including Members in Business. APES 220 also applies to all taxation services, not just tax planning and related services (which is the scope of the proposed amendments to APES 110). Technical Staff have considered the scope and potential duplication of content from the perspectives of different members and services as follows:

(i) Members in Public Practice

Members in Public Practice who are registered tax agents and/or BAS agents must comply with the *Tax Agent Services Act 2009* (TASA) and the TPB Code. The ethical requirements from the TASA and TPB Code are generally consistent with the requirements in APES 220. However, these requirements do not apply to other members who work for registered tax or BAS agents. This means that the TPB could only hold the registered agents accountable for their work and take action against them, but not those who work with or are supervised by the registered agents. Accordingly, APES 220 applies more broadly than the TASA and the TPB Code.

Technical Staff have noted the reference in the respondent's comments to the ethical requirements of the [Australian Large Market Tax Advisory Principles](#). However, these principles are from a voluntary framework, and only the Big 4 firms have released documents indicating their adoption of it. There is no evidence of the adoption of this framework by Members of Public Practice outside the Big 4.

(ii) Members in Business

Members in Business who work for a commercial organisation, not-for-profit or regulatory entity do not have to be registered tax practitioners and, therefore, the TPB Code does not apply.

In contrast, APES 220 extends to Members in Business, which includes those working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or regulatory or professional bodies, who might be employees, contractors, partners, directors (executive or non-executive), owner-managers or volunteers.

(iii) Range of Taxation Services

In considering whether APES 110 could be considered as a replacement for APES 220, Technical Staff note that the proposed revisions to APES 110 relate to tax planning and related services only. Proposed paragraph 380.5 A3 of APES 110 specifies that "*Tax planning services do not include services that are generally referred to as tax compliance or tax preparation, which are services to assist the client in fulfilling the client's filing, reporting, payment and other obligations under tax laws and regulations.*"

APES 220 applies to a broader range of taxation services, which includes tax planning, tax return preparation, tax accounting entries, and assistance with tax disputes. It is therefore important and necessary for APES 220 to provide guidance for Members who provide taxation services that are not covered in APES 110.

Technical Staff also note that the proposed revisions to APES 220 clarify how the new provisions in APES 110 interact with the extant requirements in APES 220. The changes only impact Section 5 of APES 220 relating to tax schemes and arrangements.

(iv) Regulators Views

Technical Staff are conscious of avoiding duplication where possible or creating inconsistencies with other requirements applicable to Members. Where appropriate, APESB collaborates with relevant regulators, such as the TPB and the ATO, to ensure alignment.

Technical Staff favourably note the TPB's comments regarding the alignment between APES 220 and other taxation-related laws and regulations in Agenda Item 11 (c).

Technical Staff also met with representatives of the Australian Tax Office (ATO) on 18 November 2024 to discuss the proposed revisions to APES 110 and APES 220.

Both tax regulators supported the continuance of APES 220 in the current regulatory environment.

As APES 220 is broader in both scope and application and, where applicable, consistent with TPB's requirements, Technical Staff believe it is relevant and should not be withdrawn.

Technical Staff are also concerned that the withdrawal of APES 220 would not be viewed favourably in the current regulatory environment at a time when applicable standards, regulations, monitoring and oversight mechanisms in place for the accounting profession are being questioned and examined. It would also be in contrast with the position taken by the TPB to strengthen the professional and ethical requirements for tax practitioners

Another respondent encouraged APESB to conduct a review of APES 220 for potential duplication within the Standard after the finalisation of the proposed amendments to the TPB Code and APES 110. Technical Staff note the suggestion and will take this into consideration as part of APESB's ongoing work to review its standards on a regular basis.

Incorporating references to relevant tax practitioners' laws, regulations and guidance.

A number of respondents highlighted that other laws, regulations and professional standards could apply to Members when providing tax services and that it is important to ensure consistency between the requirements that apply to Members. The regulator also commented on the inclusion of references to specific laws, regulations and guidance documents to enhance a Member's awareness of them.

Technical Staff are supportive of highlighting relevant external obligations to Members. As such, Technical Staff are proposing to add a footnote to paragraph 3.12 and amend the proposed footnote to paragraph 4.3 to include specific references to relevant laws and regulations (e.g., TASA, *Tax Agent Services Regulations 2022* and the *Tax Agent Services (Code of Professional Conduct) Determination 2024*) as well as relevant TPB information sheets.

The proposed amendments for footnotes to paragraphs 3.12 and 4.3 are set out below:

- 3.12. Where a Member provides Confidential Information in accordance with a legal¹, regulatory or professional duty or right to disclose, the Member shall consider whether it is appropriate to inform the Client, Employer or relevant third party, either before disclosing the Confidential Information, or as soon as practicable thereafter, provided that there is no legal prohibition against such notification.**

Footnote 1: [Members who are registered tax practitioners need to consider their obligations under the *Tax Agent Services Act 2009*, the *Tax Agent Services Regulations 2022*, the *Tax Agent Services \(Code of Professional Conduct\) Determination 2024*, and relevant information sheets such as TPB\(I\) 21/2014 *Code of Professional Conduct – Confidentiality of client information* and TPB\(I\) D58/2024 *Managing conflicts of interest and maintaining confidentiality in dealings with government*.](#)

- 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 regulations²⁴ and **Professional Standards** prior to lodgement of these revenue returns.

Footnote 24: ~~For example, Members who are registered tax practitioners need to should~~ consider [their obligations under the *Tax Agent Services Act 2009*, ~~or~~ the *Tax Agent Services Regulations 2022*, the *Tax Agent Services \(Code of Professional Conduct\) Determination 2024*](#) and information in the Tax Practitioners Board (TPB) Information Sheet TPB(I) 36/2021 *Supervisory arrangements under the Tax Agent Services Act 2009*.

Technical Staff note that the TPB has been conducting a consultation on the draft information sheet [TPB\(I\) D58/2024 *Managing conflicts of interest and maintaining confidentiality in dealings with government*](#). The consultation period closes on 21 November 2024, with the finalised guidance expected to be released in December 2024.

Reference to tax planning and related services and activities.

A respondent suggested that proposed paragraph 5.2 should refer to 'tax planning and related activities or services' to align with the wording used in APES 110 (refer to specific comment 4 in agenda item 11(b)).

Technical Staff agree with this suggestion and recommend paragraph 5.2 be amended as set out below:

- 5.2. When a **Member** is providing tax planning **and related** activities or services, the **Member** shall comply with **Section 280 Tax Planning Activities (for Members in Business)** or **Section 380 Tax Planning Services (for Members in Public Practice)** of the **Code**.

Proposed Amending Standard

As limited changes are being proposed to the APES 220 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 proposed amendments set out above.

The proposed effective date for the revised APES 220 is 1 July 2025, with early adoption permitted.

Technical Staff seek the Board's approval to issue the proposed revised APES 220.

Small and Medium Practices (SMPs)

Technical Staff believe the proposed amendments to APES 220 will assist SMPs in clarifying their professional responsibilities regarding the application of APES 220's requirements alongside the new requirements in APES 110 and the responsibilities of registered tax and BAS agents.

Staff Recommendation

That the Board, subject to the Board's feedback and review, approve the issue of the revised APES 220.

Materials presented

Agenda Item 11 (a)	General Comments Table ED 02/24
Agenda Item 11 (b)	Specific Comments Table ED 02/24
Agenda Item 11 (c)	Analysis of regulator comments – Confidential [Board distribution only]

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