



Level 38, International Towers Three  
300 Barangaroo Avenue  
Sydney NSW 2000

P O Box H67 Australia Square  
Sydney NSW 1213  
Australia

ABN: 51 194 660 183  
Telephone: +61 2 9335 7621  
Facsimile: +61 2 9335 7001  
DX: 1056 Sydney  
www.kpmg.com.au

Chief Executive Officer  
Accounting Professional & Ethical Standards Board  
Level 11, 99 William Street,  
Melbourne VIC 3000  
E: [sub@apesb.org.au](mailto:sub@apesb.org.au)

30 September 2022

Dear Mr Channa Wijesinghe,

**Proposed Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)**

KPMG welcomes the opportunity to comment, on the proposed amendments to the non-assurance services (“**NAS**”) provisions of APES 110 *Code of Ethics for Professional Accountants (Including Independence Standards)* (“**APES 110**”) (“**the ED**”).

KPMG is supportive of the APESB’s intent of amending APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (“the Code”) to incorporate changes made by the International Ethics Standards Board for Accountants (IESBA) to the International Code of Ethics for Professional Accountants (including International Independence Standards) (the International Code).

The revised NAS provisions in the IESBA Code help raise the bar on auditor independence with a new prohibition on audit firms providing a NAS to a Public Interest Entity (PIE) audit client that *might* create a self-review threat.

With respect to tax advisory and tax planning services, we are not supportive of APESB’s proposed Option 1 or Option 2. Instead, KPMG’s preference is that APESB maintain consistency with IESBA. **Attachment A** provides our responses to the specific questions raised in the ED.

We would be pleased to discuss our comments with you. If you wish to do so, please contact me on (02) 9335 7487, or Andrew Bryant on (03) 9288 6036.

Yours Sincerely

Jeff Cook  
Ethics and Independence  
Partner  
KPMG



## Attachment A

### Responses to specific questions

**Request for Specific Comment 1 – Do you support APESB’s proposed Option 1 to address concerns relating to tax services by amending the threshold to ‘almost certain to prevail’? Please provide reasons and justification for your response.**

KPMG is not supportive of proposed Option 1 to amend the threshold from “likely to prevail” to “almost certain to prevail”. KPMG is not aware of any evidence, and certainly not sufficient evidence, supporting the need for Australian specific amendments to the IESBA Code in this regard.

IESBA undertook substantial due diligence, outreach and consultation with various stakeholders to determine the approach now reflected in the International Code with respect to tax advisory and tax planning services. Noting IESBA’s expert and detailed consideration of the potential implications for audit independence of the audit firm providing tax advisory and tax planning services, in the absence of tangible evidence in the Australian environment of fundamentally different audit independence outcomes as a result of the provision of tax advisory and tax planning services by the audit firm, we consider it inappropriate and unjustified for the APESB to create an auditor independence regime in Australia inconsistent with that applicable globally.

In addition, given IESBA’s newly introduced self-review threat prohibits a service that *might* create a self-review threat, it is difficult to see how Option 1 will present a solution that addresses any further concerns regarding audit independence. If Option 1 is being designed to address a tax revenue concern, as opposed to an audit independence concern, the APES 110 Code is not an effective nor efficient mechanism to address such concerns. Amending the requirement to ‘almost certain to prevail’ will create a double standard in the tax advice industry with no incremental auditor independence benefit. KPMG also believes several unintended consequences could arise from proposed Option 1 as follows:

- Creating an approach to audit independence which is inconsistent with that applicable globally, without having a robust and meaningful basis for doing so, risks weakening the confidence of the profession and other stakeholders in the APES.
- Local deviations from the IESBA Code increase the risk of unintended consequences, including contradictions and omissions of required consequential amendments. This could have the overall effect of weakening confidence in audit independence in Australia with consequential implications for public perceptions of audit quality.
- Inconsistencies between APES 110 and the International Code inevitably lead to practical challenges in the application of independence standards to group audit scenarios with entities operating across different jurisdictions. They also lead to increased costs for corporations and audit firms as the efforts required to maintain compliance increase with the added complexity created by the inconsistency.



**Request for Specific Comment 2 – Do you support APESB’s proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the “firm is confident is likely to prevail” as a high threshold? Please provide reasons and justification for your response.**

We are not supportive of the APESB’s proposed Option 2 to provide guidance to clarify what the phrase “likely to prevail” is intended to mean. In our view, if guidance is to be developed, it should be done so globally (i.e., by IESBA). In this context it is noted that IESBA has already provided high level guidance on the meaning of “likely to prevail” via [Basis-for-Conclusions-Non-Assurance-Services.pdf \(ifac.org\)](#) (Pages 28 & 29). In particular that document addresses the considerations regarding “likely to prevail” compared to “more likely than not” (i.e., PCAOB Rule 3522). Further, the answer to question 16 of the [IESBA Staff Questions and Answers](#) states: ... *“The IESBA determined that, for subparagraph 604.12 A2 (c) to apply, the firm should have a high level of confidence that the basis in tax law is “likely to prevail”.*”

We would encourage APESB to work with IESBA to develop further guidance that it may consider necessary to address concerns regarding the independence of audit firms when providing tax advisory or planning services to a public interest entity audit client.

**Request for Specific Comment 3 – Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response.**

KPMG supports the addition of a requirement for firms to document the factors considered and conclusions reached in determining that the firm has satisfied the conditions, in the instances where the firm determines that providing tax planning and tax advisory services are permissible.

**Request for Specific Comment 4 – Do you agree that the term ‘tax avoidance’ is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response.**

KPMG does not oppose the use of the term “tax avoidance” in APES 110. Noting there is no globally accepted definition for the term we encourage APESB to provide Australian specific guidance to support consistent application of the term. In addition, paragraph 116 of the [Basis-for-Conclusions-Non-Assurance-Services.pdf \(ifac.org\)](#) states that IESBA is of the view that National Standard Setters are to provide additional guidance based on local tax law or regulation.