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Submitted electronically

PROPOSED AMENDMENTS TO THE NON-ASSURANCE SERVICES RELATED PROVISIONS OF APES 110 CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS (INCLUDING INDEPENDENCE STANDARDS) (APES CODE)

Dear Board Members

The purpose of this submission is to provide the APES Board with BDO Australia's (BDO) comments on exposure draft 04/22. Thank you for the opportunity to comment on the above exposure draft.

BDO places great emphasis on the importance of audit quality to support the audited financial statements provided to businesses, lenders, investors, capital markets and other parties. Auditor independence is fundamental to maintaining public trust and to consistently achieving high audit quality. Accordingly, BDO supports the alignment of the APES Code to mirror changes made internationally by the International Ethics Standards Board for Accountants (IESBA) to the International Code of Ethics for Professional Accountants (IESBA Code) along with appropriate Australian specific deviations within the APES Code to address the specifics of the Australian regulatory environment.

We note that the amendments proposed in Option 1 of the Exposure Draft would result in a deviation from the international standards. Whilst supportive of proposed amendments within the APES Code that are not aligned with the IESBA Code where sufficient evidence and research is made available to support the position, our view is that the proposed amendments suggested in Option 1 of the Exposure Draft and inherent deviation from international requirements is not justified.

BDO supports the changes proposed by Option 2 of the Exposure Draft as this mirrors the changes made internationally by IESBA. We do however encourage the APES Board to provide additional practical guidance to support the required assessment against a sufficiently high threshold in practice.

We have included further reasons for this position in Appendix 1, along with comments in response to the specific questions and options raised.

Please do not hesitate to contact us should you require further clarification on any of the matters discussed.

Yours faithfully

A handwritten signature in black ink that reads 'J Bowen'.

Jane Bowen

Partner, National Audit Quality

A handwritten signature in black ink that reads 'W Olivier'.

Willem Olivier

Head of National Risk and Ethics

Appendix 1

Our response to each of the questions posed in Exposure Draft 04/22 is provided in the table below:

Question	BDO Response
<p><i>Request for Specific Comment 1</i></p> <p>Do you support APESB’s proposed Option 1 to address concerns relating to tax services by amending the threshold to ‘almost certain to prevail’?</p> <p>Please provide reasons and justification for your response.</p>	<p>By amending the threshold to almost certain to prevail as proposed in Option 1, the APES Code will deviate from international standards and specifically the IESBA Code, as such BDO does not support proposed Option 1.</p> <p>Our view is that a deviation from international standards is only warranted in limited circumstances, as an example where there is evidence of audit or auditor independence failure or local legislation warrants such deviation.</p> <p>International alignment of professional and ethical standards is important for professional services firms that operate as a network across multiple jurisdictions therefore creating a heightened risk of breaches across the profession which is not in the public interest.</p> <p>Specifically, the risk is heightened when inconsistent auditor independence requirements are applied to tax planning and advisory services in group audits across multiple jurisdictions and related entities within the group structure.</p> <p>We also consider that in practice the requirement to meet the standard of ‘almost certain to prevail’ prior to the undertaking of any engagement would be overly burdensome and is tantamount to prohibition.</p>
<p><i>Request for Specific Comment 2</i></p> <p>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?</p> <p>Please provide reasons and justification for your response.</p>	<p>BDO supports Option 2 based on its current alignment with the revised IESBA Code. This approach facilitates the ease of aligning the APES Code with future changes to international standards.</p> <p>In considering the proposed changes to Option 2, we are of the view that supplementing this specific condition with the term ‘confident’ implies a higher threshold than was previously applied. Our view however is that further clarification and guidance should be provided on how the term ‘confident’ should be interpreted. Proposed paragraph AUST 604.12 A2.1 refers to the firm gaining confidence that there is a high probability that the condition will prevail through application of the reasonable and informed third party test.</p> <p>We propose that further guidance in relation to the application of the reasonable and informed third party test specific to this condition as it applies to tax advisory</p>

	<p>and planning services in the Australian context be provided. The guidance would be useful in informing our judgement and ensuring the application of a streamlined approach with the objective of achieving the desired threshold consistently.</p>
<p>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</p>	<p>We foresee practical challenges in implementing the documentation requirements set out in proposed paragraph AUST R604.4.1 and AUST R604.12.1 specific to Option 1 as this will unnecessarily discourage consideration of engagement in the first instance (refer to our response to Specific Comment 1).</p> <p>In relation to Option 2: AUST 604.4.1</p> <p>The documentation requirements set out in proposed paragraph AUST R604.4.1 apply specifically to documenting the factors considered and conclusions reached in determining that the services have a ‘basis in tax law that the Firm is confident is likely to prevail’.</p> <p>We do not foresee the need for an Australian specific documentation requirement, should the APES Board consider amending the paragraph as proposed in our comments in response to Specific Comment 4 and specifically 4a below.</p> <p>The practical challenges associated with implementing the documentation requirements, should the APES Board consider amending paragraph R604.4.1 as proposed in Specific Comment 4 and specifically 4b and 4c below is aligned to our response to Specific Comment 2. We would find it challenging to document the application of the reasonable and informed third party test in the absence of additional guidance informing our judgement.</p> <p>AUST 604.12.1</p> <p>Proposed paragraph AUST R604.12.1 sets out the requirement to document the factors considered and conclusions reached in determining that the tax advisory and planning services satisfy one or more of the conditions described in paragraph 604.12 A2.</p> <p>We would find it challenging to document the application of the reasonable and informed third party test in the absence of additional guidance informing our judgements as outlined in our response to Specific Comment 2.</p>

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.

4a.

If the term ‘tax avoidance’ is retained in the context of R604.4, our suggestion would be that the remainder of the proposed paragraph as quoted below, should be deleted as professionals would ordinarily be prohibited from providing tax services or recommending a transaction if it relates to a tax treatment where a significant purpose of the tax treatment is tax avoidance.

If the term ‘tax avoidance’ is retained, we propose deletion of the following:

AUST 604.4 (Option 1)

‘unless the proposed treatment has a basis in applicable tax law or regulation that is almost certain to prevail.’

AUST 604.4 A1

‘Unless the tax treatment has a basis in applicable tax law or regulation that is almost certain to prevail’

OR

R604.4

‘unless the Firm is confident that the proposed treatment has a basis in applicable tax law or regulation that is likely to prevail.’

604.4 A1

‘Unless the tax treatment has a basis in applicable tax law or regulation that the Firm is confident is likely to prevail’

AUST 604.4 A1.1

‘The Firm will need a high level of confidence that the tax treatment has a basis in tax law that is likely to prevail to satisfy paragraph R604.4. The Firm will gain that confidence if there is a high probability, if viewed objectively by applying the reasonable and informed third party test, that the tax treatment will prevail.’

4b.

Alternatively, if the term ‘tax avoidance’ in R604.4 is intended to apply more broadly to tax services or recommending a transaction where a significant purpose of the tax treatment is not considered tax avoidance we would propose the deletion of the following as appropriate qualifications are included at the end of the sentence:

‘and a significant purpose of the tax treatment or transaction is tax avoidance’

The appropriate qualifications are as follows:

‘unless the proposed treatment has a basis in applicable tax law or regulation....’

	<p>As such we propose that paragraph R604.4 reads as follows: ‘A Firm or Network Firm shall not provide a tax service or recommend a transaction to an Audit Client if the service or transaction relates to marketing, planning or opining in favour of a tax treatment that was initially recommended, directly by the Firm or Network Firm, unless the proposed treatment has a basis in tax law or regulation that is almost certain to prevail.’</p> <p>4c. Alternatively, if the term ‘tax avoidance’ is intended to apply more broadly to tax services or recommending a transaction where a significant purpose of the tax treatment is not considered tax avoidance the paragraphs mentioned above should remain and appropriate terminology for ‘tax avoidance’ might be ‘tax minimisation’ qualified as being ‘within the spirit of taxation laws’ or ‘in compliance with taxation laws’</p>
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