



Chief Executive Officer
Accounting Professional & Ethical Standards Board Limited
Level 11
99 William Street
Melbourne Victoria 3000
Australia

7 October 2022

Dear Channa,

Thank you for the opportunity to respond to this consultation regarding the proposed amendments to the Non Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards).

Tax Services

The consultation paper calls for specific comments and feedback on two proposed options to strengthen the tax services provisions in the IESBA Code for the Australian context, those being:

- Tax Services Option 1 – Amend the Threshold to ‘Almost Certain to Prevail’; and
- Tax Services Option 2 – Add Guidance on the Meaning of ‘Likely to Prevail’

We note that whilst IESBA has taken action to prohibit tax advisory and tax planning services to PIE audit clients where such services might create a self review threat, it has also intentionally ‘carved out’ certain tax advisory and tax planning services from the prohibition. IESBA provided clear and well understood qualifications on when this carve out might apply, namely when these services are:

- supported by tax authority or precedent;
- are based on established practice (commonly used and not challenged by a tax authority); or
- have a basis in tax law that the firm is confident is likely to prevail.

We see no reason to depart from these qualifications agreed to internationally and as such **we do not support Tax Services Option 1**. We also note that New Zealand considered a stricter criteria than initially proposed by IESBA regarding the carve out, but after considering feedback from a wide variety of stakeholders, they adopted the IESBA wording.

We also see the introduction of language such as ‘almost certain’ as unhelpful in the context of undertaking a risk assessment. Whilst there is no universally agreed upon probability percentage to define ‘almost certain’, many could argue that this is as high as 99%. In our view this is impractical in assessing the likelihood of a tax matter. Further, for tax practitioners the expression ‘almost certain’ does not align to existing terminology used by tax advisors or regulators. From an Australian perspective, our tax practitioners are more accustomed to thresholds such as the provision of tax advice that is ‘reasonably arguable’ based on the law as it stands at the time. This threshold is also included in the recently launched Australian Tax Advisory Firm Governance: Best Practice Principles¹,

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<https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/We-assist-and-assure-the-tax-compliance-of-large-corporate-groups/>

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developed and agreed by the Australian Taxation Office, Tax Practitioners' Board and large accounting firms.

In relation to Option 2, we recommend that the APES Board provide additional guidance to clarify the requirement that a firm 'is confident [the advice] is likely to prevail'. On its face, we believe these terms risk creating uncertainty which could impede the effective application of the standard. We agree that any proposed guidance should be consistent with IESBA's statements that the firm should have 'a high level of confidence that the basis in tax law is likely to prevail'. We submit that the following points of guidance would be consistent with this standard, while reducing uncertainty and ensuring effective practical application of the standard:

1. 'Likely to prevail' requires a probability of 'at least more likely than not' that the position is correct in law; and
2. A firm's 'confidence' of position should be supported based on an analysis of applicable laws to the client's relevant facts, having regard to an objective 'reasonable and informed person' test.

As noted below, we do not believe, on balance, that it is necessary for APESB to include compulsory documentation requirements which differ to the IESBA standard. However, we acknowledge that a firm's 'confidence' of position should generally be supported by a documented analysis of applicable laws to the client's relevant facts.

Documentation requirements

With regards to the question: *Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1?* We again reiterate that our preferred approach is to not have standards in Australia differing from the IESBA approach. Should APES proceed with its inclusion, we see no practical challenges in implementing this requirement and we note this approach would be consistent with the New Zealand approach.

Tax avoidance

With regards to the question: *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?* We note that IESBA is of the view that local regulators, professional bodies or national standard setters are best placed to provide guidance to avoid any misunderstanding resulting from the use of 'tax avoidance' and decided to retain this term in their final text. We agree with IESBA's view and would prefer APESB consider additional guidance rather than amend the text agreed by IESBA.

Should you require any further information, please do not hesitate to contact our Head of Independence Daniel Bryant on daniel.bryant@pwc.com or on +61 402 451 697.

Yours faithfully,

PricewaterhouseCoopers Australia