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Thursday 4 October 2024

Dear Mr Channa Wijesinghe,

**Proposed Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services**

KPMG welcomes the opportunity to comment on the proposed revisions for Tax Planning and Related Services in APES 110 Code of Ethics for Professional Accountants (Including Independence Standards) (“APES 110”) (“the ED”).

KPMG Australia is committed to responsible tax practice consistent with all applicable laws, regulations and professional standards established in Australia. Alongside our Values and Global Code of Conduct, we are guided by KPMG’s Global Principles for a Responsible Tax Practice which require all KPMG people to act lawfully and with integrity when dealing with tax matters. We also periodically review other internal policies, procedures and controls, and regularly monitor their application to the execution of our tax engagements.

KPMG is supportive of the APES Board’s intent of amending APES 110 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”). We make the following suggestions where we believe the ED should be clarified or strengthened.

**Code of Professional Conduct**

On 1 August 2024, the Tax Agent Services (Code of Professional Conduct) Determination 2024 added 8 supplementary obligations to the Code of Professional Conduct in the Tax Agent Services Act 2009 (“the Act”). These additional obligations are built upon the existing principles of the Code as set out in the Act, including honesty and integrity, independence, confidentiality and competence. The Act was also amended to introduce breach reporting obligations which applied from 1 July 2024, which broadly require registered tax practitioners to report significant breaches of the Code of Professional Conduct. Where there are linkages between the requirements in the Code of Professional Conduct and the International Code, we suggest the ED make reference to the Code.

**Documentation**

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.



The corresponding IESBA code provides for the ‘encouragement’ of such documentation.

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).

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 *Tax Agent Services (Code of Professional Conduct) Determination 2024*, and the *Australian Tax Advisory Firm Governance – Best practice principles* (see extracts of the provisions included in the Appendix for comparative purposes).

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.

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 2026<sup>1</sup>.

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.

### **Additional recommendations**

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:

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<sup>1</sup> [Introduction of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 | Our ministers – Attorney-General’s portfolio \(ag.gov.au\)](#)



- 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.
- 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).
- 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 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 adversarial.

We would be pleased to discuss our comments with you. If you wish to do so, please contact me at [kaleighton@kpmg.com.au](mailto:kaleighton@kpmg.com.au), or Andrew Bryant at [abryant@kpmg.com.au](mailto:abryant@kpmg.com.au).

Yours sincerely



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Ethics and Independence  
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KPMG



## **Appendix: Other documentation obligations for tax practitioners**

### [APES 220](#)

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.

### [APES 110 \(tax advisory and tax planning services to audit clients\)](#)

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.

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.

### [Section 30 Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#)

#### 30 Keeping of proper client records

- (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.
- (2) The records must:
  - (a) be in English, or readily accessible and easily convertible into English; and
  - (b) be retained for at least 5 years after the service has been provided; and
  - (c) show the nature, scope and outcome of the tax agent service provided; and
  - (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).

### [Australian Tax Advisory Firm Governance – Best Practice Principles \(Large Market Tax Adviser Principles\)](#)

#### Principle 2.6 – Documenting the advice provided to the client

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.