TAX PLANNING AND RELATED SERVICES

Preliminary Significant Matters Raised on ED

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IESBA Meeting
June 15, 2023
AGENDA

• Update on Task Force’s (TF) activities since December 2022

• Overview of early comments on the ED

• Timeline
ACTIVITIES SINCE DECEMBER 2022

• Publication of the *Proposed Revisions to The Code Addressing Tax Planning And Related Services* Exposure Draft (ED) on February 17, 2023, comment period ended on May 18, 2023

• Three global webinars
  – February 27 and 28, 2023

• Outreach with stakeholders, including
  – APESB Roundtable
  – European Commission
  – CFE Tax Advisers

• Task Force held a virtual meeting on the May 31st to discuss observations from outreach and early comments submitted to date
BREAKDOWN OF TOTAL RESPONSES (AGENDA ITEM 6)

EU: 8
Global: 8
NA: 5
SA: 1
MEA: 7
AP: 11
UK: 3
AU/NZ: 4

Stakeholder Categories
- Firms: 70%
- Professional Accountancy Organizations: 19%
- Other Professional Organizations: 5%
- Regulators: 4%
- Standard Setters: 2%

19%
MATTERS RAISED IN EARLY COMMENTS

- Description of Tax Planning
- Role of the PA in Acting in the Public Interest
- Credible Basis
- Stand-back Test
- Documentation
DESCRIPTION OF TAX PLANNING
OVERVIEW OF COMMENTS

• Broadly supportive of direction of the Task Force’s proposals but with some key themes heard

• Main themes/concerns raised were:
  
  o Some stakeholders found the description too broad and goes further than the issue of aggressive tax minimization which may inadvertently create onerous requirements
  
  o A view that the definition of Tax Planning should reflect the description used by Organisation for Economic Co-Operation and Development (OECD)
  
  o Confusion regarding the terms used – tax minimization versus tax efficient
  
  o Recommendation to either refrain from including “related services” within the scope or to provide substantial application material to clarify (tax advisory versus tax compliance)
  
  o Further clarification sought as to the applicability of the ethical framework to “another party,” as it is not clear which other parties this is intended to capture
  
  o Further clarification sought on the inclusion of transfer pricing arrangements as an example
  
  o Concerns raised on the monitoring and enforceability of provisions pertaining to the scope of related services as the description as drafted is unclear
ROLE OF THE PA IN ACTING IN THE PUBLIC INTEREST
OVERVIEW OF COMMENTS

• Broadly supportive of direction of the Task Force’s proposals but with some key themes heard

• Main themes/concerns raised were:
  o General views that it is the PA’s responsibility and onus on the PA to determine public interest when necessary
  o Views that it would be challenging to ascertain in cross-border transactions who is the public and whose interest is being upheld
  o A stakeholder noted – “public opinion is fluid, and social media is unpredictable and not necessarily representative of public acceptance”
  o Concerns raised that this would place PAs in unfair competitive advantage compared to other professions, e.g., legal profession
  o Further clarification re drafting of the public interest considerations, particularly whether a PA has the necessary skill set to consider global public interest considerations
  o Recommendation to not refer to the term “tax evasion” in the section
CREDIBLE BASIS
OVERVIEW OF COMMENTS

• Generally supportive of direction of the Task Force’s proposals but with some key themes heard

• Main themes/concerns raised were:
  
  o Generally found the term subjective and present practical challenges

  o Consideration of “credible basis” should indeed include assessment of facts and circumstances to which the laws and regulations need to be applied

  o A stakeholder noted that “the articulation of the appropriate basis in the tax code varies by jurisdiction and no global terminology is possible”

  o Different terminologies noted in various jurisdictions which will unintentionally create further confusion in terms of monitoring and enforceability

  o Further clarification sought on whether the credible basis determination should be reconsidered when circumstances change and what matters would indicate that there is not a credible basis for the tax planning service

  o One regulatory stakeholder expressed concern that as tax law is complex, different interpretations could be argued as credible, including technically credible interpretations that do not meet the tax law’s intent.
STAND-BACK TEST
OVERVIEW OF COMMENTS

• Broadly supportive of direction of the Task Force’s proposals but with some key themes heard

• Main themes/concerns raised were:
  o Generally found the description too broad and concerns raised with regards to the consideration of wider economic consequences
  o Concerns raised that to codify such an exercise of professional judgement could result in uncertainty and confusion, as well as second guessing of the PA’s professional judgement
  o Concerns raised that use of such test i.e., forward looking exercise to serve the global initiative and the investors' expectations, may raise expectations for PAs' role and responsibilities which may end up hurting the profession's role and reputation
  o Recommendation to reframe the stand-back test to focus on the consequences for the PA and the firm rather than the consequences for the client (which may be construed as a management responsibility) and develop additional guidance on
    (a) clearly delineating the responsibilities of the taxpayer and the professional accountant and
    (b) potential actions a professional accountant can take to meet the requirements of the stand-back test
DISAGREEMENTS
OVERVIEW OF COMMENTS

• Generally supportive of direction of the Task Force’s proposals but with some key themes heard
• Main themes/concerns raised were:
  o Consideration for the PA advising the client to make full disclosure of the arrangement to the relevant tax authorities or the external auditor in the event of a disagreement might create an expectation that the PA violate client confidentiality. This may not be permissible in some jurisdictions
  o Clarification sought on the requirements in paragraphs R380.20 and R280.20 to “take steps to disassociate from the engagement/arrangement” is unclear
  o Clarification sought as the action required from a PA in public practice (to consider withdrawing from the engagement in paragraph R380.21) does not seem proportionate as compared with the potentially more extreme action proposed for a PA in business (to consider resigning from employment in paragraph 280.20 A1)
OVERVIEW OF COMMENTS

• Generally supportive of direction of the Task Force’s proposals but with some key themes heard

• Main themes/concerns raised were:
  
  o Given the public interest invariably attached to tax services and its role in collecting the relevant jurisdiction’s (or multiple jurisdictions’) tax revenue, stakeholders believe documentation should be a requirement

  o Proper documentation is a useful tool to facilitate ethical considerations – especially as part of the process when considering whether the advice has a credible basis and then performing the stand-back test

  o Recommendation that documentation is introduced for at least circumstances where there is uncertainty associated with a tax planning service or where the engagement would be regarded as high risk, if it is challenging to introduce documentation requirements globally

  o A stakeholder viewed that the encouragement to document for activities within scope essentially amounts to a recommendation PAs compile such documentation even for very simple transactions and seemingly too onerous
NEXT STEPS

- Full review of significant comments on the ED
- First read of proposed revised text post-ED

September 2023 IESBA and CAG meeting

- Advance Board comments on updated text via email
- Outreach to key stakeholders

October and November

- Second read of proposed revisions
- Scheduled approval of the final text

December 2023 IESBA meeting
Any Questions or Comments?