

Tax Planning and Related Services

Summary of Significant Comments on Exposure and Task Force Proposals

I. Analysis of Responses

- Forty-nine responses to the Exposure Draft, *Proposed Revisions to the Code Addressing Tax Planning and Related Services* (ED), were received from stakeholders across a range of categories and different jurisdictions. A complete list of the respondents is included in the Appendix.

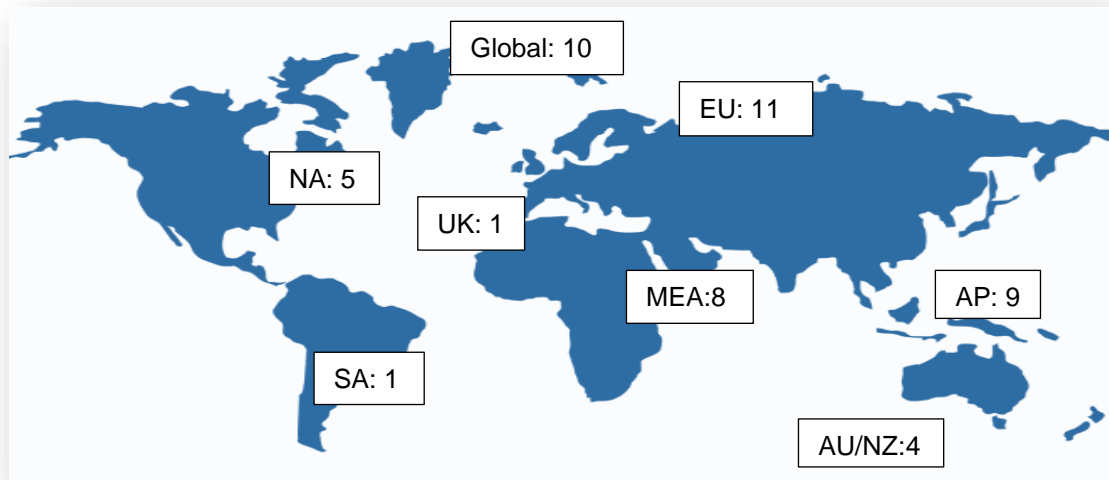
Responses by Stakeholder Category

Regulators and audit oversight authorities	2
National standard setters (NSS)	1
Accounting firms	10
Professional Accountancy Organizations	33
Other Professional Organizations	3
Total responses	49

Responses by Geographical Area

AU/NZ – Australian/New Zealand; AP-Asia Pacific; EU-Europe; MEA-Middle East and Africa.

NA-North America; SA-South America; UK-United Kingdom



Presentation of Respondents' Comments

- Significant matters raised by respondents in response to Questions 1-13 in the ED are discussed in **Section II** below. Please refer to **Agenda Items 9-D.1 to 9-D.14** for the compilation of the detailed responses to each question.
- The Task Force has carefully considered respondents' comments and is proposing amendments in the marked-up version of the ED in Agenda Items 9-B and 9-C in response to those comments.

II. Significant Matters and Task Force Proposals

A. Proposed New Sections 380 and 280 (Question 1)

Background

4. As indicated in the explanatory memorandum (EM) to the ED, the IESBA approved the scope of the project to encompass Parts 2¹ and 3² of the Code, considering the need for any conforming amendments to other sections of the Code.
5. As part of its deliberations, the IESBA noted that the issues concerning tax planning (TP) services are unique compared with other professional services provided by professional accountants (PAs), given the sensitive nature of TP in terms of its financial impact on clients and employing organizations, the broader role of taxes in meeting jurisdictions' policy goals, and the complexity of the subject. In particular, the IESBA determined that it was imperative to address the uncertainties PAs may face when providing TP services or performing TP activities, as threats to compliance with the fundamental principles (FPs) might be created in circumstances of uncertainty.
6. Consequently, the IESBA proposed adding two new sections to the Code, Sections 380 and 280.³ In drafting these sections, the IESBA agreed the following:
 - (a) Section 380 should apply to all clients, i.e., individuals and corporate clients.
 - (b) Both sections should apply to all entities, from small- and medium-sized entities (SMEs) to large multinational entities, regardless of whether they are public interest entities (PIEs).
7. Consistent with any other provisions of the Code, the proposed provisions in Sections 380 and 280 do not override laws and regulations, including any general anti-avoidance rules prevailing in jurisdictions.

Summary of ED Responses

8. Respondents generally agreed with the approach taken in the ED, recognizing that the nature of TP services/activities provided or performed by a PA in business (PAIB) and a PA in public practice (PAPP) will differ. Hence, the types of threats and the actions or safeguards to eliminate or reduce the threats to an acceptable level can vary. The Task Force noted the following significant comments or suggestions from respondents:
 - A respondent⁴ concurred with the IESBA's observation that legislation is being considered in some jurisdictions, such as the EU, to regulate tax advice and tax advisers.⁵ The respondent suggested that the IESBA consider any potential impact of such plans when finalizing the proposed standards.
 - Some respondents commented on the terminology alignment between proposed Sections 280 and 380 to clarify the requirements' applicability. In circumstances where there are other significant

¹ Part 2 – Professional Accountants in Business (PAIBs)

² Part 3 – Professional Accountants in Public Practice (PAPPs)

³ Section 280 is applicable to PAIBs, and Section 380 is applicable to PAPPs.

⁴ Agenda Item 9-D.1 [Malta Institute of Accountants](#)

⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13488-Tax-evasion-aggressive-tax-planning-in-the-EU-tackling-the-role-of-enablers/public-consultation_en?mc_cid=c0c64ee350&mc_eid=5898f32087

differences between Sections 280 and 380, they suggested that these differences should be highlighted and the compelling reasons for the divergence explained.

- A few respondents⁶ suggested that the IESBA clarify whether Section 280 applies to the provision of TP services by a PAIB to another party other than the employing organization.⁷ They noted that professionals other than certified public tax accountants are prohibited from providing tax-related services in some jurisdictions. In these cases, the employing organization may engage an external adviser, who may or may not be a PA, to recommend or advise on a particular TP arrangement. The external adviser may not be subject to ethical obligations under the Code. In another example the respondents provided, a PA can be employed by a financial institution and provide tax-related services to another party other than their employing organization.
- A respondent⁸ observed that tax advisory and compliance services are unregulated in several jurisdictions and can be provided by non-PAs who may need the appropriate professional qualifications. The respondent noted that these individuals are not subject to the ethical obligations under the Code or a similar and equally rigorous set of ethical requirements.

Task Force's Responses

9. The Task Force notes that as the global ethics standard-setter for the accountancy profession, the IESBA has rightfully taken a leadership role in promulgating global ethical standards addressing PAs' responsibilities in TP. During the [roundtable](#) discussions, the IESBA also heard from stakeholders that there are some jurisdictions with robust regulatory regimes that govern the provision of TP services performed by PAs. As a result of the consultation with stakeholders, the IESBA determined that the Code can be more substantive and practical in guiding PAs' mindset and behavior when providing TP advice. This recognizes that while the Code does not override laws and regulations, ethics is broader than the law and can guide behaviors. Accordingly, the Task Force does not believe any particular changes are needed to the proposed Sections 280 and 380 to accommodate local tax laws and regulations or any plans some jurisdictions might have to develop regulations governing the provision of tax advice and the activities of tax advisers. Nevertheless, the Task Force recommends that the IESBA continue to monitor relevant regulatory developments in jurisdictions to assess the need for any action from the perspective of the Code.
10. Regarding the circumstance where an entity engages an external adviser to recommend or advise on a particular TP arrangement, the Task Force is of the view that to the extent that a professional accountant in business (PAIB) in the entity is involved in the design of, or has overall responsibility for, the TP arrangement, the PAIB should apply Section 280 with respect to the recommendation or advice. In the circumstance where a PA provides TP advice to a party other than the PA's employing organization, the Task Force notes that the provisions of Section 280 would still apply with respect to that third party. This is because the Code makes clear that the legal form of the relationship of a PA (whether as an employee,

⁶ Agenda Item 9-D.1 [Japanese Institute of Certified Public Accountants](#) and [Hong Kong Institute of CPA](#)

⁷ The Code defines a "professional accountant in business ("PAIB")" as "a professional accountant working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer." and does not limit the types or recipients of the services.

⁸ Agenda Item 9-D.1 [Association of Chartered Certified Accountants](#)

contractor, partner, director, volunteer, etc.) with an employing organization (in this case, the third party) has no bearing on the ethical responsibilities of the PA under the Code.⁹

11. Concerning the applicability of the Code to non-PAs who are not subject to the ethical obligations under the Code, as pointed out by another respondent,¹⁰ the IESBA has a global reach as the Code has been adopted or is used in over 130 jurisdictions. The proposed sections will not only give guidance to PAs but also have the potential to inspire other standard setters and professionals to raise the bar of ethical behavior with respect to TP. The Task Force is of the view that the proposed Sections can serve as a baseline of ethical obligations for other professions in the provision of TP services. The Task Force recommends that the Board emphasize this in the Basis for Conclusions document.

Matter for IESBA Consideration

1. Do IESBA members agree with the Task Force's views above?

B. Description of Tax Planning and Related Services (Question 2)

Description of Tax Planning

Background

12. As part of its deliberations in finalizing the ED, the IESBA determined that it is important to establish a description of "tax planning" in the proposed Sections 280 and 380 to circumscribe the scope of professional services and activities that the proposed Sections would address. In considering how to describe TP, the IESBA reviewed established descriptions of TP developed by some organizations:

Organization	Description of Tax Planning
OECD	Arrangement of a person's business and private affairs to minimize tax liability ¹¹
UK HMRC	Involves using tax reliefs for the purpose for which they were intended ¹²
Confédération Fiscale Européenne (CFE) (Tax Advisers Europe)	Focus on delivering savings to clients using legal vehicles and financial transactions specifically established to exploit these technicalities ¹³

13. The IESBA considered that the OECD description is closer to what should be the focus of the proposed Sections, which deal with arrangements to minimize tax liability. The IESBA, however, considered that the term "tax efficiency" would be more neutral than "tax minimization."

⁹ Paragraph 200.3

¹⁰ Agenda Item 9-D.1 [PricewaterhouseCoopers International Limited](#)

¹¹ <https://www.oecd.org/ctp/glossaryoftaxterms.htm>

¹² [Tackling Tax Avoidance, Evasion, and Other Forms of Non-Compliance \(March 2019\)](#), HM Revenue & Customs, HM Treasury United Kingdom.

¹³ [Professional Judgment in Tax Planning – An Ethics Quality Bar for All Tax Advisers](#) (June 2021), CFE Tax Advisers Europe.

14. Accordingly, the IESBA proposed the following description in the ED:

Tax planning comprises a broad range of [services/activities] designed to assist [a client, whether an individual or an entity/an employing organization] in structuring [the client's/the employing organization's] affairs in a tax-efficient manner.

Summary of ED Responses

15. Respondents were broadly supportive of the approach taken to describing "tax planning" in the ED. They noted that a significant challenge is the appropriate terminology when referring to "aggressive tax planning." They shared that numerous international organizations have attempted to address the issue of describing "aggressive tax planning" and faced significant challenges in developing an appropriate term and description or definition for "aggressive tax planning" that could work globally. Respondents also expressed that the legality of transactions is an important consideration. In particular, it was noted that a distinction needs to be made between whether a transaction that has been consummated is structured in the most tax-efficient way and whether the transaction has as its primary or sole motivation tax avoidance.
16. Some respondents¹⁴ suggested that the proposed description of "tax planning" needs to be narrower and go further than the issue of aggressive tax minimization. They were of the view that the proposed description may inadvertently create onerous requirements. A respondent¹⁵ was of the view that the proposed description may encapsulate any "tax efficient" TP arrangements that will aim to provide an economic benefit, principally to the client.
17. Another respondent¹⁶ asked if wealth management to grow a client's business or investment portfolio, which might also include assessing current and future tax liabilities or tax impacts on the client's decision-making, is to be captured under the scope of TP services in the proposed Section 380.
18. Another respondent¹⁷ suggested that the IESBA reflect on the description used by the Organisation for Economic Co-Operation and Development (OECD) as the respondent was of the view that describing TP by reference to "structuring [] affairs in a tax-efficient manner" (i.e., to "tax efficiency") broadens the description of TP well beyond a focus on the egregious tax structuring intended to be targeted and brings within scope a whole range of tax advisory and compliance engagements that should not be within scope. From a tax administrative perspective, the respondent argued that "tax efficiency" can refer to the efficiency of revenue collection or ease of compliance with regulatory and legal requirements.
19. In the examples of TP provided, a few respondents sought further clarification regarding the inclusion of transfer pricing arrangements as an example. They noted that transfer pricing is already a requirement under the applicable laws and regulations in numerous jurisdictions to adopt an arm's length standard. They also noted that transfer pricing services are more appropriately considered tax compliance services in referencing transfer pricing arrangements. A question was also raised as to whether the example covered the case where the PA had provided initial advice followed by implementation of the transfer pricing

¹⁴ Agenda Item 9-D.2 [American Institute of Certified Public Accountants, Chartered Accountants and CA Australia and NZ, European Federation of Accountants and Auditors for SMEs, Pennsylvania Institute Of Certified Public Accountants](#)

¹⁵ Agenda Item 9-D.2 [IFAC Small and Medium Practices Advisory Group \(SMPAG\)](#)

¹⁶ Agenda Item 9-D.2 [American Institute of Certified Public Accountants](#)

¹⁷ Agenda Item 9-D.2 [Chartered Accountants and CA Australia and NZ](#)

arrangement or whether it also included the ongoing transfer pricing compliance aspects in the ensuing years.¹⁸

Task Force's Responses

20. The Task Force acknowledges that developing ethics provisions for PAs may be challenging without a clear definition or description of the issue concerning TP services, which is why the ED proposed practical guidance to assist PAs in making the appropriate judgments and decisions in navigating the "gray zone." Regarding the comments or suggestions provided by respondents above:

- The Task Force notes that TP is a legitimate activity a client or employing organization may undertake to structure or organize its affairs in a tax-efficient manner. The Task Force believes that "tax efficiency" is the appropriate term to use in the Code in describing TP as it speaks to the *general purpose* of TP without being overly prescriptive or focusing on specific desired outcomes, such as whether to optimize tax benefits or minimize tax liabilities. As respondents largely supported the proposed description, the Task Force does not propose that the Board substantively change it. However, in response to other suggestions from respondents, the Task Force proposes to clarify the description of TP to refer to advisory services and that it can also be for planning the client's affairs (see paragraph 380.5 A1):

*Tax planning services comprise a broad range of **advisory** services designed to assist a client, whether an individual or an entity, in **planning or** structuring the client's affairs tax-efficiently.*

The Task Force is proposing similar clarifications to the description of TP in Section 280 (see paragraph 280.5 A1).

- Regarding whether wealth management would be included within the scope of TP services, the Task Force notes that the proposed section 380 is not intended to address wealth management services per se. However, if the primary aim of the service is to advise the client on planning or structuring the client's *tax affairs* for wealth management purposes, or if the PA is otherwise involved in the TP, then Section 380 would be applicable.
- Regarding the comments about transfer pricing arrangements in the example of a TP service, the Task Force accepted that the reference to transfer pricing in that example might inadvertently suggest that PAs design transfer-pricing-related arrangements without regard to prevailing transfer pricing standards or guidelines. Accordingly, the Task Force proposes clarifying this example (see paragraphs 380.5 A2 and 280.5 A2).

The Task Force also notes that the Board's intent in referring to transfer pricing arrangements in the illustrative examples was to refer to the PA's role in recommending or advising on the arrangement and not in implementing it or ensuring that it is in compliance with the relevant laws and regulations. In this regard, the Task Force believes that the amendment it is proposing to the description of TP, i.e., referring to *advisory* services, will assist in making this clear.

¹⁸ Agenda Item 9-D.2 [Accounting Professional & Ethical Standards Board Limited](#)

Matters for IESBA Consideration

2. Do IESBA members agree with the Task Force's views above?
3. Do IESBA members agree with the proposed revisions to the description of TP and the example on transfer pricing?

Related Services or Activities

21. During the [roundtable](#) discussions and as part of the fact-finding work underpinning the project, the IESBA noted that there are other types of services or activities performed by PAs that are ancillary to the provision of TP services or the performance of TP activities. Such services or activities include, for example, assisting in resolving a dispute with the tax authority on a TP position that the PA or another party recommended or preparing a tax return that reflects the position in the TP arrangement. These related services or activities are based on or linked to a TP service or activity. Consistent with the indicative scope in the project proposal, the ED proposed that such related services or activities, whether provided by the PA or another party, be within the scope of the proposed Sections.

Summary of ED Responses

22. Respondents raised several concerns with the approach taken in the ED to describe related services or activities. The main concerns raised were as follows:
- There is a need to clarify whether these services/activities are within the scope of the requirements in Sections 280 and 380, and if so, which specific requirements would be applicable,¹⁹ distinguishing between tax advisory or tax compliance work.
 - Where the related service or activity is not an integral part of a TP arrangement, a respondent²⁰ suggested that the IESBA clarify the extent to which there is an obligation to establish that there is a credible basis and whether the overall stand-back test would apply. The respondent was of the view that in circumstances where the related service or activity is compliance-related (for example, preparing a tax return on behalf of the client where the PA did not previously advise on the underlying TP arrangement²¹), it would not be necessary to establish whether the related service or activity has a credible basis or to apply the stand-back test. The respondent felt that otherwise, the unintended consequence of the proposal would be to impose an onerous requirement on PAs.
 - Another respondent²² was of the view that it is crucial to distinguish between whether the service provided is tax compliance (including compliance-related advisory) or whether it is a tax dispute resolution service based on a TP position that another party recommended to the client. The respondent felt that problems may arise when conflating the different types of services as the respondent was of the view that there should be a distinction in the work effort to be performed by the PA in conducting these different types of related services or activities.

¹⁹ Agenda Item 9-D.2 [Accountancy Europe, Association of Chartered Certified Accountants, Chartered Accountants and CA Australia and NZ, Chartered Accountants Ireland](#)

²⁰ Agenda Item 9-D.2 [Accountancy Europe](#)

²¹ Agenda Item 9-D.2 [Chartered Professional Accountants Canada Public Trust Committee](#)

²² Agenda Item 9-D.2 [BDO International](#)

- Another respondent²³ commented that related services such as tax advisory services (especially advice on matters such as using tax losses or determining a capital distribution strategy) are often provided as part of the tax return preparation process. The respondent felt that, as drafted, the proposed Sections 380 and 280 seemed to be predicated on the assumption that all related services or activities are associated with a particular TP arrangement.
- A respondent sought further clarification on the applicability of the proposed ethical framework to "another party."²⁴ The respondent felt that it was unclear who the IESBA intended to capture in the description of related services, with a risk that the lack of clarity could suggest that PAs are expected to have oversight of the work performed by other service providers.

Task Force's Response

23. The Task Force acknowledged the concerns raised by some of the respondents that the approach to related services or activities in the ED was not as clear as it could have been. On due reflection in light of the respondents' comments, the Task Force proposes that compliance-related services or activities (such as preparing a tax return based on a TP arrangement developed by another party) not be included within the scope of related services or activities. The Task Force recognizes that retaining the "all-inclusive" approach in the ED would place an undue burden on the PA, given that a compliance-related TP service or activity is solely to assist the client or employing organization in complying with its legal or regulatory obligations. (Nevertheless, the PA would still be required to apply the conceptual framework to identify, evaluate, and address any threats to the PA's compliance with the fundamental principles when providing a compliance-related TP service or performing a compliance-related TP activity.)
24. Instead, the Task Force proposes to clarify through illustrative examples that the types of related services within the scope of proposed Section 380 are those that a PA is engaged to provide where the service is based on or linked to a TP arrangement that the PA was *not* involved in planning or structuring (i.e., the arrangement was developed by the client or a third-party provider), and it is necessary for the PA to apply Section 380 to the underlying TP arrangement in order to have a sufficient basis to effectively proceed with the related service. See paragraphs 380.26 A1-A2 (and the corresponding paragraphs 280.23 A1-A2 for PAIBs).
25. To better distinguish related services from TP services that PAs might be requested to perform, the Task Force proposes to locate this application material toward the end of Section 380. This will also help minimize any confusion that a related service is part of a TP service.
26. The Task Force recognizes that this revised approach might still create a perception of an undue burden on the PA as the PA might simply have been engaged to provide the related service without any expectation of reperforming the TP work done by the client or third-party provider. The Task Force would, therefore, like to seek the Board's views on whether the revised approach strikes an appropriate balance between the PA exercising the appropriate due diligence in the public interest when performing such a related service against the costs of subjecting the related service to the full application of Section 380.

²³ Agenda Item 9-D.2 [Chartered Accountants and CA Australia and NZ](#)

²⁴ Agenda Item 9-D.2 [Accountancy Europe, Ernst and Young Global Limited, Independent Regulatory Board for Auditors, Institute of Chartered Accountants of India](#)

Matters for IESBA Consideration

4. Do IESBA members agree with the Task Force's views above?
5. Do IESBA members agree with the proposed revised approach to related services and activities?

C. Role of the Professional Accountant in Acting in the Public Interest (Question 3)

Background

27. In developing the ED, the IESBA recognized a perceived challenge concerning describing who is considered the public and the interests of those groups of individuals whom PAs are expected to serve in acting in the public interest. The IESBA noted questions regarding which parties are captured under the notion of "public interest," for example, whether it refers to society at large, legislators, or shareholders and regulators of the capital markets.
28. Considering all the observations during the [roundtable](#) discussions on this matter, the IESBA determined to refrain from attempting to define or describe the public interest in the abstract, given the variety of considerations that may influence its meaning. The IESBA instead proposed contextual guidance in Sections 380 and 280 that explains that:
 - An important part of what acting in the public interest means for PAs is contributing their knowledge, skills, and experience to assist clients or employing organizations in meeting their TP goals while complying with tax laws and regulations. In doing so, PAs help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.
 - PAs play a significant role in assisting clients or employing organizations in meeting their tax obligations and not seeking to circumvent them through tax evasion. However, when PAs provide such assistance, it might involve specific tax minimization arrangements that, although not prohibited by tax laws and regulations, might threaten compliance with the FPs.

Summary of ED Responses

29. Respondents were broadly supportive of the approach taken in the ED. Some acknowledge a general expectation that PAs should guide their employing organizations or clients in understanding the tax laws and regulations and cooperating with the tax authorities.²⁵ Other respondents also agreed that PAs who provide tax advice must comply with the tax legislation.²⁶
30. A respondent expressed that the public interest would generally be considered in developing tax laws and regulations. The respondent, however, argued that it does not necessarily follow that the interpretation by the tax authority of such laws and regulations will be consistent with the intention of those developing the

²⁵ Agenda Item 9-D.3 [American Institute of Certified Public Accountants, Accounting Professional & Ethical Standards Board Limited, Association of Chartered Certified Accountants, BDO International, Chartered Accountants Ireland, Institut der Wirtschaftsprüfer in Deutschland e.V.](#)

²⁶ Agenda Item 9-D.3 [Ernst and Young Global Limited, Grant Thornton International Limited, Institute of Financial Accountants, Malaysian Institute of Certified Public Accountants, National Association of State Boards of Accountancy](#)

tax laws and regulations. Thus, the respondent believed the application by the PA of the tax authority's interpretation cannot always be presumed to be acting in the public's interest.²⁷

31. A respondent advised the IESBA to consider further clarification in drafting the public interest considerations, particularly whether a PA has the necessary skill set to evaluate global public interest considerations.²⁸ Another respondent commented that PAs should be aware that many stakeholders will have different perspectives on what constitutes the public interest concerning TP. The respondent noted that this will primarily be driven by circumstances in the jurisdiction(s) in which the PA operates. The respondent also commented that public interest perspectives may differ where a TP arrangement affects multiple jurisdictions. The respondent suggested that these would need to be considered in the stand-back test.²⁹
32. Another respondent³⁰ expressed a concern not to place PAs at an unfair competitive advantage compared to other professions, e.g., the legal profession, by having in place requirements that are more restrictive than other professions.
33. Regarding the reference to tax evasion in paragraphs 280.4 A2 and 380.4 A2 in the ED, some respondents noted that tax evasion is a criminal act. They felt that referencing tax evasion in describing the role of a PA in assisting clients to meet their tax obligations might imply that tax evasion might be part of the TP, which would be inappropriate. The respondents, therefore, suggested that the IESBA remove the reference to tax evasion from the description.

Task Force's Responses

34. The Task Force acknowledges respondents' concerns about the various complications that can arise with attempting to define the public interest when it comes to TP. Several factors, such as changing societal perceptions, jurisdictional idiosyncrasies in a multinational context, interpretation of tax legislation, and reputational risks, can affect considerations of what acting in the public interest means in the context of TP. The respondents' comments and observations reinforce the Task Force's view that the Board should avoid attempting to define or describe the public interest with respect to TP. Instead, the Task Force believes that the approach taken in the ED to describe the PA's role in acting in the public interest remains balanced and pragmatic and speaks to the essence of the PA's role in the public interest in relation to TP, i.e., the Code should:
 - (a) Acknowledge that a large part of what acting in the public interest means for PAs is to use their knowledge, skills, and experience to assist their employing organizations or clients in meeting their TP goals while complying with tax laws and regulations and
 - (b) Recognize that employing organizations and clients share a responsibility to society to pay their legally assessed tax dues and that PAs' public interest role is to advise them in that regard.
35. Regarding the reference to tax evasion in paragraph 380.4 A2 in the ED, the Task Force agreed with the suggestion to remove that reference as it is universally accepted that tax evasion is illegal, and the Code should not suggest that PAs might even contemplate using it in their TP work. Instead, the Task Force

²⁷ Agenda Item 9-D.3 [CPA Australia](#)

²⁸ Agenda Item 9-D.3 [Accounting Professional & Ethical Standards Board Limited](#)

²⁹ Agenda Item 9-D.3 [Accountancy Europe](#)

³⁰ Agenda Item 9-D.3 [Pennsylvania Institute of Certified Public Accountants](#)

proposes to refer to tax evasion in paragraph R380.6, which speaks to the requirement to comply with laws and regulations.

36. The Task Force is also proposing editorial amendments to:
- (a) Paragraphs 280.4 A1 and 380.4 A1 to align the terminology to the definition of "expertise" as is being proposed by the Experts Task Force and
 - (b) Paragraphs 280.4 A2 and 380.4 A2 clarify that PA's role is to use their expertise and experience to assist their clients/employing organizations in achieving their TP goals and meeting their tax obligations.

Matters for IESBA Consideration

- 6. Do IESBA members agree with the Task Force's views above?
- 7. Do IESBA members agree with the proposed revisions to paragraphs 280.4 A1-A2 and 380.4 A1-A2?

D. Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement (Question 4)

Background

37. In drafting the provisions, the IESBA deliberated various formulations that would convey the basis for a PA to provide a TP service or perform a TP activity. The IESBA settled on proposing that the framework include a principle that a PA recommends or otherwise advises on a TP arrangement to a client or recommends or otherwise advises on a TP arrangement for an employing organization only if the PA has determined that there is a *credible basis* in laws and regulations for the arrangement.
38. In formulating the proposed principle, the IESBA sought to avoid precluding a PA from advising that the TP arrangement needs a credible basis in laws and regulations. For example, a client may be considering a TP arrangement that does not have a credible basis in laws and regulations and needs the PA's advice to explore options that would have a credible basis in laws and regulations. In another case, the client may advise the PA of a transaction that has already occurred that does not have a credible basis in laws and regulations and, therefore, needs advice on how to address it (e.g., complying with relevant disclosure requirements under the law).

Credible Basis

39. Recognizing that what is a credible basis in laws and regulations will vary from jurisdiction to jurisdiction, the ED proposed guidance setting out various actions a PA might take to establish a credible basis for the TP arrangement. The IESBA also took the view that it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold, as doing so would convey a false sense of accuracy.
40. In developing the proposals, the IESBA also considered whether it would be appropriate to use the likely-to-prevail threshold as used in the International Independence Standards (in Section 604 addressing the provision of tax services to an audit client) but determined that such a threshold would be too high, given stakeholders' heightened expectations regarding auditor independence in the context of audit engagements. In the context of TP services provided to clients that are not audit clients or TP activities performed for employing organizations, the IESBA determined that a credible-basis threshold sets a more

appropriate bar for PAs as it calls on them to establish reasonable grounds for their TP recommendation or advice.

Summary of ED Responses

41. Respondents were generally supportive of the ED proposals, with some further clarification and improvement sought in terms of the PA establishing a credible basis:
- Some respondents found the term subjective and felt that it would present practical challenges in interpreting or determining what constitutes a credible basis.³¹ The respondents encouraged the IESBA to provide more detailed application material,³² particularly in relation to cross-border elements.³³
 - Another respondent³⁴ noted that a challenge might be posed where PAs are engaged to provide TP advice to resolve matters due to inappropriate tax advice or guidance given to the client previously. The respondent argued that while the arrangements in question may need a credible basis, it would appear neither in the public interest nor appropriate to disassociate from the client under such circumstances as this would deny access to the client to PAs who may be best placed to resolve the matter.
 - Another view³⁵ was shared that, as drafted, the proposed paragraph R380.11 could be interpreted as suggesting that a PA should not accept tax dispute work that does not have a credible basis. The respondent suggested that the IESBA further clarify in the application material that paragraph R380.11 does not preclude a PA from assisting a client in such a scenario.
 - A respondent encouraged the IESBA to add application material to specify that paragraph R380.11 does not preclude the PA from advising the client in situations where:³⁶
 - The client may be considering TP that does not have a credible basis in laws and regulations and needs the PA's advice to explore options (e.g., alternate arrangements) that would have a credible basis in laws and regulations.
 - The client may have entered into a transaction that does not have a credible basis in laws and regulations and now needs advice on how to address it (e.g., complying with relevant disclosure requirements under the law).
 - In reviewing the requirements and application material relating to a credible basis, a respondent noted that there was no consideration for instances where the circumstances surrounding the TP advice have changed.³⁷

³¹ Agenda Item 9-D.4 [Accountancy Europe, American Institute of Certified Public Accountants, Chartered Professional Accountants Canada Public Trust Committee, Saudi Organization for Chartered and Professional Accountants, Korean Institute of Certified Public Accountants](#)

³² Agenda Item 9-D.4 [Accountancy Europe, National Association of State Boards of Accountancy](#)

³³ Agenda Item 9-D.4 [WirtschaftsprüferKammer](#)

³⁴ Agenda Item 9-D.1 [IFAC Small and Medium Practices Advisory Group \(SMPAG\)](#)

³⁵ Agenda Item 9-D.2 [Chartered Professional Accountants Canada Public Trust Committee](#)

³⁶ Agenda Item 9-D.4 [KPMG International](#)

³⁷ Agenda Item 9-D.4 [Accounting Professional & Ethical Standards Board Limited](#)

Task Force's Responses

42. The Task Force acknowledged the concerns the respondents raised. First, the Task Force agreed with the observations shared by respondents that PAs must take the necessary steps to establish a credible basis for their advice, taking into account, where the circumstances are unclear or uncertain, the intent of the tax legislation. The Task Force is of the view that the interpretation of the applicable laws and tax treaties of the relevant jurisdiction forms the starting point for determining the presence or absence of a credible basis in laws and regulations. Importantly, this assessment will require the exercise of *appropriate professional judgment*, which is why the ED set out detailed guidance on actions a PA might take to facilitate the judgment as to whether there is a credible basis. The Task Force is not proposing any change to the ED in that regard.
43. In relation to respondents' concerns that the ED seemed to preclude the PA from being engaged to advise a client to resolve a situation where a particular TP arrangement does not have a credible basis, the Task Force notes that this was the IESBA's intent in formulating the principle of credible basis. The Task Force agreed with the respondents' view that the PA should be allowed to advise the client on an alternative arrangement that would have a credible basis. Indeed, allowing the PA to do so would be in the public interest. Accordingly, the Task Force is proposing to make this clear in paragraph 380.11 A2 (and in the corresponding paragraph 280.11 A2 for PAIBs).
44. The Task Force also agreed with the respondent's comment above that where the circumstances surrounding the TP arrangement have changed or where the implementation of the TP service occurs over an extended period, the PA may need to undertake a re-assessment of the credible basis to ensure that it is valid prior to finalizing the arrangement. Accordingly, the Task Force is also proposing a new requirement to the effect that if, during the engagement, the PA becomes aware of circumstances that might impact the previous determination of the credible basis, the PA must re-assess the validity of the previously assessed credible basis. See paragraphs R380.12 and R280.12.

Matters for IESBA Consideration

8. Do IESBA members agree with the Task Force's views above?
9. Do IESBA members agree with the proposed revisions to paragraphs 280.11 A1-A2 and 380.11 A1-A2?
10. Do IESBA members agree with the proposed new requirements in paragraphs R280.12 and R380.12?

E. Consideration of the Overall Tax Planning Recommendation or Advice (Question 6)

Background

45. The ED proposed that in addition to determining that there is a credible basis for the TP arrangement, the PA considers the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the arrangement – a "stand-back" test.
46. The ED also proposed guidance explaining the meaning of reputational, commercial, and wider economic consequences. In introducing this test, the IESBA believed that it is an important public interest element of the framework as it stimulates the PA to consider potential adverse consequences for the client or

employing organization and the relevant jurisdiction in terms of its tax base, in light of how stakeholders might view the TP arrangement.

47. The IESBA also emphasized in its deliberations that the stand-back test is about something other than tax morality, tax justice, or tax fairness. Equally, the IESBA emphasized that it did not intend for the PA to undertake research to assess the economic consequences of the TP arrangement on the jurisdiction's tax base but only to give the matter due consideration based on the PA's *general awareness and understanding* of the current economic environment in the context of TP.
48. If, having carried out the considerations set out in the stand-back test, the PA decides not to recommend or otherwise advise on a TP arrangement that the client or employing organization would like to pursue, the ED proposed that the PA inform the client or management and, if appropriate, those charged with governance, of this and explain the basis for the PA's conclusion. (See paragraphs R380.12-13 and R280.12-13 in the ED.)
49. The IESBA also noted that the stand-back test need not be performed sequentially after determining a credible basis but may be performed simultaneously with conducting such determination.

Summary of ED Responses

50. Respondents generally supported the inclusion of a stand-back test. Several concurred with the proposal that PAs undertaking engagements to provide TP advice should consider the potential economic and reputational impacts of the TP arrangement on the client, as well as on the PA's reputation and that of the profession, should the TP arrangement be disclosed in the public domain.³⁸
51. Other respondents shared concerns with the proposal, with some providing suggestions in terms of further clarification regarding the work effort required of the PA in applying the stand-back test. Specifically:
 - Some respondents were concerned that the considerations in the stand-back test were too broad. In particular, they queried the work effort required to determine the wider economic consequences. There was a concern that this might imply that the PA would be required to undertake additional research, especially regarding TP with cross-border arrangements.³⁹ Other respondents viewed the requirement as onerous, especially with respect to TP transactions that may not necessarily require the extent of such an assessment.⁴⁰
 - A respondent raised a concern about whether codifying such an exercise of professional judgment could result in further uncertainty and second-guessing of the PA's professional judgment.⁴¹

³⁸ Agenda Item 9-D.6 [Accountancy Europe, Accounting Professional & Ethical Standards Board Limited, Association of Chartered Certified Accountants, Institute of Chartered Accountants of Scotland, Institute of Financial Accountants, Instituto dos Auditores Independentes do Brasil, Price Bailey, PricewaterhouseCoopers International Limited](#)

³⁹ Agenda Item 9-D.6 [Accountancy Europe, BDO International, CPA Australia, Malta Institute of Accountants](#)

⁴⁰ Agenda Item 9-D.6 [BDO International, CPA Australia, Institute of Chartered Accountants in England and Wales, South African Institute of Chartered Accountants](#)

⁴¹ Agenda Item 9-D.6 [Deloitte Touche Tohmatsu Limited](#)

- Another respondent raised a concern about whether such a test, perceived as a forward-looking exercise to serve investors' expectations, might raise expectations for PAs' roles and responsibilities.⁴²
 - A respondent also suggested that the stand-back provision be deleted on the grounds that it falls squarely into tax morality, tax fairness, and tax justice domains.⁴³
52. A few respondents noted that the role of a PA is to draw the attention of their client or employing organization to any obvious commercial and economic consequences as, ultimately, it is the client's or employing organization's decision whether to proceed with a TP transaction.⁴⁴ A few other respondents argued that PAs should not be held responsible for any adverse consequences should a client or employing organization decide to pursue a certain TP arrangement after being informed of the possible adverse consequences.⁴⁵
53. A respondent felt that it was unclear who the stakeholders would be and that there could potentially be a wide range of stakeholders with different views and perceptions. Accordingly, the respondent suggested that the provision focus simply on a consideration of the reputational, commercial, and wider economic implications associated with a particular TP arrangement, which should be within the PA's awareness and consideration as appropriate, without referring to stakeholders' perceptions.⁴⁶ Another respondent suggested that only the consideration of the wider economic consequences not be linked to stakeholders' perceptions. This respondent also suggested that materiality be a factor to consider when executing the stand-back test.⁴⁷

Task Force's Responses

54. The Task Force acknowledged some respondents' concerns about the introduction of the stand-back test, including a concern that the test would lead PAs to conduct extensive research to understand the full impact of the TP arrangement on the wider economy of the relevant jurisdiction(s).
55. The Task Force noted that the stand-back test is a requirement to *consider* the wider economic consequences and not a requirement to perform economic analysis. Indeed, paragraph 380.12 A2 in the ED referred only to an *awareness* of the wider economic consequences. The stand-back test is an acknowledgment of a *perception* that stakeholders might not regard a TP arrangement as acceptable even if the arrangement is within the bounds of tax laws and regulations. It allows the PA to then decide whether to be associated with the TP arrangement.
56. The Task Force also reaffirms that a consideration of the wider economic consequences is not about tax morality, tax fairness, or tax justice but about recognizing the practical reality of the wider economic impact of what might be a very large amount of tax involved in some cases. Consistent with the PA's duty to consider not only the preferences or requirements of a client or employing organization but also the

⁴² Agenda Item 9-D.6 [Saudi Organization for Chartered and Professional Accountants](#)

⁴³ Agenda Item 9-D.6 [American Institute of Certified Public Accountants](#)

⁴⁴ Agenda Item 9-D.6 [Accounting Professional & Ethical Standards Board Limited, National Association of State Boards of Accountancy](#)

⁴⁵ Agenda Item 9-D.6 [BDO International, CPA Australia, Ernst and Young Global Limited](#)

⁴⁶ Agenda Item 9-D.6 [Hong Kong Institute of CPA](#)

⁴⁷ Agenda Item 9-D.6 [KPMG International](#)

interests of other stakeholders in acting in the public interest,⁴⁸ it behooves the PA to make the client aware of the wider context in such cases. The stand-back test is not about risk management for the PA but about informing the client or employing organization about the risks of adverse perceptions from the wider stakeholder community, as happened when the Starbucks case made the front-page news in the recent past. Indeed, the Task Force noted that if events take a significant turn for the worse for the client or employing organization, the PA could be criticized for not having informed the client or employing organization about the risks.

57. Therefore, the stand-back test is about providing the client or employing organization with all the information it needs to make an informed decision about the TP arrangement. For this reason, it is consistent with and follows the PA's duty to comply with the principle of professional competence and due care and the PA's overarching responsibility to act in the public interest.
58. Regarding the concerns about the extent of work effort involved in applying the stand-back test and the suggestion to include a materiality factor, the Task Force notes that the requirement explicitly calls for the PA to exercise professional judgment in applying the test. Thus, the more complex the TP arrangement, the greater the consideration will be. Conversely, if the TP arrangement is relatively simple, there may be little to no consideration needed. Nevertheless, to further emphasize that the consideration of the wider economic consequences is not intended to be more than the application of a general understanding of the current economic environment, the Task Force is proposing a refinement to that effect in paragraphs 280.13 A2 and 380.12 A2:⁴⁹

*An awareness of the wider economic consequences might take into account the professional accountant's **general** understanding of the **current economic environment and the** impact of the tax planning arrangement on the tax base of the jurisdiction or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the client operates.*

59. The Task Force will further consider the suggestion from a respondent to delink the consideration of wider economic consequences from stakeholders' perceptions but would welcome the Board's views on this matter.

Matters for IESBA Consideration

11. Do IESBA members agree with the Task Force's views above?
12. Do IESBA members agree with the proposed revisions to paragraphs 280.13 A2 and 380.12 A2?

F. Disagreement with Management (Question 9)

Background

60. The proposed ethical framework in the ED contained provisions to address circumstances where a disagreement arises with the management of a client regarding a TP arrangement. The ED proposed

⁴⁸ Paragraph 100.6 A4

⁴⁹ Section 113 *Professional Competence and Due Care* – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

certain required actions for a PAPP if the PA disagrees with management regarding whether a proposed TP arrangement has a credible basis in laws and regulations. If management determines to pursue the arrangement despite the PA's advice, the ED also proposed that the PA take steps to be disassociated from the engagement. This includes considering the need to withdraw from the engagement and the professional relationship. (See paragraphs R380.19 to R380.21 in the ED.)

61. The ED also proposed similar provisions for a PAIB in the case of disagreement with the PA's immediate superior or other responsible individual within the employing organization. The ED, however, recognized that it is more likely that an escalation process would apply in the case of an employing organization. A PAIB might also have recourse to established protocols and procedures regarding how to raise ethical or other concerns internally within the employing organization. (See paragraphs R280.19 – 280.20 A2 in the ED).
62. The ED, however, proposed a more measured approach with respect to the PAIB in terms of disassociation from the TP arrangement, recognizing that, unlike PAPPs who have more than one client, the PAIB's employing organization will ordinarily be their sole employer. Accordingly, the ED proposed that a PAIB might consider resigning from the employing organization in these circumstances.

Summary of ED Responses

63. Respondents generally agreed⁵⁰ with the IESBA's proposals, with some providing further comments or suggestions. Key comments include the following:
 - Some respondents were concerned that the requirement for the PA to consider advising the client to fully disclose the arrangement to the relevant tax authorities and the external auditor in the event of a disagreement might create an expectation that the PA violates client confidentiality. The respondents were of the view that this disclosure may not be permissible in some jurisdictions unless the PA has obtained the necessary agreement from the client to make such disclosure.⁵¹
 - A respondent suggested the need for further clarification to the requirements in paragraphs R380.20 and R280.20 to "take steps to disassociate from the engagement/arrangement" as the respondent felt it is unclear what this step entails.⁵²
 - The respondent also sought further clarification on the requirement for a PAPP to consider withdrawing from the engagement (paragraph R380.21 in the ED), which does not seem proportionate as compared with the potentially more extreme action proposed for a PAIB, which is to consider resigning from the employing organization (paragraph 280.20 A1 in the ED).⁵³

⁵⁰ Agenda Item 9-D.9 [American Institute of Certified Public Accountants, Association of Chartered Certified Accountants, Chartered Accountants and CA Australia and NZ, Independent Regulatory Board for Auditors, Institute of Chartered Accountants of Nigeria, Japanese Institute of Certified Public Accountants, Malaysian Institute of Certified Public Accountants, PricewaterhouseCoopers International Limited, Saudi Organization for Chartered and Professional Accountants, South African Institute of Chartered Accountants, WirtschaftsprüferKammer](#)

⁵¹ Agenda Item 9-D.9 [Chartered Professional Accountants Canada Public Trust Committee, European Federation of Accountants and Auditors for SMEs, IFAC Small and Medium Practices Advisory Group \(SMPAG\), WirtschaftsprüferKammer](#)

⁵² Agenda Item 9-D.9 [Deloitte Touche Tohmatsu Limited](#)

⁵³ Agenda Item 9-D.9 [Deloitte Touche Tohmatsu Limited](#)

Task Force's Response

64. The Task Force noted that PAs are required under the Code to have an inquiring mind when gathering all the relevant facts and circumstances and making the judgments that form part of their advice to the employing organization or client. After taking all the necessary steps, a PA might determine that the TP arrangement has no credible basis in laws and regulations. If the employing organization or client disagrees with the PA's assessment, the PA should communicate their reservations to the employing organization or client. The Task Force is of the view that this communication should take place irrespective of whether the TP arrangement would result in an adverse ruling. Accordingly, the Task Force is proposing a revision to paragraphs R280.20(b) and R380.20(b).
65. In the case of disagreement with the client, the Task Force is of the view that transparency around the exercise of professional judgment and making appropriate disclosure to the tax authority would be important, especially when there might be a need to explain that there is commercial substance to the transaction. Therefore, the Task Force believes there should be no change to the PA's requirement to advise the client to disclose the arrangement to the relevant tax authorities. Regarding the respondents' concerns that this would create an expectation that the PA breach client confidentiality, the Task Force noted that the requirement addressed disclosure *by the client* and not by the PA. Nevertheless, to acknowledge the respondent's concerns that there might be confidentiality issues in some jurisdictions, the Task Force proposes to clarify paragraph R380.21(b) to state that disclosure by the client to relevant tax authorities would be where it is applicable. The Task Force proposes a similar amendment to paragraph R280.21(b) for PAIBs.
66. Regarding the suggestion to explain what taking steps to disassociate from the engagement means, the Task Force does not believe the Code should specify prescriptive steps in that regard, as the principle is clear that the PA should not be associated in one form or another with the TP arrangement in such circumstance of disagreement. However, the Task Force accepted the comment that the requirement for the PA to consider the need to withdraw from the engagement and the professional relationship with the client should be more tempered, given that TP often involves significant uncertainty and application of professional judgment. Accordingly, the Task Force proposes an amendment to the requirement to focus on the PA, considering *whether* there is a need to withdraw from the engagement and the professional relationship (see paragraph R380.22). A similar change is proposed to paragraph 280.21 A1 for PAIBs.

Matters for IESBA Consideration

13. Do IESBA members agree with the Task Force's views above?
14. Do IESBA members agree with the Task Force's proposed revisions to paragraphs R380.20 – R380.22 and R280.20 – R280.21 A1?

G. Documentation (Question 10)

Background

67. The ED proposed guidance highlighting the importance of documentation, including the matters that would be beneficial to document and why such documentation will assist PAs.

68. In developing the ED, the IESBA considered whether to require documentation of the TP arrangement, discussions with the client or responsible parties within the employing organization, and the PA's analysis, judgments, and decisions. The IESBA, however, considered that documentation is a quality and risk management matter and not an ethics matter. Therefore, the ED proposed to encourage, but not require, PAs to prepare documentation. However, the IESBA agreed that the reasons for documentation in paragraphs 380.23 A2 and 280.21 A2 in the ED were sufficiently persuasive that, in most cases, PAs will document the various matters set out in paragraphs 380.23 A1 and 280.21 A1 of the ED.

Summary of ED Responses

69. Respondents generally agreed with the IESBA's proposals, with some providing comments or suggestions.⁵⁴
70. A respondent noted that documentation should be required given the heightened public interest in TP arrangements. The respondent was of the view that proper documentation is a useful tool to facilitate ethical considerations, especially when considering whether the advice has a credible basis and then performing the stand-back test.⁵⁵ The respondent also suggested that if it is challenging to introduce documentation requirements globally, the IESBA should consider requiring documentation where there is uncertainty with a TP arrangement or where the engagement would be considered a considerable risk.

Task Force's Response

71. The Task Force continues to believe that from an ethics perspective, documentation is a risk management tool that all PAs should be encouraged to adopt as good practice.
72. This position, however, does not preclude jurisdictions from establishing documentation requirements as they see fit for their national circumstances. In this regard, during the [roundtable](#) discussions, the Task Force heard that in some jurisdictions, the requirement to document is an established practice within the local laws and regulations. For example, the Professional Conduct in Relation to Taxation (PCRT) Standard⁵⁶ requires the members of the UK professional accountancy organizations to document on a timely basis the rationale for professional judgments exercised. Where there is genuine and reasonable uncertainty as to whether a particular TP is in breach of the PCRT, sufficient documentation is required concerning the detailed reasoning and evidence to demonstrate why any TP was viewed as not being in breach of the PCRT.⁵⁷ Documentation may also be established in relevant standards in some jurisdictions.

⁵⁴ Agenda Item 9-D.6 [Accountancy Europe, Accounting Professional & Ethical Standards Board Limited, American Institute of Certified Public Accountants, Association of Chartered Certified Accountants, Chartered Professional Accountants Canada Public Trust Committee, Hong Kong Institute of CPA, Institute of Certified Public Accountants of Uganda, Institute of Chartered Accountants of Scotland](#)

⁵⁵ Agenda Item 9-D.6 [Accountancy Europe](#)

⁵⁶ Professional Conduct in Relation to Taxation (PCRT) was jointly produced by the Association of Accounting Technicians (AAT), Association of Chartered Certified Accountants (ACCA), Association of Taxation Technicians (ATT), Chartered Institute of Taxation (CIOT), Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), and Society of Trust and Estate Practitioners (STEP). Her Majesty's Revenue and Customs (HMRC) has incorporated this code of conduct into its Standards for Tax Agents. (Effective from March 2017 and republished in March 2019, <https://www.icaew.com/-/media/corporate/files/technical/tax/p crt/p crt.ashx>)

⁵⁷ Agenda Item 9-D.10 [Association of Chartered Certified Accountants, Institute of Chartered Accountants in England and Wales, Institute of Chartered Accountants of Scotland](#)

For example, in Australia, the Accounting Professional & Ethical Standards Board (APESB) has issued [APES 220 Taxation Services](#), which requires its members to provide documentation for taxation services.

73. The Task Force also notes the Board's observation during the development of the ED that the approach to documentation in the Code is a broader issue than just in relation to TP, given that outside of the International Independence Standards, the Code generally only encourages documentation. Therefore, the Task Force suggests that the Board address the topic of documentation as part of a more holistic review of the Code's provisions on documentation.
74. That said, the Task Force believes that it would be useful to add to the guidance on why documentation is useful to the PA a recognition that documentation assists the PA's consideration of the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the arrangement (see paragraphs 380.25 A2 and 280.22 A2).

Matters for IESBA Consideration

15. Do IESBA members agree with the Task Force's views above?
16. Do IESBA members agree with the Task Force's proposed revisions to paragraphs 380.25 A2 and 280.22 A2?

H. Tax Planning Products or Arrangements Developed by a Third Party (Question 11)

Background

75. The ED proposed guidance in paragraph 380.22 A1 to the effect that where a PA refers a client to a third-party provider of TP products or arrangements or where a client approaches a PA for advice on a TP product or arrangement developed by a third party, the provisions in Section 380 apply. The IESBA took the view that in both situations, the responsibilities of the PA should be no different than if the PA were the creator of the TP product or arrangement.
76. If the PA receives a commission or referral fee for the introduction, the ED also guides the PA to follow the provisions in paragraphs 330.5 A1-A2 addressing commissions or referral fees.

Summary of ED Responses

77. There was general consensus among respondents about the considerations that PAs should apply where they have the opportunity to refer a client to an external provider of TP products. As a general matter, some respondents agreed that if the PA is referring the client to a provider of packaged TP products to meet the client's needs, the PA would need to inform the client of the PA's relationship with the external provider in the first instance.⁵⁸
78. A few respondents also shared that PAs should proceed cautiously when referring a client to an external provider of packaged TP products. They expected that the PA would advise the client of the risks, not least to limit the PA's exposure to litigation and reputational risks should the product fail to stand up to scrutiny by the tax authority or in a court of law. The respondents agreed that the PA should advise the client or

⁵⁸ Agenda Item 9-D.11 [Accountancy Europe, Chartered Professional Accountants Canada Public Trust Committee, Deloitte Touche Tohmatsu Limited, Hong Kong Institute of CPA, National Association of State Boards of Accountancy, Pennsylvania Institute Of Certified Public Accountants](#)

consult with the external provider to ensure the TP product is appropriately tailored to the client's specific circumstances.⁵⁹

79. However, a respondent⁶⁰ was of the view that the PA should not be responsible for determining the credible basis of the TP service if they have referred the client to another provider with the expertise to deal with the client's tax affairs. The respondent felt that this scenario should also be distinguished from the circumstance where the PA actively promotes a third party's TP products or arrangements. Taking into account these different circumstances, the respondent suggested that the IESBA consider further application material.
80. A few respondents noted that the practice concerning referral fees varies across jurisdictions. In some jurisdictions' codes of conduct, for example, in the U.S., PAs are expected to disclose any referral fees to clients as an important safeguard against threats to the PAs' objectivity. In other jurisdictions, such as Germany,⁶¹ referral fees are prohibited. Participants also noted that the Code contains guidance on disclosure of commissions or referral fees that would apply in these circumstances.⁶²

Task Force's Response

81. The Task Force agreed with respondents that depending on the extent of the PA's involvement in developing the TP product or arrangement, there should be consideration of some element of due diligence on the part of the PA concerning the TP product or arrangement. However, the Task Force also agrees with the comment that care is needed not to place an onerous, impracticable requirement on the PA.
82. Therefore, having considered the respondents' feedback, the Task Force proposes that, regardless of whether the client is approaching the PA for advice on a TP product or arrangement developed by a third party or whether the PA is recommending or referring the client to a third-party provider, the PA would need to inform the client of any professional or business relationship the PA has with the third-party provider. This transparency ensures that the PA's objectivity is viewed in light of such circumstances. See paragraphs R380.23(a) and R380.24.
83. On the work effort required, the Task Force considers that, from an ethical point of view, it is important to clearly delineate the PA's responsibilities to account for different circumstances:
- (a) Where a client approaches a PA for a recommendation or advice on a TP product or arrangement developed by a third party, the Task Force believes that the PA should be responsible for ascertaining that there is a credible basis for the particular TP product or arrangement, as they would ultimately be signing off on the TP recommendation or advice to the client. In this instance, the Task Force proposes that the provisions in Section 380 apply to the TP product or arrangement.
 - (b) Where the PA merely recommends or refers the client to a third-party provider, the PA will not have access to the full breadth of details of the TP product or arrangement. The PA might also make such a referral when the PA does not have the capabilities or capacity to perform the service, and thus it is not in the public interest for the PA to undertake the work. Under these

⁵⁹ Agenda Item 9-D.11 [BDO International, Chartered Accountants and CA Australia and NZ](#)

⁶⁰ Agenda Item 9-D.11 [Accounting Professional & Ethical Standards Board Limited](#).

⁶¹ Paragraph 55 (2) WPO

⁶² Paragraphs 330.5 A1- A2 of the Code

conditions, holding the PA responsible for applying the Section 380 requirements for whatever professional service is ultimately developed by the third-party provider would be impracticable and unreasonable. Therefore, the Task Force is proposing guidance to state that where the PA only recommends or refers a client to a third-party provider of TP services, the provisions of Section 380 do not apply. However, as proposed in the ED, the provisions in Section 330 concerning referral fees or commissions will continue to be relevant in such circumstances (see paragraph 380.24 A1), in addition to informing the client of any professional or business relationship the PA has with the third-party provider as discussed above.

Matters for IESBA Consideration

17. Do IESBA members agree with the Task Force's views above?
18. Do IESBA members agree with the Task Force's proposals in paragraphs R380.23 to R380.24 A1?

Appendix

List of Respondents to the Tax Planning and Related Services Exposure Draft

(Note: No members of the Monitoring Group responded to the ED.)

#	Abbrev.	Respondent	Region
Regulators and Audit Oversight Authorities			
1.	IRBA	Independent Regulatory Board for Auditors	MEA
2.	TPB	Tax Practitioners Board, Australia	AU/NZ
National Standard Setters			
3.	APESB	Accounting Professional & Ethical Standards Board	AU/NZ
Professional Accountancy Organizations			
4.	AICPA	American Institute of Certified Public Accountants	NA
5.	ACCA	Association of Chartered Certified Accountants	GLOBAL
6.	CAANZ	Chartered Accountants Australia and New Zealand	AU/NZ
7.	AE	Accountancy Europe	UK/Europe
8.	CPAAu	CPA Australia	AU/NZ
9.	CPAC	Chartered Professional Accountants Canada	NA
10.	CAI	Chartered Accountants Ireland	Europe
11.	EFAA	European Federation of Accountants and Auditors for SMEs	Europe
12.	HKICPA	Hong Kong Institute of Certified Public Accountants	AP
13.	IBRACON	Instituto dos Auditores Independentes do Brazil	SA
14.	ICPAU	Institute of Certified Public Accountants of Uganda	MEA
15.	ICAEW	Institute of Chartered Accountants in England and Wales	Europe
16.	ICAI	Institute of Chartered Accountants of India	AP
17.	ICAN	Institute of Chartered Accountants of Nigeria	MEA
18.	ICAS	Institute of Chartered Accountants of Scotland	Europe
19.	IDW	Institut der Wirtschaftsprüfer in Deutschland e.V.	Europe

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#	Abbrev.	Respondent	Region
20.	IFA	Institute of Financial Accountants, United Kingdom	Europe
21.	SMPAG	IFAC Small and Medium Practices Advisory Group	GLOBAL
22.	ISCA	Institute of Singapore Chartered Accountants	AP
23.	JICPA	Japanese Institute of Certified Public Accountants	AP
24.	KICPA	Korean Institute of Certified Public Accountants	AP
25.	MIA	Malaysian Institute of Accountants	AP
26.	MIA	Malta Institute of Accountants	Europe
27.	MICPA	Malaysian Institute of Certified Public Accountants	AP
28.	NASBA	National Association of State Boards of Accountancy, U.S.	NA
29.	NBA	Royal Netherlands Institute of Chartered Accountants	Europe
30.	NCCPAP	National Conference of CPA Practitioners, New York, U.S.	NA
31.	PICPA	Pennsylvania Institute of Certified Public Accountants, U.S.	NA
32.	PAAB	Public Accountants and Auditors Board, Zimbabwe	MEA
33.	SAICA	South African Institute of Chartered Accountants	MEA
34.	SOCPA	Saudi Organization for Chartered and Professional Accountants	MEA
35.	TFAC	Thailand Federation of Accounting Professions	AP
36.	WPK	Wirtschaftsprüferkammer, Germany	Europe
Other Professional Organizations			
37.	ETAF	European Tax Adviser Federation	Europe
38.	TIHK	Taxation Institute of Hong Kong	AP
39.	IBA	Tax Committee of International Bar Association	GLOBAL
Accounting Firms			
40.	BDO	BDO International Limited	GLOBAL
41.	DTTL	Deloitte Touche Tohmatsu Limited	GLOBAL

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#	Abbrev.	Respondent	Region
42.	EYG	Ernst & Young Global Limited	GLOBAL
43.	GTIL	Grant Thornton International Limited	GLOBAL
44.	KPMG	KPMG Limited	GLOBAL
45.	MO	Mo Chartered Accountants (Zimbabwe)	MEA
46.	PKF	PKF (Durban)	MEA
47.	Price Bailey	Price Bailey, United Kingdom	Europe
48.	PwC	PricewaterhouseCoopers International Limited	GLOBAL
49.	RSM	RSM International	GLOBAL