

Compilation of Significant ED Comments

Note: This Agenda Item has been prepared **for information only**. A comprehensive summary of the significant comments received on the Exposure Draft (ED) of [Proposed Revisions to The Code Addressing Tax Planning And Related Services](#), and the Task Force’s related analysis of significant issues and proposals are presented in **Agenda Item 9-A**.

Documentation

10. Do you agree with the IESBA’s proposals regarding documentation as outlined in Section VII.J above?

o	Respondent	Respondent Comments
1	Accountancy Europe	<p>We note that the Explanatory Memorandum states that "IESBA believes that the reasons for documentation set out in paragraphs 380.23 A2 and 280.21 A2 are sufficiently persuasive that in the vast majority of cases, PAs will document the various matters set out in paragraphs 380.23 A1 and 280.21 A1" but stops short of making it compulsory:</p> <ul style="list-style-type: none"> a) to maintain consistency with the non-audit sections of the Code, and b) because documentation is more of a quality control issue than an ethical one. <p>However, we believe that the issues facing professional accountants involved in tax planning services may call for a different approach in respect of documentation. For example, in the grey zone there is uncertainty over whether an arrangement is legal or not legal. This can be a risk for PAs trying best advise their client as to the tax consequences of a business transaction the client is considering. There may also be an opportunity to reduce the client’s tax liabilities below that intended by legislators by leveraging uncertainty, mismatches etc. – what is commonly described as aggressive tax planning. There is a strong argument that the decision whether or not to ‘aggressively’ utilise the grey zone is an ethical decision and not risk management.</p> <p>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. In some jurisdictions, if a tax planning arrangement is defeated in court it can attract criminal penalties so adequate documentation of the thought processes that lead to the advice would be a vital tool to protect the PA. As is stated in Article 3.11 of the UK’s Professional Conduct in Relation to Taxation, “notes taken on a timely basis are likely to be the most convincing</p>

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		<p>way of demonstrating compliance with the principles after the event, to the benefit of the member and the client and to satisfy any wider public concerns”.</p>
2	<p>Accounting Professional & Ethical Standards Board Limited</p>	<p>We understand IESBA's rationale and proposed global approach concerning the proposed documentation paragraphs in Sections 280 and 380. However, APESB is of the view given the public interest that is invariably attached to tax services and its role in the collection of the relevant jurisdiction's (or multiple jurisdictions) tax revenue, the professional accountant should be required to document the factors considered and the conclusions reached in determining the tax planning service has a credible basis. Documentation should also be mandatory when uncertainty is associated with the tax service, or it is considered high-risk.</p> <p>In Australia, APESB has issued a professional standard (since 2007) on tax services, APES 220 Taxation Services, which has required documentation, and we are not aware that this has caused significant challenges for professional accountants in Australia.</p> <p>In addition, APESB has included an Australian-specific requirement on documentation relating to providing taxation services to an audit client in its Non-Assurance Services, Amending Standard to APES 110. The paragraph (AUST R604.4.1) requires firms to document the factors considered and conclusions reached in determining that the tax treatment satisfies the conditions described in paragraph AUST R604.4, such as the proposed tax treatment has a basis in applicable tax law or regulation that is likely to prevail.</p> <p>The big four firms in Australia have adopted voluntary Large Market advisor principles. For example, principle 2.6 requires the firm to have a written note of all the final advice provided to the client when dealing with higher-risk arrangements. APESB is of the view this represents best practice for tax planning and related service.</p> <p>Where multiple jurisdictions are involved and jurisdictions that don't require documentation interact with the Australian tax system that generally requires documentation to establish a reasonable basis, it creates challenges for the Australian revenue authorities to obtain appropriate information to administer Australia's tax system.</p> <p>APESB encourages the IESBA to reconsider documentation requirements as that will also support evidencing how the professional accountant determined a credible basis for tax planning services. In addition, given the tax scandals over the last decade, we believe documentation is in the public interest and could act as a deterrent.</p>

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		<p>If mandating a global documentation requirement is challenging, then APESB strongly believes that documentation should at least be required for uncertain circumstances or higher-risk tax planning services in proposed sections 280 and 380.</p> <p>For example, a new proposed requirement paragraph for section 380 could be drafted as follows:</p> <p>R380.24 (new)</p> <p>The professional accountant shall document on a timely basis the matters set out in paragraph 380.23 A1 when providing a tax planning service that involves circumstances of uncertainty or when an engagement is assessed as high risk.</p>
3	American Institute of Certified Public Accountants	<p>Although we are generally supportive of these proposals, the primary concern in this section involves the language relating to “identity of the ultimate beneficiaries” in proposed section 380.23 A1 and 280.21 A1. As noted above we think that this requirement is too broad in scope and imposes excessive costs on the PA which would have to be borne by the client and the employing organization. As noted in our recommendation above, revising this provision to state that only known and expected beneficiaries should be identified would minimize these expected costs burdens and resource constraints. In some TP service recommendations that impact financial planning, it may be difficult to identify all the parties who may ultimately benefit, beyond the initial parties involved in the transaction. We would recommend documenting the “known and expected beneficiaries” instead of “ultimate.”</p>
4	Association of Chartered Certified Accountants	<p>Overall, we agree. In addition, we wish to share that the Professional Conduct in Relation to Taxation (PCRT) Standard for TP on professional judgement and appropriate documentation requires notes to be kept on a timely basis of the rationale for professional judgements exercised. Where there is genuine and reasonable uncertainty as to whether particular TP is in breach of the PCRT Standard on advising on TP arrangements, sufficient documentation of the detailed reasoning and evidence to be able to demonstrate why any TP was viewed as not being in breach of that PCRT Standard is required. [paragraphs 3.2 and 3.9 of the PCRT]</p> <p>We note, however, that in the overwhelming majority of cases where there is a failure to document, there is likely to also be a pre-existing breach of the principle of professional competence and due care by advising beyond competence (acting without sufficient expertise). Issues in the Code flow from that fundamental breach. In a case where the adviser is sufficiently competent to recognise that documentation would have been required, but failed to prepare or retain it, there will again be a prima facie assumption of other wrongdoing at a level more fundamental</p>

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		than the ethics provisions. Also, circumstances might create more than one threat to compliance with one or more fundamental principles, which can be indicative of more serious underlying issues that need to be addressed. Ultimately, we believe that the Code, by design, needs to focus on helping those applying the Code to ‘do the right thing’ and be able to demonstrate why they have done so.
5	BDO International	Although the ED does not require documentation of the various considerations it proposes, to withstand possible challenges to the tax advice provided, BDO agrees that documentation should be encouraged. Where a tax position is challenged, it often occurs many years after the event, and this makes proper documentation particularly important. Documentation will also assist other PAs in forming their own opinions when required to do so. Documenting the considerations will raise the standards across the profession, but may also have the unintended consequence of increasing the cost and time taken for all TP advisory work.
6	Chartered Accountants and CA Australia and NZ	<p>We agree with the intent of IESBA's proposals regarding documentation as outlined in Section VII.J of the EM.</p> <p>However, the wording of paragraphs 380.23 A1 and 280.21 A2 does not assist PAs to determine the appropriate nature and extent of the documentation that they should keep. In our experience, the existence of this guidance material can cause confusion for PAs working in or with SMEs with under or over documentation (and additional cost) the result. Similarly, these PAs might fail to make the linkage between documentation and quality management. Accordingly, we recommend that the IESBA considers providing additional application material to clarify these issues. For example – after paragraph 380.23 A1:</p> <p>The nature and extent of this documentation is a quality management and risk matter to which the professional accountant should apply professional judgement and the reasonable and informed third party test. The level of uncertainty present in the tax planning arrangement might be an important consideration in determining the documentation required.</p>
7	Chartered Accountants Ireland	<p><u>Risk assessment:</u></p> <ul style="list-style-type: none"> We agree with the proposals, but we would recommend including in 380.23 A1 and 280.21 A1 a reference to risk management. For example, the third bullet point could read “<i>the nature of any risks and uncertainties</i>” or alternatively an additional bullet point may be added as follows: “<i>the key risks associated with the tax planning arrangement and how they are addressed</i>”.

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		<ul style="list-style-type: none"> • We would also recommend reflecting consideration of risk in 380.23 A2 and 280.21 A2, for example as part of the first bullet point: “Develop the accountant’s analysis of the facts, circumstances, relevant tax laws and regulations, risk assessment and any assumptions made or changed”. • The IESBA notes in Section VII.J that documentation is not considered an ethics matter. However the risk of unethical behaviour or conduct is a risk management matter and therefore inclusion of risk as a consideration would be appropriate.
8	Chartered Professional Accountants Canada Public Trust Committee	<p>The PTC agrees with the IESBA’s thought process as outlined under Explanatory Memorandum in paragraphs 84 and 85 regarding documentation.</p> <p>However, while the PTC acknowledges that requiring documentation in the absence of privilege between the PAPP and a client could create additional risks that need to be considered, on balance our stakeholders believe that documentation is so important and vital in enforcement that it should be required. Accordingly, the PTC recommends that the IESBA consider converting the guidance on documentation into a requirement.</p>
9	CPA Australia	<p>Yes. CPA Australia supports these proposals and considers to them to be consistent with good practice.</p> <p>We also note that the available documentation held by the PA will be dependent on:</p> <ul style="list-style-type: none"> • the terms and scope of the engagement • the information provided by the client or shared within the business • the relevance of such information to the TP advice • the laws and regulations of the relevant jurisdiction/s including those related to: <ul style="list-style-type: none"> ○ record keeping and document retention ○ client confidentiality and privacy ○ acting in the clients’ best interests ○ legal professional privilege and similar concessions (e.g., the accountants’ concession in Australia).

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		Further clarity on the requirement to document “any disagreement” with the client is required. Generally, TP advice is either accepted or not. Non-acceptance of TP advice by those charged with governance does not equate to a disagreement.
10	European Federation of Accountants and Auditors for SMEs	<p>We disagree with some of the proposals.</p> <p>We believe that the proposed guidance, combined with the broad scope of application, might present some challenges for PAs. Encouraging documentation for activities within scope essentially amounts to a recommendation PAs compile such documentation even for very simple cases. Not only might this be onerous, in simple cases it would add little if any value. We wonder, therefore, whether it would be better to avoid using the word ‘encouraged’.</p>
11	European Tax Adviser Federation	We fully agree with the importance of documentation as a quality and risk management matter and acknowledge the decision of IESBA to only encourage, and not require, professional accountants to prepare documentation, in order to be coherent with the approach to documentation taken in other parts of the Code. While we agree with the IESBA guidance, we would like to point out that the exact form and extent of document can only depend on the particular circumstances of each case.
12	Grant Thornton International Limited	Although GTIL is generally supportive of the proposals, there are concerns involving the language relating to “identity of the ultimate beneficiaries” in proposed section 380.23 A1 and 280.21 A1. As noted above, we believe this requirement is too broad in scope and imposes excessive costs on the professional accountant which would ultimately be incurred by the client.
13	Hong Kong Institute of CPA	<p>We generally agree with the IESBAs proposals regarding documentation as outlined in Section VII.J, particularly where there is, or may be, some difference of view over a specific TP arrangement. If the matter is non-controversial, there may not be a need to document all the matters referred to in paragraphs 280.21 A1 and 380.23 A1, and certainly not in any great detail.</p> <p>With respect to the last bullet of paragraphs 280.21 A1 and 380.23 A1, in case of a PA’s disagreement with his/her immediate supervisor, management, those charged with governance or the client, we would suggest the PA’s documentation to demonstrate compliance with the fundamental principles and the provisions in section 280 or 380.</p>

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14	IFAC Small and Medium Practices Advisory Group (SMPAG)	In principle, we do prefer “encouraging” documentation rather than requiring it. However, the simple and unproblematic nature of many of the arrangements that are included in the scope means that the cost-benefit value of documentation many times will be low. As such, if the wording that encourages documentation remains, and considering the broad scope of the arrangements that would fall subject to the guidance, we encourage the IESBA to include in the application material that risk and significance should be considered as factors in determining whether documentation is appropriate.
15	Institute of Certified Public Accountants of Uganda	ICPAU agrees with the IESBA's proposals regarding documentation. However, we note that the proposals only encourage but do not require, that PAs prepare documentation. We believe that the proposal should require PAs in exercising professionalism to document all the work performed for their clients/ employing organizations and/or other third-party evaluation, developing an appropriate level of documentation throughout the process to substantiate the judgments, decisions, and actions taken by the PA.
16	Institute of Chartered Accountants in England and Wales	<p>We note the comments in respect of documentation. We appreciate the fine line between producing documentation for its own sake, thereby incurring extra costs for no obvious benefit, and ensuring that an adviser can at a later date support and where appropriate defend the judgements made as being in accordance with the code. Timely prepared appropriate documentation is a sensible risk management strategy which will help support judgements made, if required at a later date.</p> <p>The PCRT includes a mandatory requirement that members should keep notes on a timely basis of the rationale for the judgments made, but that members are not required to complete paperwork for its own sake. We believe that this is a reasonable provision which helps to protect the member.</p>
17	Institute of Chartered Accountants of Nigeria	We do agree with the Board's proposal that documentation should be encouraged. This is an ethical standard, not execution standard of quality and risk management. Laying down the type of document could have overreaching effect in scope.

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18	Institute of Chartered Accountants of Scotland	<p>We note the comments in respect of documentation. The PCRT says that Members are not required to complete paperwork for its own sake, but they should be prepared to identify, support and where appropriate defend the judgements they made in applying these requirements to their work.</p> <p>Appropriate documentation, on a timely basis, is a standard risk management strategy that we recommend to all members in order to provide the most convincing way of demonstrating compliance with the principles after the event, to the benefit of the member and the client and to satisfy any wider public concerns. However, documentation of itself is a risk management strategy rather than an ethical consideration.</p>
19	Institute of Financial Accountants	<p>We support the proposals and agree that documentation should be encouraged, rather than required.</p> <p>As drafted, paragraphs 380.23 A1, 380.23 A2, 280.23 A1 and 280.23 A2 appear prescriptive. To avoid this impression, we recommend reversing the order of paragraphs A1 and A2, leading with what must be achieved by effective documentation.</p>
20	Malaysian Institute of Accountants	<p>Agree. It is well known that the tax rules and regulations around the globe require taxpayers or PAs assisting the taxpayers to ensure proper record-keeping of all tax documents. Therefore, the proposal is an extension to the current requirement, which will safeguard the PAs position in the event of a dispute with the relevant tax authorities.</p>
21	Malta Institute of Accountants	<p>Whilst recognising that this paragraph also states “that in the vast majority of cases, PAs will document the various matters set out in paragraphs 380.23 A1 and 280.21 A1.”, we suggest removing the words “but not require” as this might dilute the importance of preparing documentation.</p>
22	Mo Chartered Accountants (Zimbabwe)	<p>In as much as documentation is a quality and risk management matter its existence will also allow a reviewer to determine how ethical issues have been documented and resolved</p>
23	Pennsylvania Institute Of Certified Public Accountants	<p>The committees note that these requirements may go beyond what is legally appropriate in the United States and, in many cases, documentation requirements and best practices may be defined by legal counsel. The committees appreciate that the proposal does not require such documentation. At the same time, the committees do not believe that the Code is an appropriate medium for best practice considerations.</p>

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24	PKF (Durban)	<p>Yes, I do agree with this as this generally happens in practice anyway as it safeguards the PA in terms of the information provided in respect of the tax service rendered.</p> <p>However, we do caution the risk that it may pose on PAs for TP where the documentation may be inappropriately used by third parties for other issues which may not be relevant to the Code. In this regard we specifically highlight the fact that in South Africa (as with many other tax jurisdictions) professionals accountants rendering tax services are not entitled to legal professional privilege whereas professional attorneys rendering the same or similar services are permitted to claim legal privilege to protect their client's information.</p>
25	Price Bailey	<p>Yes. We would expect all professional accountants to obtain and document knowledge and understanding of the client, its owners, management and those charged with governance, and its business activities; along with the purpose and circumstances of the tax planning arrangement; and the relevant tax laws and regulations.</p>
26	Public Accountants and Auditors Board Zimbabwe	<p>The PAAB disagrees with the IESBA's proposals regarding documentation to encourage PAs to document the TP arrangement.</p> <p>We believe that documentation should be an enforceable requirement for all organisations that a PA deal with as it creates an audit trail and enhances transparency issues.</p> <p>Documentation will go a long way in supporting the basis of any TP arrangement to determine the thought process and rationale for actions of the PA and preparing such documentation will assist the PA to:</p> <ul style="list-style-type: none"> • Develop the PA's analysis of the facts, circumstances, relevant tax laws and regulations, and any assumptions made or changed. • Record the basis of the professional judgments at the time they were made or changed. • Support the position if the tax planning arrangement is challenged by the relevant tax Authorities. • Demonstrate that the PA has complied with the provisions in this section.
27	RSM International	<p>Yes. We support at a minimum that there is application guidance relating to documentation, including the matters to include and to set out the purpose of such documentation.</p>

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28	Saudi Organization for Chartered and Professional Accountants	We agree with the IESBA's proposals with regard to documentation. Further, additional reference to the relevant documentation requirements in the Code and relevant professional standards can serve the IFAC's purpose of aligning the efforts made by the different boards, and this specifically applies to the proposed guidance related to PAPP.
29	South African Institute of Chartered Accountants	SAICA agrees with the documentation however we caution of the risk that it may pose on PAs for TP where the documentation may be inappropriately used by third parties for other issues which may not be relevant to the Code. In this regard we specifically highlight the fact that in South Africa (as with many other tax jurisdictions) PAs rendering tax services are not entitled to legal professional privilege whereas professional attorneys rendering the same or similar services are permitted to claim legal privilege to protect their client's information.
30	Subcommittee for the Ethics Code Setting, Federation of Accounting Professions	Agreed. However, certain documents which Professional Accountants (PAs) must communicate with their clients should be added, for example, relevant laws, rulings, and tax measures applied, including supporting evidence of the advice given by people, like experts, involved, and disclosure of information to tax authorities, etc.
31	Taxation Institute of Hong Kong	Generally documentation requirements is ideal but in some situations there could be certain verbal discussions taken place which would not be ideal for documenting the discussions. Besides, a good balance need to be stroked between proper and sufficient documentations versus excessive administrative burden to the tax practitioners.
32	WirtschaftsprüferKammer	A complete 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.