

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**.

Tax Planning Products or Arrangements Developed by a Third Party

11. Do you agree with the IESBA’s proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third-party provider?

No	Respondent	Respondent Comments
1	Accountancy Europe	<p>Article 380.22 is extremely brief and requires reference to paragraphs 88 and 89 of the Explanatory Memorandum to provide context. In particular, the following points should be included in Article 380.22:</p> <ul style="list-style-type: none"> a) The need to inform the client of the PA’s relationship with the external provider. This is especially pertinent where the external provider is somehow related to the PA – i.e., by common ownership or by heavily interlinked business models. b) The need to for the PA to ascertain the provider’s competence – for example, if they are members of an appropriate professional body with a code of conduct, professional indemnity insurance etc. c) The statement that the responsibilities of the PA are no different when referrals are made to a third-party provider than if the PA was the creator of the tax planning arrangement. <p>Where such referral fees are permitted by local law, we believe that the PA should disclose to the client the fact that they will receive a commission for referral, and an indication of the likely amount, at the earliest opportunity.</p> <p>380.22 refers to ‘tax planning products or arrangements.’ In certain jurisdictions, the term ‘tax planning products’ would be equated to actively marketed pre-packaged tax avoidance schemes that are not client specific. We do not believe that PAs should be associated with such schemes and would recommend that 380.22 be amended to only refer to ‘tax planning arrangements.’</p>
2	Accounting Professional & Ethical	<p>APESB supports the inclusion of provisions relating to tax planning products or arrangements developed by a third-party provider, especially the guidance pertaining to referral fees and commissions.</p>

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	Standards Board Limited	<p>However, we disagree that the professional accountant should be responsible for determining the credible basis of the tax planning service if they have referred the client to another provider with the expertise to deal with the client's tax affairs.</p> <p>The above circumstances must be distinguished from the situation when the accountant actively promotes a third party's tax planning products or arrangements. Accordingly, this obligation and its application need to be clarified to avoid unintended consequences.</p>
3	American Institute of Certified Public Accountants	<p>We do not agree and are not supportive of paragraphs 380.22 A1 – A3.</p> <p>The guidance in Section 330 “Fees and Other Types of Remuneration” of the IESBA code is applicable to all PAs in public practice when providing any services, so it is not necessary to include paragraphs 380.22 A2-A3.</p> <p>We disagree with the guidance in proposed section 380.22 A1 and in the EM paragraphs 88-89. As noted above, it is not appropriate to hold a PA who refers a client to a third-party provider of tax planning products or arrangements to the same standard as if they were the creator of the tax planning product or arrangement, and therefore be subject to all the provisions of the ED. The referral also may be due to PA's lack of competency regarding the specific tax planning arrangement being referred. Under 380.22, a PA would almost never make a referral and would render the referral moot as this standard implies the PA has sufficient skill and knowledge to directly provide the tax planning arrangement. The threshold to justify a referral is too high.</p> <p>We also disagree with these same paragraphs in the circumstance where a client approaches the accountant for advice on a tax planning product or arrangement developed by a third party, for the reasons stated above.</p> <p>Circular 230 as well as the SSTs provides guidance to U.S. tax practitioners regarding the due diligence required when relying on the advice of others and these principles provide a good framework for the evaluation of third-party referrals. These principles provide that a practitioner may only rely on the advice of another person if the advice was reasonable, and the reliance is in good faith considering all the facts and circumstances. In tax planning, PAs often rely on assumptions and representations. Although such reliance is often necessary, the PAs should take care to assess whether such assumptions and representations are reasonable. In deciding whether an assumption or representation is reasonable, the PA should consider its source (for example, the knowledge and expertise of the issuer), and consistency with other information known to the member.</p> <p>Reliance is not reasonable when the PA knows or reasonably should know that the opinion of the other person should not be relied on; the PA knows or reasonably should know that the other person is not competent or lacks the necessary</p>

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		<p>qualifications to provide the advice; or the PA knows or reasonably should know that the other person has a conflict of interest.</p>
4	BDO International	<p>Paragraph 380.22 A1</p> <p>BDO agrees with the proposals addressing TP products or arrangements developed by a third-party provider in principle. If a PA refers a client to another service provider, BDO believes that the third-party provider should then be responsible for the credibility of the TP product or arrangement provided. The referring PA, without any further involvement in the product or arrangement, cannot be held responsible purely based on the referral.</p> <p>The drafting of this paragraph, however, does not seem aligned to the usual drafting conventions applied by the IESBA. Although this is positioned as application material and “shall” has not been used as is usual practice to indicate a requirement, the language used (“provisions in this section apply”) suggests that this is in fact a requirement. BDO recommends that the IESBA revisit the intention behind this paragraph and align the wording as appropriate.</p> <p>BDO recommends that proposed paragraph 380.22 A1 of the ED clarifies further obligations, if any of the PA once the requested advice on the TP product or arrangement developed by a third party provider has been provided, particularly when the advice is not favourable. PA’s should not be precluded from helping a client to address the matter, where a TP product or arrangement developed by a third party does not, in the PA’s view, have a credible basis.</p>
5	Chartered Accountants and CA Australia and NZ	<p>We agree with the intent of the IESBA’s proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third-party provider except for the referring member always being responsible for ascertaining the credibility of the TP product or arrangement developed by a third party. While that expectation may be reasonable for taxation specialists it seems unreasonable for SMPs, who may not have the knowledge or expertise necessary to determine the validity of the tax analysis and conclusions provided by a tax expert. Accordingly, we recommend that the IESBA clarifies the wording of paragraph 380.22 A1 including reference to paragraphs R320.10 - 320.10 A1.</p>
6	Chartered Professional Accountants Canada Public	<p>The PTC agrees with the IESBA’s proposals as detailed in Section VII.K addressing TP products or arrangements developed by a third-party provider. However, the PTC recommends expanding the IESBA’s proposals to include the following actions as guidance:</p>

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	Trust Committee	<p>a) The PA should consider if the third party is competent, and</p> <p>b) Disclose the PAs relationship to the third-party and if any compensation will be paid or received.</p> <p>In addition, the PTC has some concerns with the last sentence in paragraph 88 of the Explanatory Memorandum which asks the PA to ascertain the credibility of the particular TP product or arrangement. Although this language was not repeated in the IESBA's proposals in paragraph 380.22, the PTC believes that this might be an unreasonably high bar for a PA to meet given that the referring PA may have no expertise in tax, or in any case, would not likely have collected all of the facts and circumstances of the client or applied them to the TP in question because that is the role of the third party service provider.</p> <p>Accordingly, the PTC recommends clarifying the scope of the PA's responsibility under this section and within the Explanatory Memorandum for any future use.</p>
7	CPA Australia	<p>CPA Australia supports the disclosure of referral fees or commissions to clients where a client approaches the professional accountant for advice on a tax planning product or arrangement, as expressed in section 380. While referral fees or commissions are rare, advice is regularly outsourced when the complexity of tax laws requires access to specialists.</p> <p>However, the PA cannot necessarily be reasonably expected to ascertain whether the third-party provider has the appropriate expertise in developing the product, nor should they necessarily be responsible for ascertaining the credibility of a particular tax planning product or arrangement, given that outsourcing will often be on the basis of not possessing the requisite expertise.</p> <p>Para. 88 of the ED states that “the PA should ascertain the provider's competence in developing the TP product or arrangement” and then goes on to state at para. 89, “in both situations, the responsibilities of the PA are no different than if the PA were the creator of the TP product or arrangement”.</p> <p>CPA Australia considers the requirement for the professional accountant to be able to ascertain the third-party provider's competence in developing the tax planning product or arrangement to be unrealistic, already addressed in commercial contracts, covered by professional indemnity insurance and contradictory to laws and regulations in some jurisdictions.</p> <p>For example, in Australia, the TPB advises that “where a registered tax practitioner outsources the provision of tax agent services to a registered third party, then the tax practitioner is not responsible for reviewing the third party's work, nor are they required to provide supervision and control.” The TPB guidance provides further information on the tax practitioners' responsibilities to the client when outsourcing including the requirement to inform the client and obtain their consent.</p>

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		<p>If progressed, the section should be worded in a manner that:</p> <ul style="list-style-type: none"> • provides sufficient flexibility for PAs to maintain trust in their professional colleagues • does not impose onerous and unrealistic burdens on PAs, and • does not duplicate, contradict or undermine well-established contractual and legal principles and obligations.
8	Deloitte Touche Tohmatsu Limited	<p>While Deloitte Global generally supports the proposed approach, we note the following observations for the Board's consideration:</p> <ul style="list-style-type: none"> - We recommend that the Board consider strengthening the wording in paragraph 380.22 A1 to make it clear that a professional accountant shall not facilitate an arrangement that would not meet the requirements of this section of the Code if provided by a professional accountant by referring the client to a third-party provider regardless of whether the professional accountant receives a commission or referral fee. - There are considerations set out in paragraph 88 of the Explanatory Memorandum, such as informing the client of the professional accountant's relationship with the external provider, professional accountant ascertaining the provider's competence in developing the TP product or arrangement or ascertaining the credibility of the particular TP product or arrangement, that are relevant and important but are not included in the Code. We encourage the Board to consider including these considerations directly in the standard. - Finally, we observe that paragraph 380.22 A3 seems disjointed from paragraph 380.22 A2. We therefore suggest that the Board consider merging the two paragraphs, as follows: 380.22 A2 <i>A self-interest threat to compliance with the principles of objectivity and professional competence and due care might be created if a professional accountant receives a referral fee or commission by referring a client to a third-party provider of tax planning products or arrangements. When a professional accountant is not otherwise prohibited by laws or regulations from receiving referral fees or commissions, the provisions in paragraphs 330.5 A1 and A2 are relevant in such circumstances.</i>
9	Ernst and Young Global Limited	<p>No, we do not fully agree with the IESBA's proposals as reflected in proposed paragraphs 380.22 A1. We believe it is unreasonable and impracticable, and would have detrimental, unintended consequences to the public interest, to extend the PA's responsibilities for the work performed by a third party tax service provider when the PA has only made a referral and</p>

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		<p>is not jointly engaged by the client, or is asked by the client for advice on a tax planning product or arrangement developed by a third party.</p> <p>It is in the public interest for a PA to refer a client to another tax service provider with specialized knowledge when the PA does not possess the competencies to service the client, thereby facilitating the client's compliance with tax laws. When the client engages the referred tax service provider separately from the PA, it will be under commercial terms and conditions to which the PA is not a party. Further, the PA will not have access to the full breadth of technical details of the tax arrangement, or would not possess the competencies to fully understand the details, if this is the reason for making the referral in the first place. Under these conditions, it is unreasonable and impracticable to hold the PA responsible for the tax product or arrangement of the referred third party tax service provider. A clear example of this would be when the PA is engaged to prepare the tax return of the client when the referred third party tax service provider has provided the tax product or arrangement. In many jurisdictions, the PA who prepares the tax return is responsible to the client for the accuracy of the return based on the information provided and the PA is typically not required to audit the amounts or verify information provided by a client or third party.</p> <p>This could also have a detrimental, unintended consequences for the public interest. It is in the public interest for the PA to refer the client to a third party tax service provider when the PA does not possess the competencies to service the client. When referring a client to a third party tax service provider, the PA should satisfy the fundamental principles, in particular professional competence and due care and professional behavior. This would involve the PA being satisfied that the third party tax service provider has sufficient competence and expertise such that the client receives competent professional services based on the PA's referral, as well as the PA being satisfied that the third party tax provider has a credible reputation such that the PA would not be associated with referring a client to a third party that might discredit the profession. But if the PA must then take responsibility for the referred third party's tax product or arrangement under the proposed ethical framework, especially when the PA does not have the technical expertise in the first place (and hence the referral), this could lead to a reluctance of PAs to make referrals leaving it up to the client to find their own third party tax service provider. Since the client may not know an appropriate third party (and hence the need for a referral) or may not exercise the same level of professional responsibility in satisfying themselves as to the technical expertise and credible reputation that a PA would, there could potentially be a detrimental consequence to the public interest because there will be a reluctance by the PA to make a referral.</p> <p>When the client asks the PA for advice on a tax planning product or arrangement developed by a third party, we understand that the PA would need to apply the proposed ethical framework with regard to the PA's own advice as it relates to the third</p>

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		<p>party's tax planning product or arrangement. However, as discussed in our response to question two above, it is not clear how the PA can apply the ethical framework to another party that is not under the direct supervision of the PA, and why the service of another party would create a threat to the fundamental principles for the PA. If the Board decides to proceed with the proposed revisions, the Board should consider making it clear that when the client approaches the PA for advice on the tax planning product or arrangement developed by a third party, the provisions of proposed section 380 apply only with regard to the PA's advice pertaining to the third party's tax planning product or arrangement.</p> <p>If the Board decides to proceed with the proposed revisions, we agree with the proposals reflected in proposed paragraphs 380.22 A2 and 380.22 A3.</p>
10	European Federation of Accountants and Auditors for SMEs	<p>We believe this scenario to be rare and so of low relevance to SMPs. Accordingly we have no comments.</p>
11	European Tax Adviser Federation	<p>We consider that it is of utmost importance, from an ethical point of view, to have clear guidance when a professional accountant refers a client to a third-party provider of tax planning products or arrangements, or where a client approaches a professional accountant for advice on a tax planning product or arrangement developed by a third party. We therefore fully agree that objectivity principles must be applied in these cases.</p>
12	Grant Thornton International Limited	<p>We do not agree with IESBA's proposals addressing tax planning products or arrangements developed by a third-party provider.</p> <p>Such a requirement can place a professional accountant in the position of being required to evaluate and be responsible for the results of tax advice or other tax services that are outside the areas of their expertise. This is counter to the professional accountant seeking the best for their clients by making referrals to other professional accountants with the proper tax experience.</p> <p>Furthermore, certain jurisdictions have standards that address the ability and responsibility of professional accountants who rely on information or tax advice provided to a client by a third party. New guidance is not necessary where long-standing requirements in jurisdictions are in place.</p>

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		<p>Finally, the client is responsible for making a management decision on whether to engage the third-party provider. The client can consider the referral, including pros and cons the professional accountant may provide, but ultimately it is their management decision.</p> <p>Accordingly, GTIL is requesting the Board consider elimination of this provision.</p> <p>GTIL believes the extant IESBA code Section 330 “Fees and Other Types of Remuneration” is applicable to all professional accountants in public practice when providing any services, so additional provisions are not necessary.</p>
13	Hong Kong Institute of CPA	<p>In paragraph 88 of the explanatory memorandum, it is stated that, “where a PA is referring a client to a provider of TP products or arrangements to meet the client’s needs, the PA would need to inform the client of the PA’s relationship with the external provider. In addition, the PA should ascertain the provider’s competence in developing the TP product or arrangement.” These issues do not seem to be covered in the ED and, in any case, a distinction should be drawn between a situation in which a PA is recommending a particular TP provider or TP arrangement, and one in which the PA is just being asked for a second opinion by the client. This distinction could have an impact on, for example, the degree of due diligence that the PA might be expected to do on the TP provider.</p>
14	IFAC Small and Medium Practices Advisory Group (SMPAG)	<p>Paragraph 88 of the explanatory memorandum states “where a PA is referring a client to a provider of TP products or arrangements to meet the client’s needs, the PA would need to inform the client of the PA’s relationship with the external provider. In addition, the PA should ascertain the provider’s competence in developing the TP product or arrangement.” These issues do not seem to be covered in the exposure draft and, in any case, a distinction should be drawn between a situation in which a PA is recommending a particular TP provider or TP arrangement, and one in which the PA is just being asked for second opinion by the client.</p>
15	Independent Regulatory Board for Auditors	<p>Paragraph 380.22.A1 states that “provisions in this section apply”. Should this therefore rather be a requirement (“shall”) than application material?</p> <p>Further, paragraph 380.22 A1 refers to “where a client approaches the accountant for advice on a tax planning product or arrangement developed by a third party”. This scenario would imply a second opinion that, at times, the PA may be aware of; or the client may not have disclosed to the PA that they are in fact providing a second opinion, for various reasons such as not wanting to taint that PA’s view on the transaction. So, we propose that the reference to second opinions be included.</p>

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16	Institut der Wirtschaftsprüfer in Deutschland e.V.	<p>In principle, we understand the reasoning. Should the scope of application be extended to all tax advice, further differentiations might have to be made. In addition, we would like to note that 380.22 refers to tax planning products or arrangements. In some jurisdictions, the term ‘tax planning products’ would be equated to actively marketed pre-packaged tax avoidance schemes that are not client-specific.</p>
17	Institute of Certified Public Accountants of Uganda	<p>ICPAU agrees that third-party work that has been endorsed by a PA creates reputational risks. PAs play a critical role in ensuring that tax planning products or arrangements are in compliance with relevant tax laws and regulations. When referring clients to a third-party provider or providing advice on a tax planning product or arrangement developed by a third party, the PA should exercise professional judgment and comply with the fundamental ethical principles, including integrity, objectivity, professional competence, and due care. Furthermore, the PA ought to apply the conceptual framework to identify, evaluate, and address any threats to compliance with the fundamental principles that may arise from the referral or advice. This ensures that they take responsibility for the tax planning product or arrangement and its compliance with relevant tax laws and regulations, regardless of whether they created it or not.</p> <p>We believe the proposals are appropriate and necessary to ensure that PAs maintain their ethical obligations when referring clients to a third-party provider or providing advice on a tax planning product or arrangement developed by a third party.</p>
18	Institute of Chartered Accountants in England and Wales	<p>We agree with the comments made in respect of third party arrangements. The PCRT includes various provisions on this topic. In principle, we support IESBA’s conclusion in para 88 that the professional accountant should still be responsible for ascertaining the credibility of the particular TP product or arrangement, especially where the accountant will be submitting the tax return as agent. However, we are concerned that the word ‘ascertaining’ could be perceived as potentially too high a hurdle in that it could be taken as a requirement to audit or reperform the work of the third party. We would suggest that the work required may often be more about giving appropriate consideration as to the credibility of a particular arrangement, taking into account all the facts and circumstances.</p> <p>We also agree with IESBA that the responsibilities of the accountant are no different than if the accountant were the creator of the tax planning product or arrangement. We also agree with the IESBA conclusions on commissions in para 90. Aside from the fact that proper disclosure is required, acceptance of commission is likely to be regarded by the courts and public opinion as accepting some degree of responsibility for the arrangements.</p>

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		<p>Our concern with section 380.22.A1 is that it could be interpreted that it is acceptable for the professional accountant to refer clients to a third-party adviser who promotes aggressive tax planning arrangements unless the professional accountant receives a referral fee or commission for so doing. We believe that the professional accountants' responsibilities are wider and are not limited only to cases where the professional accountant receives a referral fee or commission. This wider responsibility is particularly likely to occur where the professional accountant submits the relevant tax return which includes arrangements, the advice for which was provided by others.</p> <p>The wording needs to be strengthened to make it clear that a professional accountant is likely to maintain a responsibility to the client in respect of a third-party arrangements entered into and especially where the outcome of any such planning is reflected on a tax return submitted by the professional accountant regardless of whether or not a referral fee or commission was paid to the professional accountant.</p>
19	Institute of Chartered Accountants of India	<p>We do not fully agree with the IESBA's proposals as reflected in proposed paragraphs 380.22 A1.</p> <p>In those cases where the tax client engages a third-party separately, the PA will not be a party to the contractual terms & conditions of that service, and likely will not have the necessary understanding of the issues being addressed and solution being proposed, hence the need for a referral in the first place. Under these conditions, it is unreasonable and impracticable to hold the PA responsible for the tax product or arrangement of the referred third party tax service provider.</p> <p>There could also be a detrimental impact to the public interest if a PA is held responsible for the tax planning arrangement provided by a third-party, in that the PA may decide not to make referrals if they will subsequently be held responsible under the proposed ethical framework for a tax arrangement they are not sufficiently informed on.</p>
20	Institute of Chartered Accountants of Scotland	<p>We agree with the comments made in respect of third party arrangements. It is an area of concern to our members and PCRT includes various provisions and guidance on this topic.</p> <p>We agree that the professional accountant is responsible for ascertaining the credibility of the particular tax planning product or arrangement, especially where the accountant will be submitting the tax return as agent. We also agree with proposed new paragraph 380.22 A2 regarding commission; acceptance of commission is likely to be regarded by the courts and public opinion as accepting some degree of responsibility for the arrangements.</p>

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21	Institute of Financial Accountants	<p>In our opinion, the proposed paragraphs are lacking. It would be helpful to remind the reader that the engagement letter with the client will set out the professional accountant’s responsibilities in respect of any advice to be provided by a third party.</p> <p>The existing provisions of Section 330 of the Code, in respect of commission received, are adequate. Therefore, paragraphs 380.22 A1 to A3 are unnecessary.</p>
22	Korean Insitute of Certified Public Accountants	<p>The provisions in section 380 also apply when the PA refers a client to a third-party provider (paragraph 380.22 A1). If a third party is in charge of providing the service, the PA may have limited access to client information required to perform the following procedures. Therefore, we suggest that the level of the following requirements should be mitigated.</p> <ul style="list-style-type: none"> - Determining that there is a credible basis; - Performing a “stand-back” test.
23	KPMG International	<p>Paragraph 380.22 A1 indicates the provisions of Section 380 apply in circumstances where a PA refers a client to a third-party provider of tax planning products or arrangements. This would appear to result in the referring PA being required to comply with requirements associated with determining whether an arrangement advised upon or recommended by the third party has credible basis in laws and regulations (R380.11) and the performance of the “stand-back” test (R380.12), among others. If this is IESBA’s position, we disagree that these requirements should apply as we believe that the PA no longer has an obligation for the advice provided by that third-party provider once the referral is made. Additionally, the referring PA may not have the ability to comply with such requirements due to a lack of information regarding the arrangement or underlying circumstances as a result of confidentiality restrictions. If it is not IESBA’s intent that these requirements be applicable in the case of a third-party referral, we believe the associated provision in paragraph 380.22 A1 should be revised to make clear which specific provisions in Section 380 are applicable in these circumstances.</p> <p>If Paragraph 380.22 A1 is retained, then in the circumstance when a client approaches the PA regarding a third-party provider, we recommend that the PA’s “advice” should be further clarified to distinguish it from a case where the PA may be providing straightforward information or answering a client’s general inquiry. Therefore, in paragraph 380.22 A1, we propose using the word “recommend or advice on using,” as follows:</p> <p><i>380.22 A1</i></p>

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		<i>There might be circumstances where a professional accountant refers a client to a third-party provider of tax planning products or arrangements, or where a client approaches the accountant for advice <u>advice recommendation or advice on using</u> on a tax planning product or arrangement developed by a third party. In both circumstances, the provisions in this section apply.</i>
24	Malaysian Institute of Accountants	Tax planning advice is specific to each client and PAs should not encourage clients to engage in generic Tax planning advice or solution developed by third party providers. In any case, we do not agree that the requirement for disclosure of the referral fees to the client under paragraph 90 would necessarily enable the PA to maintain objectivity.
25	Malta Institute of Accountants	While acknowledging the responsibility to review any transaction or arrangement, a PA who refers a client to an expert which is a third party provider of TP products or arrangements, should not be held responsible for the creation of the TP products or arrangements by the third party provider.
26	Mo Chartered Accountants (Zimbabwe)	The PA must disclose their relationship or interest in the service provider. The PA should not be the only one ascertaining the service providers competence and expertise and it would be the organisations responsibility as well to do an independent due diligence.
27	National Association of State Boards of Accountancy	NASBA agrees that the PA should inform the client of the PA's relationship with the external provider and that the PA should be responsible for ascertaining the credibility of the particular TP product or arrangement; however, NASBA does not agree that it is the responsibility of the PA to assume the responsibilities of the third-party provider as if the PA were the creator of the TP product or arrangement.
28	National Conference of CPA Practitioners	<p>Guidance is being proposed whereby a PA (professional accountant) refers a client to a third- party provider of TP (tax planning) products or arrangements, or where a client approaches a PA (professional accountant) for advice on a TP (tax planning) product or arrangement developed by a third party, the provisions in Section 380 apply. In both situations according to this proposed guidance, the responsibilities of the PA (professional accountant) are no different than if the PA (professional accountant) were the creator of the TP (tax planning) product or arrangement.</p> <p>We have several concerns with this proposed provision. Professional Accountants have an ethical responsibility when they do not have expertise in a particular subject matter, to refer a client to a third party who does have such expertise. Guidance such as the above discourages such ethical behavior for fears of being made responsible for work beyond their control. This</p>

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		<p>forces a Professional Accountant in such a situation to consider taking such an engagement on themselves, when it is not in the best interest of the client.</p> <p>Further, this proposed provision places a burden that is biased against small firm and solo practitioners. Larger firms have in house staff that can provide these services. The small firm and solo practitioners, typically, do not have such staff in place. Making referrals to third parties much more commonplace in the small and solo firm arenas.</p> <p>The guidance is also nebulous as to what is considered a referral to a third party. Tax planning can cover a wide range of potential professional expertise. Although we disagree with this provision in general, should it stay in the final version of the guidance, there needs to be clearer explanations on what professional expertise falls under this proposed guidance.</p> <p>When referring to a third party, it is common practice for a Professional Accountant to provide several different third party referrals with the same professional tax planning expertise. This allows a client to decide for themselves whom to choose. Does such guidance deem a Professional Accountant responsible for any and all of those referrals, regardless of whom the client may pick?</p> <p>We also see nothing in the guidance as to what time period this may cover. It is common practice for a Professional Accountant to give a third party referral in the tax planning arena. The client might hold the referral for months, perhaps years, before deciding to engage that professional. That professional might have had all manner of staff or practice changeover in the intervening period of time. Does this guidance contemplate then that a Professional Accountant is responsible in perpetuity for the work of a third party referral given to a client?</p>
29	Pennsylvania Institute Of Certified Public Accountants	<p>The committees support the requirement to disclose any commission or referral fee received from referring a client to another firm and to disclose any relationship to a provider of packaged tax- planning products in the event of a referral to that provider. However, the committees do not support requiring the member in public practice to be responsible for ascertaining the reliability and consequences of the particular product, including its impact on the client or the client's financial statements. Given the broad definition of tax-planning services in the proposed guidance, the extent of this ultimate responsibility is unclear and potentially contrary to the public interest. For example, should a client require assistance in tax planning in a specific area in which the member in public practice doesn't have expertise, there is potentially a disincentive to refer the client to another practitioner. The member wouldn't have a way of controlling or providing oversight of the other practitioner, but would still retain responsibility for the work of the other practitioner. A professional accountant, for example, cannot take responsibility for how the client might use the tax tool or software or service that was part of a recommendation for the client's consideration. Also, what if, after being mentioned by their professional accountant, a client obtains ChatGPT and asks a</p>

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		<p>question, framed a certain way, and they get a response that may not be accurate or applicable in the actual fact pattern? IESBA cannot stipulate a "fiduciary" responsibility for the work or services of others the client might engage or invest in. Therefore, the member may be incentivized to try to gain the requisite competence rather than make a referral to someone with more experience. This may not be in the best interest of the public.</p> <p>380.5 A3 and 280.5 A3 – The reference to “another party” in the proposed revisions is vague. It is unclear what the IESBA’s intent is with respect to the responsibility of the professional accountant. While the explanatory guidance discusses holding the professional accountant responsible for the performance of a third party, the actual proposed revisions are unclear. The committees do not support any requirement holding the professional accountant responsible for the work provided by another firm or practitioner.</p> <p>It is in the public interest for a professional accountant to refer a client to another tax service provider with specialized knowledge when the professional accountant does not possess the competencies to service the client, thereby facilitating the client’s compliance with tax laws. In those cases, when the client engages the referred tax service provider separately from the professional accountant, it will be under commercial terms and conditions to which the professional accountant is not a party. Further, the professional accountant will not have access to the full breadth of technical details of the tax arrangement, or would not possess the competencies to fully understand the details since this is the reason for making the referral in the first place. Under these conditions, it is unreasonable and impracticable to hold the professional accountant responsible for the tax product or arrangement of the referred third-party tax service provider. A clear example of this would be when the professional accountant is engaged to prepare the tax return of the client when the referred third-party tax service provider has provided the tax product or arrangement. In many jurisdictions, the professional accountant who prepares the tax is responsible to the client for the accuracy of the return based on the information provided and the professional accountant is typically not required to audit the amounts or verify information provided by a client or third party.</p> <p>This could also have detrimental, unintended consequences for the public interest. It is in the public interest for the professional accountant to refer the client to a third-party tax service provider that the professional accountant is satisfied has the technical competence and credible reputation to provide a competent service to the client. But if the professional accountant must then take responsibility for the referred third party’s tax product or arrangement under the proposed ethical framework, especially when the professional accountant does not have the technical expertise in the first place (and hence the referral), this could lead to a reluctance of professional accountants to make referrals, leaving it up to the client to find their own third-party tax service provider. Since the client may not exercise the same level of professional responsibility in</p>

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		satisfying themselves as to the technical expertise and credible reputation that a professional accountant would, there could potentially be a detrimental consequence to the public interest.
30	PKF (Durban)	<p>Yes, we are in agreement with this however concern is raised in terms of 380.22 AI which also makes reference to "where a client approaches the PA for advice on a tax planning product or arrangement developed by a third party".</p> <p>This scenario would imply a second opinion which at times the PA may not be aware of as the client may not disclose this to the PA for various reasons such as not wanting to taint that PA's view on the transaction etc.</p> <p>We recommend that this wording should be changed to rather state that "where the PA is aware that he is providing advice ..." or alternatively reference should be made to the part of the code relating to second opinions (paragraph 321)</p>
31	Price Bailey	<p>We think that the guidance could go further in this respect. Some jurisdictions (including the UK) have issues with unregulated and/or unqualified R&D claim 'factories'. We believe it would be helpful if IESBA went beyond focussing on duty of care and self-interest threats in respect of commissions on referrals, to look more broadly at considerations concerning the quality or credibility of TP provided by a third party, about which the professional accountant may have concerns.</p> <p>Considerations might include:</p> <ul style="list-style-type: none"> • The legal basis of the advice • Whether the person giving the advice is appropriately qualified • Circumstances in which the member might have to caveat their compliance responsibility or obtain a second opinion
32	PricewaterhouseCoopers International Limited	We understand the background of section VII.K but would find the situation quite unusual. In any event, we agree with IESBA addressing this situation.
33	Public Accountants and Auditors	The PAAB agrees with the IESBA's proposals, but we believe other than the self-interest threat mentioned, there is most likely to also be an advocacy threat to objectivity when the PA refers a client to a third-party provider of tax planning products or arrangements with the PA being responsible for ascertaining the reliability, credibility and consequences of the particular product.

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	Board Zimbabwe	<p>There is also a threat on professional competency and due care in that if the PA was incompetent to provide the product, they will not be able to review the products credibility, reliability and consequences that may arise.</p> <p>There is need therefore for more guidance on the appropriate safeguards to reduce or eliminate these threats.</p>
34	Royal Netherlands Institute of Chartered Accountants	<p>As it is common that accountants and tax advisors are working together (through legal entities or partnerships or network) we recommend that IESBA also addresses this matter. It is possible that via association, an accountant will be seen as providing tax advise (effectively not provided by the accountant but by the tax advisor) not in line with the Code. This situation specifically applies to tax advise provided to clients of the associated party not being a client of the accountant.</p>
35	RSM International	<p>We agree that the provisions of section 380 should apply in the circumstance where a Professional Accountant refers a client to a third-party provider of tax planning products or arrangements and where the Professional Accountant is advising on a matter related to a specific tax product or arrangement. However, we suggest that section 380 should not apply in the circumstance where a Professional Accountant simply refers a client to a third party provider of tax planning services and where the Professional Accountant has no involvement in advising on matters related to the particular tax planning product or arrangement. We suggest that this is clarified in the application guidance. We agree that it is helpful to refer to sections 330.5 A1 and A2 in the situation where a Professional Accountant receives a referral fee or commission by referring a client to a third-party provider of tax planning.</p>
36	South African Institute of Chartered Accountants	<p>SAICA agrees with the proposal however members were concerned in term of 380.22 A1 which also makes reference to “where a client approaches the accountant for advice on a tax planning product or arrangement developed by a third party”.</p> <p>This scenario would imply a second opinion which at times the PA may be aware of, or the client may not disclose to the PA that he is in fact providing a second opinion for various reasons such as not wanting to taint that PA's view on the transaction etc. Should this wording not be changed to state that “where the PA is aware that he is providing advice ...” or alternatively reference should be made to the part of the code relating to second opinions (paragraph 321).</p>