

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**.

Multi-jurisdictional Tax Benefit

12. Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L above?

No	Respondent	Respondent Comments
1	Accountancy Europe	<p>We are not convinced that this topic requires a separate section in the Code. It is arguable that developments in international taxation such as the OECD's anti-BEPS and GloBE initiatives have reduced the instances where certain taxpayers can benefit from mismatches in international taxation, and have introduced specific reporting requirements. In any event, the relevant factors presented in 380.14 A2 could be added to 380.17 A2. The suggestion that the client should report the tax advantages to the different jurisdictions could be included in 380.17 A4, except where there is existing mutual sharing of tax data, such as under the requirements of DAC 6.</p> <p>Also, we do not support the inclusion of the second bulleted point in 380.14 A2. In our opinion, just because other taxpayers are taking advantage of the tax benefits does not make the multi-jurisdictional tax planning unethical behaviour. This goes against the principle of PAs having to use professional judgment while engaged in their work. Also, given the confidentiality of individual tax planning arrangements, it would be very unlikely that this could be proven and documented, so this is technically not possible as an option.</p>
2	Accounting Professional & Ethical Standards Board Limited	<p>APESB supports the intent of proposed provisions regarding a multi-jurisdiction tax benefit.</p> <p>Stakeholders at the APESB roundtable provided mixed feedback on these provisions. Some were supportive, whereas others did not believe it is reasonable for professional accountants to advise the client to voluntarily disclose to the tax authorities or government about multi-jurisdiction tax.</p>
3	American Institute of Certified Public Accountants	No. Paragraphs 380.14 A1-A2 and 280.14 A1 – A2 are not needed.

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4	Association of Chartered Certified Accountants	<p>Overall, we agree. However, with respect to paragraph 380.14 A1, the IESBA may wish to consider that situations may arise where, even if advised by a professional accountant, a client may not necessarily agree to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions. There may also be practical difficulties around how the client discloses the information.</p> <p>With respect to paragraph 380.14 A2, we would welcome further clarity and guidance on the relevant factors set out, e.g., it is not clear to whom the tax benefits are significant.</p>
5	BDO International	<p>Paragraph 380.14 A1-A2</p> <p>BDO questions the necessity for disclosure in instances where a credible basis has been determined for the TP in each jurisdiction. BDO recommends that the client seeks advice pertaining to the other jurisdiction. The PA may not necessarily have sufficient knowledge of the tax laws and regulations within the other jurisdiction, and should not be under any obligation (implicit or otherwise) to make recommendations to the client regarding the tax benefits derived from the transaction in the other jurisdiction and disclosure to the relevant tax authority.</p> <p>While it is possible for the PA to advise the client to disclose (although this is normally not legally required) the information outlined in proposed paragraph 380.14 A1, the client might experience difficulty in disclosing this information to the tax authorities where there is no mechanism to facilitate such disclosure. OECD Base Erosion and Profit Sharing (BEPS) initiatives may also require disclosures in this regard.</p> <p>In paragraph 380.14.A2, the “significance” of tax benefits is proposed as a factor for consideration for such disclosure, but it is unclear in what context this judgment of significance is made (e.g., at the level of the client entity, the group, the economy of the jurisdiction etc.) and what the threshold is.</p>
6	Chartered Accountants and CA Australia and NZ	<p>We support the intent of the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L of the EM.</p> <p>However, IESBA may wish to re-word the second bullet point of 380.14 A2 as it seems to imply that “it’s acceptable if everyone else is doing it” which might not be correct depending on the facts and circumstances of the situation.</p>

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7	Chartered Accountants Ireland	<p>The guidance in 380.14 A1 – A2 and 280.14 A1 – A2 is useful but in the case of 380.14 A1 we recommend including “<i>in such circumstances and where the professional accountant is aware of the fact, while the client might be in....</i>”.</p> <p>We also recommend highlighting the OECD’s principles of taxation, including effectiveness and fairness which involves ensuring taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation. 380.14 A2 and 280.14 A2 could include: “Consider the application of globally accepted principles, such as the OECD principles of taxation, in the relevant jurisdictions and any official rules on double taxation and unintentional taxation.”</p>
8	Chartered Professional Accountants Canada Public Trust Committee	<p>The PTC appreciates the spirit of proposed paragraphs 280.14 and 380.14, however, the PTC has concerns on the proposal in relation to multi-jurisdiction tax benefits. Stakeholders highlighted that it may not be practical for the client/organization to disclose the TP to multiple jurisdictions unless the client is required to do so under applicable laws or regulations.</p> <p>For example, it may not be clear how or to whom such disclosures would be made. National tax authorities are large, complex organizations and getting such disclosures to an appropriate department that is equipped to manage unexpected TP disclosures will likely be a challenge.</p> <p>Also, the PTC is concerned that the proposed guidance may overstep existing tax disclosure requirements and could put the PA in a difficult position with the client when not otherwise legally required to disclose such TPs.</p> <p>However, if the IESBA decides to proceed with these revisions, the PTC recommends softening the language in proposed paragraphs 380.14 A1 and 280.14 A1 to: “might advise the client to consider disclosing to the relevant tax authorities.”.</p> <p>Finally, the PTC recommends removing the second bullet in paragraph 380.14 A2: “The likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits.” The PTC believes that this is not a relevant factor in considering whether the client should make a disclosure.</p>
9	CPA Australia	<p>In principle, CPA Australia supports the proposal as described in Section VII. L given that the paragraph is not written as an absolute requirement nor is a decision or response required from the relevant tax authority before the client or employing organisation proceeds with the transaction.</p> <p>A clearer definition of “tax benefit” is required for the purpose of 380.14 A1 if PAs are to encourage clients to make voluntary disclosures or seek tax authority agreement in relation to arrangements. Tax efficiency and the considered application of tax</p>

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		<p>laws are not equivalent to achieving a tax benefit, and the suggestion that any deviation from the statutory rate or the use of tax concessions equates to a tax benefit is incorrect.</p> <p>As a result of the OECD's work on BEPS, treaties, mutual agreement procedures and information sharing between jurisdictions are progressing well and now cover most of the global tax base. BEPS Actions including model rules are also increasing consistency and collaboration between tax authorities, empowering them to undertake joint actions if they wish. Therefore, the necessity and value of section 380.14 is unclear.</p> <p>CPA Australia makes the following observations in respect of proposed paragraph 380.14 A2:</p> <ul style="list-style-type: none"> • The accountant may have no insight into whether other entities in a similar circumstance to their client are taking advantage of the tax benefits • The decisions of those charged with governance in relation to tax may vary greatly in relation to a particular set of tax laws due to differing facts and circumstances • Like the likelihood of detection, the likelihood of other entities taking advantage of a tax benefit should not be a consideration (i.e., "everybody else is/isn't doing it" is not a credible basis for TP advice) • The PA may not be aware of any multi-jurisdictional tax benefits being obtained as many arrangements involve multiple PAPPs across jurisdictions who are not permitted to share information due to client confidentiality and privacy requirements • For the reason set out above at Question 6 relating to the stand-back requirement, we do not support the inclusion of the third point as advice on stakeholders' perceptions is not the PA's purview and highly unlikely to form part of the terms of engagement. <p>Further, CPA Australia observes that in respect of proposed paragraph 280.14 A2, the decision of whether to disclose the tax benefit to the relevant tax authorities has been placed with the PA, whereas it would more appropriately be a decision to be made by the employing organisation, specifically those charged with governance. This is consistent with the wording of paragraph 280.14 A2.</p>
10	Deloitte Touche Tohmatsu Limited	<p>Deloitte Global generally agrees with the Board's proposal. However, we note the following comments for the Board's consideration:</p>

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		<ul style="list-style-type: none"> - With respect to the paragraph 380.12 A2 it is unclear how the professional accountant would be able to estimate the impact of a tax arrangement on a tax base, in particular in multiple jurisdictions. We recommend that the paragraph is deleted. - We also recommend deleting the second bullet in paragraph 380.14 A2 since “the likelihood that other entities in similar circumstances to the client are taking advantage of the tax benefits” is not in itself an indication that the law is being correctly interpreted.
11	Ernst and Young Global Limited	<p>No, we do not agree with the IESBA’s proposal regarding a multi-jurisdiction tax benefit. We believe mandatory disclosure requirements should be dealt with by the relevant international or domestic tax laws. In addition, it is not clear what a “tax benefit” in this context means.</p> <p>Also, for similar reasons as discussed in our response to question six with regard to stakeholder perceptions, we do not believe a relevant factor for the PA to consider is the “[s]takeholders’ perceptions of the client if the facts and circumstances were known to the stakeholder” as noted in the last bullet point of proposed paragraph 380.14 A2. Instead, if the Board decides to retain these proposed revisions, we believe reference should be made to the reasonable and informed third party test, which we believe is more persuasive than the perceptions of stakeholders.</p>
12	European Federation of Accountants and Auditors for SMEs	<p>We disagree with some of the proposals.</p> <p>We believe that the proposed guidance may be problematic. If the treatments in question are lawful, the consideration will be a public interest one and as such the challenges in establishing public interest would again be relevant. This will be even harder in multi-jurisdictional cases.</p>
13	European Tax Adviser Federation	<p>In the case of a multi-jurisdictional tax benefit, ETAF agrees in principle with the proposal to disclose to the relevant tax authorities the particular facts, circumstances and tax benefits derived from the transaction in the different jurisdictions.</p> <p>However, we find that the consequences for the client if he refuses to notify the relevant tax authorities and what the professional accountant should do in such a situation are not clear. Should the professional accountant notify to the relevant tax authorities the particular facts, circumstances and the tax benefits if the client chooses not to?</p> <p>Moreover, paragraphs 380.14 A1/280.14 A1 regarding a multi-jurisdictional tax benefit only refer to situations where the client complied with the legislation applicable in both jurisdictions and paragraph 380.5 A2 mentions advising an entity on structuring its international operations to minimize its overall taxes as an example of tax planning services. As a consequence, we wonder</p>

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		<p>what would be the point in this case of notifying tax authorities about the absence of tax treaties or other differences in the laws applicable that allow the tax benefit?</p> <p>This triggers more questions: should the professional accountant necessarily be involved in a tax planning service as described above to advise the client to notify the relevant tax authorities?</p> <p>In our members' opinion, other tax planning services which are not requiring directly the professional accountant to advise on such transactions, but which allow the professional accountant to discover situations as those described in paragraphs 380.14 A1/280.14 A1, could face the same recommendation, i.e., to advise the client to disclose to the relevant tax authorities the particular facts, circumstances and the tax benefits derived from the transaction in the different jurisdictions.</p>
14	Hong Kong Institute of CPA	<p>The proposal seems somewhat vague. Should a PA consider disclosure just on the basis that it involves a tax benefit in more than one jurisdiction and there is no tax treaty between them? It would be better to set out some additional factors that might make consideration of disclosure more appropriate, e.g., a situation of potential double non-taxation.</p>
15	IFAC Small and Medium Practices Advisory Group (SMPAG)	<p>The proposed guidance in this area may again be problematic. If the treatments under question are lawful, the consideration would fall on a public interest argument, meaning the challenges in establishing public interest would again be relevant. As noted earlier, this would be even harder to interpret in multi-jurisdictional cases as political leanings and other considerations from each jurisdiction could be very different. There is also some ambiguity as to whether the guidance in this area is intended to cover only deliberate cases obtaining tax benefits from multiple jurisdictions, or whether unintended or consequential cases would also be relevant for consideration. It would be useful to provide some explicit clarification on this point.</p> <p>There may also be some ambiguity in paragraph R380.14 A2 that would be useful to provide clarity on. The first bullet includes the "significance of the tax benefits in the relevant jurisdiction" being a consideration in determining whether to advise the client to make a disclosure. It is not clear what this means nor how significance would be assessed in this respect. It is also unclear if the assessment should be on monetary, or other terms (e.g., type of tax benefit claimed). Some further clarity may be useful on this point.</p>
16	Independent Regulatory Board for Auditors	<p>We disagree with the IESBA's proposals regarding a multi-jurisdiction tax benefit, as described in paragraph R380.14.</p> <p>Paragraph R380.14 implies that the PA is required to have a working knowledge of multiple tax jurisdictions to know about such tax benefits and to make such a recommendation to the client. In practice, the tax expertise of most PAs is limited to specific tax areas (for example, there are corporate tax specialists, value-added tax specialists, pay as you earn specialists,</p>

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		<p>etc.). This is mainly due to the complexities of tax law within each specific jurisdiction. Therefore, it is unlikely that a PA advising on a specific tax planning arrangement that may involve other tax jurisdictions would be aware of the tax benefits to be derived therefrom in the other jurisdictions in which the client operates.</p> <p>Further, our opinion is that it may be difficult to disclose this information to the tax authorities, where there is no mechanism to facilitate such disclosure.</p> <p>In addition, the concept of “significance of the tax benefits in the relevant jurisdictions” in the first bullet point of paragraph 380.14.A2 requires further clarification. We are assuming that this means the quantum. But is a PA meant to merely apply professional judgement to determine what would be a significant tax benefit in the relevant jurisdictions?</p>
17	Institute of Chartered Accountants in England and Wales	<p>We are concerned that this provision could impose potentially onerous and unreasonable compliance burdens on advisers. The adviser may not act for the client in all relevant jurisdictions so may not be aware of the actual tax benefits accruing in other jurisdictions. There may also be data protection/client confidentiality matters. Ultimately, and while the section is framed in terms of ‘might advise the client to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions’, the question of disclosure would be for the client to decide.</p>
18	Institute of Chartered Accountants of India	<p>We do not agree with the IESBA's proposal regarding a multi-jurisdiction tax benefit.</p> <p>We believe mandatory disclosure requirements should be dealt with by the relevant international or domestic tax laws.</p> <p>In addition, it is not clear what a “tax benefit” in this context means or why the absence of a tax treaty increases the risk that a tax benefit can be obtained in two countries.</p>
19	Institute of Chartered Accountants of Nigeria	<p>We align with the IESBA's proposal regarding a multi-jurisdictional tax benefit as described in Sections VII.L, as the disclosures are in line with the spirit of transparency and openness.</p>
20	Institute of Chartered	<p>This provision may be difficult to comply with if different advisers are used in different jurisdictions.</p>

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	Accountants of Scotland	In proposed new paragraph 380.14 A2 (the second bullet point), we are concerned about the proposition that one may take into consideration whether other taxpayers are doing something similar – this does not seem to be a sound basis for decision making in relation to ethical behaviour.
21	International Bar Association Tax Committee	As an additional factor, the PA should also recommend to the client obtaining expert advice on TP arrangement in the relevant jurisdiction and consider globally accepted principles and guidance on double taxation and double non-taxation such as UN and OECD's principles of taxation.
22	Japanese Institute of Certified Public Accountants	We agree with the proposal. However, we suggest that the IESBA should additionally clarify that the provision applies to a tax benefit obtained as a result of the PA's recommendation or otherwise advice of TP arrangements and does not apply to a tax benefit obtained accidentally and unintentionally.
23	KPMG International	<p>The OECD has undertaken significant work regarding tax transparency and many jurisdictions have extensive disclosure rules, thus making the disclosure requirements proposed in the exposure draft redundant in certain jurisdictions. A relevant factor to consider in determining whether to advise a client to make a disclosure should include whether a jurisdiction already has a disclosure regime in place so that a professional accountant need not advise a client to make a disclosure above and beyond what is already required.</p> <p>In addition, it is unclear when disclosure would be required where there are “tax benefits derived from the transaction in different jurisdictions.” This wording could be interpreted too broadly and is insufficiently specific. For example, if a country's resident corporation has a foreign branch, the expenses incurred by the branch would be deductible in computing the income of the branch in the foreign jurisdiction where it carries on business, but also in the home country when computing the resident corporation's worldwide income. We do not believe that disclosure to tax authorities regarding this situation is what is intended by this proposal in the ED. Examples in the Code to illustrate the application of paragraphs 380.14 A1 and 380.14 A2 would be beneficial.</p> <p>The above would similarly apply to Section 280.</p>
24	Malaysian Institute of Accountants	In respect of the proposed guidance regarding multi-jurisdictional tax benefit, we are of the view that disclosure to the relevant tax authorities should only be advised by the PA if such disclosure is expressly required in local tax regulation or legislation. Amendments to the wording in this area would be helpful.

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25	Malaysian Institute of Certified Public Accountants	No. Multi-jurisdiction tax benefit arises because of different tax laws in different tax jurisdictions. Disclosure of the tax benefit should only be required if there is a requirement in the local law. In practice, tax advice is specific to each jurisdiction and it may be too onerous for the PA in one jurisdiction to have the responsibility to report on the tax implications of another jurisdiction which may be beyond the PA's knowledge and scope of work.
26	Malta Institute of Accountants	The relevant factors that a professional accountant might consider for determining whether to advise the client to make a disclosure of transactions to the tax authorities (and as set out in the Exposure Draft - 380.14.A2 refers by way of example) are, in our view, too onerous. Our recommendation is that the role of the professional accountant in this context should be to create awareness for clients that in such similar instances (i.e. in cases where the same transaction is accounted in different jurisdictions) tax advice should be obtained to determine the extent of disclosure thereof with the tax authorities. The onus of carrying out such assessments should be of the client and not of the professional accountant.
27	Pennsylvania Institute Of Certified Public Accountants	<p>The committees do not believe that members have the authority to advise a tax client to take specific tax return steps based on perceptions of public opinion. The committees note that public opinion changes frequently. Instead, professional accountants should remain objective and free from political or personal bias when providing tax planning services. The committees are concerned that providing advice that is outside enacted legislation could result in legal liability for a member and a member's client. Legislators are responsible for enacting legislation that is in the best interests of the public. If specific disclosures are needed, then legislation should be enacted to require these disclosures. The Code does not have the authority to require tax advice that extends beyond what is legally required.</p> <p>Furthermore, the language in the proposal makes it seem likely there is something underhanded by a business moving to another jurisdiction due to the other jurisdiction providing tax incentives, such as credits and other incentives for relocations of businesses and employing enterprises. A professional accountant should not have to advise a client not to relocate to another jurisdiction that has favorable financial or other benefits because it will have a negative impact on the jurisdiction the client would be leaving.</p>
28	PKF (Durban)	We do not have any objections to this disclosure being made to the client however the concept of "significance of the tax benefits in the relevant jurisdictions" in the first bullet point requires further clarification. I am assuming that this means the quantum but is a PA intended to just merely apply professional judgement to determine what is would be a significant tax benefit in the relevant jurisdictions?

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		Furthermore, it may be difficult for the PA to determine the actual tax benefits in the relevant jurisdictions as he/she would generally be a tax specialist in relation to a specific country. The term tax benefit would also require further clarification.
29	PricewaterhouseCoopers International Limited	The proposed language in 380.14 A1 (“might advise”) is rightfully quite cautious. It may very well be that a particular multi-jurisdiction tax benefit is fully consistent with the object and purpose of the applicable tax laws in each jurisdiction. Whether there would be any advisability of disclosure beyond what is required by applicable law would fully depend on relevant facts and circumstances. We would suggest to slightly rephrase, as follows: “might advise the client to consider disclosing.”
30	Public Accountants and Auditors Board Zimbabwe	<p>The PAAB agrees with the IESBA proposal regarding multi-jurisdiction tax benefit and the factors considered when deciding whether to make such a disclosure.</p> <p>We agree with all the factors in the proposals except for the second factor proposed in part 380.14 A2 – “the PA might need to consider the likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits”.</p> <p>This seems like an improper basis of making a TP decision as it does not seem to support the PA’s acting in public interest.</p>
31	RSM International	We agree that there are circumstances where it is in the public interest for the Professional Accountant to advise the client or employing organisation to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in different jurisdictions as set out in 380.14 A1-A2 and 280.14 A1-A2.
32	South African Institute of Chartered Accountants	<p>SAICA disagrees with the proposal as it may be an overreach. It is recommended that the wording should be reconsidered as the proposal is broad and grey without defining what a tax benefit is.</p> <p>Members raised the concerns that they did not understand the reasons on reporting issues that have been done legally and are lawful. It was recommended that the IESBA scope in what is lawful. It is difficult to understand the purpose of the proposal where PAs are acting ethically within the legal constraints.</p>
33	Subcommittee for the Ethics Code Setting, Federation of Accounting Professions	Agreed. For the maximum benefit of their clients in considering appropriate tax planning which is also in compliance with relevant countries' tax laws, Professional Accountants (PAs) should study and analyze the differences in the international tax law of the relevant countries.

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34	Taxation Institute of Hong Kong	It would be better to set out more clear examples or guidance's on this aspect and how to consider the level of disclosure as appropriate.
35	WirtschaftsprüferKammer	We are unconvinced by the IESAB proposals as they add complexity to the process and the re-ported requirements already in place. Initiatives such as the OECD's anti-BEPS and GloBE are already having a good regulatory effect here.