

Compilation of Other 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**.

No	Respondent	Respondent Comments
1	American Institute of Certified Public Accountants	<p><u>Effective date</u></p> <p>To better achieve international convergence, IESBA should consider a significantly longer delayed effective date than usual standards, potentially 4 years. This extended timeframe is especially critical for jurisdictions that have no tax practice standards in place where education efforts may go well beyond what is typical so that widespread non-compliance and inconsistency in practice does not occur. IESBA could allow for early implementation so that those that can act more quickly can do so.</p> <p><u>Editorial</u></p> <p>380.11 A3 Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:</p> <ul style="list-style-type: none"> ○ Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement. ○ Assessing the reasonableness of any assumptions. ○ Reviewing the relevant tax legislation. ○ Reviewing legislative proceedings that discuss the intent of the relevant tax legislation. ○ Reviewing relevant literature such as court decisions, law professional or industry journals, and tax authority rulings or guidance. ○ Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities. ○ Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.

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		<ul style="list-style-type: none"> ○ Consulting with experts within or outside the professional accountant's firm regarding what a reasonable interpretation of the relevant tax laws and regulations might be. ○ Consulting with the relevant tax authorities, where applicable. <p>380.17 A1 Providing a tax planning service to a client might create a self-interest, advocacy or intimidation threat. For example:</p> <ul style="list-style-type: none"> ○ A self-interest threat might be created when a professional accountant has a direct ○ financial interest in a client and the accountant is involved in designing a tax planning arrangement that has an impact on the client's financial situation. ○ A self-interest or advocacy threat might be created when a professional accountant actively promotes a particular tax position a client should adopt. ○ A self-interest threat might be created when a professional accountant accepts a significant fee for an engagement to develop a tax planning arrangement for which ○ the interpretation of the relevant tax laws and regulations is uncertain or unclear. ○ Self-interest and advocacy threats might be created when a professional accountant advocates a client's position in a tax planning arrangement before a tax authority when there are indications that the arrangement might not have a credible basis in laws and regulations. ○ Self-interest and intimidation threats might be created when a professional accountant provides services to a client who exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis for the arrangement in laws and regulations. ○ Self-interest and intimidation threats might be created when a professional accountant or the accountant's firm is threatened with dismissal from the engagement or the accountant's firm concerning the tax position a client is insisting on pursuing regarding a tax planning arrangement. <p>380.17 A2 Factors that are relevant in evaluating the level of such threats include:</p> <ul style="list-style-type: none"> ○ The degree of transparency of the client, including, where applicable, the identity of the known and expected ultimate beneficiaries. ○ Whether the proposed tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.

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		<ul style="list-style-type: none"> ○ The nature and complexity of the underlying business transaction or circumstances. ○ The complexity or clarity of the relevant tax laws and regulations. ○ Whether the professional accountant knows, or has reason to believe, that the proposed tax planning arrangement would be contrary to the intent of the relevant tax legislation. ○ The number of jurisdictions involved and the nature of their tax regimes. ○ The extent of the professional accountant’s knowledge, skills and experience in the relevant tax areas. ○ The significance of the potential tax savings. ○ The nature and amount of the fee for the tax planning service. ○ The extent to which the professional accountant has knowledge that the proposed tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities. ○ Whether there is pressure being exerted by the client or another party on the professional accountant. <p>380.17 A4 Examples of actions that might be safeguards to address such threats include:</p> <ul style="list-style-type: none"> ○ Establishing the identity of the known and expected ultimate beneficiaries. ○ Advising the client to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance. ○ Advising the client to structure the tax planning arrangement based on an established practice of which the professional accountant is aware of that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities. ○ Consulting with an expert within or outside the professional accountant’s firm in the relevant tax areas. ○ Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances. <p>280.17 A2 Factors that are relevant in evaluating the level of such threats include:</p> <ul style="list-style-type: none"> ○ The degree of transparency regarding the underlying business transaction or circumstances, including, where applicable, the identity of the known and expected ultimate beneficiaries. ○ Whether the proposed tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances. ○ The nature and complexity of the underlying business transaction or circumstances.

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		<ul style="list-style-type: none"> ○ The complexity or clarity of the relevant tax laws and regulations. ○ Whether the professional accountant knows, or has reason to believe, that the proposed tax planning arrangement would be contrary to the intent of the relevant tax legislation. ○ The number of jurisdictions involved and the nature of their tax regimes. ○ The extent of the professional accountant’s knowledge, skills and experience in the relevant tax areas. ○ The significance of the potential tax savings. ○ The nature and significance of any incentives offered to the professional accountant to develop the proposed arrangement. ○ The extent to which the professional accountant has knowledge that the proposed tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities. ○ Whether there is pressure being exerted on the professional accountant. ○ The degree of urgency in implementing the tax planning arrangement. ○ The organizational culture of the employing organization. <p>280.17 A4 Examples of actions that might be safeguards to address such threats include:</p> <ul style="list-style-type: none"> ○ Establishing the identity of the known and expected ultimate beneficiaries. ○ Advising the employing organization to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance. ○ Advising the employing organization to structure the tax planning arrangement based on an established practice of which the professional accountant is aware of that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities. ○ Engaging an internal or external expert who has the necessary knowledge, skills and experience to advise the employing organization on the proposed tax planning arrangement. ○ Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances. ○ Having a tax expert, who is not otherwise involved in the tax planning activity, review any work performed or conclusions reached by the professional accountant with respect to the tax planning arrangement.

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		<ul style="list-style-type: none"> ○ Having the employing organization provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and known and expected ultimate beneficiaries of the tax planning arrangement.
2	Association of Chartered Certified Accountants	<p>At this juncture, it may also be timely for IESBA to consider developing profession-agnostic ethical requirements for TP and related services, similar to the approach taken for IESBA's Sustainability Project where the IESBA has committed to reading profession-agnostic ethics and independence standards for all sustainability assurance providers. We believe that it is generally more effective to regulate behaviour (i.e., individuals providing TP and related services) rather than defined classes of individuals (e.g., professional accountants). However, we are mindful that there may be implementation and enforceability challenges stemming from the fact that non-professional accountants are likely to be beyond the purview of the Code unless specifically implemented at the respective jurisdiction level.</p> <ul style="list-style-type: none"> • Small- and Medium-sized Entities (SMEs) and Small and Medium Practices (SMPs) <p>SMEs and SMPs are important stakeholders in developing and enhancing the Code. It is within such organisations (with more limited resources, including fewer personnel) where changes in behaviours and mindset are best supported through clear guidance which is proportionate and scalable. The implementation of the new TP and related services provisions is unlikely to entail significant changes to policies and procedures for most firms. However, the burden on SMEs/SMPs could be disproportionately high, particularly in jurisdictions where public interest entities may be smaller in size, and the proposed changes may be too costly and impractical for some smaller firms and businesses. This is due to inherent limitations of available resources such as expertise available within the firm or capital available to engage experts. While commanding public trust is important, the standards also need to allow for efficiency and choice.</p> <ul style="list-style-type: none"> • Tax Authorities <p>Any refinements to provisions of the Code by the tax authorities and regulatory community when developing and implementing local codes of conduct must focus on the desired outcomes, and the behavioural changes that will be perceived by the public, rather than simply whether the local codes' requirements are comprehensive. Therefore, the drafting of local codes must be clear, and they must be drafted with due regard to enforceability. The tax authorities and regulatory community in some parts of the world, in particular in developing nations, may lack the appetite, capacity and ability to refine the provisions of the Code specific to their jurisdiction. The implementation of the new TP and related</p>

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		<p>services provisions may present practical challenges for local relevant bodies, and they may require proactive engagement and support to deliver these changes.</p> <ul style="list-style-type: none"> • Developing Nations <p>Member bodies in different parts of the world operate within a range of cultural environments. While ethical values should not be regarded as relative to location or culture, clarity and sensitivity are important with regard to developing the Code. We believe the Code should remain principles-based and provide a clear framework, while allowing the flexibility for tailored implementation guidance by national standard setters and/or professional bodies. The provisions need to provide practical and effective guidance in order to aid consistency of understanding, interpretation and application across all the IFAC member organisations.</p> <ul style="list-style-type: none"> • Translations <p>Translation of the Code for adoption in various environments is a challenging process for translators. Changes inevitably create inefficiencies and place additional demands on translation resources which could threaten accurate translation of the Code and compliance. In our opinion, the proposals should be clear, consistent and logical, and a realistic translation period is required. Although, as drafted, the proposed revisions would be unlikely to present translation issues as they use generally understood phrases rather than specific terms, the Board should remain alert to this when proposing changes to the Code.</p>
3	BDO International	<p>BDO believes that the public interest could be served with a principles-based framework that guides a Professional Accountant’s (PA) ethical conduct and frames the mindset when providing TP and related services. However, we also note that TP and related services is a regulatory matter that goes beyond the IESBA Code, given that these services are not only provided by PAs, but also by law firms and boutique advisors (e.g., a consulting firm providing advisory services on special credits, incentives or government grants). In this respect, BDO believes that the guidance provided in proposed section 380 should be considered as best practice with regards to the ethical standards to apply when providing tax planning advice and that the IESBA should encourage tax authorities to adopt the guidance so that it is applied by others, outside of the accounting profession, too. BDO recommends that the IESBA considers developing and issuing section 380 as a profession-agnostic ethical framework for use and implementation by all professionals providing TP advice (similar to the profession-agnostic ethical framework being developed for sustainability reporting and assurance). If section 380 only applies to PAs, the issues addressed in the ED may be exacerbated by creating a two-tier regulatory environment.</p>

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		<p>BDO believes that the IESBA has an advocacy role to play in influencing other professional bodies to implement a similar framework in their Code of Professional Conduct. If the playing field is not level, there might be a risk that some advisors providing TP and related services might resign from the professional body binding them to the IESBA Code, for example, if this lowered the cost of meeting their regulatory obligations). Alternatively, taxpayers may engage legal experts or other non-accountants (some of whom are not affiliated to a professional body) not bound to the IESBA Code.</p> <p>There also needs to be recognition of the responsibilities of the PA versus that of the taxpayer client. It is not appropriate for responsibilities to be merely transferred to the PA, or duplicated (for example with regards to the stand-back provision and disagreement). BDO also believes that the IESBA has an advocacy role to play with tax legislators, to try and ensure that what is legal is also ethical, so that additional rules, codes and practices are not required.</p> <p><u>Anti-avoidance Laws and Regulations</u></p> <p>R380.6</p> <p>Requiring the PA to advise every TP client to comply with anti-avoidance laws and regulations may give rise to including boilerplate clauses in engagement contracts. While all TP advice should comply with all relevant laws and regulations (and it is unclear why a specific reference to anti-avoidance laws is necessary), BDO believes that it would be more meaningful for the ED to require PAs to ensure that all TP advice provided complies, to the best of their knowledge, with the relevant anti-avoidance laws and regulations.</p> <p><u>Responsibilities of Management and Those Charged with Governance</u></p> <p>380.8 A1</p> <p>BDO mostly agrees with this section. Clearly, there will need to be a mechanism for making clients aware of their responsibilities (this could be included in the PA’s letter of engagement). We would add to this the following points:</p> <ul style="list-style-type: none"> • Jurisdictions tend to have rules on how long books and records are required to be kept and any liabilities should be limited by reference to those rules. • Management should ensure that any TP is implemented in line with the advice received. • Management should seek further advice if circumstances change or where such time elapses that the tax law might reasonably be expected to have changed.

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		<ul style="list-style-type: none"> Management should have sufficient expertise to ask relevant questions to enable them to understand the advice and implement it correctly. They also have a joint responsibility to ensure that the factual assumptions used in the advice are correct. <p><u>Responsibilities of All Professional Accountants</u></p> <p>R380.9 A1</p> <p>It seems somewhat inconsistent to include specific client and engagement acceptance requirements for TP services (as per proposed paragraph R380.9 above) that go beyond the requirements contained within section 320 of the IESBA Code, within proposed section 380. BDO believes that, to achieve consistency in the drafting style, proposed paragraph R380.9 would be more appropriately addressed within section 320, leaving only the cross-reference to section 320 in proposed paragraph 380.9 A1.</p>
4	Chartered Accountants Ireland	<p>While we welcome the IESBA initiative to further strengthen ethical standards and address public interest concerns, we believe that in doing so it can impact the competitiveness of the accountancy profession, and of the capacity of the profession itself to police and enforce new standards. In many jurisdictions, including Ireland and the United Kingdom, there is effective regulation of tax advisory services by the domestic government or its agencies, for instance by licensing tax advisers (as is the case in Germany). We would like to see a level playing field in respect of high standards of ethical behaviour.</p> <p>We would like to also highlight the risk and unintended consequence of driving tax planning services to unregulated service providers where ethical standards may not be as rigorous as in the accounting profession in some jurisdictions. As acknowledged by the IESBA in the exposure draft, professional accountants provide an important role in assisting clients and employing organisations navigate complex local and global tax requirements. It would be an unfortunate if competent and capable professional accountants no longer provide these services due to additional complexity and additional risk exposure in adhering to the new requirements.</p>
5	Chartered Professional Accountants Canada Public	<p><u>Comment periods for IESBA Exposure Drafts</u></p> <p>As outlined in our previous communications with the IESBA, the PTC would like to reemphasize that a 90-day comment period is highly challenging, especially in a multi-jurisdictional country such as Canada. The challenge of responding within a relatively short time frame is even more acute in our particular circumstances, as our due process for providing comments</p>

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	Trust Committee	<p>includes the exposure of IESBA proposals to revise the International Independence Standards for public comment in Canada, when applicable. It is also noteworthy that the Exposure Draft comment period occurred during the busiest time of year for PAs who practice tax in Canada.</p> <p>As the IESBA continues its important work in encouraging and promoting global adoption of the Code, we recommend it consider whether longer public consultation periods would result in more comprehensive and considered input and lead to a more rigorous standard-setting process in the public interest. This is particularly important in jurisdictions such as Canada where the proposals must be considered in the context of local laws and regulation and may require translation for public exposure. We are concerned that a 90-day comment period does not allow sufficient time to coordinate and prioritize the resources required for robust consultation in all jurisdictions and request again, that the IESBA increase the length of comment periods going forward.</p> <p><u>Webinars and other resources related to IESBA Exposure Drafts</u></p> <p>Our committees find the IESBA's webinars to be extremely helpful in understanding the IESBA's process in developing its proposals in the public interest, as well as the substance and implications of the proposals to the Code itself. We encourage the IESBA to continue announcing webinar dates with the release of the relevant exposure draft. This greatly assists our committees in understanding the proposals and providing feedback to our consultation processes.</p> <p><u>Tax Planning vs. Abusive Tax Avoidance Examples for SMPs/SMEs</u></p> <p>The PTC notes that it can be difficult to draw a line between legitimate tax planning and abusive tax avoidance that has no credible basis. Therefore, the PTC believes that jurisdiction-neutral examples would be helpful for PAs to address common unethical practices in TP arrangements, as separate non-authoritative application material.</p> <p>The PTC notes some examples from the Tax Planning and Related Services – Final Working Group Report (IESBA Meeting September 2021) which the IESBA can consider:</p> <ul style="list-style-type: none"> • Base erosion and profit shifting • Hybrids for tax avoidance • Abusive use of tax treaties • Arrangements without substantive economic activities

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		<ul style="list-style-type: none"> • Double or multiple non-taxation • Non-transparent tax system • Unreasonably high pricing of intangibles (royalties) <p><u>Clarity of Subject</u></p> <p>Proposed paragraphs R280.18 and R380.18 contain requirements that PAs should already be following, but the PTC recommends a slight wording change to R380.18 to improve clarity and consistency:</p> <p>“A professional accountant shall explain to the client the basis on which the accountant recommended or otherwise advised on a tax planning arrangement.”</p>
6	CPA Australia	<p>Some aspects of the proposed sections are highly likely to impose onerous or impractical requirements that do not necessarily properly consider the dynamic between PAs and those charged with governance, nor accommodate the variety of tax engagements that occur. In contrast to audit engagements where PAs are responsible and accountable for the auditor’s report that is furnished by the PA, we highlight the fact that taxpayers are ultimately responsible for the accuracy of their tax return regardless of who prepares it or the advice they may receive in the course of managing their tax affairs. Taxpayer choices about their tax affairs rest with the controllers of the business (e.g., the Board of Directors, partners in a partnership, company directors) and not professional accountants in public practice (PAPPs) or public accountants in business (PAIBs) such as tax managers.</p> <p>We also note that, depending on the interpretation of the definition of tax planning (TP) services, these revisions could potentially affect all tax advisors who are PAs and may apply to advice provided to ordinary individual and small business clients. While the ED suggests that these changes are in response to the tax activities of large multinationals, we anticipate that the revisions will apply to a far greater range of clients and businesses than the narrow examples used to argue for these changes.</p> <p>The impact and efficacy of the proposed revisions will also vary considerably by jurisdiction. While PAs and other providers of taxation services are highly regulated in Australia, other jurisdictions may be substantially less regulated and their tax services industries are not necessarily dependent on PAs. CPA Australia is concerned that these significant differences are not adequately considered in the proposed revisions, particularly that they may place a significant burden on smaller PAs working in less regulated jurisdictions unused to such requirements.</p>

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		<p>We observe that there is significant detail in the Explanatory Memorandum (the EM) which may not be fully understood or reflected in the proposed sections. For clarity, sections should be able to be read on a standalone basis with the EM only requiring to be referenced if further context is needed. Greater clarity and consistency would also be beneficial in relation to terms such as “tax minimisation”, “tax efficiency”, “compliant”, “tax savings” and “tax benefit” as the current interchangeability and interpretive uncertainty will require additional guidance.</p> <p>While CPA Australia welcomes the proposed revisions to the International Code of Ethics for Professional Accountants (the Code) to address concerns regarding the ethical implications and professional behaviour of accountants involved in tax planning arrangements, we continue to be concerned with the ever-increasing size of the Code. Our view is that the fundamental principles and the Code itself is adequate to address TP services without the necessity for these proposed provisions. Our preference is for IESBA to provide guidance and support material for PAs, rather than modifying the Code in response to topical issues that arise. This is a common approach taken by governments and tax authorities who complement statute and regulations with more detailed and tailored guidance on specific issues and new law.</p>
7	Deloitte Touche Tohmatsu Limited	<p><u>Editorial:</u></p> <p>380.4 A2 Clients are entitled to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, clients have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants’ role is to <u>contribute their knowledge, skills and experience to assist</u> advise their clients on how best to meet in achieving their tax planning goals and –in addition, accountants play an important role in assisting clients in <u>meeting</u> their tax obligations. and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.</p> <p>380.5 A2 Examples of tax planning services include <u>advising</u>:</p> <ul style="list-style-type: none"> • <u>Advising</u> an individual to structure on their tax affairs to achieve investment, retirement or estate planning goals. • <u>Advising</u> an individual business owner on structuring on their ownership and income from the business to minimize their overall taxes. • <u>Advising</u> an entity on structuring on its international operations to minimize its overall taxes including through transfer pricing arrangements.

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		<ul style="list-style-type: none"> • Advising on efficient ways to utilize available tax losses. • Advising an entity on how to structure its capital distribution strategy in a tax-efficient manner. • Advising an entity on structuring its compensation strategy for senior executives to optimize the tax benefits. <p>R380.6 In some jurisdictions, laws and regulations, including those that are often referred to as anti-avoidance rules, limit or prohibit certain tax planning arrangements. A professional accountant shall obtain an understanding of those laws and regulations and advise the client to comply <u>provide advice that complies</u> with them when providing tax planning services.</p> <p>380.8 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:</p> <ul style="list-style-type: none"> • (...) • Ensuring that the client’s tax planning arrangements are consistent with any publicly disclosed tax strategy or policies. • <u>Engaging experts where in-house tax knowledge does not exist.</u> <p>R380.9 As part of providing a tax planning service, a professional accountant shall obtain an understanding of the nature of the engagement including:</p> <p>(a) Knowledge and understanding of the client, its owners, management and those charged with governance, and its business activities;</p> <p>(b) The purpose <u>as well as specific facts</u> and circumstances of the tax planning arrangement; and</p> <p>(c) The relevant tax laws and regulations.</p> <p>R380.11 A professional accountant shall recommend or otherwise advise on a tax planning arrangement to a client, <u>or provide advice supporting such arrangement</u>, only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement</p> <p>380.11 A2 The determination of whether there is a credible basis <u>the tax planning arrangement has a credible basis in laws and regulations</u> involves the exercise of professional judgment by the professional accountant. This determination will vary from jurisdiction to jurisdiction based on the relevant tax laws and regulations at the time.</p>

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		<p>380.11 A3 Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:</p> <ul style="list-style-type: none"> • (...) • Considering whether the basis used for the proposed arrangement is an established practice that has not been <u>successfully</u> challenged by the relevant tax authorities. • Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed. • (...) <p>380.12 A1 The reputational and commercial consequences might relate to personal or business implications to the client or implications to the reputation of the client and the profession of a prolonged dispute with the relevant tax or other authorities. The implications to the client might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the client’s business.</p> <p>380.14 A2 Relevant factors the professional accountant might consider in determining whether to advise the client to make such disclosure include:</p> <ul style="list-style-type: none"> • (...) • The likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits. <p>380.15 A2 Circumstances that might give rise to uncertainty include:</p> <ul style="list-style-type: none"> • (...) • Difficulty in establishing an adequate basis of assumptions. • Lack of clarity in the tax laws and regulations and their interpretation, including: <ul style="list-style-type: none"> ○ (...) ○ Innovative business models not addressed by the current tax laws and regulations. ○ (...) <p>380.16 A1 The discussion serves a number of purposes, including:</p>

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		<ul style="list-style-type: none"> • Explaining the professional accountant’s assessment about how likely the relevant tax authorities are to have a view that supports challenge the proposed tax planning arrangement where there is a lack of clarity in the interpretation of the relevant tax laws and regulations. • Considering any assumptions that might need to be made or changed. • (...) <p>380.17 A1 Providing a tax planning service to a client might create a self-interest, advocacy or intimidation threat. For example:</p> <ul style="list-style-type: none"> • A self-interest threat might be created when a professional accountant has a direct financial interest in a client and the accountant is involved in designing a tax planning arrangement that has an impact on the client’s financial situation <u>condition</u>. • (...) <p>380.17 A2 Factors that are relevant in evaluating the level of such threats include:</p> <ul style="list-style-type: none"> • (...) • The extent to which the proposed tax planning arrangement reflects an established practice that has not been <u>successfully</u> challenged by the relevant tax authorities. <p>380.17 A3 Examples of actions that might eliminate such threats include:</p> <ul style="list-style-type: none"> • Referring the client to an expert outside the professional accountant’s firm who has the necessary knowledge, skills and experience to advise the client on the proposed tax planning arrangement. • (...) <p>380.17 A4 Examples of actions that might be safeguards to address such threats include:</p> <ul style="list-style-type: none"> • Establishing the identity of <u>Identifying</u> the ultimate beneficiaries. • <u>Advising the client, having considered the underlying economic purpose and substance, to undertake tax planning arrangements that are in compliance with the relevant tax laws, regulations and treaties.</u> • Advising the client to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance. • (...)

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		<p style="color: red;">• Having the client provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ultimate beneficiaries of the tax planning arrangement.</p> <p>380.17 A5 Steps a professional accountant might take to establish the identity of the ultimate beneficiaries include, for example:</p> <ul style="list-style-type: none"> • (...) • Making inquiries of registrars <u>or researching other public records</u> where the client or entities within its legal structure are incorporated concerning the relevant shareholders. <p style="color: red;">• Researching relevant public records.</p> <p>380.22 A2 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. <u>When a professional accountant is not otherwise prohibited by laws or regulations from receiving referral fees or commissions,</u> the provisions in paragraphs 330.5 A1 and A2 are relevant <u>in such circumstances.</u></p> <p style="color: red;">380.22 A3 In some jurisdictions, professional accountants are prohibited by law or regulation from receiving referral fees or commissions.</p> <p>380.23 A2 Preparing such documentation assists the accountant to:</p> <ul style="list-style-type: none"> • (...) • <u>Consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.</u> <p>280.4 A2 Employing organizations are <u>entitled expected</u> to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, employing organizations have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to advise their employing organizations on how best to meet their tax planning goals. In addition, accountants play an important role in assisting employing organizations meet their tax obligations and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.</p>

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		<p>280.5 A2 Examples of tax planning activities include <u>advising</u>:</p> <ul style="list-style-type: none"> • <u>Advising</u> management on <u>structuring</u> the employing organization’s international operations to minimize its overall taxes, including through transfer pricing practices. • <u>Advising</u> management on efficient ways to utilize available tax losses for the employing organization. • <u>Advising</u> the employing organization on how to structure its capital distribution strategy in a tax-efficient manner. • <u>Advising</u> management on <u>structuring</u> the employing organization’s compensation strategy for senior executives to optimize the tax benefits for the employing organization <u>and its executives</u>. • <u>Advising</u> a non-profit employing organization on how to <u>structure conduct</u> its business to avoid breaching its non-profit status. • <u>Advising</u> management on <u>structuring</u> the employing organization’s investments to take advantage of tax incentives offered by jurisdictions or localities. <p>280.8 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:</p> <ul style="list-style-type: none"> • (...) • <u>Considering the professional reputation of external advisors.</u> <p>280.17 A1 Performing a tax planning activity for an employing organization might create a self-interest, advocacy or intimidation threat. For example:</p> <ul style="list-style-type: none"> • A self-interest threat might be created when a professional accountant’s career advancement prospects depend on developing a <u>creative</u> tax planning arrangement for which the interpretation of the relevant tax laws and regulations is unclear. • A self-interest threat might be created when a professional accountant participates in an incentive compensation scheme <u>that is</u> impacted by the accountant’s design of a tax planning arrangement. • (...) • Self-interest and intimidation threats might be created when an <u>dominant</u> owner or leader of the employing organization exerts significant influence over the design of <u>advocates</u> a particular tax arrangement, in a

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		<p>way that might influence the accountant’s determination that there is a credible basis in laws and regulations.</p> <ul style="list-style-type: none"> Self-interest and intimidation threats might be created when a professional accountant faces potential dismissal over the position the employing organization is insisting on pursuing regarding a tax planning arrangement <u>against which the accountant advises</u>.
8	Ernst and Young Global Limited	<p>While we understand the Board’s desire to address public concerns related to tax avoidance schemes and tax strategies that are perceived to be aggressive, we do not believe revisions to the Code are necessary to address these concerns. Rather, we believe the Code’s robust conceptual framework already provides an ethical framework that sufficiently addresses the expected behaviors of Professional Accountants (“PA”) when providing any professional service, including tax planning and related services.</p> <p>Rather than revisions to the Code, we believe the Board’s concerns with regard to ethical behaviors expected of PAs when providing tax planning and related services could more effectively be addressed through materials outside of the Code, for example Staff Questions & Answers or case studies. While we do not agree that the proposed revisions to the Code are necessary, if the Board decides to proceed with the proposed revisions described in the ED, we offer our views as described below for each of the questions identified by the Board.</p>
9	European Federation of Accountants and Auditors for SMEs	<p>EFAA is concerned to ensure that policy, regulation, and professional standards are scalable and both proportionate to the capacities of SMPs and their SMEs clients and tailored to the needs and characteristics of SMPs and SMEs. We strongly prefer a ‘Think Small First’ approach, developing straightforward regulation and standards for SMEs and SMPs and then scaling up to suit larger more complex companies and practices.</p> <p>SMPs are often involved in offering tax services to SMEs and for that reason we have been closely following this project since its inception. While we are broadly supportive of the proposed revisions to the Code, we believe in some areas greater clarity will facilitate implementation and in some other areas the proposed revisions may cause unintended consequences.</p> <p>We are concerned that the definition and description of services that fall into the scope of tax planning and related services (TP) is too broad. For example, scoping in preparing a tax return that reflects the position in the TP, may adversely impact the ability of professional accountants (PAs) providing TP services to compete with other service providers.</p>

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		<p>The ‘stand-back test’ requirement will pose practical challenges and add little value where the arrangement in question is routine in nature. We suggest that application of this test be limited to arrangements where there are specific risks, for example those that might fall in the ‘gray zone’.</p> <p>We note that the explanatory memorandum explains why no attempt has been made to define or describe the ‘public interest’ and identifies the challenges in determining ‘credible basis.’ While we recognise these are highly subjective in nature and impacted by jurisdictional circumstances, the lack of guidance on these concepts will pose practical challenges for PAs who will have no option but to make their own determination as to what they entail. We also fear that ethical dilemmas may be created through the proposed revisions. There is a risk that PAs will withdraw from some services in the gray zone when this may not be in the public interest. Guidance encouraging documentation and encouraging clients to consider reporting arrangements which have been assessed not to have a credible basis to tax authorities may also impact client confidentiality and protection.</p>
10	IFAC Small and Medium Practices Advisory Group (SMPAG)	<p>Other Comments</p> <p>Paragraphs 380.8 A1 and 280.8 A1 refer to the responsibilities of management and Those Charged With Governance (TCWG). The reality for many SMEs will be that TCWGs are unlikely to be familiar with tax and would not necessarily have the sophistication to carry out some of the responsibilities listed. As such, the guidance in this area may be harder to adopt for SMEs and would appear less relevant.</p> <p>Generally, it seems as if PIE engagements or grey-zone situations have been in focus when drafting many of the proposals in the new sections. Given the broad scope of possible tax arrangements subject to this initiative, the requirements might not be as relevant and suited for simple, non-complex engagements which are often provided to SMEs by SMPs. Therefore, we would encourage the IESBA to consider whether certain requirements (e.g., R380.12) must apply in every case and also whether sufficient guidance is provided to ensure that the requirements are relevant and proportionate to the broad scope of arrangements that they should be applied to.</p> <p>CONCLUDING COMMENTS</p> <p>If the approach to proceed with revisions to the Code has been decided, the SMPAG generally supports the proposed revisions, but urges IESBA to take steps to make the application of the guidance more targeted to cases where there are significant risks as the current scope is too broad. It would also be useful to clarify the applicability of certain of the proposed</p>

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		<p>requirements due to this broad scope and more generally some clarity should be added in areas where PAs and especially SMPs may struggle in practical application.</p> <p>The SMPAG strongly suggests that further steps such as dissociation should only be considered when there is no credible basis and that more extreme measures such as withdrawal from the engagement or cessation of a relationship with the client should only be considered when the assumed potential impact of a specific tax arrangement (which has a credible basis) is sufficiently severe.</p>
11	Institute of Chartered Accountants in England and Wales	<p><u>Para 380.4.A2</u></p> <p>In addition, accountants play an important role in assisting clients meet their tax obligations and not seek to circumvent them through tax evasion.</p> <p>We believe that there should also be a stand-alone, unequivocal, statement that professional members should not be involved in any arrangements that might amount to, or facilitate, tax evasion (or even perceived as such). We suggest:</p> <p>“Professional Accountants should never be knowingly involved in tax evasion, unless it is to assist clients to take appropriate corrective action to regularise their affairs with the Tax Authorities. Further guidance on non-Compliance with Laws and Regulations is given at Para 380.7.A1 below.”</p> <p><u>Para 380.4 A3</u></p> <p>As it stands this is a correct statement of fact. However, it would be helpful to include at the beginning of that sentence “While the professional accountant will need to exercise professional judgement as to whether any tax planning complies with tax laws and regulations, it is ultimately for the courts etc”.</p> <p><u>Para R380.9</u></p> <p>We suggest the addition of a fourth bullet (d)</p> <p>“(d) an understanding of the facts and a realistic assessment of them.”</p> <p><u>Para 380.11 A3</u></p> <p>Sixth bullet point - Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.</p>

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		<p>We suggest that the word “successfully” is inserted before “challenged by the relevant tax authorities”.</p> <p>Seventh bullet point - Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.</p> <p>This use of the word “if” implies that the relevant facts and circumstances may not be disclosed. We suggest that the wording is amended as follows:</p> <p>“Considering how likely it is that the proposed arrangement would be accepted by the relevant tax authorities given that all the relevant facts and circumstances should be adequately disclosed and especially where any arrangements are likely to be challenged or if the agreement of the relevant tax authority is being sought to an arrangement.”</p> <p><u>Para R380.12</u></p> <p>In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgment and consider the reputational, commercial and wider economic consequences</p> <p>We believe that establishing that there is a credible basis for any tax planning arrangement is by reference to the legal position applied to the actual facts of the case. The consideration of potential reputational, commercial and wider economic circumstances is a separate matter. We suggest this is reworded as:</p> <p>“The professional accountant shall exercise professional judgment in determining that there is a credible basis for the tax planning arrangement. In addition, the professional accountant should also consider the potential reputational, commercial, and wider economic consequences that may arise from the way stakeholders might view the arrangement.”</p> <p><u>Para 380.12 A2</u></p> <p>An awareness of the wider economic consequences might take into account the professional accountant’s understanding of the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the client operates.</p> <p>We recommend that this sentence is deleted. If the tax planning arrangement produces a tax charge that might be lower than expected, it will inevitably have an impact on the tax base. In addition, the professional accountant acting for even a large client is rarely able to professionally estimate the impact of planning on a government’s tax base, if the planning is pursued by other individuals or business entities.</p>

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		<p><u>Para 380.14.A1</u></p> <p>At the end of the paragraph, we suggest adding “noting that any decision about what to disclose ultimately rests with the client unless the professional accountant is required to disclose by law.”</p> <p><u>Para 380.14 A2</u></p> <p>We suggest the addition of a fourth bullet point as follows:</p> <p>“the extent to which there is a method of disclosure appropriate for the type of transaction in the law and practice of the relevant jurisdictions.”</p> <p><u>Para 380.15 A2</u></p> <p>First bullet - Difficulty in establishing an adequate factual basis</p> <p>As noted above, we think that in order to underpin any analysis of the legal position, establishing a realistic assessment of the facts is essential. We propose that the above wording should be amended as follows:</p> <p>“Difficulty in establishing a realistic assessment of the facts which will form the basis on which a credible view of the law can be taken.”</p> <p><u>Para 380.16 A1</u></p> <p>Second bullet - Considering any assumptions that might need to be made or changed</p> <p>See comments already made above about the need for tax planning to be based on a realistic assessment of the facts. In a similar manner to our comment in Para 380.15 A2 above, we believe it is essential that any assumptions reasonably required are reasonable and realistic and should not be changed to fit an outcome that is not justified on the facts. We suggest that the above wording is amended as follows:</p> <p>“Considering whether any assumptions made when establishing the facts on which TP is provided are reasonably required and have a reasonable and realistic basis.”</p> <p><u>Para 380.17. A1</u></p> <p>Providing a tax planning service to a client might create a self-interest, advocacy or intimidation threat.</p>

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		<p>We believe that that this section should emphasise that professional accountants run a risk of self-interest and advocacy threats where they are actively promoting a client to adopt a particular position. We suggest it is reworded as follows:</p> <p>“Providing a tax planning service and/or promoting tax planning arrangements to a client might create a self-interest, advocacy or intimidation threat.”</p> <p><u>Para 380.17 A5</u></p> <p>Steps a professional accountant might take to establish the identity of the ultimate beneficiaries include, for example</p> <p>We would note that the professional accountant might be required to undertake such steps in order to comply with, for example, money laundering and any associated ‘know your client’ rules. We suggest that this wording is amended to make this clear, as follows:</p> <p>“Steps a professional accountant might take to establish the identity of the ultimate beneficiaries (noting that such steps might be required under existing anti money laundering/know your client rules) include, for example”</p> <p><u>Para R380.20</u></p> <p>If the client decides to pursue the tax planning arrangement, despite the professional accountant’s advice to the contrary, the professional accountant shall take steps to be disassociated from the arrangement. In doing so, the accountant shall consider advising the client. . .</p> <p>We note that this section imposes a mandatory duty to ‘take steps to disassociate’ themselves from the client’s/employer’s course of action. While we appreciate that there may be no option other than to disassociate in many such circumstances, we suggest that consideration be given to whether this should be qualified by the addition of “to the extent possible and necessary in complying with the fundamental principles”, or by saying instead that the “professional accountant shall consider whether there is a need to disassociate themselves and to take such possible and necessary steps in upholding the general principles”.</p>
12	Institute of Financial Accountants	<p>Proposed paragraphs 380.2 and 280.2 might be amended to place more emphasis on the advocacy threat, which is clearly and directly related to the professional accountant’s need to serve the best interests of their client or employer. In determining the ethical course of action, there is an advocacy threat to objectivity and, possibly, integrity. However, it may be argued that the proposed paragraphs are incorrect in claiming that advocacy threatens competence and due care. Furthermore, while the threat to professional behaviour is thought to exist, it will always be problematic to assert that, in</p>

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		<p>serving their client or employer, a professional accountant has acted contrary to the public interest or that they should have known that their conduct might discredit the accountancy profession.</p> <p>We agree that a professional accountant has an obligation to their client or employer to consider the risk that acting on any advice provided might cause reputational damage, and to inform the client or employer about that risk.</p> <p>In general, we are concerned that the proposals within the consultation seek to address a matter of public perception, rather than a matter of public interest (which is extremely complex). We would prefer the IESBA to take a high-level approach (which would be less controversial) and simply provide guidance relating to how issues concerning aggressive tax planning may be addressed with reference to the conceptual framework.</p> <p>The costs and benefits of the proposed changes are difficult to quantify. Nevertheless, we are concerned that the costs – especially to SMPs and SMEs – of implementing the changes to the Code, as proposed, would outweigh the benefits.</p>
13	KPMG International	<p>Other editorial comments for consideration</p> <p>The Referral Fee or Commission topic at paragraph 380.22 A2 is redundant with paragraph 330.5 A1. Referring a client to a third-party provider of tax planning products or arrangements could be addressed by adding the following new bullet point to paragraph 330.5 A1:</p> <ul style="list-style-type: none"> • A fee or commission received by referring a client to a third-party provider of tax planning products or arrangements. <p>Paragraphs 380.7 A1 (280.7 A1), 380.9 A1, 380.9 A2, and 380.10 A1 (280.10 A1) are also redundant. We suggest deleting these paragraphs as we do not see the value in these instances of referencing the applicability of earlier sections of the Code given the Code’s building block approach.</p>
14	National Association of State Boards of Accountancy	<p>NASBA supports substantially all of the proposed changes to the Code; however, it encourages IESBA to continue to carefully weigh proposed principles-based revisions to the Code against the impact that such proposals may have on a regulatory body’s ability to bring enforcement actions against members of the tax regulatory community due to a violation of the Code.</p>

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15	Pennsylvania Institute Of Certified Public Accountants	<p>1. Proposed Section 380.4 A2 – The committees do not agree that there is a definitive correlation between threats to compliance with the fundamental principles and recommending tax minimization arrangements that are not prohibited by tax laws and regulations. Further, the committees disagree with the concept that tax practitioners need to project sentiment beyond the legally enacted tax laws and regulations. The committees request that the last sentence be reworded to remove “although not prohibited by tax laws and regulations.”</p> <p>2. Proposed Section 380.6 – At best, 380.6 should be reduced to an “A” provision. First, countless pieces of legislation, especially local tax matters, are written in a manner that lacks specificity that might limit the tax jurisdiction’s capabilities, applications, or interpretations. In Pennsylvania, approximately 10% of the local jurisdictions have an Act 511 business privilege/mercantile tax (BPT), with few being “identical” in their legislative language and application. This particular tax application has long been formed through the courts, and it was planned that way. Accordingly, expectations that a professional accountant have the insight of the precise legislative intent and the potential expertise on that insight in every jurisdiction is beyond onerous. In addition, such requirements would further materially increase the cost of services to the many thousands of businesses that are subject to those taxes, which is clearly not in the best interest of the public.</p> <p>3. Proposed Section 380.8 A1 – This guidance would be more appropriately included in a best practices guide for publicly held companies.</p> <p>a) Maintaining an internal control system – The committees believe that the guidance on management’s responsibility to implement a system of internal control necessary to enable the client to fulfill its tax compliance obligations is unreasonable. While publicly held companies are required to maintain their internal controls over compliance with laws and regulations, most privately held companies do not have a specific internal control system over compliance with the tax requirements. Individual taxpayers likely do not maintain such an internal control system. The committees do not believe that individuals and companies without such an internal control system should be precluded from having a CPA advise them on their tax planning and related services. Furthermore, as the proposed guidance relates to tax planning and related services, it is unclear how this internal control system would be evaluated by the tax practitioner.</p> <p>b) Submitting the client’s tax returns and dealing with the relevant tax authorities in a timely manner – The committees request removing the reference to “dealing with the relevant tax authorities” as this is too vague to be required.</p> <p>c) “Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any tax planning arrangements” – We request</p>

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		<p>that the following words be removed from this bullet point “or as might be necessary to support a tax position, including details of any tax planning arrangements,” as they suggest that management may need to go beyond what is legally required. We do not agree with this.</p> <p>d) “Ensuring that the client’s tax planning arrangements are consistent with any publicly disclosed tax strategy or policies” – The committees request adding qualifying language to reflect materiality (e.g., “generally consistent”).</p> <p>4. Proposed Section 380.11 A3 – The committees note that the guidance in this section might not be appropriate for application in the United States and might border on the practice of law. A strict interpretation of these provisions could suggest that a professional accountant could not even comment about a charitable contribution without addressing every conceivable application and consideration in a detailed tax memo to ensure the demonstration of every possible consideration of due care – which may violate the taxpayers’ own rights and which could prove as a potential litigation roadmap for the professional accountant by any possible participant to the tax transaction or matter.</p> <p>5. Proposed Section 380.12 – “In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgment and consider the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the arrangement.” The committees do not believe that it is appropriate to “consider the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the arrangement” when considering whether there is a basis for a tax planning arrangement. Rather, the committees believe that tax practitioners should provide objective tax planning services that are based upon enacted legislation. The committees recommend the following edit to this proposed wording: “In addition to determining that there is a basis for the tax planning arrangement, the professional accountant shall exercise professional judgment.</p> <p>6. Proposed Section 380.12 A1 – The proposed requirement for the professional accountant to evaluate the following to consider whether the basis for the tax planning arrangement is inappropriate and would result in the professional accountant performing a responsibility of management and those charged with governance. These considerations may be best practice considerations for management. However, the committees do not believe that they are appropriate for the Code.</p> <p>7. Proposed Section 380.12 A2 – The proposed requirement to consider the “wider economic consequences” and the “impact of the tax planning arrangement on the tax base of the jurisdiction” appears to be unreasonable and costly for all tax planning and related services.</p>

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		<p>8. Proposed Section 380.13 – This appears to be a landmine of potential exposure for every assumption and interpretation of the fact pattern, the applicable laws/legislation, and the understanding of all matters directly or indirectly involved. PAs in the United States would likely look to possible liability protection via Kovel arrangements with attorneys to have the protection of privilege. This would complicate a tax-planning engagement as well as significantly drive up the cost of these services. Accordingly, a great many of tax-planning needs by clients, particularly individuals and small businesses, would likely look to other non-CPA providers for greater cost efficiency, which would not likely be in the best public interest.</p> <p>9. Proposed Section 380.14 A1 – The committees do not believe that the guidance should include “the professional accountant 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.” Professional accountants should provide advice consistent with the requirements in the enacted laws and regulations. This creates a problem for the professional accountant regarding the requirement to evaluate the tax benefits on a jurisdiction-by-jurisdiction basis and to advise the client to disclose to applicable tax authorities the impact that such a plan would have on the tax benefits to be gained from pursuit of such strategy.</p> <p>10. Proposed 380.14 A2 – The committees request that this paragraph be removed. The committees do not support guidance requiring professional accountants to consider stakeholder perceptions. They are not in a position to determine the likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits. Therefore, the necessity for full jurisdiction-by- jurisdiction analyses would be quite costly and probably push the need for clients to engage services from firms large enough to have “expertise” in every applicable jurisdiction. This is not in the best interests of small businesses that cannot afford such costly expertise.</p> <p>11. Proposed Section R380.20 (b) – The committees request revising “Make full disclosure of the arrangement to the relevant tax authorities” to add “where applicable” to clarify that this may or may not be required.</p> <p>12. Proposed Section 380.23 A1 – The committees request rewording the first sentence to “consider” rather than “encourage” the specific documentation, as the appropriateness of the documentation varies by jurisdiction.</p>
16	Price Bailey	<p>A number of our clients are SMEs where we may also be advising the owner of the entity. For example, a client might be selling their business and be looking to minimise a tax burden on the capital gain. One solution might be non-residency. This might be subject to meeting many conditions, in particular moving to another country, which may involve considerable upheaval and adjustment on the part of the individual concerned. This solution might be entirely legitimate, yet many might regard such a solution as unfair as a.) such a solution will not realistic for everyone and b.) it may deprive one tax</p>

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		jurisdiction of tax revenues, whilst potentially boosting those of another. Would such a scenario pass the stand back test proposed by IESBA?
17	South African Institute of Chartered Accountants	<p>(a) Practical implementation of the proposal</p> <p>A significant amount of the proposals in the ED is subjective with no clear guidance. Subjectivity increases the risk of difference in interpretation and application by PAs resulting in an inconsistent application of the proposals by PAs. This may result in the IESBA not achieving its desired outcome with the proposed amendments to the Code. In addition, the subjectivity in the proposal may not be practically implementable by PAs as a lot of professional judgement is left to the PAs. Examples of proposed areas where subjectivity may be a challenge includes amongst others, the credibility test, the stand back test and in the public interest.</p> <p>(b) Overregulating PAs performing TP services</p> <p>The proposals in the ED are seen to be overregulating the profession in TP which may not be applicable to other professions involved in TP and potentially making it difficult for PAs to be competitive with other professions. Other risks that may arise as a result of the proposal is that PAs performing TPs may be requested to resign from their PAOs, especially PA's whose PAO's obligations pose a risk to their employers.</p> <p>It is envisaged that the fundamental principles in the Code, as it currently stands, is applicable to all PAs and PAs involved in TP arrangements should be able to adapt the fundamental principles in the Code to their work.</p> <p>Furthermore, the proposals may be overburdening PAs. A number of additional processes will have to be performed by PAs which will result in additional costs on the part of the PA and the PA's organisation. We are of the view that it is highly likely that these additional costs will not be recoverable from clients as they may not see or understand the additional compliance burdens being placed on PAs rendering TP services and hence may not be willing to pay the additional costs.</p> <p>(c) Monitoring by PAOs</p> <p>A Code amendment makes no impact unless monitored and enforced by PAO's. This was not initially a concern raised in relation to this project given that the initial workgroup recommendation preferred a guidance document, which we still believe was better suited to a matter of this nature. Monitoring of the proposals may be an issue as the proposal is vague in most instances.</p>

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		<p>Where definitions are not provided or inadequate guidance provided, we have noted based on experience that it causes uncertainty by PAs and PAOs, as well as a difference in interpretation.</p> <p>A recent similar example of this in the Code was the implementation of NOCLAR where uncertainty exists amongst PAs due to the subjectivity of terms used in the Code such as “clearly inconsequential.” This has also negatively impacted the monitoring of the requirements of NOCLAR by PAOs. It is envisaged that if the subjectivity in the proposals for TPs is not corrected, similar challenges as those experienced by NOCLAR will occur.</p> <p>Where a PAO seeks to enforce the Code and it contains vague provisions, it undermines the PAO’s ability to do so and places it at financial and reputational risk should members revert to the courts to clarify and declare on the matter.</p> <p>(d) Increased volume of the Code</p> <p>The IESBA should consider the increase in content to the Code as a result of including a lot of application guidance. By including additional requirements for PA’s performing TP services, we are potentially setting a precedent in the future to include additional paragraphs for other PAs who perform work in other areas which have a big public interest for example public sector. This may not be ideal for the Code as it will continuously increase in volume and as a result may lose its value to PAs.</p> <p>This may also detract PAs from the requirements of the Code. Application guidance that may not be necessary should be placed in a guidance document outside the Code to reduce the risk of confusion by PAs and ensuring that it is consistently applied and practically implementable.</p> <p>An example of a list of application guidance that may not be required to be included in the Code are Paragraphs 280.11 A3 and 380.11 A3 as it is envisaged that all PAs will apply the fundamental principal of professional competence and professional behaviour while performing TP service will consider specific processes.</p> <p>Paragraphs 280.11 A3 and 380.11 A3 states:</p> <p>“Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:</p> <ul style="list-style-type: none"> • Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.

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		<ul style="list-style-type: none"> • Assessing the reasonableness of any assumptions. • Reviewing the relevant tax legislation. • Reviewing legislative proceedings that discuss the intent of the relevant tax legislation. • Reviewing relevant literature such as court decisions, law or industry journals, and tax authority rulings or guidance. Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities. Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed. • Consulting with experts within or outside the employing organization regarding what a reasonable interpretation of the relevant tax laws and regulations might be. • Consulting with the relevant tax authorities, where applicable. <p>The above can be compared to a list of audit procedures which is included in the Code which may be inappropriate as the Code should be principle based.</p> <p>Furthermore, the practical guidance may be incorrectly interpreted by organisations who are not PAOs as requirements which may negatively impact members.</p> <p>(e) International pressure</p> <p>The tone of the ED is that IESBA is not addressing the “grey area” between lawful and unlawful (i.e., tax matters that were not designed to fall foul of the law but does) or illegal (tax matters that were intentionally designed to fall foul or seem to evade detection by the law) on the other side. This is notwithstanding that in the 2022 IESBA Roundtable discussions stakeholders noted this approach as being untenable. It therefore infers that IESBA is attempting to enforce ethical rules on “categories” of lawful conduct, with this ED attempting to articulate that “category”.</p> <p>The ED further seeks to impose legal consequences in terms of the code of conduct for not meeting ethical obligations that are however lawful conduct. These consequences as enforcement through the PCC and disciplinary process, will also be public in many countries and have public legal consequences.</p>

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		<p>The ED notes that it is issued in support of the OECD’s BEPS initiative, though it is unclear exactly what about the BEPS project it supports given the global differing opinions on BEPS. This includes developing countries disagreement with it and their tabling at the UN of a more globally representative regime in 2022.</p> <p>Ironically the BEPS project was initiated not on the basis of “evading taxpayers”, but in seeking to align and get consensus on the fiscal policy of countries to avoid enabling legal tax avoidance. It is public record that the project has migrated significantly from this main objective to one where taxpayers were publicly accused of “not doing anything illegal but being immoral”. The IESBA ED however denies that it is attempting a tax morality exercise though it is hard to agree with this conclusion given the essence of the ED .</p> <p>Inevitably, the ED is adding to the now popular political approach to “publicly shame” taxpayers and tax advisors who comply with the law but force them into doing what is seen as “moral” in respect of a specific country or view, even if it is in contradiction to other country’s morals and their laws. This is also reflected in the overly vague “stand back test” proposed. It avoids that countries have to address the laws they draft rather than taxpayers having to read “the spirit of the law”, resulting in that they cannot rely on what the law actually says at a particular point in time in a particular jurisdiction vs another (i.e., same spirit of the law can have different meanings in different jurisdictions). This state of affairs is with respect, not the accountancy professions to own or fix.</p> <p>It is interesting that even the European Court of Human Rights has taken a stance on governments using public shaming tactics, even where tax transgression occurred and debt is actually owed, therefore not even something as whimsical as “tax morality” matters.</p> <p>Imposing a “ethical” standard on legal conduct that has a particular “open ended moral” view is a problematic proposal to apply and implement in practice and not in the interest of IFAC members.</p> <p>In this regard we believe that addressing the “grey area between lawful and unlawful/illegal in addition to enhanced transparency disclosures (i.e., the latter cannot be hidden or made opaque), including in financial records e.g., as IFRIC 23 has done, is a lot more helpful in achieving the intended goals. It also enables professional bodies to address the actual problem namely those that seek to escape their legal liability through improper conduct, whether directly or through intentionally making transactions opaque and hide its true nature.</p> <p>Regulation of tax advisors varies amongst jurisdictions</p>

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		<p>The ED does notes:</p> <p>“Further, feedback from outreach indicates that there are stakeholder perceptions that the tax adviser community is not as closely regulated as the audit profession and therefore, generally feels less constrained in its advisory services.</p> <p>It further states:</p> <p>Given the wide diversity of tax laws and regulations, the IESBA is cognizant that this framework will need to be jurisdiction-neutral (i.e., equally applicable in jurisdictions where the tax burden is high and where it is low).</p> <p>The first statement is not entirely true as the profession is regulated in some jurisdictions and substantially more than the audit professions. This notwithstanding that auditing by its very nature is a public interest assurance function, whereas tax planning is an individual tax advisor/client matter that should not be done in manner that undermines the public interest. That is a substantial difference. The ED should also specifically distinguish jurisdictions with regulation of the tax professions from those that have none.</p> <p>The second statement recognises the diversity challenge of legislation but none the less attempts to achieve global alignment on matters not achieved before by countries or revenue services themselves.</p> <p>Not acknowledging the impact that the tax profession reaches beyond the professional accountancy profession is disappointing as that is the reality our members face and that our members compete for their own financial sustainability I such market. The reality is that the market for tax advisors is primarily to ensure tax efficiency (as a direct cost) and compliance as that is one of its core legal purposes.</p> <p>It is also a reality that the legal profession inter alia in many jurisdictions is not regulated as it relates to tax advice. In this regard, the fact that regulators have also indifferently treated and favoured the legal profession in local regulation like in South Africa, notwithstanding the lack of competency standards or ethical standards for that profession in tax, is a reality that PA have to deal commercially and legally.</p> <p>Negative perceptions that taxpayers have disclosure protection with legal practitioners and none with PA are exacerbated by compelled disclosures not applicable to the rest of the tax profession.</p>

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		Added to regulatory requirements in jurisdictions that already regulate their tax profession compounds the above challenges and risks driving IFAC member bodies members out of the profession. This is not in the interest of IFAC or the tax profession as it just means that less people subject to code requirements will remain in the profession.