

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**.

Role of the PA in Acting in the Public Interest

3. Do you agree with IESBA’s proposals as explained in Section VII.B above regarding the role of the PA in acting in the PI in the context of TP?

No	Respondent	Respondent Comments
1	Accountancy Europe	<p>Although the regulatory environment for providing tax advisory services differs considerably across Europe, Accountancy Europe believes that the professional accountant should consider the public interest when providing tax advice.</p> <p>PAs should also be aware that the environment of client and public opinion on tax planning are subject to rapid change, which will directly impact the development of the concept of public interest in a tax planning context.</p> <p>We agree with IESBA's proposed contextual guidance describing how professional accountants ‘help to facilitate a more efficient and effective operation of a jurisdiction’s tax system, which is in the public interest (380.4 A1).’</p> <p>However, PAs should be aware that many stakeholders will have a different perspective of what constitutes public interest in respect of tax planning. This will largely be driven by circumstances in the jurisdiction(s) in which the PA operates, and where a tax planning arrangement affects more than one jurisdiction, the perspective of public interest may not be the same. This would need to be considered in the stand-back test.</p>
2	Accounting Professional & Ethical Standards Board Limited	<p>APESB acknowledges the complexity of explaining the role of the professional accountant in acting in the public interest in the context of tax planning and related services. APESB agrees with the proposed application material in paragraphs 280.4 A1 and 380.4 A1, as it succinctly sets out the professional accountant's role and acknowledges that the accountant's public interest role is in assisting with the operation of a jurisdiction’s tax system.</p> <p>However, APESB is of the view that the understanding of the proposed paragraph 380.4 A2 would be enhanced by separating the obligations of the Client and the Professional Accountant in the following manner:</p> <p>380.4 A2</p>

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No	Respondent	Respondent Comments
		<p>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.</p> <p>380.4 A3 (new)</p> <p>In this regard, Professional accountants' role is to advise their clients on how best to meet their tax planning goals. In addition, accountants play an important role in assisting clients to 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> <p>The above separation will work well with the proposed 380.4 A1 and 380.4 A3 of the Exposure Draft.</p> <p>Some stakeholders at the APESB's roundtable raised a concern that public interest could be interpreted more broadly, with the accountant needing to determine a global public interest position, especially when Tax Planning Services may impact multiple jurisdictions. As a result, these stakeholders questioned whether it is within the professional accountant's skill set to assess global public interest considerations. They believed additional guidance was necessary to clarify IESBA's expectations if this aspect is included in the standard.</p>
3	American Institute of Certified Public Accountants	<p>We generally agree that that PAs providing their clients or their employing organizations with high quality tax planning advice to ensure compliance with laws and regulations helps to serve the public interest. We also agree that it is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations as described in proposed paragraphs 380.4 A3 and 280.4 A3. Please see our concern about the public interest not being served under Taxpayer Protections.</p>
4	Association of Chartered Certified Accountants	<p>We agree with IESBA's approach not to define or describe public interest and instead provide contextual guidance in Sections 380 and 280 and note that it is ultimately a court or other appropriate adjudicative body that determines whether a TP arrangement complies with the relevant laws and regulations.</p> <p>We also acknowledge that professional accountants, in advising clients on how best to meet their TP goals, might encounter certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles. In this respect, we believe that other Sections of the Code are sufficient to address such encounters and threats to compliance.</p>

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		<p>Nonetheless, having considered the various views from IESBA's roundtable participants set out in paragraph 36 of the Explanatory Memorandum, it is important that professional accountants recognize the need to be acutely aware of public perception in their balance of obligations against the background of today's constantly changing environment. For example, companies are increasingly subject to broader duties beyond the maximization of shareholder profits, which has implications for both those charged with governance and their advisers.</p>
5	BDO International	<p>BDO agrees that PAs play an important role in facilitating a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest. PAs also have a duty towards their clients in providing TP advice by contributing their knowledge, skills, and experience to assist clients in satisfying their tax obligations in the context of their personal (for individuals) or commercial (for entities) goals. An appropriate balance between these interests must be maintained. We believe this is achieved by PAs properly advising clients on the available options and choices under the relevant tax law and ensuring that taxpayers pay the relevant amounts of tax due under those laws.</p> <p>BDO believes that by highlighting threats to compliance with the fundamental principles when providing TP advice, the ED is capable of providing PAs with guidance on how to appropriately maintain this balance. BDO believes, however, that where a PA presents different options for achieving a client's goals (which are afforded by the relevant tax laws and therefore have different tax outcomes), it is the client's responsibility to decide which option to take. It is possible for this decision-making process to be consistent with the 'stand back test' referred to below.</p> <p>Paragraphs 380.4 A1 - A2</p> <p><u>Tax planning goals</u></p> <p>BDO's view is that PAs should typically use a client's personal, domestic or commercial objectives (rather than "tax planning goals") as a starting point for any tax advice. As noted above, where a number of different options are available to achieve a client's goal, the tax adviser is obliged to outline the different options and consequences of each option. The options may have different tax and other consequences, and ultimately the choice of the option is the client's responsibility. Where a client's personal, domestic or commercial objectives are not sufficiently plausible, the PA should consider the reputational, commercial and economic consequences of the different options, as well as the interests of the client's internal and external stakeholders.</p> <p><u>Tax evasion</u></p>

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		<p>BDO disputes the need to refer to “tax evasion” in proposed paragraph 380.4 A2. Firstly, this may, when translated, be confused as having the same meaning as the term “tax avoidance” in some jurisdictions and may also result in inconsistencies. Secondly, no PA should ever be promoting or facilitating tax evasion and inclusion in the ED could be construed as implying the opposite. We are of the view that the intention of proposed paragraph 380.4 A2 is achieved without the use of this term and we recommend that the reference to tax evasion be removed from this paragraph. Non-compliance with Tax Laws and Regulations is sufficiently addressed in paragraph 380.7 A1.</p> <p><u>Tax minimization arrangements</u></p> <p>It is BDO’s experience that “tax minimization arrangements” is not a phrase that is commonly used in practice and may not be well understood. Paragraph 26 of the Explanatory Memorandum explains that the term “tax efficiency” would be more neutral than “tax minimization”, which is then used in describing TP services in proposed paragraph 380.5 A1 of the ED.</p> <p><u>BDO’s recommendation</u></p> <ol style="list-style-type: none"> 1. BDO recommends that the wording of proposed paragraph 380.4 A1 be amended as follows: ... to assist clients in meeting their tax planning goals <u>understanding and optimizing the tax results of their personal, domestic or commercial objectives</u> while complying with tax laws and objectives. 2. BDO recommends that the wording of proposed paragraph 380.4 A2 be amended as follows: ... In this regard, professional accountants’ role is to advise their clients <u>on the tax results of the client’s personal, domestic or commercial objectives and how to structure the client’s affairs in a tax-efficient manner</u> best to meet their tax planning goals. In addition, accountants play an important role in assisting clients to meet their tax obligations and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain TP <u>minimization</u> arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles. <p>BDO further recommends that all references to TP goals be amended in line with the suggestions above.</p>
6	Chartered Accountants and	We agree with the intent of IESBA’s proposals as explained in Section VII.B of the EM regarding the role of the PA acting in the public interest in the context of TP. We agree with the views expressed by participants of the roundtables

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	CA Australia and NZ	described in section VII.B of the EM (in particular, paragraph 36) and with the conclusion reached by IESBA in paragraph 38 of the EM.
7	Chartered Accountants Ireland	<p><u>Role of the Professional Accountant acting in the Public Interest:</u></p> <p>We agree with the acknowledgement of the significant role Professional Accountants play in supporting and enhancing the effectiveness of the tax system partly described in 380.4 A1 and 280.4 A1. We would also emphasise that Professional Accountants have a role in supporting compliant taxpayer behaviour and making complex national and global tax systems workable for individuals and businesses of all sizes, including those with cross-border tax activity. This important work by Professional Accountants also reduces the risk of unexpected tax costs for all taxpayers and ensures higher compliance rates and collection of tax.</p> <p>We also acknowledge the public concerns arising from understanding who is considering the public interest in tax planning activity. The interpretation of the tax legislation mentioned in the Exposure Draft is an important mechanism to ensure consideration of the public interest, and the professional competence of Professional Accountants is central to ensuring proper application of those tax laws. However, while it is acknowledged later in the Exposure Draft, it would be valuable to also acknowledge in this section that some jurisdictions, e.g. Republic of Ireland and the United Kingdom, have also implemented additional regulatory mechanisms such as general tax anti-avoidance legislation, that seeks to defeat certain tax avoidance schemes.</p> <p><u>Role of courts and tax authorities:</u></p> <p>We agree with 380.4 A3 and 280.4 A3 in that "<i>it is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations</i>". However, this general statement may be better placed in the introduction, following 380.1 and 280.1, so that it is presented in the context of the Professional Accountants' other requirements that apply for the provision of any professional service, including tax services. We would also recommend emphasising the primacy and responsibility of local tax authorities for some jurisdictions in the enforcement of tax compliance, the policing of appropriate tax planning and any independent mechanisms to be first arbitrator of rulings or interpretation of tax requirements.</p> <p><u>Link to Fundamental Principles:</u></p>

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		<p>While we agree with much of 380.4 A2 and 280.4 A2 we propose the final point in the paragraph may be more affirmative if worded:</p> <p><i>“However, when accountants provide such assistance, threats to compliance with the fundamental principles may arise from the development and use of it might involve certain tax minimization arrangements that, although are not expressly prohibited by tax laws and regulations., might create threats to compliance with the fundamental principles.”</i></p> <p><u>Certain tax minimisation arrangements:</u></p> <p>It would also be useful if the IESBA were to provide examples of “<i>certain tax minimisation arrangements</i>”.</p>
8	Chartered Professional Accountants Canada Public Trust Committee	<p>The PTC is in general agreement with many of the IESBA's proposals in this section, specifically that PAs performing TP serve the public interest by contributing their skills, knowledge, and experience, assisting their clients, and employing organizations in meeting their obligations and not seeking to circumvent them through tax evasion.</p> <p>The PTC, however, contends that these proposals on TP introduce additional complexity that requires further clarification and guidance despite references to public interest throughout the Code. Specifically, the PTC notes that the IESBA raised this concern in paragraph 34 of their Explanatory Memorandum, but the Code proposals do not currently address or clarify how PAs can act in the public interest while balancing several parties' interests.</p> <p>The PTC is concerned that the IESBA's proposal may be interpreted as placing too much responsibility on PAs to make an interpretation on public interest with many stakeholders having diverse interests in a TP arrangement and, without sufficient guidance. We believe the responsibility of the PA is to assist clients or their employing organizations in meeting their tax planning goals while complying with tax laws and regulations.</p> <p>In addition, the PTC thinks that the last sentences in proposed paragraphs 280.4 A2 and 380.4A2 would benefit from additional clarification or examples of the types of threats to compliance with the fundamental principles that PAs should be aware of, similar to the approach taken in proposed paragraphs 280.17 A1 and 380.17 A1.</p>
9	CPA Australia	<p>CPA Australia broadly agrees with the role of the PA in acting in the public interest, as expressed in the ED, in the context of TP and support the conclusion at s380.4 A3 that it is ultimately for a court or other appropriate adjudicative body to determine whether an arrangement is compliant. CPA Australia considers that in providing all tax advice, considerations of potential risk to the PA's client or employing organization must be limited to tax considerations only.</p>

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		<p>We agree that the public interest would generally be considered in the development of tax laws and regulations. However, it does not necessarily follow that the interpretation by the tax authority of such law and regulations will be consistent with the intention of those developing the tax laws and regulations. Therefore, the application by the PA of the tax authority's interpretation cannot always be presumed to be acting in the public's interest.</p> <p>Similarly, noting the varying capabilities of tax authorities across the world, the absence of the tax authority publicly considering the relevant legislation should not result in the PA failing to act in the public interest.</p> <p>While we are highly supportive of revenue authorities issuing interpretive guidance to assist taxpayers, CPA Australia agrees with the point made at paragraph 38 of the EM and is wary of giving a tax authority's interpretation the force of law. While litigation is rare due to the costs and risks to both tax authorities and taxpayers, court judgments and settlements reflect the complexity and uncertainty of many areas of tax law. The outcomes also reflect that tax authorities do not always correctly interpret or administer those laws, or that they themselves can be quite uncertain as to whether an arrangement is compliant or has a credible basis.</p> <p>In some jurisdictions such as Australia, the tax authority will fund test litigation to seek the court's view on issues where there is uncertainty or contention about how the law operates. This recognizes that tax law can be ambiguous or there is valid disagreement on what the law means or how it operates.</p> <p>Acting in the public interest where tax legislation is applied by a PA in a manner consistent with its interpretation by a local tax authority is an approach that should be limited to where the tax authority:</p> <ul style="list-style-type: none"> • has carefully considered the interpretation of the relevant legislation in a circumstance relevant to the tax planning structure the PA is considering • takes an active role in developing, implementing and/or administering tax laws • has the capacity and capability to properly contemplate and issue guidance on the relevant tax laws and regulations, and • can provide a credible basis for their views on a structure or arrangement when requested. <p>CPA Australia supports the wording of proposed paragraphs 380.4 A1 and 280.4 A1. CPA Australia further supports the wording of proposed paras. 380.4 A2 and 280.4 A2 while noting that the use of the term "tax minimization" seems to be inconsistent with the intention to use the "tax efficient" in the relevant Sections. We welcome the use of the word</p>

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		<p>“might”, and consider that the use of this word clarifies the point that tax planning can involve tax minimization or tax-efficient structuring which is not a threat to compliance with the fundamental principles.</p>
10	<p>Deloitte Touche Tohmatsu Limited</p>	<p>Deloitte Global agrees with the approach taken by the Board regarding the role of a professional accountant in acting in the public interest in the context of tax planning.</p> <p>However, Deloitte Global does not agree with the inclusion of the reference to tax evasion in paragraphs 280.4 A2 and 380.4 A2. Tax evasion is a criminal act. The role of the professional accountant is to assist a client in meeting their tax obligations and circumventing the law would not even be contemplated in a tax planning service. Including reference to tax evasion might imply that it might be part of the tax planning which is not appropriate. In Deloitte Global’s view, the reference to tax evasion should be deleted.</p> <p>In addition, we believe the description of the accountant’s role in paragraphs 280.4 A2 and 380.4 A2 should mirror the description in paragraphs 280.4 A1 and 380.4 A1, as follows:</p> <p>380.4 A2 <i>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 contribute their knowledge, skills and experience to assist 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 meeting their tax obligations. and not seek to circumvent them through tax evasion.</i> 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>
11	<p>Ernst and Young Global Limited</p>	<p>The responsibility of a PA to act in the public interest is a well-established principle within the Code, featuring prominently throughout the Code, including in the very first paragraph. As the Board explains in paragraph 37 of the EM, the purpose of proposed paragraphs 380.4 A1 through 380.4 A3 is not to define or describe the public interest as it relates to TP&R Services, but rather to explain what it means for a PA to act in the public interest when providing TP&R Services. If the Board decides to proceed with the proposed revisions, we believe the proposed paragraphs are helpful in that they specifically focus on the PA’s role in meeting the public interest when providing TP&R Services - that is, as explained in the EM, to contribute their knowledge, skills and experience when providing TP&R Services</p>

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		thereby enabling their client or employing organization to meet its tax planning goals while yet complying with tax laws and regulations.
12	European Federation of Accountants and Auditors for SMEs	<p>We broadly agree.</p> <p>While we recognize the reasons given for not defining or describing the public interest, this will place the onus on the PA to determine the public interest when necessary. This determination will prove especially difficult in certain situations. Many arrangements will relate to cross-border activities and the public interest is defined differently from one jurisdiction to another. Typically, in any one jurisdiction there are multiple regulators with overlapping authority in this area making it difficult to determine which regulator decides what the public interest is. Hence, in the absence of the Code defining the public interest, we welcome some illustrative examples.</p> <p>We are concerned that the proposals risk placing PAs, especially SMPs, at a competitive disadvantage to non-PAs, such as lawyers and tax consultants, that also provide TP services but whom will not be subject to the proposed guidance. The proposed guidance and additional considerations will add cost to the provision of TP services, including where the schemes are not risky nor aggressive, potentially impacting the ability of PAs to compete with non-PAs. .</p>
13	European Tax Adviser Federation	<p>ETAF members fully support the recognition that professional accountants serve the public interest by helping to facilitate a more efficient and effective operation of a jurisdiction's tax system. For this reason, it is of utmost importance that tax planning and related activities are done by tax professionals who have the necessary professional knowledge and competency. We also welcome the recognition of the clients' responsibility to pay their legally assessed tax dues.</p> <p>While we understand the reasoning of IESBA for choosing not to attempt to define the public interest, we do believe that some more clarity regarding how to interpret the public interest in the context of tax planning would be welcomed.</p>
14	Grant Thornton International Limited	Professional accountants play an important role in tax planning by contributing their knowledge, skills, and experience to assist clients in meeting their tax planning goals while complying with tax laws and regulations. In doing so, accountants help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest. 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 should obtain an understanding

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		<p>of those laws and regulations and advise the client to comply with them when providing tax planning services, in order to act in the public interest.</p> <p>Furthermore, we believe it is appropriate for legislators/regulators to consider the public interest when establishing laws and ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.</p> <p>Accordingly, GTIL agrees that professional accountants should act in the public interest when providing tax planning service and agree with IESBA's proposals regarding the role of the professional accountant to act in the public interest when performing tax planning services. Acting in the public interest is of keen importance, but we recognize it is difficult to define the term 'public interest' as it may have different meanings to different stakeholders in multiple jurisdictions.</p>
15	IFAC Small and Medium Practices Advisory Group (SMPAG)	<p>We note the reasons why it has not been attempted to define or describe the public interest, although an example of how this is relevant for tax planning is given in 380.4 A1. However, in practice, leaving this for PAs to determine could be problematic. Many arrangements will be concerned with cross-border operations, and the public interest may differ from jurisdiction to jurisdiction. In many jurisdictions, there are also multiple regulators that could operate in this area, so it would be a challenge to determine who decides what the public interest is. Additionally, where legislature is unclear, decisions about the appropriateness of tax planning schemes are often made in hindsight – sometimes with considerable time delay involving more than one institution and different interpretations until a final decision is reached. Considering these challenges, it may be useful to give additional relevant examples of what constitutes public interest in the context of tax planning, this could save PAs time and effort in trying to establish what this is.</p> <p>The existence of other actors providing services in this space, such as lawyers, tax advisers or unregulated individuals providing tax planning advice, must also be considered. Non-PAs operating in this area could create a challenge in implementation as the proposed guidance would fail to apply to them. The proposed guidance and additional considerations will add cost to the provision of these services, potentially making PAs less efficient than others in carrying out this activity, especially where the schemes in question are not risky or aggressive. As such, there is potential for the proposed guidance to be to the detriment of PAs.</p> <p>While we note the explanatory memorandum confirms that the provisions do not address tax morality, there does appear to be some focus on the moral tone when considerations of the public interest are examined. Therefore, we suggest the explanation in the 2nd and 3rd sentences of para. 65 of the explanatory memoranda be added as</p>

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		<p>explanatory material within the Code. The overarching aim of the PA should be to give the client credible tax advice, outlining all legally permissible options, including those that will be most advantageous to the client. It would not be acceptable to withdraw some options from client consideration due to issues with perceptions on public interest, as this would be failing to meet this overarching aim. Withholding the most advantageous options from a client may also leave the PA exposed to legal challenge.</p>
16	<p>Independent Regulatory Board for Auditors</p>	<p>Acting in the public interest in the context of TP is subjective and the practical application of this principle could be difficult. PAs would attempt to balance the needs of the fiscus while ensuring the most tax-efficient position for their clients (shareholders), as clients engage the relevant PA services and expertise for that reason. The public interest, as noted in paragraph 34 of the Explanatory Memorandum (EM), may at times result in a conflict of interest for the PA that is beyond his/her control when it comes to which stakeholder included in the “public interest” category takes preference.</p> <p>It should also be noted that case law in South Africa allows taxpayers to arrange their affairs legally in such a way that they can pay the minimum amount of tax.</p> <p>We are uncomfortable with the reference to “tax evasion” in paragraph 380.4.A2, as this may create confusion; hence, we suggest that any reference thereto be deleted.</p> <p>Section VII, paragraph 26, of the EM specifically mentions that “the IESBA, however considered that the term ‘tax efficiency’ would be more neutral than ‘tax minimization’”. We agree that the term tax efficient is a more neutral concept, with no negative connotations. However, in the ED, paragraph 380.4.A2, the phrase “tax minimization arrangement” is used. This phrase, in our view, has negative connotations that possibly allude to some type of “tax scheme” that would be considered as rather aggressive tax planning. We therefore proposed that this wording be changed to “tax efficiency structures or measures”.</p> <p>Further, paragraph 380.4.A2 refers to “such assistance”, but it is unclear as to “which assistance” is referenced. Therefore, we suggest that a clarification be provided in this regard.</p> <p>Paragraph 380.4.A3 mentions an “adjudicative body”, whereas Section 604 of the Code refers to a “tribunal or court”. While it is accepted that the term “adjudicative body” is used multiple times in the Code, we believe that “tribunal or court” is more appropriate in the context of a tax matter (particularly a tax dispute). We note that paragraph 604.27.A2</p>

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		<p>of the Code reads as follows: “What constitutes a ‘tribunal or court’ depends on how tax proceedings are heard in the particular jurisdiction”.</p> <p>We suggest that paragraph 380.4.A3 be reworded to read as follows: “However, it is ultimately for a tribunal or court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.”</p>
17	Institut der Wirtschaftsprüfer in Deutschland e.V.	<p>Yes, we agree. The IDW Code of Conduct also contains comparable statements: “As advisors on tax matters, we are an independent part of the system for upholding tax law. We promote a constructive relationship between taxpayers and the tax authorities. In the interests of the common good, we are committed to preventing the abusive use of tax planning arrangements to the detriment of the State.”</p>
18	Institute of Certified Public Accountants of Uganda	<p>ICPAU agrees with IESBA’s proposals regarding the role of the PA in acting in the public interest in the context of TP. We affirm that PAs should understand that there is inherently a public interest element in all aspects of the work that they do and the actions they take and that they should always exercise that responsibility of acting in the public interest (issues of tax are ‘public’ by nature).</p> <p>However, our worry lies in the fact that the world over unlike the case with assurance services, tax services are not entirely a preserve of PAs. Individuals such as lawyers and other tax consultants from different fields play a critical role in the provision of tax services. As such, the proposals place PAs majority of whom are likely to be Small and Medium Practices (SMPs) at an adverse competitive edge.</p> <p>Also, failure to provide guidance on the term public interest leaves every jurisdiction to highlight what would possibly fall under public interest within their own precincts. This is likely to result in unintended consequences given the fact that tax services are cross-border under a wide spectrum of multinational players in differentiated regulatory environments. We believe that the IESBA should provide additional application material as appropriate to enable PAs to appreciate the notion of “public interest”.</p>
19	Institute of Chartered Accountants in England and Wales	<p>We believe that professional accountants have a public interest duty to properly advise taxpayers on their potential options and choices granted by governments under the tax law and to ensure that the taxpayers submit a correct and complete tax return and pay the right amount of tax at the right time.</p>

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		<p>We agree with IESBA's proposed guidance in 380.4 A1 describing how professional accountants 'help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.'</p>
20	<p>Institute of Chartered Accountants of Scotland</p>	<p>We firmly believe that members of ICAS operate in the public interest by using their knowledge, skills and expertise to help facilitate a more efficient and effective operation of a jurisdiction's tax system. Tax agents are vital to the effective operation of the UK tax system - they support tax compliance by helping taxpayers to get their tax affairs right; they make complex tax systems workable for businesses and individuals and reduce the risk of unexpected tax costs for all taxpayers, all of which is in the public interest.</p> <p>IESBA should be careful not to move away from a principles-based approach when considering what constitutes the 'public interest' because public opinion, client views, and government views on tax planning can change. For instance, in the UK what was deemed acceptable has moved quite considerably in the last 10 years, so it is important that any ethical code on tax planning should be principles-based only, or it may be subject to constant revision.</p>
21	<p>Institute of Financial Accountants</p>	<p>How the public interest is best served by professional accountants is a fundamental question at the root of this Consultation. We are pleased that the IESBA recognizes 'the benefits of having PAs provide TP services as they play a significant role in supporting and enhancing the effectiveness of the tax system'.</p> <p>The Consultation is helpful in setting out various factors considered by roundtable participants when considering where the public interest lies. We are clear that public perception is a significant factor and the public expects a professional accountant to help clients and employers to comply with the law. The consultation goes on to state that the need for professional accountants to preserve the interests of clients and employers as well as the public interest is a 'balancing act'. However, we would argue that the two are not in conflict, as serving the interests of the client or employer meets the expectations of the public and so serves the public interest also. This is particularly true in the case of professional accountants serving the needs of SMEs and individual taxpayers.</p> <p>The reputation of the profession serves the public interest as well as the interests of the profession. However, the IESBA must be mindful of the fact that not all accountants are members of an IFAC member body.</p> <p>We would respectfully challenge the statement that 'public concerns have risen significantly about the role tax advisers play in assisting tax avoidance by wealthy individuals and corporations, including concerns about multinational companies utilizing sophisticated TP strategies to minimize their taxes'. A more nuanced view might be</p>

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		<p>that any such criticism is primarily of the wealthy individuals and organizations, rather than their advisers who are performing the role for which they were engaged.</p> <p>Similarly, we note that the Consultation does not provide a source for the assertion that stakeholders have a greater awareness of what is in the public interest and that ‘what may have been regarded as creative and skillful TP in the past may now be perceived to be “tax avoidance”’.</p> <p>We support the contextual guidance provided in proposed paragraphs 380.4 A1 and 280.4 A1, and would only add, in each case, that this description of tax planning services also enhances trust in professional accountants, and so makes it easier for clients and employers to access professional help. This point is omitted from the proposed paragraphs discussing the professional accountant’s public interest role.</p> <p>Proposed paragraphs 380.4 A3 and 280.4 A3 both state ‘It is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations’. The purpose of this statement is unclear. The perceived implication might be that the responsibilities of the professional accountant and their client or employer are, therefore, less important.</p>
22	International Bar Association Tax Committee	<p>We broadly agree that PAs play an important role in supporting and enhancing the effectiveness of the tax system as explained Section VII.B. Indian tax law contains prosecution provisions against any person who assists or abets (this includes PA) in falsification of books of accounts or documents or misstatements in returns or accounts. However, with respect to tax planning, which has different connotations than tax evasion in the Indian context, the key responsibility for preserving the integrity of the tax system should be with the tax authorities and courts, as have been recognized in R 380.4 A3.</p> <p>Moreover, with respect to R 380.4 A3, it’s unclear what are the tax minimization strategies that will create threats to the fundamental principles. For instance, like many other jurisdictions, India’s General Anti-Avoidance Regulations (GAAR) already prescribes robust standards around what would be an impermissible avoidance arrangement. In this context, having a subjective overlay of ‘tax minimization strategies that are inconsistent with fundamental principles’ may not be necessary. Also, please consider the deletion of the term ‘might’ as it adds further ambiguity to the proposed ethical standard.</p>

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23	Japanese Institute of Certified Public Accountants	<p>We agree with the proposal as this provision is consistent with paragraphs 100.6 A1 and 100.6 A4, etc., of the Code. However, we believe that, in providing TP services, it is important, especially for professional accountants in public practice (“PAPP”) who provide non-assurance services or PAIB, to emphasize that they act in the public interest in consideration of the impact on medium- to long-term corporate value. We believe that the IESBA should strive to ensure that the actions of PAs in the public interest will be understood and accepted by a wide range of stakeholders including their clients and employing organizations, and ultimately by public as a whole. For example, many states in the U.S. have introduced a form of corporation for public interest purposes called a public benefit corporation and designed a system to ensure that actions related to the public interest receive recognition and attention from investors. Furthermore, one of the ESG-related types of information which companies are required to explain to their stakeholders is “transparency regarding taxes,” and it is considered that a global trend toward encouraging ethical behavior regarding taxes is already emerging. It is considered that this is because the idea of acting in the public interest is becoming widely accepted and supported by stakeholders and reflected in systems and practices. It is expected that proactive educational activities for investors, tax regulators and other stakeholders regarding the ethical behavior of professional accountants for the public interest in TP services will encourage professional accountants to act in the public interest in the tax-related systems in their respective jurisdictions.</p>
24	Korean Institute of Certified Public Accountants	<p>We agree with the need for the PA to act in the public interest, considering that TP services offered to the client may have adverse consequences on the relevant jurisdiction’s tax base. However, it is also important for the PA to use expertise to support the client’s position in a tax-efficient manner. The KICPA expects the revised Code to find a right balance between the two.</p>
25	Malaysian Institute of Accountants	<p>We are supportive of the IESBA’s proposals regarding the role of the PA in the public interest in the context of TP and acknowledge the IESBA’s reasoning for not defining or describing public interest. However, we would believe that there will be practical challenges for the PA in their role to provide a TP arrangement as public interest could differ in different jurisdictions, especially when performing cross-border engagements. In considering this matter, we propose that instead of providing a definition, further guidance on or examples of public interest could be included to assist the PA in their consideration.</p> <p>The presence of other service providers in this field such as lawyers and other non-professional accountants should also be taken into account. There could be challenges in implementing the proposals as these guidelines would not apply to them. The suggested proposals will also potentially make PAs less efficient as compared to other parties</p>

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		<p>who engage in tax planning services, especially when dealing with non-aggressive schemes and will hence, leave PAs at a disadvantage.</p> <p>Besides this, we would also suggest for the IESBA to consider if there is a need to refer to “tax evasion” in the proposed paragraph 380.4 A2, which may be confusing and considered as having the same meaning as the term ‘tax avoidance’, especially in translations. Although, “tax minimization arrangements” is a term that does appear in practice but it may not be well understood. Instead, “tax efficiency” would be a more neutral term than “tax minimization”.</p>
26	Malaysian Institute of Certified Public Accountants	<p>Yes. Helping clients meet their tax obligations and comply with the tax laws and regulations is important and in line with the public interest. Where circumstances give rise to uncertainty due to a lack of clarity in the tax laws and regulations and their interpretation, appropriate communication of such uncertainty to the client is necessary.</p> <p>However, we note that in the Malaysian context, advising a client on any tax avoidance scheme (even if it is within the law and not tax evasion) is not relevant as doing so would expose a client to penalties for any anti-avoidance adjustments under Section 140 of the Income Tax Act 1967.</p>
27	Mo Chartered Accountants (Zimbabwe)	<p>Interpretation of tax legislation is always going to pose a challenge. We agree and support the view that should the tax authority grant consent on a tax treatment that will be acting in the public interest. What can't be gauged is the level and extent of consultation that may occur in this direction.</p> <p>We believe that the four factors mentioned in section 36 may go a long way in ensuring that PAs have considered the wider public interest and should be documented and maintained as per the deliverables of such engagements.</p>
28	National Association of State Boards of Accountancy	<p>NASBA agrees that PAs contribute their knowledge, skills and experience to assist clients or employing organizations meet their TP goals while complying with tax laws and regulations, however, it is equally important to not establish a higher standard of conduct for PAs than other non-PA TP individuals or entities. Further, NASBA agrees that PAs play an important role in assisting clients or employing organizations in meeting their tax obligations and not seeking to circumvent them through tax evasion; however, tax minimization, if authorized by law, should not be viewed as a violation of this fundamental principle.</p>

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29	Pennsylvania Institute Of Certified Public Accountants	<p>The committees note that practitioners act in the public interest by assisting clients in compliance with the tax code. However, the committees also note that in the United States the tax authority is not the final determiner of the legality of a tax return position. The U.S. judicial system is the final authority of the law. Therefore, the tax authority's agreement with a particular tax treatment or structure at the time of consultation is not an appropriate indicator of whether the practitioner is acting in the public interest. In the United States, the IRS has developed a robust process for companies to take tax return positions, and it is in the best interest of the public that the practitioner follows the applicable laws and regulations of the jurisdiction rather than aspirational guidance included in this proposal.</p> <p>The committees do not believe that the threat of legislation in the European Union (EU) (cited in the Explanatory Memorandum) to regulate tax advice and tax advisers justifies revising the Code to include detailed tax-planning standards. The United States, for example, already has a robust process for regulating tax preparers and taking tax return positions, and the AICPA already has standards for tax services, including advising on tax positions, knowledge of errors, data protection, reliance on tools, tax return positions, tax return questions, reliance on information from others, use of estimates, etc.</p> <p>The committees agree that sound practice management activities include considering the potential risks of the tax position to their clients or employing organization and the reputational risks. These risks include many factors, but do not typically involve predicting public opinion or reactions on social media. The committees note that public opinion is fluid, and social media is unpredictable and not necessarily representative of public acceptance. Practitioners should be primarily focused on following the guidance in a particular jurisdiction. Attempts to force professional accountants to go beyond the enacted legislation to integrate stakeholder perception into their advice seems to be contrary to the public interest and should be prohibited by the Code. The committees note specifically that in the United States such advice could result in litigation against a member.</p>
30	PKF (Durban)	<p>Acting in the public interest in the context of TP is very subjective and the application of this principle would be very difficult on a practical level. Many PAs would attempt to balance the needs of the fiscus (affecting society at large) whilst ensuring the most tax efficient position for their client (shareholders) as that is what the client is engaging the relevant PAs services and expertise for. The public interest as noted in paragraph 34 of the EM may at times result in a conflict of interest for the PA which is beyond his/her control as to which stakeholder included in the "public interest" category takes preference.</p>

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		<p>In the South African context for example, a client may approach a PA stating that his estimated taxable income is R4 million rand but because he is entitled to a deduction for donations made to approved (section 18A) Public Benefit Organisations (PBOs) that he would prefer to rather donate up to R400,000 to a PBO (e.g. The Gift of the Givers) where he is confident that the funds donated are being used for benefit of society at large as the work undertaken by this organization is rather publicized and the head of that organization Dr Imtiaz Sooliman is on site whenever the country faces a crisis as opposed to government who are often slow to react and in addition there is a perceived very high level of corruption in our country.</p> <p>As a PA, my client has made a valid point in terms of why he believes he is acting in the public interest in addition he is entitled to claim such deduction in terms of the SA tax law hence I would agree that such donation, provided he obtains the necessary certificate from the PBO etc., should be made to be tax efficient and would also serve the public interest. However, another PA may take a differing view and propose that making such donation may be regarded as aggressive tax planning and not advise the client to make such a donation or at least not to such a large extent. There is a very high level of subjectivity in applying this concept.</p> <p>As a point of departure, it must be emphasized, as many courts of law have concluded, taxpayers are legally entitled to tax planning (i.e., to arrange their affairs to minimize their taxes). Consequently, those who assist them in achieving this, while meeting the laws of the relevant countries, are acting in the public interest. This state of affairs exists even though it may be in contrast to revenues services mandate to collect as much tax as the law requires and governments to use as much tax to provide services and public goods to those in that country.</p> <p>The fact that the latter is in the public interest does not denigrate that the former is as well and the wants and wishes of revenue services and governments still must remain within the confines of the law, just as is expected from taxpayers and advisers. It is the law that they ultimately create. This principle is illustrated in the example above.</p> <p>The ED states:</p> <p>"Above all, the IESBA aspires to rise to the challenge of reinforcing public trust in the global accountancy profession." Its however unclear which "public" IESBA is referring to? Is it governments and regulators or is it the members of the profession (who are also the public) and their clients and employers? The ED seems to want to deal primarily with the former even if at the cost of the latter, notwithstanding that the targeted conduct of the latter under review is by the ED's own admission legal under the countries they reside in.</p>

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		<p>It is a concern that globally, the tax advisory profession has been treated as inherently not being in the public interest and globally governments seem not to worry about the sustainability of the profession, which like the globally declining audit profession which a similar single-minded approach has been applied, is also under pressure.</p> <p>South Africa is a developing country and as was evident from the Panama Papers and HSBC leaks is that taxpayers and advisors in developed countries are mostly responsible for "aggressive tax planning", the financial flows of which are in most instances to the benefit of the economies of those developed countries. Much of the financial reporting occurs at consolidated basis in the developed countries, remaining opaque to developing countries where the beneficial flows originate. This state of affairs is in many instances enabled by developing countries lack resources to implement complex tax administrations or to match the developed countries political and legal tax regimes that enable these tax indifferent flows.</p> <p>In South Africa we have a definitive interest in addressing "aggressive tax planning" but it must operate within the confines of the law i.e., unlawful conducting or hiding unlawful conduct should be the object. In this regard, enabling more transparency through financial reporting, especially in countries from where financial flows originate and identifying where it ultimately goes would significantly assist developing countries in addressing this matter. Transparency in reporting as to not only as relates to the taxpayers' affairs but as to who is providing such advice will further deter "playing on the line" between what is lawful and unlawful or illegal.</p> <p>In addition, it is also important to note that SA was one in the first batch of countries to adopt the common reporting standards (CRS) and began first exchanges in September 2017 and country-by-country reporting (cBcR) (applicable for years of assessment commencing on or after 1 January 2016) which confirms that we are a country where tax transparency has been promoted and additional measures have also been taken since the countries recent "grey listing" to further improve such transparency which will deter aggressive tax planning due to the additional disclosures that are now being required.</p>
31	Price Bailey	<p>Price Bailey believes firmly in our responsibility, and that of the wider accountancy profession, to act in the public interest. It is an important mandate for us as a profession. The ICAEW Code of Ethics has an overriding public interest requirement we also adhere to the Criminal Finances Act re: non-facilitation of tax evasion and the UK Professional Conduct in Relation to Taxation Guidance (PCRT).</p>

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		<p>We note however that, given the 200+ references to the concept of public interest in the IESBA Code, nowhere is it actually defined. Nor does it appear to be defined elsewhere, though there have been efforts to assist in its analysis.</p> <p>Public interest is a particularly difficult concept when it comes to tax planning, as many discussions on the topic are inherently politically charged. For example, it is difficult to completely ignore concepts of tax justice as it is these that tend to inflame public opinion the most.</p> <p>This is not helped by the fact that tax is generally reported upon poorly in the media which can further inflame public opinion, perhaps more in fact than poor advisers or lack of regulation. Just because the public might be interested does not necessarily mean that a matter is in the public interest.</p> <p>We therefore welcome IESBAs distillation of the concept in this context to two main threads:</p> <ul style="list-style-type: none"> • Complying with laws and regulations • Giving high quality advice <p>We also welcome IESBAs acknowledgement that assessing public interest will be an ‘impossible task’ in some circumstances, particularly those that involve cross-border transactions.</p>
32	Public Accountants and Auditors Board Zimbabwe	<p>The PAAB agrees with the IESBA’s proposals regarding the role of the PA in acting in the public interest as PAs ought to consider interpretation of the tax legislation, PA’s expertise and reputational risks, perception issues and the complexity of TP transactions like cross-border transactions. This is necessary to ensure that the output is premised upon a holistic consideration of the factors.</p>
33	Saudi Organization for Chartered and Professional Accountants	<p>We generally agree with the IESBA's proposed changes making the effort to exhibit the PAs' role to act in the public interest since that represents part of the IESBA's objectives to make the proposals. However, as noted in our comment on the previous question, it is still puzzling whether the TP services based on the new proposed definition and changes to the Code are different than simply providing tax advises in accordance with relevant tax laws and regulations. We felt that Section VII.B confirmed that IESBA chose not to define or describe the public interest in terms of TP’s ethical guidance. Instead, it chose to describe it from PAs perspective that serving the public interest is for PAs to contribute their knowledge, skills and experience to assist clients or employers to meet their TP goals while complying with tax laws and regulations. Thus, while the proposed changes are trying to emphasize on the idea that unethical TP is different than the idea of tax evasion (unlawful tax advisory), they still depict a picture of PAs' role in</p>

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		<p>serving the public interest through ensuring tax payers' compliance with tax laws and regulations. Likewise, it was highlighted that non-compliance with tax laws and regulations is only to be determined by courts or other appropriate adjudicative body. Therefore, we think that these thin differences between those concepts should be made clear enough in the proposed ethical guidance.</p>
34	<p>South African Institute of Chartered Accountants</p>	<p>SAICA disagrees with the proposals explained in Section VII.B regarding the role of the PA in acting in the public interest in the context of TP based on the following:</p> <p>(a) Paragraph 34 of the explanatory memorandum notes that “the IESBA has recognized that there was a perceived challenge concerning understanding who is considered the public and interests of those groups of stakeholders PAs are expected to serve in the public interest” and paragraph 37 indicates that “considering all observations during the roundtable discussions, the IESBA determined not to attempt to define or describe the public interest in the abstract given the variety of considerations that may influence the meaning.” This highlights the complexity of determining what is in the public interest by PAs in TP. The proposal does not provide guidance as to how far should a PA go when determining public interest and which stakeholders' interest take preference over those of others. This therefore gives rise to a high level of subjectivity and inconsistency in the application of public interest amongst PAs.</p> <p>(b) It has been noted that the proposed paragraphs 280.4A1 – A3 are application guidance with no requirements. It is envisaged that application guidance should be provided to guide PAs. Given that the background and understanding contained in the explanatory memorandum will not appear in the Code once the proposed revisions are approved and published, the application guidance may cause confusion amongst PAs. This may result in the term “public interest” being inconsistently applied. Furthermore, PAO's may experience challenges in monitoring the application of these paragraphs as a result of a lack of understanding and background as to what these paragraphs are trying to achieve without the background being provided in an introductory paragraph. Paragraphs 280.4A1 – A3 will be better placed in a guidance document for PAs which will allow for more information to be included to guide PAs on the considerations to be made when determining public interest.</p> <p>(c) Members have also noted that the proposed paragraphs may not be practical to implement. For example, in instances where PA's may be challenged by Revenue Services and the PA may be required to go into a tax dispute where there are valid reasons that the position of the PA is correct. In this instance, even though tax disputes may be recognized by legislation and the PA may be correct in his or her view, the fact that the PA is disputing the Revenue</p>

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		<p>Service’s view may be seen as not acting in the public interest despite the PA being correct. Therefore, this may become a conflict of interest for PAs in determining which public interest may take preference – shareholders, the revenue services, investors or the public at large. Furthermore, how does a PA test that their decision in terms of what constitutes the public interest is correct?</p> <p>(d) Therefore, acting in the public interest in the context of TP is a very subjective concept and the application of this principle would be very difficult on a practical level. Many PAs would attempt to balance the needs of the fiscus (affecting society at large) whilst ensuring the most tax efficient position for their client (shareholders) as that is what the client is engaging the relevant PAs services and expertise for. The public interest as noted in paragraph 34 of the EM may at times result in a conflict of interest for the PA which is beyond his/her control as to which stakeholder included in the “public interest” category takes preference.</p> <p>(e) It should also be noted that case law in South Africa allows taxpayers to arrange their affairs in such a way to pay minimum amount of tax legally due – it is acceptable and allowable to do so.</p>
35	WirtschaftsprüferKammer	<p>We agree with IESBA’s proposed contextual guidance describing how professional accountants ‘help to facilitate a more efficient and effective operation of a jurisdiction’s tax system, which is in the public interest’ (380.4 A1). This understanding coincides with the German view.</p>