

**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**.

*Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement*

4. Do you agree with the IESBA’s proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?

No	Respondent	Respondent Comments
1	<a href="#">Accountancy Europe</a>	<p>Accountancy Europe agrees with IESBA's conclusion that it would be inappropriate to determine uncertainty with measures based on the percentage likelihood that a particular tax planning arrangement will succeed in law (which is in itself very subjective).</p> <p>There were some fundamental concerns raised by our constituents about the interpretation and determination of what constitutes a ‘credible basis,’ and how this test is intended to work in practice. This may be an area deserving of more detailed application material to provide further guidance.</p> <p>Concern has been raised that the wording of R380.11 which precludes a PA from advising the client about an alternative arrangement after the PA has decided that the arrangement under discussion has no credible basis. Article 380.11 A1 mentions that the PA is allowed to explain to the client their rationale but does not explicitly mention possibility of suggesting alternative arrangements that would have a credible basis. In any event, the wording of R380.11 has precedence over 380.11 A1 and it is unclear whether the PA explaining their rationale would also include the possibility of presenting alternatives. We suggest that the wording is amended to explicitly permit PAs to present alternatives to the arrangement that has no credible basis – if this is not the IESBAs intention then the reasons for this should be stated.</p> <p>The thought process described in 380.11 A3 provides a solid foundation to assess whether a credible basis exists but we wonder whether further commentary and examples could help PAs navigate this process.</p>
2	<a href="#">Accounting Professional &amp; Ethical</a>	<p>APESB is supportive of the requirement for professional accountants to determine that there is a credible basis in laws and regulations when providing tax planning services. We believe it formalises the best practice processes that professional accountants should undertake to develop an effective and appropriate tax planning service for their clients or employer.</p>

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	<a href="#">Standards Board Limited</a>	<p>However, when considering the process a professional accountant would follow in determining a credible basis, we are of the view that considering uncertainty would be a key element in making that determination. The discussion with the client about uncertainty (as per proposed paragraph R380.16) lends itself to gathering further information and facts that may support the determination of a credible basis. As such, APESB is of the view that the proposed requirements and application materials on circumstances of uncertainty (e.g., proposed paragraphs 380.15 A1 – 380.16 A1) should be relocated to be before the material on the basis for recommending or otherwise advising on a tax planning arrangement (e.g., before proposed paragraphs R380.11).</p> <p>In reviewing the requirements and application material relating to a credible basis, APESB noted that there was no consideration for instances when the circumstances surrounding the tax planning advice changed. Accordingly, we encourage the IESBA to consider including additional guidance on circumstances where the determination of credible basis needs to be reassessed, including when circumstances change or where the implementation of the tax planning service occurs over an extended period.</p> <p>We note that it is also unclear whether the provision of related activities or related services can only be performed if the professional accountant believes the initial tax planning arrangement has a credible basis. This consideration is particularly relevant when another party performs the initial tax planning arrangement.</p> <p>A regulatory stakeholder has expressed concern that as tax law is complex, different interpretations could be argued as credible, including technically credible interpretations that do not meet the tax law's intent. Accordingly, this stakeholder believes the IESBA should introduce a test level higher than credible as it is in the public interest and helps to ensure fairness and equity in the tax system, and it will be consistent with the policy intent of the law.</p> <p>The 'reasonable care' or 'reasonably arguable' standard is used in Australia. An entity will be liable for penalties if it doesn't abide by these legislative requirements in Australian Tax law.</p> <p>If the IESBA is of the view that the proposed credible basis test is to be maintained at that level, this regulatory stakeholder suggested that the proposed paragraph 380.11 A2 be amended to include the following additional sentence at the end of the paragraph:</p> <p>"A failure to meet a jurisdiction's relevant tax laws and regulations is likely to result in the tax planning arrangement not having a credible basis for the purpose of paragraph R380.11."</p>

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		<p>The additional text will reinforce the need for professional accountants to apply the legal standard applicable in their jurisdiction to determine the credible basis.</p> <p>Some stakeholders at the APESBA roundtable believed that using professional judgement to determine if there is a credible basis would be challenging. Therefore, they suggested that additional guidance on what is not a credible basis would support the professional accountant in their application of professional judgement to determine what is a credible basis.</p>
3	<a href="#">American Institute of Certified Public Accountants</a>	<p>We agree that the overall concept of the “credible basis” of a tax planning arrangement being based on the laws and regulations of the relevant jurisdiction at the time of the evaluation of such an arrangement by the PA is reasonable.</p>
4	<a href="#">Association of Chartered Certified Accountants</a>	<p>We support the IESBA’s proposals and note that they are compatible with our <a href="#">Global policy on taxation of companies: principles and practices</a> which is clearly against companies’ pursuance of aggressive tax avoidance, i.e., completely artificial arrangements that have no clear purpose other than to avoid tax by complicated schemes.</p> <p>However, we observe that ‘credible basis’ is not defined as this can vary from jurisdiction to jurisdiction. As an alternative, and to strengthen application, we suggest that this be complemented by the reasonable and informed third party test in paragraph 120.5 A6 of the Code.</p>
5	<a href="#">BDO International</a>	<p>BDO agrees with the principle that PAs should determine that there is a credible basis in laws and regulations for any tax position on which they provide advice.</p> <p>Although the terminology and intricacies may differ from one jurisdiction to the other, the requirement for a PA to establish a credible basis (within the ordinary meaning of these words) for their advice is consistent with the fundamental principle of professional competence and due care, and a practical example of operationalising the IESBA Code.</p> <p>Having said that, although paragraph 58 of the Explanatory Memorandum states that the “likely to prevail” threshold is higher than the “credible basis” threshold, the actual intended meaning of “credible basis” is not addressed and therefore unclear.</p> <p>Also, despite the stated intention in paragraph 52 of the Explanatory Memorandum not to ‘unduly preclude’ PAs advising in situations where there is no credible basis, proposed paragraph 380.11 appears to do exactly that by saying: “...otherwise advise...only if”. For some backward looking tax work (such as resolving disputes with tax authorities) there may be cases</p>

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		<p>where there was no credible basis for the tax position, but advice will still be needed in order to help clients remedy the position with tax authorities.</p> <p><u>Paragraph 380.11 A3</u></p> <p>While BDO notes the list of actions that a PA might take to determine that there is a credible basis, as provided in proposed paragraph 380.11 A3 of the ED, the lack of a definition for “credible basis” will make this difficult to implement.</p> <p>The list of possible actions provided that a PA may take to determine that there is a credible basis, is wide-ranging, from the basic “reviewing the relevant tax legislation” to the conservative “consulting with the relevant tax authorities”. The ED is not clear on the extent of the actions that the PA is required to take to conclude that the TP arrangement has a credible basis. Such lists included in the IESBA Code may become checklists of items to be addressed, as opposed to promoting the right mindset.</p> <p>BDO also questions whether the action to consider how likely it is that the arrangement would be accepted by the relevant tax authorities (bullet point 7), is a suitable test of whether there is a credible basis. The tax authority does not necessarily determine the correct tax position. It may be that an arrangement is defensible in court without being accepted by the relevant tax authorities. BDO therefore recommends that greater importance should be afforded to decisions by Courts, with greater authority and persuasiveness to higher courts.</p> <p>BDO recommends that:</p> <ol style="list-style-type: none"> <li>a. “Credible basis” be defined by reference to the equivalent terms used in the professional standards, practices, laws and regulations relevant to TP services that are currently effective within the relevant jurisdiction(s). If none are effective within the relevant jurisdiction, then the PA would default to ‘reasonable grounds’. This point seems to be accepted in proposed paragraph 380.11 A2, but for this to be clear our view is that it should be stated unequivocally; and</li> <li>b. The list of actions contained in 380.11 A3 be moved out of the ED to a guidance document, after deleting bullet point 7. If the IESBA decides to keep this list of actions in section 380, BDO recommends that it is made clear that these are just examples of actions that might be taken, and that there is no expectation for a PA to take all of these actions in all instances.</li> <li>c. The application of these actions might differ from jurisdiction to jurisdiction and this should also be acknowledged.</li> </ol>
6	<a href="#">Chartered Accountants and</a>	We agree with the intent of the IESBA’s proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing

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	<a href="#">CA Australia and NZ</a>	<p>organization, as described in Section VII.E of the EM. In particular, we support the IESBA’s decision not to define the term “credible basis” in order to allow individual jurisdictions to define this concept themselves based on their own commonly understood and accepted definition of what is acceptable practice. We agree with the observations shared by roundtable participants described in para 51 of the ED.</p>
7	<a href="#">Chartered Accountants Ireland</a>	<p><u>Anti-avoidance laws and regulations and credible basis test:</u></p> <p>In terms of the extent to which a credible basis test is performed, we welcome IESBA’s acknowledgement that anti-avoidance laws and regulations apply in some jurisdictions, as is the case in Ireland and the United Kingdom, and where they exist that the professional Accountant must comply or advice compliance with them (380.6 and 280.6).</p> <p><u>Inclusion of credible basis test as part of conceptual framework:</u></p> <p>We agree with the IESBA emphasis in 380.11 A2 and 280.11 A2 the requirement for professional judgment when determining whether a credible basis exists. Also, as highlighted in 380.10 A1 and 280.10 A1, compliance with the above requirements is further enhanced by Section 120 of the Code of Ethics, the requirement for a professional accountant to have an inquiring mind and exercise professional judgment when considering the specific facts and circumstances relating to the tax planning activity. Consistent with our response to question 1 above, we recommend incorporating consideration of a credible basis as part of the Conceptual Framework of the Code of Ethics where professional judgment is comprehensively addressed.</p> <p>We agree with the IESBA conclusion that “<i>it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold as doing so would convey a false sense of accuracy</i>”, especially given that what is a credible basis in laws and regulations will vary from jurisdiction to jurisdiction.</p> <p><u>Responsibilities of all professional accountants:</u></p> <p>The requirement 380.9 falls under the heading of applying to all professional accountants. However, some of the content is specific to Professional Accountants in Public Practice (PAPP). Some differences are notable when compared to the requirement 280.9, applying to professional accountants in business. Therefore, the headings for each of the sections these requirements fall under is confusing and may be best described as “<b>Other responsibilities for professional accountants in Public Practice</b>” (in respect of section 380) and “<b>Other responsibilities for professional accountants in business</b>” (in respect of section 280).</p>

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8	<a href="#">Chartered Professional Accountants Canada Public Trust Committee</a>	<p>The PTC agrees with the IESBA's proposals to introduce a thought process for PAs to determine whether there is a credible basis for a TP but recommends that the IESBA make some clarifications in this area to assist PAs in making this determination and to improve enforceability.</p> <p>Specifically, the PTC recommends rewording proposed paragraph R380.11 to include specific reference to the use of professional judgement (currently it is only mentioned in application material) and expanding upon the language at the end of the paragraph "... in laws and regulations..." to also include "jurisprudence and other authoritative resources".</p> <p>In addition, some stakeholders suggested converting proposed paragraphs R280.11 and R380.11 into application material due to the subjectivity of the term "credible basis" and the limited examples. To address this, the PTC recommends expanding the guidance in paragraphs 280.11 A2 and 380.11 A2 to tie into the Reasonable and Informed Third Party Test in paragraph 120.5 A6 to direct PAs to an existing framework that will assist them in making a determination about whether there is a credible basis for a TP arrangement in a broad range of circumstances.</p> <p>Finally, the PTC notes that the proposed application material in paragraphs 280.11 A1 and 380.11 A1 is not clear regarding whether the PA can apply discretion in considering whether to advise the client or employing organization of their rationale when they determine that the TP does not have a credible basis in laws and regulations. The PTC thinks that this is inconsistent with the requirement in R280.13 and R380.13 for the PA to explain the basis for their conclusion after applying the stand-back test. We suggest that the IESBA consider making this a requirement in both paragraphs. If there is any specific reason for this difference, we recommend that it be clarified in proposed paragraphs 280.11 A1 and 380.11 A1.</p>
9	<a href="#">CPA Australia</a>	<p>CPA Australia supports the proposed paragraphs 380.11 to 380.11 A3 and note that these are reflective of current TP practices. We make the following suggestions to aid interpretation and application of these paragraphs:</p> <ul style="list-style-type: none"> <li>• R380.11 refers to "laws and regulations". However, 380.11 A2 acknowledges that a determination of credible basis will vary from jurisdiction to jurisdiction due to the difference between laws and regulations across respective jurisdictions. 380.11 A2 achieves this with the use of the word 'relevant'. As tax planning arrangements may often be cross-border, jurisdictional differences become key and for this reason the reference to a credible basis being formed in relevant laws and regulations should be emphasised.</li> <li>• The factors listed in 380.11 will differ in relative importance depending on the scope and form of TP advice and may not always lead to the same determination. For clarity, 380.11 A2 should include a recognition that PAPPs and PAIBs</li> </ul>

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		<p>are able to weight the factors listed in 380.11 A3 based on their professional judgment and that not all factors will be relevant for every TP engagement.</p> <ul style="list-style-type: none"> <li>• Consideration could also be given to statements to the effect that:           <ul style="list-style-type: none"> <li>○ the likelihood of detection by the revenue authority should not be a factor for consideration as it is not a valid basis for determining credibility, and</li> <li>○ in assessing the credibility of a position, the PAPP/PAIB should look at whether the outcome is credible, not just reviewing the inputs (e.g., legislation and administrative guidance).</li> </ul> </li> <li>• We observe that 380.11 A1 notes that R380.11 “does not preclude” the accountant from explaining their rationale to for determining whether a tax planning arrangement has a credible basis. In contrast, 380.13 requires an accountant to explain to their client in the circumstance that they advise against a tax planning arrangement on the basis of anticipated adverse reputational and commercial consequences arising from such an arrangement. CPA Australia contends that an accountant’s obligation to explain to their client their rationale for advising against a tax planning arrangement will be due to the absence of a credible basis. The proposed requirement for accountants to explain their rationale advising against the arrangement on the basis of potential adverse reputational and commercial outcomes is inappropriate and should be removed.</li> <li>• CPA Australia recommends that the non-exhaustive list at 380.11 A3 refers to legislative supplementary materials in addition to legislative proceedings, as both may contribute to the understanding of legislative intent.</li> </ul>
10	<a href="#">Deloitte Touche Tohmatsu Limited</a>	<p>Deloitte Global is supportive of the Board’s approach with respect to a professional accountant’s determination that there is a credible basis in laws and regulations when recommending or otherwise advising on a TP arrangement.</p> <p>Deloitte Global recommends, however, that the Board considers the following suggestions intended to strengthen the impact of the standard on promoting ethical tax planning conduct and practice as well as to improve the standard’s clarity and alignment with the explanatory memorandum:</p> <ul style="list-style-type: none"> <li>- Paragraph 51 of the explanatory memorandum seems inconsistent with the standard in which it refers to professional accountant establishing “a credible basis for their advice” – which implies broader consideration than solely a “credible basis in laws and regulation” as noted in paragraph R380.11. We believe that the consideration of “credible basis” should indeed include assessment of facts and circumstances to which the laws and regulations need to be applied. While a professional</li> </ul>

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		<p>accountant should not be required to “audit” the factual information furnished by its client, they should not ignore the implications of the information provided to, or actually known by, the professional accountant and they should make reasonable inquiries if the furnished information appears incorrect or incomplete. We encourage the Board to consider whether to extend the scope of this consideration, at least through the application material.</p> <p>- We recommend that paragraphs 380.11 A1 and 280.11 A1 clarify, in line with the explanatory memorandum (paragraph 55), that where the professional accountant does not consider that the proposed arrangement has a credible basis in laws and regulations, they may advise why that is the case, and may, but are not obliged to, advise on alternative TP arrangements that do have a credible basis.</p>
11	<a href="#">Ernst and Young Global Limited</a>	<p>If the Board decides to proceed with the proposed revisions, we do not take exception to including the concept of a credible basis in laws and regulations in the ethical framework for TP&amp;R Services, and agree that the PA should establish reasonable grounds for their tax planning recommendation or advice, as explained in paragraph 58 of the EM. We agree with the Board’s view expressed in paragraph 58 of the EM that the likely-to-prevail threshold in Section 604 is a higher threshold than the credible-basis threshold, and believe this point is critical for a proper understanding and effective implementation of proposed paragraph R380.11. Therefore, we recommend that this point be included in the proposed revisions, or be made clear in the Basis for Conclusion or other potential non-authoritative material the Board might consider. Such an explicit acknowledgement by the Board would bring clarity for firms and other stakeholders that the credible-basis threshold is a lower threshold than the likely-to-prevail threshold.</p> <p>With regard to the actions that a PAPP might take to determine that there is a credible basis listed in proposed paragraph 380.11 A3, we agree that these are relevant but would suggest replacing the word “Reviewing” is some of the items with “Understanding,” since the term “Reviewing” may not convey that a level of understanding is needed, in particular for the following items:</p> <ul style="list-style-type: none"> <li>• <del>Reviewing</del> <u>Understanding</u> the relevant facts and circumstances, including the economic purpose and substance to the arrangement.</li> <li>• <del>Reviewing</del> <u>Understanding</u> the relevant tax legislation.</li> </ul>
12	<a href="#">European Federation of Accountants and</a>	<p>We do not agree with some of the proposals.</p> <p>We believe that the term ‘credible basis in laws and regulations’ is very subjective and may present practical challenges for a PA to determine. If “credible basis” is to be retained, then further explanation is necessary to help the PA make the</p>



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	<a href="#">Auditors for SMEs</a>	necessary determination. It is not clear who is best placed to define and difficult to assess if PAs are complying. We urge further clarity and / or illustrative examples.
13	<a href="#">European Tax Adviser Federation</a>	<p>We generally agree that a professional accountant should provide tax advice on a tax planning arrangement only after concluding that there is a credible basis in tax laws and regulations and that this process will require him to exercise his professional judgment. In our view, the proposed revision demands nothing more here than a diligent exercise of the profession.</p> <p>We also welcome the examples of actions to be undertaken to determine the credible basis listed in paragraphs 380.11 A3 and 280.11 A3.</p>
14	<a href="#">Grant Thornton International Limited</a>	<p>GTIL agrees that the concept of ‘credible basis’ of a tax planning arrangement being based on the laws and regulations of the relevant jurisdiction the professional accountant practices in, is a reasonable approach. However, the term ‘credible basis’ in the proposed standard is not defined with sufficient clarity for it to serve as an operational rule for professional accountants when performing tax planning services.</p> <p>Many jurisdictions have well defined standards, laws and regulations which address levels of strength of authority for a tax position, how the tax position is to be evaluated, requirements that the strength of a tax position be communicated to a client, disclosure requirements in tax returns of positions to taxing authorities, areas where a professional accountant’s advice may not be relied on by a client, and penalty structures applicable to both the professional accountant and client for failure to comply.</p> <p>In such jurisdictions, the overlay of a ‘credible basis’ standard and other related requirements will create unnecessary confusion and incur unnecessary costs to both clients and professional accountants without adding any additional benefit.</p>
15	<a href="#">IFAC Small and Medium Practices Advisory Group (SMPAG)</a>	<p>The SMPAG agrees with the concept of establishing a ‘credible basis in laws and regulations’ (R380.11), but notes that this would be highly subjective and could pose practical problems for a PA to determine without further clarity or examples to support them, as they would not always be best placed to do this . From the point of view of Professional Accountancy Organizations (PAOs) to the extent that they may perform oversight over members’ activities, much like public interest considerations, it would also be very difficult to assess if PAs were complying.</p> <p>As mentioned in the cover letter, R380.12 is potentially also problematical, in that even when a PA has established a credible basis for a particular tax planning arrangement, the PA is required to go further and consider reputational, commercial and</p>

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		<p>wider economic consequences using professional judgement about stakeholders’ possible views on the specific arrangement. We suggest this applies only when the PA encounters so-called “grey zone issues” and not to all tax planning arrangements. We are also concerned that this consideration may prove impossible in some cases. The results of this test (i.e., the PAs identification of consequences and related risks) are ultimately decisive for the PA’s determination not to recommend a or otherwise advise on a tax planning arrangement in R380.13. As explained in our general comments above, we suggest the IESBA clarify that the relative significance of the identified consequences will factor into the PA’s action in regard to whether to disassociate from the arrangement, withdraw from the engagement, or even from the relationship with the client, since at this stage the PA has already established that a credible basis exists for the tax planning arrangement and due to the subjectivity involved in complying with R380.12.</p> <p>A further issue is in relation to the apparent disconnect between ‘credible basis in laws and regulations’ (e.g., 380.11 A1, R280.11), including the uncertainty referred to in 380.15 A1 and the notion that arrangements may not be prohibited by tax laws and regulations and yet may still be problematic (e.g., 280.4 A2). Perhaps some alignment is needed for these two concepts as they could be the source of some confusion.</p>
16	<a href="#">Independent Regulatory Board for Auditors</a>	<p>We note that the intended meaning of “credible basis” is not addressed, and it would be open to interpretation and inconsistent application by PAs. We suggest that the IESBA clearly articulates what is meant by credible basis.</p> <p>In the South African context – in terms of the Tax Administration Act No. 28 of 2011, Section 223(3)(b)(iii) – the “more likely than not” position indicates that the PA must confirm that there is a more than 50% chance of success of the taxpayer’s position, should the matter proceed to court. This threshold is in fact lower than the “credible basis” threshold proposed. As such, we are of the view that paragraph 380.11 A2 would supersede the credible basis test, as the domestic legislation would override this provision.</p> <p>We also question whether this list of “procedures” (described as examples) that a PA may undertake to determine a credible basis will be viable or practical, as it is very comprehensive and long. The number of the actions that the PA may need to take is also unclear.</p> <p>Further, we suggest that paragraph 380.11.A2 should clarify that the equivalent local laws and regulations will prevail.</p> <p>In respect of paragraph 380.11.A3, bullet point 7, acceptance by the relevant tax authority is not a requirement, as the issue is whether it would be defensible in court. As such, we suggest that bullet point 7 be reworded to read as follows:</p>

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		<p>“considering how likely the proposed arrangement <i>would be successfully defended in court or</i> accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed”.</p>
17	<a href="#">Institute of Certified Public Accountants of Uganda</a>	<p>The notion of ‘Credible Basis’ seeks to require a PA to always have a basis on which they provide their tax advice. Since obligations under the Code calls for reciprocal compliance from the PAs, in the event of non-compliance with the assessment of a credible basis, one wonders how this would be assessed for purposes of proving that the PA failed to comply with it if a matter of professional misconduct is to be brought against the PA. More illustrative scenarios may be needed to draw more clarity on the principle of a credible basis.</p>
18	<a href="#">Institute of Chartered Accountants in England and Wales</a>	<p>See general comments above. We appreciate the difficulty in formulating a test which will be acceptable internationally and the credible basis is a reasonable starting point. While we believe that the credible basis test sets an appropriate principles-based test, we note that the PCRT also includes additional requirements which go further than this, namely a requirement for a realistic assessment of the facts upon which any advice or recommendations are made and that members must not create, encourage or promote certain arrangements that are likely to indicate abusive tax arrangements. Given the public interest concerns about members recommending, for example, highly contrived and artificial arrangements. IESBA should keep this test under review. We also think that IESBA should consider publishing further guidance on the application of the credible basis test.</p>
19	<a href="#">Institute of Chartered Accountants of Scotland</a>	<p>As noted in our earlier comments above, we are aware of some concerns about the adoption of the ‘credible basis’ test. PCRT also uses a similar ‘credible view’ test, albeit coupled with the need for any tax planning to be based on a realistic assessment of the facts and a credible view of the law. The PCRT test was formulated after an extensive consultation exercise and after discussions with leading counsel; we also note that ‘credibility’ is used in the law of evidence.</p> <p>We believe that this test, taken as a whole, sets an appropriate threshold, so in principle we support its use.</p>
20	<a href="#">Institute of Financial Accountants</a>	<p>The Consultation acknowledges that what is legal is not necessarily ethical, and yet the phrase ‘credible basis in laws and regulations’ appears to bring the focus back to legal compliance rather than ethical behaviour. Therefore, the term ‘laws and regulations’ should be more clearly explained in the context of these proposed paragraphs.</p> <p>We believe it is unclear, from proposed Sections 380 and 280, what the ‘thought process’ should be. Nevertheless, we consider a ‘credible basis’ for the tax advice to be a reasonable concept.</p>

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		The various actions provided as examples in paragraphs 380.11 A3 and 280.11 A3 are helpful. However, they suggest a significant resource is required to be able to exercise the required judgement – resources that may not be available to an SMP.
21	<a href="#">Institute of Singapore Chartered Accountants</a>	<p>The proposed paragraph R380.11 for a PA in public practice (PAPP) (or similar wordings in R280.11 for a PA in business) may be interpreted as prohibiting the PA from providing advice on a TP arrangement that has no credible basis in laws and regulations (L&amp;R). We believe this is not the intent of IESBA.</p> <p>In a scenario where the client or employing organisation had previously entered into a TP arrangement with no credible basis in L&amp;R and needed the PA’s advice to do the right thing, the PA should be permitted to provide advice on alternative TP arrangements that would have a credible basis in L&amp;R.</p> <p>For clarity, we propose the following amendments:</p> <p><b>R380.11</b> A professional accountant shall recommend <del>or otherwise advise</del> on a tax planning arrangement to a client only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement.</p>
22	<a href="#">Instituto dos Auditores Independentes do Brasil</a>	We agree with the IESBA’s proposals in Section VII.E of the Exposure Draft (Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement). However, the related paragraphs (R380.11, 380.11 A1, A2 and A3) could have references on the threats as described to the paragraphs 380.17 A1, A2 and A3. A misleading may arise if read separately.
23	<a href="#">International Bar Association Tax Committee</a>	We have no additional comments to this.
24	<a href="#">Japanese Institute of Certified Public Accountants</a>	<p>We agree with the IESBA’s proposal regarding the thought process for professional accountants. However, we would like to add the following comments.</p> <p><input type="checkbox"/> Although the provision in paragraph 380.11 A1 states that “paragraph R380.11 does not preclude the accountant from explaining to the client the accountant’s rationale for the determination”, paragraph 55 of the explanatory memorandum of the ED states that “The IESBA is of the view that it is important to emphasize that PAs are able to communicate to their client or the responsible parties within their employing organization if they have determined that a particular TP arrangement</p>

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		<p>does not have a credible basis. However, there is no obligation for the PA to recommend an alternative TP arrangement. (See paragraphs 380.11 A1 and 280.11 A1.)”.</p> <p>Even though the IESBA’s view that, if PAs have determined that a TP arrangement does not have a credible basis, it is important to emphasize that PAs are able to explain the fact to their client or their employing organization is presented in paragraph 55 of the explanatory memorandum of the ED, the negative wording of “does not preclude the accountant from explaining” is used in paragraph 380.11 A1, and the statement in paragraph 380.11 A1 does not seem to correctly express the IESBA’s original intent. In this regard, we believe that modifying the wording of paragraph 380.11 A1 to “an accountant is able to explain” to better reflect the IESBA’s intent will promote understanding by users of the Code.</p> <ul style="list-style-type: none"> <li>□ Paragraph 58 of the explanatory memorandum of the ED states that the “likely-to-prevail” threshold in Section 604 of the Code is higher than a “credible-basis” threshold. We suggest that more specific guidance should be provided as to how the concept of the “likely-to-prevail” threshold in Section 604 can be utilized in the consideration of the “credible basis” for TP.</li> <li>□ Paragraph 60 of the explanatory memorandum of the ED states that many participants were of the view that the PA should not recommend or otherwise advise the employing organization or client to proceed if the threshold of being successful in court was less than 50%. However, if the threshold is introduced in this manner, we believe that it is necessary to mention in the Basis for Conclusions, etc., that the criteria for judging may differ from past judicial precedents, practices and other factors in each jurisdiction.</li> </ul>
25	<a href="#">Korean Insitute of Certified Public Accountants</a>	<p>Cross-border transactions generally involve a high level of uncertainty in TP. And as described in the explanatory memorandum, the generally accepted threshold for TP may vary by jurisdiction, which makes it even more challenging to determine that there is a credible basis when cross-border transactions with varying levels of thresholds are involved. As the ED doesn’t provide additional guidance or considerations regarding the cross-border transaction, we ask to provide such additional relevant guidance on establishing a credible basis, in the Code or in the explanatory memorandum / relevant examples.</p>
26	<a href="#">KPMG International</a>	<p>Given the IESBA’s concern in translating “affirmatively advising,” we suggest that the IESBA add application material to specify that paragraph R380.11 does not preclude the PA from advising the client in situations where:</p>

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		<ul style="list-style-type: none"> <li>• the client may be considering tax planning that does not have a credible basis in laws and regulations and needs the PA's advice to explore options (e.g., alternate arrangements) which would have a credible basis in laws and regulations; or</li> <li>• the client may have entered into a transaction that does not have a credible basis in laws and regulations and now needs advice on how to address it (e.g., complying with relevant disclosure requirements under the law).</li> </ul> <p>The above would similarly apply to Section 280.</p>
27	<a href="#">Malaysian Institute of Accountants</a>	<p>We are agreeable with the proposals regarding the thought process for PAs. We are, however, of the view that the intended meaning of the term “credible basis” lacks clarity and guidance as the term is highly subjective. Another concern would arise when determining whether PAs are actually complying with these proposals due to their broad and subjective nature. We suggest that the term could be made clearer or further guidance be provided to assist the PA in determining what exactly a “credible basis” would mean.</p>
28	<a href="#">Mo Chartered Accountants (Zimbabwe)</a>	<p>We agree with the IESBA's proposals regarding the actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement.</p> <p>A credible basis in law and regulations needs to be further explained. For example, where the legislative intent behind tax laws is unclear or uncertain, and the related regulations or tax forms lack clarity, then how is this going to be resolved? Clear guidance needs to be had for the PA to follow.</p>
29	<a href="#">National Association of State Boards of Accountancy</a>	<p>NASBA agrees that a determination that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement is important; however, NASBA believes that additional commentary may be necessary regarding the considerations listed in Section 380.11 A3. As the marketplace evolves, TP arrangements may arise that do not fall within the considerations criteria listed in this area.</p>
30	<a href="#">Pennsylvania Institute Of Certified Public Accountants</a>	<p>The committees agree that the threshold for determining what is appropriate varies among jurisdictions. As to the use of the term “credible,” as it appears to assign a value judgment to the threshold, the committees recommend that this term be removed throughout the document. Further, the committees do not believe that this terminology is appropriately aligned with the requirements in all jurisdictions worldwide. The articulation of the appropriate basis in the tax code varies by jurisdiction and no global terminology is possible. The committees agree that there needs to be a basis in laws and regulations for tax</p>

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		<p>planning advice or arrangement. The committees do not support incorporating any qualifier to the term “basis” in this guidance.</p> <p>Furthermore, the thought process for determining the basis for a tax return position should not include legislative intent. There may be legal differences between the enacted legislation and the original legislative intent. The professional accountant should be following the enacted legislation and should not be encouraged to rewrite the legislation or the tax return forms to comply with an ambiguous concept of legislative intent. Especially in the United States, a piece of legislation may be enacted only after many revisions. It is not appropriate for professional accountants to provide biased, politically motivated tax-planning guidance. The Code includes ethical concepts of maintaining objectivity and being free from bias or conflicts of interest. The committees believe that these fundamental principles should not be overridden, as this would not be in the public interest.</p>
31	<a href="#">PKF (Durban)</a>	<p>We would prefer not to have a comprehensive list of "procedures" (described as examples) that a PA should undertake to determine a credible basis as there is concern that these 9 examples may be regarded as a "check list" should a PA find himself in a position where there is an argument that he did not have a credible basis purely because he omitted one of the 9 examples which in his professional judgement was not required because he might have already had sufficient knowledge/experience in that specific area of tax, as an example. Paragraph 380.11.A3 can be compared to a list of audit procedures which is included in the Code which may be inappropriate as the Code should be principled based.</p> <p>Additionally, it noted in the context of providing tax services or tax planning that not every request from a client for tax advice would justify the resources (time spent and costs of research etc) to issue a formal written tax opinion.</p> <p>In practice tax advice can be verbal or via email (i.e., not on a formal letterhead of such public practice etc) simply because the PA from the service was requested may have the adequate experience and knowledge to render such tax advice, having considered his/her provisional competence and feel comfortable enough to render such service verbally without documenting the basis upon which that tax conclusion was reached.</p> <p>This type of situation arises more often than not and should the PA be found to be negligent in rendering such advice then he/she would not be complying with the fundamental principle of the code in terms of professional competence and due care and should be disciplined in terms of the general disciplinary process contained in the code.</p>

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32	<a href="#">Price Bailey</a>	<p>We believe the guidance on actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement is helpful.</p> <p>However, it may be more helpful to articulate ‘credible basis’ by reference to some of the expected % success rates that were suggested during the roundtables. Whilst we understand IESBAs reluctance to include a threshold or indeed a range of threshold there are some helpful comments in the explanatory memorandum that don’t make it into the exposure draft, namely an acceptance that the threshold for ‘credible basis’ is lower than ‘likely’ (50%) and possibly significantly lower (20%) in some jurisdictions. We suggest, at the end of Para 380.11 A2, adding “in many jurisdictions credible basis is lower than likely or 50% probability and where sufficient disclosure is made in accordance with the local requirements could be significantly lower.”</p>
33	<a href="#">Pricewaterhouse Coopers International Limited</a>	<p>We agree, noting that interpretation of the applicable laws and tax treaties under interpretation rules of the relevant jurisdiction and international law should always form the starting point for determining the presence or absence of a credible basis in laws. Regulations may be authoritative if these are based on delegated authority and stay within the boundaries of the delegation but may also be merely interpretive in nature. It is clear that the latter, representing interpretation by the tax authority only, has less authority than the former, regulation based on delegated authority.</p>
34	<a href="#">Public Accountants and Auditors Board Zimbabwe</a>	<p>The PAAB agrees with the IESBA’s proposals regarding the actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement as this will entail a PA to be well rooted in all laws and regulations relevant to a TP arrangement thereby giving a well-informed TP status.</p>
35	<a href="#">RSM International</a>	<p>Yes. The credible basis threshold (cf. likely-to-prevail) seems appropriate, as it is sufficiently generic to apply on a uniform basis across jurisdictions without requiring consideration of jurisdiction-specific differences, which could lead to inconsistent and potentially inappropriate outcomes.</p>
36	<a href="#">Saudi Organization for Chartered and</a>	<p>We agree with the IESBA's proposals to introduce a tool that PAs can utilize while determining whether to recommend or otherwise advise on TP arrangement. However, we have some concerns regarding the high subjectivity associated with the suggested tool (threshold) "credible basis in tax laws and regulations" because, for instance, the actions listed in sections (380.11 A2 &amp; 280.11 A2) can be seen in a simpler way as merely requiring PAs to make sure that they are conducting the TP arrangement with "due diligence". Therefore, we recommend that IESBA utilizes the "due diligence" principle to explain</p>



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	<a href="#">Professional Accountants</a>	<p>the threshold based on which PAs should determine their decision to provide the TP arrangement. The reason behind recommendation is to avoid adding new subjective concepts to the Code, especially as some PAs are still expressing some challenges to rightfully comprehend and implement the Codes' conceptual framework.</p>
37	<a href="#">South African Institute of Chartered Accountants</a>	<p>SAICA disagrees with the IESBA's proposal regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E based on the following:</p> <p>(a) The IESBA has been unable to define the term “credible basis” which will result in the risk of subjectivity and inconsistency amongst PA’s. This will increase the risk of poor implementation of the application of a credible basis amongst PAs which will also be problematic for PAOs to monitor.</p> <p>(b) It has been noted by members that the credible basis of TPs may vary from the start to the end of the process of TP arrangements. At which point in the process will the PA conclude that the TP has a credible basis or not? Uncertainty will exist amongst PAs as to what will pass the test of credible basis as insufficient guidance has been provided. An example of this in South Africa is where a PA would want to claim a deduction for repairs and maintenance expenses. The PA will look at all the facts surrounding the transaction and may believe that the claim exists and is valid and will submit the claim on that basis. However, the Revenue Service may later indicate that the deduction is not allowed and will impose interest and penalties. What impact will this have in the determination of the credible basis by the PA? In other words, despite the PA using his professional judgement and applying his knowledge in determining a credible basis, the Revenue Services even though the decision of the Revenue Service may still be subject to objection and appeal by the PA as allowed by legislation.</p> <p>Was the PA wrong? How does a PA make that judgment call as to whether there was a credible basis at a particular point in time? Furthermore, how will a PAO monitor this and at which point in time does the PAO determine that disciplinary action should be taken on the PA?</p> <p>Members would prefer not to have a comprehensive list of “procedures” that a PA should undertake to determine a credible basis as included in paragraph 280.11 A3 and 380.11 A3 as there is concern that these 9 examples may be regarded as a “check list” should a PA find himself in a position where there is an argument that he did not have a credible basis purely because he omitted one of the 9 examples which in his professional judgement was not required because he might have already had sufficient knowledge/experience in that specific area of tax, as an example.</p>

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		<p>Furthermore, members have also argued that providing so detailed application guidance in the Code will limit the PA's ability to provide advice to clients verbally or through emails, where clients regularly request advice quickly despite the PA considering all the ethical consideration into account in providing the advice whilst using the professional judgement and expertise in providing the advice. This may result in dissatisfied clients who may not be willing to pay additional for written opinion causing the client to find an alternative tax advisor who will be able to provide the advice immediately and is not a PA.</p> <p>It has further been noted that the “credible basis” test requires the application of the Law of interpretation which is not a PA competency which may result in PAs not being able to implement the proposal.</p> <p>SAICA recommends that in order to include credible basis in the Code, the IESBA needs to clearly articulate what is meant by credible basis.</p> <p>SAICA further recommends that the application of credible basis be left to each jurisdiction to determine on the appropriateness of implementation in that jurisdiction since the IESBA recognises that a credible basis in laws and regulation will vary from jurisdiction to jurisdiction as stated in paragraph 56 of the explanatory memorandum:</p> <p>“Recognizing that what is a credible basis in laws and regulations will vary from jurisdiction to jurisdiction, the IESBA proposes guidance setting out various actions a PA might take to establish a credible basis for the TP arrangement. (See paragraphs 380.11 A3 and 280.11 A3.) The IESBA is of the view that it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold as doing so would convey a false sense of accuracy, more so given roundtable participants’ feedback that there is a range of probabilities commonly understood and accepted in different jurisdictions.”</p>
38	<a href="#">Subcommittee for the Ethics Code Setting, Federation of Accounting Professions</a>	<p>We opined that this section outlines the duties that Professional Accountants (PAs) should perform, which causes them to have an analysis of the law's reasonableness in providing tax planning advice to their clients which also increases the work efficiency of professional accountants (PAs). However, in practice, Professional Accountants (PAs) are employed and receive benefits from the employer, this may affect their independence in exercising their professional judgment or behavior.</p>
39	<a href="#">Wirtschaftsprüferkammer</a>	<p>We support the use of the term "credible basis" (R 380.11) and recognize that determining whether a credible basis exists necessarily requires the auditor's judgement. Differing interpretations of this term should be avoided as far as possible. We</p>

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		therefore recommend the inclusion of further clarification to minimize uncertainty in tax planning arrangements, particularly those with cross-border elements.