

**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**.

*Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone*

8. In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on:
- (a) The types of threats that might be created in the gray zone;
  - (b) The factors that are relevant in evaluating the level of such threats;
  - (c) The examples of actions that might eliminate threats created by circumstances of uncertainty; and
  - (d) The examples of actions that might be safeguards to address such threats
- sufficiently clear and appropriate?

No	Respondent	Respondent Comments
1	<a href="#">Accountancy Europe</a>	Accountancy Europe agrees that tax planning often carries a degree of uncertainty, especially in respect of cross-border transactions. Consequently, we welcome IESBA’s approach of: <ul style="list-style-type: none"> <li>a) Highlighting the main areas of uncertainty that a PA providing tax planning advice may encounter (380.15 A2)</li> <li>b) Requiring that the PA discusses the uncertainty with the client (R380.16)</li> <li>c) Presenting potential ethical threats that could arise from a tax planning service (380.17 A1)</li> <li>d) Presenting factors that are relevant in evaluating the level of such threats (380.17 A2)</li> <li>e) Presenting examples of actions that might eliminate such threats (380.17 A3)</li> <li>f) Presenting examples of actions that might be safeguards to address such threats (380.17 A4) and</li> <li>g) Presenting steps to help PAs establish the identity of the ultimate beneficiaries of a tax planning arrangement (380.17 A5).</li> </ul>

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		<p>We see certain elements discussed as being of particular importance. These include:</p> <ul style="list-style-type: none"> <li>a) Whether the proposed tax arrangement has a clear economic purpose and substance (380.17 A2)</li> <li>b) Whether the proposed tax planning arrangement could be contrary to the intents of the relevant tax legislation (380.17 A2)</li> </ul> <p>In addition, we would propose adding to 380.17 A2 the following factors that are relevant in evaluating the level of potential threats from providing a tax planning service (as set out in our 2020 publication, Accountants &amp; Tax):</p> <ul style="list-style-type: none"> <li>a) Whether an arrangement (or elements of the arrangement) is contrived, wholly artificial or seeks to exploit loopholes, mismatches between different legislation or different treatment of structures or items in different countries.</li> <li>b) Whether the tax planning arrangement is a pre-packaged scheme used for different clients with little modification for the clients' specific circumstances</li> <li>c) Whether the success of the arrangement relies to any degree on the withholding of key information from tax authorities</li> <li>d) Whether the arrangement involves non-cooperative jurisdictions or jurisdictions that do not require the filing of beneficial ownership information</li> <li>e) Whether the arrangement involves the use of non-transparent structures.</li> </ul> <p>We consider that there is interlinkage and overlap between different sections of the proposed revision to the Code – in particular, between R380.9 (Responsibilities of all Professional Accountants), R380.11 (determining the credible basis) and R380.12 (the stand back test) and then Articles 380.17 A2 and 380.18 A4.</p> <p>We acknowledge that the paragraph 68 of the Explanatory Memorandum states that the stand-back test need not be performed sequentially. However, it can be difficult to navigate the sequence of actions that would best achieve the aims of the proposed revisions to the code.</p> <p>For example, R380.19 requires that a professional accountant gains knowledge of the client and the purpose of the tax planning arrangement. For most professional accountants involved in tax advisory work, this would be an</p>

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		<p>essential first step to providing quality, client specific advice. Consequently, it would appear to be an element of establishing a credible basis for the advice and not part of the stand-back test.</p> <p>However, in the first and second bullets of 380.17 A2 (assessing possible risks) both the (lack of) transparency of ultimate beneficial ownership and the arrangement having no clear economic purpose are mentioned as factors that are relevant in evaluating the level of the threats. However, 380.17 A4 (safeguards against the risks) highlights these same factors are actions that can be used to address the threats.</p> <p>If these are factors that increase the level of the threat, then they cannot be safeguards to address the level of the threat at the same time. We also suggest that a PA without this information could be in breach of R380.19 and consequently should not undertake the engagement as this would be a clear breach of the Code. In many jurisdictions, this would also result in the PA being in breach of anti-money laundering legislation.</p> <p>We would also comment that some of the proposed safeguards in A380.17 A4 are very simplistic – for example, if establishing the identity of ultimate beneficiaries was so simple it probably wouldn't increase the level of the threat from the start of the process.</p>
2	<a href="#">Accounting Professional &amp; Ethical Standards Board Limited</a>	<p>APESB are of the view that the proposed guidance to assist professional accountants with the application of the conceptual framework navigating through the grey zone is sufficiently clear and appropriate.</p> <p>A stakeholder at the APESB roundtable noted that the self-review threat was not included in the list of potential threats and noted that this threat might be relevant if the professional accountant also provides other services to the client, such as a valuation service for tax consolidation purposes, which will be relied upon when providing the tax planning service.</p>
3	<a href="#">American Institute of Certified Public Accountants</a>	<p>We generally agree with the conceptual framework approach and guidance as presented in proposed sections 380.17 A1 – A5 and 280.17 A1 – A5.</p> <p>However, we have concerns around the example related to establishing the identity of the ultimate beneficiaries in paragraphs 380.17 A4 and 280.17 A4. We think a PA's ability to document and determine the ultimate beneficiary (or beneficiaries) of any tax planning strategy may impose an undue hardship on the PA and could force the client to incur unnecessary costs to accurately achieve this stated objective. This is especially true when a PA is engaged by a client or hired by an employing organization, not by the beneficiaries of a tax planning strategy. Many tax</p>

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		<p>planning strategies have a ripple effect related to the tax benefits obtained. Beyond the client and the employing organization, the PA may have no knowledge of any benefit to those beneficiaries beyond the client or employing organization, nor would the PA have access to the information necessary to accurately determine the ultimate beneficiary (or beneficiaries) and the amount of such benefits.</p> <p>We recommend that in both paragraphs referenced above, the sub-bullet which states that, “The identity of the ultimate beneficiaries” be changed to “The identity of the known and expected beneficiaries.”</p> <p>Also, in another example in these two paragraphs, the recommendation to advise the client or employing organization to the tax planning arrangement “based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities” has a similarly overly broad application and should be limited. The insertion of the phrase “of which the PA is currently aware of”, would achieve this desired outcome.</p> <p>We also recommend that the following bullet be deleted since the Code addresses it already; it could cause confusion because, currently, significant fee considerations are only addressed in the International Independence Standards, not in Section 330. If IESBA intended for the example in the conceptual framework significant fee considerations to be applicable when any service is being provided, it should have been included in Section 330.</p> <p><i>A self-interest threat might be created when a professional accountant accepts a significant fee for an engagement to develop a tax planning arrangement for which the interpretation of the relevant tax laws and regulations is uncertain or unclear.</i></p>
4	<a href="#">Association of Chartered Certified Accountants</a>	<p>Yes, however, we suggest that reference also be made to Sections 260 and 360 of the Code on responding to non-compliance with laws and regulations, as these will further guide professional accountants on available courses of action, including external courses of action, in the event such situations are encountered.</p> <p>In the event that profession-agnostic ethical requirements are developed for TP and related services, we suggest that Sections 260 and 360 of the Code be reviewed to ensure that these sections can be applied by non-professional accountants as well.</p>
5	<a href="#">BDO International</a>	<p>Paragraphs 380.17 A1 – A5</p>

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		<p>BDO agrees that the types of threats, the factors for evaluating threats and the examples of actions are generally appropriate and we believe that PAs will find them useful to some extent. We seek clarity though whether the potential threats will only arise in circumstances of uncertainty. The usefulness and clarity of these threats, factors and actions, is inevitably limited by the challenge of applying these to different practices in different jurisdictions.</p> <p>There are a number of bullets in paragraphs 380.17 A1 &amp; A2 on which clarification is needed in order for PAs to be able to apply them confidently:</p> <ul style="list-style-type: none"> <li>• Some guidance will be needed on how to determine whether a fee is “significant” (bullet 3 in A1).</li> <li>• In instances where there “might” not be a credible basis, this could affect numerous cases, depending on the definition of a credible basis (as discussed above) (bullet 4 in A1).</li> <li>• The number of jurisdictions involved does not in itself seem relevant in evaluating these threats (bullet 6 in A2).</li> <li>• Again, guidance on “significance” is needed (bullet 8 in A2).</li> </ul> <p>BDO recommends adding a link to highlight the self-review threat contained in paragraph R604.15 of the IESBA Code pertaining to the audit of a Public Interest Entity: “A firm or a network firm shall not provide tax advisory and TP services if the provision of such services might create a self-review threat.”</p> <p>With regards to the fifth bullet in paragraph 380.17 A2, part E of the Explanatory Memorandum appears to presume that the context may be important in interpreting legislation even when the language used is clear and admits only one meaning. The concept of an “intention of legislation/parliament” is not straightforward as the legal systems in different jurisdictions will approach this in different ways and in some jurisdictions the intention is inferred from the words of the legislation.</p>
6	<a href="#">Chartered Accountants Ireland</a>	<p><u>Self-interest, advocacy or intimidation threat:</u></p> <ul style="list-style-type: none"> <li>• The application guidance in 380.17 A1 and 280.17 A1 is useful in assisting the professional accountant apply the Conceptual Framework in context of tax planning services.</li> <li>• We observe in 380.17 A1 that “<i>Self-interest and advocacy threats might be created when a professional accountant advocates a client’s position in a tax planning arrangement before a tax authority when there are indications that the arrangement might not have a credible basis in laws and regulations</i>”. This does not account for a legitimate dispute resolution where the professional accountant is seeking to resolve a</li> </ul>

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		<p>difference of opinion on compliance and the purpose of the advocacy is to follow the tax authorities procedures to resolve the situation.</p> <ul style="list-style-type: none"> <li>• We recommend inclusion of “are perceived to” in the point in 280.17 A1, “A self-interest threat might be created when a professional accountant’s career advancement prospects <b>are perceived to</b> depend on developing a creative tax planning arrangement for which the interpretation of the relevant tax laws and regulations is unclear”. Career development prospects are not always explicitly linked to achieving a single outcome.</li> <li>• We recommend inclusion of “directly” in the point in 280.17 A1, “A self-interest threat might be created when a professional accountant participates in an incentive compensation scheme <b>directly</b> impacted by the accountant’s design of a tax planning arrangement”. The incentive compensation is more likely to be based on overall performance rather than the achievement of a single outcome. The Self-interest threat would be much higher if the scheme was directly impacted by the accountant’s design of a tax planning arrangement.</li> <li>• Consistent with our response to question 7, we recommend inclusion of manager or supervisor in the point in 280.17 A1, “Self-interest and intimidation threats might be created when a dominant owner, <del>or</del> <b>leader, manager or supervisor</b> of the employing organization exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant’s determination that there is a credible basis in laws and regulations”. This makes it clearer for a professional accountant in business who may not report to or have access to senior leaders or business owners.</li> </ul> <p><u>Elimination of threats:</u></p> <ul style="list-style-type: none"> <li>• We recommend including an additional point under 280.17 A3, “<b>Obtaining advice from outside the employing organisation from an expert who has the necessary knowledge, skills and experience to advise on the proposed tax planning arrangement</b>”. Obtaining external expert advice is included as an example of an action that might eliminate threats for a professional accountant in public practice and it should equally apply for a professional accountant in business.</li> </ul> <p><u>Safeguards to address threats:</u></p> <ul style="list-style-type: none"> <li>• We note the safeguard in 380.17 A4 to provide “full transparency about the tax planning arrangement to the relevant tax authorities”. This is also a legal requirement in many jurisdictions, including Ireland and the United Kingdom, arising from anti-avoidance laws and regulations.</li> </ul>

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7	<a href="#">Chartered Professional Accountants Canada Public Trust Committee</a>	<p>The PTC believes the proposed guidance in paragraphs 280.17 A1 to A5 and 380.17 A1 to A5 is sufficiently clear and appropriate, with the following considerations:</p> <ul style="list-style-type: none"> <li>• some examples of actions in paragraphs 280.17 A3 and 380.17 A3 are similar to or duplicates of the safeguards in paragraphs 280.17 A4 and 380.17 A4; and</li> <li>• some may not always eliminate existing threats.</li> </ul> <p>Accordingly, the PTC recommends the following changes:</p> <ul style="list-style-type: none"> <li>• Proposed paragraph 280.17 A3, bullet #1 and #3, will not necessarily eliminate a threat, as such they would be better positioned in 280.17 A4 as a safeguard, and</li> <li>• Proposed paragraph 380.17 A3, bullet #1 and #2, will not necessarily eliminate a threat, so they would be better positioned in 380.17 A4 as a safeguard.</li> </ul> <p>Furthermore, with respect to safeguards, the PTC recommends adding an additional safeguard stating that in some jurisdictions there are laws or regulations that may require mandatory reporting to the government.</p>
8	<a href="#">CPA Australia</a>	<p>CPA Australia considers the proposed guidance is sufficiently clear while noting that the factors listed at 380.17 A2 will be of varying relevance and importance depending on the arrangement.</p> <p>It remains unclear as to how tax controversy and dispute resolution activities are expected to be managed. The fact that the taxpayer is in dispute or litigating its position with the tax authority indicates that the tax authority does not believe that the taxpayer (and by extension their advisors) has a credible basis, or they may wish to test the credibility of the position before the courts.</p> <p>In such situations, often legal practitioners and Counsel will often be involved, mitigating self-interest threats, or the taxpayer may change PAs in the course of the dispute. In any case, the requirements should not result in PAs being unable to accept a client in dispute with the tax authority, nor should taxpayers be prevented from access to justice due to PAs being wary of contravening these provisions.</p>
9	<a href="#">Deloitte Touche Tohmatsu Limited</a>	<p>Deloitte Global broadly supports the proposed guidance. However, we note some observations for the Board's consideration when finalizing the standard:</p>

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		<ul style="list-style-type: none"> <li>- We are of the view that the “<i>Potential Threats Arising from Providing a Tax Planning Service</i>” as included in paragraph 380.17 A1, should be presented earlier in the section. This is consistent with the approach in other sections, e.g., the provision of non-assurance services to an audit client, where the potential threats are presented following the description of the service.</li> <li>- With respect to the purposes of the discussion with the client, as noted in paragraph 380.16 A1, Deloitte Global believes that “<i>Obtaining any additional information from the client that might reduce the uncertainty</i>” should rather be included in paragraph 380.11 A3.</li> <li>- Deloitte Global recommends that the Board review the references to acting with transparency when dealing with tax authorities that are included in the ED (for example in paragraphs 380.11 A3, 38014.A1, 380.17 A4). We are concerned that these references may have the unintended consequence of implying that transparency when dealing with tax authorities is optional. Deloitte Global believes that tax planning should never involve withholding or misrepresenting facts when dealing with the the tax authorities.</li> <li>- We encourage the Board to consider the following drafting suggestion which is intended to place greater emphasis on providing advice on tax planning arrangements which are compliant with relevant laws and regulations:           380.17 A4 <i>Examples of actions that might be safeguards to address such threats include:</i> <ul style="list-style-type: none"> <li>• (...)</li> <li>• <i>Advising the client, having considered the underlying economic purpose and substance, to <del>structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance</del> undertake tax planning arrangements that are in compliance with the relevant tax laws, regulations and treaties.</i></li> </ul> </li> </ul>
10	<a href="#">European Federation of Accountants and Auditors for SMEs</a>	<p>We believe this guidance to be of limited relevance to SMPs and so have no comments.</p>



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11	<a href="#">European Tax Adviser Federation</a>	<p>We find the proposed guidance in all the listed matters sufficiently clear, detailed and appropriate.</p> <p>As stated above, the IESBA will have to monitor recent developments in this area to make sure its guidance remains updated and most useful for tax professionals.</p>
12	<a href="#">Grant Thornton International Limited</a>	<p>GTIL generally agrees with the application of the proposed guidance in a-d above.</p> <p>However, we have concerns around the example related to establishing the identity of the ultimate beneficiaries in paragraphs 380.17 A4 and 280.17 A4. In addition to our concerns discussed in Q7 above, we believe a professional accountant’s ability to document and determine the ultimate beneficiary (or beneficiaries) of any tax planning engagement may impose an undue hardship on the professional accountant and could force the client to incur unnecessary costs.</p> <p>This is especially true when a professional accountant is engaged by a client and not by the beneficiaries of a tax planning strategy. Many tax planning strategies have a domino effect related to the tax benefits obtained, beyond the client. The professional accountant may have no knowledge of any benefit to those beneficiaries beyond the client, nor would the professional accountant have access to the information necessary to accurately determine the ultimate beneficiary (or beneficiaries) and the amount of such benefits.</p> <p>Therefore, we request the Board to remove this provision from the proposed standard.</p>
13	<a href="#">Hong Kong Institute of CPA</a>	<p>In paragraphs 380.17 A2 and 380.17 A4, in the first bullet point in each case, it may need to be made more explicit who “ultimate beneficiaries” refers to and why, other than for the purposes of general transparency, it is important in the situations covered specifically by this section to establish their identity. Clearly, PAs should know their clients and be familiar with the client’s business and, in many jurisdictions, a PA may be required, e.g., by anti-money laundering laws and regulations to establish the identity of ultimate beneficial owners. However, it may need to be spelled out more clearly here why knowing the identity of ultimate beneficiaries (and who are the ultimate beneficiaries of a TP arrangement – the client entity, the major shareholders, or all shareholders?) is a factor in evaluating level of threats and may act as a safeguard to address the threats identified. Our comment in this regard also applies to paragraphs 280.17 A2 and 280.17 A4 in relation to a PA’s employing organization.</p>

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		Other comments: The linkages between the CF Section VII.H and other preceding sections may need to be made clearer. This section does not seem to flow naturally from the discussion of the “credible basis in laws and regulations” and addressing the “gray zone”.
14	<a href="#">IFAC Small and Medium Practices Advisory Group (SMPAG)</a>	There is likely to be limited exposure to cases where these considerations will be relevant for SMPs, but we note that generally the guidance in relation to the gray zone could be made more useful through reinforcing the link between the gray zone and the concept of “credible basis in laws and regulation”. The drafting of 380.17 A2 and A4 may raise some questions for practitioners. It would be useful to make explicitly clear who ‘ultimate beneficiaries’ in the context of these sections refers to and why it is important that their identity is established.
15	<a href="#">Independent Regulatory Board for Auditors</a>	<p>The heading to this section is “Potential Threats Arising from Providing a Tax Planning Service”. However, in the EM, potential threats are discussed as part of the gray zone. We suggest that clarity be provided on whether these threats are only considered when dealing with the gray zone or have relevance to all tax planning services.</p> <p>We further propose that a cross-reference to the self-review threat contained in paragraph R604.15 of the Code be added.</p> <p><u>In relation to paragraph 380.17.A1:</u></p> <ul style="list-style-type: none"> <li>• Bullet point 3: The term “significant fee” is used. We suggest that clarity be provided as to what is considered to be a significant fee.</li> <li>• Bullet point 4: This should be deleted, as the PA would have to consider and apply the credible basis provisions.</li> </ul> <p><u>In relation to paragraph 380.17.A2:</u></p> <ul style="list-style-type: none"> <li>• This provides a comprehensive list of potential factors in evaluating the potential threats that may arise. Our view is that some of these factors could be problematic, impractical and subjective, as further indicated below.           <ul style="list-style-type: none"> <li><u>The number of jurisdictions involved and the nature of their tax regimes</u> <ul style="list-style-type: none"> <li>○ As noted in our response to question 6, PAs generally specialise in a specific area or areas of tax within one jurisdiction. The expectation that a PA should be aware of the nature of the tax regime in another jurisdiction is unlikely.</li> </ul> </li> </ul> </li> </ul>

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		<ul style="list-style-type: none"> <li>○ The term “nature” is rather vague and requires further clarification.</li> </ul> <p><u>The significance of the potential tax savings</u></p> <ul style="list-style-type: none"> <li>○ The term “significance” is subjective. We suggest that further clarity be provided in this regard.</li> </ul> <p><u>The nature and amount of the fee for the tax planning service</u></p> <ul style="list-style-type: none"> <li>○ We are of the view that this criteria is subjective.</li> <li>○ We suggest that the term “nature” be clarified regarding whether it applies to how the fee is determined (e.g. time spent vs the contingency fee based on tax savings).</li> <li>○ Clarification and guidance are also required in respect of “the amount”. Would this amount be considered in relation to a percentage of the tax saving, again, possibly alluding to the charging of contingent fees?</li> </ul> <p><u>The known previous behaviour or reputation of the client, including its organizational culture</u></p> <ul style="list-style-type: none"> <li>○ We note that this would likely be considered during the client acceptance stage of the engagement and should then not be repeated here.</li> <li>○ We suggest that bullet points 11 and 12 be combined and reworded to read as follows:        “Whether there is pressure being exerted by the client or another party on the professional accountant and the degree of urgency in implementing the tax planning arrangement.”</li> </ul> <ul style="list-style-type: none"> <li>• Further, bullet point 13 would likely have been considered during the client acceptance stage of the engagement and should be considered for deletion.</li> </ul> <p>In relation to paragraph 380.17. A4:</p> <ul style="list-style-type: none"> <li>• Paragraph 380.17. A4 contains examples of actions a PA may take to implement safeguards to address a threat. It is noted that a lot of emphasis is placed on determining the identity of the ultimate beneficiaries, so much that paragraph 380.17. A5 specifically provides steps that a PA may take to identify the ultimate beneficiary. Certain tax services or tax planning does not require the PA to have full knowledge of the ultimate beneficiary, even if one finds themselves in the gray zone. We suggest that clarity be provided with regard to</li> </ul>

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		the emphasis on the requirement to identify the ultimate beneficiaries and the examples listed in paragraph 380.17 A5.
16	<a href="#">Institute of Chartered Accountants in England and Wales</a>	<p>The proposed guidance appears reasonable.</p> <p>We consider that there could be some interlinkage between the consideration of the grey zone and the stand-back test and wonder whether it would be advantageous to cross reference the two sections.</p>
17	<a href="#">Institute of Chartered Accountants of Nigeria</a>	<p>We consider the proposed guidance with respect to the identified matters as sufficiently clear and appropriate. However, the practicability of the application of some of the guidance could be difficult to operationalize in certain jurisdictions.</p>
18	<a href="#">Institute of Financial Accountants</a>	<p>These proposed paragraphs are perhaps the most significant in this Consultation, and their significance must not be obscured by additional text that is unclear, controversial or of little value.</p> <p>We support the framework set out under (a) to (e) (proposed paragraphs 380.17 A1 to A4 and 280.17 A1 to A4). However, its impact is weakened by the inclusion of threats that are likely to arise in any relationship with a client or employer (eg having a personal financial interest or relying on a high level of fees or salary). Therefore, the significance of the advocacy threat is at risk of being overlooked.</p>
19	<a href="#">Instituto dos Auditores Independentes do Brasil</a>	<p>We agree with the proposed guidance on the matters above (Section VII.H Applying the Conceptual Framework to Navigate the Gray Zone and Other Tax Planning Circumstances).</p>
20	<a href="#">Malta Institute of Accountants</a>	<p>Another example that could be included is “clarifications in writing by tax authorities”.</p>

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21	<a href="#">Pennsylvania Institute Of Certified Public Accountants</a>	<p>The committees believe that this guidance is generally appropriate for the Code. However, there are several examples that may be difficult to implement or are overly onerous (e.g., identifying beneficiaries and obtaining external "opinions"). Further, references to ensuring an arrangement is "...based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities..." is extremely limiting and ignores the hundreds of thousands of court cases that have and continue to shape and clarify tax legislation. The committees therefore request that these threats be rephrased in more general principled terms so that they can be practically applied across the globe without attempting to contravene local tax laws and regulations.</p>
22	<a href="#">PKF (Durban)</a>	<p>308.17 A2 provides a comprehensive list of potential factors in evaluating the potential threats that may arise. The lists may not be complete. Additional important threats and safeguards that may be environment, client or jurisdiction specific may not be included and as a result of the list provided may not be considered by the PA which potentially could drive bad behaviour in PAs. It is recommended that these paragraphs be removed from the content of the Code and developed as separate guidance for TP</p> <p>We are also of the view that some of these factors are problematic impractical and rather subjective. We list the following example:</p> <ul style="list-style-type: none"> <li>• "The number of jurisdictions involved and the nature of their tax regimes".           <ul style="list-style-type: none"> <li>○ As noted in my response to question 6, PAs generally specialize in a specific area or areas of tax within one jurisdiction, the expectation that a PA would be aware of the nature of the tax regime in another jurisdiction is unlikely.</li> <li>○ Furthermore, the term "nature" is rather vague and requires further clarification.</li> </ul> </li> <li>• The significance of the potential tax savings.           <ul style="list-style-type: none"> <li>○ The term "significance" is rather subjective. Further clarity is sought in this regard.</li> </ul> </li> <li>• The nature and amount of the fee for the tax planning service.           <ul style="list-style-type: none"> <li>○ The criteria in respect of the term "nature and amount are again very subjective.</li> </ul> </li> </ul>

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		<ul style="list-style-type: none"> <li>○ Clarification is sought as to the term "nature" as to whether this applies to how the fee is determined (e.g., Time spent vs contingency fee based on tax savings)</li> <li>○ Clarification and guidance are also sought in respect of the amount. Would this amount be considered in relation a percentage of the tax saving, again possibly alluding to the charging of contingent fees?</li> <li>• The known previous behaviour or reputation of the client including its organizational culture             <ul style="list-style-type: none"> <li>○ This would likely be considered during the client acceptance stage of the engagement and hence does not require repetition here.</li> </ul> </li> </ul> <p>Section 380.17.A4 contains the examples of actions a PA may take to safeguard a threat. It is noted that much emphasis is placed on determining the identity of the ultimate beneficiaries, so much so that 380.17 AS specifically provides steps that a PA may take to identify the ultimate beneficiary. Certain tax services or tax planning does not require the PA to have full knowledge of the ultimate beneficiary even if one does find himself in the Gray Zone. Kindly advise the emphasis of the requirement to identify the ultimate beneficiaries.</p>
23	<a href="#">Price Bailey</a>	<p>Much of the guidance to assist the professional accountant in navigating the 'gray zone' is welcome, subject to our comments above re: credible basis.</p>
24	<a href="#">PricewaterhouseCoopers International Limited</a>	<p>While we agree in general, we note the following:</p> <p>380.17 A1, third bullet: This paragraph may overshoot. What is a significant fee for an engagement is inherently subjective. Furthermore, interpretation of the relevant tax laws and regulations is often uncertain or unclear, so we see a risk that as per this paragraph there could be many situations of perceived self-interest that are in fact innocuous. In any event we suggest that the paragraph be limited to the situation where the fee for an engagement is contingent on the tax savings resulting from a tax planning arrangement.</p> <p>380.17 A1, fourth bullet: This statement could be perceived as limiting the professional accountant's ability to adequately represent a client in a dispute, either before the tax authority or in administrative or judicial appeal. We would suggest considering deletion. See also our comment above relating to question 5.</p> <p>Regarding 380.17 A2, first bullet, we raise the question whether compliance with general client acceptance and anti-money laundering rules would suffice, or whether IESBA aims to introduce further due diligence requirements.</p>

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No	Respondent	Respondent Comments
25	<a href="#">Public Accountants and Auditors Board Zimbabwe</a>	<p>The PAAB agrees that the proposed guidance is sufficiently clear and appropriate to navigate the Gray Zone as the safeguards that are available to eliminate or reduce the threats to an acceptable level have been sufficiently and appropriately detailed.</p> <p>We however believe that where relevant tax laws are unclear, legal or other independent advice must be sought to enable a better understanding of the laws and regulations and clear such uncertainties and gray areas.</p>
26	<a href="#">RSM International</a>	<p>Yes. The material provided will be helpful in assisting the Professional Accountant in applying the Conceptual Framework.</p>
27	<a href="#">Saudi Organization for Chartered and Professional Accountants</a>	<p>Taking into consideration our answers to the previous questions, we agree with the discussion introduced in paragraphs (280.17 &amp; 380.17 and its related application materials) because it coherently comes along with the Code's approach. In particular, the IESBA's proposals in relation to TP broadly diverge from this approach by which the code is designed. The code approach is to consistently show the conceptual framework application is consistently shown wherever an ethical challenge (arising threats) is discussed.</p>
28	<a href="#">South African Institute of Chartered Accountants</a>	<p>No. SAICA believes that the guidance provided in paragraphs 280.17 A1 to A5 may not be appropriate based on paragraphs 24 and 25.</p> <p>The lists may not be complete. Additional important threats and safeguards that may be environment, client or jurisdiction specific may not be included and as a result of the list provided may not be considered by the PA which potentially could drive bad behaviour in PAs. It is recommended that these paragraphs be removed from the content of the Code and developed as separate guidance for TP.</p> <p>Paragraph 380.17 A2 of the ED provides a comprehensive list of potential factors in evaluating the potential threats that may arise. Members are of the view that some of these factors are problematic, impractical and rather subjective. The following serves as example –</p> <p>(a) “The number of jurisdictions involved and the nature of their tax regimes”.</p>

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No	Respondent	Respondent Comments
		<ul style="list-style-type: none"> <li>• As noted earlier, PAs generally specialize in a specific area or areas of tax within one jurisdiction, the expectation that a PA would be aware of the nature of the tax regime in another jurisdiction is impractical and unrealistic.</li> <li>• Furthermore, the term “nature” is rather vague and requires further clarification.</li> </ul> <p>(b) The significance of the potential tax savings.</p> <ul style="list-style-type: none"> <li>• The term “significance” is rather subjective. Further clarity is sought in this regard.</li> </ul> <p>(c) The nature and amount of the fee for the tax planning service.</p> <ul style="list-style-type: none"> <li>• This criteria in respect of the term “nature and amount” are again very subjective.</li> <li>• Clarification is sought as to the term “nature” as to whether this applies to how the fee is determined (e.g., Time spent vs contingency fee based on tax savings).</li> <li>• Clarification and guidance are also sought in respect of the amount. Would this amount be considered in relation a percentage of the tax saving, again possibly alluding to the charging of contingent fees?</li> </ul> <p>(d) The known previous behaviour or reputation of the client including its organizational culture.</p> <ul style="list-style-type: none"> <li>• This would likely be considered during the client acceptance stage of the engagement and hence does not require repetition here.</li> </ul> <p>Section 380.17.A4 contains the examples of actions a PA may take to safeguard a threat. It is noted that much emphasis is placed on determining the identity of the ultimate beneficiaries, so much so that 380.17 A5 specifically provides steps that a PA may take to identify the ultimate beneficiary. Certain tax services or TP does not require the PA to have full knowledge of the ultimate beneficiary even if one does find himself or herself in the Gray Zone.</p>
29	<a href="#">Subcommittee for the Ethics Code Setting, Federation of Accounting Professions</a>	<p>The fundamental principles are considered complete and appropriate. Considering the circumstances, identifying and evaluating threats created from the circumstances, and suggesting actions to eliminate the threats created as well as the safeguarding measurements are covered.</p>



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30	<a href="#">WirtschaftsprüferKammer</a>	We agree that tax planning often carries a degree of uncertainty, especially in respect of cross-border transactions. So, we welcome IESBA's approach. In particular, we see certain elements discussed as being of particular importance. These include whether the proposed tax planning arrangement could be contrary to the intents of the relevant tax legislation (380.17 A2).