

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**.

Disagreement with Management

9. Do you agree with the proposals outlined in Section VII.I above which set out the various actions PAs should take in the case of disagreement with the client or with the PA's immediate superior or other responsible individual within the employing organization regarding a TP arrangement?

No	Respondent	Respondent Comments
1	Accountancy Europe	<p>We propose that the scope of R380.19 to R380.21 is specified to cover those situations where, from the PA's point of view, there is no credible basis, and the client is informed of this fact. Other disputes, for example those described under R380.13, may not necessarily lead to the consequences under R380.19 to R380.21.</p> <p>In the circumstances where a dispute with management in terms of R380.13 occurs, there should be a mechanism to deal with 'other disagreements' that allow the PA to withdraw from the engagement and professional relationship if serious damage to the reputation of the PA or the profession is to be expected.</p> <p>In respect of R380.19 and R380.20, there may be an opportunity to obtain an advance ruling from the appropriate tax authorities as to whether the tax arrangement conforms with their interpretation of the law. Indeed, this may be an expectation or even a requirement where the client is in a national co-operative compliance programme.</p> <p>It could be the case that voluntary advance disclosure of the arrangement to the tax authorities could prevent the disagreement with the client escalating to a level that a PA needs to consider disassociating themselves from the engagement. Consequently, we recommend that the suggestion that the PA could advise to client to fully disclose the arrangement to the relevant tax authorities should be moved from R380.20 to R380.19.</p>
2	Accounting Professional & Ethical Standards Board Limited	<p>APESB supports the proposed provisions relating to disagreements with the client in Section 380. However, we are concerned about the proposed paragraph 280.20 A1 in Section 280.</p> <p>This paragraph suggests a professional accountant might consider resigning from the employing organisation if the employing organisation undertakes the tax planning arrangement contrary to the professional accountant's advice. This</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>recommended action seems quite a severe suggestion, especially as it does not consider the level of the professional accountant within the organisation.</p> <p>In fact, this application material is setting the bar higher than the Non-compliance with Laws and Regulations provisions where only Senior Professional Accountants in Business are advised to consider resigning from their employer. Accordingly, APESB suggests the IESBA review the proposed paragraph 280.20 A1 in light of the NOCLAR provisions at 260.18 A1 and R260.24 to R260.26.</p> <p>Stakeholders at the APESB roundtable believed that the provisions should also address the treatment of a disagreement where the outcome may be insignificant. Some stakeholders also queried whether paragraphs 380.19 to 380.21 is intended only to address situations where the client has developed the tax planning strategy which the professional accountant deems not credible or if it encompasses situations where the client has obtained a tax planning strategy from another advisor who believes it is credible.</p> <p>APESB recommends that the IESBA reconsider the application of these paragraphs for related services.</p>
3	American Institute of Certified Public Accountants	<p>We generally agree with the approach IESBA has taken with disagreements on tax planning arrangements as presented in proposed paragraphs R380.19– 380.20 A1 and R280.19–280.20 A2. However, to make these provisions workable in the United States and avoid the issues outlined under Taxpayer Protections, we respectfully request the following revisions, as PAs have very limited protections regarding communications with taxpayers in the United States; providing the proposed level of detail could expose the client to unintended consequences.</p> <p>Revising R380.19 and R280.19 as follows, would allow for the application of professional judgment in determining the level of detail the PA provides:</p> <p>If the professional accountant disagrees that a tax planning arrangement that a client would like to pursue has a credible basis, the accountant shall consider:</p> <ul style="list-style-type: none"> (a) Informing the client of the basis of the accountant's assessment; (b) Communicating to the client the potential consequences of pursuing the arrangement in the event of an adverse ruling; and (c) Advising the client not to pursue the arrangement.

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>We recommend the phrase “shall take steps to disassociate from the engagement. In doing so, the accountant” be eliminated from the requirement in R380.20 and R280.20. What’s important here are the steps that the PA should consider regarding advising the client or employer to take when a disagreement occurs. Also, we believe that 26 U.S. Code Section 7206, referenced above, which criminalizes aiding or assisting a taxpayer in the presentation or preparation of false or fraudulent returns or other tax documents, is sufficient protection of the public interest.</p>
4	Association of Chartered Certified Accountants	<p>Overall, we agree. However, we think that it is important to also highlight that withdrawal from an engagement or professional relationship (paragraph R380.21) and resignation from an employing organisation (paragraph 280.20 A1) are not substitutes for taking other actions to address disagreements regarding a TP arrangement, similar to paragraphs 360.21 A2 and 260.18 A2 in the Code relating to responding to non-compliance with laws and regulations.</p>
5	BDO International	<p>Paragraphs R380.19 – R380.21</p> <p>BDO recommends that further context is given to when a disagreement with a client could arise. It is also not clear if proposed paragraph R380.19 is meant to differ from proposed paragraph R380.13. Proposed paragraph R380.19 also appears to exclude the “reputational, commercial and wider economic” consequences as described in proposed paragraph R380.12.</p> <p>The requirement in proposed paragraph R380.19, together with R380.20, with revisions, might be more appropriately targeted specifically at the situations where the external auditor, if any (presumably by cross-reference to auditing standards) is faced with a TP arrangement of the client, which does not meet the criteria set out in proposed paragraphs R380.11 and R380.12.</p> <p>While BDO agrees with the proposed requirements in paragraph R380.20, the three steps seem to be overly onerous and not part of the PA’s role. Furthermore, there may be commercial sensitivity around the TP arrangement services that firms provide and we believe that merely communicating that there is a difference of views should suffice. BDO recommends that the IESBA reviews this in finalising the ED.</p> <p>In continuing with proposed paragraph R380.20, the distinction between the TP engagement and the professional relationship is not evident. A BDO firm might be performing a number of different engagements for a client and so it is unclear if and under which circumstances a firm should withdraw from the professional relationship in its entirety. BDO recommends that the consideration to withdraw should be limited to the relevant TP engagement.</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
6	Chartered Accountants and CA Australia and NZ	<p>We agree with the intent of the proposals outlined in Section VII.I of the EM which set out the various actions PAs should take in the case of disagreement with the client or with the PA's immediate superior or other responsible individual within the employing organisation regarding a TP arrangement.</p> <p>However, in our experience, junior PAs can form views that, on further discussion and investigation, are misinformed. Accordingly, we recommend that the IESBA considers augmenting to section 280 to encourage the PA to first discuss the facts and circumstances and interpretations of law with others to seek to resolve any misunderstandings or difference of opinions (i.e. consistent with its suggested actions for dealing with misleading information (220.8 A1 - 220.8 A2) or pressure (270.3A4)) before taking the actions required by paragraphs R280,19 and R280,20 without just cause.</p>
7	Chartered Accountants Ireland	<p>Responsibilities of Management and Those Charged with Governance (TCWG):</p> <p>In providing our response to proposals in respect of disagreement with management it is important to also address proposals in respect of Responsibilities of Management and TCWG in application guidance 380.8 A1 and 280.8 A1. The scope of the Code of Ethics applies to Professional Accountants and while, in the context of 380.8 A1, the responsibilities of management and TCWG can be conveyed in an engagement letter agreed with a professional accountant in public practice, there is no formal mechanism for a professional accountant in business to obtain acceptance of these responsibilities outlined in 280.8 A1. Notwithstanding any jurisdictional statutory directors' duties, members of management and TCWG who are not professional accountants are not obliged to consider this guidance. As a result, professional accountants in business may be unfairly held accountable for decisions or actions over which they have no authority or oversight.</p>
8	Chartered Professional Accountants Canada Public Trust Committee	<p>The PTC generally agrees with the proposals but has several concerns outlined below.</p> <p>Stakeholders recognize that proposed paragraph R380.20 may help protect PAs but have concerns about the practicality of several of the steps. For example, if a PA has provided advice to the client not to pursue a TP arrangement, it is because they believe there is no credible basis, and the client is informed. In cases of disagreement, the PTC thinks that it may not be practical to expect the client to then take the actions listed in paragraph R380.20 (b) and (c) and recommends the following changes to paragraph R380.20 to make the proposed paragraph more practical:</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<ul style="list-style-type: none"> • Paragraph (b) to be revised as “Advising the client to seek an advance tax ruling from the tax authorities, where applicable.” • Paragraph (c) to be revised as “Advising the client to consult other professionals to obtain an alternative opinion.” <p>Furthermore, the PTC notes that proposed paragraph R280.20 (c) requires the PA to consider communicating the difference of views to the external auditor. This may go against the PA’s duty of confidentiality, as a PA may not be able to inform the external auditor of such matters without expressed provisions in the law authorizing this. Although this issue may be jurisdiction specific, the PTC recommends removing subparagraph (c) from proposed paragraph R280.20.</p> <p>In addition, some stakeholders expressed the view that professional opinions between two experienced PAs (or other service providers) can differ, but both can still have a credible basis, and this should not necessitate a PAIB to become a whistleblower. However, the PTC notes the Disagreement on the Tax Planning Arrangement section in the proposed changes does not clearly address such scenarios and recommends that IESBA consider clarifying with examples and additional application material.</p> <p>In addition, as drafted, the PTC thinks that it will be confusing for PAs to interpret the meaning of proposed paragraphs R380.21 and 280.20 A1 and consistently take appropriate action because the use of “shall consider” and “might also consider” is not sufficiently clear.</p> <p>The PTC notes that in Canada, PAs are prohibited from associating with false or misleading information and would be required to resign under these circumstances, while the IESBA’s proposals for PAIBs suggest that this need only be considered. This may be a Canadian-specific difference; however, the PTC recommends that the IESBA consider whether it is in the public interest to include stronger guidance when a PA believes the TP is false or misleading.</p> <p>Finally, the PTC also recommends making written communication a requirement. Such as when there is a disagreement, for example, a client’s desire to pay less tax goes beyond the realm of tax optimization into the realm of abusive tax avoidance, that requires the PA to extricate themselves from the situation. Written documentation to address the reasons for resignation is important.</p>
9	CPA Australia	CPA Australia holds concerns about the requirements imposed on accountants in responding to disagreements.

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>The vast number of regular TP engagements undertaken for even a medium sized group means that an “all or nothing” approach to disagreements on a particular TP arrangement is inappropriate. For large companies and multinationals, many advisors, including non-PAs such as legal practitioners, are often involved and different advisors are engaged in different jurisdictions. Depending on the scope of engagement, PAs will only advise on certain aspects of an arrangement, often within a particular jurisdiction, as part of their broader engagement to manage the taxpayers’ affairs.</p> <p>As acknowledged throughout the ED, TP issues arise from uncertainty and may or may not be successfully argued if adjudicated by a court. Differing views are common and ultimately the decision to proceed is the responsibility of those charged with governance. Further, many disputed TP arrangements are usually of marginal value when referenced against total tax payable and are often constrained within a particular set of activities, group of entities or specific set of issues.</p> <p>As a result, the suggestion that a PA would resign (280.20 A1) or disassociate (380.20 and 380.21), based on a professional difference of opinion on what is often a comparatively small transaction, is extreme. NoCLAR obligations are in place to address situations of non-compliance. However, these proposed provisions appear to seek the adoption of a NoCLAR approach in the context of TP disagreements. This attempt to elevate a professional judgment on the credibility of a tax arrangement to the level of non-compliance is inappropriate.</p> <p>While guidance may be helpful for PAs who are grappling with uncertainty and who have differing views from those charged with governance, the mandatory and extreme nature of these provisions may often be disproportionate to the level of risk and jeopardises the ability of taxpayers to maintain access to professional advice from PAs for the remaining majority of their tax affairs.</p>
10	Deloitte Touche Tohmatsu Limited	<p>Deloitte Global notes the following questions and observations for the Board’s consideration when finalizing the standard:</p> <ul style="list-style-type: none"> - The meaning of the requirements in paragraphs R380.20 and R280.20 to “take steps to disassociate from the engagement/arrangement” is unclear. It seems to imply termination, but this meaning is not consistent with the steps to be considered in the subsequent bullet points as well as with the specific requirement to consider the need to withdraw from the engagement (paragraph R380.21) or the application material to consider resigning from the employing organization (paragraph 280.21 A1).

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>- The action required from a professional accountant in public practice (to consider withdrawing from the engagement in paragraph R380.21) does not seem proportionate as compared with the potentially more extreme action proposed for a professional accountant in business (to consider resigning from employment in paragraph 280.20 A1). Deloitte Global encourages the Board to consider a more proportionate approach with respect to a professional accountant in business, keeping in mind the significant potential impact of the proposed action on their career or even livelihood.</p> <p>- Deloitte Global believes developing application material would be useful with respect to the requirement in paragraph R380.18 (Communication of Basis of Tax Planning Arrangement)</p>
11	Ernst and Young Global Limited	<p>If the Board decides to proceed with the proposed revisions, we agree with the proposals as reflected in proposed paragraphs R380.19 through R380.21.</p> <p>We note that when the client is an individual taxpayer, the considerations included in proposed paragraph R380.20 (a) and (c) would not be relevant. Therefore, the Board should consider the following edits to the last sentence of R380.20:</p> <p>“In doing so, the accountant shall consider advising the client to <u>make full disclosure of the arrangement to the relevant tax authorities. In addition, when the client is an entity, the account shall consider advising the client to:</u></p> <p>(a) Communicate internally to the appropriate level of management the details of the arrangement and the difference of views; <u>and</u></p> <p>(b) Make full disclosure of the arrangement to the relevant tax authorities; and</p> <p>(c) Communicate the details of the arrangement and the difference of views to the external auditor, where applicable.”</p>
12	European Federation of Accountants and Auditors for SMEs	<p>We do not agree with some of the proposals.</p> <p>We believe that requiring the PA to consider advising the client to make full disclosure of the arrangement to the relevant tax authorities or the external auditor in the event of a disagreement about pursuing a tax planning arrangement might create an expectation that the PA violate client confidentiality. This might present an acute ethical dilemma for the PA and may not be permissible in some jurisdictions.</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>We suggest the guidance remind the PA of their obligations in relation to client confidentiality and that they should only take the approach of encouraging a client to report ‘if permissible.’ The guidance might also remind the PA that escalating to the client reporting to a tax authority should be limited to situations where a treatment is without doubt incorrect or problematic.</p>
13	European Tax Adviser Federation	<p>While we generally agree with the IESBA proposals in case of a disagreement with management regarding a tax planning arrangement, we would like to make a couple of remarks on this point.</p> <p>Concerning the paragraphs R380.19 to R380.21, we wonder if there should be any specific action that the professional accountant should do to follow up with the client’s actions. The question is particularly relevant when it comes to situations where the client does not inform the professional accountant on how he will pursue some engagements or when there is a long period of time between the advice and the action of the client. Should there be obligations for the professional accountant, such as regularly checking with the client or verifying by himself the follow up actions taken by the clients?</p> <p>Concerning paragraph R380.19, we believe that some specific provisions could be added to cover the case where the immediate superior of the professional accountant is himself a professional accountant.</p>
14	Grant Thornton International Limited	<p>GTIL believes the proposed steps professional accountants should take when there are disagreements on the tax planning arrangements are generally reasonable.</p> <p>However, we believe the requirements set out in sections R380.20 and R280.20 may be contrary and difficult to operationalize in jurisdictions that have established robust laws and regulations.</p>
15	Hong Kong Institute of CPA	<p>In Section 280, it may be extreme to require that a PA to escalate the situation in circumstances where there may just be a good faith difference of view over whether a particular TP arrangement has a credible basis in laws and regulations. The process should be commenced only where, for example, the PA considers that no reasonable professional person in that position could take the view taken by the PA’s immediate supervisor.</p> <p>As for Section 380, should the PA encounter disagreement with the client and follow R380.20 to advise the client, we would suggest sub-bullet (a) to add “those charged with governance” as an example, i.e., “Communicating internally to</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		the appropriate level of management and/or those charged with governance, the details of the arrangement and the difference of views”.
16	IFAC Small and Medium Practices Advisory Group (SMPAG)	<p>We agree with the requirement in R380.13 that the client shall be fully informed as to a PA's reasons for not recommending a specific course of action even when the PA believes there is a credible basis when the PAs considerations required under R380.12 flag potential consequences. We also agree that uncertainties as to whether there is a credible a basis must be discussed with a client (R 380.16). However, given the subjectivities involved in both cases, we believe that the issues such as severity and materiality must feature in driving a PA's reaction to the client's decision to pursue a particular tax treatment that the PA has not recommended despite there being a credible basis, so it is not reasonable that both cases should automatically lead to a requirement for a need to dissociate fully from the engagement as proposed in R380.20 (in R380.13 there is a credible basis and in R380.16 it is not sufficiently certain). In any case, this proposal is not in line with the requirement of R380.21 which requires the PA consider the need to withdraw from the engagement. In our view, it is appropriate to require disassociation only when the PA determines there is no credible basis. Consequently, we contend that generally it is appropriate to require only consideration of disassociation, withdrawal from the engagement and cessation of the client relationship based on the consequences identified under R380.12. We therefore suggest that IESBA require a consideration by the PA in both R380.20 and 21 and also provide guidance as to factors that should be considered. R380.21 may not result in termination of the professional relationship and so it could be clearer that the PA may also assist in related services (e.g., assisting the client further in regard to a tax planning arrangement which has been challenged).</p> <p>The wording of paragraphs R380.20 and R280.20 is further problematic as the advice also appears contradictory. These paragraphs note a PA should take steps to dissociate from the client if a tax planning approach is adopted despite the PA's advice to the contrary; presumably based on a decision required under R380.13 (although whether or not the intent is to also refer to disagreements about the existence of a credible basis is unclear). However, actions such as advising the client to make disclosure to tax authorities or the external auditor would be contrary to disassociation. While these paragraphs require the PA to consider advising the client to make full disclosure of the arrangement to the relevant tax authorities or the external auditor in the event of a disagreement about pursuing a tax planning arrangement, there is no clarity on what a PA should do if the client refuses to make such disclosure. This could create an underlying expectation for the PA to violate client confidential information in such a case. It should be made clear that the scope of arrangements entered into and permissibility of actions in jurisdictional legislation would need to be considered as a factor before advising a client to make a disclosure. The guidance should explicitly remind a PA of their</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>obligations in relation to client confidentiality, and it would also be beneficial for the guidance to include a reminder that it would be extreme for a PA to suggest escalation through the client reporting to a tax authority where there is a good faith difference in view and a credible basis. This approach should only be limited to situations where a treatment would be unquestionably incorrect or problematic.</p> <p>The wording of R380.21 notes that the PA “shall” consider the need to withdraw from the engagement and professional relationship. The wording seems quite strong and, without guidance to explain matters that factor in such a decision, may be taken as an implication that this is generally the course of action to follow in such circumstances. Perhaps explaining the factors driving such consideration would be helpful to show there is genuine judgment to be applied in making this decision and that PA would take the possible further action(s) in severe but not necessarily all cases.</p>
17	Independent Regulatory Board for Auditors	<p>Yes, we agree that where the PA disagrees with management, this needs to be communicated as noted in R380.19.</p> <p>Our view is that the requirement under R380.20 – to advise the client where it decides to pursue the tax planning arrangement, despite the PA’s advice to the contrary – may be problematic, on the basis that the PA who rendered the advice to not pursue the arrangement may not be informed by the client of the action taken. We therefore suggest that this paragraph be reworded to start as follows: “Where a PA is aware or becomes aware that a If client decides to pursue the tax planning arrangement ...”.</p> <p>Further, we suggest that paragraphs R380.19 and R380.20 be combined, as the actions and engagement would practically take place at the same time.</p> <p>Also, paragraph R380.21 is unclear regarding under which circumstances an PA/audit firm should withdraw from the professional relationship in its entirety. We suggest that further clarity be provided in this regard.</p>
18	Institut der Wirtschaftsprüfer in Deutschland e.V.	<p>Our suggestion here is to clarify the scope. We understand the provisions here to imply that the title of the section should better be "Disagreement with Client about the Credible Basis". R380.19 explicitly refers to disagreements when there is no credible basis. R380.20 and R380.21 no longer (explicitly) refer to the criterion of "disagreement about the existence of a credible basis", instead implying that the disagreement in R380.20 can also arise from other reasons, despite there being a credible basis. We suggest, however, these rules should be read as consecutive to each other. The requirement to take steps to disassociate (R380.20) should apply when there is no credible basis (i.e., it should apply in R380.19). Where there is a credible basis, but the PA nevertheless decides not to recommend a particular tax planning arrangement in line with R380.13, there should only be a requirement to consider the need to disassociate</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		from the tax planning arrangement (R380.19) or withdraw from the engagement or the relationship with the client (R 380.21) (see above).
19	Institute of Certified Public Accountants of Uganda	<p>While ICPAU believes that PAs need to protect themselves from unrealistic employer and client expectations and that communicating relevant matters or concerns with the individual client, management, or those charged with governance, including as part of an escalation process is necessary, we further note as below:</p> <p>We find this proposal to be contrary to para.38 and 380.4A3 among others, where there is disagreement as to whether a TP arrangement does not have a credible basis in laws and regulations or not. This is a matter that borders typical objections or disagreements in the field of tax services. While the proposals seek to carry the guidance akin to what already exists in the Non-Compliance with Laws and Regulations (NoCLAR), we find that this in some cases may be a matter for court adjudication.</p>
20	Institute of Chartered Accountants of Nigeria	<p>We align with the Board's proposal.</p> <p>However, we recommend that when the matter for disagreement does not bother on the contravention of tax laws and regulations and does not violate ethical consideration in each circumstance, the professional accountant should explore every other means to reach mid-point with the management rather than resigning or terminating an engagement. In addition, we recommend that whatever additional step(s) the Board expects professional accountants to take in that circumstances should align with the principle of Non-compliance with Laws and Regulations (NOCLAR) provided by the IFAC.</p>
21	Institute of Financial Accountants	<p>It appears this question may be related to paragraphs 380.8 A1 and 280.8 A1, which set out the responsibilities of clients, management and those charged with governance. However, we feel that these paragraphs lack context and add nothing to these proposed Sections of the Code, which should focus on the responsibilities of professional accountants.</p> <p>In general, we would agree that, where a client determines to pursue a tax planning arrangement despite the professional accountant's advice, the professional accountant should disassociate themselves from that engagement and should consider withdrawing completely from the professional relationship where the disagreement would give rise to ongoing threats to compliance with the fundamental ethical principles. We have reservations concerning the 'more measured approach' taken by the IESBA in relation to professional accountants in business. To simply say that the</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>professional accountant should consider resigning is insufficient, as ongoing threats to compliance with the fundamental principles are equally likely to exist in business as in public practice.</p>
22	<p>Institute of Singapore Chartered Accountants</p>	<p>Given that a PA in business (PAIB) is required to communicate with the immediate superior, next higher level of authority and if appropriate, those charged with governance (TCWG) (proposed paragraphs R280.19 and R280.20), we are supportive of the proposed actions that the PAIB should take in the case of disagreement with management regarding whether a TP arrangement has a credible basis in L&R.</p> <p>In a similar manner, we believe that the proposed actions set out for PAPPs in the case of disagreement with client under proposed paragraphs R380.19 and R380.20 should also include communication with TCWG where appropriate (i.e., as part of the requirement instead of being shown as part of application material under paragraph 380.21 A1).</p>
23	<p>International Bar Association Tax Committee</p>	<p>As such, we agree with the proposals outlined in this context and have no further comments. However, the PAs role should end at communicating to the client, the risks involved in the TP arrangements and the actions set out in R380.20. However, the key responsibility of electing to follow that advice or not should exclusively rest with the management of the client. Currently, under Indian tax laws, the management of a company is responsible for the affairs of the company. Once clear advice has been shared by the PA and the Client confirms its decision to pursue the TP arrangement in spite of such advice, it may be impracticable to expect the PA to proactively pursue the senior management on such matters as is currently contemplated in 380.20 A1.</p>
24	<p>Japanese Institute of Certified Public Accountants</p>	<p>We agree with the proposal. However, we believe that the following points need to be addressed.</p> <p>Paragraph R380.20 specifies the matters which a PAPP must consider advising on when the management pursues a TP arrangement despite the contrary opinion of the PA. In addition, paragraph R280.20 sets forth the matters to be considered when the superior or the management pursues a TP arrangement despite the advice of a PAIB. On the other hand, paragraphs 380.7 A1 and 280.7 A1 state that the “responding to non-compliance with laws and regulations” in the Code applies when a PA becomes aware of tax evasion, etc. We believe that it should be clarified how paragraphs R380.20 and R280.20 relate to the provisions regarding the “responding to non-compliance with laws and regulations.”</p> <p>In the case of PAIB, there are differences in the environment in which a senior PAIB including CFO and a PAIB other than a senior PAIB are placed, and it may be difficult for a PAIB other than a senior PAIB to take the actions specified in the Code against the interests of the organization. A PAIB other than a senior PAIB may find it difficult to take the</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>actions in this provision, especially if the management or the superior are risk-favoring with respect to tax strategies, as the management may not heed the advice of the PAIB in gray zone.</p> <p>Accordingly, as with Section 260 of the Code, we believe that it will be useful to separate PAIBs into senior PAIBs and PAIBs other than senior PAIBs and provide the respective considerations. It is expected that, as with the “responding to non-compliance with laws and regulations,” showing the respective responses in the form of a flow chart in the staff Q&A, if possible, will further enhance the understanding of professional accountants.</p>
25	Korean Insitute of Certified Public Accountants	<p>The PA’s disagreement with the client often happens when the legislative intent behind tax laws or interpretation thereof is unclear or uncertain. There are also jurisdictions like Korea where there is no official process to make full disclosure of the arrangement to the relevant tax authorities and where the only available option is to raise inquiries to obtain response or to rely on an advance ruling process. Therefore, we agree with the proposed requirement for the PA to “consider” advising the client to take specific actions described in paragraph R380.20, given such a process may be inappropriate in some circumstances. Instead, the KICPA suggests that the ED should set forth an inquiry & response process as an alternative to the disclosure of the arrangement to the relevant tax authorities, for the jurisdictions that share similar legislative environments with Korea. We also propose that the ED should add a requirement (to paragraph R380.20) to communicate with those charged with governance in case of disagreement with the client, considering the importance of the supervisory role played by those charged with governance.</p> <p>It may not be appropriate in some circumstances to require the PA to inform the client and explain “the basis for the accountant’s conclusion”, when the PA decides not to recommend or advise on a TP arrangement that the client would like to pursue (paragraph R380.13). Therefore, we suggest that the ED should consider lowering the level of the PA’s obligation to explain the basis for the conclusion, by making it part of application guidance, instead of requirements.</p>
26	KPMG International	<p>Paragraph 380.15 A1 acknowledges a proposed tax planning arrangement can be in compliance with the relevant tax laws and regulations even when there are circumstances giving rise to uncertainty. Uncertainty can lead to differences of opinion between a PA and their client (including the client’s internal subject matter experts) with respect to interpretation of laws and regulations and their intent. While paragraphs R380.20 and R380.21 state the PA is to consider advising or consider the need to withdraw from an engagement (as compared to a requirement to do so), we believe this section would benefit from additional application material that acknowledges in some circumstances, especially when there is uncertainty, it is reasonable that the PA may determine it is not necessary to advise on the points in paragraph R380.20, or to withdraw from the engagement and the professional relationship. Without such</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>clarification, these requirements may be interpreted in practice in a heavy-handed manner, resulting in an adversarial relationship between the PA and the client. It will not serve the public interest if, as an unintended consequence, the client avoids a future tax planning confrontation with the PA by either engaging with service providers who are not PAs and who may have a less stringent ethical framework or declining to use any service provider resulting in tax planning arrangements that are not as high in quality and may not have a credible basis in law.</p> <p>From the perspective of the PAIB, we believe that taking the steps to disassociate mentioned in paragraph R280.20 would be a high bar to comply with, especially in circumstances where there is uncertainty, including from differences of opinion or where the intent of law is unclear.</p> <p>Lastly, we are not certain if consideration of (a), (b) and (c) under paragraphs R380.20 or R280.20 alone would be sufficient to comply with the requirement to take steps to disassociate from the tax planning arrangement. It is unclear whether the PA would need to take additional actions to disassociate themselves, and what those actions might be short of withdrawal.</p>
27	Malaysian Institute of Accountants	<p>It is unclear if the intention of the proposed paragraph R380.19 is different from the proposed paragraph R380.13. The proposed paragraph R380.19 also appears to exclude the ‘reputational, commercial and wider economic’ consequences described in the proposed paragraph R380.12.</p> <p>We are supportive of the principles behind proposed paragraphs R380.20 and R280.20 but steps (b) and (c) which require the PA to consider advising the client to make full disclosure to tax authorities or the external auditor is overly onerous as well as impractical when considering that there could be some commercial sensitivity around such TP arrangements. This could imply that there is a possibility of revealing confidential information to other parties in these situations. These steps may only be applicable when the proposed TP arrangements are genuinely contentious and if the disclosure is required by local tax regulations or legislation. Current practice in Malaysia does not require such escalation as this is something that is the responsibility of the client only.</p> <p>To address this, we would propose for the IESBA to consider revising the proposed paragraphs to emphasize that it would only be under such specific contentious circumstances (subject to the legal requirements in the jurisdiction or expectations stated by the tax authorities in specific guidelines or rulings) that a PA should consider suggesting such escalation. We would also propose that the IESBA provide additional guidance in relation to the PA’s compliance with confidentiality in these circumstances.</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
28	Malaysian Institute of Certified Public Accountants	Agree. Such proposals are sufficient to provide guidance to PAs to navigate issues that arise in cases where the PAs believe that there is no credible basis in the tax planning advice or solution. With that, it is hoped that the proposals outlined will ensure that the PAs will not deviate from their commitment to fundamental principles as well as the public interest.
29	Malta Institute of Accountants	Part. I paragraph 80 refers to “escalate the matter within the client or employing organization (such as to TCWG or whistleblower ombudspersons). In this regard, one needs to also take into consideration existing regulations and requirements, such as those related to tipping off, to ensure that there are no conflicting requirements.
30	Pennsylvania Institute Of Certified Public Accountants	<p>The committees note that there are varying degrees of judgement in determining an appropriate basis for a tax return position and that a difference of opinion between a member in public practice and client could vary in degree and materiality. The proposed guidance assumes that what constitutes a credible basis for a tax return position is clear cut and lacking in any ambiguity. This is far from the reality of the tax practice landscape, where legislation often lacks clarity and, at times, is incomplete and inconsistent. As a result, judgement is required to determine the significance of the difference of opinion and the impact on engagement continuance decisions. The committees do not agree that the member in public practice should automatically take steps to disassociate from the engagement or consider the need to withdraw from the engagement and the professional relationship in the event that there is disagreement.</p> <p>The committees further note that the Code includes guidance on disagreements with clients and disagreement guidance with the member’s immediate superior. Additionally, client acceptance and retention guidance is included in the attest standards, and further guidance is not needed in the Code. Furthermore, the guidance for addressing illegal acts within the Noncompliance with Laws and Regulations guidance is adequate for clear-cut situations.</p>
31	PKF (Durban)	<p>Yes, I do agree that where the PA disagrees with management that this needs to be communicated as noted in R380.19.</p> <p>The requirement under R380.20 to advise the client where the client decides to pursue the tax planning arrangement despite the professional account's advice to the contrary, may be problematic on the basis that the PA who rendered the advice to not pursue the arrangement may not be informed by the client of the action taken hence cannot make such further communication. As mentioned in our response to question 2 clients that require TP services are not often recurring clients and may not be audit clients hence it may be difficult for a PA after having provided such TP service to</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
		<p>determine whether or not the client decided to pursue the arrangement. It is therefore recommended that this wording be amended such that the sentence starts with</p> <p>Where a PA is aware or becomes aware that a client decides to pursue the tax planning arrangement. ..."</p>
32	PricewaterhouseCoopers International Limited	<p>While we agree in general, we note that the wording of R380.19 is very broad and would also cover the situation in which a third party (not the professional accountant) would have advised the client on the tax planning arrangement. We assume that the thrust of this paragraph is to give guidance with respect to the tax planning arrangement in respect of which the professional accountant was engaged to render tax planning services and suggest making this explicit in the wording of the paragraph.</p>
33	Public Accountants and Auditors Board Zimbabwe	<p>The PAAB agrees with the proposed various actions but we however believe that in circumstances that the disagreement is as a result of a non-compliance with rules and regulations like the example the given on the client or employing organization engaging in illegal activities or in cases of perceived tax evasion we believe in addition to the proposed actions, the PA can also take the actions outlined in the code when responding to NOLCAR under section 260 for PAIB and 360 for PAPPs as it is the professional duty and responsibility of the PA to bring this to the attention of the appropriate level of authority within the organization (TCWG) or directly to law enforcement by referring to the NOCLAR provisions of the Code on sections of that provide guidance.</p>
34	RSM International	<p>Yes. However, we recommend that the order of paragraphs 280.20 A1 and 280.20 A2 be reversed to make clear that a Professional Accountant consider the need to resign from the employing organization in the absence or failure of established protocols and procedures to address ethical or other concerns. This will provide greater clarity to Professional Accountants.</p>
35	Saudi Organization for Chartered and Professional Accountants	<p>We agree with the IESBA's proposed guidance because this issue is one of the challenges that PAs could face in practice and the proposed guidance may significantly help PAs to secure their ethical stance. However, although IESBA's proposals consider the practical challenges associated with the options available to Professional Accountants in Business (PAIB) in case of a disagreement with management, there are constraints that PAs could face within an employing organization which may limit their ability to escalate or communicate their views to the right level of management. In our opinion, more considerable procedures are needed to help PAIB meet the ethical considerations provided in the proposed changes.</p>

Tax Planning and Related Services
 Compilation of Significant ED Comments – Question 9
 IESBA Meeting (September 2023)

No	Respondent	Respondent Comments
36	South African Institute of Chartered Accountants	<p>SAICA agrees with the proposal however members disagree with the requirement in paragraph 380.20.</p> <p>The requirement under R380.20 to advise the client where the client decides to pursue the tax planning arrangement despite the professional account's advice to the contrary, may be problematic on the basis that the PA who rendered the advice to not pursue the arrangement may not be informed by the client of the action taken and hence cannot make such further communication resulting in the proposal being practically implementable.</p> <p>It is therefore recommended that this wording be amended such that the sentence starts with –</p> <p>“Where a PA is aware or becomes aware that a client decides to pursue the tax planning arrangement...”</p>
37	Taxation Institute of Hong Kong	<p>It would be practically difficult and potentially too extreme to require tax practitioners escalate the situations. Sometimes there is a fine margin on different cases – the cases could just be a good faith difference on a particular TP arrangement which happens frequently concerning the interpretation of the local laws and regulations.</p>
38	WirtschaftsprüferKammer	<p>In principle, we agree with the proposals. In Germany, however, the profession is subject to far-reaching confidentiality, which restricts many proposals unless the client agrees.</p>