

Meeting: IESBA CAG

Meeting Location: Virtual

Meeting Date: March 7 and 31, 2022

Agenda Item

B

Tax Planning and Related Services

Objectives of Agenda Item

1. To report back on the September 2021 IESBA CAG discussion.
2. To obtain Representatives' views on the key issues identified by the Tax Planning Task Force (TPTF) and its preliminary responses.

Task Force

3. Members:
 - Jens Poll, Chair, IESBA Member
 - Sanjiv Chaudhary, IESBA Member
 - Laurie Endsley, IESBA Member
 - Andrew Mintzer, IESBA Member
 - Channa Wijesinghe, IESBA Member

Project Status and Timeline

4. The IESBA committed in its [Strategy and Work Plan 2019-2023](#) to understand and address the ethical implications of “aggressive tax planning” as it relates to the role of professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs). Following [fact finding](#), the IESBA initiated a [project](#) in September 2021 aimed at developing a principles-based framework to guide PAIBs' and PAPPs' ethical conduct when providing tax planning and related services to their employing organizations and clients, respectively.
5. The fact finding work, including the Tax Planning Working Group's final report, was discussed with the CAG in September 2019, March 2020, May 2021 and September 2021.
6. During April 2022, the TPTF plans to hold a series of global roundtables (virtual) to gather feedback from stakeholders on the key matters under consideration in the project.
7. The project timeline anticipates IESBA approval of an Exposure Draft in December 2022.

Report Back on September 2021 CAG Discussion

8. [Appendix 1](#) to this paper includes extracts from the draft minutes of the September 2021 CAG meeting¹ and an indication of how the Tax Planning Working Group or IESBA has responded to CAG Representatives' comments.

Matters for CAG Consideration

9. Representatives are asked for views on matters raised in the presentation in **Agenda Item B-1**.

Material Presented

Agenda Item B-1 Tax Planning and Related Services: Presentation

¹ The draft minutes will be approved at the March 2022 IESBA CAG meeting.

Appendix 1

Below are extracts from the draft minutes of the September 2021 CAG meeting and an indication of how the Tax Planning Working Group or the IESBA has responded to the CAG's comments.

Matters Raised	Working Group/IESBA Responses
PROJECT PROPOSAL	
<p>Mr. Hansen sought clarification as to whether there is an intention to differentiate between public interest entities (PIEs) and non-PIEs as the project progresses. He also reminded the WG that during the CAG meeting in May 2021, CAG representatives had also asked whether there was an intention to review types of tax structures or tax havens as part of the project.</p>	<p>During the meeting, Prof. Poll explained that there should be no differentiation between PIE and non-PIEs when developing ethical principles. However, there might be a need to acknowledge a differential approach with respect to communication with those charged with governance (TCWG). Prof. Poll nevertheless noted that the WG would consider reflecting it in the project proposal. (The point has been reflected in paragraph 11 of the project proposal.)</p> <p>On the issue of transactional structures or arrangements, Prof. Poll responded that the factors mentioned are indicators the future Task Force will be considering. He added that the project would also consider the economic substance of non-transaction-driven tax structures.</p>
<p>Ms. Blomme noted Accountancy Europe's support for the WG's proposal to move to a standard-setting project with the presentation of the project proposal. She pointed out that this is a topic of much discussion in Europe and the UK, and Accountancy Europe has also produced considerable work in this area. Notably, the matter of defining the various key terms is not straightforward, and it would be difficult to define and differentiate concepts such as "aggressive tax planning," "tax planning," and "tax evasion" at a global level. Ms. Blomme encouraged the future TF to progress the project having regard to international efforts, such as the OECD's Pillar 2 efforts in shifting the global effective tax rates, which she felt would support the project. She noted that the work of the OECD, Accountancy Europe and others in the EU could guide the discussion forward, especially concerning the tax professions in general. She noted</p>	<p>Support noted.</p> <p>During the meeting, Prof. Poll noted Ms. Blomme's observations and clarified that there is no intention for the project to "reinvent" the wheel. He acknowledged the diversity of terminologies in the market on the topic of tax planning. He assured Representatives that the project will be prudent in finding the right approach, i.e., by investigating the characteristics or factors that relate to tax planning rather than constructing new sets of terminology. He also informed representatives that the WG had planned an upcoming engagement with CFE Tax Advisers Europe as part of its outreach activities.</p>

Matters Raised	Working Group/IESBA Responses
<p>for example that other than PAs, the legal profession also executes tax planning activities in certain jurisdictions such as France. She believes that there is scope for the future TF to reach out to various stakeholders other than the accounting profession to understand the ethical scope that applies to tax advisors. She also mentioned that CFE Tax Advisers Europe had recently issued a consultation paper, <u>Professional Judgment in Tax Planning – An Ethics Quality Bar for All Tax Advisers</u>, seeking to guide tax advisors in using their ethical compass when providing tax advice.</p>	
<p>Ms. McGeachy-Colby expressed her appreciation for the breadth of the project, noting that the future TF is tasked to investigate an extensive topic. She added that the SMPAG continues to have concerns about trying to define "aggressive tax planning," as raised during the May 2021 CAG discussion. She also queried if the future TF would be cognizant of how the proposed provisions may interact with local regulations such as the General Anti-Avoidance Rules (GAAR) in some jurisdictions. She cautioned the WG on setting provisions that may be stricter than the local tax legislation. She was concerned that this may create a hostile environment for PAs to operate with more restrictions on tax planning activities.</p>	<p>Points considered.</p> <p>The TPTF considered the points raised as part of its deliberations in developing the agenda material for this meeting.</p>
<p>Mr. Munter observed that the future TF has a challenging task of determining the suitable terminology to use as the project progresses. He also wondered whether consideration had been given to the different responsibilities of those who carry out tax planning activities in different capacities such as PAIBs versus auditors. He was of the view that motivation is an important issue, for example, whether an entity intends to adopt a certain tax strategy as part of its business as opposed to one that is "tax motivated," and the threshold for the strategy to be deemed permissible. On the other hand, he noted that auditors need to consider their independence in terms of where they might be advocating for their clients. In such an instance, he was of the view that it is difficult</p>	<p>Points noted.</p> <p>During the meeting, Prof. Poll responded that motivation is very important and accordingly, there is a need to consider the circumstances of a tax transaction or structure. He added that the threshold issue should be left to the future Task Force to consider, potentially in the context of assessing whether the reasonable and informed third party (RITP) test would be an appropriate test to apply. Prof. Poll also acknowledged that the extant Code currently has provisions in place to deal with auditors providing non-assurance services (NAS) such as tax planning services in Section 604 of the Code.</p>

Matters Raised	Working Group/IESBA Responses
to determine the appropriate safeguards to deal with the advocacy threats.	
Ms. Meng conveyed her support for the WG's direction in terms of the proposals in the project proposal. She emphasized the importance of understanding the economic substance of the tax transactions as the project develops provisions and suitable terminology to deal with tax planning. At the same time, she encouraged the project to maintain a principles-based approach.	Support noted. The TPTF considered the points raised as part of its deliberations in developing the agenda material for this meeting.
Mr. Cela noted the excellent work that the WG had undertaken and agreed that the best way forward is Option A, which is to develop overarching material in the Code that will assist PAs in complying with the fundamental principles (FPs) and apply the conceptual framework (CF). He also concurred with Mr. Hansen's observation that there should be no differentiation between PIEs and non-PIEs. Mr. Cela also noted his full support for the future TF to advance work in this area to assist professional bodies in guiding their members in the ethical conduct expected when carrying out tax planning services.	Support noted. The TPTF considered the points raised as part of its deliberation in developing the agenda material for this meeting.
Ms. Mubarak commented on the clear explanation provided by the WG for the IESBA to undertake this project and supported the way forward. From a regulator's perspective, she welcomed the WG's recommendation for Option A as she believes this will improve the profession's accountability and transparency when carrying out tax planning services. She shared observations from her experience where tax professionals seemed to have abused the loopholes in tax laws, for example, via transfer pricing for profit-shifting. She noted that the tax regulations are complex and subject to misinterpretation by various parties.	Support noted. During the meeting, Prof. Poll confirmed that this project will address all tax planning-related activities carried out by PAs while the current NAS provisions will deal with independence considerations for tax-related NAS provided to audit clients.
Mr. Hansen encouraged the future TF to consider engaging with the legal profession. He also noted that it was difficult to see a link between this project and the societal issues related to the Environmental,	Points considered. During the meeting, Prof. Poll clarified Mr. Hansen's query on ESG by noting a movement towards sustainability reporting by organizations today. There are many such frameworks in

Matters Raised	Working Group/IESBA Responses
<p data-bbox="203 268 833 338">Social and Governance (ESG) movement mentioned in the project proposal.</p> <p data-bbox="203 520 833 772">Ms. Blomme agreed with Prof. Poll, noting that the ESG movement is prevalent in Europe, with tax transparency definitely being part of the long-term view. She felt that where there was less of a link was in relation to inducements. However, she was of the view that there is definitely a link to the governance part of the ESG developments.</p>	<p data-bbox="857 268 1427 449">place, such as the GRI and ESG reporting. These frameworks encourage transparency in reporting, especially of the various tax strategies and risk policies and procedures adopted by organizations.</p> <p data-bbox="857 472 1427 758">Prof. Poll explained that the intent in introducing the inducements concept in this project was more in relation to how inducements are approached in the extant Code. As noted by Mr. Munter, intention is very important and PAs' environment can contribute to certain behaviors that encourage PAs to undertake risky or poor judgments.</p> <p data-bbox="857 781 1427 921">Prof. Poll added that he hoped the future TF would develop an understanding of the various factors that can assist PAs in overcoming such pressures.</p>