Tax Planning and Related Services—Issues and Task Force Proposals

I. Background

Proposed Ethical Framework

1. During the June 2022 IESBA meeting, the Tax Planning Task Force (TPTF) presented an outline of an ethical framework to guide professional accountants (PAs) in exercising judgments when navigating the complexities and uncertainties of tax planning (TP) and deciding on the appropriate course of action in the circumstances. Key elements of the proposed framework include:

   - Complying with the fundamental principles (FPs) and addressing the threats to such compliance that might be created when carrying out TP activities.
   - Exhibiting the mindset and behavior expected of PAs consistent with the Role and Mindset provisions of the Code. This includes having the strength of character to act appropriately when facing pressure or other challenging circumstances, having an inquiring mind when carrying out TP activities, and meeting the expectations set out in the Code for PAs to promote an ethics-based culture within their employing organizations and to uphold the profession's reputation.
   - Reviewing the relevant tax laws and regulations, the economic purpose and substance of the transaction or arrangement, and, where necessary, the legislative intent behind the tax legislation
   - Exercising professional judgment to establish a credible basis for the TP advice in circumstances of uncertainty.
   - Consulting internally or externally with appropriate experts, which might be part of specific actions to address identified threats.
   - Communicating relevant matters or concerns with the individual client, management, or those charged with governance, including as part of an escalation process where necessary.
   - Evaluating the need for transparency. This includes the circumstances in which disclosure (subject to confidentiality) would be appropriate or justified, to whom disclosure might be made and when, and the matters that might be disclosed.
   - Developing appropriate documentation throughout the process to substantiate PAs' judgments, decisions, and actions.
   - Responding to suspected non-compliance with laws and regulations (NOCLAR) when PAs encounter information that suggests TP might have "stepped over the line" into an actual or suspected breach of tax laws and regulations.

2. Following the direction provided by the Board at that meeting, the TPTF has developed the first draft of the proposed new Sections 380 and 280 in **Agenda Items 3-B** and **3-C**, respectively, based on the key elements of the ethical framework.

II. Scope of Proposals

Proposed New Sections 380 and 280

3. As noted in the project proposal, the scope of the project encompasses Parts 2[1] and 3[2] of the Code, with consideration given to the need for any conforming amendments to other sections of the Code.

Task Force Proposals

4. The TPTF is of the view that the proposed ethical framework warrants new sections in Parts 2 and 3 focused on TP and related services or activities.

5. As part of its deliberations, the TPTF noted that the issues concerning TP and related services are unique compared with other professional services provided by PAs, given the sensitive nature of TP in terms of its financial impact on clients and employing organizations, the broader role of taxes in meeting jurisdictions' policy goals, and the complexity of the subject. In particular, the TPTF believes it is especially important to address the uncertainties PAs may face when providing TP and related services.

6. Therefore, the TPTF proposes that two new sections be added to the Code, namely Sections 380 and 280. In drafting these sections, the TPTF has endeavored to keep:

   - Section 380 applicable to all clients.
   - Both sections applicable to all entities, from small- and medium-sized enterprises (SMEs) to large publicly traded multi-national entities, regardless of whether they are public interest entities (PIEs).

   (See paragraphs 380.5 A4 and 280.5 A4.)

7. Consistent with any other provisions of the Code, the proposed provisions in Sections 380 and 280 do not override laws and regulations, including any anti-avoidance rules prevailing in a given jurisdiction.

8. Further, the TPTF notes that paragraph 100.7 A1 of the Code remains applicable, i.e., where a jurisdiction has provisions that differ from or go beyond those in the Code, PAs in that jurisdiction need to be aware of those differences and comply with the more stringent provisions unless prohibited by law or regulation.

---

[1] Professional Accountants in Business

[2] Professional Accountants in Public Practice

Scope of Services Addressed

Tax Planning

9. The TPTF is of the view that it is important to establish a description of "tax planning" in the proposed sections to circumscribe the scope of professional services and activities that the sections would address.

10. In considering how to describe TP, the TPTF has reviewed established descriptions of TP developed by the following organizations:

Organization	Description of Tax Planning
OECD	Arrangement of a person's business and/or private affairs in order to minimize tax liability[3]
UK HMRC	Involves using tax reliefs for the purpose for which they were intended[4]
Confédération Fiscale Européenne (CFE) (Tax Advisers Europe)	Focus on delivering savings to clients using legal vehicles and financial transactions specifically established to exploit these technicalities[5]

11. The TPTF noted that the latter two descriptions appear unduly limiting in scope in one way or another, or overly technical. The TPTF believes that the OECD description is closer to what should be the focus of the new sections, i.e., dealing with arrangements to minimize tax liability. The TPTF, however, prefers the more neutral term "tax efficiency" vs "tax minimization" when considering TP.

12. Accordingly, the TPTF proposes the following description:

> *Tax planning comprises a broad range of* [services/*activities] designed to assist [a client/an employing organization] in structuring its affairs in a tax-efficient manner, including taking a position on a current or future tax return*.

(See paragraphs 380.5 A1 and 280.5 A1.)

13. To facilitate consistent application, the TPTF is proposing in paragraphs 380.5 A2 and 280.5 A2 a broad range of illustrative examples of TP services or activities covered under these sections.

Related Services or Activities

14. During the roundtable discussions and as part of the fact-finding work underpinning the project, the TPTF noted that there are other types of services or activities performed by PAs that are ancillary to the provision of TP services or the performance of TP activities. Such services or activities include, for example, assisting in resolving a dispute with the tax authority on a TP position that the PA or another party recommended, or preparing a tax return that reflects the position in the TP

---

3 https://www.oecd.org/ctp/glossaryoftaxterms.htm

4 Tackling Tax Avoidance, Evasion, and other forms of Non-Compliance (March 2019), HM Revenue & Customs, HM Treasury United Kingdom

5 Professional Judgment in Tax Planning - An Ethics Quality Bar for All Tax Advisers (June 2021), CFE Tax Advisers Europe

arrangement. These related services or activities are based on or linked to a TP service or activity. Consistent with the indicative scope in the project proposal, the TPTF proposes that such related services or activities be within the scope of the ethical framework.

15. The TPTF is proposing a description of related services in paragraph 380.5 A3 and related activities in paragraph 280.5 A3.

16. As related services or activities are scoped in, the remainder of Sections 380 and 280 do not make further reference to them.

NOCLAR

17. As agreed, this project is not addressing tax evasion, which is unlawful. Nevertheless, to build in the proper linkage to the NOCLAR provisions of the Code, the TPTF proposes guidance that refers PAs to the NOCLAR sections of the Code when they become aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by a client, management, those charged with governance (TCWG) or other individuals working for or under the direction of the client or employing organization. (See paragraphs 380.7 A1 and 280.7 A1.)

Matters for IESBA Consideration

1. Do IESBA members agree with the Task Force's proposals above regarding:
   (a) the scope of services or activities addressed; and
   (b) The descriptions of TP and related services or activities?

III. Role of the Professional Accountant in Acting in the Public Interest

Background

18. As discussed at the June 2022 IESBA meeting, various difficulties can arise when trying to define the public interest (PI) when it comes to TP. In particular, the following factors, as shared by roundtable participants, can affect what it means for a PA to act in the PI in relation to TP, whether done for a client or an employing organization:

- *Interpretation of the tax legislation*: roundtable participants expressed the view that the notion of acting in the PI when carrying out TP activities is closely linked to the approval from the tax authority in the particular jurisdiction. Thus, they believed that if the tax authority agrees with a particular tax treatment or structure at the time of consultation, the PA has acted in the PI. There was also a strong view that legislators and regulators consider the PI when they develop tax laws and regulations; therefore, it was argued that complying with those laws and regulations represents acting in the PI.
- *PAs' expertise and reputational risks*: participants generally accepted that PAs play a role in serving the PI by providing their clients and employing organizations with high-quality TP advice, leveraging their training and expertise. Participants suggested that in providing high-quality TP advice, PAs need to consider the potential risks of the TP to their clients or employing organizations and the reputational risks to the PAs – considerations that are relevant to the PI. By providing high-quality advice, the PA is perceived to improve compliance within the tax

system and generally improve tax collection in the particular jurisdiction – outcomes that are in the PI.

- *Perception issues*: Participants generally believed that the very nature of PAs helping their clients or employing organizations to obey the law is an embodiment of PAs acting in the PI. Participants generally agreed that it is a balancing act – clients or employing organizations may view that PAs should be preserving their interests rather than those of the general public at large.
- *The complexity of TP transactions:* Some participants believed that it may be challenging to determine what is in the PI, especially in situations where multiple jurisdictions are involved in cross-border transactions. It was observed that each jurisdiction would perceive the PI differently. So, it was argued that it is an impossible task to determine what would be in the PI in these circumstances. Each jurisdiction would try to protect its sovereignty by determining its tax regime for competitive or other reasons. The reality, therefore, is that tax laws can differ quite considerably among jurisdictions.

Task Force Proposal

19. Taking into account all the observations during the roundtable discussions and the TPTF's proposal in June that the Code should not attempt to define or describe the PI in the abstract in relation to TP, the TPTF proposes contextual guidance in Sections 380 and 280 that explains that:

    - An important part of what acting in the PI means for PAs is for them to contribute their knowledge, skills and experience to assist clients or employing organizations meet their TP goals while complying with tax laws and regulations. In doing so, PAs help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the PI. (See paragraphs 380.4 A1 and 280.4 A1.)
    - PAs have a responsibility not only to advise their clients or employing organizations on how best to meet their TP goals but also to assist them in meeting their responsibility to pay taxes and not seek to avoid it through tax evasion or by taking advantage of tax minimization arrangements that, although not prohibited by tax laws and regulations, might still create threats to compliance with the fundamental principles. (See paragraphs 380.4 A2 and 280.4 A2.)

Matter for IESBA Consideration

2. Do IESBA members agree with the Task Force's proposals above regarding the role of PAs acting in the PI?

IV. Responsibilities of Clients, Management, and Those Charged with Governance

20. The TPTF believes that it is important to recognize within the proposed ethical framework the specific responsibilities of management and TCWG of clients or employing organizations in relation to TP. While proposed Sections 380 and 280 specify PAs' responsibilities when providing TP services or

carrying out TP activities, nothing in those sections detracts from the expected obligations of management and TCWG.

21. As such, the TPTF proposes guidance that highlights a number of key responsibilities of management and those charged with governance. These include:

- Ensuring that the client's or employing organization's tax affairs are conducted in accordance with the relevant tax laws and regulations.
- Maintaining all the books and records and implementing the systems of internal control necessary to enable the client or employing organization to fulfill its tax compliance obligations.
- In relation to a TP service provided to a client, making available all the facts and other relevant information needed to enable the PA to perform the TP service.
- Submitting the client's or employing organization's tax returns and dealing with the relevant tax authorities in a timely manner.
- Making such disclosures to the relevant tax authorities as might be required by tax laws and regulations or as might be necessary to support a tax position, including details of any TP arrangements.

(See paragraphs 380.8 A1 and 280.8 A1.)

Matter for IESBA Consideration

3. Do IESBA members agree with the Task Force's proposals above regarding highlighting the responsibilities of management and TCWG of clients or employing organization?

V. Responsibilities of All Professional Accountants

22. The TPTF proposes that the ethical framework specify some basic responsibilities for all PAs.

23. First, it is important to recognize that in some jurisdictions, there are anti-avoidance laws and regulations. Accordingly, the TPTF proposes that PAs obtain an understanding of those laws and regulations and comply with them when providing TP services or carrying out TP activities. (See paragraphs R380.6 and R280.6.)

24. If a PA in public practice (PAPP) is requested by a client to provide a TP service, the TPTF then proposes that the PA obtain an understanding of the nature of the request. At a general level, prior to the PA undertaking any detailed work, the TPTF proposes that this understanding include:

(a) The background of the client, its owners, management and TCWG, and its business activities;

(b) The goals of the TP; and

(c) The relevant tax laws and regulations. (See paragraph R380.9)

25. The TPTF also proposes guidance that refers the PAPP to relevant provisions of the Code addressing client and engagement acceptance (Section 320), second opinions as the PAPP might be engaged to provide a second opinion on a TP arrangement (Section 321), professional competence and due care (Subsection 113), and the need to exercise professional judgment and have an inquiring mind (Section 120). (See paragraphs 380.9 A1 – 380.10 A1.)

26. For a PAIB involved in performing a TP activity, the TPTF proposes a similar requirement (paragraph R280.9) as well as guidance regarding professional competence and due care, and the need to exercise professional judgment and have an inquiring mind. (See paragraph 280.10 A1.)

27. The TPTF also believes it is important that PAs explain the basis on which they advised or recommended a TP arrangement to a client or for an employing organization. Accordingly, the TPTF proposes requirements to that effect in paragraphs R380.11 and R280.11.

Matter for IESBA Consideration

4. Do IESBA members agree with the Task Force's proposals above regarding the responsibilities of all PAs?

VI. Establishing a Credible Basis for Tax Planning Advice

Background

28. During the fact-finding phase preceding the project's launch, stakeholders commented that in providing TP services, PAs might sometimes face situations where the legislative intent behind tax laws is unclear or uncertain, and the related regulations or tax forms lack clarity. To further explore this matter, the TPTF posed several questions during the global roundtable discussions to understand how a PA would approach their advice to a client or employing organization if they were uncertain that the tax treatment would prevail based on the relevant tax laws and regulations. Participants were asked what specific factors the PA should consider in exercising their judgment in such circumstances.

29. In gaining an understanding of the challenges PAs face when the legislative intent behind tax laws is unclear or uncertain, the TPTF also thought it would be beneficial to identify specific scenarios to understand the extent to which PAs consider the legislature's intent, the approach PAs would take, and whether their assessment would change:

- If the situation concerns a cross-border transaction involving multiple jurisdictions.
- If the tax strategy could be considered artificial or contrived.

30. In summary, the TPTF agrees with the observations shared by roundtable participants that in all circumstances, PAs must take the necessary steps to establish a credible basis for their advice, taking into account, where applicable, the intent of the tax legislation. In addition, participants also suggested several actions PAs can undertake to navigate situations where the legislative intent behind tax laws is unclear or uncertain:

- PAs may review rulings regarding specific cases to gather insight into what the legislature intended. It was noted that the PA's responsibility is to inform and educate the client or employing organization about the law's intent to better understand the underlying risks, if any, of the transaction.
- As a general matter, participants commented that full transparency regarding the risks to the client or employing organization is essential. Participants shared that the threshold for success in terms of the TP arrangement being accepted by the relevant tax authorities is subject to debate in different jurisdictions. In such circumstances, participants expected that the PA would

also explain the risks involved and advise the client or employing organization against taking unnecessary risks.

- It would be important for PAs to document these risks as it was noted that jurisdictions have different definitions of what is considered a credible basis for the TP arrangement. Participants shared the view that what is a credible basis could vary from jurisdiction to jurisdiction as it depends on judgment in the circumstances. Participants agreed that it would be important for PAs to document the rationale for their judgments and decisions.
- PAs are expected to address disclosure (subject to confidentiality) to the relevant tax authorities as an important matter.
- Participants noted that understanding the legislature's intent is important to applying the tax legislation. In some jurisdictions, a PA is perceived to be acting negligently if the PA did not consider the legislation's intent.
- If the PA has reason to believe that the tax strategy does not have a credible basis and the client or the PA's immediate superior disagrees with the PA's assessment, participants commented that the PA should communicate their reservations to the client or the appropriate level of management within the employing organization. The PA might also consider seeking expert advice. If the expert advice aligns with the PA's assessment, participants agreed that the PA might need to decide whether to retain the client or resign from the engagement and client relationship if the client has not changed its position, or resign from the employing organization in the case of a PAIB.

31. Concerning dealing with the complexities of cross-border transactions, which evolving tax laws may compound, the TPTF noted that there is a potential for polarization given that there may be conflicting considerations between different jurisdictions that PAs need to balance. Participants generally agreed that PAs who are not equipped with the necessary expertise or experience to advise the client or employing organization in these circumstances need to rely upon the judgments of other firms or experts that have the appropriate competencies. PAs would then need to assume that these firms or experts will operate within a similar ethical framework as the PAs.

32. The TPTF also agrees that if a PA is involved in providing TP advice in cross-border transactions, the PA has a responsibility to be informed about the various complexities associated with those transactions and to develop the professional competence to deal with them. This is consistent with the FP of professional competence and due care.[6] A PA is also expected to have an inquiring mind and not advise on, or engage in, transactions that are unlikely to prevail in a court of law.[7]

33. Participants also cautioned that in some jurisdictions, it is possible for a TP strategy or transaction to have a very low likelihood of success in a court of law, yet not be deemed unacceptable such that

---

[6] Paragraph 110.1 A1(c) of the Code states that PAs are to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and act diligently and in accordance with applicable technical and professional standards.

[7] Paragraph 110.1 A1(e) of the Code states that PAs are to comply with the fundamental principle of professional behavior, which means complying with relevant laws and regulations, behaving in a manner consistent with the profession's responsibility to act in the PI in all professional activities and business relationships, and avoiding any conduct that they know or should know might discredit the profession.

fines and penalties would be levied in the event of an adverse ruling. For example, it was noted that in some jurisdictions such as the U.S., the likelihood of such a tax treatment prevailing in court might be only 20%.[8] Accordingly, the TPTF was cautioned not to propose provisions in the Code that would be contradictory to such practice.

Task Force Proposal

34. Given the above backdrop, the TPTF proposes that the framework establish a principle that if a PA is engaged to advise on or recommend a TP arrangement to a client, or is involved in advising on or recommending a TP arrangement for an employing organization, the PA only do so if they have established a credible basis in laws and regulations for the arrangement. (See paragraphs R380.12 and R280.12.)

35. Recognizing that what is a credible basis under relevant tax laws and regulations will vary from jurisdiction to jurisdiction, consistent with feedback obtained from roundtable participants, the TPTF proposes guidance setting out various actions a PA might take to establish a credible basis for the TP arrangement. (See paragraphs 380.12 A2 and 280.12 A2.) The TPTF maintains the view, as discussed during the June 2022 IESBA meeting, that it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold as doing so would convey a false sense of accuracy, all the more so given roundtable participants' feedback that there is a range of numerical probabilities commonly understood and accepted in different jurisdictions.

36. The TPTF noted that the International Independence Standards use a "likely to prevail" threshold with respect to:

    (a) A tax service or transaction relating to marketing, planning or opining in favor of a tax treatment for an audit client and a significant purpose of which is tax avoidance (paragraph R604.4), and

    (b) Circumstances in which providing tax advisory and TP services will not create a self-review threat (paragraph 604.12 A2(c)).

    The TPTF believes that the likely-to-prevail threshold—reinforced through Section 604 referring to the need for the audit firm to have confidence about clearing the threshold—is higher than a credible-basis threshold, given stakeholders' heightened expectations regarding auditor independence. In the context of TP services provided to clients that are not audit clients or TP activities performed for employing organizations, the TPTF believes a credible-basis threshold sets a more appropriate bar for PAs as it calls on them to establish reasonable grounds for their TP advice or recommendation, taking into account the various actions they may take to establish such grounds in the particular jurisdictional context, as explained in paragraphs 380.12 A2 and 280.12 A2.

37. Further, feedback received during stakeholder outreach preceding the launch of the project as well as during the global roundtables suggests that stakeholders generally agree with the principle that PAs only advise on or recommend a TP arrangement if there is a credible basis for them to do so.

---

[8] Reasonable Basis (20%): If a position is based on one or more authorities, it will generally satisfy reasonable basis even though it does not satisfy the substantial authority standard (not merely arguable or not merely a colorable claim). [Regs. Sec.1.6662-3(b)(3); Joint Committee on Taxation Interest and Penalty Study (JCS-3-99)] – AICPA Levels of Confidence for Tax Return Positions (May 2017)

Matter for IESBA Consideration

5. Do IESBA members agree with the Task Force's proposals above regarding the principle of credible basis?

VII. Stand-back Test

38. The TPTF believes it is important that the framework include a stand-back test given heightened public attention on the issue of "tax avoidance," the fact that TP has become an important part of the calculus among investors and other stakeholders regarding how clients and employing organizations meet sustainability goals, and the need to protect the profession's role and reputation in TP.

39. Therefore, the TPTF proposes that in determining whether to proceed with the advice or recommendation on the TP arrangement, the PA *consider* the reputational, commercial and wider economic risks and consequences arising from the way stakeholders might view the arrangement. The TPTF believes that this test is an important public interest element of the framework as it stimulates the PA to consider the potential for any adverse consequences for the client or employing organization, as well as the relevant jurisdiction in terms of its tax base, in the light of how stakeholders might view the TP arrangement. The TPTF has proposed guidance elaborating on the meaning of reputational, commercial and wider economic risks and consequences. (See paragraphs R380.13 – 380.13 A2 and R280.13 – 280.13 A2.)

40. The TPTF notes that this stand-back test will assist the PA in complying with the FP of professional behavior. It is also consistent with paragraph 100.6 A4 of the role and mindset provisions that in acting in the PI, a PA considers not only the preferences or requirements of an individual client or employing organization, but also the interests of other stakeholders when performing professional activities. Further, the test serves to support the Organisation for Economic Cooperation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative. Finally, the test is responsive to the PIOB's suggestion for the framework to incorporate an aspirational element that would serve to elevate the ethical bar for all PAs.

Matter for IESBA Consideration

6. Do IESBA members agree with the Task Force's proposals above regarding the stand-back test?

VIII. Describing the Gray Zone

Background

41. At the June 2022 IESBA meeting, the TPTF noted the challenge regarding identifying the appropriate terminology to use to refer to the "gray zone" of uncertainty. Various international organizations have attempted to address the issue and faced significant challenges in developing an appropriate term that could work globally.

42. During the global roundtables, the TPTF outlined the proposition to use terms such as "uncertain" and "egregious" to describe the gray zone and a sub-zone within the gray zone. Roundtable participants shared that this proposition suggests that TP activities can be easily categorized into subgroups within the gray zone when the situation can be a lot more complex in practice. Some also

viewed the term "unacceptable tax planning" as embodying an element of moral judgment that they encouraged the TPTF to avoid.

43. A few roundtable participants offered suggestions for alternative terms or approaches. One suggestion was to use the term "reasonable" instead of "appropriate" or "proper" when referring to TP. Another suggestion was to focus on describing characteristics of the gray zone without defining it. This would recognize that the gray zone is more context-sensitive, both from the societal or broader sustainability perspective and from the client's or employing organization's perspective.

44. Other participants noted that uncertainty is the key issue rather than the treatment of the tax scheme itself. It was noted that the main concern for PAs is the ambiguity around tax treatments and whether these will withstand public perceptions or the scrutiny of a court of law. For example, it was observed that a tax strategy that has substance in a given year might be deemed inappropriate a few years later.

Task Force Proposal

45. The TPTF concurs with the views of the roundtable participants that given the absence of a global consensus regarding the acceptability of TP practices, it is inappropriate to seek to categorize TP arrangements within the gray zone.

46. The TPTF also agrees with stakeholders who suggested care in not blurring the boundaries of ethical behavior with moral judgment with respect to PAs carrying out TP activities.[9] Instead, the TPTF believes that PAs' involvement in TP can contribute to their broader societal role, the sustainability of businesses, and the profession's reputation.

47. Therefore, the TPTF proposes guidance to acknowledge that a PA might encounter circumstances giving rise to uncertainty as to whether a proposed TP arrangement will comply with the relevant tax laws and regulations. Because such uncertainty makes it more challenging for the PA to establish a credible basis for the TP arrangement, threats to compliance with the FPs might be created. (See paragraphs 380.15 A1 and 280.15 A1.)

48. The TPTF then proposes guidance setting out various circumstances that might give rise to uncertainty. (See paragraphs 380.15 A2 and 280.15 A2.) The TPTF has endeavored as far as possible to take a generic approach to describing such circumstances, recognizing that the Technology Working Group has identified the issue of uncertainty as potentially giving rise to threats in circumstances other than when providing TP services or performing TP activities.

49. Given that circumstances of uncertainty create risks, the TPTF is proposing that the PA discuss the nature of the uncertainty with the client or with management and, if appropriate, TCWG of the employing organization. The TPTF also proposes guidance as to the purposes such a discussion would serve. (See paragraphs R380.16 – 380.16 A1, and R280.16 – 280.16 A1.)

---

[9] The final report (September 2021) leading to the launch of the project highlighted the concept of tax morality and the OECD's work on this topic. Tax morale, as defined by the OECD, is the intrinsic motivation to pay taxes. This is a vital aspect of the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues. As recommended in the report, the TPTF does not believe the Code should deal with the broader theme of tax morality.

Matter for IESBA Consideration

7. Do IESBA members agree with the Task Force's proposals above regarding describing the gray zone?

IX. Applying the Conceptual Framework to Navigate the Gray Zone and Other Tax Planning Circumstances

50. A significant part of the proposed ethical framework is the application of the conceptual framework (CF) to assist PAs in navigating the gray zone and other TP circumstances. Taking into account the rich feedback from the roundtable discussions, the TPTF therefore proposed practical guidance in terms of:

- Illustrative examples of the types of threats that might be created from PAs providing a TP service or performing a TP activity. (See paragraphs 380.17 A1 and 280.17 A1.)
- Factors that are relevant in evaluating the level of such threats. (See paragraphs 380.17 A2 and 280.17 A2.)
- Examples of actions that might eliminate threats created by circumstances of uncertainty. (See paragraphs 380.17 A3 and 280.17 A3.)
- Examples of actions that might be safeguards to address such threats. (See paragraphs 380.17 A4-A5 and 280.17 A4-A5.)

Matter for IESBA Consideration

8. Do IESBA members agree with the Task Force's proposed guidance regarding the application of the CF?

X. Disagreement with Management

51. As previously discussed, the TPTF believes that the proposed ethical framework should contain provisions to address circumstances where a disagreement arises with management of a client regarding a TP arrangement. The TPTF therefore proposes certain required actions for a PAPP if the PA disagrees with management regarding whether a proposed TP arrangement has a credible basis in laws and regulations. If management determines to pursue the arrangement despite the PA's advice to the contrary, the TPTF proposes that the PA take steps to be disassociated from the arrangement. (See paragraphs R380.18 and R380.19.)

52. The TPTF proposes similar provisions for a PAIB in the case of disagreement with the PA's immediate superior or other responsible individual within the employing organization. The TPTF, however, recognizes that it is more likely that an escalation process would apply in the case of an employing organization. A PAIB might also have recourse to established protocols and procedures regarding how to raise ethical or other concerns internally within the employing organization. (See paragraphs R280.18 – 280.19 A1).

Matter for IESBA Consideration

9. Do IESBA members agree with the Task Force's proposals regarding addressing circumstances of disagreement with the client or with others within the employing organization regarding a TP arrangement?

XI. Documentation

53. Consistent with the earlier discussions at the Board, the TPTF proposes guidance highlighting the importance of documentation. The proposals guide PAs as to the matters that it would be beneficial to document, and explain how such documentation will assist them. (See paragraphs 380.21 A1 – 380.21 A2, and 280.20 A1 – 280.20 A2).

54. In line with the approach to documentation in Sections 2 and 3 of the Code, the TPTF proposes to encourage, but not require, that PAs prepare documentation. Documentation is generally a matter of quality management or engagement performance rather than an ethical behavior issue. However, the TPTF believes that the reasons set out in paragraphs 380.21 A2 and 280.20 A2 are sufficiently persuasive that PAs will document the various matters set out in those paragraphs.

Matter for IESBA Consideration

10. Do IESBA members agree with the Task Force's proposals above regarding documentation?

XII. Other Matters

Tax Planning Products or Arrangements Developed by a Third Party

Background

55. Question 4 in the roundtable briefing note asked participants about the ethical considerations for a PA if the PA is contemplating introducing a client to a firm that specializes in developing TP products or arrangements for sale to the public. Participants were also asked whether the PA should disclose to the client any commission or referral fee the PA has received or will receive from the external provider.

56. At the June 2022 IESBA meeting, the Board concurred with the roundtable participants' general observations that where a PA is referring a client to a provider of TP products or arrangements to meet the client's needs, the PA would need to inform the client of the PA's relationship with the external provider. In addition, the PA should ascertain the provider's competence in developing the TP product or arrangement. Ultimately, the PA would still be responsible for ascertaining the credibility of the particular product or arrangement, including its impact on the client or the client's financial statements.

57. If the PA receives a commission or referral fee for the introduction, the participants were almost unanimously of the view that the commission or referral fee should be disclosed to the client. Participants felt that this would need to be disclosed to the client before the actual referral is made so that the client understands the full context and expectations. It was felt that such disclosure would also enable the PA to maintain objectivity.

Task Force Proposal

58. The TFTP proposes guidance in paragraph 380.20 A1 to the effect that where a PA refers a client to a third party provider of TP products or arrangements, or where a client approaches a PA for advice on a TP product or arrangement developed by a third-party, the provisions in Section 380 apply. The TPTF believes that in both situations, the responsibilities of the PA are no different than if the PA were the creator of the TP product or arrangement.

59. Regarding referral fees or commissions, the TPTF believes that the provisions in Section 330 addressing such type of remuneration are sufficient and applicable. Accordingly, the TPTF proposes the inclusion of a reference to the appropriate provisions in Section 330. (See paragraph 380.20 A2.)

Multi-jurisdictional Tax Benefit

60. During the global roundtables, an observation was raised that a client or employing organization might obtain a tax benefit from accounting for the same transaction in more than one jurisdiction. In such a case, it was suggested that while it would not be unlawful for the client or employing organization to obtain the same tax benefit twice in two different jurisdictions, there is a public interest argument for the PA to advise the client or employing organization to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.

61. The TPTF has accepted this point and proposes guidance to that effect in paragraphs 380.14 A1 and 280.14 A1.

Conforming Amendments

62. In developing an appropriate linkage to Section 321 addressing second opinions in the context of PAPPs, the TPTF noted the need for a few conforming amendments to that section to recognize that a PAPP might need to advise on the application of tax laws and regulations in the context of being approached by a client for a second opinion on a proposed TP arrangement. Section 321 currently does not contemplate a PAPP providing a second opinion on the application of laws and regulations.

63. **Agenda Item 3-D** sets out the proposed conforming amendments.

Matter for IESBA Consideration

11. Do IESBA members agree with the Task Force's proposals above regarding the other matters highlighted?