

Tax Planning and Related Services

Issues and Task Force Proposals

I. Introduction

1. In February 2023, the IESBA released the Exposure Draft (ED), [Proposed Revisions to the Code Addressing Tax Planning and Related Services](#). The proposals are aimed at strengthening the ethical expectations for professional accountants (PAs) in business (PAIB) and public practice (PAPP) when performing tax planning (TP) activities for employing organizations or providing TP services to clients, respectively.
2. Forty-nine responses were received from stakeholders across a range of categories and different jurisdictions.¹ The IESBA considered a summary of the significant comments raised on the ED and the Task Force's (TF) responses at the September 2023 Board meeting (Agenda Item [9-A](#) of the September 2023 meeting).
3. After the meeting, the TF also consulted with stakeholders² regarding their views on some aspects of proposed Sections 280 and 380. This paper summarizes the background and feedback received and explains how the TF proposes addressing such feedback.

II. Matters raised at the September 2023 IESBA Meeting

4. At the September 2023 meeting, the IESBA generally supported the TF's views and proposals in response to respondents' feedback on the ED. Board members provided comments and suggestions for further clarifications and refinements to the proposed texts of Sections 380 and 280.
5. The [Appendix](#) contains the comments received from Board members at the September 2023 meeting, along with TF responses. Refer to **Agenda Items 3-B** and **3-C**, which detail the proposed revisions in mark-up from the version posted for the September 2023 IESBA meeting.
6. **Agenda Items 3-B** and **3-C** also incorporate some changes in response to comments received from IESBA participants on an advance draft of Sections 380 and 280 circulated to the Board in October 2023. The TF's responses to the advance comments will be shared with the Board separately.
7. The TF also noted a number of general drafting and editorial comments from IESBA members. The TF has considered these carefully and proposes some changes in **Agenda Items 3-B** and **3-C** for the IESBA's consideration.

Matter for IESBA Consideration

1. Do IESBA members agree with the TF's responses to the matters raised at the September Board meeting as summarized in the Appendix?

¹ Refer to the Appendix of Agenda Item [9-A](#) of the September 2023 IESBA meeting for a list of the respondents.

² IESBA-National Standard Setters (NSS), representatives from the ICAEW Tax Faculty and representatives from AICPA

III. PIOB Public Interest Issues

8. As noted in **Agenda Item 1-B**, in November, the PIOB updated its list of public interest issues on the project and raised the following three key public interest issues:
 - (a) Promoting consistent ethical behavior of PAs in relation to providing TP services/activities.
 - (b) Raising the awareness of risks associated with unacceptable TP services/activities.
 - (c) Promoting sustainability principles, including transparency, by encouraging appropriate disclosure of tax-related matters in accordance with applicable reporting requirements
9. In relation to the first two issues, the PIOB commented that achieving consistent ethical behavior of PAs in relation to TP is a critical outcome and sets high expectations for the profession. The PIOB expressed support for the IESBA's intention to provide an ethical framework for PAs to determine how to identify threats, apply adequate safeguards, and report, as needed, in relation to TP services/activities, as well as develop relevant practical guidance on how to apply this framework in particular circumstances. The PIOB recommended that before the finalization of the project, the IESBA assess whether the TP provisions in the Code achieve the objectives that were set at the inception of the project.
10. In relation to the third issue, the PIOB suggested that the proposed text could go further in promoting transparency by guiding PAs (both in business and public practice) to encourage and promote the appropriate disclosure of tax-related matters in the financial statements or other relevant public documents, in accordance with applicable reporting requirements.
11. Lastly, the PIOB welcomed the series of global roundtables organized to gather input and feedback from a broad range of stakeholders. The PIOB also welcomed the targeted outreach that has since taken place with stakeholders beyond the accounting profession, including investors, national standard setters, and the OECD. The PIOB encouraged continuing engagement with those stakeholders and civil society organizations, tax authorities, and lawyers/other professionals providing tax services through to the finalization of the project since the representation in the ED responses from organizations beyond the accounting profession was quite limited. This would serve to ensure that existing initiatives and experience are leveraged and that views are adequately considered in the proposed requirements. At the same time, the PIOB noted that the IESBA's engagement with other tax professional organizations may encourage them to develop ethical codes based on the provisions in the Code or that are equivalent.

Task Force Responses

Promoting Consistent Ethical Behavior of PAs in Relation to Tax Planning

12. During the [fact-finding](#) phase of this workstream, the IESBA learned that various international and regional organizations, professional accountancy organizations (PAOs), and firms have developed frameworks and practices that touch on ethical considerations in TP to a varying extent. The frameworks and guidance materials that various organizations and firms have developed overlap but are inconsistent because they do not serve the same purposes or address the same audience.
13. As the ethics standard-setter for the global accountancy profession, the IESBA accepted that it had a significant role to play as a leader in promulgating global ethics standards addressing PAs' responsibilities in relation to TP, especially considering that many of the issues of concern identified in the project research

are cross-border or multi-jurisdictional. There was a compelling need for a unifying framework in the Code that would codify and embody the principles and best practices to guide PAs when providing TP services or performing TP activities.

14. As a result of the global consultation with stakeholders and given the lack of specific provisions in the extant Code addressing TP beyond the fundamental principles and conceptual framework and a few independence-focused provisions, the TF believes that the proposed provisions will set a new global benchmark of ethics standards that will substantively and practically guide PAs' mindset and behavior when providing TP advice.
15. During the [roundtable](#) discussions, the TF heard from stakeholders that some jurisdictions have regulatory regimes that govern the provision of TP services performed by PAs. The TF believes that laws and regulations alone are not sufficient when it comes to addressing ethical behavior. Indeed, the complexity of tax laws and regulations and their lack of clarity in many instances often create uncertainty and opportunities for unethical behavior. In that context, the development of the provisions duly recognizes that while the Code does not override laws and regulations, ethics is broader than the law and can guide thinking and behaviors where laws and regulations are unclear, uncertain or silent.
16. The framework being developed to guide PAs' conduct in their TP activities is also principles-based. Quite apart from the general advantages of principles over rules, the TF believes that focusing on principles is the appropriate way to develop this framework for TP because of the wide variety of tax laws, practices, and customs around the world. Hence, global applicability and consistent application in a variety of circumstances have been driving forces in the development of the framework, recognizing nonetheless the essential and critical role of professional judgment in the application of principles.
17. Given that the proposed provisions will reside in the Code, the TF also believes that they will have greater visibility and standing as they will be authoritative compared with ethical guidance on TP in non-authoritative materials. Additionally, the Code has a much greater ability to influence behavior because it is enforceable. Finally, under IFAC's Statements of Membership Obligations (SMOs) which apply to PAOs in over 130 jurisdictions around the world, IFAC member bodies are required to apply no less stringent standards than those stated in the Code. As such, the TF believes that the provisions will serve the public interest by raising the bar and promoting consistent ethical behavior of PAs in relation to TP globally.

Raising the Awareness of Risks Associated with Unacceptable Tax Planning Activities

18. The [objective](#) of the project is to develop a principles-based framework, leveraging the fundamental principles and the conceptual framework of the Code. At an overarching level, the proposed ethical framework builds appropriate linkages to provisions in the Code that speak to PAs' responsibility to act in the public interest and the mindset and behavioral characteristics expected of them in the context of TP.
19. At a practical level, the proposed ethical framework guides the PA to:
 - Understand the applicable tax laws and regulations and comply with them. This includes seeking an understanding of the legislative intent as a possible action when establishing a credible basis. At the same time, the provisions make clear that tax evasion is illegal.
 - Obtain an understanding of the rationale for the tax scheme, structure, or transaction, taking into account a reasonable and informed third party's perceptions, particularly when there are uncertainties. In this regard, the proposed provisions contain guidance on establishing a credible

basis for the TP arrangement and indicators of what might be deemed acceptable vs. unacceptable TP.

- Consider the reputational, commercial, and wider economic consequences that could arise from how stakeholders might view the TP arrangement. The proposed provisions highlight some of the risks and potential consequences to the client or employing organization as well as to the profession if the TP arrangement is viewed or challenged by tax authorities as questionable. Considering the risks involved, having regard to stakeholders' perceptions should the TP arrangement become public, is an important guardrail to guide PAs to think carefully about the TP arrangement in a wider context and not behave in a manner that could bring disrepute to the profession.
 - Identify and address circumstances where there might be undue pressure or threats that could place the PA in a position to breach the fundamental principles.
 - Communicate with the client, management or those charged with governance (TCWG) regarding the PA's assessment of the TP arrangement from an ethical standpoint. This includes any necessary communication of relevant matters or concerns when there is uncertainty, or as part of an escalation process when a disagreement arises.
 - Address considerations relating to transparency to the relevant tax authorities, including the circumstances in which such transparency would be advisable to the client (e.g., when there is uncertainty, where the client is obtaining a tax benefit from accounting for the same transaction in multiple jurisdictions, or where there is disagreement between the PA and the client).
 - Document on a timely basis the PA's assessment, communications with the client and other parties, the client's or employing organization's response to the accountant's advice, and any disagreement.
20. The TF therefore believes that the proposed framework comprehensively responds to the public interest need to raise awareness of risks associated with unacceptable TP activities.

Promoting Sustainability Principles, Including Transparency, by Encouraging Appropriate Disclosure of Tax-related Matters in Accordance with Applicable Reporting Requirements

21. The TF believes that tax transparency, especially in promoting sustainability principles, is a matter for sustainability reporting frameworks and not the Code. However, the TF believes that management and TCWG have a responsibility in promoting tax transparency. Therefore, the TF proposes guidance in paragraph 380.9 A1 to recognize explicitly that management, with oversight from TCWG, has a responsibility to make the appropriate disclosure of tax strategy, policies or other tax-related matters in the client's financial statements or other relevant public documents in accordance with applicable reporting requirements in the relevant jurisdictions. (A similar addition is proposed in Section 280.)

Global Applicability of the Code

22. Overall, based on the fact-finding work leading to the launch of the project, extensive outreach program and feedback from ED respondents, the TF firmly believes that the IESBA's efforts in this project have translated into a set of robust and comprehensive provisions that meet the objective set at the project's inception, i.e., the development of an ethical framework to guide PAPPs' and PAIBs'

mindset and conduct when providing TP and related services to clients or performing TP activities for employing organizations.

23. The TF recognizes that effective implementation of, and compliance with, the Code is a continuous endeavor and challenge requiring the collective efforts of, and diligence from, NSS, PAOs, firms, individual PAs, and regulatory and oversight bodies. The TF strongly believes that the proposed provisions, if adopted, properly implemented, and enforced, can strengthen ethical behavior among PAs with respect to TP.
24. Concerning the applicability of the provisions to non-PAs who are not subject to the ethical obligations under the Code, the TF believes that the proposed sections have the potential to inspire other standard setters and professionals to raise the bar of ethical behavior with respect to TP. The TF agrees with the PIOB's view that the proposed sections can serve as a global baseline of ethics standards for other professionals who provide TP services to clients or perform TP activities in employing organizations.
25. The TF recommends that the Board emphasize these points in the Basis for Conclusions document and factor them into its outreach and communication plan once the final pronouncement is issued. Further, there would be an opportunity to advance global dialogue about the applicability of the proposed provisions to non-PAs when the Board embarks on its identified strategic priority to explore expanding the scope of the Code beyond PAs during the next strategic cycle.

Matter for IESBA Consideration

2. Do IESBA members agree with the TF's responses concerning the PIOB's comments?

IV. Effective Date

26. The TF proposes that Sections 280 and 380 become effective for TP engagements or activities beginning after June 30, 2025, subject to certification of the final pronouncement by the PIOB in April 2024.
27. Although the TF recognizes the challenges related to the relatively short period available for adoption and implementation, the TF notes that it is in the public interest for the relevant provisions to become effective as soon as possible, especially given the high level of public scrutiny regarding PAs' involvement in TP services as a result of a number of high-profile scandals in recent years.
28. The TF recommends a transitional provision to allow TP services or activities started before the effective date of the pronouncement to run their course and be completed under the extant Code provisions.
29. The TF also recommends that the Board permit early adoption of the provisions.

Matter for IESBA Consideration

3. Do IESBA members agree with the proposed effective date?

V. Due Process Matters

Significant Matters Raised by Respondents

30. The TF has carefully considered all significant matters raised by ED respondents. The TF's analysis of the significant matters raised by respondents to the ED and its proposals have been presented in the September 2023 public agenda papers for the Board's deliberation. In the TF's view, there are no significant matters raised by the respondents that have not been brought to the Board's attention.

Need for Further Consultation

31. The TF believes that the Board has pursued extensive outreach to stakeholders throughout the life cycle of this project, including through the series of global roundtables in April 2022, and meetings with the IESBA Consultative Advisory Group (CAG), the regulatory and legal communities, the Forum of Firms, and the IFAC SMP Advisory Group.
32. On the basis of the above, the TF does not believe there is a need for further consultation with stakeholders.

Consideration of the Need for Re-Exposure

33. The Board's due process and working procedures require that prior to finalizing the revised content of an exposed international pronouncement, the Board determines whether there has been a substantial change to the exposed document such that re-exposure would be necessary. They also require that when an ED has been subject to many changes, a summary comparative analysis be presented to the Board showing, to the extent practicable, the differences between the ED and the proposed final international pronouncements.
34. Under the due process and working procedures, situations that constitute potential grounds for a decision to re-expose may include, for example:
- Substantial change to a proposal arising from matters not aired in the ED such that commentators have not had an opportunity to make their views known to the Board before it reaches a conclusion.
 - Substantial change arising from matters not previously deliberated by the Board.
 - Substantial change to the substance of a proposed international pronouncement.
35. The main revisions to the ED (see **Agenda Item 3-E**):
- Clarify the descriptions of TP services and related services.
 - Clarify a few of the illustrative examples of TP services.
 - Clarify the guidance related to establishing a credible basis, especially to make clear that the provisions do not act as a barrier to the PA being engaged by the client, or otherwise assisting the client, in remediating or rectifying a TP arrangement which lacks a credible basis.
 - Clarify and enhance the illustrative examples of self-review and self-interest threats.
 - Clarify the provisions addressing circumstances where the PA has been engaged to advise on a TP product or arrangement developed by a third party.
 - Clarify the actions the PA can undertake when a disagreement arises with the client.

- Provide clearer guidance when the PA is engaged to advise on a TP arrangement developed by a third party.
36. These changes are largely similar in Section 280.
37. The TF considers that the changes reflected in the final proposed text of Sections 380 and 280 post-exposure respond to the feedback received from respondents to the ED and do not fundamentally or substantively change the proposals in the ED. Accordingly, the TF is of the view that re-exposure is not warranted.

Matter for IESBA Consideration

4. Do IESBA members agree that the changes to the ED do not warrant re-exposure?

Appendix

The table below summarizes the comments received from Board members at the September 2023 meeting, along with TF responses. Refer to **Agenda Items 3-B** and **3-C**, which detail the proposed revisions in mark-up from the version posted for the September 2023 IESBA meeting.

Paragraph Reference	Matters Raised	Task Force Responses
<i>Description of Tax Planning and Related Services</i>		
380.5 A1	To provide further clarification regarding the distinction between tax planning and compliance services.	<p>The TF agreed that there is a distinction between tax planning and tax compliance services. This distinction was also highlighted by some respondents to the ED, with the example of the preparation of a client’s tax returns being noted as a tax compliance service.</p> <p>On due reflection in light of respondents’ comments, the TF proposes that compliance-related services or activities (such as preparing a tax return based on a TP arrangement developed by another party) not be included within the scope of related services or activities. The TF proposes to make this clear via new application material paragraph 380.5 A3.</p> <p><u>380.5 A3 Tax planning services do not include services that are generally referred to as tax compliance or tax preparation, which are services to assist the client in fulfilling the client’s filing, reporting, payment and other obligations under tax laws and regulations. However, if a tax service comprises both tax planning and tax compliance, the portion that relates to tax planning would be covered by this section.</u></p> <p>The TF notes that the PA would still be required to apply the conceptual framework to identify, evaluate, and address any threats to the PA’s compliance with the fundamental principles when providing a tax compliance service.</p>
380.5 A1 and 380.5 A2	The term “tax planning” seems to be used interchangeably with “tax advisory” as paragraph 604.2 A1 refers to “tax planning	The TF notes that tax advisory and tax planning are not mutually exclusive. Some tax advisory services are not tax planning services. However, tax planning services are advisory services, which is reflected in paragraph 380.5 A1.

Paragraph Reference	Matters Raised	Task Force Responses
	services” and “tax advisory services” separately as examples of tax services.	
380.5 A2	To provide further guidance on the examples, including the efficient use of tax credits and mergers and acquisitions.	The TF proposes no change as it would not be appropriate to describe in technical detail how TP might help achieve the efficient use of tax credits or structure mergers or acquisitions.
380.5 A2	To clarify that the example referring to transfer pricing is about tax planning, not tax compliance.	<p>The Task Force has amended the bullet point to make it clearer that this is an example of TP that falls within the scope of this section:</p> <ul style="list-style-type: none"> Advising on <u>the structuring of</u> transfer pricing arrangements, taking into account tax-related transfer pricing guidelines. <p>The Task Force proposes that the Basis of Conclusion explain that while this standard does not address tax compliance services, if the PA is engaged to perform a service that comprises both tax planning and tax compliance, it is a service that is covered under this section.</p>
<i>Responsibilities of Management and Those Charged with Governance</i>		
	To clarify the subheading as it does not appear to match the description in para 380.8 A1. The subheading indicates that management and TCWG individually take equal responsibilities, while para 380.8 A1 implies that management takes primary responsibilities.	The TF proposes no change as this is consistent with Section 360 (NOCLAR). The reference to TCWG in the subheading points to the oversight responsibility of TCWG as set out in paragraph 380.9 A1.
380.9 A1, 6 th bullet	The management responsibility is linked to the responsibility for the client's tax compliance, including the content of and timely submission of relevant returns and	The TF proposes no change, as the responsibility for submitting tax returns ultimately rests with management. Management may, however, engage a PA to assist management in making the submission to the tax authority.

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Paragraph Reference	Matters Raised	Task Force Responses
	filings. The mere submission is not per se a management responsibility, as it may be delegated to a PA in the tax compliance activity.	
<i>Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement</i>		
380.12 A2	To consider including an example from the explanatory memorandum (i.e., the client may advise the PA of a transaction that has already occurred that does not have a credible basis in laws and regulations and, therefore, needs advice on how to address it) in the proposed text	<p>The TF acknowledged that the ED seemed to preclude the PA from being engaged to advise a client to resolve a situation where the particular TP arrangement does not have a credible basis. The TF agreed that the PA should be allowed to advise the client on an alternative arrangement that would achieve a credible basis. Indeed, allowing the PA to do so would be in the public interest. Accordingly, the TF proposes to clarify this in the new application material paragraph 380.12 A3.</p> <p>This also would be responsive to comments from a stakeholder about the need to make this point clear.</p>
380.12 A4 bullet six	To consider amending “challenged” to “successfully challenged” as the fact that there are challenges is not, per se, a decisive argument. Ultimately, such challenges may or may not be supported by courts.	The Task Force notes that the wording of the bullet point is from the ED and was approved by the Board. Respondents broadly supported it. The bullet point states that the practice is already <i>established</i> . To limit consideration of the action to only circumstances where courts have affirmed the practice would be unreasonable. Not every established practice needs to have been vetted by the courts if it is generally accepted practice. The Task Force therefore proposes no change.
<i>Circumstances of Uncertainty</i>		
380.17 A2 bullet one	Consider elaborating on the phrase “adequate factual basis.” The Basis for Conclusions (BfC) should include materials and clarifications on the meaning of this circumstance.	The TF believes that establishing a factual basis is a basic and essential task a PA needs to undertake to understand the client's circumstances and the particular facts needed to properly advise the client. Accordingly, the TF does not believe further clarification is needed.

Paragraph Reference	Matters Raised	Task Force Responses
380.17 A2 bullet five	Consider elaborating on the phrase “ultimate beneficiaries.” The BfC should include materials and clarifications on the meaning of this circumstance.	The Task Force is of the view that the concept of “ultimate beneficiaries” is generally understood from its plain English wording. Accordingly, the TF does not believe further clarification is needed.
<i>Potential Threats Arising from Providing a Tax Planning Service</i>		
380.19 A1 bullet one	Consider re-wording the illustrative examples as the new bullet suggests that a self-review threat (SRT) is created if the PA relies on the outcome of the other services in providing the TP service. In other words, this is an example where the other services create the SRT to the TP service. However, given the main body of this para stating that “Providing a TP service to a client might create a self-review threat.” I believe this bullet should address the circumstances where providing a PT service creates an SRT.	The Task Force has reworded the example for clarity: <u>A self-review threat might be created when a professional accountant has recently provided a valuation service to a client for tax purposes, the output of which is then relied upon or is a key input to a tax planning service for the client.</u>
380.19 A1 bullet five	Regarding the reference to fees “that might be perceived to be excessive,” the concept of “excessive” is very judgmental, never used in the Code, and with no definition. Accordingly, to avoid unintended consequences, the TF shall provide clear indications and clarifications in the BfC on how to use and apply such terms.	The Task Force notes that what is excessive should be assessed through the objective lens of a reasonable and informed third party. The exercise of professional judgment will be essential, taking into account the facts and circumstances. The TF therefore proposes no change.

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Paragraph Reference	Matters Raised	Task Force Responses
380.19 A2 bullet ten	To consider the term “challenged” should be changed to “successfully challenged.”	See response to similar comment raised on paragraph 380.12 A4.
380.19 A2 Bullet thirteen	The term “pre-packaged” has not been explained throughout the provisions.	The TF proposes some edits to this bullet point to refer to “off-the-shelf” package, which is a term already used in the Code.
<i>Tax Planning Products or Arrangements Developed by a Third Party</i>		
R380.24	To consider the confidentiality aspect when informing the client of any professional or business relationship with the third-party provider.	The TF notes that Subsection 114 addressing confidentiality permits a PA to make appropriate disclosures to comply with technical and professional standards, including ethics requirements.
R380.25	The PIOB observer sought clarification as to whether the PA is subject to the provisions in Section 380 if the PA receives a fee or commission for referring the client to a third party. He then shared his observation that PAs should not be encouraged or be provided with a safe harbor if the PA receives a fee or commission for referring the client to a third party who would advocate for aggressive tax planning.	Paragraph 380.25 A1 makes it clear that where the PA only recommends or refers a client to a third-party provider of TP services, the provisions of the section do not apply. Nevertheless, the PA would still be required to apply the conceptual framework to comply with the fundamental principles.