

Meeting: IESBA CAG

Meeting Location: New York

Meeting Date: March 6, 2023

Agenda Item

A-4

Report-Back – Tax Planning and Related Services

Objectives of Agenda Item

1. To note the report-back on the September 2022 CAG discussion.

CAG member organizations are encouraged to submit comments on the Exposure Draft (ED), [*Proposed Revisions to the Code Addressing Tax Planning and Related Services*](#).

Task Force

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

Project Status since September 2022 and Timeline

3. During the [December 2022](#) IESBA meeting, the Tax Planning Task Force presented the final draft of the proposed new Section 280 and 380 for approval for exposure.
4. The IESBA approved the ED at the meeting. The ED was released in February 2023 and is open for comment through May 18, 2023.
5. A summary of the responses to the ED will be presented to the CAG at its September 2023 meeting.
6. The IESBA anticipates finalizing the project by December 2023.

Global Webinars

7. To promote awareness of the ED and to encourage feedback from all stakeholders, the IESBA is hosting a series of global webinars on February 27 and 28, 2023 during which members of the Task

Force will explain the key proposals in the ED. Recordings of the webinars will be made available on the IESBA website.

Report Back on September 2022 CAG Discussion

8. [Appendix 1](#) to this paper includes extracts from the draft minutes of the September 2022 CAG meeting¹ and an indication of how the Task Force or IESBA has responded to CAG Representatives' comments.

Matters for CAG Consideration

9. Representatives are asked to note the report back.

¹ The draft minutes will be approved at the March 2023 IESBA CAG meeting.

Appendix 1

Below are extracts from the draft minutes of the September 2022 CAG meeting and an indication of how the Tax Planning Task Force or the IESBA has responded to the CAG's comments.

Matters Raised	Task Force/IESBA Responses
ROLE OF THE PA IN ACTING IN THE PUBLIC INTEREST	
<p>Mr. Sobel expressed support for the direction of the Task Force's proposal. He wondered whether a company would accept the tax advice if the tax arrangement is technically legal but not considered appropriate or in the public interest.</p>	<p>During the meeting, Prof. Poll responded that the Task Force's proposals address circumstances where there is a disagreement between the PA and the client.</p>
<p>Ms. Landell-Mills highlighted the potential conflict of interest for auditors to be providing TP services to audit clients. In her view, such conflict would not be in the public interest. She acknowledged that there are a lot of benefits for companies to receive tax advice but she wondered why such advice needed to be provided by auditors. She commented that independence is vital to the audit. She added that there is much academic evidence indicating that actual tax payments are not aligned to the underlying economic activities, given the intent of the tax laws.</p>	<p>During the meeting, Prof. Poll clarified that the proposals presented by the Task Force would apply to PAs in public practice (PAPPs) and do not address auditor independence, which is dealt with in Section 604 of the Code.</p> <p>He added that the IESBA's recently revised NAS provisions would prohibit the provision of TP services that might create a self-review threat in the case of PIE audit clients.</p>
<p>Mr. Ishiwata noted that some jurisdictions have issued codes of conduct for TP services. He recommended that the Task Force consider such codes of conduct available in the market.</p>	<p>Point noted.</p> <p>The Task Force has considered the codes of conduct for tax planning developed in some jurisdictions during its fact finding work, e.g., Australia, UK, USA. The Task Force also considered the codes of conduct of the largest global accounting firm networks.</p>
<p>Mr. Yurdakul sought clarification regarding whether there is a conflict between the public interest and the client's interest. He was of the view that while there is a need for a balance between the two, protecting and promoting the public interest should take precedence. He added that TP should be about compliance with tax laws and regulations as opposed to interpreting the tax legislation to gain tax benefits.</p>	<p>Points considered.</p> <p>The Task Force agreed that the public interest should take precedence.</p> <p>During the meeting, Prof. Poll acknowledged that there is a tension between the client's interest and the public interest but noted that the PA must exercise appropriate professional judgment when providing the TP advice.</p>

Matters Raised	Task Force/IESBA Responses
	<p>Regarding whether TP should be about compliance with tax laws and regulations, the Task Force believes that the ethical considerations are broader than just complying with the strict letter of the law or regulation, hence the need for this project.</p>
<p>Mr. Thompson shared the latest development in the EU, where the European Commission had recently issued a survey seeking stakeholders' views on the topics of tax evasion and aggressive TP and the role of professional enablers of such services. He added that the EC seemed to be considering a code of conduct for tax professionals to minimize the issues of tax evasion and aggressive TP.</p>	<p>Point noted. The Task Force is monitoring the developments concerning the EC's initiative.</p>
<p>Dr. Manabat noted the difficulty in balancing the client's interest and the public interest. She echoed the observation of others, noting that tax legislation is subject to different interpretation. She advised the Task Force to consider the various jurisdictional laws and regulations.</p>	<p>Points considered.</p> <p>The Task Force has endeavored to develop provisions that are jurisdiction-neutral. Also, interpretation of tax legislation is always a matter of professional judgment. The proposed provisions guide the PA to see expert advice in circumstances of uncertainty, among other actions.</p>
<p>Ms. McGeachy-Colby shared her appreciation for the direction the Task Force has taken in promoting the public interest. She expressed a concern about increasing the expectation gap in that PAs should not become enforcers of the public interest. She requested the Task Force to be cautious about the adoptability of the provisions. She added that there is also a perception that PAs may not be able to serve the interest of the client and the public interest simultaneously. Lastly, Ms. McGeachy-Colby encouraged the Task Force to follow the developments in the EU so that the proposals do not contradict jurisdictions requirements.</p>	<p>Support and concern noted.</p> <p>During the meeting, Prof. Poll acknowledged the concern about policing the system and agreed that PAs are not the enforcement authority. He also indicated that there is a need to understand the adoptability of the provisions and that this will be an ongoing discussion.</p>
<p>Ms. Blomme congratulated the Task Force on the project's progress, noting the Task Force's efforts to take into account the feedback from the roundtables in drafting the provisions. She noted that the current</p>	<p>During the meeting, Prof. Poll acknowledged that the EU may go further in regulating tax advisors. He agreed that the challenge is to strike an appropriate balance. He also agreed that there is a</p>

Matters Raised	Task Force/IESBA Responses
proposals have not gone as far as regulations in some jurisdictions but acknowledged that it is not easy to strike a balanced approach. However, she added that for other jurisdictions, this could be a big leap forward. She encouraged the Task Force to consider whether stricter prohibitions would be warranted in certain areas.	tension between the client's interest and the public interest but that the PA must exercise appropriate professional judgment when providing the TP advice.
INTENT OF LEGISLATION	
Ms. Meng commended the Task Force on drafting principles-based provisions that can be applied globally. She agreed that it is important to consider the economic purpose and substance of the TP arrangement. She sought clarification from the Task Force on whether the description of TP services excludes artificial or contrived transactions.	<p>Support noted.</p> <p>During the meeting, Prof. Poll acknowledged the consideration of economic purpose and substance of the TP arrangement as being an important element in drafting the proposals.</p> <p>Regarding the description of TP services, the Task Force has developed a neutral description to avoid any suggestion that TP services always involve artificial or contrived transactions ("Tax planning services comprise a broad range of services designed to assist a client, whether an individual or an entity, in structuring the client's affairs in a tax-efficient manner.")</p>
Mr. Yurdakul shared his observation that the interpretation of the intent of the tax legislation can be subjective. He sought clarification on how the current proposals would reflect the objectives and goals of the tax laws and regulations.	During the meeting, Prof. Poll noted that it is important to understand the intent of the tax legislation. He indicated that there were some cases in Germany in which the tax advisers tried to circumvent the legislature's intent but which the courts subsequently disallowed. He explained that the Task Force believes the Code can work with different national legal regimes. He clarified that as a global standard-setter, the IESBA will not put requirements in place that interfere with local jurisdictional requirements.
ESTABLISHING A CREDIBLE BASIS	
Ms. Landell-Mills shared that PAs are working first and foremost for the client. Accordingly, she was of the view that it is improbable that the client's interest will be aligned with the public interest. She added that auditors should not be providing TP advice but	<p>Points considered.</p> <p>The Task Force believes that while there is a tension between the client's interest and the public interest, these interests are not necessarily always in conflict, especially if the client is conducting its</p>

Matters Raised	Task Force/IESBA Responses
<p>should instead draw attention to TP arrangements that are aggressive in nature.</p>	<p>tax affairs in accordance with the letter and spirit of the tax laws and regulations.</p> <p>With regard to auditors providing TP advice, the IESBA has strengthened the independence provisions addressing the provision of non-assurance services (NAS) to an audit client. In particular, tax planning advice for PIE audit clients is prohibited if it gives rise to a self-review threat.</p>
<p>Ms. Gamboa noted that the proposals around the factors and examples to establish a credible basis are helpful. She commended the Task Force on the principles-based approach taken.</p>	<p>Support noted.</p>
<p>Mr. Hansen shared his observation that establishing a credible basis conveys the notion of dealing with probabilities. He added that the paragraph which speaks about PAs taking action to establish a credible basis seems to imply that it is the responsibility of the PA to establish the credible basis rather than the responsibility of the employing organization or client. He believes that the PA's responsibility should be to assess the reasonableness of the employing organization's or client's assessment and reach a conclusion. If the PA cannot conclude on the reasonableness of the employing organization's or the client's assessment, the PA should not proceed with advising the employing organization or client on the particular TP arrangement.</p>	<p>During the meeting, Prof. Poll responded that the Task Force is aware that the PA's advice to the employer organization or the client might differ based on the circumstances presented. He indicated that the Task Force would consider the matter further.</p> <p>The Task Force notes that it is not always the case that the client or employing organization will first develop a credible basis for the TP arrangement. In many case, the PA will be asked to develop such a basis because of the PA's expertise in TP. The important principle that the IESBA has proposed in the ED is that the PA can recommend or otherwise advise on a TP arrangement only if there is a credible basis in laws and regulations for the arrangement.</p>
GRAY ZONE	
<p>Mr. Ishiwata noted that the proposed guidance on the factors to consider in determining whether the PA is in the “gray zone” is helpful. He suggested that the Task Force consider providing examples to illustrate different circumstances in the gray zone, such as whether related parties are involved and whether there is appropriate documentation.</p>	<p>Suggestion considered.</p> <p>The IESBA has proposed detailed guidance about the gray zone in the ED.</p>