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Dear Gabriela,

Response to the International Ethics Standards Board for Accountants (IESBA)'s Exposure Draft (ED), Proposed Revisions to the Code Addressing Tax Planning and Related Services

EFAA appreciates the opportunity to provide our comments to the [*IESBA's ED, Proposed Revisions to the Code Addressing Tax Planning and Related Services*](#).

The European Federation of Accountants and Auditors for SMEs (EFAA) represents accountants and auditors providing professional services primarily to SMEs both within the European Union and Europe as a whole. Constituents are mainly small practitioners (SMPs), including a significant number of sole practitioners. EFAA's members, therefore, are SMEs themselves, and provide a range of professional services (e.g., audit, accounting, bookkeeping, tax, and business advice) to SMEs. EFAA currently represents 15 national accounting, auditing, and tax advisor organisations with more than 380,000 individual members.

GENERAL COMMENTS

EFAA is concerned to ensure that policy, regulation, and professional standards are scalable and **both** proportionate to the capacities of SMPs and their SMEs clients **and** tailored to the needs and characteristics of SMPs and SMEs. We strongly prefer a 'Think Small First' approach, developing straightforward regulation and standards for SMEs and SMPs and then scaling up to suit larger more complex companies and practices.

SMPs are often involved in offering tax services to SMEs and for that reason we have been closely following this project since its inception. While we are broadly supportive of the proposed revisions to the Code, we believe in some areas greater clarity will facilitate implementation and in some other areas the proposed revisions may cause unintended consequences.

We are concerned that the definition and description of services that fall into the scope of tax planning and related services (TP) is too broad. For example, scoping in preparing a tax return that reflects the position in the TP, may adversely impact the ability of professional accountants (PAs) providing TP services to compete with other service providers.

The 'stand-back test' requirement will pose practical challenges and add little value where the arrangement in question is routine in nature. We suggest that application of this test be limited to arrangements where there are specific risks, for example those that might fall in the 'gray zone'.

We note that the explanatory memorandum explains why no attempt has been made to define or describe the ‘public interest’ and identifies the challenges in determining ‘credible basis.’ While we recognise these are highly subjective in nature and impacted by jurisdictional circumstances, the lack of guidance on these concepts will pose practical challenges for PAs who will have no option but to make their own determination as to what they entail. We also fear that ethical dilemmas may be created through the proposed revisions. There is a risk that PAs will withdraw from some services in the gray zone when this may not be in the public interest. Guidance encouraging documentation and encouraging clients to consider reporting arrangements which have been assessed not to have a credible basis to tax authorities may also impact client confidentiality and protection.

QUESTIONS IN EXPOSURE DRAFT

Proposed New Sections 380 and 280

1. Do you agree with the IESBA’s approach to addressing TP by creating two new Sections 380 and 280 in the Code as described in Section VI of this memorandum?

We generally agree with the approach.

While we believe it is important that the TP provisions allow PAs to exercise their professional judgement, as this will help ensure SMEs can gain access to high quality TP services from SMPs, as we explain later in some cases having to apply judgement will pose challenges.

Description of Tax Planning and Related Services

2. Do you agree with IESBA’s description of TP as detailed in Section VII.A above?

We do not agree with some of the proposed description.

We believe that the scope of arrangements that fall under the description of tax planning and related services is too broad and goes far beyond focusing on the most pressing issue of aggressive tax minimization. This broad definition may inadvertently create onerous requirements for many simple benign services. To exacerbate matters the proposed definition of tax planning includes arrangements where affairs are structured in a “tax-efficient” way. In effect, this means any arrangements that are of economic benefit to the client would be within scope. Such wording combined with the broad scope may ultimately create more work for simple schemes that are clearly legal but aim to be tax efficient.

We welcome in principle providing examples of TP services though wonder whether it would be better to focus on examples that limit the scope and illustrate the more contentious types of arrangements where application of the guidance would be most important.

Role of the PA in Acting in the Public Interest

3. Do you agree with IESBA’s proposals as explained in Section VII.B above regarding the role of the PA in acting in the public interest in the context of TP?

We broadly agree.

While we recognise the reasons given for not defining or describing the public interest, this will place the onus on the PA to determine the public interest when necessary. This determination will prove especially difficult in certain situations. Many arrangements will relate to cross-border activities and the public interest is defined differently from one jurisdiction to another. Typically, in any one jurisdiction there are multiple regulators with overlapping authority in this area making it difficult to determine which regulator decides what the public interest is. Hence, in the absence of the Code defining the public interest, we welcome some illustrative examples.

We are concerned that the proposals risk placing PAs, especially SMPs, at a competitive disadvantage to non-PAs, such as lawyers and tax consultants, that also provide TP services but whom will not be subject to the proposed guidance. The proposed guidance and additional considerations will add cost to the provision of TP services, including where the schemes are not risky nor aggressive, potentially impacting the ability of PAs to compete with non-PAs. .

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

4. Do you agree with the IESBA’s proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?

We do not agree with some of the proposals.

We believe that the term ‘credible basis in laws and regulations’ is very subjective and may present practical challenges for a PA to determine. If “credible basis” is to be retained, then further explanation is necessary to help the PA make the necessary determination. It is not clear who is best placed to define and difficult to assess if PAs are complying. We urge further clarity and / or illustrative examples.

5. Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?

We have highlighted some jurisdiction specific issues elsewhere in this response.

We believe that guidance that is more principles-based than prescriptive in nature will facilitate the effective adoption and implementation by SMPs and minimize the likelihood of jurisdiction specific challenges.

Consideration of the Overall Tax Planning Recommendation or Advice

6. Do you agree with the proposals regarding the stand-back test, as described in Section VII.F above?

We do not with some of the proposals.

We are concerned that performing this test will be time-consuming – a particular problem for SMPs that lack the resources of larger practices - and yet add little if any value to straightforward and routine arrangements or activities. Making a consideration from the point of view of stakeholders is especially problematic: who are they and what might be their position? SMPs will also struggle to consider the

“wider economic consequences” resulting from arrangements: this seems to be more relevant for PIEs or large listed than SMEs.

In conclusion we suggest that if the test be retained then it be limited to PIEs and that straightforward and routine arrangements or activities be exempted.

Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone

7. Do you agree with the IESBA’s proposals as outlined in Section VII.G above describing the gray zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?

We agree.

We believe it is reasonable to discuss the nature of uncertainty with the client where such uncertainties exist. The current proposals seem to suggest that the gray zone is a current or future consideration. We wonder whether this ought to be extended to the past, at least as a transitional measure until such time as the proposals have had time to be fully adopted and implemented.

8. In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on:

- (a) The types of threats that might be created in the gray zone;**
- (b) The factors that are relevant in evaluating the level of such threats;**
- (c) The examples of actions that might eliminate threats created by circumstances of uncertainty; and**
- (d) The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate?**

We believe this guidance to be of limited relevance to SMPs and so have no comments.

Disagreement with Management

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

We do not agree with some of the proposals.

We believe that requiring the PA to consider advising the client to make full disclosure of the arrangement to the relevant tax authorities or the external auditor in the event of a disagreement about pursuing a tax planning arrangement might create an expectation that the PA violate client confidentiality. This might present an acute ethical dilemma for the PA and may not be permissible in some jurisdictions.

We suggest the guidance remind the PA of their obligations in relation to client confidentiality and that they should only take the approach of encouraging a client to report ‘if permissible.’ The guidance

might also remind the PA that escalating to the client reporting to a tax authority should be limited to situations where a treatment is without doubt incorrect or problematic.

Documentation

10. Do you agree with the IESBA's proposals regarding documentation as outlined in Section VII.J above?

We disagree with some of the proposals.

We believe that the proposed guidance, combined with the broad scope of application, might present some challenges for PAs. Encouraging documentation for activities within scope essentially amounts to a recommendation PAs compile such documentation even for very simple cases. Not only might this be onerous, in simple cases it would add little if any value. We wonder, therefore, whether it would be better to avoid using the word 'encouraged'.

Tax Planning Products or Arrangements Developed by a Third Party

11. Do you agree with the IESBA's proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third party provider?

We believe this scenario to be rare and so of low relevance to SMPs. Accordingly we have no comments.

Multi-jurisdictional Tax Benefit

12. Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L above?

We disagree with some of the proposals.

We believe that the proposed guidance may be problematic. If the treatments in question are lawful, the consideration will be a public interest one and as such the challenges in establishing public interest would again be relevant. This will be even harder in multi-jurisdictional cases.

Proposed Consequential and Conforming Amendments

13. Do you agree with the proposed consequential and conforming amendments to Section 321 as described in Section VII.M above?

We have no comments.

CONCLUDING COMMENTS

We trust that the above is clear but if you have any questions, please do not hesitate to contact us.

Yours faithfully,

Salvador Marin
President

Paul Thompson
Technical Director