

May 18, 2023

The Chairwoman  
International Ethics Standards Board for Accountants (IESBA)  
International Federation of Accountants  
529 5<sup>th</sup> Avenue  
New York 10017  
United States of America

Via Online Submission

Dear Ms Figueiredo Dias

**COMMENTS ON IESBA EXPOSURE DRAFT '*PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANING AND RELATED SERVICES*'**

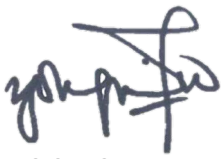
The Malaysian Institute of Certified Public Accountants ("MICPA") appreciates the opportunity to comment on the IESBA Exposure Draft '*Proposed Revisions to the Code Addressing Tax Planning and Related Services*' ("Exposure Draft"). We also applaud the effort of the IESBA to develop a principles-based framework, leveraging the fundamental principles and the conceptual framework of the Code, to guide professional accountants in public practice and in business' ethical conduct when providing tax planning and related services (tax planning services) to clients, or performing tax planning activities for employing organisations, thereby maintaining the Code's robustness and relevance as a cornerstone of public trust in the global accountancy profession.

In this regard, we are pleased to attach MICPA's comments as set out in the Appendix for your consideration. In furnishing our comments, we would like to take the opportunity to highlight to IESBA that the abbreviation TP is commonly known as transfer pricing in the tax profession. Hence, to avoid confusion, perhaps IESBA can consider using a different abbreviation for tax planning in the Code.

We trust that our comments are valuable to the IESBA for your onward deliberation. MICPA looks forward to further support the effort of the IESBA in setting and enhancing the auditing, assurance and quality management standards. Please do not hesitate to contact the undersigned or the Tax Manager, Ms Tan Yu Yin at [yuyin@micpa.com.my](mailto:yuyin@micpa.com.my) should you require any clarification.

Thank you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Foo Yoke Pin', written in a cursive style.

FOO YOKE PIN  
Executive Director

Our responses to the specific questions are as follows:

***Proposed New Sections 380 and 280***

**Question 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?**

**Comment:**

Yes. We agree that it is helpful for IESBA to provide more detailed explanations of their interpretation and scope of "tax planning" under Sections 380 and 280. In particular, we note that the IESBA acknowledges that there are actions that may be put in place to eliminate self-interest threat under Section 380.17 A3 and actions that may be safeguards to address such threats under Section 380.17 A4.

***Description of Tax Planning and Related Services***

**Question 2**

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

**Comment:**

Agree. The description provides a comprehensive view of tax planning and the list of activities covered, but not limited to those activities, under a tax planning advice or solution. Besides, the use of 'tax efficient manner' as opposed to 'tax minimisation' signifies PAs commitment to optimising their clients' tax obligations based on the relevant tax laws and regulations, which is consistent with their duties in upholding the public interest. Further, minimising risk of disagreements with the tax authorities should also be part of tax planning.

***Role of the PA in Acting in the Public Interest***

**Question 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?**

**Comment:**

Yes. Helping clients meet their tax obligations and comply with the tax laws and regulations is important and in line with the public interest. Where circumstances give rise to uncertainty due to a lack of clarity in the tax laws and regulations and their interpretation, appropriate communication of such uncertainty to the client is necessary.

However, we note that in the Malaysian context, advising a client on any tax avoidance scheme (even if it is within the law and not tax evasion) is not relevant as doing so would expose a client to penalties for any anti-avoidance adjustments under Section 140 of the Income Tax Act 1967.

***Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement***

**Question 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?**

**Comment:**

Yes.

**Question 5**

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

**Comment:**

In jurisdictions which adopt common law system where interpretation of tax legislation is affected by the prevailing court decisions, the determination of credible-basis threshold and application of the proposed provisions may be more difficult compared to jurisdictions which adopt civil law system. This is because the interpretation of tax law in common law jurisdictions may change more frequently which makes it less predictable.

The courts may have a different view on the interpretation of tax laws. Of the tax cases that have gone to the courts on transfer pricing issues, decisions have been made in favour of taxpayers in the cases of KPHDN v Proctor & Gamble (Malaysia) Sdn Bhd (2022) (HC), CFE Ltd v KPHDN (2022) (SCIT) and SEO Sdn Bhd v KPHDN (2021) (SCIT). A transfer of technical know-how to a related overseas company was held to be of an income nature and taxable in Malaysia in the case of Keysight Technologies Malaysia Sdn Bhd v KPHDN (2022) (HC). Applying the tax laws may not be clear as shown in the above cases. These are the gray areas.

***Consideration of the Overall Tax Planning Recommendation or Advice*****Question 6**

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

**Comment:**

Yes, this should help businesses align with ESG initiatives.

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

**Question 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?**

**Comment:**

Yes. Where there are uncertainties that disallow the PAs to determine the credible basis of rules and regulations for the tax planning advice or solution, PAs are advised to exercise professional judgement to navigate such issues, as they are expected to uphold the public interest (i.e., this should help business align with the corporate governance agenda of the ESG initiatives) by ensuring that their clients are able to meet their tax obligations in the most efficient manner based on the tax rules and regulations.

**Question 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?**

**Comment:**

Yes, it is sufficient. With that, PAs are able to get a clear view of how to resolve issues, particularly threats created in gray zone areas.

***Disagreement with Management***

**Question 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?**

**Comment:**

Agree. Such proposals are sufficient to provide guidance to PAs to navigate issues that arise in cases where the PAs believe that there is no credible basis in the tax planning advice or solution. With that, it is hoped that the proposals outlined will ensure that the PAs will not deviate from their commitment to fundamental principles as well as the public interest.

***Documentation***

**Question 10**

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

**Comment:**

Agree. It is well known that the tax rules and regulations around the globe require taxpayers or PAs assisting the taxpayers to ensure proper record-keeping of all tax documents. Therefore, the proposal is an extension to the current requirement, which will safeguard the PAs position in the event of a dispute with the relevant tax authorities.

***Tax Planning Products or Arrangements Developed by a Third Party***

**Question 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?**

**Comment:**

Tax planning advice is specific to each client and PAs should not encourage clients to engage in generic Tax planning advice or solution developed by third party providers. In any case, we do not agree that the requirement for disclosure of the referral fees to the client under paragraph 90 would necessarily enable the PA to maintain objectivity.

***Multi-jurisdictional Tax Benefit***

**Question 12**

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

**Comment:**

No. Multi-jurisdiction tax benefit arises because of different tax laws in different tax jurisdictions. Disclosure of the tax benefit should only be required if there is a requirement in the local law. In practice, tax advice is specific to each jurisdiction and it may be too onerous for the PA in one jurisdiction to have the responsibility to report on the tax implications of another jurisdiction which may be beyond the PA's knowledge and scope of work.

***Proposed Consequential and Conforming Amendments***

**Question 13**

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

**Comment:**

Agree.