

May 18, 2023

Mr. Ken Siong
Senior Technical Director
International Ethics Standards Board for Accountants
529 Fifth Avenue
New York, New York 10017 USA

Re: *Exposure Draft, Proposed Revisions to the Code Addressing Tax Planning and Related Services*

Dear Mr. Siong:

Deloitte Global appreciates the opportunity to provide comments on the exposure draft “Proposed Revisions to the Code Addressing Tax Planning and Related Services” (the “ED”) issued in February 2023 by the International Ethics Standards Board for Accountants (the “IESBA” or “Board”).

We support the efforts by the Board to develop an ethical framework for professional accountants when they provide tax planning and related services. Deloitte Global believes, as does the Board, that developing such framework to guide professional accountants’ behavior will contribute to protecting the public interest and supporting the profession’s reputation.

Deloitte is committed to guiding clients through the complexity of tax laws and supporting them in meeting their tax obligations. This includes assisting clients in making informed decisions regarding their tax matters and keeping them abreast of the changing tax landscape, but also considering broader implications to their organization. When providing tax planning services, Deloitte is guided by our ethical standards, as well as our global tax principles that are broadly consistent with the objectives of the proposed IESBA standard.

Having considered the ED from the standpoint of a tax practitioner, Deloitte Global encourages the Board to consider certain revisions to the proposed standard to increase its clarity and therefore strengthen its impact on promoting ethical tax planning conduct and practice. It is our concern that standalone application of the revised Code, without referring to the informative clarifications made in the explanatory memorandum – and presumably in the Basis for Conclusions after the standard is approved – might result in inconsistent interpretation or misunderstanding of the intent of certain provisions, which is not in public interest.

Please find below our comments in response to the specific questions in the explanatory memorandum for the Board’s consideration. We have also included certain drafting suggestions that we believe help meet the objective of the standard.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Touche Tohmatsu Limited is a private company limited by guarantee incorporated in England & Wales under company number 07271800, and its registered office is Hill House, 1 Little New Street, London, EC4A, 3TR, United Kingdom.

Specific Comments

Proposed New Section 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?

Deloitte Global is supportive of the Board's approach.

Description of Tax Planning and Related Services

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

Deloitte Global is generally supportive of the approach taken by the IESBA with respect to the description of TP and the scope of services addressed.

Notwithstanding the above, Deloitte Global does not support the inclusion of transfer pricing arrangements as an example of "advising an entity on structuring its international operations to minimize its overall taxes" in the illustrative examples included in paragraphs 280.5 A2 and 380.5 A2. Transfer pricing should not be described as tax planning. As it is already the requirement under the relevant OECD standards and other applicable laws in numerous jurisdictions to adopt an arm's length standard, transfer pricing services are more appropriately considered to be tax compliance services. We suggest that the words "including through transfer pricing arrangements" be deleted in both paragraphs 280.5 A2 and 380.5 A2.

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

Deloitte Global agrees with the approach taken by the Board regarding the role of a professional accountant in acting in the public interest in the context of tax planning.

However, Deloitte Global does not agree with the inclusion of the reference to tax evasion in paragraphs 280.4 A2 and 380.4 A2. Tax evasion is a criminal act. The role of the professional accountant is to assist a client in meeting their tax obligations and circumventing the law would not even be contemplated in a tax planning service. Including reference to tax evasion might imply that it might be part of the tax planning which is not appropriate. In Deloitte Global's view, the reference to tax evasion should be deleted.

In addition, we believe the description of the accountant's role in paragraphs 280.4 A2 and 380.4 A2 should mirror the description in paragraphs 280.4 A1 and 380.4 A1, as follows:

380.4 A2 *Clients are entitled to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, clients have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to contribute their knowledge, skills and experience to assist advise their clients on how best to meet in achieving their tax planning goals and -In addition, accountants play an important role in assisting clients meeting their tax obligations. and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.*

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

Question 4 Do you agree with the IESBA's proposal regarding the thought process for PA's 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?

Deloitte Global is supportive of the Board's approach with respect to a professional accountant's determination that there is a credible basis in laws and regulations when recommending or otherwise advising on a TP arrangement.

Deloitte Global recommends, however, that the Board considers the following suggestions intended to strengthen the impact of the standard on promoting ethical tax planning conduct and practice as well as to improve the standard's clarity and alignment with the explanatory memorandum:

- Paragraph 51 of the explanatory memorandum seems inconsistent with the standard in which it refers to professional accountant establishing "a credible basis for their advice" – which implies broader consideration than solely a "credible basis in laws and regulation" as noted in paragraph R380.11. We believe that the consideration of "credible basis" should indeed include assessment of facts and circumstances to which the laws and regulations need to be applied. While a professional accountant should not be required to "audit" the factual information furnished by its client, they should not ignore the implications of the information provided to, or actually known by, the professional accountant and they should make reasonable inquiries if the furnished information appears incorrect or incomplete. We encourage the Board to consider whether to extend the scope of this consideration, at least through the application material.
- We recommend that paragraphs 380.11 A1 and 280.11 A1 clarify, in line with the explanatory memorandum (paragraph 55), that where the professional accountant does not consider that the proposed arrangement has a credible basis in laws and regulations, they may advise why that is the case, and may, but are not obliged to, advise on alternative TP arrangements that do have a credible basis.

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

Deloitte Global is not aware of any other considerations.

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?

While Deloitte Global considers that it is appropriate to exercise professional judgement and consider the reputational, commercial and wider economic consequences that could arise from tax planning, we do have a concern that attempts to codify such an exercise of professional judgement could result in uncertainty and confusion, as well as second-guessing of the professional accountant's professional judgement.

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

Deloitte Global supports the proposed approach, but we have noted the following observations with respect to circumstances included in paragraph 380.15 A2:

- It is unclear what the circumstances would be that are described as "*Difficulty in establishing adequate basis of assumption*". We suggest this bullet point is deleted. Similarly, we suggest that the second bullet point in paragraph 380.16 A1 "*Considering any assumptions that might need to be made or changed*" is also deleted.
- The last bullet point introduces the concept of "ultimate beneficiaries" which is not referred to elsewhere in the ED. We recommend that the Board consider providing more context as to why the identity of ultimate beneficiaries is of importance in the context of tax planning.

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?

Deloitte Global broadly supports the proposed guidance.

However, we note some observations for the Board's consideration when finalizing the standard:

- We are of the view that the "*Potential Threats Arising from Providing a Tax Planning Service*" as included in paragraph 380.17 A1, should be presented earlier in the section. This is consistent with the approach in other sections, e.g., the provision of non-assurance services to an audit client, where the potential threats are presented following the description of the service.
- With respect to the purposes of the discussion with the client, as noted in paragraph 380.16 A1, Deloitte Global believes that "*Obtaining any additional information from the client that might reduce the uncertainty*" should rather be included in paragraph 380.11 A3.
- Deloitte Global recommends that the Board review the references to acting with transparency when dealing with tax authorities that are included in the ED (for example in paragraphs 380.11 A3, 380.14.A1, 380.17 A4). We are concerned that these references may have the unintended consequence of implying that transparency when dealing with tax authorities is optional. Deloitte Global believes that tax planning should never involve withholding or misrepresenting facts when dealing with the the tax authorities.
- We encourage the Board to consider the following drafting suggestion which is intended to place greater emphasis on providing advice on tax planning arrangements which are compliant with relevant laws and regulations:

380.17 A4 *Examples of actions that might be safeguards to address such threats include:*

- (...)
- *Advising the client, having considered the underlying economic purpose and substance, to ~~structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance~~ undertake tax planning arrangements that are in compliance with the relevant tax laws, regulations and treaties.*

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?

Deloitte Global notes the following questions and observations for the Board's consideration when finalizing the standard:

- The meaning of the requirements in paragraphs R380.20 and R280.20 to "take steps to disassociate from the engagement/arrangement" is unclear. It seems to imply termination, but this meaning is not consistent with the steps to be considered in the subsequent bullet points as well as with the specific requirement to consider the need to withdraw from the engagement (paragraph R380.21) or the application material to consider resigning from the employing organization (paragraph 280.21 A1).
- The action required from a professional accountant in public practice (to consider withdrawing from the engagement in paragraph R380.21) does not seem proportionate as compared with the potentially more extreme action proposed for a professional accountant in business (to consider resigning from employment in paragraph 280.20 A1). Deloitte Global encourages the Board to consider a more proportionate approach with

respect to a professional accountant in business, keeping in mind the significant potential impact of the proposed action on their career or even livelihood.

- Deloitte Global believes developing application material would be useful with respect to the requirement in paragraph R380.18 (Communication of Basis of Tax Planning Arrangement)

Documentation

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

Deloitte Global supports the proposed approach, recognizing that the level of appropriate documentation is a matter of professional judgement.

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?

While Deloitte Global generally supports the proposed approach, we note the following observations for the Board's consideration:

- We recommend that that Board consider strengthening the wording in paragraph 380.22 A1 to make it clear that a professional accountant shall not facilitate an arrangement that would not meet the requirements of this section of the Code if provided by a professional accountant by referring the client to a third-party provider regardless of whether the professional accountant receives a commission or referral fee.
- There are considerations set out in paragraph 88 of the Explanatory Memorandum, such as informing the client of the professional accountant's relationship with the external provider, professional accountant ascertaining the provider's competence in developing the TP product or arrangement or ascertaining the credibility of the particular TP product or arrangement, that are relevant and important but are not included in the Code. We encourage the Board to consider including these considerations directly in the standard.
- Finally, we observe that paragraph 380.22 A3 seems disjointed from paragraph 380.22 A2. We therefore suggest that the Board consider merging the two paragraphs, as follows:

380.22 A2 *A self-interest threat to compliance with the principles of objectivity and professional competence and due care might be created if a professional accountant receives a referral fee or commission by referring a client to a third-party provider of tax planning products or arrangements. **When a professional accountant is not otherwise prohibited by laws or regulations from receiving referral fees or commissions, the provisions in paragraphs 330.5 A1 and A2 are relevant in such circumstances.***

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?

Deloitte Global generally agrees with the Board's proposal.

However, we note the following comments for the Board's consideration:

- With respect to the paragraph 380.12 A2 it is unclear how the professional accountant would be able to estimate the impact of a tax arrangement on a tax base, in particular in multiple jurisdictions. We recommend that the paragraph is deleted.

- We also recommend deleting the second bullet in paragraph 380.14 A2 since “the likelihood that other entities in similar circumstances to the client are taking advantage of the tax benefits” is not in itself an indication that the law is being correctly interpreted.

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?**

Deloitte Global agrees with the proposed consequential and conforming amendments.

In addition to the specific responses to the Board’s questions provided above, in the appendix the Board will find drafting suggestions for consideration.

* * *

We would be pleased to discuss our comments with members of the IESBA or its Staff. If you wish to do so, please feel free to contact Ms. Denise Canavan via email (decanavan@deloitte.com) or at +1 203 563 2759.

Sincerely,

Deloitte Touche Tohmatsu Limited

Deloitte Touche Tohmatsu Limited

Appendix - Drafting suggestions

- 380.4 A2 Clients are entitled to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, clients have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to contribute their knowledge, skills and experience to assist advise their clients on how best to meet in achieving their tax planning goals and ~~in addition, accountants play an important role in assisting clients in~~ meeting their tax obligations. ~~and not seek to circumvent them through tax evasion~~. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.
- 380.5 A2 Examples of tax planning services include advising:
- Advising an individual ~~to structure on~~ their tax affairs to achieve investment, retirement or estate planning goals.
 - Advising an individual business owner ~~on structuring on~~ their ownership and income from the business to minimize their overall taxes.
 - Advising an entity ~~on structuring on~~ its international operations to minimize its overall taxes including through transfer pricing arrangements.
 - Advising on efficient ways to utilize available tax losses.
 - Advising an entity on how to structure its capital distribution strategy in a tax-efficient manner.
 - Advising an entity on structuring its compensation strategy for senior executives to optimize the tax benefits.
- R380.6 In some jurisdictions, laws and regulations, including those that are often referred to as anti-avoidance rules, limit or prohibit certain tax planning arrangements. A professional accountant shall obtain an understanding of those laws and regulations and ~~advise the client to comply~~ provide advice that complies with them when providing tax planning services.
- 380.8 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:
- (...)
 - Ensuring that the client's tax planning arrangements are consistent with any publicly disclosed tax strategy or policies.
 - Engaging experts where in-house tax knowledge does not exist.
- R380.9 As part of providing a tax planning service, a professional accountant shall obtain an understanding of the nature of the engagement including:
- (a) Knowledge and understanding of the client, its owners, management and those charged with governance, and its business activities;
 - (b) The purpose as well as specific facts and circumstances of the tax planning arrangement; and
 - (c) The relevant tax laws and regulations.
- R380.11 A professional accountant shall recommend ~~or otherwise advise on~~ a tax planning arrangement to a client, or provide advice supporting such arrangement, only if the accountant has determined that there is a credible basis in laws and regulations for the arrangement
- 380.11 A2 The determination of whether ~~there is a credible basis~~ the tax planning arrangement has a credible basis in laws and regulations involves the exercise of professional judgment by the professional accountant. This determination will vary from jurisdiction to jurisdiction based on the relevant tax laws and regulations at the time.
- 380.11 A3 Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:
- (...)

- Considering whether the basis used for the proposed arrangement is an established practice that has not been successfully challenged by the relevant tax authorities.
 - Considering how likely the proposed arrangement would be accepted by the relevant tax authorities ~~if all the relevant facts and circumstances were disclosed.~~
 - (...)
- 380.12 A1 The reputational and commercial consequences might relate to personal or business implications to the client or implications to the reputation of the client and the profession of a ~~prolonged~~ dispute with the relevant tax or other authorities. The implications to the client might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the client's business.
- 380.14 A2 Relevant factors the professional accountant might consider in determining whether to advise the client to make such disclosure include:
- (...)
 - ~~The likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits.~~
- 380.15 A2 Circumstances that might give rise to uncertainty include:
- (...)
 - ~~Difficulty in establishing an adequate basis of assumptions.~~
 - Lack of clarity in the tax laws and regulations and their interpretation, including:
 - (...)
 - ~~Innovative~~ business models not addressed by the current tax laws and regulations.
 - (...)
- 380.16 A1 The discussion serves a number of purposes, including:
- Explaining the professional accountant's assessment about how likely the relevant tax authorities are to ~~have a view that supports challenge~~ the proposed tax planning arrangement ~~where there is a lack of clarity in the interpretation of the relevant tax laws and regulations.~~
 - ~~Considering any assumptions that might need to be made or changed.~~
 - (...)
- 380.17 A1 Providing a tax planning service to a client might create a self-interest, advocacy or intimidation threat. For example:
- A self-interest threat might be created when a professional accountant has a direct financial interest in a client and the accountant is involved in designing a tax planning arrangement that has an impact on the client's financial ~~situation~~ condition.
 - (...)
- 380.17 A2 Factors that are relevant in evaluating the level of such threats include:
- (...)
 - The extent to which the proposed tax planning arrangement reflects an established practice that has not been successfully challenged by the relevant tax authorities.
- 380.17 A3 Examples of actions that might eliminate such threats include:
- Referring the client to an expert ~~outside the professional accountant's firm~~ who has the necessary knowledge, skills and experience to advise the client on the proposed tax planning arrangement.
 - (...)
- 380.17 A4 Examples of actions that might be safeguards to address such threats include:
- ~~Establishing the identity of~~ Identifying the ultimate beneficiaries.
 - Advising the client, having considered the underlying economic purpose and substance, to undertake tax planning arrangements that are in compliance with the relevant tax laws, regulations and treaties.

- ~~Advising the client to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.~~
- (...)
- ~~Having the client provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ultimate beneficiaries of the tax planning arrangement.~~

380.17 A5 Steps a professional accountant might take to establish the identity of the ultimate beneficiaries include, for example:

- (...)
- Making inquiries of registrars or researching other public records where the client or entities within its legal structure are incorporated concerning the relevant shareholders.
- ~~Researching relevant public records.~~

380.22 A2 A self-interest threat to compliance with the principles of objectivity and professional competence and due care might be created if a professional accountant receives a referral fee or commission by referring a client to a third-party provider of tax planning products or arrangements. When a professional accountant is not otherwise prohibited by laws or regulations from receiving referral fees or commissions, ¶the provisions in paragraphs 330.5 A1 and A2 are relevant in such circumstances.

~~380.22 A3 In some jurisdictions, professional accountants are prohibited by law or regulation from receiving referral fees or commissions.~~

380.23 A2 Preparing such documentation assists the accountant to:

- (...)
- Consider the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

280.4 A2 Employing organizations are entitled expected to organize their affairs for tax planning purposes. While there are a variety of ways to achieve such purposes, employing organizations have a responsibility to pay taxes as determined by the relevant tax laws and regulations. In this regard, professional accountants' role is to advise their employing organizations on how best to meet their tax planning goals. In addition, accountants play an important role in assisting employing organizations meet their tax obligations and not seek to circumvent them through tax evasion. However, when accountants provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles.

280.5 A2 Examples of tax planning activities include advising:

- Advising management on structuring the employing organization's international operations to minimize its overall taxes, ~~including through transfer pricing practices.~~
- Advising management on efficient ways to utilize available tax losses for the employing organization.
- Advising the employing organization on how to structure its capital distribution strategy in a tax-efficient manner.
- Advising management on structuring the employing organization's compensation strategy for senior executives to optimize the tax benefits for the employing organization and its executives.
- Advising a non-profit employing organization on how to structure conduct its business to avoid breaching its non-profit status.
- Advising management on structuring the employing organization's investments to take advantage of tax incentives offered by jurisdictions or localities.

280.8 A1 In relation to tax planning, management, with the oversight of those charged with governance, has a number of responsibilities, including:

- (...)
- Considering the professional reputation of external advisors.

280.17 A1 Performing a tax planning activity for an employing organization might create a self-interest, advocacy or intimidation threat. For example:

- A self-interest threat might be created when a professional accountant's career advancement prospects depend on developing a ~~creative~~ tax planning arrangement for which the interpretation of the relevant tax laws and regulations is unclear.
- A self-interest threat might be created when a professional accountant participates in an incentive compensation scheme that is impacted by the accountant's design of a tax planning arrangement.
- (...)
- Self-interest and intimidation threats might be created when an ~~n dominant~~ owner or leader of the employing organization ~~exerts significant influence over the design of~~ advocates a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant faces potential dismissal over the position the employing organization is insisting on pursuing regarding a tax planning arrangement against which the accountant advises.