



**The Japanese Institute of
Certified Public Accountants**

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

Dear Mr. Siong:

**JICPA comments on the IESBA Exposure Draft, *Proposed Revisions to the Code
Addressing Tax Planning and Related Services***

The Japanese Institute of Certified Public Accountants (JICPA) expresses its appreciation for the activities of the International Ethics Standards Board for Accountants (IESBA), and is grateful for the opportunity to share its comments on the IESBA Exposure Draft, *Proposed Revisions to the Code Addressing Tax Planning and Related Services*.

Our responses to the questions raised by the IESBA are as follows:

I. Comments on the overall

In Japan, there is a system of certified public tax accountants, and it is the exclusive duty of certified public tax accountants to provide any tax-related services to others, which is prohibited to be provided by other than certified public tax accountants. The certified public tax accountants are not obligated to comply with the Code because they are not “An individual who is a member of an IFAC member body.” as defined in the glossary “professional accountant” of the Code. Considering that there are several jurisdictions as well as Japan with similar systems in place, we suggest that the IESBA should consider the existence of such a system where professionals only with CPA license cannot treat taxation matters and develop the provisions of the Code.

(Please refer to our comments to questions 2 and 5 of “II. Request for Specific Comments.”)

II. Request for Specific Comments

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?

(Comment)

We agree with the proposed approach except for the following matters.

The Code defines a "professional accountant in business ("PAIB")" as "a professional accountant working in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, or in regulatory or professional bodies, who might be an employee, contractor, partner, director (executive or non-executive), owner-manager or volunteer" and does not limit the types or recipients of the services. As a result, it is considered that the provisions of Part 2 of the Code would apply to services provided by PAIB for others. On the other hand, paragraph 280.4 A1 proposed in this ED states, "Professional accountants play an important role in tax planning by contributing their knowledge, skills and experience to assist employing organizations in meeting their tax planning goals while complying with tax laws and regulations" and Section 280 reads as it is intended for the provision of TP services for their employing organizations. However, it is not clear whether the Section is also intended to apply to the provision of TP services for others.

We believe that it should be clarified whether Section 280 applies to the provision of TP services for others by PAIB. In Japan, there is a system of certified public tax accountants, and it is prohibited for professionals other than certified public tax accountants to provide tax-related services for others. However, in other jurisdictions, for example, the above issue arises with respect to a professional accountant who belongs to a financial institution and provides tax-related services for others, so we comment on it as an issue in the application of the Code.

Description of Tax Planning and Related Services

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

(Comment)

We agree with the proposed description of TP as detailed in Section VII.A. However, in Japan, it is the exclusive duty of certified public tax accountants to provide any tax-related services to others, which is prohibited to be provided by other than certified public tax accountants. Furthermore, there are several other jurisdictions in addition to Japan that have similar systems in place. This practice should be considered in applying the Code. We suggest that the IESBA should explain cases where a system exists for the service of certified public tax accountants which is different from that of professionals only with CPA license in the Basis for Conclusion.

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?

(Comment)

We agree with the proposal as this provision is consistent with paragraphs 100.6 A1 and 100.6 A4, etc., of the Code. However, we believe that, in providing TP services, it is important, especially for professional accountants in public practice (“PAPP”) who provide non-assurance services or PAIB, to emphasize that they act in the public interest in consideration of the impact on medium- to long-term corporate value. We believe that the IESBA should strive to ensure that the actions of PAs in the public interest will be understood and accepted by a wide range of stakeholders including their clients and employing organizations, and ultimately by public as a whole. For example, many states in the U.S. have introduced a form of corporation for public interest purposes called a public benefit corporation and designed a system to ensure that actions related to the public interest receive recognition and attention from investors. Furthermore, one of the ESG-related types of information which companies are required to explain to their stakeholders is “transparency regarding taxes,” and it is considered that a global trend toward encouraging ethical behavior regarding taxes is already emerging. It is considered that this is because the idea of acting in the public interest is becoming widely accepted and supported by stakeholders and reflected in systems and practices. It is expected that proactive educational activities for investors, tax regulators and other stakeholders regarding the ethical behavior of professional accountants for the public interest in TP services will encourage professional accountants to act in the public interest in the tax-related systems in their respective jurisdictions.

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?

(Comment)

We agree with the IESBA’s proposal regarding the thought process for professional accountants. However, we would like to add the following comments.

- Although the provision in paragraph 380.11 A1 states that “paragraph R380.11 does not preclude the accountant from explaining to the client the accountant’s rationale for the determination”, paragraph 55 of the explanatory memorandum of the ED states that “The IESBA is of the view that it is important to emphasize that PAs are able to communicate to their client or the responsible parties within their employing organization if they have

determined that a particular TP arrangement does not have a credible basis. However, there is no obligation for the PA to recommend an alternative TP arrangement. (See paragraphs 380.11 A1 and 280.11 A1.)”.

Even though the IESBA’s view that, if PAs have determined that a TP arrangement does not have a credible basis, it is important to emphasize that PAs are able to explain the fact to their client or their employing organization is presented in paragraph 55 of the explanatory memorandum of the ED, the negative wording of “does not preclude the accountant from explaining” is used in paragraph 380.11 A1, and the statement in paragraph 380.11 A1 does not seem to correctly express the IESBA’s original intent. In this regard, we believe that modifying the wording of paragraph 380.11 A1 to “an accountant is able to explain” to better reflect the IESBA’s intent will promote understanding by users of the Code.

- Paragraph 58 of the explanatory memorandum of the ED states that the “likely-to-prevail” threshold in Section 604 of the Code is higher than a “credible-basis” threshold. We suggest that more specific guidance should be provided as to how the concept of the “likely-to-prevail” threshold in Section 604 can be utilized in the consideration of the “credible basis” for TP.
- Paragraph 60 of the explanatory memorandum of the ED states that many participants were of the view that the PA should not recommend or otherwise advise the employing organization or client to proceed if the threshold of being successful in court was less than 50%. However, if the threshold is introduced in this manner, we believe that it is necessary to mention in the Basis for Conclusions, etc., that the criteria for judging may differ from past judicial precedents, practices and other factors in each jurisdiction.

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

(Comment)

As we commented in Question 2, in Japan, it is the exclusive duty of certified public tax accountants to provide any tax-related services to others, which is prohibited to be provided by other than certified public tax accountants. When applying the provisions of this ED in Japan, it is necessary to discuss whether to apply the Code to services performed by a CPA who is also qualified as a certified public tax accountant. Considering that there are several jurisdictions as well as Japan with similar systems in place, we suggest that the IESBA should consider the existence of such a system where professionals only with CPA license cannot treat taxation matters and develop the provisions of the Code.

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?

(Comment)

We agree with the proposals regarding the stand-back test. However, we suggest that the IESBA should make it supplemented by specific guidance, etc., on methods for professional accountants to consider and utilize the factors listed in paragraphs R380.12 and R280.12.

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?

(Comment)

We agree with the proposal. However, we believe that the following points need to be addressed. Since different jurisdictions have different ways of defining tax treatment, there may be divergent interpretations as to the scope of what documents are included in "laws and regulations," and we believe that criteria for judging in each jurisdiction will be necessary.

Japanese tax laws contain many expressions such as "unreasonably expensive" and "unavoidable circumstances," and there are elements which are left to the taxpayer to consider, known as "indeterminate concepts." In such areas, practice is established by "soft law" which has no legal source, such as notifications, advance ruling or FAQ published by tax authorities.

If all areas that are not clarified by "laws and regulations" are "uncertain," then many areas of Japanese TP practice will be subject to uncertainty, and professional accountants will have to consider the contents of "soft law" in the process of considering the "credible basis," which is expected to impose an excessive burden on them. Considering the practical application in Japan, we believe that it is necessary to include "soft law" such as notifications, advance ruling or FAQ in the scope of "laws and regulations" and to add a clear explanation of the inclusion so that only those matters whose treatment cannot be determined by such "soft law" can be treated as "uncertain" and proceed to the consideration of the "credible basis." To this end, we suggest that the IESBA should make more specific examples of the "credible basis" in paragraph 380.11 A3 and the "circumstances that might give rise to uncertainty" in paragraph 380.15 A2.

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)

We agree with the proposal.

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?

(Comment)

We agree with the proposal. However, we believe that the following points need to be addressed. Paragraph R380.20 specifies the matters which a PAPP must consider advising on when the management pursues a TP arrangement despite the contrary opinion of the PA. In addition, paragraph R280.20 sets forth the matters to be considered when the superior or the management pursues a TP arrangement despite the advice of a PAIB. On the other hand, paragraphs 380.7 A1 and 280.7 A1 state that the "responding to non-compliance with laws and regulations" in the Code applies when a PA becomes aware of tax evasion, etc. We believe that it should be clarified how paragraphs R380.20 and R280.20 relate to the provisions regarding the "responding to non-compliance with laws and regulations."

In the case of PAIB, there are differences in the environment in which a senior PAIB including CFO and a PAIB other than a senior PAIB are placed, and it may be difficult for a PAIB other than a senior PAIB to take the actions specified in the Code against the interests of the organization. A PAIB other than a senior PAIB may find it difficult to take the actions in this provision, especially if the management or the superior are risk-favoring with respect to tax strategies, as the management may not heed the advice of the PAIB in gray zone.

Accordingly, as with Section 260 of the Code, we believe that it will be useful to separate PAIBs into senior PAIBs and PAIBs other than senior PAIBs and provide the respective considerations. It is expected that, as with the "responding to non-compliance with laws and regulations," showing the respective responses in the form of a flow chart in the staff Q&A, if possible, will further enhance the understanding of professional accountants.

Documentation

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

(Comment)

We agree with the proposal.

We do not see any problem with not making it a requirement, as it is consistent with other sections.

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?

(Comment)

We agree with the proposal.

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?

(Comment)

We agree with the proposal. However, we suggest that the IESBA should additionally clarify that the provision applies to a tax benefit obtained as a result of the PA's recommendation or otherwise advice of TP arrangements and does not apply to a tax benefit obtained accidentally and unintentionally.

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?

(Comment)

We agree with the proposal.

III. Request for General Comments

(a) *SMEs and SMPs* – The IESBA invites comments regarding any aspect of the proposals from SMEs and SMPs.

(Comment)

We have no comment.

(b) *Tax Authorities* – The IESBA invites comments on the proposals from a regulatory perspective from members of the tax regulatory community.

(Comment)

Not applicable.

(c) *Developing Nations* – Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular on any foreseeable difficulties in applying them in their environment.

(Comment)

Not applicable.

(d) *Translations* – Recognizing that many respondents may intend to translate the final changes for adoption in their own environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.

(Comment)

We do not have any specific comments on the wording used in the Exposure Draft from the perspective of translation into Japanese.

However, English is not the official language in Japan, thus, it is inevitable to translate the Code from English to Japanese in an understandable manner. For this reason, we pay close attention to the wording used in the Code in respect of whether it is translatable and comprehensible when translated. We therefore request the IESBA to avoid lengthy sentences and to use concise and easily understandable wording.

We hope the comments provided above will contribute to the robust discussions at the IESBA.

Sincerely yours,

Toshiyuki Nishida

Executive Board Member - Ethics Standards

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