



MALAYSIAN INSTITUTE
OF ACCOUNTANTS

26 May 2023

Mr Ken Siong
Senior Technical Director
International Ethics Standards Board for Accountants
International Federation of Accountants
529 Fifth Avenue, 6th Floor
New York, 10017 USA

Dear Ken Siong

INTERNATIONAL ETHICS STANDARDS BOARD FOR ACCOUNTANTS (“IESBA”) EXPOSURE DRAFT, *PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES*

The Ethics Standards Board (“ESB”) of the Malaysian Institute of Accountants (“MIA or the Institute”) welcomes the opportunity to provide its comments on the IESBA’s Exposure Draft (“ED”), *Proposed Revisions to the Code Addressing Tax Planning and Related Services*.

We enclose in **Appendix 1**, our response to the questions contained in the ED.

We hope our comments would contribute to the IESBA’s deliberation in finalising the ED. If you have any queries or require clarification of this submission, please contact Simon Tay Pit Eu at +603 2722 9271 or email at simontaypiteu@mia.org.my.

Thank you.

Yours sincerely

MALAYSIAN INSTITUTE OF ACCOUNTANTS

DR. WAN AHMAD RUDIRMAN WAN RAZAK
Chief Executive Officer

APPENDIX 1

PART A: SPECIFIC COMMENTS

We have outlined our responses to each question in the ED below.

Proposed New Sections 380 and 280

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

We are supportive of the IESBA’s approach to creating two new Sections 380 and 280 in addressing tax planning, especially given the complex nature of the tax planning environment and thereby providing a framework that guides the ethical conduct and frames the mindset of both public accountants in business as well as public accountants in public practice when providing TP and related services to either the employing organisations or clients. However, we would highlight that difficulties could arise when a professional accountant (PA) is engaged to offer their services to address past issues resulting from a client receiving improper tax advice or arrangements. Although these arrangements in question may lack a “credible basis”, it would not be in the public interest and impractical to disassociate with the client in such situations. We propose that the IESBA consider providing further relevant examples of such situations.

Description of Tax Planning and Related Services

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

While we agree with the scope of TP services detailed in the proposed sections, we are concerned over the inclusion of TP-related services (tax compliance services and tax dispute resolution services) based on a TP position that another party recommended to the client, as suggested in proposed paragraph 380.5.A3. This could raise questions as to the extent of work required to be performed by the public accountant (PA) in carrying out compliance work. When providing TP services that are typically forward-looking, PAs typically have a high degree of certainty pertaining to the tax advice provided. However, when providing tax compliance services alone, there is a lower degree of certainty pertaining to the tax position taken. We believe that TP-related services based on TP advice provided by another party should not be subjected to the full scope of proposed section 380. Instead, the PA should be allowed to place reliance on the work of other PAs, parallel to principles in the International Standards on Auditing on using the work of other auditors.

In addition to the above and with respect to the proposed paragraph 380.5 A3, we would also suggest that the IESBA clarify which services are specifically excluded from related services.

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 are supportive of the IESBA’s proposals regarding the role of the PA in the public interest in the context of TP and acknowledge the IESBA’s reasoning for not defining or describing public interest. However, we would believe that there will be practical challenges for the PA in their role to provide a TP arrangement as public interest could differ in different jurisdictions, especially when performing cross-border engagements. In considering this matter, we propose that instead of providing a definition, further guidance on or examples of public interest could be included to assist the PA in their consideration.

The presence of other service providers in this field such as lawyers and other non-professional accountants should also be taken into account. There could be challenges in implementing the proposals as these guidelines would not apply to them. The suggested proposals will also potentially make PAs less efficient as compared to other parties who engage in tax planning services, especially when dealing with non-aggressive schemes and will hence, leave PAs at a disadvantage.

Besides this, we would also suggest for the IESBA to consider if there is a need to refer to “tax evasion” in the proposed paragraph 380.4 A2, which may be confusing and considered as having the same meaning as the term ‘tax avoidance’, especially in translations. Although, “tax minimisation arrangements” is a term that does appear in practice but it may not be well understood. Instead, “tax efficiency” would be a more neutral term than “tax minimisation”.

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 are agreeable with the proposals regarding the thought process for PAs. We are, however, of the view that the intended meaning of the term “credible basis” lacks clarity and guidance as the term is highly subjective. Another concern would arise when determining whether PAs are actually complying with these proposals due to their broad and subjective nature. We suggest that the term could be made clearer or further guidance be provided to assist the PA in determining what exactly a “credible basis” would mean.

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

We are not aware of any other considerations that may impact the proper application of the proposed provisions.

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?

Overall, we agree with the intention of the proposals regarding the stand back test but we note that the expectation of the PA in the phrase “to consider” and “consequences” are unclear. For example, if the PA has established a credible basis and informed the client of the possible consequences of the arrangement, would the PA still be considered responsible for any consequences should the client choose to pursue the TP arrangement despite being informed of the possible consequences? We certainly do not think so.

Hence, we would urge the IESBA to consider further clarifying the expectations of the PA in navigating such circumstances.

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?

Overall, we are supportive of the description of the gray zone of uncertainty and its relationship in determining that there is a credible basis for the TP arrangement. However, similar to Question 1 above, we are of the opinion that the suggested proposals should take into account past events. Previous advice could have led clients into a gray zone scenario and the PA could be engaged to rectify this situation. It would be impractical for the PA to disassociate from such situations. To this end, we would propose for the IESBA to clarify or provide relevant examples of such situations.

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 agree with the proposed guidance in relation to the application of the CF.

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?

It is unclear if the intention of the proposed paragraph R380.19 is different from the proposed paragraph R380.13. The proposed paragraph R380.19 also appears to exclude the 'reputational, commercial and wider economic' consequences described in the proposed paragraph R380.12.

We are supportive of the principles behind proposed paragraphs R380.20 and R280.20 but steps (b) and (c) which require the PA to consider advising the client to make full disclosure to tax authorities or the external auditor is overly onerous as well as impractical when considering that there could be some commercial sensitivity around such TP arrangements. This could imply that there is a possibility of revealing confidential information to other parties in these situations. These steps may only be applicable when the proposed TP arrangements are genuinely contentious and if the disclosure is required by local tax regulations or legislation. Current practice in Malaysia does not require such escalation as this is something that is the responsibility of the client only.

To address this, we would propose for the IESBA to consider revising the proposed paragraphs to emphasise that it would only be under such specific contentious circumstances (subject to the legal requirements in the jurisdiction or expectations stated by the tax authorities in specific guidelines or rulings) that a PA should consider suggesting such escalation. We would also propose that the IESBA provide additional guidance in relation to the PA's compliance with confidentiality in these circumstances.

Documentation

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

We are supportive of the proposals regarding documentation as outlined in Section VII.J.

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 agree with the proposals addressing TP products or arrangements developed by a third party provider.

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?

In respect of the proposed guidance regarding multi-jurisdictional tax benefit, we are of the view that disclosure to the relevant tax authorities should only be advised by the PA if such disclosure is expressly required in local tax regulation or legislation. Amendments to the wording in this area would be helpful.

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 are supportive of the proposed consequential and conforming amendments to Section 321 as described in Section VII.M.

PART B: GENERAL COMMENTS

In addition to the request for specific comments above, the IESBA is also seeking comments on the matters set out below:

- ***Small- and Medium-sized Entities (SMEs) and Small and Medium Practices (SMPs)*** – The IESBA invites comments regarding any aspect of the proposals from SMEs and SMPs.

We do not have any comments from the perspective of SMEs and SMPs.

- ***Regulators and Audit Oversight Bodies*** – The IESBA invites comments on the proposals from an enforcement perspective from members of the regulatory and audit oversight communities.

Not applicable.

- ***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.

We do not foresee difficulties in applying these proposals in the Malaysian environment other than in specific areas that have been highlighted in the comments above.

- ***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.

Not applicable.