



PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANNING
AND RELATED SERVICES EXPSOURE DRAFT

**Response from the Public Accountants
and Auditors Board (PAAB), Zimbabwe**

17 May 2023

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Further information about PAAB can be obtained at www.paab.org.zw

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17 May 2023

**PAAB ZIMBABWE COMMENT LETTER TO THE IESBA EXPOSURE DRAFT ON PROPOSED REVISIONS
TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES**

Dear Chairman,


We are writing on behalf of the Public Accountants and Auditors Board Zimbabwe to comment on the IESBA's exposure draft on proposed revisions to the code addressing tax planning and related services. PAAB is pleased to present its comments on this Exposure Draft. In coming up with these comments the PAAB consulted various stakeholders from auditors, preparers, academia, and professional accountancy organisations.

General Comment on the Consultation paper

The PAAB followed a due process in coming up with this comment letter. Under the due process the PAAB technical staff conducted research, consulted key stakeholders, and drafted this comment letter. The PAAB is in support of the IESBA proposed amendments as we believe that the proposed amendments are clear and practical to implement. However, there is need for further clarity and amendments to areas such as on the relationship between the gray zone of uncertainty and the determination of the credible basis in laws and regulations for the TP arrangement, the issue of documentation of the TP arrangement because in as much as documentation is more of a risk and quality management matter than an ethical issue, it is essential and needs to be addressed on the ethical side as it responds to public interest concerns about tax avoidance and the IESBA should make documentation a requirement.

Response to Specific Matters for Comment: Detailed comments on the Specific Matters for Comment are provided in the attached Annex.


Admire Ndurunduru
Secretary, PAAB


Tanaka Zhangazha
Standards, PAAB

EXPSOURE DRAFT: PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

Specific Matter for Comment 1: Proposed New Sections 380 and 280

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?

The PAAB agrees with the IESBA's approach because the nature of work done by an PA in public practice and a PA in business is significantly different, the type of threats they face and the fundamental principles that are affected are different, hence it is necessary to set out two new sections in the Code. Further, the roles taken by a PA in public practice and PA in business might pose different situations that could emanate for both PAs hence different threats on compliance with fundamental principles as well as the appropriate safeguards to eliminate the threats or reduce them to an acceptable level.

Specific Matter for Comment 2: Description of Tax Planning and Related Services

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

The PAAB agrees with the IESBA's description of Tax Planning because we also believe that the term "tax efficiency" is more neutral than "tax minimization", due to the following reasons:

1. "minimisation" is not efficient as it tends to focus more on the minimisation of tax liability which might be efficient to the taxpayer but not efficient to the government and ultimately the society at large.
2. Tax minimisation is limiting in the manner in which a PA might remain independent and the scope of tax affairs to be encompassed in a TP exercise. Tax minimisation also has the connotation of fraudulently/criminally avoiding tax which results in blinkered aggression when addressing TP issues.

Specific Matter for Comment 3: Role of the PA in Acting in the Public Interest EXPLANATORY MEMORANDUM 24

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?

The PAAB agrees with the IESBA's proposals regarding the role of the PA in acting in the public interest as PAs ought to consider interpretation of the tax legislation, PA's expertise and reputational risks, perception issues and the complexity of TP transactions like cross-border transactions. This is necessary to ensure that the output is premised upon a holistic consideration of the factors.

Specific Matter for Comment 4: Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

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?

The PAAB agrees with the IESBA's proposals regarding the actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement as this will entail a PA to be well rooted in all laws and regulations relevant to a TP arrangement thereby giving a well-informed TP status.

Specific Matter for Comment 5: Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

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

The PAAB is not aware of any specific issues in Zimbabwe that may impact the proper application of the proposed provisions. However specific issues will only be brought up once the definition of what public interest is has been updated.

Specific Matter for Comment 6: Consideration of the Overall Tax Planning Recommendation or Advice

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

The PAAB agrees with the proposed stand-back test stand-back test in determining the credible basis for the TP arrangement because it protects the interests of the stakeholders as the PA will consider a holistic view in which both the clients and stakeholders' consequences are all considered in a TP exercise. This will mean that a PA has a better chance of offering better tax related services without jeopardising the usefulness of that information to various stakeholders.

Specific Matter for Comment 7: Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone

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?

The PAAB agrees with the description of the gray zone by outlining circumstances that might give rise to the uncertainty but however we believe the proposals are not clear on the relationship between the gray zone of uncertainty and the determination of the credible basis in laws and regulations for the TP arrangement.

From our understanding, the gray zone refers to uncertainty as to whether a proposed TP arrangement will be in compliance with relevant tax laws and regulations.

There is need for more guidance on how the PA can then determine whether or not there is a credible basis for the TP in light of circumstances that might give rise to uncertainties and if professional judgement will be exercised, the Code must highlight that point.

Specific Matter for Comment 8: Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone

In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance sufficiently clear and appropriate ?

The PAAB agrees that the proposed guidance is sufficiently clear and appropriate to navigate the Gray Zone as the safeguards that are available to eliminate or reduce the threats to an acceptable level have been sufficiently and appropriately detailed.

We however believe that where relevant tax laws are unclear, legal or other independent advice must be sought to enable a better understanding of the laws and regulations and clear such uncertainties and gray areas.

Specific Matter for Comment 9: Disagreement with Management

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?

The PAAB agrees with the proposed various actions but we however believe that in circumstances that the disagreement is as a result of a non-compliance with rules and regulations like the example the given on the client or employing organisation engaging in illegal activities or in cases of perceived tax evasion we believe in addition to the proposed actions, the PA can also take the actions outlined in the code when responding to NOLCAR under section 260 for PAIB and 360 for PAPPs as it is the professional duty and responsibility of the PA to bring this to the attention of the appropriate level of authority within the organisation (TCWG) or directly to law enforcement by referring to the NOCLAR provisions of the Code on sections of that provide guidance.

Specific Matter for Comment 10: Documentation

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

The PAAB disagrees with the IESBA's proposals regarding documentation to encourage PAs to document the TP arrangement.

We believe that documentation should be an enforceable requirement for all organisations that a PA deal with as it creates an audit trail and enhances transparency issues.

Documentation will go a long way in supporting the basis of any TP arrangement to determine the thought process and rationale for actions of the PA and preparing such documentation will assist the PA to:

- Develop the PA's analysis of the facts, circumstances, relevant tax laws and regulations, and any assumptions made or changed.
- Record the basis of the professional judgments at the time they were made or changed.
- Support the position if the tax planning arrangement is challenged by the relevant tax Authorities.
- Demonstrate that the PA has complied with the provisions in this section.

Specific Matter for Comment 11: Tax Planning Products or Arrangements Developed by a Third Party

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?

The PAAB agrees with the IESBA's proposals, but we believe other than the self-interest threat mentioned, there is most likely to also be an advocacy threat to objectivity when the PA refers a client to a third-party provider of tax planning products or arrangements with the PA being responsible for ascertaining the reliability, credibility and consequences of the particular product.

There is also a threat on professional competency and due care in that if the PA was incompetent to provide the product, they will not be able to review the products credibility, reliability and consequences that may arise.

There is need therefore for more guidance on the appropriate safeguards to reduce or eliminate these threats.

Specific Matter for Comment 12: Multi-jurisdictional Tax Benefit

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

The PAAB agrees with the IESBA proposal regarding multi-jurisdiction tax benefit and the factors considered when deciding whether to make such a disclosure.

We agree with all the factors in the proposals except for the second factor proposed in part 380.14 A2 – “the PA might need to consider the likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits”.

This seems like an improper basis of making a TP decision as it does not seem to support the PA’s acting in public interest.

Specific Matter for Comment 13: Proposed Consequential and Conforming Amendments

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

The PAAB agrees with the IESBA proposal to develop an appropriate linkage to Section 321 addressing second opinions in the context of PAPPs by adding a few conforming amendments to section 321 for a PA in business’ point of view as they might need this second opinion for certainty of the initial opinion given. However, from a PA in public practice’s perspective, providing a second opinion may create inconsistencies and ethical dilemmas which may affect their professional behaviour.