



Program and Senior Director
International Ethics Standards Board for Accountants
International Federation of Accountants
529 Fifth Avenue, 6th Floor
New York 10017

18 May 2023

Dear Mr Siong,

Re: IESBA Exposure Draft – Proposed revisions to the code addressing tax planning and related services

We⁽¹⁾ appreciate and thank you for the opportunity to comment on the IESBA's Exposure Draft regarding the proposed revisions to the code addressing tax planning and related services.

PwC has engaged with IESBA almost from the start of the work of IESBA's Working Group and subsequently the Task Force. We appreciate the significant effort of IESBA and its key stakeholders, now resulting in the Exposure Draft and commend IESBA with respect to this Exposure Draft.

We support and agree with the thrust of the Exposure Draft. We believe that the proposed framework, if adopted, would indeed be conducive to enhancing public trust in the profession.

The annex to this letter responds to IESBA's request for specific comments on the points mentioned in pages 23-25 of the Explanatory Memorandum. Those comments are preceded by two overarching comments relating to the Exposure Draft and the Explanatory Memorandum.

Kind regards,

A handwritten signature in black ink, appearing to be 'Stef van Weeghel', with a long horizontal flourish extending to the right.

Stef van Weeghel,
Global Tax Policy Leader
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¹ This response is being filed on behalf of PricewaterhouseCoopers International Limited (PwCIL). References to "PwC", "we" and "our" refer to PwCIL and its global network of member firms, each of which is a separate and independent legal entity.

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Annex

General remarks

The Explanatory Memorandum to the Exposure Draft contains significant background information and clarifications. We assume that the intention will be to include some of this helpful material in the Basis for Conclusions or a Staff Q&A, amended as necessary to align with the final Standard, to serve as interpretative material upon adoption of the proposed changes to the Code.

The Explanatory Memorandum expresses the clear intention that the proposed rules cover Tax Planning and Related Services. While the Exposure Draft reflects this intention in the Introduction (380.3), it is not always clear in the proposed Standard. We suggest that the related services which are covered are enunciated more precisely. In addition, as some of our specific comments below suggest, not all proposed rules may be equally appropriate for each related service (see, e.g., items 5 and 9 below).

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?

PwC generally agrees with the IESBA's approach to addressing TP. IESBA is an important standard setter with global reach, and it can be expected that the proposed sections will not only give guidance to professional accountants, but also serve as inspiration for other standard setters and professionals not covered by the Code. Our suggestions below relate to Section 380 but are equally relevant for parts of Section 280 dealing with professional accountants in business.

Description of Tax Planning and Related Services

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

PwC agrees with IESBA's description of TP. However, PwC suggests that in section 380.5 A2, the third bullet "including through transfer pricing arrangements" be slightly modified. The way it is drafted in the Exposure Draft suggests that transfer pricing is a means to minimize overall taxes. We believe that transfer pricing as embodied, amongst others, in the OECD and UN transfer pricing guidelines, is a standard for arm's length dealings between associated enterprises and not a tax planning instrument. We suggest deleting the language from the third bullet and to include a separate bullet as follows: "Advising on transfer pricing taking into account applicable transfer pricing guidelines."

We further suggest inserting in 380.5 A3 in the third line, following "tax authority": ", including representing a client in administrative or court proceedings, as the case may be".

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?

PwC agrees with IESBA's proposals as expressed in section VII.B, paragraphs 37 and 38.



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 agree, noting that interpretation of the applicable laws and tax treaties under interpretation rules of the relevant jurisdiction and international law should always form the starting point for determining the presence or absence of a credible basis in laws. Regulations may be authoritative if these are based on delegated authority and stay within the boundaries of the delegation but may also be merely interpretive in nature. It is clear that the latter, representing interpretation by the tax authority only, has less authority than the former, regulation based on delegated authority.

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

Taxpayers should always be entitled to legal and tax representation in case of a dispute with the tax authority, whether at the administrative level or in court, regardless of whether the position taken by the taxpayer has a credible basis in laws.

We suggest that a section be added to R380.11 as follows: "If the professional accountant determines that the tax planning arrangement does not have a credible basis in laws and regulations, paragraph R380.11 does not preclude the professional accountant from assisting and representing the client before the tax authority, in administrative appeal or in court, following a dispute with the tax authority."

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?

While we agree with the overall approach of the stand-back test, we would suggest a modification of its text.

R380.13 states: "If, having considered the matters set out in paragraph R380.12, the professional accountant decides not to recommend or otherwise advise on a tax planning arrangement that the client would like to pursue, the accountant shall inform the client of this and explain the basis for the accountant's conclusion." While we believe it is important for an advisor to apply the stand-back test in addition to determining credible basis for the advice, it should be left to the client to decide, based on all available information, whether to proceed with the transaction in question. Doing otherwise would increase the risk of the advisor being engaged in management decisions. We would therefore suggest modifying R.380.13 to say that the professional account should communicate its observations on the application of the stand-back test to the client to allow the client to make an informed decision as to whether or not to pursue a tax planning arrangement.

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?

Yes.



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?

While we agree in general, we note the following:

380.17 A1, third bullet: This paragraph may overshoot. What is a significant fee for an engagement is inherently subjective. Furthermore, interpretation of the relevant tax laws and regulations is often uncertain or unclear, so we see a risk that as per this paragraph there could be many situations of perceived self-interest that are in fact innocuous. In any event we suggest that the paragraph be limited to the situation where the fee for an engagement is contingent on the tax savings resulting from a tax planning arrangement.

380.17 A1, fourth bullet: This statement could be perceived as limiting the professional accountant's ability to adequately represent a client in a dispute, either before the tax authority or in administrative or judicial appeal. We would suggest considering deletion. See also our comment above relating to question 5.

Regarding 380.17 A2, first bullet, we raise the question whether compliance with general client acceptance and anti-money laundering rules would suffice, or whether IESBA aims to introduce further due diligence requirements.

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?

While we agree in general, we note that the wording of R380.19 is very broad and would also cover the situation in which a third party (not the professional accountant) would have advised the client on the tax planning arrangement. We assume that the thrust of this paragraph is to give guidance with respect to the tax planning arrangement in respect of which the professional accountant was engaged to render tax planning services and suggest making this explicit in the wording of the paragraph.

Documentation

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

Yes.



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 understand the background of section VII.K but would find the situation quite unusual. In any event, we agree with IESBA addressing this situation.

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?

The proposed language in 380.14 A1 ("might advise") is rightfully quite cautious. It may very well be that a particular multi-jurisdiction tax benefit is fully consistent with the object and purpose of the applicable tax laws in each jurisdiction. Whether there would be any advisability of disclosure beyond what is required by applicable law would fully depend on relevant facts and circumstances. We would suggest to slightly rephrase, as follows: "might advise the client to consider disclosing."

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?

Yes.