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18 May 2023

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

Dear Mr Siong,

**Proposed Revisions to the Code Addressing Tax Planning and Related Services**

RSM International Limited, a worldwide network of independent audit, tax, and consulting services firms focused on serving the middle market, appreciates the opportunity to comment on the IESBA's proposed revisions to the IESBA Code relating to Tax Planning and Related Services.

We support the proposed amendments to the Code as they will provide Professional Accountants in Business and Professional Accountants in Public Practice with valuable guidance on the practical application of the Fundamental Principles to tax planning and related services.

This will resolve associated ambiguity and assist Professional Accountants in identifying and resolving potential ethical concerns by reference to a uniform framework, which will in turn enhance trust, and public confidence in the integrity, of the profession.

We have specific comments and suggested amendments or additions and have set out these by responding to the specific questions below. If you have any questions relating to our response, please contact me at [peter.oastler@rsm.global](mailto:peter.oastler@rsm.global).

Yours sincerely,

*Peter Oastler*

Peter Oastler  
Global Ethics and Independence Leader  
RSM International

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## 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?**

**Ans:** Yes. We support the proposed amendments to the Code as they will provide Professional Accountants with valuable guidance on the practical application of the Fundamental Principles to tax planning and related services.

This will resolve associated ambiguity and assist Professional Accountants in identifying and resolving potential ethical concerns by reference to a uniform framework, which will in turn enhance trust, and public confidence in the integrity, of the profession.

### *Description of Tax Planning and Related Services*

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

**Ans:** We support the description and the proposed incorporation of illustrative examples and extension of the description to related services is welcomed. We suggest that the description be reworded, to emphasise the role of adviser to the client or management, as follows: "*Tax planning services comprise a broad range of services designed to assist a client, whether an individual or an entity, in making informed decisions to achieve tax efficiency while complying with tax laws and regulations. structuring the client's affairs in a tax-efficient manner.*"

**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?**

**Ans:** Yes. As noted in the Explanatory Memorandum, attempting to define or describe public interest in the abstract would be difficult and the approach of instead providing contextual guidance is considered appropriate.

### *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?**

**Ans:** Yes. The credible basis threshold (cf. likely-to-prevail) seems appropriate, as it is sufficiently generic to apply on a uniform basis across jurisdictions without requiring consideration of jurisdiction-specific differences, which could lead to inconsistent and potentially inappropriate outcomes.

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

**Ans:** No. As indicated above, adoption of the credible basis threshold avoids jurisdiction-specific considerations. A credible basis threshold is universally comprehensible, and both proposed 280.11 A3 and 380.11 A3 provide useful criteria by reference to which Professional Accountants can assess whether a credible basis exists.

### *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?**

**Ans:** Yes. Professional Accountants have the ethical responsibility to serve the public interest and uphold the public trust in the profession. That responsibility is not only to clients, but also to client's investors, creditors and any stakeholders. The proposed stand-back test will facilitate responsible behaviour required of us in our profession – to serve our clients and the public interest with integrity, objectivity, and due care.

However, there are important clarifications outlined in paragraph 65 of the Exposure Draft that we recommend be included in the application guidance in section 280.12/ 380.12. In particular we recommend that the guidance includes clarification that:

- the stand-back test is not about tax morality, tax justice or tax fairness; and
- the PA is not expected to carry out research on the economic consequences other than giving the matter due consideration based on the Professional Accountant's general awareness and understanding of the current economic environment in the context of the tax planning.

We further recommend that the application material refer the PA to use the "Reasonable and Informed Third Party Test" outlined in paragraph 120.5 A6 of the IESBA Code in consideration of the overall tax planning recommendation or advice.

### *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?**

**Ans:** Yes. Even if we can determine that there is a credible basis in laws and regulations for the tax planning arrangement, there may be circumstances that might give rise to uncertainty. In those cases we agree that it is appropriate to communicate this to our clients. The circumstances (examples) described in the proposed revisions will be helpful to consider as we provide the tax planning services.

#### **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?**

**Ans:** Yes. The material provided will be helpful in assisting the Professional Accountant in applying the Conceptual Framework.

### *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?**

**Ans:** Yes. However, we recommend that the order of paragraphs 280.20 A1 and 280.20 A2 be reversed to make clear that a Professional Accountant consider the need to resign from the employing organisation in the

absence or failure of established protocols and procedures to address ethical or other concerns. This will provide greater clarity to Professional Accountants.

*Documentation*

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

**Ans:** Yes. We support at a minimum that there is application guidance relating to documentation, including the matters to include and to set out the purpose of such documentation.

*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?**

**Ans:** Yes. We agree that the provisions of section 380 should apply in the circumstance where a Professional Accountant refers a client to a third-party provider of tax planning products or arrangements and where the Professional Accountant is advising on a matter related to a specific tax product or arrangement. However, we suggest that section 380 should not apply in the circumstance where a Professional Accountant simply refers a client to a third party provider of tax planning services and where the Professional Accountant has no involvement in advising on matters related to the particular tax planning product or arrangement. We suggest that this is clarified in the application guidance. We agree that it is helpful to refer to sections 330.5 A1 and A2 in the situation where a Professional Accountant receives a referral fee or commission by referring a client to a third-party provider of tax planning.

*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?**

**Ans:** Yes. We agree that there are circumstances where it is in the public interest for the Professional Accountant to advise the client or employing organisation to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in different jurisdictions as set out in 380.14 A1-A2 and 280.14 A1-A2.

*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?**

**Ans:** Yes. We agree with the proposed consequential and conforming amendments to Section 321.