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*submitted electronically through the IESBA website*

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Düsseldorf, 16.05.2023  
703/

## **Re.: Exposure Draft: Proposed Revisions to the Code Addressing Tax Planning and Related Services**

Dear Gabriela,

We would like to thank you for the opportunity to provide the IESBA with our comments on the Exposure Draft “Proposed Revisions to the Code Addressing Tax Planning and Related Services”, hereinafter referred to as “the Exposure Draft”.

With due regard for recent cases of abusive use of tax planning, the IDW understands IESBA’s decision to include additional provisions on tax planning and related services in the Code. The [IDW Code of Conduct](#), which was published at the beginning of 2023 and recommended to IDW members for application, also contains high-level principles and guidelines on responsible tax advice. However, particularly in view of legislative procedures currently under discussion (e.g., SAFE initiative in the European Union), we believe it would be helpful to support the profession with regard to ethical issues in the context of all areas of tax advice and, at the same time, to signal – as proposed – that the profession is clearly positioned against aggressive tax planning (the abusive use of tax planning arrangements to the detriment of the State).

GESCHÄFTSFÜHRENDE R VORSTAND:  
Prof. Dr. Klaus-Peter Naumann,  
WP StB, Sprecher des Vorstands;  
Melanie Sack, WP StB,  
stv. Sprecherin des Vorstands;  
Dr. Torsten Moser, WP

Amtsgericht Düsseldorf  
Vereinsregister VR 3850

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In this comment letter, we would like to provide our remarks regarding the delimitation of the scope of application (definition of tax planning and related services), the design of the stand-back test and the consequences of disagreement with the client. Finally, we believe that it needs to be sufficiently clear to all stakeholders that Professional Accountants (PA) should always pay attention to ethical principles when providing tax advice. Limiting the scope of this Exposure Draft to the field of tax planning and related services is, in our view, not advisable. On the one hand, (avoidable) questions arise regarding the specific classification of individual tax advisory services. Secondly, we do not see why the ethical principles for (other) tax advice should be derived solely from the general part of the Code. Furthermore, we support the provisions on the stand-back test included in R380.12 of the Exposure Draft. The IDW Code of Conduct also provides that, in addition to purely "legal" considerations, wider consequences of tax planning arrangements should also be included in the evaluation. It should be clarified that the stand-back test is limited to the identification of abstract risks, which by nature, are subjective depending on the respective stakeholder a PA may have in mind. In addition, we suggest that the scope of application of the rules on disagreement with the client should be defined more precisely. It should be made clear that the corresponding rules (R380.19 – R380.21) are only to be applied if, in the PA's opinion, there is no credible basis. This would not preclude the PA from taking further steps in extreme cases of disagreement on the matters considered in the stand-back test (i.e., there could be a requirement to consider further steps in these cases), but would underline the importance of a credible basis.

In the following, we would like to discuss the questions in the Guide for Respondents:

*(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?*

Yes, we agree. For the delimitation of the scope, see the answer to the following question (2).

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

In principle, we agree with the description of tax planning and related services. However, we would like to point out that tax planning is a future-oriented activity and related services tend to relate to a past-oriented activity. At the beginning, the exposure draft distinguishes between tax planning and related services. Later, however, the provisions often refer exclusively to tax

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planning. Under certain circumstances, this differentiation results in different procedures, e.g., for the stand-back test or the steps to reduce uncertainty. In Germany, for example, it is only possible to obtain an advanced ruling (“verbindliche Auskunft”), if the arrangement has not yet been actioned. Based on discussions, we assume that a very strict understanding of related services is implied in the ED. We suggest that this should be clarified. A broad understanding of related services would, for example, require a revision of the recommendations for actions to determine if there is a credible basis (380.11 A3). We also believe that the actions proposed in 380.17 A3 are applicable especially in the context of (future-oriented) tax planning services and not (past-oriented) related services.

Furthermore, we believe that ethical considerations are not only required in the limited field of tax planning and related services. In general, the provision of any type of tax advice should take ethical considerations into account. We would therefore recommend expanding the scope of the rules to include the entire area of tax advice. This would also avoid any difficulties in classifying services. However, the IESBA should clarify that the stand-back test required by R380.12 would not involve an onerous task regarding tax services that are routine or non-controversial in nature. In addition, the implementation of an effective tax compliance management system should also be seen as an indication of the existence of a credible basis.

- (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?*

Yes, we agree. The IDW Code of Conduct also contains comparable statements: “As advisors on tax matters, we are an independent part of the system for upholding tax law. We promote a constructive relationship between taxpayers and the tax authorities. In the interests of the common good, we are committed to preventing the abusive use of tax planning arrangements to the detriment of the State.”

- (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 here with the IESBA's approach to determining whether a tax arrangement has a credible basis. In particular, the approach should allow for country-specific characteristics.

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- (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 application to the proposed provisions. In the light of the international application of the Code, we do not believe that jurisdiction-specific considerations should be included.

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

We agree with the proposals regarding the stand-back test. The IDW Code of Conduct also provides for informing the client about reputational and other financial risks that may result from tax advice. However, it should be clarified here that the stand-back test can only refer to the abstract determination of the risks. A precise determination of the impact of reputational risks or wider economic consequences is not possible in our view.

In addition, R380.13 should require that the PA consider (rather than automatically being required to) withdrawing from the engagement in serious cases of disagreements with the client regarding the interpretation of the stand-back test. We agree that a stand-back test should only be performed if the PA is of the opinion that a credible basis exists (but there is a grey zone). If the PA then decides based on the stand-back test (e.g., due to reputational risks from the PA's point of view) not to recommend the tax planning arrangement, a situation may arise that the client decides differently. Perhaps the client estimates the reputational risks as lower and decides to implement the tax planning arrangement. Such a tax planning arrangement still has a credible basis. The disagreement between the PA and the client is therefore not based on a "legal" assessment; it is "only" a different assessment of other factors (e.g., reputational risks) - thus the sections R380.19-R380.21 should not be applicable in most cases.

Under certain circumstances, however, a situation may arise in which the PA is sufficiently concerned about reputational risks not only for the client, but also personally and/or for the entire profession. In this case, the Code should support the PA in determining whether to take further consequences under R380.19-21 (i.e., a requirement to consider whether the significance of the disagreement justifies such measures. If serious reputational risks were to be expected, the PA could be required to consider whether to apply the Code's requirements pertaining to disagreements where there is no

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credible basis and thus better justify the step of withdrawal from the engagement and the professional relationship vis-à-vis the client).

- (7) *Do you agree with the IESBA's proposals as outlined in Section VII.G above describing the grey zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?*

Yes, we agree.

- (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 grey 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?*

In general, we agree with the proposed guidance.

- (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?*

Our suggestion here is to clarify the scope. We understand the provisions here to imply that the title of the section should better be "Disagreement with Client about the Credible Basis". R380.19 explicitly refers to disagreements when there is no credible basis. R380.20 and R380.21 no longer (explicitly) refer to the criterion of "disagreement about the existence of a credible basis", instead implying that the disagreement in R380.20 can also arise from other reasons, despite there being a credible basis. We suggest, however, these rules should be read as consecutive to each other. The requirement to take steps to disassociate (R380.20) should apply when there is no credible basis (i.e., it should apply in R380.19). Where there is a credible basis, but the PA nevertheless decides not to recommend a particular tax planning arrangement in line with R380.13, there should only be a requirement to consider the need to disassociate from the tax planning arrangement (R380.19) or withdraw from the engagement or the relationship with the client (R 380.21) (see above).

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

Yes, we agree.

*(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?*

In principle, we understand the reasoning. Should the scope of application be extended to all tax advice, further differentiations might have to be made.

In addition, we would like to note that 380.22 refers to tax planning products or arrangements. In some jurisdictions, the term 'tax planning products' would be equated to actively marketed pre-packaged tax avoidance schemes that are not client-specific.

We would be pleased to provide you with further information, if you have any additional questions about our response, or to discuss our views with you.

Yours truly,



Torsten Moser  
Executive Director



Jürgen Brokamp,  
Technical Director, Tax