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IESBA Exposure Draft: Proposed Revisions to the Code Addressing Tax Planning and Related Services

Dear Ken

Dear Ladies and Gentlemen

The Wirtschaftsprüferkammer (WPK) is pleased to take this opportunity to comment on the above-mentioned Exposure Draft (ED). We would like to highlight some general issues first and provide you with our specific responses to selected questions of the ED subsequently.

General Comments

We support IESBA's project in the revision of a Code of Ethics for the work of professional accountants in dealing with complex national and international tax systems.

Taxes are the most important source of revenue for a state. They also have an important steering function. A functioning tax system is therefore an essential component for a functioning polity. In Germany, professional accountants are considered as an independent body for the administration of tax justice. The functioning and further development of tax systems is therefore partly their responsibility. So we welcome that this responsibility is supported by a strong Code of Ethics.

However, we have some notes to the ED.

We support the use of the term "credible basis" (R 380.11) and recognise that determining whether a credible basis exists necessarily requires the auditor's judgement. Differing interpretations of this term should be avoided as far as possible. We therefore recommend the inclusion of further explanations in the final version.

In addition to professional accountants, other professions are also involved in tax planning. It would also be beneficial if the ethical requirements for tax planning proposed by the IESBA were also adopted by these professions and their organisations.

Our full responses to requests for specific comments can be found below.

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?

We agree with IESBA's approach in creating two new sections. However, professional accountants in business (PAIB) do not exist in Germany, so Section 280 has no relevance for us.

Description of Tax Planning and Related Services

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

We agree with the IESBA's description of tax planning activities as comprising "a broad range of activities designed to assist an employing organization in structuring its affairs in a tax-efficient manner" and understand the IESBA's reasoning to not use the OECD's definition of tax planning, which emphasises minimising the tax liability.

The concept of 'tax-efficient' seems to be somewhat vague and open to interpretation. Consequently, the IESBA should consider whether additional commentary is required to reduce the possibility of differences in interpretation of this term.

Additionally, we have concerns with the inclusion of 'related services' in this section. The requirements in this section refer to tax planning arrangements and it is uncertain, which related services are automatically drawn into these requirements. We suggest a clarification of the '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 agree with IESBA's proposed contextual guidance describing how professional accountants 'help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest' (380.4 A1). This understanding coincides with the German view.

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 support the use of the term "credible basis" (R 380.11) and recognise that determining whether a credible basis exists necessarily requires the auditor's judgement. Differing interpretations of this term should be avoided as far as possible. We therefore recommend the inclusion of further clarification to minimise uncertainty in tax planning arrangements, particularly those with cross-border elements.

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

No, we have no information about other considerations.

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?

We support the inclusion of a stand-back test, as proposed in R380.12. However, we have some concerns about the inclusion of 'wider economic consequences' as a factor in 380.12 A2. Identifying these consequences requires extensive research that cannot be part of a simple stand-back test.

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?

We agree with the proposals, acknowledging that professional accountants often face uncertainty when deciding whether a tax planning arrangement is legal or illegal.

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 that tax planning often carries a degree of uncertainty, especially in respect of cross-border transactions. So, we welcome IESBA's approach. In particular, we see certain elements discussed as being of particular importance. These include whether the proposed tax planning arrangement could be contrary to the intents of the relevant tax legislation (380.17 A2).

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?

In principle, we agree with the proposals. In Germany, however, the profession is subject to far-reaching confidentiality, which restricts many proposals unless the client agrees.

Documentation

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

A complete documentation is a useful tool to facilitate ethical considerations – especially as part of the process when considering whether the advice has a credible basis and then performing the stand-back test.

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 have no comments on the proposed changes.

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?

We are unconvinced by the IESAB proposals as they add complexity to the process and the reporting requirements already in place. Initiatives such as the OECD's anti-BEPS and GloBE are already having a good regulatory effect here.

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?

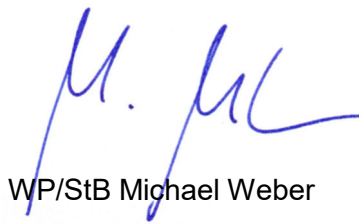
[We have no comments on the proposed changes.](#)

We hope that our comments are helpful. If you have any questions relating to our comments in this letter, we should be pleased to discuss matters further with you.

Kind regards



Dr. Michael Hüning
Chief Executive Officer



WP/StB Michael Weber
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