

## AGENDA PAPER

**Item Number:** 12  
**Date of Meeting:** 14 June 2018  
**Subject:** Proposed revised APES 220 *Taxation Services*

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Action required     For discussion     For noting     For information

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### Purpose

To obtain the Board's approval to issue the revised *APES 220 Taxation Services* (APES 220), subject to the Board's review comments and editorials.

### Background

At the March 2018 Board Meeting, the Board approved the release of the [Exposure Draft Proposed Standard APES 220 Taxation Services](#) (APES 220 ED). The APES 220 ED included proposed revisions to the Standard to address issues relating to references to laws and regulations, reported inconsistencies in the application of Independence requirements, outsourcing activities and cyber security. Comments were due by 18 May 2018.

### Consideration of Issues

APESB received four submissions from stakeholders and they are tabulated in the General and Specific Comments tables in Agenda Item 12(b) and Agenda Item 12(c), respectively.

Stakeholders were generally supportive of the proposed revisions to APES 220, apart from concerns raised with the Professional Independence provisions. The key issues raised by stakeholders in the submissions and how these responses have been addressed is noted below.

#### 1. Independence obligations

The majority of submissions had concerns with the proposed Independence requirements in the APES 220 ED (paragraphs 3.6 – 3.8). These paragraphs were included in the ED to address a matter raised by the tax regulator about concerns that independence requirements were not being adhered to by Members in Public Practice providing Taxation Services to audit or assurance Clients of the Member's Firm.

Respondents were of the view that the intention of the paragraphs in the APES 220 ED were ambiguous and could be interpreted in a manner to mean that Independence requirements apply to all taxation services, which extends beyond the current requirements of APES 110 *Code of Ethics for Professional Accountants* (the Code).

In addition to the concerns about clarity and intended scope of application, stakeholders were concerned that the proposals:

- did not adequately explain the use of the conceptual framework (and the application of safeguards) in addressing threats to Independence;
- created an impression that tax services are prohibited unless the auditor independence requirements have been applied; and
- would lead to disparity between the requirements in APES 220 and the *Tax Agent Services Act 2009*.

To address the concerns raised in the submissions, Technical Staff propose to:

- (a) make editorial amendments to paragraph 3.7 (paragraph 3.6 in the APES 220 ED) to clarify that Members must comply with the relevant Independence requirements in the Code if they are providing taxation services to an audit or assurance client of the firm;
- (b) remove proposed paragraph 3.7 (as per APES 220 ED) as the amendments to the new paragraph 3.7 remove the need to assess if the taxation service is provided as part of an assurance engagement;
- (c) remove proposed paragraph 3.8 (as per the APES 220 ED) as the new paragraph 3.7 will include the requirement to comply with the relevant sections of the Code;
- (d) delete the definition of Independence (as the term is not used in the proposed Standard); and
- (e) change the title of the section to Independence Obligations.

Subsequent to these revisions the section on Independence obligations will comprise the following paragraph:

**3.7 When a Member in Public Practice is providing Taxation Services to a Client and the Member's Firm is also engaged to conduct an Assurance Engagement for the same Client, the Member shall comply with Section 290 *Independence – Audit and Review Engagements* (for audit Engagements) or Section 291 *Independence – Other Assurance Engagements* (for other Assurance Engagements) of the Code.**

## 2. Conflicts of Interest

A stakeholder commented that APES 220 does not provide material that assists Members to address conflicts of interest that might arise when they are asked to represent a Client or Employer before a court or tribunal in respect of Professional Activities the member previously provided.

To address this concern, Technical Staff propose to include a new paragraph 3.6 in APES 220 that requires Members to comply with the relevant sections in the Code on conflicts of interest.

### 3. Consulting on tax schemes and arrangements

A Professional Body recommended that paragraph 5.5 include the option of consulting with a Revenue Authority, subject to receiving the consent from the Member's Client or Employer. In addition, the Professional Body believed it is outside their remit to advise their Member's on the legality of tax schemes and arrangements.

Another Professional Body also requested this paragraph be amended to clarify the content and timing of the documentation suggested in paragraph 5.5(c).

Technical Staff agree with the comments from the Professional Bodies and propose to revise paragraph 5.5 as follows:

- 5.5 If a Member is uncertain that a tax scheme or arrangement is of the type set out in paragraph 5.4, the Member should consider:
- (a) consulting with the Client, ~~or~~ Employer, or Those Charged with Governance ~~or a Professional Body~~, as applicable;
  - (b) if necessary, consulting with an in-house legal counsel or obtaining independent legal advice; ~~and~~
  - (c) if necessary and with the Client or Employer's consent, consulting with the applicable Revenue Authority; and
  - (d) documenting the substance of the tax scheme or arrangement and key matters considered by the Member ~~considerations~~ in assessing determining whether the tax scheme or arrangement is not of the type set out in paragraph 5.4.

A marked-up copy of APES 220 (changes post ED) incorporating the proposed revisions from the exposure draft process is presented as Agenda Item 12 (a).

#### **Recommendation**

Subject to the Board's review comments, the Board approve the issue of the revised APES 220.

#### **Materials Presented**

Agenda Item 12(a)	Revised APES 220 <i>Taxation Services</i> (Marked-up version)
Agenda Item 12(b)	General Comments Table – ED 01/18
Agenda Item 12(c)	Specific Comments Table – ED 01/18

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