



Annual Review of APES 220 *Taxation Services*

Prepared by APESB Technical Staff

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Background

Accounting Professional and Ethical Standards Board (APESB) originally issued APES 220 *Taxation Services* (APES 220) in October 2007 and revised the standard in March 2011 and October 2015.

The October 2015 revision became effective on 1 January 2016.

Reason for this report

In accordance with APESB's Constitution, an annual review needs to be performed on pronouncements to identify any issues reported by stakeholders.

The following procedures were performed as part of the annual review:

- Consulted with the Professional Bodies, other key stakeholders and subject matter experts to identify whether Members or other stakeholders have raised any issues in respect of APES 220;
- Reviewed the APESB Issues Register to identify whether stakeholders have reported any matters in relation to APES 220;
- Performed an internal technical review of APES 220 including considering the technological neutrality of the Standard; and
- Considered the results of the Quality Reviews conducted by the Professional Bodies in respect of APES 220.

This report presents an analysis of the issues identified from these procedures and proposed recommendations to resolve these issues.

Issues identified

1. *Reference to laws and regulations*

Issue

A stakeholder has raised the issue that the reference to laws in APES 220 paragraph 3.1 is narrow. It is restricted to a requirement for Members to comply with Taxation Laws rather than broadly to applicable laws and regulations, such as those in respect of anti-money laundering and whistleblowing.

Analysis of Issue

Paragraph 3.1 requires the delivery of services by Members to be in accordance with the relevant Taxation Laws. This limits the requirement to laws and/or regulations that only relate to taxation (such as direct and indirect taxes, levies, surcharges, penalties or similar charges imposed by government bodies). It does not address compliance with other applicable laws and regulations, such as those in respect of anti-money laundering and whistleblowing.

Impacted Stakeholders

Members in Public Practice and in Business.

Recommendation

It is recommended that APES 220 paragraph 3.1 be revised to extend the requirement to comply with Taxation Laws to other applicable laws as well. The proposed amendments are as follows:

Paragraph 3.1

Members providing Taxation Services shall at all times safeguard the interests of their Client or Employer provided that such services are delivered in accordance with Section 100 *Introduction and Fundamental Principles* of the Code and relevant [law](#), [including applicable](#) Taxation Law.

2. *Compliance with the 'spirit of the law'*

Issue

A Stakeholder has noted that APES 220 should clarify that Members need to comply with the 'spirit of the law', not just the 'letter of the law', to address concerns about some Members potentially offering services involving aggressive tax schemes.

Analysis of Issue

All APESB standards contain a paragraph highlighting to Members that they should be guided not merely by the words but also by the spirit of the relevant Standard and the Code. However, this paragraph does not refer to applicable law and regulations.

Technical Staff agree that Members could be reminded that their responsibility to comply with laws include compliance with the 'spirit of the law' and not just the 'letter of the law'.

Impacted Stakeholders

Members in Public Practice and in Business.

Recommendation

It is recommended that paragraph 1.9 of APES 220 be amended to include a reference to laws and regulations to clarify that Members should comply with the 'spirit of the law' and not just the words.

Update from 29 November 2017 Board Meeting

The Board considered the implication of including a guidance paragraph about compliance with the 'spirit of the law'.

The Board requested Technical Staff consider this matter further and engage with relevant stakeholders in this regard.

The Board requested Technical Staff present at the March 2018 Board Meeting an Exposure Draft of proposed changes to APES 220.

3. *Independence requirements*

Issue

A stakeholder has observed that the practices of some firms appear to be inconsistent with the Independence requirements of the Code, particularly when tax advisers and audit and assurance practitioners work in the same firm. The stakeholder cited that firms at times place too much emphasis on the tax partners not being directly involved in the audit and assurance services as an adequate safeguard to threats to independence, particularly, when they are based in office locations different from the audit and assurance teams. The stakeholder noted that this is a compelling factor for addressing threats to independence for state based partnerships but less relevant to firms with national partnerships.

Analysis of Issue

APES 220 does not contain provisions relating to Independence. APES 110 *Code of Ethics for Professional Accountants* (the Code) sets out specific requirements to ensure Independence on the provision of Taxation Services to an Audit Client. However, there is no cross-reference in APES 220 to these requirements in the Code.

APES 220 could be updated to reinforce the applicable Independence requirements for Members in Public Practice who provide Taxation Services.

Impacted Stakeholders

Members in Public Practice.

Recommendation

It is recommended that APES 220 include a new section entitled *Professional Independence*, with the following requirements paragraphs in order to elevate the importance of independence considerations where it is applicable when providing taxation services:

Professional Independence (new section)

3.X When engaged to perform a Taxation Service to a Client which requires Independence, a Member in Public Practice shall comply with Independence as defined in this Standard.

3.XX A Member in Public Practice shall consider whether an Engagement, or a specific element of an Engagement, is an Assurance Engagement under the Framework for Assurance Engagements issued by the AUASB.

3.XXX Where the Engagement is an Assurance Engagement, the Member in Public Practice shall comply with Section 290 Independence – Audit and Review Engagements or Section 291 Independence – Other Assurance Engagements of the Code, as applicable.

Technical Staff also propose additional terms are included in the Definitions section to support the inclusion of the proposed paragraphs as follows:

Assurance Engagement means an Engagement in which a Member in Public Practice aims to obtain sufficient appropriate evidence in order to express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the subject matter information (that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria).

This includes an Engagement in accordance with the *Framework for Assurance Engagements* issued by the AUASB or in accordance with specific relevant standards, such as International Standards on Auditing, for Assurance Engagements.

AUASB means the Australian statutory body called the Auditing and Assurance Standards Board established under s 227A of the *Australian Securities and Investments Commission Act 2001*.

Independence is:

- (a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.
- (b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a Firm's, or a Member's, integrity, objectivity or professional scepticism has been compromised.

4. Understanding of foreign laws and regulations

Issue

A Stakeholder has noted the need for APES 220 to clarify that the Members' obligation to maintain professional competence and take due care in the provision of Taxation Services may involve obtaining an understanding of applicable foreign laws and regulations.

Analysis of Issue

Paragraph 3.11 requires that Members maintain professional competence and take due care when providing Taxation Services. Paragraph 3.12 clarifies this requirement by providing guidance that (a) competent Taxation Services requires sound judgement in applying knowledge and skill to perform the work, and (b) exercising due care involves acting diligently in accordance with applicable technical and Professional Standards.

Technical Staff agree that APES 225 could clarify that Members should obtain an understanding of applicable foreign laws and regulations in order to provide competent Taxation Services.

Impacted Stakeholders

Members in Public Practice and in Business.

Recommendation

It is recommended that additional guidance is included in APES 220 to clarify the need to obtain an understanding of applicable foreign laws and regulations. The proposed guidance paragraph would be inserted after paragraph 3.13 and worded as follows:

[A Member should obtain an understanding of relevant foreign laws and regulations sufficient to enable the provision of competent Taxation Services. Where the Member does not have the necessary knowledge of the foreign laws and regulations they should engage the services of an expert to ensure the Professional Activities are performed to the required standard.](#)

5. Outsourcing

Issue

A stakeholder has suggested that APES 220 could be enhanced by including specific reminders about the Members' obligations in respect of using outsourced services by referring to Section 130 *Professional Competence and Due Care* of the Code or to APES GN 30 *Outsourced Services* (APES GN 30).

Analysis of Issue

APES 220 paragraph 3.11 includes a requirement for Members to comply with Section 130 of the Code. APES 220 paragraph 4.3 also requires a Member who provides tax lodgement services to review any returns (including relevant documentation) when a significant portion of the work on such returns and documents was not performed under the Member's supervision.

Technical Staff agree that a reference to APES GN 30 to provide additional guidance in respect of the Members' professional and ethical obligations relating to outsourcing would be useful to Members.

Impacted Stakeholders

Members in Public Practice and in Business.

Recommendation

It is recommended that additional guidance be included in APES 220 to refer to APES GN 30:

Paragraph 8.6 (new)

[A Member in Public Practice should consider the guidance in APES GN 30 *Outsourced Services* if they engage, or outsource to, a third party either components or all aspects of the Taxation Service performed for the Client.](#)

6. *Cyber security concerns*

Issue

A stakeholder has suggested that APES 220's guidance in paragraph 11.3 on storing documentation electronically should be expanded to consider cyber security issues.

Analysis of Issue

Extant paragraph 11.3 indicates that Members contemplating use of electronic storage should consider the legal implications of such form of storage, which may vary by jurisdiction. Technical Staff are of the view that in addition to legal implications, Members should also consider risks relating to security of information when deciding whether to use electronic storage.

Impacted Stakeholders

Members in Public Practice and in Business.

Recommendation

It is recommended that extant paragraph 11.3 be revised as follows:

Nothing in this Standard precludes the storage of documentation in appropriate electronic formats. Members contemplating the use of electronic storage should consider the legal implications of such forms of storage, which may vary by jurisdiction, and seek appropriate advice in this context. [Members should also consider security risks over information stored electronically and adopt appropriate measures \(such as implementation of IT security controls including up-to-date security software\) to address such risks.](#)

7. *NOCLAR*

Issue

New provisions relating to *Responding to Non-Compliance with Laws and Regulations* (NOCLAR) will become effective in Australia from 1 January 2018. These provisions will apply to all Members and all the services they perform, including the provision of Taxation Services.

Analysis of Issue

APES 220 does not include any specific references to non-compliance with laws and regulations, however there are topics in the standard that overlap with NOCLAR.

There are existing requirements in the Standard relating to confidentiality (paragraphs 3.6 to 3.10). These requirements clearly state that unless a Member has a legal obligation of disclosure then they shall not disclose any information to a third party without the Client's or Employer's permission. This aligns with existing legal requirements, such as in the *Tax Agents Services Act 2009*. The current wording of this section is clear and does not necessarily relate to identification of NOCLAR matters.

APES 220 also contains a section on false or misleading information (section 7) which sets out requirements for Members when they determine the Taxation Service they are providing is based

on false or misleading information. Section 7 of APES 220 could be strengthened by including references to the NOCLAR provisions in the Code.

Impacted Stakeholders

Members in Public Practice and in Business.

Recommendation

It is recommended that the following paragraph be included in Section 7 of APES 220.

Paragraph 7.8 (New)

[A Member shall comply with Section 225 Responding to Non-Compliance with Laws and Regulations \(for Members in Public Practice\) or Section 360 Responding to Non-Compliance with Laws and Regulations \(for Members in Business\) of the Code if the Member is aware of or suspects the Client or Employer has not complied with applicable laws and regulations.](#)

8. *Minor editorial matter*

Issue

Technical Staff has noted a minor editorial matter that need to be addressed, as follows:

Definition of 'Employer'

The current definition of Employer includes the words 'within the context of this Standard'. This duplicates the introduction of the definition section and is not necessary. Technical Staff are of the view these words should be removed from the definition.

Impacted Stakeholders

Members in Business and in Public Practice, Firms and Professional Bodies.

Recommendation

It is recommended that this editorial be addressed in the next revision of APES 220.