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Basis for Conclusions: Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

Prepared by the Technical Staff of the Accounting Professional & Ethical Standards Board

BASIS FOR CONCLUSIONS:

Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

This basis for conclusions has been prepared by Technical Staff of Accounting Professional & Ethical Standards Board Limited ("APESB"). It has been reviewed and approved by the Board of Directors of APESB and is provided for the benefit of stakeholders to gain an understanding of the background to the *Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (the Code) Addressing Tax Planning and Related Services*.

The basis for conclusions **does not** form part of APES 110 and is not a substitute for reading the Code.

Background

The International Ethics Standards Board for Accountants (IESBA) issues the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the International Code), upon which APESB bases its Code.

The revisions to the existing Code have been driven from the following sources:

1. IESBA's revisions to the International Code addressing tax planning and related services;
2. Amendments to the International Code for the Australian context; and
3. Amendments to address request to include references to relevant tax laws and regulations in Australia.

In July 2024, APESB issued Exposure Draft (ED) 03/24 [Proposed Revisions to APES 110 Code of Ethics for Professional Accountants \(including Independence Standards\) Addressing Tax Planning and Related Services](#) (ED 03/24).

APESB received seven submissions in response to ED 03/24 from large accounting firms, professional accounting bodies and a tax regulator. The submissions generally supported the proposals in the exposure draft, apart from concerns with the proposed revisions relating to the definition of credible basis, the stand back test and the documentation requirement. Additionally, a request was made to include references to relevant laws and regulations applicable to registered tax practitioners in Australia.

The details of significant changes made, the key issues raised by respondents and stakeholders during the revision of tax planning-related provisions to the Code and how APESB addressed them are set out below.

(a) IESBA's revisions to the International Code addressing tax planning and related services

The IESBA commenced a project on tax planning and related services in September 2021. The project aimed to develop a principles-based framework based on the fundamental principles and the conceptual framework in the International Code to guide professional accountants' ethical conduct when providing tax planning and related services to clients or employers.

The final pronouncement, [*Revisions to the Code Addressing Tax Planning and Related Services*](#), was released by the IESBA in April 2024 and is effective for engagements or assignments beginning after 30 June 2025, with early adoption permitted.

The significant changes to the extant Code included:

- New Sections 280 and 380 to assist Members in Business and Members in Public Practice in identifying and evaluating threats to the fundamental principles when engaging in tax planning and related services. The new sections set out:
 - A description of tax planning activities or services (paragraphs 280.5 A1 to 280.5 A4, and 380.5 A1 to 380.5 A4);
 - That the scope includes related services that are based on or linked to a tax planning service, including those developed by a third-party provider (paragraphs 280.6 A1, 280.6 A2, 380.6 A1, and 380.6 A2);
 - The exclusion of illegal tax evasion practices (paragraphs 280.7 A1 and 380.7 A1);
 - Requirements on understanding applicable tax laws and regulations and advising employing organisations or clients to comply with them (paragraphs R280.8 and R380.8);
 - References to Sections 260 and 360 when responding to non-compliance with tax laws and regulations (paragraphs 280.8 A1 and 380.8 A1);
 - The responsibilities of management and Those Charged with Governance in relation to tax planning (paragraphs 280.9 A1 and 380.9 A1);
 - Requirements for Members to exercise professional judgement to establish a credible basis for tax planning advice in circumstances of uncertainty (paragraphs R280.12, R280.13, R380.12 and R380.13);
 - Requirements for Members to apply a stand-back test to consider the reputational, commercial and wider economic consequences (paragraphs R280.14, R280.15, R380.14 and R380.15);
 - New guidance for situations in relation to multi-jurisdictional tax benefits (paragraphs 280.16 A1, 280.16 A2, 380.16 A1 and 380.16 A2);
 - New examples and factors to consider when identifying and evaluating threats arising from tax planning, including actions and safeguards to

Code of Ethics for Professional Accountants (including Independence Standards)

- address such threats (paragraphs 280.19 A1 to 280.19 A5, and 380.19 A1 to 380.19 A5);
- New requirements and guidance on possible actions a Member can take when a disagreement arises with the client (paragraphs R280.21 to 280.22 A2, and R380.21 to R380.23);
- Requirements and guidance where Members in Public Practice advise on a tax planning product or arrangement developed by a third party (paragraphs R380.24 and R380.25);
- Consequential amendments to Section 321 when Members of Public Practice provide a second opinion on the application of tax laws and regulations (paragraphs 321.3 A1, 321.3 A3 and R321.4); and
- Editorial amendments.

In conjunction with the release of the IESBA's amending standard on the tax planning-related revisions to the International Code, the IESBA also released a [Basis for Conclusions](#).

APESB adopted the changes to the International Code into APES 110 with no substantive changes made as a result of the exposure draft due process, except for Australian application paragraphs relating to the definition of credible basis, the documentation requirement, and a footnote to incorporate references to relevant tax practitioners' laws and regulations.

(b) Amendments to the International Code for the Australian context

Definition of "credible basis"

Paragraphs R280.12 and R380.12 require Members to determine whether there is a "credible basis" in laws and regulations for the tax planning advice.

Two respondents were concerned about the clarity of the term "credible basis" in paragraphs R280.12 and R380.12, highlighting the uncertainty in its interpretation by tax practitioners. One respondent proposed referencing the term "*Reasonably Arguable Position*" used in the existing Australian tax regime.

The Australian tax regulators supported this approach, noting it as a well-understood concept for tax practitioners in Australia.

This term is also defined in section 284-15 of the [Tax Administration Act 1953](#) as:

"A matter is *reasonably arguable* if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is as likely to be correct as incorrect, or is more likely to be correct than incorrect".

Code of Ethics for Professional Accountants (including Independence Standards)

APESB agreed that the term can be clarified for the Australian environment by linking it to the term “*Reasonably Arguable Position*” to assist Members providing tax services in understanding and implementing the revisions to the Code.

Accordingly, APESB have determined to include Australian application paragraphs AUST 280.12 A1.1 and AUST 380.12 A1.1 in both Sections 280 and 380, as set out below:

“For tax planning arrangements that require advice or recommendations in respect of Australian tax laws and regulations, a credible basis means a reasonably arguable position as defined in section 284-15 of the *Tax Administration Act 1953*.”

APESB is of the view that this amendment will clarify the term “credible basis” and provide guidance in determining a credible basis in laws and regulations for tax planning advice in Australia.

The stand-back test

One respondent raised concerns about the application of the stand-back test required by paragraph R380.14. Their concerns included the limited professional skills of professional accountants, the inappropriateness of placing professional accountants in a quasi-management role, and that the assessment should be the role of the client. APESB note that the respondent has also raised these comments with the IESBA as part of the global due process.

The IESBA provided its rationale in paragraphs 93 to 110 of [IESBA's Basis for Conclusions](#) for the stand-back test requirements and application guidance. The IESBA clarified in paragraph 104 that the stand-back test requires professional accountants to *consider* reputational, commercial and wider economic consequences and have an “awareness” of these wider economic consequences. However, the professional accountant does not have to perform economic analysis or conduct extensive research on the full impact of the tax planning arrangement on the relevant jurisdiction’s economy.

The IESBA also reaffirmed that professional accountants have a duty to act in the public interest, not only considering the preferences or requirements of a client. Further, the stand-back test is consistent with the professional accountants’ duty to comply with the fundamental principle of professional competence and due care, by providing clients with information to make an informed decision about the tax planning arrangement, as outlined in paragraphs 106 and 107 of [IESBA's Basis for Conclusions](#). Additionally, the IESBA clarified the role of management and Those Charged with Governance in paragraph 380.9 A1.

The same respondent was also concerned that paragraph 380.14.A2 (refer below) in an Australian context may put professional accountants in breach of their obligations under the TPB’s Code of Professional Conduct (TPB Code).

“An awareness of the wider economic consequences might take into account the Member in Public Practice’s general understanding of the current economic environment and the impact of the tax planning arrangement on the tax base of the

Code of Ethics for Professional Accountants (including Independence Standards)

jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the client operates”.

APESB reviewed paragraph 380.14.A2 and found no conflicting positions between the amending standard for APES 110 and the requirements in the TPB Code.

Another respondent suggested including a lens of materiality or significance as a factor when performing the stand-back test. The IESBA has revised the requirement on the stand-back test so that it is considered by the Members when applying their professional judgement (refer to paragraph 108 of [IESBA's Basis for Conclusions](#)). Accordingly, APESB do not support the inclusion of materiality or significance as a specific factor in the stand-back test.

APESB have also considered the confidential comments made by the TPB and the discussion held with representatives of the Australian Tax Office (ATO).

Based on the review of the TPB Code and the IESBA's rationale provided in the [Basis for Conclusions](#) regarding the stand-back test, APESB has not proposed further amendments for these comments raised by the respondents.

Documentation requirement

Proposed paragraphs AUST R280.23 and AUST R380.26 mandate the documentation of specific information relating to tax planning services.

Three respondents did not support the documentation requirements, noting that the IESBA position of voluntary documentation for tax planning and related services should be maintained in APES 110.

APESB have considered the position taken by the IESBA and existing requirements in other professional standards applicable to Members in Public Practice in Australia, as set out below:

- *The IESBA's position*

The IESBA did consider making documentation mandatory in relation to tax planning and related services at their [September 2023 meeting](#). However, they acknowledged this could cause difficulties for some countries that adopted the Code and decided to maintain the voluntary documentation position.

The IESBA also noted in its [Basis for Conclusions](#) that the position it adopted does not preclude jurisdictions from establishing documentation requirements as they see fit for their national circumstances (paragraph 141), such as the UK PCRT requirements that are applicable to members of the UK professional accounting organisations; and that documentation may also be established in relevant professional standards in some jurisdictions, in which the IESBA quoted the documentation requirement of APES 220 *Taxation Services* (paragraph 142).

Code of Ethics for Professional Accountants (including Independence Standards)

- Documentation requirement of APESB pronouncements

Since APES 220 *Taxation Services* (APES 220) was first issued by the APESB in 2007 (effective from 1 July 2008), it has required Members to document the work performed in relation to the taxation service or activity, including calculations, determinations or estimates used (paragraph 11.1 of APES 220).

Members must also comply with the documentation requirements as part of the firm's quality management system and risk management framework, as outlined in [APES 320 Quality Control for Firms that Provide Non-Assurance Services](#) and [APES 325 Risk Management for Firms](#).

- Record keeping requirements of the Tax Practitioners Board (TPB) Code

Section 30 *Keeping of proper client records* of the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (Determination) requires registered tax practitioners to keep proper client records, including all advice provided to the client. The records must include the relevant facts, assumptions, and reasoning underpinning any advice provided, including the basis and method used for any calculations, determinations, or estimates. Accordingly, the Determination establishes a local legislative obligation to prepare documentation.

Based on the above considerations, APESB consider that Members in Public Practice in the Australian environment have had a long-standing requirement to document the work they have performed regarding taxation services.

Nevertheless, APESB note the respondents' concerns raised, in particular the concern that the drafting of proposed paragraphs AUST R280.23 and AUST R380.26 broadens the extant requirement due to the inclusion of the seven matters listed.

Accordingly, APESB agree that the proposed draft could be read in a manner that alters the extant requirement. To address this concern, APESB determined to split the proposed paragraphs AUST R280.23 and AUST R380.26 into a requirement paragraph that aligns with the extant APES 220 requirement and an application paragraph that lists the seven matters as matters Members might consider documenting with respect to tax planning services (i.e., AUST 280.23 A1 and AUST 380.26 A1).

(c) Amendments to address request to include references to relevant tax practitioners' laws and regulations in Australia

One respondent suggested that APES 110 refer to obligations in the [Tax Agent Services Act 2009](#) (TASA) and the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (Determination), which could apply to Members when providing taxation services. APESB also note the comments provided by the regulator, TPB, regarding the alignment between APES 110 and the TPB Code.

Code of Ethics for Professional Accountants (including Independence Standards)

APESB agreed with the respondent's suggestion to include references to legislative and regulatory obligations for registered tax practitioners in the new sections in APES 110. This would enhance the usability of the Code and provide a reminder of the obligations under TASA, the Determination and the TPB regulations.

Accordingly, APESB determined to add a footnote to paragraph 380.3 to include specific references to relevant laws and regulations, including TASA, [Tax Agent Services Regulations 2022](#) and the Determination.