

23 September 2024

Chief Executive Officer
Accounting Professional & Ethical Standards Board Limited
Level 11, 99 William Street
Melbourne Victoria 3000

Via email: sub@apesb.org.au

Dear Channa,

Exposure Draft 02/24 - Proposed Standard APES 220 Taxation Services, and Exposure Draft 03/24 Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

We appreciate the opportunity to comment on Exposure Drafts 02/24 Proposed Standard APES 220 Taxation Services, and 03/24 Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (“the Australian Code”) Addressing Tax Planning and Related Services, issued by the Accounting Professional & Ethical Standards Board (APESB) in June 2024 and July 2024 respectively (the EDs).

Exposure Draft 02/24 - Proposed Standard APES 220 Taxation Services

We are supportive overall of the amendments proposed by the APESB in this ED, however question the continuing need for APES 220.

Taking into consideration recent additions to the IESBA International Code of Ethics for Professional Accountants (including International Independence Standards) (the International Code) and the proposed changes to the Australian Code incorporating additional ethical requirements when providing tax planning activities or services, together with Australian tax law and regulation containing ethical requirements, including the Tax Agent Services Act 2009 Code of Professional Conduct and expanded Code, and the Large Market Tax Advisor Principles, we ask the Board to consider whether APES 220 could be withdrawn. This would help avoid duplication, reduce potential inconsistencies, and make it simpler for tax practitioners to understand and comply with their ethical requirements.

With respect to paragraph 5.2, we suggest amending “tax planning activities or services” to “tax planning and related activities or services” to align with the wording used in APES 110.

Exposure Draft 03/24 Revisions to APES 110 Code of Ethics for Professional Accountants (including Independence Standards) Addressing Tax Planning and Related Services

We are supportive of those amendments proposed by the APESB in this ED that reflect changes made by the International Ethics Standards Board for Accountants (IESBA) to the International Code.

We have the following additional comments:

Credible Basis for Tax Planning Advice

Paragraphs 280.12 and 380.12 require the Member to determine whether there is a “credible basis” in laws and regulations for their tax advice. While there is no definition of credible basis, Australia’s tax regime does have a

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similar and well-established concept known as the “Reasonably Arguable Position”. It is defined as, “....in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.” Where there is uncertainty in tax interpretation, tax practitioners use this standard to assess the appropriateness of their tax advice. There is also case law, and tax office guidance that assists tax practitioners in applying this standard. Accordingly, we consider this is likely to be referred to by tax practitioners in establishing a credible basis, as it is a well understood and accepted concept.

Therefore, we suggest the Board consider including a footnote referring to the consideration of the Reasonably Arguable Position when determining whether there is a credible basis for the tax advice. Alternatively, the Board could consider including a definition of credible basis, similar to that proposed by the NZ Regulatory Board in “ED 2024-3: Proposed 2025 Update to NZICA Code of Ethics – Tax planning and Related Services” as follows (with suggested changes for the Australian context):

“For tax planning arrangements that require advice or recommendations in respect to Australian New Zealand tax laws and regulations, means ~~an~~ reasonably arguable acceptable tax position as defined in section ~~284-15~~ 3 of the Tax Administration Act ~~1953~~ 1994 (NZ). For tax planning arrangements that require advice or recommendations in respect to the tax laws and regulations of a jurisdiction other than Australia New Zealand, is what is commonly understood and accepted as a “credible basis” in that jurisdiction.”

Documentation Requirements

As stated in our correspondence on previous revisions to APES 110, we consider that the Australian Code should reflect the wording and structure of the International Code, preferably with no changes, unless changes are required for legislative or regulatory reasons. In relation to AUST paras 280.23 and 380.26 we do not support the APESB’s proposal to make documentation a requirement, departing from the IESBA’s approach to encourage documentation, as there is no local legislative or regulatory reason to do so.

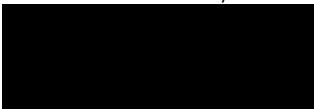
We note the APESB indicated the reason for making this change was to align with APES 220 documentation requirements. However, APES 220 (paragraph 11) has a much narrower scope limited to documenting the work performed and therefore rather than aligning, in our view the APESB’s proposal significantly expands existing obligations without any basis for doing so. The documentation requirement in APES 220 does not extend to other aspects covered in APES 110 paragraphs 280.23 and 380.26, such as documenting beneficiaries, uncertainties, and discussions with, responses from, and disagreements with the client.

This would be an example of APES 220 creating duplication and inconsistencies with other standards and laws, and we refer to our comment about considering the withdrawal of APES 220. We suggest aligning APES 110 paragraphs 280.23 and 380.26 with the International Code, and to address the APESB’s concerns, consider including an Australian paragraph, similar to the approach in the NZ Regulatory Board proposal, such as:

“Members might also be required to prepare such documentation to comply with technical and professional standards and laws and regulations”

I would be pleased to discuss our comments with members of the APESB or its staff. If you wish to do so, please feel free to contact me via email (maorbea@deloitte.com.au).

Yours sincerely



Marisa Orbea
Partner