Taxation Services – Detailed Comments

1.	Tax	Tax return preparation: We agree with the proposals in this regard.	IRBA	
2.	Tax	Taxation systems vary significantly around the world (both in terms of laws and administrative practice). In addition, the expectations of a "reasonable person" as to the proper and expected activities of an audit firm, when working in the tax environment of a jurisdiction, differ significantly from country to country as a consequence. We are therefore concerned that in some respects the draft code may be responding to threats that are perceived to occur in certain jurisdictions, which are not perceived as such in other parts of the world. Moreover many companies and other organisations want to use a single tax adviser for all their tax services. The auditor is well-placed to offer these services cost effectively, and indeed it is generally accepted that the provision of tax services by the auditor in fact enhances audit quality. Prohibiting, or at least strongly discouraging, audit firms from undertaking certain tax service activities for an audit client, could lead to clients concluding they should use another provider for all their tax services even in jurisdictions where the independence threat is not significant. This reduction of choice and potential impairment of audit quality is unlikely to be in the public interest particularly where there are adequate safeguards for the perceived threat or local conditions that make the perceived threat insignificant or not applicable. We consider that the Exposure Draft does not adequately recognise the nature of tax regimes operating in different territories, nor their various customs and practices, and allowance should be made for safeguards to be determined by the audit firm based on IESBA guidance.	Australia	
3.	Tax	This is another area where we believe the provisions could be strengthened further. The provision of any taxation services to audit clients may affect the audit firm's independence and the approach taken in Section 290 contradicts the general principles established in paragraphs 156 – 160.	ICANZ	

4.	Tax	There is no general threat by advisory services where the advise is supported by tax authorities, by established practice or has a basis in tax laws. Regarding the representation before the tax authorities, the process has 2 stages: a) there is no self review threat in the preliminary phase of deliberations, according to the law in Israel, it is of importance that the auditor himself act as a representative for an audit client and explain the data in cases of disagreements with the tax authorities. b) In cases where the disagreement with the tax authorities is brought before a court of law – the auditor must not be involved and only lawyers are to advocate for the audit client.	ICPAI	
5.	Tax	We agree with the threats and safeguards approach to taxation, in line with the provision of other non-audit services. However, we do have concerns as to the level of analysis within the guidance, the resulting presumed threats, and ultimately a number of the absolute prohibitions.	BDO	
6.	Tax	Whereas the current Code states in par 290.180 an assignment for the provision of taxation services not being generally seen to create threats to independence, the proposed Code contains very detailed requirements regarding common tax services. We share the opinion of the Board that taxation services – provided by the auditor - may create a self-review threat and may lead to the refusal of an engagement, if no appropriate safeguards could be installed. Nonetheless we are concerned about a variety of included threats to independence in the whole section regarding common tax services, which cannot or can only hardly be mitigated by safeguards. Like stated in the current Code (par 290.180) in many jurisdictions the firm may be asked to provide taxation services to a financial statement audit (or review) client. For those clients, especially but not only SMPs, it is a very important reason to ask their audit firm to provide the tax services, especially the preparation of tax returns, tax planning and tax advisory services, due to cost saving purposes as the audit firm usually has already most of the information necessary to provide the relating tax services. We therefore are of the opinion that the provision of tax services by the audit firm is likely to be in the public interest.	WpK	

7.	Tax	While we welcome the revisions of the provision of taxation services in Section 290 and support the general thrust of the recommendations, we are concerned that the additional restrictions do not appear to consider the significance of the threats. For example, the prohibition on material tax calculations for audits of entities of significant public interest seems to be moving away from the threats and safeguards approach, without a proper assessment of the significance of the threat. In the case of material tax calculations, the significance of the threat is greater where an auditor reviews his/her own subjective opinions than where the work has been of a mechanical nature. We believe that the introduction of such restrictions could adversely affect the quality of tax return preparation and tax calculations, especially for smaller listed entities. If IESBA has evidence that prohibitions are needed, we suggest that these restrictions should at most apply to tax calculations which are material to the group financial statements of entities of significant public interest and are subjective in nature.	CCAB	
8.	Tax	Existing Section 290 dealing with this type of services describes in detail the numerous situations highlighting threats over independence which cannot be reduced to an acceptable level by the application of safeguards, accounting for the nature of the service provided. As previously indicated this position is likely to increase the costs of assurance engagements and we are not convinced that this moves in favour of public interest.	CSOEC	

9.	Tax	NIVRA believes the number of rules, including prohibitions, which are proposed in relation to taxation services, are out of proportion to the regulations concerning each of the other non-assurance services. This wrongly implies that the possible threats with respect to taxation services are different in nature and size to those in respect of other non-assurance services NIVRA again raises the question of whether the regulation of these services will lead to an improvement of the quality of the audit, while it will most likely result in increased costs for clients. See "General comments". An example of this are the possible guarantees referred to in 290.181. One-person firms will have to request a second opinion outside of their office. This will lead to extra costs for the client. Small companies, in particular, do business with one-person firms and extra costs are the most problematic for this category of clients. The real areas of risks are aggressive tax advising and assistance in the resolution of tax disputes. In the light of the above, NIVRA proposes only setting rules with respect to aggressive tax advising and assistance in the resolution in tax disputes.	NIVRA	
10.	Tax	We agree that the provision of taxation services by auditors, like any other non-audit service, could create threats to independence and these need to be assessed and necessary safeguards applied, or the service not provided. Accordingly, we welcome the revisions to the guidance concerning the provision of taxation services in Section 290. Indeed, the IOSCO Survey on Non-Audit Services1 notes the need to consider threats while recognising that taxation services are, in many jurisdictions, seen as unique as a result of certain inherent safeguards. However, we believe that the section proposed is in far greater detail than necessary and seems to support a presumption of threats, which cannot be mitigated by safeguards in many cases. We are concerned, therefore, that the additional restrictions do not appear to consider the significance of the threats.	ACCA	

1 A Survey on the Regulation of Non-Audit Services Provided by the Auditors to Audited Companies, IOSCO, January 2007

11.	Tax	The proposed changes introduce a number of absolute prohibitions which go beyond those applied in a number of other cases and for which no evidence has been produced that there is a public interest need. Indeed, from the perspective of the users of professional tax services, the inevitable additional costs of sourcing tax assistance and potential issues of choice and audit quality indicate that these additional restrictions are likely to be against the public interest. We believe that the introduction of such restrictions could adversely affect the quality of tax return preparation and tax calculations, especially for smaller listed entities. If the IESBA has evidence that prohibitions are needed, we suggest that these restrictions should, at most, apply to tax calculations which are material to the group financial statements of ESPIs and are subjective in nature.	ACCA	
12.	Tax	Our comments on these provisions must be viewed in the context of what we believe to be important public interest issues. Generally, we believe that it is in the broad public interest for audit firms to provide tax services to audit clients without restrictions. The provision of tax services to an audit client has not historically been viewed as an independence problem. For example, the Securities and Exchange Commission in the US concluded in its rule making that the provision of tax services to audit clients, "generally [does] not create the same independence risks as other non-audit services." In part, the SEC's conclusion is based on the scrutiny tax work receives from the tax authorities. Tax returns of audit clients are often subject to examination by the tax authorities and enforcement mechanisms are available to the regulators in some countries, including suspension of practice for the practitioner, as well as his or her firm, and loss of license and authority to practice. Cont'd	DTT	

13.	Tax	• There is no evidence that the provision of non-audit services by the auditor has been a contributing factor in the failure of, or the timing of the failure of, any of the widely publicized corporate failures in recent years. On the contrary, empirical evidence analyzed by academic researchers suggests that audit quality is improved (i.e. there are fewer restatements) when the auditor also provides tax services to the audit client. • The external and independent review by tax authorities of company tax returns provides a safeguard that helps mitigate any perceived self-review threat that could undermine an auditor's objectivity. • For many clients, particularly large or complex ones, there are separate tax teams involved in audit-related work and advisory or specialist work. • Whenever a tax expert suggests a particular tax planning opportunity, client management takes the final decision. As such, management takes the responsibility for the transaction and may often seek input from other advisors before reaching a decision. • Tax advisors outside the audit firm are under no obligation to inform the auditor of information relevant to financial reporting, and they may not even be informed of the client's accounting treatment of the transaction or tax position. • Having to use two separate firms for auditing and tax services can undoubtedly lead to increases in client costs due to the economies associated with the inter-linkage between audit work and tax services. • Limiting tax services by audit firms to audit clients can be particularly disadvantageous for smaller-listed companies and SMEs. These tend to have fewer or, in some cases, no internal tax resources. If an audit firm can no longer provide a broad range of tax services to SMEs and smaller-listed companies, these entities would have disproportionately greater costs. Cont'd	DTT	

14.	Tax	The provision of tax services to audit clients has often been an integral part of the work of auditors and we question whether certain of the prohibitions that are included in the ED are necessary rather than permitting the use of appropriate safeguards if threats to independence are considered significant. We recognize that threats to independence could arise as a result of tax services, just as they could arise with respect to the provision of any non-audit service. As with any service, it is necessary to consider those threats and apply appropriate safeguards where necessary. However, we believe there are appropriate safeguards that can be applied. Overly technical or complicated independence rules by their nature can provide unnecessary barriers for audit firms in providing tax services to audit clients. These rules must daily be interpreted by audit and tax professionals as well as their clients in order to ensure that the audit firm remains independent. Taken individually, the various provisions may seem reasonable, but as a whole the provisions may greatly complicate what has traditionally been fairly straightforward. The current Code contains the independence rules for tax services in just one paragraph. The ED has extended that to 12 paragraphs over 4 pages. While some of this might be seen as helpful guidance, many audit and tax professionals will view this as excessive regulation in an area that has not been problematic to date. An unintended consequence may be that this additional regulation will by virtue of its complexity reduce tax services by audit firms to audit clients. When in doubt (and complexity feeds doubt) auditors and audit clients may chose the safest course and not have the audit firm provide a broad range of tax services to the audit client We have the following specific comments on various paragraphs in the current ED.	DTT	
15.	Tax	It is appropriate for the Board to recognise that in certain circumstances tax services can give rise to actual or perceived threats to an auditor's independence, and to highlight those circumstances and the safeguards that may be appropriate in mitigating the threats. Overall the ED strikes the right balance between enhancing auditor independence and enabling robust tax expertise to remain embedded in audit firms in order to maintain audit quality. A greater separation of audit and tax work could lead to a loss of quality and additional costs for clients without commensurate benefits.	PwC	

16.	Tax	The proposed guidance does not recognize the potential threat that may occur when a taxing entity may propose a tax assessment on the (1) client and (2) a preparer penalty. Such a situation clearly places the CPA firm and the client in a potentially adverse situation which is not addressed in the guidance.	CACPA	
17.	Tax	We support the additional guidance provided on Taxation Services and agree that applying the conceptual framework to these services is appropriate. However, certain issues are still unclear and, in our view, could benefit from further clarification to minimize any misinterpretation and to ensure a consistent implementation of the Code.	E&Y	
18.	Tax	The ED sets out guidance pertaining to the following taxation services: (a) Tax return preparation. (b) Preparation of tax calculations intended to be used as the basis for the accounting entries in the financial statements. (c) Tax planning and other tax advisory services. (d) Assistance in the resolution of tax disputes. In principle, we agree with the Board that in certain circumstances, tax services can give rise to actual or perceived independence threats. However, we are also cautiously aware that in practice, the above activities are usually interrelated. For example, companies seeking tax return preparation service would generally also require the professional accountant to have the flexibility of providing other advisory services and assistance in the resolution of tax disputes. Whilst the principle is sound, we are concerned that the revised Code could unnecessarily result in smaller companies (which are not significant public interest) being forced to incur additional costs in seeking tax services from firms other than their auditors when the additional safeguards are not likely to result in material enhancements to auditor independence. There is a perception, based on empirical experiences, that tax is an area which has not been subjected to significant audit independence issues. In short, we are in support of the proposed ED for application to entities of significant public interest. However, we urge the Board to take a more cautious approach and defer the application to entities that are not of significant public interest until the Board has the opportunity to reassess whether the separation of audit and tax work for such entities necessarily raises audit quality materially.	PAOC	

19.	Tax	We agree that updating the provisions relating to taxation services is required and we support generally the proposed changes.	CICA	
20.	Tax	Overall, we support the IESBA's proposed guidance related to tax services and believe it provides a reasonable approach to addressing and differentiating between the types of tax services that pose a threat to independence from those that do not. We strongly believe that there are many types of tax services that firms could perform for an audit client that do not threaten the firm's independence. By virtue of the independent accountant's involvement in understanding the financial activities of an audit client, as well as his/her expertise in understanding the tax accounting and financial accounting guidance, accountants have been the logical professionals on whom audit clients rely for tax reporting to governmental authorities as well as for advice on the tax effects of alternative business decisions. The SEC also recognized that, "[T]ax services are unique among nonaudit services for a variety of reasons. Detailed tax laws must be consistently applied, and the Internal Revenue Service has discretion to audit any tax return. Additionally, accounting firms have historically provided a broad range of tax services to their audit clients…The Commission reiterates its longstanding position that an accounting firm can provide tax services to its audit clients without impairing the firm's independence. Accordingly, accountants may continue to provide tax services such as tax compliance, tax planning, and tax advice to audit clients, subject to the normal audit committee pre-approval requirements."[2] Audit quality and the quality of the resulting financial statements are elevated when auditors have access to the deeper understanding of a client's financial transactions that can be gained from providing tax services. Accordingly, we recommend that the IESBA ensure that the final rules on tax services will not interfere with that important access. With respect to the proposed guidance, we have identified a number of issues that we believe require further consideration or clarification by the IESBA which we have described below.	AICPA	

2 See *Strengthening the Commission's Requirements Regarding Auditor Independence*, Federal Register, Vol. 68, No. 24, February 5, 2003.

21.	Tax	The proposed amendments are examples of an apparent move away from a principles-based approach to a more rules-based approach. The current Code of Ethics has a single paragraph on this subject matter, whereas the proposed Code of Ethics is far more prescriptive and includes many absolute prohibitions. Once again, this limits the professional judgement an accountant can exercise, and makes it easier for an accountant to fall foul of the Code of Ethics and therefore be subject to discipline and possible litigation. In addition, the absolute prohibitions have the consequence of outside resources having to be engaged, leading to increased costs.	SAICA	
22.	Tax	Whilst we agree that the provision of tax services to audit clients may, in common with the provision of other non audit services to audit clients, create threats to independence we are concerned that many of the additional restrictions do not appear to consider the significance of the threats or give due consideration to the safeguards which could be applied. An example is the prohibition of material tax calculations without any proper assessment of the significance of the threat. We believe that the restrictions proposed are unnecessary and cannot be justified in the public interest. Further we believe that such restrictions would affect the quality of the tax calculation and tax return preparation for smaller entities, including listed entities. If the IESBA has evidence that prohibitions are necessary they should apply only where the degree of threat is significant, i.e. for material and subjective calculations.	CARB	

23.	Tax	In our estimation, the additional constraints proposed on the provision of tax services to clients ignores jurisdictions which presently permit both assurance and tax services to be provided to the same client. While CGA-Canada appreciates that these services are already separated in certain countries, for those countries where this regime is not employed it has severe consequences, and inconvenience to the client that would benefit from both services being provided by the same firm (i.e., cost benefit). Any independence concerns could be mitigated through the use of external review provisions	CGA - CANADA	
24.	Tax	We agree that the provision of taxation services by auditors, like any other non-audit service, could create threats to independence and these need to be assessed and necessary safeguards applied, or the service not provided. Accordingly, it is appropriate to introduce a discussion on potential threats and examples of safeguards. We note that the IOSCO Survey on Non-Audit Services3, in its comments on tax services, observes that taxation services are in many jurisdictions seen as unique as a result of certain inherent safeguards, but there is agreement with the need to consider threats. However we believe that the section proposed is in far greater detail than necessary and seems to support a presumption of threats which cannot be mitigated by safeguards in many cases. It introduces a number of absolute prohibitions which go beyond those applied in a number of other cases and for which no evidence has been produced that there is a public interest need. Indeed, from the perspective of the users of professional tax services, the inevitable additional costs of sourcing tax assistance and potential issues of choice and audit quality (see 1.1(c) above) indicate that these additional restrictions are likely to be against the public interest. Should the IESBA nevertheless decide that the proposed structure of a detailed analysis is to be retained, we set out below a number of specific points on the proposed tax section.	FEE	

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25.	Tax	The previous version of the IFAC Code of Ethics (2005) stated in one Section (290.180) that the provision of tax services to financial statement audit clients is generally not seen to create threats to independence. In the current Exposure Draft, however, the IESBA's attitude towards provision of such services has been radically altered. According to the proposals, taxation services provided by a firm to an audit client will become subject to strict and detailed (11 sections) regulation. This constitutes a move towards a rules-based approach in this area and consequently deviates significantly from the EU Recommendation on Statutory Auditors' Independence and the recently approved EU Statutory Audit Directive. Furthermore, with one exception (preparation of tax calculations), there is no distinction between provision of tax services to entities of significant public interest audit clients and others. We explain our contention as follows: It is common for entities to request their accountant to perform taxation services in addition to audit services, as this is very often efficient for the entities needing the services. A practitioner providing both taxation and auditing services obtains information during the audit that is pertinent to taxation services and vice versa. Ultimately, it is the entity that benefits from such synergy effects, both in terms of cost savings and audit quality. We would like to draw the Board's attention to the study by Professor Kinney [Journal of Accounting Research Vol. 42 No. 3 June 2004], which indicates that the knowledge an accountant gains in the role of taxation adviser is positively correlated to the quality of the audit. We would like to comment on the following specific provisions:	IDW	
26.	Tax	With respect to Preparation of Tax Calculations, the Code of Ethics would be more consistent if the applicable provisions for ESPIs were similar to the provisions on preparation of accounting records and financial statements. In particular, the proposed revised Section 290 clarifies that accounting and bookkeeping services may be provided in emergency situations or other unusual situations when it is impractical for the audit client, including ESPIs, to make other arrangements. We believe that a similar exemption in emergency situations should be available for the preparation of tax calculations of current and deferred tax liabilities (or assets) for the primary purpose of preparing accounting entries as well.	E&Y	

27.	Tax	In Hong Kong, we are especially concerned about the revised guidance related to the provision of taxation services. We are of the view that smaller firms will be put in a disadvantaged position as compared to the larger firms. An example is the provision of services relating to (a) tax planning and other tax advisory services and (b) assistance in the resolution of tax disputes. We note that smaller firms may not be able to implement the safeguards mentioned in the Exposure Draft such as: • Using professionals who are not members of the audit team to perform the service; • Having an additional tax partner or senior tax employee who is not involved in the provision of the tax services to the client, advise the audit team on the service and review of the financial statement treatment; or • Obtaining advice on the service from an external tax professional Cont'd	HKICPA	
28.	Tax	Accordingly, we urge the IESBA to identify safeguards that are appropriate to firms of all sizes, rather than limiting the identified safeguards to those relevant to larger firms. For example, unlike other major jurisdictions, the Hong Kong taxation system is not a full "self assessment" system and the tax system is significantly simpler than in many other major jurisdictions. The Hong Kong Inland Revenue Department plays an active role in vetting all tax returns and tax disputes. Accordingly, consideration of such a system should be taken into account, and could be identified in the Code as an acceptable safeguard. SMEs often prefer to have many of the abovementioned services provided by a known and trusted service provider. They place great value on having a close business relationship with a practitioner who develops a deep understanding of their business. The relationship is one that is mutually beneficial, has stood the test of time, and serves the public interest by making for a vibrant SME sector. Some aspects of the proposals in the Exposure Draft, while well intended, threaten this relationship while offering little enhancement to audit or service quality.	HKICPA	

29.	Tax	We agree that the provision of taxation services by auditors could create threats to independence and that accordingly these need to be assessed and necessary safeguards applied, or the service prohibited. The existing Code simply states in one section (290.180) that the provision of tax services to financial statement audit clients is generally not seen to create threats to independence. The ED, however, marks a significant shift in the IESBA's attitude towards the provision of such services. It proposes stringent and detailed regulation of the provision of tax services by a firm to an audit client. We believe that the proposed provisions are far more detailed than necessary and in many cases presume the existence of threats which cannot be mitigated by safeguards. It introduces a number of absolute prohibitions that exceed those applied in many other cases and for which there is no evidence of a public interest need. Indeed, from the perspective of the users of professional tax services, the inevitable additional costs of sourcing tax assistance, combined with issues of reduced choice and audit quality, suggest that these additional restrictions will work against the public interest. As well as adversely impacting SMPs and their clients, this implies a move towards a rules-based approach in this area and, consequently, deviates from the IESBA's stated intent to adopt a principles-based approach. Furthermore, with the exception of the preparation of tax calculations, no distinction is drawn between the provision of tax services to ESPI clients and others. This lack of distinction is especially detrimental to SMPs since many SMPs will not be in a position to apply the safeguards as outlined in Section 290.181. Cont'd	SMP/DNC	

30.	Tax	The end result of applying the new provisions will be that many SMPs will be excluded from providing such services to their clients, forcing their clients to look elsewhere for tax services and/or to move all their audit and non-assurance work to a larger firm that can apply the safeguards. This is potentially discriminatory, will likely increase business costs and risks impairing the quality of both the audit and tax work. Similar arguments can be extended to other non-assurance services, for instance, some IT systems services and litigation support and legal services. If the IESBA is determined that the proposed structure of a detailed analysis is to be retained, we have two general comments: first, we suggest extending the public interest entity differential approach from the present few isolated cases to most, if not all, taxation services and other non-assurance services; and second, we suggest consideration be given to extending the use of the materiality concept across more taxation services, such as tax advice, and other non-assurance services. In the next section we set out a number of specific comments.	SMP/DNC	
31.	174-185	We have concerns that the guidance in respect of taxation services is too permissive and ignores the threat to independence in appearance. An argument supporting the preparation of tax returns by auditors for audit clients is that tax returns are prepared on the basis of established tax law and are subsequently approved by the taxation authority. In our opinion this argument is flawed in that the application of tax law is often subject to interpretation and the application of professional judgment and that tax returns are rarely approved by the taxation authority before the completion of the audit. As noted previously, in respect of valuation services, it is unlikely that the audit client will be competent to form a view on the reasonableness of the taxation services provided. In fact, the audit client will typically have acknowledged this in seeking an expert to provide the taxation services for them. In this situation the auditor must also take account of the guidance in paragraph 290.160 which requires a member of management with a sufficient level of understanding of the service, and an ability to evaluate the results, to be designated to make all significant judgments and decisions connected with the services, and to accept responsibility for the actions to be taken arising from the results of the service. The guidance in paragraph 290.160 therefore needs to be reflected in the guidance on taxation services.	CAGNZ	

32.	174-185	The material in paragraphs 290.174 to 290.185 recognises the type of instances where self-review and advocacy threats arise. We believe that it would be improved if it was made clearer that safeguards need to be considered in the circumstances described in paragraphs 290.176 and 290.180. A threat is created in both these circumstances (albeit possibly an insignificant one) and an evaluation of its significance should be made.	APB	
33.	174-175	We entirely agree with the need to replace the existing section on taxation with a general discussion of the threats that can apply in the provision by auditors of taxation services to audit clients, and of the types of safeguards that might be applied. Taxation services are similar to many other non-audit services in terms of threats and safeguards and the existing position is inappropriate.	ICAEW	
34.	175	The ED also provides in paragraph 290.175 that a factor that can create an independence threat is the level of tax expertise of the audit client's employees. Many audit clients have limited tax expertise in-house for a number of practical reasons, mostly related to size and the difficulty of maintaining the high level of expertise necessary to provide tax advice. The real issue is not the level of tax expertise in a client, but the competency of its general management and its ability to receive professional advice in tax matters in order to take the necessary management action based on that advice. This provision would have particular effect on smaller enterprises.	DTT	
35.	176	290.176. Firms provide a range of tools, including spreadsheets and templates, designed to enable clients to input their own data and prepare their own tax returns and other tax information and documentation. It would be helpful to clarify in this paragraph that the sale or licensing of the audit firm's proprietary tax software to audit clients does not generally threaten independence, for the same reasons. We propose adding a final sentence, "Similarly, the provision of software that the audit client can use to prepare its own tax returns and other tax-related information and documentation will not threaten the firm's independence."	Australia	

36.	176	According to the last sentence of Section 290.176, the provision of tax return preparation services does not generally threaten the firm's independence as long as management takes responsibility for the returns including any significant judgments made. To our assessment there is obviously no reason to keep the word "generally" in this sentence.	SMP/DNC	
37.	176	We however agree with the text of paragraph 290.176 dealing with preparation of tax returns.	CSOEC	
38.	176 - 178	Preparation of tax calculations: Although we agree that this would create a self review threat, we also believe that the risks associated with preparation of tax returns can be contained. The Revenue Service would generally perform its own independent checks on tax calculations, which should reduce the risk of any self review threat. In addition, requiring someone else to perform the tax calculation would necessarily result in doubling of cost. The additional cost of requiring an independent party to prepare the tax calculation when they are not familiar with the figures on which the calculation is based whilst still incurring the cost of the review of the calculation by the auditor outweighs the potential self-review threat. We believe the threat can be managed by requiring persons independent of the engagement team within the audit firm to prepare the calculation	IRBA	
39.	176-178	We agree with the underlying analyses in respect of tax return preparation and tax calculation preparation for audits of entities that are not ESPIs. These seem to address exactly the potential threats in these areas. However, the prohibition on material tax calculations for the audits of ESPIs moves away from threats and safeguards and the resultant wording causes a number of problems. • First, because there are different requirements in respect of tax calculations and tax advice, the prohibition could be taken to cover tax advice in respect of tax liabilities. If material tax calculations are to be prohibited for all audits of ESPIs it is likely, particularly in the case of small listed entities, that the outcome will be that the client does their own calculation, incorrectly. As the ultimate aim must be the maintenance of high standards of financial reporting and audit quality it must be made clear that iterative tax advice in respect of the liability reported is acceptable. Cont'd	ICAEW	

40.	176-178	• In addition, the differing treatment for tax return preparation and tax calculations in respect of the audit of ESPIs is likely to result in some keen debates as to whether the calculations are "for the primary purpose of preparing accounting entries". Again particularly for smaller listed entities, tax return and tax calculation services are often seen as a logically combined product with neither output being regarded as the primary or secondary one. We agree with the discussions on tax planning and other tax advisory services. These focus on the areas of likely threat and provide a sensible and reasoned conclusion. We note that some regulators, particularly in the U.S. have included provisions relating to the sale of 'aggressive' tax schemes by auditors. This is an interesting subject within the wider sphere of professional ethics and worthy of separate debate, but it is not directly related to threats to independence and we are pleased that such provisions have not been included in this particular standard.	ICAEW	
41.	177	We note that the implication of Section 290.177 is that, in appropriate circumstances and with appropriate safeguards, an auditor may prepare accounting entries containing tax calculations. As the tax provision is often material to the financial statements, the degree of subjectivity criterion becomes very important. We would ask the IESBA to consider additional guidance, for example, to state that the application of a fixed statutory tax rate to an annual income amount, the auditor of which is otherwise independent, will not ordinarily involve an undue degree of subjectivity. We would suggest that a safeguard similar to the safeguard set out in section 290.160 (Management Responsibilities) be considered for the preparation of tax calculations in Section 290.177. (This additional safeguard might also be added to Section 290.165 which deals with the preparation of accounting records, etc.). We would also suggest that the IESBA consider including in the Taxation Services section a provision for an exemption in emergency situations like that found in Section 290.168.	CICA	

42.	177	We concur with the SEC that accountants have historically provided a broad range of tax services to their audit clients. This is particularly the case for privately-held audit clients, which often rely on their auditors, typically small firms and sole practitioners, to provide high quality integrated tax and audit services at a reasonable price. Accordingly, providing guidance that will help small firms and sole practitioners to safeguard against potentially significant self-review threats to their independence can help promote their continued objectivity and independence in the performance of the audit. While the safeguards suggested in the tax section are not mandatory, and other safeguards can be used if they are effective even though not described in the section, it would seem useful to describe in 290.177 at least one safeguard that small firms and sole practitioners would be capable of implementing. We encourage the IESBA to do so by describing the safeguard of "obtaining advice on the service from an external tax professional" (as described in 290.181 and .183), which can be an effective safeguard when a firm does not have enough qualified individuals to implement the other safeguards described in that paragraph.	AICPA	
43.	177-178	Preparation of tax calculations – small audit clients may not have the internal ability to perform this function. If the CPA cannot provide this service, then outside CPAs would have to be employed to do so, increasing the cost to the client.	GSH	
44.	177-178	Para's 290.177 and 290.178. Our primary concern is how materiality and subjectivity should be assessed. The Code should clarify that materiality should be consistent with the International Auditing and Assurance Standards Board's concept of materiality. We also consider that the distinction should be drawn between adjustments that are the result of generally accepted principles of tax law and hence are routine and mechanical, (e.g. different depreciation rates for accounting and tax), and those that are subject to a considerable degree of subjectivity. That is, the need for safeguards should be limited to that item which is significantly subjective and which is itself material. The proposed Para 177 could be interpreted such that the conclusion is drawn that tax will always be material – meaning that the safeguards will in effect be mandatory. This is not necessary or appropriate; and a "threats and safeguards" approach is considered appropriate.	Australia	

45.	177-178	We are concerned that paragraphs 290.177 and 290.178 have been drafted so that a threat to independence is said to depend on the "purpose" or "primary purpose" for which the tax service was provided. We believe that it is the outcome of a non-audit service provided by an audit firm to an audit client that creates the risk of a self review threat rather than the particular motivation of the client when it commissioned the service, which has no place in the consideration of the ethical impact of any non-audit services. We therefore believe strongly that these paragraphs should be redrafted to remove the references to "purpose".	Grant Thornton	
46.	177-178	The ED includes a prohibition against the preparation of tax calculations of current and deferred tax liabilities (or assets) if the primary purpose of such calculations is for financial reporting purposes. Although we appreciate that this prohibition is with respect to entities of significant public interest, for the reasons discussed above, we are concerned that this would extend to too many entities where the public is not best served by requiring a firm other than the auditors to assist the client with its tax calculations. In many instances, the calculation is not highly subjective and safeguards could be applied, including the use of professionals who are not members of the engagement team. Moreover, the Code could include a requirement that the accountant review the results of the service with management in sufficient detail so that management is able to approve and take responsibility for the results of the service.	DTT	
47.	177-178	Additionally, we are uncomfortable with the construct in paragraphs 290.177 and 290.178. In both paragraphs there is reference to the purpose of the preparation of the tax calculation. The inference is that there is a self-review threat when the tax calculation is prepared for the purpose of preparing the financial statements, but there is no self-review threat if the tax calculation is prepared by the audit firm for another primary purpose. The significance of the threat depends not on the purpose of the preparation of the tax calculation, but the timing of when this work is undertaken and what the tax figures are actually used for. As stated in paragraph 290.176, where the tax returns are prepared based on historical financial information, this is unlikely to create a significant threat to the firm's independence, but only on the basis that the audit of the historical financial information has already been completed and the resulting tax figures are not used in the financial statements. Where the work is undertaken prior to the completion of the audit, it is very likely that the calculation of the tax due will be used in the finalisation of the accounts and, if so, either safeguards should be applied where necessary as required under paragraph 290.177, or, in the case of entities of significant public interest, the firm should not prepare such tax calculations where the tax is material to the financial statements.	APB	

48.	177-178	Traditionally even some listed companies have looked to their audit firms to provide assistance with the calculation of their liabilities for current and deferred taxation and we do not believe that the Code should rule out such assistance entirely. In particular, as with other aspects of the financial statements, auditors should be able to help clients correct miscalculations without giving rise to self review threats. We therefore recommend that a new paragraph should be inserted under paragraph 290.178, as follows: "Nothing in paragraphs 290.177 or 290.178 should be taken as preventing auditors from proposing correcting adjustments to clients' own calculations of their liabilities for current and deferred taxation. Advice may also be provided on the tax treatment of specific transactions and pro forma templates or schedules may be provided to assist clients with the performance of their tax liability calculations."	Grant Thornton	
49.	178	We would nevertheless like to comment on the text of paragraphs 290.178 which deals with tax calculations of current and deferred tax liabilities or assets. As for valuation services, we believe that absolute prohibition should apply only in cases when the calculations performed by the professional accountant are material and include a large part of subjectivity.	CSOEC	
50.	178	Regarding the preparation of tax calculations we do not agree with par 290.178 that the calculation of material current and deferred tax liabilities (or assets) should be prohibited for entities of significant public interest, irrespective of whether safeguards could be applied. This is especially the case for calculations that are not subjective (please see above, 2.1).	WpK	

51.	178	We question whether the prohibition at paragraph 290.178 concerning material tax calculations by auditors for their ESPI clients, irrespective of whether safeguards can be applied, is necessary or justifiable in the public interest. At the very least if a prohibition is to be applied, it should only be to material and subjective calculations as otherwise, the threat is less significant. The additional restriction does not consider the significance of the threat. In our view, the 'blanket' prohibition on material tax calculations for ESPI audit clients moves section 290 away from the threats and safeguards approach as there is no proper assessment of the significance of the threat. In the case of material tax calculations, the significance of the threat is greater where an auditor reviews his/her own subjective opinions than where the work has been of a mechanical/routine nature , i.e. where you are applying a tried and tested method. At paragraph 290.178, it is unclear what it meant by 'financial statements on which the firm will express an opinion'. We believe that the prohibition, to the extent that it stands, should apply only to the group financial statements.	ACCA	
52.		We agree that the guidance in the current IFAC Code is weak. Therefore we welcome the introduction of a discussion on potential threats and examples of safeguards. We also support the general thrust of the recommendations, although we are concerned that the additional restrictions do not appear to consider the significance of the threats. In this respect, the proposed prohibition on auditors performing material tax calculations for significant public interest entity audit clients appears to be moving away from the threats and safeguards approach, without a proper assessment of the significance of the threat. In the case of material tax calculations, the significance of the threat is greater where an auditor reviews his/her own subjective opinions than where the work has been of a mechanical nature. Indeed, from the perspective of the users of professional tax services, the inevitable additional costs of sourcing tax assistance and potential issues of choice and audit quality indicate that these additional restrictions are likely to be against the public interest. We believe that the introduction of such restrictions could adversely affect the quality of tax return preparation and tax calculations, especially for smaller listed entities. If IESBA has evidence that prohibitions are needed, we suggest that these restrictions should at most apply to tax calculations which are material to the group financial statements of entities of significant public interest and which are subjective in nature.	ICAS	

53.	178	In particular, we do not believe that the prohibition in 290.178 on material tax calculations by auditors for their ESPI clients, irrespective of whether safeguards can be applied, is necessary or justifiable in the public interest. At the absolute minimum the prohibition, if applied, should apply to material *and* subjective calculations as we believe the degree of threat is otherwise less significant. See our comments on valuation services under item 2.5.1 above.	FEE	
54.	178	We commented above on the lack of clarity of what is meant by "financial statements on which the firm will express an opinion". The same phrase is used in 290.178. We believe that the prohibition, to the extent that it stands, should apply only to the group financial statements.	FEE	
55.	178	In particular, the standard promotes a situation of very little threat involved in the preparation of tax returns, yet an absolute prohibition on the calculation of the current year's tax liability for ESPIs. In practice, it is often difficult to establish where work performed in respect of the tax return preparation finishes and where work performed in the preparation of the current year liability starts. This is often, therefore, an artificial distinction which audit clients will find difficult to understand and the profession will find difficult to apply with consistency. The concept of '*for the primary purpose of preparing accounting entries'* is not helpful and will be open to widely differing interpretations.	BDO	
56.	178	We do not believe that the prohibition in 290.178 on material tax calculations by auditors for their ESPI clients is necessary or justifiable in the public interest. At the very most the prohibition should only apply to material *and* subjective calculations, as we believe the extent of the threat is otherwise not significant.	SMP/DNC	
57.	179	It would be useful to clarify that advising the client on new tax legislation is clearly a duty for a tax advisor as it is in the interest of the client. This would help to remove the implication that could be read into 290.179 (which we assume is intended to be a neutral introductory paragraph) that the services mentioned are a potential threat.	FEE	

58.	179	Tax planning and other tax advisory services: Although we agree with this prohibition, we are also of the opinion that there are further threats which need to be managed, such as auditors assisting clients to develop aggressive tax schemes. We appreciate that these threats are matters to be considered by the various regulators and not by codes or standards.	IRBA	
59.	179	Tax planning and other tax advisory services – will not be permitted if the CPA prepares a financial statement for the client. Most small clients rely upon the CPA to provide tax planning and preparation of financial statements. This would require the client to have two (2) firms for a simple engagement.	GSH	
60.	179	At paragraph 290.179, it would be useful to clarify that the intention is not to restrict the professional accountant from advising the client on new tax law or regulation but such services are mentioned as an example of a potential threat.	ACCA	
61.	179	In many jurisdictions, e.g. in Germany, public accountants are also entitled to provide tax advisory services. In these cases even a public accountant who is only engaged to perform the statutory audit of an entity is obliged by professional law to inform his client about developments in the entity's tax environment. This might lead to the result that the public accountant who fulfils his professional duties compromises his independence according to the Code. Therefore a clarification in par 290.179 might be helpful.	WpK	
62.	179	Section 290.179 regards services such as advising the client how to structure its affairs in a tax efficient manner (tax planning) on one hand and the advice on the application of a new tax law or regulation on the other hand as part of a broad range of tax planning and other tax advisory services. We do not agree that it is appropriate to lump these together in this manner. We do not appreciate how the latter might impair an auditor's independence. On the contrary, due to professional requirements for the exercise of due care and professional competence, we believe it is entirely conceivable that an accountant providing tax services will be obliged to make an audit client aware of a new tax law or regulation, e.g. when there is a deadline for a tax exemption or a tax relief.	IDW	

63.	179	It does not seem appropriate to apply the same treatment to services such as advising the client on how to structure its affairs in a tax efficient manner (tax planning) on the one hand and the application of a new tax law or regulation on the other. It is unclear how the latter could impair the auditor's independence. On the contrary, one could argue that the provider of tax services should be obliged to make the audit client aware of a new tax law or regulation for example, if there is a deadline for a tax exemption or a tax relief. Hence, we suggest clarifying that advising the client on new tax legislation is clearly a duty for a tax advisor and that this could constitute a safeguard. This would help to remove the implication that could be read into Section 290.179 that the services mentioned are a potential threat	SMP/DNC	
64.	180	We do not believe that the first bullet in paragraph 290.180 adds anything to the more specific guidance set out in the other bullets, and in particular the final bullet so far as concerns the implications for the accounting of the tax advice in the financial statements. We therefore believe that the first bullet will confuse the reader and should be deleted.	KPMG	
65.	180	It would be easier to understand if any examples of specific restrictions are given	JICPA	
66.	180	The last bullet under section 290.180 refers to "doubt as to the appropriateness of the accounting treatment or presentation." We recognize that the difference in construct between 290.180 and 290.182(a), that is, 290.182(a) uses the word "reasonable" as a modifier of the word "doubt," was intentional. However, we would not expect most readers to grasp the subtlety of the distinction and recommend that the word "reasonable" be added before "doubt" to be consistent with the language used in section 290.182(a): "Whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements and there is *reasonable* doubt as to the appropriateness of the accounting treatment or presentation under the relevant financial reporting framework."	AICPA	
67.	180	In listing the various factors of tax consultancy that could give rise to advocacy threats in paragraph 290.180, the factors are either a financial statement factor or a tax factor. It is not clear whether this is an inclusive or exclusive test. What is the advocacy result where the financial treatment is accepted but the tax outcome questionable? Therefore we recommend that IFAC provides clearer guidance as to whether these are mutually inclusive or exclusive advocacy threats.	Grant Thornton	

68.	180	Section 290.180 states that a self-review threat may be created where the advice will affect matters to be reflected in the financial statements and that the significance of any threat will depend, among others, on "the level of tax expertise of the client's employees" (third bullet-point). The extent to which this level of tax expertise represents a relevant factor for the assessment of the self-review threat needs to be clarified.	IDW	
69.	180	Section 290.180 states that a self-review threat may be created where the advice will affect matters to be reflected in the financial statements and that the significance of any threat will partly depend on "the level of tax expertise of the client's employees". It should be clarified to what extent this level of tax expertise represents a relevant factor for the assessment of the self-review threat.	SMP/DNC	
70.	181	In addition the text of paragraph 290.171 (sic) {181?} refers to three types of possible safeguards. For small entities, only the safeguard consisting in obtaining advice on the tax service requested from an external tax professional is possible. This type of safeguard may turn out to be onerous for the client and could lead to prevent small practices from performing the tax services requested by the entity. We propose as a result to add among the safeguards provided the possibility for the professional accountant to ask for example for the opinion of the tax authorities when available or to extend the periodic quality control reviews undertaken by the professional body to the tax services provided to the client.	CSOEC	
71.	181	The following additional safeguard should be added to paragraph 290.181 picking up the same language as in paragraph 290.176: "Requiring management of the client to take responsibility for evaluating the appropriateness of the advice including any significant judgments made".	DTT	

72.	181	At paragraph 290.181, three possible safeguards are mentioned. In many countries small businesses source their tax assistance from small practitioners, many of them being sole practitioners. In the context of sole practitioners in particular, the only possible safeguard appears to be 'obtaining advice on the service from an external tax professional'. This is likely to add to the cost to the client. Indeed it might render the provision of tax services to audit and review clients unviable, presenting the client with the need to find another source, if available. It would be helpful to add additional examples, such as obtaining pre-clearance or advice from the tax authorities, where available, and extending periodic quality control reviews to tax services, as possible safeguards.	ACCA	
73.	181	We note that the discussion in 290.181 refers to three possible safeguards. These safeguards are mentioned as examples ("might include"). In many countries, small businesses source their tax assistance from sole practitioners. However, of the examples mentioned in 290.181, the only possibility for such practitioners is the last example: obtaining advice on the service from an external tax professional. This is likely to add to the cost to the client. Indeed it might render the provision of tax services to audit and review clients unviable for this part of the profession, presenting the client with the need to find another source, if available. It would be helpful to add additional examples, such as obtaining pre-clearance or advice from the tax authorities, where available, and extending periodic quality control reviews to tax services	FEE	
74.	181	Par 290.181 enumerates three possible safeguards relating to a self-review threat resulting from tax planning or other tax advisory services performed by the auditor. In some jurisdictions, e.g. in Germany, there is the possibility to receive a binding advice from the tax authorities. In this advice the tax authority obligates itself to treat a certain case in a predefined way. We recommend adding the binding advice as a possible safeguard to par 290.181	WpK	

75.	181	Section 290.181 refers to three possible safeguards which are presented as examples as denoted by "might include." In many countries SMEs obtain tax assistance from sole practitioners. However, of the three examples mentioned the only possibility for such practitioners is the last one, obtaining advice on the service from an external tax professional. This is likely to increase the cost to the client. Indeed for this sector of the profession it might render the provision of tax services to audit clients unviable causing the client to have to seek another source. We suggest including additional safeguards, such as obtaining pre-clearance or advice from the tax authorities and extending periodic quality control reviews to include tax services.	SMP/DNC	
76.	182	Paragraph 290.182 contains a limitation on the provision of tax advice if such advice depends on a particular accounting treatment or presentation in the financial statements and there is reasonable doubt as to the appropriateness of the related accounting treatment, and the advice will have a material effect on the financial statements. We assume that this was intended to cover the very narrow situation where the realization by the audit client of tax benefits from implementing the advice provided by the audit firm is conditioned on a certain accounting treatment and the auditor agrees with the client to such accounting treatment, notwithstanding the fact that there is reasonable doubt as to the appropriateness of such treatment. In our view, we question the need for this paragraph as it seems to cover a fairly remote set of circumstances. If retained, we suggest that it be clarified so the reader will better understand the particular circumstances the limitation is intended to cover. At a minimum, paragraph 290.182 should be amended by adding the words "or the engagement for tax services discontinued as the case may be" after the words "should not be provided". In most cases it will not be until the engagement is in process before it can reasonably be concluded that the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements.	DTT	
77.	182	We are concerned that the phrase "reasonable doubt as to the appropriateness of the accounting treatment" in 290.182(a) is unhelpful and request that this be rephrased. See comments on a similar statement in the Corporate Finance section, under item 2.5.5 below.	FEE	

78.	182	In sections 290.182 and 290.211 the guidance prohibits any consultancy services where the effectiveness of the tax or corporate finance advice depends on a particular accounting treatment or presentation in the financial statements and *"(a) There is reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and* *(b) The outcome or consequences of the tax advice will have a material effect on the* *financial statements."* In FSR's opinion this is not an independence issue. An auditor should never give any advice where the effectiveness depends on a particular accounting treatment. We recommend that you remove the two sections from the exposure draft or that you get more specific about the purpose or the meaning of these two sections.	FSR	
79.	182	NIVRA agrees with the prohibition in 290.182 regarding aggressive tax advice.	NIVRA	
80.	182	While we are generally supportive of the proposed guidance on the provision of tax planning and other tax advisory services, we do not believe that the guidance in paragraph 290.182 of the ED should be required for audit clients that are not entities of significant public interest. Therefore, we recommend rewording paragraph 290.182 as follows (new language in boldface italics): "*Audit Clients that are Entities of Significant Public Interest* In the case of an audit client that is an entity of significant public interest, where the effectiveness of the tax advice depends on particular accounting treatment or presentation in the financial statements and: (a) There is reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and (b) The outcome or consequences of the tax advice will have a material effect on the financial statements; the self-review threat would be so significant that no safeguards could reduce the threat to an acceptable level in which case the tax advice should not be provided. The only other course of action would be to withdraw from the audit engagement."	KICPA	

81.	182	We would note that section 290.182 seems to presume that a professional accountant may adopt or acquiesce in an inappropriate accounting treatment or presentation. If that were the case there would be more than an Independence problem. This may simply be a wording issue producing an unintended result.	CICA	
82.	182	The guidance introduces the concept of *'reasonable doubt as to the appropriateness of the accounting treatment'*. We are concerned that this phrase is extremely difficult to apply without reference to the person who is actually assessing the appropriateness. Therefore, we recommend that the wording be amended to *'the audit partner having reasonable doubt as to the appropriateness of the accounting treatment'*. If a competent audit partner has no doubt as to the appropriateness of the accounting treatment under a given framework, then we do not consider that the firm's independence would be insurmountably threatened.	BDO	
83.	182	With respect to Tax Planning and Other Tax Advisory Services and more specifically, paragraph 290.182, additional clarification of the concept of "reasonable doubt" and the provision of examples to illustrate the intent of the paragraph would be helpful for ensuring appropriate and consistent application of the prohibition	E&Y	
84.	183	Assistance in the resolution of tax disputes – does not permit the firm that performs the audit to represent the client before a "tribunal or court". Small audit clients would not be permitted to have the CPA represent them before an IRS appeals hearing.	GSH	
85.	183	With respect to Assistance in the Resolution of Tax Disputes, we are concerned that the proposed Exposure Draft wording could give rise to interpretation issues. In particular, a number of concepts are unclear: for instance, the meaning of "formal proceeding" or "...once the tax authorities have made it known..." We would support a much more direct test such as "when the firm represents an audit client in the resolution of a tax dispute before a tribunal or court". In addition, this section should be more explicit that Litigation support services permitted under 290.198 to 200 would be equally permitted when related to a tax dispute under 290.183 to 185.	E&Y	
86.	183	In Section 290.183 (assistance in the resolution of tax disputes) it remains unclear whether, and to which extent, the first bullet-point (whether the firm has provided the advice which is the subject of the tax dispute) and the fifth bullet-point (the role management plays in the resolution of the dispute) overlap. In our opinion, the fifth bullet-point could be deleted.	IDW	

87.	183	I agree with this requirement to the extent that it addresses the appearance of advocacy between a professional accountant and his or her client. My concern is that professional accountants may believe that "private" advocacy of a client's position does not threaten independence. I suggest the Code specify that the advocacy threat to independence, i.e., promotion of a position or opinion to the point that subsequent objectivity may be compromised, may occur in a non-public setting.	AC	
88.	183	We have a number of suggestions concerning paragraph 290.183 regarding Tax Disputes. First, the phrase "have made it known" should be changed to "provided formal notification". This will make the triggering event clearer and therefore compliance much more effective. Second, the phrase "in a formal proceeding" should be changed to "in an independent proceeding". Dealing directly with the tax authorities on a tax matter on behalf of an audit client has long been accepted as appropriate. Using the word "independent" serves to make it clear that once the issue has moved to a forum that is independent of the tax authority, it would no longer be appropriate for the audit firm to represent the client. This is also a brighter line test. Third, an inherent problem lies with the fact that it is necessary to draw a line in each jurisdiction notwithstanding that each jurisdiction has unique procedures set down in the different tax codes for resolving tax disputes. The paragraph should expressly direct each IFAC member body to determine and publish which tribunals are "independent" and hence "prohibited" by audit firms on behalf of audit clients. Without this specific guidance, compliance will be much more difficult and audit firms will differ in interpretation. Fourth, the following safeguard should be added along the lines of; "Requiring that a competent member of client management review, approve and take responsibility for making all final decisions with respect to the services provided by the auditor"	DTT	
89.	183	In paragraph 290.183 we suspect there will be debate in particular about the meaning of a "formal proceeding". We suggest that it should be clarified that this would need to reflect how the collection of tax is administered in a particular jurisdiction.	KPMG	
90.	183	We would also note that in Canada, and perhaps elsewhere, it is more commonly the audit client and not the tax authorities who will refer disputes to courts or tribunals. We believe, therefore, that Section 290.183 would be improved if it applied whenever a tax dispute goes to a formal proceeding and without reference to the initiating party.	CICA	

91.	183	We agree that an advocacy threat may be created once the matter is referred for determination in a formal proceeding. However, clarification is needed regarding what is meant by "made it known" when a dispute is heading to a formal proceeding. For example, verbal communication (rejection of arguments) from an appellate agent often takes place before the "formal" (written) notification; there is then a period of time before the formal disallowance occurs during which the matter could still be settled without a formal proceeding. Because procedural rules vary from jurisdiction to jurisdiction, we recommend the appropriate standard be formal notification. Cont'd	AICPA	
92.	183	In addition, in the United States the appeals process generally is not initiated based on the referral of the matter *by the taxing authority*. For example, the *taxpayer* may be required to initiate a petition to present their case in tax court. Also, a significant period of time may lapse once the taxing authority provides notification that it has rejected the argument before the taxpayer may decide to appeal the matter and request a "formal proceeding." During that period before the taxpayer has made a decision to request a formal proceeding, we believe the advocacy threat is insignificant. Accordingly, we recommend that section 290.183 be revised as follows to clarify that it may not necessarily be the taxing authority that initiates the referral and the "trigger" for determining when the advocacy threat is created is when the matter is actually referred for determination as part of a formal proceeding: An advocacy threat may be created when the firm represents an audit client in the resolution of a tax dispute once the tax authorities ~~have made it known~~ *provide formal notification* that they have rejected the audit client's arguments on a particular issue and *the matter is referred* ~~are referring the matter~~ for determination in a formal proceeding, for example before a tribunal or court…"	AICPA	
93.	183	In Section 290.183 regarding assistance in the resolution of tax disputes it remains unclear if, and to what extent, the first bullet-point (whether the firm has provided the advice that is the subject of the tax dispute) and the fifth bullet-point (the role management plays in the resolution of the dispute) are overlapping. In our opinion, the latter bullet-point could be waived.	SMP/DNC	

94.	183-184	NIVRA believes that granting of assistance to a client in tax procedures is inherent to the activities of an auditor in the field of taxation services. For this reason, this service must remain, except in the case of legal action before the highest national judicial authority. In the Netherlands, and NIVRA assumes that this also applies to other jurisdictions, the Taxation Section is public (makes its judgements in public). However, as a result of the adjective "public" the granting of assistance before lower legal authorities is (possibly unintentionally) not permitted. NIVRA is not in agreement with this.	NIVRA	

95.	183-184	Par 290.183 states that an advocacy threat may be created when the firm represents an audit client in the resolution of a tax dispute once the tax authorities have made it known that they have rejected the audit client's arguments on a particular issue and are referring the matter for determination in a formal proceeding. Bullet 2 says that the significance of the threat will depend among others on the extent to which the outcome of the dispute will have a material effect on the financial statements on which the firm will express an opinion. Par 290.184 adds that where the taxation services involve acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter and the amounts involved are material to the financial statements, the advocacy threat is considered so significant that no safeguard could eliminate or reduce the threat to an acceptable level. Therefore, the firm should not perform this type of service for an audit client. This rule is applicable for all audit clients. Safeguards are not provided. These paragraphs go far beyond the existing requirements. In this context we would like to draw your attention to the EU Commission Recommendation of 16 May 2002 — Statutory Auditors' Independence in the EU: A Set of Fundamental Principles, par 7.2.5 of the Annex: *"It is less likely that this threat will become significant, when the Statutory Auditor is only required to give evidence to a court or tribunal in a case in which the client is involved.* *Even when taking a relatively active role on behalf of the client, there can be other specific situations which are generally not seen to compromise a Statutory Auditor's independence. Such situations could include the representation of an Audit Client before the court or the tax administration in a case of tax litigation. They could also include advising the client and defending a particular accounting treatment in a situation where a Member State's authority, securities regulator or review panel, or any other similar European or international body investigates the Audit Client's financial statements. However, whatever the circumstances, the Statutory Auditor should analyse the specific situation and his particular involvement to carefully assess whether or not there is a significant risk to his independence."*	WpK	

96.	183-184	In 2004, after several accounting scandals in Germany and worldwide, the German legislator considered a prohibition of certain tax and legal services provided by the statutory auditor, and representation in court in particular. In this context the German legislator abolished the advocacy threat in representing a client in a public tribunal or court. We agree with the German legislator that representing a client in a public tribunal or court does not create an advocacy threat. At least the audit firm should have the possibility in accordance with the EU Recommendation to defend a particular accounting treatment in court, when the tax authorities rejected a position which was already confirmed by the audit firm. As "on which the firm will express an opinion" is not repeated in par 290.184, we conclude that the auditor should not act as an advocate for his audit client before a public tribunal or court in the resolution of tax matters, not even when the amounts involved are only material to financial statements, which are not subject of the audit performed by the auditor in question. In this case we do not see an advocacy threat. We therefore request the IESBA to generally reconsider par 290.183 and 290.184.	WpK	
97.	183-185	The ED highlights a potential advocacy threat when in a tax dispute the audit firm represents an audit client in certain circumstances. We believe that it is appropriate for the Board to provide guidance on this issue. We do believe, however, that the self-review threat inherent in tax advisory work might, in some cases, be augmented in a tax dispute where the firm's original tax advice and the client's accounting treatment thereof has been called into question, creating a potential self-review for the audit engagement team as it considers the appropriateness of the accounting treatment. In most cases, however, it would be possible to reduce the, possibly augmented, self-review threat to an acceptable level through the use of safeguards. The Board may want to add this to the discussion in paragraph 290.183. Some of the factors relating to the significance of the threat mentioned in paragraph 290.183, as well as the safeguards, relate more to this self-review threat than to the advocacy threat. Cont'd	PwC	

98.	183-185	We agree with the basic presumption that the auditor's role in assisting the client to comply with its statutory obligations in relation to its tax affairs, including helping to resolve routine differences of opinion between the client and the tax authority, is compatible with independence. We also agree that assistance to an audit client in the resolution of a serious dispute with the tax authority should be subject to an evaluation of the significance of any actual or perceived threat to the auditor's objectivity and the application of appropriate and proportionate safeguards. As the ED acknowledges in paragraph 290.174, the activities involved in providing a tax service are often interrelated. The ability to assist the client when disagreements arise out of an interpretation of the applicable tax rules, having regard to the need to monitor and preserve independence, is clearly important to audit firms being able to maintain sustainable tax practices. Cont'd	PwC	
99.	183-185	The reference to a "formal proceeding" in 290.183 is, however, unclear since there are a number of activities within the compliance processes in the jurisdictions of member bodies which constitute an integral and routine part of agreeing a tax liability and which take place before the matter could reasonably be described as a serious dispute, but which might nevertheless be construed as a formal proceeding (e.g., the filing of an administrative appeal). Disagreements which the tax authority and taxpayer attempt to resolve between themselves are common and routine in many jurisdictions. Furthermore, formality is an inherently subjective criterion which could introduce uncertainty and inconsistency. The advocacy threat arises when other parties get the impression that the audit firm represents an audit client in a manner that creates a perceived lack of objectivity. We believe that this perception does not arise in a non-public proceeding with the tax authorities. The word "formal" proceeding in paragraph 183 is therefore, we believe, unfortunate, as it does not address the public attribute of the proceeding. In the interests of clarity, therefore, the reference to "a formal proceeding" should, in our view, be amended to "a proceeding accessible to the public". Cont'd	PwC	

100.	183-185	Reference is made to "tribunal or court" in 290.183 and to "public tribunal or court" in 290.184 and 290.185. Consistently with what we say in the preceding paragraph, we believe that reference should be made to "proceeding accessible to the public". However, the Board will appreciate that there are many tax assessment systems around the world, and there are many different types of closed and open forums within their tax administrative and judicial processes. We do not believe it is possible for the Board to define exactly what processes are accessible to the public to such a degree that they create an advocacy threat; this should be left to each member body to determine. The Board may want to review, after some time, the application in each country to ascertain that the application has been made with sufficient levels of consistency. Cont'd	PwC	
101.	183-185	Accordingly, we recommend the following: 1. Enhance the discussion in this Section to acknowledge that it deals with both the self-review threat and the advocacy threat. Acknowledge that most self-review threats can be dealt with through safeguards. 2. Delete the word "formal" in the introduction to 290.183, add "accessible to the public" after "proceeding" and take out the "for example, before a tribunal or court". 3. Amend the first sentence of 290.184 to refer to "representing" an audit client, and delete the final sentence of 290.184, replacing it with the following: What constitutes a "proceeding accessible to the public" should be determined by the member bodies in that jurisdiction. 4. Delete "public tribunal or court" from 290.184 and 290.185 and replace it with "proceeding accessible to the public". Revised proposed language is provided in Appendix I. [Appendix 4 to this agenda paper]	PwC	

102.	184-185	Paragraphs 290.184 and 185 prohibit the audit firm from acting as an advocate for the client in the resolution of a tax matter in certain circumstances. While threats should clearly be considered, the degree of threat will vary. The EU Recommendation on Independence notes (at Section 7.2.5) "Even when taking a relatively active role on behalf of the client, there can be other specific situations which are generally not seen to compromise a Statutory Auditor's independence. Such situations could include the representation of an Audit Client before the court or the tax administration in a case of tax litigation. They could also include advising the client and defending a particular accounting treatment in a situation where a Member State's authority, securities regulator or review panel, or any other similar European or international body investigates the Audit Client's financial statements." It is at the very least important to distinguish between merely representing a client position and the audit firm defending its own opinion, where it has already opined on a certain treatment (this is implied in the second item in the list in 290.183 but "on which the firm *will* express an opinion" is not repeated in 290.184). In this latter case, there is no advocacy threat to a future opinion and there should be no prohibition	FEE	
103.	184-185	Paragraphs 290.184 and 185 prohibit the audit firm from assisting the client in the resolution of a tax matter in certain circumstances. While threats should clearly be considered, the degree of threat will vary. The European Commission Recommendation on Statutory Auditor Independence notes (at section 7.2.5) 'Even when taking a relatively active role on behalf of the client, there can be other specific situations which are generally not seen to compromise a Statutory Auditor's independence. Such situations could include, the representation of an Audit Client before the court or the tax administration in a case of tax litigation. They could also include advising the client and defending a particular accounting treatment in a situation where a Member State's authority, securities regulator or review panel, or any other similar European or international body investigates the Audit Client's financial statements'. It is at the very least important to distinguish between merely representing a client position and the audit firm defending its own opinion, where it has already opined on a certain treatment (this is implied in the second bullet of paragraph 290.183 but '…on which the firm *will* express an opinion' is not repeated in paragraph 290.184). In this latter case, we do not believe there is an advocacy threat to a future opinion and, therefore, there should be no prohibition	ACCA	

104.	184-185	Sections 290.184 and 290.185 prohibit the audit firm from acting as an advocate for the client in the resolution of a tax matter in certain circumstances. While threats need to be considered, the degree of threat will vary. We question whether the advocacy threat is so significant that no safeguard could eliminate or reduce the threat to an acceptable level in particular, in cases where the taxation service is provided to an entity other than ESPI. We suggest, therefore, that at the very least the Code should distinguish between merely representing a client position and the audit firm defending its own opinion, where it has already opined on a certain treatment. In this latter case, there is no advocacy threat to a future opinion and so there should be no prohibition. Indeed, it is hard to justify denying the client access in a decisive phase of tax assessment to the very expert who best knows the circumstances of case.	SMP/DNC	
105.	184	Section 290.184 prohibits taxation services that involve acting as an advocate for an audit client before a public tribunal or court in the resolution of tax matters where the amounts involved are material to the financial statements. We would like to question the Board's opinion, that the advocacy threat is considered so significant that no safeguard could eliminate or reduce the threat to an acceptable level, in particular in cases where the taxation service is provided to an entity not of significant public interest. Furthermore, we do not see that there is a convincing reason as to why in a decisive phase of tax assessment the expert who knows best the circumstances of the relevant case should be withdrawn from the client. Furthermore, we would like to point out that an auditor, having audited the financial statements, including the tax charges, provisions etc. reflected therein, will be essentially justifying his or her own audit opinion as to the taxation issues presented in the financial statements in this respect, as opposed to acting solely in the interests of the audited entity. In such circumstances we do not believe there is an advocacy threat	IDW	

106.	184	Paragraph 290.184 of the ED states that "Where the taxation services involve acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter and the amounts involved are material to the financial statements, the advocacy threat is considered so significant that no safeguard could eliminate or reduce the threat to an acceptable level. Therefore, the firm should not perform this type of service for an audit client. What constitutes a "public tribunal or court" should be determined according to how tax proceedings are heard in the particular jurisdiction." We strongly believe that there should be more detailed guidance on the facts and circumstances in which case the taxation services should not be provided. In addition, we do not believe that the guidance should be required for audit clients that are not entities of significant public interest. Therefore, we recommend rewording paragraph 290.184 as follows (new language in boldface italics): "*Audit Clients that are Entities of Significant Public Interest* In the case of an audit client that is an entity of significant public interest, where the taxation services involve acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter and the amounts involved are material to the financial statements, the advocacy threat is considered so significant that no safeguard could eliminate or reduce the threat to an acceptable level. Therefore, the firm should not perform this type of service for an audit client that is an entity of significant public interest. What constitutes a "public tribunal or court" should be determined according to how tax proceedings are heard in the particular jurisdiction and will normally meet all of the following three criteria: (a) the tax proceedings are open to the public or a transcript of the proceeding s is available to the public (b) the public tribunal or court is the final trier of fact so that any appeal is based on the factual record developed at the public tribunal or court, and (c) the public tribunal or court may issue decisions that apply the law to the facts and that serve as precedents for subsequent cases involving different taxpayers with similar facts"	KICPA	
107.	185	Assistance in the resolution of tax disputes: We agree that if an auditor is requested to fulfill the continuing advisory role as envisaged in paragraph 290.185, there is no advocacy risk. It appears, from the references to public tribunals and courts, that the intention is to relate the advice to matters dealt with in a public forum rather than any 'formal' proceeding which in many cases is not open to the public and therefore would not create a visible advocacy threat. We therefore suggest that references to 'formal proceedings' be avoided and the term 'public proceedings' be used instead.	IRBA	

108.	186-191	The guidance on internal audit services will be subject to the overriding guidance in paragraph 290.160 - which effectively elaborates on the existing guidance in paragraph 290.190(b).	CAGNZ	
109.	188	As the safeguards in Paragraph 290.188 are somewhat too broadly defined, there is a possibility of loose interpretations.	JICPA	
110.	192-197	The guidance on IT systems services will be subject to the overriding guidance in "f paragraph 290.160 - and should be amended accordingly. Paragraph 290.193 makes reference to IT systems that do not form a significant part of the accounting records or financial statements. We consider the words "a significant" should be removed as it introduces an unacceptable level of subjectivity and does not take account of the threat to independence in appearance. We do not consider implementation of "off-the-shelf" accounting or financial information software (as set out in paragraph 290.193) is appropriate for the reason that it does not take account of the threat to independence in appearance. Paragraph 290.197 should be amended to remove the subjectivity around the references to ",.. a significant part of the accounting systems or generate information that is significant to the clients financial statements...". This can be achieved by removing the words "a significant" and replacing the words "is significant to" with "will be included in". The amendments also remove the possibility of threats to independence in appearance.	CAGNZ	

111.	193	With respect to paragraph 290.193, we note that in certain countries audit firms have developed their own proprietary software for example to facilitate the preparation by clients of their tax returns. This software may be sold or licensed to clients. In the same way as tax return preparation services do not generally threaten the firm's independence in the circumstances outlined in paragraph 290.176, it should also be recognised that the firm might license or sell software to clients to the extent that the functionality is limited to the preparation of tax returns. If the software has additional functionality, for example to generate information which might be incorporated in the financial statements, such functionality would need to be evaluated in order to consider the potential effect on the audit firm's independence. An additional safeguard that might be necessary in certain circumstances would be for the audit client to accept responsibility for the use of the software by designating a competent employee to operate the software, including the assumptions and inputs and the results of the software in determining any accounting entries to be made in the financial statements. We believe that paragraph 290.193 should be extended to include a discussion of the acceptability of such types of software in these circumstances.	KPMG	
112.		The ED should clarify that valuations performed for tax purposes should be permitted to the extent that such valuations, if material, are not used for financial reporting purposes. The ED should clarify that technology and systems provided by audit firms to support or deliver permitted tax services do not impair independence.	DTT	