

Meeting: IESBA CAG Meeting

Meeting Location: Virtual Meeting

Meeting Date: September 7, 2021

Agenda Item

B

Tax Planning and Related Services

Objectives of Agenda Item

1. To:
 - (a) Note the report-back on the May 2021 IESBA CAG discussion;
 - (b) Obtain Representatives' views on the final report and recommendations of the Tax Planning and Related Services Working Group (TPWG); and
 - (c) Obtain Representatives' views on the proposal for an IESBA project addressing the ethical implications for professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs) when they provide tax planning and related services to employing organizations and clients, respectively.

Working Group

2. Members:
 - Jens Poll, Chair, IESBA Member
 - Sanjiv Chaudhary, IESBA Member
 - Laurie Endsley, IESBA Member
 - Andrew Mintzer, IESBA Member

Working Group Activities Since May 2021 CAG Discussion

3. Members of the TPWG met via videoconference in Q3 2021 to consider the feedback from the CAG in May and from the IESBA in June, and to finalize the TPWG's report and recommendations to the IESBA. Based on the final report, the TPWG also developed the project proposal for the Board's consideration.

Report Back on May 2021 CAG Discussion

4. [Appendix 1](#) to this paper includes extracts from the draft minutes of the May 2021 CAG meeting¹ and an indication of how the Working Group or IESBA has responded to CAG Representatives' comments.

¹ The draft minutes will be approved at the September 2021 IESBA CAG meeting.

Matters for CAG Consideration

5. CAG Representatives are asked for views on:
- (a) The final report and recommendations in **Agenda Item B-1**; and
 - (b) The project proposal in **Agenda Item B-2**.

Material Presented

Agenda Item B-1 Tax Planning and Related Services: Final Report

Agenda Item B-2 Tax Planning and Related Services: Project Proposal

Appendix 1

Below are extracts from the draft minutes of the May 2021 CAG meeting and an indication of how the TPWG and/or IESBA has responded to the CAG's comments.

Matters Raised	TPWG/IESBA Response
TERMINOLOGY	
<ul style="list-style-type: none"> Mr. Hansen noted that at the IESBA-National Standard Setters (NSS) meeting the previous week, there were some comments about the challenges of defining “unacceptable tax planning” and “aggressive tax planning.” He wondered why the emphasis was on planning vs. compliance, although they are interrelated activities. He felt that it is more critical to address the role of PAIBs, such as CFOs and financial controllers, as opposed to auditors. 	<p>Points noted.</p> <p>During the meeting, Prof. Poll confirmed that PAIBs are scoped in and that for auditors, the recently issued Non-assurance Services (NAS) revisions to the Code will limit tax planning services to audit clients that are aimed at tax avoidance.</p> <p>The focus of the initiative is on tax planning although the TPWG acknowledges that compliance is a related consideration.</p>
<ul style="list-style-type: none"> Ms. McGeachy-Colby expressed a concern about trying to define “aggressive tax planning,” noting the danger of creating a prescriptive delineation that could be easily circumvented. Ms. Blomme supported not attempting to define “aggressive tax planning” and “unacceptable tax planning,” noting the potential for different interpretations in different cultures. 	<p>Point considered.</p> <p>Having reflected on the various input it has received from the Board and stakeholders, the TPWG is proposing that the project explore developing suitable terminology that would facilitate the development of the principles-based framework and understanding and use of the framework.</p>
<ul style="list-style-type: none"> Ms. Blomme was supportive, however, of exploring a principles-based framework to think about unacceptable tax planning, noting that work done by the OECD, Accountancy Europe and others in the EU could provide useful guidance in steering the discussion forward. She was of the view that clarifications would not only help guide PAs ethically in their tax planning activities but also address the broader issue of public perceptions. She also supported economic or commercial substance as being an important consideration as tax planning is about adhering not only to the letter but also the spirit of the law. 	<p>Point considered and support noted.</p> <p>During the meeting, Prof. Poll highlighted a recently issued OECD report addressing professional enablers of tax and white collar crimes which observed that while professionals offer various legitimate business services to clients, they may also be experts at finding legal loopholes, giving room for the creation of tax avoidance strategies. He emphasized that the starting point is in each jurisdiction in terms of the legally gray area vs. non-compliance with laws and regulations (NOCLAR). He added that consideration should be given to whether, based on the facts and circumstances, there are indicators of risks of unacceptable tax planning</p>
<ul style="list-style-type: none"> Ms. Meng was of the view that what is deemed acceptable tax planning will be based on 	

Matters Raised	TPWG/IESBA Response
<p>interpretation. She agreed that both the legality and economic substance of transactions are relevant considerations when determining what is acceptable tax planning. In addition, she wondered whether an additional factor is rationality, i.e., whether a transaction has a reasonable business purpose. She also wondered whether non-transactional arrangements should be considered.</p>	<p>which the PA should assess and then inform the employing organization or client. He agreed that the work done by the OECD and the European Commission on indicators of aggressive tax planning would be helpful in this regard but welcomed other references.</p> <p>Prof. Poll also responded that the factors noted are indicators the Working Group is considering. He added that the Working Group is also considering non-transaction-driven tax structures.</p>
<ul style="list-style-type: none"> Mr. Munter commented that the indicator is whether a transaction has a primary business purpose (such as an acquisition) but which is structured in the most tax efficient way as opposed to one whose primary or sole motivation is tax avoidance. He was of the view that the business purpose is a critical aspect. He added that tax minimization might be an indicator of a problematic area. He also noted that in both International Financial Reporting Standards (IFRS) and US Generally Accepted Accounting Principles (GAAP), there is guidance for uncertain tax positions and that in both sets of standards, this guidance is anchored to the “more likely than not” recognition threshold. He suggested that this might be another indicator or direction the Working Group might consider in terms of unacceptable tax planning. 	<p>Point noted.</p> <p>During the meeting, Prof. Poll responded that the Working Group considers business purpose as a very important factor. He also highlighted feedback from NSS the previous week indicating that the COVID-19 pandemic had impacted public perceptions of tax structures involving jurisdictions seen as non-compliant.</p>
<ul style="list-style-type: none"> Ms. Manabat echoed the observation that there are different tax laws and practices as well as cultural differences across jurisdictions. She added that aggressive tax planning has been an old concern in any economy and that there have been prosecutions of cases and lessons learned. 	<p>Point noted.</p> <p>During the meeting, Prof. Poll concurred, noting that while PAs need to be aware of differences in tax regimes and cultures, it is also important to recognize that the environment and public perceptions have changed significantly.</p>
<ul style="list-style-type: none"> Mr. Pavas reiterated a concern he shared previously that there are professionals who provide tax planning services who are subject to different codes of ethics. He wondered how this 	<p>Point noted.</p> <p>During the meeting, Prof. Poll acknowledged that the Code applies only to PAs but noted that it applies in accountancy firms to non-PAs such as lawyers who are involved in multi-disciplinary</p>

Matters Raised	TPWG/IESBA Response
<p>uneven playing field could be addressed with greater clarity.</p>	<p>teams. He added that feedback from stakeholder outreach had supported the view that if the accountancy profession takes the lead in addressing the issues, it could well influence other professions to do the same.</p>
<ul style="list-style-type: none"> Ms. Landell-Mills highlighted that there have been some tax principles that have come out from civil society that might be worth considering, such as an initiative called the Fair Tax Mark which issued a recent report highlighting four core expectations for companies with respect to the topic of tax avoidance. She also noted that certain tax practices in gray areas of the tax law might be in fact be unidentified NOCLAR as it might not be immediately clear whether they are legally compliant. She was of the view that auditors play a very important role in flagging these issues to investors not only because of the regulatory implications but also because of the reputational risks. Finally, she suggested looking into whether there have been cases involving tax behavior that have been prosecuted and which auditors had not flagged, given the importance of accountability. 	<p>Point noted.</p> <p>During the meeting, Prof. Poll noted that the environment has changed dramatically. While tax courts might have seen certain tax structures as interesting but not illegal in the past, there has now been a significant shift to criminal prosecution of professionals involved in such cases in various jurisdictions. In addition, even if the prosecutions do not lead to criminal convictions, reputations are often damaged.</p>
<p>CONSIDERATION OF POSSIBLE RESPONSES</p>	
<ul style="list-style-type: none"> Ms. McGeachy-Colby noted the IFAC SMP Advisory Group's support for Option C as that option has the benefit of being nimble compared with developing revisions to the Code. Mr. Cela agreed, noting that non-authoritative material (NAM) should be capable of being applied across jurisdictions and cultures. However, he added that there would be merit in a combination of Options A and C to address different perspectives. Mr. De Tullio also supported a combination of Options A and C. He recognized that Option A could be seen as prescriptive. However, he felt that if there was nothing specific in the Code on the topic, it would be challenging to address the issues. 	<p>Views noted.</p> <p>During the meeting, Prof. Poll observed that at the IESBA-NSS meeting the previous week, NSS that had already published guidance material on the topic preferred Option C compared with those that had not. He also noted that regulatory stakeholders generally preferred Option A.</p> <p>In response to Ms. Landell-Mills' comment, Prof. Poll noted that the perception of having the topic addressed in the Code would be of high importance in the public arena.</p> <p>Prof. Poll also highlighted the criticality of professional judgment and the suggestions at the March 2021 IESBA meeting for the Working</p>

Matters Raised	TPWG/IESBA Response
<ul style="list-style-type: none"> • Mr. Hirai expressed a preference for Option C. He noted that in Japan, tax practitioners are often outside the profession. Accordingly, NAM would be more accessible to them. However, he accepted that a combination of Options A and C could be another response. He added that it was difficult to be more definitive without knowing what changes would be made in the Code. • Ms. Landell-Mills felt that Option A was a sensible response, possibly in combination with Option C. She was of the view that given the importance of the topic, not addressing it in the Code could diminish the Code's credibility. • Mr. Orth noted Accountancy Europe's support for the initiative. He agreed that the profession should take the lead in addressing the issues. He suggested starting with Option C and seeing if there would be merit in making enhancements to the Code as the thinking matures. • Mr. Hansen suggested that from NASBA's perspective, the way forward should begin with Option A and then considering whether to pick up Option C as the thinking develops. He added that Option A is more consistent with a focus on changing behavior and supporting enforcement. • Mr. Kashiwagi noted that the PIOB views the initiative to be of high importance. He also noted the good direction taken by the Working Group and the good input provided by CAG representatives. However, he remarked that the PIOB was disappointed with the pace of progress, although he acknowledged the challenges in developing a global view on the topic. He suggested taking a pragmatic approach to quicken the pace, adding that personally he supported both Options A and C. 	<p>Group to consider making appropriate linkages to the provisions and behavioral concepts in the Code addressing NOCLAR, Inducements, and Role & Mindset.</p>