

Project Proposal

Tax Planning and Related Services

I. Subject

1. Revisions to the [International Code of Ethics for Professional Accountants \(including International Independence Standards\)](#) (the Code) to address the ethical implications of tax planning as it relates to the role of professional accountants (PAs) both in business and in public practice.

II. Background

Relevant Developments

2. In recent years, much public attention has focused on the topic of tax avoidance, notwithstanding the legality of the tax mitigation schemes or related transactions to achieve desired tax outcomes. Questions have been raised regarding the ethical implications for professional behavior when PAs in business (PAIBs) are involved in developing tax minimization strategies that are perceived as “aggressive,” or when PAs in public practice (PAPPs) provide advice to their clients on such strategies. The issue is of such major public interest significance that it has been discussed on the G20 agenda.¹
3. The need for transparency and better disclosure of tax practices have been a focus area for global bodies such as:
 - (a) The Organisation for Economic Cooperation and Development (OECD), which has launched the [Base Erosion and Profit Shifting \(BEPS\)](#) project in partnership with the G20. The project aims to ensure that the international tax rules do not facilitate the shifting of corporate profits away from where the real economic activity and value creation are taking place. The premise for value creation is linked to the substance over form argument which maintains that transactions in question should not be evaluated based on their formal legal structure but rather on the tax impact from their underlying substance.
 - (b) The World Federation of Exchanges, which has included [tax transparency](#)² as a “material Environmental, Social and Governance (ESG) metric” for reporting by listed companies.
 - (c) The International Federation of Accountants (IFAC), which has called for jurisdictions to share information to promote [accountability and long-term global sustainability](#).³
 - (d) The International Accounting Standards Board (IASB), which has worked on [changes to tax disclosure rules](#).⁴

¹ For example, in its article [What could a new system for taxing multinationals look like?](#) the Economist noted that in 2015, the OECD estimated that tax avoidance robs public coffers of US\$100-240 bn, or 4-10% of global corporation tax revenues a year.

² *Exchange Guidance & Recommendation* (October 2015), WFE Sustainability Working Group, World Federation of Exchanges.

³ *G20 Public Trust in Tax – Surveying Public Trust in G20 Tax Systems* (January 2019), Association of Chartered Certified Accountants (ACCA), Chartered Accountants Australia and New Zealand (CA ANZ) and IFAC.

⁴ IFRIC 23, *Uncertainty over Income Tax Treatments*

4. In addition, in its July 2021 update to its list of public interest issues on IESBA projects, the PIOB has continued to highlight that the ethical implications of tax planning are a public interest issue that the IESBA should address, given the emphasis across the globe on matters relating to tax, tax avoidance and social justice in respect of tax practices, as well as concerns raised by many stakeholders on these topics.
5. Specifically, the PIOB commented that it is in the public interest that the IESBA prioritize a project to address “unacceptable/aggressive” tax services provided by PAs and, whenever needed, to change their behavior. The PIOB indicated that it welcomed the IESBA’s willingness to take a leadership role in developing ethics provisions and associated guidance for PAs undertaking tax planning and related services.

IESBA’s Strategic Commitment

6. In light of the external developments, the IESBA acknowledged in its [2019-2023 Strategy and Work Plan](#) (SWP) a pressing need to better understand and address the ethical implications of “aggressive tax planning” as it relates to the role of PAs both in business and in public practice. Recognizing that such developments were already a major topic of discussion among its stakeholders, and in preparation to commence work on the topic, the IESBA established the Tax Planning and Related Services Working Group (TPWG) in March 2019.
7. The TPWG was [tasked to](#):
 - (a) Gather an understanding of regulatory, practice and other developments in corporate and individual tax planning by PAIBs and PAPPs;
 - (b) Identify and analyze the ethical implications of those developments and determine whether there is a need for enhancements to the Code or further actions; and
 - (c) Develop a report and recommendations to the IESBA.
8. Following fact finding, including a year-long program of outreach to stakeholders, the TPWG delivered its final report and recommendations to the IESBA in September 2021. The report provides a comprehensive overview of the TPWG’s fact finding and its analyses of the identified issues as well as its recommendations. These recommendations form the basis of this project proposal.

III. Project Objectives, Focus, Scope and Approach

Objective

9. The objective of the project is to develop a principles-based framework to guide PAs’ conduct when providing tax planning and related services to employing organizations and clients, thereby maintaining the Code’s robustness and relevance as a cornerstone of public trust in the global accountancy profession.

Scope

10. The scope will encompass:
 - (a) Part 2 – Professional Accountants in Business; and
 - (b) Part 3 – Professional Accountants in Public Practice.

Consideration will be given to the need for any enhancements to the provisions in Part 1 – Complying with the Code, Fundamental Principles and Conceptual Framework.

11. The provisions to be developed will be scalable across individual and corporate taxpayers (from small- and medium-sized enterprises (SMEs) to large publicly traded multi-national entities).
12. PAs' responsibilities when they encounter circumstances involving actual or suspected unlawful tax evasion are addressed under the NOCLAR provisions of the Code (Sections 260 and 360). This project will consider appropriate references to the NOCLAR provisions.

Focus

13. While a contextual understanding of tax planning methods or approaches is required for this project, the focus will be on PAs' ethical conduct.
14. The project will not analyze the merits of any particular tax positions or tax schemes planned or adopted by individual or corporate taxpayers. Equally, the project will not judge the merits of the tax regimes or strategies of jurisdictions.

Approach

15. In developing the principles-based framework, the project will pursue the recommendations set out in the final TPWG report:
 - At an overarching level, draw the appropriate linkages to provisions in the Code that speak to why businesses, governments and other organizations involve PAs in a broad range of areas and PAs' responsibility to act in the public interest in the context of tax planning services, i.e.:
 - The particular aspects of tax planning services that contribute to PAs' role, the sustainability of businesses, and the profession's reputation at large in the context of public perceptions and expectations.

In this regard, while the project will analyze reputational risks from the profession's perspective, it will not deal with the broader theme of tax morality.⁵ However, the development of principles and a clearer delineation of the "gray area" of tax planning from an ethical perspective might assist in mitigating concerns about tax morality.
 - PAs' responsibility to comply with the fundamental principles (FPs) and the types of threats to such compliance that might be created in tax planning circumstances.
 - PAs' responsibility to exhibit the mindset and behavioral characteristics expected of them in accordance with the Role & Mindset provisions of the Code. Within the context of tax planning, this might include guidance elaborating on the relevance and applicability of behavioral concepts and principles such as strength of character and having an inquiring mind; and expectations of PAs to promote an ethics-based culture within their organization.
 - PAs' responsibility to respond to non-compliance with laws and regulations (NOCLAR) or suspected NOCLAR when they encounter information that suggests tax planning

⁵ Tax morale, as defined by the [OECD](#), is the intrinsic motivation to pay taxes. This is a vital aspect of the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues.

might have “stepped over the line” into an actual or suspected breach of tax laws and regulations.

These linkages might individually or together speak to the issues of fairness and accountability.

- At a practical level:
 - Provide guidance to assist a PA in identifying what might be deemed acceptable or unacceptable tax planning behavior. Given parallels with inducements that fall in a gray area from an ethical perspective, the project will consider the approach taken in the Code with respect to navigating circumstances involving inducements, e.g.:
 - Understand the applicable tax laws and regulations, including as far as possible the legislative intent, and comply with them.
 - Apply a judgment akin to an “intent test,” i.e., the underlying rationale or intent for the particular tax scheme, structure or transaction, taking into account a reasonable and informed third party’s perceptions. In this regard, the project will develop guidance on indicators of what might be deemed acceptable vs unacceptable tax planning, drawing on the work done by other organizations.
 - If there is no intent to promote unacceptable tax planning, provide guidance on applying the conceptual framework to the tax planning facts and circumstances, i.e., what types of threats might be created and what actions, including safeguards, might address the threats. This might include guidance to navigate situations where the legislative intent behind tax laws and regulations is uncertain.
 - Address circumstances where there might be undue pressure, whether from management or from a client, to skirt the boundaries of what might be deemed acceptable tax planning. Linking to the provisions of the Code addressing pressure to breach the FPs might be appropriate in this regard.
 - Recognize that an inducement might be offered to achieve certain tax outcomes in strict non-compliance with tax legislation. Linking to the provisions of the Code addressing inducements might be appropriate in this regard.
 - Provide guidance with respect to when communication with management or those charged with governance would be appropriate, including as part of an escalation process, and the matters or concerns that might be communicated.
 - Provide guidance on when and with whom to consult (internally or externally), which might be as part of specific actions to address identified threats.
 - Address considerations relating to transparency balanced against PAs’ duty of confidentiality under the Code, including the circumstances in which transparency would be appropriate or justified (e.g., as a safeguard to address threats, to disclose risks from uncertainties, or to disclose intent), when informed consent for disclosure should be obtained in the case of clients, to whom disclosure might be made and when, and the matters that might be disclosed.
 - Address any documentation expectations for PAs.

16. The project will explore developing suitable terminology that would support building of the framework and facilitate stakeholders' understanding and use of the framework.
17. In developing the provisions for the Code, global applicability will be an important consideration, given the wide variety of tax laws, practices and customs around the world.

Non-authoritative Material

18. As the project evolves, opportunities might be identified for the IESBA to commission non-authoritative material to support and promote adoption and implementation of the principles-based framework in the Code. If so, the project will develop recommendations for the IESBA's consideration, including potential collaboration with IFAC and others.

Consultation with Stakeholders

19. The project will involve consultations with various stakeholders at appropriate points during the development of the principles-based framework, including:
 - The IESBA Consultative Advisory Group (CAG)
 - Regulators in the G20 including tax authorities
 - National standard setters (NSS)
 - IFAC, IFAC PAIB Advisory Group, and IFAC Small and Medium Practices (SMP) Advisory Group
 - OECD
 - The investor, preparer (i.e., financial statements) and corporate governance communities
 - Professional accountancy organizations, especially those in the G20
 - Accountancy firms
 - Academia
 - The legal profession
 - Other professional organizations with a nexus to the topic

IV. How the Project Serves the Public Interest and Impact Analysis

How the Project Serves the Public Interest

20. Key public interest outcomes this project seeks to achieve are:
 - (a) Promoting consistent, ethical tax planning conduct and practice by PAs through a principles-based framework and guidance;
 - (b) Raising awareness about risks associated with unacceptable tax planning to employing organizations, clients (individuals or corporate), and the profession; and
 - (c) Promoting the ESG-related principles of fairness, accountability and transparency through guiding PAs' conduct when involved in tax planning activities.

Impact Analysis Considerations

21. As the project advances, costs and benefits will be an important consideration as the IESBA evaluates options and the practical impact of any potential changes to the Code. At a general level, however:
- The new standard is expected to benefit many stakeholders through clear and robust principles and guidance to inform and steer PAs' conduct when performing tax planning activities. These stakeholders include:
 - Investors, taxpayers, NSS, tax authorities, preparers, those charged with governance (TCWG), and policy makers.
 - The global accountancy profession.
 - Society at large.
 - There will be costs associated with adoption and implementation at the national level and within firms, including translation, awareness-raising and training.
22. The project will be especially mindful of the importance of avoiding unnecessary complexity, which may undermine understandability and clarity, given the wide variety of tax regimes and practices around the world.

V. Implications for any Specific Persons or Groups

23. The project has implications for:
- NSS and professional accountancy organizations that have adopted the Code or use it as a basis or a benchmark for their own standards.
 - Tax authorities in relation to their interactions with PAs.
 - Firms that conform their policies and methodologies to the Code or are otherwise subject to national standards based on the Code.
 - International and regional organizations with a policy-making mandate or significant influence in the area of tax planning, including IFAC, OECD and the European Commission.
 - Individual PAPPs and PAIBs.
 - Preparers and TCWG in relation to their interactions with tax authorities.
 - The academic and educational communities in relation to teaching professional ethics.

VI. Development Process, Project Output and Project Timetable

Development Process

24. The project will follow the IESBA's due process, including seeking input and advice from the IESBA CAG.

Project Output

25. It is anticipated that the output of the project will be a principles-based framework encompassing Parts 2 and 3 of the Code. The project does not preclude the identification of consequential or conforming amendments to other parts of the Code, especially Part 1.

26. Depending on the issues identified, the project Task Force may bring forward other relevant matters for the IESBA's consideration. These may include recommendations for the development of non-authoritative material or issues to be addressed as part of future standard-setting projects.

Project Timetable

27. Subject to the IESBA's approval of the project proposal, this project will commence immediately. The specific project milestones and outputs will depend on the matters that the project Task Force ultimately determines are appropriate to address as part of the project, and the priorities assigned to those matters.
28. The table below provides indicative timing for the project up to and including approval of an Exposure Draft.

Timing	Milestone
September 2021	Discussion of project proposal with IESBA CAG
	IESBA approval of project proposal
December 2021	Update to IESBA
March 2022	Discussion of issues with IESBA CAG and IESBA
June 2022	Discussion of issues with IESBA
September 2022	First read of proposals to IESBA CAG and IESBA
December 2022	IESBA consideration and approval of Exposure Draft (ED)
June 2023	High-level update to IESBA
September 2023	Discussion of significant matters raised on ED and Task Force responses with IESBA CAG
	Full review of ED responses and first read post-exposure with IESBA
December 2023	IESBA approval of final pronouncement

VII. Resources Required

29. A project Task Force consisting of four IESBA representatives, with an IESBA member as Chair.
30. IESBA Staff will provide support to the project Task Force.

VIII. Relevant Sources of Information that Address the Matters Being Proposed

31. Relevant sources of information include:
- The final TPWG report.

- IFAC guide, [*A Guide for Professional Accountancy Organizations – Developing Good Practices for Members Providing Tax Advice*](#)
- Relevant ethics standards or other literature developed by NSS.
- Research, thought leadership or other literature published by professional accountancy organizations, the governing bodies of other professions, tax authorities, multilateral organizations, academics, and others on the topic of tax planning.