

Meeting: IESBA CAG

Meeting Date: September 11, 2023

Agenda Item

G2

Report – Back

Tax Planning and Related Services

Objectives of Agenda Item

1. To receive a report back on the September 2023 CAG discussion.

Task Force

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

Project Status since September 2023 and Timeline

3. During the [December 2023](#) meeting, the Tax Planning Task Force (TPTF) presented the IESBA with a final read of the proposed new sections, Sections 280 and 380, to the Code for approval.

Report Back on September 2023 CAG Discussion

4. [Appendix 1](#) to this paper includes extracts from the draft minutes of the September 2023 CAG meeting¹ and an indication of how the TPTF or IESBA has responded to CAG Representatives' comments.

¹ The draft minutes will be circulated to CAG representatives for their offline comments and will be shared with CAG Chair subsequently.

Appendix 1

Below are extracts from the draft minutes of the September 2023 CAG meeting and an indication of how the Tax Planning Task Force or the IESBA has responded to the CAG's comments.

Matters Raised	Task Force/IESBA Responses
DESCRIPTION OF TAX PLANNING	
Dr. Norberg expressed his support for the Task Force's direction in adopting a neutral term to describe Tax Planning as the description needs to be adopted globally. He added that the strategy to focus more on the general provision of tax planning advisory services rather than the narrower scope of aggressive tax planning is appropriate.	Support noted.
Ms. Meng noted her support for the description of tax planning and the focus on tax efficiency presented by the Task Force.	Support noted.
RELATED SERVICES	
In relation to the examples of related services, and specifically regarding a related service to assist the client in resolving a dispute with the tax authority on the tax planning arrangement, Mr. Hansen requested that the Task Force reconsider the wording "dispute" as it seemed too strong. He noted that a related service is not restricted only to matters that would arise from a dispute between the tax authority and the client. He suggested that alternative wording, such as "disagreement," be considered.	The TPTF considered the point in developing the agenda material for the December 2023 IESBA meeting. The TPTF is of the view that the reference to a tax dispute is only an illustrative example of a related service. A dispute generally means that the disagreement is quite significant, and so it might need the professional accountant's (PA) involvement, as opposed to a minor disagreement that might be readily addressed by the client or employing organization. Therefore, the TPTF does not propose further revisions.
ROLE OF PA IN ACTING IN THE PUBLIC INTEREST	
Dr. Lawal Danbatta suggested clarification of the phrase "tax minimization arrangements" to avoid negative connotations associated with tax evasion. Mr. Hansen agreed, noting that the phrase refers to tax planning through specific arrangements rather than the illegal act of tax evasion itself.	<p>The TPTF considered the points in developing the agenda material for the IESBA December 2023 meeting.</p> <p>The TPTF is of the view that "tax minimization" is a neutral term and does not connote tax evasion. It is legitimate for all taxpayers to seek to minimize their tax burden within the bounds of laws and regulations.</p>

Matters Raised	Task Force/IESBA Responses
Dr. Norberg cautioned the Task Force against assigning a prescriptive term to define what is in the public interest. With regard to tax evasion, he noted that it may not be understood in the same way in all jurisdictions. He expressed his support for the approach undertaken by the Task Force. Ms. Blomme concurred with Dr. Norberg.	Support noted.
Ms. Peters shared concern about referencing both the client and the public interest, as they may not be aligned in terms of interest.	During the meeting, Prof. Poll clarified that the reference pertains to PAs who provide tax advisory services, as opposed to an auditor who is responsible to both the client and the investors. The TPTF is of the view that PAs have a role in assisting clients as they navigate complex tax laws and regulations while also helping them meet their legal obligations and pay their fair share of tax. Assisting clients in this way is unquestionably in the public interest.
CREDIBLE BASIS	
<p>Ms. Blomme noted her support for the Task Force's direction with respect to the principle of establishing a credible basis. She encouraged further guidance on how this can be translated into practice.</p> <p>Dr. Norberg concurred with Ms. Blomme. He noted that one example of a credible basis situation is where a tax planning practice has become generally accepted even though there is no tax ruling on the matter.</p>	<p>Support noted.</p> <p>The TPTF believes that the provisions already include extensive guidance (e.g. on factors to consider) to assist PAs in exercising appropriate professional judgment in applying the principle.</p>
Dr. Manabat complimented the work of the Task Force and suggested that the Task Force clarify circumstances involving the PA, who may be engaged in dual roles. For example, the Task Force was asked to consider whether there would be a threat to the PA's ability to comply with the fundamental principles if the PA had been engaged to provide tax planning advice involving a tax scheme that the PA had previously been engaged by the tax authority to develop.	During the meeting, Prof. Poll shared his initial view that there are instances where PAs are engaged as policy advisors on tax planning strategies by the government and later find themselves providing advice to the client on that tax planning strategy. He noted that compliance with the fundamental principles of the Code is of utmost importance, especially the PA's ability to remain objective and confidential in their ethical conduct. Recent events reflecting this type of behavior have become a matter of significant concern for the IESBA, such that the Board felt it

Matters Raised	Task Force/IESBA Responses
	<p>was necessary to issue a public statement emphasizing the critical importance of ethical behavior for all PAs and their obligations to adhere to the fundamental ethical principles of the Code.</p> <p>To more clearly and explicitly respond to this type of situation, the TPTF is proposing adding an example of a self-interest threat to the list of types of threats that might be created in the context of tax planning in paragraph 380.19 A1:</p> <p>“A self-interest threat might be created when a professional accountant advises a government agency on tax policy, laws or regulations and the confidential information the accountant obtains from that work would be valuable in advising other clients on their tax planning arrangements.”</p>
<p>Ms. McGeachy-Colby supported the Task Force’s proposals and encouraged it to provide further examples of applying proposed Sections 280 and 380.</p>	<p>Support noted.</p> <p>The TPTF believes that the proposals already include fairly extensive guidance for PAs in both sections. Adding further guidance in those sections would risk making them prescriptive and unbalanced in the context of a principles-based Code.</p>
DISAGREEMENTS	
<p>Dr. Norberg supported the proposed revision to paragraph R380.21(b), which addresses concerns raised about confidentiality when disclosing information to tax authorities in jurisdictions where disclosure is permissible and applicable.</p>	<p>Support noted.</p>
DOCUMENTATION	
<p>Ms. Blomme shared her view that documentation should be required rather than encouraged, although she understands the Task Force’s position on this point. She encouraged the Task Force to take inspiration from the Professional Conduct in Relation to Taxation (PCRT) guidance issued in the United Kingdom, which states that documentation is essential for PAs to enable them to substantiate their work if the tax authorities or a</p>	<p>The TPTF considered the points in developing the agenda material for the IESBA December 2023 meeting. The TPTF notes that the issue of documentation has been discussed at length by the IESBA during the development of the Exposure Draft.</p> <p>The TPTF will recommend that the IESBA carefully explain its rationale for the position in the</p>

Matters Raised	Task Force/IESBA Responses
court challenges them. Ms. Blomme also mentioned that it is both in the public interest and the client's interest that PAs document their work on a timely basis so that all substantive information relating to the transaction is captured. Mr. Hansen concurred with Ms. Blomme.	Basis of Conclusion document.
Mr. Thompson expressed general support for the Task Force's revisions to Sections 280 and 380.	Support noted.
Dr. Norberg stated his support for the Task Force's direction regarding documentation, noting that requiring documentation is a jurisdiction-specific matter. He was of the view that if documentation were to be a requirement, there should be an impact assessment.	Support noted.
Dr. Manabat supported the Task Force's proposal regarding documentation. She suggested that the Task Force consider a stronger encouragement for PAs to document, adding that this would enable PAs to better assist their clients in managing the risks involved.	<p>Support noted.</p> <p>The TPTF believes that the provisions on documentation in the revised texts of Sections 380 and 280 amount to a clear and strong encouragement to PAs to document.</p>