

18 May 2023

Submitted via the IESBA website using [link](#) provided in Exposure Draft

Dear Mr Siong,

**Subject: Response to the IESBA Exposure Draft: Proposed Revisions to the Code Addressing Tax Planning and Related Services**

Chartered Accountants Ireland (“the Institute”) is a membership body representing over 31,000 professional accountants in over 90 countries throughout the globe. We are a member of the International Federation of Accountants (IFAC). The Institute is committed to acting in the public interest, and to promoting and ensuring high professional and ethical standards, which enhance the confidence of users and employers of the services of Chartered Accountants. Chartered Accountants are required to observe high standards of conduct and play their part in re-enforcing public belief in their professional integrity. Our members are required to comply our Code of Ethics which adopts the Code of Ethics for Professional Accountants developed by the International Ethics Standards Board for Accountants (IESBA).

Dr Brian Keegan, Director of Advocacy and Voice ([brian.keegan@charteredaccountants.ie](mailto:brian.keegan@charteredaccountants.ie)) or Níall Fitzgerald FCA, Head of Ethics and Governance ([niall.fitzgerald@charteredaccountants.ie](mailto:niall.fitzgerald@charteredaccountants.ie)) at Chartered Accountants Ireland may be contacted if any further details in relation to any points made in this submission are required.

Our full response to the request for specific comments is detailed in appendix I. In addition, we would like to emphasise the following key observations:

- The IESBA Code of Ethics for Professional Accountants is currently over 300 pages and expected to increase further in size to better address areas such as sustainability and technology. While there are areas where further guidance would be welcome, there are opportunities in this exposure draft to embed some of the considerations and requirements within current sections of the Code including the Conceptual Framework.
- The definition of “*tax planning*” is sufficiently broad on its own and we recommend the removal of “*and related services*”. Some of the activities described as ‘related’ are more closely associated with routine compliance, such as the filing of tax returns and representing clients on compliance issues using Tax Authorities’ dispute resolution mechanisms.
- We have highlighted, in appendix I, proposals where there can be additional emphasis on the primacy and responsibility of local tax authorities in the enforcement of tax compliance, the policing of appropriate tax planning and their independent mechanisms to be first arbitrator in making a ruling rather than a court of law.
- We have provided detailed feedback on the “*credible basis*” and “*stand-back*” tests, including suggestions for additional guidance and positioning of these considerations as part of the Conceptual Framework. Two additional points are prompted by these tests:

1. While we welcome the IESBA initiative to further strengthen ethical standards and address public interest concerns, we believe that in doing so it can impact the competitiveness of the accountancy profession, and of the capacity of the profession itself to police and enforce new standards. In many jurisdictions, including Ireland and the United Kingdom, there is effective regulation of tax advisory services by the domestic government or its agencies, for instance by licensing tax advisers (as is the case in Germany). We would like to see a level playing field in respect of high standards of ethical behaviour.
  2. We would like to also highlight the risk and unintended consequence of driving tax planning services to unregulated service providers where ethical standards may not be as rigorous as in the accounting profession in some jurisdictions. As acknowledged by the IESBA in the exposure draft, professional accountants provide an important role in assisting clients and employing organisations navigate complex local and global tax requirements. It would be an unfortunate if competent and capable professional accountants no longer provide these services due to additional complexity and additional risk exposure in adhering to the new requirements.
- We have provided, within appendix I, suggested wording and amendments to some of the proposals in areas such as identifying threats and implementing adequate safeguards, the consideration of multiple uncertainties, requirements to consider resignation and additional consideration in respect of the role of professional accountants in business (PAIB). We hope you find the suggestions helpful, thought-provoking, and supportive of the overall objective to ensure high standards of ethics and public interest consideration in the accountancy profession.

Thank you for the opportunity to comment on these proposals and we are available for further details or discussion on the contents of this letter.

Sincerely,



Dr Brian Keegan  
Director, Advocacy and Voice

## Appendix I - Response to request for specific comments

### **Proposed New Sections 380 and 280**

#### ***1 - Do you agree with the IESBA's approach to addressing TP by creating two new Sections 380 and 280 in the Code as described in Section VI of this memorandum?***

The creation of two new sections in the Code that is specific to a single category of service provided by Professional Accountants' is a new development. The current structure of the IESBA Code of Ethics establishes the Fundamental Principles and Conceptual Framework at the outset and proceeds to address specific requirements and considerations for Professional Accountants in Public Practice (PAPPs) and Professional Accountants in Business (PAIBs) in the context of threats to those principles and conceptual framework.

Within Sections 380 and 280, many subsections cross reference existing requirements and application material in the Code that already addresses the considerations necessary. Examples of sections cross-referenced include:

- The Fundamental Principles (sections 111 to 115)
  - The Conceptual Framework (Section 120)
- PAIB:
- Responding to non-compliance with laws and regulations (Section 260)
- PAPP:
- Professional Appointments (Section 320)
  - Fees and Other Types of Remuneration (Section 330)
  - Responding to non-compliance with laws and regulations (Section 360)

The specific requirements for Tax planning could be embedded within other existing sections of the Code of Ethics such as:

- Acting with sufficient expertise – Section 230
- Pressure to breach the fundamental principles – Section 270

The current IESBA Handbook of the International Code of Ethics for Professional Accountants (including International Independence Standards) is more than 300 pages. Adding additional sections further increases size and complexity, two risk factors that can result in poorer adherence to requirements. We suggest size and complexity can be reduced by embedding the additional requirements and considerations for tax planning within the existing sections of the Code of Ethics.

We note and support the approach to embed additional content within Section 321, Second Opinions.

### **Description of Tax Planning and Related Services**

#### ***2 - Do you agree with IESBA's description of TP as detailed in Section VII.A above?***

Related Services:

Tax planning is a broad term that is made broader by the addendum of “related services”. Some of the activities described as ‘related’ are more closely associated with routine compliance (primarily the filing of tax returns) than planning. For example, assisting to resolve a dispute with a tax authority is an activity that seeks to regularise the tax affairs of an individual or entity, engage constructively with the tax authority to provide information and clarification and ultimately agree a compliant position. There is no tax planning taking place at this stage. This is a common understanding in Ireland and the United Kingdom where Tax Authority officials are not permitted (by their own rules) to raise complaints to relevant accountancy bodies, where the topic of complaint has arisen in the context of a dispute resolution process and the accountant is acting as an agent. Much tax dispute resolution arises in practice from compliance issues, rather than from tax planning issues.

The scope of this IESBA project states that it “*will not judge the merits of the tax regimes or strategies of jurisdictions, or enter into debates about tax policy, but will consider the importance of developing provisions that are jurisdiction neutral*”. An activity is either tax planning or it is not as defined by any of the organisations referred to in the Exposure Draft, e.g. OECD, or as may be defined by any jurisdictions tax regime. Broadening the focus of the ethical provisions specific to tax planning to other types of services, creates further ambiguity which may result in poorer adherence to the core issue of tax planning itself.

All professional accountants’ activities are adequately addressed by the current and more widely understood Five Fundamental Principles and Conceptual Framework of the Code of Ethics’. We would recommend the focus of these additional provisions only on Tax Planning Services and to remove sections 380.5 A3 and 280.5 A3 in relation to “Related Activities”.

### **Role of the PA in Acting in the Public Interest**

#### ***3 - Do you agree with IESBA’s proposals as explained in Section VII.B above regarding the role of the PA in acting in the public interest in the context of TP?***

##### Role of the Professional Accountant acting in the Public Interest:

We agree with the acknowledgement of the significant role Professional Accountants play in supporting and enhancing the effectiveness of the tax system partly described in 380.4 A1 and 280.4 A1. We would also emphasise that Professional Accountants have a role in supporting compliant taxpayer behaviour and making complex national and global tax systems workable for individuals and businesses of all sizes, including those with cross-border tax activity. This important work by Professional Accountants also reduces the risk of unexpected tax costs for all taxpayers and ensures higher compliance rates and collection of tax.

We also acknowledge the public concerns arising from understanding who is considering the public interest in tax planning activity. The interpretation of the tax legislation mentioned in the Exposure Draft is an important mechanism to ensure consideration of the public interest, and the professional competence of Professional Accountants is central to ensuring proper application of those tax laws. However, while it is acknowledged later in the Exposure Draft, it would be valuable to also acknowledge in this section that some jurisdictions, e.g. Republic of Ireland and the United Kingdom, have also implemented additional regulatory mechanisms such as general tax anti-avoidance legislation, that seeks to defeat certain tax avoidance schemes.

Role of courts and tax authorities:

We agree with 380.4 A3 and 280.4 A3 in that “*it is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations*”. However, this general statement may be better placed in the introduction, following 380.1 and 280.1, so that it is presented in the context of the Professional Accountants’ other requirements that apply for the provision of any professional service, including tax services. We would also recommend emphasising the primacy and responsibility of local tax authorities for some jurisdictions in the enforcement of tax compliance, the policing of appropriate tax planning and any independent mechanisms to be first arbitrator of rulings or interpretation of tax requirements.

Link to Fundamental Principles:

While we agree with much of 380.4 A2 and 280.4 A2 we propose the final point in the paragraph may be more affirmative if worded:

“*However, when accountants provide such assistance, threats to compliance with the fundamental principles may arise from the development and use of ~~it might involve~~ certain tax minimization arrangements that, although are not expressly prohibited by tax laws and regulations., ~~might create threats to compliance with the fundamental principles.~~*”

Certain tax minimisation arrangements:

It would also be useful if the IESBA were to provide examples of “*certain tax minimisation arrangements*”.

**Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement**

**4 - Do you agree with the IESBA’s proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?**

Anti-avoidance laws and regulations and credible basis test:

In terms of the extent to which a credible basis test is performed, we welcome IESBA’s acknowledgement that anti-avoidance laws and regulations apply in some jurisdictions, as is the case in Ireland and the United Kingdom, and where they exist that the professional Accountant must comply or advice compliance with them (380.6 and 280.6).

Inclusion of credible basis test as part of conceptual framework:

We agree with the IESBA emphasis in 380.11 A2 and 280.11 A2 the requirement for professional judgment when determining whether a credible basis exists. Also, as highlighted in 380.10 A1 and 280.10 A1, compliance with the above requirements is further enhanced by Section 120 of the Code of Ethics, the requirement for a professional accountant to have an inquiring mind and exercise professional judgment when considering the specific facts and circumstances relating to the tax planning activity. Consistent with our response to question 1 above, we recommend incorporating consideration of a credible basis as part of the Conceptual Framework of the Code of Ethics where professional judgment is comprehensively addressed.

We agree with the IESBA conclusion that “*it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold as doing so would convey a false sense of accuracy*”, especially given that what is a credible basis in laws and regulations will vary from jurisdiction to jurisdiction.

Responsibilities of all professional accountants:

The requirement 380.9 falls under the heading of applying to all professional accountants. However, some of the content is specific to Professional Accountants in Public Practice (PAPP). Some differences are notable when compared to the requirement 280.9, applying to professional accountants in business. Therefore, the headings for each of the sections these requirements fall under is confusing and may be best described as “**Other responsibilities for professional accountants in Public Practice**” (in respect of section 380) and “**Other responsibilities for professional accountants in business**” (in respect of section 280).

***5 - Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?***

No further observations to make.

**Consideration of the Overall Tax Planning Recommendation or Advice**

***6 - Do you agree with the proposals regarding the stand-back test, as described in Section VII.F above?***

‘Stand-back’ test as part of the Conceptual Framework:

The ‘stand-back’ test (consideration of the overall tax planning advice) is a practical consideration, and we agree that it serves the public interest to consider the broader impact of a decision or arrangement. However, this is relevant to all decision-making and notwithstanding the IESBA’s current ongoing work to develop proposals in respect of sustainability requirements and considerations for the Code of Ethics, we propose this test be applied generally as part of the Conceptual Framework in section 120 of the Code. This recommendation would be consistent with the IESBA’s own acknowledgment “*that this consideration will assist the professional accountant in complying with the fundamental principles of professional behaviour*” and is also consistent with the ‘Role and Mindset provisions’ and the application guidance for considering “*the interests of other stakeholders when performing professional activities*” described in 100.6 of the Code.

Limitations of the ‘stand-back’ test:

We also agree with the practical limitations of this test highlighted by the IESBA and that it is not intended for a “*professional accountant to carry out research on the economic consequences other than giving the matter due consideration based on the Professional accountant’s general awareness and understanding of the current economic environment in the context of tax planning*”. The stand-back test proposes considerations of matters that can be subjective and different conclusions can be arrived at depending on an individual’s morals or belief system. However, we note the IESBA preference to not merge “*the boundaries of ethical behaviour and moral judgement*” and that the Code should not deal with tax morality.

The application guidance in 380.12 A1 and 280.12 A1 is useful, however it is one-sided in considering the potential downside to tax authorities. There is an upside for the public interest that should also be considered,



for example, to consider the benefit for the economy and society as intended by the legislature when creating the tax incentive or provision.

Informing the client or employing organisation:

The requirement 380.13 and 280.13 appears to be duplicate of requirements 380.19 and 280.19. Please see our comments in relation to this at **question 9**. Furthermore, if the professional accountant in public practice decides not to “*advise on a tax planning arrangement*”, this decision may be taken as part of professional appointment requirements and considerations set out in section 320 of the Code.

## **Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone**

### ***7 - Do you agree with the IESBA’s proposals as outlined in Section VII.G above describing the gray zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?***

Uncertainties arising in assessment credible basis:

Please see our comments to **question 4** and recommendation to include application guidance 380.15 A1 to 380.15 A2 and 280.15 A1 to 280.15 A2 as a continuation of guidance arising in respect of actions outlined under 380.11 A3 and 280.11 A3.

Multiple uncertainties:

380.15 A1 to 380.15 A2 and 280.15 A1 to 280.15 A2 prompt sufficient consideration of various circumstances that may give rise to uncertainty. However, it is only reasonable to expect the professional accountant to make their client or employing organisation aware of any risks or uncertainties pertaining to the tax planning arrangement that they can reasonably expected to be aware of. The ‘third party test’ outlined in the conceptual framework would be a suitable proxy for ‘reasonableness’.

The IESBA acknowledge in their introduction to the Exposure Draft the increased complexity and therefore relevance of further consideration in situations, e.g. cross border transactions, where there is ambiguity regarding what is acceptable. Application guidance 380.15 A2 and 280.15 A2 highlights some of these circumstances but we would also add that multiple conflicting uncertainties can exist.

Discussing with the client or employing organisation:

We agree with the requirement to discuss the uncertainties with the client (380.16) and while the subsequent application guidance in 380.16 A1 is helpful, the uncertainty may remain even after these types of discussions. It is important to distinguish between the professional accountants responsibly to communicate the uncertainties they have identified and the internal governance and risk management responsibilities of the client which will assess those uncertainties in context of their circumstances and ultimately decide whether to proceed with the tax planning advice.

The situation can be different for a professional accountant in business who may not always have access to management or those charged with governance and it is also possible that an organisation’s culture or governance mechanisms may frustrate such access. We recommend inclusion of “direct report” to 280.16 as follows: “*Where there is uncertainty as to whether a proposed tax planning arrangement will be in compliance*

with the relevant tax laws and regulations, a professional accountant shall discuss the uncertainty with **their direct report for the assignment and/or** management and, if appropriate, those charged with governance”

**8 - In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on: (a) The types of threats that might be created in the gray zone; (b) The factors that are relevant in evaluating the level of such threats; (c) The examples of actions that might eliminate threats created by circumstances of uncertainty; and (d) The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate?**

Self-interest, advocacy or intimidation threat:

- The application guidance in 380.17 A1 and 280.17 A1 is useful in assisting the professional accountant apply the Conceptual Framework in context of tax planning services.
- We observe in 380.17 A1 that “*Self-interest and advocacy threats might be created when a professional accountant advocates a client’s position in a tax planning arrangement before a tax authority when there are indications that the arrangement might not have a credible basis in laws and regulations*”. This does not account for a legitimate dispute resolution where the professional accountant is seeking to resolve a difference of opinion on compliance and the purpose of the advocacy is to follow the tax authorities procedures to resolve the situation.
- We recommend inclusion of “are perceived to” in the point in 280.17 A1, “*A self-interest threat might be created when a professional accountant’s career advancement prospects **are perceived to** depend on developing a creative tax planning arrangement for which the interpretation of the relevant tax laws and regulations is unclear*”. Career development prospects are not always explicitly linked to achieving a single outcome.
- We recommend inclusion of “directly” in the point in 280.17 A1, “*A self-interest threat might be created when a professional accountant participates in an incentive compensation scheme **directly** impacted by the accountant’s design of a tax planning arrangement*”. The incentive compensation is more likely to be based on overall performance rather than the achievement of a single outcome. The Self-interest threat would be much higher if the scheme was directly impacted by the accountant’s design of a tax planning arrangement.
- Consistent with our response to question 7, we recommend inclusion of manager or supervisor in the point in 280.17 A1, “*Self-interest and intimidation threats might be created when a dominant owner, ~~or~~ leader, **manager or supervisor** of the employing organization exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant’s determination that there is a credible basis in laws and regulations*”. This makes it clearer for a professional accountant in business who may not report to or have access to senior leaders or business owners.

Elimination of threats:

- We recommend including an additional point under 280.17 A3, “**Obtaining advice from outside the employing organisation from an expert who has the necessary knowledge, skills and experience to advise on the proposed tax planning arrangement**”. Obtaining external expert advice is included as an example of an action that might eliminate threats for a professional accountant in public practice and it should equally apply for a professional accountant in business.

Safeguards to address threats:



- We note the safeguard in 380.17 A4 to provide “*full transparency about the tax planning arrangement to the relevant tax authorities*”. This is also a legal requirement in many jurisdictions, including Ireland and the United Kingdom, arising from anti-avoidance laws and regulations.

### **Disagreement with Management**

**9 - Do you agree with the proposals outlined in Section VII.I above which set out the various actions PAs should take in the case of disagreement with the client or with the PA’s immediate superior or other responsible individual within the employing organization regarding a TP arrangement?**

#### Responsibilities of Management and Those Charged with Governance (TCWG):

In providing our response to proposals in respect of disagreement with management it is important to also address proposals in respect of Responsibilities of Management and TCWG in application guidance 380.8 A1 and 280.8 A1. The scope of the Code of Ethics applies to Professional Accountants and while, in the context of 380.8 A1, the responsibilities of management and TCWG can be conveyed in an engagement letter agreed with a professional accountant in public practice, there is no formal mechanism for a professional accountant in business to obtain acceptance of these responsibilities outlined in 280.8 A1. Notwithstanding any jurisdictional statutory directors’ duties, members of management and TCWG who are not professional accountants are not obliged to consider this guidance. As a result, professional accountants in business may be unfairly held accountable for decisions or actions over which they have no authority or oversight.

### **Documentation**

**10 - Do you agree with the IESBA’s proposals regarding documentation as outlined in Section VII.J above?**

#### Risk assessment:

- We agree with the proposals, but we would recommend including in 380.23 A1 and 280.21 A1 a reference to risk management. For example, the third bullet point could read “*the nature of any risks and uncertainties*” or alternatively an additional bullet point may be added as follows: “*the key risks associated with the tax planning arrangement and how they are addressed*”.
- We would also recommend reflecting consideration of risk in 380.23 A2 and 280.21 A2, for example as part of the first bullet point: “*Develop the accountant’s analysis of the facts, circumstances, relevant tax laws and regulations, risk assessment and any assumptions made or changed*”.
- The IESBA notes in Section VII.J that documentation is not considered an ethics matter. However the risk of unethical behaviour or conduct is a risk management matter and therefore inclusion of risk as a consideration would be appropriate.

### **Tax Planning Products or Arrangements Developed by a Third Party**

**11 - Do you agree with the IESBA’s proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third-party provider?**

We have no comments on the application guidance provided.

### **Multi-jurisdictional Tax Benefit**

***12 - Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L above?***

- The guidance in 380.14 A1 – A2 and 280.14 A1 – A2 is useful but in the case of 380.14 A1 we recommend including “*in such circumstances and where the professional accountant is aware of the fact, while the client might be in....*”.
- We also recommend highlighting the OECD's principles of taxation, including effectiveness and fairness which involves ensuring taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation. 380.14 A2 and 280.14 A2 could include: “**Consider the application of globally accepted principles, such as the OECD principles of taxation, in the relevant jurisdictions and any official rules on double taxation and unintentional taxation.**”

**Proposed Consequential and Conforming Amendments**

***13 - Do you agree with the proposed consequential and conforming amendments to Section 321 as described in Section VII.M above?***

We agree with the conforming amendments to Section 321.