

Gabriela Figueiredo Dias
Chair
International Ethics Standards Board for Accountants (IESBA)
29 5th Avenue New York,
New York 10017

Submitted electronically

Brussels, 17 May 2023

Subject: ETAF comments on the IESBA exposure draft on ethical conduct in tax planning

Dear Ms Figueiredo Dias,

The European Tax Adviser Federation (ETAF) is pleased to provide its comments on the [exposure draft](#) on proposed revisions to the International Code of Ethics for Professional Accountants addressing tax planning and related services.

ETAF is a European umbrella organisation for 215 000 regulated tax professionals from France, Germany, Belgium, Romania, Hungary and Austria. ETAF members recognize and appreciate the importance and added value of enforceable professional codes, be it at national, European or international level. In this spirit, all ETAF Members signed a [“Charter of Regulated European Tax Advisers”](#) which outlines basic principles concerning the role and status of regulated tax advisers in the tax collecting process, lays down guidelines in the exercise of the profession and introduces appropriate control measures.

As some of our members organisations also represent professional accountants doing tax advice, we found it important and relevant for ETAF to take a stand. Moreover, when it comes to ethical conduct in tax planning and defending the role and value of our tax profession, we believe that all tax professionals should harmonize their voices. Going even further, we think that tax advisers, which are members of a professional organisation recognized by law and governed by public interest rules, should follow the proposed guidance.

This being said, please find below our general remarks on the proposed revisions to the Code as well as our answers to your specific questions.

Our general remarks

Recently public concerns have risen significantly about the role some tax professionals play in assisting tax avoidance with scandals like the Paradise and Pandora Papers leading to an increased public mistrust towards our tax profession. ETAF believes that proactive initiatives such as the one carried out by IESBA come at the right time and are necessary to regain public confidence.

At the same time, guidance on how to navigate in the grey zone of uncertainty when carrying out tax planning activities are much welcomed and will concretely help tax professionals in their daily work.

The IESBA work is also very enlightening in the framework of the future initiative [Securing the Activity Framework of Enablers \(SAFE\)](#) of the European Commission to be released in June 2023 and its expected definition of “aggressive tax planning”. We hope the IESBA will take into account recent developments, in particular the upcoming legislative plan at EU level, and frequently review its guidance so as to stay up to date.

Our answers to specific questions

Proposed new sections 380 and 280

→ *Do you agree with the IESBA’s approach to addressing tax planning by creating two new Sections 380 and 280 in the Code as described in Section VI?*

As stated above, we fully support the IESBA goal and therefore approve the creation of the two new sections 380 (for professional accountants in practice) and 280 (for professional accountants in business) in the Code.

Description of tax planning and related services

→ *Do you agree with IESBA’s description of tax planning as detailed in Section VII.A?*

We agree with the description of tax planning activities as “*a broad range of services designed to assist a client, whether an individual or an entity, in structuring the client’s affairs in a tax-efficient manner*”.

We find it balanced, neutral and appreciate the fact that it is accompanied by illustrative examples of tax planning services or activities mentioned in paragraphs 380.5 A2 and 280.5 A2.

Concerning paragraphs 380.5 A2 and 280.5 A2, we agree that minimizing the overall taxes can indeed be a motivation for a client. However, clients can also seek tax planning advice to get a complicated issue, such as tax affairs and international tax law, done in a good and workman like manner. In this regard, we believe that the wording “*to minimize their overall taxes*” should be rather replaced by a more neutral wording such as “*in tax issues*”.

If we were to add anything else, it would be more examples of related services in paragraphs 380.5 A3 and 280.5 A3, particularly those referring to handling the relationship between the client entity and the tax authority, such as assisting the client with its fiscal matters' procedures for example.

We consider that some new emerging services could also be added, such as the assistance with implementing and reporting for SAF-T purposes or services combining a significant digital component and a professional accounting and tax knowledge.

Role of the professional accountant in acting in the public interest

→ *Do you agree with IESBA's proposals as explained in Section VII.B regarding the role of the professional accountant in acting in the public interest in the context of tax planning?*

ETAF members fully support the recognition that professional accountants serve the public interest by helping to facilitate a more efficient and effective operation of a jurisdiction's tax system. For this reason, it is of utmost importance that tax planning and related activities are done by tax professionals who have the necessary professional knowledge and competency. We also welcome the recognition of the clients' responsibility to pay their legally assessed tax dues.

While we understand the reasoning of IESBA for choosing not to attempt to define the public interest, we do believe that some more clarity regarding how to interpret the public interest in the context of tax planning would be welcomed.

Basis for recommending or otherwise advising on a tax planning arrangement

→ *Do you agree with the IESBA's proposals regarding the thought process for professional accountants to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a tax planning arrangement to a client or an employing organization as described in Section VII.E?*

We generally agree that a professional accountant should provide tax advice on a tax planning arrangement only after concluding that there is a credible basis in tax laws and regulations and that this process will require him to exercise his professional judgment. In our view, the proposed revision demands nothing more here than a diligent exercise of the profession.

We also welcome the examples of actions to be undertaken to determine the credible basis listed in paragraphs 380.11 A3 and 280.11 A3.

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

Our members would only recommend having more guidance for evolving situations. For example, they reported some cases when the tax authority's interpretation has changed over the years, without however any change in the relevant facts and circumstances. It is also

possible that, after a period of silence, the tax authority expresses an opinion which may be divergent with the professional accountant's initial one.

Consideration of the overall tax planning recommendation or advice

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

ETAF supports in principle the proposed stand-back test, which would require the professional accountant to also assess the reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the tax planning arrangement.

However, we fear that determining the wider economic consequences could prove to be very difficult in some cases and consequently highly burdensome for professional accountants.

Describing the grey zone and applying the conceptual framework to navigate the grey zone

→ *Do you agree with the IESBA's proposals as outlined in Section VII.G describing the grey zone of uncertainty and its relationship to determining that there is a credible basis for the tax planning arrangement?*

ETAF acknowledges the difficulty for professional accountants, and tax professionals in general, to navigate through this grey zone of uncertainty, and therefore welcomes the IESBA proposals.

We agree with the IESBA that in such situations the professional accountant should explain to the client the risks of an uncertain tax planning arrangement. We believe that if there is a chance that the proposed arrangement could be not fully compliant with the relevant tax laws and regulations, the client should know and the professional accountant should assess the legal and financial risks involved.

Moreover, if the uncertainty about whether a proposed tax planning arrangement will be in compliance with the relevant tax laws and regulations is caused by insufficiently clear tax standards, we believe that discussing the nature of the uncertainty not only with clients but also with tax authorities would minimize the risk for the client but could also be seen as an example of the professional accountant acting in the public interest.

→ *In relation to the application of the conceptual framework as outlined in Section VII.H, is the proposed guidance on the following matters sufficiently clear and appropriate?*

- the types of threats that might be created in the grey zone,
- the factors that are relevant in evaluating the level of such threats,
- the examples of actions that might eliminate threats created by circumstances of uncertainty,
- the examples of actions that might be safeguards to address such threats.

We find the proposed guidance in all the listed matters sufficiently clear, detailed and appropriate.

As stated above, the IESBA will have to monitor recent developments in this area to make sure its guidance remains updated and most useful for tax professionals.

Disagreement with management

→ *Do you agree with the proposals outlined in Section VII.I, which set out the various actions professional accountants should take in the case of disagreement with the client or with the professional accountant's immediate superior or other responsible individual within the employing organization regarding a tax planning arrangement?*

While we generally agree with the IESBA proposals in case of a disagreement with management regarding a tax planning arrangement, we would like to make a couple of remarks on this point.

Concerning the paragraphs R380.19 to R380.21, we wonder if there should be any specific action that the professional accountant should do to follow up with the client's actions. The question is particularly relevant when it comes to situations where the client does not inform the professional accountant on how he will pursue some engagements or when there is a long period of time between the advice and the action of the client. Should there be obligations for the professional accountant, such as regularly checking with the client or verifying by himself the follow up actions taken by the clients?

Concerning paragraph R380.19, we believe that some specific provisions could be added to cover the case where the immediate superior of the professional accountant is himself a professional accountant.

Documentation

→ *Do you agree with the IESBA's proposals regarding documentation as outlined in Section VII.J?*

We fully agree with the importance of documentation as a quality and risk management matter and acknowledge the decision of IESBA to only encourage, and not require, professional accountants to prepare documentation, in order to be coherent with the approach to documentation taken in other parts of the Code.

While we agree with the IESBA guidance, we would like to point out that the exact form and extent of document can only depend on the particular circumstances of each case.

Tax planning products or arrangements developed by a third party

→ *Do you agree with the IESBA's proposals as detailed in Section VII.K addressing tax planning products or arrangements developed by a third-party provider?*

We consider that it is of utmost importance, from an ethical point of view, to have clear guidance when a professional accountant refers a client to a third-party provider of tax planning products or arrangements, or where a client approaches a professional accountant

for advice on a tax planning product or arrangement developed by a third party. We therefore fully agree that objectivity principles must be applied in these cases.

Multi-jurisdictional tax benefit

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

In the case of a multi-jurisdictional tax benefit, ETAF agrees in principle with the proposal to disclose to the relevant tax authorities the particular facts, circumstances and tax benefits derived from the transaction in the different jurisdictions.

However, we find that the consequences for the client if he refuses to notify the relevant tax authorities and what the professional accountant should do in such a situation are not clear. Should the professional accountant notify to the relevant tax authorities the particular facts, circumstances and the tax benefits if the client chooses not to?

Moreover, paragraphs 380.14 A1/280.14 A1 regarding a multi-jurisdictional tax benefit only refer to situations where the client complied with the legislation applicable in both jurisdictions and paragraph 380.5 A2 mentions advising an entity on structuring its international operations to minimize its overall taxes as an example of tax planning services. As a consequence, we wonder what would be the point in this case of notifying tax authorities about the absence of tax treaties or other differences in the laws applicable that allow the tax benefit?

This triggers more questions: should the professional accountant necessarily be involved in a tax planning service as described above to advise the client to notify the relevant tax authorities?

In our members' opinion, other tax planning services which are not requiring directly the professional accountant to advise on such transactions, but which allow the professional accountant to discover situations as those described in paragraphs 380.14 A1/280.14 A1, could face the same recommendation, i.e., to advise the client to disclose to the relevant tax authorities the particular facts, circumstances and the tax benefits derived from the transaction in the different jurisdictions.

Proposed consequential and conforming amendments

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

We have no particular comment.

We thank IESBA very much for the opportunity to engage in the discussion and comment on its exposure draft.

We hope that IESBA's proposals will meet the general approval and we are looking forward to the final pronouncement in December 2023.

Sincerely,

Philippe Arraou

ETAF President

A handwritten signature in black ink, appearing to be 'P. Arraou', written in a cursive style.

Notes

For further information on this letter, please contact: Marion Fontana, EU Policy Officer, marion.fontana@etaf.tax, Phone: +32 2 2350 105 | Mobile: +32 471 78 90 64

About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is set as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15th December 2015. It represents more than 215,000 tax professionals from France, Germany, Belgium, Romania, Hungary and Austria.