



18<sup>th</sup> May 2023

**Comments from the Malta Institute of Accountants to the proposed revisions to the Ethical Code addressing tax planning and related services**

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?

This is in principle welcome. However, as highlighted in the document, legislation is being considered at EU level to regulate tax advice and tax advisers. Hence, we recommend that the possible impact of the EU plans (and those of any other jurisdictions looking to do the same) to the proposed amendments to the Code are taken into consideration.

*Description of Tax Planning and Related Services*

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

As this document has highlighted, there are multiple definitions of TP already. We recommend that the definition is kept as close as possible to the OECD's definition, and while we understand and agree that "tax efficiency" is a more neutral term than "tax minimisation" we feel that the use of the word "structuring" is more charged than the OECD's choice of the word "arrangement of a person's ... affairs". The definition we would support is therefore:

*Tax planning comprises a broad range of [services / activities] designed to assist [a client, whether an individual or an entity / an employing organisation] in managing and administering better their affairs in a tax-efficient manner.*

*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?

No adverse comments.

*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?

No adverse comments.

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

No adverse comments.



*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?

In principle we agree that in exercising professional judgement as to the credible basis for tax planning arrangements, professional accountants need to have a general awareness of the wider economic consequences thereof on both the domestic and foreign tax base of the jurisdictions in which their client may operate.

However, in our view, the proposed stand-back test should only be introduced within the parameters of creating awareness for professional accountants in that any tax planning arrangements may result in tax consequences not only domestically but also in multiple foreign jurisdictions. Accordingly, it is recommended as general practise in exercising such professional judgement to suggest that clients must obtain tax advice in relation to all taxes i.e. foreign and domestic.

The introduction of the stand-back test should not result in an expectation on the professional accountant to understand all such tax consequences (both domestic and foreign). Rather it should serve to trigger awareness of the need to advise clients to obtain tax advice as necessary in order to properly evaluate such wider tax consequences (i.e. both domestic and foreign).

*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?

No adverse comments.

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; No adverse comments.
- (b) The factors that are relevant in evaluating the level of such threats; No adverse comments.
- (c) The examples of actions that might eliminate threats created by circumstances of uncertainty; Another example that could be included is "clarifications in writing by tax authorities".
- (d) The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate? No adverse comments.

*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?

Part. I paragraph 80 refers to "escalate the matter within the client or employing organisation (such as to TCWG or whistleblower ombudspersons). In this regard, one needs to also take into consideration



existing regulations and requirements, such as those related to tipping off, to ensure that there are no conflicting requirements.

#### *Documentation*

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

Whilst recognising that this paragraph also states "that in the vast majority of cases, PAs will document the various matters set out in paragraphs 380.23 A1 and 280.21 A1.", we suggest removing the words "but not require" as this might dilute the importance of preparing documentation.

#### *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?

While acknowledging the responsibility to review any transaction or arrangement, a PA who refers a client to an expert which is a third party provider of TP products or arrangements, should not be held responsible for the creation of the TP products or arrangements by the third party provider.

#### *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 relevant factors that a professional accountant might consider for determining whether to advise the client to make a disclosure of transactions to the tax authorities (and as set out in the Exposure Draft - 380.14.A2 refers by way of example) are, in our view, too onerous. Our recommendation is that the role of the professional accountant in this context should be to create awareness for clients that in such similar instances (i.e. in cases where the same transaction is accounted in different jurisdictions) tax advice should be obtained to determine the extent of disclosure thereof with the tax authorities. The onus of carrying out such assessments should be of the client and not of the professional accountant.

#### *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?

No adverse comments.