



CPA

CHARTERED
PROFESSIONAL
ACCOUNTANTS
CANADA

COMPTABLES
PROFESSIONNELS
AGRÉÉS
CANADA

Chartered Professional Accountants of Canada
277 Wellington Street West Toronto ON CANADA M5V 3H2
T. 416 977.3222 F. 416 977.8585
www.cpacanada.ca

Comptables professionnels agréés du Canada
277, rue Wellington Ouest Toronto (ON) CANADA M5V 3H2
T. 416 204.3222 Téléc. 416 977.8585
www.cpacanada.ca

May 18, 2023

Mr. Ken Siong
Program and Senior Director
International Ethics Standards Board for Accountants
529 Fifth Avenue
New York, NY 10017 USA

Dear Mr. Siong:

Re: February 2023 Exposure Draft, Proposed Revisions to the Code Addressing Tax Planning and Related Services

I am writing on behalf of the Public Trust Committee (PTC) of the Canadian Chartered Professional Accountant profession in response to your request to comment on the Exposure Draft entitled *Proposed Revisions to the Code Addressing Tax Planning and Related Services* (“the Exposure Draft”).

Canada’s accounting profession is regulated by provincial CPA bodies and is comprised of more than 220,000 members both at home and abroad. The provincial CPA regulatory bodies are statutorily responsible for their respective codes of conduct including the independence standards. CPA Canada is a member of IFAC, represents the profession nationally and internationally, and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations, and government. The provincial CPA regulatory bodies and CPA Canada collaborate through the PTC to recommend policies and strategies to uphold the public’s confidence and trust in the profession.

One of the responsibilities of the PTC is to monitor international developments with respect to the International Ethics Standards Board for Accountants (IESBA) Code of Ethics (“the Code”) and develop responses to changes on behalf of the Canadian CPA profession.

Our views

We commend the IESBA for its efforts to develop a principles-based framework, to guide PAPPs’ and PAIBs’ ethical conduct when providing tax planning and related services (TP) to clients or for employing organizations. We are generally supportive of the proposed revisions and appreciate that the IESBA consulted with key stakeholders in 2022 through a series of global roundtables to identify how best to formulate a proposed ethical framework to guide PAIBs and PAPPs in relation to TP.

In preparing this response, the PTC sought the input of numerous stakeholders to effectively respond to the Exposure Draft. Feedback from these stakeholders revealed a general theme, that the IESBA is proposing to formalize many best practices which are already performed by most PAs providing TP. The PTC thinks that it is important to codify such best practices, subject to our more specific comments and recommendations below.

There was also an underlying concern raised by stakeholders that the proposed changes require PAs to go beyond their role as a PA. Stakeholders observe that the proposals appear to put a significant amount of responsibility on PAs to make social, moral and economic judgements regarding TP (e.g., stand-back test, multi-jurisdictional tax benefits) that go beyond a PA's mandate, despite the IESBA's stated intention to not address tax morality, tax fairness and tax justice. Accordingly, the PTC also have concerns with the notion and potential interpretation that could follow from paragraph 12 of the Explanatory Memorandum, which states: "what is legal is not necessarily ethical". The PTC agrees that this discussion in the explanatory memorandum and some of the proposed changes can be perceived as overextending the PA's responsibilities which may negatively impact upon the attractiveness of the accounting profession, ultimately decreasing public access to skilled tax practitioners.

In addition to the above, and our responses to your specific questions where we have recommended clarification or additional guidance to encourage consistency in the interpretation and application of the proposals and to improve enforceability, we encourage the IESBA to also consider our comments below related to the consultation process more broadly.

Comment periods for IESBA Exposure Drafts

As outlined in our previous communications with the IESBA, the PTC would like to reemphasize that a 90-day comment period is highly challenging, especially in a multi-jurisdictional country such as Canada. The challenge of responding within a relatively short time frame is even more acute in our particular circumstances, as our due process for providing comments includes the exposure of IESBA proposals to revise the International Independence Standards for public comment in Canada, when applicable. It is also noteworthy that the Exposure Draft comment period occurred during the busiest time of year for PAs who practice tax in Canada.

As the IESBA continues its important work in encouraging and promoting global adoption of the Code, we recommend it consider whether longer public consultation periods would result in more comprehensive and considered input and lead to a more rigorous standard-setting process in the public interest. This is particularly important in jurisdictions such as Canada where the proposals must be considered in the context of local laws and regulation and may require translation for public exposure. We are concerned that a 90-day comment period does not allow sufficient time to coordinate and prioritize the resources required for robust consultation in all jurisdictions and request again, that the IESBA increase the length of comment periods going forward.

Webinars and other resources related to IESBA Exposure Drafts

Our committees find the IESBA's webinars to be extremely helpful in understanding the IESBA's process in developing its proposals in the public interest, as well as the substance and implications of the proposals to the Code itself. We encourage the IESBA to continue announcing webinar dates with the release of the relevant exposure draft. This greatly assists our

committees in understanding the proposals and providing feedback to our consultation processes.

Our responses to your questions

Please find below our responses to the requested matters for input from Respondents as outlined in the Explanatory Memorandum's Guide for Respondents.

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 PTC supports IESBA's approach to addressing TP by creating two new Sections 380 and 280 in the Code. Stakeholders believe having distinct sections that deal with TP would clearly attract the necessary attention of PAs working in these areas.

Description of Tax Planning and Related Services

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

The PTC appreciates IESBA's approach to describing TP in broad and neutral tones, however, stakeholders note that additional consistency, clarity, and additional examples would assist readers.

For example, stakeholders agreed that although the term "tax efficiency" sounds more neutral than "tax minimization", the latter term as well as the term "tax optimization" are more broadly understood and our stakeholders have suggested that either would be a better choice. The PTC also notes that it is crucial to clarify the responsibilities of PAs in serving their clients and employing organizations while protecting the public interest in the context of the term used, whether it is tax optimization, tax minimization or tax efficiency, as there are differences between the views of taxpayers and tax authorities regarding tax results.

Furthermore, despite proposing to use the more neutral term in the description of TP, the IESBA has continued to use the term "tax minimization" in the proposed changes and this may cause confusion. Accordingly, the PTC recommends that the IESBA consider revising proposed paragraph 380.5 A1 to: "*...in structuring the client's affairs in a manner that results in tax-optimization [or tax-minimization]*". In addition, the PTC recommends that the IESBA use the same term consistently in its final revisions.

The PTC further observes that the Code revisions do not adequately explain what the expectations are for the PA performing the compliance work where they have not advised on the TP arrangement. For example, does the PA have to decide whether the planning has a credible basis before reflecting it in a tax return? If so, our stakeholders believe this may be problematic due to the extra work and costs associated with "recreating the wheel" and that the PA may lack the experience and information to make such a decision. The PTC recommends the IESBA consider making this clarification in the final Code amendments.

The PTC also understands that in some cases a PA may be asked to assist a new client deal with a tax dispute for which there is no credible basis, and the role for the PA is to help the client

reach a fair and reasonable outcome on the issue. In these situations, the PTC believes that proposed paragraph R380.11 could be interpreted as suggesting that a PA should not accept the tax dispute work in the first place. Accordingly, the PTC recommends that the IESBA consider clarifying with application material that paragraph R380.11 does not preclude a PA from assisting clients in such scenarios.

Finally, the PTC notes that the examples provided in proposed paragraph 280.5 A2 only apply to PAs who advise a business' management or executive team and don't include PAs who are part of a management or executive team that makes decisions about tax planning. Many PAs are in senior management positions or on management teams and would therefore be called upon to make or participate in the decision to adopt one TP arrangement over another. We recommend that the examples in proposed paragraph 280.5 A2 also refer to PAs in management roles.

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?

The PTC is in general agreement with many of the IESBA's proposals in this section, specifically that PAs performing TP serve the public interest by contributing their skills, knowledge, and experience, assisting their clients, and employing organizations in meeting their obligations and not seeking to circumvent them through tax evasion.

The PTC, however, contends that these proposals on TP introduce additional complexity that requires further clarification and guidance despite references to public interest throughout the Code. Specifically, the PTC notes that the IESBA raised this concern in paragraph 34 of their Explanatory Memorandum, but the Code proposals do not currently address or clarify how PAs can act in the public interest while balancing several parties' interests.

The PTC is concerned that the IESBA's proposal may be interpreted as placing too much responsibility on PAs to make an interpretation on public interest with many stakeholders having diverse interests in a TP arrangement and, without sufficient guidance. We believe the responsibility of the PA is to assist clients or their employing organizations in meeting their tax planning goals while complying with tax laws and regulations.

In addition, the PTC thinks that the last sentences in proposed paragraphs 280.4 A2 and 380.4A2 would benefit from additional clarification or examples of the types of threats to compliance with the fundamental principles that PAs should be aware of, similar to the approach taken in proposed paragraphs 280.17 A1 and 380.17 A1.

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?

The PTC agrees with the IESBA's proposals to introduce a thought process for PAs to determine

whether there is a credible basis for a TP but recommends that the IESBA make some clarifications in this area to assist PAs in making this determination and to improve enforceability.

Specifically, the PTC recommends rewording proposed paragraph R380.11 to include specific reference to the use of professional judgement (currently it is only mentioned in application material) and expanding upon the language at the end of the paragraph “... *in laws and regulations...*” to also include “*jurisprudence and other authoritative resources*”.

In addition, some stakeholders suggested converting proposed paragraphs R280.11 and R380.11 into application material due to the subjectivity of the term “credible basis” and the limited examples. To address this, the PTC recommends expanding the guidance in paragraphs 280.11 A2 and 380.11 A2 to tie into the Reasonable and Informed Third Party Test in paragraph 120.5 A6 to direct PAs to an existing framework that will assist them in making a determination about whether there is a credible basis for a TP arrangement in a broad range of circumstances.

Finally, the PTC notes that the proposed application material in paragraphs 280.11 A1 and 380.11 A1 is not clear regarding whether the PA can apply discretion in considering whether to advise the client or employing organization of their rationale when they determine that the TP does not have a credible basis in laws and regulations. The PTC thinks that this is inconsistent with the requirement in R280.13 and R380.13 for the PA to explain the basis for their conclusion after applying the stand-back test. We suggest that the IESBA consider making this a requirement in both paragraphs. If there is any specific reason for this difference, we recommend that it be clarified in proposed paragraphs 280.11 A1 and 380.11 A1.

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

The PTC is not aware of any jurisdiction specific considerations that may impact the proper application of the proposed provisions in Canada.

However, the PTC would like to highlight that Canada is a jurisdiction which has a General Anti-Avoidance Rule (GAAR). This Rule acts to negate any tax benefit from “abusive” tax transactions that satisfy the letter of the law but are found to be contrary to the spirit or underlying policy of the legislation. Therefore, the PTC notes that countries with a GAAR will likely have a legal framework that supports some of the objectives of this Exposure Draft.

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?

Overall, the PTC is of the view that the proposed wording in paragraphs R280.12 and R380.12 is too broad and might be interpreted to mean that PAs are required to consider all reputational, commercial, and wider economic consequences that stakeholders might consider. The PTC is concerned that these proposals may be perceived as overextending the PAs’ role and more importantly their expertise and would not be enforceable without clarification, especially due to the broad range of potential stakeholders.

The PTC also notes that if the IESBA’s proposals to determine whether there is a credible basis for a TP arrangement are properly applied, then the paragraphs R280.12 and R380.12 should clearly identify what additional considerations the PA should consider in addition to the credible basis assessment.

Further, some stakeholders felt the scope of paragraphs R280.12 and R380.12 can be narrowed, such as by removing “wider economic consequences”. In addition, the PTC thinks that parts of paragraph 65 in the Explanatory Memorandum could be incorporated as guidance to help clarify IESBA’s expectations of the stand-back test, such as “...*IESBA does not intend for the PA to carry out research on the economic consequences other than giving the matter due consideration based on the PA’s general awareness and understanding of the economic environment in the context of TP*”.

Therefore, the PTC recommends IESBA clarify the scope of the considerations around reputational, commercial, and economic consequences, and as an alternative, consider converting the requirement into guidance.

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?

The PTC generally agrees with the proposals describing the gray zone of uncertainty; however, recommends that the IESBA consider adding additional examples to help clarify the proposals.

For example, the PTC notes that “adequate factual basis” and “adequate basis of assumptions”, are unclear in the first two bullets of proposed paragraphs 380.15 A2 and 280.15 A2. It is also not clear how they differ from the other circumstances listed under the same paragraph. The PTC recommends that these paragraphs include additional clarification or examples.

The PTC observes that proposed paragraph R380.16 only refers to “...*relevant tax laws and regulations...*” when discussing the uncertainty of a TP. However, the PTC believes that there are additional resources such as legal precedents and tax rulings to which the PA should also refer. Accordingly, the PTC recommends adding the following language to broadly capture such material:

*“Where there is uncertainty as to whether a proposed tax planning arrangement will be in compliance with the relevant tax laws, regulations, **jurisprudence and other authoritative resources...**”.*

Finally, the PTC thinks that it would be helpful if the IESBA referenced or included the list of actions in proposed paragraph 380.11 A3, that help determine credible basis in proposed paragraph R380.16. This will assist in the application of the requirement.

8. In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance [sufficiently clear and appropriate] on:

(a) The types of threats that might be created in the gray zone;

The PTC believes these are sufficiently clear and appropriate.

(b) The factors that are relevant in evaluating the level of such threats;

The PTC believes these are sufficiently clear and appropriate.

(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?

The PTC believes the proposed guidance in paragraphs 280.17 A1 to A5 and 380.17 A1 to A5 is sufficiently clear and appropriate, with the following considerations:

- some examples of actions in paragraphs 280.17 A3 and 380.17 A3 are similar to or duplicates of the safeguards in paragraphs 280.17 A4 and 380.17 A4; and
- some may not always eliminate existing threats.

Accordingly, the PTC recommends the following changes:

- Proposed paragraph 280.17 A3, bullet #1 and #3, will not necessarily eliminate a threat, as such they would be better positioned in 280.17 A4 as a safeguard, and
- Proposed paragraph 380.17 A3, bullet #1 and #2, will not necessarily eliminate a threat, so they would be better positioned in 380.17 A4 as a safeguard.

Furthermore, with respect to safeguards, the PTC recommends adding an additional safeguard stating that in some jurisdictions there are laws or regulations that may require mandatory reporting to the government.

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?

The PTC generally agrees with the proposals but has several concerns outlined below.

Stakeholders recognize that proposed paragraph R380.20 may help protect PAs but have concerns about the practicality of several of the steps. For example, if a PA has provided advice

to the client not to pursue a TP arrangement, it is because they believe there is no credible basis, and the client is informed. In cases of disagreement, the PTC thinks that it may not be practical to expect the client to then take the actions listed in paragraph R380.20 (b) and (c) and recommends the following changes to paragraph R380.20 to make the proposed paragraph more practical:

- Paragraph (b) to be revised as “Advising the client to seek an advance tax ruling from the tax authorities, where applicable.”
- Paragraph (c) to be revised as “Advising the client to consult other professionals to obtain an alternative opinion.”

Furthermore, the PTC notes that proposed paragraph R280.20 (c) requires the PA to consider communicating the difference of views to the external auditor. This may go against the PA’s duty of confidentiality, as a PA may not be able to inform the external auditor of such matters without expressed provisions in the law authorizing this. Although this issue may be jurisdiction specific, the PTC recommends removing subparagraph (c) from proposed paragraph R280.20.

In addition, some stakeholders expressed the view that professional opinions between two experienced PAs (or other service providers) can differ, but both can still have a credible basis, and this should not necessitate a PAIB to become a whistleblower. However, the PTC notes the Disagreement on the Tax Planning Arrangement section in the proposed changes does not clearly address such scenarios and recommends that IESBA consider clarifying with examples and additional application material.

In addition, as drafted, the PTC thinks that it will be confusing for PAs to interpret the meaning of proposed paragraphs R380.21 and 280.20 A1 and consistently take appropriate action because the use of “shall consider” and “might also consider” is not sufficiently clear.

The PTC notes that in Canada, PAs are prohibited from associating with false or misleading information and would be required to resign under these circumstances, while the IESBA’s proposals for PAIBs suggest that this need only be considered. This may be a Canadian-specific difference; however, the PTC recommends that the IESBA consider whether it is in the public interest to include stronger guidance when a PA believes the TP is false or misleading.

Finally, the PTC also recommends making written communication a requirement. Such as when there is a disagreement, for example, a client’s desire to pay less tax goes beyond the realm of tax optimization into the realm of abusive tax avoidance, that requires the PA to extricate themselves from the situation. Written documentation to address the reasons for resignation is important.

Documentation

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

The PTC agrees with the IESBA’s thought process as outlined under Explanatory Memorandum in paragraphs 84 and 85 regarding documentation.

However, while the PTC acknowledges that requiring documentation in the absence of privilege between the PAPP and a client could create additional risks that need to be considered, on balance our stakeholders believe that documentation is so important and vital in enforcement that it should be required. Accordingly, the PTC recommends that the IESBA consider converting the guidance on documentation into a requirement.

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?

The PTC agrees with the IESBA’s proposals as detailed in Section VII.K addressing TP products or arrangements developed by a third-party provider.

However, the PTC recommends expanding the IESBA’s proposals to include the following actions as guidance:

- a) The PA should consider if the third party is competent, and
- b) Disclose the PAs relationship to the third-party and if any compensation will be paid or received.

In addition, the PTC has some concerns with the last sentence in paragraph 88 of the Explanatory Memorandum which asks the PA to ascertain the credibility of the particular TP product or arrangement. Although this language was not repeated in the IESBA’s proposals in paragraph 380.22, the PTC believes that this might be an unreasonably high bar for a PA to meet given that the referring PA may have no expertise in tax, or in any case, would not likely have collected all of the facts and circumstances of the client or applied them to the TP in question because that is the role of the third party service provider.

Accordingly, the PTC recommends clarifying the scope of the PA’s responsibility under this section and within the Explanatory Memorandum for any future use.

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 PTC appreciates the spirit of proposed paragraphs 280.14 and 380.14, however, the PTC has concerns on the proposal in relation to multi-jurisdiction tax benefits. Stakeholders highlighted that it may not be practical for the client/organization to disclose the TP to multiple jurisdictions unless the client is required to do so under applicable laws or regulations.

For example, it may not be clear how or to whom such disclosures would be made. National tax authorities are large, complex organizations and getting such disclosures to an appropriate

department that is equipped to manage unexpected TP disclosures will likely be a challenge.

Also, the PTC is concerned that the proposed guidance may overstep existing tax disclosure requirements and could put the PA in a difficult position with the client when not otherwise legally required to disclose such TPs.

However, if the IESBA decides to proceed with these revisions, the PTC recommends softening the language in proposed paragraphs 380.14 A1 and 280.14 A1 to: “might advise the client to consider disclosing to the relevant tax authorities.”.

Finally, the PTC recommends removing the second bullet in paragraph 380.14 A2: “The likelihood that other entities in a similar circumstance to the client are taking advantage of the tax benefits.” The PTC believes that this is not a relevant factor in considering whether the client should make a disclosure.

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?

The PTC agrees with the proposed consequential and conforming amendments to Section 321.

Other General Comments

The PTC would like to provide these additional comments for IESBA’s consideration:

Tax Planning vs. Abusive Tax Avoidance Examples for SMPs/SMEs

The PTC notes that it can be difficult to draw a line between legitimate tax planning and abusive tax avoidance that has no credible basis. Therefore, the PTC believes that jurisdiction-neutral examples would be helpful for PAs to address common unethical practices in TP arrangements, as separate non-authoritative application material.

The PTC notes some examples from the Tax Planning and Related Services – Final Working Group Report (IESBA Meeting September 2021) which the IESBA can consider:

- Base erosion and profit shifting
- Hybrids for tax avoidance
- Abusive use of tax treaties
- Arrangements without substantive economic activities
- Double or multiple non-taxation
- Non-transparent tax system
- Unreasonably high pricing of intangibles (royalties)

Clarity of Subject

Proposed paragraphs R280.18 and R380.18 contain requirements that PAs should already be following, but the PTC recommends a slight wording change to R380.18 to improve clarity and consistency:

“A professional accountant shall explain **to the client** the basis on which the accountant recommended or otherwise advised on a tax planning arrangement.”

We thank you for the opportunity to comment on this Exposure Draft and we appreciate that further revisions to these proposals may result through the feedback provided by stakeholders.

Yours truly,



Jamie Midgley, FCPA, FCA
Chair, Public Trust Committee