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

Dear Mr Siong,

We appreciate the opportunity to comment on the above Exposure Draft (ED) issued by the International Ethics Standards Board for Accountants (IESBA or the Board). We have consulted with, and this letter represents the views of, the KPMG global organization.

We are supportive of the IESBA's goal to develop a principles-based framework to guide ethical conduct of professional accountants (PAs) when providing tax planning and related services to clients or performing tax planning activities for employing organizations.

The Appendix to this letter provides our responses to the specific questions posed by the Board in the ED and indicates the matters we believe can be clarified or strengthened. The main proposal we do not support is related to *Tax Planning Products or Arrangements Developed by a Third Party*. We believe that once a referral to a third party is made, the PA no longer has an obligation for any future advice provided by that third-party provider and therefore, a PA would not need to apply the requirements of Section 380 when the PA is not performing the tax planning service.

Our additional comments include:

- *Basis for Recommending or Otherwise Advising on a TP Arrangement* – We propose adding application material to specify that the requirement to only advise on a tax planning arrangement with a credible basis in law does not preclude the PA from advising the client on other options that would have a credible basis in laws or regulations or steps needed to address a current tax plan that does not have a credible basis in law.

- *Consideration of the Overall Tax Planning Recommendation or Advice* – We believe a lens of materiality or significance should be added as a factor to consider when performing to the stand-back test, in addition to disassociating the concept of “wider economic consequences” from “stakeholders’ views” and clarifying that giving due consideration to such wider economic consequences is based on the PA’s general awareness and understanding.
- *Disagreement with Management* – We believe clarification is needed related to the expectations of the PA, acknowledging in some circumstances, especially when there is uncertainty or difference of opinion, it is reasonable that after considering the matter, the PA would not take certain steps to disassociate or withdraw from the engagement or the professional relationship.
- *Multi-jurisdictional Tax Benefit* – We suggest adding an application paragraph to specify that the PA considers whether the impacted jurisdiction already has a disclosure regime as the PA would not need to advise a client to make a disclosure above and beyond what is already required.

As the Board itself has discussed in several standard-setting projects, we also share the concern that implementing this standard for PAs could create a competitive advantage for others (e.g., the legal profession) capable of performing tax planning services who may not be held to the same robust ethical framework. We encourage the IESBA to continue considering this issue and working with other bodies (e.g., standard setting boards or professional associations) to address any potential inequity, using the outcome of the Sustainability project and the potential for profession-agnostic standards as a bellwether.

Please contact Karen Bjune at [kbjune@kpmg.com](mailto:kbjune@kpmg.com) if you have questions on any of the points raised in this letter. We would be happy to discuss our views with you.

Yours sincerely



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## **Appendix: Responses to Specific Questions**

### 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?**

We agree with the creation of the new sections for professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs).

### Description of Tax Planning and Related Services

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

We agree with the IESBA's description of tax planning.

### 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?**

We agree with the proposals regarding the role of the PA.

### 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?**

Given the IESBA's concern in translating "affirmatively advising," we suggest that the IESBA add application material to specify that paragraph R380.11 does not preclude the PA from advising the client in situations where:

- the client may be considering tax planning that does not have a credible basis in laws and regulations and needs the PA's advice to explore options (e.g., alternate arrangements) which would have a credible basis in laws and regulations; or
- the client may have entered into a transaction that does not have a credible basis in laws and regulations and now needs advice on how to address it (e.g., complying with relevant disclosure requirements under the law).

The above would similarly apply to 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, we are not aware of any other considerations.

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?**

Paragraph R380.12 states that the PA should consider the possible “wider economic consequences that could arise from the way stakeholders might view the arrangement.” We do not believe the PA’s consideration of wider economic consequences should be linked to stakeholders’ views of the tax planning arrangement. This linkage is unclear and does not seem to be aligned with paragraphs 380.12 A1 and 380.12 A2. In addition, it raises the broader issue of how stakeholders in this context would be defined or identified, and how their interests would be prioritized. Therefore, we suggest rewording paragraphs R380.12 and 380.12 A1 as follows:

**R380.12** In addition to determining that there is a credible basis for the tax planning arrangement, the professional accountant shall exercise professional judgment and consider the reputational, and commercial ~~and wider economic consequences to the client and the profession, as well as the wider economic consequences in the relevant jurisdictions, that could arise from the way stakeholders might view the arrangement.~~

**380.12 A1** The reputational and commercial consequences might relate to personal or business implications to the client from the way stakeholders might view the arrangement, or implications to the reputation of the client and the profession ~~of~~ from a prolonged dispute with the relevant tax or other authorities. The implications to the client might involve adverse publicity, costs, fines or penalties, loss of management time over a significant period, and potential adverse consequences for the client’s business.

We also note the Board’s position in paragraph 65 of the Explanatory Memorandum that the requirement of paragraph R380.12 “is not about tax morality, tax justice or tax fairness. Equally, the 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 current economic environment in the context of TP.” We recommend the IESBA reflect this position more clearly in the application paragraphs following paragraph R380.12 to prevent misinterpretation of the expectation.

Finally, we also believe that materiality should be a factor to consider when executing the stand-back test. The addition of application material that addresses materiality of the tax planning arrangement as a factor to consider would be appropriate since the possible consequences are relative to the significance of the arrangement.

The above would similarly apply to Section 280.

*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?**

Yes, we agree with the proposals.

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?**

Yes, the proposed guidance is sufficiently clear and appropriate.

*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?**

Paragraph 380.15 A1 acknowledges a proposed tax planning arrangement can be in compliance with the relevant tax laws and regulations even when there are circumstances giving rise to uncertainty. Uncertainty can lead to differences of opinion between a PA and their client (including the client’s internal subject matter experts) with respect to interpretation of laws and regulations and their intent. While paragraphs R380.20 and R380.21 state the PA is to consider advising or consider the need to withdraw from an engagement (as compared to a requirement to do so), we believe this section would benefit from additional application material that acknowledges in some circumstances, especially when there is uncertainty, it is reasonable that the PA may determine it is not necessary to advise on the points in paragraph R380.20, or to withdraw from the engagement and the professional relationship. Without such clarification, these requirements may be interpreted in practice in a heavy-handed manner, resulting in an adversarial relationship between the PA and the client. It will not serve the public interest if, as an unintended consequence, the client avoids a future tax planning confrontation with the PA by either engaging with service providers who are not PAs and who may have a less stringent ethical framework or declining to use any service provider resulting in tax planning arrangements that are not as high in quality and may not have a credible basis in law.

From the perspective of the PAIB, we believe that taking the steps to disassociate mentioned in paragraph R280.20 would be a high bar to comply with, especially in circumstances where there is uncertainty, including from differences of opinion or where the intent of law is unclear.

Lastly, we are not certain if consideration of (a), (b) and (c) under paragraphs R380.20 or R280.20 alone would be sufficient to comply with the requirement to take steps to disassociate from the tax planning arrangement. It is unclear whether the PA would need to take additional actions to disassociate themselves, and what those actions might be short of withdrawal.

Documentation

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

Yes, we agree with these proposals.

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?**

Paragraph 380.22 A1 indicates the provisions of Section 380 apply in circumstances where a PA refers a client to a third-party provider of tax planning products or arrangements. This would appear to result in the referring PA being required to comply with requirements associated with determining whether an arrangement advised upon or recommended by the third party has credible basis in laws and regulations (R380.11) and the performance of the “stand-back” test (R380.12), among others. If this is IESBA’s position, we disagree that these requirements should apply as we believe that the PA no longer has an obligation for the advice provided by that third-party provider once the referral is made. Additionally, the referring PA may not have the ability to comply with such requirements due to a lack of information regarding the arrangement or underlying circumstances as a result of confidentiality restrictions. If it is not IESBA’s intent that these requirements be applicable in the case of a third-party referral, we believe the associated provision in paragraph 380.22 A1 should be revised to make clear which specific provisions in Section 380 are applicable in these circumstances.

If Paragraph 380.22 A1 is retained, then in the circumstance when a client approaches the PA regarding a third-party provider, we recommend that the PA’s “advice” should be further clarified to distinguish it from a case where the PA may be providing straightforward information or answering a client’s general inquiry. Therefore, in paragraph 380.22 A1, we propose using the word “recommend or advice on using,” as follows:

380.22 A1 There might be circumstances where a professional accountant refers a client to a third-party provider of tax planning products or arrangements, or where a client approaches the accountant for ~~advice recommendation or advice on using on~~ a tax planning product or arrangement developed by a third party. In both circumstances, the provisions in this section apply.

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 OECD has undertaken significant work regarding tax transparency and many jurisdictions have extensive disclosure rules, thus making the disclosure requirements proposed in the exposure draft redundant in certain jurisdictions. A relevant factor to consider in determining whether to advise a client to make a disclosure should include whether a jurisdiction already has a disclosure regime in place so that a professional accountant need not advise a client to make a disclosure above and beyond what is already required.

In addition, it is unclear when disclosure would be required where there are “tax benefits derived from the transaction in different jurisdictions.” This wording could be interpreted too broadly and is insufficiently specific. For example, if a country’s resident corporation has a foreign branch, the expenses incurred by the branch would be deductible in computing the income of the branch in the foreign jurisdiction where it carries on business, but also in the home country when computing the resident corporation’s worldwide income. We do not believe that disclosure to tax authorities regarding this situation is what is intended by this proposal in the ED. Examples in the Code to illustrate the application of paragraphs 380.14 A1 and 380.14 A2 would be beneficial.

The above would similarly apply to Section 280.

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 proposed amendments.

Other editorial comments for consideration

The *Referral Fee or Commission* topic at paragraph 380.22 A2 is redundant with paragraph 330.5 A1. Referring a client to a third-party provider of tax planning products or arrangements could be addressed by adding the following new bullet point to paragraph 330.5 A1:

- A fee or commission received by referring a client to a third-party provider of tax planning products or arrangements.

Paragraphs 380.7 A1 (280.7 A1), 380.9 A1, 380.9 A2, and 380.10 A1 (280.10 A1) are also redundant. We suggest deleting these paragraphs as we do not see the value in these instances of referencing the applicability of earlier sections of the Code given the Code’s building block approach.