

# Proposed Revisions to the Code Addressing Tax Planning and Related Services

An exposure draft issued for public consultation by the International Ethics Standards Board for Accountants (IESBA) in February 2023

Comments from ACCA  
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## OVERALL COMMENTS

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ACCA welcomes the opportunity to provide views in response to the IESBA Exposure Draft on Proposed Revisions to the Code Addressing Tax Planning and Related Services (hereinafter referred to as the 'ED'). We hope that our comments, which reflect feedback from our ACCA Global Forum for Ethics and ACCA Global Forum for Taxation, are a helpful contribution to this process.

We support the broad aims of the proposals and note that they are generally compatible with our [Global policy on taxation of companies: principles and practices](#). However, we note that in many jurisdictions, tax advisory and compliance services are not protected or formally regulated activities. As a result, tax planning (TP) and related services are often provided by non-professional accountants, such as lawyers and other individuals who may be from different professions or who may have no professional qualifications at all. Such individuals are not under the purview of the IESBA International Code of Ethics for Professional Accountants (including International Independence Standards) ('Code') and may not be subject to a similar and equally rigorous set of ethical and independence requirements.

Therefore, it is important to be mindful of considerations of global operability and practicality. Accordingly, we recommend that IESBA works closely with other professions whose members are similarly involved in providing such services, so that ethical requirements and objectives are aligned and met, while maintaining the Code as a gold standard of professional ethical requirements.

At this juncture, it may also be timely for IESBA to consider developing profession-agnostic ethical requirements for TP and related services, similar to the approach taken for IESBA's Sustainability Project where the IESBA has committed to readying profession-agnostic ethics and independence standards for all sustainability assurance providers. We believe that it is generally more effective to regulate behaviour (i.e., individuals providing TP and related services) rather than defined classes of individuals (e.g., professional accountants). However, we are mindful that there may be implementation and enforceability challenges stemming from the fact that non-professional accountants are likely to be beyond the purview of the Code unless specifically implemented at the respective jurisdiction level.

Our responses to the specific and general questions asked are set out below.

## RESPONSES TO SPECIFIC QUESTIONS RAISED

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### Proposed New Sections 380 and 280

**Question 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?

#### ACCA response – Question 1

Overall, we agree with the creation of two new sections in the Code to address TP. However, we wish to highlight that in many jurisdictions, tax advisory and compliance services are not protected or formally regulated activities. As a result, TP and related services are often provided by non-professional accountants, such as lawyers and other individuals who may be from different professions or who may have no professional qualifications at all. Such individuals are not under the purview of the Code and may not be subject to a similar and equally rigorous set of ethical and independence requirements.

### Description of Tax Planning and Related Services

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

#### ACCA response – Question 2

We support having a more neutral definition for TP, and recommend it is further refined as follows to better reflect the essence of TP:

*380.5 A1 Tax planning services comprise a broad range of services designed to assist a client, whether an individual or an entity, in exercising discretion in response to choices available in the tax system-in structuring the client’s affairs in a tax-efficient manner.*

*280.5 A1 Tax planning activities comprise a broad range of activities designed to assist an employing organization in exercising discretion in response to choices available in the tax system-in structuring its affairs in a tax-efficient manner.*

We find that the current proposed definition is potentially incomplete or even unhelpful as it implies that only activities or services that result in a structuring of affairs in a tax-efficient manner fall under TP. The extent to which TP results in tax efficiency is open to different levels of understanding and judgement, and in many circles ‘tax efficiency’ is seen as a euphemism for ‘tax minimisation’, with the associated negative connotations.

By linking the definition of TP to the quantum of the tax liability it is not clear whether choices which result in the same tax liability but have other implications for reputation or society would be subject to the Code. Given that reputation and public interest are both explicitly relevant to ethical considerations within the Code, a more neutral

definition would appear more consistent with the principles-based approach and the wider aims of the Code and the Public Interest Framework criteria.

We are mindful that the established definitions considered in paragraph 25 of the Explanatory Memorandum are grounded in anti-avoidance rules, the wording of which might inadvertently lead to TP services/activities being viewed negatively even when there is no element of anti-avoidance.

We note also that paragraph 30 of the Explanatory Memorandum explains that 'related services/activities' are scoped in through paragraphs 380.5 A3 and 280.5 A3, and hence not separately referred to in the remainder of the ED. However, there is no specific provision including 'related services/activities' within TP, and by inference, the separate definitions in paragraphs 380.5 A3 and 280.5 A3 suggest that 'related services/activities' are specifically not the same as TP. We would welcome clarification within the Code itself.

We would also welcome specific guidance on the extent of the 'related services/activities'. In some jurisdictions, the audited financial statements are an integral part of the company tax return. This could potentially bring the preparation of the financial statements within the scope of 'related services/activities' and hence within scope of the Code's provisions on TP. This would be consistent with paragraphs 380.8 A1 and 280.8 A1 which include references to maintaining all the books and records and making such disclosures to the relevant tax authorities as might be necessary to support a tax position.

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

**Question 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?

#### **ACCA response – Question 3**

We agree with IESBA's approach not to define or describe public interest and instead provide contextual guidance in Sections 380 and 280, and note that it is ultimately a court or other appropriate adjudicative body that determines whether a TP arrangement complies with the relevant laws and regulations.

We also acknowledge that professional accountants, in advising clients on how best to meet their TP goals, might encounter certain tax minimisation arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the fundamental principles. In this respect, we believe that other Sections of the Code are sufficient to address such encounters and threats to compliance.

Nonetheless, having considered the various views from IESBA's roundtable participants set out in paragraph 36 of the Explanatory Memorandum, it is important that professional accountants recognise the need to be acutely aware of public perception in their balance of obligations, against the background of today's constantly changing environment. For example, companies are increasingly subject to

broader duties beyond the maximisation of shareholder profits, which has implications for both those charged with governance and their advisers.

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

**Question 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?

### **ACCA response – Question 4**

We support the IESBA’s proposals and note that they are compatible with our [Global policy on taxation of companies: principles and practices](#) which is clearly against companies’ pursuance of aggressive tax avoidance, i.e., completely artificial arrangements that have no clear purpose other than to avoid tax by complicated schemes.

However, we observe that ‘credible basis’ is not defined as this can vary from jurisdiction to jurisdiction. As an alternative, and to strengthen application, we suggest that this be complemented by the reasonable and informed third party test in paragraph 120.5 A6 of the Code.

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

### **ACCA response – Question 5**

As highlighted in our response to Question 1, while we generally agree with the proposed provisions, we are mindful that in many jurisdictions, tax advisory and compliance services are not protected or formally regulated activities. As a result, TP and related services are often provided by non-professional accountants, such as lawyers and other individuals who may be from different professions or who may have no professional qualifications at all. Such individuals are not under the purview of the Code and may not be subject to a similar and equally rigorous set of ethical and independence requirements.

We believe that it is important to be mindful of considerations of global operability and practicality. Accordingly, we recommend that IESBA works closely with other professions whose members are similarly involved in providing such services, so that ethical requirements and objectives are aligned and met, while maintaining the Code as a gold standard of professional ethical requirements. Regardless of minor differences between professional standards, a unified message highlighting the importance of ethical tax behaviours, and of professional advisers in demonstrating those behaviours, will help to achieve the underlying goals of the Code.

Just as there are a range of advisers, there are also a range of taxpayer behaviours to consider. Different taxpayers will respond differently to knowing that their adviser is

subject to a rigorous ethical code, and it is important not to dilute the provisions of the Code in order to “appeal to” those taxpayers who would prefer to explore TP which would not pass the credible basis test.

At this juncture, to mitigate the above concerns, and to address situations where TP activities/services are provided by non-professional accountants, we think it may be timely for IESBA to consider developing profession-agnostic ethical requirements for TP and related services, similar to the approach taken for IESBA’s Sustainability Project where the IESBA has committed to readying profession-agnostic ethics and independence standards for all sustainability assurance providers (both professional accountants and non-professional accountants). We believe that it is generally more effective to regulate behaviour (i.e., individuals providing TP and related services) rather than defined classes of individuals (i.e., professional accountants). However, we are mindful that there may be implementation and enforceability challenges stemming from the fact that non-professional accountants are likely to be beyond the purview of the Code unless specifically implemented at the respective jurisdiction level.

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

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

#### **ACCA response – Question 6**

Overall, we agree. The proposed stand-back test set out in the proposed paragraphs R380.12 and R280.12 is consistent with our [Global policy on taxation of companies: principles and practices](#) which highlights that accountants have a clear duty to advise on the risks and the ethical dimension, including technical and reputational issues, associated with all available options. Not to do so could lead to the possibility of committing professional misconduct.

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

**Question 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?

#### **ACCA response – Question 7**

Overall, we agree. We think that IESBA’s proposals take into consideration the context-sensitive nature of the gray zone and will be helpful in navigating it.

**Question 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?

**ACCA response – Question 8**

Yes, however, we suggest that reference also be made to Sections 260 and 360 of the Code on responding to non-compliance with laws and regulations, as these will further guide professional accountants on available courses of action, including external courses of action, in the event such situations are encountered.

In the event that profession-agnostic ethical requirements are developed for TP and related services, we suggest that Sections 260 and 360 of the Code be reviewed to ensure that these sections can be applied by non-professional accountants as well.

**Disagreement with Management**

**Question 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?

**ACCA response – Question 9**

Overall, we agree. However, we think that it is important to also highlight that withdrawal from an engagement or professional relationship (paragraph R380.21) and resignation from an employing organisation (paragraph 280.20 A1) are not substitutes for taking other actions to address disagreements regarding a TP arrangement, similar to paragraphs 360.21 A2 and 260.18 A2 in the Code relating to responding to non-compliance with laws and regulations.



## Documentation

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

### ACCA response – Question 10

Overall, we agree. In addition, we wish to share that the Professional Conduct in Relation to Taxation<sup>1</sup> (PCRT) Standard for TP on professional judgement and appropriate documentation requires notes to be kept on a timely basis of the rationale for professional judgements exercised. Where there is genuine and reasonable uncertainty as to whether particular TP is in breach of the PCRT Standard on advising on TP arrangements, sufficient documentation of the detailed reasoning and evidence to be able to demonstrate why any TP was viewed as not being in breach of that PCRT Standard is required. [paragraphs 3.2 and 3.9 of the PCRT]

We note, however, that in the overwhelming majority of cases where there is a failure to document, there is likely to also be a pre-existing breach of the principle of professional competence and due care by advising beyond competence (acting without sufficient expertise). Issues in the Code flow from that fundamental breach. In a case where the adviser is sufficiently competent to recognise that documentation would have been required, but failed to prepare or retain it, there will again be a *prima facie* assumption of other wrongdoing at a level more fundamental than the ethics provisions. Also, circumstances might create more than one threat to compliance with one or more fundamental principles, which can be indicative of more serious underlying issues that need to be addressed. Ultimately, we believe that the Code, by design, needs to focus on helping those applying the Code to ‘do the right thing’ and be able to demonstrate why they have done so.

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

**Question 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?

### ACCA response – Question 11

Overall, we agree.

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<sup>1</sup> The [Professional Conduct in Relation to Taxation \(PCRT\)](#) is a pan-professional document published by seven leading accountancy and tax bodies which represents an ‘industry standard’ about professional behaviour in tax matters. All ACCA members, regardless of location, must be familiar with, and comply with the PCRT when advising on tax matters. ACCA has adopted PCRT as relevant focused guidance on the application of ethical principles and standards to tax as a specific area of professional activity.

## Multi-jurisdictional Tax Benefit

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

### ACCA response – Question 12

Overall, we agree. However, with respect to paragraph 380.14 A1, the IESBA may wish to consider that situations may arise where, even if advised by a professional accountant, a client may not necessarily agree to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions. There may also be practical difficulties around how the client discloses the information.

With respect to paragraph 380.14 A2, we would welcome further clarity and guidance on the relevant factors set out, e.g., it is not clear to whom the tax benefits are significant.

## Proposed Consequential and Conforming Amendments

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

### ACCA response – Question 13

Overall, we agree.

## RESPONSES TO GENERAL COMMENTS REQUESTED

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- **Small- and Medium-sized Entities (SMEs) and Small and Medium Practices (SMPs)**

SMEs and SMPs are important stakeholders in developing and enhancing the Code. It is within such organisations (with more limited resources, including fewer personnel) where changes in behaviours and mindset are best supported through clear guidance which is proportionate and scalable. The implementation of the new TP and related services provisions is unlikely to entail significant changes to policies and procedures for most firms. However, the burden on SMEs/SMPs could be disproportionately high, particularly in jurisdictions where public interest entities may be smaller in size, and the proposed changes may be too costly and impractical for some smaller firms and businesses. This is due to inherent limitations of available resources such as expertise available within the firm or capital available to engage experts. While commanding public trust is important, the standards also need to allow for efficiency and choice.

- **Tax Authorities**

Any refinements to provisions of the Code by the tax authorities and regulatory community when developing and implementing local codes of conduct must focus on the desired outcomes, and the behavioural changes that will be perceived by the public, rather than simply whether the local codes' requirements are comprehensive.

Therefore, the drafting of local codes must be clear, and they must be drafted with due regard to enforceability. The tax authorities and regulatory community in some parts of the world, in particular in developing nations, may lack the appetite, capacity and ability to refine the provisions of the Code specific to their jurisdiction. The implementation of the new TP and related services provisions may present practical challenges for local relevant bodies, and they may require proactive engagement and support to deliver these changes.

- **Developing Nations**

Member bodies in different parts of the world operate within a range of cultural environments. While ethical values should not be regarded as relative to location or culture, clarity and sensitivity are important with regard to developing the Code. We believe the Code should remain principles-based and provide a clear framework, while allowing the flexibility for tailored implementation guidance by national standard setters and/or professional bodies. The provisions need to provide practical and effective guidance in order to aid consistency of understanding, interpretation and application across all the IFAC member organisations.

- **Translations**

Translation of the Code for adoption in various environments is a challenging process for translators. Changes inevitably create inefficiencies and place additional demands on translation resources which could threaten accurate translation of the Code and compliance. In our opinion, the proposals should be clear, consistent and logical, and a realistic translation period is required. Although, as drafted, the proposed revisions would be unlikely to present translation issues as they use generally understood phrases rather than specific terms, the Board should remain alert to this when proposing changes to the Code.