

Response of the Institute of Chartered Accountants of India on the IESBA Exposure Draft on Proposed Revisions to the Code Addressing Tax Planning & Related Services.

It may be noted that in India, various Tax Planning & related services are provided not only by Professional Accountants but also by other Professionals, and the clients/employer has option to choose the professional.

In India, there are no provisions especially applicable to govern Tax Planning by Professionals including by Professionals Accountants, though certain guidance in is available in ICAI Code of Ethics under 'Role of Chartered Accountants in relation to unlawful acts by their Clients'.

Since the extant Exposure Draft brings elaborate guidance on this issue, it is important that the issue is deliberated thoroughly by ICAI forum.

Income Tax Act, 1961 is the domestic statute in India applicable to citizens. The Act itself has strict provisions including penal provision on Tax Services.

With these comments, we have certain specific comments on question given in exposure draft which are given as under:-

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

- We agree with the description of the tax planning services. It is largely consistent with the extant definition provided in paragraph 604.11 A1.
- With regard to the "related services," we believe more clarification is needed as to the applicability of the ethical framework to "another party" as it is not clear which other parties this is intended to capture.

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

- We do not agree with the proposals regarding the stand-back test.
- We believe the test described in proposed paragraphs R380.12 through R380.13 goes beyond the responsibility to consider the public interest, does not align with proposed paragraphs 380.4 A1 and 380.4 A2, is too ambiguous to be applied in practice, and is unnecessary in light of the extant requirement to apply the reasonable and informed third party test.

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?

- We do not fully agree with the IESBA's proposals as reflected in proposed paragraphs 380.22 A1.
- In those cases where the tax client engages a third-party separately, the PA will not be a party to the contractual terms & conditions of that service, and likely will not have the necessary understanding of the issues being

addressed and solution being proposed, hence the need for a referral in the first place. Under these conditions, it is unreasonable and impracticable to hold the PA responsible for the tax product or arrangement of the referred third party tax service provider.

- There could also be a detrimental impact to the public interest if a PA is held responsible for the tax planning arrangement provided by a third-party, in that the PA may decide not to make referrals if they will subsequently be held responsible under the proposed ethical framework for a tax arrangement they are not sufficiently informed on.

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

- We do not agree with the IESBA's proposal regarding a multi-jurisdiction tax benefit.
- We believe mandatory disclosure requirements should be dealt with by the relevant international or domestic tax laws.
- In addition, it is not clear what a "tax benefit" in this context means or why the absence of a tax treaty increases the risk that a tax benefit can be obtained in two countries.