



Submission of Proposed Revisions to The Code Addressing Tax Planning and Related Services

The Institute refers to IESBA proposed revisions to the Code's proposal and would like to set out our suggestions and comments as follows:

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?*

No major objections or comments.

Description of Tax Planning and Related Services

2. *Do you agree with IESBA's description of TP as detailed in Section VII.A above? Role of the PA in Acting in the Public Interest*

No major objections or comments.

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 major objections or 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 major objections or comments.

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

The term "regulations" in the provisions needs to be more specific and provide more guidance on how it is defined. The local tax authorities may have their own different set of practice which tax practitioners would need to follow as best practice or align with the local law. Nevertheless, the tax practitioners may often propose tax position with arguments that could be different from the tax authorities view, and this should not simply put the practitioner in conflict with the so called "credible basis in laws and regulation" in the current proposal.

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?*

No major objections or comments.

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 major objections or 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;*
- (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?*

No major objections or 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?*

It would be practically difficult and potentially too extreme to require tax practitioners escalate the situations. Sometimes there is a fine margin on different cases – the cases could just be a good faith difference on a particular TP arrangement which happens frequently concerning the interpretation of the local laws and regulations.

Documentation

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

Generally documentation requirements is ideal but in some situations there could be certain verbal discussions taken place which would not be ideal for documenting the

discussions. Besides, a good balance need to be striked between proper and sufficient documentations versus excessive administrative burden to the tax practitioners.

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?

No major objections or comments.

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?

It would be better to set out more clear examples or guidances on this aspect and how to consider the level of disclosure as appropriate.

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 major objections or comments.

Yours sincerely,

For and on behalf of
The Taxation Institute of Hong Kong



Carol Liu
President