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Proposed Revisions to the Code Addressing Tax Planning and Related Services

To the members of the International Ethics Standards Board for Accountants:

Grant Thornton International Ltd. (GTIL) appreciates the opportunity to comment on the exposure draft, Proposed Revisions to the Code Addressing Tax Planning and Related Services, approved for publication by the International Ethics Standards Board for Accountants (the IESBA or the Board).

GTIL is an umbrella organisation that does not provide professional services to clients. Professional services are delivered by GTIL member firms around the world. Representative GTIL member firms have contributed to and collaborated on this comment letter with the public interest as their overriding focus.

We thank the Board for their continued efforts to serve the public interest and acknowledge the challenges they face to set high-quality standards that will enhance the profession. However, we do have some important concerns regarding the proposed revisions to the Code Addressing Tax Planning and Related Services, which we discuss in our comment letter.

Request for Specific Comment

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?

While GTIL agrees with IESBA on the need to address tax planning services from an ethical perspective, we do have some concerns with IESBA's approach.

We acknowledge the issues concerning tax planning work are unique and they vary depending on the tax advisor's role and the jurisdiction the professional accountant practices in. However, the proposals may be difficult for professional accountants to operationalize in jurisdictions with existing laws and regulations.

Many jurisdictions have robust regulatory regimes that govern the provision of tax planning services performed by professional accountants. The proposed revisions should be intended to set baseline standards, particularly for jurisdictions without robust standards currently in place, rather than set additional compliance requirements. Attempting to establish additional compliance requirements will potentially yield no incremental benefits or enhancements to the public interest.

Therefore, we believe it would be more appropriate to develop a principles-based framework for tax planning services that accounts for various jurisdictional distinctions, including current laws and regulations.

Description of Tax Planning and Related Services

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

GTIL believes the descriptions in section 380.5 A2 and 280.5 A2 could be refined or clarified so that they do not include services where the primary goal is not tax planning, but rather where tax planning is an ancillary result.

An example is wealth management services with the goal of growing a client's business or investment portfolio where the related impacts on current and future tax liability or where tax impacts have a basis in the client's decision-making, and the results of such decisions will eventually be part of a client's tax return and the be subject to review by the taxing authorities. It is impossible to do effective financial planning without a broader understanding of the client's financial situation and an understanding of how the tax decisions impact other financial decisions the client may be contemplating. However as drafted, these financial planning services could be bound by the same standards that IESBA are proposing to adopt for tax planning engagements.

Furthermore, the concept of 'tax-efficient' may be widely applied in practice and more guidance may be needed to have a consistent approach. Therefore, paragraphs 380.5 A1 and 280.5 A1 could also explicitly state that arrangements that are contrary to the clear intention or purpose of statutes should not be deemed as acceptable tax planning.

Lastly, in section 380.5 A3, an example of a *related service* is "preparing the client's tax return that reflects the position in the tax planning arrangement". There are often situations where a professional accountant is engaged to prepare a tax return and a third party (e.g., a law firm or other accounting firm) has done the tax planning services. The proposed provisions seem to suggest that the professional accountant may be required to obtain the details of the tax planning arrangement, analyze them, and determine whether the tax planning arrangement has a credible basis in laws and

regulations. If a credible basis has not been established, the professional accountant will need to advise the client of this. This position seems beyond the scope of tax return preparation services.

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?

Professional accountants play an important role in tax planning by contributing their knowledge, skills, and experience to assist clients in meeting their tax planning goals while complying with tax laws and regulations. In doing so, accountants help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest. In some jurisdictions, laws and regulations, including those that are often referred to as anti-avoidance rules, limit or prohibit certain tax planning arrangements. A professional accountant should obtain an understanding of those laws and regulations and advise the client to comply with them when providing tax planning services, in order to act in the public interest.

Furthermore, we believe it is appropriate for legislators/regulators to consider the public interest when establishing laws and ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations.

Accordingly, GTIL agrees that professional accountants should act in the public interest when providing tax planning service and agree with IESBA's proposals regarding the role of the professional accountant to act in the public interest when performing tax planning services. Acting in the public interest is of keen importance, but we recognize it is difficult to define the term 'public interest' as it may have different meanings to different stakeholders in multiple jurisdictions.

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?

GTIL agrees that the concept of 'credible basis' of a tax planning arrangement being based on the laws and regulations of the relevant jurisdiction the professional accountant practices in, is a reasonable approach. However, the term 'credible basis' in the proposed standard is not defined with sufficient clarity for it to serve as an operational rule for professional accountants when performing tax planning services.

Many jurisdictions have well defined standards, laws and regulations which address levels of strength of authority for a tax position, how the tax position is to be evaluated, requirements that the strength of a tax position be communicated to a client, disclosure requirements in tax returns of positions to taxing authorities, areas where a professional accountant's advice may not be relied on by a client, and penalty structures applicable to both the professional accountant and client for failure to comply.

In such jurisdictions, the overlay of a 'credible basis' standard and other related requirements will create unnecessary confusion and incur unnecessary costs to both clients and professional accountants without adding any additional benefit.

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

GTIL is not aware of any material considerations, including jurisdiction specific considerations, that may impact the proper application of the proposed provisions.

However, IESBA does need to understand the implications the proposed requirements could have in jurisdictions with robust requirements for tax planning services, including tax laws and rules.

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

GTIL does not agree with the proposed stand-back test requirements. We believe this new test will impose requirements that professional accountants (in many cases) are not capable of evaluating and are inconsistent with existing standards in certain jurisdictions.

The proposed stand-back test requires professional accountants to possess expertise in areas outside of tax, and inappropriately forces professional accountants to assess economic, social, and political considerations that should be assessed by the client.

Accordingly, GTIL is requesting the Board consider elimination of the stand-back test.

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?

Defining what is meant by 'gray zone' is extremely difficult and its interpretation may vary widely in jurisdictions. Certain provisions regarding identification of threats when applying the conceptual framework suggest that the professional accountant should determine the identity of the ultimate beneficiaries of a tax planning arrangement. GTIL believes this could be too broad in scope and could impose additional costs on the professional accountant.

Such a requirement, especially when combined with the stand-back test, may create in fact or appearance liability exposure of the professional accountant to parties not in privity of the contract with the professional accountant. As such, this proposal runs counter to law and legal precedent in many jurisdictions.

Accordingly, GTIL request the Board to remove this provision from the proposed standard.

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?**

GTIL generally agrees with the application of the proposed guidance in a-d above.

However, we have concerns around the example related to establishing the identity of the ultimate beneficiaries in paragraphs 380.17 A4 and 280.17 A4. In addition to our concerns discussed in Q7 above, we believe a professional accountant's ability to document and determine the ultimate beneficiary (or beneficiaries) of any tax planning engagement may impose an undue hardship on the professional accountant and could force the client to incur unnecessary costs.

This is especially true when a professional accountant is engaged by a client and not by the beneficiaries of a tax planning strategy. Many tax planning strategies have a domino effect related to the tax benefits obtained, beyond the client. The professional accountant may have no knowledge of any benefit to those beneficiaries beyond the client, nor would the professional accountant have access to the information necessary to accurately determine the ultimate beneficiary (or beneficiaries) and the amount of such benefits.

Therefore, we request the Board to remove this provision from the proposed standard.

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?

GTIL believes the proposed steps professional accountants should take when there are disagreements on the tax planning arrangements are generally reasonable.

However, we believe the requirements set out in sections R380.20 and R280.20 may be contrary and difficult to operationalize in jurisdictions that have established robust laws and regulations.

Documentation

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

Although GTIL is generally supportive of the proposals, there are concerns involving the language relating to "identity of the ultimate beneficiaries" in proposed section 380.23 A1 and 280.21 A1. As noted above, we believe this requirement is too broad in scope and imposes excessive costs on the professional accountant which would ultimately be incurred by the client.

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.

We do not agree with IESBA's proposals addressing tax planning products or arrangements developed by a third-party provider.

Such a requirement can place a professional accountant in the position of being required to evaluate and be responsible for the results of tax advice or other tax services that are outside the areas of their expertise. This is counter to the professional accountant seeking the best for their clients by making referrals to other professional accountants with the proper tax experience.

Furthermore, certain jurisdictions have standards that address the ability and responsibility of professional accountants who rely on information or tax advice provided to a client by a third party. New guidance is not necessary where long-standing requirements in jurisdictions are in place.

Finally, the client is responsible for making a management decision on whether to engage the third-party provider. The client can consider the referral, including pros and cons the professional accountant may provide, but ultimately it is their management decision.

Accordingly, GTIL is requesting the Board consider elimination of this provision.

GTIL believes the extant IESBA code Section 330 "*Fees and Other Types of Remuneration*" is applicable to all professional accountants in public practice when providing any services, so additional provisions are not necessary.

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?

GTIL agrees with IESBA's proposals regarding a multi-jurisdiction tax benefit as described in the exposure draft.

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?

GTIL agrees with the proposed consequential and conforming amendments to section 321.

GTIL would like to thank the IESBA for this opportunity to comment. As always, we welcome an opportunity to meet with representatives of the IESBA to discuss these matters further. If you have any questions, please contact Gina Maldonado-Rodek, Director - Global Independence at gina.maldonado-rodek@gti.gt.com

Sincerely,

A handwritten signature in cursive script that reads "Kim Gibson". The signature is written in black ink and is positioned to the left of a vertical line.

Kim Gibson

GTIL Global Head – Risk Management and Independence