Tax Planning and Related Services—
Tax Morality and Related Matters

I. Background

1. The objective of the project is to develop a principles-based framework, leveraging the fundamental principles and the conceptual framework, to guide professional accountants' (PAs') ethical conduct when providing tax planning and related services to employing organizations and clients. Such a framework would contribute to maintaining the Code's robustness and relevance as a cornerstone of public trust in the global accountancy profession.

2. During the discussion of the project proposal at the September 2021 IESBA meeting, a concern was raised regarding a perceived inconsistency in that the project proposal indicated that the project would not address tax morality, and yet it seemed to suggest that the project would address societal issues related to the Environmental, Social and Governance (ESG) movement. Related to the orientation of the project, the PIOB observer at the meeting noted that the project would provide an excellent opportunity to test the application of the new Public Interest Framework for standards development and supported the Task Force's approach in linking the project's outcome to public interest objectives.

3. During the fact finding phase leading to the development of the Tax Planning Working Group's report, various stakeholders had advised about the need to be cautious to avoid confusion with the overlapping themes of tax morality, tax fairness and tax justice. In this regard, while it would be relevant to speak to reputational risks from the profession's perspective, for the reasons set out in the following sections the TPTF does not believe the Code should deal with the broader themes of tax morality, tax fairness and tax justice. However, what the Code might specify in terms of principles and a clearer delineation of the "gray area" might contribute to mitigating some of the wider stakeholder concerns about tax morality, tax fairness and tax justice.

4. Given this backdrop, the TPWG believes that one of the first issues to address in this project is to:

   (a) Clarify the distinctions among the concepts of tax morality, tax fairness, tax justice and a professional accountant's (PA) responsibility at act in the public interest in the context of tax planning; and

   (b) Seek to identify whether there are any aspects relating to the concepts of tax morality, tax fairness and tax justice that may be relevant to considerations regarding PAs' ethical conduct when engaged in tax planning activities.

II. Tax Morality

5. Tax Morale, as defined by the Organisation for Economic Cooperation and Development (OECD),[1] is "the intrinsic motivation to pay taxes." This concept is vital to the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues.

6. In its 2019 report titled "Tax Morale: What Drives People and Businesses to Pay Taxes?" the OECD analyzed the results of a survey of business perceptions on tax certainty to identify the constraints

[1] Tax Morale: What Drives People and Businesses to Pay Tax? (OECD, September 11, 2019)

and concerns businesses face in paying taxes around the world. The study is amongst a few that examine the relevance of tax morale to explain tax compliance[2] versus tax evasion and its implications on fiscal policy implementation. This report builds on previous OECD research to identify key socio-economic and institutional drivers of tax morale across developing countries.

7. Among other matters, the OECD report highlights various drivers that influence individuals' and businesses' intrinsic motivation to pay taxes. Examples of drivers that influence individuals' tax morale include age, education, gender, religion, and trust in government. With respect to businesses, the report notes that tax morale for them has both similarities and differences to tax morale for individuals. Specifically, as decisions in entities are made by individuals, some of the drivers influencing those individuals may spill over into the entities, especially small entities. These drivers include corruption, cultural norms and values. Other drivers are determined by entities' corporate behavior and include risk preferences, the approach of tax advisors, board reputation, company structure, size of the entity, compliance cost, and tax complexity.

8. The OECD report notes that tax certainty appears likely to be a key component of tax morale, i.e., when businesses perceive low tax certainty, they may be less likely to participate actively or positively in the tax system. The report explains that tax certainty affects the ease of paying taxes and the relationship with the tax authority. In addition, tax certainty is likely to influence a range of issues around how a business engages with the tax system, for example, its approach to tax incentives and tax planning strategy.

9. The OECD also observed that international taxation issues are a source of tax uncertainty in all regions on a global level. Based on its underlying survey, the OECD report noted that concerns over tax uncertainty include inconsistency with international standards, lack of expertise in the tax administration, and a lack of understanding of the business structures of multinational entities.

10. The report also suggests that trust between taxpayers and tax authorities is likely to be another key component of tax morale for businesses.

TPTF's Preliminary Views

11. The OECD's initiative on understanding the drivers that influence tax morale[3] indicates that tax morality is a large and important issue. Tax morality raises a number of interesting and challenging social and philosophical questions around individual beliefs, attitudes and social and economic backgrounds. It also raises practical questions about how best to achieve greater tax certainty such as optimal ways through which to simplify tax legislation. While these questions highlight the importance of considering tax morality in the development and implementation of fiscal policy, it is not within the scope of this project to seek to address them. Further, the OECD itself has noted that "the tax morale of businesses is difficult to measure, and there is little research conducted to this day."

12. Nevertheless, the TPTF believes that an understanding of the drivers of tax morale for both individuals and businesses, and in particular the role of tax uncertainty, can provide useful context in considering factors that might influence PAs' ethical behavior when performing tax planning activities.

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[2] According to the OECD's Glossary of Terms, tax compliance is degree to which a taxpayer complies (or fails to comply) with the tax rules of his country, for example by declaring income, filing a return, and paying the tax due in a timely manner.

[3] In its press release, the OECD said that "increasing tax morale offers an important contribution to achieve sustainable growth in tax revenues in developing countries."

Complexity

13. During various outreach engagements leading to the development of the Tax Planning Working Group's report,[4] stakeholders recommended consideration of tax complexity as one factor influencing PAs' behavior. Some stakeholders[5] in particular shared that the subject of tax planning is fraught with complex questions, from the differences in the tax treatment of transactions across jurisdictions to grey areas of interpretation of tax laws and regulations, rapidly evolving legislation, and changing societal expectations in today's economic landscape.

14. As with the OCED's observation regarding the lack of consistent international standards as one of the factors that increase tax complexity, stakeholders the Tax Planning Working Group engaged with concurred with the observation[6] that there is no "one set" of global ethical principles applicable to PAs across jurisdictions that is enforced by professional bodies upon their members in carrying out tax planning activities. While there is no perceived lack of a general framework or fundamental principles of ethics applicable to tax planning activities, the Tax Planning Working Group was informed that there is a lack of *guidance on how PAs can identify, evaluate and address ethical risks related to tax planning*.

15. As discussed at the March 2020 IESBA meeting, the Tax Planning Working Group reflected on whether the IESBA should consider any new category of threat such as "complexity" threat or address this potential gap in the Code via some other means. The Tax Planning Working Group acknowledged that the types of threats to compliance with the fundamental principles as currently defined in the Code do not capture the "complexity" risk. However, as noted by the Technology Working Group (TWG) during the September 2020 IESBA meeting, PAs have regularly dealt with complicated situations in the past but are now increasingly dealing with complex situations. After further deliberation in the context of the Technology project, the Board supported including new application material on complex circumstances in Section 120 of the Code as a consideration when applying the conceptual framework.[7]

16. The TPTF will therefore further explore whether, and if so, how the Code can be positioned to play a more significant role in assisting PAs to contextualize complexity in assessing the ethical risks relating to tax planning activities. In doing so, the TPTF will coordinate closely with the Technology Task Force as the proposed application material on complexity continues to develop.

Matter for Consideration

1. IESBA members are asked to share any comments, questions or reactions to the TPTF's preliminary views above.

[4] Refer to Agenda Item 3 from the June 2020 IESBA meeting to sight the list of stakeholders whom the Tax Planning Working Group engaged with in 2020.

[5] AICPA, MICPA/MIA, UK Professional Accountancy Bodies, Accountancy Europe

[6] See paragraph 9 - Agenda Item 8 Tax Planning and Related Services Cover Note (December 2019)

[7] Refer to page 9 of agenda item 7-A.

III. Tax Fairness and Tax Justice

Tax Fairness

17. As highlighted in the Tax Planning Working Group's conversations with stakeholders that operate in the non-governmental[8] and non-profit[9] space, there is an increased push towards organizations being more publicly accountable about their tax affairs. These organizations are expected to act in the public interest and pay their fair share of taxes in the location where the economic benefit of their transaction was gained. During these conversations, the concept of tax fairness[10] was raised.

18. In the Wealth of Nations (1776),[11] Adam Smith argued that taxation should follow the four principles of fairness, certainty, convenience, and efficiency:

    - Tax fairness is a concept which states that the system of taxation must be equitable to the public. A fair tax system encourages a fair contribution to the cost of maintaining public utilities and infrastructure.
    - Certainty refers to the conditions in which taxpayers are informed about why and how taxes are levied.
    - Convenience relates to the ease of compliance for the taxpayers.
    - Efficiency touches on the collection of taxes and refers to the administration of tax collection being such that it does not negatively affect the allocation and use of resources in the economy.

19. The American Institute of Certified Public Accountants' (AICPA's) *Guiding Principles for Tax Equity and Fairness (2007)* recommends that the following seven dimensions be considered in determining tax fairness:[12]

    - *Exchange Equity and Fairness*: Over the long run, taxpayers receive appropriate value for the taxes they pay.
    - *Process Equity and Fairness*: Taxpayers have a voice in the tax system, are given due process, and are treated with respect by tax administrators.
    - *Horizontal Equity and Fairness*: Similarly situated taxpayers are taxed similarly.
    - *Vertical Equity and Fairness:* Taxes are based on the ability to pay.
    - *Time-Related Equity and Fairness*: Taxes are not unduly distorted when income or wealth levels fluctuate over time.
    - *Inter-Group Equity and Fairness*: No group of taxpayers is favored to the detriment of another without good cause.
    - *Compliance Equity and Fairness*: All taxpayers pay what they owe on a timely basis.

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8 Banco Bilbao Vizcaya Argentaria (BBVA), Iberdrola

9 ActionAid, Oxfam (EU)

10 ActionAid

11 Smith, A., & Cannan, E. (2003). *The Wealth of Nations*. New York, N.Y: Bantam Classic

12 The seven equity and fairness dimensions are not listed in rank order. The relative importance of each will depend in part on the type of tax involved and the nature of the tax law or administrative change being considered.

Tax Justice

20. Tax justice is another tenet that is closely linked to tax fairness.

21. According to ActionAid, tax justice is a central concern for anyone working for social justice. Tax Justice UK sees a parallel in the movement for tax justice to the movement for women's rights and labor rights as important elements of a country's social fabric. It is a belief in genuinely progressive taxation, i.e., tax systems that generate sufficient public revenue while ensuring that this revenue is fairly redistributed and focused on rebalancing economic and gender inequalities.[13]

22. In conducting its fact finding, the Tax Planning Working Group had noted that there are several agencies advocating for further advancement on tax justice, predominantly:

    - ActionAid
    - European Network on Debt and Development (Eurodad)[14]
    - Global Alliance for Tax Justice[15]
    - Oxfam International[16]
    - Tax Justice Network[17]
    - Tax Justice UK[18]

23. Two common observations across these agencies in establishing the principles of tax justice are that:

    - Tax rates should be progressive, and everyone should pay their fair share; and
    - Tax revenue should pay for valuable public investments and set society on a sustainable path.

24. Tax Justice UK has argued that tax and financial transparency is a necessary step towards tax justice, for example, by ensuring that financial institutions, subject to complete disclosure of their activities, do not take advantage of people suffering or recovering from a financial crisis. In its view, tax and financial transparency has its origin in people's natural desire for a just and fair economic system. Tax Justice UK has stated that it believes the following components are required to achieve tax and financial transparency:[19]

    - Can large multinational companies be obliged to pay their fair share of taxes in countries where their economic activity occurs? This can best happen if taxed as single entities rather than as a group of separate entities.
    - Can we stem the abuse of shell companies and tax havens that enable companies and the financial elite to move their profits away from where their profits occur? Can we expect more from the lawyers and accountants who help make that possible?

[13] https://actionaid.org/politics-and-economics/tax-justice

[14] https://www.eurodad.org/tax_justice

[15] https://www.globaltaxjustice.org/

[16] https://www.oxfam.org/en/tags/tax-justice

[17] https://taxjustice.net/

[18] https://www.taxjustice.uk/

[19] https://www.taxjustice.uk/tax-takes-5.html

- Can country-by-country reporting be a required public disclosure for all publicly held companies so that the public itself can be a judge of the ethics and values of the companies in which they invest?
- Can the automatic exchange of information be a matter of normal practice among all jurisdictions so tax abuse can be stemmed with simplicity and ease?
- Can the beneficial ownership of companies, trusts, and foundations be a matter of public record so that society can exercise its fiduciary obligation to hold each person or entity accountable to the highest standard?
- Can there be a World Tax Authority that can arbitrate tax disputes between nations so that developing countries, which are often more vulnerable, are not left at the mercy of the wealthier multinational companies and of pressure from their countries of residence?
- Can there be a harmonization of predicate offenses so that a crime in one jurisdiction can be considered a crime in another, and funds from the proceeds of such crime cannot easily be transferred from one jurisdiction to another?

TPTF's Preliminary Views

25. Based on its literature review, the TPTF noted that tax fairness and tax justice principles or frameworks encourage taxes to be paid where income is earned, which aligns with Adam Smith's first maxim of taxation. For society to perceive a condition of tax fairness, there needs to exist an equitable tax system enforceable via legislation. Most tax fairness and tax justice advocates argue for the closing of loopholes in tax laws and regulations that allow specific individuals and corporations to avoid paying taxes altogether.

26. The TPTF observed that the concepts of tax fairness and tax justice are tightly entwined with the notion of equity and society's perceptions of doing what is right to advance the quality of life. On a political level, criticisms could be levied against tax regimes that are perceived as not equitable or fair. However, the TPTF believes that it would not be appropriate for PAs within their roles to make judgments about whether the tax regimes in their jurisdictions are fair or just, or seek through their actions to compensate for any perceived lack of such fairness or justice.

27. The TPTF believes that the various dimensions of tax fairness and tax justice, such as those identified by the AICPA and Tax Justice UK, are really matters for national jurisdictions to determine. Accordingly, while the TPTF acknowledges that tax fairness and tax justice are concepts linked to society's perception of the public interest, they are areas that are outside the scope of this project. Nevertheless, the dimensions of tax fairness and tax justice are important contextual factors for PAs to consider in relation to the reputational risks (i.e., threats to the fundamental principle of professional behavior) they might create if there are perceptions of PAs taking advantage of "unacceptable" tax planning strategies or practices. Indeed, the IESBA's Strategy and Work Plan 2019-2023 notes the following:

> As societal expectations evolve, there have been public concerns about perceptions of some entities employing "aggressive tax avoidance" strategies, and whether such strategies are ethically justifiable. The questions that have been raised have implications for both professional accountants in public practice and professional accountants in business in relation to the advice or support they provide to their clients or employing organizations in the area of tax planning and related services.

Matter for Consideration

2. IESBA members are asked to share any comments, questions, or reactions to the TPTF's preliminary views above.

IV. Professional Accountants' Role to Act in the Public Interest

28. The project proposal identifies several public interest outcomes the project seeks to achieve,[20] namely:

    (a) Promoting consistent, ethical tax planning conduct and practice by PAs through a principles-based framework and guidance;

    (b) Raising awareness about risks associated with unacceptable tax planning to employing organizations, clients (individuals or corporate), and the profession;

    (c) Protecting and strengthening the profession's role and reputation in relation to tax planning; and

    (d) Promoting the Environmental, Social and Governance (ESG)-related principles of fairness, accountability, and transparency through guiding PAs' conduct when involved in tax planning activities, consistent with their responsibility to act in the public interest.

29. In that context, the TPTF believes that an important issue to clarify at the start of the project is the profession's responsibility to act in the public interest in relation to tax planning. In that regard, the foreword to the UK publication *Professional Conduct in Relation to Taxation* (UK PCRT) sets out the following:

    > Tax advisers operate in a complex business and financial environment and a core purpose of the tax system is to fund public services and to ensure the good health of our economy and society. Tax advisers therefore have a responsibility to serve their clients' interests whilst upholding the profession's reputation and the need to take account of the wider public interest.

30. The introduction to the International Federation of Accountants' (IFAC) publication *A Guide for Professional Accountancy Organizations – Developing Good Practices for Members Providing Tax Advice* contains broadly similar messages:

    > Members of professional accountancy organizations (PAOs) who provide tax advice operate in a complex business and financial environment and under tax systems the core purpose of which is to fund public services and ensure the good health of the economy and society.
    >
    > Ethical behavior in relation to tax advice is crucial. The work carried out by a PAO member needs to be trusted by society at large as well as by clients and other stakeholders. PAOs' and their members' conduct in this regard reflects not just on themselves but also on the accountancy profession. PAOs have a responsibility to ensure that their members who provide tax advice as part of their responsibilities to serve their clients' or employing organizations' interests uphold the profession's reputation.

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[20] Para 22 of Tax Planning Project Proposal approved at the IESBA September 2021 meeting

31. In developing its preliminary views on this matter, the TPTF has also briefly reviewed the public interest frameworks developed by IFAC, the Institute of Chartered Accountants in England and Wales (ICAEW) and the PIOB.

Public Interest Frameworks

IFAC

32. In its June 2012 Policy Position Paper *A Definition of the Public Interest*, IFAC defines the public interest as “the net benefits derived for, and procedural rigor employed on behalf of, all society in relation to any action, decision or policy.” IFAC developed this definition and the related assessments set out in the paper to assist it in acting and making decisions that are in the public interest.

33. IFAC notes that the benefits for society referred to in the definition may include the soundness of financial and non-financial reporting, the comparability of financial and non-financial information across borders, fiscal prudence in public expenditures, and the contributions that PAs make to corporate governance, efficient resource management, and organizational performance.

34. In relation to the concept of the “public,” IFAC considers that it includes all individuals and groups because the responsibilities of the accountancy profession affect (directly or indirectly) every aspect of society: investors, consumers, suppliers, citizens and taxpayers. IFAC, however, notes that the extent to which any particular group is impacted can vary according to the action, decision or policy taken.

35. To determine whether an action, decision or policy has been undertaken in the public interest, IFAC uses the following assessments, having regard to the dimensions of both outcome (net benefits) and process:

    - Assessment of costs/benefits – The extent to which, for society as a whole, the benefits of the action, decision or policy outweigh the costs.
    - Assessment of process – The extent to which the manner for considering the action, decision or policy was conducted with the qualities of transparency, public accountability, independence, competence, adherence to due process, and participation.

    IFAC also notes that the degree to which each assessment is applied should correspond to the size, scope and potential repercussions of the subject under evaluation, and that differences in culture and ethical systems should be considered.

ICAEW

36. In its 2012 paper *Acting in the Public Interest: A Framework for Analysis*, ICAEW indicates that it does not seek to establish a detailed definition of the public interest. This is on the ground that there is an infinitely wide set of individual circumstances which detailed definitions are unlikely to be able to cope with without unintended consequences. Instead, it sets out to develop a practical framework for use by policy makers and others in respect of proposals which may be, or have been, justified as being in the public interest.

37. ICAEW’s framework is based around the key issues that need to be addressed by those who face the challenge of justifying actions as being in the public interest. The framework covers the following stages:

- Justification of credentials for the right to invoke the public interest.
- Identification of whether a matter is actually a public interest matter.
- Consideration of who the relevant public are, what they want, and whether their wants contrast with needs or other constraints.
- Aggregation of sometimes conflicting input and resulting decision.
- Implementation of the desired action.

38. The framework considers all circumstances in which organizations seek to change people's actions through laws, regulations or other methods of persuasion. ICAEW also notes that its framework has a role for individuals considering an action in the public interest such as disclosure of a matter that would otherwise be confidential.

39. Insofar as the public is concerned, ICAEW notes that the whole of the public must be eligible for consideration in respect of a matter which is asserted to be in the public interest, by its very nature. However, as a practical matter, there will be large numbers of people whose welfare will not actually be affected by the action. The relevant public will therefore only be a subset of the whole public – those "affected."

PIOB

40. The PIOB's Public Interest Framework is structured around how the international audit and ethics standard-setting boards (SSBs), i.e., the IESBA and the International Auditing and Assurance Standards Board (IAASB), in promulgating standards that effect a change of PAs' behavior, can validate the following questions:
    - For whom are standards developed?
    - What interests need to be served?
    - How are the interests of users best served?
    - What qualitative characteristics should the standards exhibit?
    - How is the public interest responsiveness of a standard assessed?
    - What special considerations are required for international audit-related standards, given their particular public interest relevance?

41. The PIOB specifies five broad groups of stakeholders for consideration by the SSBs:
    - Users of financial statements.
    - The accountancy profession.
    - Those in charge of adoption, implementation and enforcement of the standards.
    - Preparers.
    - Other users based on their reliance (directly or indirectly) on financial and non-financial information.

TPTF's Preliminary Views

42. As conveyed in the UK PCRT publication and the IFAC tax guide for PAOs, the TPTF agrees that a PA has a responsibility to serve the interests of the PA's client or employing organization. While this responsibility will generally mean representing or advocating for the client or employing organization vis-à-vis the tax authority, it may also involve advising the client or employing organization against a particular course of action because of potential risks, especially reputational risks. As far as the PA's wider public interest responsibility is concerned, the TPTF shares the view that this comes from the need to have regard to the interests of the jurisdiction's treasury (i.e., the fiscus), which provides the revenue to fund public services and for which the tax authority administers and collects from all taxpayers their legally assessed tax dues.

43. Therefore, when considering a PA's public interest responsibility, there is a need to balance the interests of the client or employing organization and its stakeholders (investors, creditors, employees, etc) against those of the jurisdiction's treasury. If a client or employing organization pays more tax than its legally presumed "fair share," this benefits the treasury but harms the client's or employing organization's stakeholders. Conversely, if a client or employing organization pays less, this benefits the client's or employing organization's stakeholders and harms the treasury. This conceptual view of the public interest is closer to a "zero sum" game. In contrast, the public interest in an audit context aspires to a "win-win" outcome based on serving the collective interests of stakeholders alongside management's interests.

44. Special consideration needs to be given to cross-border taxation which involves close interaction of different actors, such as national legislatures, tax administrations, courts, taxpayers, tax advisers, and international organizations. The reality of cross-border taxation is that it often involves tax competition among jurisdictions. Accordingly, when considering a PA's responsibility to act in the public interest, it is important that any judgment or decision the PA makes does not place the PA at odds with the national public interest of the jurisdiction in which the PA works.

45. As stakeholders have highlighted during the Tax Planning Working Group's fact finding, professional judgment has taken an increasingly important role as businesses evolve in a world of complex tax structures brought about by the borderless ecosystem of e-commerce. The exercise of professional judgment will be especially important when considering the PA's responsibility to act in the public interest, particularly in tax planning situations involving complexity or uncertainty. PAs will need to adhere to the fundamental principles and document their professional judgment appropriately should tax authorities challenge their judgments or decisions in such situations.

46. The TPTF also notes that the PIOB's Public Interest Framework will provide good guidance as the TPTF progresses work on the development of an exposure draft.

Matter for Consideration

3. IESBA members are asked to share any comments, questions, or reactions to the TPTF's preliminary views above.