IESBA International Ethics Standards Board for Accountants®

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Meeting:	IESBA	**Agenda Item 8**
Meeting Location:	New York	
Meeting Date:	December 3-6, 2019	

Tax Planning and Related Services

Objectives of Agenda Item

1. To note IFAC's release of its final Good Practice Guide to support professional accountancy organizations in providing guidance to their members regarding professional conduct in relation to taxation.

2. To receive an update from the Tax Planning and Related Services Working Group (TPWG) on its recent outreach activities and fact-finding work to date.

Working Group

3. Members:
   - Jens Poll, Chair. IESBA Member
   - Sanjiv Chaudhary, IESBA Member
   - Robert Juenemann, IESBA Member
   - Andrew Mintzer, IESBA Member

Working Group Activities Since Last IESBA Discussion

4. The TPWG met in person immediately following the September 2019 IESBA meeting and twice via teleconference to progress its work.

5. In October and November 2019, the TPWG conducted the following outreach meetings:

   (a) Presentation to members of Accountancy Europe October 2nd – Jens Poll

   (b) Teleconference October 7th with Kevin Dancey (CEO) and Alta Prinsloo (Executive Director), International of Federation of Accountants (IFAC) – Jens Poll and Carla Vijian

   (c) Meeting November 15th with the American Institute of Certified Public Accountants' (AICPA) Tax Practice Responsibilities Committee (TPRC) – Andrew Mintzer and Carla Vijian

6. The TPWG Chair will provide an update to the IESBA CAG at the upcoming March 2020 CAG meeting. The TPWG Chair will brief the Board on the input received from the CAG during the March 2020 Board meeting.

7. The TPWG continues to conduct "desk research" in the area of tax planning, including reviews of publicly available reports, articles, podcasts, webinars and other relevant material.

Preliminary Themes Emerging from Information Gathering Activities to Date

8. The analysis to date has yielded several observations that the TPWG is now evaluating further in terms of what, if any, response is appropriate for the IESBA to consider. These observations emerged from its discussions with stakeholders and materials reviewed to date.

    - There is no "one set" of ethical principles, specifically focused on tax planning, that applies to professional accountants (PAs) across jurisdictions and which is enforced by professional bodies upon their members (see Sections 3.1 and 4 in **Agenda Item 8A**).
    - The concept of "Fairness" and "Transparency" are expected and necessary elements in recent developments pertaining to tax planning and related services.
    - Tax planning impacts ethical behaviors across all the fundamental principles (FPs).
    - Threats to compliance with the FPs, as defined currently in the Code, do not obviously capture the "complexity" risk associated with the multi-faceted discipline of tax planning.
    - As jurisdictions continue to form alliances in a global effort to address the ethical dimension of tax planning, the criticality and value of professional judgment will increase.

    These preliminary themes are further developed below.

Perceived Absence of Guidance Focused Specifically on Tax Planning

9. The TPWG's desk review to date has identified limited studies which examined the FPs or other provisions in the Code in relation to how PAs should handle tax planning-related ethics issues. The prominent theme across most stakeholder perspectives that have been gleaned to date is the lack of guidance material on how PAs can identify, evaluate and address threats related to tax planning. Stakeholders have noted that the approach to demonstrate ethical behavior and comply with the FPs seems to be affected by the level of complexity in the course of interpreting the intent of the law for tax planning purposes.

10. There are thought leadership pieces which debate the notion that PAs should not engage in tax reduction strategies solely for the purpose of tax avoidance. The thrust of the argument relates to the economic substance of the transaction (the profit) and the related tax that should be paid in the country where the transaction took place. The Organisation for Economic Co-operation and Development (OECD) launched its BEPS[1] project with the aim of ensuring that the international tax laws do not encourage shifting of corporate profits to a jurisdiction with a lower tax rate or no taxation from the place where the real economic activity/value creation takes place.

Fairness and Transparency

11. As noted in conversations with some stakeholders, the topic of tax planning is complex due to the differing tax schemes and interpretation of the law across jurisdictions. While the specific focus of Phase I of this initiative centers on what involvement in tax planning means in terms of implications on the PA's ethical behavior and responsibility to comply with the FPs, the TPWG observed that the frameworks used by international organizations such as the OECD, United Nations (UN) and European Commission (EC) consistently include considerations of **fairness** and **transparency**, as

[1] Base erosion and profit shifting (BEPS) - https://www.oecd.org/tax/beps/

well as accountability. The TPWG will further consider how and at what level (other than from an overall societal perspective) the concepts of fairness and transparency interact with the Code.

12. Given the importance of ethics in maintaining public confidence in the profession and the Code's role in that regard, the TPWG also noted academic literature which examined the role of PAs as ethical champions or leaders in their organizations and society.. The TPWG notes that Section 200[2] contains application material about the Code's expectation of PAs to encourage and promote an ethics-based culture in their organizations, considering their position and seniority within their organizations. The TPWG will explore whether, and if so how, the Code can be positioned to play a greater role in assisting PAs assess the risks around tax planning activities and thereby contribute towards strengthening public trust in PAs' ethical conduct.

Tax Planning and the Fundamental Principles

13. The Code specifies five FPs of ethics for PAs. The TPWG believes that the expected behavior of PAs in carrying out tax planning services cuts across all five FPs in an interrelated manner. As a result, missing or not fully understanding the threat to compliance with one FP might also lead to not recognizing a threat to non-compliance with another FP. This "combined" effect, along with the complexity of tax planning, suggests that it is especially important for a PA to consider the inter-related nature of the FPs. For example:

    - PAs should seek to advance their clients' positions to the extent those positions, and their efforts comply with applicable laws, regulations and professional standards. PAs are expected to remain *objective* and give proper consideration to economic substance to ensure that positions advocated do not result in a conflict of interest and compromise the PAs' credibility.
    - The PA must have the appropriate *professional competence and due care* to sufficiently understand and evaluate the business and legal aspects of tax planning. When advising a client, the PA has a duty to serve that client's interests within the bounds of applicable laws, regulations and professional standards, including ethics requirements.
    - If the PA knew or should have known that the PA's assessment of a particular tax strategy was not objective or they lacked the expertise to at least ask the right questions, this implies a lack of fair dealing or truthfulness, namely *integrity*.
    - Privacy considerations may arise and can heighten the level of threat to compliance with the FPs of *confidentiality* and *professional behavior* expected of PAs. PAs may only disclose information without their clients' consent when there is an express legal or professional duty to disclose. In such a case, the PA should inform the client of such duty.
    - Lastly, the consequences of one or more such lapses in compliance with these FPs may also discredit the profession under the FP of *professional behavior*, particularly in light of heightened public expectations of fairness and transparency in tax planning.

2 Part 2, *Professional Accountants in Business.*

"Complexity" Risk When Applying the Conceptual Framework

14. Section 120[3] of the Code states that threats to compliance with the FPs fall into one or more of five defined categories of threat: self-interest, self-review, advocacy, familiarity and intimidation.

15. Based on the TPWG's initial review and analysis of information gathered to date and insights gained from considering the application of the Conceptual Framework to identifying, evaluating and addressing threats that might be created by tax planning, the TPWG is considering whether the current articulation of threats to compliance with the FPs sufficiently recognizes the ethics risks inherent in the complex environment in which PAs work. the TPWG noted that such complexity is caused by not only differing tax schemes available across multiple jurisdictions with differing laws and regulations, but also other factors such as the ever-expanding array of regulatory requirements imposed on PAs.

16. In light of the above, the TPWG will further reflect on whether the IESBA should consider any new category of threats such as "complexity" threat or address this potential gap in the Code via some other means.

Criticality of Professional Judgment

17. The work carried out by a PA needs to be trusted by society at large as well as by clients and other stakeholders. It is therefore important that PAs who provide tax planning advice understand their responsibilities in serving their clients' or employing organizations' interests, in order to uphold the profession's reputation. Some stakeholders have cited the increasingly important role of professional judgment expected of PAs as businesses evolve in a world of complex business structures brought about by the borderless ecosystem of e-commerce. PAs may often need to navigate through various nuances of international and local taxation requirements even though they may not be physically working in the particular jurisdiction(s) where the underlying transactions have occurred. In summary, professional judgement in relation to tax planning is perceived to be critical.

Matter for Consideration

1. IESBA members are asked to share any comments, questions or reactions to the preliminary themes described above.

Next Steps

18. The TPWG found the outreach meetings in this quarter to be highly informative as well as an effective way to gather multiple stakeholder views in a condensed timeframe.

19. Other information gathering activities the TPWG is seeking to schedule in Q4 2019 and 2020 include:
    - Teleconference with Tax Leaders of the Big 6 Firms on December 10th.
    - European outreach in Q1 2020, including potential meetings with Accountancy Europe, the OECD and the professional bodies in the UK and Scotland.
    - Discussion at the upcoming IESBA-National Standard Setters (NSS) meeting in May 2020 to gather input from NSS participants.

[3] Part 1, *Complying with the Code, Fundamental Principles and Conceptual Framework,* Section 120*, The Conceptual Framework,* paragraph 120.6 A3

Matter for Consideration

2. IESBA members are asked to provide input on opportunities, in their jurisdictions or otherwise, to promote and discuss the work of the TPWG.

Material Presented

Agenda Item 8A	Tax Planning and Related Services: Fact Finding
Agenda Item 8B	IFAC PAO Tax Advisor Guidance (For information only)