

TAX PLANNING AND RELATED SERVICES

PRELIMINARY REPORT

JUNE 2021

**IESBA
TAX PLANNING AND RELATED SERVICES
WORKING GROUP**

I. Summary of Preliminary Working Group Recommendations

1. On a preliminary basis, the Tax Planning Working Group (TPWG) recommends that the Board launch a project to address ethical considerations when professional accountants (PAs) provide tax planning services to their employing organizations or clients. The TPWG has based its recommendation on the following:
 - The topic of tax planning has risen to such a level of public interest importance that it deserves a robust response from the IESBA. Stakeholders' expectations that PAs act ethically in relation to tax planning have increased significantly. Yet, beyond the fundamental principles (FPs) and conceptual framework (CF), the Code is silent on the topic.
 - As a standard setter, the Board's focus should be on a standard-setting response first and foremost. In contrast to non-authoritative material, the Code's provisions have greater visibility and standing because they are authoritative. The Code is better placed to influence and guide behavior because it is enforceable.
 - As the global ethics standard setter for the accountancy profession, it is befitting for the Board to take a leadership role in promulgating global ethics standards addressing PAs' responsibilities in relation to tax planning, especially considering that many of the issues of concern identified in the TPWG's research are cross-border or multi-jurisdictional.
 - Given the wide variety of frameworks and guidance materials developed by various organizations and firms in the area of tax planning, there is a compelling need for a unifying framework in the Code that would codify and embody the principles and best practices to guide PAs when providing tax planning services.
 - Tax planning has become an important aspect of the growing Environmental, Social and Governance (ESG) movement. There is a clear opportunity for the Code to lay a stake in the ground by speaking to how it supports PAs' role in building sustainable businesses in this regard.
2. The TPWG recommends that the Board develop a principles-based framework in the Code to guide PAs in their tax planning activities.
 - At an overarching level, this framework could build appropriate linkages to provisions in the Code that speak to PAs' greater societal role, their responsibility to act in the public interest, and the mindset and behavioral characteristics expected of them in the context of tax planning services.
 - At a practical level, the framework could provide guidance to:
 - Assist the PA in identifying what might be deemed acceptable or unacceptable tax planning behavior. In this regard, consideration could be given to the approach taken in the Code with respect to guiding PAs in circumstances involving inducements. This is because like tax planning, inducements are not necessarily illegal or unethical. However, there are inducements that fall within the "gray area" of what might potentially be deemed unacceptable. The Code might provide guidance on indicators of what might be deemed acceptable vs unacceptable tax planning, drawing on the work done by other organizations.

- Guide PAs with respect to other important considerations, including where there might be undue pressure to skirt the boundaries of what might be deemed acceptable tax planning; the nature, extent and timing of communication with management and those charged with governance; when and with whom to consult internally or externally; the circumstances in which transparency would be appropriate or justified, to whom disclosure might be made, and the matters that might be disclosed; and documentation.
3. The TPWG recommends that the project explore developing suitable terminology that would facilitate the development of the framework and understanding and use of the framework.
 4. The TPWG recommends that the Board assess in due course the need for non-authoritative material and collaborate with others (IFAC in particular) as appropriate to supplement the relevant provisions in the Code.

The TPWG's detailed preliminary recommendations are set out in [Section X](#).

II. Background

1. In recent years, much public attention has focused on the topic of tax avoidance notwithstanding the legality of the tax mitigation schemes or related transactions to achieve desired tax outcomes. Questions have been raised regarding the ethical implications for professional behavior when individual professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs) are involved in developing tax minimization strategies that are perceived as “aggressive,” or when firms provide advice to their clients on such strategies.
2. The issue is of major public interest significance¹ as it has been discussed on the G20 agenda. The need for transparency and better disclosure of tax practices have been a focus area for global bodies such as:
 - (a) The Organisation for Economic Cooperation and Development (OECD), which has launched the [Base Erosion and Profit Shifting \(BEPS\)](#) project in partnership with the G20. The project aims to ensure that the international tax rules do not facilitate the shifting of corporate profits away from where the real economic activity and value creation are taking place. The premise for value creation is linked to the substance over form argument which maintains that transactions in question should not be evaluated based on the formal legal structure of the transactions, but rather the tax impact from the underlying substance of the transactions.
 - (b) The World Federation of Exchanges, which has included [tax transparency](#)² as a “material ESG metric” for reporting by listed companies.
 - (c) The International Federation of Accountants (IFAC), which has called for jurisdictions to share information to promote [accountability and long-term global sustainability](#).³
 - (d) The International Accounting Standards Board (IASB), which has worked on [changes to tax disclosure rules](#).⁴
3. The Code addresses matters related to tax services in the context of independence through the recently revised Non-Assurance Services (NAS) provisions (refer to [Section VIII](#) below for further detail). Setting this aside, respondents to the IESBA’s consultation on its [Strategy and Work Plan for 2019-2023](#) broadly supported the IESBA addressing the topic of tax planning and related services as a strategic priority.

III. Objectives

4. The objectives of this initiative are to:
 - (a) Gather an understanding of regulatory, practice and other developments in corporate and individual tax planning by PAIBs and PAPPs;

¹ For example, in its article [What could a new system for taxing multinationals look like?](#) the Economist noted that in 2015, the OECD estimated that tax avoidance robs public coffers of \$100-240 bn, or 4-10% of global corporation tax revenues a year.

² *Exchange Guidance & Recommendation* (October 2015), WFE Sustainability Working Group, World Federation of Exchanges.

³ *G20 Public Trust in Tax - Surveying Public Trust in G20 Tax Systems* (January 2019), Association of Chartered Certified Accountants (ACCA), Chartered Accountants Australia and New Zealand (CA ANZ) and IFAC.

⁴ IFRIC 23, *Uncertainty over Income Tax Treatments*.

- (b) Identify and analyze the ethical implications of those developments and determine whether there is a need for enhancements to the Code or further actions; and
 - (c) Develop a report and recommendations to the IESBA.
5. The Tax Planning Working Group (TPWG) will consider incorporating feedback from the IESBA during the June 2021 board meeting into the final report to be presented at the September 2021 IESBA meeting.

IV. Tax Planning – Described Terms

6. Tax practitioners frequently face the question of whether certain planning strategies to reduce the tax liability of a taxpayer are legally permissible tax ‘planning’, tax ‘avoidance’ or illegal tax ‘evasion’. According to published literature, the conventional view of the line between the different concepts is as follows:⁵
- (a) Tax planning involves using tax reliefs for the purpose for which they are intended – it is not tax avoidance. An example is claiming relief on capital investment.
 - (b) Tax avoidance occurs when a taxpayer takes advantage of all legal opportunities to minimize its tax obligations (whether federal income, gift, estate or otherwise) through claiming permissible deductions and credits or planning income or gains such that they fall outside the tax net. Even if tax avoidance is sometimes perceived to be “aggressive,” it is still considered not to be illegal.
 - (c) Tax evasion occurs if the planning structure involves some form of deception, fraud, false statement or sham in fact, including concerted efforts to impair, impede and obstruct tax enforcement—e.g., mischaracterized transactions, false book entries, false statements made during tax examinations, and under-reporting of income.
7. Indicators of tax avoidance have been, and are, the subject of extensive debate. In the UK, for example, HM Revenue and Customs (HMRC) defines tax avoidance as often involving “contrived, artificial transactions that serve little or no purpose other than to produce a tax advantage. It involves operating within the letter – but not the spirit – of the law.”⁶ The letter of the law refers to what the law states versus the spirit of the law which is a social and moral consensus of the interpretation of the letter.
8. In its Glossary of tax terms, the OECD⁷ describes tax avoidance as:
- “a term that is difficult to define but which is generally used to describe the arrangement of a taxpayer’s affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow.”*

⁵ See, for example, [Tackling Tax Avoidance, Evasion, and Other Forms of Non-Compliance](#) (March 2019), HM Revenue & Customs, HM Treasury United Kingdom.

⁶ HMRC (September 2012), *Tackling Tax Avoidance*.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/89029/briefing-avoidance.pdf

⁷ <https://www.oecd.org/ctp/glossaryoftaxterms.htm>

9. In essence, tax avoidance is difficult to define precisely.⁸ The growing view is that tax practitioners should not engage in tax reduction strategies solely for the purpose of tax avoidance, regardless of whether the structure is legally supportable. Such strategies are often viewed as “aggressive.” The discussion has shifted toward a consideration of whether legally effective tax planning is also within the object and spirit of the taxing statute and thus essentially “acceptable,” or if it is contrary to the law’s object and spirit and thus essentially “unacceptable.”

There is no Clear Line Between Tax Planning and Aggressive Tax Planning

10. The IESBA received overwhelming support from stakeholders on its initiative to address the topic of tax planning.⁹ In light of the changing expectations of society, there is a greater awareness that it is in the public interest, to address the ethical dimensions of tax planning practices especially when they are perceived to be “aggressive” though not necessarily illegal.
11. The TPWG has sought to understand the varying views of aggressive tax planning practices. The TPWG learned that in some jurisdictions, aggressive tax planning can be portrayed as actively creating arrangements or structures that are by “opinion” subject to question. It is a universal theme amongst various stakeholders that aggressive tax planning practices are not necessarily illegal until they are established as such by the judiciary system, and what is aggressive represents a “matter of degree” that is rather subjective. For example:

- In the United States, “aggressive” has little negative connotation. Congressional committees have produced research on “international tax avoidance” techniques used by companies. The committees have also required tax directors of large corporations to testify regarding their tax strategies.¹⁰ Scrutiny from US lawmakers has also arisen in response to the increase in inversions, or corporate re-domicile transactions, that have taken place over the last decade.
- In the UK and the EU, “aggressive” has a negative connotation. According to academic literature, taxpayers are expected to follow the rules and not look for tricks or loopholes to minimize their payments.

In 2015 the UK enacted a diverted profit tax (DPT)¹¹ (also known as the “Google Tax”) aimed at specific tax avoidance structures. [DPT](#) applies to profits arising from April 1, 2015 and is focused on contrived arrangements designed to erode the UK tax base. Its primary aim is to ensure that the profits taxed in the UK fully reflect the economic activity in the UK itself. This is consistent with the aims of the OECD BEPS¹² project. Specifically, DPT aims to deter and counteract the diversion of profits from the UK by large groups that either:

- (a) Seek to avoid creating a UK permanent establishment that would bring a foreign company into the charge to UK Corporation Tax; or

⁸ *The Role of General Anti-Avoidance Rule in Protecting the Tax Base of Developing Countries* (November 2017), Capacity Building Unit, Department of Economic and Social Affairs, United Nations (www.un.org/esa/ffd/)

⁹ IESBA [Strategy and Work Plan \(SWP\) for 2019-2023](#)

¹⁰ Hearings by the Senate’s Permanent Subcommittee on Investigations chaired by Carl Levin – <https://www.govinfo.gov/content/pkg/CHRG-113shrg89523/pdf/CHRG-113shrg89523.pdf>

¹¹ <https://www.gov.uk/government/publications/diverted-profits-tax-guidance>

¹² <https://www.oecd.org/tax/beps/>

- (b) Use arrangements or entities which lack economic substance to exploit tax mismatches either through expenditure or the diversion of income within the group.
- In Australia, the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015* came into effect on January 1, 2016 "in connection with a scheme, whether or not the scheme was entered into, or was commenced to be carried out, before that day." The Australian legislative measures focus on arrangements that attempt to avoid establishing a permanent establishment presence in Australia. While they were originally intended to target a group of thirty large multinational corporations, other taxpayers will still need to document whether they would be subject to the provisions. The Australian Taxation Office has the power to assess an administrative penalty of 100% of any calculated shortfall of tax owed, together with base tax and interest.
12. The European Commission (EC) recently published a report detailing [Aggressive Tax Planning Indicators](#) in which the EC described *aggressive tax planning* as:

"taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability."

For example, the report noted that transactions that fall within the description of aggressive tax planning:

- Rearrange international flows to avoid repatriation taxes
- Reallocate the tax base to a lower-tax country
- Reduce the tax base via a double deduction or double non-taxation.

More broadly, the report detailed the defining features or indicators of aggressive tax planning to be income shifting through interest or royalty payments and strategic transfer pricing.¹³

13. The EC also identified seven different types of aggressive tax planning structures, namely:
- Offshore loan
 - Hybrid loan
 - Hybrid entity
 - Interest-free loan
 - Patent box
 - Two-tiered
 - IP and cost contribution agreement

In its findings, the EC concluded that these structures are prevalent in jurisdictions where there is:

- A lack of controlled foreign corporation (CFC)¹⁴ rules;

¹³ As noted in its [Terms of Reference](#), the TPWG will focus on the ethical behavior of professional accountants and will not comment on the merits of any particular tax positions or the application of any particular tax schemes.

¹⁴ [Action 3 - OECD BEPS](#) – Controlled foreign company (CFC) rules respond to the risk that taxpayers strip the tax base of their country of residence by shifting income into a foreign company that is controlled by the taxpayers. Without such rules, CFCs provide opportunities for profit shifting and long-term deferral of taxation.

- Base erosion by means of financing costs intra-group; or
 - A lack of rules to counter mismatches in “entities qualification and dividend flow-throughs.”¹⁵
14. Within this report, the EC also noted that “while it is theoretically possible to draw a line between acceptable tax planning and aggressive tax planning, the boundaries will in reality be somewhat blurred.” As such, the EC noted aggressive tax planning is not illegal and does not amount to tax avoidance (refer to [para 6\(b\)](#) above). Rather, it is a term that has been associated with the extent to which organizations may exploit the ambiguities in competing tax systems to reduce their tax liabilities. It is a term that is frequently used to express the notion that an activity pushes the boundaries of what is currently accepted as ethical, and which must be addressed through changes to legislation.
15. After a yearlong series of outreach discussions with various stakeholders, the TPWG has come to the view that it is difficult to adequately define *aggressive tax planning* on a global scale. Global and regional organizations such as the OECD, the United Nations (UN) and the EC are making a concerted effort to address the topic of tax planning as a matter of global importance. Whilst tax planning is a defined term in some jurisdictions,¹⁶ there is a lack of authoritative literature that clearly defines *aggressive tax planning*.

Acceptable Tax Planning

16. In exploring defined terms in the current literature on taxation, the TPWG was introduced to the concept of tax mitigation which is sometimes referred to as acceptable tax planning or “non-aggressive tax planning.” Acceptable tax planning refers to instances where tax practitioners employ tax law to achieve anticipated tax advantages that are intentionally embedded in tax provisions.
17. Mitigation in this sense includes deductions, reliefs, and various other measures that have been expressly included in tax legislation as a means to offer certain avenues for reducing taxpayers’ overall tax liability. Although such choices may also have substantial tax consequences, they are by design intended and known to the tax authorities.

Unacceptable Tax Planning

18. The starting point in the analysis of acceptable versus unacceptable tax planning is that both in interpretation and in application, acceptable tax planning refers to both the legality and the economic substance of the transactions or activities. The OECD’s Inclusive Framework (IF), in relation to BEPS Action 5,¹⁷ requires “substantial activities” in order for the tax regime not to be considered a “harmful tax practice.” “The objective is to prevent low-tax jurisdictions from attracting profits from certain mobile activities without corresponding economic activity. The types of mobile activities covered

¹⁵ A flow-through (pass-through) entity is a legal business entity that passes income on to the owners and/or investors of the business. Flow-through entities are a common device used to limit taxation by avoiding double taxation. With flow-through entities, the income is taxed only at the owner’s individual tax rate for ordinary income. (<https://www.investopedia.com/terms/f/flow-through.asp>)

¹⁶ E.g., Australia, Canada, United Kingdom, United States.

¹⁷ [Action 5 of the OECD’s BEPS](#) addresses the detection and coordination to counter harmful tax practices, with a renewed focus on transparency and substance requirements.

include headquarters, distribution centers, service centers, financing, leasing, fund management, banking, insurance, shipping, holding companies, and the provision of intangibles”¹⁸.

19. As noted in some jurisdictions,¹⁹ the economic substance of a transaction will prevail over the form of the transaction when the form does not reflect, or is inconsistent with, the economic substance.²⁰ Unacceptable tax planning might be deemed to refer to any transaction that is inconsistent with its economic substance.
20. Across all jurisdictions, PAs might face serious penalties where an arrangement is considered inappropriately aggressive by the tax authorities. The TPWG agrees that PAs should not engage in unacceptable tax planning solely for the purpose of tax avoidance, for example via the creation of artificial transactions. At the end of the day, PAs have an ethical responsibility for safeguarding their involvement in a way that distinguishes acceptable tax planning from unacceptable tax planning on behalf of their employing organizations or clients.
21. Several representatives on the IESBA Consultative Advisory Group (CAG)²¹ also have expressed the view that both the legality and economic substance of transactions are relevant considerations when determining what is acceptable tax planning. In particular, it has been suggested on the CAG that a distinction needs to be made between whether a transaction that has been consummated is structured in the most tax efficient way as opposed to one whose primary or sole motivation is tax avoidance. The business purpose of the particular tax planning was therefore noted to be a critical consideration.
22. In conducting its desktop review, the TPWG found that in several jurisdictions, there are tax regulations in place to deal with unacceptable tax planning practices such as general anti-avoidance rule,²² and targeted anti-avoidance and mandatory disclosure rules,²³ although these rules do not necessarily address *aggressive tax planning* practices.
23. The TPWG was also informed that jurisdictions may use several approaches to encourage legal compliance and to discourage unacceptable tax planning practices and/or behavior, although such behavior is not necessarily characterized as *aggressive tax planning*.

¹⁸ *OECD introduces minimum ‘substance’ requirements in low-tax jurisdictions* (PwC , December 2018) <https://www.pwc.com/us/en/services/tax/library/insights/oecd-introduces-minimum-substance-requirements.html>

¹⁹ For example, the United Arab Emirates (UAE) issued [Economic Substance Regulations](#) (Cabinet of Ministers Resolution No. 31 of 2019), (the “Regulations”) on April 30, 2019 as part of their commitment as a member of the OECD Inclusive Framework. The Regulations require UAE onshore and free zone companies and certain other business forms that carry out any of the defined “Relevant Activities” to maintain and demonstrate an adequate “economic presence” in the UAE relative to the activities they undertake (“Economic Substance Test”).

Similarly, the British Virgin Islands (BVI) issued the [Economic Substance \(Companies and Limited Partnerships\) Act, 2018](#) which came into force on January 1, 2019. The law sets out economic substance requirements and reporting for BVI legal entities that are not tax-residents in other jurisdictions and carry on relevant activities.

²⁰ E.g., *Complex Media Inc. v. Commissioner*, TC Memo 2021-14, February 10, 2021, (United States) <https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/transaction-form-disavowed%3b-amortization-deductions-determined/2r4vw>

²¹ See draft minutes of May 2021 IESBA CAG discussion, included as **Agenda Item 9-B**.

²² For example, in Australia, Canada, China, European Union, India, the Netherlands, New Zealand, Singapore, United Kingdom.

²³ Frameworks such as DAC 6 in the European Union.

24. The TPWG also acknowledges that absent of a clear definition of aggressive tax planning, it may be challenging to develop ethics provisions on the topic tax planning for PAs. Instead, some stakeholders have suggested that the TPWG explore the notion of unacceptable tax planning practices and/or behavior and consider whether it is possible to codify indicators of unacceptable tax planning by PAs versus aggressive tax planning.

Unacceptable Tax Planning – Indicators

25. In its literature search on the question of what is or is not acceptable in respect of tax planning arrangements, the TPWG sought to gather some common indicators of unacceptable tax planning. The search yielded a wide-ranging spectrum of indicators, for example:
- Base erosion and profit shifting
 - Hybrids for tax avoidance
 - Abusive use of tax treaties
 - Arrangements without substantive economic activities
 - Double or multiple non-taxation
 - Non-transparent tax system
 - Unreasonably high pricing of intangibles (royalties)
26. Having discussed the indicators of types of tax practices deemed acceptable versus unacceptable, the TPWG explored the merit of a principles-based framework to guide PAs in their tax planning activities and assist them in identifying what would be deemed acceptable vs. unacceptable tax planning behavior.

V. Code of Conduct in Taxation for Organizations and Tax Practitioners

27. The TPWG noted that there are publications that detail what is considered good practice in relation to tax practices as well as conduct expected of organizations and/or tax practitioners. Whilst none of these are embedded as part of a particular code of ethics for either the legal or accountancy profession, these publications establish general frameworks that nonetheless provide a basis on which compliance is encouraged. Below are some examples of those frameworks:
- OECD/G20's Inclusive Framework on [Base Erosion and Profit Shifting \(BEPS\)](#) and [country by country reporting rules](#). The overarching goal behind the 15 BEPS action items is to strengthen the international tax system by removing egregious tax loopholes and ensuring that profits are taxed where economic activities are transacted, and value is created.
 - The EU Council adopted new rules known as "[DAC 6](#)" to increase transparency to deter aggressive cross-border tax planning practices. This framework provides for mandatory disclosure of cross-border arrangements by intermediaries or taxpayers to the tax authorities and mandates automatic exchange of this information among the EU Member States. The stated purpose of DAC 6 is to enhance transparency, reduce uncertainty over beneficial ownership and dissuade intermediaries from designing, marketing and implementing harmful tax structures. Non-compliance with reporting requirements will attract penalties as established in the national legislation of the respective EU Member States.

- In 2014, VBDO²⁴ published a report called [Good Tax Governance in Transition, Transcending the tax debate to CSR](#), in conjunction with PwC Netherlands and Oikos. VBDO looked at how tax was becoming regarded as a necessary part of a company's corporate social responsibility strategy and at the tax transparency performance of Dutch companies. It proposed six principles of good tax governance, which became the basis of an annual ranking program:
 - Companies should define and communicate a clear strategy on tax governance.
 - Tax must be aligned with the business and it is not a profit center by itself.
 - Respect the spirit of the law (with tax compliant behaviour as the norm).
 - Know and manage tax risks.
 - Monitor and test tax controls.
 - Provide tax assurance.
- In 2015, Oxfam, Action Aid, and Christian Aid collaborated on the production of the report *Getting to Good – Towards Responsible Corporate Tax Behaviour*.²⁵ In that report, these organizations codified their current positions on what corporate standards should be in the area of tax planning. In the report, these organizations supported principles of public transparency and reporting. They also supported enhancement of relationships with tax authorities to ensure organizations are not perceived to be using their economic or political power to obtain preferential or extra-statutory treatment in tax rulings or settlements.
- [Principles for Responsible Investment \(PRI\)](#)²⁶ worked with global investors on corporate tax responsibility to produce its [Engagement guidance on corporate tax responsibility](#) in 2015. In 2017, the PRI and the investors worked together to supplement the guidance with the [Investors' recommendations on corporate income tax disclosure](#). The publication is a set of disclosure recommendations developed by investors to strengthen corporate income tax disclosure across tax policy, [governance](#) and risk management areas, which can be summarized as follows:²⁷
 - **Policy:** Disclosure of a tax policy signed by a board-level representative outlining the company's approach to taxation and how this approach is aligned with its business and sustainability strategy.
 - **Governance and risk management:** Information on tax governance and management of the tax policy and related risks.
 - **Performance:** Transparency on tax strategies, tax-related risks and country-by-country activities.

²⁴ VBDO is the Dutch Association of Investors for Sustainable Development.

²⁵ Oxfam, Action Aid, Christian Aid (2015), *Getting to Good – Towards Responsible Corporate Tax Behavior*, [Getting to Good: Towards responsible corporate tax behaviour \(oi-files-d8-prod.s3.eu-west-2.amazonaws.com\)](#). See Appendix 1 for a summary of the report's recommendations.

²⁶ The PRI is independent. It encourages investors to use responsible investment to enhance returns and better manage risks but does not operate for its own profit. It engages with global policymakers but is not associated with any government. It is supported by, but is not part of, the United Nations (<https://www.unpri.org/pri/about-the-pri>).

²⁷ <https://www.unpri.org/tax-avoidance>

In 2018, the PRI also published [Evaluating and engaging on corporate tax transparency: an investor guide](#) which details the following findings and suggestions for future engagement:

- **Policy.** A clear majority of companies in the research set had not yet published a tax policy that applies to the entire organization. Investors can therefore encourage companies to formulate their approach on tax.
- **Governance and risk management.** Although a relatively large number of companies had published information on tax risks, corporate reporting could be more detailed and organization specific. Investors can encourage companies to articulate the process of identification and management of tax risks.
- **Reporting.** None of the companies surveyed had published a country-by-country report. Investors could request more meaningful data that substantiates companies' commitments to avoiding aggressive tax planning.
- In 2018, The B Team²⁸, together with a group of leading companies and through engagement with civil society organizations, institutional investors and international institutions launched its [Responsible Tax Principles](#). The principles offer a framework that details what good tax practice should look like and sets a new benchmark for businesses to work towards practicing. This is a consolidated effort from a group of cross sector and cross regional companies to articulate best practice in seven key areas of tax:
 - Accountability & Governance
 - Compliance
 - Business Structure
 - Relationships with Authorities
 - Seeking & Accepting Tax Incentives
 - Supporting Effective Tax Systems
 - Transparency
- In March 2019, [CSR Europe](#)²⁹ issued an advice and position paper [Blueprint for Responsible and Transparent Tax Behaviour](#). The report identified the following five emerging trends among progressive business:
 - Publication of Tax Strategy or Tax Policy documents.
 - Enhanced collaboration between the CSR and tax departments.
 - A growing preparedness for enhanced transparency and tax reporting requirements.
 - Building co-operative compliance relations with tax authorities.
 - A more open and “pedagogical” approach towards many stakeholders.

The report breaks 'responsible and transparent tax behaviour' into six themed areas and details general advice under each section. It also presents a questionnaire-based 'Self-Assessment

²⁸ Co-founded by Sir Richard Branson and Jochen Zeitz, The B Team launched in June 2013 as a global non-profit organization.

²⁹ CSR Europe is the European Business Network for Corporate Sustainability and Responsibility.

Tool on tax transparency and responsibility' based on the same thematic areas. The areas are summarized³⁰ below:

Theme	Key element
Tax planning strategies	Aligning taxation with value creation
Tax function management and governance	Developing the right processes to manage tax
Public transparency and reporting	Disclosing relevant tax related information to the public
Interaction with tax authorities	Managing relationships with tax authorities & digital transformation of tax administrations
Tax incentives	The impact on public finances
Building a narrative to accompany a tax strategy	How to engage stakeholders with a company's approach to tax

- In April 2019, the [Financial Accountability and Corporate Transparency \(FACT\)](#)³¹ Coalition published [Trending Towards Transparency: The Rise of Country-by-Country Reporting](#).³² The report noted "the growing chorus of individuals and organizations speaking out on the value of tax transparency and the public country-by-country reporting of certain financial information for multinational companies." Detailed recommendations were made on the data elements that should be disclosed, such as number of employees, total revenues and tangible assets.
- The Global Reporting Initiative (GRI), a sustainability standard setter, issued its first global standard for public reporting on tax, [GRI 207: Tax 2019](#), setting out requirements for greater levels of tax transparency reporting. It has called on global businesses to use the framework to provide detailed public information about their tax practices.
- ESG Reporting Frameworks. In March 2019, the GRI noted that only a handful of companies disclosed their environmental performance two decades ago and as of today, 93% of the world's largest companies (by revenue) report ESG³³ information. In Q3 2019, [FactSet reported](#) 31 S&P 500 companies citing "ESG" on earnings calls. The collation and provision of ESG data is an area of investors' interest. Detailed questionnaires and associated methodologies are not usually in the public domain; however, details have emerged to indicate that 'tax conduct' is increasingly on the radar of this sector and its clients. For example, Morgan Stanley Capital International (MSCI) produces ESG indices against which \$67bn of assets are

³⁰ [Essential-elements-of-Global-Corp-Standards-for-Resp-Tax-Conduct-FINAL.pdf \(fairtaxmark.net\)](#)

³¹ The Financial Accountability and Corporate Transparency (FACT) Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

³² Freymeyer, Christian (2019), *Trending Towards Transparency: The Rise of Country-by-Country Reporting*.

³³ The [Financial Times Lexicon](#) defines ESG as "a generic term used in capital markets and used by investors to evaluate corporate behavior and to determine the future financial performance of companies."

benchmarked³⁴. In 2016, the Financial Times reported that from January 2017, "MSCI will significantly reduce the ESG ratings of companies that are embroiled in legal battles over tax issues, pay effective rates of tax that are much lower than their predicted rates based on revenues, or those with opaque tax structures."³⁵

28. From the various frameworks noted above, the TPWG observed that they include considerations of **FAIRNESS**,³⁶ **TRANSPARENCY**³⁷, and **ACCOUNTABILITY**. As highlighted in conversations with stakeholders that operate in the non-governmental³⁸ and non-profit³⁹ space, there is an increased push towards organizations being more publicly transparent about their tax affairs. There is a general view that voluntary transparency in respect of tax affairs can improve public perceptions of these organizations when employing a certain tax strategy. As they pursue such transparency, organizations are also being encouraged to give greater consideration to the ethical dimension of their tax planning and compliance strategies to ensure alignment with current legislation.⁴⁰
29. The TPWG was also briefed on the importance of enhanced transparency with tax authorities and how such transparency is viewed as a cornerstone of co-operative compliance. The general concept of cooperative compliance was initially referred to as "enhanced relationships," but was rebranded as cooperative compliance in 2013 by the OECD.⁴¹ The concept is broadly viewed as an exchange of greater upfront **TRANSPARENCY** by the taxpayer in return for more certainty from the tax authorities⁴². The general view is that reduced compliance costs and efficiencies often result due to the better utilization of resources by both parties.

VI. Code of Conduct in Taxation for Professional Accountants

30. Having scanned international publications on good practice guidelines in relation to tax practices, the TPWG has further sought to understand the various frameworks available to PAs internationally as well as across some jurisdictions in the provision of tax planning services. These are summarized below.

³⁴ [Essential-elements-of-Global-Corp-Standards-for-Resp-Tax-Conduct-FINAL.pdf \(fairtaxmark.net\)](#)

³⁵ <https://www.ft.com/content/b12b120c-a80b-11e6-8b69-02899e8bd9d1>

³⁶ Tax fairness is a concept which states that a government's system of taxation must be equitable to all of its citizens. (<https://financialtransparency.org/what-is-tax-fairness-and-why-does-tax-fairness-matter/>)

³⁷ In a recent [report](#) published by VBDO and PwC Netherlands, there is a demand for tax transparency due to the increased realization that taxes are needed to "fund sustainable growth as proposed in the EU's Green Deal and the net-zero emissions commitments made by governments and corporations". Tax is seen as "an instrument to create socio-economic cohesion, environmental value creation and long-term prosperity" especially in the wake of worsening budget deficits due to the COVID-19 pandemic.

³⁸ Banco Bilbao Vizcaya Argentaria (BBVA), Iberdrola

³⁹ ActionAid, Oxfam (EU)

⁴⁰ Accountancy Europe

⁴¹ Co-operative compliance is an initiative developed by the [OECD Forum on Tax Administration](#) to promote better tax compliance. It sets out expectations for transparency and good tax governance by the taxpayer in order to give a high degree of reassurance as to the control of tax risks and the absence of aggressive tax planning.

⁴² For example, during its outreach with Singapore Chartered Tax Professionals (SCTP), the TPWG was informed that in Singapore, there is an "advance ruling" procedure under which a taxpayer can write to the Inland Revenue Authority of Singapore (IRAS) to seek a confirmation of whether a transaction that is to be undertaken complies with the law and whether its interpretation of the tax outcome is agreeable to IRAS. If IRAS gives a positive ruling, IRAS is required to adhere to this ruling.

IFAC (GLOBAL)

31. IFAC has developed a non-authoritative good practice guide to support professional accountancy organizations (PAOs) in providing guidance to their members regarding the application of the IESBA Code when providing tax advice. The guide, [A Guide for PAOs – Developing Good Practices for Members Providing Tax Advice](#), illustrates what compliance with the Code might entail in the area of tax planning.
32. In its guide, IFAC details the importance of PAs maintaining an ethical mindset in providing tax advice or carrying out taxation services. The guide illustrates the application of the Code's five FPs to tax advice. The good practices are presented after the requirements of the Code in relation to each of the FPs: integrity, objectivity, professional competence and due care, confidentiality and professional behavior.
33. The IFAC guide also goes on to encourage PAOs to guide their members to apply good practice management in terms of:
 - Providing tax advice based on a specific client's facts and circumstances;
 - In doing so, ensuring full disclosure and transparency of the transactions undertaken to all parties involved, i.e., client and the tax authorities;
 - Bearing in mind that they are to remain lawful at all times; and
 - Where significant professional judgment is being exercised, to ensure appropriate documentation.

American Institute of CPAs (USA)

34. The American Institute of CPAs (AICPA) issued "The Statements on Standards for Tax Services"⁴³ (SSTs), the interpretations of SSTs and Frequently Asked Questions. SSTs are set as "enforceable tax practice standards for members of the AICPA" and "delineate members' responsibilities to taxpayers, the public, the government, and the profession." The SSTs and their interpretations are intended to complement other standards of tax practice, such as U.S. Treasury Department Circular No. 230, *Regulations Governing Practice before the Internal Revenue Service*; penalty provisions of the Internal Revenue Code; and state boards of accountancy rules.
35. The SSTs note that their origin was the Statements on Responsibilities in Tax Practice (SRTPs), which were originally issued between 1964 and 1977, and that SRTPs "became de facto enforceable standards of professional practice, because state disciplinary organizations and courts regularly held CPAs accountable for failure to follow the guidelines set forth in the SRTPs."
36. *Statement on Standards for Tax Services No. 1, Tax Return Positions*⁴⁴ was issued to clarify how relevant "standards would apply across the spectrum of tax planning, including those situations involving tax shelters, regardless of how that term is defined." The interpretation provides general interpretation as well as specific illustrations to help AICPA members apply and interpret the relevant standards on a member's responsibilities in connection with tax planning. *Statement on Standards*

⁴³ <https://www.aicpa.org/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices.html>

⁴⁴

<https://www.aicpa.org/content/dam/aicpa/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices/downloadabledocuments/ssts-interpretation-no-1-2-tax-planning.pdf>

for Tax Services No. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*⁴⁵ provides guidance when AICPA members become aware of a significant error in a taxpayer's current or previous tax return.

ACCA, ATT, ICAEW, ICAS (UNITED KINGDOM)

37. “*Professional Conduct in Relation to Taxation*”⁴⁶ (PCRT) was jointly produced by Association of Accounting Technicians (AAT), Association of Chartered Certified Accountants (ACCA), Association of Taxation Technicians (ATT), Chartered Institute of Taxation (CIOT), Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), and Society of Trust and Estate Practitioners (STEP). Her Majesty's Revenue and Customs (HMRC) has incorporated this code of conduct into its own Standards for Tax Agents.
38. The purpose of this code of conduct is “to assist and advise members on their professional conduct in relation to taxation, and particularly in the tripartite relationship between a member, client and HMRC.” PCRT has the Fundamental Principles and the Standards for Tax Planning. The Fundamental Principles are derived from the IESBA Code issued in July 2009.
39. PCRT⁴⁷ has guidance for tax planning arrangements, tax evasion, and tax planning and advice. In its foreword, PCRT mentions that “a member must never be knowingly involved in tax evasion, although, of course, it is appropriate to act for a client who is rectifying their affairs.” Additionally, it states that “a member who has reason to believe that proposed arrangements are, or may be, tax evasion must strongly advise clients not to enter into them. If a client chooses to ignore that advice, it is difficult to envisage situations where it would be appropriate for a member to continue to act other than in rectifying the client's affairs.” Furthermore, PCRT sets out a flowchart that summarizes the recommended steps for a member when a possible error arises (refer to [Appendix 2](#))

APESB (AUSTRALIA)

40. The Accounting Professional & Ethical Standards Board (APESB) in Australia has issued APES 220 *Taxation Services*⁴⁸ for members of the professional accountancy bodies to “set the standards for Members in the provision of quality and ethical Taxation Services.” The standard has guidance on tax schemes and arrangements.
41. [Paragraph 5.4 of the guidance](#) states that “a Member shall not promote, or assist in the promotion of, or otherwise encourage any tax schemes or arrangements where the dominant purpose is to derive a tax benefit, and it is not reasonably arguable that the tax benefit is available under Taxation Law.”⁴⁹

⁴⁵ <https://www.aicpa.org/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices/ssts-knowledge-of-error-faq.html>

⁴⁶ Effective from March 2017 and republished in March 2019, <https://www.icaew.com/-/media/corporate/files/technical/tax/pcrt/pcrt.ashx>

⁴⁷ The TPWG was informed by the Singapore Chartered Tax Professionals (SCTP) that SCTP's [Code of Professional Conduct and Ethics](#) is modelled after the PCRT.

⁴⁸ https://apesb.org.au/wp-content/uploads/2020/03/Revised_APES_220_July_2019.pdf

⁴⁹ A member should consider applicable legal precedents, in addition to the laws and regulations relating to the promoter penalty regime in Division 290 of Schedule 1 to the Taxation Administration Act 1953 (https://apesb.org.au/wp-content/uploads/2021/01/Revised_APES_220_July_2019_web.pdf).

Accordingly, a Member shall not provide advice on such a scheme or arrangement to a Client or Employer other than to advise that in the Member's opinion it is not effective at law."

42. Among other matters, the guidance states that "a Member shall not knowingly or recklessly be associated with any arrangement which involves documents or accounting entries that are intended to misrepresent a transaction, or which depend upon lack of disclosure for its effectiveness."
43. Furthermore, the standard has guidance on "false or misleading information" for members⁵⁰ of the professional accountancy bodies to follow when they encounter materially false or misleading information. Standard 7.6 states that "a Member in Public Practice who:
 - (a) Knows that a Client or the Member on behalf of the Client has filed a return or submission materially understating a tax liability to a Revenue Authority, and
 - (b) Finds the Client unwilling to correct such understatement,shall consider the Firm's policies and procedures established in accordance with Acceptance and Continuance of Client Relationships and Specific Engagements of APES 320 *Quality Control for Firms* in determining whether to continue acting for the Client in a professional capacity."

Accountancy Europe

44. In 206, Accountancy Europe produced a [reporting template](#)⁵¹ for country-by-country reporting that aims for companies to provide useful information required by stakeholders whilst minimizing the costs of preparation and the risk of disclosing economically sensitive information.
45. Some of the specifications include corporate tax paid, effective tax rate, non-taxation-based fees and levies or investments to the public finances, number of legal entities, business activities and taxes paid other than corporation tax.

Global Accounting Firm Networks

PricewaterhouseCoopers (PwC) Total Tax Contribution Framework

46. The PwC [Total Tax Contribution Framework](#) was launched in 2005 and distinguishes between taxes borne and taxes collected. The framework identifies five dimensions through which to think about tax obligations: profit, people, product, property and planet (environmental)⁵². It also captures 'other payments' to government (such as payments for rights to explore or extract oil and gas from a mineral area) and the cost of tax compliance. Corporation taxes are captured as 'cash taxes paid', not accounting accruals. PwC encourages businesses to make a 'Total Tax Rate' calculation, based on taxes borne over the profit before borne taxes, and a 'Taxes borne and collected as a percentage of turnover' calculation.

KPMG Responsible Tax Project

47. The KPMG [Responsible Tax Project](#) was initiated in the UK in 2014 and is now presented as a 'global' project that invites "the full range of stakeholders, including taxpayers, academia, media, government,

⁵⁰ Of the professional bodies i.e., CPA Australia, CAANZ

⁵¹ <https://www.accountancyeurope.eu/publications/concrete-proposal-public-country-country-reporting-disclosing-tax-information/>

⁵² <https://www.pwc.com/gx/en/tax/pdf/the-total-tax-contribution-framework.pdf>

global bodies, politicians, NGOs and tax professionals, to inform thinking on what responsible tax behavior looks like in a global context.”

48. As part of the project, KPMG introduced [Principles for a Responsible Tax Practice](#) that bring to life values and its [Global Code of Conduct](#) in a way that is meaningful to its tax professionals. Some of the principles adopted, which are based off the IESBA Code, are integrity, objectivity and professional due care.

Ernst and Young and Deloitte

49. Both Ernst and Young and Deloitte have made similar contributions with the release of reports that ask readers to consider the ongoing external drivers toward more tax transparency and what a corporate response might look like.
- EY’s ‘Tax Transparency – seizing the initiative’. The paper is a call to action for multinationals to be more transparent about their tax affairs. In considering tax transparency reporting, the report recommends that organizations:
 - Recognize that now is the time to review the position with respect to additional reporting;
 - Review how they measure against their peer group and consider where they want to be;
 - Decide where the most appropriate place is to communicate the tax strategies; and
 - Design the processes to collate suitable information and supporting data.
 - Deloitte’s ‘Responsible Tax – Sustainable tax strategy’.⁵³ The paper explores practical steps to assist organizations align their tax strategy with their broader corporate and risk management strategy. The steps involve:
 - Reviewing the current tax strategies by benchmarking against best practice guidance in the market and by understanding the tax risk profiles;
 - Identifying where gaps may exist by carefully considering factors such as financial, reputation and interests of all the stakeholders (from investors to employees and customers and relevant authorities), including an assessment of the stakeholders’ ethical agenda;
 - Communicating the tax strategy adopted; and
 - Ensuring the sustainability of such strategy for the organization.

Other Firms

50. Other firms also actively contribute to the discourse on international taxation. For example, BDO has in place an international research program called the [Global Tax Outlook](#). This program produces periodic thought pieces⁵⁴ that cover matters such as:
- The most significant tax issues facing an organization and the priorities that are being set.
 - How changes in tax legislation and the behavior of tax authorities impact business.

⁵³ <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/tax/uk-tax-responsible-tax-v2.pdf>

⁵⁴ https://www.bdo.com/BDO/media/Report-PDFs/TAX_2021-BDO-Tax-Outlook-Survey_web.pdf

- Tax strategy, policy and risk – the focus on tax at board level and the evolution of the tax function.
- The use of technology in tax.
- Total tax liability – and its value in directing decision making.

Feedback from Outreach

51. A common message the TPWG has heard in its outreach to some of the global networks of firms⁵⁵ is that the firms have in place frameworks based on the FPs of the IESBA Code and various good practice guidelines from the industry. As noted in discussions with these firm stakeholders,⁵⁶ PAs in the firms undergo training on real life case studies of tax transactions on which the firms have provided advice. In addition, in carrying out their obligations under the Code, PAs in those firms will use their training to make an informed judgment when faced with an ethical dilemma. It was acknowledged⁵⁷ that there is a greater need to keep up with changes in tax legislation and interpretations of tax law by the tax authorities and the courts, as well as to be sensitive to public perceptions.
52. A few stakeholders⁵⁸ noted that it is important for PAs to maintain their competencies via continuous professional development. It was argued that PAs should not view the training activities as a compliance exercise but rather as a critical need to ensure that they do not breach the FPs of *Professional Competence and Due Care* and *Integrity* when carrying out tax planning activities:
- The PA must have the appropriate competencies and skills 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 applicable national professional standards, laws, and regulations.
 - If the PA knew the PA lacked the expertise to at least ask the right questions, then this demonstrates a lack of fair dealing or *integrity* on the part of the PA.

VII. Expectations of Ethical Behavior for Professional Accountants in Tax Planning

Professional Accountants and the Ethical Principles

53. As noted in discussions with certain PAOs,⁵⁹ there are requirements or guidance these PAOs have specified for their members who perform tax planning services. Where the expected ethical behavior of PAs carrying out tax planning activities is based on the IESBA Code, there is consensus that the five FPs are interrelated. This view was also shared by some practitioners⁶⁰ who confirmed that their firms' policies and procedures follow the principles of the Code.

⁵⁵ Global Public Policy Committee (GPPC) brings together senior partners from the six large international accounting networks (BDO, Deloitte, EY, Grant Thornton, KPMG and PwC)

⁵⁶ GPPC

⁵⁷ AICPA, Malaysian Institute of Certified Public Accountants (MICPA) / Malaysian Institute of Accountants (MIA), UK Professional Accountancy Bodies, Accountancy Europe

⁵⁸ AICPA, MICPA/MIA

⁵⁹ AICPA, UK professional accountancy bodies

⁶⁰ KPMG, PwC

Compliance with the Fundamental Principles

54. As discussed at the December 2019 [IESBA meeting](#), the TPWG is of the view that the behavior expected of PAs performing tax planning services is the same for all PAs across the five FPs in an interrelated manner. As a result, missing or not fully understanding the threat to compliance with one FP might create a threat of non-compliance with another FP.
55. In its discussions with stakeholders, the TPWG presented the following option(s) to address the inter-related nature of the impact of tax planning on compliance with the FPs:

Option A

Develop overarching material in the Code that will assist PAs comply with the FPs and apply the CF.

Option B

Develop material under one or more specific FPs, such as objectivity and professional competence and due care, to explain the expected behavior of PAs performing tax planning activities.

Option C

Develop material outside the Code (such as staff Q&As or case studies) on the types and magnitude of the threats that might be created when PAs perform tax planning activities.

56. The TPWG noted roughly equal split of support among stakeholders for Options A and C. The TPWG found that the split of views for either Option A or Option C relates directly to the type of ethical code in place for each jurisdiction. Where the local jurisdiction has adopted a rules-based approach, the preference is for Option A as the stakeholders feel that any guidance outside the Code would not suffice in assisting regulators enforce the ethical requirements. It was argued that avoiding ambiguity in determining what is acceptable versus unacceptable tax planning practice would help eliminate perceived gaps in the Code. In discussions with national standard setters (NSS), a regulatory stakeholder⁶¹ has also observed that stakeholders' perspectives have shifted amidst the COVID-19 pandemic and there is increasing public support for businesses that "do the right thing" – a comment that aligns with increasing stakeholder awareness about the importance of considering ESG issues.
57. Conversely, stakeholders who preferred Option C are predominantly from jurisdictions which have adopted a more principles-based approach. These stakeholders welcome guidance materials that would help PAs navigate real-life ethical dilemmas they may experience in providing tax services.
58. The TPWG also noted that stakeholders' views varied based on their professional backgrounds. Stakeholders who operate within the profession (e.g., PAOs and practitioners) generally welcomed Option C as these stakeholders have in place relevant literature to guide their members or themselves in the provision of tax services.⁶² A NSS also expressed a preference for Option C as it has already promulgated a standard in this area.⁶³ These stakeholders encouraged the development of guidance materials with real-life examples. Conversely, stakeholders outside the profession, such as regulators and nonprofit organizations, generally preferred Option A to enhance transparency,

⁶¹ UK Financial Reporting Council (FRC)

⁶² The TPWG found that in most instances, the professional bodies and practitioners have referred to the IESBA Code as the basis for putting together a framework for PAs providing taxation services. The TPWG also found that there are varying levels of granularity in those frameworks.

⁶³ APESB has issued [APES 220 Taxation Services \(2019\)](#)

accountability, uniformity and compliance across the profession. These different perspectives were also shared within the IESBA CAG.⁶⁴ A few within the CAG supported consideration of both Options A and C as they did not see the two options as mutually exclusive.

59. As for Option B, the TPWG noted little to no support as the stakeholders viewed that the complexity and diversity of the tax issues cut across all the FPs. They felt that the adoption of this option may inadvertently create gaps in the Code as the general view is that the behavior expected of PAs performing tax planning activities is the same for all PAs across the five FPs in an interrelated manner.

VIII. Other Relevant Provisions of the Code

60. The Code contains other provisions that are relevant when considering the ethical expectations for PAs who provide tax planning services to their employing organizations or clients.

Section 100

61. As revised as part of the [Role and Mindset provisions](#), paragraph 100.1 of the Code states that a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Paragraph 100.6 A4 further states that in acting in the public interest, a PA considers not only the preferences or requirements of an individual client or employing organization, but also the interests of other stakeholders when performing professional activities.

Section 120

62. Section 120 sets out requirements and application material, including a conceptual framework, to assist PAs in complying with the FPs and meeting their responsibility to act in the public interest. The conceptual framework specifies an approach for PAs to identify, evaluate and address threats to compliance with the FPs by eliminating the threats or reducing them to an acceptable level.
63. As noted in paragraph 31 above, the IFAC Tax Guide for PAOs provides guidance on the application of each of the Code's five FPs to the provision of tax planning advice: integrity, objectivity, professional competence and due care, confidentiality and professional behavior.

Ethics-based culture

64. The TPWG noted academic literature which examined the role of PAs as ethical leaders in their organizations.⁶⁵ The perception of PAs as ethical leaders was also shared by stakeholders whom the TPWG consulted during the outreach program in Q1 2020. Practitioners echoed the relevance of Section 200⁶⁶ of the Code which specifies an expectation for PAs to encourage and promote an ethics-based culture in their organizations, considering their position and seniority within those organizations.⁶⁷ The promotion of an ethical culture within an organization and the expectation for

⁶⁴ See draft minutes of May 2021 IESBA CAG discussion, included as **Agenda Item 9-B**.

⁶⁵ Darius Fatemi, John Hasseldine, Peggy Hite, 'The Influence of Ethical Codes of Conduct on Professionalism in Tax Practice' (2018), *Journal of Business Ethics*.

⁶⁶ Part 2, *Professional Accountants in Business*, Section 200, *Applying the Conceptual Framework – Professional Accountants in Business*, paragraph 200.5 A3.

⁶⁷ [Agenda Item 5-A IESBA Technology Initiative Phase 1 Final Report \(December 2019\)](#)

PAs to encourage and promote such a culture within their organization have also been emphasized as part of the recent Role and Mindset revisions to the Code.⁶⁸

Role and Mindset

65. In considering the role of PAs as ethical leaders, the IESBA has included revised provisions in [Subsection 115](#)⁶⁹ as part of its Role and Mindset project. The revised provisions specifically require PAs to behave in a manner that is consistent with the profession's responsibility to act in the public interest. The revisions explicitly state that PAs are entrusted with public confidence in the wide-ranging roles they play in society, and that that confidence is based on the skills and values PAs bring to their professional activities.
66. Among other changes, the revisions reinforce aspects of the FPs of integrity, objectivity and professional behavior. They also raise behavioral expectations of PAs, requiring them to have an *inquiring mind* as they apply the conceptual framework when carrying out their professional activities. The revisions stress the importance of PAs being aware of the potential influence of bias in their judgments and decisions. As noted above, the provisions also highlight the supportive role the right organizational culture can play in promoting ethical conduct and business.

Inducements

67. In July 2018, the IESBA issued revisions to the Code regarding the offering and accepting of inducements. The revisions clarified the meaning of an inducement, which can range from a minor act of hospitality between business colleagues to an act that results in non-compliance with laws and regulations. The revisions also stress that an inducement is "considered as improperly influencing an individual's behavior if it causes the individual to act in an unethical manner."
68. Importantly, the revised provisions set out a comprehensive framework that distinguishes the boundaries of acceptable inducements, guiding the behavior and actions of PAIBs and PAPPs in situations involving inducements. To begin, the provisions require PAs to understand relevant laws and regulations that prohibit the offering or accepting of inducements in certain circumstances, such as those related to bribery and corruption, and to comply with them when PAs encounter such circumstances. Next, central to this framework is an intent test that prohibits the offering or accepting of inducements where there is actual or perceived intent to improperly influence the behavior of the recipient or of another individual. Finally, with respect to inducements with no intent to improperly influence behavior, the provisions guide PAs in applying the conceptual framework.
69. How the Code addresses inducements provides some useful parallels when thinking about PAs' ethical behavior in relation to tax planning. Like tax planning, inducements are not necessarily illegal or unethical. However, there are inducements that fall within the "gray area" of what might potentially be deemed unacceptable. Further, the inducements provisions give regard to how a PA's actions might be perceived by a reasonable and informed third party. Thus, the conceptual and structured approach taken in the Code to help PAs think more clearly about their judgments and actions in circumstances involving an inducement might be a useful one to consider when thinking about how best to guide the judgments and behavior of PAs involved in providing tax planning services.

⁶⁸ Paragraphs 120.13 A1-A3.

⁶⁹ Subsection 115, *Professional Behavior*.

Non-compliance with laws and regulations (NOCLAR)

70. In July 2016, the IESBA issued the NOCLAR provisions which set out a framework guiding the response of PAs in the public interest when they encounter NOCLAR or suspected NOCLAR. The provisions apply to both PAIBs and PAPPs. Examples of NOCLAR include tax evasion and tax fraud.
71. Under the NOCLAR provisions, the PA's objective is to comply with the FPs of integrity and professional behavior. Importantly, the response framework assists the PA in dealing with the situation, including escalating the issue with management or those charged with governance so that the consequences of the NOCLAR are appropriately rectified or remediated. Ultimately the PA is required to determine if further action is required in the public interest.
72. A critical decision point for the PA is whether to set aside the duty of confidentiality under the Code in order to make disclosure of the NOCLAR or suspected NOCLAR to an appropriate authority. The NOCLAR provisions grant the PA such a right and set out detailed considerations to aid the PA in that decision-making process.

Non-assurance Services

73. In April 2021, the IESBA issued [revisions](#) to the NAS provisions of the Code. Amongst other matters, the revised provisions prohibit an audit firm or a network firm from providing a tax service or recommending a transaction to an audit client if the service or transaction relates to marketing, planning, or opining in favor of a tax treatment initially recommended, directly or indirectly, by the firm or network firm and a significant purpose of which is tax avoidance, unless the firm is confident that the proposed treatment has a basis in applicable tax law or regulation that is likely to prevail.⁷⁰
74. Revised subsection 604⁷¹ requires firms to consider potential self-review or advocacy threats to independence arising from tax compliance or advisory services. For example, when providing tax advice that is dependent on a particular accounting treatment or presentation, the firm will need to consider whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements and whether the audit team has doubt as to the appropriateness of that treatment or presentation under the relevant financial reporting framework.
75. These NAS provisions, however, only deal with auditor independence and not the broader considerations of PAs' ethical behavior in relation to tax planning.

IX. Other Matters for Consideration

Tax Morality

76. The TPWG has also considered the OECD's work on [Tax Morale](#). Tax morale, as defined by the OECD, is the intrinsic motivation to pay taxes. This is a vital aspect of the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues.
77. In a [report](#) published in 2019, the OECD analyzed the results of a survey of business perceptions on tax certainty to identify the constraints and concerns businesses face in paying in taxes around the world. The study is amongst a few which examine the relevance of tax morale to explain the level of tax compliance versus tax evasion, and its implications on fiscal policy implementation. This report

⁷⁰ Paragraph R604.4.

⁷¹ Subsection 604, *Tax Services*.

builds on previous OECD research to identify some of the key socio-economic and institutional drivers of tax morale across developing countries. Finally, the report identifies a range of factors that may affect business decision making such as risk preferences, approach of tax advisors, board reputation, company structure, size of the firm, compliance cost and tax complexity. The report also suggests some areas for future research.

78. In summary, the moral underpinnings of paying taxes in the light of the public interest is clear according to the report. The report also raises the question of whether the current tax reform proposals conform to a broadly held understanding of the public interest. Tax avoidance, which is legal according to letter of the law, is not always perceived to be supporting the principles of tax morality.

Corporate Social Responsibility (CSR) and Environmental, Social and Governance

79. Corporate Social Responsibility (CSR)⁷² is an evolving business practice that incorporates sustainable development into a company's business model. There is a general appreciation that CSR has a positive impact on social, economic and environmental factors.⁷³ The main principle behind CSR is about providing accountability within the organization. As noted above, the TPWG has found that reporting tax strategies is part of a company's consideration for CSR reporting. Increasingly, corporate tax has become a leading governance consideration, specifically corporate income tax responsibility and disclosure targeting aggressive tax strategies.
80. ESG refers to the three key factors of environmental, social and governance when measuring the sustainability and ethical impact of an investment in a business or company. ESG is the quantifiable measure of a company's sustainability and societal impact, using metrics that matter to investors. The factors are a subset of non-financial performance indicators which include ethical, sustainable and corporate governance issues. The number of investment funds that incorporate ESG factors in their investment strategies has been growing rapidly since the beginning of this decade and is expected to continue rising significantly over the decade to come.
81. Although much of the global attention within the ESG sector has been placed on the environmental component, social and governance issues are equally important. As multinational corporations pursue their ESG strategies, these organizations may endorse tax disclosure⁷⁴ describing the principles of transparency⁷⁵ and accountability. Disclosure is viewed as a mechanism to highlight that these organizations do not encourage or promote tax evasion and adopt aggressive tax strategies that are deemed 'unacceptable' by the general public.⁷⁶

⁷² The European Commission has defined CSR as the responsibility of enterprises for their impact on society and, therefore, it should be company led. Companies can become socially responsible by integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations following the law. Public authorities play a supporting role through voluntary policy measures and, where necessary, complementary regulation. (https://ec.europa.eu/growth/industry/corporate-social-responsibility_en)

⁷³ <https://www.businessnewsdaily.com/4679-corporate-social-responsibility.html>

⁷⁴ Deborah L. Paul and T. Eiko Stange, Wachtell, Lipton, Rosen & Katz, 'Tax and ESG' (February 22, 2020), <https://corpgov.law.harvard.edu/2020/02/22/tax-and-esg/#more-127066>

⁷⁵ SSE PLC (<https://sse.com/media/270263/SSE-Tax-Policy.pdf>), Tullow PLC (http://www.tulloil.com/Media/docs/default-source/5_sustainability/tullow_2013_transparency_report.pdf?sfvrsn=4)

⁷⁶ J.M. Fisher, 'Fairer Shores: Tax Havens, Tax Avoidance, and Corporate Social Responsibility' (2014), Boston University Law Review

X. Preliminary Working Group Recommendations

82. On the basis of its fact-finding work, the TPWG believes there are sufficient grounds to recommend that the Board undertake a project to develop enhancements to the Code to address ethical considerations when PAIBs and PAPPs provide tax planning services, beyond the limited NAS provisions that address independence when PAPPs provide tax planning services to audit and assurance clients.

Basis for Preliminary TPWG Recommendation for a Project

83. The rationale for the TPWG's recommendation that the Board undertake a project to address ethical considerations when PAs provide tax planning services to their employing organizations or clients is as follows:
- The topic of tax planning has risen to such a level of public interest importance that it deserves a robust response from the IESBA. Stakeholders' expectations that PAs act ethically in relation to tax planning have increased significantly. Yet, beyond the FPs and CF and the limited NAS provisions in relation to independence as noted above, the Code is silent on such an important topic. Specifically, while tax planning services constitute a major part of the profession's work, whether in business or public practice, the Code provides no explicit guidance to assist PAs in navigating the ethical considerations in relation to tax planning. Not responding through explicit provisions in the Code would be a missed opportunity to strengthen the Code in this area. The Public Interest Oversight Board (PIOB) has also [communicated](#) its expectations that the IESBA promptly advance work on this topic given relevant concerns raised by many stakeholders and society at large.
 - As a standard setter, the TPWG believes the Board's focus should be on a standard-setting response first and foremost provided that there is a public interest rationale for it and it is clear what that response will be. (This is further discussed below.) In contrast to non-authoritative material, the provisions contained in the Code have greater visibility and standing because they are authoritative. Further, the Code has a much greater ability to influence behavior because it is enforceable.⁷⁷ Finally, under IFAC's Statements of Membership Obligations,⁷⁸ IFAC member bodies are required to apply no less stringent standards than those stated in the Code. Accordingly, the jurisdictions of those PAOs effectively benchmark their ethics standards against the Code.
 - As the TPWG has documented above, a variety of international and regional organizations as well as PAOs and firms have developed their own frameworks and practices that touch on ethical considerations to a larger or lesser extent in relation to tax planning. As the ethics standard setter for the global accountancy profession, it behooves the IESBA to play its part and take a leadership role in promulgating global ethics standards specifically addressing PAs' responsibilities in relation to the provision of tax planning services, especially considering that many of the issues of concern identified in the TPWG's research are cross-border or multi-jurisdictional.

⁷⁷ As noted, for example, by representatives of the AICPA and UK FRC, or in enforcement actions they have taken.

⁷⁸ IFAC Statement of Membership Obligations 4, *IESBA Code of Ethics for Professional Accountants*, paragraph 12.

- The frameworks and guidance materials that various organizations and firms have developed overlap to varying degrees but are not necessarily consistent with each other because they do not serve the same purposes or address the same audience. There is a compelling need for a unifying framework in the Code that would codify and embody the principles and best practices to guide PAs when providing tax planning services.
 - As noted above, businesses' tax planning has become an important aspect of the growing ESG movement. There is a clear opportunity for the Code to lay a stake in the ground by speaking to how it supports PAs' role in building sustainable businesses in this regard. This would also be consistent with and reinforce the role and mindset provisions in the Code.
84. The TPWG therefore believes the Board should focus on Option A as described in [Section VII](#) above (developing enhancements to the Code) rather than Option C (developing non-authoritative material). This approach, however, does not preclude the Board assessing in due course the need for non-authoritative material and collaborating with others (IFAC in particular) as appropriate to supplement the relevant provisions in the Code.

Focus of a Standard-setting Response

85. Having considered the extensive work done by other organizations on the topic of tax planning, including the development of indicators of tax planning practices deemed acceptable versus unacceptable, the TPWG recommends that the Board develop a principles-based framework in the Code to guide PAs in their tax planning activities. Quite apart from the general advantages of principles over rules, the TPWG believes that a focus on principles is the appropriate way forward because of the wide variety of tax laws, practices and customs around the world, i.e., global applicability is an overriding consideration. A focus on principles is also appropriate because of concerns stakeholders have expressed about the risk of the Code becoming unduly prescriptive given the shifting goalpost of what is deemed acceptable versus unacceptable tax planning practice. The TPWG is also of the view that it is undesirable to take a rules-based approach as this may foster a 'check-box' mentality.
86. The TPWG believes this principles-based framework could deal with the following:
- At an overarching level, draw the appropriate linkages to provisions in the Code that speak to PAs' greater societal role and their responsibility to act in the public interest in the context of tax planning services, i.e.:
 - The particular aspects of tax planning services that contribute to PAs' societal role, the sustainability of businesses, and the profession's reputation at large in the context of public perceptions and expectations. In this regard, while it would be relevant to speak to reputational risks from the profession's perspective, the TPWG does not believe the Code should deal with the broader theme of tax morality. However, what the Code might specify in terms of principles and clearer delineation of the "gray area" might assist in mitigating some of the concerns about tax morality.
 - PAs' responsibility to comply with the FPs and the types of threats to such compliance that might be created in tax planning circumstances.
 - PAs' responsibility to exhibit the mindset and behavioral characteristics expected of the profession. Within the context of tax planning, this might include guidance elaborating on the relevance of behavioral concepts and principles such as strength of character and

having an inquiring mind; and expectations of PAs to promote an ethics-based culture within their organization.

- PAs' responsibility to respond to NOCLAR or suspected NOCLAR when they encounter information that suggests tax planning might have "stepped over the line" into an actual or suspected breach of tax laws and regulations.

These linkages might individually or together speak to the issues of fairness and accountability.

- At a practical level:
 1. Provide guidance to assist the PA in identifying what might be deemed acceptable or unacceptable tax planning behavior. As noted above, the approach taken in the Code with respect to navigating circumstances involving inducements might be useful to consider in this regard, e.g.:
 - Understand the applicable tax laws and regulations, including as far as possible the legislative intent, and comply with them.
 - Apply a judgment akin to an "intent test," i.e., the underlying rationale or intent for the particular tax scheme, structure or transaction, taking into account a reasonable and informed third party's perceptions. In this regard, the Code might provide guidance on indicators of what might be deemed acceptable vs unacceptable tax planning, drawing on the work done by other organizations.
 - If there is no intent to promote unacceptable tax planning, provide guidance on applying the conceptual framework to the tax planning facts and circumstances, i.e., what types of threats might be created and what actions, including safeguards, might address the threats. This might include guidance to navigate situations where the legislative intent behind tax laws and regulations is uncertain.
 2. Address circumstances where there might be undue pressure, whether from management or from a client, to skirt the boundaries of what might be deemed acceptable tax planning. Linking to the provisions of the Code addressing pressure to breach the FPs might be appropriate in this regard.
 3. Recognize that an inducement might be offered to achieve certain tax outcomes in strict non-compliance with tax legislation. Linking to the provisions of the Code addressing inducements might be appropriate in this regard.
 4. Provide guidance with respect to when communication with management or those charged with governance would be appropriate, including as part of an escalation process, and the matters or concerns that might be communicated.
 5. Provide guidance on when and with whom to consult (internally or externally), which might be as part of specific actions to address identified threats.
 6. Address considerations relating to transparency balanced against PAs' duty of confidentiality under the Code, including the circumstances in which transparency would be appropriate or justified (e.g., as a safeguard to address threats, to disclose risks from uncertainties, or to disclose intent), to whom disclosure might be made, and the matters that might be disclosed.

7. Address any documentation expectations for the PA.

Terminology

87. In addition to a principles-based framework, the TPWG recommends that the project explore developing suitable terminology that would facilitate the development of the framework and understanding and use of the framework.

XI. Next steps

88. The TPWG will meet in Q3 2021 to discuss the Board's feedback and any outstanding matters with a view to finalizing its report and recommendations.

Getting to Good – Towards Responsible Corporate Tax Behaviour (2015)

Oxfam, Action Aid, and Christian Aid

The report's detailed recommendations are summarized below⁷⁹:

Tax planning practices	Business will make incremental changes to its structures and tax-related transactions to book less of its income, profits and gains in jurisdictions and legal entities where they attract low or no tax and in which related assets and activities are not located.
Public transparency and reporting	Business will seek to publish, in an open data format, information that enables stakeholders in every jurisdiction where it has a subsidiary, branch or tax residence to see how its taxable income, profits and gains are calculated and internationally distributed; and to understand all significant determinants of the tax charge on those profits.
Non-public disclosure	Business agrees that, in principle, it will make available any information within the group to revenue, judicial or law enforcement authorities in any jurisdiction where it operates.
Relationships with tax authorities	Business will progressively increase the transparency of its relations with the tax authority in every jurisdiction where it operates. It will seek to be treated as a taxpayer like any other, putting in place clear boundaries in any tax negotiation or dispute resolution to ensure that it does not use its economic or political power to obtain preferential or extra-statutory treatment in tax rulings or settlements.
Tax function management and governance	A business' tax operations will become a mechanism not simply for reducing tax liabilities while managing tax risk, but also for implementing responsible tax behaviors. This broader function will be implemented through tax policy, and the performance objectives and incentives of tax staff, governance and oversight measures.
Impact evaluation of tax policy and practice	Business will work to design and build internal systems to assess the impact of any significant tax-advantageous transaction or structure: on the tax charge to the company or group; on the revenue due to different governments; and, in line with the corporate responsibility to respect human rights, on the human rights of employees, customers and other stakeholders.
Tax lobbying/advocacy	A tax-responsible business is transparent in its advocacy to tax lawmakers and policy makers, and does not seek special access to tax policy making or law-making that is not accorded to other groups of taxpayers.
Tax incentives	A tax-responsible business seeks a tax-level playing field, and to be treated under a country's tax regime like any other, similar corporate taxpayer.

⁷⁹ [Essential-elements-of-Global-Corp-Standards-for-Resp-Tax-Conduct-FINAL.pdf \(fairtaxmark.net\)](#)

APPENDIX 2

PCRT sets out a flowchart that summarizes the recommended steps for a member when a possible error arises.

Steps to take if there is a possible error

