

Tax Planning & Related Services**Draft May 2021 IESBA CAG Minutes**

Prof. Poll introduced the topic, reminding CAG representatives¹ of the objectives of the Tax Planning initiative. He then provided an update on the Working Group's key information gathering activities in 2020 and recapped the key emerging themes it has identified as presented at the March 2020 CAG meeting.

TERMINOLOGY

Prof. Poll outlined the Working Group's observations that there is no clear line between "tax planning" and "aggressive tax planning," and that it is difficult to define the latter on a global basis. He noted that some jurisdictions may use several approaches to encourage tax compliance and to discourage unacceptable tax planning practices. The Working Group had therefore been exploring the merit of a principles-based decision-making framework to guide professional accountants (PAs) in identifying what would be deemed acceptable or unacceptable in relation to tax planning.

Among other matters, the following were raised:

- Mr. Hansen noted that at the IESBA-National Standard Setters (NSS) meeting the previous week, there were some comments about the challenges of defining "unacceptable tax planning" and "aggressive tax planning." He wondered why the emphasis was on planning vs. compliance, although they are interrelated activities. He felt that it is more critical to address the role of PAs in business (PAIBs), such as CFOs and financial controllers, as opposed to auditors. Prof. Poll confirmed that PAIBs are scoped in and that for auditors, the recently issued Non-assurance Services (NAS) revisions to the Code will limit tax planning services to audit clients that are aimed at tax avoidance.
- Ms. McGeachy-Colby expressed a concern about trying to define "aggressive tax planning," noting the danger of creating a prescriptive delineation that could be easily circumvented.
- Ms. Blomme supported not attempting to define "aggressive tax planning" and "unacceptable tax planning," noting the potential for different interpretations in different cultures. She was supportive, however, of exploring a principles-based framework to think about unacceptable tax planning, noting that work done by the OECD, Accountancy Europe and others in the EU could provide useful guidance in steering the discussion forward. She was of the view that clarifications would not only help guide PAs ethically in their tax planning activities but also address the broader issue of public perceptions. She also supported economic or commercial substance as being an important consideration as tax planning is about adhering not only to the letter but also the spirit of the law.
- Prof. Poll highlighted a recently issued [OECD report](#) addressing professional enablers of tax and white collar crimes which observed that while professionals offer various legitimate business services to clients, they may also be experts at finding legal loopholes, giving room for the creation of tax avoidance strategies. He emphasized that the starting point is in each jurisdiction in terms of the legally gray area vs. non-compliance with laws and regulations (NOCLAR). He added that consideration should be given to whether, based on the facts and circumstances, there are indicators of risks of unacceptable tax planning which the PA should assess and then inform the employing

¹ See the Appendix for the list of meeting participants and their organizations.

organization or client. He agreed that the work done by the OECD and the European Commission on indicators of aggressive tax planning would be helpful in this regard but welcomed other references.

- Ms. Meng was of the view that what is deemed acceptable tax planning will be based on interpretation. She agreed that both the legality and economic substance of transactions are relevant considerations when determining what is acceptable tax planning. In addition, she wondered whether an additional factor is rationality, i.e., whether a transaction has a reasonable business purpose. She also wondered whether non-transactional arrangements should be considered. Prof. Poll responded that the factors noted are indicators the Working Group is considering. He added that the Working Group is also considering non-transaction-driven tax structures.
- Mr. Munter commented that the indicator is whether a transaction has a primary business purpose (such as an acquisition) but which is structured in the most tax efficient way as opposed to one whose primary or sole motivation is tax avoidance. He was of the view that the business purpose is a critical aspect. He added that tax minimization might be an indicator of a problematic area. He also noted that in both International Financial Reporting Standards (IFRS) and US Generally Accepted Accounting Principles (GAAP), there is guidance for uncertain tax positions and that in both sets of standards, this guidance is anchored to the “more likely than not” recognition threshold. He suggested that this might be another indicator or direction the Working Group might consider in terms of unacceptable tax planning.
- Prof. Poll responded that the Working Group considers business purpose as a very important factor. He also highlighted feedback from NSS the previous week indicating that the COVID-19 pandemic had impacted public perceptions of tax structures involving jurisdictions seen as non-compliant.
- Ms. Manabat echoed the observation that there are different tax laws and practices as well as cultural differences across jurisdictions. She added that aggressive tax planning has been an old concern in any economy and that there have been prosecutions of cases and lessons learned. Prof. Poll concurred, noting that while PAs need to be aware of differences in tax regimes and cultures, it is also important to recognize that the environment and public perceptions have changed significantly.
- Mr. Pavas reiterated a concern he shared previously that there are professionals who provide tax planning services who are subject to different codes of ethics. He wondered how this uneven playing field could be addressed with greater clarity. Prof. Poll acknowledged that the Code applies only to PAs but noted that it applies in accountancy firms to non-PAs such as lawyers who are involved in multi-disciplinary teams. He added that feedback from stakeholder outreach had supported the view that if the accountancy profession takes the lead in addressing the issues, it could well influence other professions to do the same.
- Ms. Landell-Mills highlighted that there have been some tax principles that have come out from civil society that might be worth considering, such as an initiative called the [Fair Tax Mark](#) which issued a recent report highlighting four core expectations for companies with respect to the topic of tax avoidance. She also noted that certain tax practices in gray areas of the tax law might be in fact be unidentified NOCLAR as it might not be immediately clear whether they are legally compliant. She was of the view that auditors play a very important role in flagging these issues to investors not only because of the regulatory implications but also because of the reputational risks. Finally, she suggested looking into whether there have been cases involving tax behavior that have been prosecuted and which auditors had not flagged, given the importance of accountability. Prof. Poll noted that the environment has changed dramatically. While tax courts might have seen certain tax

structures as interesting but not illegal in the past, there has now been a significant shift to criminal prosecution of professionals involved in such cases in various jurisdictions. In addition, even if the prosecutions do not lead to criminal convictions, reputations are often damaged.

CONSIDERATION OF POSSIBLE RESPONSES

Prof. Poll outlined three options the Working Group had identified regarding possible IESBA responses on the topic, namely:

- Option A: Develop overarching material in the Code to assist PAs comply with the fundamental principles (FPs) and apply the conceptual framework
- Option B: Develop material under one or more specific FPs (e.g. objectivity and professional competence and due care) to explain the expected behavior of PAs performing tax planning activities
- Option C: Develop material outside of the Code itself (e.g., staff Q&As or case studies) on the types and magnitude of the threats created when PAs perform tax planning activities

Prof. Poll highlighted input from the stakeholder outreach that even though tax planning constitutes a very significant part of the work of PAs generally, the Code does not explicitly deal with the topic except in a limited way through the NAS provisions. In contrast, the Code deals with PAs performing audits of financial statements extensively through Part 4A.

Among other matters, the following were raised:

- Ms. McGeachy-Colby noted the IFAC SMP Advisory Group's support for Option C as that option has the benefit of being nimble compared with developing revisions to the Code. Mr. Cela agreed, noting that non-authoritative material (NAM) should be capable of being applied across jurisdictions and cultures. However, he added that there would be merit in a combination of Options A and C to address different perspectives.
- Mr. De Tullio also supported a combination of Options A and C. He recognized that Option A could be seen as prescriptive. However, he felt that if there was nothing specific in the Code on the topic, it would be challenging to address the issues.
- Mr. Hirai expressed a preference for Option C. He noted that in Japan, tax practitioners are often outside the profession. Accordingly, NAM would be more accessible to them. However, he accepted that a combination of Options A and C could be another response. He added that it was difficult to be more definitive without knowing what changes would be made in the Code.
- Ms. Landell-Mills felt that Option A was a sensible response, possibly in combination with Option C. She was of the view that given the importance of the topic, not addressing it in the Code could diminish the Code's credibility.
- Mr. Orth noted Accountancy Europe's support for the initiative. He agreed that the profession should take the lead in addressing the issues. He suggested starting with Option C and seeing if there would be merit in making enhancements to the Code as the thinking matures.
- Mr. Hansen suggested that from NASBA's perspective, the way forward should begin with Option A and then considering whether to pick up Option C as the thinking develops. He added that Option A is more consistent with a focus on changing behavior and supporting enforcement.

Prof. Poll thanked CAG representatives for their input. He observed that at the IESBA-NSS meeting the previous week, NSS that had already published guidance material on the topic preferred Option C compared with those that had not. He also noted that regulatory stakeholders generally preferred Option A. In response to Ms. Landell-Mills' comment, he noted that the perception of having the topic addressed in the Code would be of high importance in the public arena. Finally, he highlighted the criticality of professional judgment and the suggestions at the March 2021 IESBA meeting for the Working Group to consider making appropriate linkages to the provisions and behavioral concepts in the Code addressing NOCLAR, Inducements, and Role & Mindset.

Mr. Kashiwagi noted that the PIOB views the initiative to be of high importance. He also noted the good direction taken by the Working Group and the good input provided by CAG representatives. However, he remarked that the PIOB was disappointed with the pace of progress, although he acknowledged the challenges in developing a global view on the topic. He suggested taking a pragmatic approach to quicken the pace, adding that personally he supported both Options A and C.

Appendix

Participants at the May 2021 IESBA CAG Meeting

PRESENT

Member Organizations

Gaylen Hansen (Chair)	National Association of State Boards of Accountancy (NASBA)
Hilde Blomme	Accountancy Europe (AE)
Dr. Christian Orth	AE
Robert De Tullio	Basel Committee on Banking Supervision (Basel Committee)
Dr. Claes Norberg	Business Europe (BE)
Mohini Singh	CFA Institute
Prof. Hysen Cela	European Federation of Accountants and Auditors for SMEs (EFAA)
Paul Thompson	EFAA
Paul Sobel	Institute of Internal Auditors (IIA)
Daniel Sarmiento Pavas	Inter-American Accounting Association (IAA)
Dr. Conchita Manabat	International Association of Financial Executives Institutes (IAFEI)
Natasha Landell-Mills	International Corporate Governance Network (ICGN)
Paul Munter	International Organization of Securities Commissions (IOSCO)
Takeshi Hirai	IOSCO
James Dalkin	International Organization of Supreme Audit Institutions (INTOSAI)
Dr. Bello Lawal Danbatta	Islamic Financial Services Board (IFSB)
Inanc Yazar	Organisation for Economic Cooperation and Development (OECD)
Asha Mubarak	Sri Lanka Accounting and Auditing Standards Monitoring Board (SLAASMB)
Wei Meng	World Federation of Exchanges (WFE)
Juan Carlos Serrano-Machorro	World Bank (WB)

Observer Organizations

Dawn McGeachy-Colby	IFAC Small and Medium Practices (SMP) Advisory Group (SMPAG)
Lillian Ceynowa	U.S. Public Company Accounting Oversight Board (PCAOB)

Public Interest Oversight Board (PIOB)

Shigeo Kashiwagi

IESBA Members and Staff

Dr. Stavros Thomadakis IESBA Chairman

Caroline Lee	IESBA Deputy Chair
Jens Poll	Tax Planning Working Group Chair
James Gunn	Managing Director, Professional Standards
Ken Siong	Senior Technical Director
Diane Jules	Deputy Director
Geoffrey Kwan	Principal
Kam Leung	Principal
Szilvia Sramko	Manager
Carla Vijian	Manager

APOLOGIES

Xiomara Morel
Huseyin Yurdakul
George Kabwe

Member/Observer Organizations

World Bank (WB)
IOSCO
International Money Fund