

Approved Project Proposal

Tax Planning and Related Services

(September 2021)

I. Subject

1. Revisions to the [International Code of Ethics for Professional Accountants \(including International Independence Standards\)](#) (the Code) to address the ethical implications of tax planning as it relates to the role of professional accountants (PAs) both in business and in public practice.

II. Background

Relevant Developments

2. 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 PAs in business (PAIBs) are involved in developing tax minimization strategies that are perceived as “aggressive,” or when PAs in public practice (PAPPs) provide advice to their clients on such strategies. The issue is of such major public interest significance that it has been discussed on the G20 agenda.¹
3. 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 BEPS 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 their formal legal structure but rather on the tax impact from their underlying substance.
 - (b) The World Federation of Exchanges, which has included [tax transparency](#)² as a “material Environmental, Social and Governance (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

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 US\$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*

4. In addition, in its August 2021 update to its list of public interest issues on IESBA projects, the PIOB has welcomed the IESBA's willingness to take a leadership role in developing ethics provisions and associated guidance for PAs undertaking tax planning and related services. In supporting the IESBA's initiative, the PIOB highlighted the emphasis across the globe on matters relating to tax, tax avoidance and social responsibility in respect of tax practices, as well as concerns raised by many stakeholders on these topics.

IESBA's Strategic Commitment

5. In light of the external developments, the IESBA acknowledged in its [2019-2023 Strategy and Work Plan](#) (SWP) a pressing need to better understand and address the ethical implications of “aggressive tax planning” as it relates to the role of PAs both in business and in public practice. Recognizing that such developments were already a major topic of discussion among its stakeholders, and in preparation to commence work on the topic, the IESBA established the Tax Planning and Related Services Working Group (TPWG) in March 2019. The IESBA received overwhelming support from stakeholders to commit to a strategic initiative on tax planning.⁵
6. The TPWG was [tasked to](#):
 - (a) Gather an understanding of regulatory, practice and other developments in corporate and individual tax planning by PAIBs and PAPPs;
 - (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.
7. Following fact finding, including a year-long program of outreach to stakeholders, the TPWG delivered its final report and recommendations to the IESBA in September 2021. The report provides a comprehensive overview of the TPWG's fact finding and its analyses of the identified issues as well as its recommendations. These recommendations form the basis of this project proposal.

III. Project Objectives, Scope, Limitations and Approach

Objective

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

Scope and Limitations

9. The scope will encompass:
 - (a) Part 2 – Professional Accountants in Business; and
 - (b) Part 3 – Professional Accountants in Public Practice.

Consideration will be given to the need for any enhancements to the provisions in Part 1 – Complying with the Code, Fundamental Principles and Conceptual Framework.

5 IESBA Strategy and Work Plan (SWP) for 2019-2023

10. The provisions to be developed will be applicable across individual and corporate taxpayers (from small- and medium-sized enterprises (SMEs) to large publicly traded multi-national entities).
11. At a principles level, the provisions will be equally applicable to public interest entities (PIEs) and non-PIEs. However, the distinction between PIEs and non-PIEs might be a relevant factor for a PA to consider when assessing possible actions to take, such as communication with those charged with governance.
12. PAs' responsibilities when they encounter circumstances involving actual or suspected unlawful tax evasion are addressed under the NOCLAR provisions of the Code (Sections 260 and 360). This project will consider appropriate references to the NOCLAR provisions.
13. Consistent with any other provisions of the Code, provisions to be developed under this project will not override laws and regulations, including any anti-avoidance rules prevailing in a given jurisdiction. This project will respect, and not undermine, national sovereignty to enact and promulgate tax laws and regulations as each jurisdiction sees fit.
14. Further, paragraph 100.7 A1 of the Code will remain applicable, i.e., where jurisdictions have provisions that differ from or go beyond those in the Code, PAs in those jurisdictions need to be aware of those differences and comply with the more stringent provisions unless prohibited by law or regulation.
15. While a contextual understanding of tax planning methods or approaches is required for this project, the focus will be on PAs' ethical conduct.
16. The project will not analyze the merits of any particular tax positions or tax schemes planned or adopted by individual or corporate taxpayers. Likewise, and as a corollary to paragraph 13, the project will not judge the merits of the tax regimes or strategies of jurisdictions, or enter into debates about tax policy, but will consider the importance of developing provisions that are jurisdiction neutral (i.e., equally applicable in jurisdictions where the tax burden is high and where it is low).

Approach

17. In developing the principles-based framework, the project will pursue the recommendations set out in the final TPWG report:
 - At an overarching level, draw the appropriate linkages to provisions in the Code that speak to why businesses, governments and other organizations involve PAs in a broad range of areas and PAs' 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' role, the sustainability of businesses, and the profession's reputation at large in the context of public perceptions and expectations. In this regard, the project will:
 - (a) Analyze reputational risks from the profession's perspective; and
 - (b) Seek to distinguish the broader theme of tax morality⁶ from the profession's responsibility to act in the public interest.

⁶ 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.

- PAs' responsibility to comply with the fundamental principles (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 them in accordance with the Role & Mindset provisions of the Code. Within the context of tax planning, this might include guidance elaborating on the relevance and applicability 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 non-compliance with laws and regulations (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:
 - Provide guidance to assist PAs in judging what might be deemed acceptable or unacceptable from an ethical perspective regarding professional activities related to tax planning. The project will explore the following approach for PAs:
 - Understand the applicable tax laws and regulations, including as far as possible the legislative intent, and comply with them.
 - Obtain an understanding of the rationale for the particular tax scheme, structure or transaction, taking into account a reasonable and informed third party's perceptions. In this regard, the project will develop guidance on indicators of what might be deemed acceptable vs unacceptable tax planning in the light of understanding that rationale, drawing on the work done by other organizations. In doing so, the project will seek to link PAs' judgments to compliance with the FPs (such as integrity, objectivity and professional behavior) and the application of the conceptual framework.
 - If there is no indication or perception of 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 tax laws are complex and the legislative intent behind them is uncertain.
 - 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.
 - 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.

- 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. In this regard, PAIBs might be guided to consider internal protocols, policies or procedures for referring matters to those charged with governance.
 - Provide guidance on when and with whom to consult (internally or externally), which might be as part of specific actions to address identified threats.
 - 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 the rationale for a particular tax scheme, structure or transaction), when informed consent for disclosure should be obtained in the case of clients, to whom disclosure might be made and when, and the matters that might be disclosed.
 - Address any documentation expectations for PAs.
18. While this project proposal uses the terms “acceptable” and “unacceptable” when referring generally to tax planning, it will explore whether these terms are suitable for the Code and can be appropriately described, or whether other terminology should be developed to (a) support building the framework, and (b) facilitate stakeholders' understanding and use of the framework.
19. In developing the provisions for the Code, global applicability will be an important consideration, given the wide variety of tax laws, practices and customs around the world.

Non-authoritative Material

20. As the project evolves, opportunities might be identified for the IESBA to commission non-authoritative material to support and promote adoption and implementation of the principles-based framework in the Code. If so, the project will develop recommendations for the IESBA's consideration, including potential collaboration with IFAC and others.

Consultation with Stakeholders

21. The project will involve consultations with various stakeholders⁷ at appropriate points during the development of the principles-based framework, including:
- Regulators in the G20 including tax authorities
 - National standard setters (NSS)
 - IFAC, IFAC PAIB Advisory Group, and IFAC Small and Medium Practices (SMP) Advisory Group
 - OECD
 - The investor, preparer (i.e., financial statements) and corporate governance communities
 - Professional accountancy organizations, especially those in the G20

⁷ Many stakeholder constituencies are represented on the IESBA [Consultative Advisory Group](#) (CAG).

- Accountancy firms (including the Forum of Firms)
- Academia
- The legal profession
- Other professional organizations with a nexus to the topic

IV. How the Project Serves the Public Interest and Impact Analysis

How the Project Serves the Public Interest

22. Key public interest outcomes this project seeks to achieve are:
- (a) Promoting consistent, ethical tax planning conduct and practice by PAs through a principles-based framework and guidance;
 - (b) Raising awareness about risks associated with unacceptable tax planning to employing organizations, clients (individuals or corporate), and the profession;
 - (c) Protecting and strengthening the profession's role and reputation in relation to tax planning; and
 - (d) Promoting the ESG-related principles of fairness, accountability and transparency through guiding PAs' conduct when involved in tax planning activities, consistent with their responsibility to act in the public interest.

Impact Analysis Considerations

23. As the project advances, costs and benefits will be an important consideration as the IESBA evaluates options and the practical impact of any potential changes to the Code. At a general level, however:
- The new standard is expected to benefit many stakeholders through clear and robust principles and guidance to inform and steer PAs' conduct when performing tax planning activities. These stakeholders include:
 - Investors, taxpayers, NSS, tax authorities, preparers, those charged with governance (TCWG), and policy makers.
 - The global accountancy profession.
 - Society at large.
 - There will be costs associated with adoption and implementation at the national level and within firms, including translation, awareness-raising and training.
24. The project will be especially mindful of the importance of avoiding unnecessary complexity, which may undermine understandability and clarity, given the wide variety of tax regimes and practices around the world.

V. Implications for any Specific Persons or Groups

25. The project has implications for:
- NSS and professional accountancy organizations that have adopted the Code or use it as a basis or a benchmark for their own standards.

- Tax authorities in relation to their interactions with PAs.
 - Firms that conform their policies and methodologies to the Code or are otherwise subject to national standards based on the Code.
 - International and regional organizations with a policy-making mandate or significant influence in the area of tax planning, including IFAC, OECD and the European Commission.
 - Individual PAPPs and PAIBs.
 - Preparers and TCWG in relation to their interactions with tax authorities.
 - The academic and educational communities in relation to teaching professional ethics.
26. To the extent the project contemplates any changes or references to the provisions in Part 1 of the Code, it will seek to leverage relevant provisions being developed by the Technology Task Force in terms of technology-related enhancements to Part 1, particularly on the matter of complexity as a contextual factor to consider.

VI. Development Process, Project Output and Project Timetable

Development Process

27. The project will follow the IESBA's due process, including seeking input and advice from the IESBA CAG.

Project Output

28. It is anticipated that the output of the project will be a principles-based framework in Parts 2 and 3 of the Code. The project does not preclude the identification of consequential or conforming amendments to other parts of the Code, especially Part 1.
29. Depending on the issues identified, the project Task Force may bring forward other relevant matters for the IESBA's consideration. These may include recommendations for the development of non-authoritative material or issues to be addressed as part of future standard-setting projects.

Project Timetable

30. Subject to the IESBA's approval of the project proposal, this project will commence immediately. The specific project milestones and outputs will depend on the matters that the project Task Force ultimately determines are appropriate to address as part of the project, and the priorities assigned to those matters.
31. The table below provides indicative timing for the project.

Timing	Milestone
September 2021	Discussion of project proposal with IESBA CAG
	IESBA approval of project proposal
December 2021	Update to IESBA

Timing	Milestone
March 2022	Discussion of issues with IESBA CAG and IESBA
June 2022	Discussion of issues with IESBA
September 2022	First read of proposals to IESBA CAG and IESBA
December 2022	IESBA consideration and approval of Exposure Draft (ED)
June 2023	High-level update to IESBA
September 2023	Discussion of significant matters raised on ED and Task Force responses with IESBA CAG
	Full review of ED responses and first read post-exposure with IESBA
December 2023	IESBA approval of final pronouncement

32. Should there be a need to conduct formal consultation with stakeholders, such as through global roundtables, prior to the issuance of the Exposure Draft, the project timeline will be adjusted as necessary.

VII. Resources Required

33. A project Task Force consisting of four to five IESBA representatives, with an IESBA member as Chair.
34. IESBA Staff will provide support to the project Task Force.

VIII. Relevant Sources of Information that Address the Matters Being Proposed

35. Relevant sources of information include:
- The final TPWG report.
 - IFAC guide, [A Guide for Professional Accountancy Organizations – Developing Good Practices for Members Providing Tax Advice](#)
 - Relevant ethics standards or other literature developed by NSS.
 - Research, thought leadership or other literature published by professional accountancy organizations, the governing bodies of other professions, tax authorities, multilateral organizations, academics, and others on the topic of tax planning.

Appendix

Comments by Standard-Setting Board (SSB)/IFAC Technical Managers

Due process requires that project proposals be circulated to SSB Staff and IFAC Staff for the technical areas within, or supported by, IFAC for comments on any matters of possible relevance to the project.

Kevin Dancey (CEO – IFAC) on behalf of:

- **IFAC Quality and Development Department**
- **IFAC Education Initiative**
- **IFAC Professional Accountants in Business (PAIB) Advisory Group**
- **IFAC Small and Medium Practices (SMP) Advisory Group**
- **Transnational Auditors Committee (TAC)**

IFAC staff appreciates the opportunity to comment on IESBA's *Project Proposal: Tax Planning and Related Services*, and this message reflects the consolidated views of IFAC staff. We recognize the need for IESBA to continuously consider maintenance of and updates to the IESBA Code in line with changes in the environment, while balancing the perspectives of all stakeholders. Accordingly, we support IESBA's initiative to consider potential enhancements to the ethical framework related to tax planning.

We note the IESBA Tax Planning Working Group's recommendation for the IESBA to develop a principles-based framework in the Code to guide professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs) in navigating the ethical considerations that arise when they perform tax planning activities for their employing organizations or provide tax planning services to their clients, respectively. Meaningful progress has been made on multilateral cooperation (for example at the OECD) and many of the issues related to tax planning services may only be resolved at this level. Nevertheless, in the context of the high level of attention tax planning has received at the global level in recent years, we appreciate that the IESBA needs to consider the public interest concerns regarding the ethical dimension of tax planning and explore how best to respond to those concerns within its mandate.

That said, we would like to urge IESBA to proceed carefully with an initiative to develop new standards specifically focused on tax planning and related services as the issues are complex and challenging. In particular, it would be important that in considering the project proposal and the questions outlined therein, IESBA reflects on the need for appropriate guardrails to minimize the potential for any changes to the Code being globally inoperable or leading to unintended consequences. If due caution is not exercised, we are concerned that the project might create an expectations gap and present significant challenges for many jurisdictions in adoption and implementation of the Code. This, in turn, would have negative implications for adoptability of the Code and IFAC member organizations' ability to comply with the IFAC Statements of Membership Obligations (SMOs). So while we support IESBA's effort to consider this issue, we urge IESBA to adopt a path forward that can attract the broadest possible support.

With this in mind, we encourage IESBA to consider undertaking a careful impact analysis of the costs and benefits of proposals as they are developed during the project. We would also strongly encourage IESBA to first pursue the guidance approach contemplated earlier in this workstream, including Q&As or case

studies on the types and magnitudes of threats created when professional accountants perform tax planning activities and building on the [IFAC 2019 Guidance for PAOs](#). Guidance outside of the Code has been supported by the IFAC SMPAG and should have the benefit of addressing key concerns in the tax services space while still satisfying stakeholders expecting meaningful action. This approach would also be a more timely response given the years it would take to develop new standards. We note the potential for collaboration with IFAC on the development of non-authoritative material and would be happy to engage with IESBA in this area.

In closing, we appreciate IFAC, the SMPAG, PAIBAG and TAC being included on the list of stakeholders for further consultation at appropriate points as the project progresses and confirm our willingness to facilitate further input on this important topic.

Signed: Kevin Dancey C.M., FCPA, FCA

Date: September 1, 2021

Chief Executive Officer
International Federation of Accountants

Senior Staff to International Auditing and Assurance Standards Board (IAASB)

Any matters requiring coordination will be addressed under the established framework for IAASB-IESBA coordination.

Senior Staff to the International Public Sector Accounting Standards Board (IPSASB)

No comments.