

Meeting: IESBA CAG

Meeting Location: Virtual

Meeting Date: September 6 and 23, 2022

Agenda Item

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Tax Planning and Related Services

Objectives of Agenda Item

1. To receive a report-back on the March 2022 CAG discussion and the April 2022 global roundtables.
2. To obtain Representatives' views on key aspects of the Task Force's first draft of the proposed new sections to the Code.

Task Force

3. Members:
 - Jens Poll, Chair, IESBA Member
 - Sanjiv Chaudhary, IESBA Member
 - Laurie Endsley, IESBA Member
 - Andrew Mintzer, IESBA Member
 - Channa Wijesinghe, IESBA Member

Project Status since March 2022 and Timeline

4. During April 2022, the Tax Planning Task Force (TPTF) held a series of global roundtables (virtual) to gather feedback from stakeholders on the key matters under consideration in the project.
5. The Task Force reported the key feedback received from the roundtables and presented its preliminary views and reactions for the IESBA's consideration at the [June 2022 IESBA meeting](#).
6. The Task Force subsequently developed the first draft of the proposed new sections to the Code.
7. The Task Force Chair will report the main feedback from the CAG at the IESBA September 2022 Board meeting.
8. The project timeline anticipates IESBA approval of an Exposure Draft in December 2022.

Report Back on March 2022 CAG Discussion

9. [Appendix 1](#) to this paper includes extracts from the draft minutes of the March 2022 CAG meeting¹ and an indication of how the Tax Planning Task Force or IESBA has responded to CAG Representatives' comments.

¹ The draft minutes will be approved at the September 2022 IESBA CAG meeting.

Matters for CAG Consideration

10. Representatives are asked to:

- (a) Consider the key issues and Task Force proposals highlighted in the presentation; and
- (b) Provide input and guidance to the Task Force.

CAG Reference Material – September 2022 IESBA Agenda Material

[Issues Paper](#)

[Proposed Section 380](#)

[Proposed Section 280](#)

Appendix 1

Below are extracts from the draft minutes of the March 2022 CAG meeting and an indication of how the Tax Planning Task Force or the IESBA has responded to the CAG's comments.

Matters Raised	Task Force/IESBA Responses
CONTEXT	
<ul style="list-style-type: none"> Mr. Hansen noted the reference to the interests of a jurisdiction's treasury in Prof. Poll's explanation of the context. He queried if the role of PAs in providing TP services is to serve the public interest in a broader sense or whether it is to adhere to the tax regime. 	<p>During the meeting, Prof. Poll noted that a PA's role has been described as having a clear line of communication with the tax authorities in acting in the client's best interests. He added that there is a perception that the PA has to be aware that he is not only acting in the client's interests but also cognizant of the impact of the tax advice on the overall public. He noted that this is a factor that the TPTF wanted to highlight in the Code.</p>
<ul style="list-style-type: none"> Dr. Norberg supported the TPTF's direction. He noted that the key feature of the proposed framework relates to distinguishing between uncertain and improper TP arrangements. He recommended that the Task Force provide further clarification to enable PAs, to the best of their abilities, to assist clients in navigating what is considered uncertain versus improper. He also noted that the Task Force's approach to understanding uncertain or improper TP indicators is better than trying to describe what aggressive TP is. 	<p>Point and support noted.</p> <p>The Task Force's focus has been on making sure that the proposed framework provides practical guidance to enable the PA to think through the relevant ethical considerations when navigating the gray zone and acting appropriately.</p>
<ul style="list-style-type: none"> Ms. Blomme also noted her support for the project, adding that PAs should not be involved in TP arrangements that are artificial or contrived and contrary to the legislature's intent. In this regard, she noted that AE shares the same objective as the IESBA. She commented that while TP arrangements can vary from jurisdiction to jurisdiction in how they are structured, the objective of such arrangements should not be to avoid paying taxes. She wondered, though, how the proposed framework would be operationalized. In this regard, she noted that the TPTF's global roundtables planned for April 2022 would assist 	<p>Support noted.</p> <p>During the meeting, Prof. Poll thanked Ms. Blomme for her comments, acknowledging the clarity issues. He noted that the TPTF will progress with the drafting of the provisions following the April 2022 global roundtables. He hoped that the roundtables would provide good stakeholder feedback as to how the proposed framework would work in different jurisdictions.</p>

Matters Raised	Task Force/IESBA Responses
<p>the TPTF in obtaining feedback from stakeholders on this question. She echoed Dr. Norberg's comments about operationalizing the gray zone, making clear that it exists and it is acceptable. She hoped the lessons learned from the non-compliance with laws and regulations (NOCLAR) project would be useful to this project, as the NOCLAR project was not an easy undertaking for the Board.</p>	
<ul style="list-style-type: none"> Mr. Ishiwata noted that Prof. Poll's presentation helped him understand the key issues and matters raised by the Task Force. He advised the Task Force to be conscious of the precedents in different jurisdictions and suggested that the Task Force prepare notes about those precedents. Mr. Ishiwata further suggested that as part of its deliberations, the Task Force considers other categories of indicators of the gray zone, which may extend to inconsistent or incomplete documentation from the client. 	<p>During the meeting, Prof. Poll thanked Mr. Ishiwata for his advice and noted that the TPTF will consider his suggestions when it moves to the drafting stage.</p>
<ul style="list-style-type: none"> Ms. McGeachy-Colby noted the Task Force's progress on the project. She requested the Task Force to clarify the point about the interest of a jurisdiction's treasury. She believes that this is mainly dependent on the role of the PA in the ecosystem. She also expressed her concerns about the project. She believes the Code currently provides a robust framework and will withstand scrutiny in leading PAs down the ethical path when carrying out TP services. Ms. McGeachy-Colby commented that this project may inadvertently cause PAs to adhere to more stringent requirements, including deeming a TP arrangement as aggressive when it is not so. She also had practical concerns about requirements that could cause conflicts with jurisdictional laws and deter jurisdictions from adopting the proposed framework. 	<p>During the meeting, Prof. Poll noted that the TPTF is aware of different tax legislations with respect to the provision of TP services. He explained that the TPTF believes it is possible for the Code to work with different national legal regimes. He clarified that as a global standard-setter, the IESBA will not put in place requirements that will interfere with local jurisdictional requirements. However, the TPTF will seek to understand from the global roundtables where there might be conflicts with respect to cross-border transactions and develop a practical response.</p>
<ul style="list-style-type: none"> Ms. Landell-Mills echoed the importance of the project and supported the TPTF's proposal to 	<p>Point and support noted.</p>

Matters Raised	Task Force/IESBA Responses
<p>address several challenges noted in the project. From the investor perspective, she reiterated that companies should be doing the right thing when implementing tax strategies as this is in their best long-term interests. She added that, without a doubt, the gray zone is a critical area of concern. She was of the view that PAs should apply the principles of the Code, ensuring that companies are adhering to the spirit and not just the letter of the law. Ms. Landell-Mills advised the TPTF to refer to the work carried out by the Fair Tax Initiative in the UK as an essential reference point. The initiative encourages responsible tax behavior, which, when thinking about what investors would regard as sustainable TP, comes down to having a disclosure mindset. This includes making sure that the auditor is making appropriate disclosure of the issue to the shareholders through key audit matters in the auditor's report.</p> <ul style="list-style-type: none"> • With specific reference to the longer-term outlook on the Environmental, Social, and Governance (ESG) movement, Ms. Landell-Mills noted greater disclosure of companies' tax strategies. She noted the importance of PAs being transparent about the tax strategies undertaken, especially if it verges on the gray zone. 	<p>The Task Force is very much aware of investor concerns about the need for companies to pursue sustainable business strategies, including with respect to tax planning. This is one of the key factors that has motivated the launch of this project. The issues of adhering to the spirit and not just the letter of the law, and promoting greater transparency about tax strategies, are important considerations in this project.</p>
<ul style="list-style-type: none"> • Prof. Cela expressed support for the project and agreed with the focus on identifying the fundamental principles impacted. He wondered how the provisions would be differentiated between public interest entities (PIEs) and non-PIEs, although the issues are broadly the same. 	<p>During the meeting, Prof. Poll responded that the Task Force is aware that the PA's response might be different in different jurisdictions insofar as the distinction between PIEs and non-PIEs is concerned, for example, potentially with more disclosure in the former case.</p>
<ul style="list-style-type: none"> • Mr. Yurdakul commented on the TPTF's excellent and clear presentation and supported the project. He also noted the gray zone as the most important area for the TPTF to focus on – how the FPs can be impacted, and the level of threats PAs face when constantly dealing with the changes in tax legislation. For PAs operating in the gray zone, he saw the role of the Code as 	<p>During the meeting, Prof. Poll explained that the TPTF is aware of the different reactions in jurisdictions with more regulations and disclosure rules for PIEs versus non-PIEs. He shared that the TPTF will consider the matter around scalability.</p>

Matters Raised	Task Force/IESBA Responses
<p>assisting them in navigating around the uncertainties, acting ethically and carefully, and applying the conceptual framework per the Code. Mr. Yurdakul also queried if the TPTF would be making a differentiation between PIEs and non-PIEs as he views scalability as an important factor to consider.</p>	
<ul style="list-style-type: none"> Mr. Dalkin noted the importance of having criteria to determine when the PA is in the gray zone. He advised that the TPTF should be flexible in thinking about these criteria as the indicators can be jurisdiction-specific. 	<p>During the meeting, Prof. Poll agreed that the criteria need to be flexible. While the Code is able to cover this area in terms of the fundamental principles, it is important for the profession to demonstrate to stakeholders that it is able to handle the uncertainties of TP in an ethical manner. Also, the topic is not currently visible in the Code and is dealt with in a rather abstract way. Accordingly, it is in the public interest that the Code addresses it more explicitly, especially in view of today's changing environment.</p>
<ul style="list-style-type: none"> Dr. Manabat welcomed the initiative and noted its importance. She echoed the observation of others supporting principles-based provisions. She advised the TPTF to discern and consider the various jurisdictional laws and regulations and not pursue a 'one size fits all' strategy. 	<p>Support noted.</p> <p>Prof. Poll noted that with this project, the TPTF seeks to address stakeholder concerns and criticism that PAs have a role in promoting unethical TP behavior. The TPTF is of the view that the extant Code is silent around guiding PAs to navigate the uncertainties in providing TP services.</p>
<ul style="list-style-type: none"> Ms. Landell-Mills expressed that one of the circularities is that the gray zone exists because of TP carried out by PAs. Clients then exploit those uncertainties, and PAs are now asked to resolve those uncertainties. She was of the view that this will be a challenge for the IESBA. She added that a question that should be addressed at a high level is when a PA should disclose the existence of a gray zone to the relevant tax authorities. Such transparency would then break the link between PAs creating the TP scheme and alerting the tax authorities about it by calling it out. 	<p>During the meeting, Prof. Poll noted that the TPTF will have intensive discussions with stakeholders as to what the expectations are in different jurisdictions. For example, in some jurisdictions, there may be a requirement for PAs to disclose. Prof. Poll observed, however, that from a Code perspective, there is the issue of confidentiality.</p>

Matters Raised	Task Force/IESBA Responses
RESPONSE FRAMEWORK	
<ul style="list-style-type: none"> Ms. Blomme observed that the discussion on the response framework is at the initial stage. What would be important to clarify is how the framework would be operationalized in terms of the conceptual framework of the Code. 	<p>During the meeting, Prof. Poll responded that the TPTF is aware that the proposed framework is currently at a high level, and drafting is yet to come. He added that from a global perspective, it is important to understand the challenges and constraints at the jurisdictional level.</p>
<ul style="list-style-type: none"> Mr. Pavas noted the importance and sensitivity of TP and requested clarification regarding the applicability of the proposed framework across all jurisdictions. He wondered about the public interest expectations of PAs' when providing TP services compared with the expectations when they carry out work in the assurance area. 	<p>During the meeting, Prof. Poll responded that TP is in the advisory context and not the assurance context. He explained that the notion of the public interest is different in the former context than in the latter context. Nonetheless, he noted that the Code applies to all types of services. PAs' ethical conduct is also governed by their duty to act in the public interest.</p>
<ul style="list-style-type: none"> Ms. Landell-Mills advised the TPTF to explore requirements for PAs to disclose instances of resignation from clients to relevant parties to the extent permitted by law. She believed that this is a material piece of information that the shareholders, investors, and the public, in general, would find relevant. 	<p>During the meeting, Prof. Poll responded that the TPTF would consider the suggestion subject to further outreach activities planned to gather stakeholder input.</p>
<ul style="list-style-type: none"> Mr. Hansen expressed support for the project, noting that it has an ambitious timeline. He added that in the U.S., there have been headlines about firms selling tax shelters to clients and large companies not paying any taxes. Accordingly, there are reputational issues at stake. 	<p>Points and support noted.</p>