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18 May 2023

Mr Ken Siong
IESBA Program and Senior Director
International Ethics Standards Board for Accountants
529 Fifth Avenue
New York, NY, 10017
USA

By email: KenSiong@ethicsboard.org

Dear Ken,

Proposed Revisions to the Code Addressing Tax Planning and Related Services

CPA Australia represents the diverse interests of more than 170,000 members working in over a 100 jurisdictions and regions, supported by 19 offices globally. We make this submission on behalf of our members globally and in the broader public interest.

CPA Australia is broadly supportive of the changes proposed in IESBA's Proposed Revisions to the Code Addressing Tax Planning and Related Services – Exposure Draft (the ED) issued February 2023 and note the improvements to the proposed revisions arising from the consultation process. We appreciate the use of the terms, "may" and "might" throughout the ED and in the proposed revisions, as they appropriately reflect and accommodate the breadth and nature of tax services provided by professional accountants (PAs) and other tax professionals.

Many of the requirements and factors for consideration reflect well-established practices in the tax profession and are broadly consistent with tax assurance and governance requirements being developed by tax authorities globally.

Some aspects of the proposed sections are highly likely to impose onerous or impractical requirements that do not necessarily properly consider the dynamic between PAs and those charged with governance, nor accommodate the variety of tax engagements that occur. In contrast to audit engagements where PAs are responsible and accountable for the auditor's report that is furnished by the PA, we highlight the fact that taxpayers are ultimately responsible for the accuracy of their tax return regardless of who prepares it or the advice they may receive in the course of managing their tax affairs. Taxpayer choices about their tax affairs rest with the controllers of the business (e.g., the Board of Directors, partners in a partnership, company directors) and not professional accountants in public practice (PAPPs) or public accountants in business (PAIBs) such as tax managers.

We also note that, depending on the interpretation of the definition of tax planning (TP) services, these revisions could potentially affect all tax advisors who are PAs and may apply to advice provided to ordinary individual and small business clients. While the ED suggests that these changes are in response to the tax activities of large multinationals, we anticipate that the revisions will apply to a far greater range of clients and businesses than the narrow examples used to argue for these changes.

The impact and efficacy of the proposed revisions will also vary considerably by jurisdiction. While PAs and other providers of taxation services are highly regulated in Australia, other jurisdictions may be substantially less regulated and their tax services industries are not necessarily dependent on PAs. CPA Australia is concerned that

these significant differences are not adequately considered in the proposed revisions, particularly that they may place a significant burden on smaller PAs working in less regulated jurisdictions unused to such requirements.

We observe that there is significant detail in the Explanatory Memorandum (the EM) which may not be fully understood or reflected in the proposed sections. For clarity, sections should be able to be read on a standalone basis with the EM only requiring to be referenced if further context is needed. Greater clarity and consistency would also be beneficial in relation to terms such as "tax minimisation", "tax efficiency", "compliant", "tax savings" and "tax benefit" as the current interchangeability and interpretive uncertainty will require additional guidance.

While CPA Australia welcomes the proposed revisions to the International Code of Ethics for Professional Accountants (the Code) to address concerns regarding the ethical implications and professional behaviour of accountants involved in tax planning arrangements, we continue to be concerned with the ever-increasing size of the Code. Our view is that the fundamental principles and the Code itself is adequate to address TP services without the necessity for these proposed provisions. Our preference is for IESBA to provide guidance and support material for PAs, rather than modifying the Code in response to topical issues that arise. This is a common approach taken by governments and tax authorities who complement statute and regulations with more detailed and tailored guidance on specific issues and new law.

Our longer-term concern is that the Code becomes prescriptive, rules-based and impractical, particularly given the rapid rate of change and increasing role of automation and technology. We also observe that many global institutions including the Organisation for Economic Cooperation and Development (OECD), International Monetary Fund and World Bank are undertaking initiatives and programs related to tax, most notably the OECD's Base Erosion and Profit Shifting (BEPS) Actions. We recommend that IESBA continues to liaise with and be informed by other global bodies to ensure consistency, maintain relevance and avoid duplication.

Responses to specific questions asked in the ED are included in the **Attachment** to this letter. Our responses focus on PAPPs but will be similarly applicable to PAIBs.

If you have any queries about this submission, please don't hesitate to contact Elinor Kasapidis, Senior Manager Tax Policy at Elinor.kasapidis@cpaaustralia.com.au or on +61 466 675 194.

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager
Policy and Advocacy

Attachment

Requests for Specific Comments

The responses below should be read in conjunction with, and should consider, the observations made in the covering letter. However, these responses are restricted to the specific questions being asked.

Proposed New Sections 380 and 280

1. Do you agree with the IESBA's approach to addressing tax planning (TP) by creating two new Sections 380 and 280 in the Code as described in Section VI of this memorandum?

Yes. CPA Australia supports in principle the creation of the two new Sections 380 and 280 in the Code. However, we note that TP services are clearly distinct from audit and assurance services and that any requirements for TP must be sufficiently flexible to recognise the different forms and level of engagement involved in TP.

Taxpayers, specifically the decision makers such as company directors or partners in a partnership are ultimately responsible for the information reported to the tax authority. PAPPs and other TP service providers are engaged to provide their professional views on the application of tax laws and to assist taxpayers make decisions in relation to their tax affairs. PAPPs also support their clients during audits and to resolve disputes with tax authorities. Their role in TP is more closely aligned to that of legal counsel or consultant. PAIBs, specifically tax managers, will rarely be decision makers and generally have a broad range of responsibilities across a multitude of tax obligations, often jurisdiction specific. As such, the revisions should be mindful not to conflate the behaviour and actions of a taxpayer with those of the PAPPs or PAIBs who are engaged or employed by the taxpayer.

It is also essential that these Sections do not prescribe impractical requirements or exceed existing legislative and regulatory requirements already in place in many jurisdictions, including Australia.

Description of Tax Planning and Related Services

2. Do you agree with IESBA's description of TP as detailed in Section VII.A above?

The description of TP at para. 27 of the EM and sections 380.5 and 280.5 is unclear. There is a difference in opinion amongst our members as to the breadth of tax advisory services affected. One interpretation suggests that only the more novel or complicated arrangements would be captured, while another interpretation is that, given almost all tax services will require some consideration of tax efficiency, the new requirements will impact all tax advisors and their clients.

Tax advice is provided on the basis that the correct amount of tax is paid. Given the complexity and uncertainty of taxation laws globally, a range of tax outcomes may be considered by a taxpayer and their advisors and professional judgment is required to determine the appropriate approach for the taxpayer. It would be inappropriate and unprofessional for a tax advisor to establish their clients' affairs so that they pay more tax than is due under the law and caution should be taken to ensure that this description and associated requirements do not inadvertently lead to overpayment of taxes.

The examples provided at 380.5 A2 suggest that even the most basic tax advice could be captured. In Australia, this might include the establishment of a small business structure that includes a company or family trust, decisions on the distribution of franked dividends, the allocation of losses across a group structure, family trust elections, the choice of a particular calculation method or advice on the application of the small business

rollover for capital gains tax purposes. These are all common and standard forms of advice that ensure that taxpayers are not overtaxed and that they legitimately access the deductions and tax options available to them (i.e., that their tax affairs are managed efficiently).

Similarly, the inclusion of related services at 380.5 A3 requires further clarity, particularly in respect to tax controversy and dispute resolution work, or when multiple firms are responsible for different aspects of the taxpayers' affairs. There may be many TP service providers being engaged to advise a taxpayer (including non-PAs), or a PAPP/PAIB may only have limited or peripheral involvement in particular transactions or arrangements. A threshold or list of exclusions would therefore be helpful to better understand when the TP requirements apply.

We also query the specific reference to transfer pricing in section 380.5 A2 and note the absence of other similarly challenging areas of tax law, particularly in international tax. We suggest either removing the specific reference, or instead include additional examples (e.g., those identified for BEPS Actions by the OECD).

CPA Australia largely supports the wording proposed at para. 27 of the EM and the breadth of the description by specifically referencing PAIBs and PAPPs. We support the use of the word 'structuring' and consider it to be broader than the term 'arrangement' used by the OECD and certainly broader than the terms 'tax reliefs', 'legal vehicles' and 'financial transactions' used by UK HMRC and CFE (Tax Advisers Europe). Further, we support the use of the broad term 'affairs'.

However, we have concerns with the use of the terms 'tax-efficient' and 'tax efficiency' and its potential confusion with the tax theory principle of efficiency necessary for good tax design as referenced in Footnote 11 of the ED. CPA Australia would prefer the use of the term 'tax minimisation'. We note the draft Sections 280 and 380 have used both 'tax-efficient' and 'tax minimisation' terms and encourage a single term be use used consistently to avoid confusion.

Role of the PA in Acting in the Public Interest

3. Do you agree with IESBA's proposals as explained in Section VII.B above regarding the role of the PA in acting in the public interest in the context of TP?

CPA Australia broadly agrees with the role of the PA in acting in the public interest, as expressed in the ED, in the context of TP and support the conclusion at s380.4 A3 that it is ultimately for a court or other appropriate adjudicative body to determine whether an arrangement is compliant. CPA Australia considers that in providing all tax advice, considerations of potential risk to the PA's client or employing organisation must be limited to tax considerations only.

We agree that the public interest would generally be considered in the development of tax laws and regulations. However, it does not necessarily follow that the interpretation by the tax authority of such law and regulations will be consistent with the intention of those developing the tax laws and regulations. Therefore, the application by the PA of the tax authority's interpretation cannot always be presumed to be acting in the public's interest.

Similarly, noting the varying capabilities of tax authorities across the world, the absence of the tax authority publicly considering the relevant legislation should not result in the PA failing to act in the public interest.

While we are highly supportive of revenue authorities issuing interpretive guidance to assist taxpayers, CPA Australia agrees with the point made at paragraph 38 of the EM and is wary of giving a tax authority's interpretation the force of law. While litigation is rare due to the costs and risks to both tax authorities and taxpayers, court judgments and settlements reflect the complexity and uncertainty of many areas of tax law. The outcomes also reflect that tax authorities do not always correctly interpret or administer those laws, or that they themselves can be quite uncertain as to whether an arrangement is compliant or has a credible basis.

In some jurisdictions such as Australia, the tax authority will fund test litigation to seek the court's view on issues where there is uncertainty or contention about how the law operates. This recognises that tax law can be ambiguous or there is valid disagreement on what the law means or how it operates.

Acting in the public interest where tax legislation is applied by a PA in a manner consistent with its interpretation by a local tax authority is an approach that should be limited to where the tax authority:

- has carefully considered the interpretation of the relevant legislation in a circumstance relevant to the tax planning structure the PA is considering
- takes an active role in developing, implementing and/or administering tax laws
- has the capacity and capability to properly contemplate and issue guidance on the relevant tax laws and regulations, and
- can provide a credible basis for their views on a structure or arrangement when requested.

CPA Australia supports the wording of proposed paragraphs 380.4 A1 and 280.4 A1. CPA Australia further supports the wording of proposed paras. 380.4 A2 and 280.4 A2 while noting that the use of the term "tax minimisation" seems to be inconsistent with the intention to use the "tax efficient" in the relevant Sections. We welcome the use of the word "might", and consider that the use of this word clarifies the point that tax planning can involve tax minimisation or tax-efficient structuring which is not a threat to compliance with the fundamental principles.

Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

4. Do you agree with the IESBA's proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?

CPA Australia supports the proposed paragraphs 380.11 to 380.11 A3 and note that these are reflective of current TP practices. We make the following suggestions to aid interpretation and application of these paragraphs:

- R380.11 refers to "laws and regulations". However, 380.11 A2 acknowledges that a determination of credible basis will vary from jurisdiction to jurisdiction due to the difference between laws and regulations across respective jurisdictions. 380.11 A2 achieves this with the use of the word 'relevant'. As tax planning arrangements may often be cross-border, jurisdictional differences become key and for this reason the reference to a credible basis being formed in relevant laws and regulations should be emphasised.
- The factors listed in 380.11 will differ in relative importance depending on the scope and form of TP advice and may not always lead to the same determination. For clarity, 380.11 A2 should include a recognition that PAPPs and PAIBs are able to weight the factors listed in 380.11 A3 based on their professional judgment and that not all factors will be relevant for every TP engagement.
- Consideration could also be given to statements to the effect that:
    - the likelihood of detection by the revenue authority should not be a factor for consideration as it is not a valid basis for determining credibility, and
    - in assessing the credibility of a position, the PAPP/PAIB should look at whether the outcome is credible, not just reviewing the inputs (e.g., legislation and administrative guidance).

- We observe that 380.11 A1 notes that R380.11 "does not preclude" the accountant from explaining their rationale to for determining whether a tax planning arrangement has a credible basis. In contrast, 380.13 requires an accountant to explain to their client in the circumstance that they advise against a tax planning arrangement on the basis of anticipated adverse reputational and commercial consequences arising from such an arrangement. CPA Australia contends that an accountant's obligation to explain to their client their rationale for advising against a tax planning arrangement will be due to the absence of a credible basis. The proposed requirement for accountants to explain their rationale advising against the arrangement on the basis of potential adverse reputational and commercial outcomes is inappropriate and should be removed.
- CPA Australia recommends that the non-exhaustive list at 380.11 A3 refers to legislative supplementary materials in addition to legislative proceedings, as both may contribute to the understanding of legislative intent.

5. Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?

CPA Australia's membership covers many countries and jurisdictions with varying degrees of regulation of tax professionals. Australia, for example, has a government regulator, established by federal legislation, responsible for the registration and regulation of tax practitioners – the Tax Practitioners Board (TPB). Except for legal practitioners, providers of tax services are required to be registered as a tax agent with the TPB. Tax practitioners registered by the TPB are obliged to adhere to a Code of Professional Conduct under the *Tax Agent Services Act 2009*, must meet CPD requirements and may be liable to disciplinary proceedings by the TPB. Tax agents are not required to be, but in many cases are, a member of a professional accounting association such as CPA Australia.

In contrast our members in New Zealand (and in many other jurisdictions) may provide tax services without necessarily needing to register as a tax agent with the NZ revenue authority (or relevant jurisdictional authority). Even when registered, there are minimal standards with which they must comply. In such jurisdictions, a tax agent acts as an intermediary for tax compliance purposes and their status as a tax agent may not be relevant to the provision of tax services such as TP services. Other jurisdictions simply do not regulate advisors who provide taxation services for a range of reasons, including the responsibility ultimately resting with the taxpayer, the high regulatory burden and more urgent government priorities.

We are supportive of efforts to establish consistent, practical and fair TP standards for PAPPs and PAIBs globally, particularly in jurisdictions where regulations, guidance or tax administration capacity may not be well-developed. However, the requirements should not seek to exceed the standards set by governments in jurisdictions where the regulatory framework is well-established. CPA Australia's global membership will be impacted in different ways depending on the jurisdiction in which they operate.

Consideration of the Overall Tax Planning Recommendation or Advice

6. Do you agree with the proposals regarding the stand-back test, as described in Section VII.F above?

CPA Australia does not support the stand-back test as described in Section VII F of the ED.

CPA Australia considers the responsibility of a PA providing tax planning services does not, and should not, extend to considering reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement. Advice provided should be within the terms of engagement and be based on the competent and reasonable interpretation and application of tax laws. We are not aware of any terms of engagement that countenance the inclusion of a requirement to consider non-tax impacts, and consider such a requirement going far beyond the professional capability and authority of a PA.

CPA Australia considers this responsibility is onerous and potentially contrary to the fundamental principles, in particular professional competence and due diligence. CPA Australia considers that such responsibilities sit more appropriately with those charged with governance and should be managed by alternative functions such as corporate governance and public and investor relations.

While para. 65 of the EM states that the stand-back test is not about tax morality, tax justice or tax fairness, CPA Australia argues that reputational and commercial consequences are frequently connected to tax morality, tax justice and tax fairness as demonstrated by the public response to accusations of tax avoidance by large multi-nationals. We note that in the cases identified in the EM, there was no finding of wrongdoing by the taxpayer or their advisors, nor were civil or criminal penalties sought by the tax authority. The additional payments to government were not associated with an audit adjustment or court judgement. This indicates that the payment was not for additional tax liabilities arising from an adjustment under tax laws, but rather a non-tax payment to government resulting from pressures external to the tax authority and the law. In taking this approach to such circumstances, the proposed stand-back test can only be taken to link to tax morality, tax justice and tax fairness issues, as it is not connected to the credibility of the taxpayer's position which should remain the focal point of these revisions.

We therefore do not support the inclusion of proposed paragraph R380.13 that requires an accountant to explain to their client in the circumstance that they advise against a tax planning arrangement on the basis of anticipated adverse reputational and commercial consequences arising from such an arrangement. The stand-back test should be removed.

Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone

7. Do you agree with the IESBA's proposals as outlined in Section VII.G above describing the gray zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?

CPA Australia supports the recognition of uncertainty in the provision of TP services and the intention to provide guidance on how PA's may respond.

PAs' primary value is supporting taxpayers in understanding and navigating complex tax laws and regulations and supporting clients in interactions with tax authorities. Where tax laws are clear, tax reporting is increasingly automated with PAs performing more of an oversight role than completing or checking forms. As a result, uncertainty and the gray zone is where many PAs commonly operate, and these TP services are required by not only the client but also the tax authority.

In many jurisdictions, it is acknowledged that tax authorities do not have the capacity or capability to determine the application of tax laws to all the arrangements and transactions that occur in the economy. As such, PAs

perform a critical role in supporting clients to ensure the basis of their TP arrangements are credible, and to support tax authorities to develop relevant interpretive guidance and resolve queries and disputes.

CPA Australia is concerned with the inconsistent language of proposed paragraphs 380.15A1 and 380.16. Much of proposed section 380 refers to a tax planning arrangement requiring a "credible basis" in laws and regulations, in particular paragraphs 380.11 and 380.12. However, paragraphs 380.15A1 and 380.16 refer to a tax planning arrangement's "compliance with relevant tax laws and regulations", rather than "having a credible basis in laws and regulations". We are of the opinion that the wording of paragraph 380.16 is more definite than IESBA's description of "grey zone" area of uncertainty intends. We have the same concerns with the same language used in paragraph 380.14A1.

CPA Australia recommends the term "will be in compliance with the relevant tax laws and regulations" be replaced with "has a credible basis in relevant tax laws and regulations" in proposed paragraphs 380.15 A1 and R380.16.

The comments above in relation to section 380, apply equally in respect of paragraphs 280.15 A1 and 280.16 in proposed Section 280.

CPA Australia agrees with the requirement in paragraph 380.16 for a PA to discuss with the client the uncertainty of an arrangement, as outlined in paragraph 380.15 (similarly in paragraph 280.16), and observes this absolute requirement is consistent with paragraph 380.13. For the reasons set out at 6 above, CPA Australia considers the fourth purpose of the discussion at paragraph 380.16 A1 to be inappropriate and recommend its removal.

8. In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on:
   (a) The types of threats that might be created in the gray zone;
   (b) The factors that are relevant in evaluating the level of such threats;
   (c) The examples of actions that might eliminate threats created by circumstances of uncertainty; and
   (d) The examples of actions that might be safeguards to address such threats

   sufficiently clear and appropriate?

CPA Australia considers the proposed guidance is sufficiently clear while noting that the factors listed at 380.17 A2 will be of varying relevance and importance depending on the arrangement.

It remains unclear as to how tax controversy and dispute resolution activities are expected to be managed. The fact that the taxpayer is in dispute or litigating its position with the tax authority indicates that the tax authority does not believe that the taxpayer (and by extension their advisors) has a credible basis, or they may wish to test the credibility of the position before the courts.

In such situations, often legal practitioners and Counsel will often be involved, mitigating self-interest threats, or the taxpayer may change PAs in the course of the dispute. In any case, the requirements should not result in PAs being unable to accept a client in dispute with the tax authority, nor should taxpayers be prevented from access to justice due to PAs being wary of contravening these provisions.

Disagreement with Management

9. Do you agree with the proposals outlined in Section VII.I above which set out the various actions PAs should take in the case of disagreement with the client or with the PA's immediate superior or other responsible individual within the employing organization regarding a TP arrangement?

CPA Australia holds concerns about the requirements imposed on accountants in responding to disagreements.

The vast number of regular TP engagements undertaken for even a medium sized group means that an "all or nothing" approach to disagreements on a particular TP arrangement is inappropriate. For large companies and multinationals, many advisors, including non-PAs such as legal practitioners, are often involved and different advisors are engaged in different jurisdictions. Depending on the scope of engagement, PAs will only advise on certain aspects of an arrangement, often within a particular jurisdiction, as part of their broader engagement to manage the taxpayers' affairs.

As acknowledged throughout the ED, TP issues arise from uncertainty and may or may not be successfully argued if adjudicated by a court. Differing views are common and ultimately the decision to proceed is the responsibility of those charged with governance. Further, many disputed TP arrangements are usually of marginal value when referenced against total tax payable and are often constrained within a particular set of activities, group of entities or specific set of issues.

As a result, the suggestion that a PA would resign (280.20 A1) or disassociate (380.20 and 380.21), based on a professional difference of opinion on what is often a comparatively small transaction, is extreme. NoCLAR obligations are in place to address situations of non-compliance. However, these proposed provisions appear to seek the adoption of a NoCLAR approach in the context of TP disagreements. This attempt to elevate a professional judgment on the credibility of a tax arrangement to the level of non-compliance is inappropriate.

While guidance may be helpful for PAs who are grappling with uncertainty and who have differing views from those charged with governance, the mandatory and extreme nature of these provisions may often be disproportionate to the level of risk and jeopardises the ability of taxpayers to maintain access to professional advice from PAs for the remaining majority of their tax affairs.

Documentation

10. Do you agree with the IESBA's proposals regarding documentation as outlined in Section VII.J above?

Yes. CPA Australia supports these proposals and considers to them to be consistent with good practice.

We also note that the available documentation held by the PA will be dependent on:

- the terms and scope of the engagement
- the information provided by the client or shared within the business
- the relevance of such information to the TP advice
- the laws and regulations of the relevant jurisdiction/s including those related to:
    - record keeping and document retention
    - client confidentiality and privacy
    - acting in the clients' best interests

- legal professional privilege and similar concessions (e.g., the accountants' concession in Australia).

Further clarity on the requirement to document "any disagreement" with the client is required. Generally, TP advice is either accepted or not. Non-acceptance of TP advice by those charged with governance does not equate to a disagreement.

Tax Planning Products or Arrangements Developed by a Third Party

11. Do you agree with the IESBA's proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third party provider?

CPA Australia supports the disclosure of referral fees or commissions to clients where a client approaches the professional accountant for advice on a tax planning product or arrangement, as expressed in section 380. While referral fees or commissions are rare, advice is regularly outsourced when the complexity of tax laws requires access to specialists.

However, the PA cannot necessarily be reasonably expected to ascertain whether the third-party provider has the appropriate expertise in developing the product, nor should they necessarily be responsible for ascertaining the credibility of a particular tax planning product or arrangement, given that outsourcing will often be on the basis of not possessing the requisite expertise.

Para. 88 of the ED states that "the PA should ascertain the provider's competence in developing the TP product or arrangement" and then goes on to state at para. 89, "in both situations, the responsibilities of the PA are no different than if the PA were the creator of the TP product or arrangement".

CPA Australia considers the requirement for the professional accountant to be able to ascertain the third-party provider's competence in developing the tax planning product or arrangement to be unrealistic, already addressed in commercial contracts, covered by professional indemnity insurance and contradictory to laws and regulations in some jurisdictions.

For example, in Australia, the TPB advises that "where a registered tax practitioner outsources the provision of tax agent services to a registered third party, then the tax practitioner is not responsible for reviewing the third party's work, nor are they required to provide supervision and control."[1] The TPB guidance provides further information on the tax practitioners' responsibilities to the client when outsourcing including the requirement to inform the client and obtain their consent.

If progressed, the section should be worded in a manner that:

- provides sufficient flexibility for PAs to maintain trust in their professional colleagues
- does not impose onerous and unrealistic burdens on PAs, and
- does not duplicate, contradict or undermine well-established contractual and legal principles and obligations.

Multi-jurisdictional Tax Benefit

[1] Para. 28, Code item 7, TPB(PN) 2/2018 Outsourcing and offshoring of tax services - Code of Professional Conduct considerations | Tax Practitioners Board

12. Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L above?

In principle, CPA Australia supports the proposal as described in Section VII. L given that the paragraph is not written as an absolute requirement nor is a decision or response required from the relevant tax authority before the client or employing organisation proceeds with the transaction.

A clearer definition of "tax benefit" is required for the purpose of 380.14 A1 if PAs are to encourage clients to make voluntary disclosures or seek tax authority agreement in relation to arrangements. Tax efficiency and the considered application of tax laws are not equivalent to achieving a tax benefit, and the suggestion that any deviation from the statutory rate or the use of tax concessions equates to a tax benefit is incorrect.

As a result of the OECD's work on BEPS, treaties, mutual agreement procedures and information sharing between jurisdictions are progressing well and now cover most of the global tax base. BEPS Actions including model rules are also increasing consistency and collaboration between tax authorities, empowering them to undertake joint actions if they wish. Therefore, the necessity and value of section 380.14 is unclear.

CPA Australia makes the following observations in respect of proposed paragraph 380.14 A2:

- The accountant may have no insight into whether other entities in a similar circumstance to their client are taking advantage of the tax benefits
- The decisions of those charged with governance in relation to tax may vary greatly in relation to a particular set of tax laws due to differing facts and circumstances
- Like the likelihood of detection, the likelihood of other entities taking advantage of a tax benefit should not be a consideration (i.e., "everybody else is/isn't doing it" is not a credible basis for TP advice)
- The PA may not be aware of any multi-jurisdictional tax benefits being obtained as many arrangements involve multiple PAPPs across jurisdictions who are not permitted to share information due to client confidentiality and privacy requirements
- For the reason set out above at Question 6 relating to the stand-back requirement, we do not support the inclusion of the third point as advice on stakeholders' perceptions is not the PA's purview and highly unlikely to form part of the terms of engagement.

Further, CPA Australia observes that in respect of proposed paragraph 280.14 A2, the decision of whether to disclose the tax benefit to the relevant tax authorities has been placed with the PA, whereas it would more appropriately be a decision to be made by the employing organisation, specifically those charged with governance. This is consistent with the wording of paragraph 280.14 A2.

Proposed Consequential and Conforming Amendments

13. Do you agree with the proposed consequential and conforming amendments to Section 321 as described in Section VII.M above?

CPA Australia supports the proposed consequential and conforming amendments to Section 321 as described in Section VII. M.