

## AGENDA PAPER

**Item Number:** 10  
**Date of Meeting:** 6 September 2021  
**Subject:** Project update on Non-Assurance Services

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Action required     For discussion     For noting     For information

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### Purpose

To:

- provide an update to the Board on Technical Staff's benchmarking analysis on Non-Assurance Services (NAS) provisions in New Zealand, the UK and the USA; and
- seek Board member's views and feedback on a proposed stakeholder survey on auditor independence and NAS for Public Interest Entities (PIEs).

### Background

On 28 April 2021, the International Ethics Standards Board for Accountants (the IESBA) issued a final pronouncement: [Revisions to the Non-Assurance Services Provisions of the Code](#) (the IESBA NAS revisions). The changes are to the provisions of the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code) and will be effective from 15 December 2022.

At the [March 2021 Board meeting](#), the Board considered a preliminary draft of an exposure draft to amend APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) to incorporate the IESBA NAS revisions. The [Board requested](#) Technical Staff engage with stakeholders to understand the concerns and implications of the proposals, including consideration of the final recommendations of the Parliamentary Joint Committee on Corporations and Financial Services (PJC) Inquiry into the Regulation of Auditing in Australia.

At the June 2021 Board Meeting, Mr Robert Buchanan, the New Zealand Auditing and Assurance Standards Board (NZAuASB) Chair, and Ms Misha Pieters, the XRB Interim Director for Auditing and Assurance Standards, provided an update on NZ's project on NAS. The update included the NZAuASB's intention to adopt the IESBA NAS revisions but to seek to strengthen it by prohibiting tax advisory and tax planning services and developing additional guidance about independence and what is considered audit-related services.

At this meeting, the Board also considered APESB's [proposed exposure draft](#) on revisions to APES 110's NAS provisions to incorporate the IESBA NAS revisions and other amendments

to address recommendations from the PJC Inquiry and matters raised by Australian regulators. Key proposals included prohibiting tax advisory and tax planning services if it creates an advocacy threat and changing references from 'likely to prevail' to 'highly likely to prevail'. The [Board requested](#) Technical Staff to undertake further consideration of the proposed NAS provisions.

## **Matters for Consideration**

APESB Technical Staff have been working on gathering information and evidence concerning NAS. The two key focus areas of Technical Staff since the last Board Meeting are outlined below.

### **1. Benchmarking analysis**

Following the June 2021 board meeting, Technical Staff have undertaken a high-level benchmarking analysis of the proposed NAS provisions in New Zealand (NZ), the United Kingdom (UK) and the United States of America (USA). The analysis considered key differences to the IESBA NAS revisions focusing on the treatment of the provisions relating to tax services, particularly tax advisory and tax planning services.

The IESBA NAS revisions state that providing tax advisory and tax planning services to an audit client might create a self-review threat (paragraph 604.12 A1). However, such services will not create a self-review threat if the services (per paragraph 604.12 A2):

- (a) Are supported by a tax authority or other precedent;
- (b) Are based on an established practice; or
- (c) Have a basis in tax law that the firm is confident is likely to prevail.

The IESBA NAS revisions prohibit tax advisory and tax planning services to an audit client that is a PIE if the service might create a self-review threat (paragraph R604.15).

The high-level analysis relating to tax services for the three jurisdictions is set out below.

#### New Zealand

In July 2021, the NZAuASB issued [ED 2021/4 Proposed Amendments to Professional and Ethical Standard 1: Non-Assurance Services](#) (NZAuASB NAS proposals) and is seeking comments on the Exposure Draft by 31 October 2021. The exposure draft adopts the IESBA NAS provisions but with the following amendments:

- inclusion of a prohibition on providing tax planning and advisory services to a PIE audit client (NZ para R604.15) as it will always create an independence threat;
- remove "advising on the tax treatment of past transactions" from the description of tax return preparation services (NZ para 604.5 A1);
- include advising on the "tax return preparation or any adjustments arising therefrom" in the description of tax advisory and tax planning services (NZ para 604.11 A1); and
- delete "will not create a self-review threat" and rephrase the paragraph to emphasise the factors that are relevant to identifying self-review or advocacy threats (NZ para

604.12 A2) to address NZAuASB's concern that 'likely to prevail' is subjective and sets the bar too low.<sup>1</sup>

The inclusion of the prohibition on providing tax advisory and tax planning services is to reflect NZAuASB's views that there will always be a risk of self-review threat while providing these services.<sup>2</sup> These services create threats to independence that cannot be eliminated, and no safeguards are available to reduce threats to an acceptable level (para NZR604.15-NZ604.15 A1). This prohibition includes advising on the "tax return preparation or any adjustments arising therefrom". This prohibition is higher than the IESBA NAS revisions, which only prohibit tax advisory and tax planning services to a PIE audit client if the service might create a self-review threat.

The elevated prohibition in the NZAuASB NAS proposals means the safeguards to address advocacy threats relating to tax advisory and tax planning services set out in paragraph 604.15 A1 of the IESBA NAS revisions are no longer applicable.

In developing the position on this prohibition in the exposure draft, the NZ XRB undertook a survey of users of financial statements on perceptions of auditor independence when NAS is provided. The survey found that the provision of tax-related services had a particularly negative impact on the perceptions of auditor independence by the respondents. The NZAuASB also consulted with the XRB's Advisory Panel and received feedback that audit clients may benefit from certain services that are best provided by the auditor.<sup>3</sup>

### United Kingdom

The NAS provisions in the UK are established under the [FRC Revised Ethical Standard 2019](#) (the FRC Standard) and the European Union Audit Regulations. The overlay of these requirements means there is a 'whitelist' of permitted NAS under the FRC Standard and also a list of prohibited services.

The following tax services are on the prohibited list in the [FRC Standard](#):

- (i) preparation of tax forms;
- (ii) payroll tax;
- (iii) customs duties;
- (iv) identification of public subsidies and tax incentives unless support from the audit firm in respect of such services is required by law;
- (v) support regarding tax inspections by tax authorities unless support from the audit firm in respect of such inspections is required by law;
- (vi) calculation of direct and indirect tax and deferred tax; and
- (vii) provision of tax advice.

This approach differs from the IESBA NAS provisions, where tax advisory and tax planning services are only prohibited from being provided to PIE audit clients if it might create a self-review threat.

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<sup>1</sup> Paragraphs 33 of Invitation to Comment at [NZAuASB ED 2021/4 » XRB](#).

<sup>2</sup> Paragraphs 33 of Invitation to Comment at [NZAuASB ED 2021/4 » XRB](#).

<sup>3</sup> Paragraphs 18, 20 and 21 of Invitation to Comment at [NZAuASB ED 2021/4 » XRB](#).

In July 2020, the FRC announced principles for operational separation for the Big 4 firms in the UK. The 22 principles focus on governance, the scope of audit practice ('ring fence'), financial separation ('arm's length'), partner remuneration, transparency and accountability to ensure audit practices focus on quality, the public interest and do not rely on cross-firm subsidies. In relation to the provision on NAS, it is expected that audit practices can provide:

- permitted audit-related and non-audit services to PIEs audited by the firm;
- audit-related and non-audit services to non-PIEs audited by the firm which are not prohibited; and
- services to other entities not audited by the firm that are either included on the "whitelist" in the FRC Standard or are non-audit assurance engagements where the recipient of the assurance is a third party (e.g., a regulator, government or lender) separate from the client of the audit firm.

These principles are due to be implemented by 30 June 2024.

### United States of America

There are three key sources of independence rules in the USA:

- The American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct (AICPA Code) includes independence rules applicable to members and their interests and relationships with, and services provided to attest/audit clients.
- Independence regulations of the Securities and Exchange Commission (SEC); and
- Independence regulations from the Public Company Accounting Oversight Board (PCAOB).<sup>4</sup>

In relation to tax planning and advisory services, APESB Technical Staff have focused on the SEC and PCAOB rules. The rules from these regulators are meant to work in concert, but the PCAOB's rules impose incremental independence obligations on registered public accounting firms.

The SEC rules set out four principles that indicate impaired independence, which means the auditor cannot:

- create a mutual or conflicting interest between the auditor and the audit client;
- act in the role of management (i.e., management responsibility prohibition);
- audit their own work (i.e., self-review threat); and
- serve in an advocacy role (i.e., advocacy threat).

Tax services are not specifically prohibited services in the SEC Rules. The SEC's view is that tax services, including tax compliance, planning and advice, can be provided subject to consideration of and meeting the four basic principles (avoid conflicts of interest, management responsibility, self-review threats and advocacy threats), the audit committee approves the service and amount of fees for the tax services are disclosed.<sup>5</sup>

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<sup>4</sup> [AICPA Plain English guide to independence](#)

<sup>5</sup> [SEC Rules](#) Section B.11

Overall, it appears that the SEC Rules are similar to the IESBA NAS provisions because independence would be impaired if the auditor were to “audit his or her own work”. The rules identify the following tax services which could impair independence:

- Representing a client before a tax court; and
- The recommendation of transactions by a firm, where the sole purpose of which is tax avoidance, “*and the tax treatment of which may be not supported*” by tax laws and regulations.

The SEC Rules appear to be more stringent in relation to advocacy roles, with a clear prohibition rather than a consideration that it might create an advocacy threat (under the IESBA NAS provisions).

Under the PCAOB rules, aggressive or confidential tax transactions or personal tax services provided to persons in financial reporting oversight roles are subject to strict restrictions.<sup>6</sup> For example, rule 3522 states that a firm is not independent if it provides a NAS to an audit client related to marketing, planning, or opining in favour of the tax treatment of a transaction that is:

- a confidential transaction; or
- an Aggressive Tax Position Transaction (initially recommended, directly or indirectly, by the firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws).

This PCAOB rule is very similar to the prohibition in paragraph R604.4 of the IESBA NAS provisions.

Note that the IESBA are currently conducting a benchmarking project focussing on the USA’s professional and ethical requirements compared to the IESBA Code. The final report of the first part of this benchmarking project is expected to be released in late 2021.

## **2. Proposed Stakeholder Survey**

Technical Staff are proposing to undertake a stakeholder survey, similar to the survey undertaken by the NZ XRB, to gather evidence of perceptions of auditor independence when NAS is provided to PIE audit clients.

The survey undertaken in NZ showed that independence in appearance was impacted when NAS, in particular tax services, was provided to audit clients. APESB Technical Staff believe it would be of value to conduct a similar survey in Australia to determine the opinion of local stakeholders on this matter.

APESB would seek feedback from a wide range of stakeholders, including accountants within and outside firms, directors, management, investors, academics and other users of financial statements.

The survey would be conducted from September to October 2021. Technical Staff have developed proposed questions for the survey (refer to Agenda Item 10(a)).

Technical Staff seek the Board’s views and comments on the proposed survey questions set out in Agenda Item 10(a).

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<sup>6</sup> [AICPA Plain English guide to independence](#)

## **Recommendations**

The Board:

- note Technical Staff's high-level benchmarking analysis on NAS provisions relating to tax planning and advisory services in NZ, the UK and the USA; and
- provide feedback and views on the proposed stakeholder survey on NAS.

## **Materials presented**

Agenda Item 10(a) Draft APESB Survey Questions on NAS for PIE Audit Client

**Authors** Jon Reid  
Rachael Tiong

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