

AGENDA PAPER

Item Number: 9
Date of Meeting: 3 June 2022
Subject: Project update on APES 220 *Taxation Services*

Action Required For Discussion For Noting For Information

Purpose

To provide the Board with a project update on APES 220 *Taxation Services* (APES 220).

Background

In August 2020, the Board requested Technical Staff review APES 220 *Taxation Services*, and other APESB pronouncements, in light of the enhanced whistleblower protections as contained in the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.

Technical Staff reported to the Board in November 2020 on the impact of the new whistleblowing legislation on the confidentiality provisions in APESB pronouncements and current projects undertaken by the Australian Taxation Office (ATO) and the Tax Practitioners Board (TPB). As a result, the Board agreed to defer the revisions to APES 220 to encompass any necessary outcomes from these stakeholder projects.

Matters for Consideration

This paper has been prepared to inform Board members of developments relating to taxation services.

Tax lodgement services and supervision of work

In September 2020, an issue was raised with APESB Technical Staff about the interplay of paragraph 4.3 of APES 220 *Taxation Services* with [guidance](#) issued by the Tax Practitioners Board (TPB) in July 2020 on supervisory arrangements and supervision and control.

The concern was that the TPB Guidance appeared to indicate that a tax agent will breach legislative requirements if the person performing the work on the revenue returns is not an employee of the tax agent. Whereas APES 220 acknowledges that Members can provide a tax lodgement service to another party as long as they ensure sufficient reviews are undertaken on the returns and documents prior to lodgement.

Paragraph 4.3 of APES 220 states as follows:

- 4.3 Where a Member in Public Practice provides a tax lodgement service to another party and a significant portion of the work associated with the revenue returns and other relevant documents is not performed under the supervision of the Member, the Member shall perform sufficient reviews of the revenue returns and other relevant documents in accordance with this Standard and the Code prior to lodgement of these revenue returns.**

The use of a tax lodgement service is common when a Member is gaining experience to meet the experience requirements of being a tax agent and may lodge revenue returns they prepare under the supervision of a fully qualified tax agent (who may not necessarily be their employer).

In October 2020, APESB Technical Staff met with the TPB to discuss this issue. TPB Staff were of the view that the requirements are not necessarily inconsistent as both focus on the need for adequate supervision.

In 2021, the TPB updated its guidance on supervisory arrangements by issuing [TPB Information Sheet TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#). The guidance clarifies that there is no need to have an employer/employee relationship with the person performing the services as long as there is adequate supervision. The tax agent needs to direct, oversee and check the services provided on their behalf.

Technical Staff have reviewed paragraph 4.3 of APES 220 in light of the revised guidance issued by the TPB and believe the phrase "...is not performed under the supervision of the Member..." should be amended to "...is performed by the other party...". Technical Staff also recommend that a footnote be included for this paragraph which refers to the TPB guidance.

Technical Staff believe this matter should be included in the next revision of APES 220, and notes it is already recorded as a matter on the APESB Issues Register.

ATO engagement regarding auditor independence and best practice governance for tax practices

During 2020 and 2021, APESB Technical Staff have been collaborating with the Australian Taxation Office (ATO) about current projects being undertaken by each organisation.

At the November 2021 Board Meeting, the ATO provided the Board with an update on their project on a Governance framework for tax practitioners/firms. The ATO hopes to release their guidance in the second half of 2022.

At this meeting, the ATO also addressed issues associated with APESB's current project on Non-Assurance Services (NAS) and discussed the proposed provisions relating to tax services to an audit client. Refer to Board Agenda Item 12 for further details on the NAS project. The proposed revisions to the NAS provisions in APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) are expected to be finalised by the end of 2022.

IESBA's current project on Tax Planning and Related Services

In September 2021, the International Ethical Standards Board for Accountants (the IESBA) approved a [project proposal](#) on tax planning and related services. The project aims to develop a principles-based framework based on the fundamental principles and the conceptual framework in the *International Code of Ethics for Professional Accountants (including International Independence Standards)* (the IESBA Code) to guide professional accountants' ethical conduct when providing tax planning and related services to clients or their employer.

A significant part of the impetus for this project is recent tax scandals such as the Panama papers, Pandora papers and Paradise papers. These scandals have focused the public, government and regulatory bodies of multiple jurisdictions' attention on the professional practices and behaviour of professional enablers such as lawyers and accountants.

At the IESBA March 2022, the IESBA reviewed a [report](#) from the Public Interest Oversight Board (PIOB) on the public interest considerations of IESBA's current projects. The PIOB supports the IESBA's tax project noting the current global emphasis on tax, tax avoidance and social responsibility regarding tax practices.

The PIOB noted that the key public interest issues for this project would be:

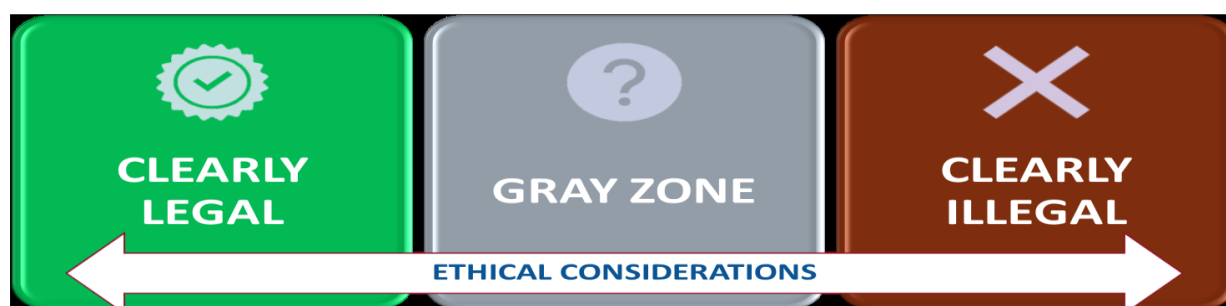
- Promoting consistent ethical behaviour of professional accountants providing tax planning services;
- Raising the awareness of risks associated with unacceptable tax planning; and
- Promoting sustainability principles, including transparency.

(refer to page 7 of PIOB's report to IESBA)

At the March 2021 meeting, the IESBA also received [an update](#) from the IESBA's Tax Planning and Related Services Taskforce for this project. From the beginning of this year, APESB CEO Channa Wijesinghe has been a member of this IESBA Taskforce in his capacity as an IESBA member.

The project's primary objective is to develop a principle-based ethical framework based on the Conceptual Framework in the IESBA Code to guide the professional accountant's behaviour when providing tax planning and related services.

The Taskforce noted that tax planning services could fall anywhere within a broad ethical spectrum from what is considered clearly legal to what is considered clearly illegal. Ethical considerations apply to professional accountants providing tax planning services all along this spectrum. However, the perception of professional accountants' ethical behaviour in carrying out tax planning services that, while not illegal, are perceived as unacceptable tends to arise within the boundaries of what the IESBA has termed the "gray zone."



Source: *IESBA Tax Planning & Related Services – Briefing Note* (Refer Agenda Item 9(a)).

The project's focus will be on the 'gray zone' (which falls between clearly legal tax services and those that are clearly illegal) and issues of uncertainty or improper behaviour.

The Taskforce have performed an initial high-level assessment of how the conceptual framework could be applied to these issues. The Taskforce also considered the following frameworks that operate in the UK, Australia and the USA:

- The UK standard *Professional Conduct in Relation to Taxation* (PCRT) which is jointly issued by seven professional bodies and associations in the UK;
- APES 220 *Taxation Services*; and
- AICPA's Statements on Standards for Tax Services (SSTS).

The IESBA Taskforce has undertaken stakeholder engagement to inform the standard-setting process and held three global roundtables (Americas, Europe & Asia Pacific) in late April 2022.

Refer to Agenda Item 9 (a) for the briefing note circulated to participants at the Roundtables. Over ninety delegates from around the world attended these IESBA's global roundtables. The Taskforce will provide an update on the global stakeholder feedback at the IESBA June 2022 meeting

The expected timeline for the project would see an exposure draft approved in December 2022 or March 2023, with a final pronouncement due at the end of 2023.

Way forward

APESB Technical Staff are of the view that any proposed revisions to APES 220 should be deferred to allow for the completion of the ATO project, the revision of the NAS provisions in APES 110 and to consider the potential outcomes of the IESBA project.

Technical Staff will continue to monitor the progress of these projects and will update the Board on relevant future developments. At a minimum, consideration of the issue of a revised APES 220 will occur in the first half of 2023.

Recommendations

The Board note the update on the APES 220 *Taxation Services* project.

Materials Presented

Agenda Item 9 (a) IESBA Briefing Note – Tax Planning and Related Services.

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Date: 23 May 2022