Exposure Draft 04/22: ***Proposed Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)***

Review of Submissions - Specific Comments
Exposure Draft 04/22: *Proposed Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*

Note: General comments and confidential comments from regulators relating to Exposure Draft 04/22 are addressed in separate tables. This table excludes minor editorial changes.

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1	Specific Comment 1	BDO	Appendix 1 Our response to each of the questions posed in Exposure Draft 04/22 is provided in the table below: Question *[Table Header only]* ***Request for Specific Comment 1*** Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response. BDO Response *[Table Header only]* By amending the threshold to almost certain to prevail as proposed in Option 1, the APES Code will deviate from international standards and specifically the IESBA Code, as such BDO does not support proposed Option 1. Our view is that a deviation from international standards is only warranted in limited circumstances, as an example where there is evidence of audit or auditor independence failure or local legislation warrants such deviation. International alignment of professional and ethical standards is important for professional services firms that operate as a network across multiple jurisdictions therefore creating a heightened risk of breaches across the profession which is not in the public interest.	No

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			Specifically, the risk is heightened when inconsistent auditor independence requirements are applied to tax planning and advisory services in group audits across multiple jurisdictions and related entities within the group structure. We also consider that in practice the requirement to meet the standard of 'almost certain to prevail' prior to the undertaking of any engagement would be overly burdensome and is tantamount to prohibition.	
2	Specific Comment 1	CA ANZ	**Appendix A** **Responses to specific questions** **Request for Specific Comment 1 – Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response.** We do not support proposed Option 1 to change the threshold from "likely to prevail" to "almost certain to prevail" on the basis that we do not believe that there is sufficient evidence to support Australian specific amendments to the IESBA Code in this regard. Furthermore, we support trans-Tasman harmonisation of standards where possible - if Australia adopted this approach, it would result in divergence from the approach taken in New Zealand. We believe several unintended consequences could arise from proposed Option 1 as follows: • Substantial work, outreach and consultation has been undertaken by the IESBA to determine the approach taken with respect to tax advisory and tax planning services. The IESBA Code has been developed holistically, with a high degree of interconnectivity including between the principles and more prescriptive aspects. When seeking to make amendments that diverge from the IESBA Code there is a risk of unintended consequences, contradictions and omission of required consequential amendments. If this were to occur this could have the overall effect of weakening confidence in audit rather than strengthening it. • If Australia deviates from the IESBA Code (and the approach taken in New Zealand), this could cause challenges in practice in relation to group audits with entities across different jurisdictions.	No

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			• Not having a robust, demonstrable basis for the departure from the IESBA Code may impact the confidence and support of both the public and those implementing and complying with APES 110. • It is highly unlikely that a tax opinion that requires consideration of a tax avoidance purpose would ever reach the threshold of "almost certain to prevail". This is a complicated area of the tax law that often requires subjective weighting of objective factors and thus, by its very nature, will lack certainty except in the most simple of fact patterns.	
3	Specific Comment 1	CPAA	**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. That is, for example, as noted in the covering letter CPA Australia is not supportive of the approach whereby prohibitions on the provision of certain non-assurance services are based only on the possibility that a threat might be created. This impacts the wording of paragraphs in Section 604. However, these impacts are not being considered in our responses below. ***Request for Specific Comment 1*** **– Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response.** CPA Australia does not support Option 1. Feedback received indicates that there is nothing in the Australian taxation environment that would justify the use of a higher threshold than that which is proposed by IESBA. Indeed, in the Australian taxation environment the concept of "reasonably arguable position"—which is a lower threshold than "almost certain to prevail"—is the starting point for all discussions with the ATO. It seems unreasonable to expect auditors/firms to have to meet a higher threshold, or burden of proof, than is required by the Taxation Commissioner and the courts.	No

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4	Specific Comment 1	Deloitte	Please find below our responses to the request for specific comments in the ED: 1. *Request for Specific Comment 1 – Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail"?* Deloitte does not support Option 1. Using the term "almost certain to prevail" creates a different standard to that required under Australian income tax law which considers that an entity will not meet its tax obligations unless the position taken is "reasonably arguable". The Taxation Administration Act states that 'a matter is reasonably arguable if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is *about as likely to be correct as incorrect, or is more likely to be correct than incorrect*'. Accordingly, a position of "almost certain to prevail" is incongruent with the standard currently applicable within Australian tax law and would necessitate separate processes and thresholds to be applied for tax advice provided to audit clients. This would also represent a challenge for tax agents in meeting their obligations to audit clients, as they have a statutory duty to act in the client's best interests in providing advice based on Australian tax laws. Furthermore, implementing Option 1 would create Trans-Tasman differences given the New Zealand Auditing and Assurance Standards Board (NZAuASB) has adopted a different approach in its Ethics Code.	No
5	Specific Comment 1	EY	**Appendix 1: Specific Comments Table** **Request for Specific Comment 1** Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response. **EY response** *[Table Header only]*	No

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			EY does not support proposed Option 1 as we consider it beneficial to have minimal amendments to IESBA's language to reduce inconsistencies between jurisdictions. Further, EY is concerned there is a lack of clear evidence of a compelling reason for APESB to deviate from IESBA in this instance. We further note such amendments would create inconsistencies between the approach adopted by the New Zealand Auditing and Assurance Standards Board (NZAuASB). Whilst we recognise Australia and New Zealand are unique countries and our respective Codes of Ethics are promulgated by separate Boards, EY strongly believes Trans-Tasman accordance is the preferred outcome for these proposals. Finally, EY is concerned an "almost certain to prevail" threshold may, in practice, never be able to be achieved in the absence of ATO rulings or court declarations being sought for every tax position being advised on for an audit client. Such a threshold could inadvertently serve as equivalent to a prohibition on tax advisory services.	
6	Specific Comments 1 & 2	IPA	**Attachment** **IPA responses to APESB Exposure Draft 02/22 – Request for Specific Comments** **Question 1** Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response. **Question 2** Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the "firm is confident is likely to prevail" as a high threshold? Please provide reasons and justification for your response. <u>IPA Response on Question 1 & 2</u>	Yes Paras. AUST 604.4 A1.1 & AUST 604.12 A2.1

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			On balance, IPA supports Option 1. IPA is of the view that both options are consistent with the intent of the requirements of the IFAC IESBA Code. Each option provides the much-needed clarity to aid practical application of the intended requirements. Option 1 provides clarity that IESBA's intent was to set a high threshold, and an audit/assurance firm should have a high level of confidence that providing tax advisory and tax planning services will not create a self-review threat where there is a basis in tax law that is almost certain to prevail. Although Option 2 is also workable, IPA believes it may involve a higher degree of subjectivity on application. On this basis, Option 1 is preferred over Option 2. As IESBA has stopped short on including a total prohibition on an audit/assurance firm providing tax advisory and tax planning services, IPA believes it is undesirable for the APESB to adopt such an approach given that such prohibitions do not exist in Australian law and no other international jurisdiction has introduced such prohibitions.	
7	Specific Comment 1	KPMG	**Attachment A** **Responses to specific questions** **Request for Specific Comment 1 – Do you support APESB's proposed Option 1 to address concerns relating to tax services by amending the threshold to 'almost certain to prevail'? Please provide reasons and justification for your response.** KPMG is not supportive of proposed Option 1 to amend the threshold from "likely to prevail" to "almost certain to prevail". KPMG is not aware of any evidence, and certainly not sufficient evidence, supporting the need for Australian specific amendments to the IESBA Code in this regard. IESBA undertook substantial due diligence, outreach and consultation with various stakeholders to determine the approach now reflected in the International Code with respect to tax advisory and tax planning services. Noting IESBA's expert and detailed consideration of the potential implications for audit independence of the audit firm providing tax advisory and tax planning services, in the absence of tangible evidence in the Australian environment of fundamentally different audit independence outcomes as a result of the provision of tax advisory and tax planning services by the	No

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			audit firm, we consider it inappropriate and unjustified for the APESB to create an auditor independence regime in Australia inconsistent with that applicable globally. In addition, given IESBA's newly introduced self-review threat prohibits a service that might create a self-review threat, it is difficult to see how Option 1 will present a solution that addresses any further concerns regarding audit independence. If Option 1 is being designed to address a tax revenue concern, as opposed to an audit independence concern, the APES 110 Code is not an effective nor efficient mechanism to address such concerns. Amending the requirement to 'almost certain to prevail' will create a double standard in the tax advice industry with no incremental auditor independence benefit. KPMG also believes several unintended consequences could arise from proposed Option 1 as follows: • Creating an approach to audit independence which is inconsistent with that applicable globally, without having a robust and meaningful basis for doing so, risks weakening the confidence of the profession and other stakeholders in the APES. • Local deviations from the IESBA Code increase the risk of unintended consequences, including contradictions and omissions of required consequential amendments. This could have the overall effect of weakening confidence in audit independence in Australia with consequential implications for public perceptions of audit quality. • Inconsistencies between APES 110 and the International Code inevitably lead to practical challenges in the application of independence standards to group audit scenarios with entities operating across different jurisdictions. They also lead to increased costs for corporations and audit firms as the efforts required to maintain compliance increase with the added complexity created by the inconsistency.	
8	Specific Comment 1	PWC	**Tax Services** The consultation paper calls for specific comments and feedback on two proposed options to strengthen the tax services provisions in the IESBA Code for the Australian context, those being: • Tax Services Option 1 – Amend the Threshold to 'Almost Certain to Prevail'; and	No

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			• Tax Services Option 2 – Add Guidance on the Meaning of 'Likely to Prevail' We note that whilst IESBA has taken action to prohibit tax advisory and tax planning services to PIE audit clients where such services might create a self review threat, it has also intentionally 'carved out' certain tax advisory and tax planning services from the prohibition. IESBA provided clear and well understood qualifications on when this carve out might apply, namely when these services are: • supported by tax authority or precedent; • are based on established practice (commonly used and not challenged by a tax authority); or • have a basis in tax law that the firm is confident is likely to prevail. We see no reason to depart from these qualifications agreed to internationally and as such **we do not support *Tax Services Option 1***. We also note that New Zealand considered a stricter criteria than initially proposed by IESBA regarding the carve out, but after considering feedback from a wide variety of stakeholders, they adopted the IESBA wording. We also see the introduction of language such as 'almost certain' as unhelpful in the context of undertaking a risk assessment. Whilst there is no universally agreed upon probability percentage to define 'almost certain', many could argue that this is as high as 99%. In our view this is impractical in assessing the likelihood of a tax matter. Further, for tax practitioners the expression 'almost certain' does not align to existing terminology used by tax advisors or regulators. From an Australian perspective, our tax practitioners are more accustomed to thresholds such as the provision of tax advice that is 'reasonably arguable' based on the law as it stands at the time. This threshold is also included in the recently launched Australian Tax Advisory Firm Governance: Best Practice Principles[1], developed and agreed by the Australian Taxation Office, Tax Practitioners' Board and large accounting firms. [1] https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/We-assist-and-assure-the-tax-compliance-of-large-corporate-groups/	

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9	Specific Comment 2	BDO	Question *[Table Header only]* ***Request for Specific Comment 2*** Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the "firm is confident is likely to prevail" as a high threshold? Please provide reasons and justification for your response. BDO Response *[Table Header only]* BDO supports Option 2 based on its current alignment with the revised IESBA Code. This approach facilitates the ease of aligning the APES Code with future changes to international standards. In considering the proposed changes to Option 2, we are of the view that supplementing this specific condition with the term 'confident' implies a higher threshold than was previously applied. Our view however is that further clarification and guidance should be provided on how the term 'confident' should be interpreted. Proposed paragraph AUST 604.12 A2.1 refers to the firm gaining confidence that there is a high probability that the condition will prevail through application of the reasonable and informed third party test. We propose that further guidance in relation to the application of the reasonable and informed third party test specific to this condition as it applies to tax advisory and planning services in the Australian context be provided. The guidance would be useful in informing our judgement and ensuring the application of a streamlined approach with the objective of achieving the desired threshold consistently.	Yes Paras. AUST 604.4 A1.1 & AUST 604.12 A2.1
10	Specific Comment 2	CA ANZ	**Request for Specific Comment 2 – Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the "firm is confident is likely to prevail" as a high threshold? Please provide reasons and justification for your response.**	Yes Paras. AUST 604.4

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			We recommend the APESB consider retaining the original form of the IESBA Code to maintain international consistency. However, proposed Option 2 could be workable – to provide guidance to clarify what the phrase "likely to prevail" is intended to mean. This approach would also result in trans-Tasman harmonisation, which we support, as New Zealand has adopted a similar approach. As the phrase "likely to prevail" is not commonly used in Australia to describe the strength of a tax opinion, we recommend that the APESB provide additional guidance to clarify that "likely to prevail" requires satisfaction of at least a "more likely than not" position. This would be consistent with the wording in US PCAOB's Rule 3522, from which the proposed requirement was originally adapted. The proposed guidance is consistent with the IESBA's intention that the firm should have a high level of confidence. The answer to question 16 of the IESBA Staff Questions and Answers says: … "*The IESBA determined that, for subparagraph 604.12 A2 (c) to apply, the firm should have a high level of confidence that the basis in tax law is "likely to prevail*"."	A1.1 & AUST 604.12 A2.1
11	Specific Comment 2	CPAA	***Request for Specific Comment 2*** **– Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the "firm is confident is likely to prevail" as a high threshold? Please provide reasons and justification for your response.** CPA prefers Option 2. Given the global nature of the taxation services that many firms provide, it will assist adoption and implementation by them if the APESB was to remain consistent with the global standard issued by IESBA. While it is known that several jurisdictions will be deviating from the global standard, one can anticipate that the revisions issued by IESBA may be adopted in the majority of jurisdictions. However, CPA Australia does not support the inclusion of paragraph **AUST 604.4.A1.1**. The use of the wording "high level of confidence" conflicts with the wording in the preceding two paragraphs which describes the threshold as being that the firm "is confident". Additionally, suggesting that there is a need to determine that there "is a high probability" that a tax treatment will prevail contradicts paragraph **R 604.4**, where the threshold test is "likely" to prevail. Arguably, the inclusion of **AUST 604.4.A1.1** is tantamount to requiring that a threshold of	Yes Paras. AUST 604.4 A1.1 & AUST 604.12 A2.1

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			"almost certain" be used, which CPA Australia does not support (refer response to Specific Comment 1). The introduction of additional, seemingly contradictory and undefined terms will lead to greater uncertainty and confusion. For the same reasons, CPA Australia also does not support the inclusion of AUST 604.12.A2.1.	
12	Specific Comment 2	Deloitte	*2. Request for Specific Comment 2 – Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the 'firm is confident is likely to prevail' as a high threshold?* Deloitte is supportive of APES 110 remaining consistent with the International Code and is not aware of evidence to suggest the need for Australian specific changes to be made. If the Board believes further guidance is required, then we do not object to Option 2, as it retains the "likely to prevail" wording used in the International Code and adds guidance consistent with current IESBA Staff guidance (Ref: Q16 in the IESBA Staff Questions & Answers on the Revised Non-Assurance Services Provisions of the Code which sets out that the firm should have a "*high level of confidence that the basis in tax law is likely to prevail*"). Option 2 is also more closely aligned with the NZAuASB's position and therefore would create a harmonised Trans-Tasman approach.	Yes Paras. AUST 604.4 A1.1 & AUST 604.12 A2.1
13	Specific Comment 2	EY	**Request for Specific Comment 2** Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the "firm is confident is likely to prevail" as a high threshold? Please provide reasons and justification for your response. **EY response** *[Table Header only]* The amendments proposed in Option 2 are consistent with the NZAuASB's approach and therefore minimise Trans-Tasman discrepancies. For this reason, and for the reasons outlined above, we support APESB's proposed Option 2 to include guidance to clarify the high threshold level imposed by this requirement, as outlined in the IESBA Staff Q&A on this topic.	Yes Paras. AUST 604.4 A1.1 & AUST 604.12 A2.1

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			However, we emphasise our belief that the public interest is best served by adopting IESBA's amendments without the proposed Australian-specific amendments. As additional feedback relating to Option 2, EY requests the Board consider including further guidance on the minimum steps firms should undertake to satisfy this level of confidence. Such an inclusion would serve to increase understanding and compliance with these provisions and is not incompatible with the Code's principles-based approach. We would also encourage APESB to work with IESBA to make this guidance globally relevant to address concerns regarding independence when audit firms provide tax advice or planning services to their public interest entity audit clients.	
14	Specific Comment 2	KPMG	**Request for Specific Comment 2 – Do you support APESB's proposed Option 2 to address concerns relating to tax services by including guidance to clarify and establish the "firm is confident is likely to prevail" as a high threshold? Please provide reasons and justification for your response.** We are not supportive of the APESB's proposed Option 2 to provide guidance to clarify what the phrase "likely to prevail" is intended to mean. In our view, if guidance is to be developed, it should be done so globally (i.e., by IESBA). In this context it is noted that IESBA has already provided high level guidance on the meaning of "likely to prevail" via Basis-for-Conclusions-Non-Assurance-Services.pdf (ifac.org) (Pages 28 & 29). In particular that document addresses the considerations regarding "likely to prevail" compared to "more likely than not" (i.e., PCAOB Rule 3522). Further, the answer to question 16 of the IESBA Staff Questions and Answers states: … "*The IESBA determined that, for subparagraph 604.12 A2 (c) to apply, the firm should have a high level of confidence that the basis in tax law is "likely to prevail"*." We would encourage APESB to work with IESBA to develop further guidance that it may consider necessary to address concerns regarding the independence of audit firms when providing tax advisory or planning services to a public interest entity audit client.	No
15	Specific Comment 2	PWC	In relation to Option 2, we recommend that the APES Board provide additional guidance to clarify the requirement that a firm 'is confident [the advice] is likely to prevail'. On its face, we believe these terms risk creating uncertainty which	Yes

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			could impede the effective application of the standard. We agree that any proposed guidance should be consistent with IESBA's statements that the firm should have 'a high level of confidence that the basis in tax law is likely to prevail'. We submit that the following points of guidance would be consistent with this standard, while reducing uncertainty and ensuring effective practical application of the standard: 1. 'Likely to prevail' requires a probability of 'at least more likely than not' that the position is correct in law; and 2. A firm's 'confidence' of position should be supported based on an analysis of applicable laws to the client's relevant facts, having regard to an objective 'reasonable and informed person' test.	Paras. AUST 604.4 A1.1 & AUST 604.12 A2.1
16	Specific Comment 3	BDO	Question *[Table Header only]* ***Request for Specific Comment 3*** Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response BDO Response *[Table Header only]* We foresee practical challenges in implementing the documentation requirements set out in proposed paragraph AUST R604.4.1 and AUST R604.12.1 specific to Option 1 as this will unnecessarily discourage consideration of engagement in the first instance (refer to our response to Specific Comment 1). **In relation to Option 2:** **AUST 604.4.1** The documentation requirements set out in proposed paragraph AUST R604.4.1 apply specifically to documenting the factors considered and conclusions reached in determining that the services have a 'basis in tax law that the Firm is confident is likely to prevail'.	Yes Paras. AUST R604.4.1 & AUST R604.12. 1

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			We do not foresee the need for an Australian specific documentation requirement, should the APES Board consider amending the paragraph as proposed in our comments in response to Specific Comment 4 and specifically 4a below. The practical challenges associated with implementing the documentation requirements, should the APES Board consider amending paragraph R604.4.1 as proposed in Specific Comment 4 and specifically 4b and 4c below is aligned to our response to Specific Comment 2. We would find it challenging to document the application of the reasonable and informed third party test in the absence of additional guidance informing our judgement. **AUST 604.12.1** Proposed paragraph AUST R604.12.1 sets out the requirement to document the factors considered and conclusions reached in determining that the tax advisory and planning services satisfy one or more of the conditions described in paragraph 604.12 A2. We would find it challenging to document the application of the reasonable and informed third party test in the absence of additional guidance informing our judgements as outlined in our response to Specific Comment 2.	
17	Specific Comment 3	CA ANZ	**Request for Specific Comment 3 – Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response.** We support the addition of a requirement for firms to document the factors considered and conclusions reached in determining that the firm has satisfied the conditions, in the instances where the firm determines that providing tax planning and tax advisory services is permissible. Paragraph 113 of the Basis for Conclusions states that the IESBA envisages that a firm may *choose* to document, in situations that are not apparent, the factors considered in determining its confidence that the proposed treatment has a basis in applicable tax law and regulation that is likely to prevail. In addition, paragraph 600.27 A1 of the IESBA Code sets out what documentation the firm might prepare.	Yes Paras. AUST R604.4.1 & AUST R604.12.1

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			We do not believe this requirement would be onerous, as we understand that such documentation is consistent with current best practice in Australia in determining whether a NAS is permissible or not.	
18	Specific Comment 3	CPAA	***Request for Specific Comment 3*** **– Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response.** CPA Australia makes the following observations, based on feedback received, as to potential challenges in implementing the documentation requirements in proposed paragraphs **AUST R604.4.1** and **AUST R604.12.1**. • Many firms will have a range of procedures in place to review risks and oversee decisions (e.g., "two pairs of eyes", sign-off by a legal department). Therefore, rather than requiring that documentation be provided for each individual service provided and decision made, it may be more appropriate to require that firms have in place processes (which might be subject to review) to ensure that all relevant considerations are made, and that conclusions are reached only after full consideration of all relevant information. • Moreover, it has been suggested to us that in terms of documentation, the need to determine the likelihood of a view prevailing would often require advice from senior legal advisers (e.g., a KC or an SC). This advice will be protected by legal professional privilege and cannot be disclosed. Furthermore, it would be too costly, time-consuming and onerous to get this advice for every transaction, but—similar to the approach used by the ATO—firms may receive legal advice on the interpretation of a taxation law or provision and then apply that in their work. The advice provided to a client will often then reference the relevant provisions, rulings and case law upon which the advice is based but will not disclose the advice itself.	No
19	Specific Comment 3	Deloitte	*3. Request for Specific Comment 3 – Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1?* Deloitte does not see the need for documentation paragraphs additional to those already in the Code, however we do not foresee any practical challenges in implementing the proposed paragraphs.	Yes Paras. AUST R604.4.1 & AUST

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				R604.12.1
20	Specific Comment 3	EY	**Request for Specific Comment 3** Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response. **EY response** *[Table Header only]* We are supportive of paragraphs AUST R604.4.1 and AUST R604.12.1 to require firms to document their conclusions when determining a particular tax treatment, or tax advisory or planning service, is permissible. We recognise the broad consistency between this requirement, the NZAuASB's approach, and the consideration given to documentation by IESBA in their Basis for Conclusions. We further note the expansion to tax treatment proposed in AUST R604.4.1 and do not believe this to be prohibitive in the Australian context.	Yes Paras. AUST R604.4.1 & AUST R604.12.1
21	Specific Comment 3	IPA	**Question 3** Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST 604.12.1? Please provide reasons and justification for your response. <u>IPA Response on Question 3</u> IPA supports the proposal to require documentation of the factors considered and conclusions reached in determining that a self-review threat has not been created on the basis that the tax advisory and tax planning services satisfies one or more of the conditions described in paragraph 604.12 A2. The requirement to document should not pose any practical challenges as the Code adopts a similar approach in relation to other issues. Practical challenges to implementation will include creating an awareness of the new requirements, audit/assurance firms adjusting their	Yes Paras. AUST R604.4.1 & AUST R604.12.1

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			internal policies and procedures to ensure all engagement staff make the relevant assessments when engaged to provide any tax advisory and tax planning services. IPA is committed to raising awareness of the changes once implemented by APESB.	
22	Specific Comment 3	KPMG	**Request for Specific Comment 3 – Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1? Please provide reasons and justification for your response.** KPMG supports the addition of a requirement for firms to document the factors considered and conclusions reached in determining that the firm has satisfied the conditions, in the instances where the firm determines that providing tax planning and tax advisory services are permissible.	Yes Paras. AUST R604.4.1 & AUST R604.12.1
23	Specific Comment 3	PWC	As noted below, we do not believe, on balance, that it is necessary for APESB to include compulsory documentation requirements which differ to the IESBA standard. However, we acknowledge that a firm's 'confidence' of position should generally be supported by a documented analysis of applicable laws to the client's relevant facts. **Documentation requirements** With regards to the question: *Do you foresee any practical challenges in implementing the documentation requirements in proposed paragraphs AUST R604.4.1 and AUST R604.12.1?* We again reiterate that our preferred approach is to not have standards in Australia differing from the IESBA approach. Should APES proceed with its inclusion, we see no practical challenges in implementing this requirement and we note this approach would be consistent with the New Zealand approach.	Yes Paras. AUST R604.4.1 & AUST R604.12.1
24	Specific Comment 4	BDO	Question *[Table Header only]* ***Request for Specific Comment 4***	Yes Para. AUST R604.4

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			Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response. BDO Response *[Table Header only]* ***4a.*** If the term 'tax avoidance' is retained in the context of R604.4, our suggestion would be that the remainder of the proposed paragraph as quoted below, should be deleted as professionals would ordinarily be prohibited from providing tax services or recommending a transaction if it relates to a tax treatment where a significant purpose of the tax treatment is tax avoidance. If the term 'tax avoidance' is retained, we propose deletion of the following: AUST 604.4 (Option 1) 'unless the proposed treatment has a basis in applicable tax law or regulation that is almost certain to prevail.' AUST 604.4 A1 'Unless the tax treatment has a basis in applicable tax law or regulation that is almost certain to prevail' OR R604.4 'unless the Firm is confident that the proposed treatment has a basis in applicable tax law or regulation that is likely to prevail.' 604.4 A1	

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			'Unless the tax treatment has a basis in applicable tax law or regulation that the Firm is confident is likely to prevail' AUST 604.4 A1.1 'The Firm will need a high level of confidence that the tax treatment has a basis in tax law that is likely to prevail to satisfy paragraph R604.4. The Firm will gain that confidence if there is a high probability, if viewed objectively by applying the reasonable and informed third party test, that the tax treatment will prevail.' ***4b.*** Alternatively, if the term 'tax avoidance' in R604.4 is intended to apply more broadly to tax services or recommending a transaction where a significant purpose of the tax treatment is not considered tax avoidance we would propose the deletion of the following as appropriate qualifications are included at the end of the sentence: 'and a significant purpose of the tax treatment or transaction is tax avoidance' The appropriate qualifications are as follows: 'unless the proposed treatment has a basis in applicable tax law or regulation….' As such we propose that paragraph R604.4 reads as follows: 'A Firm or Network Firm shall not provide a tax service or recommend a transaction to an Audit Client if the service or transaction relates to marketing, planning or opining in favour of a tax treatment that was initially recommended, directly by the Firm or Network Firm, unless the proposed treatment has a basis in tax law or regulation that is almost certain to prevail.' ***4c.*** Alternatively, if the term 'tax avoidance' is intended to apply more broadly to tax services or recommending a transaction where a significant purpose of the tax treatment is not considered tax avoidance the paragraphs mentioned above should remain and appropriate terminology for 'tax avoidance' might be 'tax minimisation' qualified as being 'within the spirit of taxation laws' or 'in compliance with taxation laws'	

Exposure Draft 04/22: ***Proposed Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards)***

Item No.	Paragraph No. in ED	Respondent	Respondents' Comments	Change made to standard ?
25	Specific Comment 4	CA ANZ	**Request for Specific Comment 4 – Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response.** We do not agree that the term "tax avoidance" is inappropriate to use in APES 110. However, we would support the inclusion of an additional Australian specific guidance paragraph to support consistent application of the term in Australia as there is no globally accepted definition. Paragraph 116 of the Basis for Conclusions also states that the IESBA is of the view that National Standard Setters are well-positioned to provide additional guidance based on local tax law or regulation as appropriate to help address concerns about potential misunderstanding and inconsistent application of the term.	Yes Para. AUST R604.4
26	Specific Comment 4	CPAA	***Request for Specific Comment 4*** **– Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response.** CPA Australia does not think it is inappropriate to use the term "tax avoidance" in proposed paragraphs AUST R604.4. In the Australian context, the term "tax avoidance" is used in a number of situations (e.g., Part IVA of the Income Tax Assessment Act 1936 is referred to as the General Anti-Avoidance Rules (GAAR) and Diverted Profits Tax falls under the Multinational Anti-Avoidance Legislation (MAAL)). Problems are created primarily when discussion of "anti-avoidance" turns to the use of terms such as the "spirit of the law" and the "intent of the law". These are terms that the APESB should avoid using. Feedback received indicates that, at a practical level, no firm or advisor is likely to ever openly state or document that the significant purpose of a piece of advice, or service provided, is tax avoidance. What they might do is to seek legal opinion of whether the anti-avoidance rules might apply, and whether they have a "reasonably arguable" position.	Yes Para. AUST R604.4
27	Specific Comment 4	Deloitte	*4. Request for Specific Comment 4 – Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraph AUST R604.4?*	Yes

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			Deloitte does not agree that the term tax avoidance is "inappropriate" to use in the Australian Code. Broadly, the various anti-avoidance provisions in Australian taxation law already prohibit tax treatments that have a "*principal purpose of tax avoidance*". Therefore, in Australia, if tax advice is provided that has a significant purpose of tax avoidance, it will not likely prevail in a court and would therefore not meet the threshold of having a basis in law that is "likely to prevail".	Para. AUST R604.4
28	Specific Comment 4	EY	**Request for Specific Comment 4** Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response. **EY response** *[Table Header only]* EY is supportive of consistency between the IESBA Code and APES 110. We therefore do not agree the term 'tax avoidance' is inappropriate to use in AUST R604.4. However, additional application material clarifying the meaning of this term in the Australian context may be beneficial to support consistent application of the term. Such an inclusion consistent with IESBA's intentions in their Basis for Conclusions.	Yes Para. AUST R604.4
29	Specific Comment 4	IPA	**Question 4** Do you agree that the term "tax avoidance" is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response. <u>IPA Response on Question 4</u> IPA agrees the term "tax avoidance" should not be used in the Australian context as it is likely to imply that a practitioner is assisting a client to breach a taxation law. Terminology such as "tax minimisation" used in APES 220 *Taxation Services* would be an acceptable way forward or a phrase to the effect of "within the spirit of taxation laws" or "in compliance with taxation laws".	Yes Para. AUST R604.4

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30	Specific Comment 4	KPMG	**Request for Specific Comment 4 – Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead? Please provide reasons and justification for your response.** KPMG does not oppose the use of the term "tax avoidance" in APES 110. Noting there is no globally accepted definition for the term we encourage APESB to provide Australian specific guidance to support consistent application of the term. In addition, paragraph 116 of the Basis-for-Conclusions-Non-Assurance-Services.pdf (ifac.org) states that IESBA is of the view that National Standard Setters are to provide additional guidance based on local tax law or regulation.	Yes Para. AUST R604.4
31	Specific Comment 4	PWC	**Tax avoidance** With regards to the question: *Do you agree that the term 'tax avoidance' is inappropriate to use in proposed paragraphs AUST R604.4 (Option 1) or R604.4 (Option 2)? What alternative terminology could APESB use instead?* We note that IESBA is of the view that local regulators, professional bodies or national standard setters are best placed to provide guidance to avoid any misunderstanding resulting from the use of 'tax avoidance' and decided to retain this term in their final text. We agree with IESBA's view and would prefer APESB consider additional guidance rather than amend the text agreed by IESBA.	Yes Para. AUST R604.4
32	Para. R600.16 (and R603.5, R604.15, R604.19, R604.24, R605.6, R606.6, R607.6, R608.7, and R610.8)	CPAA	• **Paragraph R600.16 (and R603.5, R604.15, R604.19, R604.24, R605.6, R606.6, R607.6, R608.7, and R610.8).** The wording of these paragraphs does not seem appropriate. It appears to contradict another part of the Code and potentially undermines the Code's foundation. o These paragraphs indicate that the provision of a non-assurance service is prohibited on the basis that it "might create a self-review threat" (emphasis added). It is not clear why there is a focus on establishing a prohibition on the basis that one specific threat might be created? Logic suggests that if there is a concern that the mere possibility of a threat being created leads to an impairment of independence, then the prohibition should surely be extended across all potential threats. It is not clear why this specific threat has been singled out. It poses the question: should there be a blanket prohibition on the provision of any non-assurance service by auditors of public interest entities (PIEs), if that is the intent of the APESB (or the IESBA) in proposing these revisions to the Code? The APESB might wish to re-consider the wording of these ten paragraphs (refer Recommendations below).	No

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			○ The prohibition of a service on the basis that a threat might be created appears to contradict Section 120 *The Conceptual Framework* of the Code, or at least renders that section redundant with respect to these ten paragraphs. Paragraph R 120.3 states: ***The Member shall apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles set out in Section 110.*** In the case of the ten paragraphs listed above, the member is being directed to disregard **R120.3**. That is, the ten paragraphs are written in a manner which does not require the identification of a threat, but merely recognition of the possibility that a threat might occur. Moreover, the ten paragraphs do not require the member to evaluate or address potential threats. The wording of the ten paragraphs also seems to contradict, or at the least renders redundant, proposed paragraph **R400.12** and **600.1**. If the proposed wording is retained, the APESB should clarify and explain for members this apparent contradiction. It should consider explicitly noting that in complying with these ten paragraphs, that Section 120 and paragraphs **R400.12** and **600.1** should be ignored. Alternatively, the wording of these ten paragraphs should be re-considered (refer Recommendations below). ○ As a direct consequence of proposed paragraph R600.16, paragraph **604.12.A2/AUST 604.12.A2** has been drafted to state that the provision of tax advisory and tax planning services "**will not create a self-review threat**" if certain conditions are met. Again, this does not seem appropriate. Arguably, self-review threats **are** created in these circumstances. The conditions listed at **604.12.A2/AUST 604.12.A2, (a), (b)** and **(c)** are, arguably, ways in which an identified threat can be addressed to reduce that threat to an acceptable level. That is, in such situations the member is seemingly being asked to apply the conceptual framework (Section 120), as recommended in paragraph **R600.17 (b)**. The APESB may wish to re-consider the wording of proposed paragraph **604.12.A2/AUST 604.12.A2**. ○ Paragraph **600.15.A2** – which is a not a requirement – states that: ***Where the provision of a non-assurance service to an Audit Client that is a Public Interest Entity creates a self-review threat, that threat cannot be eliminated, and safeguards are not capable of being applied to reduce that threat to an Acceptable Level.***	

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			This paragraph appears to be the "authority" (explanation) by which the prohibition of certain services is based (see next dot point). However, it is disconnected from the ten paragraphs noted above, by virtue of the fact that it discusses the creation of a threat and not the possibility that a threat "might" be created. ○ The "identify, evaluate and address threats" approach is a fundamental foundation of the Code. The application of this approach and the exercise of professional judgement by the member are essential to the effective implementation of the Code. However, in parts of the Code the APESB (and IESBA) has recognised that it does not wish to allow members the ability to exercise their professional judgement and has prohibited certain actions, without reference to the conceptual framework. That is, clear rules have been included in the Code. For example, proposed paragraph **R400.13** is a clear prohibition that does not reference threats but merely states a firm shall not assume management responsibility. Similarly, paragraph **R601.6** does not reference threats, or potential threats, but is a clear prohibition that states that a firm "shall not provide accounting and bookkeeping services". The APESB may wish to consider the use of clear prohibitions for the ten paragraphs noted above. **Recommendations**: CPA Australia recommends that the APESB considers using wording in Section 600 that differs from that of the IESBA for these proposed revisions. It should consider: ▪ Removing references to the wording "**might create**" and continue to focus on the identification (and subsequent evaluation and addressing) of threats, in line with Section 120 and paragraph **R400.12**. Indeed, consideration might be given to deleting paragraph **R600.16** ▪ Including clear prohibitions of certain services, where deemed appropriate, in those paragraphs where the "might create" wording has been used. ▪ The impacts that the changes in the first two dot points (above) will have on other paragraphs in the Code. ▪ Rewording paragraph **604.12.A2**/**AUST 604.12.A2** to recognise that self-review threats are likely to be created, but that these threats can be addressed to reduce them to an acceptable level by means of the	

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			examples provided. (The APESB will need to consider the responses to the Specific Comment questions (refer Attachment) when re-wording this paragraph and other related paragraphs in Section 604.)	
33	Para. 600.15 A1	CPAA	• **Paragraph 600.15.A1**. This paragraph states: ***When the Audit Client is a Public Interest Entity, stakeholders have heightened expectations regarding the Firm's Independence. These heightened expectations are relevant to the reasonable informed party test used to evaluate a self-review threat created by providing a non-assurance service…….*** This paragraph seems to explain why there are different independence requirements for audits of public interest entities, vis-à-vis audits of those entities that are not public interest entities. However, it is arguable that most users/readers of an auditor's reports would not be able to describe the difference between a public interest entity and another entity, and nor would they know the different independence requirements that apply to different audits. While audit oversight bodies and certain regulators would have heightened expectations, it is not clear that this assertion applies more generally. Moreover, it is difficult to explain to many users/readers of an auditor's report that—as the IESBA noted when it consulted on these changes to the Code—additional independence requirements do not equate to different levels of independence. That is, the IESBA posits that even if users of an auditor's reports do have heightened expectations and additional independence requirements are imposed, the "level" of independence relevant to the different types of audits remains unchanged. The APESB might consider clarifying and explaining these concepts in a guidance note or staff paper, that can be used to assist in educating the broader public on these complex and nuanced issues.	
34	Para. 600.20.A1 to R600.24	CPAA	• **Paragraphs 600.20.A1 to paragraph R600.24.** These paragraphs are challenging to understand. The APESB might consider whether these paragraphs can be simplified, or whether simplified guidance can be developed to assist in implementing these paragraphs. In paragraphs **R600.21 (a) (ii)** and **R600.22 (a)** reference is made to firms concluding or determining that threats to independence "**will not**" be created. As noted earlier, in other proposed new paragraphs reference is made to the possibility that threats "**might**" (rather than "**will**") be created. Moreover,	No

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			in one paragraph—600.20.A2—discussing how a firm might agree a process to communicate with Those Charged with Governance, the third dot point discusses services that "would not" create threats, while the fifth dot point refers to services that "might" create a threat. It is not clear that these terms are compatible in their use in this section of the Code. That is, on the one hand the APESB is seeking members to be definitive about when threats will not occur, while on the other hand members are being asked to behave in a particular manner when a threat might exist. Arguably, it may be challenging for members to comply with the former in certain circumstances, as the "possibility" that a threat might occur may be ever present.	

RESPONDENTS

1	BDO	BDO Australia Ltd
2	CA ANZ	Chartered Accountants Australia and New Zealand
3	CPAA	CPA Australia
4	Deloitte	Deloitte Touche Tohmatsu
5	EY	Ernst & Young
6	IPA	Institute of Public Accountants
7	KPMG	KPMG
8	PWC	PricewaterhouseCoopers