

Basis for Conclusions
Prepared by the Staff of the IESBA®
April 2024

*International Ethics Standards Board
for Accountants®*

Revisions to the Code Addressing Tax Planning and Related Services

IESBA

**International
Ethics Standards
Board for Accountants®**

About the IESBA

The [International Ethics Standards Board for Accountants®](#) (IESBA®) is an independent global standard-setting board. The IESBA's mission is to serve the public interest by setting high-quality, international ethics (including independence) standards as a cornerstone to ethical behavior in business and organizations, and to public trust in financial and non-financial information that is fundamental to the proper functioning and sustainability of organizations, financial markets and economies worldwide.

Along with the [International Auditing and Assurance Standards Board](#) (IAASB), the IESBA is part of the [International Foundation for Ethics and Audit](#) (IFEA). The [Public Interest Oversight Board](#) (PIOB) oversees IESBA and IAASB activities and the public interest responsiveness of the standards.

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**BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING
AND RELATED SERVICES**

CONTENTS

	Page
I. Introduction	4
II. Background.....	4
III. Scope of Proposals.....	7
IV. Scope of Services Addressed.....	8
V. Role of the Professional Accountant in Acting in the Public Interest.....	13
VI. Responsibilities of Clients, Management, and Those Charged with Governance	16
VII. Responsibilities of All Professional Accountants	17
VIII. Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement	18
IX. Consideration of the Overall Tax Planning Recommendation or Advice.....	22
X. Describing the “Gray Zone” of Uncertainty	25
XI. Applying the Conceptual Framework to Navigate the Gray Zone and Other Tax Planning Circumstances.....	27
XII. Disagreement with Management	28
XIII. Documentation.....	29
XIV. Tax Planning Products or Arrangements Developed by a Third Party.....	31
XV. Multi-jurisdictional Tax Benefit	33
XVI. Conforming Amendments	33
XVII. Effective Date.....	33

1. Introduction

2. At its December 2023 meeting, the IESBA approved the revisions to the Code addressing tax planning and related services with the affirmative votes of 18 out of 18 IESBA members present.
3. This Basis for Conclusions is prepared by IESBA staff. It provides background to the project and explains the rationale for the IESBA's proposals in the Exposure Draft and how the IESBA has addressed the significant matters raised on exposure. The Basis for Conclusions relates to, but does not form part of, the pronouncement approved by the IESBA.

I. Background

Development of the Project Proposal

4. In recent years, much public attention has focused on tax avoidance, considering revelations such as the "Paradise Papers"¹ and the "Pandora Papers,"² notwithstanding the legality of the tax mitigation schemes or related transactions to achieve desired tax outcomes. Questions have been raised regarding the ethical implications for professional behavior when individual professional accountants (PAs) in business (PAIBs) and professional accountants in public practice (PAPPs) are involved in developing tax minimization strategies that are perceived as "aggressive" or when firms provide advice to their clients on such strategy.
5. The issue has been of such public interest significance³ that it has been discussed on the G20 agenda. Several global bodies have also focused on transparency and better disclosure of tax practices, among other policy actions. For example:
 - (a) The Organisation for Economic Cooperation and Development (OECD) launched the [Base Erosion and Profit Shifting \(BEPS\)](#) project in partnership with the G20. The project aimed to ensure that the international tax rules do not facilitate shifting corporate profits away from where the actual economic activity and value creation occur. The premise for value creation is linked to the substance over form argument, which maintains that transactions in question should not be evaluated based on their formal legal structure but on their underlying substance.
 - (b) The World Federation of Exchanges has included [tax transparency](#)⁴ as a "material Environmental, Social and Governance (ESG) metric" for reporting by listed companies.
 - (c) The International Federation of Accountants (IFAC) has called on jurisdictions to share information to promote [accountability and long-term global sustainability](#).⁵
 - (d) The International Accounting Standards Board (IASB) has worked on [changes to tax disclosure rules](#).⁶

¹ See, for example, the UK House of Commons [Briefing Paper](#), *The Paradise Papers* (November 2017).

² See, for example, <https://www.bbc.com/news/world-58780561>.

³ For example, in its article [What could a new system for taxing multinationals look like?](#) the Economist noted that in 2015, the OECD estimated that tax avoidance robs public coffers of \$100-240 bn, or 4-10% of global corporation tax revenues a year.

⁴ *Exchange Guidance & Recommendation* (October 2015), WFE Sustainability Working Group, World Federation of Exchanges.

⁵ *G20 Public Trust in Tax – Surveying Public Trust in G20 Tax Systems* (January 2019), Association of Chartered Certified Accountants (ACCA), Chartered Accountants Australia and New Zealand (CA ANZ) and IFAC.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

6. In the light of these developments and pursuant to a commitment in its [Strategy and Work Plan 2019-2023](#), the IESBA formed a Working Group in September 2019 to:
 - (a) Gather an understanding of the regulatory, practice, and other developments in corporate and individual tax planning (TP) by PAIBs and PAPPs; and
 - (b) Identify and analyze the ethical implications of those developments and determine whether there is a need for enhancements to the Code or further actions.
7. In September 2021, the Working Group submitted its final [report](#) and recommendations to the IESBA. Based on this report and the related recommendations, the IESBA launched a [standard-setting project](#) on the topic of TP and related services (TP services), establishing a Task Force to take it forward.

Project Objective

8. The objective of the project was to develop a principles-based framework, leveraging the fundamental principles (FPs) and the conceptual framework (CF) of the Code, to guide PAPPs' and PAIBs' ethical conduct when providing TP services to clients or performing TP activities for employing organizations, thereby maintaining the Code's robustness and relevance as a cornerstone of public trust in the global accountancy profession.
9. The IESBA agreed that the revisions will not address the issues of tax morality,⁷ tax fairness,⁸ and tax justice,⁹ which the IESBA determined were outside this project's scope.

IESBA Global Roundtables

10. In April 2022, the IESBA held three global virtual roundtables on the project. The roundtables brought together a broad range of stakeholders to discuss the state of play on the topic of TP and explore how the IESBA could formulate a proposed ethical framework to guide PAIBs and PAPPs when performing TP activities or providing TP services.
11. The diverse input from the roundtables helped to inform the IESBA's development of the Exposure Draft (ED).

Exposure Draft

12. In February 2023, the IESBA released the ED, [Proposed Revisions to the Code Addressing Tax Planning And Related Services](#), with the comment period closing on May 18, 2023. As stated in the Explanatory Memorandum (EM) to the ED, the IESBA proposed, among other matters, an ethical framework to assist PAs in exercising judgment in navigating the complexities and uncertainties of TP and deciding on the appropriate course of action in the circumstances. The

⁶ IFRIC 23, *Uncertainty over Income Tax Treatments*

⁷ [Tax Morale](#), as defined by the OECD, is "the intrinsic motivation to pay taxes." This concept is vital to the tax system as most tax systems rely on taxpayers' voluntary compliance for the bulk of their revenues.

⁸ In the *Wealth of Nations (1776)* (Smith, A., & Cannan, E. (2003). *The Wealth of Nations*. New York, NY. Bantam Classic), Adam Smith argued that taxation should follow the four principles of fairness, certainty, convenience, and efficiency. Tax fairness is a concept which states that the system of taxation must be equitable to the public. A fair tax system encourages a fair contribution to the cost of maintaining public utilities and infrastructure.

⁹ According to ActionAid, tax justice is a central concern for anyone working for social justice. Tax Justice UK sees a parallel in the movement for tax justice to the movement for women's rights and labor rights as important elements of a country's social fabric. It is a belief in genuinely progressive taxation, i.e., tax systems that generate sufficient public revenue while ensuring that this revenue is fairly redistributed and focused on rebalancing economic and gender inequalities.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

ethical framework would guide PAs to:

- Comply with the FPs. It would also highlight the types of threats to such compliance that might be created when performing TP activities.
 - Exhibit the mindset and behavior expected of them in accordance with the Role and Mindset provisions of the Code. The guidance would include elaborating on the relevance and applicability of behavioral concepts and principles, such as demonstrating strength of character and having an inquiring mind, as well as expectations of PAs to promote an ethics-based culture within their employing organizations and to uphold the profession's reputation.
 - Understand the applicable tax laws and regulations, which might include the legislative intent of those laws and regulations and, if relevant, the economic purpose and substance of the transaction.
 - Exercise professional judgment to establish a credible basis for the TP advice in circumstances of uncertainty.
 - Consult internally or externally with experts as needed, which might be part of specific actions to address identified threats. It was understood that the consultations would be conducted within the professional boundaries of referring work to experts, bearing in mind the PA's responsibility to remain objective.
 - Communicate relevant matters or concerns with the individual client, management, or those charged with governance, including as part of an escalation process where necessary.
 - Evaluate the need for transparency regarding PAs' duty of confidentiality under the Code. This includes the circumstances in which disclosure would be appropriate or justified, when informed consent for disclosure should be obtained in the case of clients, to whom disclosure might be made and when, and the matters that might be disclosed.
 - Develop appropriate documentation throughout the process to substantiate their judgments, decisions, and actions.
 - Respond to suspected non-compliance with laws and regulations when they encounter information that suggests TP might have "stepped over the line" into an actual or suspected breach of tax laws and regulations.
13. [Forty-nine responses](#) were received across a range of stakeholder categories and jurisdictions. Respondents generally supported the direction of the proposals. Respondents also raised specific comments concerning the consequences of the changes and suggested further clarifications to the proposed text.
14. The IESBA revised its proposals to address the significant matters raised by respondents to the ED, considering also the input provided by the IESBA Consultative Advisory Group (CAG).
15. The main revisions to the ED are as follows and are explained in the following sections:
- Clarification of the description of TP and the concept of related services.
 - Clarification of some of the illustrative examples of TP services and activities.
 - Clarification of the provisions related to establishing a credible basis, especially to make clear that the provisions do not act as a barrier to the PA being engaged by a client or otherwise assisting the client in remediating or rectifying a TP arrangement that lacks a credible basis.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

- Clarification and enhancement of the illustrative examples of self-review and self-interest threats.
- Clarification of the provisions addressing circumstances where the PA has been engaged to advise on a TP product or arrangement developed by a third party.
- Clearer guidance when the PA is engaged to advise on a TP arrangement developed by a third party.
- Clarification of the actions the PA can undertake when a disagreement arises with the client.

II. Scope of Proposals

Proposed New Sections 280 and 380

16. The IESBA approved the scope of the project to encompass Parts 2¹⁰ and 3¹¹ of the Code, considering the need for any conforming amendments to other sections of the Code.
17. The IESBA noted that the issues concerning TP are unique compared with other professional services provided by PAs or professional activities performed by them, given the sensitive nature of TP in terms of its financial impact on clients and employing organizations, the broader role of taxes in meeting jurisdictions' policy goals, and the complexity of the subject. In particular, the IESBA determined that it was imperative to address the uncertainties PAs may face when providing TP services or performing TP activities, as threats to compliance with the FPs might be created in circumstances of uncertainty.
18. Consequently, the IESBA proposed adding two new sections to the Code, Sections 280 and 380.¹² In drafting these sections, the IESBA agreed the following:
 - (a) Section 380 should apply to all clients, i.e., individuals and corporate clients.
 - (b) Both sections should apply to all entities, from small and medium-sized entities (SMEs) to large multinational entities, regardless of whether they are public interest entities (PIEs).
19. Consistent with any other provisions of the Code, the proposed provisions in Sections 280 and 380 would not override laws and regulations, including any general anti-avoidance rules prevailing in jurisdictions.

Respondents' Comments

20. Respondents generally agreed with the approach taken in the ED, recognizing that the nature of TP activities performed by a PAIB and TP services provided by a PAPP will differ. Hence, the types of threats and the actions or safeguards to eliminate or reduce the threats to an acceptable level can vary.
21. A few respondents suggested that the IESBA clarify whether Section 280 applies to the provision of TP services by a PAIB to another party other than the employing organization. They noted that professionals other than certified public tax accountants are prohibited from providing tax-related services in some jurisdictions. In these cases, the employing organization may engage an external adviser, who may or may not be a PA, to recommend or advise on a

¹⁰ Part 2 – Professional Accountants in Business

¹¹ Part 3 – Professional Accountants in Public Practice

¹² Section 280 is applicable to PAIBs, and Section 380 is applicable to PAPPs.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

particular TP arrangement. The external adviser may not be subject to ethical obligations under the Code. In another example the respondents provided, a PA could be employed by a financial institution and provide tax-related services to a party other than their employing organization.

22. Another respondent observed that tax advisory and compliance services are unregulated in several jurisdictions and can be provided by non-PAs who may not have the appropriate professional qualifications. The respondent noted that these individuals are not subject to the ethical obligations under the Code or a similar and equally rigorous set of ethical requirements.

IESBA Decisions

23. Regarding the circumstance where an entity engages an external adviser to recommend or advise on a particular TP arrangement, the IESBA noted that to the extent that a PAIB in the entity is involved in the design of, or has overall responsibility for, the TP arrangement, the PAIB should apply Section 280 with respect to the recommendation or advice. When a PA provides TP advice to a party other than the PA's employing organization, the provisions of Section 280 would still apply with respect to that third party. This is because the Code makes clear that the legal form of the relationship of a PA (whether as an employee, contractor, partner, director, volunteer, etc.) with an employing organization (in this case, the third party) has no bearing on the ethical responsibilities of the PA under the Code.¹³
24. Concerning the applicability of the Code to non-PAs who are not subject to the ethical requirements under the Code, the IESBA noted the Code's global reach as it has been adopted or is used in over 130 jurisdictions. The IESBA believes that the Code can serve as a baseline of ethical obligations for other individuals who perform the same professional activities as PAs. Through promulgating Sections 280 and 380, the IESBA seeks to inspire other standard setters and non-PA practitioners to raise the bar of ethical behavior with respect to TP.
25. The IESBA has identified extending the impact of the Code to others outside the accountancy profession as a strategic area of focus. The IESBA has therefore committed, in the Strategy and Work Plan 2024-2027 (SWP) it approved in December 2023, to a new workstream to explore extending the impact of the Code by making it applicable to others who are not PAs but perform the same professional activities as PAs. This topic is further discussed in the SWP, which is expected to be issued in April 2024.

III. Scope of Services Addressed

Tax Planning

26. At the project outset, the IESBA agreed on the importance of establishing a description of "tax planning" in the proposed sections to circumscribe the scope of professional services and activities that the sections would address.
27. In considering how to describe TP, the IESBA reviewed established descriptions of TP developed by the following organizations:

¹³ Paragraph 200.3

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

Organization	Description of Tax Planning
Organisation for Economic Co-Operation and Development (OECD)	Arrangement of a person's business and/or private affairs in order to minimize tax liability ¹⁴
UK HMRC	Involves using tax reliefs for the purpose for which they were intended ¹⁵
Confédération Fiscale Européenne (CFE) (Tax Advisers Europe)	Focus on delivering savings to clients using legal vehicles and financial transactions specifically established to exploit these technicalities ¹⁶

28. The IESBA noted that the latter two descriptions appear limiting in scope for this project in one way or another or overly technical. The IESBA viewed the OECD description as closer to what should be the focus of the new sections, i.e., dealing with arrangements to minimize tax liability. The IESBA, however, considered that the term “tax efficiency” would be more neutral than “tax minimization.”
29. Accordingly, the IESBA proposed the following description in the ED:

Tax planning comprises a broad range of [services/activities] designed to assist [a client, whether an individual or an entity/an employing organization] in structuring [the client's/the employing organization's] affairs in a tax-efficient manner.

Respondents' Comments

30. Respondents broadly supported the approach to describing "tax planning" in the ED. They noted that a significant challenge is the appropriate terminology to use when referring to "aggressive tax planning." They shared that numerous international organizations have attempted to address the issue of describing "aggressive tax planning" and faced significant challenges in developing an appropriate term and description or definition for it that could work globally. Respondents also expressed that the legality of the transactions is an important consideration. In particular, it was noted that a distinction needs to be made between whether a transaction that has been consummated is structured in the most tax-efficient way and whether the transaction has tax avoidance as its primary or sole motivation.
31. Some respondents suggested that the proposed description of "tax planning" needs to be narrower and go further than the issue of aggressive tax minimization. They believed that the proposed description may inadvertently create onerous requirements. A respondent thought the proposed description may encapsulate any "tax efficient" TP arrangements that aim to provide an economic benefit, principally to the client.

¹⁴ <https://www.oecd.org/ctp/glossaryoftaxterms.htm>

¹⁵ [Tackling Tax Avoidance, Evasion, and Other Forms of Non-Compliance \(March 2019\)](#), HM Revenue & Customs, HM Treasury, United Kingdom.

¹⁶ [Professional Judgment in Tax Planning – An Ethics Quality Bar for All Tax Advisers](#) (June 2021), CFE Tax Advisers Europe.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

32. Another respondent asked if wealth management to grow a client's business or investment portfolio, which might also include assessing current and future tax liabilities or tax impacts on the client's decision-making, would be captured under the scope of TP services in the proposed Section 380.
33. A respondent suggested that the IESBA reflect on the description used by the OECD as the respondent was of the view that describing TP by reference to "structuring [the client's/the employing organization's] affairs in a tax-efficient manner" would broaden the description of TP well beyond a focus on the egregious tax structuring intended to be targeted and bring within scope a whole range of tax advisory and compliance engagements that should not be within scope. From a tax administrative perspective, the respondent argued that "tax efficiency" can refer to revenue collection efficiency or compliance with regulatory and legal requirements.
34. In the examples of TP provided, a few respondents sought further clarification regarding the inclusion of transfer pricing arrangements as an example. It was noted that transfer pricing is already a requirement to adopt an arm's length basis under the applicable laws and regulations in numerous jurisdictions. They also pointed out that transfer pricing services are more appropriately considered tax compliance services. A question was also raised as to whether the example provided covered the case where the PA had provided initial advice followed by implementation of the transfer pricing arrangement, or whether it also included the ongoing transfer pricing compliance aspects in the ensuing years.

IESBA Decisions

35. The IESBA recognized that developing ethics provisions for PAs may be challenging without a clear definition or description of the issue concerning TP services, which is why the ED also proposed practical guidance to assist PAs in making the appropriate judgments and decisions in navigating circumstances where there is a "gray zone" of uncertainty in TP. Regarding the comments above from respondents:

- The IESBA noted that TP is a legitimate activity a client or employing organization may undertake to structure or organize its affairs in a tax-efficient manner. The IESBA believes that "tax efficiency" is the appropriate term to use in the Code in describing TP as it speaks to the *general purpose* of TP without being overly prescriptive or focusing on specific desired outcomes, such as whether to optimize tax benefits or minimize tax liabilities, and without presuming ill-intent. Given that respondents largely supported the proposed description, the IESBA determined not to change it substantively. However, in response to other suggestions from respondents, the IESBA clarified the description of TP to refer to advisory services and that TP can also be for planning the client's affairs (see paragraph 380.5 A1):

*Tax planning services are **advisory** services designed to assist a client, whether an individual or an entity, in **planning or** structuring the client's affairs in a tax-efficient manner.*

The IESBA made similar clarifications to the description of TP in Section 280 (see paragraph 280.5 A1).

- Regarding whether wealth management should be included within the scope of TP services, the IESBA noted that Section 380 is not intended to address wealth management services per se. However, if the primary aim of the service is to advise the client on planning or structuring the client's *tax affairs* for wealth management purposes, or if the PA is otherwise involved in the TP, then Section 380 would be applicable.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

- Regarding the comments about transfer pricing arrangements in the example of a TP service, the IESBA accepted that this example might inadvertently suggest that PAs design transfer-pricing-related arrangements without regard to prevailing transfer pricing standards or guidelines. Accordingly, the IESBA clarified this example, referring to advising on the structuring of transfer pricing arrangements, taking into account tax-related transfer pricing guidelines (see paragraphs 280.5 A2 and 380.5 A2).

Similarly, the IESBA intends to refer to the PA's role in recommending or advising on the transfer pricing arrangement, not implementing it or ensuring that it complies with relevant laws and regulations. In this regard, the IESBA believes that the amendment it has made to the description of TP, i.e., referring to *advisory* services, will assist in making this clear.

Related Services or Activities

36. During the IESBA's global [roundtable](#) discussions and as part of the fact-finding work underpinning the project, the IESBA noted that there are other types of services or activities performed by PAs that are ancillary to the provision of TP services or the performance of TP activities. Such services or activities include, for example, assisting in resolving a dispute with the tax authority on a TP position that the PA or another party recommended, or preparing a tax return that reflects the position in the TP arrangement. These related services or activities are based on or linked to a TP service or activity.
37. Therefore, the IESBA proposed in the ED that the scope of Section 380 also include related services. The IESBA proposed a description of related services, i.e., those that are based on or linked to a TP service, whether provided by the PA or another party, and provided examples of such services. The IESBA proposed a similar approach for related activities in Section 280.

Respondents' Comments

38. Respondents raised several concerns with the approach taken in the ED to describe related services or activities. The main comments raised were as follows:
 - A need to clarify whether these services/activities are within the scope of the requirements in Sections 280 and 380, and if so, which specific requirements would be applicable, distinguishing between tax advisory and tax compliance work.
 - Where the related service or activity is not an integral part of a TP arrangement, a suggestion to clarify the extent to which there is an obligation to establish that there is a credible basis and whether the overall "stand-back" test (discussed in section IX below) would apply. It was argued that in circumstances where the related service or activity is compliance-related (for example, preparing a tax return on behalf of the client where the PA did not previously advise on the underlying TP arrangement), it would not be necessary to establish whether the related service or activity has a credible basis or to apply the stand-back test. It was felt that otherwise, an unintended consequence would be to impose an onerous requirement on PAs.
 - The importance of distinguishing whether the service provided is tax compliance (including compliance-related advisory) or whether it is a tax dispute resolution service based on a TP position that another party recommended to the client. It was felt that problems may arise when conflating the different types of services as it was argued that there should be a distinction in the work effort to be performed by the PA in conducting these different types of related services or activities.
 - An observation that related services such as tax advisory services (especially advice on topics such as using tax losses or determining a capital distribution strategy) are often

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

provided as part of the tax return preparation process. It was felt that, as drafted, the proposed Sections 280 and 380 seemed to be predicated on the assumption that all related services or activities are associated with a particular TP arrangement.

- A suggestion to clarify the applicability of the proposed ethical framework to "another party." It was felt that it was unclear who the IESBA intended to capture in the description of related services, with the perceived lack of clarity potentially suggesting that PAs are expected to have oversight of the work performed by other service providers.

IESBA Decisions

39. The IESBA acknowledged the concerns raised by some of the respondents that the approach to related services or activities in the ED could have been more straightforward. The IESBA accepted that retaining the "all-inclusive" approach in the ED would place an undue burden on the PA, given that a compliance-related TP service or activity is solely to assist the client or employing organization in complying with its legal or regulatory obligations. For example, the preparation of a tax return without providing TP advice is an example of a tax compliance service that is outside the scope of Sections 280 and 380.
40. The IESBA determined that a clear distinction needed to be made between TP and tax compliance services. Accordingly, the IESBA added this clarification via new application material paragraph 380.5 A3.

Tax planning services do not include services that are generally referred to as tax compliance or tax preparation, which are services to assist the client in fulfilling the client's filing, reporting, payment, and other obligations under tax laws and regulations. However, if a tax service comprises both tax planning and tax compliance, the portion that relates to tax planning is covered by this section.

The IESBA added a similar clarification in Section 280 for PAIBs (paragraph 280.5 A3).

41. In all instances, the PA would still be required to apply the CF to identify, evaluate, and address any threats to the PA's compliance with the FPs when providing a compliance-related TP service or performing a compliance-related TP activity.
42. In relation to the nature of related services covered within the scope of Section 380, the IESBA clarified that a related service is one based on or linked to a TP arrangement that the PA was not involved in planning or structuring (i.e., the client or third party developed the arrangement). (See paragraph 380.6 A1. For PAIBs, see the corresponding paragraph 280.6 A1 regarding related activities.)
43. A PAPP is, therefore, required to apply the provisions in Section 380 to the underlying TP arrangement to have a sufficient basis to effectively proceed with the related service. To facilitate the application of the provisions to related services, the IESBA has provided illustrative examples of such related services in paragraph 380.6 A2 (280.6 A2 for PAIBs).
44. As part of its deliberations, the IESBA also determined to clarify that while Sections 280 and 380 do not apply to tax compliance activities or services, if the PA is engaged to perform a tax activity or service comprising both tax planning and tax compliance, the portion that relates to tax planning is covered by the relevant section. (See paragraphs 280.5 A3 and 380.5 A3.)

Tax Evasion or Other Non-compliance with Tax Laws and Regulations

45. The provisions in Sections 280 and 380 do not address tax evasion, which is unlawful. The IESBA established at the outset of the project that this is an important distinction to make as the

two sections focus on guiding PAs through circumstances where there might be uncertainties pertaining to the TP arrangement. Accordingly, the scope of the provisions excludes illegal tax practices. (See paragraphs 280.7 A1 and 380.7 A1.)

46. The IESBA has retained a linkage to the provisions of the Code dealing with responding to non-compliance with laws and regulationsTM (NOCLAR[®]).¹⁷ (See paragraphs 280.8 A1 and 380.8 A1.) This linkage refers PAs to the NOCLAR sections of the Code when they become aware of tax evasion or suspected tax evasion, or other non-compliance or suspected non-compliance with tax laws and regulations by an employing organization or client, management, those charged with governance (TCWG) or other individuals working for or under the direction of the employing organization or client.

Anti-Avoidance Laws and Regulations

47. The IESBA noted that, in some jurisdictions, there are anti-avoidance laws and regulations in place governing TP practices. The provisions in Sections 280 and 380 do not override laws and regulations, including any anti-avoidance rules prevailing in a given jurisdiction.
48. Accordingly, the provisions require PAs to obtain an understanding of those laws and regulations and advise the employing organization or client to comply with them when performing TP activities or providing TP services. (See paragraphs R280.8 and R380.8.)

IV. Role of the Professional Accountant in Acting in the Public Interest

49. During the fact-finding phase of the project, the IESBA noted the benefits of having PAs provide TP services as they play a significant role in supporting and enhancing the effectiveness of the tax system given their training and expertise. Indeed, TP is so important for employing organizations and clients that tax advisory services constitute a significant part of the profession's activities worldwide.¹⁸
50. However, in recent times, public concerns have risen significantly about tax advisers' role in assisting wealthy individuals and corporations in tax avoidance, including concerns about multinational companies utilizing sophisticated TP strategies to minimize their taxes. Public mistrust of professional tax advisers has risen to such a level that legislation is being considered to regulate tax advice and tax advisers in some major jurisdictions, such as the EU.¹⁹
51. Many participants across the IESBA's global roundtables acknowledged that PAs providing TP services play an essential public interest role in serving employing organizations' or clients' interests in accordance with tax laws and regulations, i.e., by facilitating compliance with those laws and regulations. In considering what it means for a PA to act in the public interest in relation to TP, whether done for a client or an employing organization, the IESBA noted the following perspectives as shared by roundtable participants:
 - *Interpretation of the tax legislation:* roundtable participants expressed the view that the notion of a PA acting in the public interest when performing TP activities is closely linked to the approval of the tax treatment or structure by the tax authority in the particular

¹⁷ Section 260 for PAIBs and Section 360 for PAPPs

¹⁸ According to one source, the global tax management market is expected to grow from USD 18.9 billion in 2021 to USD 32.5 billion by 2026, at a Compound Annual Growth Rate (CAGR) of 11.5% during the forecast period (<https://www.marketsandmarkets.com/PressReleases/tax-management.asp>).

¹⁹ See, for example, https://www.accountancyeurope.eu/tax/tax-policy-220107/?mc_cid=73311ac0b2&mc_eid=5898f32087.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

jurisdiction. Thus, they believed that the PA has acted in the public interest if the tax authority agreed with a specific tax treatment or structure at consultation. There was also a strong view that legislators and regulators consider the public interest when they develop tax laws and regulations; therefore, participants shared that by complying with those laws and regulations, the PA is acting in the public interest.

- *PAs' expertise and reputational risks*: roundtable participants generally accepted that PAs play a public interest role by providing their clients and employing organizations with high-quality TP advice, leveraging their training and expertise. Participants suggested that in providing high-quality TP advice, PAs need to consider the potential risks of the TP to their clients or employing organizations and the reputational risks to the PAs – considerations that are relevant to the public interest. By providing high-quality advice, and when the client or employing organization implements this advice, the PA is perceived as improving compliance within the tax system and collection in the particular jurisdiction – an outcome that is in the public interest.
 - *Perception issues*: Participants generally believed that the very nature of PAs helping their clients or employing organizations to obey the law is an embodiment of PAs acting in the public interest. Participants generally agreed that it is a balancing act – clients or employing organizations may view that PAs should be serving their interests instead of those of the public at large.
 - *The complexity of TP transactions given the complexity in the underlying tax codes or interactions between tax codes*: Some participants believed it might be challenging to determine what is in the public interest, especially when multiple jurisdictions are involved in cross-border transactions. It was observed that each jurisdiction would perceive the public interest differently. So, it was argued that it is impossible to determine what would be in the public interest in these circumstances. Each jurisdiction would try to protect its sovereignty by determining its tax regime for competitive or other reasons. The reality, therefore, is that tax laws can differ quite considerably among jurisdictions.
52. The IESBA recognized that there was a perceived challenge in understanding who is considered the public and the interests of those groups of stakeholders. Considering all the observations during the roundtable discussions, the IESBA determined not to attempt to define or describe the public interest in the abstract, given the variety of considerations that may influence its meaning. The IESBA instead proposed contextual guidance in Sections 280 and 380 that explains that:
- An important part of what acting in the public interest means for PAs is for them to contribute their knowledge, skills, and experience to assist clients or employing organizations to meet their TP goals while complying with tax laws and regulations. In doing so, PAs help to facilitate a more efficient and effective operation of a jurisdiction's tax system, which is in the public interest.
 - PAs play an important role in assisting clients or employing organizations in meeting their tax obligations and not seeking to circumvent them through tax evasion. However, when PAs provide such assistance, it might involve certain tax minimization arrangements that, although not prohibited by tax laws and regulations, might create threats to compliance with the FPs.
53. The IESBA also took the view in the ED that while the PA plays an important role in the efficient and effective operation of the tax system, it is ultimately for a court or other appropriate adjudicative body to determine whether a TP arrangement complies with the relevant tax laws

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

and regulations.

Respondents' Comments

54. Respondents were broadly supportive of the approach taken in the ED. Some acknowledged a general expectation that PAs should guide their employing organizations or clients in understanding the tax laws and regulations and cooperating with the tax authorities. Other respondents also agreed that PAs who provide tax advice must comply with the tax legislation.
55. A respondent expressed that the public interest would generally be considered in developing tax laws and regulations. The respondent, however, argued that it does not necessarily follow that the interpretation by the tax authority of such laws and regulations will be consistent with the intention of those developing the tax laws and regulations. Thus, the respondent believed that the PA's application of the tax authority's interpretation cannot always be presumed to reflect the PA acting in the public's interest.
56. A respondent advised the IESBA to consider further clarification in drafting the public interest considerations, particularly whether a PA has the necessary skill set to evaluate global public interest considerations. Another respondent commented that PAs should be aware that many stakeholders will have different perspectives on what constitutes the public interest concerning TP. The respondent noted that this will be primarily driven by circumstances in the jurisdiction(s) in which the PA operates. The respondent also commented that public interest perspectives may differ where a TP arrangement affects multiple jurisdictions. The respondent suggested that these would need to be considered in the stand-back test (discussed in Section IX below).
57. Another respondent expressed a concern not to place PAs at an unfair competitive disadvantage compared to other professions, e.g., the legal profession, by having in place requirements that are more restrictive than those in other professions.
58. Regarding the reference to tax evasion in paragraphs 280.4 A2 and 380.4 A2 in the ED, some respondents noted that tax evasion is a criminal act. They felt that referencing tax evasion in describing the role of a PA in assisting clients to meet their tax obligations might inadvertently imply that tax evasion might be part of the TP, which they considered would be misleading. Therefore, the respondents suggested that the IESBA remove the reference to tax evasion from the description.

IESBA Decisions

59. The IESBA acknowledged respondents' concerns about the various complications that can arise when attempting to define the public interest when it comes to TP. Several factors, such as changing societal perceptions, jurisdictional idiosyncrasies in a multinational context, interpretation of tax legislation, and reputational risks, can affect considerations of what acting in the public interest means in the context of TP.
60. The respondents' comments and observations reinforced the IESBA's view that it should avoid attempting to define or describe the public interest with respect to TP. Instead, the IESBA believes that the approach taken in the ED to describe the PA's role in acting in the public interest remains balanced and pragmatic, and speaks to the essence of the PA's role in the public interest in relation to TP. That is, the Code should:
 - (a) Acknowledge that a large part of what acting in the public interest means for PAs is to use their knowledge, skills, and experience to assist their employing organizations or clients in meeting their TP goals while complying with tax laws and regulations; and

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

- (b) Recognize that employing organizations and clients share a responsibility to society to pay their legally assessed tax dues and that PAs' public interest role is to advise them in that regard.

See paragraphs 280.4 A1-A2 and 380.4 A1-A2.

61. Regarding the reference to tax evasion in paragraphs 280.4 A2 and 380.4 A2 in the ED, the IESBA agreed with the suggestion to remove that reference as it is universally accepted that tax evasion is illegal, and the Code should not suggest that PAs might even contemplate employing tax evasion in their TP work. Instead, the IESBA established that it would be appropriate to refer to tax evasion in:
- Paragraphs 280.7 A1 and 380.7 A1, which clarify that Sections 280 and 380 do not address tax evasion, which is clearly illegal.
 - Paragraphs 280.8 A1 and 380.8 A1, which point to the requirements and application material set out in Sections 260 and 360, respectively, when a PA encounters or becomes aware of tax evasion or suspected tax evasion.

V. Responsibilities of Clients, Management, and Those Charged with Governance

62. During the fact-finding phase of the project, the IESBA heard from stakeholders about the importance of recognizing that management and TCWG share a fiduciary duty as strategic and governance leaders within their organizations to ensure that they play the equally important role of facilitating the provision of accurate information to the PA. The responsibilities of management and TCWG also extend to ensuring the organization's tax affairs are aligned with its tax strategy or policies.
63. The IESBA believes it is important to recognize the specific responsibilities of management and TCWG of clients and employing organizations concerning TP within the ethical framework. Accordingly, the ED set out the main responsibilities of management and TCWG with respect to the client's or employing organization's tax affairs.
64. While Sections 380 and 280 specify PAs' responsibilities when providing TP services or performing TP activities, nothing in those sections detracts from the obligations of management and TCWG.

IESBA Decisions

65. As respondents were broadly supportive of the guidance setting out the responsibilities of management and TCWG, the IESBA has retained the guidance in Sections 280 and 380, with a few refinements.
66. As part of its deliberations, the IESBA was asked by the Public Interest Oversight Board (PIOB) to consider enhancing the application material to promote the principle of transparency by guiding PAs to encourage clients, management and TCWG to make the appropriate disclosure of tax-related matters in the financial statements or other relevant public documents, in accordance with applicable reporting requirements. Upon due reflection, the IESBA believes that the promotion of transparency of tax-related matters in the financial statements or other public documents is truly a matter for reporting frameworks to address and goes beyond the remit of the Code.
67. However, the IESBA acknowledged the importance of transparency in building trust and encouraging accountability. Accordingly, the IESBA determined to highlight the following specific

responsibility of management (including an individual client, as the case may be) and TCWG in the list of key responsibilities they hold in relation to the employing organization's or client's tax affairs:

- Making appropriate disclosure of tax strategy, policies or other tax-related matters in the financial statements or other relevant public documents in accordance with applicable reporting requirements.

(See paragraphs 280.9 A1 and 380.9 A1.)

VI. Responsibilities of All Professional Accountants

68. Other than specifying the main responsibilities of management and TCWG of clients and employing organizations, the IESBA also proposed that the ethical framework establish some basic responsibilities for all PAs.
69. First, as discussed in Section IV above, it is important to recognize that some jurisdictions have anti-avoidance laws and regulations. Accordingly, Sections 280 and 380 require PAs to obtain an understanding of those laws and regulations where they exist and advise the employing organization or client to comply with them when performing TP activities or providing TP services.
70. Secondly, the IESBA agreed with participants at the IESBA global roundtables who commented that PAs have a responsibility to be informed and to develop professional competence to provide TP services or to perform TP activities. This is consistent with the FP of professional competence and due care.²⁰ For the PA, it is a matter of not just adhering to the letter of the law but also being able to attest to being ethical in carrying out professional duties. In particular, a PA is expected to apply an inquiring mind and not advise on or engage in transactions that do not have a credible basis.²¹

IESBA Decisions

71. The IESBA determined that if a client requests a PAPP to provide a TP service, the Code requires the PA to obtain an understanding of the nature of the engagement before the PA undertakes any detailed work. The IESBA resolved that this understanding includes:
 - (a) Knowledge and understanding of the client, its owners, management and TCWG, and its business activities;
 - (b) The purpose, facts and circumstances of the TP arrangement; and
 - (c) The relevant tax laws and regulations.(See paragraph R380.10.)
72. The IESBA also considered the intersection of Section 380 with other sections of the Code that are especially important in the context of a PA providing TP services. The IESBA therefore

²⁰ Paragraph 110.1 A1(c) of the Code states that PAs are to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation, and act diligently and in accordance with applicable technical and professional standards.

²¹ Paragraph 110.1 A1(e) of the Code states that PAs are to comply with the fundamental principle of professional behavior, which means complying with relevant laws and regulations, behaving in a manner consistent with the profession's responsibility to act in the public interest in all professional activities and business relationships, and avoiding any conduct that they know or should know might discredit the profession.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

determined to provide guidance that refers the PAPP to relevant provisions of the Code addressing client and engagement acceptance (Section 320), second opinions as the PAPP might be engaged to provide a second opinion on a TP arrangement (Section 321), professional competence and due care (Subsection 113), and the need to exercise professional judgment and have an inquiring mind (Section 120). (See paragraphs 380.10 A1 – 380.11 A1.)

73. For a PAIB involved in performing a TP activity, the IESBA determined to include a similar requirement in Section 280 (paragraph R280.10), as well as guidance regarding professional competence and due care and the need to exercise professional judgment and have an inquiring mind. (See paragraph 280.11 A1.)
74. The IESBA also believes it is important for transparency that PAs explain the basis on which they recommended or otherwise advised on a TP arrangement to a client or an employing organization. Accordingly, the IESBA determined to include requirements to that effect in paragraphs R280.20 and R380.20.

VII. Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement

75. During the fact-finding phase preceding the project's launch, stakeholders commented that in providing TP services, PAs might sometimes face situations where the legislative intent behind tax laws is unclear or uncertain, and the related regulations or tax forms lack clarity. To further explore this matter, the IESBA posed several questions during the global roundtable discussions to understand how a PA would approach their advice to a client or employing organization if they were uncertain that the tax treatment would prevail based on the relevant tax laws and regulations. Participants were asked what specific factors the PA should consider in exercising their judgment in such circumstances.
76. In gaining an understanding of the challenges PAs face when the legislative intent behind tax laws is unclear or uncertain, the IESBA also thought it would be beneficial to identify specific scenarios to understand the extent to which PAs consider the legislature's intent, the approach PAs would take, and whether their assessment would change:
 - If the situation concerns a cross-border transaction involving multiple jurisdictions.
 - If the tax strategy could be considered artificial or contrived.
77. In summary, the IESBA agreed with the observations shared by roundtable participants that PAs must take the necessary steps to establish a credible basis for their advice, taking into account, where the circumstances are unclear or uncertain, the intent of the tax legislation. In addition, participants also suggested several actions PAs can take to navigate situations where the legislative intent behind tax laws is unclear or uncertain:
 - Participants noted that understanding the legislature's intent is important to applying the tax legislation. In some jurisdictions, a PA is perceived to be acting negligently if the PA did not consider the legislature's intent. PAs may review rulings regarding specific cases to gather insight into what the legislature intended. It was noted that the PA's responsibility is to inform and educate the client or employing organization about the law's intent to understand the underlying risks, if any, of the transaction better.
 - Full transparency by the PA regarding the risks to the client or employing organization is essential. Participants shared that the threshold for success in terms of the TP arrangement being accepted by the relevant tax authorities is subject to debate in different jurisdictions. In such circumstances, participants expected that the PA would also

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

explain the risks involved and advise the client or employing organization against taking unnecessary risks.

- It would be important for PAs to document these risks as it was noted that jurisdictions have different definitions of what is considered a credible basis for the TP arrangement. Participants shared the view that what is a credible basis could vary from jurisdiction to jurisdiction as it depends on judgment in the circumstances. Participants agreed that it would be important for PAs to document the rationale for their judgments and decisions.
 - PAs are expected to address disclosure (subject to confidentiality laws) to the relevant tax authorities as an important matter.
 - If the PA has reason to believe that the tax strategy does not have a credible basis and the client or the PA's immediate superior disagrees with the PA's assessment, participants commented that the PA should communicate their reservations to the client or the appropriate level of management within the employing organization. The PA might also consider seeking expert advice. If the expert advice aligns with the PA's assessment, participants agreed that the PA might need to decide whether to retain the client or resign from the engagement and client relationship if the client has not changed its position, or resign from the employing organization in the case of a PAIB.
78. In drafting the provisions, the IESBA deliberated various formulations that would convey the intent for a PA to proceed with a TP advice subject to there being a credible basis. The IESBA considered, in particular, using the phrase "to affirmatively advise" only when there is a credible basis. In considering this phrase, the IESBA was attempting to respond to concerns not to unduly preclude instances where the PA would be able to provide advice if the TP arrangement did not have a credible basis in laws and regulations. For example, a client may be considering a TP arrangement that does not have a credible basis in laws and regulations and needs the PA's advice to explore options that would have a credible basis in laws and regulations, or the client may inform the PA of a transaction that has already occurred that does not have a credible basis in laws and regulations and therefore needs advice from the PA on how to address it (e.g., complying with relevant disclosure requirements under the law).
79. However, the IESBA noted that the phrase "to affirmatively advise" would be difficult to translate. Therefore, the IESBA determined not to use that phrase.
80. In light of the above, the IESBA determined to establish in the framework a principle that a PA recommend or otherwise advise on a TP arrangement to an employing organization or client only if the PA has determined that there is a credible basis in laws and regulations for the arrangement. (See paragraphs R280.12 and R380.12.)
81. The IESBA believes it is important to emphasize that PAs can communicate to their client or the responsible parties within their employing organization if they have determined that a particular TP arrangement does not have a credible basis. (See paragraphs 280.12 A2 and 380.12 A2.)

Credible Basis

82. Recognizing that what is a credible basis in laws and regulations will vary from jurisdiction to jurisdiction, the IESBA proposed guidance setting out various actions a PA might take to establish a credible basis for the TP arrangement. (See paragraphs 280.11 A3 and 380.11 A3 in the ED.) The IESBA took the view that it would not be appropriate to ascribe a probabilistic numerical measure to a credible-basis threshold as doing so would convey a false sense of accuracy, more so given roundtable participants' feedback that there is a range of probabilities commonly understood and accepted in different jurisdictions.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

83. The IESBA noted that the International Independence Standards use a “likely to prevail” threshold with respect to:
- (a) A tax service or transaction relating to marketing, planning, or opining in favor of a tax treatment for an audit client and, a significant purpose of which is tax avoidance (paragraph R604.4); and
 - (b) Circumstances in which providing tax advisory and TP services will not create a self-review threat (paragraph 604.12 A2(c)).
84. The IESBA believes that the likely-to-prevail threshold—reinforced through Section 604 referring to the need for the audit firm to have confidence about clearing the threshold—is higher than a credible-basis threshold, given stakeholders’ heightened expectations regarding auditor independence. In the context of TP services provided to clients that are not audit clients or TP activities performed for employing organizations, the IESBA believes a credible-basis threshold sets a more appropriate bar for PAs as it calls on them to establish reasonable grounds for their TP recommendation or advice. Establishing such grounds will require professional judgment, considering the various actions PAs may take in the particular jurisdictional context at the time of the determination.

Respondents’ Comments

85. Respondents were generally supportive of the ED proposals, with some further clarification and improvement sought in terms of the PA establishing a credible basis:
- Some respondents found the term subjective and felt that it would present practical challenges in interpreting or determining what constitutes a credible basis. The respondents encouraged the IESBA to provide more detailed application material, particularly in relation to cross-border elements.
 - A respondent noted that a challenge might arise where PAs are engaged to provide TP advice to resolve matters due to inappropriate tax advice or guidance given to the client previously. The respondent argued that while the arrangements in question may need a credible basis, it would appear neither in the public interest nor appropriate to disassociate from the client under such circumstances as this would deny the client access to PAs who may be best placed to resolve the matter.
 - A related comment was that, as drafted, the proposed credible-basis principle (paragraph R380.11 in the ED) could be interpreted as suggesting that a PA should not accept tax dispute work that does not have a credible basis. The respondent suggested that the IESBA clarify that Section 380 would not preclude a PA from assisting a client in such a scenario.
 - A respondent encouraged the IESBA to add application material to specify that paragraph R380.11 in the ED does not preclude the PA from advising the client in situations where:
 - The client may be considering TP that does not have a credible basis in laws and regulations and needs the PA's advice to explore options (e.g., alternate arrangements) that would have a credible basis in laws and regulations.
 - The client may have entered into a transaction that does not have a credible basis in laws and regulations and now needs advice on how to rectify it (e.g., complying with relevant disclosure requirements under the law).
 - A respondent noted that there was no consideration for instances where the circumstances surrounding the TP advice have changed.

IESBA Decisions

86. The IESBA acknowledged the concerns the respondents raised and agreed with the observations that PAs must take the necessary steps to establish a credible basis for their advice, considering, where the circumstances are unclear or uncertain, the intent of the tax legislation. The IESBA believes that interpreting the relevant jurisdiction's applicable laws and tax treaties forms the starting point for determining the presence or absence of a credible basis in laws and regulations. Importantly, this assessment will require the exercise of appropriate professional judgment, which is why the ED set out detailed guidance on actions a PA might take to facilitate the judgment as to whether there is a credible basis. The IESBA determined not to make any change to the ED in that regard. (See paragraphs R280.12 and 280.12 A4, and R380.12 and 380.12 A4.)
87. In relation to the concerns that the ED seemed to preclude the PA from advising a client to resolve a situation where a particular TP arrangement does not have a credible basis, the IESBA noted that this was not its intent in formulating the principle of a credible basis. The IESBA agreed that the PA should be allowed to advise the client on an alternative arrangement that would have a credible basis. Indeed, allowing the PA to do so would be in the public interest. Accordingly, the IESBA clarified this in paragraph 380.12 A2. A similar clarification has been made in paragraph 280.12 A2 for PAIBs.
88. Taking into account respondents' comments, the IESBA also determined to provide further clarification in paragraphs 280.12 A3 and 380.12 A3 to the effect that the credible-basis principle does not preclude PAs from assisting their employing organization or client in remediating or rectifying a TP arrangement that lacks a credible basis. The IESBA has provided some illustrative examples of such activities or services. The IESBA also clarified that these types of activities or services are considered related activities or services under Sections 280 and 380. (See paragraphs 280.12 A3 and 380.12 A3.)
89. Where the circumstances surrounding the TP arrangement have changed or where the implementation of the TP service occurs over an extended period, the IESBA believes that the PA may need to undertake a re-assessment of the credible basis to ensure that it remains valid prior to finalizing the arrangement. Accordingly, the IESBA determined to add a new requirement to the effect that if, during the engagement, the PA becomes aware of circumstances that might impact the previous determination of the credible basis, the PA must re-assess the validity of the previously assessed credible basis. (See paragraph R380.13. A corresponding requirement has been added in paragraph R280.13 for PAIBs).

Cross-Border Transactions

90. Concerning dealing with the complexities of cross-border transactions, which evolving tax laws may compound, the IESBA noted that there is a potential for polarization given that there may be conflicting considerations between different jurisdictions that PAs need to balance. Participants at the IESBA global roundtables generally agreed that PAs who are not equipped with the necessary expertise or experience to recommend or otherwise advise on a TP arrangement to a client or an employing organization in these circumstances need to rely upon the judgments of other firms or individual experts who have the appropriate expertise. PAs would then need to assume that these firms or experts will operate within a similar ethical framework as the PAs.
91. Roundtable participants also cautioned that in some jurisdictions, it is possible for a TP arrangement to have a very low likelihood of success in a court of law yet not be deemed unacceptable such that fines and penalties would be levied in the event of an adverse ruling.

Many participants were of the view that if the threshold was less than 50%, the PA should not recommend or otherwise advise the employing organization or client to proceed. This, however, was not a universal view as some participants indicated that the generally accepted threshold in their jurisdictions is lower than 50%, particularly when safeguarded by transparency disclosure. For example, it was noted that in some jurisdictions, such as the U.S., it would be acceptable to recommend or otherwise advise on a TP arrangement when a lower threshold exists since the position must be disclosed to the taxing authority.²² Accordingly, there was a view that the Code should not contradict such practices.

92. The IESBA took the above feedback into account in formulating the principle of credible basis, recognizing that it is necessary to establish the credible basis in the context of each jurisdiction vis-à-vis the laws and regulations prevailing in that jurisdiction.

VIII. Consideration of the Overall Tax Planning Recommendation or Advice

93. In recent years, there has been a significant shift in investor concerns and societal expectations for companies to pursue more sustainable business models. In particular, in light of mounting public concern about tax avoidance by multinational companies,²³ stakeholders have developed a greater awareness of what it means for a PA to act in the public interest. What may have been accepted as creative and skillful TP in the past may now no longer be regarded as acceptable tax avoidance.²⁴
94. Given the heightened public attention on the issue of “tax avoidance,” the fact that TP has become an important part of the calculus among investors and other stakeholders regarding how entities meet sustainability goals, and the need to protect the profession’s role and reputation in TP, the IESBA took the view that it would be important for the proposed ethical framework to include a consideration of how the PAs’ overall TP recommendation or advice might be perceived by stakeholders.
95. Therefore, the IESBA proposed in the ED that in addition to determining that there is a credible basis for the TP arrangement, the PA considers the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the arrangement – a “stand-back” test. The IESBA also proposed guidance explaining the meaning of reputational, commercial, and wider economic consequences.
96. The IESBA believed that this test would be an important public interest element of the framework as it would stimulate the PA to consider potential adverse consequences for the client or employing organization, as well as the relevant jurisdiction in terms of its tax base, in light of how stakeholders might view the TP arrangement. The IESBA emphasized in its deliberations that the stand-back test is not about tax morality, tax justice, or tax fairness.

²² Reasonable Basis (20%): If a position is based on one or more authorities, it will generally satisfy reasonable basis even though it does not satisfy the substantial authority standard (not merely arguable or not merely a colorable claim). [Regs. Sec.1.6662-3(b)(3); Joint Committee on Taxation Interest and Penalty Study (JCS-3-99)] – AICPA Levels of Confidence for Tax Return Positions (May 2017)

²³ For example, in November 2012, the UK’s Public Accounts Committee (PAC), which is charged with monitoring government financial affairs, [invited Google, Starbucks and Amazon to give evidence](#) amid mounting public and political concern about tax avoidance by large international companies.

²⁴ See, for example, [comments](#) from former UK prime minister David Cameron about the need for a debate “not only [about] what is against the law... but [also about] what is unacceptable in terms of really aggressive tax avoidance;” and [comments](#) from former ICAEW CEO Michael Izza, “Our members do not support illegal tax evasion or the kind of aggressive tax avoidance that we believe to be unethical.”

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

Equally, the IESBA did not intend for the PA to carry out research on the economic consequences other than giving the matter due consideration based on the PA's existing general awareness and understanding of the current economic environment in the context of TP.

97. The IESBA noted that this consideration would assist the PA in complying with the FP of professional behavior. It is also consistent with paragraph 100.6 A4 of the Role and Mindset provisions that in acting in the public interest, a PA considers not only the preferences or requirements of an individual client or employing organization but also the interests of other stakeholders when performing professional activities. Further, the test would serve to support the OECD's BEPS initiative.
98. If having carried out the considerations set out in the stand-back test, the PA decides not to recommend or otherwise advise on a TP arrangement that the client or employing organization would like to pursue, the IESBA proposed that the PA inform the client or management and, if appropriate, TCWG, of this and explain the basis for the PA's conclusion.
99. The IESBA additionally noted that the stand-back test need not be performed sequentially after determining whether there is a credible basis but may be performed at any time during determination.

Respondents' Comments

100. Respondents generally supported the inclusion of the stand-back test. Several concurred with the proposal that PAs undertaking engagements to provide TP advice should consider the potential reputational and commercial impacts of the TP arrangement on the client (or employing organization in the case of a PAIB), as well as the potential impacts on the PA's reputation and that of the profession, should the TP arrangement be disclosed in the public domain.
101. Other respondents shared concerns regarding the proposal, with some providing suggestions in terms of further clarification regarding the work effort required of the PA in applying the stand-back test. Specifically:
 - Some respondents were concerned that the considerations in the stand-back test were too broad. In particular, they queried the work effort required to determine the wider economic consequences. There was a concern that this might imply that the PA would be required to undertake additional research, especially regarding TP with cross-border arrangements. Other respondents viewed the requirement as onerous, especially with respect to TP transactions that may not necessarily require the extent of such an assessment.
 - A respondent raised a concern about whether codifying such an exercise of professional judgment could result in further uncertainty and second-guessing of the PA's professional judgment.
 - Another respondent raised a concern about whether such a test, perceived as a forward-looking exercise to serve investors' expectations, might raise expectations for PAs' roles and responsibilities.
 - A respondent also suggested that the stand-back provision be deleted on the grounds that it falls squarely into tax morality, tax fairness, and tax justice domains.
102. A few respondents noted that the role of a PA is to draw the attention of their client or employing organization to any obvious commercial and economic consequences as, ultimately, it is the

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

client's or employing organization's decision whether to proceed with a TP transaction. A few other respondents argued that PAs should not be held responsible for any adverse consequences should a client or employing organization decide to pursue a certain TP arrangement after being informed of the possible adverse consequences.

103. A respondent felt that it was unclear who the stakeholders would be and that there could potentially be a wide range of stakeholders with different views and perceptions. Accordingly, the respondent suggested that the provision focus on considering the reputational, commercial, and wider economic implications associated with a particular TP arrangement, which should be within the PA's awareness and consideration as appropriate, without referring to stakeholders' perceptions. Another respondent suggested that only the consideration of the wider economic consequences not be linked to stakeholders' perceptions. This respondent also suggested that materiality be a factor when executing the stand-back test.

IESBA Decisions

104. The IESBA noted respondents' broad support for the PA to consider the reputational and commercial consequences of the TP arrangement for the client (or employing organization in the case of a PAIB) as part of the proposed stand-back test. However, the IESBA acknowledged the concerns from some respondents about requiring a consideration of the wider economic consequences within the stand-back test, including a concern that the test would lead PAs to conduct extensive research to understand the full impact of the TP arrangement on the wider economy of the relevant jurisdiction.
105. The IESBA noted that the stand-back test is a requirement to *consider* the reputational, commercial and wider economic consequences and not a requirement to perform economic analysis. Indeed, with regard to wider economic consequences, the ED had referred only to an awareness of those consequences. The stand-back test recognizes that stakeholders might not regard a TP arrangement as acceptable even if the arrangement is within the bounds of tax laws and regulations. It allows the PA to then decide whether to be associated with the TP arrangement.
106. The IESBA also reaffirmed that a consideration of the reputational, commercial and wider economic consequences is not about tax morality, tax fairness, or tax justice, nor is it about risk management for the PA, but about recognizing the practical reality of the impact of what might be a very large amount of tax involved in some cases, based on how stakeholders might view the TP arrangement.²⁵ Consistent with the PA's duty to consider not only the preferences or requirements of a client or employing organization but also the interests of other stakeholders in acting in the public interest, the IESBA believes that there is a strong public interest expectation for the PA to make the client or employing organization aware of the wider context in such cases. Indeed, the IESBA noted that if events take a significant turn for the worse for the client or employing organization, the PA could be criticized for not having informed the client or employing organization about the reputational and other risks associated with the TP arrangement. Consequently, the IESBA determined to require the PA to inform the client or employing organization about the basis for the PA's conclusion if, having applied the stand-back test, the PA decides not to recommend or otherwise advise on the tax planning arrangement that the client or employing organization would like to pursue. (See paragraphs R280.15 and R380.15.)

²⁵ See, for example, the Reuters investigation of Starbucks (<https://www.bbc.com/news/business-19967397>).

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

107. Therefore, the stand-back test is about providing the client or employing organization with the information it needs to make an informed decision about the TP arrangement. For this reason, it is consistent with and follows the PA's duty to comply with the FP of professional competence and due care and the PA's overarching responsibility to act in the public interest.
108. Regarding the concerns about the extent of work effort involved in applying the stand-back test and the suggestion to include a materiality factor, the IESBA noted that the requirement explicitly calls for the PA to exercise professional judgment in applying the test. Thus, the more complex the TP arrangement, the greater the consideration will be. Conversely, if the TP arrangement is relatively simple, there may be little consideration needed. The IESBA also did not accept the comment about second-guessing the PA's judgment. As with any other provision of the Code that calls for the exercise of professional judgment, PAs are expected to act in good faith and should not be subject to hindsight judgment.
109. Nevertheless, to further emphasize that the consideration of the wider economic consequences is not intended to be more than the application of a general understanding of the current economic environment, the IESBA made a refinement to that effect in paragraphs 280.14 A2 and 380.14 A2:²⁶

*An awareness of the wider economic consequences might take into account the professional accountant's **general** understanding of the **current economic environment** and the impact of the tax planning arrangement on the tax base of the jurisdiction, or the relative impacts of the arrangement on the tax bases of multiple jurisdictions, where the [employing organization/client] operates.*

110. Finally, the IESBA did not agree that the stand-back test should be delinked from the way stakeholders might view the TP arrangement. The IESBA noted that the reference to stakeholders in this requirement is a general reference to stakeholders at large, which will include the public. This also aligns to the wider public interest focus of the project. Accordingly, the IESBA determined to retain the reference to stakeholder perceptions of the arrangement. (See paragraphs R280.14 and R380.14.)

IX. Describing the “Gray Zone” of Uncertainty

111. A PA might encounter circumstances giving rise to uncertainty as to whether a proposed TP arrangement will comply with the relevant tax laws and regulations. Such uncertainty makes it more challenging for the PA to determine that there is a credible basis in laws and regulations for the TP arrangement. This uncertainty might, therefore, create threats to compliance with the FPs. The IESBA made this point clear in the ED.
112. In considering how to refer to this “gray zone” of uncertainty, the IESBA noted the challenge of identifying the appropriate terminology to use. Various international organizations have attempted to address the issue and faced challenges in developing an appropriate term that would work globally.
113. During the IESBA global roundtables, the IESBA outlined the proposition to use terms such as “uncertain” and “egregious” to describe the gray zone and a sub-zone within the gray zone, respectively. Roundtable participants shared that this proposition would suggest that TP activities can be easily categorized into subgroups within the gray zone when the situation can

²⁶ Section 113 *Professional Competence and Due Care* – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

be significantly more complex in practice. Some also viewed the term “unacceptable tax planning” as embodying an element of moral judgment they encouraged the IESBA to avoid.

114. A few roundtable participants offered suggestions for alternative terms or approaches. A suggestion was to use the term “reasonable” instead of “appropriate” or “proper” when referring to TP. Another suggestion was to focus on describing the characteristics of the gray zone without defining it. This would recognize that the gray zone is more context-sensitive, both from the societal or broader sustainability perspective and the client’s or employing organization’s perspective.
115. Other participants noted that uncertainty is the key issue rather than the treatment of the tax scheme itself. They noted that the main concern for PAs is the ambiguity around tax treatments and whether these will withstand evolving public perceptions or the scrutiny of a court of law. For example, it was observed that a tax strategy that is considered proper each year might be deemed improper a few years later.

Respondents’ Comments and IESBA Decisions

116. Respondents broadly supported the point that uncertainty makes it more challenging for a PA to determine that there is a credible basis in laws and regulations for a TP arrangement. Accordingly, the IESBA has retained it in the final pronouncement, subject to a minor clarification. (See paragraphs 280.17 A1 and 380.17 A1.)
117. The IESBA concurred with the views of the roundtable participants that, given the absence of a global consensus regarding the acceptability of TP practices, it is inappropriate to seek to categorize TP arrangements within the gray zone.
118. The IESBA also agreed with stakeholders who suggested care in not merging the boundaries of ethical behavior and moral judgment with respect to PAs performing TP activities.²⁷ Instead, the IESBA believes PAs’ involvement in TP can contribute to their broader societal role, the sustainability of businesses, and the profession’s reputation.
119. The IESBA recognized that it would be useful to provide guidance setting out various circumstances that might give rise to uncertainty instead of using a specific term to refer to the “gray zone.” The IESBA endeavored to take a generic approach to describe such circumstances, recognizing that its Technology Working Group has identified the issue of uncertainty as potentially giving rise to threats in circumstances other than when providing TP services or performing TP activities. As respondents to the ED broadly supported this guidance, the IESBA has retained it in the final provisions. (See paragraphs 280.17 A2 and 380.17 A2.)
120. Given that circumstances of uncertainty create risks, the IESBA also determined that it would be necessary that the PA discuss the nature of the uncertainty with the client or with management and, if appropriate, TCWG of the employing organization. Respondents broadly supported the proposed provisions in the ED addressing this point. These provisions have therefore been carried forward to the final pronouncement, with some minor refinements. (See paragraphs R280.18 and R380.18.) The IESBA also agreed to retain, with a few minor refinements, the guidance proposed in the ED explaining the purposes such a discussion would serve. (See paragraphs 280.18 A1 and 380.18 A1.)

²⁷ The final [report](#) (September 2021) leading to the launch of the project highlighted the concept of tax morality and the OECD’s work on this topic. Tax morale, as defined by the OECD, is the intrinsic motivation to pay taxes. This is a vital aspect of the tax system as most tax systems rely on taxpayers’ voluntary compliance for the bulk of their revenues. As recommended in the report, the IESBA agreed that the Code should not deal with tax morality.

X. Applying the Conceptual Framework to Navigate the Gray Zone and Other Tax Planning Circumstances

121. A significant part of the ethical framework proposed in the ED is the application of the CF to assist PAs in navigating the gray zone and other TP circumstances. Considering the rich feedback from the roundtable discussions, the IESBA therefore proposed practical guidance in terms of:
- Illustrative examples of the types of threats that might be created by PAs performing a TP activity or providing a TP service.
 - Factors that are relevant in evaluating the level of such threats.
 - Examples of actions that might eliminate such threats.
 - Examples of actions that might be safeguards to address such threats.

Respondents' Comments and IESBA Decisions

122. Respondents broadly supported the guidance in the ED. The IESBA has therefore carried it to the final pronouncement, with some minor refinements in response to respondents' suggestions. (See paragraphs 280.19 A1-A4 and 380.19 A1-A4.)
123. As part of its deliberations and taking into account input from the CAG, the IESBA considered the situation where a government engages a PA as a policy advisor to assist the government in developing tax legislation to mitigate tax avoidance, and the PA later takes the opportunity to advise clients on tax strategies that would avoid being caught under such tax legislation. The IESBA noted that in these circumstances, compliance with the FPs of the Code, in particular, integrity, confidentiality and professional behavior, as well as addressing conflicts of interest, would be of utmost importance²⁸.
124. As this situation might not be uncommon, the IESBA determined to add an example of a self-interest threat to the list of types of threats that might be created in the context of TP (see paragraph 380.19 A1):

“A self-interest threat might be created when a professional accountant is in possession of confidential information obtained from the accountant’s involvement in formulating or drafting tax policy, laws or regulations for a government agency and the confidential information would be valuable to the accountant in advising other clients on their tax planning arrangements.”

The IESBA made a similar addition in Section 280 (see paragraph 280.19 A1).

125. In relation to the example of self-interest threat in the ED that referred to a “significant fee,” a few respondents sought clarification as to what is meant by “significant.” The IESBA determined that this will be a matter of professional judgment considering the facts and circumstances, and that it would not be appropriate to prescribe a quantitative threshold. The IESBA also noted that PAs would be expected to use the reasonable and informed third party test in applying the CF.

²⁸ Recent events in a number of major jurisdictions involving professional accountants have raised concerns with many stakeholders and the public about whether the accountants' conduct was straightforward and honest, free from conflicts of interest, in accordance with confidentiality requirements, or in the public interest. It has become a matter of significant concern for the IESBA, such that the Board felt it was necessary to issue a [public statement](#) emphasizing the critical importance of ethical behavior for all PAs and their obligations to adhere to the fundamental ethical principles of the Code.

Nevertheless, the IESBA determined to make the point clearer by referring in the example to “a fee that might be perceived to be excessive” for the engagement.

XI. Disagreement with Management

126. In circumstances where a PA has reason to believe that a TP arrangement does not have a credible basis in laws and regulations and the PA’s client disagrees with the PA’s assessment, participants at the IESBA global roundtables commented that the PA should communicate their reservations to the client. The PA might also consider seeking expert advice. If the expert advice aligns with the PA’s assessment, participants agreed that the PA might need to decide whether to retain the client or resign from the engagement and client relationship if the client has not changed its position.
127. Where a client or an employing organization is perceived to be engaging in illegal activities, roundtable participants expected the PA to escalate the matter within the client or employing organization (such as to TCWG or whistleblower ombudspersons), consider reporting these activities to an appropriate authority, and consider the need to extricate themselves from the client or employment relationship.
128. Given this input, the IESBA believed that the proposed ethical framework should contain provisions to address circumstances where a disagreement arises with the management of a client regarding a TP arrangement. The IESBA, therefore, proposed certain required actions for a PAPP if the PA disagrees with management regarding whether a proposed TP arrangement has a credible basis in laws and regulations. If management determines to pursue the arrangement despite the PA’s advice to the contrary, the IESBA proposed that the PA take steps to be disassociated from the engagement. This includes considering the need to withdraw from the engagement and the professional relationship.
129. The IESBA proposed similar provisions for a PAIB in the case of disagreement with the PA’s immediate superior or other responsible individual within the employing organization. The IESBA, however, recognized that it is more likely that an escalation process would apply in the case of an employing organization. A PAIB might also have recourse to established protocols and procedures regarding how to raise ethical or other concerns internally within the employing organization. The IESBA, however, proposed a more measured approach with respect to PAIBs in terms of disassociation from the TP arrangement, recognizing that, unlike PAPPs who generally have more than one client, a PAIB’s employing organization will ordinarily be their sole employer. Accordingly, the IESBA proposed that a PAIB might consider resigning from the employing organization in these circumstances.

Respondents’ Comments

130. Respondents generally agreed with the IESBA’s proposals, with some providing further comments or suggestions. Key comments included the following:
 - Some respondents were concerned that the requirement for the PA to consider advising the client to fully disclose the arrangement to the relevant tax authorities and the external auditor in the event of a disagreement might create an expectation that the PA would breach client confidentiality. The respondents were of the view that this disclosure may not be permissible in some jurisdictions unless the PA has obtained the necessary agreement from the client to make such disclosure.

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

- A respondent suggested further clarifying the proposed requirements to "take steps to disassociate from the engagement/arrangement" as the respondent felt it was unclear what this step would entail.
- The respondent also sought further clarification on the *requirement* for a PAPP to consider the need to withdraw from the engagement, which did not seem proportionate compared with the guidance proposed for a PAIB, which is that the PAIB *might* consider the need to resign from the employing organization.

IESBA Decisions

131. The IESBA noted that PAs are required under the Code to have an inquiring mind when gathering all the relevant facts and considering the circumstances and making the judgments that form part of their advice to the employing organization or client. After taking all the necessary steps, a PA might determine that the TP arrangement has no credible basis in laws and regulations. If the employing organization or client disagrees with the PA's assessment, the IESBA determined that the PA should communicate their reservations, including the potential consequences of pursuing the arrangement, to the employing organization or client (see paragraphs R280.21 and R380.21). However, on further reflection, the IESBA believes that the communication requirement should not refer only to the potential consequences *in the event of an adverse ruling* as proposed in the ED. Accordingly, the IESBA agreed to revise paragraphs R280.21(b) and R380.21(b) to refer simply to the communication of the potential consequences of pursuing the arrangement.
132. In the case of disagreement with the client, the IESBA believes that transparency around the exercise of professional judgment and making appropriate disclosure to the tax authority would be important, especially when there might be a need to explain that there is commercial substance to the transaction. Therefore, the IESBA determined there should be no change to the principle of transparency to the relevant tax authorities.
133. Regarding the respondents' concerns that this would create an expectation that the PA breach client confidentiality, the IESBA noted that the requirement addressed disclosure by the client and not by the PA. Nevertheless, to acknowledge the respondent's concerns that there might be confidentiality issues in some jurisdictions, the IESBA determined to amend the provision to require the PA to advise the *client* to *consider* making full disclosure of the arrangement to the relevant tax authorities (see paragraph R380.22(b)). The IESBA agreed on a similar approach for PAIBs (see paragraph R280.22 (b)).
134. Regarding the suggestion to explain what taking steps to disassociate from the engagement means, the IESBA does not believe the Code should be prescriptive in that regard. The principle is clear that the PA should not be associated in one form or another with the TP arrangement where there is a disagreement. However, the IESBA accepted the comment that the requirement for the PA to consider the need to withdraw from the engagement and the professional relationship with the client should be more tempered, given that TP often involves significant uncertainty and application of professional judgment. Accordingly, The IESBA determined to amend the requirement to focus on the PA considering *whether there is a need* to withdraw from the engagement and the professional relationship (see paragraph R380.23). A similar change is reflected in the guidance for PAIBs (see paragraph 280.22 A1).

XII. Documentation

135. The IESBA proposed guidance in the ED highlighting the importance of documentation. The guidance explained the matters it would be beneficial for the PA to document and how such

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

documentation would assist them.

136. In developing the proposed approach to documentation, the IESBA considered whether to require documentation of the TP arrangement, discussions with the client or with responsible parties within the employing organization, and the PA's analysis, judgments, and decisions. The IESBA considered that requiring documentation would ensure that the PA captures all the relevant facts and circumstances and has a basis to address inquiries from, for example, tax authorities. The IESBA, however, also considered the view that documentation is a quality and risk management matter and not an ethics matter.
137. Recognizing the approach to documentation in Parts 2 and 3 of the Code, the IESBA decided to propose encouraging, but not requiring, PAs to prepare documentation. However, the IESBA took the view that the reasons for documentation set out in the ED would be sufficiently persuasive that in the vast majority of cases, PAs would document the various matters set out in the guidance.

Respondents' Comments

138. Respondents generally agreed with the IESBA's proposals, with some providing comments or suggestions.
139. A respondent was of the view that documentation should be required given the heightened public interest in TP arrangements. The respondent believed that proper documentation is a useful tool to facilitate the PA's ethical considerations, especially when considering whether the advice has a credible basis and then performing the stand-back test. The respondent also suggested that if it is challenging to introduce documentation requirements globally, the IESBA should consider requiring documentation where there is uncertainty with a TP arrangement or where the engagement would be regarded as a considerable risk.

IESBA Decisions

140. The IESBA believes that from an ethics perspective, documentation is a risk management tool that all PAs should be encouraged to adopt as good practice.
141. This position, however, does not preclude jurisdictions from establishing documentation requirements as they see fit for their national circumstances. In this regard, during the [roundtable](#) discussions, the IESBA heard that in some jurisdictions, the requirement to document is an established practice within the local laws and regulations. For example, in the UK, the Professional Conduct in Relation to Taxation (PCRT) standard requires members of the UK professional accountancy organizations to document on a timely basis the rationale for professional judgments exercised. Where there is genuine and reasonable uncertainty as to whether a particular TP is in breach of the PCRT, the PCRT requires sufficient documentation concerning the detailed reasoning and evidence to demonstrate why any TP was viewed as not being in breach of the PCRT.
142. Documentation may also be established in relevant standards in some jurisdictions. For example, in Australia, the Accounting Professional & Ethical Standards Board (APESB) has issued [APES 220 Taxation Services](#), which requires its members to prepare documentation for taxation services.
143. The IESBA also noted that during the development of the ED, it had considered that the approach to documentation in the Code is a broader issue than just in relation to TP, given that outside of the International Independence Standards, the Code generally only encourages documentation. Therefore, the IESBA determined to consider the topic of documentation as part

of a more holistic review of the Code's provisions on documentation in the future.

144. Notwithstanding the above, the IESBA believes that it would be useful to include in the guidance on why documentation is useful to the PA a recognition that documentation assists the PA's consideration of the reputational, commercial, and wider economic consequences that could arise from the way stakeholders might view the arrangement (see paragraphs 280.23 A2 and 380.26 A2).

XIII. Tax Planning Products or Arrangements Developed by a Third Party

145. One of the questions the IESBA posed to the roundtable participants was the ethical considerations for a PA if the PA is contemplating introducing a client to a firm specializing in developing TP products or arrangements for sale to the public. Participants were also asked whether the PA should disclose to the client any commission or referral fee the PA has received or will receive from the external provider.
146. As a general matter, participants agreed that if a PA refers a client to another firm so that the client can benefit from expert advice, this is a positive outcome for the client. That said, where the PA is referring the client to a provider of packaged TP products to meet the client's needs, participants commented that the PA would need to inform the client of the PA's relationship with the external provider. Participants felt the PA should ascertain whether the provider has the appropriate expertise to develop the TP product. Some participants believed that the PA should still be responsible for ascertaining the reliability and consequences of the particular product, including its impact on the client or the client's financial statements.
147. The IESBA concurred with the roundtable participants' general observations that where a PA is referring a client to a provider of TP products or arrangements to meet the client's needs, the PA would need to inform the client of the PA's relationship with the external provider. In addition, the PA should ascertain the provider's competence in developing the TP product or arrangement. The IESBA also took the view that the PA should still be responsible for ascertaining the credibility of the particular TP product or arrangement.
148. The IESBA, therefore, proposed guidance to the effect that where a PA refers a client to a third-party provider of TP products or arrangements or where a client approaches a PA for advice on a TP product or arrangement developed by a third party, the provisions in Section 380 apply. The IESBA felt that in both situations, the responsibilities of the PA would be no different than if the PA were the creator of the TP product or arrangement.
149. If the PA receives a commission or referral fee for the introduction, roundtable participants were almost unanimously of the view that the commission or referral fee should be disclosed to the client. Participants felt that this would need to be disclosed to the client before the actual referral is made so that the client understands the full context and expectations. Such disclosure would also enable the PA to maintain objectivity.
150. Taking into account this input, the IESBA felt that the provisions in Section 330 addressing such type of remuneration would be sufficient and applicable. Accordingly, the IESBA proposed the inclusion of a reference to the appropriate provisions in Section 330.

Respondents' Comments

151. There was general consensus among respondents about the considerations that PAs should apply where they have the opportunity to refer a client to an external provider of TP products. As a general matter, some respondents agreed that if the PA is referring the client to a provider of packaged TP products to meet the client's needs, the PA would need to inform the client of

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

the PA's relationship with the external provider in the first instance.

152. A few respondents also shared that PAs should proceed cautiously when referring a client to an external provider of packaged TP products. They expected that the PA would advise the client of the risks, not least to limit the PA's exposure to litigation and reputational risks should the product fail to stand up to scrutiny by the tax authority or in a court of law. The respondents agreed that the PA should advise the client or consult with the external provider to ensure the TP product is appropriately tailored to the client's specific circumstances.
153. However, a respondent was of the view that the PA should not be responsible for determining the credible basis of the TP product if they have referred the client to another provider with the expertise to deal with the client's tax affairs. The respondent felt that this scenario should also be distinguished from the circumstance where the PA actively promotes a third party's TP products or arrangements.
154. A few respondents noted that the practice concerning referral fees varies across jurisdictions. In some jurisdictions' codes of conduct, for example, in the U.S., PAs are expected to disclose any referral fees to clients as an important safeguard against threats to the PAs' objectivity. In other jurisdictions, such as Germany, referral fees are prohibited. Participants also noted that the Code contains guidance on disclosure of commissions or referral fees that would apply in these circumstances.

IESBA Decisions

155. The IESBA agreed with respondents that depending on the extent of the PA's involvement in developing the TP product or arrangement, there should be consideration of some element of due diligence on the part of the PA concerning the TP product or arrangement. However, the IESBA also agreed with the comment that care is needed to avoid placing an onerous or impracticable requirement on the PA.
156. Therefore, having considered the respondents' feedback, the IESBA determined that, regardless of whether the client is approaching the PA for advice on a TP product or arrangement developed by a third party or whether the PA is recommending or referring the client to a third-party provider, the PA would need to inform the client of any professional or business relationship the PA has with the third-party provider. This transparency ensures that the PA's objectivity is viewed in light of such circumstances. (See paragraphs R380.24(a) and R380.25.)
157. On the work effort required, the IESBA considered that, from an ethical point of view, it is important to clearly delineate the PA's responsibilities to account for different circumstances:
 - (a) Where a client approaches a PA for a recommendation or advice on a TP product or arrangement developed by a third party, the IESBA believes that the PA should be responsible for ascertaining that there is a credible basis for the particular TP product or arrangement, as they would ultimately be recommending or advising on the TP product or arrangement to the client. In this instance, the IESBA determined that the provisions in Section 380 apply to the TP product or arrangement. (See paragraphs R380.24(b).)
 - (b) Where the PA merely recommends or refers the client to a third-party provider, the PA will not have access to the full breadth of details of the facts and circumstances, or the TP advice ultimately provided. The PA might also make such a referral when the PA does not have the capabilities or capacity to perform the service, and thus, it would not be in the public interest for the PA to undertake the work or fail to help the client find a potentially suitable alternative provider. Under these conditions, holding the PA responsible for

applying Section 380 to the TP product or arrangement that is ultimately developed by the third-party provider would be impracticable and unreasonable. Therefore, the IESBA determined for the guidance to state that where the PA only recommends or refers a client to a third-party provider of TP services, the provisions of Section 380 do not apply. (See paragraph 380.25 A1.)

However, the provisions in Section 330 concerning referral fees or commissions will continue to be relevant in such circumstances (see paragraph 380.25 A2), in addition to informing the client of any professional or business relationship the PA has with the third-party provider, as discussed above.

XIV. Multi-jurisdictional Tax Benefit

158. During the IESBA global roundtables, an observation was raised that a client or employing organization might obtain a tax benefit from accounting for the same transaction in more than one jurisdiction. In such a case, it was suggested that while it would not be unlawful for the client or employing organization to obtain the same tax benefit twice in two different jurisdictions, there is a public interest argument for the PA to advise the client or employing organization to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.
159. The IESBA accepted this point and provided guidance to that effect in paragraphs 280.14 A1-A2 and 380.14 A1-A2 of the ED.

IESBA Decisions

160. As respondents were broadly supportive of the guidance in the ED, the IESBA determined to retain it, with some refinements in response to comments and suggestions from respondents (see paragraphs 280.16 A1-A2 and 380.16 A1-A2).

XV. Consequential Amendments

161. During its outreach activities, the IESBA heard that in some jurisdictions, it is not uncommon for a PAPP to be approached by a client for a second opinion on a proposed TP arrangement. The client might have earlier sought and received the advice of another PAPP or other service provider on the TP arrangement. As Section 321 addressing second opinions currently does not contemplate a PAPP providing a second opinion on the application of laws and regulations, the IESBA proposed some consequential amendments to that section.

IESBA Decision

162. Respondents generally did not have concerns regarding the proposed consequential amendments. However, following further deliberation, the IESBA has made a refinement to the consequential amendments to narrowly focus the scope of the amendments to a PAPP being approached for a second opinion on the application of *tax* laws and regulations. See paragraph 321.3 A1.

XVI. Effective Date

163. Although the IESBA recognizes the efforts it takes to adopt and implement new and revised provisions in the Code, the IESBA believes it is in the public interest for the final provisions arising from this project to become effective as soon as possible. The IESBA took into account the high level of public scrutiny regarding PAs' involvement in TP services and activities as a result of the various high-profile scandals in recent years, as referred to in Sections II and V

BASIS FOR CONCLUSIONS:
REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

above. The IESBA firmly believes the provisions will strengthen ethical practice in this area and rebuild public trust in the profession.

164. Consequently, the IESBA set the effective date for Section 280 to be for TP activities beginning after June 30, 2025. The IESBA set the effective date for Section 380, as well as the consequential amendments to Section 321, to be for TP services beginning after June 30, 2025. Early adoption of the provisions is permitted.
165. Recognizing that some TP services or activities might have started before the pronouncement's effective date, the IESBA determined to allow a transitional provision under which those TP services or activities may run their course and be completed under the extant Code provisions.

XVII. Applicability to Sustainability Assurance Practitioners

166. In its current Sustainability project, the IESBA has proposed that Section 380, once issued as a final pronouncement, will be applicable to sustainability assurance practitioners who perform sustainability assurance engagements within the scope of the International Independence Standards in the proposed Part 5 of the Code if they also provide TP services to the same sustainability assurance clients. See the January 2024 Exposure Draft, [*Proposed International Ethics Standards for Sustainability Assurance \(including International Independence Standards\) and Other Revisions to the Code Relating to Sustainability Assurance and Reporting*](#), and accompanying explanatory memorandum.

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