

IESBA

International  
Ethics Standards  
Board for Accountants®

# FIRST GLOBAL ETHICS STANDARD ON TAX PLANNING

## IESBA Tax Planning Webinar

May 13, 2024



# Presenters



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# New Tax Planning Standard [April 2024]

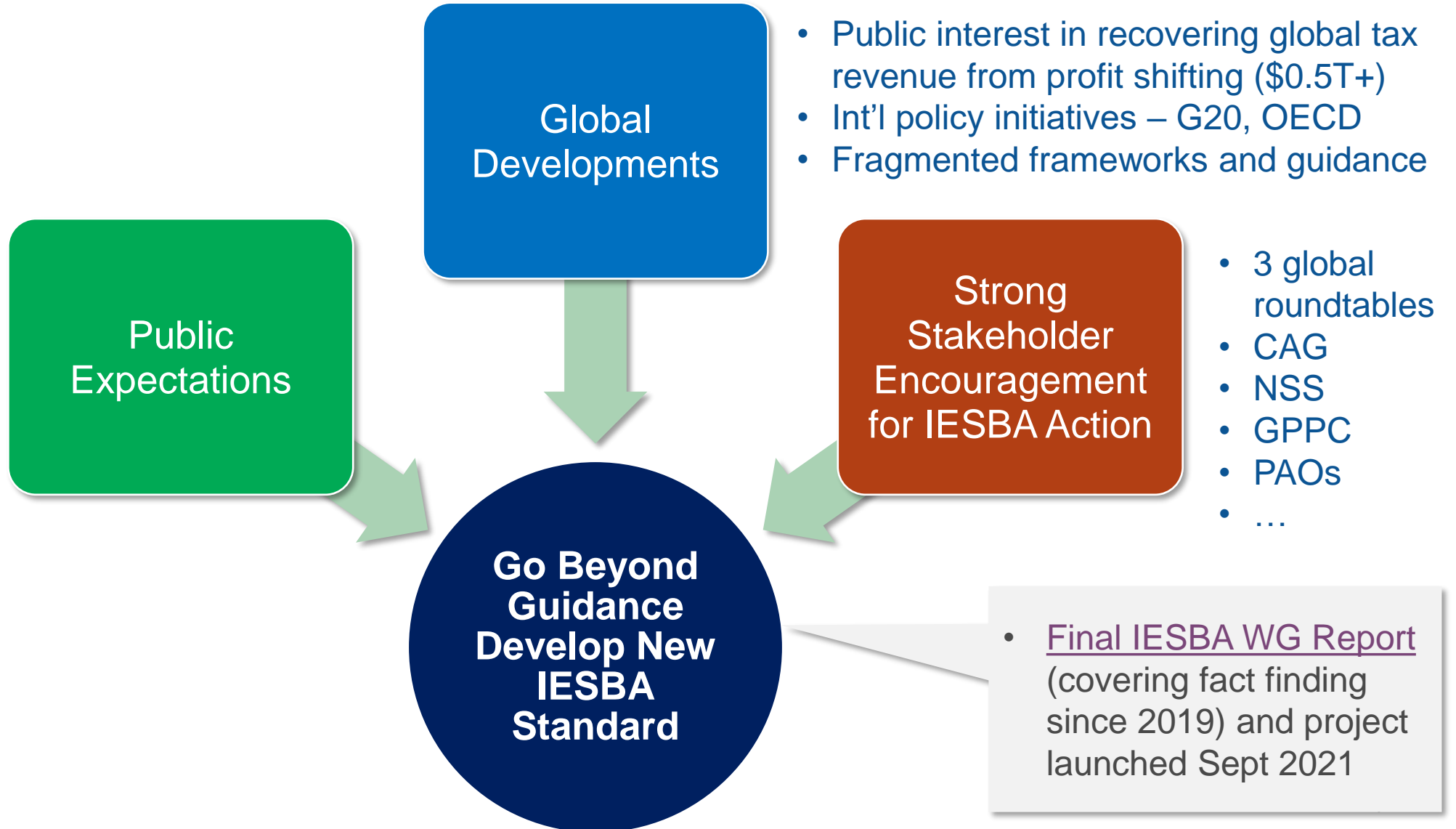


- Significant advance in public interest and trust
- Clear, transparent and robust principles
- A comprehensive guidance for navigating tax planning (TP) ethical dilemmas
  - Sets global benchmark in driving consistent ethical behavior
- Raises bar of ethical behavior for all professional accountants (PAs)
  - Intended to lead to substantive change in mindset and behavior among PAs in relation to TP



# Why a new Tax Planning Standard

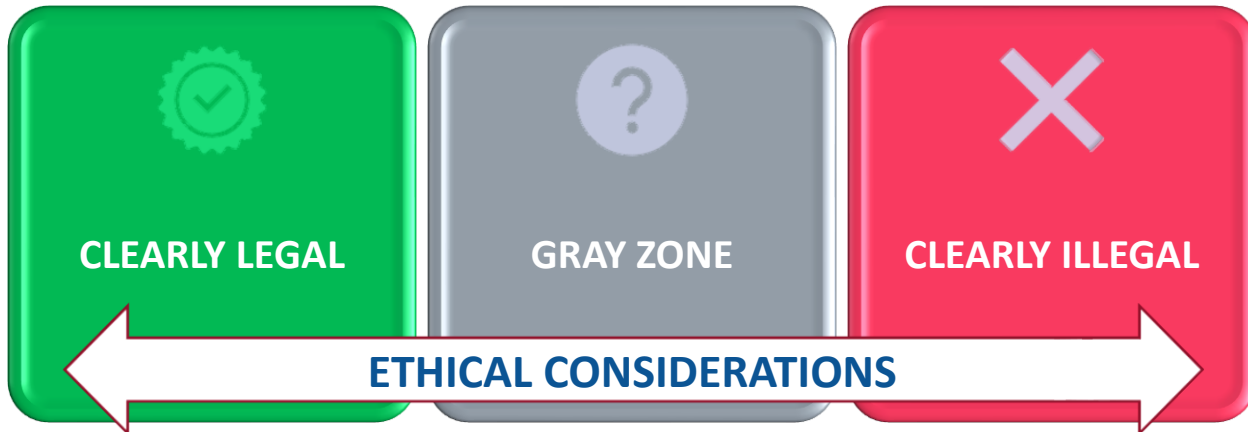
- Transparency
- Accountability (Panama and Paradise Papers)
- Sustainability
- Digital
- Social scrutiny
- COVID-19



# Tax Planning and Related Services

## Project Objective

Develop an **ethical framework** to guide judgments and decisions when PAs in public practice (PAPPs) provide TP services or PAs in business (PAIBs) perform TP activities



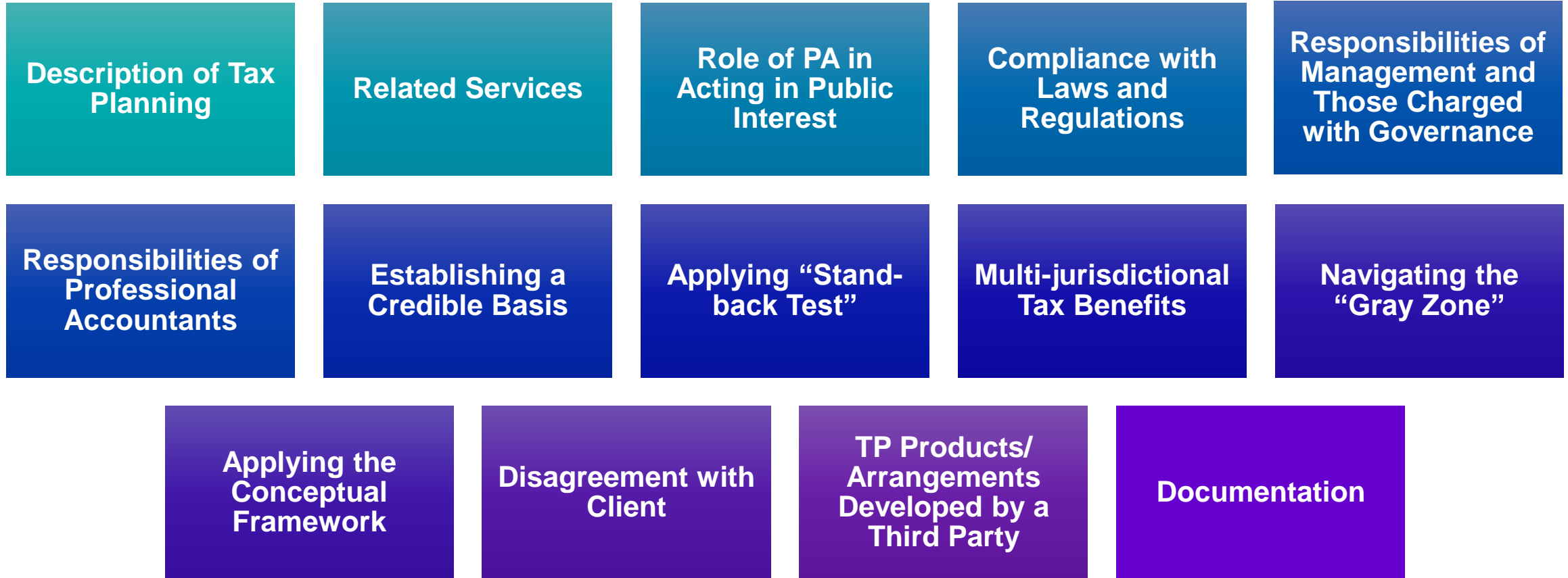
## Applicability

- PAIBs – All entities (Section 280)
- PAPPs – All clients: individuals and entities (Section 380)
- Other tax advisers *encouraged* to apply the standard

## Exclusions

- Tax compliance or preparation
- Tax evasion

# Overview of Standard (PAPPs)

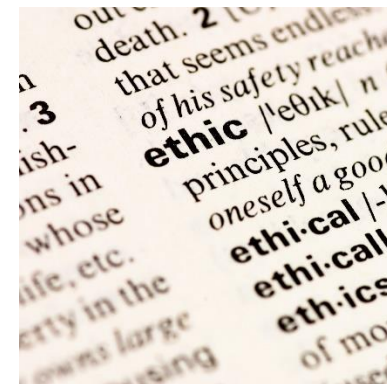


# Description of Tax Planning

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.

## Examples of TP Services

- Advising a client on structuring the client's *tax affairs* to achieve investment or estate planning goals
- Advising on the structuring of transfer pricing arrangements, taking into account tax-related transfer pricing guidelines



# Related Services

Related services are services based on or linked to a TP arrangement developed by the client or a third-party provider.

Standard applies to underlying TP arrangement

## Examples of Related Services

- Assisting the client in resolving a dispute with the tax authority on the tax planning arrangement
- Advising the client on an acquisition where the valuation depends on the tax planning arrangement established by the target





# Establishing a Credible Basis

## Key Principle

A PA can recommend or otherwise advise on a TP arrangement to a client *only if* the PA has determined that there is a *credible basis* in laws and regulations for the TP arrangement

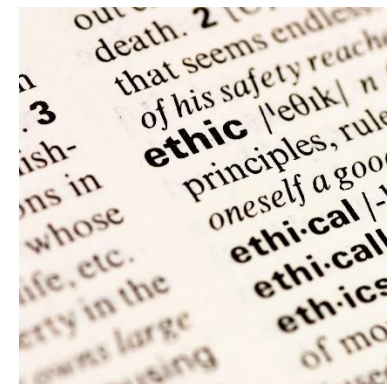
- Key considerations
  - Exercise of professional judgment essential
  - Determination will be jurisdiction-specific
- What is *not* prohibited
  - Engaging in any discussion with client if there is no credible basis
  - Assisting client to remediate or rectify the TP arrangement if it lacks a credible basis (e.g. through a related service such as tax dispute resolution)



# Establishing a Credible Basis

## Illustrative Actions

- Understand relevant facts and circumstances, including economic purpose and substance of the TP
- Assess reasonableness of assumptions
- Review relevant tax legislation, legislative proceedings and other pertinent literature (e.g. professional journals, tax authority rulings/guidance)
- Consider whether basis used is an established practice not challenged by relevant tax authorities
- Likelihood that TP would be accepted by relevant tax authorities if all relevant facts and circumstances disclosed
- Consult with legal counsel or other experts
- Consult with relevant tax authorities, where applicable



# Considering Overall TP Recommendation/Advice

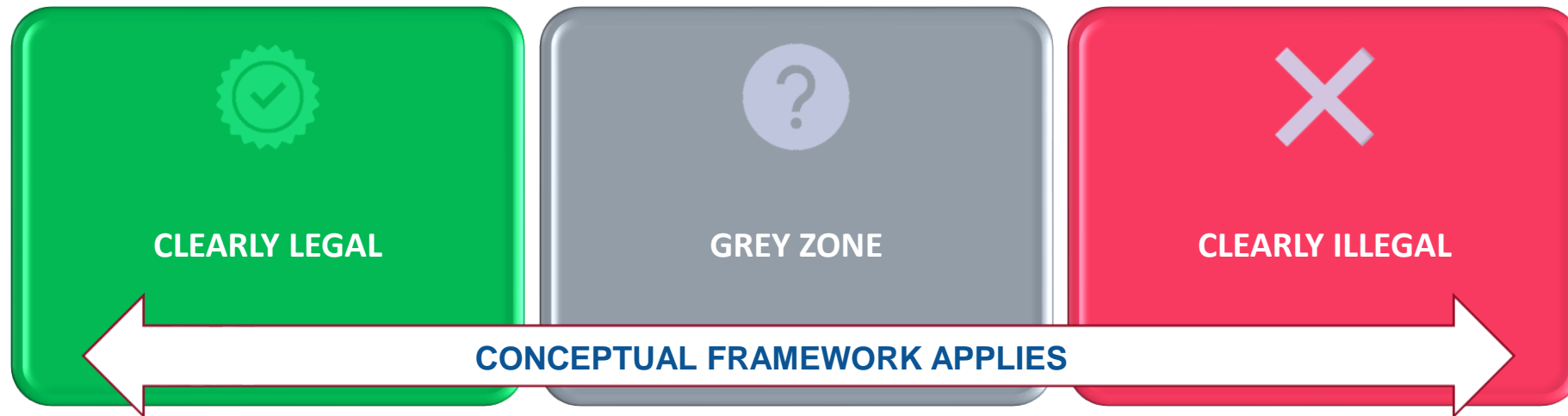
## “Stand-back Test”

Consider reputational, commercial and wider economic consequences that could arise from the way stakeholders might view the arrangement.

- Key considerations
  - Complements credible basis principle
  - Not about tax morality, tax fairness or tax justice
- Consideration of wider economic consequences
  - Based on *general* understanding of current economic environment and impact on jurisdiction’s tax base
- Must explain basis of recommendation or advice to client; if not proceeding ahead, explain why



# Navigating the “Grey Zone”



- What is the “grey zone?”
  - Circumstances giving rise to uncertainty as to whether a proposed TP arrangement will be in compliance with the relevant tax laws and regulations
- Why does the grey zone matter?
  - Makes it *more challenging* to establish a credible basis and might, therefore, create threats to compliance with the fundamental principles





# Navigating the “Grey Zone”

- Where is the red line?
- Capable of being defined?
- What to call it:
  - Improper?
  - Aggressive?
  - Abusive?
  - Egregious?
  - Unacceptable?
- IESBA approach describes grey zone through indicators of uncertainty



# Navigating the “Grey Zone”

## Examples of Indicators of Uncertainty

- Difficulty in establishing adequate factual basis
- Lack of clarity in tax legislation or its interpretation
  - Gaps in tax laws and regulations
  - Challenges to previous court rulings
  - Complexity in interpretation or application
  - No legal precedent
  - Conflicting laws across jurisdictions for cross-border transactions
  - New business models not addressed
- Unclear economic purpose and substance of TP arrangement
- Ultimate beneficiaries of TP arrangement unclear



# Navigating the “Grey Zone”

- Uncertainty must be discussed with client
  - Explain likelihood of relevant tax authority’s acceptance of TP arrangement
  - Consider any assumptions made
  - Obtain further information from client to reduce uncertainty
  - Discuss any reputational, commercial or wider economic consequences if TP arrangement pursued
  - Discuss potential courses of action to mitigate potential adverse consequences for client, including disclosure to relevant tax authority



# Applying the Conceptual Framework

- Conceptual framework must still be applied when providing a TP service, even when not in the gray zone
  - Identify threats to compliance with fundamental principles
  - Evaluate level of the threats
  - Address the threats
- Types of threats that might be created
  - Self-interest
  - Self-review
  - Advocacy
  - Intimidation

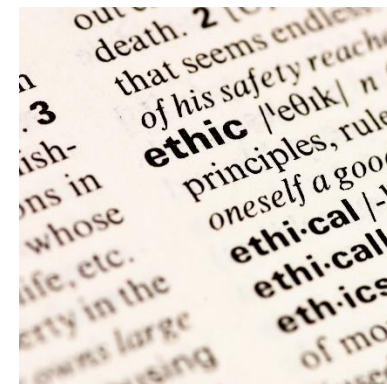




# Applying the Conceptual Framework

## Examples of Potential Threats

- Self-interest threat when the government engages the PA as a policy advisor to assist the government in developing tax policy or legislation to prevent or mitigate tax avoidance
- Self-interest and advocacy threats when PA actively promotes a particular tax position to client
- Self-interest and intimidation threats when client exerts significant influence over design of TP arrangement in a way that might influence PA's determination of a credible basis
- Self-review threat when PA recently provided a valuation service to client for tax purposes, the output of which is then used for the TP service



# Applying the Conceptual Framework

## Examples of Factors to Evaluate Threats

- Extent of client's transparency, including, where applicable, identity of ultimate beneficiaries
- Whether TP arrangement has clear economic purpose and substance
- Complexity or clarity of the relevant tax laws and regulations
- PA's expertise and experience in the relevant tax areas
- Significance of the potential tax savings
- Nature and amount of the fee for the TP service
- Whether pressure is being exerted by client or another party on PA
- Degree of urgency in implementing TP arrangement





# Applying the Conceptual Framework

## Examples of Actions to Eliminate Threats

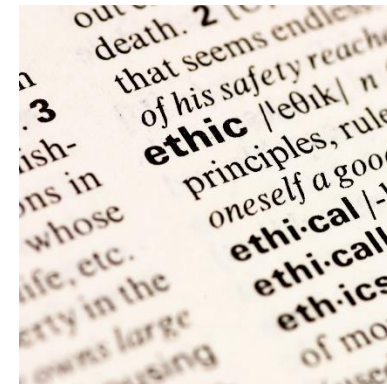
- Referring client to an appropriate expert
- Advising client to structure the TP arrangement to be consistent with relevant tax authority's interpretation or ruling
- Obtaining an advance ruling from relevant tax authority where possible
- Advising client not to pursue the TP arrangement



# Applying the Conceptual Framework

## Examples of Safeguards

- Advising client to structure TP arrangement so that it better aligns with underlying economic purpose and substance
- Advising client to structure TP arrangement based on an established practice which the relevant tax authority has accepted or is not challenging
- Consulting with a legal counsel or other expert in the relevant tax areas
- Having an appropriate reviewer not otherwise involved in the TP service review any work performed or conclusions reached by PA
- Having client provide full transparency about the TP arrangement to the relevant tax authority



# Disagreement with Client

- Disagreements can arise – what to do?
  - Inform client of PA's assessment re credible basis
  - Explain potential consequences to client if it goes ahead
  - Advise client not to pursue TP arrangement
- If client decides to proceed with TP arrangement, advise client to:
  - Communicate difference of views to appropriate level of management and to external auditor, if any
  - Consider making full disclosure of TP arrangement to relevant tax authority
- Consider whether there is need to withdraw from engagement and client relationship given client's response to PA's advice



# Other Matters

## TP product (or arrangement) developed by 3<sup>rd</sup> party

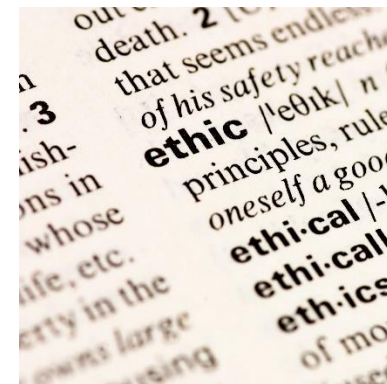
- Case 1: Client engages PA to advise on the TP product
  - Inform client of any professional/business relationship between PA and 3<sup>rd</sup> party provider
  - Comply with Code provisions re TP product
- Case 2: PA refers client to 3<sup>rd</sup> party provider of TP services
  - Inform client of any professional/business relationship between PA and 3<sup>rd</sup> party provider
  - Code provisions do *not* apply to the referral to a 3<sup>rd</sup> party provider



# Other Matters

## Multi-jurisdictional tax benefit

- What if client obtaining tax benefit from accounting for same transaction in more than one jurisdiction?
  - Not unlawful to claim same tax benefit in more than one jurisdiction
  - But in public interest for PA to *consider* advising client to disclose the matter to the relevant tax authorities
- Take into consideration relevant factors
  - Significance of tax benefits
  - Stakeholder perceptions of client if facts become known
  - Any globally or nationally accepted principles or practices to guide consideration of disclosure in similar situations





# Documentation

- Documentation encouraged
  - Purpose, circumstances and substance of TP arrangement
  - Identity of ultimate beneficiaries
  - Nature of any uncertainties
  - PA's analysis, courses of action considered, judgments made and conclusions reached in advising client
  - Results of discussions with client and other parties
  - Client's response to PA's advice
  - Any disagreement with client



# Effective Date and Implementation

- Standard is effective for TP activities (Section 280) or TP services (Section 380) beginning after June 30, 2025
- Transitional provision
  - TP activities or TP services commenced before effective date may be continued and be completed under extant provisions of IESBA Code
- Effective implementation of, and compliance with, the new provisions will require collective efforts of:
  - National standard setters | Professional accountancy organizations | Firms | Individual PAs | Regulatory and oversight bodies | Educational organizations



# What Next: Outcomes in Public Interest



Promoting consistent ethical TP behavior and a trusted practice



Raising awareness about reputational risks to employing organization or client, the PA and the profession



Promoting accountability, transparency and sustainability



Strengthening public trust in PAs and protecting the profession's reputation



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# Thank you





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