

BRIEFING MEMO: IESBA - SUPPLEMENT

September 18-22, 2023

Additional considerations to the BM dated September 11, 2023

9 - TAX PLANNING AND RELATED SERVICES

Notes/key points from the review of the documentation for this meeting

It would appear appropriate to ask for the IESBA's view on the following question: "would the proposed changes to the Code, if already implemented, have had a beneficial effect in the public interest in the context of the unethical behavior which is coming to light through the Australian Parliamentary Inquiry(ies)? In posing this question, it is of course important to recognize that the call for evidence in Australia continues and therefore the full facts are/may not already be in the public domain.

We suggest the above question is posed in a similar way to how the PIOB has been seeking to understand the relevance of the evolving IAASB standard on going concern in the context of the banking failures earlier in the year. In this regard, it could be useful to ask IESBA the above question with specific reference to:

- the actions/non-actions of the PwC global network as well as the actions of PwC Australia individuals
- the relationship between the Fundamental Principles of the Code and the new Sections on Tax Planning. With respect to the Fundamental Principles, it is very important to go beyond the Principle of Confidentiality which may be regarded as the most directly relevant in the Australian inquiries given the apparent disregard of Non-Disclosure Agreements (NDAs) and circulation of confidential information across the PwC network. The Code's Fundamental Principle of Integrity is, however, deserving of greater attention given its broader relevance to the public interest concerns over tax planning – i.e. concerns which do not stem from egregious breaches of confidentiality.

With specific respect to the approach set out in the proposed new Sections and (some of) the responses to the ED, the following points appear relevant:

- the description of tax planning in the ED appears, as does the ED itself, to neglect that tax planning is necessarily about an envisaged outcome between a client's obligations as well as rights: the reference to "structuring affairs in tax efficient manner" alludes to, or at least primarily to, the use of tax reliefs and other provisions to reduce tax. The revisions in the Code are an important

opportunity to change the behavior of PAs (and ideally others too who provide tax planning) and to address external perceptions of how the Code serves the public interest: is this description a good enough starting point to achieve these objectives?

- the approach to “credible basis” remains more “legally” than “ethically” focused – as it is more about a claimed view of the law, rather than on an “honest” view on facts pursued within the law. Consequently, it could be appropriate to ask whether the revisions to the Code will really make a difference. Specifically, will the Code address what has been the reality in many markets over years concerning form over substance to reach desired tax results, and other arrangements which have been defined in the UK as “artificial” or “contrived”. In summary, will the Code have a meaningful effect with respect to the provision of advice on arrangements to achieve a tax outcome which, otherwise, do not have genuine economic purpose?
- the “stand-back” provisions may be well-intentioned when seen in an overall public interest context but appear overly broad and therefore inadequately designed to guide professional judgment in relation to the specific problems which have led IESBA to revise the Code. It appears valid for the PIOB to seek further comment from the IESBA on whether the “stand-back” provisions will have any meaningful impact at all - and indeed whether they may even have a negative impact.
- Most importantly, it is appropriate to seek the IESBA’s view on whether the Public Interest could be better served by a greater leveraging of the Principle of Integrity (Be straightforward and honest in all professional and business relationships) in the revisions to the Code. The question could be framed with reference to the manner in which professional judgment is exercised in relation to a client’s obligations and rights. Specifically, this relates to integrity in the PA’s consideration of the economic and other facts of the client, the consideration of the relevant laws and ultimately the design of the planning advice itself. In summary, tax planning arrangements which are devised with integrity and honesty ought to achieve a balance between a client’s obligations and rights which has a credibility which is wider (i.e. ethical) than legally credible. A specific question to the IESBA on this might be: could greater leverage on the Principle of Integrity within the new Sections be more effective for the public interest and help avoid the complexities of providing guidance on what stand-back considerations should look like?

Additional PIOB’s PI issues and recommendations (identified by PIOB staff) on the revised drafts circulated for the September 2023 meeting (items 9-B and 9-C):

- Previous wording in parr. 380.4 A2 and 280.4 A2 was preferable, as it made reference to not “circumvent tax obligations through tax evasion”. Recognizing that the wording had a negative connotation, and taking into account the comments from some respondents, the revision could have still retained that reference, while its deletion seems to diminish the role of Professional Accountants in the public interest. The TF proposes to move the reference to other paragraphs where NOCLAR is concerned (i.e. 380.6 and 280.6 which reads: “*This section does not address tax evasion, which is illegal*”). The

sentences do not have the same effect as if they were placed at the beginning of the provisions. It is important to make clear that tax evasion, being illegal, is something which should be avoided or deterred also through the advice and services provided by PAs. This would be in line with the public interest role played by PAs and the tax planning services they provide. A sustainable society is also a just society.

- Parr. 380.7 A1 and 280.7 A1 refer to the application of NOCLAR requirements (section 360 and 260, respectively). For that reason, they should be elevated to requirements as well.
- Parr. 380.10 A1 and 280.10 A1 relate to PA's responsibilities (i.e. professional competence and due care, inquiring mind and exercise of professional judgment). To strengthen the provisions, both paragraphs should be elevated to requirements. Subsequently, the wording should be revised and "is expected" should be replaced with "shall".

Outstanding PIOB's PI issues, according to the PIOB's PI Issues lists as of June 2023 (published in September):

- "Encouragement" to document should be replaced with a "requirement" to document (380.25 A1 and 280.22 A1 in items 9-B and 9-C, respectively). The TF motivates that choice (item 9-A) by saying that documentation is considered "a quality and risk management matter and not an ethics matter".
- Transparency and disclosure of tax-related matters in Financial Statements of the client or in public documents has not been addressed at this stage.