May 22, 2023

International Ethics Standards Board for Accountants
529 Fifth Avenue, 6th Floor
New York, NY 10017

Re: Proposed Revisions to the Code Addressing Tax Planning and Related Services

Dear Members of the International Ethics Standards Board for Accountants:

The Professional Ethics Executive Committee (PEEC) and the Tax Executive Committee (TEC) (the committees), on behalf of the American Institute of Certified Public Accountants (AICPA), recognize the efforts the International Ethics Standards Board for Accountants (IESBA) has put forth on its Proposed Revisions to the Code Addressing Tax Planning and Related Services exposure draft (the exposure draft) to strengthen the ethical expectations for professional accountants (PA)[1] in business and in public practice when performing tax planning (TP) activities.

The AICPA is a steadfast supporter of the goals of enhancing compliance and elevating ethical conduct for all PAs. While in general we are supportive of the effort to develop a principles-based framework regarding the ethical performance of tax planning services into the IESBA code, we have certain concerns with the proposals. In the United States, in addition to federal and state laws and regulations, the profession is subject to long-standing robust practice standards for tax and personal financial planning services. These standards have been adopted by the licensing authorities who regulate the behavior of Certified Public Accountants (CPAs), were developed to complement these laws and regulations, and have successfully maintained trust in the accountancy profession for over 100 years. Our professional standards already require that tax professionals be competent, ethical and perform professional services in a manner that is consistent with the goals of the proposed additions to the IESBA code.

We understand that there are jurisdictions that do not have tax practice standards in place or whose laws and regulations could benefit from a principles-based framework. However, we think several of the proposed provisions could diminish the important role that CPAs play in helping to set high ethical practice standards in the efficient and effective operation of the U.S. tax system. If adopted, these proposed provisions could result in having a substantial amount of tax planning and related services performed by others who are not bound by ethical and performance standards.

[1] In the United States, licensed professional accountants are referred to as Certified Public Accountants (CPAs). A license to practice is granted by an individual state board of accountancy, which governs the behavior of CPAs licensed to practice in their respective jurisdiction. While not all CPAs are AICPA members, most state boards use the AICPA Code of Professional Conduct and related practice standards as part of their licensing and oversight regimes.

Critical recommendations

In addition to our responses to the *Request for Specific Comments*, we respectfully offer the following recommendations, which we think are critical to the successful adoption of the proposed provisions.

We recommend that the following provisions be eliminated.

- The requirement in proposed paragraphs R380.12–380.12 A2 and R280.12 –280.12 A2 to consider the reputational, commercial, and wider economic consequences that stakeholders might view the tax planning arrangement, also referred to as the "stand-back test".

- The requirement in proposed paragraphs R380.13 and R280.13 to explain to management and, if appropriate, those charged with governance why a tax planning arrangement did not pass the stand-back test.

- The proposal in paragraph 380.22 A1 that a referring PA who did not create a tax planning product or arrangement that the PA referred be held to the same standard as if the PA were the creator.

Background

Standards are the foundation of a profession. The AICPA promulgates several sets of standards, including ethical standards (AICPA Code of Professional Conduct), tax standards (AICPA Statements on Standards for Tax Services, or SSTSs) and personal financial planning standards (AICPA Statement on Standards in Personal Financial Planning Services, or SSPFPS) for its members. A comprehensive Code that is more than 100 years old, the AICPA Code of Professional Conduct, includes, among other things, the Due Professional Care Rule and Compliance With Standards Rule. The AICPA also aids its members in fulfilling their ethical responsibilities by instituting and maintaining standards against which their professional performance can be measured. Compliance with tax practice and personal financial planning standards reaffirm the public's awareness of the professionalism and ethical responsibility associated with CPAs and the AICPA.

Through PEEC, the AICPA devotes significant resources to ethics activities, including evaluating existing standards, proposing new standards, interpreting and enforcing the standards, and developing practice aids and implementation guidance. In addition, the TEC is in the process of updating its existing tax practice standards to better reflect the issues and needs of members and the tax practices of today and the future. The SSTSs ensure the highest ethical standards for CPAs and support the assertion that CPAs are the premier providers of tax services in the United States. The TEC is also currently reviewing the concept of quality management in tax practices, and specifically how to best implement a quality management system in the tax function. PEEC and the TEC have approached these endeavors with the public's interest in mind.

In addition to the SSTSs and the SSPFPS, CPAs may also be subject to other AICPA professional standards, such as Statements on Auditing Standards (SASs), Statements on Standards for Attestation Engagements (SSAEs), Statements on Standards for Accounting and Review Services (SSARSs), Statement on Standards for Consulting Services (SSCS), or Statement on Standards for

Valuation Services (SSVS) during the performance of tax services.

The U.S. Internal Revenue Code contains a robust structure of disclosure requirements for strategies and transactions that the U.S. government believes are of concern. In addition, under U.S. tax law, a CPA may be subject to criminal penalties for aiding and abetting a taxpayer in undertaking a strategy which may be fraudulent or false, and requires the CPA to sign a return as a paid preparer that states "Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, current and complete." Also, U.S. tax law requires the CPA to consider if a tax planning strategy has as a significant purpose the avoidance or evasion of tax in evaluating whether a taxpayer (client) may be subject to penalties for undertaking the strategy. Critically, it is a felony with substantial penalties if any person "willfully aids or assists in" the preparation or presentation of any return or other document under the internal revenue laws that is false or fraudulent, whether or not the taxpayer knows or consents to the falsity or fraud. (26 U.S. Code Section 7206).

Furthermore, CPAs are subject to other standards, laws, and regulations adopted by governmental authorities, such as the Office of Professional Responsibility of the Internal Revenue Service (IRS)[2] which develops and enforces regulations governing practice before the IRS as detailed in Circular 230; and the Financial Crimes Enforcement Network (FinCEN) which safeguard the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.

It should also be noted that the U.S. tax administration system (the IRS) is one of the largest tax administration systems in the world. In fiscal year 2022, the IRS received more than 262.8 million returns voluntarily filed, collected nearly $475.9 billion in income taxes and handled more than $2.8 trillion of tax withheld and tax payments.[3]

The U.S. tax administration system is built on the idea of voluntary compliance. This means that taxpayers are responsible for declaring all their income, calculating their tax liability, and filing a tax return on time. The IRS depends upon honest reporting. In turn, over half of the United States' taxpayers rely on paid preparers to help them meet their tax obligations. CPAs represent approximately one third of all paid preparers and are the only ones subject to the AICPA Code of Professional Conduct and SSTSs. In comparison, over half of the paid preparers have minimal costs of entry and no ethical, credentialing, or continuing education requirements. It is in the public interest for CPAs to maintain their prominent and respected role as the premier providers of tax services.

CPAs are considered the "gold standard" of technical and ethical representation; they are looked to as

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2 The IRS is the revenue services for the U.S. federal government, which is responsible for collecting U.S. federal taxes and has the authority to administer and enforce the Internal Revenue Code, the main body of federal statutory tax law.

3 See IRS.gov, "Returns Filed, Taxes Collected & Refunds Issued," updated April 14, 2023.

respected leaders maintaining voluntary compliance and the view that it is every American's civic duty to pay taxes and is unacceptable to cheat on income taxes. CPAs look at what is in the public's best interest, try to minimize marketplace confusion and avoid driving the cost of compliance so high, that taxpayers will look to less qualified, less expensive alternatives.

Taxpayer Protections

Paragraph 11 of the exposure draft acknowledges the "…need to balance the public interest benefits of the proposed revisions to the Code with consideration of global operability, practicality, and scalability for users of the Code." Paragraph 12 acknowledges "…the Code does not and cannot override laws and regulations." We believe that if PAs are required to apply the proposed standards in a manner that would compromise or jeopardize protections to which a taxpayer is legally entitled, neither the taxpayer's nor the public's interest would be served and laws and regulations affecting the taxpayer would be undermined.

CPAs in the United States have limited ability to protect communications with their clients related to tax advice. Proposed provisions that trigger disclosure of information to the client or preparation of documentation would potentially provide the tax authorities with the ability to use the CPA's communications with the taxpayer against the taxpayer. The communication could also be used in any litigation involving the taxpayer. This would compromise significant legal protections to which U.S. taxpayers are entitled. We believe that the public's and taxpayers' interests are best served by allowing the CPA to use professional judgment regarding the level of detail and nature of communications with the taxpayer.

Moreover, IESBA standards, as proposed, will likely cause taxpayers to seek advice from other tax service providers, many of whom, as noted above, may not be subject to any standards or ethical requirements, or to requirements that are not as robust as those CPAs are currently subject to. Additionally, if adopted, the proposed standards might lead PAs to contemplate alternative service entities that would not be subject to the tax planning standards of IESBA or other similar organizations.

To avoid these serious consequences, which we believe are contrary to the public and other stakeholder interests, we recommend the following be added to the proposed framework:

> A PA shall not be required to apply a tax planning standard if application of that standard would compromise or jeopardize the legal rights or protections of a taxpayer in that jurisdiction. This includes, for example, any standard that would affect or compromise a taxpayer client's protection of communications with its tax adviser under law or that would affect or compromise a client's confidence threshold in taking a tax position to which the taxpayer is entitled in that tax jurisdiction.

Alternatively, IESBA could provide an exception for jurisdictions that have long-standing and proven tax practice standards. This will avoid unnecessary and prolonged conflict in attempting convergence in such jurisdictions.

AICPA tax practice standards have been in effect in the United States for more than a century and continue to evolve based on changes in federal and state legislation, regulations and global ethical norms. We believe that the high ethical and practice standards to which U.S. CPAs must already adhere are well known to the profession, interested stakeholders, and the public at large, and have proven to be effective. We believe our existing U.S. standards, in conjunction with our highly developed regulatory system, sufficiently protect the public interest, and would meet the criteria for a such an exception.

Effective date

To better achieve international convergence, IESBA should consider a significantly longer delayed effective date than usual standards, potentially 4 years. This extended timeframe is especially critical for jurisdictions that have no tax practice standards in place where education efforts may go well beyond what is typical so that widespread non-compliance and inconsistency in practice does not occur. IESBA could allow for early implementation so that those that can act more quickly can do so.

Responses to requests for specific comments

Q1 - Do you agree with the IESBA's approach to addressing TP by creating two new Sections 380 and 280 in the Code as described in Section VI of this memorandum?

We are generally supportive of IESBA's efforts to incorporate a principles-based framework regarding the ethical performance of tax planning services into the IESBA code for jurisdictions that do not have tax and personal financial planning performance standards in place. However, we have significant concerns with some of the elements of the proposed additions to the code as noted above in *Critical Recommendations* and *Taxpayer Protections*.

Q2 - Do you agree with IESBA's description of TP as detailed in Section VII.A?

We recommend these descriptions be refined or clarified so that they do not include services where the primary goal is not tax planning but rather is ancillary.

As written, the descriptions of tax planning in paragraphs 380.5 A1 and 280.5 A1 and related services in paragraphs 380.5 A3 and 280.5 A3 are too broadly drafted since they will include advisory services where the primary goal is not tax planning. An example is wealth management with the goal of growing 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. The results of such decisions will eventually be part of a client's tax return and the be subject to review by the taxing authorities.

It is virtually impossible to provide effective financial planning without a broader understanding of the client's financial situation and how the tax decisions affect other financial decisions the client may be contemplating. Yet as drafted, these financial planning services would be bound by the same standards that IESBA is proposing to adopt for a tax planning engagement.

The concept of tax planning encompasses a wide variety of situations. However, the proposed additions to the IESBA code, as written, are too broad in scope. Just because a transaction or technique has a tax consequence, irrespective of its materiality, purpose, or goal, it should not

automatically be affected by these proposed revisions, which are intended to specifically address the concerns expressed around the concept of “aggressive” tax planning as noted in the Explanatory Memorandum (EM) Section II, Paragraph 3. A narrower approach to the definition of “tax planning” should be considered. Perhaps it could incorporate the elements of the definitions outlined in EM Section VII, Paragraph 25 as referenced by the United Kingdom’s HM Revenue & Customs (HMRC) which states that tax planning, “Involves using tax reliefs for the purpose for which they were intended” or the Confédération Fiscale Européenne (CFE) (Tax Advisers Europe) which states that tax planning is the “Focus on delivering savings to clients using legal vehicles and financial transactions specifically established to exploit these technicalities.”

Q3 - Do you agree with IESBA’s proposals as explained in Section VII.B above regarding the role of the PA in acting in the public interest in the context of TP?

We generally agree that that PAs providing their clients or their employing organizations with high quality tax planning advice to ensure compliance with laws and regulations helps to serve the public interest. We also agree that it is ultimately for a court or other appropriate adjudicative body to determine whether a tax planning arrangement complies with the relevant tax laws and regulations as described in proposed paragraphs 380.4 A3 and 280.4 A3. Please see our concern about the public interest not being served under *Taxpayer Protections.*

Q4 - Do you agree with the IESBA’s proposals regarding the thought process for PAs to determine that there is a credible basis in laws and regulations for recommending or otherwise advising on a TP arrangement to a client or an employing organization, as described in Section VII.E above?

We agree that the overall concept of the “credible basis” of a tax planning arrangement being based on the laws and regulations of the relevant jurisdiction at the time of the evaluation of such an arrangement by the PA is reasonable.

Q5 - Are you aware of any other considerations, including jurisdiction-specific considerations, that may impact the proper application of the proposed provisions?

If the stand-back test remains as drafted, we could have a challenge adopting it under our current U.S. regulatory structure, as described under *Taxpayer Protections*.

We agree that “credible basis” is best defined by specific laws, regulations and judicial decisions and will vary by jurisdiction. Since positions may change over time, we recommend that proposed paragraphs R380.11 and R280.11 be amended as follows because any lack of clarity and specificity on what laws and regulations were used to determine credible basis could expose the PA to challenge when changes in laws and regulations occur.

> R380.11 A professional accountant shall recommend or otherwise advise on a tax planning arrangement to a client only if the accountant has determined that there is a credible basis in laws and regulations ***at the time of the professional accountant’s evaluation of*** ~~for~~ the arrangement.
>
> R280.11 A professional accountant shall recommend or otherwise advise on a tax

planning arrangement for an employing organization only if the accountant has determined that there is a credible basis in laws and regulations ***at the time of the professional accountant's evaluation of*** ~~for~~ the arrangement.

Q6 - Do you agree with the proposals regarding the stand-back test, as described in Section VII.F above?

We recommend the stand-back test in paragraphs R380.12–R380.13 and R280.12–R280.13 be eliminated for several reasons, the first of which is described under *Taxpayer Protections.*

We think the stand-back test in paragraphs R380.12–R380.13 and R280.12–R280.13 should be eliminated as an ethical requirement as it falls squarely into tax morality, tax fairness, and tax justice, which IESBA has specifically stated was outside the scope of this project. This is because the stand-back test requires the PA to consider the reputational, commercial, and broader economic consequences that could arise from the way stakeholders might view the arrangement. It also puts the PA in a position of policing the intent and impact of the taxing authority, as well as evaluating the legislative intent of the government on the overall tax base of the jurisdiction that the client resides in or the employing organization operates in, it is even more unworkable if the client or employing organization is in more than one jurisdiction at the time a particular tax planning proposal is being evaluated. These requirements are clearly something far afield from a reasonable assessment for a PA and the client or employing organization.

The stand-back test should be eliminated because the cost to implement outweighs the benefit achieved. This is because we think PAs will need additional support for their analysis of the reputational, commercial, and wider economic consequences. We note that in paragraph 65 of the explanatory memorandum, IESBA emphasizes that it does not intend for the PA to conduct research on the economic consequences, other than giving the matter due consideration based on the PA's general awareness and understanding of the current economic environment in the context of tax planning. However, this language does not appear in the proposed application paragraphs for the stand-back test requirement, and therefore, this intention does not carry the weight of authoritative guidance.

The stand-back test creates redundancy and confusion. PAs are already required to comply with the fundamental principles of Integrity, Objectivity, and Professional Competence and Due Care and the reasonable, informed third-party test when applying the conceptual framework for all professional services they provide, not just tax planning and related services. The stand-back test also creates confusion since it introduces a new test, instead of relying on the well-established reasonable and informed third party test used when applying the conceptual framework.

The stand-back test should be eliminated because it creates unintended consequences for financial planning. We think PAs who provide financial planning services will be subject to the stand-back test, as tax planning is one of many aspects considered in performing financial planning services. Additional requirements on a PA who provides ide financial planning could drive some financial planning services to other providers who are not subject to the same requirements.

The requirement in paragraphs R380.13 and R280.13 should be eliminated for the reasons noted under *Taxpayer Protections*.

Q7 - Do you agree with the IESBA's proposals as outlined in Section VII.G above describing the gray zone of uncertainty and its relationship to determining that there is a credible basis for the TP arrangement?

The discussion of uncertainties with the client as described in R380.16 and R280.16 should not be required for the same reason we noted under *Taxpayer Protections*.

Q8 - In relation to the application of the CF as outlined in Section VII.H above, is the proposed guidance on:

(a) The types of threats that might be created in the gray zone;

(b) The factors that are relevant in evaluating the level of such threats;

(c) The examples of actions that might eliminate threats created by circumstances of uncertainty; and

(d) The examples of actions that might be safeguards to address such threats sufficiently clear and appropriate?

We generally agree with the conceptual framework approach and guidance as presented in proposed sections 380.17 A1 – A5 and 280.17 A1 – A5.

However, we have concerns around the example related to establishing the identity of the ultimate beneficiaries in paragraphs 380.17 A4 and 280.17 A4. We think a PA's ability to document and determine the ultimate beneficiary (or beneficiaries) of any tax planning strategy may impose an undue hardship on the PA and could force the client to incur unnecessary costs to accurately achieve this stated objective. This is especially true when a PA is engaged by a client or hired by an employing organization, not by the beneficiaries of a tax planning strategy. Many tax planning strategies have a ripple effect related to the tax benefits obtained. Beyond the client and the employing organization, the PA may have no knowledge of any benefit to those beneficiaries beyond the client or employing organization, nor would the PA have access to the information necessary to accurately determine the ultimate beneficiary (or beneficiaries) and the amount of such benefits.

We recommend that in both paragraphs referenced above, the sub-bullet which states that, "The identity of the ultimate beneficiaries" be changed to "The identity of the ***known and expected*** beneficiaries."

Also, in another example in these two paragraphs, the recommendation to advise the client or employing organization to the tax planning arrangement "based on an established practice that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities" has a similarly overly broad application and should be limited. The

insertion of the phrase "***of which the PA is currently aware of***", would achieve this desired outcome. See **exhibit 1** for proposed modified language.

We also recommend that the following bullet be deleted since the Code addresses it already; it could cause confusion because, currently, significant fee considerations are only addressed in the International Independence Standards, not in Section 330. If IESBA intended for the example in the conceptual framework significant fee considerations to be applicable when any service is being provided, it should have been included in Section 330.

> A self-interest threat might be created when a professional accountant accepts a significant fee for an engagement to develop a tax planning arrangement for which the interpretation of the relevant tax laws and regulations is uncertain or unclear.

Q9 - Do you agree with the proposals outlined in Section VII.I above which set out the various actions PAs should take in the case of disagreement with the client or with the PA's immediate superior or other responsible individual within the employing organization regarding a TP arrangement?

We generally agree with the approach IESBA has taken with disagreements on tax planning arrangements as presented in proposed paragraphs R380.19– 380.20 A1 and R280.19–280.20 A2. However, to make these provisions workable in the United States and avoid the issues outlined under *Taxpayer Protections*, we respectively request the following revisions, as PAs have very limited protections regarding communications with taxpayers in the United States; providing the proposed level of detail could expose the client to unintended consequences.

Revising R380.19 and R280.19 as follows, would allow for the application of professional judgment in determining the level of detail the PA provides:

> If the professional accountant disagrees that a tax planning arrangement that a client would like to pursue has a credible basis, the accountant shall ***consider***:
>
> (a) Inform***ing*** the client of the ~~basis of the~~ accountant's assessment;
>
> (b) Communicat***ing*** to the client the potential consequences of pursuing the arrangement ~~in the event of an adverse ruling~~; and
>
> (c) Advis***ing*** the client not to pursue the arrangement.

We recommend the phrase "shall take steps to disassociate from the engagement. In doing so, the accountant" be eliminated from the requirement in R380.20 and R280.20. What's important here are the steps that the PA should consider regarding advising the client or employer to take when a disagreement occurs. Also, we believe that 26 U.S. Code Section 7206, referenced above, which criminalizes aiding or assisting a taxpayer in the presentation or preparation of false or fraudulent returns or other tax documents, is sufficient protection of the public interest.

Q10 - Do you agree with the IESBA's proposals regarding documentation as outlined in Section VII.J above?

Although we are generally supportive of these proposals, the primary concern in this section involves the language relating to "identity of the ultimate beneficiaries" in proposed section 380.23 A1 and 280.21 A1. As noted above we think that this requirement is too broad in scope and imposes excessive costs on the PA which would have to be borne by the client and the employing organization. As noted in our recommendation above, revising this provision to state that only ***known and expected beneficiaries*** should be identified would minimize these expected costs burdens and resource constraints. In some TP service recommendations that impact financial planning, it may be difficult to identify all the parties who may ultimately benefit, beyond the initial parties involved in the transaction. We would recommend documenting the "known and expected beneficiaries" instead of "ultimate."

Q11 - Do you agree with the IESBA's proposals as detailed in Section VII.K above addressing TP?

We do not agree and are not supportive of paragraphs 380.22 A1 – A3.

The guidance in Section 330 "Fees and Other Types of Renumeration" of the IESBA code is applicable to all PAs in public practice when providing any services, so it is not necessary to include paragraphs 380.22 A2-A3.

We disagree with the guidance in proposed section 380.22 A1 and in the EM paragraphs 88-89. As noted above, it is not appropriate to hold a PA who refers a client to a third-party provider of tax planning products or arrangements to the same standard as if they were the creator of the tax planning product or arrangement, and therefore be subject to all the provisions of the ED. The referral also may be due to PA's lack of competency regarding the specific tax planning arrangement being referred. Under 380.22, a PA would almost never make a referral and would render the referral moot as this standard implies the PA has sufficient skill and knowledge to directly provide the tax planning arrangement. The threshold to justify a referral is too high.[4]

We also disagree with these same paragraphs in the circumstance where a client approaches the accountant for advice on a tax planning product or arrangement developed by a third party, for the reasons stated above.

Circular 230 as well as the SSTSs provides guidance to U.S. tax practitioners regarding the due diligence required when relying on the advice of others and these principles provide a good framework for the evaluation of third-party referrals. These principles provide that a practitioner may

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[4] We note that paragraph 87 acknowledges that only "Some participants were of the view 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." This suggests that this was not a view of the majority, yet the provision (and more) was included in the proposal.

only rely on the advice of another person if the advice was reasonable, and the reliance is in good faith considering all the facts and circumstances. In tax planning, PAs often rely on assumptions and representations. Although such reliance is often necessary, the PAs should take care to assess whether such assumptions and representations are reasonable. In deciding whether an assumption or representation is reasonable, the PA should consider its source (for example, the knowledge and expertise of the issuer), and consistency with other information known to the member.

Reliance is not reasonable when the PA knows or reasonably should know that the opinion of the other person should not be relied on; the PA knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or the PA knows or reasonably should know that the other person has a conflict of interest.

Q12 - Do you agree with the IESBA's proposals regarding a multi-jurisdiction tax benefit as described in Section VII.L?

No. Paragraphs 380.14 A1-A2 and 280.14 A1 – A2 are not needed.

Q13 - Do you agree with the proposed consequential and conforming amendments to Section 321 as described in Section VII.M?

We agree with the proposed consequential and conforming amendments to Section 321 Second Opinions.

Miscellaneous editorial suggestions

In addition to the above comments, some editorial suggestions from the AICPA are included in Exhibit 1.

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The AICPA is the world's largest member association representing the accounting profession, with more than 431,000 members in 130 countries and territories and a history of serving the public interest since 1887. Membership represents many areas of practice, including business and industry, public practice, government, education, and consulting.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Melanie Lauridsen, Director – AICPA Tax Practice & Ethics, Melanie.Lauridsen@aicpa-cima.com or Ellen Goria, Associate Director – AICPA Global Professional Ethics, Ellen.Goria@aicpa-cima.com.

Sincerely,

Brian S. Lynch
Chair, Professional Ethics Executive Committee

Jan Lewis, CPA
Chair, Tax Executive Committee

380.11 A3 Actions that a professional accountant might take to determine that there is a credible basis in relation to a particular tax planning arrangement include:

- Reviewing the relevant facts and circumstances, including the economic purpose and substance of the arrangement.
- Assessing the reasonableness of any assumptions.
- Reviewing the relevant tax legislation.
- Reviewing legislative proceedings that discuss the intent of the relevant tax legislation.
- Reviewing relevant literature such as court decisions, ~~law~~ ***professional*** or industry journals, and tax authority rulings or guidance.
- Considering whether the basis used for the proposed arrangement is an established practice that has not been challenged by the relevant tax authorities.
- Considering how likely the proposed arrangement would be accepted by the relevant tax authorities if all the relevant facts and circumstances were disclosed.
- Consulting with experts within or outside the professional accountant's firm regarding what a reasonable interpretation of the relevant tax laws and regulations might be.
- Consulting with the relevant tax authorities, where applicable.

380.17 A1 Providing a tax planning service to a client might create a self-interest, advocacy or intimidation threat. For example:

- A self-interest threat might be created when a professional accountant has a direct financial interest in a client and the accountant is involved in designing a tax planning arrangement that has an impact on the client's financial situation.
- A self-interest or advocacy threat might be created when a professional accountant actively promotes a particular tax position a client should adopt.
- A self-interest threat might be created when a professional accountant accepts a significant fee for an engagement to develop a tax planning arrangement for which the interpretation of the relevant tax laws and regulations is uncertain or unclear.
- Self-interest and advocacy threats might be created when a professional accountant advocates a client's position in a tax planning arrangement before a tax authority when there are indications that the arrangement might not have a credible basis in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant provides services to a client who exerts significant influence over the design of a particular tax arrangement, in a way that might influence the accountant's determination that there is a credible basis for the arrangement in laws and regulations.
- Self-interest and intimidation threats might be created when a professional accountant ***or the accountant's firm*** is threatened with dismissal from the engagement or the accountant's firm concerning the ***tax*** position a client is insisting on pursuing ~~regarding a tax planning arrangement.~~

380.17 A2 Factors that are relevant in evaluating the level of such threats include:

- The degree of transparency of the client, including, where applicable, the identity of

the ***known and expected*** ~~ultimate~~ beneficiaries.

- Whether the proposed tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.
- The nature and complexity of the underlying business transaction or circumstances.
- The complexity or clarity of the relevant tax laws and regulations.
- Whether the professional accountant knows, or has reason to believe, that the proposed tax planning arrangement would be contrary to the intent of the relevant tax legislation.
- The number of jurisdictions involved and the nature of their tax regimes.
- The extent of the professional accountant's knowledge, skills and experience in the relevant tax areas.
- The significance of the potential tax savings.
- The nature and amount of the fee for the tax planning service.
- The extent to which the ***professional accountant has knowledge that the*** proposed tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities.
- Whether there is pressure being exerted by the client or another party on the professional accountant.

380.17 A4 Examples of actions that might be safeguards to address such threats include:

- Establishing the identity of the ***known and expected*** ~~ultimate~~ beneficiaries.
- Advising the client to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.
- Advising the client to structure the tax planning arrangement based on an established practice ***of which the professional accountant is aware of*** that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities.
- Consulting with an expert within or outside the professional accountant's firm in the relevant tax areas.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances.

280.17 A2 Factors that are relevant in evaluating the level of such threats include:

- The degree of transparency regarding the underlying business transaction or circumstances, including, where applicable, the identity of the ***known and expected*** ~~ultimate~~ beneficiaries.
- Whether the proposed tax planning arrangement has a clear economic purpose and substance based on the underlying business transaction or circumstances.
- The nature and complexity of the underlying business transaction or circumstances.
- The complexity or clarity of the relevant tax laws and regulations.
- Whether the professional accountant knows, or has reason to believe, that the

proposed tax planning arrangement would be contrary to the intent of the relevant tax legislation.

- The number of jurisdictions involved and the nature of their tax regimes.
- The extent of the professional accountant's knowledge, skills and experience in the relevant tax areas.
- The significance of the potential tax savings.
- The nature and significance of any incentives offered to the professional accountant to develop the proposed arrangement.
- The extent to which ***the professional accountant has knowledge that*** the proposed tax planning arrangement reflects an established practice that has not been challenged by the relevant tax authorities.
- Whether there is pressure being exerted on the professional accountant.
- The degree of urgency in implementing the tax planning arrangement.
- The organizational culture of the employing organization.

280.17 A4 Examples of actions that might be safeguards to address such threats include:

- Establishing the identity of the ***known and expected*** ~~ultimate~~ beneficiaries.
- Advising the employing organization to structure the tax planning arrangement so that it better aligns with the underlying economic purpose and substance.
- Advising the employing organization to structure the tax planning arrangement based on an established practice ***of which the professional accountant is aware of*** that is currently not subject to challenge by the relevant tax authorities or is known to have been accepted by the relevant tax authorities.
- Engaging an internal or external expert who has the necessary knowledge, skills and experience to advise the employing organization on the proposed tax planning arrangement.
- Obtaining an opinion from an appropriately qualified professional (such as legal counsel or another professional accountant) regarding the interpretation of the relevant tax laws and regulations as applied to the particular circumstances.
- Having a tax expert, who is not otherwise involved in the tax planning activity, review any work performed or conclusions reached by the professional accountant with respect to the tax planning arrangement.
- Having the employing organization provide full transparency about the tax planning arrangement to the relevant tax authorities, including the goals, business and legal aspects, and ***known and expected*** ~~ultimate~~ beneficiaries of the tax planning arrangement.