



**INSTITUTE OF  
CERTIFIED PUBLIC ACCOUNTANTS  
OF UGANDA**

Our Ref: STA/001

**18 May 2023**

The International Ethics Standards Board for Accountants (IESBA)  
529 Fifth Avenue, 6th Floor  
New York, NY 10017  
United States of America.

Submitted via the website: [www.ethicsboard.org](http://www.ethicsboard.org)

Dear Sir/Madam,

**EXPOSURE DRAFT PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANNING  
AND RELATED SERVICES.**

The Institute of Certified Public Accountants of Uganda (ICPAU) appreciates the opportunity to respond to the **Exposure Draft Proposed Revisions to the Code Addressing Tax Planning and Related Services.**

In a bid to collect views from our members with respect to the subject line, ICPAU conducted a survey on some of the key issues addressed by the Exposure Draft. We herein attach our comments to the Exposure Draft (Appendix I).

We hope you will find our comments helpful.

For any inquiries relating to this comment letter, kindly contact us at [standards@icpau.co.ug](mailto:standards@icpau.co.ug).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Charles Lutimba', with a large circular flourish at the end.

CPA Charles Lutimba  
**MANAGER STANDARDS AND TECHNICAL SUPPORT**

*Appendix: Comments to the Exposure Draft Proposed Revisions to the Code Addressing Tax Planning and Related Services  
LN/...*

## APPENDIX I:

### ICPAU'S COMMENTS ON IESBA'S EXPOSURE DRAFT PROPOSED REVISIONS TO THE CODE ADDRESSING TAX PLANNING AND RELATED SERVICES

#### Specific Comments

##### *Proposed New Sections 380 and 280*

1. 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?

##### **Comment:**

The Institute of Certified Public Accountants of Uganda (ICPAU) applauds the IESBA's initiative on tax planning and related services.

ICPAU notes that the proposed insertion of new ethical requirements in relation to tax planning and related services into the IESBA Code will impact ICPAU as it will need to adopt it into ICPAU's Code. The proposed revisions to the IESBA Code raise questions about the scope of the new IESBA revisions and how they will impact the existing guidance in the ICPAU Code to ensure that they provide a consistent and coherent Code.

We also note that the proposed revisions are driven by continued public interest concerns about tax avoidance and the role played by professional tax advisers (who constitute a significant portion of the members of ICPAU). However, the difficulty is likely to be that the IESBA approach is more prescriptive than a principles-based approach. This could present some challenges, especially given that in our jurisdiction, the established tax laws/ rules do not provide great scope for tax planning or related services.

##### *Description of Tax Planning and Related Services*

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

##### **Comment:**

ICPAU does not entirely agree with IESBA's description of TP and examples of tax planning services listed in 380.5 A2.

We believe that the proposed definition of tax planning includes arrangements where affairs are structured in a "tax-efficient" way. In effect, this would mean that any arrangements that are of economic benefit to the client would be within the scope of this definition. This is likely to impose implementation challenges since

at any one moment in time, there is no such a time when tax laws will cover up all routes to curb tax planning. Taxpayers will always be proactive in addressing emerging issues, not waiting and watching but keenly keep changing their tax planning in response to legislation or re-evaluating their tax strategy based on any emerging recent events. *Judge Learned Hand in, Commissioner of Internal Revenue v. Newman, 159 F.2d 848 (2d Cir. 1947) notes that: "... Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible... nobody owes any public duty to pay more than the law demands. "*

With the foregoing, we believe the proposed wording of the definition of tax planning may suffocate business arrangements that are legal but designed in a manner intended to ensure tax efficiency. We are in agreement with providing examples of TP services though emphasis should have been put on those more aggressive tax planning schemes.

We further believe that additional application material is necessary to enable PAs to appreciate the attributes of tax planning and related services.

### ***Role of the PA in Acting in the Public Interest***

#### **3. 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?**

##### **Comment:**

ICPAU agrees with IESBA's proposals regarding the role of the PA in acting in the public interest in the context of TP. We affirm that PAs should understand that there is inherently a public interest element in all aspects of the work that they do and the actions they take and that they should always exercise that responsibility of acting in the public interest (issues of tax are 'public' by nature).

However, our worry lies in the fact that the world over unlike the case with assurance services, tax services are not entirely a preserve of PAs. Individuals such as lawyers and other tax consultants from different fields play a critical role in the provision of tax services. As such, the proposals place PAs majority of whom are likely to be Small and Medium Practices (SMPs) at an adverse competitive edge.

Also, failure to provide guidance on the term public interest leaves every jurisdiction to highlight what would possibly fall under public interest within their own precincts. This is likely to result in unintended consequences given the fact that tax services are cross-border under a wide spectrum of multinational players in differentiated regulatory environments. We believe that the IESBA should provide

additional application material as appropriate to enable PAs to appreciate the notion of “public interest”.

#### ***Basis for Recommending or Otherwise Advising on a Tax Planning Arrangement***

- 4. 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?**

##### **Comment:**

The notion of ‘Credible Basis’ seeks to require a PA to always have a basis on which they provide their tax advice. Since obligations under the Code calls for reciprocal compliance from the PAs, in the event of non-compliance with the assessment of a credible basis, one wonders how this would be assessed for purposes of proving that the PA failed to comply with it if a matter of professional misconduct is to be brought against the PA. More illustrative scenarios may be needed to draw more clarity on the principle of a credible basis.

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

##### **Comment:**

ICPAU believes that tax planning and related services may be challenged in cross-border situations because by its nature tax is jurisdictional.

#### ***Consideration of the Overall Tax Planning Recommendation or Advice***

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

##### **Comment:**

ICPAU agrees with the proposals regarding the stand-back test as described in the Exposure Draft. We strongly believe that this requirement will serve the intended purpose of emphasizing to PAs the need to exercise professional judgment in establishing a credible basis for the tax planning arrangement in circumstances of uncertainty.

However, we are worried about the requirement where it is intended to be applied for all tax services that PAs will seek to provide and apply in addition to the credible

basis assessment. We believe there might be some direct and/ or routine services to which the stand-back assessment would be more onerous and costly than value-adding. If this requirement is to be sustained, we propose that it is restricted to a certain group of entities say those with public interest.

***Describing the Gray Zone and Applying the Conceptual Framework to Navigate the Gray Zone***

7. 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?

**Comment:**

ICPAU agrees with the proposals, for it is reasonable to discuss any uncertainties with the client whenever they exist.

8. 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?

**Comment:**

No comment.

***Disagreement with Management***

9. 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 individuals within the employing organization regarding a TP arrangement?

**Comment:**

While ICPAU believes that PAs need to protect themselves from unrealistic employer and client expectations and that communicating relevant matters or concerns with the individual client, management, or those charged with governance, including as part of an escalation process is necessary, we further note as below:

We find this proposal to be contrary to para.38 and 380.4A3 among others, where there is disagreement as to whether a TP arrangement does not have a credible basis in laws and regulations or not. This is a matter that borders typical objections or disagreements in the field of tax services. While the proposals seek to carry the guidance akin to what already exists in the Non-Compliance with Laws and Regulations (NoCLAR), we find that this in some cases may be a matter for court adjudication.

### ***Documentation***

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

**Comment:**

ICPAU agrees with the IESBA’s proposals regarding documentation.

However, we note that the proposals only encourage but do not require, that PAs prepare documentation. We believe that the proposal should require PAs in exercising professionalism to document all the work performed for their clients/ employing organizations and/or other third-party evaluation, developing an appropriate level of documentation throughout the process to substantiate the judgments, decisions, and actions taken by the PA.

### ***Tax Planning Products or Arrangements Developed by a Third Party***

- 11. Do you agree with the IESBA’s proposals as detailed in Section VII.K above addressing TP products or arrangements developed by a third-party provider?**

**Comment:**

ICPAU agrees that third-party work that has been endorsed by a PA creates reputational risks. PAs play a critical role in ensuring that tax planning products or arrangements are in compliance with relevant tax laws and regulations. When referring clients to a third-party provider or providing advice on a tax planning product or arrangement developed by a third party, the PA should exercise professional judgment and comply with the fundamental ethical principles, including integrity, objectivity, professional competence, and due care. Furthermore, the PA ought to apply the conceptual framework to identify, evaluate, and address any threats to compliance with the fundamental principles that may arise from the referral or advice. This ensures that they take responsibility for the tax planning product or arrangement and its compliance with relevant tax laws and regulations, regardless of whether they created it or not.

We believe the proposals are appropriate and necessary to ensure that PAs maintain their ethical obligations when referring clients to a third-party provider or providing advice on a tax planning product or arrangement developed by a third party.

***Multi-jurisdictional Tax Benefit***

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

**Comment:**

No comment.