



Chartered
Institute of
Taxation
Excellence in Taxation



The Association of
Taxation Technicians

Professional Rules and Practice Guidelines 2011

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DEFINITIONS

In this publication:

'ATT' means The Association of Taxation Technicians.

'CIOT' means The Chartered Institute of Taxation.

'Client' includes, where the context requires, former client.

'Council' means the governing body of the CIOT or the ATT as appropriate.

'Firm' means a sole practitioner, a partnership, a limited liability partnership or a body corporate or unincorporated.

'HMRC' means Her Majesty's Revenue and Customs.

'Laws of the CIOT and ATT' means the rules and regulations of both bodies, comprising the Royal Charter and byelaws of the CIOT, the memorandum and articles of the ATT, CIOT Council General Regulations and Members' Regulations and ATT Consolidated Regulations together with Professional Rules and Practice Guidelines, Professional Conduct in Relation to Taxation, PII and CPD Regulations, Money Laundering Regulations 2007 Registration, Monitoring and Compliance Scheme, CCAB Anti-Money Laundering Guidance and the Taxation Disciplinary Scheme. (See www.tax.org.uk and www.att.org.uk).

'Member' means a member of the CIOT or the ATT.

'Member in practice' means a member who provides taxation services on a full time or part-time basis as a sole practitioner, a member of a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a director of, or an employee of, a company providing taxation services in which he or she has a financial interest which represents 5% or more of the equity capital.

'Principal' means a sole practitioner, partner, member of a limited liability partnership or director in a firm.

'Student' means a student registered as such for the time being with the CIOT or the ATT.

'Tax advice' means the preparation and submission of tax returns, advice on tax planning, representation and defence of taxpayers before authorities and courts and the provision of overall advice in the area of taxation and complementary accounting and legal services.

Words importing persons include bodies corporate.

Words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular.

References to an Act include any statutory modifications or re-enactment of it for the time being in force.

1. INTRODUCTION

- 1.1 In setting requirements for tax advisers working in practice, commerce or industry, CIOT and ATT aim to create an educational and ethical framework of the highest standard to produce tax advisers of the best quality for the general public.
- 1.2 The PRPG sets out the fundamental principles and guidance with which members must comply and helps members handle challenges encountered in their professional work.
- 1.3 The PRPG have been designed to protect both the public and members by aiming to preserve public confidence in the tax profession and assisting members to maintain appropriate professional standards. Those members who fail to comply with the PRPG or any other laws of the CIOT or the ATT may be subject to disciplinary action.
- 1.4 Chapter 2 contains the five fundamental principles that a member is required to observe and member's obligations. Chapter 3 onwards sets out the practice guidelines. Further guidelines are contained in the separately published Professional Conduct in Relation to Taxation, Engagement Letters for Tax Practitioners, Anti-Money Laundering Guidance and help sheets on Financial References and Appointing an Alternate. (See www.tax.org.uk and www.att.org.uk).
- 1.5 Unless otherwise stated these Professional Rules and Practice Guidelines apply to:
- members of the CIOT
 - members of the ATT
 - students of the CIOT
 - students of the ATT
 - firms authorised to use the designatory title Chartered Tax Advisers
 - international tax affiliates of the CIOT ('ADIT')

The PRPG apply equally to an employed member as they do to a member in practice whether or not his employer is a member of the CIOT or the ATT. They apply to every employed member irrespective of the nature of the activities or business of his employer.

- 1.6 A member owes a duty to his clients (including those clients for whom he acts on a reduced, or for no, fee) to act with reasonable care and skill. A member also owes a duty to his clients as above to act with honesty, integrity, impartiality and professionalism. These duties are also owed to the member's employers, employees, partners, co directors and generally.
- 1.7 A member owes a duty not to act in such a way as to bring CIOT/ATT into disrepute, or in any way which would harm the reputation or standing of CIOT/ATT. Further, a member may have duties and obligations to other regulators and professional bodies, for example, HMRC or the Audit Practices Board, and should have regard to these as relevant.
- 1.8 From time to time a member's duties may conflict. A member should safeguard the confidentiality of client information particularly where there could be a conflict of interest with another client. Resolving conflicts of interest may involve careful questions of judgement. Often it will be appropriate for the member to seek the advice and guidance of others. The purpose of the PRPG is to provide a framework within which to make those judgements.
- 1.9 No rules and guidance can cover every set of facts and circumstances that affect professional conduct and any illustrative examples given are not intended to be exhaustive. Moreover, the danger of attempting to codify guidance in this area is that anything that is not specifically

forbidden may come to be regarded as permissible. To adopt such an approach is to miss one of the fundamental principles of professional practice. It is important to observe the spirit, as much as the letter, of these Professional Rules and Practice Guidelines and use professional judgement when applying them in practice.

- 1.10 The PRPG are based on the law and practice in England and Wales. A member who, for example, is based overseas or who is acting for a client who is subject to the tax jurisdiction of another country could be subject to different legal obligations under the tax law and general law of that country. Subject to that caveat, a member should apply the principles set out in this guidance to professional activities with non UK aspects.
- 1.11 A member seeking further guidance on the application of the PRPG may contact the CIOT or the ATT at standards@tax.org.uk. Particular issues may require the member to seek specialist advice. Any decision is a matter for judgement by the member himself.
- 1.12 The Taxation Disciplinary Board operates independently of CIOT and ATT and is responsible for the management of the Taxation Disciplinary Scheme which handles all complaints made in regard to the professional conduct of members. For further details see www.tax-board.org.uk.

2. FUNDAMENTAL PRINCIPLES AND MEMBER'S OBLIGATIONS

2.1 Overview of the fundamental principles

A member shall comply with the following fundamental principles.

- **Integrity**
To be straightforward and honest in all professional and business relationships.
- **Objectivity**
To not allow bias, conflict of interest or undue influence of others to override professional or business judgements.
- **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 service based on current developments in practice, legislation, techniques and act diligently and in accordance with applicable technical and professional standards.
- **Confidentiality**
To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the member or third parties.
- **Professional behaviour**
To comply with relevant laws and regulations and avoid any action that discredits the profession.

Each of these fundamental principles is discussed in more detail below:

2.2 Integrity

- 2.2.1 A member must be honest in all his professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information.
- 2.2.2 A member must not engage in or be party to any illegal activity.
- 2.2.3 A member should not act if he considers that the fulfilment of his client's instructions involves a risk of assisting in a criminal activity. For example, under the anti-money laundering or anti-bribery laws.
- 2.2.4 Great care must be taken with money and assets that have to be maintained separately from the member's own funds. A member must ensure that clients' money is properly accounted for. For further details see paragraph 7.7.
- 2.2.5 A member must not obtain or seek professional work in any unprofessional manner. In this regard members are referred to Chapters 4 and 10 for guidance on the requirements on changes in a professional appointment and Chapter 14 on advertising.

2.3 **Objectivity**

2.3.1 A member must be independent and objective in all work undertaken. This applies both to the representation of clients and to the resolution of conflicting interests as between tax advisers, clients, HMRC and any other interested parties. If such independence and objectivity may be impaired through conflict of interest, the member must act in accordance with Chapter 6.

2.4 **Professional competence and due care**

2.4.1 A member must carry out his professional work with a proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which the member is not competent to perform, whether because of lack of experience or the necessary technical or other skills, unless appropriate advice or assistance is obtained to ensure that the work is properly completed.

2.5 **Confidentiality**

2.5.1 A member owes a duty of confidentiality to his client or employer. The duty to observe confidentiality applies without time limit to all information with which the member is entrusted by his clients or which is brought to his knowledge during or at any time after the carrying out of his assignment, or in the course of his professional practice in general. The same duty of confidentiality should be imposed on employees and subcontractors.

2.5.2 Information acquired in the course of a member's work must not be divulged in any way outside his organisation without the specific consent of the client or employer unless there is a legal or professional right or duty to disclose.

2.5.3 Confidential information obtained in the course of the work must not be used for personal advantage by a member or anyone associated with him. Further, a member should be aware that doing so may constitute a criminal offence.

2.6 **Professional behaviour**

2.6.1 A member must:

- take due care in his conduct
- take due care in all his professional dealings
- uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT.

2.6.2 A member must not:

- perform his professional work, or conduct his practice or business relationships, or perform the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or the ATT or to the members or any part of the membership or to the tax profession
- breach the Laws of the CIOT or the ATT

2.6.3 A member must be courteous and considerate towards all with whom he comes into contact in the course of his professional work.

2.7 **Professional Indemnity Insurance (PII) and Personal Responsibility**

2.7.1 A member must protect his clients, his practice and himself by having adequate PII cover (see [here](#) for CIOT and [here](#) for ATT) as he has a duty of care to his clients when carrying out his

professional work (see paragraph 5.1.1). A member is responsible for his own work and that of his employees and subcontractors. A member may be liable to pay damages for loss caused by his own professional negligence and that of his employees and subcontractors.

2.8 Provision of information to the CIOT and the ATT

2.8.1 A member must provide such information as is reasonably requested by the CIOT and ATT as a member without unreasonable delay. A member must reply to correspondence from the CIOT and the ATT which requires a response and again must do so without an unreasonable delay.

2.9 Compliance with the disciplinary process and orders from the Taxation Disciplinary Board Limited (TDB)

2.9.1 A member is subject to the disciplinary processes of the TDB in respect of a complaint against him. A member must comply with any order from the TDB including orders in respect of costs and fines.

2.9.2 A member must respond to correspondence from the TDB without delay.

2.9.3 Failure to respond to correspondence or to comply with an order from the TDB will in itself be a disciplinary matter.

2.10 Obligation to notify the CIOT and the ATT

2.10.1 A member must promptly inform the CIOT or the ATT if he:

- is convicted of a criminal offence (other than a 'summary only' road traffic offence) or is charged with any financial crime such as fraud or money- laundering;
- is notified of disciplinary and/or regulatory action begun against him by another professional body to which the member belongs or by a regulator;
- is notified of disciplinary action for misconduct/gross misconduct or is dismissed for misconduct/gross misconduct by his employer;
- has a bankruptcy order made against him (see also paragraphs 3.8 and 3.9);
- enters into a voluntary arrangement with his creditors (see also paragraphs 3.8 and 3.9);
- is disqualified as a director or trustee, or enters into a disqualification undertaking.

2.11 Obligation to comply with Anti Money Laundering legislation

This is set out in detail [here](#) for CIOT and [here](#) for ATT.

2.12 Obligation to comply with Continuing Professional Development requirements

This is set out in detail [here](#) for CIOT and [here](#) for ATT.

3. PRACTICE GOVERNANCE

3.1 Business structure

3.1.1 A member is recommended to have a memorandum of understanding or other governing document setting out the basis on which his business will be conducted and any arrangements between the principals.

3.2 Names and letterheads of practices

3.2.1 In this paragraph "letterheads" means material used by the member for external communications including practice notepaper, advertisements, electronic mail, facsimile and internet material.

3.2.2 A firm's name should convey a professional image consistent with the standards required of members of the CIOT and ATT.

3.2.3 A firm's name must comply with partnership and company law as appropriate.

3.2.4 A firm's name should not be misleading. Generally it will not be misleading where a member practises under a name based on the names of past or present members of the firm or of a firm with which it has merged or to which it has succeeded. Examples of potentially misleading names would include:

- a firm with a limited number of offices describing itself as international simply because one of them is overseas;
- using a name that might be confused with the name of another firm should be avoided even if the member could reasonably justify a claim to the name.

3.2.5 Letterheads, documents and other stationery, including nameplates, used by the practice should meet the following criteria:

- they should be of a suitable professional standard
- they must comply with legal requirements as to names of partners, principals and other participants
- they must comply with the practising designations guidelines (see paragraph 3.4 below)
- they should not advertise any specialist service unless the firm has the relevant expertise

3.3 Practising designations

3.3.1 A member may use his designatory letters at all times and personally describe himself as a member of the CIOT or the ATT as appropriate. However, the member must not allow business associates to use words or descriptions which indicate that they have qualifications to which they themselves are not directly entitled.

3.3.2 A member of the CIOT may describe himself as a Chartered Tax Adviser ('CTA'); as can a firm where all principals are CTAs. Where all principals in a firm are not CTAs, please refer to member regulation 44.

3.3.3 A member of the ATT may describe himself as a Taxation Technician or where applicable, Taxation Technician (Fellow).

3.4 Coats of Arms, Logos & Badges

- 3.4.1 The coats of arms of the CIOT and the ATT are their respective exclusive properties and must not be reproduced or used by anyone other than the CIOT or the ATT.
- 3.4.2 The logos of the CIOT and the ATT are trademarked and their respective exclusive properties and must not be reproduced or used without permission of the CIOT or the ATT.
- 3.4.3 The rules for the use of the CIOT badge are set out here.
- 3.4.4 Copies of the coats of arms, logos and badges can be seen at Appendix 3.

3.5 Temporary incapacity of a sole practitioner

- 3.5.1 A member who is a sole practitioner is strongly recommended to make suitable arrangements to ensure that his firm can continue to be carried on in the event of his illness or temporary incapacity. Without contingency arrangements serious difficulties may arise, prejudicing the interests of clients.
- 3.5.2 A member should consider whether his firm has sufficient resources to meet his obligations in his absence or whether those obligations should be discharged by another firm under a prior arrangement or by a practitioner acting on a locum basis. A member should be satisfied that a person or firm to whom the work is to be assigned has sufficient experience and expertise to act and is adequately insured for the work to be undertaken. Guidance notes and a draft agreement are available from the Membership Departments of the CIOT and the ATT.

3.6 Death or permanent incapacity of a sole practitioner

- 3.6.1 Similar considerations to those in paragraph 3.5 apply to the death or permanent incapacity of a sole practitioner, although the difficulties are potentially far greater for both the firm and its clients.
- 3.6.2 A member should ensure there are suitable arrangements in place for the future management of his firm.
- 3.6.3 Arrangements should be set out in detail in a written agreement to avoid any doubt or confusion which may otherwise arise. The agreement should provide for the duration and extent of the manager's duties and responsibilities and the legal relationship with the sole practitioner or his personal representatives. Members are recommended to consult a solicitor with appropriate experience in drawing up such an agreement. Members should also consider granting a power of attorney where appropriate.
- 3.6.4 A member who acts as a manager of a firm is under the same standard of duty to the sole practitioner or his personal representatives as he is to any client. Such a member must not use his position to seek any personal gain other than the agreed remuneration.

3.7 Business continuity plan

- 3.7.1 A member should have in place a business continuity plan which would ensure the continuity of the business in the event of a serious incident such as fire, flood or major IT systems failure.

3.8 Bankruptcy and Individual Voluntary Arrangements (IVAs) – ATT

- 3.8.1 A member who enters into an IVA with his creditors or becomes subject to a bankruptcy order must notify the ATT within 3 months of the date of the IVA or bankruptcy order.
- 3.8.2 If a member fails to notify the ATT his membership of the ATT shall cease automatically upon the expiry of the 3 month period referred to in 3.8.1.

- 3.8.3 Where a member notifies the ATT within the 3 month period the ATT will consider whether exclusion is appropriate or whether membership should continue.
- 3.8.4 A member who notifies the ATT within the 3 month period will be advised of the ATT's decision within 30 days of his notifying the ATT. Where, exceptionally, this is not possible the member will be notified within thirty days that his case is being considered.
- 3.8.5 A member whose membership is terminated following consideration by the ATT has the right of appeal to the Taxation Disciplinary Board Limited. Such an appeal must be made within 31 days of the date of the notification of exclusion.
- 3.9 **Bankruptcy and Individual Voluntary Arrangements (IVAs) – CIOT**
- 3.9.1 A member who enters into an IVA with his creditors or becomes subject to a bankruptcy order must notify the CIOT within 30 days of the date of the IVA or bankruptcy order.
- 3.9.2 If a member fails to notify the CIOT his membership of the CIOT shall cease automatically upon the expiry of the 30 day period referred to in 3.9.1.
- 3.9.3 Where a member notifies the CIOT within the 30 day period the CIOT will consider whether exclusion is appropriate or whether membership should continue.
- 3.9.4 A member who notifies within the 30 day period will be advised of the CIOT's decision within 2 months of his notifying the CIOT.
- 3.10 **Dissolution or merger of practice**
- 3.10.1 A merger of two or more practices or the dissolution of a practice should normally be notified to all clients to give them the opportunity of deciding whether they wish to continue to instruct the newly constituted practice.
- 3.10.2 Care should be taken to ensure that appropriate professional indemnity insurance cover remains in place in accordance with the guidance notes and regulations.
- 3.10.3 Members should also consider taking specialist legal advice in respect of matters such as the assignment of engagements and other contractual matters.
- 3.11 **Cessation of practice**
- 3.11.1 A member's liability in respect of services provided whilst acting for a client continues after the member has ceased to practice and continuing professional indemnity cover must be arranged. A retiring partner is also advised to consider obtaining an indemnity from the continuing partners in respect of claims made against him after his retirement.
- 3.12 **Honorary and pro bono work**
- 3.12.1 A member's duty of care covers honorary work, pro bono work and work for family, friends and charitable organisations. Honorary work means a formal honorary post for charities, amateur organisations and other 'not for profit' organisations. Pro bono work means work for which absolutely no payment is made either in cash or kind.
- 3.12.2 A member should consider whether, in carrying out work of this nature, he comes within the definition of a 'member in practice' with the related obligations, and in particular the need for professional indemnity insurance (PII). A member should refer to the guidance notes and regulations to see when PII is required, [here](#) for CIOT and [here](#) for ATT.

3.13 **Regulated investment business activities**

3.13.1 This section concerns those activities defined in the Financial Services and Markets Act 2000 (the Act) as regulated activities (including exempt regulated activities). Regulated activities include investment and pension advice and advice on general insurance contracts.

3.13.2 A member should be careful not to breach the provisions of the Act. Membership of the CIOT or the ATT alone does not give any authority to provide any of the services regulated under the Act. A member who wishes to undertake activities covered by the Act must be with a firm which is either authorised by the Financial Services Authority (FSA) or a member (or controlled or managed by a member) of a Designated Professional Body ('DPB'). Full details of the requirements for authorisation with the FSA are available from the FSA. Details of DPB membership requirements and the rules for members wishing to provide those investment services permitted under the Act are available from the DPBs.

The FSA recognise the following Designated Professional Bodies:

- The Law Society (England and Wales)
 - The Law Society of Scotland
 - The Law Society of Northern Ireland
 - The Institute of Chartered Accountants in England and Wales (ICAEW)
 - The Institute of Chartered Accountants of Scotland (ICAS)
 - The Institute of Chartered Accountants in Ireland (ICAI)
 - The Association of Chartered Certified Accountants (ACCA)
 - The Institute and Faculty of Actuaries
 - The Council for Licensed Conveyancers (CLC); and
 - The Royal Institution of Chartered Surveyors (RICS)
- 3.13.3 A member who is with a firm which is neither authorised by the FSA nor a member of a DPB should not carry out regulated activities (nor exempt regulated activities) as to do so would be committing an offence.
- 3.13.4 A member who is with a firm which is a member of a DPB may provide a restricted range of investment services. These are described as 'exempt regulated activities' and further guidance should be available from the relevant DPB. It should also be noted that any exempt regulated activities carried on by the firm must be incidental to the provision by the firm of professional services. Furthermore the firm must not receive from anybody other than the client a pecuniary award or other advantage arising out of the carrying on of regulated activity (including exempt regulated activity) for which the firm does not account to the client.
- 3.13.5 A member who is with a firm which is authorised by the FSA will need to be approved by the FSA in relation to any 'controlled function' (this includes acting as an investment adviser) that he performs on the firm's behalf. Applications for approval as an approved person will be made on the member's behalf by the firm. An approved person may carry out those regulated (and exempt regulated) activities for which approval has been given.
- 3.14 What constitutes regulated activities (and exempt regulated activities) is a complex area and if a member is in doubt about whether he is carrying out such activities he should seek advice from

the FSA or a DPB. The following example may be helpful in drawing a distinction in broad terms between the scope of the advice which can be given by different advisers:

- A member who is with a firm which is neither authorised by the FSA nor a member of a DPB may advise in general terms on the benefits of setting up pension arrangements but must not refer to any specific pension product provider.
- Provided that the advice concerned is incidental to the provision by the firm of professional services regulated by a DPB, a member who is with a firm which is registered with a DPB may also advise on the benefits of setting up a pension and can comment on advice given by an authorised financial adviser regarding pensions and the selection of pension products. However he cannot make alternative product recommendations.
- A member who is with a firm which is authorised by the FSA may, provided he is registered with the FSA as an Approved Person in this area, advise fully on pensions and can make specific product recommendations. Additional specific authorisation from the FSA is required before he can advise on pension transfers or opt-outs.

4. NEW CLIENTS

4.1 Obtaining clients

4.1.1 A client has the right to choose or change professional advisers, or to take a second opinion, or to retain separate advisers on different matters.

4.1.2 A member should not obtain or seek professional work for himself, another member or anyone else in a manner which is unprofessional.

4.1.3 A member may pay a fee, commission or other reward to a third party in return for the introduction of a new client (or further work for an existing client) provided that:

- the member has no reason to believe, and does not believe, that undue pressure or influence was exerted on the prospective client by the third party;
- before accepting instructions, the member has disclosed to the prospective client, in writing, both the amount and nature of the fee, commission or other reward and the identity of the third party recipient; and
- in the case of a payment to an employee care should be taken to see that the employee has not breached the guidelines.

4.1.4 The practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work ('cold calling') is not of itself unprofessional conduct. However, repeated cold calling may become offensive and lead to a complaint.

4.1.5 Direct mailing and the sending of unsolicited electronic material, brochures, circulars and other literature about the member or his firm to non-clients would not, of themselves, amount to unprofessional conduct, unless they breach one of the other guidelines.

4.1.6 Subject to the above, a member may advertise his services to the public. Chapter 14 deals with advertising.

4.2 Client acceptance

4.2.1 A member who is invited to undertake professional work by a prospective client is under no obligation to act. Indeed, he should decline to do so if he believes he would be unable to meet the duty of care that he would have to that client (see paragraph 5.1).

4.2.2 In acting for a new client, a member should:

- Comply with the identification requirements set out in the anti money laundering guidance which can be found on the [CIOT](#) and [ATT](#) websites.
- Consider whether the potential client will be an acceptable client in terms of the risks which will arise for the practice from acting for that client and whether the member has the capability to manage those risks. In assessing the risks relating to the client the member should consider the potential client's personal circumstances, business situation, financial standing, source of funds, integrity and attitude to disclosure in regard to compliance with taxation law.
- Consider whether the member and firm will have the skills and competence to service the client's requirements during the course of the engagement.

- Consider whether there is any conflict of interest in accepting the client and if so whether and how it might be managed. (See chapter 6).
 - Only accept instructions in exceptional circumstances from a client who refuses to give the existing tax adviser permission to disclose appropriate information about his affairs.
 - Note that a member must do nothing to assist a client to commit any criminal offence, or (save to the extent permitted by law) to shield the client from the consequences of having defrauded the Crown of tax or of having been negligent in regard to direct or indirect tax matters. A member who acquires information which leads him to conclude that a prospective client may need to make full disclosure of his tax affairs to the appropriate authorities should only accept this appointment on the basis that full disclosure will be made. Members are encouraged to keep a record of the basis for client acceptance.
 - Consider whether the Distance Selling Regulations apply if the member has not met the client in person and consider whether the Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008 apply if the contract is not made in the member's office. If these regulations do apply, the appropriate notices should be given to the clients to ensure enforceability of any contract terms, including fees. Members should be aware that criminal sanctions can be imposed upon them for failing to comply with the regulations and therefore members should make themselves aware of the regulations and the circumstances in which they apply.
- 4.2.3 Having accepted the client, before starting work on any assignment for a client, the member should understand and agree with the client the scope of the assignment, having first assessed the client service risks, and be satisfied that the relevant skills and experience to perform the work are available or accessible.
- 4.3 **Professional clearance**
- 4.3.1 Before accepting an appointment in place of another tax adviser, the member should request the prospective client's permission to communicate with the existing adviser. If this permission is refused, the member should refer to paragraph 4.3.5. Only in exceptional circumstances where the member has good reason should he undertake professional work in place of another tax adviser without seeking professional clearance.
- 4.3.2 The objective of the communication referred to in paragraph 4.3.1 is to ensure that:
- The incoming adviser is fully aware of all factors that may be relevant to acceptance of the appointment and the effective handling of the client's tax affairs.
 - The incoming adviser is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to HMRC.
 - The client's affairs are properly dealt with, on a timely basis, and that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed in the transitional period.
- 4.3.3 When permission has been received from the prospective client for such communication, the member should ask the previous adviser, in writing, for all information which, in the opinion of that previous adviser, is necessary to enable the member to decide whether or not to accept the appointment.
- 4.3.4 A member who receives a communication of the type referred to in paragraph 4.3.3 should ask the client for permission to discuss his affairs freely with the prospective new adviser. If the

client's permission is refused, see paragraph 4.3.5 below. When the client's permission has been received, he should disclose to the prospective new adviser, either orally or in writing, all information which, in his opinion and based on his knowledge of the client and his affairs, may be needed to enable that adviser to decide whether or not to accept the appointment.

- 4.3.5 If the client's permission is not received for the circumstances in 4.3.1 or 4.3.4, the prospective adviser should normally not accept the appointment, unless satisfied that circumstances exist that make it appropriate to override the normal rule. It would require exceptional circumstances to justify acceptance of the appointment and such cases are likely to be rare. It would be advisable to document at that time the facts, circumstances and justification.
- 4.3.6 When requesting information from a predecessor requests should be reasonable and relevant. Regard should be had to the likely cost to the client of supplying the information.

4.4 **Engagement letter**

- 4.4.1 On accepting instructions a member is strongly recommended to issue an engagement letter to the client. The engagement letter can be used to manage client expectations and it, or accompanying correspondence, should also set out clearly the basis upon which fees are charged, the scope and nature of the assignment and invite the client to agree to this in writing. It provides significant protection to the practitioner and is likely to be an important document in any dispute. For more information, see the guidance Engagement Letters for Tax Practitioners which can be found on the [CIOT](#) and [ATT](#) websites.
- 4.4.2 Members are strongly recommended to issue an engagement letter at the outset of an engagement and review it annually and also when the scope of the engagement changes significantly.

4.5 **Obligations in respect of advice given by a predecessor**

- 4.5.1 Unless the client requires otherwise, a member has no duty to investigate advice given by a predecessor, but if he becomes aware that it is incorrect, he has a duty to tell the client.

5. CLIENT SERVICE

5.1 Duty of care

- 5.1.1 When acting for a client a member places his professional expertise at the disposal of that client and, in so doing, the member assumes a duty of care towards the client which is recognised in law. A member must, therefore, exercise reasonable skill and care when acting for a client. Failure to do so may result in the member being liable for a claim for professional negligence. The member must understand the duties and responsibilities in respect of the client and the risks associated with a failure adequately to discharge those duties and responsibilities. The member must manage the risks associated with advising a particular client. In order to do so the member must assess his ability to discharge his duty of care to that client in respect of the matters on which advice is sought or the work to be undertaken. See also paragraph 7.2.

5.2 Professional competence

- 5.2.1 A member should advise a client only when he has an adequate understanding of that client's personal and business circumstances and tax position. In addition, the member should fully understand the issues under consideration and the objectives of the advice.
- 5.2.2 A member should advise only within the scope of his own professional competence and within the scope of the terms of the engagement (see paragraph 4.4).

5.3 Supervision and training

- 5.3.1 If a member delegates work, the member remains primarily responsible for the work so should exercise sufficient supervision to confirm that the work performed is adequate and that it is undertaken by staff who have been adequately trained to carry out the work involved.
- 5.3.2 The principles of this chapter also apply to sub-contractors and consultants engaged by a member.

5.4 Use of subcontractors

- 5.4.1 Due to the need to preserve client confidentiality, a member must obtain a client's consent before subcontracting work on that client's affairs to another firm. A member could consider including a clause authorising referral to a subcontractor within his engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral

5.5 Consultation and second opinions

- 5.5.1 A member is encouraged to consult with fellow professionals when advising clients, where appropriate, to ensure that relevant skill and judgement is applied. It is a matter of judgement for the member whether consultation is necessary in any particular situation. If a member relies on consultation, evidence of it should be retained on the client file. Client confidentiality rules, especially those concerning consent, must be taken into account. See paragraph 2.5 for further details.
- 5.5.2 A member who is giving a significant opinion to a client should consider obtaining a second opinion. This may be obtained by requesting formally an independent view from a colleague, or by instructing another member or tax counsel. In addition, in any case where the risks for the member (assessed in terms of professional reputation or financial exposure of his practice) of

giving wrong advice are high, the member should consider taking a second opinion. It is a matter of judgement for the member whether a second opinion should be obtained in any situation. If a member relies on a second opinion, evidence of it should be retained on the client file

A significant opinion is one in respect of which either:

- the amount of tax at stake, or potentially at stake, in relation to the matters advised on is significant for the client and there is a real risk that a contrary view to that taken by the member on those matters could be reached; or
- the matters advised on are, for some other reason, of sufficient importance to the client to merit obtaining a second opinion.

5.6 **Form and content of advice**

5.6.1 On deciding on the form of advice provided to a taxpayer, a member should exercise professional judgement and should consider such factors as the following:

- the importance of the transaction and amounts involved
- the specific or general nature of the taxpayer's enquiry
- the time available for development and submission of the advice
- the technical complications presented
- the existence of authorities and precedents
- the tax sophistication of the taxpayer
- the need to seek other professional advice.

5.6.2 Unless set out in a separate document (such as terms and conditions or an engagement letter) an advice communication should normally set out:

- the purpose for which the advice is required and the client's objectives
- the background facts and assumptions on which the advice is based and whether or not the facts have been verified by the adviser
- the alternatives open to the client
- the risks associated with the advice
- relevant caveats and exclusions.

5.6.3 When formulating advice a member should refer to the relevant taxation legislation and the practice of HMRC. Due regard should also be given to case law.

5.6.4 A member should make it clear that the advice given is current and may be affected by subsequent changes in the law. To reduce the risk of misunderstanding, a member may wish to make it clear in the engagement letter that no responsibility is accepted to inform the client automatically that advice previously given, by either the member or a predecessor, has been affected by a change in the law but that he is willing to receive instructions to reconsider such advice.

5.6.5 Advice should normally be given in writing. If a member gives advice in meetings or by telephone, the member should consider carefully whether to confirm in writing. It would be prudent for a member either to write to the client confirming oral advice or to make a note on file of advice

given and he should consider sending a copy of that note to the client for his information and comment. This will allow the client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given.

5.7 Keeping proper professional records

5.7.1 A member should make a proper professional record of all his dealings in connection with his client in order that:

- the member and his colleagues and successors can access a complete record of the client history to inform future client service
- the member is able to resolve any misunderstandings or complaints, including in relation to fees
- the member is able to defend any allegation of negligence.

5.7.2 The records should include:

- all written communications relating to the client's affairs, including letters, faxes and e-mails
- file notes of meetings and telephone conversations, which should be contemporaneous and dated
- records of how the advice given is reached, including details of technical research, consultations and second opinions (see paragraph 5.5)
- all necessary permanent information and copies of such working documents as are likely to be required.

5.7.3 Records should be organised so as to be accessible. Electronic records should be backed up.

5.7.4 The retention of working papers is an important issue. Members should put in place a policy which takes into account both statutory requirements and time limits for legal action against a member. Further guidance is given in Chapter 13: Documents and Records.

5.8 Time limits, due dates and interest

5.8.1 A member should maintain a diary system to ensure that warning is given of all relevant time limits including appeals, claims and elections, and that appropriate action is taken. A member should also be in a position to advise clients of the date by which action must be taken, in particular the due date of payment of tax and the rules governing interest and penalties.

5.8.2 Where a member undertakes tax compliance work for a client this will normally include responsibility for keeping the client informed of the amount of tax due for payment, the due date for payment and drawing the client's attention to the fact that interest accrues from that date.

5.8.3 If a member believes that he has no responsibility for monitoring the relevant dates for a compliance client, a specific exclusion to that effect should be incorporated in the letter of engagement or otherwise communicated to the client in writing.

5.8.4 A member who has no compliance responsibilities for a particular client would not normally be expected to monitor relevant dates and tax payments, unless specifically requested to do so. In cases of doubt, a member is advised to discuss the issue with the client and incorporate the agreed position into the letter of engagement or otherwise confirm in writing.

5.9 **Representation at Tribunals**

5.9.1 Members are referred to Chapter 15 for guidance on this.

6. CONFLICTS OF INTEREST

6.1 Professional independence

6.1.1 A member must, at all times, maintain his professional independence.

6.1.2 A member must not only remain professionally independent, but particular care must be taken to preserve perceived, as well as actual, independence. A conflict of interest may impair a member's professional independence.

6.1.3 If a member becomes aware of any factor which affects or might affect his independence in respect of a matter (or which might be perceived to do so) the member should immediately take action to address that factor in order to preserve his professional independence. If no appropriate action can be taken to remove the threat to the member's professional independence, the member should refuse to act on the matters in question or, if already acting when becoming aware of the adverse factor, should cease to act.

6.2 Managing conflicts

6.2.1 There are many circumstances in which a member in practice may be presented with an actual or potential conflict of interest. It is not possible to envisage every possible situation but the more common occurrences are set out below in paragraphs 6.3 to 6.4, together with general guidance notes for each circumstance.

6.2.2 Points to consider are:

- Conflicts of interest are not always easy to recognise or anticipate. However, a member should always be aware of the possibility that a conflict may arise and of the fact that this may impair the ability to give independent advice to a client.
- A member must seek not only to avoid conflicts of interest but also to avoid situations where there may be a perceived conflict of interest. The member must consider his position and his actions in the light of his own views about whether a conflict exists and how the situation will be perceived by the client and third parties.
- A member should acknowledge the existence of a conflict or potential conflict as soon as he becomes aware of it and should immediately seek a solution to resolve it.
- If the conflict or potential conflict cannot be resolved the member must consider whether it is appropriate to continue to act. Often, the existence of a conflict of interest will mean that it is inappropriate to continue to act for one or more of the clients concerned (as to which, see paragraph 6.3 below). Should the member consider it appropriate to continue to act, he must inform the client of the existence of the conflict. Where appropriate, the member should advise the client to obtain independent advice on whether it is in the client's interests for the member to continue to act.
- How the conflict is resolved should be confirmed in writing to the client, including any agreement where the member continues to act. These arrangements should be regularly reviewed by the member.

6.3 **Acting for more than one party to a transaction**

6.3.1 This could include acting for both parties in a divorce settlement or acting for both employer and employee. In most circumstances, a member who is asked to act for more than one party to a transaction should refuse to do so. However, this may present difficulties if both the parties are existing clients. The member has an in-built conflict if he shows preference in providing services to one client and not the other, and an added conflict if he does not act in the best interests of both.

6.3.2 The member has three choices:

- **To advise both clients of the conflict** and to give both the opportunity to consider whether or not they wish the member to act or whether they wish to seek alternative representation.

If both clients agree, the member may act provided that there is adequate disclosure of all relevant facts to both parties, so that they may formulate proper business judgements and provided that no preference is shown in advising one against the other and that the member is satisfied that the circumstances of the conflict can be managed. In practice this may be difficult but there may be sufficient 'mutuality of interest' between the parties to allow this course to be followed. In this situation, where applicable, both clients should be advised to consider seeking independent advice on whether it is appropriate for the member to act for both parties.

With the agreement of the clients the member may also resolve the potential conflict by appointing a separate team to act for each client, who maintain ethical "walls" to prevent confidential information relating to one client becoming known to the team acting for the other.

- **To act for only one client.** Generally this will be the client who first sought advice. If a member has acquired relevant knowledge concerning a client who has instructed him in relation to a transaction and is then instructed by the other party to the transaction, the member should advise both clients of the potential conflict.

A member who decides to act only for one client should advise the other client of this decision in order to avoid any suggestion of acting improperly or misusing any confidential information concerning that client. Members are also reminded that knowledge acquired from previous clients should be kept confidential.

- **To act for neither party.** This may be the best course of action because of the potential conflict of interest between the parties and the difficult position in which this may put the member. However, to refuse to act may not serve the interests of everyone concerned and, in these instances, may not be the best course. It is, however, the recommended course if the member is in any doubt.

6.4 **Financial involvement with clients**

6.4.1 Having a financial involvement with a client may be perceived as impairing a members ability to act objectively. Even in situations where there are no regulatory restrictions on such an involvement as exist (for example in respect of the firm's audit clients) members should exercise care before entering into any kind of financial arrangement with a client. This includes, for example lending money or investing in the business of a client.

6.4.2 Where it is necessary to agree an instalment arrangements with a client for the payment of outstanding fees, members should be aware of the potential obligations in 8.6.7.

7. OTHER CLIENT HANDLING ISSUES

7.1 Dealings with HMRC

The relationship between the member and HMRC when acting for a client, including the member's particular duties in this regard, is dealt with in Professional Conduct in Relation to Taxation which can be found on the [CIOT](#) and [ATT](#) websites.

7.2 Managing liability to other third parties

7.2.1 Where a member provides advice or reports or other documents to clients with whom he has an engagement letter, he has the protection of a defined scope and exclusions. Where however he gives advice, reports or other documents to a third party, he may be exposed to claims against him from the third party without the benefit of the reasonable contractual protections applying to the relationship with his client.

7.2.2 When dealing with third parties on a client's behalf a member must be careful not to breach client confidentiality or inadvertently assume a duty of care towards the third party. The following are ways in which the member may manage these risks:

- The member should consider requiring, as a term of the engagement, that the client must seek his consent before advice, reports or other documents which he has produced, or with which his or his firm's name is associated, are released by the client to third parties.
- Before consenting to the release of documents the member may request that the third party and its agents or advisers undertake that the member will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.
- If no such undertaking is obtained the member should communicate to the third party the terms upon which the documents are released including caveats, e.g. limitations on scope or a warning that the advice is generic and may not apply in all circumstances, and confirmation that no responsibility is accepted, if appropriate. Where a number of third parties are involved, each with different circumstances and reasons for their interest, particular care and attention should be paid to the caveats.
- Unless required to do so by law or where it is considered reasonably necessary for the administration of justice (such as to enable the member to defend himself in disciplinary proceedings), the member must not release to a third party information provided by the client which can be said to be confidential without first obtaining the client's consent.
- The member should consider whether it is possible to decline to provide the advice or reports or other documents if it is commercially practical, for example, he may be able to decline to provide a reference.
- In some cases it may be possible to obtain an indemnity from the client in respect of any possible claim against the member by the third party. This is most appropriate where the client has a strong interest in the advice, reports or other documents being provided to the third party; for example, where the client asks the member to give access to his client files to a potential buyer of one of the client's subsidiaries.
- In some cases it may be appropriate for the member to accept that he owes a duty of care to the third party and manage that with a separate engagement letter. This can be done either

by binding the third party into the engagement letter with the primary client or entering into a shorter agreement tailored for the situation. Possible situations include where

- the member's client is a company but the shareholders wish to rely personally on the member's advice to the company
- a client's wife wishes to use the advice given to her husband for a similar transaction.

7.2.3 If a member becomes aware that any of the advice, reports or other documents which he has produced or with which he is associated and which are being used or relied upon by the third party are defective, he should insist that the client withdraws them from the third party. Failure to do this may, depending on the nature of the consents or warnings given, leave the member exposed to an action for damages by the third party if, on the strength of the documents, the third party sustains loss. It would be prudent for him to obtain proof of the withdrawal (e.g. a copy of a letter from the client to the third party withdrawing the document). If the client refuses to withdraw the document, the member should consider what further steps might be taken such as writing to the third party saying that the document can no longer be relied upon. However this should not be done without first taking legal advice.

7.3 Working with other professional advisers

7.3.1 A member should ascertain whether any other professional advisers are involved in any project or assignment which a client asks him to undertake or in any related services. It is advisable to define clearly the respective areas of responsibility and record this in the letter of engagement.

7.3.2 In some cases a member may enter into a direct relationship with another professional adviser rather than the taxpayer concerned. In such cases it is important to be clear whether the other professional adviser or the taxpayer is the client. Where the taxpayer is not the immediate client reference should be made to paragraph 7.2 on managing liability to other third parties.

7.3.3 When working alongside another professional, a member should be careful to observe his duty of client confidentiality (see paragraph 2.5). In cases of doubt, the member should obtain instructions from his client, preferably in writing. The member should advise his client of the advantages of permitting appropriate communication between the advisers on a project or assignment in order to progress the matter efficiently. Where the member is aware of information which will be properly required by another adviser in performing his duties and the client does not authorise direct communication, the member should ensure that his advice draws the client's attention to the matters of which the other adviser should be informed.

7.3.4 A member should keep appointments and meet commitments entered into with other professional advisers as regards timely supply of information and the giving of advice. He should attend meetings, as agreed, and ensure that proper arrangements are made for any that he is responsible, including adequate notice of the meeting, advising its date, time and venue and the provision of all necessary facilities at the meeting.

7.3.5 A member should deal promptly with all correspondence with other professional advisers, and maintain a file record of such correspondence, including fax, electronic and telephone communications, and notes of any meetings. If any undue delay is likely to arise in responding to other advisers' communications then the other advisers should be notified promptly of this, together with the reasons and, if possible, an indication of the date when a response will be sent.

- 7.3.6 In certain circumstances a member may give instructions direct to barristers without using the services of a solicitor. Further details on direct access may be found on the Bar Council website www.barcouncil.org.uk.
- 7.3.7 Where the progress of work involves the contribution of other professional advisers, a member should endeavour to ensure that his client is kept informed on the state of progress so far as he reasonably can ensure this.
- 7.4 Working as a subcontractor to another professional adviser**
- 7.4.1 A member working as a subcontractor to another professional adviser should ensure that there is a written record of the agreement between the two parties.
- 7.4.2 The scope and basis of the work undertaken should be clear, for example, whether the subcontractor will rely wholly on information provided by the professional adviser or whether he will undertake his own research.
- 7.4.3 The subcontractor should ascertain how he will be held out to the end user and how his advice will be communicated to the client. For example, will he be in direct contact with the client or will he work 'behind the scenes' with all communication directed through the professional adviser?
- 7.4.4 A member working as a subcontractor should consider carefully his Professional Indemnity (PII) position. Further guidance is given on this area in the Guidance Notes on PII which can be found on the [CIOT](#) and [ATT](#) websites.
- 7.5 Referrals to another professional adviser**
- 7.5.1 A member who does not have the expertise or the staff resources available to meet his client's needs should refer the client to another professional adviser.
- 7.5.2 A member should take care when making referrals and should aim to give the client a choice of adviser.
- 7.5.3 A member should make it clear to his client that the member has no responsibility for the work undertaken by the other professional adviser.
- 7.6 Anti Money Laundering**
- 7.6.1 Members must comply with the UK's anti money laundering legislation. A member must act in accordance with the Consultative Committee of Accountancy Bodies ('CCAB') anti money laundering guidance including the appendix for tax practitioners which can be found [here](#) for CIOT and [here](#) for ATT.
- 7.6.2 A member must, if requested, advise the CIOT and ATT of their Supervisory Authority under the Money Laundering Regulations 2007.
- 7.7 Clients' money**
- 7.7.1 A member who receives clients' money in connection with the carrying on by the member of investment business (as defined by the Financial Services and Markets Act 2000) must handle that money in accordance with the regulations of the regulatory authority with whom he is registered relating to the handling of such funds. The following guidance addresses only non-investment business clients' money. See also paragraph 3.13.
- 7.7.2 "Clients' money" means money of any currency which a member holds or receives for or from a client, and which is not immediately due and payable on demand to the member for his own

- account. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded.
- 7.7.3 Clients' money must be kept separate from money belonging to the firm. For this reason, clients' money must be kept in a separate client account. A client account can be a current or deposit account at a bank or building society in the name of the member or his firm but it must also include the word 'client' in the title of the account. Clients' money can be kept either in a general client account, or in separate client accounts each designated with the name of a specific client, or in both.
- 7.7.4 The following conditions apply to client accounts:
- Written notice must be given to the bank concerned that all money standing to the credit of each client account is held by the firm as clients' money, and that the bank is not entitled to combine the account with any other account, or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it on any other account of the firm.
 - Any interest payable in respect of sums credited to the account shall be credited to that account.
 - The bank must describe the account in its records in such a manner to make it clear that the money in the account does not belong to the member.
 - The bank should be required to acknowledge in writing that it accepts the terms of the notice.
- 7.7.5 Clients' money received by the firm must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.
- 7.7.6 If a cheque, draft or electronic transfer includes both clients' money and non-clients' money, that cheque, draft or electronic transfer must be paid into the appropriate client account immediately and the non-clients' money must be withdrawn from the account as soon as practicable once the funds have cleared. Under no circumstances should clients' money be paid into the firm's own account.
- 7.7.7 Where money of any one client in excess of £10,000 is held or is expected to be held by the firm for more than 30 days, it is recommended that the money should be paid into a separate interest-bearing bank account designated as that of the client. In other cases, except where the amount of interest arising is likely to be immaterial (a matter for the member's judgement) clients' money must be deposited in an interest-bearing account. Except in the case of clients' money held by a firm as stakeholder, the interest credited to a designated client account must be paid to the client concerned. Unless otherwise agreed, interest earned on stakeholders' money is payable to the person to whom the stake is paid.
- 7.7.8 Money held in a client account may be withdrawn only where properly authorised by a client in writing (including e-mail) or under the terms of the engagement letter.
- 7.7.9 A firm must at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a client account, distinguishing the money of each client from the money of other clients and from firm money. Each client account must be reconciled against the balances shown in the client's ledger at least at six-monthly intervals, and the records of such reconciliation must be kept for at least six years from the date of the last transaction recorded therein.

7.7.10 Members are reminded to consider the money laundering legislation when allowing money to be passed through the client account (see 7.6).

7.8 **Services Directive**

Under the Services Directive (Directive 2006/123/EC of 12 December 2006 on services in the internal market), a member in practice must provide certain information to clients and prospective clients. The information must be supplied before the conclusion of a contract for the provision of the service or, where there is no contract, before the services are provided. Further guidance can be found [here](#) for CIOT and [here](#) for ATT.

8. CHARGING FOR SERVICES

8.1 Basis of charge

- 8.1.1 Before undertaking any work on behalf of any new or existing client, a member should ensure that the client clearly understands the basis on which fees will be charged and how expenses incurred on behalf of the client will be treated. It will usually be appropriate to set these matters out in the letter of engagement. A member should make it clear at the outset whether he will charge for the initial meeting.
- 8.1.2 Fee arrangements are a matter for commercial negotiation by members and should be fair in relation to those services performed and the timescale required by the client. A member's fee should have regard to the responsibility, nature and importance of the work, the time devoted to it and the benefit to the client. The possible arrangements include:
- Time and expenses - where the member charges on the basis of time spent according to the skill and the resources deployed. An enhanced rate might be charged for urgent deadlines. A provision should be included in the letter of engagement for varying the amount to be charged where extra work is performed.
 - Fixed fees - where the member charges a fixed amount for an agreed assignment the fee should be based upon a proper costing of the work to be undertaken. When the arrangement is to run for any length of time, say beyond one year, there should be an appropriate variation clause in the engagement letter to enable additional work to be charged and cost escalation to be recouped.
 - Contingent or success fees - see 8.2.
 - Insurance - fees may be covered in whole or part by professional fee insurance.
- 8.1.3 A member should take steps to avoid fee disputes by agreeing fees before issuing fee notes or giving indicative fees before work is started and regularly keeping the client informed. It is best practice to issue fee notes without undue delay and a member should issue regular fee notes to clients unless alternative arrangements have been agreed with the client.
- 8.1.4 Normally, it is not necessary for a fully detailed fee note to be sent automatically to the client unless a prior request has been made. However, the member's records should be adequate to enable a fully detailed fee note to be prepared at a later date if required.
- 8.1.5 When charging costs or fees to different projects or different but connected clients, care should be taken to ensure that the allocation is commercially justifiable and reflects the work done for those clients.

8.2 Contingent fees

- 8.2.1 Contingent fees can carry increased risks, such as a third party questioning the independence and objectivity of the member. Accordingly, where a contingent fee basis is adopted, a member should take care not only to ensure that his conduct meets but is seen to meet the required principles of integrity and objectivity.
- 8.2.2 A member should be aware that there may be legal or regulatory restrictions to having a contingent fee.

- 8.2.3 It is advisable that where contingent fees are used the engagement letter should set out the scope of the work they cover and stipulate the action to be taken should subsequent events cancel all or part of the benefits to the client of the contingent fee arrangement. It should set out clearly and precisely whether part or all of the fee is to be repaid and whether interest is payable.
- 8.2.4 Where a contingent fee forms the basis of reward for the member, a member is advised to give consideration to the need for the basis to be disclosed in any document in the public domain or in any document disclosed to a third party on which a third party may rely.
- 8.2.5 A member should be aware of the requirements of the Tax Avoidance Disclosure regime and the consequences of applying contingent fees which may be considered to be a premium fee under the Tax Avoidance Disclosure regime.

8.3 **Disclosure of commission**

- 8.3.1 Where a member gives advice to a client which, if acted upon, will result in the receipt by the member of commission or other reward from a person other than the client, the member should inform the client of this fact at the time the advice is given, and of the amount of the commission or reward which the member expects to receive. Where the amount of commission is unknown, the member should either explain to the client the basis on which the commission will be calculated, or notify the client of the amount when it is received.
- 8.3.2 If a commission or reward is receivable the member should take care to preserve normal standards of professional care and competence, and should ensure that any advice given is in the best interests of the client. If required to do so, the member should be able to justify the advice given by reasons other than the receipt of the commission.
- 8.3.3 Commission can also be received by a member in other circumstances, e.g. by introducing the client to a third party. The member should inform the client of the member's relationship with that third party, and of the amount and terms of commission or reward which the member will receive, by following 8.3.1. Moreover, the member should be able to justify the introduction of the client to that third party as being in the best interests of the client.
- 8.3.4 A member must comply with the requirements imposed by regulatory bodies in respect of commissions arising from regulated business activities (e.g. investment business advice).
- 8.3.5 The way in which commission is to be treated should be agreed with the client and it is recommended that this is detailed in the engagement letter or otherwise confirmed in writing.

8.4 **Retainer arrangements**

- 8.4.1 "Retainer arrangement" means that a member may charge, or accept, fees from a client simply for the retention by that client of the member's services, whether or not additional fees will be charged for specific services which may subsequently be rendered.
- 8.4.2 Any retainer arrangement should normally be set out in writing, with a view to ensuring that the member and the client clearly understand the extent, and limitations, of the arrangements. In particular, such a letter of engagement should make clear the point at which further charges may be levied: see Engagement Letters for Tax Practitioners which can be found on the [CIOT](#) and [ATT](#) websites.
- 8.4.3 When a member agrees to a retainer arrangement, under which the client can call on that member's services at any time, the member should recognise that, in fulfilling his obligations to that client, he may be unable to fulfil his obligations to other clients because of a conflict of interest. It is for this reason that members are advised to consider carefully all the implications

before entering into material retainer arrangements and should normally include in the letter of engagement provision for terminating the arrangements in the event of a conflict of interest.

8.5 Payments on account and payments in advance

- 8.5.1 The terms of such payments, and any circumstances in which they might become repayable with or without interest, should be incorporated in the letter of engagement to the client before the member starts to act for that client.
- 8.5.2 Any such payments should be reasonable in amount in relation to the likely level of fee which will be charged for the work performed or to be performed within a reasonable time scale.
- 8.5.3 Members are reminded that where professional work paid for in advance by the client is not carried out, such fees paid in advance must be repaid. Substantial payments in advance should be treated with caution and a member should ensure that he has sufficient funds (including interest) available to refund the client where necessary.
- 8.5.4 The member should ensure that there is proper accounting for any VAT that may arise in respect of payments on account or advance payments.

8.6 Clients who are slow to pay

- 8.6.1 A member should inform clients in writing of the payment terms of fees to be rendered. Normally, this should be incorporated in the letter of engagement sent to the client (see paragraph 4.4.1).
- 8.6.2 If a client does not settle an account within the agreed terms, a member should seek to understand why he has not paid and, if applicable, make appropriate allowances.
- 8.6.3 If there is no satisfactory explanation for the non-payment of the fee and the member has drawn the unpaid fee to the client's attention, the member may wish to consider taking legal action to recover it.
- 8.6.4 Alternatively, or in addition, the member may wish to notify the client that he will cease acting on behalf of that client unless payment is received within a reasonable, specified period. See also Chapter 10.
- 8.6.5 A member should not settle his fees from money held, or received by the member on behalf of the client (e.g. a tax repayment), unless prior approval for such action has been obtained from the client. Any such arrangement should be in writing and have regard to the guidance in paragraph 7.7.
- 8.6.6 A member should bear in mind the Consumer Credit Act 1974 (as amended) and the potential need to apply for a consumer credit licence if he offers clients a payment by instalment facility or time to pay (and any potential AML supervisory obligations with the OFT). Further advice can be found on the [OFT website](#).

8.7 Fee disputes

- 8.7.1 If it becomes apparent that the client is dissatisfied an attempt should be made to settle any difference by negotiation; If the client remains dissatisfied, a member should consider reporting the matter to his PII insurers.
- 8.7.2 It should be noted that neither the CIOT nor the ATT will arbitrate between a member and his client upon the amount of a disputed fee.

8.7.3 A member may only exercise a lien in appropriate circumstances. A lien is the legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met. However before doing so the member should consider:

- whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the fee note
- whether the potential loss of goodwill, both towards the member and towards the tax profession as a whole, which may be caused by such formal legal action outweighs the financial considerations
- whether to take specialist legal advice or recommend the client to take specialist legal advice.

See paragraph 13.5 for further advice.

9. COMPLAINTS

9.1 Complaints to members

9.1.1 Experience shows that the majority of complaints could have been avoided by taking some simple measures. The following paragraphs highlight a few areas to which attention can usefully be given and provide guidance on what to do when a client complaint is received.

9.1.2 A member is strongly recommended to have procedures in place to handle complaints from clients which should include:

- Each new client being informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided, and of the ability to complain to the Taxation Disciplinary Board (unless alternative forms of alternative dispute resolution are outlined). This information should be included in the engagement letter.
- Each complaint being acknowledged promptly in writing.
- Each complaint being investigated thoroughly and without delay by a person of sufficient experience, seniority and competence who preferably was not directly involved in the act or omission giving rise to the complaint, and the client is told about the investigation.
- If the investigation finds that the complaint is justified in whole or in part, any appropriate action is taken.

9.1.3 If the client refers the complaint to the Taxation Disciplinary Board, the member may be required to show how the complaint has been dealt with. Clients who complain to the Taxation Disciplinary Board are asked to state whether they have already lodged a complaint with the member and what was the outcome. If they have not already done so, they may well be encouraged to pursue the complaint directly with the member or the firm before coming back to the Taxation Disciplinary Board. It is therefore important for members to maintain a careful written record of each complaint and of the steps taken.

9.1.4 Many complaints arise because the member, although doing his work properly, has failed to inform the client of what is happening. Lengthy gaps in communicating with the client should be avoided. Members should reply promptly to correspondence. If an early response to an enquiry cannot be given, the member should explain to the client why that is so and provide an estimate of when a full reply will be sent. If the client complains about delay in completing the assignment, the member should provide a completion date which should then be kept. If delay is caused by third parties, this should be explained to the client, who should be told what is being done about it. If the client fails to provide information that the member has requested, a reminder should be sent after a reasonable interval.

9.1.5 A complaint received from a client should be treated seriously and immediate action taken. The objective should be to defuse the problem which has given rise to the complaint and remedy any defective work (so far as practicable) as quickly as possible. A speedy and well thought out response often repairs any damage which may have been done to the member/client relationship.

9.1.6 If the complaint is found to be justified (even if only in part) then a prompt acknowledgement and apology should be made. However, before doing so, a member should consider carefully

whether the subject matter of the complaint could give rise to a claim for professional negligence against him. If so, he should notify the matter to his professional indemnity insurers as soon as possible and obtain their approval to any response or apology prior to making the same.

9.2 **Complaints to the Taxation Disciplinary Board**

9.2.1 The Taxation Disciplinary Board operates independently of CIOT and ATT and is responsible for the management of the Taxation Disciplinary Scheme which handles all complaints made in regard to the professional conduct of members.

9.2.2 The aims of the TDB are to investigate complaints and take action against members who have breached professional standards; provided inadequate professional advice; or behaved in an unbecoming manner, in order to:

- Protect the public, especially those who use the services of members;
- Maintain high standards of behaviour and performance among members;
- correct and deter misconduct; and
- Ensure that confidence is maintained in CIOT and ATT.

9.2.3 The TDB website www.tax-board.org.uk provides guidance for the public and members. It includes the governing documents, namely the Taxation Disciplinary Scheme and the associated Regulations and explains the disciplinary process in detail.

9.2.4 Members are reminded that under paragraph 2.9 they are required to provide such information as may be requested by the Taxation Disciplinary Board and to respond to correspondence from the Taxation Disciplinary Board without unreasonable delay.

10. CEASING TO ACT

10.1 Ceasing to act

10.1.1 A member who has accepted a client's instructions should not cease to act for the client until the relevant work has been completed unless:

- he has to because of legal or professional obligations;
- the client requires it; or
- the member gives reasonable notice to the client of his intention to cease to act. However, a member will need to have due regard to the terms of his engagement letter.

10.1.2 The member should continue to act until he has taken reasonable steps to notify the client that he is no longer acting. It is strongly recommended that before ceasing to act, a member should notify the client in writing that he is no longer acting and address the following in his letter of disengagement:

- A summary of services provided up to the date of ceasing to act;
- note of any further action to be taken by the member;
- A note of any outstanding matters that either the ex-client or the new advisers will need to address;
- Details of any impending deadlines and the action required;
- The member's willingness or otherwise to:
 - assist the new advisers to resolve outstanding issues with HMRC or others;
 - provide copy papers to the new advisers;
- Details of any outstanding fees;
- A note indicating whether the member or his successor is to advise HMRC of the change.

10.1.3 On ceasing to act, the member will usually discuss with the client the arrangements for settling unpaid fee accounts and billing work not yet invoiced. Consideration should also be given to the client's requirements for handing over papers to the member's successor. In this regard, the member's attention is drawn to paragraph 13.5 and the limited right to retain papers belonging to a client until fees have been paid.

10.1.4 A member who after ceasing to act receives a communication from a successor should proceed as set out in paragraph 4.3.

10.1.5 If a member is asked to hand over relevant papers to his former client or a successor, the following points should be considered:

- If the request does not come from the client direct, the member should obtain written consent from his former client prior to providing papers to a successor.
- Some documents on the member's files may belong to the client (see paragraph 13.1). The member is therefore required to provide these, subject to any lien the member may have (see paragraph 13.5). In the event of any dispute as to ownership of documents a member

should normally seek specialist legal advice. Where the original documents are handed over, the member should first take copies, so that he can maintain proper professional records (see paragraph 5.7).

- Where documents belong to the member (see paragraph 13.1) the member should cooperate in providing copies of documents relevant to the client's ongoing tax affairs. If a significant amount of work in providing copies is required or if it is provided for in the member's engagement letter, a reasonable charge may be made.
- If there is a risk that the former client may use the information provided to support a claim against the member, the member should consult his professional indemnity insurers and consider whether to take legal advice.

10.1.6 If after ceasing to act, the member subsequently receives any correspondence relating to the former client, he should forward that correspondence without delay and advise the sender to address future correspondence direct to that client.

11 TRAINING AND CPD

11.1 Training contracts

11.1.1 Members of the CIOT and ATT qualify by examination and relevant practical experience. Detailed entry requirements are to be found in the CIOT's and the ATT's respective prospectuses.

11.1.2 There are also guidance notes available for firms who are employing tax trainees who will be studying for ATT examinations.

11.2 Continuing Professional Development (CPD)

11.2.1 The CPD rules do not apply to students of the CIOT or ATT who are not members of either body.

11.2.2 It is important that a member keeps fully up to date in relation to statute and case law and practice in areas where the member holds himself out to be competent to practise.

A compulsory CPD scheme applies to all CIOT and ATT members with some minor exceptions. A member who is uncertain whether these Regulations apply, or who wishes to apply for exemption, should consult the Membership Team at the CIOT or ATT (cpdenquiries@ciot.org.uk/cpdenquiries@att.org.uk). For the current detailed requirements and guidelines, members should refer to the [CIOT](#) or [ATT](#) website.

12. MEMBERS IN EMPLOYMENT

12.1 Employees

12.1.1 These Professional Rules and Practice Guidelines also apply to an employed member whether or not his employer is a member of the CIOT or the ATT. They apply to every employed member irrespective of the nature of the activities or business of his employer.

12.1.2 A member with responsibility for a company's financial accounting arrangements needs to be aware of the Senior Accounting Officer (SAO) certification requirements introduced for 'qualifying companies' by Schedule 46 Finance Act 2009.

12.2 Employees acquiring knowledge of default or an unlawful act

12.2.1 Members have a professional obligation to comply with the PRPG and the fundamental principles. There may be times when employed members find themselves in situations that threaten their compliance with the PRPG and the fundamental principles by being put under pressure to:

- Act contrary to professional standards
- Act contrary to law/regulation.

12.2.2 If an employed member, whether working in a tax practice or in industry, acquires knowledge which suggests taxation irregularities or that his employer may have committed an unlawful act, he should seek to establish the facts and identify the affected parties so that, as far as is possible, he has a clear understanding of the situation. He should then:

- First raise any concern internally within the organisation at the appropriate level and follow the organisation's applicable procedure. The content and outcomes of any discussions held should be noted down.
- If a member discloses a concern internally and he is worried either that he has not been dealt with seriously or handled effectively, or if he feels unable to talk to anyone internally for whatever reason, he can contact the CIOT/ATT.
- Explore available external routes, such as contacting the independent charity, [Public Concern at Work](#) (which offers free, confidential advice on what is protected by the Public Interest Disclosure Act 1998 (PIDA) and other whistleblowing issues), or seek legal advice from a specialist lawyer.
- Where possible, disassociate himself from the matter.

12.3 Insurance arrangements

12.3.1 An employee can be sued jointly or severally with the employer by a client. For his own protection, therefore, a member should:

- Draw his employer's attention to the possibility of including a clause in the engagement letter stating that the client may only sue the firm/employer and not the employee.
- Satisfy himself that he is suitably protected in his employment contract.
- Satisfy himself that his employer has adequate indemnity insurance covering the member as employee in respect of the taxation services provided to and on behalf of the employer by

the member and that such cover protects the employee after he leaves the practice and also if the employer's practice ceases or is merged.

- If still concerned, a member should consider effecting his own insurance cover.

12.3.2 It is also possible for an employee to be sued by his employer, for example, for breach of contract or tortious liability. A member at material risk of this should seek legal advice.

13. DOCUMENTS AND RECORDS

13.1 Introduction

- 13.1.1 The reference to “documents” does not merely refer to paper documents, but includes any information such as information stored electronically, on hard disk, CD, email and other non paper format.
- 13.1.2 The principles discussed below reflect the legal position in England and Wales (please see appendix 1 & 2 for Scottish and Northern Irish law). However, there may be instances where, either by express agreement or by implication, foreign laws apply. In such cases, a member should consider seeking assistance from a lawyer qualified to give advice in the relevant jurisdiction.

13.2 Ownership

- 13.2.1 Determination of ownership can be complicated and involves considering questions of law and fact. In deciding who owns the documents and records, a member should consider:
- a) the capacity in which he acts for the client - agent or principal?
 - b) the contract between the member and his client.
 - c) the purpose for which the documents and records were created.

Capacity

- 13.2.2 This distinction in capacity may affect a member's rights to ownership and possession of documents. An agency relationship exists, for example, where the work done by the member is of a tax compliance nature, such as preparing returns and computations for HMRC. A member will be acting as a principal where he is retained to carry out advisory or consultancy work.

Contract

- 13.2.3 When considering the ownership of a document, the terms of the contract between the member and his client should first be reviewed. If they provide expressly for the ownership of the documents prepared during the engagement; that concludes the matter. Alternatively, the contract terms may imply who owns the documents prepared during the engagement. It is recommended that members consider dealing with the issue of ownership of documents in the engagement letter with their clients. See Engagement Letters for Tax Practitioners which can be found on the [CIOT](#) and [ATT](#) websites.

Purpose

- 13.2.4 Where there is an agency relationship, the client has a right to documents prepared by the member for the client. Such documents would include any tax return, supporting documentation for that return and copies of letters passing between the member and third parties. However, a member's working papers belong to him. For example, where a member is instructed to prepare a computation, his working papers compiled to enable him to produce the computation will belong to the member. Only the computation itself, and any supporting schedule, belong to the client.

- 13.2.5 If a document was prepared by a member whilst acting as a principal, the position depends upon the type of document in question. Generally, documents created by a member for the purposes of advising or carrying out work for the client belong to the member but not where the document is provided to the client. Therefore, documents created on the specific instructions of the client belong to the client, whilst documents prepared by the member for his own purposes belong to the member. Examples of documents belonging to a member include copies of letters passing between the member and third parties, file notes, internal memoranda and drafts created in preparing advice for the client. However, the letter or document containing the advice sent to the client will belong to the client and the file copy will belong to the member.
- 13.2.6 In either case, documents and records provided initially by the client to the member will remain the property of the client.
- 13.2.7 In practice, there may be difficulty in identifying whether the member or the client owns a particular document. The member should consider taking specialist legal advice on the extent to which he may be obliged to allow access to his files and working papers, including those documents which he owns.
- 13.3 Retention of records and time limits for court action**
- 13.3.1 Members should implement a policy for retention of documents and records in their files.
- 13.3.2 When deciding the period of retention for records (paper and electronic working papers) a member should consider:
- the periods of retention required by law;
 - the period of time during which actions may be brought in the courts and which records and working papers may need to be available as evidence;
 - the period of time for which information in the working papers may be required for use in compiling tax returns.
- 13.3.3 Members should take steps to ensure that records and working papers are maintained securely and that client confidentiality is protected. All documents, regardless of ownership, created in the course of acting for a client are client confidential information (see paragraph 2.5).
- 13.3.4 A member should keep records and his working papers for at least seven years from the end of the tax year, or accounting period, to which they relate or such longer period as the rules of self assessment may require. Papers and records which are legally the property of the client (or former client) should be returned to the client (or former client) or the client's permission obtained for their destruction.
- 13.3.5 Members who are uncertain about the time limits should seek legal advice.
- 13.4 Request from other third parties**
- 13.4.1 If a member receives a request for information or documents from any third party he should either obtain his client's permission or ensure that the request is legally enforceable and overrides client confidentiality. This includes requests by HMRC, although the engagement letter will normally provide for the provision by the member of documents to HMRC without further recourse to the client. Determining whether a third party has legally effective powers to request disclosure or whether the request can be discussed with the client can be a complex matter and a member should consider obtaining specialist advice, particularly when a client refuses permission to disclose.

13.4.2 member should bear in mind that, where a third party seeks access to documentation within a member's possession under statutory or regulatory powers, then a member should, before complying with the request, take reasonable steps to satisfy himself that any power is being exercised correctly. Members should bear in mind that such powers may not extend to requiring the production of documents which are subject to legal professional privilege. Where a member believes that he may hold documents which are subject to legal professional privilege, he should take specialist legal advice.

13.5 Lien

13.5.1 A lien is a legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met.

13.5.2 A lien can be either general or particular. A general lien gives the person holding the lien the right to retain possession of all property that he holds belonging to the person who owes him the debt until that debt has been paid, whether or not that property relates to the debt in question. A general lien may be difficult to establish and is unlikely to be relevant to a member and is not considered further here.

A particular lien is a lien over specific property in relation to which work has been done and respect of which a debt is owed. A member will probably have a particular lien over documents belonging to the client in respect of which he has performed work for which he has not been paid the fee due.

13.5.3 Before exercising a lien, a member should consider:

- whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the bill
- whether the potential loss of goodwill, both towards the member and towards the tax profession as a whole, which may be caused by such formal legal action outweighs the financial considerations
- whether to take specialist legal advice or recommend the client to take specialist legal advice.

If a third party has a legal right of access to a client's documents without the client's consent but the member has a lien over those documents, the member should seek legal advice before handing them over to the third party.

13.5.4 The following conditions must all be met if a right of particular lien is to exist:

- the documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client
- the documents must have come into the possession of the member by proper means
- fees must be due to the member in respect of work done on the client's instructions in respect of the documents and a bill for those costs must have been rendered
- the fees for which the lien is exercised must be outstanding in respect of that work and not in respect of other, unrelated, work

It follows that a failure by a director of a company to pay fees for personal tax work does not give a member a lien over the company's documents. Further if a member receives documents

belonging to a client from a third party in error, the member is not entitled to exercise a lien over those documents.

Documents belonging to or created for a client which relate to one engagement for that client for which no fees are outstanding, may not be treated by the member as subject to a lien in relation to other unpaid fees. It will only be the documents relating to the work undertaken for which fees are outstanding which will be subject to the particular lien.

13.5.5 A lien cannot exist over:

- the books or documents of a registered company that, either by statute or by the articles of association of the company, have to be available for public inspection or to be kept at the registered office or some other specified place or be dealt with in any special way;
- accounting records within section 386 of the Companies Act 2006; or
- the VAT returns of any business (excluding photocopies).

A lien may be exercised over documents (such as tax returns) prepared on behalf of an unincorporated company client, which do not form part of the accounting records of the company. Also your working papers (those documents prepared in order to achieve your objective of preparing accounts) belong to you. Ownership of documents is a complex legal area and if you are unsure of ownership it is advisable to consult a qualified professional.

13.6 **Drafting legal documents**

13.6.1 There are certain categories of legal documents which may only be drafted by appropriately qualified people, such as solicitors, barristers and licensed conveyancers. These "reserved legal activities" include drafting any document relating to the transfer of real property (i.e. land); preparing any other document relating to real property or personal property (i.e. goods other than land) including the contract, conveyance and mortgage in a land transaction; preparing instruments relating to legal proceedings; drafting a trust deed for fee, gain or reward. A person convicted of drafting such documents without the appropriate qualifications will be liable to a fine. However, if a member merely indicates required amendments to a legal document, but does not himself amend them, he is not committing an offence.

13.6.2 In practice, it may be difficult to ascertain whether a member may or may not draft a particular document and the member should consider taking specialist legal advice on this matter.

13.7 **Data protection**

13.7.1 A member should comply with his obligations under the relevant Data Protection legislation, for example whether:

- in electronic or paper form, he may not collect, process or store data about his clients without their consent
- he must store data confidentially and securely
- he may not use personal data for marketing purposes without his client's consent
- he must have in place systems and procedures which will enable him to confirm what data is held about a person, if asked
- clients or targets must be given the opportunity to be removed from a member's mailing list.

14. ADVERTISING, PUBLICITY AND PROMOTION

14.1 General principles

- 14.1.1 Subject to the following, and any applicable laws that may apply to them, members may seek publicity for their achievements and services and may advertise their products and services in any way they think fit
- 14.1.2 Advertisements and promotional material or activity prepared or produced by members or firms should not (either in content or presentation):
 - a) reflect adversely on the CIOT/ATT, the member or firm, other members or the tax profession;
 - b) discredit the services offered by others, for example, by claiming superiority for the member or firm;
 - c) be misleading, either directly or by implication;
 - d) fail to comply with any regulatory or legislative requirements, such as the standards and requirements of the Advertising Standards Authority's Code, notably as to legality, decency, clarity, honesty and truthfulness;
 - e) breach client confidentiality; or
 - f) amount to harassment.
- 14.1.3 An advertisement should be clearly distinguishable as such.
- 14.1.4 If members are storing personal information about clients for marketing purposes they should ensure they have the necessary consents from the data subjects as set out in the Data Protection Act 1998. Members should also give the data subjects the opportunity to withdraw their consent before the information is used.

14.2 Badges and logos

- 14.2.1 Where a member uses CIOT/ATT badges or logos in any advertisement, he should refer to paragraph 3.4.

14.3 Fees

- 14.3.1 If reference is made in promotional material to fees, the basis on which fees are calculated and what services are covered should be clearly stated.

15. Tribunals and Advocacy

15.1 General principles

15.1.1 A member should not undertake professional work which he is not himself competent to perform unless and until he has obtained appropriate advice and assistance to enable him to undertake the specific assignment. That principle is particularly important where the member is planning to represent a client before a Tribunal as this is a particularly complex area. A Tribunal may be the First-Tier Tax Tribunal ('FTT') or Upper Tribunal ('UT') whichever the case may be. Further guidance on representation before Tribunals may be found on the [CIOT](#) and [ATT](#) websites.

15.1.2 Even if a member considers they are competent to represent a client at a FTT or UT, where it appears likely that there will be an appeal, by either side, to the Court of Appeal or Court of Session, a member should consider carefully whether counsel or a solicitor with a High Court advocacy certificate should be briefed, even for the hearing before the FTT or UT.

Similarly, briefing counsel or a solicitor with an appropriate advocacy certificate (High Court or criminal) should also be considered where tax evasion may be involved.

15.1.3 The FTT is the final arbiter on questions of fact. Thus, the importance of ensuring that all facts are well presented cannot be over-emphasised, no matter how self-evident or trivial those facts may, at first sight, appear to be.

APPENDIX 1

CONSIDERATION OF SCOTS LAW

Members should note that although the majority of statutory references in the Professional Rules and Practice Guidelines 2011 apply to Scotland, the following should be considered. Members who are members of other professional bodies may have to comply with additional professional rules.

3. PRACTICE GOVERNANCE

3.5 Temporary incapacity of a sole practitioner

Although a member may make arrangements for the practice to continue in the event of illness or incapacity, clients are not bound by those arrangements if and to the extent that the contract involves the choice of a particular person to do the work which implies the exclusion of others. In Scots law this is known as *delectus personae* and, if involved (the choice of a sole practitioner implying this), this prevents assignation (assignment) of the rights under the contract from the sole practitioner unless consented to by the client. In exceptional circumstances a Court in Scotland may appoint a judicial factor with powers to carry on the business however clients would similarly not be bound by this.

3.6 Death of permanent incapacity of a sole practitioner

In Scotland personal representatives will either be an executor (executor nominate) appointed under the will or, failing nomination or acceptance by those nominated, an executor dative or judicial factor appointed by the Court. The considerations under 3.5 above would apply.

3.8/9 Bankruptcy and Individual Voluntary Arrangements (IVAs)

Personal insolvency in Scotland is governed by the common law and the Bankruptcy (Scotland) Act 1985 as amended.

IVAs are not available in Scotland. In Scotland one may enter into a trust deed for creditors (a voluntary arrangement whereby a deed is granted by a person in favour of a trustee or trustees under which assets of the person are transferred to be administered for the benefit of creditors) which is private unless it becomes protected by complying with certain requirements under the 1985 Act. The protected trust deed is the closest equivalent to the IVA. Both the trust deed and the protected trust deed are popular methods of dealing with personal insolvency.

The equivalent in Scotland to a bankruptcy order is an award of sequestration under the 1985 Act. Sequestration is sought by petition to the Court for the appointment of a trustee to administer the estate.

4. NEW CLIENTS

4.3 Professional clearance

In Scotland the professional courtesy letter is normally called a mandate. A member should obtain a mandate, terminating the professional relationship, from the client and authorisation to discuss the affairs freely with a prospective new adviser. They should pass on the papers that belong to the client. If such papers are not to be passed on to the new adviser they should be given to the client. (See also section 13.2 Ownership)

5. CLIENT SERVICE

5.7 Keeping proper professional records

In some cases, members who are members of other professional organisations may be required to keep papers for longer periods. For example there is detailed guidance for solicitors in Scotland which varies with the type of document and covers in some circumstances periods up to and over 20 years. It should be borne in mind that the Money Laundering Regulations generally impose a minimum period of five years. The position on returning or destroying papers may be covered in the letter of engagement.

6. CONFLICTS OF INTEREST

6.3 Acting for more than one party to a transaction

Members who are members of other professional organisations, such as solicitors in Scotland, may have other specific restrictions placed upon them in relation to this.

7. OTHER CLIENT HANDLING ISSUES

7.3 Working with other professional advisers

For "barristers" in Scotland read "advocates". Advocates are members of the Faculty of Advocates and have a status and function corresponding to that of a barrister in England. Further details on direct access to advocates may be found on the Faculty of Advocates website at <http://www.advocates.org.uk/index.html>

7.6 Anti Money Laundering

The Money Laundering Regulations and Part 7 of the Proceeds of Crime Act 2002 apply in Scotland. While in England and Wales proceedings for an offence under reg.45 may be instituted by a number of different bodies, in Scotland prosecutions are undertaken in the name of the Lord Advocate or a Procurator Fiscal (an officer appointed by the Lord Advocate as his agent to act within a sheriffdom as public prosecutor in the sheriff court and the district court). In serious cases reference is made to the Crown Office (a department under the Lord Advocate responsible for the public prosecution of crime within Scotland and who administer the Procurator Fiscal Service) or a Procurator Fiscal for instructions on whether a person should be prosecuted.

Members are advised that what constitutes "criminal conduct" may differ between Scotland and elsewhere in the UK. For example aiding and abetting is governed in English law by statute but in Scots law similar conduct is governed by common law principles; the two are not necessarily the same. Members who are in any doubt regarding their position should seek legal advice.

8 CHARGING FOR SERVICES

8.2 Contingent fees

Scottish solicitors are permitted to undertake work on a speculative basis, that, in the event of a litigation being successful, the solicitor's fees shall be increased by such percentage as may be agreed (though this is subject to the court's power to prescribe a limit). However contingency fees, where the lawyer takes a percentage of the client's compensation if he wins a case, are prohibited in Scotland under the common law. The prohibition is intended to prevent a solicitor or advocate having a personal stake in the outcome of a client's case, the concern being that this might influence the lawyer's conduct of the case. The restrictions do not prevent "no-win, no-fee" arrangements. A solicitor can agree not to charge a fee in the event of failure, but to charge an enhanced fee in the event of success.

12. MEMBERS IN EMPLOYMENT

12.3 Insurance arrangements

In Scotland for "tortious liability" read "delictual liability"

13. DOCUMENTS AND RECORDS

13.2 Ownership

In the absence of express provision in terms of the letter of engagement the Scots law of property will determine the issue. As with the law of England and Wales the answer as to who owns what is in a client file is not entirely straightforward. Members should consider taking specialist legal advice. They may be obliged to allow access to files and working papers, including documents which they own.

13.3 Retention of records and time limits for court action

In Scotland the law is set out in the Prescription and Limitation (Scotland) Act 1973. Limitation renders certain rights and obligations unenforceable by court action while prescription extinguishes rights and obligations over time. Raising a court action is effective to interrupt either. The periods of time within which actions may be brought are different in Scotland from England and Wales. In general terms rights and obligations arising from delict (tort) or breach of contract or promise are extinguished five years from the date on which the right or obligation becomes enforceable, however the law in relation to this is complex. Specialist legal advice is advised should the member consider an issue arises.

13.4 Request from other third parties

In Scotland this is not traditionally dealt with as privilege but rather under the head of confidentiality. However the expression legal professional privilege is used in Scotland and is the absolute right of confidentiality pertaining to communications (in any form) between a lawyer and his/her client. What this actually covers in terms of scope and exceptions is complex.

13.5 Lien

In Scotland a lien is a right, founded on possession, to retain property until some debt or other obligation is satisfied. It is lost if possession is relinquished. The two main classes are general liens and special liens.

A general lien is a right to retain a client's property until balances or debts due from the client in respect of all similar contracts are settled. It is recognised by the customs of certain trades and professions. This includes solicitors. A general lien would apply to a member only if he were also a solicitor.

A special lien ("particular lien" is not a term of art in Scotland) is a right implied by law to retain an article received in the course of a particular contract against the payment of a debt arising under that contract. Special lien rests on the principle of the mutuality of contractual obligations. For this to arise the client must have placed property or documents in the hands of the person on which work is to be performed or which is necessary for the work or services even though the property and documents themselves remain unaltered. It has been held in Scotland that an accountant has a lien over papers entrusted to him only for his charge for work done in connection with those papers, not a general lien for his whole professional account. It is considered that a member would have a similar lien however legal advice should be sought.

13.6 Drafting legal documents

In Scotland for "barristers" read "advocates". Advocates are members of the Faculty of Advocates and have a status and function corresponding to that of a barrister in England.

15. TRIBUNALS AND ADVOCACY

15.1 General principles

The Court of Session in Edinburgh is a higher court for cases in Scotland to which, with permission from the Upper Tribunal (Tax and Chancery Chamber) or, if this is refused, the Court, an appeal may be made against an Upper Tribunal (Tax and Chancery Chamber) decision.

The equivalent to a High Court advocacy certificate in Scotland is extended rights of audience. Advocates are members of the Faculty of Advocates and have a status and function corresponding to that of a barrister in England. Advocates once had an exclusive right of audience in the Court of Session but now share that right with solicitor-advocates. Solicitor-advocates are members of the Law Society of Scotland who have obtained an extension to their rights of audience by undergoing additional training in evidence and in the procedure of the Court of Session.

APPENDIX 2

CONSIDERATION OF NORTHERN IRELAND LAW

Members should note that although the majority of statutory references in the Professional Rules and Practice Guidelines 2011 apply to Northern Ireland, the following should be considered. Members who are members of other professional bodies may have to comply with additional professional rules.

7. OTHER CLIENT HANDLING ISSUES

7.3 Working with other professional advisers

Barristers in Northern Ireland are governed by a different regime to those in England & Wales. However, in Northern Ireland it is also possible in certain circumstances for a member to give instructions directly to barristers without using the services of a solicitor. The rules on direct access may be found in Section 29 of the Code of Conduct for barristers in Northern Ireland, which can be found on the Northern Ireland Bar Library website (www.barlibrary.com), and information and guidance is also available at www.barlibrary.com/about-barristers/access-to-barristers.

7.6 Anti Money Laundering

Members should note that, under the Money Laundering Regulations 2007, there are certain provisions relating to Supervisory Authorities that are peculiar to a Northern Irish context. In particular, the Department of Enterprise, Trade and Investment in Northern Ireland (DETI) is the Supervisory Authority for credit unions in Northern Ireland and insolvency practitioners authorised by it.

12. MEMBERS IN EMPLOYMENT

12.2 Employees acquiring knowledge of default or an unlawful act

For the Public Disclosure Act 1998 read the Public Interest Disclosure (Northern Ireland) Order 1998. Additional information can also be found on the website of the Department for Employment and Learning (www.delni.gov.uk).

13. DOCUMENTS AND RECORDS

13.6 Drafting legal documents

13.6.1 The position of licensed conveyancer does not exist in Northern Ireland.

APPENDIX 3

CIOT badges



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CIOT coat of arms



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