

**TAXATION  
DISCIPLINARY  
BOARD**

**ANNUAL REPORT**

**and**

**ACCOUNTS**

**2011**

# **THE TAXATION DISCIPLINARY BOARD 2011**

## **Board Directors**

**Desmond Hudson** LI B (Chairman) (2009)

**John Clark** MA, CTA (Fellow) (retired 12 May 2011)

**John Dewhurst** LI B, BCL, CTA (Fellow) (appointed 13 May 2011)

**Peter Gravestock** CTA (Fellow), FCA, ATT (2006)

(Year of appointment shown in brackets)

## **Executive Officers**

### **Executive Director and Company Secretary**

Neville Nagler OBE, MA

### **Secretary to Disciplinary Committee**

Peter Douglas FCA

## **Auditors**

A-Spire Business Partners,

Chartered Accountants

32 Byron Hill Road

Harrow on the Hill

Middlesex

HA2 0HY

## **Registered address**

Artillery House,

11--19 Artillery Row,

London SW1P 1RT

Registered as a Company limited by Guarantee

No. 4210063

## **Address for Correspondence**

PO Box 544,

Pinner,

Middlesex HA5 9EY

Telephone and fax: 020 8868 9717

Website: [www.tax-board.org.uk](http://www.tax-board.org.uk)

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## **CHAIRMAN'S REPORT**

Many of the themes that I highlighted in last year's Annual Report have been areas of attention for the Board during 2011 as we followed up on those matters. It has been an active but stable year for the TDB. We have been able to focus on the processing of a steady stream of cases expeditiously and efficiently. Where individual cases raise interesting policy issues, the Board has as necessary considered them and the need for change to either policy or process. We will for example be proposing to our sponsoring bodies the introduction of powers to make interim orders where the need for public protection requires suspending a member pending a full hearing of a case (see below). We have not concluded that any of the year's cases justified substantial change to process or policy. It is a matter of regret that we do not always receive the cooperation we would expect from members of our participant bodies. We have now adopted a pattern of quarterly Board meetings, when, in addition to the business issues of the TDB, we review cases, consider the enforcement of findings and examine resources and any current policy issues.

### **Institute of Indirect Taxation**

As I indicated in last year's Annual Report, during 2010 we were engaged in discussions with our participants about the possibility of the Institute of Indirect Taxation (IIT) joining the TDB. The IIT has a relatively small membership, composed of experts in the field of indirect taxation (mainly VAT), but it subscribes to the same high standards as the ATT and CIOT, who were both entirely supportive of its proposal to join the TDB. With the approval of the Councils of the CIOT and the ATT, as well as the membership of the IIT, it was agreed that the IIT should join the TDB as a third participant in February 2011. The integration of IIT members

under the purview of TDB has been satisfactorily absorbed and, as expected,

there has been no current or foreseeable change to volumes of casework or resource needs. We have in fact received no complaints involving IIT members, and it now appears that there may be a merger later in 2012 between the CIOT and the IIT. If that transpires, we will then consider reverting to our original governance structures in respect of participation from our sponsoring bodies. We are, however, continuing to explore whether there may be other tax bodies interested in joining forces, as the development of common standards and a unified disciplinary process could be of great benefit to all sections of the profession.

### **HMRC**

In the course of the year we continued our engagement with HMRC on their programme for working with tax advisers. In September we participated in their consultation on "Working with Tax Agents: Dishonest Conduct". We welcomed the overall thrust of the consultation paper, and confirmed from our own experience that we encounter relatively few tax advisers whose conduct can be described as dishonest. However, whereas HMRC appeared to envisage the publication of a dishonest agent's name only where he was uncooperative, we urged that the public interest was best served by publishing the names of all dishonest agents, subject to a right of appeal to an independent body. If publication was deemed inappropriate, the names of dishonest agents should at least be referred to their professional body, if they belong to one.

In a further consultation on HMRC's Tax Agent Strategy, we noted that some of the

responses recommended that the TDB might provide a possible route for dealing with those rare occasions when HMRC propose to suspend or remove enrolled status from a tax agent. It is our belief that if HMRC do not accept the need for an independent body to deal with appeals for those in dispute with them, they may well lose credibility. On the other hand, if the TDB were to become involved in the strategy, that would transform our role, especially if it entailed dealing with non-member agents. If HMRC were to follow up on this possibility, it would be for our participants to consider whether the TDB should go down this route. Meanwhile, we informed HMRC that if they were to consider proceeding with such a proposal, it would be useful to discuss the implications with us. We acknowledged that HMRC had many aspects of its policy to develop before reaching any conclusions on the issues raised by the TDB, but we were pleased to receive a positive response from HMRC.

### **Interim Orders**

The Board considered some time ago the benefit of amending our rules and procedures in order to introduce a power to make an interim order in cases where the public interest requires us to take urgent action ahead of a full disciplinary hearing. The Board concluded that, given that such orders are likely to be rare, whilst there will be significant procedural and external costs involved in amending our Scheme and Regulations, it would not proceed with such provisions without consultation with our sponsoring bodies. Our participants unequivocally indicated their wish to see such powers being available to TDB. Over the past year, we have therefore spent some time seeking to identify how a new power for interim orders would work. The arrangements to create a power to impose and apply interim orders will need to be spelt out clearly in revised Regulations. We have also consulted with our Disciplinary and Investigation Panel

members to seek their views and input. By the end of 2011 we had submitted our instructions to Counsel, and were awaiting a first draft of the new Regulations. The amendments to our Scheme will need the express approval of the Councils of our participant bodies, and we would hope to be able to introduce the new arrangements during the summer of 2012.

### **Complaints and enforcement**

As reported elsewhere in this report, the number of complaints received last year was lower than in previous years. There are usually between eight and ten cases under investigation at any one time. Some of those can be very time-consuming: one complaint received last year involved well over twenty separate allegations, none of which were upheld. Both the Investigation Committee and the Disciplinary Tribunal were performing within the timelines and duration measures we have adopted. As at the end of the year, none of the open cases went back further than late 2010.

Our main challenge remains that of enforcing Tribunal decisions, particularly in regard to cost awards. We remain concerned at the volatility of recovery performance and the amounts due to TDB in relation to fines and cost orders. Last year, following court action, we secured a substantial payment of costs owing for more than a year. We also obtained a charging order against an expelled CIOT member, so that when he comes to sell a property that he owns the TDB should receive its costs. We are very conscious of the need to keep down the costs of our procedures, and are sympathetic where a member has been ill or suffered some personal difficulty. But we cannot short-circuit the processes laid down in our Regulations. We adhere to the principle that the "polluter pays", since our participant bodies take the view that the costs of disciplining a member should be met by the offending member, rather than the generality of the membership. Where

cases last two or three days because the member is ill-prepared or seeks to raise various extraneous matters, the costs of the panel members, the TDB's presenter and the transcription service can quite properly be significant.

We have been considering for some time whether we could outsource more of those processes which are currently completed in-house. The limited scale and volume of cases has presented a significant problem in any cost-effective use of either full or partial outsourcing or indeed the widespread use of services from other professionals or debt management suppliers. We have therefore reviewed our own internal procedures with a view to a more intensive regular review of all cases, current performance and/or recovery plans for each case and the need for write-offs or pragmatic settlements. Our focus continues to be to draw a sensible and informed balance between the utility and cost effectiveness of recovery action as against the need to maintain the principle of recovery and enforcement in what might be termed enforcement of the "moral peril".

### **Financial performance**

Over 2011, we produced another large surplus. We recognise that this is not necessarily a satisfactory position, but we would have delivered a result in line with our budget, but for two significant payments of fines and costs which had not been budgeted.. In view of the positive outcome for 2011, we have reduced the level of contributions payable by our participants in 2012. We have also been able to repay some of the accumulated balances to our participants.

### **Relations with stakeholders**

The Board remains satisfied that there are no major or significant problems in terms of our constitutional structure or arrangements or legal developments that give rise to any concerns or the need for

any material or substantial changes to our current procedures, rule books and practices. I and my fellow Board Directors are confident that all the necessary support, communication and appropriate relationships that allow the TDB to operate in accordance with its original objectives, particularly in terms of independence, are in place, are operating well and cause no difficulty whatsoever to the smooth operation of our solid working relationships with our participants.

### **Panel members**

No new panel members were appointed in 2011 and we operated throughout the year with a full complement. In February we held our annual consultation meeting with our Panel members: details are reported elsewhere in this Annual Report. We held another such consultation early in 2012, giving us further helpful thoughts and suggestions for improvement. The Board is satisfied with our current arrangements for the recruitment and training of appointees to our two Panels. Whilst the Board maintains an operational division between the work of the members of the Disciplinary and Investigation Panels and the work of the Board itself, we greatly value the input and feedback we receive from these consultations in relation to the effectiveness of TDB procedures, rules, individual cases and/or wider developments. In the period in question and looking forward for the current year, the Board is satisfied that TDB has provided a satisfactory and independent process to deal with disciplinary matters and that our procedures and operating arrangements meet the needs of the wider profession and the public interest.

### **Conclusion**

The TDB still has a significant agenda to carry out, and many of our more complex cases raise fresh policy issues for the Board to decide. I once more would wish to pay tribute to our dedicated Executive

Director, Neville Nagler, who offers both wise counsel to me and the Board, ensures the smooth running of the organisation and provides an invaluable contribution in policy development issues as well as processing cases. I also value my close working relationships with the professional heads of our (now) three participants, namely Peter Fanning at the CIOT, Andy Pickering at the ATT and Terry Davies at the IIT.

Finally, it is a privilege and pleasure to work with my fellow Directors, John Dewhurst and Peter Gravestock. I am grateful to them all for their wise advice and consistent support. John Dewhurst took over from John Clark, who retired in May after serving for six years as the CIOT's nominated Director. Throughout his time John Clark was an invaluable source of wisdom and advice to the Board.

This summer marks the end of Peter Gravestock's term as the ATT-nominated Director. Peter has been an enormous source of help to the TDB, not only on tax matters but for his vast practical experience. We shall miss him very much, but I am glad to report that he will be succeeded by Larry Darby. Larry was appointed following an open competition in which interested members of our participants were invited to apply for the position. I look forward to working with him and John Dewhurst in the year ahead. I also add my thanks to our hard-working secretary to the Disciplinary Tribunal, Peter Douglas. Finally, my thanks to all our Panel members, whose names are listed elsewhere. Together we all aim to ensure that the TDB remains at the forefront of best regulatory practice.

**DESMOND HUDSON**  
Chairman

### **AIMS AND OBJECTIVES OF THE TDB**

The **aims** of the Taxation Disciplinary Board are to investigate complaints and take action against CIOT, ATT and IIT members who have breached professional standards; provided inadequate professional service; or behaved in an unbecoming manner, in order to:

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

The **objectives** of the Taxation Disciplinary Board are to:

- Deal with complaints expeditiously, thoroughly and fairly;
- Be open, fair, transparent and cost efficient in handling complaints;
- Ensure appropriate disciplinary action is taken against those who breach the applicable professional standards, provide inadequate professional service or display unprofessional conduct;
- Provide some redress for those who receive poor service from members of the CIOT, ATT and IIT (although the Scheme is no replacement for Court action in serious cases);
- Where a complaint is found proven, recover the costs of handling that complaint from the member of the CIOT, ATT or IIT.

## CASES HANDLED IN 2011

### Complaints received by TDB

The TDB received 26 new complaints during 2011, somewhat less than in previous years. The table below sets out the annual total of complaints received and cases disposed of by both the Investigation Committee and the Disciplinary Tribunal (formerly the Disciplinary Committee). It demonstrates the fluctuations in the volume of complaints received and handled by the TDB since it was set up.

<u>Year</u>	<u>Complaints received</u>	<u>Cases disposed of</u>
2001 (May—Dec)	4	3
2002	35	23
2003	22	29
2004	26	15
2005	17	25
2006	22	20
2007	35	35
2008	38	38
2009	33	25
2010	33	40
2011	26	22

The table below sets out in more detail the handling of cases by the TDB in 2010 and 2011.

	Number of Cases	
	<b>2011</b>	<b>2010</b>
<b>Complaints received by Reviewer</b>		
Brought forward from previous year	10	12
New cases in year	<u>26</u>	<u>33</u>
	<u>36</u>	<u>45</u>
Cases withdrawn or not pursued by complainant	8	12
Cases rejected by Reviewer (trivial, vexatious or outside TDB jurisdiction)	0	4
Cases where fixed penalty imposed	4	5
Cases referred to Investigation Committee	13	14
Cases referred directly by Reviewer for presentation to Disciplinary Tribunal	0	0
Cases carried forward to next year	<u>11</u>	<u>10</u>
	<u>36</u>	<u>45</u>
<b>Investigation Committee</b>		
No prima facie case	4	7
Prima facie case but no action taken	0	0
Referred for presentation to the Disciplinary Tribunal	9	6
Cases adjourned pending receipt of more information	<u>1</u>	<u>1</u>



	<u>14</u>	<u>14</u>
<b>Disciplinary Tribunal</b>		
Cases awaiting hearing at end of previous year	2	7
New cases referred by the Investigation Committee	9	6
New cases referred directly by the Reviewer	<u>0</u>	<u>0</u>
	<u>11</u>	<u>13</u>
Case dismissed	1	0
Sanction imposed	5	11
Cases awaiting hearing at end of year	<u>5</u>	<u>2</u>
	<u>11</u>	<u>13</u>
<b>Appeal Tribunal</b>		
■ Cases appealed	0	1
■ Appeals upheld	<u>0</u>	<u>1</u>

In 2011, the 26 new complaints were made against 26 professional members, of whom 7 belonged to the ATT, 17 to the CIOT and 2 had dual membership. One member had two separate complaints made against her. In addition, ten cases were brought forward from the previous year, giving a total of 36 cases to process. Eleven cases were carried forward to 2012; most of which were received during the last two months of the year.

### **Source of complaint**

The new complainants in 2011 fell into the following categories:

- 4 were current clients
- 3 were former clients
- 4 were former employers
- 3 were former business partners
- 1 was a former contractor
- 9 were referred by the TDB for having been subject to disciplinary action taken by another regulatory body (including the Institute of Chartered Accountants in England and Wales and the Association of Chartered Certified Accountants)
- 2 were referred by the ATT for failure to provide CPD or AML returns

### **Grounds for complaint**

The 26 new complaints received in 2011 raised in total 52 separate grounds for complaint. These fell into the following categories:

Failure to report disciplinary action taken by another professional body	8
Failure to respond to correspondence in a timely manner	7
“ Incompetence	5
Lack of integrity	4
Fraud or fraudulent trading	3
Discreditable conduct	3
Maladministration	2
Poaching clients	2

Dishonesty	2
Inadequate professional service	2
Publishing defamatory material	2
Inflating fees or charging for work not done	2
Failure to report bankruptcy or disqualification as a director	2
Theft	1
False accounting	1
Lack of objectivity	1
Criminal allegations	1
Failure to submit CPD record	1
Practising without Professional Indemnity Insurance	1
Failure to register for AML purposes	1
Failure to comply with a court order	<u>1</u>
Total number of grounds for complaint	<u>52</u>

### **Handling of complaints by the Reviewer**

A number of cases were withdrawn before they reached the Investigation Committee. No cases were rejected by the Reviewer on the grounds that they fell outside the jurisdiction of the Board. Nor were any complaints sent to the CIOT's Conciliation Officer during 2011. In four cases the Reviewer imposed a fixed penalty charge: all involved a failure to notify the CIOT of a disciplinary order made by another regulatory body in cases which raised no tax issues.

In eight cases the complainant decided not to pursue the complaint: three of these cases followed litigation.

In the course of the last two months of the year, eight complaints were received, most of which were still being dealt with at the end of the year or awaiting submission to the Investigation Committee.

The processes for the handling of cases prior to their consideration by the Investigation Committee and the planned timescales are described on Pages 15-16 of this Report. Of the thirteen cases which went to the Investigation Committee during the year, the time taken between receipt of the complaint form and the Committee's first consideration of the case broke down as follows:

	<u>Number of cases</u>	
	<u>2011</u>	<u>2010</u>
<u>Time taken</u>		
1 month	0	1
2 months	3	2
3 months	1	3
4 months	3	4
5 months	4	1
6 months	1	3
<u>More than 6 months</u>	<u>1</u>	<u>0</u>
Total	<u>13</u>	<u>14</u>

The above figures show the total time taken between receipt of the complaint form and its consideration at a meeting of the Investigation Committee. No allowance is made for delays caused by members or complainants in responding to correspondence. The planned timescale shown at Page 15 indicates that in a case where two rounds of correspondence take place with both the member and the complainant, it is likely to take around four months before a case will be considered by the Investigation Committee. The cases which take less time are those which are more straightforward, particularly those where the member has been convicted in a criminal court or has failed to report disciplinary proceedings taken by another

professional body, as less correspondence is required in order to establish the facts.

In 2011 the Investigation Committee met on only four occasions. As a rule, the Committee does not meet unless there are at least three cases to consider. In cases where the member fails to cooperate with the TDB, the Reviewer may well decide to submit the complaint to the Investigation Committee without allowing the member an excessive amount of time to procrastinate.

The one case which took seven months to reach the Investigation Committee required a substantial volume of correspondence to clarify the allegations. In total, some twenty to thirty separate allegations were put forward at different times, nearly all of which lacked evidence or could not be construed as misconduct. After they had been rejected by the Reviewer, the complainant appealed to an Investigatory Assessor, who allowed one allegation to go forward to the Committee: this was found not to constitute a Prima Facie case..

### **Investigation Committee**

The Investigation Committee held four meetings during the year. It considered four cases started in 2010 and ten cases started in 2011. At the end of the year, one case was adjourned pending the receipt of additional information.

Of the thirteen cases completed in 2011, the Investigation Committee rejected four cases on the grounds that no Prima Facie case had been established. Two of these complaints alleged incompetence, one alleged fraud and one concerned inflated fees. One of the cases which the Committee rejected was appealed to an Investigatory Assessor, who dismissed the appeal.. The remaining nine cases considered by the Investigation Committee

were all regarded as sufficiently serious to be referred to a Disciplinary Tribunal.

One case submitted for a Disciplinary Tribunal was referred back to the Investigation Committee by the presenter, ie the barrister appointed by the TDB to present the case before the Tribunal, exercising a rarely-used power under the TDB's Regulations. He considered that a prima facie case had not been made out in relation to one of the allegations submitted by the Committee and that the wording of another of those allegations required reviewing before a Prima Facie case could be made out. The case was therefore considered afresh by a Second Investigation Committee, who concluded that a Prima Facie case had been made out in respect of a single allegation, whose wording was amended in the manner suggested by the presenter.

### **Disciplinary Tribunal**

Four Disciplinary Tribunals were held during 2011. Meeting in panels of three, the Tribunals dealt with two cases brought forward from 2010 involving a single member and four cases referred in 2010. At the end of the year five cases were awaiting a hearing.

One of the cases heard by the Disciplinary Tribunal in 2010 was dismissed for lack of evidence; but in each of the other cases one or more of the charges was found proved. Brief details of each case are set out below.

- The case that was dismissed involved a firm of Chartered Tax Advisers. It was alleged that the firm had provided Inadequate Professional Service within the meaning of the Taxation Disciplinary Scheme Regulations 2010 by not carrying out its work with a proper regard for the technical and professional standards expected of it.

The complainant, who was a client of the firm, alleged that it failed to clarify with him what his instructions were in connection with the proposed sale of a property overseas. The Tribunal found that the charge was not proved and the complaint was therefore dismissed.

- Of the cases where a finding was made against a member, the first involved a member of the CIOT who was found to have failed to act with courtesy and consideration towards the complainant. The member admitted that he had failed to respond to correspondence and had withheld from the complainant information and accounts relating to his business partnership, to which he was entitled. These failings had resulted from a partnership dispute between the complainant and his business partner. The Tribunal found that a second charge that the member had failed to maintain his professional independence by failing to manage conflicts of interest between the two partners was not proved. The Tribunal concluded that the member should be given a warning to the effect that it is discourteous and unprofessional not to answer a client's letters and that in future he should be diligent in answering letters, especially when they are requests for information or call for some response, irrespective of the tenor of those letters. The Tribunal ordered that the member should pay half of the costs of the case, namely £2,055.50, but that the name of the member should not be publicised.
- A member of the ATT was found to have engaged in behaviour which discredited the profession and in conduct which was unbecoming a member of the Association. It was alleged that he had downloaded and viewed pornographic or other inappropriate material on his computer during office hours and conducted an

internet relationship during periods of time when he was expected to be carrying out work for his former employer. The conduct had been going on for a considerable time before it led to the member's dismissal and referral to the TDB. The Tribunal also found that, following his dismissal, the member had attempted to encourage clients away from his former employer in a manner which was inappropriate and unprofessional. He had stopped doing so as soon as his former employer reminded him that he was breaching his contract by this action. In all the circumstances the Tribunal decided that the appropriate sanction was a censure on the first charge and a warning on the second. The member was also ordered to pay costs of £2,930.

- A member of the CIOT was found to have failed to keep clients' money separate from money belonging to his firm or non-clients' money and to deal with or manage the clients' money in accordance with the rules set out in the PRPG. This matter had been the subject of a Consent Order made by the Institute of Chartered Accountants in England and Wales (ICAEW). The member admitted the facts of the charge, and the Tribunal noted that there was no dishonesty on his part. There was no loss to clients and all the monies were restored to the clients' account, with interest, as soon as the matter came to light. In view of the fact that the member had already received a large fine from the ICAEW, the Tribunal decided that the appropriate sanction for the TDB to impose was a censure. The Tribunal also imposed a censure upon the member for failing to notify the CIOT that disciplinary action had been commenced against him by the ICAEW and that the ICAEW had imposed sanctions upon him following the conclusion of those

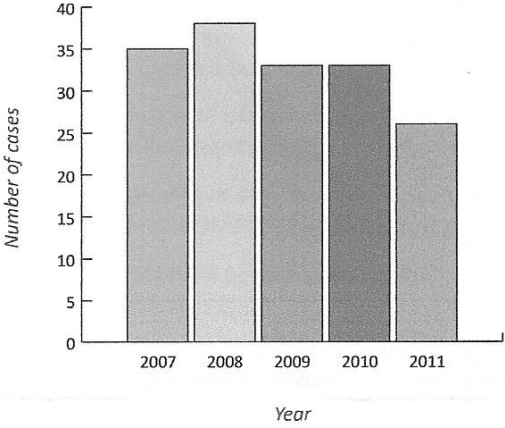
proceedings. The member was ordered to pay costs of £2,713.

- The final case considered by a Disciplinary Tribunal involved a member of the ATT against whom there were two separate complaints from clients. In respect of both clients the member was found to have failed to ensure that the clients were aware of the basis upon which fees would be charged; failed to ensure that his fees were fair in relation to the services performed for those two clients; improperly exercised a lien on those two clients' documents; failed to take due care in his conduct towards those two clients; and failed to provide information requested by the Investigation Committee of the TDB or to respond to correspondence from

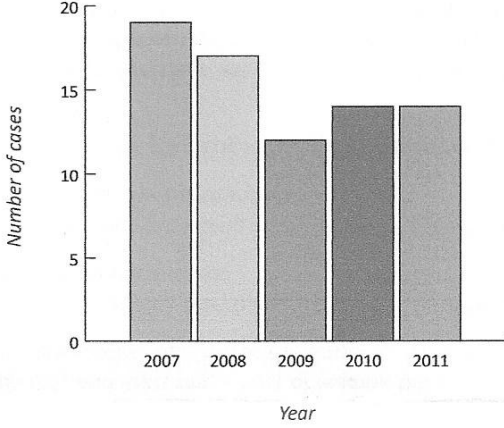
the Board without unreasonable delay. The Disciplinary Tribunal ordered that he should be suspended for five years and pay costs of £13,000. The member sought to appeal against most of the findings, the sanction and the level of costs. The request was referred to a Disciplinary Assessor who gave permission for an appeal against the sanction, on the grounds that the Tribunal had exceeded its powers: under the Taxation Disciplinary Scheme a member may be suspended for a maximum of two years. At the end of the year, the appeal was outstanding. (The Appeal Tribunal heard the appeal in March 2012 and decided that the period of suspension should be reduced to eighteen months.)

# CASES HANDLED IN 2011

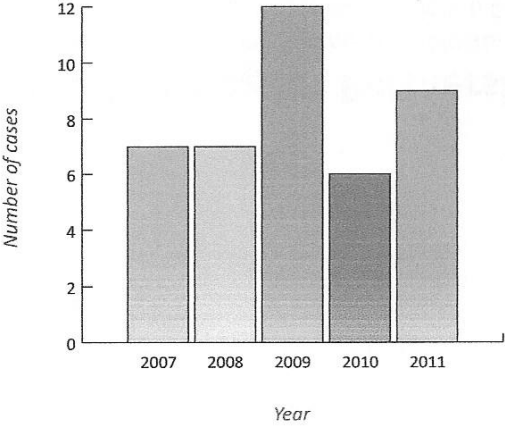
Total number of new complaints received



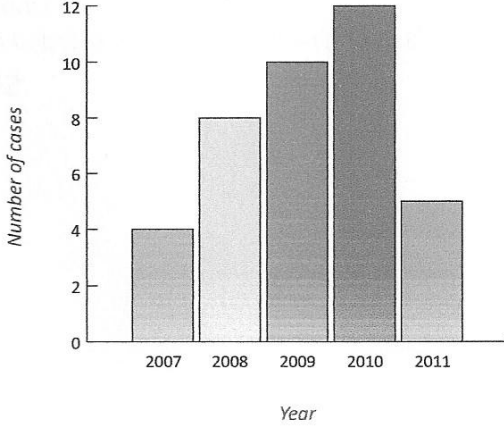
Cases referred to the Investigation Committee



Cases referred to a Disciplinary Tribunal



Disciplinary and Appeal Hearings



## **TIMESCALES FOR HANDLING COMPLAINTS**

The Board has adopted timescales for handling each stage of the complaints and disciplinary process. These are designed to ensure that the administrative processes are handled efficiently and expeditiously.

As soon as a letter of complaint is received, the complainant is sent the Board's standard complaint form. Once this is returned, the Reviewer has to consider whether the complaint falls outside the jurisdiction of the Board; whether it falls outside the prescribed time limits; whether the complaint is trivial or vexatious; or whether the complaint might be amenable to conciliation between the parties. If the complaint concerns a breach of the administrative requirements of one of the participant bodies, the Reviewer may impose a Fixed Penalty order.

Provided the complaint does not fall into one of the above categories, it will then be investigated. In that event, there will normally be two rounds of correspondence involving both the complainant and the member. The case is then prepared for a meeting of the Investigation Committee. The Board anticipates that on average it takes around 3—4 months between receipt of the complaint form and the Investigation Committee hearing. In some cases, not every stage of the process will be required, for example where the complaint is made by one of the participant bodies and the issue is clear-cut. Delays may, however, be caused by either the member or the complainant in submitting correspondence. There may also be cases involving large quantities of paper which may arrive at a time when other work has to take priority. Investigation Committee meetings are now scheduled every three months, but it may sometimes be necessary to postpone a meeting if there is insufficient business to warrant convening a meeting. This

occurred once in 2011, resulting in a gap of four months between meetings.

Once a case is referred to the Disciplinary Tribunal, the various stages of the process are less easy to timetable than the earlier processes. The overall timescale depends largely on the member and the presenting barrister, who are responsible for producing most of the documentation required for the Tribunal. There are also timed procedures laid down in the Regulations. On average, however, the TDB aims to ensure that a Disciplinary Tribunal will take place within 5 or 6 months of the Investigation Committee decision. If a Disciplinary Assessor decides that there are valid grounds for an appeal, the aim is for an Appeal Tribunal to meet within a month or so of that decision.

The Board has approved several Key Performance Indicators (KPI's), which provide a basis for monitoring performance. Four KPI's have been agreed, as set out below.

1. The percentage of cases in which the Reviewer determines within 2 months of receipt of the Complaint Form whether the case will proceed to the Investigation Committee.
2. The percentage of cases in which the Reviewer is unable to determine a referral to the Investigation Committee within 2 months, owing to delays by either the member or the complainant in responding to correspondence from the TDB by the due dates.
3. The percentage of cases which are ready for consideration by an Investigation Committee within 2.5 months of receiving all the

requested correspondence from both the complainant and the member.

4. The percentage of cases which are ready to be heard by a Disciplinary Tribunal within 5 months of their being referred by the Investigation Committee or by the Reviewer.

The statistics contained in the previous section of this Report demonstrate the extent to which the above targets were achieved in 2011.

1. In 21 of the new cases (81 percent, compared with 79 per cent in 2010) the Reviewer determined within two months of receipt of the Complaint Form whether the case would proceed to the Investigation Committee.
2. In 5 cases (19 percent, compared with 21 per cent in 2010) the Reviewer was unable to determine a referral to the Investigation Committee within two months. In two cases, legal action was pending, whilst another complaint was under investigation by the ICAEW. In one case, the complainant failed to substantiate the complaint, which was eventually closed by the TDB, whilst in another case the Reviewer

rejected the complaint (comprising more than twenty separate allegations of misconduct) on the basis that it related to a period when the adviser was not a member of the CIOT, but on appeal the Investigatory Assessor allowed one of the allegations to be investigated.

3. All 13 cases (100 per cent, compared with 93 percent in 2010) were ready for consideration by an Investigation Committee within 2.5 months of receiving all the requested correspondence from both the complainant and the member.
4. 3 of the 6 cases (50 per cent; 82 percent in 2010) heard by a Disciplinary Tribunal were ready well within five months of their being referred by the Investigation Committee or by the Reviewer. Two cases, involving a single member, required a preliminary hearing, which was held within three months of referral, although the Disciplinary Tribunal did not begin until four months later. The remaining case took longer because it involved a firm which raised various legal issues about the charges, resulting in various postponements.



## PANEL MEMBERSHIP

### Investigation Panel

The Investigation Panel had fourteen members throughout the year. Five members are selected on a rotating basis to sit as an Investigation Committee, with lay members in the majority. Four meetings of the Committee took place during 2011, plus conference calls to follow up cases where additional material was requested for particular cases. Two members reviewed cases as Investigatory Assessors in the course of the year.

As a rule, members are now appointed to the Panel for an initial term of four years. They will usually be reappointed for a further such term, serving for a maximum of eight years.

The members of the Committee, their category of membership, the dates of their original appointment, and the number of sessions of the Committee that they were called upon to attend are as follows:

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>	<u>Meetings attended 2011</u>
Simon Colton	Lay	1 September 2008	1
Amanda Dean	CIOT	1 July 2009	2
Ged Fisher	Lay	1 September 2010	1
Elizabeth Hinds	Lay	1 April 2007	2
Binka Layton	CIOT	1 July 2009	0
Bill Nelson	Lay	1 April 2009	1
Marilyn Palmer	ATT	1 April 2007	1
Paul Pharaoh	Lay	1 April 2009	1
Robert Prigg	Lay	1 January 2011	2
Peter Reid	Lay	1 September 2010	2
Rachel Skells	CIOT	1 July 2009	2
Linda Stone	Lay	1 April 2007	1
Robin Thomas	CIOT	1 July 2009	2
Judy Worthington	Lay	1 September 2008	2

Simon Colton decided not to seek reappointment when his first term expired at the end of March 2012.

### Disciplinary Panel

The Disciplinary Panel had twelve members throughout the year. Four Disciplinary Tribunals were held during the year, but no Appeal Tribunals. Tribunals are composed of a legally-qualified chairman, a member of the ATT or CIOT and a lay member. One case required a preliminary hearing before a legally-qualified member. Towards the end of the year one member was appointed as a Disciplinary Assessor to consider a request for an appeal.

As with the Investigation Panel, most members are now appointed for an initial term of four years, and will usually be reappointed for a further such term, serving for a maximum of eight years.

The members of the Panel, their category of membership, the dates of their original appointment, and the number of Tribunals they were called upon to attend are as follows:

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>	<u>Tribunals attended 2011</u>
Richard Barlow	Lawyer	1 September 2008	1
Nigel Bremner	Lawyer	1 January 2011	2
Sarah Brown	Lay	1 September 2010	1
Valerie Charbit	Lawyer	1 April 2009	0
Brian Cleave	Lawyer	1 January 2006	0
Julie Dingwall	ATT	1 October 2007	1
David Frost	CIOT	1 July 2009	1
Marjorie Kostick	CIOT	1 July 2009	1
Roger Lucking	Lay	1 September 2010	2
Angus Nicol	Lawyer	1 January 2006	1
William Silsby	CIOT	11 March 2008	1
Andrew Young	Lawyer	1 September 2008	1

## CONSULTATION WITH PANEL MEMBERS

Since the introduction of the new Scheme at the beginning of 2008, the TDB has held an annual consultation meeting for Board Directors and Panel members. This gives members the opportunity to raise any issues arising from their experience of particular cases or any other topics relevant to the work of the TDB. A consultation meeting took place in February 2011, when a number of issues were raised.

### Changes to PRPG

It was noted that the Professional Rules and Practice Guidelines of the CIOT and ATT (PRPG) had been revised, and a new version would be published in March 2011. One major change was that misconduct would be defined in terms of a breach of one of the five ethical principles which the accountancy bodies have collectively adopted as binding on their members. (The five principles are integrity; objectivity; professional competence and due care; confidentiality; and professional behaviour.) In addition, the various tax bodies, together with HMRC, had adopted in January 2011 a document entitled "Professional Conduct in Relation to Taxation" (PCRT). This document illustrated many of the issues contained in PRPG, but at some points it contained additional material (eg in relation to dealings with HMRC). The TDB's participants regarded this document as having the same status as their Professional Rules, and had advised the TDB that a failure to comply with its contents could constitute a disciplinary offence. All Panel members would receive copies of the new Rules and the PCRT document.

### CIOT and ATT rule changes

It was reported that over the past year the participants had set up a working party to

review their byelaws and regulations, partly in order to ensure that the TDB had all the powers it needed to be able to enforce its jurisdiction. In particular, rule changes would ensure that no member may resign whilst an investigation or disciplinary action is imminent or in progress; that the TDB is entitled to examine a complaint submitted up to a year after a member has resigned; that failure to pay a fine or costs awarded by a Disciplinary Tribunal within four months (unless staged payments are agreed by the TDB) will lead to automatic expulsion; that the TDB is entitled to recover any debts owing to it even after someone has ceased to be a member for whatever reason; and that a member who is suspended by the TDB shall not be entitled to use the designatory letters of the relevant body. These rule changes were subsequently approved at the AGM's of the participant bodies and came into effect later in the year.

### Issues raised by Disciplinary Panel members

It was noted that the format of Decisions of Disciplinary Tribunals varied depending on the Chairman's approach. The suggestion was made that there should be a standard template so that each Decision included the same basic information. The TDB undertook to prepare a suggested format which, after comments from members of the Disciplinary Panel, was issued as guidance.

Concern was expressed about a recent case which had gone before a Disciplinary Tribunal, in which although the proper procedures were followed at each stage of the case, the overall outcome had seemed disproportionate. The case had started with a failure to submit a CPD return requested by the ATT and to respond to subsequent correspondence. At each stage the costs

had mounted up, and eventually the Tribunal had ordered costs of over £3,000. Although there was a suggestion that the member had been unwell, medical evidence obtained from his GP had not borne this out. It was suggested that in such a case the TDB should refer the member to a support service for members. The TDB now mentions the support service provided by the participants to members when first writing to a member about a complaint.

#### Issues raised by Investigation Panel members

The question was raised regarding the procedure to be adopted in a case where an Investigation Committee reaches a conclusion on some elements of a complaint but adjourns the other elements in order to obtain more information. If the member and the complainant were informed that some elements of the complaint had been determined, it would imply that the Committee would not be reviewing the earlier decisions in the light of the further responses. If there were some issues that could readily be dismissed at the first meeting, it would be a waste of time to reconsider these at the second meeting. On the other hand, the subsequent Committee meeting would usually have different members, who might wish to review the case as a whole and reopen the earlier decisions. There were arguments on both sides, but overall the meeting agreed that in general where an Investigation Committee adjourned a case for more information on some aspects of a complaint, it should refrain from reaching a decision on other aspects. However, if in exceptional cases the Committee decided that it could deal with discrete parts of the complaint, it might do so and inform the member and complainant accordingly.

Under the current procedures, any follow-up in an adjourned case would be

considered at a subsequent Investigation Committee meeting which would have a different membership. It was suggested that such cases might be followed up via a conference call between the members of the original meeting. The meeting agreed that this seemed a sensible approach. The TDB subsequently made arrangements for conference calls in one such case last year. A similar arrangement might apply where a Tribunal is adjourned in order for members to finalise decisions, eg on costs.

The meeting went on to discuss whether other meetings of the Investigation Committee could take place via conference calls, rather than physical attendance. Whilst there could be some benefits once members became accustomed to a telephone conference, there were drawbacks: not everyone worked in an office or had access to a quiet space where confidentiality could be assured for a considerable length of time. It was also suggested that the loss of interaction among members could result in less robust decision making. The meeting agreed that it would be advisable to see how telephone conferencing worked for adjourned cases before contemplating its extension to full Committee meetings. Early in 2012 one such meeting took place by conference call: this proved highly cost-effective as the meeting was brief, the cases to be discussed had few papers and the issues for consideration were clear-cut.

Another point raised related to the language sometimes used in preparing the case summaries for Investigation Committee meetings. It was agreed that neutral language was necessary, especially as the case summary would be included among the documents sent to the member if the complaint was referred to a Disciplinary Tribunal. It was also agreed that, instead of sending the member and complainant a letter paraphrasing the Committee's conclusions and reasons, they should receive the relevant extract from the Committee's report.

### Recovery of costs and fines

The Board advised panel members of the difficulty often experienced in recovering fines and costs from uncooperative members, even after the TDB had obtained a court order. There was a substantial sum owing in respect of unpaid fines and costs. This was a dilemma for the TDB, which had to be seen to be enforcing its orders, even though the effort involved might not always be proportionate. Where the member has not been expelled the TDB would have some leverage. It was pointed out that at least one other disciplinary body stopped costs accumulating once the

member admitted the charges. It was also suggested that, where a number of charges were laid, in which only a proportion resulted in a finding and sanction, only a proportion of the costs should be ordered. It was agreed that this would be a matter for the discretion of the Tribunal.

### Conclusion

Those attending commented that they found the consultation process to be worthwhile. Most of the issues raised by Panel members have been followed up by the TDB. A similar meeting was held in February 2012.

## **FINANCIAL INFORMATION AND ACCOUNTS**

### **Statement of Directors' responsibilities**

The Directors are responsible for preparing the Annual Report and the financial statements in accordance with applicable law and regulations.

Company law requires the Directors to prepare financial statements for each financial year. Under that law the Directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). The financial statements are required by law to give a true and fair view of the state of affairs of the Company and of the profit or loss of the Company for that period. In preparing those financial statements, the Directors are required to:

- a. Select suitable accounting policies and then apply them consistently;
- b. Make judgements and estimates that are reasonable and prudent; and
- c. Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Company will continue in business.

The Directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the Company and to enable them to ensure that the financial statements comply with the requirements of the Companies Act 1985. They are also responsible for safeguarding the assets of the Company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

### **Auditors**

At the company's Annual General Meeting in 2010, the Board adopted a resolution to

reappoint Hillier Hopkins LLP to carry out the audit for 2010. However, in view of the firm's decision to raise its audit fee to the company by a substantial amount, the Directors decided to appoint a new firm of auditors. An Extraordinary General Meeting of the Company was held on 16 February 2011, when a resolution was adopted to appoint A-Spire Business Partners Ltd in place of Hillier Hopkins LLP. The former auditors were informed of this resolution and raised no objections. A resolution to reappoint A-Spire Business Partners Ltd to carry out the audit for 2010 was adopted at the company's Annual General Meeting on 20 July 2011.

### **Statement of Disclosure of Information to Auditors**

The Directors who were in office on the date of the approval of these financial statements have confirmed, as far as they are aware, that there is no relevant audit information of which the auditors are unaware. Each of the Directors has confirmed that they have taken all the steps that they ought to have taken as Directors in order to make themselves aware of any relevant audit information and to establish that it has been communicated to the auditors.

This report is prepared in accordance with the special provisions relating to small companies within Part VII of the Companies Act 1985 and with the Financial Reporting Standard for Small Entities effective January 2007 and this report was approved by the Board on 30 April 2012.

By order of the Board

N A Nagler - Company Secretary

## **INDEPENDENT AUDITOR'S REPORT TO THE MEMBERS OF THE TAXATION DISCIPLINARY BOARD LIMITED**

We have audited the financial statements of The Taxation Disciplinary Board Limited for the year ended 31 December 2011 which comprise the Profit and Loss Account, the Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and the Financial Reporting Standard for Smaller Entities (United Kingdom Generally Accepted Accounting Practice applicable to Smaller Entities).

This report is made solely to the company's members, as a body, in accordance with the Companies Act 2006, section 495. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. In those circumstances, to the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

### **Respective responsibilities of directors and auditors**

As explained more fully in the Directors' Responsibilities Statement set out on page 4, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. Our responsibility is to audit the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Auditing Practices Board's (APB's) Ethical Standards for Auditors.

### **Scope of the audit**

An audit involves obtaining evidence about the amounts and disclosures in the

financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the company's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the financial statements.

### **Opinion on financial statements**

In our opinion the financial statements:

- give a true and fair view of the state of the company's affairs as at 31 December 2010 and of its surplus for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice applicable to Smaller Entities; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

### **Opinion on other matter prescribed by the Companies Act 2006**

In our opinion the information given in the Directors' Report for the financial year for which the financial statements are prepared is consistent with the financial statements.

### **Matters on which we are required to report by exception**

We have nothing to report in respect of the following matters where the Companies Act 2006 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all of the information and explanations we require for our audit; or

- the directors were not entitled to prepare the financial statements and the directors' report in accordance with the small companies regime.

Barbara Shapiro  
(Senior Statutory Auditor)

For and on behalf of A-Spire Business  
Partners Ltd,  
32 Byron Hill Road  
Harrow on the Hill  
Middlesex  
HA2 0HY

11 May 2012



## INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31 DECEMBER 2011

	Note	2011	2010
		£	£
<b>INCOME</b>			
Contributions to expenditure from participating bodies	2	144,494	154,323
Fines, Costs and Fixed Penalty awards recovered		47,854	14,546
Bank interest		50	-----
		<hr/>	<hr/>
		<b>192,398</b>	<b>168,869</b>
<b>EXPENDITURE</b>			
Amounts payable to Directors	1.3	10,325	15,475
Amounts payable to Panel members		16,030	15,844
Salaries (including NI)		56,150	55,070
Postage, stationery, communications		1,499	1,420
Review of Scheme and regulations		3,000	1,676
Legal costs		36,614	23,645
Training for panel members		4,935	6,045
Audit		1,800	1,895
Travel and meetings		4,407	3,533
Office and computer costs		625	888
Transcripts for tribunals		2,154	2,344
Recruitment		-----	301
Insurance		1,024	1,675
Bank charges		30	37
Court applications		806	820
Miscellaneous		61	66
		<hr/>	<hr/>
		139,460	130,734
		<hr/>	<hr/>
<b>SURPLUS FOR THE YEAR</b>		52,938	38,135
Less transfer to participating bodies	6	(52,938)	(38,135)
		<hr/>	<hr/>
		-----	-----
		<hr/> <hr/>	<hr/> <hr/>

The result for the year arises from continuing operations.

No separate statement of total recognised gains and losses has been presented as all such gains and losses have been dealt with in the Income and Expenditure Account.

The notes on pages 27 and 28 form part of these financial statements.

**BALANCE SHEET AS AT 31 DECEMBER 2011**

	Note	2011 £	2010 £
<b>Current Assets</b>			
Debtors	4	361	-----
Cash at Bank		<u>103,892</u>	<u>58,995</u>
		104,253	58,995
<b>Creditors</b>			
Amounts falling due within one year	5	(104,253)	(58,995)
		-----	-----
<b>Net Current Assets</b>		=====	=====
<b>Reserves</b>			
Income and expenditure account		-----	-----
		=====	=====

The financial statements have been prepared in accordance with the special provisions relating to companies subject to the small companies regime within Part 15 of the Companies Act 2006, and with the Financial Reporting Standard for Smaller Entities (effective April 2008).

Approved by the Board of Directors and authorised for issue on 30 April 2012 and signed on its behalf by:

D Hudson  
Director

P S Gravestock  
Director

The notes on pages 27 and 28 form part of these financial statements.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2011

### 1. Accounting Policies

#### 1.1 Accounting convention

The financial statements have been prepared under the historical cost convention in accordance with the Financial Standard for Smaller Entities (effective April 2008).

#### 1.2 Income

The Scheme is financed mainly by the Chartered Institute of Taxation and the Association of Taxation Technicians. The Investigation Committee and Disciplinary Tribunal costs are shared between the two bodies in proportion to the numbers of cases dealt with from each body. All other costs are shared equally. The Institute of Indirect Taxation joined the Board during 2011 and makes a flat-rate contribution towards the Board's costs.

The Disciplinary Tribunal is empowered to make orders for the payment of costs and fines. In addition, the Board is empowered to make orders for the payment of Fixed Penalty charges for breaches of the participants' administrative requirements. Credit is taken on receipt; sums outstanding are not included in the accounts.

#### 1.3 Expenditure

Expenditure includes fees and expenses of Board and Panel members for meetings and hearings held in the year.

### 2. Net contributions to expenditure from participating bodies.

Contributions by the participating bodies are calculated to cover the Scheme's total expenditure less fines and costs recovered in the year, so that there is neither a surplus nor a deficit.

	2011	2010
	£	£
The Chartered Institute of Taxation (CIOT)	86,693	94,571
The Association of Taxation Technicians (ATT)	<u>57,202</u>	<u>59,752</u>
	143,895	154,323
Allocation of deficit / (surplus)	(52,938)	(38,135)
	<u>£90,957</u>	<u>£116,188</u>

### 3. Movements on the accounts with the participating bodies.

	CIOT	ATT
	£	£
Balance as at 1 January 2011	(50,925)	(2,550)
Contributions	<u>(86,693)</u>	<u>(57,202)</u>
	(137,618)	(59,752)
Net Cost Allocations	<u>40,015</u>	<u>60,113</u>
Balance as at 31 December 2011	<u>£ (97,603)</u>	<u>£361</u>

#### 4. Debtors

	2011	2010
	£	£
The Association of Taxation Technicians--end-year balance	<u>361</u>	<u>-----</u>

Amounts owed by the Association of Taxation Technicians represent the shortfall of its contributions compared with the expenses apportioned to it.

#### 5. Creditors - amounts falling due within one year

	2011	2010
	£	£
The Association of Taxation Technicians--end-year balance	-----	2,550
The Chartered Institute of Taxation--end-year balance	97,603	43,425
The Chartered institute of Taxation--loan for working capital	<u>-----</u>	<u>7,500</u>
	97,603	53,475
Accrued expenditure	<u>6,650</u>	<u>5,520</u>
	<u>104,253</u>	<u>58,995</u>

Amounts owing to the Association and the Institute represent the excess of their contributions compared with the expenses apportioned to them.

#### 6. Allocation of Surplus for the year

This is included in the net cost allocations shown at Note 2 above

	2011	2010
	£	£
Surplus (Deficit) for the Year	52,938	38,135
Allocated to the participant bodies:		
The Chartered Institute of Taxation	(55,849)	(29,661)
The Association of Taxation Technicians	<u>2,911</u>	<u>(8,474)</u>
	<u>(52,938)</u>	<u>(38,135)</u>
Transferred to Reserves	<u>-----</u>	<u>-----</u>

#### 7. Related Parties

The Chartered Institute of Taxation , the Association of Taxation Technicians and the Institute of Indirect Taxation are related parties by virtue of their ability to influence the conduct of the company's affairs.

## ANNEX

### THE TAXATION DISCIPLINARY SCHEME 2008

In January 2008, a new Taxation Disciplinary Scheme came into operation, after securing the approval of the Councils of the ATT and the CIOT. This followed an in-depth review of the previous Scheme carried out by a firm of solicitors specialising in professional regulation.

The main elements of the disciplinary process are set out below.

#### **1 The review stage**

The procedures set out in the new 2008 Scheme and accompanying Regulations build upon the processes developed under the previous Scheme. The initial handling of complaints remains a function of a TDB staff member, known as the Reviewer, who processes correspondence from the complainant and ensures that the member has every opportunity to respond to the allegations made by the complainant. The Reviewer may reject complaints that appear to be trivial, vexatious, more than a year old or outside the jurisdiction of the Scheme. If the complaint appears to be minor and to raise no disciplinary issues, it may be sent for conciliation. The complainant may appeal to an independent Investigatory Assessor against any decision to reject a complaint; the Assessor will then decide whether the case should continue.

If the complaint involves a breach of the participants' administrative rules, such as failure to meet the CPD requirements, there is provision for the Reviewer to impose a Fixed Penalty. If the member objects, he may request a hearing by a Disciplinary Tribunal (although if the charges are proved, additional costs are also likely to be imposed).

This is similar to the Fixed Penalty arrangements that apply in the Magistrates Courts.

#### **2. The Investigation Committee**

As under the previous Scheme, most cases will start with an Investigation Committee consideration as to whether there is a prima facie case to answer. The Investigation Committee comprises up to five members, with a majority of lay members and at least one professional member. These members are drawn from a larger Investigation Panel appointed by the TDB: the members of the Panel are listed on Page 17.

The Investigation Committee considers all cases referred to it on the basis of a dossier of written submissions from the complainant and the member. If it decides that a prima facie case has not been made out or that the case is not serious or that there is unlikely to be evidence to substantiate it before a Disciplinary Tribunal, it may conclude that the case should go no further. The Committee must give reasons for its decision and these are sent to both the complainant and the member. The complainant has a right to appeal against such a decision to an Investigatory Assessor appointed by the TDB, who may reject the appeal or require a new Investigation Committee to reconsider the complaint.

All other prima facie cases will be referred to a Disciplinary Tribunal. The Investigation Committee no longer has the power to award minor sanctions without a hearing, but with the member's consent. Thus all significant complaints will be heard by a Disciplinary Tribunal.

### **3. The Disciplinary Tribunal**

The Disciplinary Tribunal comprises three members selected from a separate Disciplinary Panel appointed by the TDB. The majority of members of the Panel are not members of the ATT or the CIOT. (The members of the Panel are listed on Page 18.) Each Tribunal will include a legally-qualified chairman, a lay person and a member of either the ATT or the CIOT. Its function is to hear evidence submitted by the Presenter of the case (who is appointed by the TDB to prepare the charges and present the case) and from the member (or his/her representative) and to listen to any witnesses. The member is not obliged to attend, although it is advisable for him/her to do so. But the member is required to cooperate with, and respond to correspondence from, the TDB.

At a Disciplinary Tribunal the standard of proof is the civil standard, and if the allegations are found proven the Tribunal has a wide range of sanctions, which include an order to apologise, a warning as to future conduct, a censure, a fine, suspension or

expulsion from the body of which the defendant is a member. When the allegations are found proved, the Tribunal will normally award costs against a defendant and order that its finding be published in Tax Adviser and on the TDB's website. In cases of inadequate professional service there is a power to award compensation where the complainant can demonstrate a quantifiable material loss, up to a maximum of £5,000.

### **4. The Appeal Tribunal**

Following a finding by a Disciplinary Tribunal, both the member and the TDB may seek to appeal. Appeals are permitted only on specified grounds. An independent Disciplinary Assessor will be appointed by the TDB from the Disciplinary Panel to determine whether the grounds of appeal meet the criteria. If they do, the case will go to an Appeal Tribunal, which has a similar composition to a Disciplinary Tribunal. The Appeal Tribunal may uphold, reject or vary any order made by a Disciplinary Tribunal. Its decision is the final stage in the TDB's procedures.

**TAXATION  
DISCIPLINARY  
BOARD**

**PO Box 544**

**Pinner**

**HA5 9EY**

**Tel/fax: 020 8868 9717**

**[www.tax-board.org.uk](http://www.tax-board.org.uk)**

**The Taxation Disciplinary Board Limited  
Registered Office: Artillery House, 11-19 Artillery Row, London SW1P 1RT  
A Company registered in England, number 4210063**