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Taxation

Excellence in Taxation

# Frequently asked Questions (FAQs) with a focus on members working in Commerce and Industry

This document covers FAQs raised by members working in Commerce and Industry. The answers follow closely the approach in PCRT which applies to all members but are drafted specifically with a focus on the Commerce and Industry workplace.

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# 1 What should I do if I find an irregularity in the company's tax affairs?

## 1.1 For the purposes of this FAQ

**1.1.1** 'Irregularities' is intended to include all errors whether the error is made by the member, senior colleagues (including the Senior Accounting Officer (SAO) where relevant), junior colleagues, an external adviser, HMRC or any other party involved in the company's tax affairs or tax accounting records.

**1.1.2** In the course of a member's work, the member may become aware of possible irregularities in the company's tax affairs. Unless already aware of the possible irregularities, senior colleagues should be informed as soon as the member has knowledge of the irregularity where it is possible to do so.

## 1.2 Irregularities

**1.2.1** Where there is an irregularity which has resulted in the company paying too much tax the member should work with colleagues and the company's professional advisers in making a repayment claim and have regard to any relevant time limits. With the exception of this paragraph and 18 the rest of this section on irregularities deals solely with situations where sums may be due to HMRC or there are inaccuracies in the SAO's certificate on tax accounting arrangements (where the company comes within the SAO regime).

**1.2.2** On occasions it may be apparent that an error made by HMRC has meant that the company has not paid tax actually due or has been incorrectly repaid tax. Correcting such mistakes may cause expense to a company. A member should bear in mind that, in some circumstances, companies or their agents may be able to claim for additional professional costs incurred and compensation from HMRC. See HMRC's complaints factsheet.<sup>1</sup>

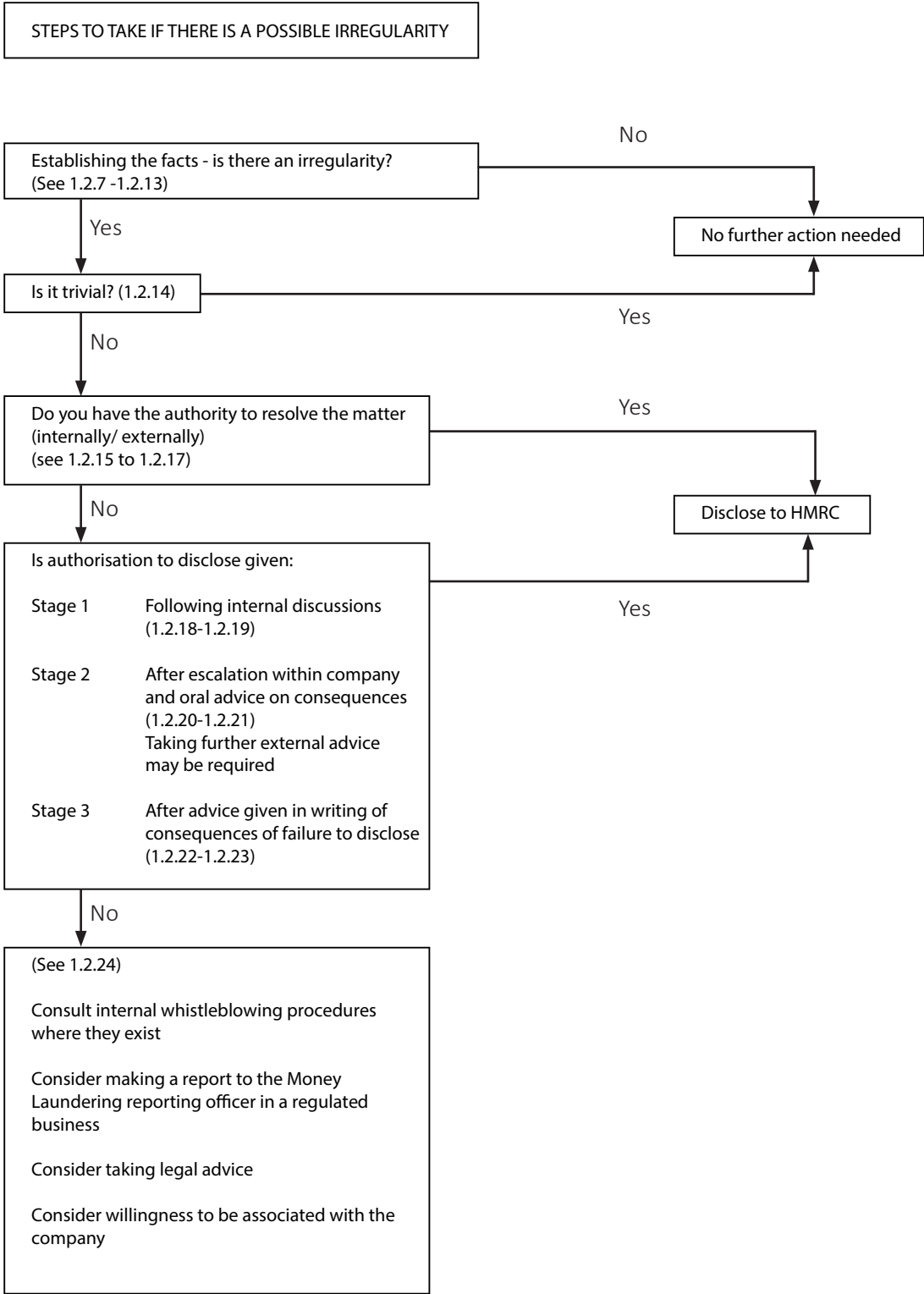
**1.2.3** A member must act correctly from the outset. A member should keep sufficient and appropriate records of discussions and advice and when dealing with irregularities the member should:

- Give colleagues within the company appropriate advice;
- If necessary, seek to persuade colleagues to behave correctly;
- Take care not to appear to be assisting colleagues or company advisers to plan or commit any criminal offence or to conceal any offence which has been committed; and
- In appropriate situations, or where in doubt, discuss the situation with a colleague or an independent third party (having due regard to confidentiality).

<sup>1</sup>Putting things right: how to complain - Factsheet C/FS - Publications - GOV.UK




- 1.2.4** Once aware of a possible irregularity, a member must bear in mind the legislation on money laundering, any other reporting requirements and the obligations and duties which this places upon them where the business is within the regulated sector.
- 1.2.5** In any situation where a member has concerns about their own position, they should take specialist legal advice. This might arise, for example, where colleagues appear to have used the member to assist in the commission of a criminal offence in such a way that doubt could arise as to whether the member had acted honestly and in good faith.
- 1.2.6** The example flowchart summarises the recommended steps a member should take where a possible irregularity arises. It must be read in conjunction with the guidance and commentary that follow it.





## Establishing the facts

- 1.2.7** Although a member is not under a duty to make enquiries to identify irregularities which are unrelated to the work they are involved with in a company, if they do become aware of any irregularity in the company's tax affairs or tax accounting records they should follow this guidance, whether in relation to a matter on which they have worked or not.
- 1.2.8** A member who suspects that an irregularity may have occurred should discuss this with senior colleagues or the SAO (where relevant) to remove or confirm the suspicion. They should take into account the fact that they may not be aware of all the facts and circumstances and may not, therefore, be able to reach a definitive conclusion.
- 1.2.9** If the irregularity concerns the accounts but is not material from an accounting perspective it will usually be the case that no adjustment is needed and no further action is required. See 3.8-3.10 of Professional Conduct in Relation to Taxation. However it should be borne in mind that what is or is not material should be tested against the materiality level for the relevant solus accounts and not the materiality level for the group accounts, if the entity is part of a consolidated group. Further HMRC do not as a rule automatically accept that matters below the level of accounting materiality are to be considered immaterial when applying tax rules and considering whether accounting systems are appropriate under the SAO rules. So consideration should be given as to whether adjustments and / or disclosures should be made to ensure tax rules including SAO requirements are met, even if the irregularity relates to an item considered "immaterial" from an accounting or audit perspective.
- 1.2.10** Where colleagues or an external adviser provides an explanation for the apparent irregularity to the satisfaction of the member, the member can continue with their work without considering the matter further.
- 1.2.11** Where an explanation of the apparent irregularity is not given to the satisfaction of the member, the member should consider whether it is appropriate to escalate the matter and raise it with more senior colleagues. They should monitor the position carefully. Should it later become apparent that there is an irregularity despite previous assurances received to the contrary the member should follow the advice in the flowchart at 1.2.6.
- 1.2.12** If a member is in doubt as to whether there is an irregularity the member should consider seeking specialist advice from sources such as external advisers, sector forums and professional bodies. Likewise correcting more serious errors can require specialist help where again assistance may be required. In some situations the member may wish to seek a second opinion on technical advice provided by external advisers.



**1.2.13** The member should protect their position and record their compliance with this guidance by documenting:

- The discussions they have had internally within the company, any colleague, specialist and/or HMRC;
- Explanations provided to them;
- Their conclusion and the reasons for reaching that conclusion.

It may be appropriate to confirm the facts in writing with a senior colleague or external advisers.

#### **Is the irregularity trivial?**

**1.2.14** As a general principle all known irregularities should be corrected (save for non-material adjustments as described in 1.2.9). In the opinion of the professional bodies it is reasonable for a member to take no steps to advise HMRC of isolated errors where the tax effect is no more than minimal, say up to £200, as these will probably cost HMRC and the company more to process than they are worth to the Exchequer.

#### **What are the company procedures associated with disclosing the irregularity?**

**1.2.15** A member must ensure that they have authority to disclose an error to HMRC or to discuss it with external professional advisers. They should refer to internal company procedures where relevant. If in any doubt or if the amount of tax involved is material the member should confirm the position with the SAO where there is one or other appropriate internal colleagues.

**1.2.16** A member must have the authority to agree a negotiated figure following disclosure of the facts and circumstances. A member cannot agree a figure that they know contains an error.

**1.2.17** In all cases where HMRC has sent an over-repayment to the company they must return it to HMRC as soon as practicable. A member must deal with matters based on company procedures and cannot act without the necessary authority.



## **Stage 1: Discuss matters internally to agree authority to disclose**

- 1.2.18** Subject to the circumstances set out in 1.2.15 – 1.2.17 above, the member should consult internally requesting authority to notify HMRC of the error. A member should advise internal colleagues about the need to make a timely disclosure, and advise colleagues of the company's obligations under the relevant tax legislation, referring, as relevant, to interest, surcharges, penalties and the rules concerning the delayed correction of innocent errors.
- 1.2.19** Colleagues may not agree with the member's advice and the member should then take the further steps detailed in paragraphs 1.2.20 – 1.2.24.

## **Stage 2: Escalating the matter within the company**

- 1.2.20** Where it appears that colleagues are reluctant to agree to authorise disclosure of the irregularity to HMRC, the member should escalate the issue within the company and refer to more senior colleagues. It may be appropriate to consider again the points set out in paragraph 1.2.12 relating to specialist advice and second opinions.

The member should explain to colleagues:

- The potential consequences of non-disclosure;
- The benefit of making a voluntary disclosure especially as regards reduced penalties; and
- The wide ranging powers available to HMRC to obtain information from taxpayers, their agents and third parties.


This will also include the member explaining that they will be required to put their advice that disclosure is required in writing.

- 1.2.21** If, having followed this approach there is continued reluctance to authorise disclosure to HMRC, the member should follow the guidance set out in paragraphs 1.2.22 – 1.2.24.

## **Stage 3: Advising senior colleagues in writing of the consequences of failure to disclose**

- 1.2.22** Where senior colleagues remain unwilling to make a full disclosure to HMRC the member should ensure that their conduct and advice are such as to prevent their own probity being called into question. It is essential therefore to advise colleagues in writing, setting out the facts as understood by the member, confirming to the colleagues the member's advice to disclose and the consequences of non-disclosure.



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- 1.2.23** If, after being advised in writing, the colleagues prevaricate about making a full disclosure, the member must consider at which point the prevarication should be treated as a refusal to disclose.

#### **Actions where there is a refusal to authorise disclosure**

- 1.2.24** If, despite being fully advised of the consequences, there remains a refusal to authorise appropriate disclosure to HMRC, the member must:

- Consult the company's whistleblower policy where one exists;
- Consider whether a money laundering report should be made to the firm's MLRO/NCA in a company within the AML regulated sector;
- Consider taking specialist legal advice;
- Consider their willingness to be associated with the company on an ongoing basis.

#### **Other related matters**

##### **Corporation Tax or Other Returns**

- 1.2.25** Where the error relates to a Corporation tax or other return the company must arrange to amend any return affected by the error providing it is within time to do so. Where the time limit for amending a return has passed the company or its agent should provide HMRC with sufficient and accurate information to explain the error. If HMRC fails, or is unable, to take any necessary action, for example to issue a discovery assessment, a member is under no legal obligation to draw HMRC's failure to their attention, nor to take any further action. Where it is relevant a member should ensure that colleagues within the organisation are aware of the potential for interest and /or penalties.

##### **Decisions of Tribunals or Courts**

- 1.2.26** It is possible that after a company has made a return a later (perhaps years later) unrelated decision of the Tribunal or Court may cast doubt on whether the return was made on the correct basis.
- 1.2.27** A member is not under a duty to monitor all returns and all tax cases for many years after the returns have been filed to identify this rare event. However, if the member is aware of such a situation they should discuss with colleagues and / or the company's professional advisers and if deemed necessary, seek specialist advice.



## 2 What should I do if I disagree with the tax technical position being adopted by a colleague?

### 2.1 In this FAQ

**2.1.1** ‘Differences of opinion’ refer to circumstance where there is internal disagreement with the organisation regarding a technical or procedural issue. Where there is a difference of opinion on an irregularity the member should refer to the circumstances where colleagues may each consider they have a tenable position on the way to proceed eg. differing interpretations of the legislation.

### 2.2 Differences of opinion

**2.2.1** Where there is a difference of opinion which may significantly increase or decrease the company’s tax bill the member should work with colleagues and the company’s professional advisers to establish the correct technical position and the approach to be adopted. This is the case whether senior staff (such as the SAO) disagree with more junior staff or junior staff (such as those reporting to an SAO) disagree with more senior staff.

**2.2.2** On occasions it may not be possible to resolve the difference of opinion and individuals within the organisation may consider there may be more than one tenable position. This section of the guidance sets out how a member should proceed.

**2.2.3** A member must act correctly from the outset. A member should keep sufficient appropriate records of discussions and advice and when dealing with the difference of opinion the member should:

- Give colleagues within the company appropriate advice;
- Explain clearly to colleagues the technical basis on which the member has reached their conclusions.
- Be willing to consider the technical basis set out by colleagues.
- In appropriate situations, or where in doubt, discuss the situation with other colleagues or an independent third party (having due regard to confidentiality).

**2.2.4** A member should not pursue their own stance unreasonably particularly where a more senior colleague is taking responsibility for a decision and signing the relevant report.

**2.2.5** A member must bear in mind the guidance on irregularities and should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading nor to assert tax positions in a tax return which they consider have no sustainable basis.

**2.2.6** The flowchart below summarises the recommended steps a member should take where a difference of opinion arises. It must be read in conjunction with the guidance and commentary that follow it.

**STEPS TO TAKE IF THERE IS A POSSIBLE DIFFERENCE OF OPINION**

Establishing the facts - is there a difference of opinion?  
(See 2.2.7- 2.2.13)

Yes

Procedure within the organisation (see 2.2.14 to 2.2.20)

Stage 1	Discuss internally
Stage 2	Escalate internally to attempt to secure agreement
Stage 3	Advise senior colleagues of the position in writing. Accept the decision of senior colleague signing off the report/tax return etc.



## Establishing the facts

- 2.2.7** Where a difference of opinion has occurred the member should be clear on the facts relating to the matter. They should double check their own technical standpoint and consider the approach suggested by others within the organisation whether they are more junior, at the same level or more senior within the organisation.
- 2.2.8** If a member feels that a difference of opinion has occurred they should consider discussing this with senior colleagues or the SAO (where relevant) to confirm whether their opinion is tenable. Where they are the SAO they should discuss the position with those reporting to them. They should take into account the fact that they may not be aware of all the facts and circumstances and may not, therefore, be able to reach a definitive conclusion.
- 2.2.9** If the difference of opinion concerns the accounts but is not material from an accounting perspective in general no adjustment is needed and no further action is required.
- 2.2.10** Where colleagues or an external adviser provide an explanation for their approach to the satisfaction of the member, the member should accept their approach and take no further action.
- 2.2.11** Where the technical explanation is not given to the satisfaction of the member, the member should consider whether it is appropriate to escalate the matter and raise it with more senior colleagues. They should monitor the position carefully. The member should be mindful that they may need to consider the irregularities section of the guidance if the difference of opinion could result in the knowing and deliberate underpayment of tax.
- 2.2.12** If a member is in doubt about their technical approach they should consider seeking specialist advice from sources such as external advisers, sector forums and professional bodies.



**2.2.13** The member should protect their position and record their compliance with this guidance by documenting:

- The discussions they have had internally within the company, any colleague, specialist and/or HMRC;
- Explanations provided to them;
- Their conclusion and the reasons for reaching that conclusion.

It may be appropriate to confirm the facts in writing with a senior colleague or external advisers.

**What are the company procedures associated with reaching agreement?**

**2.2.14** If there are two tenable positions and a difference of opinion remains the member should work through the following process:

**Stage 1: Discuss matters internally until agreement can be reached**

**2.2.15** The member should consult internally until they have exhausted all opportunities to reach agreement.


**2.2.16** It may not be possible to reach agreement and the member should then take the further steps detailed in paragraphs 2.2.17 – 2.2.18.

**Stage 2: Escalating the matter within the company**

**2.2.17** Where it appears that agreement cannot be reached the member should escalate the issue within the company and refer to more senior colleagues. It may be appropriate to consider again the points set out in paragraph 2.2.12 relating to specialist advice and consider taking a second opinion.

The member should explain to colleagues:

- The technical basis of their position
- The potential consequences of the different tenable positions



**2.2.18** Where agreement is still not reached the member should then take the further steps detailed in paragraphs 2.2.19 – 2.2.20.


**Stage 3: Advising senior colleagues in writing of the inability to reach agreement and the consequences of each tenable position. Accept the decision of senior colleague with responsibility**

**2.2.19** Where agreement cannot be reached the member should ensure that their conduct and advice are such as to prevent their own probity being called into question. It is essential therefore to advise colleagues in writing, setting out the facts as understood by the member, confirming to the colleagues the member’s technical position and the consequences of adopting a different stance.

**2.2.20** A member should be aware that more senior colleagues have the responsibility to make decisions and it may therefore be appropriate to accept the tenable approach suggested by the individual who takes responsibility for the report or tax return (eg the SAO where there is one) and take no further action. Whilst the member may consider there is another tenable position they must accept the decision of more senior colleagues where the alternative position is also tenable and the senior colleague is taking responsibility for it. The member should ensure that appropriate disclosures are made so that the position is clear and unambiguous to HMRC.

### **3 What should I do if a colleague asks me for tax advice relating to their personal tax affairs?**

**3.1** A Member working in commerce and industry is generally working in an in-house role ensuring tax compliance by their employer. Sometimes other staff within the company will be aware of their tax knowledge and will ask for assistance in relation to matters which may be closely associated to the company for example company car benefits in kind or claims for tax relief on mileage. At other times they may be asked to provide tax advice which does not relate to the employment or employer at all.

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- 3.2** Members are reminded of the fundamental principles which apply to them as set out in [Professional Conduct in relation to Taxation](#) (PCRT) and [Professional Rules and Practice Guidelines](#) (PRPG).
- 3.3** A member being asked to provide advice in a personal capacity does not have to agree to do so. In most situations it would be prudent to decline to advise for the reasons set out in 3.4 below.
- 3.4** If a member does agree to give personal tax advice, even on an informal basis to colleagues, they should be aware of the following:
- a.** The risks of providing advice which is outside the scope of a member’s employment contract. A member has a duty of care (liability in tort) when providing advice and they should be aware of the risk of legal action being taken against them (even though the advice is given for no consideration);
  - b.** Potential conflicts of interest, for example between what is in the best interests of the employer and the best interests of the individual being advised;
  - c.** They should be qualified and experienced enough to give the advice requested and should be aware of the associated risks. In particular, the member should be wary that if they portray themselves as an expert on a subject matter, they will be judged by expert standards even if their description was a misrepresentation;
  - d.** The terms of their employment contract to ensure they are not prohibited from doing the work;
  - e.** That their employment contract may not include a clause underwriting any liability in relation to advice provided or that they may not be covered by their employer’s insurance. If not covered by their employer’s insurance they should consider arranging appropriate professional indemnity insurance (PII) which covers pro bono advice. Further guidance on providers of professional indemnity insurance can be found on the [CIOT](#) and [ATT](#) websites.
- 3.5** If a member provides advice on a paid basis (other than by their employer) they should ensure they comply with the relevant [PII](#) and [AML](#) obligations.



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If you have a question or would like to discuss the FAQ Guidance, please contact us.

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