

# PROFESSIONAL RULES AND PRACTICE GUIDELINES

Effective from 9 November 2018

[Includes additional requirements from 1 January 2021  
marked in red pending full PRPG update]

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## DEFINITIONS

In this publication:

**'ADIT affiliate'** means an International Tax Affiliate of the CIOT.

**'AML'** means anti-money laundering.

**'ATT'** means Association of Taxation Technicians.

**'CIOT'** means Chartered Institute of Taxation.

**'Client'** means a tax payer which a member has a professional relationship with and includes, where the context requires, former client.

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

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

**'HMRC'** means Her Majesty's Revenue and Customs. All references in this document to HMRC also apply to devolved tax authorities.

**'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 Registration, Monitoring and Compliance Scheme, CCAB Anti-Money Laundering Guidance and the Taxation Disciplinary Scheme. (See [www.tax.org.uk](http://www.tax.org.uk) and [www.att.org.uk](http://www.att.org.uk)).

**'Member'** means a member of the CIOT or ATT, including students and ADIT affiliates.

**'Member in Practice'** means a member (including students) who provides taxation services on a full-time or part-time basis as a sole practitioner, a partner in 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 they have a financial interest which represents 5% or more of the equity capital.

**'PCRT'** means Professional Conduct in relation to Taxation.

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

**'PRPG'** means Professional Rules and Practice Guidelines.

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

**'TDB'** means The Taxation Disciplinary Board Limited.

Words importing persons include bodies corporate.

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** PRPG sets out the fundamental principles and rules together with related guidance which members must comply with and which help members handle challenges encountered in their professional work.
- 1.3** PRPG has 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. Members who fail to comply with PRPG or any other laws of the CIOT or 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 and onwards expands on the application of these principles and obligations. Further rules and guidance are contained in the separately published material on the CIOT and ATT websites, such as Professional Conduct in Relation to Taxation, Engagement Letters for Tax Practitioners and Anti-Money Laundering Guidance. (See [www.tax.org.uk](http://www.tax.org.uk) and [www.att.org.uk](http://www.att.org.uk)).

**1.5** Unless otherwise stated these Professional Rules and Practice Guidelines apply to:

- Members of CIOT
- Members of ATT
- Students of CIOT
- Students of ATT
- International tax affiliates of CIOT ('ADIT affiliates')

PRPG apply to a member employed in professional practice (as set out in Chapter 13) as it does to a member in practice whether or not their employer is a member of the CIOT or ATT. Certain parts of this guidance applies to members employed in commerce and industry and other sectors (as set out in Chapters 14 and 15).

- 1.6** A member owes a duty to their clients (including those clients for whom they act on a reduced fee or no fee basis) to act with reasonable care and skill, honesty, integrity, impartiality and professionalism. These obligations are also owed to a 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 Financial Reporting Council, and should have regard to these as relevant.
- 1.8** 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. It is important to observe the spirit, as much as the letter, of PRPG and use professional judgement when applying it in practice.
- 1.9** PRPG is written to apply throughout the UK. It is based on the law and practice in England and Wales. Appendices 1 and 2 make necessary adaptations for the laws in Scotland and Northern Ireland. 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.

- 1.10** A member seeking further guidance on the application of PRPG may contact CIOT or ATT at [standards@tax.org.uk](mailto:standards@tax.org.uk). Particular issues may require a member to seek specialist advice and apply their own judgement.
- 1.11** TDB is legally and operationally independent of CIOT and ATT and manages the Taxation Disciplinary Scheme which is the practical mechanism for handling complaints made against members. For further details see [www.tax-board.org.uk](http://www.tax-board.org.uk).

## 2. FUNDAMENTAL PRINCIPLES AND MEMBERS' OBLIGATIONS

### 2.1 Overview of the fundamental principles

A member must always 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 a member or third parties.

- **Professional behaviour**

To comply with relevant laws and regulations and avoid any action that discredits the profession.

In addition to the amplification of these fundamental principles below, a member must also comply with PCRT which provides detailed guidance on the tripartite relationship between a member, their client and HMRC.

### 2.2 Integrity

2.2.1 A member must always be honest in all their 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 (directly or indirectly) to any illegal activity.

2.2.3 A member must ensure that clients' money is properly accounted for and maintained separately. For further details, see Chapter 7.

2.2.4 A member must not obtain or seek professional work in any unprofessional manner. For further details, see Chapter 12.

### **2.3 Objectivity**

2.3.1 A member must be objective in all work undertaken. If objectivity may be impaired through conflict of interest, a member must act in accordance with Chapter 6.

### **2.4 Professional competence and due care**

2.4.1 A member must carry out their professional work with proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which a member is not competent to perform, whether because of lack of experience or the necessary technical or other skills, unless appropriate advice, training 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 their client or employer, as applicable. The duty to observe confidentiality applies without time limit to all information with which a member is entrusted by their client and/or employer. This includes information which is brought to their knowledge during or at any time after the carrying out of their assignment, or in the course of their 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 their 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 A member must comply with the legal requirements on the handling of data.

### **2.6 Professional behaviour**

2.6.1 Professional behaviour encompasses a member's business dealing and in certain circumstances as set out below in 2.6.3, conduct in a member's personal life or private capacity.

2.6.2 A member must:

- Uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT;
- Take due care in their professional conduct and professional dealings.

2.6.3 A member must not:

- Perform their professional work, or conduct their practice or business relationships, or perform the duties of their employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to themselves, to the CIOT or ATT or to the tax profession;
- Breach the Laws of the CIOT or ATT;
- Conduct themselves in an unbecoming, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT or ATT (as the case

may be). For the avoidance of doubt, conduct in this context includes (but is not limited to) conduct as part of a member's personal or private life.

- 2.6.4 A member should be courteous and considerate towards all with whom they come into contact in the course of their professional work.

## **Members' Obligations**

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

- 2.7.1 A member in practice must protect their clients, their practice and themselves by having PII cover that complies with the CIOT/ATT PII Regulations (see the CIOT and ATT websites) as they have a duty of care to their clients when carrying out their professional work. A member is responsible for their own work and that of their employees and subcontractors. A member may be liable to pay damages for loss caused by their own professional negligence and that of their employees and subcontractors.

### **2.8 Completion of Annual Return**

- 2.8.1 A member must complete and submit their Annual Return to the CIOT/ATT within the advised time limits.

### **2.9 Compliance with Professional Conduct in Relation to Taxation (PCRT)**

- 2.9.1 A member must conduct their tax work in accordance with PCRT (see the CIOT and ATT websites).

### **2.10 Compliance with Anti Money Laundering legislation and registration**

- 2.10.1 A member must comply with the UK's AML legislation in force from time to time. 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.
- 2.10.2 A member in practice must either be registered with the CIOT or ATT for AML supervision or, if requested, advise the CIOT and ATT of their Supervisory Authority under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. See the CIOT and ATT websites for further information including completion and submission of the registration form.

### **2.11 Compliance with the Continuing Professional Development (CPD) requirements**

- 2.11.1 It is important that a member keeps fully up to date in relation to statute and case law and practice in areas where a member holds themselves out to be competent to practise.
- 2.11.2 The CPD rules do not apply to students of the CIOT or ATT who are not members of either body.
- 2.11.3 A compulsory CPD scheme applies to all CIOT and ATT members with some minor exceptions. For the current requirements and guidelines, members should refer to the CIOT and ATT websites.

### **2.12 Provision of information to the CIOT and ATT**

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

## **2.13 Compliance with the disciplinary process and orders from the TDB**

- 2.13.1 A member is subject to the disciplinary processes of the TDB and must comply with any order from the TDB including orders in respect of costs and fines.
- 2.13.2 A member must respond to correspondence from the TDB without unreasonable delay. Without unreasonable delay will normally mean, in the absence of special circumstances, within 30 days.
- 2.13.3 Failure to respond to correspondence or to comply with an order from the TDB without unreasonable delay will in itself constitute a disciplinary matter.

## **2.14 Obligation to notify the CIOT and ATT – Including new requirements 1 January 2021**

2.14.1 A member must inform the CIOT or ATT in writing addressed to the Head of Professional Standards CIOT or ATT as appropriate, within 2 months if they are:

- Arrested on suspicion of; or
- Charged with; or
- Convicted of a criminal offence. A criminal offence includes an offence committed in the United Kingdom or abroad.
- On or after 1 January 2021 – convicted of Summary only road traffic offences<sup>1</sup>.
- On or after 1 January 2021 – (have) accepted a caution for a criminal offence.

A member must supply details of the nature of the allegation, conviction or caution and provide such relevant information in relation to it as is reasonably requested.

Ordinarily, CIOT or ATT will not refer a member to the TDB until the outcome of the criminal proceedings is known.

2.14.2 A member must notify the CIOT or ATT in writing addressed to the Head of Professional Standards CIOT or ATT as appropriate, within 2 months if they:

- Are notified of disciplinary and/or regulatory action upheld against them by another professional body to which a member belongs or by a regulator;
- Are dismissed for misconduct/gross misconduct by their employer;
- Are disqualified as a director or trustee, or enter into a disqualification undertaking;
- Receive a dishonest tax agent conduct notice;
- Receive a monitoring notice from HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation.

A member must provide such relevant details as are reasonably requested by the CIOT and ATT.

A member will be referred to the TDB in relation to the event notified.

## **2.15 Bankruptcy and Individual Voluntary Arrangements (IVAs)**

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<sup>1</sup> Note that you will not need to report a speeding offence if you go on a driving awareness course or accept a fixed penalty for speeding.

- 2.15.1 A member who enters into an IVA with their creditors or becomes subject to a bankruptcy order must notify the CIOT/ATT within 2 months of the date of the IVA or bankruptcy order.
- 2.15.2 If a member fails to notify the CIOT/ATT, their membership of the CIOT/ATT shall cease automatically upon the expiry of the 2 month period.
- 2.15.3 The CIOT/ATT reserves the right to reverse the cessation of membership in 2.15.2 above on the matter coming to their knowledge.
- 2.15.4 Where a member notifies the CIOT/ATT within the 2 month period the CIOT/ATT will consider the appropriate action. This could include:
- Continuation of membership;
  - Referral to TDB;
  - Exclusion.
- 2.15.5 A member who notifies within the 2 month period will be advised of the CIOT/ATT's decision within 2 months of their notifying the CIOT/ATT or where this is not possible, will be notified that their case is being considered.
- 2.15.6 A member whose membership is terminated following consideration by the CIOT/ATT has the right of appeal to the TDB. Such an appeal must be made within 31 days of the date of the notification of exclusion.

## **2.16 Honorary and pro bono work**

- 2.16.1 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 for which a payment, of modest or token amount, is made. Pro bono work means work for which absolutely no payment is made either in cash or kind; with the exception that reasonable expenses may be reimbursed.
- 2.16.2 A member should consider whether, in carrying out work of this nature they come 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, see the CIOT and ATT websites.

## **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 their business will be conducted and any arrangements between the principals.

### **3.2 Practice name**

3.2.1 A firm's name must comply with partnership and company law as appropriate and should not convey an unprofessional image.

3.2.2 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 which it has succeeded.

### **3.3 Practice brand**

In this paragraph "brand" means material used by a member for external communications including practice stationery, advertisements, websites and other digital media. Brands:

- Must comply with legal requirements as to names of partners, principals and other participants;
- Must comply with the practising designations guidelines;
- Should not advertise any specialist service unless the firm has the relevant expertise;
- Should be of a suitable professional standard.

### **3.4 Temporary incapacity of a sole practitioner**

3.4.1 A member who is a sole practitioner is strongly recommended to make suitable arrangements to ensure that their firm can continue to be carried on in the event of their illness or temporary incapacity. Without contingency arrangements serious difficulties may arise, potentially prejudicing the interests of clients.

3.4.2 A member should consider whether their firm has sufficient resources to meet their obligations in their 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 on the CIOT and ATT websites.

### **3.5 Death or permanent incapacity of a sole practitioner**

3.5.1 Similar considerations to those in paragraph 3.4 apply to the death or permanent incapacity of a sole practitioner.

3.5.2 A member should ensure there are suitable arrangements in place for the future management of their firm.

3.5.3 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 their personal representatives. Members

are recommended to consult a lawyer with appropriate experience in drawing up such an agreement. Members should also consider granting a power of attorney where appropriate.

- 3.5.4 A member who acts as a manager of a firm is under the same standard of duty to the sole practitioner or their personal representatives as they are to any client. Such a member must not use their position to seek any personal gain other than the agreed remuneration.

### **3.6 Business continuity plan**

- 3.6.1 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, major IT systems or security failure or terrorist incident.

### **3.7 Dissolution or merger of practice**

- 3.7.1 A merger of two or more practices or the dissolution of a practice should normally be notified to all clients and if appropriate give them the opportunity of deciding whether they wish to continue to instruct the newly constituted practice.
- 3.7.2 Care should be taken to ensure that appropriate professional indemnity insurance cover remains in place.
- 3.7.3 A member should also consider taking specialist legal advice in respect of matters such as the assignment of engagements and other contractual matters.

### **3.8 Cessation of practice**

- 3.8.1 Liability in respect of services provided whilst acting for a client continues after a member has ceased to practice and continuing professional indemnity cover must be arranged in accordance with the CIOT and ATT PII Regulations. A retiring partner is also advised to consider obtaining an indemnity from the continuing partners in respect of claims made against them after their retirement.

### **3.9 Regulated investment business activities**

- 3.9.1 This section concerns those activities defined in the Financial Services and Markets Act 2000 (the Act) and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the Order) as regulated activities (including exempt regulated activities). Regulated activities include investment and pension advice, advice on general (non-investment) insurance contracts and establishing, operating or winding up an investment scheme or personal pension scheme. As a general rule, for an activity to be a regulated activity it must be carried on 'by way of business'.
- 3.9.2 A member must comply with the Act and the Order. Membership of the CIOT or 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 and the Order must be with a firm which is either authorised by the Financial Conduct Authority (FCA) or a member (or controlled or managed by a member) of a Designated Professional Body ('DPB') listed below. Full details of the requirements for authorisation with the FCA are available from the FCA. Details of DPB membership requirements and the rules for a member wishing to provide those investment services permitted under the Act are available from the DPBs.



The FCA recognises the following DPBs:

- 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);
- Chartered Accountants Ireland;
- The Association of Chartered Certified Accountants (ACCA);
- The Institute and Faculty of Actuaries (IFoA);
- The Council for Licensed Conveyancers (CLC); and
- The Royal Institution of Chartered Surveyors (RICS).

3.9.3 A member who is with a firm which is neither authorised by the FCA nor a member of a DPB should not carry out regulated activities (including exempt regulated activities) as to do so would be committing a criminal offence.

3.9.4 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.

3.9.5 What constitutes regulated activities (and exempt regulated activities) is a complex area and if a member is in doubt about whether they are carrying out such activities, they should seek independent legal advice or advice from a DPB. The following high level examples may be helpful in drawing a distinction in the scope of advice which can be given by different advisers:

- A member who is with a firm which is neither authorised by the FCA 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 a 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, they cannot make alternative product recommendations;
- A member who is with a firm which is authorised by the FCA may, provided they are registered with the FCA as an Approved Person in this area, advise fully on pensions and can make specific product recommendations. Additional specific authorisation from the FCA is required before they can advise on pension transfers or opt-outs.

## 4. NEW CLIENTS & ENGAGEMENTS

### 4.1 Obtaining clients

- 4.1.1 A member should refer to the guidance on business development and marketing activities in Chapter 12.
- 4.1.2 A member who is invited to undertake professional work by a prospective client is under no obligation to act. Indeed, they should decline to do so if they believe they would be unable to fulfil the duty of care that they would have to that client.
- 4.1.3 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.

### 4.2 Introduction fees and rewards

- 4.2.1 Where permitted by law, 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:
- A 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, a 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.

### 4.3 Client acceptance

- 4.3.1 Before accepting the new client, a member must comply with the client identification requirements set out in the anti-money laundering guidance which can be found on the CIOT and ATT websites and 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 a member has the capability and resources to manage those risks. In assessing the risks relating to the client, a member should consider the potential client's personal circumstances, business situation, financial standing, sources of funds, integrity and attitude to disclosure in regard to compliance with taxation law;
  - Whether a member and firm will have the skills and competence to service the client's requirements during the course of the engagement;
  - Whether there is any conflict of interest in accepting the client and if so whether and how it might be managed; (See chapter 6);
  - Professional enquiry as set out in 4.4.
- 4.3.2 A member must only accept an appointment on the basis that full disclosure of a client's tax affairs will be made. A member must do nothing to assist a client to commit any criminal offence. A member is encouraged to keep a record of the basis for client acceptance, especially where complex decisions are involved.
- 4.3.3 A member must consider the application of the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 where their client is a consumer, as defined in these Regulations. In particular, there is a requirement to provide a cancellation notice if the contract is not concluded in a member's business premises so as to ensure enforceability of any contract terms, including fees. A member should be aware that criminal sanctions can be imposed upon them for

failing to comply with these regulations. A member should make themselves aware of the regulations and the circumstances in which they apply. For more information, see the guidance Engagement Letters for Tax Practitioners which can be found on the CIOT and ATT websites.

#### **4.4 Professional enquiry (also known as professional clearance)**

- 4.4.1 Ordinarily a member should communicate with the previous adviser before accepting an appointment. However, a member must have the prospective client's permission to do so. When permission has been received, a member should ask the previous adviser, in writing, whether the previous adviser is aware of any professional reason why they should not accept the appointment (although they should not ask the previous adviser whether any AML suspicious activity reports have been made). If permission is refused, see 4.4.3.
- 4.4.2 It will usually be convenient to request at the same time relevant handover information to ensure that 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. Requests should be reasonable and relevant and the likely cost to the client and/or previous adviser of supplying the information should be considered.
- 4.4.3 If the prospective adviser does not receive a positive response to their professional enquiry (because the client declines permission to either the prospective or previous adviser to communicate, the previous adviser does not respond or the previous adviser gives a negative or qualified response), the prospective adviser should consider the facts and circumstances and other available evidence carefully before deciding whether to accept the appointment. It would be advisable to document the facts, circumstances and justification, especially if deciding to accept the appointment.
- 4.4.4 Chapter 10 provides guidance for a member who is an outgoing adviser on responding to the professional enquiry and providing the handover information.

#### **4.5 Scope and engagement letters**

- 4.5.1 On accepting instructions, a member is strongly recommended to issue an engagement letter to the client at the outset of the engagement and review it regularly. The engagement letter can be used to manage client expectations and it, or related correspondence, should also clearly set out the basis upon which fees are charged, the scope and nature of the assignment. The client should be asked for their formal agreement. This provides significant protection to a member and is likely to be an important document in any dispute. When the scope of the engagement changes significantly a new letter of engagement may be required. For more information, see the guidance Engagement Letters for Tax Practitioners which can be found on the CIOT and ATT websites.

#### **4.6 Services Directive**

- 4.6.1 Under the Services Directive (Directive 2006/123/EC of 12 December 2006 on services in the internal market), a member (self-employed or principal of a legal person) 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 on the CIOT and ATT websites.

#### **4.7 Obligations in respect of advice given by a predecessor**

- 4.7.1 Unless the client requires otherwise, a member has no duty to investigate advice given by a predecessor, but if they become aware that it is incorrect, they have a duty to tell the client. A member should follow the guidelines in PCRT which can be found on the CIOT and ATT websites.

## **5. CLIENT SERVICE**

### **5.1 Duty of care**

5.1.1 A member has a duty of care to their client which is recognised in law. A member must exercise reasonable skill and care when acting for a client. An engagement letter or other correspondence with the client may limit or define a member's duty of care.

### **5.2 Continuing assessment of scope of engagement**

5.2.1 A member should regularly review their engagement to ensure they are operating within the scope agreed with the client and that the terms remain appropriate.

### **5.3 Managing client expectations**

5.3.1 A member should seek to agree a realistic timetable for delivery of services. Clients should be kept informed and lengthy gaps in communicating with clients should be avoided.

### **5.4 Supervision and training**

5.4.1 If a member delegates work covered by their engagement, whether to an employee, sub-contractor or consultant, a member remains primarily responsible for the work so should exercise sufficient supervision to confirm that the work is satisfactory and that it is carried out by persons who have been suitably trained to carry out the work involved.

### **5.5 Use of subcontractors**

5.5.1 Due to the need to preserve client confidentiality, a member must obtain a client's consent before subcontracting work on that client's affairs. A member could consider including a clause authorising referral to a subcontractor within their engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral. Also see 7.5.

### **5.6 Consultation and second opinions**

5.6.1 A member is encouraged to consult with fellow professionals when advising clients, where appropriate, such as where they are giving significant opinion/advice, to ensure that relevant skill and judgement is applied. This may be obtained by requesting an independent view from a colleague, or by instructing another member or tax counsel. In addition, in any case where the risks for a member (assessed in terms of professional reputation or financial exposure of their practice) of giving wrong advice are high, a member should consider taking a second opinion. It is a matter of judgement for a member whether a second opinion is necessary in any particular situation. If a member relies on a second opinion, evidence of it should be retained on the client file. Client confidentiality rules, especially those concerning consent, must be taken into account.

A significant opinion/advice 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 a client and there is a real risk that a contrary view to that taken by a member on those matters could be reached; or
- The matters advised on are, for some other reason, of sufficient importance to a client to merit obtaining a second opinion.

## **5.7 Form and content of advice**

5.7.1 On deciding on the form of advice provided to a client, 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 client'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 client;
- The need to seek other professional advice.

5.7.2 Advice should normally be given in writing. If a member gives advice in meetings or by telephone, a member should consider carefully whether to confirm in writing. This will allow a client the chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given.

5.7.3 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.

5.7.4 The advice and associated working papers should be consistent with PCRT and in particular, the standards for tax planning.

5.7.5 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.

5.7.6 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 a client automatically that advice previously given, by either a member or a predecessor, has been affected by a change in the law but that they are willing to receive instructions to reconsider such advice.

## **5.8 Keeping proper professional records**

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

- They are able to communicate effectively, including with HMRC (if necessary);
- They, their colleagues and successors can access a record of the client history to inform future client service;
- They are able to resolve any misunderstandings or complaints, including in relation to fees;

- They are able to defend any allegation of negligence.

5.8.2 The records should include:

- All written communications relating to the client's affairs, including letters 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;
- All necessary permanent information and copies of such working documents as are likely to be required.

5.8.3 Records should be organised so as to be accessible. If only electronic records are kept, they must be backed up.

5.8.4 The retention of working papers is an important issue. A member 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 11.

**5.9 Time limits, due dates and interest**

5.9.1 A member should maintain a system to ensure that all relevant time limits and deadlines are monitored and appropriate action taken.

5.9.2 Whatever services are provided, there will be a variety of deadlines. It is important to make clear who is responsible for ensuring these are met.

5.9.3 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 payable, the due date for payment and drawing the client's attention to the fact that interest accrues from that date. However, a member is not responsible for ensuring that the client does actually pay the tax due.

5.9.4 If a member has made it clear to a client that they believe that they have 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.

5.9.5 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.

## **6. OBJECTIVITY (INCLUDING CONFLICTS OF INTEREST)**

### **6.1 Objectivity**

6.1.1 A member should maintain objectivity and independence so that they can exercise professional judgement.

### **6.2 Awareness**

6.2.1 A member should be alert to any factor which affects or might affect their independence or objectivity in respect of a matter (or which might be perceived to do so) particularly with regard to close or long association with a client or family relationships. A member should immediately take action to address any relevant threat to their ability to exercise their professional judgement.

Throughout a member's relationship with a client, circumstances may change and potential conflicts of interest may arise.

### **6.3 Managing potential conflicts of interest**

6.3.1 There are many circumstances in which a member may be presented with an actual, perceived or potential conflict of interest. It is not possible to envisage every possible situation but 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 manage situations where there may be a perceived conflict of interest. A member must consider their position and their actions in the light of both their 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 they become aware of it and should immediately seek a solution to resolve it;
- Where appropriate, a member should inform the client of the existence of the conflict. In some circumstances, a member should consider advising the client to obtain independent advice on whether it is in the client's interests for a member to continue to act;
- Where a conflict of interest cannot be managed satisfactorily in another way, a member should decline to act for one or more clients;
- How the conflict is handled should be noted on file and where possible, confirmed in writing to the client, including any agreement where a member continues to act. These arrangements should be regularly reviewed by a member.

### **6.4 Acting for more than one party to a transaction**

6.4.1 A member may be asked to act for two or more parties in a single matter, for example, both parties in a divorce settlement, both employer and employee, both buyer and seller (including company takeovers, transactions in land, mergers of business, etc.) or both settlor and beneficiary. A member should consider the



appropriate steps to manage the conflict as below including checking what their terms of engagement say.

6.4.2 A member has three choices:

- **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 them in relation to a transaction and is then instructed by the other party to the transaction, a 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. A member is also reminded that knowledge acquired from previous clients should be kept confidential.

- **To act for both clients.**

This may be possible subject to the following conditions:

- There is adequate disclosure of all relevant facts to both parties. Both clients are given the opportunity to consider whether or not they wish a member to act or whether they wish to seek alternative representation. Where applicable, a member should consider whether to advise both clients to consider seeking independent advice on whether it is appropriate for a member to act for both parties;
- A member is satisfied that the circumstances of the conflict can be managed. Safeguards that may be considered include 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. If a member is unable to put separate teams and ethical walls in place, it will only be possible to act for both parties if there is sufficient mutuality of interest between the parties and hence no objection to the sharing of confidential information;
- Both clients agree in writing that a member can act for both parties;
- No preference is shown in advising one against the other.

- **To act for neither party.**

If the conflict of interest cannot be managed acceptably and acting for one party is itself problematic (perhaps because a member has confidential information relating to both parties), the best solution may be to decline to act for both parties.

## **6.5 Financial involvement with clients or third parties**

6.5.1 A member should exercise care before entering into any kind of financial arrangement with a client. This includes, for example, lending money, investing in the business of a client or being asked to act for a client with whom they already have a financial arrangement. Having a financial involvement with a client may impair or be perceived as impairing a member’s ability to act objectively.

6.5.2 Where it is necessary to agree instalment arrangements with a client for the payment of outstanding fees, a member should be aware of the potential obligations

of being authorised by the Financial Conduct Authority (FCA) to offer credit to consumers.

- 6.5.3 A member must always disclose to their client if they are receiving commission, incentives or any other advantage and the amounts they receive from a third party relating to the matter upon which they are advising.

## **6.6 Ceasing to act**

- 6.6.1 If a member needs to cease to act as a result of any conflict of interest, further guidance is in Chapter 10.

## 7. OTHER CLIENT HANDLING ISSUES

### 7.1 Dealings with HMRC

7.1.1 The relationship between a member and HMRC when acting for a client, including particular duties in this regard, is dealt with in PCRT which can be found on the CIOT and ATT websites.

### 7.2 Disclosing information to other third parties

7.2.1 The disclosure of advice, reports or other documents (“information”) to third parties may give rise to a number of potential risks, including the following:

- Breach of client confidentiality;
- Unintended consequences for the client (e.g. in a sale situation, the bidder pulling out);
- A claim against a member from a third party.

7.2.2 It is likely that a member will have a contractual obligation under the engagement letter, as well as a professional obligation, to maintain client confidentiality. This is fundamental to the client relationship.

7.2.3 Unless required to do so by law or where it is considered reasonably necessary for the administration of justice (such as to enable a member to defend themselves in disciplinary proceedings), a member must not release confidential information to a third party without first obtaining the client’s consent.

7.2.4 If the release of information is at the client’s request, it may be appropriate to obtain the client’s confirmation that the client will not hold a member responsible for any unintended consequences of releasing the information.

7.2.5 In any interaction with third parties in connection with services to a client, a member should be careful not to inadvertently assume a duty of care towards the third party. A member may manage this risk by:

- Including a clear notice or caveat in the information stating that the advice has been prepared for the client and that no liability is accepted to any third parties who choose to make use of the information;
- Requiring, as a term of the engagement, that the client seek consent before information with which their own or their firm’s name is associated, is released by the client to third parties;
- Requiring the third party and/or its advisers to undertake in writing that a member be excluded from liability or held harmless as a consequence of making the information available to them. This would be the preferred approach in higher risk situations;
- Communicating to the third party the terms upon which the information is released including limitations on scope, stating that the advice was prepared with only the client’s interests in mind, may not apply in all circumstances, and confirmation that no responsibility is accepted. This approach may be appropriate in medium risk situations;
- Relying only on any disclaimers included in the original information. This may be appropriate if the information already includes clear disclaimers and a member considers that the associated risks are low;

- Seeking an indemnity from the client in respect of any possible claim against a member by the third party. This is most appropriate where the client has a strong interest in the information being provided to the third party, for example, where information is being provided to a potential buyer of one of the client's subsidiaries;
- Declining to provide the information. This may be appropriate if a request is excessive, inappropriate or if providing the information is commercially impractical.

7.2.6 In some cases, it may be appropriate for a member to accept that he owes a duty of care to the third party and manage that with appropriate contractual arrangements. This might be done either by binding the third party into the original engagement letter or entering into a separate agreement tailored for the situation. Possible situations include where:

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

### **7.3 Managing client needs**

7.3.1 A member who does not have the expertise or the staff resources available to meet their client's needs should consider how to manage this and the potential risks involved. Possible solutions could be engaging a subcontractor, referring the client to another professional adviser or simply declining to act. The most appropriate action will depend on the specific circumstances.

7.3.2 If making a referral, a member should make it clear to their client that it is entirely the client's decision whether or not they choose to engage the other professional adviser and that a member has no responsibility for the work undertaken. If at all possible a member should aim to provide the client with a choice of adviser.

### **7.4 Working alongside other professional advisers**

7.4.1 If any other professional advisers are known to be involved in any project or assignment, it is important to define clearly the respective areas of responsibility and record this in the letter of engagement.

7.4.2 When working alongside another professional, a member should be careful to observe their duty of client confidentiality. In cases of doubt, a member should obtain permission/instructions from their client, preferably in writing, ideally in the engagement letter. A member should advise their client of the advantages of permitting appropriate communication between the advisers on a project or assignment in order to progress the matter efficiently, but should equally ensure that the client still makes key decisions and is fully aware of relevant discussions between advisers. Where a member is aware of information which will be properly required by another adviser in performing their duties and the client does not authorise direct communication, a member should ensure that their advice draws the client's attention to the matter of which the other adviser should be informed.

7.4.3 In certain circumstances a member may give instruction direct to barristers without using the services of a solicitor. Further details on licensed access may be found on the bar council website [www.barcouncil.org.uk](http://www.barcouncil.org.uk).

## **7.5 Working in a subcontractor relationship with another professional adviser**

- 7.5.1 A member working in a subcontractor relationship with another professional adviser (lead adviser) should ensure that there is a written record of the agreement between the two parties. The lead adviser will remain responsible to the client for all of the services. This should be made clear in the engagement letter between the lead adviser and their client.
- 7.5.2 The scope and basis of the work undertaken should be clear, for example, whether the subcontractor will rely wholly on information provided by the lead adviser or whether they will undertake their own research.
- 7.5.3 The advisers should agree how the subcontractor will be held out to the end user and how their advice will be communicated to the client. For example, whether the subcontractor will be in direct contact with the end client or work 'behind the scenes' with all communication directed through the lead adviser.
- 7.5.4 A member working as a subcontractor should consider carefully PII and AML. Further guidance can be found on the CIOT and ATT websites.

## **7.6 Clients' money**

- 7.6.1 "Client's money" means money of any current which a member holds or receives for or from a client, and which is not immediately due and payable on demand to a member for their own account. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded.
- 7.6.2 Due to the risks, controls and processes that need to be observed, a member should give very careful consideration before agreeing to hold client money.
- 7.6.3 A member is reminded to consider the money laundering legislation when allowing money to be passed through the client account.
- 7.6.4 A member who receives clients' money in connection with the carrying on by a 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 they are registered relating to the handling of such funds. The following guidance addresses only non- investment business clients' money.
- 7.6.5 Clients' money must be kept separate from money belonging to the firm and 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 a member or their 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.
- 7.6.6 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 a member;
  - The bank should be required to acknowledge in writing that it accepts the terms of the notice.
- 7.6.7 Clients' money must only be used for the specific purposes agreed with the client. When received by the firm, it must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.
- 7.6.8 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.
- 7.6.9 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 a member's judgement) clients' money must be deposited in an interest-bearing account and the interest paid to the client.
- 7.6.10 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.
- 7.6.11 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 (or more frequently if there are a high number of transactions), 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 Tribunals and Advocacy**

- 7.7.1 With the authorisation of the appellant client, a member may appear before the First-Tier Tax Tribunal ('FTT') or Upper Tribunal ('UT') whichever the case may be. However, a member should not undertake professional work which they are not themselves competent to perform unless and until they have obtained appropriate advice and assistance to enable them to undertake the specific assignment. That principle is particularly important where a member is planning to represent a client before a Tribunal as those without previous experience of appearing before a Tribunal may risk compromising their client's position.
- 7.7.2 Even if a member has previous experience or considers they are competent to represent a client at a FTT or UT, where it appears likely, for example because of the amount of tax at stake or the complexity or contentious nature of the point at issue, 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 an allegation of tax evasion may be involved.

7.7.3 The FTT is the only Tribunal of fact in the tax appeal process and it is only in very rare cases that the FTT will be asked to review a case again to find further facts. Thus, the importance of ensuring that all relevant facts are before the Tribunal and well-presented cannot be over-emphasised, no matter how self-evident or trivial those facts may, at first sight, appear to be.

## 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 they will charge for the initial meeting. Additional information on fees and payment terms can also be found in the guidance “Engagement Letters for Tax Practitioners” on the CIOT and ATT websites.
- 8.1.2 Fee arrangements are a matter to be agreed between a member and client. A member’s fee may 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 a 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 a member charges a fixed amount for an agreed assignment the fee should be based upon a clear scope of the work and proper costing of the work to be undertaken within the fixed fee. 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 (including success) fees - see below;
  - Insurance – in some cases fees may be covered in whole or part by professional fee insurance, e.g. in the event of an HMRC enquiry.
- 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, a 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 reflects the work done in each case 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 a member. Accordingly, where a contingent fee basis is adopted, a member should take care not only to ensure that their 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 the entire fee is to be repaid and whether interest is payable.
- 8.2.4 Where a contingent fee forms the basis of reward for a 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 disclosure of tax avoidance schemes (DOTAS) and the consequences of applying contingent fees which may be considered to be a premium fee under DOTAS. Details of a member's responsibilities under DOTAS can be found in PCRT which is on the CIOT and ATT websites.

### **8.3 Commission**

- 8.3.1 Where a member gives advice to a client which, if acted upon, will result in a member receiving commission or other reward from a person other than the client, a member should inform the client of this fact as soon as appropriate but no later than at the time the advice is given, and inform them of the amount of the commission or reward which a member expects to receive. Where the amount of commission is unknown, a 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 a member must 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, a 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. A member should inform the client of a member's relationship with that third party, and of the amount and terms of commission or reward which a member will receive. Moreover, a 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. See Engagement Letters for Tax Practitioners guidance on the CIOT and ATT websites for suggested wording.

### **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 a 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 a 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.
- 8.4.3 Before agreeing to a retainer arrangement, under which the client can call on a member's services at any time, a member should consider their ability to fulfil their obligations to other clients. A member is advised to consider carefully all the implications before entering into material retainer arrangements and should include termination arrangements in the letter of engagement.

## **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 a 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 A member is 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 they have sufficient funds (including interest) available to refund the client where necessary.
- 8.5.4 A 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.
- 8.6.2 If a client does not settle an account within the agreed terms, a member should seek to understand why they have not paid.
- 8.6.3 If there is no satisfactory explanation for the non-payment of the fee and a member has drawn the unpaid fee to the client's attention, a member may wish to consider taking legal action to recover it.
- 8.6.4 Alternatively, or in addition, a member may wish to notify the client that they will cease acting on behalf of that client unless payment is received within a reasonable, specified period.
- 8.6.5 A member should not settle the fees owed from money held, or received by a 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 on client money in paragraph 7.6.
- 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 they offer clients a payment by instalment facility or time to pay.

## **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 discussion.
- 8.7.2 If the client remains dissatisfied with services provided, a member should consider whether the matter could escalate and result in a claim against them. The member should then check their PII terms and conditions and consider the need to report to their insurers in order to comply with any time limits.
- 8.7.3 It should be noted that neither the CIOT nor ATT will arbitrate between a member and their client upon the amount of a disputed fee.
- 8.7.4 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 a member should consider:
- Whether appropriate 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 to take specialist legal advice.

See Chapter 11 for further advice.

## 9. COMPLAINTS

### 9.1 Complaints to a member

- 9.1.1 A member in practice is strongly recommended to have procedures in place to handle complaints from clients which should include:
- Informing each new client 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 TDB (unless alternative forms of alternative dispute resolution are outlined). This information should be included in the engagement letter;
  - Acknowledging each complaint promptly in writing;
  - Investigating each complaint thoroughly and without delay. The investigation should be carried out 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. The client should be told about the investigation;
  - Taking appropriate action if the investigation finds that the complaint is justified in whole or in part;
  - Considering whether to inform the firm's professional indemnity insurers.
- 9.1.2 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 a member/client relationship.
- 9.1.3 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 them. In such circumstances, legal advice may be helpful and a member should consider whether it is appropriate to notify the matter to their professional indemnity insurers as soon as possible and obtain their approval to any response or apology prior to making the same.
- 9.1.4 If the client refers the complaint to the TDB, a member may be required to show how the complaint has been dealt with. Clients who complain to the TDB are asked to state whether they have already lodged a complaint with a member and what was the outcome. If they have not already done so, they may well be encouraged to pursue the complaint directly with a member or the firm before coming back to the TDB. It is therefore important for a member to maintain a careful written record of each complaint and of the steps taken to deal with it.

### 9.2 Complaints to the Taxation Disciplinary Board

- 9.2.1 TDB is legally and operationally independent of CIOT and ATT and manages the Taxation Disciplinary Scheme which is the practical mechanism for handling complaints made against members.
- 9.2.2 TDB investigates complaints and takes action where appropriate against a member who has not maintained the high standards of behaviour and performance required

by the CIOT and ATT. They also review and take action as appropriate on appeals made against the outcome of a complaint.

- 9.2.3 The TDB website [www.tax-board.org.uk](http://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 A member is reminded that under paragraph 2.13 they are required to provide such information as may be requested by the TDB and to respond to correspondence from the TDB without unreasonable delay.

## 10. CEASING TO ACT

### 10.1 Ceasing to act

10.1.1 A member must not act if they consider that the fulfilment of their client's instructions involves a risk of assisting in a criminal activity.

10.1.2 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:

- They are obliged because of legal or professional obligations;
- The client requires it; or
- A member gives reasonable notice to the client of their intention to cease to act. However, a member will need or have due regard to the terms of their engagement letter.

10.1.3 A member should continue to act until they have taken reasonable steps to notify the client that they are no longer acting. It is strongly recommended that before ceasing to act, a member should notify the client in writing that they are no longer acting and address the following in their letter of disengagement:

- A summary of services provided up to the date of ceasing to act;
- A note of any further action to be taken by a 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;
- A 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 a member or their successor is to advise HMRC of the change.

10.1.4 A member who receives a communication from a successor should ask the client for permission to discuss their affairs with the prospective new adviser and proceed as set out the table below: (Also see paragraph 4.4)

Situation	What a member can say to successor
Authority given by client and no professional issues	In reply to your letter of [X] date, we confirm that we know of no professional reason that you should not accept appointment as tax adviser for [X]
No authority given by the client (or limited authority which makes it impossible to respond to the professional enquiry accurately)	State that you have no authority and cannot give clearance
Member has resigned for professional reasons that are a matter of public record	We concluded that continuing our relationship was not compatible with our professional obligations and the source of our concerns is a matter of public record. (See note below)
Member has resigned for professional reasons that are not a matter of public record	We concluded that continuing our relationship was not compatible with our professional obligations. (See note below)
Member would have resigned for professional reasons, but the client acted to change advisers first	We consider that continuing our relationship was not compatible with our professional obligations. (See note below)

Note: Where a member has made a Suspicious Activity Report (SAR) to the National Crime Agency (NCA), a member should be very careful to avoid committing the offence of tipping off and should not mention that they have made a SAR.

It should also be noted that professional reasons relate to such issues as ethics and integrity. Disputes over fees or deterioration in the relationship between the client and a member are not professional reasons why a successor adviser should not accept the appointment.

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

- If the request does not come from the client direct, a member should obtain written consent from their former client prior to providing papers to a successor;
- If there is a risk that the former client may use the information provided to support a claim against a member, a member should consult their professional indemnity insurers and consider whether to take legal advice;
- Some documents on a member's files may belong to the client. A member is therefore required to provide these, subject to any lien a member may have. In

the event of any dispute as to ownership of documents a member should normally seek specialist legal advice. See Chapter 11 for further details;

- Where original documents are handed over, a member should retain copies. See Chapter 11 for further details;
- The termination of a professional relationship does not change a member's requirement to maintain proper professional records of work performed, even if a former client requests the return and destruction of all copies held by a member;
- Where documents belong to a member, a member should co-operate 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 a member's engagement letter, a reasonable charge may be made.

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



## **11. LEGAL MATTERS ASSOCIATED WITH DOCUMENTS, ELECTRONIC DATA AND RECORDS**

### **11.1 Introduction**

11.1.1 This chapter supplements the records requirements in 5.8 and HMRC and third party access in Chapter 7. It relates to all forms of documents, electronic data and records whether produced by a member, client or third party.

11.1.2 The principles discussed below reflect the legal position in England and Wales (please see appendices 1 & 2 for Scots 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.

### **11.2 Retention of records and time limits for court action**

11.2.1 A member should implement a policy for retention of documents and records in their files.

11.2.2 It is best practice for a member to include in the letter of engagement/contract their policy for the taking and retaining copies of client papers.

11.2.3 Absent alternative arrangements in a member's Absent letter of engagement/contract with their client, when deciding the period of retention for records (paper and electronic working papers) a member should consider:

- The fact that data protection legislation stipulates that data must only be held for 'as long as necessary';
- The periods of retention required by law/statute. For example, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 require the destruction of personal data five years after the end of a business relationship unless otherwise agreed;
- 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. If documents are going to be kept for longer than a statutory retention period, under data protection law a member must have sufficient justification and not merely that someone might mount a challenge at some point;
- The period of time for which information in the working papers may be required for use in compiling tax returns;
- The period of time for which copies of documents are needed to support a member's work.

11.2.4 A member should take steps to ensure that records and working papers are maintained securely and that client confidentiality is protected. All documents, regardless of ownership or authorship, concerning a client, their financial affairs and their personal data are client confidential information.

11.2.5 If a member outsources the deletion of records, it would be prudent to ask for a certificate as some type of evidence of this deletion.

11.2.6 The table below sets out the main statutory retention periods for clients. A member who is uncertain about the time limits should seek legal advice.

Type of document	Retention period	Statutory authority
Accounting records for a private company	Three years from the date on which they are made	Companies Act 2006
Accounting records for a public company	Six years from the date on which they are made	Companies Act 2006
Payroll records, including overtime/bonuses/expenses	Six years + current year	Taxes Management Act 1970
Income tax records for an employee who has left	Six years after employment ceases	Taxes Management Act 1970
VAT records	Six years (10 years if using VAT MOSS service)	Value Added Tax Act 1994
Tax records for a person carrying on a trade, profession or business alone or in partnership or a company	Five years from 31 January following the tax year which the tax return relates to	Taxes Management Act 1970

11.2.7 Notwithstanding the above, a member should keep records and their 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.

### 11.3 Request from other third parties (also see Chapter 7)

11.3.1 If a member receives a request for information or documents from any third party they should either obtain their client's permission or ensure that the request is legally enforceable and legitimately overrides client confidentiality. This may include requests by HMRC, although the engagement letter will normally provide for the provision by a 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.

11.3.2 A 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 themselves that any power is being exercised correctly. A member 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 they may hold documents which are subject to legal professional privilege, they should take specialist legal advice.

## **11.4 Lien**

11.4.1 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.

11.4.2 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 a 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 a member has a lien over those documents, a member should seek legal advice before handing them over to the third party.

11.4.5 A lien cannot exist over:

- The books or documents of a registered company that by statute have to be available for public inspection or to be kept at the registered office or some other specified place for certain periods or be dealt with in any special way – Accounting records within sections 386, 388 of the Companies Act 2006; or
- The VAT records of any business (excluding photocopies).

In addition, sections 246, 349 of the Insolvency Act 1986 prevent a person with a lien over books, documents or records of a company under liquidation or administration or a bankrupt person from enforcing it against a liquidator, administrator, trustee in bankruptcy or official receiver. It should be noted that there is no statutory immunity in relation to administrative receivers or supervisors of IVAs or CVAs.

A lien may be exercised over documents (such as tax returns and correspondence) prepared on behalf of a client, which do not form part of their accounting records or VAT records (as defined above). Also a member's working papers and computations (those documents prepared in order to achieve their objective of preparing accounts) are likely to be the member's property and/or protected by copyright and therefore not subject to lien. Ownership of documents is a complex legal area and if a member is unsure of ownership it is advisable to consult a qualified professional.

## **11.5 Drafting legal documents**

11.5.1 There are certain categories of legal documents which may only be drafted by appropriately qualified persons, 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 imprisonment, a fine or both. However, if a member merely indicates required amendments to a legal document, but does not amend them themselves, they are not committing an offence.

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

## **11.6 Data Protection including General Data Protection Regulation (GDPR)**

11.6.1 A member must comply with their obligations under the relevant Data Protection legislation, for example ensuring they:

- obtain documented instructions from any data controller on whose behalf they process data;
- maintain records of all processing activities;
- are able to identify and document under what basis they are processing data;
- consider the reporting requirements if there is a breach (ICO, data subject etc.);
- ensure they have procedures in place to deal with the individual rights which clients can exercise;
- store data confidentially and securely and implement cyber security measures;
- have appropriate consent, particularly for marketing purposes and allow consent to be withdrawn;
- issue an appropriate privacy notice to clients – see the guidance Engagement Letters for Tax Practitioners which can be found on the CIOT and ATT websites.

See also the FAQs on GDPR on the CIOT and ATT websites.

## 12. ADVERTISING, PUBLICITY AND PROMOTION

### 12.1 General principles

- 12.1.1 A member must not obtain or seek professional work for themselves, another member or anyone else in a manner which is unprofessional.
- 12.1.2 Subject to the following, and any applicable laws that may apply to them, a member may seek publicity for their achievements and services and may advertise their products and services in any way they think fit.
- 12.1.3 Advertisements and promotional material or activity prepared or produced by a member or firm must not (either in content or presentation):
- Reflect adversely on the CIOT/ATT, a member, a firm or other members of the tax profession;
  - Discredit the services offered by others, for example, by claiming superiority for a member or firm;
  - Be misleading, either directly or by implication;
  - 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;
  - Breach client confidentiality; or
  - Amount to harassment.
- 12.1.4 An advertisement should be clearly distinguishable as such.
- 12.1.5 If a member is storing personal information about clients for marketing purposes they should ensure they comply with their obligations under the relevant data protection legislation.

### 12.2 Marketing

- 12.2.1 The practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work is not of itself unprofessional conduct. However, repeated unsolicited approaches may be considered to be unprofessional.

### 12.3 Promotion

- 12.3.1 Under the Standards for tax planning in PCRT a member must not:
- “promote tax planning arrangements or structures that i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.” For further details, see PCRT on the CIOT and ATT websites.

### 12.4 Practising designations

- 12.4.1 A member should not use the designatory letters or refer to themselves as a member of the CIOT or ATT or as a CTA, CTA (Fellow), ATII, FTII, Chartered Tax Adviser, ATT, Taxation Technician, ATT (Fellow), Taxation Technician (Fellow), ADIT affiliate or International Tax Affiliate of the Chartered Institute of Taxation unless authorised to do so.

12.4.2 A firm may only describe themselves as Chartered Tax Advisers or Taxation Technicians provided it complies with the regulations set out on the CIOT and ATT websites.

### **12.5 Coats of Arms, Logos and Badges**

12.5.1 The coats of arms of the CIOT and ATT are their respective exclusive properties and must not be reproduced or used by anyone other than the CIOT or ATT.

12.5.2 The logos of the CIOT and ATT are trademarked and their respective exclusive properties and must not be reproduced or used without permission of the CIOT or ATT.

12.5.3 The rules for the use of the CIOT and ATT badge can be found on the CIOT and ATT websites.

### **12.6 Fees**

12.6.1 If reference is made in promotional material to fees, the basis on which fees are calculated should not be misleading.

## 13. MEMBERS IN EMPLOYMENT – PROFESSIONAL PRACTICE

### 13.1 Application of Professional Rules and Practice Guidelines

13.1.1 PRPG apply to a member employed in a professional practice whether or not their employer is a member of the CIOT or ATT. However, the responsibilities for PII, AML registration and systems and practice governance are the responsibility of the employer.

### 13.2 Situations contrary to professional standards or law/regulations

13.2.1 There may be times when an employed member finds themselves in a situation that threatens their compliance with PRPG and the fundamental principles either by discovering a matter or by being under pressure to:

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

13.2.2 In such situations, an employed member should seek to establish the facts and identify the affected parties so that, as far as is possible, they have a clear understanding of the situation and how serious it is (for tax issues, refer to PCRT). They should:

- First raise any concern internally within the organisation at the appropriate level and follow the organisation's procedure. The content and outcomes of any discussions held should be noted down;
- Consider whether they need to make a report to their employer's money laundering reporting officer (MLRO);
- Where possible, disassociate themselves from the matter;
- 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;
- Consider seeking alternative employment.

### 13.3 Employees' legal exposure

13.3.1 It is possible for an employee to be sued jointly or severally with their employer by a client. If a member has concerns, for their own protection, they could consider checking whether:

- They are suitably protected in their employment contract;
- There is a clause in the engagement letter stating that the client may only sue the firm/employer and not the employee;
- Their employer has adequate indemnity insurance.

If still concerned, a member may consider obtaining specialist advice.

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

#### **13.4 Personal work**

- 13.4.1 If an employed member provides tax services on a paid basis (other than through their employer) they should ensure they comply with the relevant PII and AML obligations and that they are able to undertake work outside their employment under the terms of their employment contract.



## 14. MEMBERS IN EMPLOYMENT - COMMERCE AND INDUSTRY (C&I)

### 14.1 Application of Professional Rules and Practice Guidelines

14.1.1 A member employed in C&I has a professional obligation to comply with the following in PRPG:

- The Fundamental Principles;
- All obligations in Chapter 2 as stated below:
  - The requirement to have PII in 2.7 will not apply.
  - If the employer is in the regulated sector, the employee must comply with the UK's AML legislation. If the employer is not in the regulated sector, UK AML legislation will not apply.
  - A member who works in tax or holds themselves out as a CTA, CTA (Fellow), ATII, FTII, Chartered Tax Adviser, ATT, Taxation Technician, ATT (Fellow), Taxation Technician (Fellow), ADIT affiliate or International Tax Affiliate of the Chartered Institute of Taxation is required to comply with the CPD requirements. A member who does not hold themselves out as a designation listed above has no obligation to undertake CPD.

14.1.2 A member with responsibility for a company's financial accounting arrangements should consider whether the Senior Accounting Officer (SAO) rules apply to their employer company and should refer to the Commerce & Industry guidance on the CIOT and ATT websites.

### 14.2 Situations contrary to professional standards or law/regulations

14.2.1 There may be times when an employed member finds themselves in a situation that threatens their compliance with PRPG and the fundamental principles either by discovering a matter or by being under pressure to:

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

14.2.2 In such situations, an employed member should refer to the Commerce & Industry guidance on the CIOT and ATT websites. In addition, a member may wish to 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.

### 14.3 Personal work

14.3.1 If a member in C&I provides tax services on a paid basis (other than through their employer) they should ensure they comply with the relevant PII and AML obligations. Please refer to the C&I guidance regarding this issue on the CIOT and ATT websites.

## 15. MEMBERS IN EMPLOYMENT - OTHER

### 15.1 Application of Professional Rules and Practice Guidelines

15.1.1 A member in employment has a professional obligation to comply with the following in Professional Rules and Practice Guidelines (PRPG):

- The Fundamental Principles:
- All obligations in Chapter 2 as stated below:
  - The requirement to have PII in 2.7 would not apply.
  - If the employer is in the regulated sector, the employee must comply with the UK's AML legislation. If the employer is not in the regulated sector, UK AML legislation will not apply.
  - A member who works in tax or holds themselves out as a CTA, CTA (Fellow), ATII, FTII, Chartered Tax Adviser, ATT, Taxation Technician, ATT (Fellow), Taxation Technician (Fellow), ADIT affiliate or International Affiliate of the Chartered Institute of Taxation is required to comply with the CPD requirements. A member who does not hold themselves out as a designation listed above has no obligation to undertake CPD.

### 15.2 Situations contrary to professional standards or law/regulations

15.2.1 There may be times when an employed member finds themselves in a situation that threatens their compliance with PRPG and the fundamental principles either by discovering a matter or by being under pressure to:

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

15.2.2 In such situations, an employed member may find it helpful to refer to the Commerce & Industry guidance on the CIOT and ATT websites. In addition, a member may wish to 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.

### 15.3 Personal work

15.3.1 If a member in employment provides tax services on a paid basis (other than through their employer) they should ensure they comply with the relevant PII and AML obligations.

# APPENDIX 1

## CONSIDERATION OF SCOTS LAW

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

### 2. FUNDAMENTAL PRINCIPLES AND MEMBERS' OBLIGATIONS

#### 2.15 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 Sheriff Court for the appointment of a trustee to administer the estate.

### 4. NEW CLIENTS

#### 4.4 Professional enquiry (also known as professional clearance)

In Scotland the professional enquiry letter is sometimes called a mandate.

### 7. OTHER CLIENT HANDLING ISSUES

#### 7.4.3 Working alongside 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 and Wales. Further details on direct access to advocates may be found on the Faculty of Advocates website at <http://www.advocates.org.uk/index.html>

#### 7.7 Tribunals and advocacy

With effect from 24 April 2017, devolved tax appeals (Lands and Buildings Transaction Tax and Scottish Landfill Tax) will be heard in the Tax Chamber of the First-tier Tribunal for Scotland or, on appeal, by the Upper Tribunal for Scotland.

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

**11. LEGAL MATTERS ASSOCIATED WITH DOCUMENTS, ELECTRONIC DATA AND RECORDS**

**11.5 Drafting legal documents**

11.5.1 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.

**13. MEMBERS IN EMPLOYMENT – PROFESSIONAL PRACTICE**

**13.3 Employees' legal exposure**

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

## APPENDIX 2

### CONSIDERATION OF NORTHERN IRELAND LAW

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

#### **7. OTHER CLIENT HANDLING ISSUES**

##### **7.4 Working alongside other professional advisers**

7.4.3 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 (<http://www.barofni.com/>), and information and guidance is also available at <http://www.barofni.com/page/direct-access-services>.

#### **11. LEGAL MATTERS ASSOCIATED WITH DOCUMENTS, ELECTRONIC DATA AND RECORDS**

##### **11.5 Drafting legal documents**

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

#### **13. MEMBERS IN EMPLOYMENT – PROFESSIONAL PRACTICE**

##### **13.2 Situations contrary to professional standards or law/regulations**

13.2.2 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 the Economy ([www.economy-ni.gov.uk/publications/public-interest-disclosure-guidance](http://www.economy-ni.gov.uk/publications/public-interest-disclosure-guidance)).