



Practical Tax People
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Taxation Technicians



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Professional Conduct in Relation to Taxation

Frequently asked questions on the updated
guidance effective from 1 March 2017

What is Professional Conduct in Relation to Taxation (PCRT)?

Professional Conduct in Relation to Taxation (PCRT) is a document that has been produced by seven professional bodies, to give specific guidance to their members on how they should act when involved in tax work. PCRT puts the bodies' fundamental ethical principles into context for the situations that arise when a member is involved in tax planning and tax compliance work.

The seven bodies which issue PCRT are –

- The Association of Accounting Technicians (AAT)
- The Association of Chartered Certified Accountants (ACCA)
- The Association of Taxation Technicians (ATT)
- The Chartered Institute of Taxation (CIOT)
- The Institute of Chartered Accountants in England and Wales (ICAEW)
- The Institute of Chartered Accountants of Scotland (ICAS)
- The Society of Trust and Estate Practitioners (STEP)

Where can I find it?

PCRT is available online at www.tax.org.uk/pcrt2016 and www.att.org.uk/pcrt2016

How long has it been in existence?

The first edition of the guidance was published in November 1995. Since then the guidance has been updated on a regular basis.

Who follows it?

The guidance is followed by all members of the seven co-author bodies dealing with tax whether in practice or in business. In addition, many other bodies and non-member professional firms also adopt it as best practice.

What is its status?

CIOT and ATT expects its members to maintain the highest standards of practice and professional conduct. The guidance is designed to help members maintain high standards and forms part of our wider regulations and guidance, including Professional Rules and Practice Guidelines (PRPG). The PCRT itself is based on the five fundamental ethical principles that all tax advisers are expected to follow – namely integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. It reinforces in a tax context existing overarching guidance and standards expected.

Is this just guidance or a requirement on members?

Members are required to comply with the 'laws of the CIOT and ATT' which include PCRT. Complaints alleging non-compliance can be made to the independent Taxation Disciplinary Board (TDB).

What is changing?

The most significant change being made to PCRT is the addition of a set of Standards for Tax Planning. These reinforce the existing fundamental ethical principles that underpin the PCRT, concentrating on integrity, professional competence and professional behaviours. Of these new Standards, the most significant development relates to the expected standards of behaviour when advising on tax planning arrangements, in order to avoid any action that discredits the profession. The new Standard is as follows:

Members must not create, encourage or 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.

Why is this change being made?

The ethical principles on which PCRT is based reflect a requirement to respect the interests of society as a whole, for example in the requirement under Professional Behaviour that members should avoid any action that discredits the profession. Public interest concerns about behaviours in relation to tax planning have evolved significantly in recent years and the PCRT has continued to evolve to reflect the fundamental professional obligations to act with integrity and uphold the reputation of the profession and of clients.

These public interest concerns were highlighted in the Government's challenge to the profession on 19 March 2015, which was:

Asking the regulatory bodies who police professional standards to take on a greater lead and responsibility in setting and enforcing clear professional standards around the facilitation and promotion of avoidance to protect the reputation of the tax and accountancy profession and to act for the greater public good.

This latest update to the PCRT is a specific response to the public concerns and the Government's challenge to the profession. The latest update clarifies what is expected of members in this area but it should also be borne in mind that PCRT is regularly reviewed and updated to ensure that it reflects current legislation and standards. This is the eighth version of PCRT since it was first published in 1995.

What process has been adopted in updating the guidance?

A pan-professional working group, including representatives of the seven co-author bodies, has been meeting regularly to update the guidance. Following an extensive review, an informal consultation was undertaken within the professional bodies, including relevant CIOT and ATT committees. The comments received were considered and a revised version prepared for both Councils. Following review and feedback, including from HMRC, the draft was revised to take comments into account and formally adopted by the seven bodies.

What involvement did HMRC have in revising the PCRT?

The PCRT is developed and owned jointly by the seven professional bodies and the decision to publish the revised code was taken by the bodies. HMRC was consulted on this revision as it is a key stakeholder. In line with previous editions of the PCRT, the updated code has been 'endorsed' by HMRC as providing an acceptable basis for dealings between members and HMRC.

My job is to advise clients on the law. Can I still do that?

Yes. The changes to the PCRT are designed to address behaviours which are damaging our profession, not to stop members from giving bona fide tax advice to clients based on an analysis of tax law as it applies to their situation, even if as sometimes may happen this might lead to surprising results. The concern is over advisers who create schemes to exploit loopholes and frustrate the will of Parliament, or who promote them to clients, or encourage clients into them. It is the behaviour of the adviser that is the focus of PCRT, not the tax outcome for the client. We expect that the vast majority of tax advice given by our members will be unaffected by the updated PCRT.

Does the PRCT apply to members in business / in-house?

Yes. PRCT applies to all members who practice in tax including employees attending to the tax affairs of their employer.

However many of its specifics have an adviser/client situation front of mind. It has been recognised that further work is required to develop the guidance for members working in-house or in other capacities. This will be a priority for the professional bodies going forward.

I am a lawyer. Is there a risk this will conflict with my professional duties?

We understand that lawyers have a duty to act for their clients. We have listened to feedback and have discussed this issue at great length and while we don't feel there is a conflict, for the avoidance of doubt we have introduced paragraph 1.8 (copied below) of the Introduction to address these concerns. We consider this provision provides the necessary reassurance.

1.8 Nothing in PCRT overrides legal professional privilege. Similarly nothing in PCRT shall override a member's professional duties or be interpreted so as to give rise to any conflict under general law, statutory regulation, or professional regulation of solicitors or barristers, and in the event of any conflict general law, statutory regulation or such professional regulation shall prevail. For these purposes a conflict shall be considered to arise at least where such law, statutory or such professional regulation to which members are subject would prevent compliance with what would otherwise be required by PCRT.

In the event that you identify a conflict, any regulatory requirement will take precedence as will your overriding duty to the Courts. CIOT and ATT will not take any action against you for following your primary professional duties.

Why is activity against the intention of Parliament only forbidden if it is 'clear'?

This is intended to provide a legitimate protection for members from being subject to unfair accusations where the intention of Parliament genuinely is unclear. This is a balanced and fair approach.

Why is only 'highly' artificial or contrived planning targeted?

Because legitimate, responsible tax advice – the kind HMRC have no problem with – could potentially be deemed to have elements of artificiality to it.

This reflects the fact that tax law often embodies a formulaic rather than a substantive test – that is it sets down criteria by which, e.g., a company will be deemed to be trading as opposed to non-trading, or a taxpayer's place of residence will be determined. The tax system draws lines and responsible taxpayers understandably want to know where those lines are, and how to ensure they stay the right side of them. Providing this advice could be deemed to be encouraging artificiality, even though this is clearly responsible and necessary tax advice.

We and HMRC believe the wording in PCRT strikes an appropriate balance. The professional bodies have tested, with HMRC, how the new principles would apply to various real and illustrative situations. This revealed that members abusing their position as adviser on a range of different schemes could be subject to disciplinary action, as well as particular behaviours such as not taking a reasonable and realistic view of the facts.

Does this only apply in respect of UK tax?

The new standards in relation to tax planning have been developed in the specific UK context including the role of Parliament in making tax law and of HMRC in enforcing it.

The fundamental principles of PCRT, such as the need to act with integrity, apply universally. The rest of PCRT applies universally unless the adviser is working abroad and the legal obligations under the tax law and general law of that country require otherwise.

Can these provisions be used in respect of past events?

No. The new Standards will apply to any tax advice given after 1 March 2017. They will not apply to advice given before that date although the requirements of the existing PCRT will continue to apply until then.

Where can a member get help?

We will be providing support through webinars and branch visits. Any member who still has concerns or questions should contact the member services team at membership@ciot.org.uk or membership@att.org.uk or on 020 7340 0550.