THE CHARTERED INSTITUTE OF TAXATION

ASSOCIATION OF TAXATION TECHNICIANS

Professional Rules

and

Practice Guidelines

1999

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APPENDICES

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INTERPRETATION

1. In this publication:

'Association' means The Association of Taxation Technicians

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

'Council' means the governing body of The Chartered Institute of Taxation or The Association of Taxation Technicians as appropriate

'Customs' means H M Customs and Excise

'Institute' means The Chartered Institute of Taxation

'Member' means a member of the Institute or the Association and includes his firm, company or practice and their staff

'Practising member' and 'member in practice' mean a member of the Institute or the Association who is in practice as a tax adviser

'Profession' means the tax profession

'Revenue' means the Inland Revenue

'Secretariat' means the Secretariat of the Institute or the Association as appropriate

'Tax authorities' means the Revenue or Customs or both as appropriate.

Words importing persons include bodies corporate.

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

2. These Rules and Guidelines apply to members of the Institute and the Association unless specifically otherwise stated.

3. These Rules and Guidelines are based on the law and practice in England and Wales. Members practising in other jurisdictions should have regard to relevant local law and practice. Attention is drawn to Appendices 8 (Scots law) and 9 (Northern Ireland law).

1 INTRODUCTION

1.1 A member has duties to the following:

- each of the member's clients
- clients generally
- the member's employer, if any
- the public
- the tax authorities
- the profession
- any partners of the member
- any employees of the member
- himself.

1.2 From time to time those duties may conflict. Resolving such conflicts may involve careful questions of judgement. Often it will be appropriate for the member to seek the advice and guidance of others. The purpose of these Professional Rules and Practice Guidelines is to provide a framework within which to make those judgements.

1.3 The hallmark of a professional should be his honesty, integrity, independence and impartiality.

1.4 No rules and guidelines can cover every set of facts and circumstances that affect professional conduct. Moreover, the danger of attempting to codify guidance in this area is that anything that is not specifically forbidden may come to be regarded as permissible. To adopt such an approach is to miss one of the fundamental principles of professional practice. It is important to observe the spirit, as much as the letter, of the Rules and Guidelines.

1.5 This publication is divided into two parts. Section 2 contains the Professional Rules and Sections 3 onwards the Practice Guidelines. Further practice guidelines are contained in *Engagement Letters for Tax Practitioners* (see Appendix 5) and the separately published *Professional Conduct in Relation to Taxation* which covers members' dealings with the tax authorities.

1.6 The Byelaws of the Institute and the Articles of the Association provide that a member may be subject to disciplinary action if guilty of conduct which falls short of the appropriate standards or which is likely to bring discredit upon the member's professional body or its members.

1.7 The Professional Rules are statements of the principles that should govern the action of a member. They are a guide to professional behaviour, breaches of which may subject the member to disciplinary action.

1.8 The Practice Guidelines are designed to provide members with guidance on points which may be encountered in day-to-day work, particularly those topics on which members have sought advice from the Secretariat in the past.

1.9 Failure to follow these Practice Guidelines, including those contained in the publications referred to in Section 1.5, in both the letter and the spirit, does not of itself constitute misconduct. However, a member who disregards them may be called upon to justify his conduct if a complaint is made that such conduct has led to a breach of the Byelaws of the Institute or of the Articles of the Association as the case may be.

1.10.1 Upon a bankruptcy order being made against an Institute member his membership terminates automatically. If the bankruptcy order is annulled, his membership is reinstated from the date it terminated, as if the order had never been made. A bankrupt member can apply to the Institute Council to allow his membership to continue. The Council can allow this either unconditionally, or subject to such conditions as it may from time to time prescribe.

1.10.2 If an Institute member enters into a voluntary arrangement, his membership terminates automatically. However, such a member can apply to the Institute Council to allow his membership to continue. The Council can allow this either unconditionally or subject to such conditions as it may from time to time prescribe. Normally the Standards Committee, to whom the Council has delegated this power, will allow membership to continue, on the basis that it is better for the member and the public that he should be able to continue to earn fees to pay off his creditors.

1.10.3 If an Association member has a bankruptcy order made against him or makes any arrangement with his creditors the Association Council may resolve to exclude him.

1.10.4 A member of the Institute or the Association who is excluded because he has become bankrupt or entered into a voluntary arrangement can apply for re-admission to membership after his discharge in bankruptcy or the termination of his arrangement. The Council has a discretion whether or not to permit re-admission, or to do so subject to conditions.

1.11 A member in practice is required to comply with the law of the country in which he practises. These Professional Rules and Practice Guidelines apply unless the law or generally accepted practice in that country is to the contrary.

1.12 A member seeking further guidance should contact the Secretariat. However, as members will appreciate, they can only advise. Any decision is a matter for judgement by the member himself.

2 PROFESSIONAL RULES

2.1 These Professional Rules must be read in conjunction with the Introduction in Section 1 which outlines the inter-relationship between the Professional Rules and the Practice Guidelines.

2.2 **Conduct** – A member's conduct must at all times be consistent with the good reputation of the profession and the Institute or the Association.

A member who is convicted of a criminal offence (other than a 'summary only' road traffic offence), or is notified of disciplinary action begun against him by another professional body to which the member belongs, must promptly inform the Institute or the Association. Similarly, a member must promptly notify the Institute or the Association upon a bankruptcy order being made against him or on his entry into a voluntary arrangement with his creditors (see Sections 1.10.1-1.10.4).

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

2.4 **Confidentiality** – A member owes a duty of confidentiality to his client or employer. Accordingly, information acquired in the course of a member's work must not be divulged in any way outside his organisation without the specific consent of the client or employer unless there is a legal or regulatory duty or professional obligation to disclose. A member who considers that one of those exceptions applies must normally seek the client's or employer's consent and, where appropriate, specialist legal advice before making any such disclosure. Confidential information obtained in the course of the work must not be used for personal advantage by a member, a member's family, dependants, or those who live with the member.

2.5 **Objectivity** – A member must be totally objective in all work undertaken. This means that a member in practice must always have regard to any factors that might adversely affect, or be perceived to affect, his integrity and objectivity. If there is any area in which such integrity and objectivity are in doubt through conflict of interest the member must act in accordance with the guidelines in Section 9.

2.6 **Integrity** – A member must be truthful and honest in all his professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to supply relevant information.

2.7 **Courtesy** – A member must conduct himself with courtesy and consideration towards all with whom he comes into contact in the course of his professional work.

2.8 **Clients' money** – A member in practice must ensure that clients' money is properly accounted for in accordance with the Practice Guidelines in Section 4.5.

2.9 **Incompatible activities** – A member must not undertake within his professional practice business activities which are not compatible with those normally undertaken by a tax practitioner.

2.10 **Practice development** – A member must not obtain or seek professional work in any unprofessional manner. In this regard members are referred to Sections 5 and 13 for guidance and for the professional requirements on changes in a professional appointment.

2.11.1 **Continuing Professional Development (CPD)** – A member of the Institute who is engaged in the practice of UK taxation in industry, commerce or private practice must fulfil the minimum requirements of the Institute's CPD scheme. The current requirements are set out in Appendix 1.

2.11.2 A member of the Association who is in practice and has registered under the Members in Practice Scheme must fulfil the minimum requirements of the Institute's CPD scheme as set out in Appendix 1. Other members of the Association are recommended to fulfil the minimum requirements of that scheme.

2.12.1 **Professional Indemnity Insurance (PII)** – A practising member of the Institute must effect and maintain PII cover in accordance with the regulations and guidance notes set out in Appendix 3.

2.12.2 A member of the Association in practice who has registered under the Members in Practice Scheme must hold PII cover as a condition of registration under that Scheme. This cover must comply with the minimum requirements of the Council of the Association. The current rules of the Registration Scheme for members in practice are set out in Appendix 2.

A practising member of the Association who is not registered is recommended to effect and maintain PII cover appropriate to his practice.

2.13 **Practising designations** – A member may use his designatory letters at all times and personally describe himself as a member of the Institute or the Association as appropriate. However, the member must not allow business associates to use words or descriptions which indicate they have qualifications to which they themselves are not directly entitled, except in accordance with the Regulations promulgated by the relevant Council. This is particularly relevant to multi-disciplinary practices and members are referred to the guidelines in Section 3.2. A member of the Institute may describe himself as a *Chartered Tax Adviser*. For partnerships and companies see the rules prescribed in Appendix 4. A member of the Association may describe himself as a Taxation Technician.

3 FORMS AND ASPECTS OF PRACTICE

3.1 Corporate practice

3.1.1 The use of a company as a practice medium may be subject to both statutory and professional restraints. It is the member's responsibility to comply with the law and with the regulations of any other professional body to which he belongs.

3.1.2 Subject to the above, a member may carry on a tax practice in corporate form. A member who does so is subject to the same professional requirements as a member who is practising as an individual. A member who is a director of a company may be held responsible for acts or omissions of the company. Thus, the rights and duties of such a member are similar to those of a member who is a partner in a firm and the expression 'corporate practice' is, for this purpose, synonymous with 'firm'.

3.1.3 A company of which a member is a director must effect and maintain adequate professional indemnity insurance cover in accordance with the regulations and guidance notes set out in Appendix 3.

3.2 Multi-disciplinary practice

A member who is a partner in a firm or a director of a company may act in association with persons who are not members of the Institute or the Association provided that the associates (who may practise under the rules and regulations of another professional body) recognise these Professional Rules and Practice Guidelines. Practice policy relating to the provision of tax services should be consistent with that of the Institute and the Association and observed in the conduct of tax work by all partners and staff. (See also Appendix 4.)

3.3 Group practice

3.3.1 A member may wish to form an association with other members or with members of other professional bodies in order to share their practices' resources and areas of expertise. Care is required in making such arrangements to ensure that others involved in the association do not cause the member to breach the Institute's or the Association's Rules and Guidelines. The guidance in Section 3.2 is equally applicable to group practices.

3.3.2 Where a member refers a client to another practice, problems of client confidentiality may arise and reasonable steps should be taken to minimise this risk. In particular, the practice being instructed should have adequate professional indemnity insurance. Members of a group should inform their clients of its structure if it is likely to have any bearing on the manner in which a member's obligations are to be discharged to the clients. If a client's instructions are to be assigned to another practice in the group, the client's consent should first be obtained.

3.4 Illness or temporary incapacity of a sole practitioner

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

3.4.2 A member should consider whether his practice has sufficient resources to cope with his obligations in his absence or whether those obligations should be discharged by another practice under a prior arrangement or by a member acting on a locum basis. A member should be satisfied that a person or practice 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. The fact that a member's net income may be reduced or even eliminated by reason of complying with the foregoing does not excuse failure to observe this guideline.

3.5 Death or permanent incapacity of a sole practitioner

3.5.1 Similar considerations to those in Section 3.4 apply to the death or permanent incapacity of a sole practitioner, although the difficulties are potentially far greater for both the practice and its clients.

3.5.2 If a member dies his property vests in his personal representatives. If he is permanently incapacitated his rights and obligations remain vested in him.

3.5.3 In arranging for the future management of his practice, the member should ensure that the practice to which it is to be entrusted is compatible with his practice.

3.5.4 Arrangements should be set out in detail in a written agreement to avoid any doubt or confusion which may otherwise arise. The agreement should provide for the duration and extent of the manager's duties and responsibilities and the legal relationship with the sole practitioner or his personal representatives. Members are recommended to consult a solicitor with appropriate experience in drawing up such

an agreement. Members should also consider granting a power of attorney where appropriate.

3.5.5 A member who acts as a manager of a practice is under the same standard of duty to the sole practitioner or his personal representatives as he is to any client. Such a member must not use his position to seek any personal gain other than the agreed remuneration.

3.5.6 In the case of death, adequate provision should be made by will to enable executors to manage the practice personally or to appoint a member or other professionally qualified person to do so. If a practitioner dies intestate, delay may be encountered in the appointment of administrators and their statutory powers of administration will be limited. For this reason, members are reminded of the importance of making an appropriate will. Care is needed when arranging professional indemnity insurance to ensure that cover remains in force after death.

3.6 Dissolution or merger

3.6.1 A merger of two or more practices or the dissolution of a practice should normally be notified to all clients who will thus be given the opportunity of deciding whether they wish to continue to instruct the newly constituted practice.

3.6.2 Care should be taken to ensure that appropriate professional indemnity insurance cover remains in place in accordance with the guidance notes and regulations in Appendix 3.

3.6.3 Members should also consider taking specialist legal advice in respect of other matters, such as the assignment of engagements and other contractual matters.

3.7 A member's own tax affairs

A member's own tax affairs should be kept up to date and all returns and other relevant documents timeously lodged. While always important, this is particularly so if the preponderance of the member's professional work is with one or two tax districts because neglect of one's own affairs could well cause doubts in the minds of the tax authorities as to the standard of the member's professional work.

3.8 Investment business

A member should be careful not to breach the provisions of the Financial Services Act 1986. In particular, it should be borne in mind that membership of the Institute or the Association alone does not give any authority to provide the services regulated under this Act. A member who wishes to undertake any of the activities covered by the

Act must be licensed by an appropriate regulatory body and comply with its regulations.

3.9 Equal opportunities

3.9.1 A member must not discriminate on grounds of colour, race, nationality or ethnic or national origins, sex, marital status or disability in his professional dealings with staff, clients or other persons.

3.9.2 A member in practice must use reasonable endeavours to secure the operation of a non-discriminatory policy.

3.9.3 A member who is a director or is otherwise employed, whether in private practice or elsewhere, must use reasonable endeavours to secure the operation of such a policy.

3.9.4 In dealings with staff:

(a) a member should be mindful of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970 (as amended) and the Disability Discrimination Act 1995 and that in Northern Ireland discrimination on grounds of religion is unlawful;

(b) a member is recommended to follow the codes of practice which have been published by the Equal Opportunities Commission and (on the employment of disabled persons) by the Employment Service.

4 MANAGING THE DUTY OF CARE

4.1 Nature of responsibilities

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

4.2 Accepting instructions

4.2.1 Before accepting instructions to act for a client, a member should consider:

(a) whether the client will be an acceptable client in terms of the risks which will be brought to the practice from acting for that client and whether the member has the capability to manage those risks. In assessing the client's risks the member should consider the personal circumstances and business situation, financial standing, integrity and attitude to disclosure in regard to compliance with taxation law; and

(b) whether the member and firm will have the skills and competence to service the client's requirements during the course of the engagement.

4.2.2 Before starting work on any assignment for a client, the member should understand and agree with the client the scope of the assignment, having first assessed the handling risks, and be satisfied that the relevant skills and experience to handle the work are available or accessible.

4.2.3 A member is recommended to issue an engagement letter to the client confirming the terms of the engagement. The letter forms evidence of the contract with the client. If properly drafted, it sets boundaries to the duty of care which may be helpful in resolving any subsequent disagreement between the member and the client about the services that were to be provided (see Appendix 5 for guidance on engagement letters).

4.3 Providing advice

4.3.1 A member should advise a client only when he has an adequate understanding of that client's personal and business circumstances and tax position. In addition, the member should fully understand the issues under consideration and the objectives of the advice.

4.3.2 If it is intended that a client should place reliance on taxation advice, the advice should be sufficient for the purpose and normally be given in writing. However, frequently a member will give impromptu advice in meetings or by telephone, endeavouring to be responsive to the needs of the client. It is for the member to decide whether to confirm in writing advice given orally, particularly where the client is not a fellow tax professional. The member should make and keep a contemporaneous and dated note on his file of the discussion and advice given.

4.3.3 An advice letter should normally set out:

- the background facts and assumptions on which the advice is based
- the alternatives open to the client
- the risks associated with the advice
- relevant caveats and exclusions.

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

4.3.5 Unless the contract provides otherwise, a member is under no duty to inform a former client that advice previously given is affected by a change in law or practice which occurs after the relationship of client and adviser has ended.

4.3.6 Unless the contract provides otherwise, a member is under no duty to advise a new client on matters on which advice has been given by a predecessor, unless he becomes aware that the advice given by the predecessor in the area of the member's retainer was incorrect.

4.3.7 When formulating advice the member should refer to the relevant taxation legislation and the practice of the tax authorities. Due regard should also be given to case law.

4.3.8 A written record of how the advice given is reached should be retained on the client file so that a member is able to defend an allegation of negligence. If work is delegated, the member should exercise sufficient supervision to confirm that the work performed is adequate.

4.4 Consultation and second opinions

4.4.1 A member is encouraged to consult with fellow professionals when advising clients, particularly so as to ensure that appropriate skill and judgement is applied. It is a matter of judgement for the member whether consultation is necessary in any particular situation. If a member relies on consultation, evidence of it should be retained on the client file.

4.4.2 A member who is giving a significant opinion to a client should consider taking a formal second opinion to support the advice. This may be obtained by requesting formally an independent view from a partner, or by instructing another member or tax counsel. In addition, in any case where the risks for the member, assessed in terms of professional reputation or financial exposure of his practice, of giving wrong advice are high, the member should consider taking a second opinion. It is a matter of judgement for the member whether a second opinion should be formally taken in any situation. If a member relies on a second opinion, evidence of it should be retained on the client file.

A significant opinion is one in respect of which either:

4.4.2.1 the amount of tax at stake, or potentially at stake, in relation to the matters advised on is significant for the client and there is a real risk that a contrary view to that reached by the member on those matters could be reached; or

4.4.2.2 the matters advised on are, for some other reason (eg the advice given may have a bearing on whether the client is exposed to criminal liability), of sufficient importance to the client to merit obtaining a second opinion.

4.5 Clients' money

4.5.1 A member who receives clients' money in connection with the carrying on by the member of investment business (as defined by the Financial Services Act 1986) must handle that money in accordance with the regulations of the regulatory authority with whom he is registered relating to the handling of such funds. This guidance addresses only non-investment business clients' money. (See also Section 3.8.)

4.5.2 Client's money means money which a member holds or receives on account of a person for whom the member is acting in relation to the holding or receipt of such money, either as a member of the profession or, in connection with his practice as a member of the profession, as agent, bailee, stakeholder or in any other capacity. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded. In this section a 'firm' means a sole practitioner who is a member, or a partnership or a body corporate comprised in whole or part of members.

4.5.3 Clients' money must be kept separate from money belonging to the firm. For this reason, clients' money must be kept in a separate client account. A client account can be a current or deposit account at a bank or building society in the name of the member. The word 'client' should appear in the title of a client account. Clients' money can be kept either in a general client account, or in separate client accounts each designated with a name of a specific client, or in both. Written notice must be given to the bank concerned that all money standing to the credit of each client bank 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, and that any interest payable in respect of sums credited to the account shall be credited to that account. The bank should be required to acknowledge in writing that it accepts the terms of the notice.

4.5.4 Clients' money received by the firm in cash must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client directs. Any cheque, draft or electronic transfer received by a firm or member which is drawn in favour of the firm or member and which comprises or includes clients' money must be paid immediately into the appropriate client account unless it comprises money payable to one client only. In those circumstances, the funds must either be paid immediately into the appropriate client account or paid to the client or otherwise dealt with as the client directs.

4.5.5 If money is received by a member which consists of clients' money for more than one client, that money may be split. In these circumstances, each client's money should be dealt with as if the member has received a separate sum of money in relation to that part. 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 the

funds have cleared. Under no circumstances should clients' money be paid into the firm's own account.

4.5.6 Where money of any one client in excess of £10,000 is held or is expected to be held by the firm for more than 30 days, it is recommended that the money should be paid into a separate interest-bearing bank account designated as that of the client. In other cases, except where the amount of interest arising is likely to be immaterial (a matter for the member's judgement) clients' money must be deposited in an interest-bearing account. Except in the case of clients' money held by a firm as stakeholder, the interest credited to a designated client bank account must be paid to the client concerned. Unless otherwise agreed, interest earned on stakeholders' money is payable to the person to whom the stake is paid.

4.5.7 Money held in a client bank account may be withdrawn only where properly required for a payment to or on behalf of the client, including debts due to the firm and agreed fees or commissions earned by the firm.

4.5.8 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 bank account, distinguishing the money of each client from the money of other clients and from firm money. Each client bank account must be reconciled against the balances shown in the client's ledger at least at six-monthly intervals, and the records of such reconciliation must be kept for at least six years from the date of the last transaction recorded therein.

4.6 Money Laundering

4.6.1 Before accepting instructions to act for a client, a member must be satisfied that the client is not involved in activity which is money laundering or that he will not be drawn into assisting his client in money laundering. Whilst the preparation of tax returns for, or the giving of tax advice to, clients would, in themselves, not normally expose a member to a money laundering offence, the member should be cautious when acting and aware at all times of his money laundering reporting obligations. The member needs to assess the risks in every case and in particular be alert to situations where his client is, or may have been, involved in tax evasion (in any jurisdiction) which is criminal conduct and could give rise to a money laundering offence. Furthermore, where in addition a member is involved in ancillary financial services activity which may be regulated, he will be required to put in place appropriate procedures to comply with the requirements of the money laundering regulations and the law.

Money Laundering Offences

4.6.2 Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If undertaken successfully, it allows them to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of income.

4.6.3 The legislation, the majority of which is contained in the Criminal Justice Act 1993, makes it a criminal offence:

4.6.3.1 to conceal, disguise, convert or transfer another's proceeds of criminal conduct (maximum penalty 14 years' imprisonment and/or a fine).

4.6.3.2 to assist another to retain the benefit of criminal conduct (maximum penalty 14 years' imprisonment and/or a fine);

4.6.3.3 to acquire, possess or use the proceeds of criminal conduct (maximum penalty 14 years' imprisonment and/or a fine);

4.6.3.4 to tip off[1] in respect of a report of, or investigation into suspected money laundering (maximum penalty 5 years' imprisonment and/or a fine);

4.6.3.5 in the case of drug trafficking and terrorism, to fail to report knowledge or suspicion of money laundering where that knowledge was acquired in the course of a trade, profession, business or employment[1] (maximum penalty 5 years' imprisonment and/or a fine).

4.6.4 With the exception of the offence in paragraph 4.6.3.5 these offences relate to the laundering of the proceeds of criminal conduct (there are also specific offences relating to drug money and terrorist funds which mirror the offences in paragraphs 4.6.3.1 – 4.6.3.4). "Criminal conduct" includes any conduct wherever it takes place (ie in the UK or abroad) which constitutes or would constitute an indictable offence if committed in the UK. As most tax offences are indictable offences, members must be fully aware of their responsibilities in relation to the money laundering legislation and the potential dangers to which they are exposed in their position as tax advisers. If a client has evaded overseas tax, the member should consider the money laundering regulations if advising in connection with such money.

4.6.5 A member would be assisting in the laundering of money if he helped the client or another obtain, conceal, retain or invest criminal proceeds. Assisting would include, by way of example, transfers of funds, making

[1]There are certain exemptions in respect of a professional legal adviser

loans for property acquisitions with, or secured by, criminal proceeds and setting up structures concealing the true ownership of funds obtained by criminal conduct. As these examples (and they are only examples) show, it is a wide ranging offence and members should be wary. It is a defence to the offence of assisting if a member reports his knowledge or suspicion of money laundering to the police at the first available opportunity. Members should note that reporting suspicion of money laundering to the police does not breach any professional duty of confidentiality owed by a member to his client.

4.6.6 Accordingly if a member suspects any form of money laundering, he should (subject to paragraph 4.6.10) report that suspicion to the police. If he fails to do so and subsequently assists another to deal with the suspected criminal proceeds, he may be liable to prosecution for assisting in money laundering (see paragraph 4.6.3.1 above). Members are referred to paragraphs 4.6.12.4 and 4.6.13 in regard to the procedures for reporting suspicion. Furthermore, members who suspect a client of being involved in criminal conduct but who believe the funds with which they are involved are legitimate should report their suspicions, as, if the funds are later discovered to be the proceeds of crime, then an offence may have been committed.

4.6.7 If a member knows or suspects that the police are conducting, or may conduct, an investigation into money laundering or that a disclosure has been made to the police in respect of money laundering, that member must not disclose any information to any person which is likely to prejudice a related police investigation. If he does so, he may commit the criminal offence of tipping off.

4.6.8 Members should be aware that criminal liability under the money-laundering legislation can be imposed not just where they have knowledge of criminality but also where they have "suspicion" or even "reasonable grounds to suspect" this.

4.6.9 In addition, the effect of the money laundering legislation is to render criminal and triable in England and Wales offences where the underlying criminal conduct (eg tax evasion) occurred abroad if that criminal conduct would constitute an offence in England and Wales or (as the case may be) Scotland and Northern Ireland.

4.6.10 Given the wide-ranging offences created by the legislation, it would be prudent for a member who has any doubt as to the possibility of his exposing himself to the threat of prosecution to obtain expert advice.

The Money Laundering Regulations

4.6.11 The Money Laundering Regulations 1993 (the "Regulations") (SI 1993 No. 1993) provide that members engaged in "relevant financial business" are required to establish certain specified procedures for the purpose of forestalling and preventing money laundering and ensuring the reporting to the police of suspicious transactions. "Relevant financial business", as defined by the Regulations, includes investment business within the meaning of the Financial Services Act 1986 and activities listed in the Appendix to the Second Banking Directive (these include money transfer services and safekeeping and administration of securities services.). Members are likely to find that some of their dealings with clients come within this definition. Therefore, as a matter of best practice, all members should put in place procedures to comply with the requirements of the law in this area. Any member who does, in fact, engage in relevant financial business must adopt the procedures, and members should be aware that failure to comply with the requirements of the Regulations is a criminal offence. The offence is punishable by two years' imprisonment or a fine or both.

4.6.12 The procedures that members should put in place are as follows:

4.6.12.1 A member must, before carrying out relevant financial business for a new client, obtain satisfactory evidence of the new client's identity. Where the new client is or may be, acting on behalf of another person, reasonable measures must be taken to obtain evidence of that other person's identity. The question of what constitutes satisfactory evidence of identity will depend on the facts of each case. Members are referred to the booklet *Money Laundering Guidance Notes for the Financial Sector* produced by the Joint Money Laundering Steering Group. Copies can be purchased from: JMLSG. Dept BBA, PO Box 10, Wetherby, West Yorkshire LS23 7EH Tel No. 01937 840233, Fax No. 01937 845381.

Members are referred to these guidelines for the appropriate steps to be taken in order to verify clients' identities. Members are, therefore, required to maintain identification procedures in respect of new clients and maintain records of evidence of identity.

4.6.12.2 Members must maintain records of all transactions they carry out for their clients in the course of relevant financial business. Again, members are referred to the Joint Money Laundering Steering Group's guidelines in this regard.

4.6.12.3 Members who employ staff in the course of carrying on relevant financial business are obliged to provide their staff

with education and training on the requirements of the Regulations and to take appropriate steps from time to time to provide those employees with updates and refresher courses on the subject.

4.6.12.4 Members who employ staff in the course of carrying on relevant financial business are also required to have in place internal reporting procedures for the reporting of suspicious transactions. Members must designate an individual, of appropriate seniority, within their firm to whom all such reports should be made by staff. That individual ("the Money Laundering Reporting Officer") is required to decide whether a report of suspected money laundering should be made to the police. If, on the basis of reports made to him, the Money Laundering Reporting Officer suspects money laundering, he is required to report that suspicion to the Economic Crime Unit of the National Criminal Intelligence Service ("NCIS"), PO Box 8000, Spring Gardens, Tinworth Street, London SE11 5EN Tel No. 0171 238 8607, Fax No. 0171 238 8286.

When deciding whether to make a report, the test is subjective (ie if one in fact is suspicious a report should be made, even if another person might have arrived at a different conclusion). Members are again referred to the Joint Money Laundering Steering Group's guidance notes for further details. A member can properly provide the police with information which is relevant to the suspicion reported. However, if the member is asked to play a fuller role in an investigation by, for example, providing information on a client in respect of other matters, careful consideration must be given to the extent to which this is consistent with the member's duties to the client, and members are recommended to seek legal advice.

4.6.13 A report by a member to NCIS may be used in furtherance of criminal enquiries. A report to NCIS should not be considered a substitute for proper disclosure to the tax authorities. The source of the information will not be disclosed to the suspected money launderer by NCIS during the investigation or in any subsequent criminal proceedings, save in exceptional circumstances. Where a report has been made to NCIS the client should not be informed since this may amount to "tipping off" (see Section 4.6.3.4 above) under the terms of the legislation. If, for any reason, a member wishes to inform a client that a report has been made then the member should first obtain the consent of NCIS.

4.6.14 Following a report, a member is not committed to continuing the relationship with the client if such action would place the member at commercial risk. However, it is recommended that before terminating

a relationship in these circumstances, the member liaise with NCIS or the investigating officer to ensure that the termination does not "tip off" the client or prejudice the investigation.

4.6.15 Finally, the money laundering legislation does not prevent a member from advising a client on negotiations with the tax authorities in cases where the client has evaded tax, provided that full disclosure is made.

4.7 Dealings with third parties

While providing services to a client it may be necessary for a member to deal with third parties on the client's behalf. In these circumstances the member must be careful not to breach client confidentiality or inadvertently assume a duty of care towards the third party. The following are ways in which the member may manage these risks:

- The member must not release to a third party information provided by the client which can be said to be confidential without first obtaining the client's consent.
- The member should require, as a term of the engagement, that the client must seek his consent before advice, reports or other documents which he has produced, or with which his or his firm's name is associated, are released by the client to third parties.
- Before consenting to the release of documents the member may request that the third party and its agents or advisers undertake that the member will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.
- If no such undertaking is obtained the member should communicate to the third party the terms upon which the documents are released including caveats and confirmation that no responsibility is accepted, if appropriate.

If a member becomes aware that any of the advice, reports or other documents which he has produced or with which he is associated and which are being used or relied upon by the third party are defective, he should insist that the client withdraws them from the third party. It would be prudent for him to obtain proof of the withdrawal (eg a copy of a letter from the client to the third party withdrawing the document). If the client refuses to withdraw the document, the member should write to the third party saying that the document can no longer be relied upon. Failure to do this may, depending on the nature of the consents or warnings given, leave the member exposed to an action for damages by the third party if, on the strength of the documents, the third party sustained loss.

The special relationship between the member and the Revenue when acting for a client, including the member's particular duties in this regard, is dealt with in *Professional Conduct in Relation to Taxation*, available from the Institute or the Association.

5 NEW CLIENTS

5.1 Obtaining clients

5.1.1 A client has the right to choose or change professional advisers, or to take a second opinion, or to retain separate advisers on different matters. A member who is invited to undertake professional work by a prospective client is under no obligation to act. Indeed, he should decline to do so if he believes he would be unable to assume the duty of care that he would have to that client (see Section 4) or where the circumstances set out in Section 5.4 exist.

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

5.1.3 What constitutes unprofessional conduct can only be determined in the light of all the relevant facts and circumstances. The following are illustrations of unprofessional conduct:

(a) implying in an improper manner, whether orally or in correspondence, or in any brochure, circular or other literature, that existing advisers are not competent to provide an adequate service to any client;

(b) giving any commission, fee or reward to a third party, not being an employee, in return for the introduction of a client, which does not fall within the provisions in Section 5.1.4. In the case of a payment to an employee care should be taken to see that the employee has not breached the guidelines.

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

(a) the member has no reason to believe, and does not believe, that undue pressure or influence was exerted on the prospective client by the third party; and

(b) before accepting instructions, the member has disclosed to the prospective client, in writing, both the amount and nature of the fee, commission, gift or favour, and the identity of the third party recipient.

5.1.5 Although the practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work ('cold calling') is not of itself unprofessional conduct, it may lead to conduct falling within Section 5.1.3(a). Moreover, repeated cold calling may become offensive and lead to a complaint.

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

5.1.7 Subject to the above, a member may advertise his services to the public. Section 13 deals with advertising.

5.2 Communicating with previous advisers

5.2.1 Where a member is invited to undertake professional work additional to that already being carried out by another adviser, who will continue with those existing duties, as a matter of professional courtesy the member should inform the other adviser in writing of the general nature of the work being undertaken. However, where the client has a valid reason against such notification, it will not be necessary. Where there is no such notification, the reasons should be documented on the client file, at that time, in case a charge of unprofessional conduct is brought by the existing adviser.

5.2.2 A member who receives a professional courtesy letter of the kind referred to in Section 5.2.1 should be aware that the other adviser has a right to expect full co-operation from that member in the carrying out of the assignment.

5.2.3 A member who is invited to undertake recurring (or non-recurring) professional work in place of another adviser should, before accepting the appointment, request the prospective client's permission to communicate with the existing adviser. If this permission is refused, the member should decline to accept the appointment.

5.2.4 The objective of the communication referred to in Section 5.2.3 is to ensure that:

(a) 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;

(b) the incoming adviser is fully aware of all factors that may be relevant to acceptance of the appointment and the effective handling of the client's tax affairs; and

(c) the incoming adviser is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to the tax authorities.

5.2.5 When permission has been received from the prospective client for such communication, the member should ask the previous adviser, in writing, for all information which, in the opinion of that previous adviser, is necessary to enable the member to decide whether or not to accept the appointment.

5.2.6 A member who receives a communication of the type referred to in Section 5.2.5 should ask the client for permission to discuss his affairs freely with the prospective new adviser. When the client's permission has been received, he should disclose to the prospective new adviser, either orally or in writing, all information which, in his opinion and based on his knowledge of the client and his affairs, may be needed to enable that adviser to decide whether or not to accept the appointment. If the client's permission is not received, that fact should be communicated to the prospective adviser who should normally not accept the appointment, unless satisfied that circumstances exist that make it appropriate to override the normal rule. It would require very exceptional circumstances to justify acceptance of the appointment and such cases are likely to be rare. A member who believes that such circumstances exist may wish to discuss them with the Secretariat. In any event, it would be advisable to document at that time the facts, circumstances and justification.

5.3 Working with existing tax advisers

5.3.1 There will frequently be occasions where a client wishes to seek advice from a person other than the existing tax adviser. In such cases, it is advisable to prepare a carefully worded letter of engagement (see Appendix 5) to ensure a proper understanding of the scope of the work which is involved. It is usually helpful to include in that letter confirmation of the extent to which the client wishes the two advisers to communicate with one another.

5.3.2 Unless otherwise instructed by the client, information which is or will be properly required by the existing tax adviser in performing his duties for the client should be freely passed on. For example, if a member is aware of facts that have a bearing upon advice which the existing tax adviser is required to give, or returns which he is required to prepare, it is important to ensure that they are passed on without delay.

5.3.3 Subject to Section 5.3.2, the extent to which it is necessary to pass on to the existing tax adviser details of advice given by the member will depend upon the client's instructions, coupled with a judgement of its relevance to the work being performed by the existing adviser.

5.3.4 If the client's instructions do not permit information to be passed to the existing tax adviser, the member should ensure that the advice given also includes comments on any reporting requirements that may arise if action is taken on that advice.

5.3.5 Further guidance on working with other professional advisers is set out in Section 6.5.

5.4 Declining to act

5.4.1 As explained in Section 5.2.6, a member should proceed with caution when deciding to accept instructions from a client who refuses to give the existing tax adviser permission to disclose appropriate information about his affairs.

5.4.2 A member must do nothing to assist a client to commit any criminal offence, or (save to the extent permitted by law) to shield the client from the consequences of having defrauded the Crown of tax or of having been negligent in regard to direct or indirect tax matters. A member who acquires information which leads him to conclude that a prospective client may have been guilty of taxation misdemeanours should only accept the appointment on the basis that full disclosure will be made to the appropriate authorities.

5.4.3 A member who acquires such information about an existing client should follow the advice contained in Section 5 and, as appropriate, in Section 10 of the Guidelines published in *Professional Conduct in Relation to Taxation.*

6 HANDLING CLIENT WORK

6.1 Commencing to act

6.1.1 Before acting for a new client a member should communicate with the predecessor as required by Section 5.2.

6.1.2 On accepting instructions a member should normally set out in a letter of engagement (see Appendix 5) to the client his understanding of the scope and nature of the assignment and invite the client to provide confirmation. This exchange of letters serves as the contract between the member and the client although a contract still exists in the absence of such an exchange. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what the adviser has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the basis on which fees will be charged. Members are recommended to consult the guidance note entitled *Engagement Letters for Tax Practitioners* (see Appendix 5). The original contract, whether oral or written, can subsequently be varied either orally or in writing.

6.2 Conduct of the work

6.2.1 In order to perform his work adequately a member should ensure that:

(a) the working papers are so organised as to retain, in an accessible form, all necessary permanent information, together with copies of such working documents as are likely to be required;

(b) all persons engaged on the client's affairs are adequately trained and (where appropriate) supervised so as to ensure that they have the competence either to carry out the work themselves or to recognise occasions when they need to seek further assistance from others; and

(c) a contemporaneous and dated note is made and kept of all telephone conversations and meetings (including discussions with the tax authorities) and of all advice given.

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

6.2.3 A member should keep his working papers for at least seven years from the end of the tax year, or accounting period, to which they relate or such longer period as the rules of self-assessment may require. A member should also consider how long to retain documents belonging to the client (eg dividend counterfoils), before returning them or destroying them with the client's consent. See also Section 12.1 (Ownership of documents).

6.2.4 A member should record the time spent on a client's affairs, subdivided between tasks if this is appropriate.

6.2.5 Wherever practicable, a member should institute an internal review system. The purpose of such a review is to help to ensure that clients' instructions are being observed and that the level of service being provided is competent and appropriate.

6.3 Ceasing to act

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

(a) the client requires it; or

(b) the member has good cause and gives reasonable notice to the client.

6.3.2 A member who after ceasing to act receives a communication from a successor should proceed as set out in Section 5.2.

6.3.3 If a former client asks a member to hand over all relevant papers to himself, the member should co-operate, having due regard to the question of ownership and subject to any lien the member may have (see Section 8.8). In particular, he should bear in mind that many of the documents on his files connected with his appointment as tax agent may belong to the client (see Section 12.1). In the event of a dispute as to ownership of documents, a member who is not a lawyer should normally seek specialist legal advice.

6.4 Handing over to successors

6.4.1 When approached by a successor with a request for papers relating to a former client, a member should co-operate having due regard to the guidance in Section 6.3.3.

6.4.2 Guidance on the ownership of documents and working papers is contained in Section 12.1.

6.4.3 Subject to the wishes of the former client and any lien, the member should release to a successor all papers which belong to the client. It is

recommended that the member asks the former client to give formal written consent in this regard.

6.4.4 A member may wish to set out in the letter of engagement his understanding of the ownership of papers created during the course of providing tax compliance services and the basis upon which he is willing to release them to third parties.

6.4.5 On ceasing to act, the member will usually discuss with the client the arrangements for settling unpaid fee accounts and billing work not yet invoiced. It is recommended that at this juncture consideration is given to the client's requirements for handing over papers to the member's successor and the member's costs associated with making the necessary arrangements. In this regard, members' attention is drawn to Section 8.8 and the right to retain papers belonging to a client until fees have been paid.

6.5 Working with other professional advisers

6.5.1 A member should ascertain whether any other professional advisers are involved in any project or assignment which a client asks him to undertake, and the scope of their involvement. Subject to obtaining the client's consent, he should ensure that they become aware of the scope of his own involvement and establish appropriate working relationships with them in order to progress the work efficiently.

6.5.2 Where a member's advice is sought as to the appointment of suitable other professional advisers, he should make recommendations to his client's (or employer's) perceived best interests. This may involve providing several names from which the client (or employer) can choose.

6.5.3 A member should establish whether he is reporting direct to the client (or employer) or to another professional adviser involved. A member reporting direct should take due account of the other adviser's advice in formulating his own advice. A member reporting to another adviser should ascertain to whom any fee note arising should be rendered; this in turn may depend on who is the member's client, because it may be the other professional adviser.

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

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

6.5.6 A member should advise only within the scope of his own professional competence and within the scope of the terms of the engagement (see Section 6.1.2).

6.5.7 A member may give instructions direct to barristers practising in England and Wales and to members of the Scottish Faculty of Advocates without using the services of a solicitor. Barristers and advocates may be instructed direct in advisory work and giving opinions, and in drafting, and may be briefed to appear before the General or Special Commissioners, the VAT and Duties Tribunal or in magistrates courts. However, a member who is not a solicitor may not give instructions direct to a barrister to appear in the High Court, the Court of Appeal or the House of Lords. Instructions to appear in those superior courts can be given only through a solicitor. A similar prohibition applies to instructing an advocate to appear in the superior Scottish courts or the House of Lords. Notwithstanding this right of direct access, a member who is not a solicitor should always consider whether it is in the interests of the client to give instructions direct to the barrister or advocate, or whether they should be given through a solicitor.

6.5.8 In working with other professional advisers, particular attention may have to be devoted to a member's duty of care as regards the extent of disclosure of client (or employer) confidential information. In cases of difficulty or doubt the member should refer the matter to the client (or employer) and obtain instructions on the point, preferably in writing.

6.5.9 Where the progress of work involves the contribution of other professional advisers, a member should endeavour to ensure that his client (or employer) is kept informed on the state of progress so far as he reasonably can ensure this.

6.6 Use of properly trained staff

6.6.1 A member who delegates work should be satisfied that it is undertaken by staff who have been adequately trained to carry out the work involved.

6.6.2 A member who is an employee and is not satisfied that staff have adequate training or skills to perform their duties should report the situation to his employer with any appropriate recommendation as to further training, replacement or recruitment of staff. The member should also indicate to his employer the potential consequences of ignoring the recommendation, so far as it is reasonably possible.

6.6.3 A member is responsible for ensuring an appropriate level of supervision over work undertaken by subordinate staff.

6.6.4 A member who considers any work done by subordinate staff is inadequate has a duty to remedy any defects before its completion.

6.6.5 The principles of this Section will also apply to sub-contractors and consultants engaged by a member.

6.7 Advice on due dates and interest on tax

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

6.7.2 Accordingly, it is essential that members with responsibility for corporate or personal tax compliance work should be familiar with the interest rules.

6.7.3 Where a member, on behalf of a client, elects to reduce a payment on account, the member should ensure that the client understands the potential exposure to an interest charge in the event of the final calculation of the liability showing that the reduction should not have been made or was excessive.

6.7.4 If the payment of tax or the filing of a return is likely to be delayed beyond the normal due date, the member should alert the client about the exposure to interest, surcharges and penalties.

6.7.5 Where additional tax may ultimately become payable as a result of the settlement of a contentious issue, it is appropriate to advise the client of the amount of additional tax at stake and of the dates from which interest would run.

6.7.6 Where a return is completed by a member on behalf of a client and incorporates judgemental or estimated figures, the member must exercise particular care in respect of such figures. Further, the client must be made aware that the figures are estimated or judgemental. Where a judgemental figure has a material effect on the client's liability to tax, a member should obtain appropriate professional assistance in

formulating the figure where the subject matter is such that the judgement required is outside the member's area of expertise. See also *Professional Conduct in Relation to Taxation.*

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

6.7.8 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 a letter of engagement.

6.8 Proceedings before Commissioners and Tribunals

Members are referred to the Appendices for guidance on:

- Representation before Commissioners and Tribunals (Appendix 6).
- Acting as an advocate before Commissioners and Tribunals (Appendix 7).

Although the Guidance Notes in Appendix 7 were prepared specifically for members of the Institute and refer only to a 'CIOT advocate', the Council of the Association has endorsed these notes and confirmed that members of the Association should follow this guidance if they are representing a client before the General or Special Commissioners or the VAT and Duties Tribunal.

7 TRAINING AND PROFESSIONAL DEVELOPMENT

7.1 Training contracts – The Institute

7.1.1 Most members of the Institute qualify by examination at Associate level. Detailed entry requirements are to be found in the Institute's prospectus *How to become a member of the Chartered Institute of Taxation.*

7.1.2 There is no requirement for students to have had relevant practical experience before registration. However, to assist students in their preparation for the examination and to encourage them to obtain practical experience, the Institute has published model training contract provisions. Copies of the current version can be obtained from the Institute.

7.1.3 The training contract may embody the commitment required by both the student and employer to enable the student to qualify for admission as an Associate Member. The duration of the contract will normally be three years, but may be less if the student has successfully passed the examination of the Association.

7.1.4 The model training contract provisions assume that the employer (the training firm) will appoint a principal, who will be a member of the Institute and responsible for the supervision of the student's training. The principal is expected to monitor the student's progress.

7.1.5 If success in an examination is in doubt, the principal should consider advising the student to defer the sitting.

7.1.6 Whilst there is no requirement to use the Institute's model provisions, it is suggested that any training contract should deal with the following matters:

- training arrangements
- responsibility for expenses such as examination fees, registration fees and tuition costs
- leave of absence to study and take the examination
- monitoring of progress
- duration of contract
- termination of contract.

7.1.7 Provided that the student and his training principal are satisfied that no conflict will arise, such a training contract may run concurrently with studentship of other bodies or may cover the time required to pass the examination of the Association in order to obtain a Certificate of Eligibility to sit the examination of the Institute.

7.2 Training contracts – The Association

7.2.1 Members of the Association qualify by examination. Detailed entry requirements are to be found in the Association's prospectus *How to become a member of the Association of Taxation Technicians*.

7.2.2 Before a student who has successfully passed the examination can become a member of the Association, he must be able to demonstrate a minimum of relevant practical experience in United Kingdom taxation and have attained the age of 19 years.

7.2.3 A formal training contract will assist students with their preparation for the examination as well as providing the necessary evidence of the practical experience required for membership. The duration of the contract may be such as to permit the student to continue his training after achieving membership of the Association with a view to taking the examination of the Institute. Model training contract provisions are available from the Association.

7.2.4 The model training contract provisions assume that the employer (the training firm) will appoint a principal, who will be a member of the Association or of the Institute and responsible for the supervision of the student's training. The principal is expected to monitor the student's progress.

7.2.5 If success in an examination is in doubt, the principal should consider advising the student to defer the sitting.

7.2.6 While there is no requirement to use the Association's model contract provisions, it is suggested that any training contract should deal with the following matters:

- training arrangements
- responsibility for expenses such as examination fees, registration fees and tuition costs
- leave of absence to study and take examinations
- monitoring of progress
- duration of contract
- termination of contract.

7.2.7 Provided that the student and his training principal are satisfied that no conflict will arise, such a training contract may run concurrently with studentship of other bodies or may cover only the time required to pass the examination of the Association. It may also cover the time which may be required to pass the examination of the Institute.

7.3 Continuing Professional Development (CPD) – The Institute

7.3.1 It is important that a member keeps fully up to date in relation to statute and case law and practice in areas where the member holds himself out to be competent to practise. A member must be prepared to meet the obligations necessary to provide the best possible service to clients or an employer.

7.3.2 A compulsory CPD scheme applies to all Institute members who are engaged in the practice of taxation, whether in industry, commerce or practice, with some minor exceptions. Full details of the scheme applicable for 1999 are given in Appendix 1. For the current detailed requirements and guidelines, members should refer to the current issue of the CPD personal record issued annually.

7.3.3 Firms should ensure that suitable tax training sessions are available for students and other qualified staff. These may be arranged in-house, where practical, by membership of a training consortium or by arranging places on appropriate commercially organised tax training courses.

7.3.4 The Institute and the Association provide a number of residential and non-residential courses which may form part of a CPD programme. Each of the branches of the Institute holds evening lectures. In addition, a number of the branches also hold one-day and half-day courses.

7.3.5 'Unstructured' education should be planned properly. In particular, it should include regular reading of publications such as *Taxation Practitioner*, the journal of the Institute and the Association, and a reasonable selection of other tax journals and books.

7.4 Continuing Professional Development (CPD) – The Association

The Council of the Association has adopted the CPD scheme of the Institute and recommends that all members should meet the requirements of the scheme on a voluntary basis. However, for members who are registered under the Members in Practice scheme, meeting the requirements of the CPD scheme is compulsory. For the current detailed requirements and guidelines members should refer to the current issue of the CPD personal record issued annually.

8 CHARGING FOR SERVICES

8.1 Basis of charge

8.1.1 Before undertaking any work on behalf of a new client, a member should ensure that the client is aware of 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 on accepting a new client (see Appendix 5).

8.1.2 The calculation of an appropriate charge for services involves good judgement; it is not merely a question of applying a fixed scale to the time involved in completing the assignment. These guidelines should be interpreted in the light of the general principle that charges should be fair in relation to the services performed and the benefit of these services to the client.

8.1.3 Fee arrangements are a matter for commercial negotiation by members. Due regard should be given to the nature of the engagement and client relationship when setting fees. The possible arrangements include:

- Time and expenses – where the member charges on the basis of time spent according to the skill and the resources deployed. This is likely to be the usual basis in the absence of any other arrangement and the rate to be charged can reflect the complexity of the engagement and the value of the benefit to the client.
- Fixed fees – where the member charges a fixed amount for an agreed assignment the fee should be based upon a proper costing of the work to be undertaken. When the arrangement is to run for any length of time, say beyond one year, it is essential that there is an appropriate variation clause in the engagement letter to enable additional work to be charged and cost escalation to be recouped.
- Contingent or success fees – these should be used with care and should not be adopted as commercial terms if there is a risk that professional independence and integrity will be impaired in the conduct of work.

8.1.4 It is vital to be as clear as possible as to the basis of fees and to include in the letter of engagement provision for varying the amount to be charged where extra work is performed.

8.1.5 Members should take steps to avoid fee disputes by agreeing fees before issuing invoices or giving indicative fees before work is started.

8.1.6 Normally, it is not necessary for a fully detailed bill to be sent automatically to the client unless a prior request has been made. However, the member's records should be adequate to enable a fully detailed bill to be prepared at a later date if required.

8.1.7 When charging costs or fees to different projects or different but connected clients care should be taken to ensure that the allocation is commercially justifiable and reflects the benefit of the work to those clients.

8.2 Contingent fees and value billings

8.2.1 A client's instructions may be accepted where the fee basis is contingent upon success. However, members should be aware that such fees may be perceived by third parties, in particular the tax authorities, as reflecting adversely on the independence of the member. Accordingly, where a contingent fee basis is adopted, the member should take care to ensure that his conduct meets, and is seen to meet, the required standards of integrity and objectivity, and that he can refute any challenge by the tax authorities on the standard of disclosure adopted in connection with the client's affairs.

8.2.2 Where a contingent fee forms the basis of reward for the member, the basis should be disclosed in any public document on which a third party may rely.

8.2.3 Particular care will be needed in preparing the letter of engagement to ensure that the fee basis is fully and effectively defined.

8.3 Disclosure of commission

8.3.1 Where a member gives advice to a client which, if acted upon, will result in the receipt by the member of commission or other reward from a person other than the client, the member should inform the client of this fact at the time the advice is given, and of the amount of the commission or reward which the member expects to receive: see Section 3.8 for the regulatory requirements. Where the amount of commission is unknown, the member should either explain to the client the basis on which the commission will be calculated, or notify the client of the amount when it is received.

8.3.2 If a commission or reward is receivable the member should take care to preserve normal standards of professional care and competence, and should ensure that any advice given is in the best interests of the client. If required to do so, the member should be able to justify the advice given by reasons other than the receipt of the commission.

8.3.3 Commission can also be received by a member in other circumstances, eg by introducing the client to a third party. The member should inform the client of the member's relationship with that third party, and of the amount and terms of commission or reward which the member will receive, by following the procedures outlined above. Moreover, the member should be able to justify the introduction of the client to that third party as being in the best interests of the client.

8.3.4 A member must comply with the requirements imposed by regulatory bodies in respect of commissions arising from regulated business activities (eg investment business advice).

8.4 Retainers

8.4.1 Although retainer arrangements are not a common practice, there is no objection to a member seeking to charge, or accept, fees from a client simply for the retention by that client of the member's services, whether or not additional fees will be charged for specific services which may subsequently be rendered.

8.4.2 Normally, under retainer arrangements, the client is able to call for certain services without any further charge.

8.4.3 A member may undertake to provide specific professional services for a fixed fee. Arguably, this is not the same as a retainer arrangement. Nevertheless, in both cases there is clearly a need for a carefully worded letter of engagement.

8.4.4 To reduce the possibility of disputes arising with a client, any retainer arrangements should normally be set out in writing, with a view to ensuring that the member and the client clearly understand the extent, and limitations, of the arrangements. In particular, such a letter of engagement should make clear the point at which further charges may be levied: see Appendix 5.

8.4.5 When a member agrees to a retainer arrangement, under which the client can call on that member's services at any time, the member should recognise that, in fulfilling his obligations to that client he may be unable to fulfil his obligations to other clients because of a conflict of interest. It is for this reason that members are advised to consider carefully all the implications before entering into material retainer arrangements and should normally include in the letter of engagement provision for terminating the arrangements in the event of a conflict of interest.

8.5 Payments on account

8.5.1 Payments on account of work being performed, or in advance of work to be performed, may be part of the terms on which a member agrees to act for a client. Indeed, in certain cases (such as tax investigation work) such arrangements may be preferred.

8.5.2 The terms of such payments, and any circumstances in which they might become repayable with or without interest, should be incorporated in the letter of engagement to the client before the member starts to act for that client.

8.5.3 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.

8.5.4 On completion of the work, the member should provide a fee note for the services rendered, detailing the total fee charged and deducting therefrom payments on account or received in advance.

8.5.5 A member who is asked to cease acting at any stage should promptly prepare a fee note for the services previously rendered; if any earlier payment on account or in advance was greater than this fee, the member should promptly return the excess to the client.

8.5.6 Where a payment in advance has been received and the member becomes unable to start or complete the assignment, the member should promptly notify the client and repay to the client the advance payment received, after taking account of an appropriate charge for any work performed and any disbursements incurred in undertaking the assignment for the client.

8.5.7 If a substantial payment is received in advance for work to be performed, the member should recognise the contingent liability of having to return it in whole or in part to the client should the member be unable to complete the assignment or should the client subsequently require the member to cease acting. The member should keep adequate funds to repay in whole or part any advance payment (together with any interest thereon) in excess of the billing value of work done.

8.5.8 The member should ensure that there is proper accounting for any VAT that may arise in respect of payments on account or advance payments.

8.6 Clients who are slow to pay

8.6.1 A member should inform clients in writing of the payment terms of fees to be rendered. Normally, this should be incorporated in the letter of engagement sent to the client (see Section 6.1.2).

8.6.2 If a client does not settle an account within a reasonable time, a member should first ensure that the fees have been properly addressed to the client and endeavour to obtain confirmation that the relevant fee notes were received by the client. Normally, this can best be done by direct contact with the client. Alternatively, the use of a recorded delivery letter to the client should be considered.

8.6.3 Thereafter, the member should endeavour to ascertain the reason for the non-payment of the fee. This may have arisen through circumstances beyond the client's control (eg absence on business, holidays or hospitalisation). The non-payment may also have arisen because the client is dissatisfied with the service received, or the amount of the fee, or both. In the light of the client's comments, the member may need to consider whether to pursue collection of the fee and whether to continue to act for that client.

8.6.4 If there is no satisfactory explanation for the non-payment of the fee and the member has drawn the unpaid fee to the client's attention, the member may wish to take legal action to recover it.

8.6.5 Alternatively, or in addition, the member may wish to notify the client that he will cease acting on behalf of that client unless payment is received within a stated period, being a reasonable period of time.

8.6.6 In no circumstances should the member cease acting for a client without notifying the client in writing that he is no longer acting. The member should continue to act until he knows, or can reasonably assume, that the client has received that notification. If, after ceasing to act, the member subsequently receives any correspondence relating to the former client, he should pass that correspondence on without delay and advise the sender to address future correspondence direct to that former client.

8.6.7 A member who has a client who is persistently dilatory in settling accounts may wish to consider whether to continue to act for that client. A member may agree with a client that interest will be charged on fees rendered and not paid by the due payment date. The rate of interest charged should be reasonable. Moreover, the terms on which this interest would be charged must be clearly explained to the client in writing (eg in the letter of engagement) or in the fee documentation.

8.6.8 A member should not settle his fees from monies held, or received by the member on behalf of the client (eg a tax repayment), unless prior approval for such action has been obtained from the client. A member may propose an automatic set-off as part of the arrangements agreed with the client. For the avoidance of doubt, mention of such an arrangement should be included in the letter of engagement.

8.7 Fee disputes

8.7.1 Fee arrangements are a matter for commercial negotiation by members. Steps should be taken, so far as possible, to avoid disputes with clients over fees. A little foresight can often avoid a dispute and a number of suggestions to achieve this are made in the immediately preceding sections. However, if a client does consider the amount of a bill excessive, an attempt should normally be made to settle the difference by negotiation; court action should be considered as a last resort.

8.7.2 If a client who disputes a bill offers to pay a smaller sum on account, the amount tendered may be accepted without disadvantage provided it is made clear to the client at the time of acceptance, preferably in writing, that it is accepted as part payment only and not in full settlement.

8.7.3 Members' attention is drawn to Section 8.8, which deals with liens in respect of unpaid fees, and in particular to the considerations set out in Section 8.8.3.

8.7.4 It should be noted that neither the Institute nor the Association will arbitrate between a member and his client upon the amount of a disputed fee (but see Section 11.1.11).

8.8 Lien

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

A particular lien is a lien over specific property in relation to which work has been done and a debt is owed. A member will probably have a particular lien over documents belonging to the client in respect of which he has performed work for which he has not been paid the fee due. In *Woodworth v Conroy* [1976] QB 884 it was said: 'Accountants in the course of doing their ordinary professional work of ... carrying on negotiations with the Inland Revenue ... have at least a particular lien over any books of account, files and papers which their clients delivered to them and also over any documents which have come into their possession in the course of acting as their clients' agents in the course of their ordinary professional work'.

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

(a) the documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;

(b) the documents must have come into the possession of the member by proper means;

(c) fees must be due to the member in respect of work done on the client's instructions in respect of the documents and a bill for those costs must have been rendered; and

(d) the fees for which the lien is exercised must be outstanding in respect of that work and not in respect of other, unrelated, work.

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

8.8.3 A member may exercise a lien in appropriate circumstances, but before doing so he should consider:

(a) 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;

(b) whether the potential loss of goodwill, both towards the member and towards the profession as a whole, which may be caused by such formal legal action outweighs the financial considerations; and

(c) whether to take specialist legal advice or recommend the client to take specialist legal advice.

9 CONFLICTS OF INTEREST

9.1 Professional independence

9.1.1 A member must, at all times, maintain his professional independence. Accordingly, a member must not accept instructions to act for two or more clients where there is a conflict, or a significant risk of a conflict, between the interests of those clients as this may affect the member's professional independence when advising those clients or give rise to a perception that his professional independence has been affected.

9 1.2 A member must not only remain professionally independent, but also be seen to be so by clients, the public, the authorities and third parties, so particular care must be taken to preserve apparent, as well as actual, independence.

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

9.1.4 Most problems can be avoided by being alert to potential conflicts of interest and by not accepting an assignment where it seems likely that a conflict of interest could occur.

9.2 Managing conflicts

9.2.1 There are many circumstances in which a member in practice may be presented with an actual or potential conflict of interest. It is not possible to envisage every possible situation but the more common occurrences are set out below in Sections 9.3 to 9.6, together with general guidance notes for each circumstance. It is not possible to provide guidance for every eventuality. This is a matter for the professional judgement of the member based upon the precise circumstances.

9.2.2 The most important points of general guidance are:

(a) Conflicts of interest are not always easy to recognise or anticipate. However, the 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.

(b) A member must seek not only to avoid conflicts of interest but also to avoid giving the impression of being in a position where a conflict of interest exists. The member must, therefore, consider his position and his actions not only in the light of his own views about whether a conflict exists, but also in the light of the way in which the situation will be perceived by the client, the public, the authorities and third parties.

(c) A member should acknowledge the existence of a conflict or potential conflict as soon as he becomes aware of it and must conduct himself accordingly thereafter.

(d) A member should immediately address any conflict or potential conflict and seek a solution which is compatible with high professional standards and the duty owed to the client or clients.

(e) If the conflict or potential conflict cannot be resolved the member must consider whether it is appropriate to continue to act. Usually, the existence of a conflict of interest will mean that it is inappropriate to continue to act for one or more of the clients concerned (as to which, see Sections 9.4 - 9.6 below). Should the member consider it appropriate to continue to act for a client despite the existence of a conflict or potential conflict, he must inform the client fully and frankly of the existence of the conflict and should advise him to obtain independent advice on whether it is in the client's interests for the member to continue to act.

(f) Once agreed, arrangements for resolving or dealing with actual or potential conflicts of interest should be confirmed in writing to the client as should any agreement whereby a client agrees to a member continuing to act in circumstances where a conflict, or potential conflict, of interest exists.

9.3 Financial involvement with clients

9.3.1 Financial involvement with a client may affect a member's independence. Such involvement could arise in a number of ways, for example holding shares in a client company or by the making of loans to or receiving them from a client.

9.3.2 A member in practice should formulate a policy in respect of shareholdings in client companies to be followed by partners and staff. Procedures should be put in place to monitor compliance with the policy.

9.3.3 Thus, where a member, or the spouse or child of the member, makes a loan to a client, or guarantees a client's borrowing, or accepts a loan from a client or has borrowings guaranteed by a client, then a conflict

of interest could occur. Although such loans cannot be prohibited, a member should consider carefully whether it would be better not to undertake such financial transactions with a client, or if such arrangements are already in force, not to act for that person. A member who considers it is still appropriate to act or continue to act in these circumstances should fully and frankly inform the client of the conflict or potential conflict and advise the client to take independent advice on whether it is appropriate for the member to act or continue to act. If the client agrees that the member acts or continues to act, that agreement should be properly documented.

9.3.4 Similarly, acceptance of goods, services or hospitality of any kind could influence a member's independence and should not be accepted, unless of a modest amount or on terms similar to those generally available to the employees of that client.

9.3.5 A member should make sure that any such involvement with a client does not lead to less favourable service being given to any other client.

9.3.6 In cases of doubt, members can seek the advice of the Secretariat.

9.4 Acting for both parties to a transaction

9.4.1 In most circumstances, a member who is asked to act for both parties to a transaction should refuse to do so. However, this may present difficulties if both the parties are existing clients. The member has an in-built conflict if he shows preference in providing services to one client and not the other, and an added conflict if he does not act in the best interests of both.

9.4.2 The member has three choices:

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

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

If both clients are agreeable the member may act provided that there is adequate disclosure of all relevant facts to both parties, so that they may formulate proper business judgements and provided that no preference is shown in advising one against the other. In practice this may be difficult but there may be sufficient 'mutuality

of interest' between the parties to allow this course to be followed. In this situation, both clients should be advised to consider seeking independent advice on whether it is appropriate for the member to act for both parties.

(c) If a member has acquired relevant knowledge concerning a client who has instructed him in relation to a transaction and is then instructed by the other party to the transaction, it may be appropriate to inform both clients of the potential conflict and then to act only for the client who first sought advice. To change allegiance after accepting instructions could present a conflict in relation to the use of information already supplied as it would be a breach of client confidentiality to release such information, in any form, to another party without express approval of the client who provided such information.

A member who decides to act only for the first instructing 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.

9.5 Acting for both an employer and his employees

9.5.1 An employer may ask a member to provide tax or other advice to his employees. It is important for the member to identify with whom the client relationship exists. Where the employee is the client no confidential information pertaining to that employee should be given to the employer without the express approval of the employee (preferably in writing). Where the nature of the assignment is such that there is a requirement for a report to the employer, this fact should be made clear in the engagement letter submitted to the individual employee.

9.5.2 If the employer discharges the member's fees for services which are of direct benefit to the employee, arrangements should be made for appropriate reporting to the tax authorities of any benefit in kind received by the employee.

9.6 Acting for both parties in a divorce settlement

9.6.1 Acting for both parties in a divorce settlement can present difficulties, particularly if the member has previously acted for both parties.

9.6.2 It will rarely, if ever, be appropriate to act for both parties to a divorce settlement as it is highly unlikely there will be sufficient mutuality of interest between them. It will almost invariably be necessary either to act for only one of the parties or for neither of them.

10 MEMBERS IN EMPLOYMENT OR WITH A 'SINGLE CLIENT'

10.1 Employees

10.1.1 These Professional Rules and Practice Guidelines apply equally to an employed member as they do to a member in practice whether or not his employer is a member of the Institute or the Association.

10.1.2 An employed member should ensure that there is nothing in his contract of service which precludes him from complying with these Professional Rules and Practice Guidelines.

10.1.3 Knowledge gained in the course of his employment of the affairs of the employer, the shareholders or any other person with whom the employer has, or may in the future have, dealings should not be divulged to third parties except where the member has a legal duty to disclose, or is making a 'protected disclosure' pursuant to the Public Interest Disclosure Act 1998, or does so as a necessary part of a defence against proceedings, or has the permission of the person concerned or does so as a necessary part of the performance of his duties for the employer.

10.1.4 Information obtained in the course of his employment should never be used for personal gain nor conveyed to others with a view to their gaining a personal advantage. In dealing with the tax authorities, a member should have regard to the guidance in *Professional Conduct in Relation to Taxation* published in October 1997 by the Institute and the Association. Moreover, in a wider context, a member should never be a party to providing information which is misleading, deceptive or false.

10.1.5 A member who is an employee and is not satisfied that staff have adequate training or skills to perform their duties should refer to the guidance in Section 6.6.2

10.2 Employees as members of trade unions

10.2.1 An employed member is expected to behave responsibly in relation to fulfilling the terms of the contract of service. Membership of a trade union is in no way incompatible with membership of the Institute or the Association.

10.2.2 Withdrawal of services from an employer as part of a dispute would not normally give rise to a question of unprofessional conduct if the action was officially supported by the relevant trade union and was not in contravention of the law.

10.3 Employees acquiring knowledge of taxation irregularities

10.3.1 An employed member who is responsible for agreeing the employer's taxation liabilities with the tax authorities has the same duty as a practising member to ensure that there is appropriate disclosure of all relevant information. Similarly, upon a discovery of default, negligence or fraud on the part of the employer, the member is required to draw the employer's attention to the penalties for which the employer may become liable and to recommend the earliest possible voluntary disclosure .Indeed, employed members are encouraged to follow any policies the employer has in place in relation to disclosures made under the Act (see Section 10.3.5). Further, employers are encouraged to put in place such policies.

10.3.2 An employer's refusal to disclose may place the member in an intolerable position. The employee should refer to *Professional Conduct in Relation to Taxation* and may wish to obtain specialist legal advice as to his position.

10.3.3 In cases of difficulty, an employee member may seek the advice of the Secretariat on the way in which a 'protected disclosure' under the Act (see 10.3.5) should be handled.

10.3.4 Even if not directly involved in compliance work for the employer, a member who becomes aware of malpractice must adopt a similar stance.

10.3.5 A member may be protected under the Public Interest Disclosure Act 1998 to which members are referred.

10.4 Single client practitioners

10.4.1 The size of a practice, either in terms of fee income or number of clients, does not reduce a member's responsibility for maintaining the standards expected of all practising members of the Institute or the Association.

10.4.2 A member acting for a single client, or having one client whose fee income predominates, may find conflicts of interest occur more frequently and that objectivity is more difficult to achieve than for the typical member in practice. The need for the utmost care in keeping records of advice given is correspondingly greater.

10.4.3 A member with a narrow client base who, as a result, may have limited experience in particular areas of tax practice should be mindful of those limitations, and the necessity to seek assistance or specialist advice.

11 COMPLAINTS

11.1 Complaints to members

11.1.1 A member in practice is strongly recommended to have in place and operate procedures to handle complaints from clients.

11.1.2 Such procedures should ensure that:

(a) each new client is informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided, and of the ability to complain to the Institute or the Association;

(b) each complaint is acknowledged promptly in writing;

(c) each complaint is investigated thoroughly and without delay by a person of sufficient experience, seniority and competence who preferably was not directly involved in the act or omission giving rise to the complaint, and the client is told about the investigation; and

(d) if the investigation finds that the complaint is justified in whole or in part, any appropriate action is taken.

11.1.3 It will usually be convenient to include the information under Section 11.1.2(a) in the engagement letter. An example of suitable wording is contained in *Engagement Letters for Tax Practitioners* published in October 1997 (see Appendix 5).

11.1.4 If the client refers the complaint to the Institute or the Association the member may be required to show how the complaint has been dealt with. Members are therefore strongly recommended to maintain a careful written record of each complaint and of the steps taken.

11.1.5 No one likes to be the subject of complaints, but it is probable that a member in practice will receive them from time to time. Experience within the Institute and the Association shows that the majority of complaints could have been avoided by taking some simple measures. The following paragraphs highlight a few areas to which attention can usefully be given and provide guidance on what to do when a client complaint is received.

11.1.6 Members are strongly advised to issue an engagement letter in every new matter, unless it is inappropriate in the circumstances. Examples of engagement letters are contained in Appendix 5. Many complaints arise either because of confusion as to what the member has agreed to do, or over the fees charged. The engagement letter should define as

precisely as possible the scope of the assignment. It should also set out clearly the basis upon which fees will be charged. Any change in the scope of the work or the fees quoted should be set out in writing and the client's agreement obtained.

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

11.1.8 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. Time spent in dealing promptly with a complaint is often less than that required to deal with it later. A speedy response often repairs any damage that may have been done to the member/client relationship.

11.1.9 If the complaint is found to be justified, a prompt acknowledgement of this and a suitable apology is often accepted. If the complaint is felt, after investigation, not to be justified, this should be explained to the client in as simple terms as possible. Whether a complaint is justified or not, it is often helpful to try to see it from the client's point of view, and act accordingly.

11.1.10 Whenever a complaint is received it is important to consider whether it is such that it may result in a claim under the member's professional indemnity insurance policy. If so, insurers should be informed immediately of the potential claim, and the member should take into account any advice that they give.

11.1.11 If a dispute cannot be settled it may be desirable, as an alternative to litigation and with the agreement of both member and client, for it to be referred to an independent arbitrator. Application can be made to the President for the time being of the Institute or the Association to appoint an appropriate arbitrator and to formulate the terms of such appointment.

11.2 Complaints to the Institute or the Association

11.2.1 A complaint received by the Institute or the Association (including a complaint by one member against another) about the standard of a member's work or the quality of the service provided will be reviewed initially by the Secretariat. The member will be asked to comment on the complaint.

11.2.2 It may be possible to resolve the complaint to the satisfaction of both parties at this early stage. Otherwise, the complaint may be referred to the Investigation Sub-Committee of the Institute or the Association. This Sub-Committee will consider the complaint to determine whether or not there is a prima facie case for the member to answer.

11.2.3 If the Investigation Sub-Committee of the Institute concludes that there is a case to answer, it has the following powers:

(a) it may notify the member that it intends to take no further action, but that the complaint will rest on file for a period of two years; or

(b) it may admonish the member; or

(c) it may refer the case to the Disciplinary Committee of the Institute.

The member's consent is required to (a) and (b) and costs may then be awarded against the member. The decision will be communicated to the complainant.

11.2.4 If the Investigation Sub-Committee of the Association concludes that there is a case to answer it may refer the case to the Disciplinary Committee of the Association.

11.2.5 Where a complaint is referred to the Disciplinary Committee of the Institute or the Association, it will be presented before that Committee by the Investigation Sub-Committee. The member may present his own case, or may be represented, and may call witnesses as well as cross-examine any witnesses called on behalf of the Investigation Sub-Committee. If the complaint is upheld the Disciplinary Committee may make one or more of the following orders against the member;

(a) that he be excluded from membership of the Institute or the Association and that his name be removed from the list of members;

(b) that he be censured ;

(c) that he be reprimanded;

(d) that he be fined a sum up to a prescribed maximum.

In addition, the Disciplinary Committee may make an order as to costs up to a prescribed maximum sum.

11.2.6 The member may appeal against the order of the Disciplinary Committee within 21 days of the service of the order. Any such appeal is then heard by the Appeal Committee of the Institute or the Association, as appropriate. The Appeal Committee may affirm, vary or rescind any order of the Disciplinary Committee and may substitute any other order or orders which it considers to be appropriate. It may also make an order as to costs up to a prescribed maximum in respect of the appeal hearing.

12 LEGAL MATTERS

12.1 Ownership of documents

12.1.1 In general, unless a particular document or record (including microfilm and electronic records) belongs to the member or a third party, it belongs to the client.

12.1.2 When considering the ownership of a document, the terms of the contract between the member and his client should first be reviewed. If they provide expressly for the ownership of the documents prepared during the engagement, that concludes the matter. Alternatively, the contract terms may imply who owns the documents prepared during the engagement.

12.1.3 If the contract makes no express or implied provision as to the ownership of documents, a member will have to consider whether he is acting in the particular engagement as the agent of the client or as a principal. An agency relationship exists, for example, where the work done by the member is of a tax compliance nature, such as preparing returns and computations for the Revenue and VAT returns for Customs. However, the member will be acting as a principal where he is retained to carry out advisory or consultancy work.

12.1.4 Where there is an agency relationship, the client has a right to documents prepared by the member for the client. Such documents would include any tax return, supporting documentation for that return and copies of letters passing between the member and third parties.

However, a member's working papers belong to him. For example, where a member is instructed to prepare a computation, his working papers compiled to enable him to produce the computation will belong to the member. Only the computation itself, and any supporting schedules, belong to the client.

Correspondence with the Revenue in connection with compliance work is conducted by the member as agent for the client. Therefore, copies of letters written by the member to the Revenue, and the originals of letters received from them, belong to the client.

However, where an agency relationship exists and the member has not been paid by the client for the work undertaken, the member has a lien over any relevant documents which belong to the client: see Section 8.8.

12.1.5 If a document was prepared by a member who was acting as a principal, the position depends upon the type of document in question. Generally,

documents created by a member for the purposes of advising or carrying out work for the client belong to the member but not where the document will be of use to the client. Therefore, documents created on the specific instructions of the client belong to him, whilst documents prepared by the member for his own purposes belong to the member. Examples of documents belonging to a member include copies of letters passing between the member and third parties, file notes, internal memoranda and drafts created in preparing advice for the client. However, the letter or document containing the advice will belong to the client.

12.1.6 A document created by the client or a third party before any client relationship has begun, whether sent to the member by his client or by a third party, is held on behalf of the client or third party as the case may be.

12.1.7 Where a document is sent by the client to the member and the title to that document is intended to pass to the member, then the document belongs to the member. Examples include letters, authorities and instructions.

12.1.8 Certain third parties, for example taxation authorities, may have an interest in accessing client information held by the member. These third parties may also have a right of access to this information without having to obtain the client's consent. In such a situation, a member must take care in only disclosing those documents owned by the client and which can be disclosed to these third parties without the client's consent.

If the third party does have a legal right of access to a client's documents without the client's consent but the member has a lien over those documents, the lien will not be invalidated by the member handing over those documents to the third party.

12.1.9 In practice, there may be difficulty in identifying whether the member or the client owns a particular document. The member may wish to take specialist legal advice on this and on the extent to which he may be obliged to allow access to his files and working papers, including those documents which he owns.

12.2 Drafting legal documents

12.2.1 There are certain categories of legal documents which may only be drafted for a fee by appropriately qualified people. A person convicted of drafting such documents without the appropriate qualifications will be liable to a fine. However, if a member merely indicates required

amendments to a legal document, but does not himself amend them, he is not committing an offence.

12.2.2 **General** – A member who is not a solicitor, barrister or licensed conveyancer may not prepare for a fee any document relating to real property (ie land) or personal property (ie goods other than land).

However, a member may draft a document which falls within one of the following exceptions:

(1) a Will or other document which transfers goods or property but does not take effect until the death of the person making the transfer;

(2) an agreement not intended to be executed as a deed (except any contract for the sale of land). This means any document which is not a deed or was not intended to be a deed on the face of the document;

(3) a letter or power of attorney; and

(4) a transfer of stock "containing no trust or limitation thereof". There are no clear guidelines on what this means but it is thought to mean any document transferring shares which does not create a trust or similarly limit the transferee's rights in the shares.

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

12.2.3 **Conveyancing** – A member who is not a solicitor, barrister or licensed conveyancer may not prepare for a fee any document transferring or attaching a charge to registered land or make any application or lodge any document for registration at the Land Registry.

12.2.4 **Probate** – A member who is not a solicitor or barrister may not prepare for a fee papers on which to apply for, or oppose, a grant of probate or letters of administration to the estate of a deceased person.

However, a member may provide assistance to a person who is applying for a grant in person, or to a solicitor who is acting in the estate. It is therefore permissible for a member to provide information or prepare material, such as schedules of figures, which are used by an applicant in person or the solicitor to prepare the documents forming the application for the grant of probate.

In addition, a member who is appointed an executor under a Will can charge for his services in accordance with the terms of the charging clause in the Will. However, an executor cannot charge for preparing papers to found or oppose a grant of probate or letters of administration.

12.2.5 **Litigation** – A member who is not a solicitor or barrister may not prepare for a fee any document relating to legal proceedings.

However, a litigant may always act in person and therefore a member may always conduct litigation on his own behalf. A member can also assist a client who is litigating in person in an administrative capacity (such as giving advice and taking notes).

In addition, a member who is not a solicitor may not issue any writ or commence, prosecute or defend any proceedings in any civil or criminal court. Anyone breaching these particular rules is liable to criminal prosecution with the possibility of imprisonment if convicted and is also guilty of contempt of court.

12.2.6 This section sets out the present position. However, the Courts and Legal Services Act 1990 contains machinery for individuals and bodies other than solicitors to be authorised to carry out a number of these activities. So far, no such authority has been granted.

12.2.7 Before preparing any document which has legal effect (and is not in a prohibited class) a member should consider carefully whether he is competent to draft it as he may be exposing himself to the risk of a claim for negligence. He should also consider whether it is in the best interests of the client that he should prepare the document or whether it should be referred to a lawyer or other professional.

12.3 Revenue Search Warrants

12.3.1 The Revenue has power to apply to a circuit judge under section 20C of the Taxes Management Act 1970 for a warrant entitling them to search premises where there is reasonable ground for suspecting there may be evidence relating to a serious tax fraud. In several recent cases, the Revenue have used this power to "raid" the premises of tax advisers and other professionals. Members should take any search extremely seriously. They need to be fully aware of the Revenue's powers in this regard and should take legal advice from a suitably qualified solicitor in the event of such a raid. Failure to do so could expose the member to a claim for damages for professional negligence.

12.3.2 An application by the Revenue under this section is made without notice to the affected parties, so the first that the member is likely to know of the warrant is when the Revenue's officers appear at the premises demanding to be allowed entry. As many as 50 (or even more) officers may be involved in a major raid involving several premises.

12.3.3 As stated above, if a member is raided in this way he should consult a solicitor immediately and, if at all possible, arrange for his immediate

attendance at the member's offices. (The Secretariat maintains a list of solicitors with expertise in this area.) The Revenue should be asked to take no steps until the solicitor has arrived. Upon arrival, the solicitor can then advise the member in relation to compliance with the warrant and can advise as to the appropriateness (or otherwise) of the use of this draconian power. In appropriate cases, the member may have grounds for seeking an interim injunction to halt the search on suitable undertakings being given. Alternatively, he may seek to persuade the officer in charge that the search should be abandoned and, if appropriate, information provided voluntarily.

12.3.4 Although not actually required by statute, warrants typically include the following information:

(a) some description of the fraud being investigated and the particular tax or taxes involved;

(b) the names of customers or clients being investigated;

(c) the authorised time of entry (usually not before 7.00 am or after 7.00 pm);

(d) the number of officers who can be involved in the search; and

(e) what items can be seized and removed by the searching officers (failing which, they can remove anything they reasonably believe may be required as evidence in proceedings).

12.3.5 Where any documents are seized and taken away, the member is entitled to ask for access to them or for copies of them. The officer in charge of the investigation has a limited discretion whether or not to grant this request. In any event, the member should at least ask for a record of what has been removed.

12.3.6 It is essential that the person whose premises are raided (and his solicitor) read the warrant very carefully to ensure that the Revenue are not given access to any documents of the client under investigation which are not covered by the warrant or to documents which are confidential to other clients.

12.3.7 Furthermore, one of the most difficult issues which may arise in the context of a search is the question of privileged documents. The reason for this is that, in contrast to the position at common law, the only statutory exemption from seizure relates to privileged documents in the possession of a lawyer. This is a particularly complex legal area and specialist advice should always be sought in this regard. See also *Professional Conduct in Relation to Taxation.*

12.4 Customs Search Warrants

12.4.1 Customs have power to apply to a magistrate under Schedule 11 paragraph 10(3) of the Value Added Tax Act 1994 for a warrant entitling them to search premises where there is a reasonable ground for suspecting there may be evidence of a serious VAT fraud.

12.4.2 The provisions relating to the execution of such powers are similar to those of the Revenue set out in paragraph 12.3 above, save that there is no exception in respect of privileged documents.

On 1 February 1993, Customs issued the Statement of *Practice Confidentiality in VAT Matters (tax advisers)*[1] in which they said[2] that they recognised that tax advisers had a duty of confidentiality to their clients, and that whilst the duty of confidentiality might sometimes be overridden by legal requirements, Customs would not normally request the tax adviser or the trader to produce a communication relating to confidential opinion or advice of the type described in that Statement of Practice. However, Customs do retain the right to call for planning documents in line with Revenue practice. Where Customs have obtained a search warrant from a magistrate, this will obviously take the investigation outside the 'normal' circumstances described above, and they will be likely to insist that the confidentiality be overridden.

[1] VAT Leaflet 700/47/93
[2] Paragraph 6.2

13 ADVERTISING

13.1 General principles

13.1.1 Members may seek publicity for their professional standing, experience and services by means of advertising or other forms of promotion, subject to the general requirement that the medium should not reflect adversely on the member, the Institute or the Association, or other members and fellow professionals.

13.1.2 For the purposes of this Practice Guideline, 'advertising' encompasses all forms of marketing of professional services, including all types of media advertising, whether for work, sub-contract work, staff recruitment, practice mergers, employment, publications, seminars, business cards, promotional gifts or general mailshots.

13.1.3 Members must comply with the law and must follow the standards and requirements of the British Codes of Advertising and Sales Promotion, and the Independent Television Commission and Radio Authority Codes of Advertising Standards and Practice, notably as to legality, decency, clarity, honesty and truthfulness.

13.2 Specific guidelines

13.2.1 An advertisement should be clearly distinguishable as such.

13.2.2 Advertising should not be misleading in any way. For example, members should not appear to hold themselves out as having expertise in a particular field that they do not in fact possess.

13.2.3 Members who are members of any Committee, Sub-committee or working party of the Institute or the Association may publicise their membership in any book, article or advertising material for any conference at which they are lecturing or acting as chairman. A member must not publicise such membership in any other way without the prior consent of the Secretariat. Such members must use reasonable endeavours to ensure that this Guideline is observed by any person, firm or corporate body with which they are associated.

13.2.4 Members should ensure that any advertising or publicity for which they may be held responsible is accurate, is not ambiguous and is not likely to cause public offence.

13.2.5 A member remains responsible for an advertisement even if the work is delegated to an advertising agency or other intermediary.

13.2.6 Members may state the areas in which they specialise.

13.2.7 Promotional material may contain any factual statements, the truth of which a member is able to justify, but should not make disparaging references to or disparaging comparisons with the services of others.

13.3 Fees

13.3.1 If reference is made in promotional material to fees, the basis on which fees are calculated, or to hourly or other charging rates, great care must be taken to ensure that such reference does not mislead as to the precise range of services and time commitment that the reference is intended to cover. Members should not make comparisons in such material between their fees and the fees of others, whether members or not.

13.3.2 A member may offer a free consultation at which levels of fees will be discussed.

APPENDIX 1

COMPULSORY CONTINUING PROFESSIONAL DEVELOPMENT

Appendix 1

COMPULSORY CONTINUING PROFESSIONAL DEVELOPMENT RULES (1999 VERSION) FOR INSTITUTE MEMBERS AND ASSOCIATION MEMBERS WHO ARE REGISTERED PRACTITIONERS

1. Introduction

1.1 In the ever-changing world of taxation, with substantial new legislative measures introduced on a regular basis, it is clearly essential that members keep up to date and also advance their skills.

1.2 The granting of the Royal Charter to the Institute was a further recognition of the separate tax profession. Members of that profession must be prepared to meet the obligations necessary to enable them to provide the best possible service to their clients and/or employers.

1.3 Rule 2.7 of the Institute's Ethical Rules issued in 1989 states that 'A member should carry out his professional work with a proper regard for the technical and professional standards expected of him.' [Now see Section 2.3 above.]

1.4 It is with that background that the voluntary continuing professional development (CPD) scheme, introduced in 1991, became, from 1 January 1996, a compulsory CPD scheme for those members who are engaged in the practice of UK taxation (whether as a partner, sole practitioner, director or employee) in industry, commerce or private practice. There will, however, be exceptions for some members ordinarily within that category, and flexibility in the way the CPD requirements can be met. These aspects are detailed below.

1.5 The Institute fully recognises that any compulsory CPD scheme must be structured so that it meets all of the following requirements.

1.5.1 It is relevant to the needs of members in their working fields.

1.5.2 It is flexible enough to cater for the particular circumstances of members (eg a career break).

1.5.3 It does not create onerous demands, and only involves reasonable periods to be spent outside the normal working environment.

1.5.4 It is not administratively burdensome.

1.6 The following guidelines are intended to meet the above requirements.

2. The basic requirements

2.1 The minimum requirement is 120 units per calendar year, of which 30 to 60 units must be structured training and 60 to 90 units must be unstructured training.

2.2 Structured training is valued at three units per hour and unstructured training is valued at one unit per hour.

2.3 The annual requirement can be met on an averaging basis over any two consecutive years.

3. Exceptions

3.1 The following members will be excepted from the normal compulsory CPD requirements to the extent stated if coming within the following categories for all or part of a specific calendar year.

3.1.1 Members unable to meet the structured training requirements due to ill health or disability.

3.1.2 Members on maternity leave or a career break from their employment or practice or who are currently unemployed (but with unstructured training still required of a minimum of one unit per week on average).

3.1.3 Members who are within the 'retired membership' category.

3.1.4 Members who, due to travel difficulties, would find it impracticable to attend conferences on UK taxation as part of the structured training requirement. In such cases greater unstructured training should be undertaken so that the total requirement of 120 units per calendar year remains.

3.1.5 Members who are barristers in independent practice; they must still meet the total requirement of 120 units per calendar year, but from any combination of structured/unstructured training.

3.1.6 Members excepted under discretionary powers reserved by the Institute.

3.2 Where members come within any of the above categories for only part of a calendar year the exception will apply for that part only, on a *pro rata* basis where appropriate.

4. Definition of structured training

4.1 Attendance at conferences, seminars, workshops, discussion meetings or similar events involving active contribution.

4.2 Preparation of lectures or other forms of presentation.

4.3 Writing books, articles or reviews.

4.4 All learning media, provided they involve interaction with other individuals (including group research; listening to audio tapes; viewing tax videos and tax-specific television programmes; using video discs and computer-based training packages).

5. Definition of unstructured training

5.1 Reading.

5.2 Any other form of learning where there is no interaction with other individuals. This would include the learning media in 4.4 above where undertaken on a personal basis.

6. Non-core subjects

6.1 In referring to structured and unstructured training it must, of course, relate to the field of taxation.

6.2 It is nevertheless appreciated that members must often keep up to date on the related topics of law, accounting and financial services. Furthermore, they may well require training on matters such as practice management; practice administration; staff development; computer and software developments. Any training in these areas can be included up to a maximum of one half the total annual CPD requirement.

7. CPD requirements of other professional bodies

7.1 It is appreciated that members of the Institute may also be members of other professional bodies having CPD (or its equivalent) requirements or recommendations.

7.2 There is no question of any separate requirements arising – a tax conference which counts as CPD by, for example, the Institute of Chartered Accountants in England and Wales or The Law Society will also count as structured CPD under this Institute's scheme.

8. CPD requirement of professional firms

8.1 It is also appreciated that some professional firms have their own CPD requirements. Again, there is no question of any separate requirements arising.

8.2 If the professional firm's CPD requirements are for a year end other than 31 December, the former can be used instead by reference to the CPD year which ends in the calendar year.

9. Conference providers

9.1 Conference providers self-assess by allocating three CPD units per working hour, subject to a maximum of 18 units per day (or a maximum of 21 units for each full day of a residential conference). It is the responsibility of members to determine that the conference is at the CPD level (ie post-qualification). The Institute will not accredit conferences etc for CPD purposes.

9.2 Branches of the Institute typically offer a range of courses. An evening meeting provides five CPD units, and a half-day or extended evening conference provides a maximum of nine CPD units. National one-day and residential conferences are also offered by the Institute.

10. Records to be kept

10.1 Use the recommended form – [not reproduced here] to keep your CPD record for this year. Members of other professional bodies or of professional firms which have to keep CPD records may use the same record sheet for the Institute's scheme, suitably adapted where necessary.

10.2 Where members attend a meeting at which no charge is made for attendance, they must record their attendance in the record book kept by the organisers.

10.3 Members should keep CPD records until the sixth anniversary of the relevant year end. The Institute will make random checks by requesting some members to send in their CPD covering a two year period.

11. Failure to meet the compulsory CPD requirements

11.1 If a member within the compulsory scheme fails to meet the requirements the following aspects will need to be considered:

11.1.1 He/she will be required to achieve a specified number of CPD units in the current year, so as to meet the requirements over the two-year averaging period.

11.1.2 Any investigation into a complaint made about a member will involve checking the member's CPD records.

11.1.3 If practising certificates are introduced by the Institute, a prerequisite to receiving a certificate or renewal thereof will be to meet the compulsory CPD scheme requirements.

11.1.4 The Disciplinary Committee may consider what further action is appropriate.

12. Members not within the compulsory scheme

12.1 The Institute encourages all members to meet the CPD requirements, as a means of ensuring that they keep up to date in the ever-changing world of taxation.

12.2 The voluntary CPD scheme, with the same annual requirement for structured and unstructured training, continues for all members not within the compulsory scheme.

12.3 All members not within the compulsory scheme must nevertheless comply with rule 2.7 of the Institute's ethical rules. Rule 2.7 [now 2.3] is reproduced in 1.3 above.

13. Membership enquiries

All enquiries by members and course providers, including those for further guidance on whether an activity is structured or unstructured, should be addressed to the Head of Membership at the Institute on 0171 235 9381.

APPENDIX 2

RULES OF THE REGISTRATION SCHEME FOR ASSOCIATION MEMBERS IN PRACTICE

Appendix 2

RULES OF THE REGISTRATION SCHEME FOR ASSOCIATION MEMBERS IN PRACTICE

[Text as approved by the Association's Council on 10 December 1996]

1. Introduction

1.1 The scheme is open to all individual members in practice on their own account, partners in practice, or directors of limited companies whose sole or main business is the provision of taxation compliance services.

1.2 The scheme provides a basis for practising members to gain additional publicity in the promotion of their services whilst also demonstrating their commitment to maintaining their technical ability and professionalism.

1.3 In order to register members have to meet certain minimum standards as set by the Council. These standards may be subject to amendment from time to time.

2. Registration requirements

2.1 Members applying for registration must pay the registration fee as specified in paragraph 8.1, and provide the following information, declarations and documents to the Association.

(i) member's name and membership number;

(ii) business name, address, telephone number, and if appropriate fax number and electronic mail address;

(iii) commencement date of the business;

(iv) submission of a receipt or declaration by an insurance broker or insurer showing that current professional indemnity insurance (PII) is held which complies with the minimum requirement of the Council. The present requirement is at least two and half times gross fee income normally subject to a minimum of £100,000;

The PII cover should be held by the individual in the case of sole practitioners, held by the partnership in the case of partnerships, and held by the company in the case of limited companies;

(v) submission of a declaration confirming that the Association's minimum recommendation on continuing professional development (CPD) has been achieved or will be achieved within the year of application. (The Association reserves the right to check CPD records);

(vi) in the case of a partnership requiring to use the Association's badge and approved wording, a declaration from the managing partner is required confirming that the conditions in paragraph 4 have been met. Also a full list of partners is required indicating which partners are members of the Association;

(vii) in the case of a limited company requiring to use the Association's badge and approved wording, a declaration from a director of the company is required confirming that the conditions in paragraph 5 have been met. Also a full list of directors is required indicating which directors are members of the Association, and

(viii) a sample of the firm's stationery.

3. Administration of the scheme

3.1 An application form will be available for members' use in applying for registration covering the above points.

3.2 Applications will be vetted by the Secretary before putting them to the Registration Panel for consideration. The Panel will consist of the Chairman of the Membership Committee or a member of Council, and a maximum of two other members of the Membership Committee, one of whom should also be a Council member. The Secretary of the Association will act as adviser to the Panel. Initial and renewal applications, where appropriate, may be considered by a minimum of any two from the Panel. No member of the Panel should be a member of the Association's Disciplinary Committee. The Panel has the authority to request additional information from applicants, if necessary, to establish whether an application can be accepted.

3.3 On acceptance an acknowledgement will be sent confirming the member's registration under the scheme setting out the benefits of the scheme, and giving permission to use the Association's badge and the approved wording as set out in paragraph 3.5 on the member's business stationery.

3.4 Registration will be effective from the 1st of the month following the month of acceptance by the Association. First registrations will not be effective prior to 1 April 1997.

3.5 The approved wording is:
'Registered with the Association of Taxation Technicians as a member in practice'.

3.6 Members whose applications are not considered by the Panel to have met the requirements of the scheme will be notified in writing setting

out the reasons for refusal. They will be invited to re-apply after satisfying the requirements.

3.7 The Secretary will deal with renewal applications, referring only contentious applications to the Panel.

4. Conditions specific to partnerships whose sole or main business is the provision of taxation compliance services

4.1 If 75% of the partners who provide taxation compliance services are registered under the scheme the firm may use the approved wording as set out in paragraph 3.5 above and the Association's badge on its business stationery.

4.2 If the above rule is not satisfied those partners who are registered may use the badge and approved wording on their personal stationery. If any person is in this situation a sample of their personal stationery must be submitted to Council for approval.

5. Conditions specific to companies whose sole or main business is the provision of taxation compliance services

5.1 If 75% of the directors who provide taxation compliance services are registered under the scheme the company may use the approved wording as set out in paragraph 3.5 above and the Association's badge on its business stationery.

5.2 If the above rule is not satisfied those directors who are registered may use the badge and approved wording on their personal stationery. If any person is in this situation a sample of their personal stationery must be submitted to Council for approval.

6. Register of members approved under the scheme

6.1 A register will be maintained providing details of each registered member by reference to a registration number. The information contained in the register will be used to administer the scheme and also to assist in the provision of services and benefits to members, for example if the Association establishes an advertising service or public telephone enquiry line.

7. Term of registration and annual renewal

7.1 The initial period of registration will be from the 1st of the month following the month of acceptance by the Association until the following 31st December.

Thereafter the annual renewal date for all registered members will be the 1st January and the registration period will be for twelve months.

7.2 The Association reserves the right to request the re-submission of certificates as stated in paragraph 2.1.

8. Initial registration and annual renewal fees

8.1 The initial registration and annual renewal fees will be £25, or at such rates as prescribed by Council, and will apply to each individual member.

9. Disputes

9.1 In the event of a dispute by a member over the refusal of a registration or the renewal of a registration the member has the right of appeal to Council. The Appeal Panel will consist of a combination of Council members and non Council members as determined by the Council at the time. No member of the Registration Panel or Disciplinary Committee may serve on the Appeal Panel.

APPENDIX 3

COMPULSORY PROFESSIONAL INDEMNITY INSURANCE FOR INSTITUTE MEMBERS

Appendix 3

COMPULSORY PROFESSIONAL INDEMNITY INSURANCE FOR INSTITUTE MEMBERS

[First published in August 1997 following Institute Council's approval in June 1997 and as amended by the Institute's Council on 13 October 1998]

COMPULSORY PROFESSIONAL INDEMNITY INSURANCE REGULATIONS OF THE INSTITUTE

With effect from the first day of January 1998 ('the Specified Date') the following Regulations apply, provided that no failure by a member before the Specified Date to comply with these Regulations shall be capable of subjecting him to any disciplinary action unless it would have constituted a failure to comply with Section 3.3 of the *Ethical Rules and Practice Guidelines* of the Institute issued in 1989 [now 2.12.1].

1 REGULATIONS

1.1 Every member who personally or in corporate form or as a partner in a partnership firm carries on a practice or business which provides or holds itself out as providing or which has provided or held itself out as providing at any time during the preceding six years relevant services (as defined in paragraph 1.2 below) to the public is required to comply with this Section as it applies to those relevant services. Such a member will be referred to in these Regulations as 'a practising member'.

1.2 For the purpose of these Regulations 'relevant services' means services in respect of which a reasonably well informed member of the public would regard membership of the Institute as a relevant qualification.

1.3 Every practising member shall, unless exempted from this obligation pursuant to paragraph 1.4 or paragraph 1.5 below, effect and maintain or procure that there is effected and maintained in respect of his practice professional indemnity insurance cover in conformity with paragraph 1.6 below.

1.4 A practising member shall be exempted by virtue of this sub-paragraph from the obligation in paragraph 1.3 above if, but only if, he satisfies all the following conditions:

(a) He has made an application to the Institute in such manner and accompanied by such fee and supporting evidence as the Council may require and has provided information which is true in

substance and in form and has disclosed to the Institute every fact reasonably likely to be regarded by the Institute as material;

(b) He holds a current certificate from the Institute authenticated as may be prescribed by the Council exempting him wholly or partly from the obligations contained in paragraph 1.3 above and in the case of a partial exemption he has complied with all the parts to which the exemption does not extend; and

(c) he complies with all the conditions (if any) subject to which the exemption has been granted.

1.5 A practising member shall likewise be exempted from the obligation in paragraph 1.3 above if, being a member of or a partner in a partnership firm regulated by another professional body recognised for the purpose of this Regulation by or under the authority of the Council, he satisfies the Institute in such manner as the Council may prescribe that he is in full compliance with the obligations of that other professional body in regard to its requirements for the maintenance of professional indemnity insurance and he also satisfies such further requirements or conditions (if any) as the Council may prescribe generally or for him or for those members of the Institute who are members of or partners in a partnership firm regulated by that professional body.

1.6 The insurance required to satisfy the obligations of paragraph 1.3 above means insurance which:

(a) is underwritten by an insurer for the time being authorised by law to carry on in any member State of the European Union insurance business in respect of the specified risks referred to in paragraph 1.7 below;

(b) covers all the specified risks in such a manner as to protect all claims which are brought against the member insured thereby in a manner which is normal for insurances of such risk;

(c) covers all the specified risks in such a manner as to protect all claims which are brought against the member insured thereby in a manner which is normal for insurances of such risk;

(d) does not limit the cover of any individual claim or any aggregate of claims or exclude from protection the first and any other part of a claim except in any such case for amounts and in the manner from time to time approved by or under the authority of the Council;

(e) is not avoidable by reason of any misrepresentation or non-disclosure or any other act or default of the insured; and

(f) in respect of which all premiums have been paid as and when they fall due.

1.7 The specified risks referred to in paragraph 1.6 above are those which cover loss arising from claims made against the insured in respect of any civil liability, including costs and expenses, incurred in connection with the provision or offering of any relevant services.

1.8 All practising members shall be obliged to provide to the Institute as and when required so to do by or under the authority of the Council such evidence as may be sufficient to satisfy the Institute as to the due compliance by such member of his obligations under this Section.

2. GUIDANCE NOTES

2.1 Introduction

On 1 January 1998 Professional Indemnity Insurance (PII) became compulsory for all members of the Institute carrying on public practice as sole practitioners, partners or via a company (hereinafter referred to as 'firms'). All members are required to effect and maintain adequate PII cover. These guidance notes explain the main requirements of the PII regulations, qualifications for waiver and arrangements for monitoring compliance.

2.2 Required limit of liability

The normal annual minimum limit of indemnity will be £1m for any one claim and in all. Where the firm's gross fee income for the accounting year immediately preceding the year in question is less than £400,000 the limit of indemnity must be the greater of:

- 2.5 x the gross fee income; and
- 25 x the largest fee raised during that accounting year; and
- £100,000 for a sole practitioner or £200,000 in another case.

Firms may deduct a self-insured excess. The maximum permitted excess is the lower of £20,000 per principal in the annual aggregate and 2% of the level of indemnity for each and every claim. For example, for a sole practitioner with fees up to £40,000 the minimum cover becomes at least £98,000.

'Gross fee income' is the aggregate of the professional charges and

all other income (including commissions) received in respect of and in the course of the business during the accounting year immediately preceding the year in question, but excluding any commission passed on to the client in full and which is not retained to set off against fees. For the avoidance of doubt it is expected that fees will be calculated on the earnings basis.

The 'largest fee' is the largest accumulative amount of all fees raised to any client during the year, excluding recovered disbursements and expenses and VAT.

2.3 Liabilities to be covered

PII shall provide cover in respect of all civil liability incurred in connection with the conduct of the firm's business.

Whilst not compulsory it is recommended best practice that firms should take out Fidelity Guarantee Insurance to provide cover against any acts of fraud or dishonesty by any partner, director or employee in respect of money or property held in trust by the firm.

2.4 Administrative provision

(a) Each member required to comply with the PII regulations must on request provide the Institute with a policy and/or certificate from his insurer or broker.

(b) The policy terms and wording shall be available for inspection by the Authorisation Sub-Committee (ASC).

(c) Each member must keep a record of PII claims.

(d) Such record together with each annual renewal proposal form must be available for inspection by the ASC.

2.5 Cover not available

Where a member is unable to obtain PII complying with the regulations or can obtain such cover only at an unreasonable expense, the member may refer his case to the ASC.

The ASC will investigate the reasons for cover not being available and then make a recommendation to Council on whether the requirement for PII should be waived or amended for a period of time. In such a case the member must indicate to all members of the public to whom he provides services that either he has no PII or the level of his insurance falls short of the recommended minimum levels.

The ASC may impose such conditions as it deems appropriate for the member to continue in practice.

2.6 Continuity following cessation

Members must ensure that arrangements exist for the continued existence of PII for a period of not less than six years after they cease to engage in public practice. Such PII shall be on terms satisfying the requirements of the PII regulations as applied to their business during the year immediately preceding such cessation.

2.7 Exceptions

- Members who receive fees in respect of an honorarium but who do not hold themselves out to provide taxation services to the public need not hold PII cover but they must indicate in writing to every client to whom they provide services the fact that they have no PII cover.
- Members who are regulated by one of the professional bodies included in paragraph 2.11 are exempt, provided they are in full compliance with the PII regulations laid down by that other body for the year in question.

2.8 Acceptable insurance companies

Responsibility for obtaining adequate cover lies with each member and may be effected with any reputable insurance company or underwriter.

A scheme tailored for Institute members is available from Aon Risk Services, Gibraltar House, Gibraltar Walk, High Street, Wickford, Essex SS12 9AZ, telephone (01268) 764141. Details are available from the Membership Department, but in accordance with its normal practice the Institute does not endorse the company or the policy.

2.9 Examples

2.9.1 Member is a partner in a Big 5 firm regulated by the Institute of Chartered Accountants in England and Wales – **exempt**

2.9.2 Member is a director and 50% shareholder of a company providing a tax return completion service. Other director/shareholder is unqualified – **The requirement for compulsory PII applies.**

2.9.3 Member is a sole practitioner who is quoted unreasonably expensive premiums by three different insurers because two separate negligence claims have recently been made against him. **Member should refer the matter to the ASC who will look into the matter and decide whether to grant exemption for a period of time. The ASC may ask the member to undergo an independent peer review (at his own expense) before reaching a decision.**

2.10 Queries

Members in doubt about whether the scheme applies to them, or how it operates, should contact the Deputy Secretary for advice.

2.11 Schedule

Members who are regulated by one of the professional bodies shown herewith are exempt from the requirement for compulsory PII, provided they are in full compliance with the PII regulations laid down by that other body for the year in question.

- Law Society
- Institute of Chartered Accountants in England and Wales
- Association of Chartered Certified Accountants
- Chartered Institute of Management Accountants
- Institute of Chartered Accountants of Scotland
- Institute of Chartered Accountants in Ireland
- Institute of Taxation in Ireland
- Law Society of Scotland
- Law Society of Northern Ireland

and any other body approved by Council.

APPENDIX 4

RULES FOR THE USE OF THE DESIGNATORY TITLE 'CHARTERED TAX ADVISERS' BY COMPANIES AND PARTNERSHIPS

Appendix 4

RULES FOR THE USE OF THE DESIGNATORY TITLE 'CHARTERED TAX ADVISERS' BY COMPANIES AND PARTNERSHIPS (MEMBERS' REGULATION 44)

1 These regulations were made by the Council on 16 March 1999 under Bye-Law 2(9) of the Royal Charter subject to approval by the members at the Annual General Meeting to be held on 20 May 1999. The following regulations apply in the United Kingdom and European Union. Outside these areas, members shall consult with the Secretary-General on the adaptations needed to the regulations so as to comply with local practice and local legal requirements.

Definitions

2 Words and phrases used in these regulations have the same meaning as in the Bye-Laws unless specifically amended within the regulations.

3 The term '*Chartered Tax Adviser*' means a member of the Institute.

4 A 'Firm' means a sole practitioner, a partnership or a corporate body.

5 The term 'Voting rights' means the rights to vote on matters at meetings of the firm.

6 'Recognised Status' is afforded to those persons set out in Regulation 17.

7 A 'Nominated Member' is a *Chartered Tax Adviser* who is either a partner or director of a corporate body who completes the undertakings required by these Regulations, and who is duly authorised to accept responsibility to ensure that the Firm conducts itself so as not to bring the Institute or the tax profession into disrepute.

8 The 'prescribed minimum' is the number of partners or directors who must be qualified as *Chartered Tax Advisers* for the purposes of

Regulations 10(b) and 11(b) determined in accordance with the following table

Size of firm Number of Partners/Directors	Prescribed minimum Partners/Directors who are *Chartered Tax Advisers*
1 – 11	1
12 – 20	2
21 – 31	3
32 – 44	4
45 and over	5

Users of the description '*Chartered Tax Advisers*'

9 A member who is a sole practitioner in public practice shall be entitled to describe the Firm as *Chartered Tax Advisers*.

10 Members engaged in public practice as partners in a Firm which is a partnership shall be entitled to describe it as '*Chartered Tax Advisers*' only if:

(a) each partner is a *Chartered Tax Adviser,* or

(b) not fewer than 75% of the partners are *Chartered Tax Advisers* or hold Recognised Status, and not fewer than 75% of the Voting Rights are held by *Chartered Tax Advisers* or those of Recognised Status provided that the number of partners who are *Chartered Tax Advisers* shall be not less than the prescribed minimum; and

(c) the Firm has furnished to the Secretary-General of the Institute a written undertaking in such form as the Institute shall from time to time prescribe signed by the Nominated Member confirming that the firm and each of its partners will comply with the relevant obligations and liabilities of a member of the Institute and be bound by the Royal Charter, Bye-Laws, Members' Regulations and other requirements of the Institute as from time to time in force and that they will observe and uphold the ethical standards of the Institute.

11 Members engaged in public practice as directors of a firm which is a corporate body shall be entitled to describe the Firm as '*Chartered Tax Advisers*' only if:

(a) each director is a Chartered Tax Adviser or

(b) not fewer than 75% of the directors are *Chartered Tax Advisers* or hold Recognised Status, and not less than 75% of the Voting Rights in the Board of Directors, committee or other management body are held by *Chartered Tax Advisers* or those of Recognised Status provided that the number of directors who are *Chartered Tax Advisers* shall be not less than the prescribed minimum, and

(c) the Firm has furnished to the Secretary-General of the Institute a written undertaking in such form as the Institute shall from time to time prescribe signed by the Nominated Member confirming that the company and each of its directors will comply with the relevant obligations and liabilities of a member of the Institute and be bound by the Royal Charter, Bye-Laws, Members' Regulations and other requirements of the Institute as from time to time in force and that they will observe and uphold the ethical standards of the Institute.

12 (a) Firms complying with the requirement of Regulations 10(b) or 11(b) by the inclusion of partners or directors of Recognised Status must include the following statement on business stationery:

'Registered with the Chartered Institute of Taxation as a firm of *Chartered Tax Advisers*.'

(b) Firms complying with the requirements of Regulations 9, 10(a) or 11(a) may include the following statement on business stationery:

'Registered with The Chartered Institute of Taxation as a firm of *Chartered Tax Advisers*.'

Discipline

13 These Regulations shall not confer any rights, acknowledgements, status or designatory letters other than those conferred on a member by other regulations of the Institute. No firm or individual who is not a member shall make any public representation that he has such rights, acknowledgements, status or letters.

14 The Institute's disciplinary rules shall apply to complaints against partners and directors in the tax practice who are not members of the Institute as it applies to complaints against members but the defendant in any such proceedings shall be the Firm.

15 In the application of disciplinary rules against a Firm under Regulation 14, the Disciplinary Committee of the Institute may order the suspension or removal of the right to use the description '*Chartered*

Tax Advisers' or reprimand or fine the Firm such sum as the Disciplinary Committee think fit in the light of the size and gravity of the offence together with the imposition of costs provided that *Chartered Tax Adviser* members of the Firm have been afforded an opportunity to make such representations as they feel appropriate.

Fees

16 Firms wishing to take advantage of Regulations 10(b) and 11(b) will only be permitted to do so on payment of fees for the time being in force as determined by the Council of the Institute.

Recognised Status

17 Persons who are members of the following bodies

- The Institute of Taxation in Ireland;
- The Association of Taxation Technicians (provided registered as a member in practice);
- The Institute of Chartered Accountants in England and Wales;
- The Institute of Chartered Accountants of Scotland;
- The Institute of Chartered Accountants in Ireland;
- The Association of Chartered Certified Accountants;
- The Chartered Institute of Management Accountants;
- Solicitors in England and Wales, Scotland, Northern Ireland and the Republic of Ireland;
- Barristers in England and Wales, Advocates in Scotland, Barristers in Northern Ireland and the Republic of Ireland;
- The Institute of Chartered Secretaries and Administrators;
- or a body which the Council of the Institute recognises as being a similar body in the European Union.

APPENDIX 5

ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

Guidance note issued in October 1997

CONTENTS

ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

INTRODUCTION

1. This statement provides guidance to tax practitioners about engagement letters for tax work. It replaces a guidance note issued in March 1997 which has been extensively revised and updated to take account of, inter alia, self-assessment, in particular the need to adhere to statutory deadlines, changes to the investment business rules and revisions to ethical guidance issued by the Institute.

2. Whilst a letter of engagement for tax work is not mandatory, it is good practice for a practitioner to define the terms of the engagement and agree these with the client. A letter of engagement can be used to manage clients' expectations, provides significant protection to the

practitioner in any dispute and is also important for professional indemnity purposes. This is particularly so given the increasingly litigious world in which business is conducted. In this context the attention of practitioners is drawn to *Hurlingham Estates v Wilde & Partners ([1997] STC 627)* following which the Courts will infer that a practitioner has the knowledge and expertise appropriate to the ordinary competent professional practising in his particular field. The engagement letter defines the areas in which the practitioner's presumed expertise is applied for the client's benefit.

3. It is emphasised that this note is for general guidance: it is intended to give examples of what engagement letters might contain, not to set out the work that an accountant should or should not do, or how it should be done. The examples of tax compliance engagement letters in the Annexes, and in particular the wording in square brackets, are intended as suggestions to be amended to meet individual cases rather than definitive statements. The form and content of engagement letters should be varied to meet individual circumstances: it may, for example, be considered convenient to issue an engagement letter covering both tax and non-tax work in which case appropriate extracts of this document can be used in respect of the tax aspects of the work. The wording of the engagement letter may need to be amended if what is being undertaken is a 'one off' rather than a continuing assignment.

4. This note has been developed in conjunction with the Institute of Chartered Accountants in England and Wales, the Association of Chartered Certified Accountants, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland and the Institute of Indirect Taxation.

STATUS OF PRACTITIONER

5. Practitioners should consider whether they are acting as agent, for example where the work consists of preparing and submitting a tax return and agreeing the tax position, or as principal, for example where an income and expenditure account is prepared for a sole trader or consultancy work is undertaken. An engagement letter will be required in both cases, but the practitioner should be aware of the distinction when drafting its terms.

CONTENTS

6. An engagement letter should set out the scope of the engagement and the terms of business, to include as a minimum:

- the nature of the services to be provided (see section 2 in the Annexes below);
- the responsibilities of the client, including the obligation to provide full information (section 3);
- investment business requirements (section 6);
- quality of service and complaints procedures (section 14); and
- fee arrangements (section 15).

INVESTMENT BUSINESS

7. A tax engagement letter should cover the provision of investment advice as an integral element of tax services. Practitioners are subject to the Financial Services Act 1986 and, if authorised, to the investment business regulations and guidance issued by the appropriate regulatory body and need to include appropriate paragraphs in the tax engagement letter. The provision of specific investment business or corporate finance investment business services within the Financial Services Act 1986 requires a separate engagement letter.

8. Practitioners who are not authorised under the Financial Services Act 1986 are not eligible to carry on investment business activities. Any engagement letter should make this clear to the client.

9. Investment business regulations issued by the appropriate regulatory body will usually include illustrative paragraphs covering specific investment business and corporate finance investment business services for insertion in general professional services (including tax) engagement letters and a number of model investment business engagement letters. The guidance will also usually discuss the factors to take into account when considering whether certain work is integral to general professional services.

OTHER REGULATIONS AND GUIDANCE

10. As well as the investment business regulations and guidance already referred to regard should be had to The Institute's Professional Rules and Practice Guidelines and other relevant professional regulations and guidance.

THE CLIENT

11. A separate engagement letter ought to be agreed for each client to whom a service is provided. For example, separate engagement letters are required when the firm provides tax services to:

- a husband and wife;
- an individual and, following death, the personal representatives administering the deceased's estate;
- a partnership and the individual partners;
- a company and its shareholders;
- a company and its directors;
- a company and its employees where for example a bulk tax return service is provided; and
- a trust and its beneficiaries.

12. When acting for a group of companies one engagement letter may be sent to the parent company of the group provided the member companies of the group are clearly specified as being covered by the engagement letter. Care should be taken to ensure that the parent company has the authority to bind all members of the group.

FEES

13. Fee arrangements are a matter for commercial negotiation by practitioners. Due regard should be given to the nature of the engagement and client relationship when setting fees. The possible arrangements include:

- time and expenses – where the practitioner charges on the basis of time spent according to the skill of the resources deployed. This is likely to be the usual basis in the absence of any other arrangement and the rate to be charged can reflect the complexity of the engagement and the value of the benefit to the client;
- fixed fees – where the practitioner charges a fixed amount for an agreed assignment the fee should be based upon a proper costing of the work to be undertaken. It is essential that there is an appropriate variation clause in the engagement letter to enable additional work to be charged and/or cost escalation to be recouped when the arrangement is to run for any length of time, say beyond one year; and

- contingent or success fees – these should be used with care and should not be adopted as commercial terms if there is a risk that professional independence and integrity will be impaired in the conduct of work.

14. It is vital to be as clear as possible as to the basis of fees and to include in the letter provision for varying the amount to be charged where extra work has been performed.

15. Members should take steps to avoid fee disputes by agreeing fees before issuing invoices and/or giving indicative fees before work is started.

AGREEMENT OF LETTER

16. The client should be asked to agree to the scope and terms of the engagement in writing, usually by signing and returning a copy of the engagement letter.

ONGOING WORK AND CHANGES

17. An engagement letter for ongoing work should be regularly reviewed and, if appropriate, an updated engagement letter agreed. This is so even if just one aspect of the engagement is changed, for example where the practitioner agrees to carry out a year's work for a fixed rather than a time-based fee. Generally a practitioner should review engagement letters for continuing services at least triennially. It is important for practitioners to keep the client informed about progress once the engagement is under way. It may also be prudent to send a letter of disengagement when ceasing to act so that there is a proper handover of responsibilities to the new agent/adviser. These actions should help to avoid misunderstandings about the engagement and disputes about fees.

ANNEX A

EXAMPLE OF A PERSONAL (INCLUDING SOLE TRADER) TAX COMPLIANCE ENGAGEMENT LETTER

This is not intended to be used in all cases and must be tailored to meet specific circumstances.

Dear [...] *[complete]*

PERSONAL [INCLUDING SOLE TRADER BUSINESS] TAX COMPLIANCE:

TERMS OF ENGAGEMENT

1. INTRODUCTION

1.1 This letter sets out the basis on which we [are to] act as your tax agent and adviser.

1.2 Your spouse is legally responsible for [his/her] own tax affairs and should be dealt with independently. [However, if both spouses sign this letter you agree that we can disclose to your spouse such details of your financial affairs as are required to consider your combined tax position.]

SCOPE

2. OUR SERVICE TO YOU

2.1 *Note: Paragraph 2.1 is intended for use where the business accounts comprise no more than an income and expenditure account drawn up for the purpose of completing the tax return. The terms of engagement for the preparation of more extensive accounts are outside the scope of this guidance note.*

[Either]

[We will prepare the income and expenditure account of your business and the income tax computations based thereon from your accounting records and other information and explanations provided by you. We will advise you as to the adequacy of your records for this purpose but we will not carry out an audit of those records.]

[Or]

[We will prepare the income tax computations based on the accounts of your business from the accounting records and other information and explanations provided by you.

2.2 We will prepare your personal income tax and capital gains tax return together with all supporting schedules and [prepare]/[check the Inland Revenue's calculation of] your self-assessment of tax [and Class 4 national insurance contributions].

2.3 We will forward to you your tax return form [,business accounts, tax computations] *[sole traders]* and supporting schedules [in duplicate] *[optional]* for your approval and signature. Once the return has been approved and signed by you and returned to us, we will submit it[, with the accounts and computations,] to the Inland Revenue. [You authorise us to file the return electronically under the Inland Revenue Electronic Lodgement Service].

2.4 We will advise you as to amounts of tax [and national insurance contributions] to be paid and the dates by which you should make the payments, including payments on account and the balancing payment, and if appropriate we will initiate repayment claims when tax [and national insurance contributions] appear[s] to have been overpaid.

2.5 We will deal with the Inland Revenue regarding any amendments required to your return and prepare any amended returns which may be required.

2.6 We will advise as to possible claims and elections arising from the tax return and from information supplied by you and, where instructed by you, we will make such claims and elections in the form and manner required by the Inland Revenue.

2.7 We will deal with all communications relating to your return addressed to us by the Inland Revenue or passed to us by you. However, if the Inland Revenue choose your return for enquiry [we will refer you to another practitioner]/[this work will be the subject of a separate assignment and we will seek further instructions from you].

2.8 [We will check PAYE notices of coding where such notices are forwarded to us.]

3. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

3.1 Under the self-assessment regime there are a number of key dates by which returns and payments must be made. Failure to meet the deadlines may result in automatic penalties, surcharges and/or interest.

3.2 You are legally responsible for making correct returns and for payment of tax on time.

3.3 To enable us to carry out our work you agree:

(a) to make a full disclosure to us of all sources of income, charges, allowances and capital transactions and to provide full information necessary for dealing with your affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;

(b) to respond quickly and fully to our requests for information and to other communications from us;

(c) to provide us with information in sufficient time for your tax return to be completed and submitted by the [due date]/[selected date] of [...] following the end of the tax year. In order to do this, we need to receive all relevant information by [...]. [You have asked us to submit your self-assessment tax return by 30 September following the end of the tax year so that the Revenue calculate your tax liability and notify you of your 31 January balancing payment [and code out the first £1,000 of any underpayment]: in order to meet this date you agree to provide us with all relevant information by [...]]; *[Optional: amend/delete as appropriate]* and

(d) to forward to us on receipt copies of all Inland Revenue statements of account, [PAYE coding notices,] notices of assessment, letters and other communications received from the Inland Revenue to enable us to deal with them as may be necessary within the statutory time limits.

3.4 We will provide our professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or your or others' failure to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

4. PROVISION OF INFORMATION BY THIRD PARTIES

4.1 You agree that we can approach such third parties as may be appropriate for information that we consider necessary to deal with your affairs

4.2 [Please sign and return the enclosed Inland Revenue form 64-8,]/[We have submitted form 64-8 to the Inland Revenue] *[delete as*

applicable] which authorises the Inland Revenue to send us copies of formal notices. In practice the Inland Revenue will treat this as authority to correspond with us, in which case they will not correspond with you except to the extent that they are formally required to do so. However, this authority does not apply to all Inland Revenue correspondence and, even where it does, the Inland Revenue sometimes overlook it. You should therefore always send us the originals or copies of all communications you receive from the Inland Revenue.

5. OTHER SERVICES AND GENERAL TAX ADVICE

[See Annex D, paragraphs 1-3 and 6-12]

5.1 We will be pleased to assist you generally in tax matters if you advise us in good time of any proposed transactions and request advice. We would, however, warn you that because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.2 [It is our policy to confirm in writing advice upon which you may wish to rely].

6. INVESTMENT ADVICE

[See paragraphs 7-9 of the Guidance Note]

6.1 *[Either, if not authorised]*

Investment business is regulated under the Financial Services Act 1986. We are not authorised under that Act.

[Or, if authorised]

[Practitioners who are authorised to carry on investment business are referred to the investment business regulations and guidelines issued by the regulatory body who authorises them to conduct investment business. This guidance should be incorporated as appropriate into the client engagement letter to cover investment business services that are integral to tax advice. If investment services are separately identifiable, then separate engagement letters drafted in accordance with relevant guidance should be used.]

7. EXCLUDED SERVICES

[Adapt as appropriate. See also section 5 above]

7.1 You will continue to deal with all matters required by law, such as:

- inheritance tax returns
- Pay As You Earn including year end returns P35/P14/P60;
- forms P11D;
- returns for sub-contractors; and
- VAT returns.

7.2 We will be pleased to advise on any of these or other tax matters if so requested.

8. PERIOD OF ENGAGEMENT

8.1 This engagement will commence with your tax return for the year to [...].

8.2 [We will deal also with matters arising in respect of years prior to the year ended [...], namely year[s] ended [...] to [...], as appropriate.] [In particular, we will attend to any assessments issued by the Inland Revenue in respect of years prior to self-assessment.] [We will not be responsible for earlier years. Your previous advisers, [...] *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities].*[Delete/amend as appropriate]*

TERMS

9. PROFESSIONAL RULES AND PRACTICE GUIDELINES

9.1 We will observe the Professional Rules and Practice Guidelines of the Chartered Institute of Taxation and accept instructions to act for you on the basis that we will act in accordance with those guidelines. [In particular you give us authority to correct Inland Revenue errors.] A copy of these guidelines will be supplied to you on request.

10. COMMISSIONS OR OTHER BENEFITS

Your attention is drawn to the Professional Rules and Practice Guidelines and the disclosure requirements of the relevant investment business regulations, if applicable.

10.1 In some circumstances, commissions or other benefits may become payable to us [or to one of our associates] in respect of transactions which we [or such associates] arrange for you, in which case you will be notified in writing of the amount and terms of payment. The fees that would otherwise be payable by you as described will [not] take into account the benefit to us of such amounts. You consent to such commission or other benefits being retained by us [or, as the case may be, by our associates,] without our [or their] being liable to account to you for any such amounts. *[Amend as appropriate].*

11. CLIENT MONIES

11.1 We may, from time to time, hold money on your behalf. Such money will be held in trust in a client bank account, which is segregated from the firm's funds

12. RETENTION OF RECORDS

12.1 [During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you following preparation of your return. You should retain them for [1]/[5] year[s] following the 31 January following the end of the tax year. This period can be extended if the Inland Revenue enquire into your tax return.] *[Practitioners who retain records on behalf of clients will need to amend this paragraph]*

12.2 Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. If you require retention of any document you must indicate that fact to us.

13. REGULATORY REQUIREMENTS

13.1 [We reserve the right to disclose our files to regulatory bodies in the exercise of their powers.] *[Adapt as necessary and for firms who voluntarily undergo external peer review].*

14. QUALITY OF SERVICE

14.1 We wish to provide at all times a high quality of service. If at any time you would like to discuss with us how our service could be improved or if you are dissatisfied with the service you are receiving please let us know by contacting [...] *[insert name].*

14.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with the Chartered Institute of Taxation.

15. FEES

[This is an example: if fees are calculated on any other basis, for example a fixed amount or contingency fee, then different wording should be substituted.]

15.1 Our charges are computed on the basis of fees for the time spent on your affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. [If work is required which is outside the scope of this letter, for example dealing with Inland Revenue enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable.] We will issue invoices at [monthly/quarterly/ six-monthly] intervals during the course of the year. We will add value added tax, if applicable, at the current rate to the invoice.

15.2 Our invoices are payable on presentation. We reserve the right to charge interest at [x]% per [month/year] [over base rate] in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a way which is unfair or unreasonable.

16. LIMITATION OF LIABILITY

[Practitioners who wish to include provisions intended to limit their liability in the event of a claim by a client are strongly advised to take legal advice on this complex matter.]

17. APPLICABLE LAW

17.1 This engagement letter is governed by, and construed in accordance with, [English] *[amend as appropriate]* law. The Courts of [England] will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

18. AGREEMENT OF TERMS

18.1 This letter supersedes any previous engagement letter for the period covered. Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

18.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

18.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

I acknowledge receipt of your above letter dated [...] *[complete]* which fully records the agreement between us relating to your appointment to carry out the work described in it.

Signed Date

[I agree that you can disclose to my spouse such details of my financial affairs as you consider necessary (see paragraph 1.2)]

Signed Date

(Spouse)

ANNEX B

EXAMPLE OF A CORPORATION TAX COMPLIANCE ENGAGEMENT LETTER

This is not intended to be used in all cases and must be tailored to meet specific circumstances.

To the Directors of [...]*[complete]*.

CORPORATION TAX COMPLIANCE: TERMS OF ENGAGEMENT

1. INTRODUCTION

1.1 This letter sets out the basis on which we [are to] act as the company's tax agent and adviser.

1.2 We will communicate with [...] in relation to the company's tax affairs.

SCOPE

2. OUR SERVICE TO THE COMPANY

2.1 We will prepare from the accounts and other information and explanations provided by you the company's corporation tax computations, tax return [and self assessment] together with all supporting schedules and, if necessary, amended returns.

2.2 We will forward to you the tax return and supporting schedules [in duplicate] *[optional]* for your approval and signature. Once the return has been approved and signed and returned to us, we will submit it, with the accounts and computations, to the Inland Revenue.

2.3 We will advise as to amounts of corporation tax to be paid and the dates by which the company should make the payments and if appropriate we will initiate repayment claims when tax appears to have been overpaid.

2.4 We will advise as to claims and elections arising from the tax return and from information supplied by you and, where instructed by you, we will make such claims and elections in the form and manner required by the Inland Revenue.

2.5 [We will agree with the Inland Revenue the company's liability to corporation tax and attend to notices of assessment, lodging appeals against incorrect assessments as appropriate.]

2.6 We will deal with all communications relating to the company's tax return addressed to us by the Inland Revenue or passed to us by the company.

2.7 We will [prepare]/[help you in preparing] the tax provisions and disclosures to be included in the company's statutory accounts.

3. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

3.1 Under the [self assessment] regime there are a number of key dates by which returns and payments must be made. Failure to meet the deadlines may result in automatic penalties and/or interest.

3.2 The company is legally responsible for making correct returns and for payment of tax on time.

3.3 To enable us to carry out our work you agree:

(a) to make a full disclosure to us of all sources of income, charges, allowances and capital transactions and to provide full information necessary for dealing with the company's affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;

(b) to respond quickly and fully to our requests for information and to other communications from us;

(c) to provide us with information in sufficient time for the company's tax returns to be completed and submitted by the due date of [...] following the end of the accounting period. In order to do this, we need to receive all relevant information by [...]; and

(d) to forward to us on receipt copies of notices of assessment, letters and other communications received from the Inland Revenue to enable us to deal with them as may be necessary within the statutory time limits.

3.4 We will provide our professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or your or others' failure to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

4. PROVISION OF INFORMATION BY THIRD PARTIES

4.1 You agree that we can approach such third parties as may be appropriate for information that we consider necessary to deal with the company's affairs.

4.2 [Please sign and return the enclosed Inland Revenue form 64-8,]/[We have submitted form 64-8 to the Inland Revenue] *[delete as applicable]* which authorises the Inland Revenue to send us copies of formal notices. In practice the Inland Revenue will treat this as authority to correspond with us, in which case they will not correspond with the company except to the extent that they are formally required to do so. However, this authority does not apply to all Inland Revenue correspondence and, even where it does, the Inland Revenue sometimes overlook it. You should therefore always send us the originals or copies of all communications you receive from the Inland Revenue.

5. OTHER SERVICES AND GENERAL TAX ADVICE

[See Annex D, paragraphs 4 onwards]

5.1 We will be pleased to assist the company generally in tax matters [including VAT] if you advise us in good time of any proposed transactions and request advice. We would, however, warn you that because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.2 [It is our policy to confirm in writing advice upon which the company may wish to rely.]

5.3 We will be pleased also to advise the directors and executives on their personal income tax and capital tax positions. In such cases we will need to agree separate terms with the individuals concerned.

6. INVESTMENT ADVICE

[See paragraphs 7-9 of the Guidance Note]

6.1 *[Either, if not authorised]*

Investment business is regulated under the Financial Services Act 1986. We are not authorised under that Act.

[Or, if authorised]

[Practitioners who are authorised to carry on investment business are referred to the investment business regulations and guidelines

issued by the regulatory body who authorises them to conduct investment business. This guidance should be incorporated as appropriate into the client engagement letter to cover investment business services that are integral to tax advice. If investment services are separately identifiable, then separate engagement letters drafted in accordance with the relevant guideline should be used.]

7. EXCLUDED SERVICES

[Adapt as appropriate. See also section 5 above]

7.1 You will continue to deal with all matters required by law, such as:

- forms CT61;
- Pay As You Earn including year end returns P35/P14/P60;
- forms P11D;
- returns for sub-contractors; and
- VAT returns.

7.2 We will be pleased to advise on any of these or other tax matters if so requested.

8. PERIOD OF ENGAGEMENT

8.1 This engagement will commence with the company's tax return for the accounting period to [...] .

8.2 [We will deal also with matters arising in respect of periods prior to the period ended [...], namely period[s] ended [...] to [...], as appropriate.] [We will not be responsible for earlier periods. The company's previous advisers, [...] *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.] *[Delete/amend as appropriate]*

TERMS

9. PROFESSIONAL RULES AND PRACTICE GUIDELINES

9.1 We will observe the Professional Rules and Practice Guidelines of the Chartered Institute of Taxation and accept instructions to act for you on the basis that we will act in accordance with those guidelines. [In particular you give us authority to correct Inland Revenue errors.] A copy of these guidelines will be supplied to you on request.

10. COMMISSIONS OR OTHER BENEFITS

Your attention is drawn to the Professional Rules and Practice Guidelines and the disclosure requirements of the relevant investment business regulations.

10.1 In some circumstances, commissions or other benefits may become payable to us [or to one of our associates] in respect of transactions which we [or such associates] arrange for the company, in which case you will be notified in writing of the amount and terms of payment. The fees that would otherwise be payable by the company as described will [not] take into account the benefit to us of such amounts. You consent to such commission or other benefits being retained by us [or, as the case may be, by our associates,] without our [or their] being liable to account to the company for any such amounts. *[Amend as appropriate].*

11. CLIENT MONIES

11.1 We may, from time to time, hold money on behalf of the company. Such money will be held in trust in a client bank account, which is segregated from the firm's funds.

12. RETENTION OF RECORDS

12.1 [During the course of our work we will collect information from you and others acting on behalf of the company and will return any original documents to you following preparation of the company's return.] *[Practitioners who retain records on behalf of clients will need to amend this paragraph]*

12.2 Whilst certain documents may legally belong to the company, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. If you require retention of any document you must indicate that fact to us.

13. REGULATORY REQUIREMENTS

13.1 We reserve the right to disclose our files to regulatory bodies in the exercise of their powers. *[Adapt as necessary and for firms who voluntarily undergo external peer review].*

14. QUALITY OF SERVICE

14.1 We wish to provide at all times a high quality of service. If at any time you would like to discuss with us how our service could be improved or if you are dissatisfied with the service that you are receiving please let us know by contacting [...] *[insert name].*

14.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with the Chartered Institute of Taxation.

15. FEES

[This is an example: if fees are calculated on any other basis, for example a fixed amount or contingency fee, then different wording should be substituted.]

15.1 Our charges are computed on the basis of fees for the time spent on the company's affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. [If work is required which is outside the scope of this letter, for example dealing with Inland Revenue enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable.] We will issue invoices at [monthly/quarterly/ six-monthly] intervals during the course of the year. We will add value added tax, if applicable, at the current rate to the invoice.

15.2 Our invoices are payable on presentation. We reserve the right to charge interest at [x]% per [month/year] [over base rate] in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a way which is unfair or unreasonable.

16. LIMITATION OF LIABILITY

[Practitioners who wish to include provisions intended to limit their liability in the event of a claim by a client are strongly advised to take legal advice on this complex matter.]

17. APPLICABLE LAW

17.1 This engagement letter is governed by, and construed in accordance with, [English] *[amend as appropriate]* law. The Courts of [England] will have exclusive jurisdiction in relation to any claim, dispute or difference

concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

18. AGREEMENT OF TERMS

18.1 This letter supersedes any previous engagement letter for the period covered. Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

18.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

18.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

[I/We] acknowledge receipt of your above letter dated [...] *[complete]* which fully records the agreement between you and the company relating to your appointment to carry out the work described in it.

Signed Date

ANNEX C

EXAMPLE OF A PARTNERSHIP TAX COMPLIANCE ENGAGEMENT LETTER

This is not intended to be used in all cases and must be tailored to meet specific circumstances.

Dear [...] *[complete]*

PARTNERSHIP TAX COMPLIANCE: TERMS OF ENGAGEMENT

1. INTRODUCTION

1.1 This letter sets out the basis on which we [are to] act as tax agent and adviser to your firm. We will issue separate engagement letters to individual partners where we deal with their personal affairs.

1.2 We will communicate with [...] in relation to the partnership's tax affairs having agreed with you that [he/she] will represent the partnership in its tax affairs.

SCOPE

2. OUR SERVICE TO YOU

[Note: the terms of engagement for the preparation of partnership accounts are outside the scope of this guidance note.]

2.1 We will prepare the income tax and capital gains tax computations based on the partnership accounts from the accounting records and other information and explanations provided by you.

2.2 We will prepare the firm's annual partnership return, including the partnership statement of total income, gains, losses, tax credits and charges of the firm for each period of account ending in the return period.

2.3 We will forward to you the income tax and capital gains tax computations and the tax return and supporting schedules [in duplicate] *[optional]* for your approval and signature. Once the return has been approved and signed by you and returned to us we will submit it, with the accounts and computations, to the Inland Revenue. [You authorise us to file the return electronically under the Inland Revenue Electronic Lodgement Service.]

2.4 We will advise all the partners who were partners in the firm during the period of their respective shares of the firm's total income, gains, losses, tax credits and charges so that they are able to file their personal self-assessment tax returns within the relevant time period.

2 . 5 *[Include if the partnership will pay partnership tax liabilities on behalf of partners: omit if partners will meet their own tax liabilities including tax on partnership income and gains]* We will give advice to the partners so that they can inform the partnership what amounts are due in respect of their payments on account and balancing payments which relate to partnership income and gains and we will advise as to appropriate amounts of tax and Class 4 national insurance contributions to be paid and the dates by which the partnership should make the payments.

2.6 We will deal with the Inland Revenue regarding any amendments required to the partnership return and prepare any amended returns which may be required.

2.7 We will advise as to claims and elections arising from the tax return and from information supplied by you and, where instructed by you, we will make such claims and elections in the form and manner required by the Inland Revenue.

2.8 We will deal with all communications relating to the partnership return addressed to us by the Inland Revenue or passed to us by you. However, if the Inland Revenue choose the partnership tax return for enquiry [we will refer you to another practitioner]/[this work will be the subject of a separate assignment and we will seek further instructions from you].

2.9 We will [prepare]/[help you in preparing] the tax provisions and disclosures to be included in the partnership's financial accounts.

3. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

3.1 Under the self-assessment regime there are a number of key dates by which returns and payments must be made. Failure to meet the deadlines may result in automatic penalties, surcharges and/or interest.

3.2 The partnership is legally responsible for making correct returns [and for payment of tax on time] *[delete for 1997/98 onwards].*

3.3 To enable us to carry out our work you agree:

(a) to make a full disclosure to us of all sources of income, charges, allowances and capital transactions and to provide full information

necessary for dealing with the partnership's affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;

(b) to respond quickly and fully to our requests for information and to other communications from us;

(c) to provide us with information in sufficient time for the partnership tax returns to be completed and submitted by the [due date]/ [selected date] of [...] following the end of the [tax year/accounting period]. In order to do this, we need to receive all relevant information by [...] *[Amend/delete as appropriate]*; and

(d) to forward to us on receipt copies of all Inland Revenue statements of account, notices of assessment, letters and other communications received from the Inland Revenue to enable us to deal with them as may be necessary within the statutory time limits.

3.4 We will provide our professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or your or others' failure to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

4. PROVISION OF INFORMATION BY THIRD PARTIES

4.1 You agree that we can approach such third parties as may be appropriate for information that we consider necessary to deal with your affairs.

4.2 [Please sign and return the enclosed Inland Revenue form 64-8,]/[We have submitted form 64-8 to the Inland Revenue] *[delete as applicable]* which authorises the Inland Revenue to send us copies of formal notices. In practice the Inland Revenue will treat this as authority to correspond with us, in which case they will not correspond with the partnership except to the extent that they are formally required to do so. However, this authority does not apply to all Inland Revenue correspondence, and even where it does, the Inland Revenue sometimes overlook it. You should therefore always send us the originals or copies of all communications you receive from the Inland Revenue.

5. OTHER SERVICES AND GENERAL TAX ADVICE

[See Annex D, paragraph 6 onwards]

5.1 We will be pleased to assist the partnership generally in tax matters [including VAT] if you advise us in good time of any proposed transactions and request advice. We would, however, warn you that because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.2 [It is our policy to confirm in writing advice upon which you may wish to rely.]

5.3 We will be pleased also to advise the partners on their personal income tax and capital tax positions. In such cases we will need to agree separate terms with the individuals concerned.

6. INVESTMENT ADVICE

[See paragraphs 7-9 of Guidance Note]

6.1 *[Either, if not authorised]*

Investment business is regulated under the Financial Services Act 1986. We are not authorised under that Act.

[Or, if authorised]

[Practitioners who are authorised to carry on investment business are referred to the investment business regulations and guidelines issued by the regulatory body which authorises them to conduct investment business. This guidance should be incorporated as appropriate into the client engagement letter to cover investment business services that are integral to tax advice. If investment services are separately identifiable, then separate engagement letters drafted in accordance with relevant guidance should be used.]

7. EXCLUDED SERVICES

[Adapt as appropriate. See also section 5 above]

7.1 You will continue to deal with all matters required by law, such as:

- Pay As You Earn including year end returns P35/P14/P60;
- forms P11D;
- returns for sub-contractors; and
- VAT returns.

7.2 We will be pleased to advise on any of these or other tax matters if so requested.

8. PERIOD OF ENGAGEMENT

8.1 This engagement will commence with the partnership's tax return for the year to [...] .

8.2 [We will deal also with matters arising in respect of years prior to the year ended [...], namely year[s] ended [...] to [...], as appropriate.] [In particular, we will attend to any assessments issued by the Inland Revenue in respect of years prior to self-assessment.] [We will not be responsible for earlier years. Your previous advisers, [...] *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.] *[Delete/amend as appropriate]*

TERMS

9. PROFESSIONAL RULES AND PRACTICE GUIDELINES

9.1 We will observe the Professional Rules and Practice Guidelines of the Chartered Institute of Taxation and accept instructions to act for you on the basis that we will act in accordance with those guidelines. [In particular you give us authority to correct Inland Revenue errors.] A copy of these guidelines will be supplied to you on request.

10. COMMISSIONS OR OTHER BENEFITS

[Your attention is drawn to the Professional Rules and Practice Guidelines and the disclosure requirements of the relevant investment business regulations.]

10.1 In some circumstances, commissions or other benefits may become payable to us [or to one of our associates] in respect of transactions which we [or such associates] arrange for you, in which case you will be notified in writing of the amount and terms of payment. The fees that would otherwise be payable by the partnership as described will [not] take into account the benefit to us of such amounts. You consent to such commission or other benefits being retained by us [or, as the case may be, by our associates,] without our [or their] being liable to account to you for any such amounts. *[Amend as appropriate].*

11. CLIENT MONIES

11.1 We may, from time to time, hold money on behalf of the partnership. Such money will be held in trust in a client bank account, which is segregated from the firm's funds.

12. RETENTION OF RECORDS

12.1 [During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you following preparation of your return. You should retain them for 5 year[s] following the 31 January following the end of the tax year. This period can be extended if the Inland Revenue enquire into the partnership's tax return.] *[Practitioners who retain records on behalf of clients will need to amend this paragraph]*

12.2 Whilst certain documents may legally belong to the partnership, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. If you require retention of any document you must indicate that fact to us.

13. REGULATORY REQUIREMENTS

13.1 We reserve the right to disclose our files to regulatory bodies in the exercise of their powers. *[Adapt as necessary and for firms who voluntarily undergo external peer review].*

14. QUALITY OF SERVICE

14.1 We wish to provide at all times a high quality of service. If at any time you would like to discuss with us how our service could be improved or if you are dissatisfied with the service that you are receiving please let us know by contacting [...] *[insert name].*

14.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with the Chartered Institute of Taxation.

15. FEES

[This is an example: if fees are calculated on any other basis, for example a fixed amount or contingency fee, then different wording should be substituted.]

15.1 Our charges are computed on the basis of fees for the time spent on the partnership's affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. [If work is required which is outside the scope of this letter, for example dealing with Inland Revenue enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable. We will issue invoices at [monthly/ quarterly/six-monthly] intervals during the course of the year. We will add value added tax, if applicable, at the current rate to the invoice.

15.2 Our invoices are payable on presentation. We reserve the right to charge interest at [x]% per [month/year] [over base rate] in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a way which is unfair or unreasonable.

16. LIMITATION OF LIABILITY

[Practitioners who wish to include provisions intended to limit their liability in the event of a claim by a client are strongly advised to take legal advice on this complex matter.]

17. APPLICABLE LAW

17.1 This engagement letter is governed by, and construed in accordance with, [English] *[amend as appropriate]* law. The Courts of [England] will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

18. AGREEMENT OF TERMS

18.1 This letter supersedes any previous engagement letter for the period covered. Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

18.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

18.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

[I/We] acknowledge receipt of your above letter dated [...] *[complete]* which fully records the agreement between you and the partnership relating to your appointment to carry out the work described in it.

Signed Date

ANNEX D

OTHER TAXATION SERVICES

These paragraphs must be tailored to meet specific circumstances
For possible insertion at Annex A, section 5

Lloyd's taxation

1. We will deal with the taxation liabilities arising in respect of your Lloyd's affairs. This will entail collation of taxation advices, claiming of expenditure, agreement with the Inland Revenue, advising on and making loss relief claims and any double taxation claims. We will also obtain repayment of capital gains tax where appropriate and agree foreign tax credits. To enable us to do this please retain information and documents relating to syndicate participation, stop loss policies, expenses, etc., in connection with Lloyd's.

US taxation

2. You have engaged us also to prepare your Federal [and State]/[and City] United States individual income tax return[s] commencing with the return[s] for the [199...] calendar year. We will prepare your Federal return and any State and City returns that you instruct us to prepare for your approval and signature. We will prepare the return[s] from information supplied to us either by you or others acting on your behalf and, therefore, you should ensure that information therein is correct and complete before you sign the return[s] and return [it/them] to us for submission.

Inheritance tax

3. Following a request by you we will prepare any tax return that may be required for inheritance tax purposes based on information that you supply to us, which we will submit to the Inland Revenue once you have approved and signed it.

For possible insertion at Annex B , section 5

Dividends, payments under deduction of tax and to participators

4. We will complete, using information provided by you, return form CT61 regarding dividends or other payments made to and by the company under deduction of tax. We will send the form CT61 to you

for approval and signature and submission by you to the Inland Revenue. We will advise you of the amounts of income tax or advance corporation tax that are due, and the due date for payment and submission of the form. *[To be amended as appropriate if practitioner undertakes to submit form CT61 and remittance]* You must inform us immediately if the company makes or receives any distributions, or receives or pays any interest under deduction of tax.

5. Where the company has made a loan to a participator such as a shareholder, tax is payable. We can be responsible for advising you of the tax payable only if you notify us of details of such loans before the end of the relevant accounting period.

For possible insertion at Annexes A, B and C, section 5

Payroll and year end returns

6. We will maintain your payroll records, supply you with completed [weekly/monthly] [wages/salary] payslips for you to pass to employees [with their wages/salary cheques which you will draw], supply you with a completed Inland Revenue payslip for the PAYE and national insurance contributions for you to send to the Collector of Taxes with a cheque which you will draw, complete your year end return form P35 with forms P14 and P60 and supply you with the completed form P35 for signature and submission by you to the Inland Revenue with forms P14 and the forms P60 that you will pass to each employee. *[To be amended as appropriate]*

7. In order to do this we need to comply with the Employer's Guide to PAYE: we will consider with you the detailed information that is required and the form in which it is to be provided. *[It is recommended that practitioners specify a standard format for the provision of information and a deadline by which it should be received]*

Forms P11D

8. We will complete forms P11D for the [directors and]higher-paid employees for approval and submission by you to the Inland Revenue. You will supply the form P11D information to your employees by the due date. *[To be amended as appropriate]*

9. You agree to supply us with complete and accurate details of all benefits and expenses for the tax year (not the accounts year) within 14 days of the end of the tax year. *[It is recommended that practitioners specify a standard format for the provision of information]*

Sub-contractors

10. We will operate the sub-contractors' tax deduction scheme for the sub-contractors you use. In order for us to do this, we need to comply with the Employer's Guide to PAYE: we will discuss with you the information that is required and the form in which it is to be provided. *[It is recommended that practitioners specify a standard format for the provision of information and a deadline by which it should be received]*

VAT compliance

11. Starting with the return period ending [...] *[complete]* we will prepare return form VAT 100 from the records of your [business]/[company]. We will not audit or otherwise check the underlying records. When the VAT return has been completed from the information supplied, we will send you the return form within [10] days of your making the records available to us [with copies of our working papers] for you to review. If you agree the return you should then sign and submit it to Customs together with the required payment. If you consider the return to be incorrect please consult us immediately.

12. We can accept no responsibility for any default surcharge that may arise if the books and records are not available to us within [10] days after the return period ends or the books and records prove to be incomplete or unclear, and in particular are not written up to the end of the period, thereby delaying the preparation and submission of the VAT return, or you fail to submit the return and any required payment to Customs on time after we have sent the return to you for signature.

APPENDIX 6

REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

Note:

In this Appendix references to 1811 and 1812 are to the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 SI 1994 no 1811 and to the General Commissioners (Jurisdiction and Procedure) Regulations 1994 SI 1994 no 1812; references to TMA are to the Taxes Management Act 1970, to VATA are to the Value Added Tax Act 1994, to CCR are to the County Court Rules and to RSC are to Rules of the Supreme Court.

1.1 This Section deals with representation of clients before appeals tribunals for direct taxes and VAT. Thus it covers the General and Special Commissioners, as well as Value Added Tax and Duties Tribunal.

1.2 Right to representation before the General and Special Commissioners.

(a) The taxpayer may appear in person (TMA s31).

(b) A company may (subject to (e) below) be represented by its proper officer (who is the secretary or person acting as secretary unless a liquidator has been appointed when he is the proper officer) or except where a liquidator has been appointed through any person who has the express implied or apparent authority so to act (which would normally include a person who is a director) (TMA s108).

(c) A taxpayer may be represented by any person who is legally qualified (1811 r 14, 1812 r 12) – this includes (for example a barrister, a solicitor, a member of the Scottish Faculty of Advocates and a Writer to the Signet).

(d) A taxpayer may be represented by anyone who has been admitted a member of an incorporated society of accountants (1811 r 14, 1812 r 12) – this would include a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Chartered Institute of Management Accountants, the Association of Accounting Technicians.

(e) If in any particular case the tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit any other person from representing the taxpayer (1811 r 14, 1812 r 12).

(f) The Commissioners have a wide discretion (see (e)) to allow the taxpayer to be represented by any person he chooses. For example, it will normally allow a member of the Institute and the Association who is not otherwise qualified under some other provision, to appear on behalf of his clients. However, it should be noted that there is, at present, no statutory right to appear derived solely from membership of the Institute or the Association. It would be prudent to clear the matter in advance with the Commissioners concerned, because they are entitled to exclude representatives on public interest grounds.

(g) The Revenue may be represented by a barrister, solicitor, advocate or officer of the Board (1811 r 14, 1812 r 12).

Note:

(i) A representative who has been suspended from his professional body is not whilst suspended a member of that body *Cassell v Crutchfield* [1995] STC 663.

(ii) If a party fails to attend or to be represented at a hearing of which he has been notified, the Commissioners may

- if satisfied that there is good and sufficient reason for such absence postpone or adjourn the hearing.

If not so satisfied,

- hear and determine the case (taking into account any representations in writing or otherwise submitted by or on behalf of such party in response to the notice of hearing and giving any party present at the hearing an opportunity to be heard on those representations). (1811 r 16, 1812 r 14)

Unless time does not permit it is good practice to seek to agree a postponement or adjournment with the Revenue representative in advance before requesting (except possibly in delay cases before the General Commissioners but note that local practice varies) the tribunal concerned to grant such postponement or adjournment in advance of the hearing.

A good reason will be required.

1.3 Right to representation before Value Added Tax and Duties Tribunal:

(a) A taxpayer may represent himself by attending in person (VAT Tribunal Rules 1986 Rule 25a).

(b) A company may be represented by its secretary or other 'proper officer'; if the company is in liquidation, it may be represented by the liquidator.

(c) An appellant may be represented by any person he appoints (VAT Tribunal Rules 1986 Rule 25).

1.4 A member should not undertake professional work which he is not himself competent to perform unless and until he has obtained appropriate advice and assistance to enable him to undertake a particular assignment. That principle is particularly important where the member is planing to represent a client before an appeal tribunal. In particular, the member should be satisfied that he is familiar with:

(a) the way in which appeals have to be initiated;

(b) the way in which hearings are conducted;

(c) the order of proceedings (see Appendix 7);

(d) the formalities which must be observed;

(e) the desirability of submitting a statement of facts not in dispute;

(f) the procedure for expressing dissatisfaction with the tribunal's decision;

(g) other alternatives that may be available, including review, and the strict time limits that may apply to those alternatives;

(h) the relevant procedural statutory instruments;

(i) a good working knowledge of what evidence is and what is not accepted, including the hearsay rule, and who is competent to give that evidence;

(j) the circumstances in which a tribunal may impose a penalty under any relevant provision in the TMA, VATA or other relevant statute;

(k) the distinction between a review and an appeal; and

(l) the circumstances in which ex parte applications may be made.

1.5. Where it appears likely that there will be an appeal, by either side, to the High Court 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 Commissioners or VAT and Duties Tribunal.

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

1.7 The Commissioners, or the VAT and Duties Tribunal, are the final arbiters on questions of fact. Thus, the importance of ensuring that all facts are well presented cannot be over-emphasised, no matter how self-evident or trivial those facts may, at first sight, appear to be. In some cases it may be desirable to provide the Commissioners or VAT and Duties Tribunal with an agreed statement of facts, which has been settled with the relevant Revenue or Customs representative. That agreed statement should contain as much detail as possible; it is an opportunity for the taxpayer to take the initiative in the way in which relevant facts are presented. However, it should be recognised that the Commissioners, or Tribunal members, may ask supplementary questions.

1.8 The decision on whether to make an appeal should be made by the client, albeit the member will probably have to make a recommendation. In considering what to recommend, the member will have to consider a number of factors, including:

(a) the costs to the taxpayer, both in terms of time and money, particularly if the appeal is later taken to the High Court, or Court of Session, or to higher courts;

(b) the amount of tax at stake;

(c) the strength of the client's case; and

(d) publicity and the consequences thereof for the client and/or his business.

SPECIAL POINTS RELATIVE TO APPEALS TO GENERAL AND SPECIAL COMMISSIONERS

1.9 In principle, the onus of proof generally rests with the taxpayer, ie subject to the Commissioners' powers to increase an assessment, an assessment will stand unless the taxpayer satisfies a majority of the Commissioners that he has been overcharged by the assessment (TMA s50(6)).

1.10 It will normally be advisable for the appellant or his representative to attend every meeting at which an appeal is listed for hearing, even if only to request an adjournment, and even where the particular Commissioners are understood to have a general practice for dealing with such requests. The Commissioners have complete control over each case which comes before them, and can change their practice without prior notice. If an adjournment is sought, the taxpayer's representative should be prepared to give to the Commissioners adequate reasons to support the request.

1.11 If an adjournment is refused by the Commissioners and the assessment is confirmed, there are limited procedures available whereby the matter may be reopened. These include an application for review under 1811 r 19, 1812 r 17 and application for judicial review under RSC O53. Members should recognise that a taxpayer might have grounds for a claim in negligence against an adviser who had failed to attend the hearing, or (in appropriate cases) had permitted the taxpayer to pay the tax without exploring the possibility of mitigation.

1.12 Members are advised to operate an adequate system for ensuring that all notices from tribunals are logged, for noting the date of hearing of each appeal and of each adjournment, and for ensuring that every appeal hearing is attended by a person of suitable experience who is sufficiently informed to be able to deal adequately with the matter, unless they have written confirmation that attendance at the hearing will not be required.

1.13 A member should be able to advise as to whether, in appropriate circumstances, the appeal should be heard by the General Commissioners or the Special Commissioners, the choice of General Commissioners' division, the mechanism whereby appeals before the General may be transferred at their decision to the Special Commisioners and the circumstances in which appeals are taken to the Lands Tribunal. (TMA ss44 and 46-47B) and see also 1.15).

1.14 A member should understand how appeals may be settled by agreement and the effect thereof (TMA s54).

1.15 A member should be familiar with the various provisions in the two statutory instruments governing procedures before the Commissioners, in particular:

(a) the procedures for listing appeals and the notification thereof (1811 r 3, 1812 r 3);

(b) the need, where appropriate, to arrange for witness summonses (1811 r 5, 1812 r 4);

(c) pre-hearing direction mechanisms and their uses (1811 r 5);

(d) the legal effects of agreed documents (1811 r 6, 1812 r 5);

(e) the mechanism whereby two or more proceedings before the Special Commissioners and/or one or more divisions of the General Commissioners may be heard together or consecutively by the same tribunal (1811 r 7, 1812 r 6);

(f) the rules with regard to the joinder of additional parties and where appropriate transfer to the most appropriate division of General Commissioners (1811 r 8, 1812 r 7);

(g) the procedures with regard to preliminary hearings (1811 r 9);

(h) the powers of the Special Commissioners and General Commissioners to obtain information and the penalties for failure to comply (1811 r 10, 1812 r 10);

(i) how to obtain postponements and adjournments (1811 r 11, 1812 r 8);

(j) the requirements with regard to the submission of expert evidence (1811 r 11, 1812 r 9);

(k) the constitution of the tribunal at the initial and any adjourned hearings (1811 r 14, 1812 r 11);

(l) whether the proceedings are public or private, and if the former how in appropriate cases to change to the latter, together with those entitled to be present (1811 r 15, 1812 r 15);

(m) the way in which hearings are conducted, the order of proceedings and the mechanisms of giving evidence (1811 r 17, 1812 r 15);

(n) a good working knowledge of what evidence is, and what is not, accepted, including the hearsay rule, and who is competent to give the evidence;

(o) the mechanisms for the giving of the tribunal's decision and how such decisions may be reviewed and whether published (1811 rr 18-20, 1812 rr 16-17);

(p) whether and in what circumstances costs may be awarded against a party to the proceedings before the Special Commissioners, what costs are for this purpose, and the procedure for having those costs taxed (ie vetted and possibly reduced as part of the judicial function in the county court) by paying party (TMA s56C 1811 r 21, CCR 038);

(q) the special procedures relating to chargeable gains and value referrals for capital gains and/or inheritance tax to other tribunals (1811 rr 22-23, 1812 rr 18-19);

(r) the case stated procedure for appeals against decisions of the General Commissioners, including the draft revision process and the transmission to the relevant court (High Court in England, Court of Session in Scotland and Court of Appeal in Northern Ireland) (1812 rr 20-23 and TMA s56);

(s) the appeal mechanism from decisions of the Special Commissioners (TMA s56A);

(t) penalties for failure to comply with the directions of the Special Commissioners (1811 r 24);

(u) the effect which irregularities have on the tribunal function (1811 r 25, 1812 r 24);

(v) how notices are to be given and served, including substituted service (1811 rr 26-28, 1812 rr 25-27); and

(w) the need to ensure that clients are aware that the Special Commissioners have the power to publish reports of their decisions (TMA s56D) and how to take steps to ensure anonymity in appropriate circumstances.

1.16 Members should understand how appeals may be instigated against the summary determination of penalties (TMA s53) or in appropriate cases how applications for judicial review of the decision may be made (RSC O53), and the time limits involved in each case.

SPECIAL POINTS RELATIVE TO APPEALS TO VAT AND DUTIES TRIBUNAL

1.17 If a decision is taken to appeal to a VAT and Duties Tribunal, reference should be made to the rules for the procedures to be adopted as contained in the VAT Tribunal Rules 1986. Useful reference can also be made to the Explanatory Leaflet 'Value Added Tax Appeals and Applications to the Tribunals' issued by the President of the VAT Tribunal.

1.18 Certain preconditions must exist before an appeal can be made and a member should ensure that his client is not disadvantaged by a failure to comply with these conditions. In particular:

(a) in VAT cases Customs must have actually taken a 'decision' (rather than merely given guidance) on the point at issue;

(b) the decision that has been made by Customs must be one against which it is possible to appeal;

(c) in other appeals to the VAT and Duties Tribunal, Customs must have given a decision or have been deemed to give a decision following a departmental review;

(d) the notice of appeal giving the required details must be served at the appropriate Tribunal Centre before the expiration of 30 days after the date of the letter or assessment from Customs containing

the disputed VAT decision, or, in the case of other appeals, 30 days from the decision or deemed decision after a departmental review;

(e) the client must have sufficient locus standi (ie interest in the decision); and

(f) the VAT and Duties Tribunal must have the jurisdiction to hear the appeal.

1.19 The member should note that:

(a) in VAT appeals an appeal cannot be made against an assessment or the amount of an assessment in respect of an accounting period unless a VAT Return for that period has been made to Customs;

(b) in VAT, Insurance Premium Tax and Airport Duties appeals the client must also have made all his returns as payable;

(c) the client must have paid all outstanding tax or duty (as appropriate); and

(d) in the majority of cases the amount of VAT, tax or duty in dispute must also have been paid to Customs or adequate security given before the Tribunal can hear an appeal.

APPENDIX 7

INSTITUTE ADVOCATES: GUIDANCE NOTES AND ETHICAL PRINCIPLES

(These Guidance Notes are also appropriate for members of the Association – see Section 6.8)

Appendix 7

INSTITUTE ADVOCATES: GUIDANCE NOTES AND ETHICAL PRINCIPLES

1. Introduction

From time to time a member of the Institute may represent a client in a tax appeal heard by the General or Special Commissioners or the VAT and Duties Tribunal. In this Appendix the expression 'CIOT advocate' is used to refer to a member acting in that capacity. The Appendix gives guidance and prescribes ethical standards which a CIOT advocate should observe. 'The tribunal' means the General or Special Commissioners or the VAT and Duties Tribunal, as the case may be.

2. General Principles

2.1 A CIOT advocate has fundamental duties and responsibilities towards (i) the tribunal (ii) his client and (iii) the profession of which he is a member.

2.2 As regards (i), a CIOT advocate has a high and overriding ethical duty to the tribunal to ensure in the public interest that the proper and efficient administration of the law is promoted. He must assist the tribunal in the administration of the law and must not deceive or knowingly or recklessly mislead the tribunal.

2.3 As regards (ii), a CIOT advocate has a duty to his client to promote and protect fearlessly his client's best interests by all proper and lawful means (but only by means which are proper and lawful). He must promote and protect his client's best interests without regard to his own interests or to any consequences for himself or any other person.

2.4 As regards (iii) a CIOT advocate must not engage in conduct which is dishonest or discreditable or which might bring into disrepute the tax profession of which he is a member. He must not compromise his professional standards in order to please his client or a third party.

2.5 A CIOT advocate is expected to exercise discretion and judgement with a view to complying with the foregoing fundamental duties and responsibilities. He should at all times keep in mind that his overriding duty and responsibility is that owed to the tribunal, as described in 2.2 above.

3. Before the Appeal Hearing

3.1 A CIOT advocate should not accept instructions to represent a client upon an appeal:

(a) if he lacks sufficient experience or competence to represent the client adequately;

(b) if having regard to his other commitments he will not have adequate time and opportunity to prepare for the appeal and to present his client's case in a satisfactory manner;

(c) if the matter is one in which there is a risk of a disclosure of confidential information learned by him from or in connection with another client or where the knowledge which he possesses of the affairs of another client would give an undue advantage to the client who currently wishes to instruct him.

3.2 If a CIOT advocate considers that for him to accept instructions to represent a client on an appeal will or may give rise to a conflict of interest of some description he should consider the guidance in 5 below before deciding whether or not to proceed in the case.

3.3 *Contact with witnesses*

3.3.1 If the appeal will involve the giving of evidence by the client or by other witnesses called on his behalf it is acceptable and desirable for the CIOT advocate or a professional colleague to meet the witnesses before the hearing. Guidance as to such meetings is given in 3.3.3 to 3.3.5 below.

3.3.2 Nevertheless a CIOT advocate or a professional colleague must not outside the tribunal:

(a) place a witness under any pressure to provide other than a truthful account of his evidence;

(b) rehearse, practise or coach a witness in relation to his evidence.

3.3.3 Subject to the principles stated in 3.3.2 the purpose of prior meetings with witnesses is (i) for the CIOT advocate to be informed of the evidence which the witnesses can give and (ii) to assist in securing that the witnesses will give their evidence efficiently, clearly, economically and relevantly.

3.3.4 It is good practice in any case where a witness's evidence is of any substance for the advocate or his colleague, having discussed the matter with the witness and listened to his account, to prepare in draft a statement of the evidence. The witness is then requested to read the

draft statement, to amend it to the extent that he considers appropriate, and then to sign it as his evidence.

3.3.5 In some cases the tribunal may, either of its own motion or on application from the CIOT advocate, direct that the witness's signed statement will stand as his evidence in chief, in which case the witness's evidence given orally will consist primarily of his cross-examination by the advocate for the other party. Where such a direction has been given or the CIOT advocate intends to ask for one:

(i) the responsibility resting on the CIOT advocate to ensure that the statement is drafted conscientiously is all the greater, and

(ii) he should supply a copy to the advocate for the other party at a reasonable time before the hearing.

3.4 *The CIOT advocate as a witness*

If a CIOT advocate is instructed to act as advocate in an appeal in which he will or may also give evidence (including evidence relating to the client's accounts) he should consider the guidance in 6 before deciding whether to accept the instructions.

4. At the Appeal Hearing

4.1 A CIOT advocate when conducting an appeal before a tribunal:

(a) must be courteous at all times;

(b) is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked;

(c) should present his case in the form of submissions and should not (unless invited to do so by the tribunal) assert a personal opinion of the facts or the law;

(d) (subject to the guidance in 4.2) must ensure that the tribunal is informed of all relevant decisions and legislative provisions of which he is aware even if the effect is unfavourable to the client's case;

(e) must not devise facts which will assist in advancing the client's case;

(f) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy a witness or some other person;

(g) must not, in the case of a witness for the other party whom he has had the opportunity to cross-examine, impugn the witness's evidence (for example by inviting the tribunal to reject the evidence as false) unless in cross-examination he has given the witness the opportunity to answer the allegation.

4.2 With reference to 4.1(d) the duty to ensure that relevant decisions and legislative provisions are drawn to the attention of the tribunal should be exercised with judgement and professionally-informed restraint. A CIOT advocate is not required to refer to decisions or provisions which are in his opinion, if relevant at all, only marginally so. He is entitled to take into account (if, as will be usual, it is the case) that the other party is the Revenue or Customs and would be unlikely to have overlooked a relevant decision or provision, particularly if it supported its case. Nevertheless, if it appears to the CIOT advocate that the other party's advocate has overlooked a point which is plainly relevant, it would be wrong for the CIOT advocate to do nothing about it. It is always possible, and in many cases would be sensible, for him to mention the point to the advocate for the other party and hear his views upon it, before finally deciding whether his own duty impels him to draw it to the attention of the tribunal.

5. Conflicts of Interest

5.1 It is not realistic to formulate precise rules by reference to which a CIOT advocate must determine whether a conflict of interest precludes him from representing a client on an appeal. When a CIOT advocate considers that a conflict might arise he should consider the following observations, which are deliberately and inevitably expressed in general terms.

5.2 Cases sometimes arise in which two or more taxpayers have been parties to a particular transaction or arrangement, where the tax treatment is controversial, and where the treatment which is favourable to one party (A) is unfavourable to another party (B). If a CIOT advocate is requested to represent A on an appeal, but the advocate or his firm also acts for B, there is a clear conflict and the advocate should decline to represent either A or B.

5.3 Cases arise where a CIOT advocate or his firm has two clients who are both affected by a point of law. It is essentially the same point but arises in the context of two completely separate transactions. Client C contends for interpretation X to be applied to his transaction. Client D contends for interpretation Y to be applied to his transaction. If the

CIOT advocate is instructed to represent client C on an appeal he will know that, if his (the advocate's) submissions in support of interpretation X are successful, the result, though beneficial to client C, will be detrimental to client D. This is not the form of conflict which requires the CIOT advocate to decline to accept instructions from client C. He may choose not to accept the instructions, but that is a matter of choice, not of professional obligation.

5.4 Between the situations described in 5.2 and 5.3 there is a spectrum of cases within which the CIOT advocate should exercise his professional skill and judgement in determining (i) whether there is a conflict of any description and if so (ii) whether it is one which precludes him from representing a client on an appeal, or (iii) it is one which, while not precluding him from representing the client, nevertheless leads him to conclude that he will choose not to represent the client.

5.5 If a CIOT advocate perceives the possibility of a conflict it is possible for him (within the limits of preserving client confidentiality) to discuss the matter with both clients. Client A who could be adversely affected by the possible conflict might, after full disclosure by the advocate, be prepared to confirm that he has no objection to the advocate representing the other client, client B. This does not mean that client A has a right of veto over the CIOT advocate representing client B. The advocate could decide to go ahead and represent client B even if client A says that he would prefer the advocate not to. But any professional anxieties which the advocate may feel over accepting client B's instructions would be dispelled if client A states that he has no objection.

5.6 If a CIOT advocate feels unable to resolve a difficulty he may seek guidance from the Standards Committee of the Institute. Full particulars should be supplied to the Secretary-General, who will arrange for the matter to be referred to the Chairman of the Committee.

6. The CIOT Advocate as a Witness

The contents of 6 are referred to in 3.4 in connection with whether a CIOT advocate should accept instructions to act as advocate in an appeal in which he may also be a witness. Advice which the CIOT advocate should take into account in deciding whether or not to accept the instructions is given in 6.1 and 6.2. Sub-paragraph 6.3 below gives guidance which he is expected to observe if he does accept the instructions and acts as both advocate and a witness in the same appeal.

6.1 In litigation generally it is better for the same person not to be both the advocate and a witness. For example the Code of Conduct of the Bar of England and Wales provides that a barrister must not accept any brief or instructions if the matter is one in which he has reason to believe that he is likely to be a witness. The CIOT does not consider it realistic to prescribe a similar mandatory rule for CIOT advocates. Nevertheless the CIOT recommends that in any appeal where the member expects to be a witness and is also requested by the client to act as advocate, he should consider the position carefully before deciding whether to agree to the request. Hearings in which the same person is both advocate and a witness can progress untidily, and procedural difficulties arise from confusions between the two capacities.

6.2 However, the CIOT recognises that, principally on grounds of minimising expense to the client and endeavouring to shorten hearings, there will continue to be cases in which a CIOT member will consider it right to act as advocate even though he expects that some of the things that he will say will be in the nature of evidence. This may particularly be so where the member expects that his evidence will be short and wholly or largely uncontroversial. These guidelines lay down no rules on this matter, but leave it to the professional judgement of the member.

6.3 Where a CIOT advocate, as well as acting as advocate before a tribunal, also gives evidence he should assist the tribunal and the advocate for the other party in the following:

(a) he should explain to the tribunal the two capacities in which he is acting;

(b) he should keep them distinct in his own mind and seek to ensure that at all times it is clear to the tribunal and to the advocate for the other party whether what he is currently saying is argument of an advocate or evidence of a witness;

(c) he should endeavour to give all his evidence consecutively and in one piece, and should avoid delivering to the tribunal an address in which argument and evidence are jumbled together;

(d) at the point when he is about to make his statements which are evidence he should ask the tribunal to direct whether he should be placed on oath; and

(e) when he has completed the part of his address which he considers to be evidence he should say so and should tender himself for cross-examination.

APPENDIX 8

CONSIDERATION OF SCOTS LAW

CONSIDERATION OF SCOTS LAW

Members should note that although the majority of statutory references in these Professional Rules and Practice Guidelines apply to Scotland, the following should be considered.

SECTION 3 FORMS AND ASPECTS OF PRACTICE

3.4 Illness or temporary incapacity of a sole practitioner

Although a member may make arrangements for the practice to continue in the event of illness or incapacity, clients are not bound by those arrangements if the contract is governed by Scots Law because a contract to provide professional services is personal and cannot be transferred without the consent of the client. In exceptional circumstances a Court in Scotland may appoint a judicial factor with powers to carry on a business. Should the Court adopt such an approach, clients would not be bound by the arrangement.

3.5 Death or permanent incapacity of a sole practitioner

For Scotland references to 'personal representatives' should be replaced by 'executors' and it should be noted that similar considerations to those in 3.4 would apply.

SECTION 4 MANAGING THE DUTY OF CARE

4.6 Money Laundering

The Money Laundering Regulations apply in Scotland. The Criminal Justice Act 1993 inserts provisions amending the Criminal Justice (Scotland) Act 1987 in regard to money laundering.

SECTION 5 NEW CLIENTS

5.2.2 Communicating with previous advisers

In Scotland the professional courtesy letter is normally called a mandate. A member should obtain a mandate terminating the professional relationship from the client and authorisation to discuss affairs freely with a prospective new adviser and pass on papers that belong to the client. If such papers are not to be passed on to the new adviser they should be given to the client. (See also Section 12.1 with regard to ownership of documents.)

SECTION 6 HANDLING CLIENT WORK

6.2.3 Conduct of Work

In some cases, members who are members of other professional organisations may be required to keep papers for longer periods, for example solicitors in Scotland, ten years, and it should be borne in mind that the Money Laundering Regulations generally impose a minimum period of five years. The position on returning or destroying papers may be covered in the letter of engagement.

SECTION 8 CHARGING FOR SERVICES

8.8.1- Lien
8.8.2

In Scotland a lien is a right, founded on possession, to retain property until some debt or other obligation is satisfied. Liens are classed as general or special.

A general lien is a right to retain a client's property until balances or debts due from the client in respect of all similar contracts are settled. A special lien is a right implied by law to retain an article received in the course of a particular contract against the payment of a debt arising under that contract.

In the Scottish case of *Morrison v Fulwell's Trs. (1901) 9 SLT 34*, it was held that an accountant has a lien over papers entrusted to him only for his charge for work in connection with those papers, not a general lien for his whole professional account. One would expect that the same rule would apply to members unless also acting as solicitors who have a general lien.

SECTION 12 LEGAL MATTERS

12.2 Drafting Legal Documents

12.2.3 *Conveyancing*

In Scotland a member who is not a solicitor, advocate or licenced conveyancer may not prepare any document in respect of recorded and registered land for a fee, gain or reward.

12.2.4 *Probate*

The Scottish equivalent is Confirmation.

A member who is not a solicitor or advocate may not for a fee, gain or reward take instructions for, nor prepare papers to obtain, Confirmation to an estate.

12.2.6 *Litigation*

The Courts and Legal Services Act 1990 applies in part to Scotland – note Section 123.

APPENDIX 5 ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

1 Introduction

Members who are members of other professional bodies should also have regard to any standards set down by such other bodies.

APPENDIX 6 REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

Notes 1.2(b) and 1.3(b)

In Scotland if an officer of a company or a representative of the Revenue or Customs acts on behalf of the company or the appropriate tax authority that person cannot give evidence without the consent of the other side. That consent should be obtained at the outset because otherwise the other party may object to the evidence.

Notes 1.5 and 1.6

In cases going before the High Court of Justiciary and the Court of Session an Advocate or a Solicitor-Advocate must be instructed. Only a solicitor can instruct an advocate before those Courts.

Note 1.11

In Scotland reference should be made to Rule 58 of the Rules of the Court of Session in regard to judicial review. A separate remedy of certiorari as given by the Court of Exchequer may also be competent. But generally one would not expect to deal with the matter by judicial review – see *Simpson v IRC 1992 SLT 1069*.

APPENDIX 9

CONSIDERATION OF NORTHERN IRELAND LAW

CONSIDERATION OF NORTHERN IRELAND LAW

Members should note that, although the majority of statutory references in these Professional Rules and Practice Guidelines apply to Northern Ireland, the following should be considered.

SECTION 3 FORMS AND ASPECTS OF PRACTICE

3.9 Equal opportunities

3.9.4 For sub-paragraphs (a) and (b), please read:

(a) The Race Relations (Northern Ireland) Order 1977, the Sex Discrimination (Northern Ireland) Order 1976, as amended, the Fair Employment (Northern Ireland) Act 1976, as amended, and The Disability Discrimination Act 1990.

(b) Members are recommended to follow the Codes of Practice which have been published by the Equal Opportunities Commission and the Fair Employment Commission.

SECTION 4 MANAGING THE DUTY OF CARE

4.6 Money Laundering

For the offence of failure to disclose knowledge or suspicion of money laundering proceeds of drug trafficking, see Criminal Justice (Confiscation) (NI) Order 1990, Art 28A.

For the offence of money laundering, see Criminal Justice (Confiscation) (NI) Order 1990, Arts 286, 229 and 230.

APPENDIX 5 ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

17.1 For Jurisdiction and Law, insert 'Northern Ireland.'

APPENDIX 6 REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

Note: The definition of "proceedings in Northern Ireland" governed under those regulations is contained in TMA s.58(3). For County Court Rules, read County Court Rules (NI) 1981 and for Rules of the Supreme Court, read Rules of The Supreme Court (NI) 1980.

For paragraphs 1.5 and 1.6, please read:

1.5 'Where it appears likely that there will be an appeal, by either side, to the Court of Appeal, members should consider carefully whether a solicitor should be instructed and given authority to brief Counsel, or Counsel briefed directly even before the Hearing before the Commissioners or VAT and Duties Tribunal.'

1.6 'Similarly, the above should be considered where tax evasion may be involved.'

1.11 For RSC O53, read RSC (NI) 053.

1.15 (r) & (s) Note the provisions for proceedings in Northern Ireland in TMA s58 whereby a case stated by the General Commissioners under Regulation 22, General Commissioners Regulations, shall be heard by the Court of Appeal and appeals therefrom shall lie to the House of Lords. The procedure for stating a case is governed by the County Court Rules (1994/1812 Reg 23(2)(b))

1.16 For RSC O53, read RSC (NI) 053.

2.15 The definition of 'documents' is to be found in Civil Evidence Act (NI) 1971, Part I.