

THE INSTITUTE OF INDIRECT TAXATION
ETHICAL RULES
AND
PRACTICE GUIDELINES

These Ethical Rules and Practice Guidelines recognise that a member's obligations amount to more than the adherence to the laws of the Land. A member is required to behave with integrity, in a professional and disciplined manner, and place his obligations under the law and the good standing of the profession and this Institute above the interests of his clients, or of his own self interest.

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1. PRELIMINARY

Summary of Chapters 2 to 4

1.1

- Chapters 2 to 4 represent the joint views of the bodies involved in their preparation (see paragraph 1.4). They are intended to assist members both generally in dealing with clients and the tax authorities and specifically in relation to irregularities and errors.
- A member's primary duty is to ensure that his actions comply with the law. He owes a contractual duty to the client to act for him with the requisite degree of skill and care, and the relationship should be governed contractually by a letter of engagement. The member also has duties to the tax authorities, notably of compliance with the law and the honest presentation of his client's circumstances.
- It is the taxpayer's responsibility to ensure that returns made to the tax authorities are correct and complete. It is for the member to assist him to decide on the extent and manner of disclosure of facts in relation to his tax affairs.
- Where a member becomes aware that irregularities have occurred in relation to a client's tax affairs he should advise the client of the consequences, and the manner of disclosure. If necessary, appropriate specialist advice should be taken.
- Where a client refuses to follow the advice of a member in relation to issues involving disclosure, the member should consider whether he should continue to act. If appropriate, specialist advice should be taken.
- If mistakes are made by the tax authorities there may be a need, and in some cases a duty, on the part of the client and sometimes the member, to put matters right.
- Members may have statutory duties of disclosure where they have suspicions of criminal activity.
- When approached for information on a client's affairs by another adviser the member should ensure that he has his client's authority before making any disclosure.
- Chapters 2 to 4 apply equally to members in employment.

Purpose of guidelines

- 1.2 These guidelines have been prepared for the assistance of members and include practical advice about a range of legal and ethical issues. In some instances the guidance put forward goes beyond strict rights and duties. In following the guidelines it should be particularly borne in mind that each case depends upon its own circumstances and that a member who is in doubt about his position or responsibilities should seek advice from the Institute and, where appropriate, his legal advisers.

- 1.3 The guidelines are of general application and are intended as guidance in a range of circumstances.
- 1.4 The guidelines have been prepared in conjunction with The Chartered Institute of Taxation, The Association of Taxation Technicians, The Institute of Chartered Accountants in England and Wales, The Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants.
- 1.5 HMRC have reviewed Chapters 2 to 4. Whilst not necessarily agreeing with all the views expressed, HMRC have acknowledged that the parts reviewed are an acceptable basis for dealings between members and the tax authorities.
- 1.6 The guidelines supersede all previous editions, the last of which was issued in July 2000.
- 1.7 The law and practice in Chapters 2 to 4 generally reflects the position as at February 2004. The guidance in these chapters updates that in Chapters 2 to 4 of the guidance issued by the Institute in July 2000 and, in particular, addresses the changes introduced by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 and developments concerning legal professional privilege. The guidance does not cover the provisions for disclosure of tax avoidance schemes in the Finance Act 2004, which could significantly impact on how members should deal with the tax authorities, in particular under paragraph 3.4 to 3.9 (Disclosure of specific transactions to HMRC).

Interpretation

- 1.8 In the guidelines 'client' includes where the context requires 'former client'. 'Member' (and 'members') includes 'firm' or 'practice' and the staff thereof. 'The Revenue', 'Customs' and 'tax authorities' refer to HMRC. The masculine gender imports the feminine gender throughout this document.

Abbreviations

- 1.9 The following abbreviations have been used:

CEMA 1979	Customs and Excise Management Act 1979
FA	Finance Act
GAAP	Generally Accepted Accounting Practice
HRA 1998	The Human Rights Act 1998
LPP	Legal Professional Privilege
POCA 2002	Proceeds of Crime Act 2002
STC	Simons Tax Cases
TA 1988	Income and Corporation Taxes Act 1988
TMA 1970	Taxes Management Act 1970
VATA 1994	Value Added Tax Act 1994

2. PRINCIPLES APPLICABLE TO ALL TAXES

Generally

- 2.1 A member's most important duty is to ensure that his actions comply with the law. This requires that he complies with any direct obligation imposed upon him by statute or common law to do or refrain from particular actions (for example compliance with a request for information or a demand for production of documents under VATA 1994, Schedule 11, paragraph 7) and that he does not assist his client in the commission of any act which breaches the client's legal obligations (for example the provision of inaccurate accounts or misleading representations on transactions). Subject to that overriding duty, he owes a contractual duty to carry out the tasks that he has agreed to do with the requisite skill and care.
- 2.2 The discharge of this duty will often require the member to advise the client of the client's obligations under the relevant tax legislation and the consequences of non-compliance. Whether the client follows the member's advice is ultimately the client's decision. If, however, the client decides not to act in accordance with the member's advice as to his obligations, then the member must ensure that he does not take any steps which assist the client in that non-compliance because that would be in breach of the member's duty not to assist in what is likely to be an unlawful act and would in itself be an unlawful act.
- 2.3 Subject to the foregoing the member owes his client a duty to act in his best interests in carrying out his client's instructions. In so doing a member has 'one client at a time' and he should not feel precluded from acting for a client in a particular manner which is lawful simply because such a practice, if it became widespread, might make the tax authorities' job more difficult or would not be a manner in which other clients would wish to act.
- 2.4 A member's duty towards the tax authorities is to comply with the appropriate legislation and the common law when dealing on behalf of a client with a matter which is governed by tax law. In all dealings relating to the tax authorities, a member must act honestly and do nothing that might mislead the authorities.
- 2.5 A member may disclose information to the tax authorities without his client's consent only when required to do so by law. It would only be where the member would render himself liable to civil penalty or criminal sanction that the member is under a legal duty to disclose to the authorities. Such obligations, which are mainly imposed by statute, override the contractual duty of confidentiality and loyalty which a member owes to his client. Otherwise a member does not have an obligation, as a matter of law, to disclose to the tax authorities information which has been given to him in confidence even though it may be potentially relevant to some tax issue. (See also paragraphs 2.42 - 2.46 Fiscal offences and money laundering)

Overseas taxes

- 2.6 A person who is acting as a tax agent for a principal who is subject to the tax jurisdiction of another country could well be subject to different obligations in relation to the confidentiality or disclosure depending on the tax law and general law of that country. Subject to that caveat members should apply the principles set out in these guidelines in dealing with issues relating to overseas taxes. See also paragraphs 2.42 - 2.46.

Relationship with the client

- 2.7 In dealing with a client's taxation affairs a member's role is often that of agent but he may be acting as principal in an advisory capacity. The contractual relationship should be governed by an appropriate letter of engagement in order that the scope of both the member's and the client's responsibilities are made clear. Members are strongly urged to include in the letter of engagement a statement to the following effect:

‘We will observe the Professional Rules and Practice Guidelines of our professional Institute 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 HMRC errors.’

Members should bear in mind that an engagement letter once agreed with a client is a contract and should be aware and make a note of any variations that have subsequently been made whether orally or in writing.

- 2.8 Every contractual relationship should be covered; if the member acts for a partnership and also for one or more of the partners, then the partnership and each partner acted for are separate clients for the purposes of these guidelines. Likewise, if the member acts for a husband and wife, each is a separate client.
- 2.9 If the client is a body corporate, the client is the company and not the directors. Where a default of any kind is discovered, the matter should be raised at the appropriate level in the client organisation. Where the directors' actions have resulted in the company defrauding the Crown, references in these guidelines to the 'client' should be regarded in the first instance as referring to the directors. For example, where the member has to advise a client to make a full disclosure to the tax authorities, the advice should be addressed to the directors. If it is believed that this advice will not be brought to the attention of the board as a whole, it should be given to each director, and then, if appropriate, to shareholders.
- 2.10 A member should deal with taxation work only on the basis that the client is prepared to make full disclosure to him. Such disclosures are governed by confidentiality as an implied contractual term.
- 2.11 These guidelines explain the position of members if a client refuses to act in accordance with the member's advice, for example where the client has unreasonably delayed either the production of information needed for the preparation of returns or accounts or full disclosure of irregularities. The member should consider whether to continue to act for the client but should note the recommendations contained in Chapter 4 of these guidelines regarding termination of relationships with the client.
- 2.12 If a member believes that a relationship with a client has been or is likely to be terminated, whether by the client or by the member, the member needs to take extra care to make clear to the client in writing what matters within the terms of the engagement have been dealt with and what remains to be done, and by what date it should be done, and also what further action the member will, or will not, take.
- 2.13 A member is advised to keep detailed notes (preferably typed) of meetings and telephone conversations with his clients, the tax authorities and any other third parties regarding his clients' affairs. By this means the member may protect himself in the event of a subsequent dispute over what was said at the time and, in the case of what

the member perceives to be important meetings and conversations, he should consider ensuring that such notes are signed and dated by the originator.

- 2.14 It would be prudent for a member either to write to the client confirming oral advice as a matter of course or at least to make a note on file of advice given and he should consider sending a copy of that note to the client for his information and comment. This will allow the client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given. Exceptionally, where it is felt that the note is of particular importance, it may be sensible to have the creation of the file note witnessed.
- 2.15 Members will from time to time find themselves having to advise on matters which require specialist knowledge. In such circumstances they should be careful not to go beyond their own level of competence and, if necessary, should seek help from a specialist in the field.

Tax avoidance

- 2.16 Tax avoidance is legal and is to be distinguished from evasion which is illegal. All taxpayers have the right to arrange their affairs under the law to minimize their liability to tax. The member should consider carefully the merits of arrangements which may be considered artificial by the tax authority concerned. Such schemes should be considered in the light of the client's wider interests because of the risk that they may be challenged by the tax authorities. A scheme which depends fundamentally on concealment from the tax authorities may very well amount to tax evasion, or at least may be viewed in that light by the tax authorities.
- 2.17 The tax authorities say that they object to arrangements set up for no purpose other than to avoid tax. They see such artificial arrangements as fundamentally different from choosing one commercial approach which generates a lower tax bill than another, or the mere organisation of a taxpayer's affairs in such a way as to minimize the tax bill. This is a difficult and controversial area, where the approach of the Courts has changed over time. Members may find it helpful to bear in mind the dicta of Lord Hoffman in *MacNiven v Westmoreland Investment* [2001] STC 237 at page 257:

‘If the question is whether a given transaction is such as to attract a statutory benefit, such as a grant or assistance like legal aid, or a statutory burden, such as income tax, I do not think it promotes clarity of thought to use terms like stratagem or device. The question is simply whether upon its true construction, the statute applies to the transaction. Tax avoidance schemes are perhaps the best example. They either work (*Inland Revenue Commissioners v. Duke of Westminster* [1936] A.C.1) or they do not (*Furniss v. Dawson* [1984] A.C.474). If they do not work, the reason, as my noble and learned friend, Lord Steyn, pointed out in *Inland Revenue Commissioners v. McGuckian* [1997] 1 W.L.R.991, 1000, is simply that upon the true construction of the statute, the transaction which was designed to avoid the charge to tax actually comes within it. It is not that the statute has a penumbral spirit which strikes down devices or stratagems designed to avoid its terms or exploit its loopholes.’

- 2.18 For a helpful exploration of Inland Revenue attitudes members may like to refer to an article in Tax Bulletin Issue 49 issued in October 2000. The article is concerned with FA 2000 s.144 which introduced a new criminal offence aimed at tax fraud and includes the following passage:

‘The borderline between avoidance and evasion

‘In the same [parliamentary] debate at least one member raised the subject of the impact of the new offence on tax advisers, especially those involved in advising on arrangements which could be characterised as tax avoidance. We do not consider that the new offence has led to any change in the law in this area.

‘Where a scheme labelled as ‘avoidance’ by its participants and their advisers admittedly fails, the key issue as a matter of criminal law would be whether they have been dishonest in the unsuccessful effort to reduce the relevant tax liability. It would be for the courts to decide as a question of fact whether that is the case.

‘Concern has been expressed in some quarters that as a result the decision will not normally be taken by those with professional experience of tax matters and, given the highly technical nature of much tax law, that state of affairs may lead to injustice. That is an issue well beyond the scope of this article, but it may be helpful to remember that possible dishonesty becomes a consideration in this context only in certain circumstances. That is where there is some suggestion that the participants in an avoidance scheme are not merely relying on the intrinsic technical soundness of the arrangements actually put in place to reduce the liability but also on concealment of the facts from the inspector. If so, then, if the scheme fails, it is perfectly possible that the criminal courts may find there has been an offence. But conversely, where there is no trace of any concealment of the true facts of arrangements for which there is a respectable technical case, it is hard to imagine how a criminal offence can have been committed.’

Disclosure

- 2.19 In all tax matters, the member must act in good faith in dealings with the tax authorities: in particular the member must take reasonable care when making statements or asserting facts on behalf of a client. However, the member’s duty to try to ensure that the information provided is accurate and that relevant facts are not withheld is not always simple to achieve, especially if the client does not co-operate. See Chapter 3 (Disclosure).

Files and working papers

- 2.20 Members should keep copies of returns etc. and organise their working papers to separate matters such as the preparation of accounts and tax returns from those on which audit and other opinions may be expressed, because the latter are normally protected from disclosure.

Responses to official requests

- 2.21 The starting point is that a member owes his client a contractual duty of confidentiality. Although the client’s consent to the disclosure of relevant information is normally implied, if there is a real doubt about the information which the member proposes to disclose, it is wise to obtain the client’s consent expressly. When doing so, the member will normally be able to advise the clients whether it is in the client’s

best interests to disclose such information. This section deals with the circumstances in which the member or the client can be compelled to provide further information.

- 2.22 A distinction must be made between a request for information informally (“informal requests”) and those requests for information which are made in exercise of a power to require the provision of the information requested (“statutory requests”). In general, only the latter form of request is capable of overriding the member’s contractual duty of confidentiality to his client. Informal requests may be merely forerunners of statutory requests compelling the disclosure of such information. Consequently, it will normally be sensible for the client to comply with such requests or persuade the tax authority that a more limited request would be appropriate. The member should advise the client as to the reasonableness of the informal request and likely consequences of non-compliance and let the client make his decision. As regards statutory requests addressed to the client the member should advise the client about rights of appeal.
- 2.23 In relation to statutory requests, a distinction should be drawn between requests addressed to the client and those addressed to the member. Again, only the latter type of request is capable of overriding the member’s contractual duty of confidentiality because the former type of request imposes duties on the client and not on the member. In relation to the former category of request, the member should provide the client with advice concerning the validity of the request, appropriate methods of complying with the request and the serious consequences of non-compliance. Normally, the client in receipt of such advice will consent to the member providing such information on his behalf.
- 2.24 A statutory request addressed to the member, if valid, imposes a set of legal obligations directly upon the member. Failure to comply with such obligations can expose the member to serious civil and criminal penalties. Save in relation to limited categories of information (for example information covered by legal professional privilege (“LPP”)), a member can and should decide how he complies with a valid information request without requiring the consent of his client. Normally, he will be able to discuss such matters with the client, although certain powers may preclude communication between the member and the client; for example; TMA 1970 s.20BA & Sch 1AA and POCA 2002 s333.
- 2.25 Whether the statutory request is addressed to the client or the member, it will normally be helpful to answer the following questions:
- (a) Was the notice validly issued; for example did the officer making the request have the necessary authority to issue the notice and did he act in accordance with the various procedural safeguards?
 - (b) Do one or more of the pieces of information requested qualify as information which are either expressly or impliedly excluded from the ambit of the power authorising the request? For example, a client who receives a notice under TMA 1970 s.20 (1) is not obliged to disclose otherwise relevant information if it is covered by LPP and a barrister, solicitor or advocate who receives a notice under TMA 1970 s.20B(3) is not obliged and, therefore, not authorised, to disclose LPP material without his client’s consent.

Given the complexity of some of the rules relating to the scope of particular information powers, it may be appropriate to take specialist legal advice.

- 2.26 Where a category of documents falls outside the scope of the statutory request, the member remains under a duty to preserve the confidentiality of his client.
- 2.27 Where the member has ceased to act for a client, he remains subject to the duty of confidentiality. In relation to general and statutory requests which are addressed to the former client, the member should refer the enquirer either to the former client or his new agent. In relation to statutory requests addressed to the member, the termination of his professional relationship with the client does not affect his duty to comply with that request.
- 2.28 Advice given by a member to his client is not normally disclosable by the member to the tax authorities because it normally not relevant to the tax treatment of the underlying transaction. But this may not always be the case: for example, where the tax treatment depends upon whether the client had a tax avoidance purpose, the advice the client was receiving at the time about the alternatives open to him might be relevant. Subject to particular common law and statutory exceptions, the member might be compelled to disclose such advice although this is a difficult and contentious area.
- 2.29 As regards Revenue taxes only, an inspector may, under certain conditions, obtain access to documents in a member's possession or power relevant to tax liabilities: TMA 1970 s.20(3). However, this excludes documents which are the property of a member and were either created in relation to certain audit functions or relate to tax advice: TMA 1970 s.20B(9),(10). The powers included in TMA 1970 s.20BA and Sch 1AA need also to be borne in mind. As regards the powers of Customs see paragraph 3.19. As to ownership of documents, when in doubt the member should consider taking legal advice.
- 2.30 A member should be aware of the powers of the tax authorities in relation to the removal of documents; he may also find it helpful to have identified a lawyer or other practitioner with relevant specialist knowledge of both civil and criminal law from whom he can obtain advice. If a member is faced with a situation in which the tax authorities are seeking to enforce disclosure by the removal of documents he should consider seeking immediate advice from such a source, before permitting such removal. Since there may be little time to take advice, the member should consider putting in place a protocol giving guidance to his colleagues and staff as to what preliminary steps should be taken in the event that the member's premises are subject to a raid.

Legal professional privilege ('LPP')

- 2.31 LPP is related to but not quite the same as the general duty of confidentiality owed to a client. LPP, a part of the common law, was originally developed in the context of court proceedings, whether civil or criminal. In court or tribunal proceedings, the rule operates to exclude privileged material from having to be disclosed to the other party or, if known to the other party, being brought into evidence by him. Until recently, it was thought that the rule might not apply outside court or tribunal proceedings. However, the English Courts have recognised that the public policy behind LPP can be achieved only if the confidentiality of such material is protected from information-gathering powers which are exercisable even when no court or tribunal proceedings are pending. Consequently, the protection given to LPP material potentially applies to limit the scope of the tax authorities' investigation powers.
- 2.32 Until the House of Lords' decision in *R(on the application of Morgan Grenfell & Co Ltd) v. Special Commissioner of Income Tax* [2002] STC 786, the Revenue contended

that TMA 1970 s. 20(1) impliedly overrode the right to confidentiality conferred on LPP material. The House of Lords held that the right to communicate in confidence with a legal adviser was a fundamental constitutional right. It could be overridden by Parliament but only if the statute did so expressly or by necessary implications. General words of wide meaning are not enough to found such an inference. None of the statutory language relied upon by the Revenue was considered by the House of Lords to be sufficiently compelling to justify the conclusion that Parliament had decided to override such an important right. Since the terms of the other information powers offer less support for an implied override argument, it is considered that this decision is of general application and all Revenue and Customs' investigatory powers take effect subject to the right of the client's right to confidentiality in respect of the LPP material.

- 2.33 It is, therefore, of critical importance to ascertain whether the documents requested qualify as LPP material because the protection given to such material is more extensive than that conferred by the statutory exceptions. Due to the complexity of the common law rules on what qualifies as LPP material, specialist legal advice is likely to be required, particularly if the member or the client is minded not to disclose a document on the ground that it is privileged.
- 2.34 At common law the concept of LPP is complex. The protection it provides has significant limitations. It is not the case that every communication, of whatever nature, by or to a lawyer (barrister, Scottish advocate, or solicitor) is privileged. At common law the two significant situations in which privilege arises are as follows:

(a) *Litigation privilege*

Documents created for the dominant purpose of litigation are privileged. The privilege covers not only documents prepared by the lawyer, but also documents brought into existence by third persons for the predominant purpose of litigation. The existence of a second significant purpose will prevent the document from being privileged. Therefore, once litigation has started or is contemplated, documents prepared by non-lawyer advisers (including tax advisers) may be privileged. It is considered that litigation for this purpose includes a tax appeal, although there appears to be no case in which this point has been expressly confirmed.

Scots law similarly provides for the privilege of communications post litem motem. Though there is doubt as to when the privilege begins to attach to a communication prepared in advance of litigation, which would include a tax appeal, there is a strong argument that the protection arises as soon as anything occurs to indicate that the Revenue are querying the tax liability of the taxpayer. For example, where the Revenue challenge the completeness of a return or the correctness, in fact or law, of the basis upon which a self-assessment has proceeded.

(b) *Advice privilege*

Documents passing between a client and his legal advisers are privileged if they are written for the purpose of obtaining or giving legal advice. Who is a legal adviser for this purpose is not entirely clear. The description is not restricted to lawyers in private practice and can include employed lawyers. On the present state of the authorities (many of which date from an era where the range of services offered by non-lawyers was much more limited), this type of privilege does not normally extend to documents recording communications to or from non-lawyers, even though such advisers may regularly advise on a particular area

of the law and have professional qualifications to do so. So tax advice (not obtained for purposes of litigation) from a non-lawyer adviser is not privileged at common law. Nor are commissioned reports or investigations of companies. If a member is in any doubt in this very complex area he should seek legal advice.

- 2.35 LPP should not be confused with the protections from disclosure to the Revenue given to tax advisers by some subsections of TMA 1970 s.20B. These latter protections arise from express statutory provisions and are protections of the adviser restricting the powers of the Revenue to require information or documents from him. LPP, on the other hand, exists under the common law and is the privilege, not of the lawyer, but of the lawyer's client. The general common law rule is that the client, unless he waives the privilege, cannot be required to produce documents or answer questions where the subject matter is protected by privilege; nor can the lawyer produce the documents or answer the questions without the client's consent. There are exceptions, one of which is where a document came into existence as a step in criminal or illegal activity in which case the document is not privileged.
- 2.36 Members should bear in mind that, even if material is not protected by LPP or a statutory exemption, there may be recourse to the HRA 1998, although the position is uncertain and controversial.
- 2.37 If a member is consulted about, or receives himself, a request from the tax authorities, in the form of a statutory notice, which calls for the disclosure of material which he believes to be privileged at common law and which the client does not agree to disclose, it is suggested that the member should consider seeking specific legal advice. There is little guidance on these questions in reported cases. It is, however, not uncommon for members, or their clients, when asked for some particular document or item of information by the tax authorities, to reply to the effect that, because the document or information is privileged, it is not being disclosed. If a member is consulted about, or receives himself, a request from the tax authorities (whether in the form of statutory notice or not) which calls for disclosure of material which he believes to be privileged at common law and which the client does not agree to disclose, it is suggested that in the first instance the member should reply along the lines mentioned, briefly setting out the grounds on which privilege is claimed. The tax authorities may not pursue the matter: frequently they do not. If they press the request for the documents or information, it may be appropriate for either the member or client to commence proceedings to determine the status of the material in advance of any penalty proceedings for non-compliance.

Irregularities and errors

- 2.38 In the course of a member's relationship with the client, whether as agent or principal, he may become aware of irregularities or errors in the client's tax affairs. The client should be informed at once, normally in writing. Tact may be required and immediate corrective action may be difficult but the member should be seen to have acted correctly at the outset (see also Chapter 4). See also paragraphs 2.42-2.46.

Materiality

- 2.39 Counsel has advised that the concept of a 'true and fair view' incorporates the concept of materiality. Accordingly the effect of FA 1998 s.42 (1) (which requires profits to be computed in accordance with GAAP) is to permit a trading entity to disregard non-material adjustments in computing its profits for tax purposes; s.42 is extended to the profits of a Schedule A business by TA 1988 s.21A(2). However,

members should bear in mind that in other contexts tax law does not explicitly recognize the concept of materiality. See also paragraph 4.8 concerning HMRC's view on materiality.

- 2.40 Whether an amount is to be regarded as material depends upon the facts and circumstances in each case. An amount which is not regarded as material for audit purposes may still be material for tax purposes. The tax authorities are not prepared to indicate whether there is an absolute minimum which they are prepared to disregard as not material. In the context of direct tax a figure of £100 or less might reasonably be seen as not material in the majority of circumstances.
- 2.41 In considering whether or not he must cease to act because a client refuses to make or permit a disclosure to the tax authorities a member may reasonably have regard to the materiality of the amount involved. See also Chapter 4 as regards a situation in which a member must cease to act.

Fiscal offences and money laundering

- 2.42 Where members become aware of tax irregularities, they should also bear in mind that under the money laundering legislation, fiscal offences can amount to money laundering.
- 2.43 Tax-related offences involve evasion and not avoidance and are not in a special category. Tax evasion is a crime, the proceeds of which have to be treated in exactly the same way as those from drug trafficking, terrorist activity, theft, fraud, etc. Offences may relate to direct tax such as income tax or corporation tax, or they may relate to indirect tax such as VAT. Whilst not all tax-related offences are indictable, most are, including frauds against HMRC.
- 2.44 A member who has knowledge of or reasonable grounds for suspecting money laundering should consider whether he has an obligation to make a report to the appropriate authorities (the Money Laundering Reporting Officer in his organisation or the National Criminal Intelligence Service (NCIS)).
- 2.45 Where a report has been made to NCIS, the client should not be informed where this would be considered tipping-off under the terms of the Money Laundering legislation. Members should also note that a report made to NCIS is not a substitute for a proper disclosure to the tax authorities.
- 2.46 This is an important subject and can involve the member in criminal penalties. There have been recent changes in both UK and EU law, the latter at the time of writing yet to be incorporated into UK law. Members should familiarise themselves with the required rules and procedures and should read carefully the current professional guidance on the avoidance, recognition and reporting of money laundering. Members who are in any doubt about their responsibilities in this area should seek appropriate advice.

Members in employment

- 2.47 Whilst these guidelines are addressed primarily to members in practice, they apply equally to members employed in professional practice and in business.

Human Rights

- 2.48 The tax authorities are constrained by the HRA 1998. UK legislation should be construed if possible in a manner which is consistent with a Convention right. Similarly, public authorities are, subject to limited exceptions, obliged to act consistently with Convention rights, in particular in the exercise of their discretionary powers. Under Article 8 of the European Convention, everyone, including legal persons, has the right to respect for his private life and is entitled to privacy in relation to both his personal and business correspondence. A breach of that confidentiality is permitted only if and to the extent that it is authorised by law, it is in pursuit of a legitimate aim, which must constitute a pressing social need and the breach is no more than is proportionate to the social need which is sought to be advanced. See *Foxley v United Kingdom* (2000) 31 EHRR 637,647, para 44 in relation to a breach of the right to confidentiality sought to be advanced. Against this background, all requests for access to information held by a professional adviser should be considered carefully. In cases where doubts arise, members should seek guidance from a suitably qualified adviser.

VALUE ADDED TAX

This and the following Chapter refer to Value Added Tax but apply *mutatis mutandis* to other indirect taxes. They should be read in conjunction with Chapters 1 and 2

3. DISCLOSURE

Relevant responsibilities in preparing VAT returns

- 3.1 The client has the primary responsibility to submit a true and complete VAT return to HMRC. It follows that the final decision as to whether to disclose is the client's. A member who prepares a return on behalf of a client is responsible to the client for the accuracy of the return based on the information provided.
- 3.2 Where a member is acting as a 'tax representative' for an overseas principal the obligations and liabilities of the VAT legislation are imposed jointly and severally on the client and the member. A member who acts in this way as a tax representative should seek indemnity from the client against failure by the client to provide information required. The member should also make clear in writing his obligation to disclose any irregularity to HMRC (see Chapter 4).
- 3.3 A member is not required to audit the figures in the books and records provided by the client but should exercise normal care and judgement in preparing the return and should record detailed figures in working papers.

Disclosure of specific transactions to HMRC

- 3.4 Normally, specific transactions need not be disclosed to HMRC. Nevertheless, a member may recommend to a client that a particular matter be disclosed in order to avoid uncertainty.
- 3.5 In such a case the full facts concerning it, including the reasons for doubt, should be disclosed to HMRC. The client can then generally rely on any unequivocal ruling in writing received from them on the point.
- 3.6 If a transaction is found to have been treated incorrectly but it can be shown that full information about it was disclosed to HMRC, the client will be able to claim the benefit of the concession concerning misdirection given in the Ministerial undertaking known as the 'Sheldon Statement' and reproduced as VAT

Extra-statutory concession 3.5 in Notice 48 (March 2002): Extra Statutory Concessions. The undertaking says 'If a HMRC officer, with the full facts before him, has given a clear and unequivocal ruling on VAT in writing or, knowing the full facts, has misled a registered person to his detriment, any assessment of VAT due will be based on the correct ruling from the date the error was brought to the registered person's attention'.

- 3.7 The meaning of full disclosure was considered in *Matrix Securities Limited v IRC* ([1994] STC 272) albeit in the context of direct tax. HMRC has stated that the Sheldon statement will not be honoured in cases where HMRC has been misled to obtain a specific ruling.
- 3.8 When disclosing transactions on which the member has previously advised, extra care may be needed to ensure that the full facts are disclosed. The advice given must not be allowed to affect the member's objectivity.
- 3.9 HMRC consider that they are entitled to override their general guidance by a specific ruling relating to the affairs of a particular taxpayer. Whether a specific ruling is applied retrospectively will depend on whether the general guidance could reasonably have been read as covering the particular case.

Known HMRC practices

- 3.10 Particular care is needed if HMRC have published their interpretation or have indicated their practice on a point and the client proposes to take a different view. Disclosure will probably be prudent in the interests of the client. Even where a taxpayer has Counsel's opinion that HMRC's interpretation is wrong, it is advisable to disclose the facts to the client's Written Enquiries team, in writing, making it clear that HMRC's interpretation is not accepted. However, the final decision on what, if any, disclosure is to be made rests with the client.

Requests for rulings from HMRC

- 3.11 Once the member is satisfied that it is appropriate to apply for a ruling he should ensure that the client understands the issues and implications of the proposed course of action. This advice to the client should normally be confirmed in writing.
- 3.12 HMRC Notice 700/6 of August 2003 provides guidance on how rulings should be sought. Rulings should normally be confirmed by HMRC in writing. If necessary the client, or the member, should write to HMRC confirming the facts and the ruling that is understood to have been given.
- 3.13 If a written ruling appears to the member to be incorrect, he should consider whether it is clear that full facts were disclosed (the amount of VAT involved may be a material fact) and whether it is clear from the wording of the ruling that the officer of HMRC has understood the question.

Effect of rulings and official practice

- 3.14 Members are entitled to rely on official HMRC's practices and rulings where these are favourable to their clients.
- 3.15 However, there are limits to the extent to which HMRC are bound by undertakings and statements of policy which they have given or issued. Examples of restrictions on a taxpayer's entitlement to rely on HMRC's rulings are:

- (a) the VAT and Duties Tribunals will have regard to the strict terms of the law in their decisions and may ignore any HMRC advice or extra-statutory concessions which the taxpayer may have relied on even if they have been published in an official HMRC notice or leaflet; and
 - (b) failure by HMRC to comply with the Sheldon Statement cannot, of itself, constitute a ground for appealing to the tribunals.
- 3.16 If HMRC refuse to stand by a ruling given, whether generally or specifically to the client, there may be a remedy in judicial review before the High Court, and, in Scotland, the Court of Session. In this event, the member should seek legal advice as soon as possible as to the applicable time limits for such procedures. An application may also be made to the Adjudicator or to the Ombudsman.
- 3.17 If an error was obvious in the records available when a control officer visited, this should prevent any suggestion of fraudulent evasion or recklessly negligent conduct entailing a criminal penalty; and may also obviate the risk of an accusation of conduct involving dishonesty which could lead to a civil penalty. However, the concession on misdirection explained in paragraph 3.6 will not apply unless it can be shown that the officer saw the specific records in question and failed to point out the error. By its very nature, this is difficult to prove.
- 3.18 If a member obtains a ruling with which he disagrees, he may advise the client to consider an appeal to the VAT and Duties Tribunals (having regard to the applicable time limits). The member should be aware that an appeal can only be made against a ruling which has been given in respect of an actual transaction. It is not possible to appeal against a ruling given in respect of a proposed transaction.

Demands by HMRC for information

- 3.19 HMRC's powers to demand information and their policy on access to working papers etc. are outlined in Leaflet 700/47/93: Confidentiality in VAT matters (tax advisers) - Statement of Practice dated February 1993 (see also www.hmrc.gov.uk/forms/notices/700-47.htm). However, Leaflet 700/47/93 was published before the decisions in *R (on the application of Morgan Grenfell & Co Limited) v Special Commissioners* [2002] STC UKHL 21 [2002] STI 786 and *R v Customs and Excise Commissioners, ex parte Popely and Harris* [1999] STC 1016 and members should be aware of the possible implications of these decisions. In particular, Counsel advises that HMRC have no statutory powers to compel the disclosure of LPP material. Furthermore, the information powers must be interpreted by the Courts and applied by the HMRC officers in a manner which is consistent with the client's and the member's rights under Article 8 of the European Human Rights Convention.
- 3.20 Enquiries from HMRC are often unexpected and informal and usually arise from a visit to the client. The member should consider whether authorisation to reveal the information requested is needed from the client. The nature of the enquiry may not be immediately apparent and the position may need reviewing as it progresses.
- 3.21 A member who is in doubt about the implications of a question should consider asking for it to be put in writing so that a response may be agreed with the client.
- 3.22 Though there are no equivalent provisions of TMA 1970, ss20-20D in the Customs and Excise management legislation, HMRC's powers to require disclosure of

documents and information are contained in various statutes, including, in the context of VAT, VATA 1994, Sch.11, paragraphs 7(2) and (3).

- 3.23 These provisions permit HMRC to require production of documentation by every person concerned in the supply of goods and services or the acquisition or importation of goods, or from any other person 'who appears to the authorized person to be in possession of them.' This provision may be wide enough to entitle HMRC to demand recovery of documents from a tax adviser. Though the Statement of Practice in Notice 700/47 recognizes the client's common law privilege, both in relation to legal professional privilege and litigation privilege, disputes may arise as to whether or not a particular document is protected by privilege.

4. ACQUIRING KNOWLEDGE OF VAT ERRORS AND IRREGULARITIES

For the purposes of this Chapter, 'irregularity' means conduct which could give rise to prosecution or an evasion penalty. Some errors may constitute or become irregularities.

Generally

- 4.1 A member must do nothing to assist a client to plan or commit any offence or to conceal any offence which has been committed. A member must exercise great care to avoid commission of an offence by knowingly or recklessly making false statements or false representations when assisting a client whom the member suspects may have defrauded the Crown of tax or of having been negligent in regard to VAT matters.
- 4.2 Subject to the terms of his engagement, a member who assists a client to prepare any return or advises a client on a VAT matter has no responsibility to carry out an audit of the client's accounts or to investigate any matter not directly affecting the assignment he has agreed to undertake or to seek or to detect any error or irregularity. In general, his duty is limited to carrying out the assigned work, and he need only deal with errors or irregularities in respect of that assignment which came to his attention in performing it.
- 4.3 A member who, as a result of any work undertaken on behalf of a client, has reason to believe that a VAT error or irregularity has occurred should discuss with the client the matter which gave rise to that belief and consider whether in the circumstances it is appropriate for him to act. Where the member has not acted in relation to that question, he should take into account the fact that he may not be party to all the facts and circumstances and may not therefore be able to reach a conclusion on the issue. It is not the duty of a member to pursue to a conclusion a matter, in respect of which he has not been engaged, unless it affects work in respect of which he has been engaged.
- 4.4 If there is a VAT error, the member should normally advise the client to follow the procedure set out in Customs Notice 700/45/02: How to correct VAT errors and make adjustments or claims.
- 4.5 If there is doubt as to whether or not an irregularity has occurred the member should consider protecting his position by obtaining advice from a specialist in this field. Furthermore if the member has any doubt about his competence to provide advice to his client in these circumstances he should seek obtain specialist help as appropriate.

Money laundering

- 4.6 Where appropriate, members should bear in mind the legislation on money laundering and the duties which this places upon them (see paragraphs 2.42 -2.46).

Human rights

- 4.7 Wherever appropriate, in particular if there is a risk of prosecution or tax-gear penalties, the provisions of the HRA 1998, in particular the protection given by Articles 6 and 8 of the European Convention should be considered and in obtaining advice on behalf of their clients members should ensure that the Act is taken into account.

Materiality

- 4.8 In considering the action which he should take in the circumstances outlined in this section, the member may take account of materiality but reference should be made to paragraphs 2.39 –2.41. However HMRC's position is that any error ought to be corrected.

VAT errors

- 4.9 Correction of errors up to a prescribed amount can be made on the current VAT return as part of the entries for that period. If this is done, neither penalties nor interest is due. If the net value of the errors is greater than the specified level this procedure is not available, and separate disclosure of the error must be made. Form VAT 652 is provided for the purpose of making a voluntary disclosure separate from the VAT return, although its use is not mandatory and in most circumstances it may be more appropriate to make the disclosure by letter.
- 4.10 HMRC have stated that disclosure of errors after a visit date has been arranged will be rejected where there is reason to believe that:
- (a) the errors were disclosed only because of the visit; or
 - (b) disclosure made during or after a visit was prompted only by HMRC's enquiries.

Other voluntary disclosures made after the visit date has been arranged may, however, may be accepted by HMRC.

Advice to be given where an irregularity is admitted

- 4.11 A member whose client has admitted an irregularity should consider whether to recommend to his client to take legal advice. One of the factors the member must take into account is whether his client will have the benefit of LPP in relation to confidential discussions between the client and the adviser concerning the client's knowledge of the irregularity. As indicated in Chapter 2 above, the present position at common law is that communications for the purpose of the obtaining legal advice from non-lawyers does not qualify for LPP unless the dominant purpose behind such communication is to assist in litigation which is either pending or contemplated. In many circumstances, the dominant purpose in seeking such advice will be to ascertain the extent of the tax liability, rather than to assist in contemplated litigation. If legal advice is not appropriate the member should advise the client to disclose the irregularity to HMRC and make an internal note of having given such advice. The member should explain the consequences of not making a disclosure, in particular that:
- (a) should HMRC discover the irregularity later there might be no defence against a misdeclaration penalty;
 - (b) having knowledge of the irregularity without acting upon it may be construed as a criminal offence or a civil fraud;
 - (c) interest may accrue up to the time the VAT is paid: the policy of HMRC not to assess interest in 'no loss to the revenue' cases may not be relevant; and
 - (d) it would be improper to allow HMRC to agree a settlement without putting them in possession of all the facts.

If the client declines to disclose the irregularity, the member should confirm his earlier advice in writing and consider whether it is appropriate to carry on acting.

When HMRC are not aware of an irregularity

- 4.12 Where there is an irregularity which HMRC have not discovered, voluntary disclosure and payment of the under-declared or over-reclaimed tax will usually remove the risk of a penalty, although interest may remain due. Prompt disclosure of an error may avoid suspicion by HMRC that it was deliberate thus reducing the risk of a civil fraud penalty.

When HMRC allege that irregularities may have occurred

- 4.13 When HMRC allege that an irregularity may have occurred, but it has not been identified by the member or his client, the member should establish from HMRC such details as he can of the alleged irregularity and the circumstances in which it occurred. This should take place at a meeting between the member and the HMRC officer or in the course of correspondence, depending on the circumstances.
- 4.14 The member should then discuss the position with his client and establish with him the full facts relating to the alleged irregularity. The member should evaluate HMRC' allegations in the light of the facts as they have been explained by the client. Where appropriate, he should advise his client to make a full disclosure to HMRC and to offer them all facilities for investigation. In the course of his evaluation the member should consider whether to recommend to his client to take legal advice prior to making a disclosure. In particular, where there is a real possibility that the tax authorities may still bring criminal proceedings against the client even if he provided full disclosure the client needs to have proper legal advice concerning his right to silence and the privilege against self-incrimination before deciding which course to take.
- 4.15 It may be appropriate for the member, having agreed this with his client, to offer that a full report of the facts behind and surrounding the alleged irregularity be prepared by the member on behalf of the client with a view to making a full disclosure to HMRC.

When HMRC are aware of an irregularity

- 4.16 If HMRC intend to prosecute a person for evading tax, they should administer a caution to that person. Therefore, when HMRC are aware that a serious irregularity has occurred, an interview under caution may be sought. If the member is made aware of such an interview, he should attempt to ascertain HMRC' reasons for the interview and then notify his client of the seriousness and the potential implications of the allegations. If the interview under caution is already taking place, and no legal advice has been sought, the member should repeat the need to take legal advice which HMRC should in any case have indicated at the outset as the client's legal right. The member should also advise the client of his right to silence and his privilege against self-incrimination. If the member does not feel competent to advise on these matters, he should seek to arrange legal advice on these matters for the client as soon as possible.
- 4.17 A tax adviser who is not a lawyer has no right to attend his client's interview under caution. HMRC have indicated that when a client is being interviewed in a criminal investigation, that client may already be under arrest and there is no obligation to allow a tax adviser to be present during such an interview unless that adviser is also a

lawyer. It is therefore unlikely, in most instances, that tax advisers will have access to their clients in such circumstances.

- 4.18 The benefit of full co-operation and complete disclosure in civil fraud cases is set out in Customs' Civil evasion penalty investigations: Statement of Practice (VAT Notice 730, which should be read together with the addendum thereto issued in April 2002) and VAT Information Sheet 1/02. The addendum and the Information Sheet explain Customs' equivalent procedure to Hansard effective from April 2002. If this approach is offered, they will prosecute only if a fraud is likely to continue or the trader refuses to answer four standard questions. In criminal cases co-operation can facilitate the agreement of offers to compound criminal offences (under CEMA 1979 s.152) and the mitigation of penalties although it will not always prevent prosecution. If HMRC seek to rely in criminal or tax geared penalty proceedings upon statements or documents produced by the client following such procedure as comprising accurate evidence of the client's involvement in the irregularity, then it is possible that such reliance would be a breach of the client's privilege against self-incrimination under Article 6 of the European Convention. It should be noted that tax-geared penalty proceedings will normally be regarded as criminal proceedings for the purposes of Article 6 of the European Convention. Again, this is a matter on which specialist legal advice should be sought as soon as possible.
- 4.19 An interview under caution is an early indication of the possibility of a criminal prosecution. If it appears likely that criminal charges will be brought, the member should advise the client to take advice from a criminal law specialist. Even if HMRC are prepared to compound proceedings it may still be appropriate to take legal advice.
- 4.20 If the advice is to co-operate, the member should advise his client to make a full disclosure to HMRC and, when under investigation for civil evasion, co-operate within the terms of VAT Notice 730 or the Statement of Practice in VAT Information Sheet 1/02. In the case of a criminal investigation under caution, the advice of a specialist professional should be taken throughout in respect of full disclosure and production of documents etc.
- 4.21 HMRC will advise the client at the outset if they are considering an investigation under the civil regime by issuing VAT Notice 730 or the statement of practice in VAT information sheet 1/02: this is not a caution. In the event of a criminal investigation a caution will be issued. In most cases full co-operation under the civil regime affords a maximum discounted penalty of 25% of the tax concerned. In the case of criminal investigations the situation is set out in Notice 12 'Compounding, Seizure and Restoration', issued by Customs in April 1998.
- 4.22 Members should be aware that HMRC's policy is not to offer the civil regime to professional advisers in respect of their own affairs.

The importance of confirming admissions of irregularities by clients

- 4.23 Misunderstandings can arise, especially when the client is under investigation by HMRC. Before a member makes any disclosure to HMRC on behalf of a client he must be absolutely clear that an irregularity has occurred and that he has the client's agreement to the manner of disclosure.

Instructions to disclose

- 4.24 Provided the member has the client's written permission (or a note of oral instructions which he has confirmed in writing to the client) to disclose an error too large to be

corrected on the next return, he should write to HMRC giving as much detail of the inaccuracy in the return(s) as is available.

- 4.25 It may be more appropriate for the letter of disclosure to be sent by the client. In this case the member may either draft the letter for the client or review the client's draft to ensure that adequate disclosure has been made.
- 4.26 The disclosure should be made to HMRC as soon as possible in order to minimize the risk of their becoming aware of the problem before they are told. Care should be taken to ensure that the disclosure is as full as practicable concerning the number and the amount of irregularities which have been detected.

Disclosure to other tax authorities of an admitted irregularity

- 4.27 The member should also consider the need to make a similar disclosure to the Revenue.

Unwillingness or refusal to disclose an admitted irregularity

- 4.28 'Unwillingness' in this context includes such procrastination or prevarication as effectively amounts to a 'refusal', albeit not expressed. A member should allow a reasonable period for the client to make a decision. Thereafter, the member must decide whether continuing 'unwillingness' is in fact 'refusal' for these purposes.
- 4.29 If the client refuses to accept the member's advice to make a full and prompt disclosure to HMRC, the member should ensure that his conduct and advice are such to prevent his own probity being called into question. It is essential therefore to advise the client in writing properly and fully of the consequences of the failure to disclose.
- 4.30 The member should take such steps as are necessary to disassociate himself from the client's conduct. The member should write to the client setting out the facts understood by the member or agreed, and advising the client of the latter's duty to disclose. He should also make it clear that he, the member, may have an obligation formally to disassociate himself from any work done, should disclosure not be made.
- 4.31 If the client refuses to disclose or to take other steps (for example, seeking Counsel's opinion on the member's view) to regularize the situation, the member should consider taking steps formally to disassociate himself from the relevant work taking account of all relevant issues. In certain cases it may be necessary to cease to act in relation to the client's VAT affairs, or indeed all his affairs.
- 4.32 If HMRC realized that the member had continued to act after becoming aware of such undisclosed errors, they might consider the member to be 'knowingly concerned' in the commission of an offence. At the very least HMRC might cease to trust the member. Furthermore, the relationship of trust which must exist between member and client will have been impaired.

The member prepares or assists in the preparation of the VAT return

- 4.33 Where the member either prepares or assists in the preparation of VAT returns, and the client refuses to disclose errors which occurred during or before the period in respect of which the member has acted, it may be necessary to cease to act in relation to the client's VAT affairs, or indeed all his affairs.

- 4.34 If HMRC are aware that the member has been acting for a particular client, the member should, when appropriate, notify them that he has ceased to act for that client.

The member prepares or assists in the production of accounts

- 4.35 A member may prepare or assist in the production of accounts, without advising on VAT. If the client refuses to disclose a VAT error, the member should consider whether the relationship with the client, which is based on trust, has been impaired and, if it has, whether it is proper to continue to act for the client. A member who decides to continue to act should not thereafter give any advice in relation to any tax matters (other than the matter of disclosure) unless and until the client agrees to full disclosure.

The member is engaged to provide VAT advice

- 4.36 If required to deal with HMRC on the client's behalf, the member might not be in a position to do so in good faith whilst aware of an undisclosed error and the member should consider ceasing to act. This does not apply where the member has advised on VAT matters, or otherwise, without dealing with HMRC, but the member should consider his position carefully.

Where the client refuses to admit an irregularity

- 4.37 Where the client denies any irregularity to the satisfaction of the member, the member is free to continue to act for that client. The member should protect himself by ensuring that his files fully document the discussions with the client and the reasons why the member is satisfied with the explanations given. It may be appropriate also to send a copy of the file note to the client.
- 4.38 Where the client denies any irregularity and the member rejects outright that denial, the member must cease to act for the client at least in relation to his VAT affairs, and very possibly in relation to all his affairs. The decision depends on the nature and scope of the member's relationship with the client having regard to the various circumstances. See also paragraphs 2.42 – 2.46.
- 4.39 Where, despite the client's denial of any irregularity, the member still has reservations, but does not consider that he is justified in rejecting the denial outright, the member must give careful consideration as to whether he can continue to act on behalf of the client. If the member decides to continue to act, his file notes should set out clearly the client's explanation and/or assurances that there have been no such irregularities.

Consequences of ceasing to act

- 4.40 The member need not inform HMRC of the termination of his instructions unless the member is at the time dealing with HMRC on the client's behalf.

Suspicious circumstances

- 4.41 A member who acts in relation to VAT matters and has good grounds to suspect that a client has committed a material tax irregularity should discuss the position with the client to confirm or remove the suspicion. This applies whether or not the member has acted in relation to the actual matter concerned. If the suspicion is confirmed, the

member would then have actual knowledge of the irregularity and these guidelines should be followed.

- 4.42 If the member finds no confirmation but remains suspicious such that the relationship of trust which must exist between the member and the client may have been impaired, the member should consider whether he should continue to act. If a new adviser then approaches the member, the member should consider his position in the light of paragraphs 4.45 and 4.46.

Request for information from a new adviser

- 4.43 On changes in a professional appointment the initiative to request information lies with the new adviser who should obtain the proposed client's authorization to communicate with the member. The member should not volunteer information to a new adviser in the absence of any such request by the new adviser or his former client.
- 4.44 When the member receives a request for information from a new adviser, he should:
- (a) seek authorization from the former client to disclose all relevant information to the new adviser;
 - (b) on receipt of such authorization, disclose all the information needed and reasonably requested by the new adviser to enable him to decide whether to accept the work; and
 - (c) to the extent that he is authorised to do so, discuss freely with the new adviser all matters of which he should be aware.
- 4.45 If the former client refuses permission, the member cannot disclose information to the new adviser. However, the member can refer the latter to the fact that there is correspondence between the member and the former client without disclosing what it says. The new adviser will then ask the client for copies of that correspondence.
- 4.46 The new adviser will therefore become aware of the non-disclosure and possible offence. Since the former adviser will have resigned on the grounds of the client's unwillingness or refusal to disclose, it should follow logically that if the client continues to be unwilling or refuses to disclose, or refuses permission for the former adviser to communicate with the new adviser, the new adviser should decline to act. However, the new adviser is entitled to consider whether or not he comes to the same conclusion as the former adviser.

5. INDIRECT TAXES AND ACCOUNT

- 5.1 A member who prepares accounts should ensure that they reflect all material liabilities for indirect taxes whether or not they have been declared to HMRC. If a material liability for indirect taxes is omitted a member who is also an auditor cannot, without qualification, report on the accounts as showing a true and fair view. HMRC often request the accounts in the course of a control visit in an attempt to reconcile turnover to the VAT returns.
- 5.2 If an assessment based upon alleged undisclosed takings is accepted by the client or a settlement at a reduced figure is agreed with HMRC, and the member has already submitted accounts information for the period in question to the Revenue, the member must consider whether the accounts show a true and fair view and, if not, follow the guidance set out above.
- 5.3 In such circumstances it may be wise to inform the Revenue before a final settlement is agreed with HMRC in order that the self-assessment for direct tax purposes can be amended as well. This may help to avoid a second investigation.

6. DEALINGS WITH HMRC IN RELATION TO STAMP TAXES

- 6.1 At the time of writing, stamp duty applies to instruments executed after 30 November 2003 relating to stock or marketable securities and certain instruments involving the acquisition of UK land interests by a partnership from one or more of its members (or vice-versa), or of interests in a partnership owning UK land, as well as to instruments executed before 1 December 2003 transferring property generally (subject to exceptions). Although stamp duty is a voluntary tax, in the sense that HMRC has no power to enforce payment of stamp duty (as opposed to stamp duty land tax and stamp duty reserve tax) members should be aware that there are various offences in relation to stamp duty, as well as stamp duty reserve tax, which are set out in the Stamp Act 1891 and the Stamp Duties Management Act 1891 as well as in various subsequent Finance Acts.
- 6.2 In particular, Section 5 of the Stamp Act 1891 provides that all the facts and circumstances affecting the liability of any instrument to stamp duty, or the amount of the stamp duty with which any instrument is chargeable, are to be fully and wholly set forth in the instrument.
- 6.3 Members advising on land transactions or transfers or agreements to transfer securities should appreciate that such transactions may give rise to a liability to a charge to stamp duty land tax or stamp duty reserve tax, in addition to or instead of stamp duty, and that these taxes are separate from stamp duty with their own rules, procedure and collection machinery. It should, in particular, be appreciated that stamp duty land tax and stamp duty reserve tax, unlike stamp duty, are not voluntary taxes and that the person who is accountable for such tax is required under the relevant legislation to give notice that a charge has arisen and to pay the tax. Accordingly, members who are advising on or in conjunction with such transactions who do not themselves have the requisite specialist knowledge of the tax should either seek advice from a person who has such specialist knowledge or obtain confirmation from the client that such advice has been sought. Where a member does advise on such taxes, reference may be made to the Professional Rules in relation to Taxation of the Chartered Institute of Taxation with regard to dealings between such member or the person who he is advising and HMRC.

7. CONFIDENTIALITY

Improper Disclosure

- 7.1 Information confidential to a client or employer acquired in the course of professional work should not be disclosed except where consent has been obtained from the client, employer or other proper source, or where there is a legal right or duty to disclose. Where information is being sought by HMRC or another authority, or where a member becomes aware of an error or irregularity, the member should refer to Section 2 (Principles applicable to all taxes) or Section 4 (Acquiring knowledge of VAT errors and irregularities) as appropriate.

Where a member is in doubt as to whether he or she has a right or duty to disclose he should, if appropriate, consider taking legal advice and/or consult the Institute.

Improper Use of Information

- 7.2 A member acquiring or receiving confidential information in the course of his or her professional work should neither use nor appear to use that information for his personal advantage or for the advantage of a third party.

When a member changes his or her firm or employment he is entitled to use experience gained in the previous firm or employment but not confidential information acquired there.

A member should not deal in the shares of a company with which he has a professional association at such a time or in such a manner as might make it seem that he was turning to his own advantage information obtained by him in his professional capacity.

It may be a criminal offence in certain circumstances to use confidential information for an improper purpose.

8. OBTAINING PROFESSIONAL WORK

Practice Promotion

8.1 Subject to the guidance which follows a member may seek publicity for his or her services, and may advertise in any way consistent with the dignity of the profession in that he should not project an image inconsistent with that of a professional person bound to high ethical and technical standards.

(a) Advertising:

Advertisements must comply with the law and should conform as appropriate with the requirements of the British Code of Advertising Practice, and the ITC and Radio Authority Code of Advertising Standards and Practice, notably as to legality, decency, clarity, honesty and truthfulness. An advertisement should be clearly distinguishable as such.

The preceding considerations are of equal application to letterheads, invoices and similar practice documents.

(b) Fees:

If reference is made in promotional material to fees, the basis on which fees are calculated, or to hourly or other charging rates the greatest care should be taken to ensure that such reference does not mislead as to the services and time commitment that the reference is intended to cover.

Harassment

8.2 A member should, under no circumstances, promote or seek to promote his or her services, or the services of another member, in such a way or to such an extent as to amount to harassment of a prospective client.

Cold Calling

8.3 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 in itself unprofessional conduct, it may lead to harassment within paragraph 8.2 above. Moreover, repeated cold calling may become offensive and lead to complaint.

Subject to the above, unsolicited promotional or technical material may be sent to a non-client.

A member may send a letter introducing his or her firm and its range of services to another professional adviser, such as a solicitor or accountant, and follow it up by a telephone call or visit.

Introductions

- 8.4 A member should not give or offer any commission, fee or reward to a third party, not being either his or her employee or another adviser governed by the ethical standards comparable to those observed by members in return for the introduction of a client.

9. COMMUNICATION WITH EXISTING ADVISER OF PROSPECTIVE CLIENT

When a member is first approached by a prospective client he should explain that he has a professional duty, if asked to act, to communicate with any existing adviser. When asked to act the member should ask the client to inform any existing adviser of the proposed change and, at the same time, to give the latter written authority to discuss the client's affairs with the member. The member should then write to the existing adviser, seeking information which could influence his decision as to whether or not he may properly act.

Where the existing adviser does not respond within a reasonable time the member should endeavour to contact the existing adviser by some other means, for instance by telephone. Should this fail, and where the member has no reason to believe there are untoward circumstances surrounding the proposed instruction, the member may accept the instruction.

10. CONFLICTS OF INTEREST

Introduction

- 10.1 A member must, at all times, maintain his professional independence. Accordingly, a member must not act in circumstances where there is or is likely to be a significant risk of his professional judgement being affected by a conflict of interests. In addition to remaining independent, it is also important that the member is seen to be so by the clients, the authorities and third parties.

Two types of conflict

- 10.2 This section deals with two types of conflict of interest:-

- (a) a member must not act where the member's own interests conflict with the client; and
- (b) a member must not act where a conflict of interests (or a significant risk of conflict) arises between two or more clients.

Conflict between a member and the client

- 10.3 A member must not accept or continue an engagement in which there is or is likely to be a significant conflict of interests between a member and the client. Whether such a conflict exists or is likely to arise will depend on the circumstances.

Situations where a member may be in conflict with the client

10.4 The following is a list of examples of situations where a member may be in conflict with the client, but the list is not exhaustive:

- (a) *Financial involvement with the client:* this could arise in a number of ways, for example holding shares in the client company or the making of loans to or receiving them from a client. Not every financial involvement with the client will result in a member being in conflict with the client. Whether such a conflict arises will depend upon the nature and extent of the financial involvement.
- (b) *Acceptance of goods, services or hospitality from a client:* this could influence a member's independence where the benefit received by the member is substantial. However, a conflict should not arise where the member receives a benefit which is modest or on terms similar to those generally available to the employees of the client.
- (c) *Receipt of commission or other benefit from a third party:* a member should not allow his or her judgement to be swayed by the fact that he will receive a commission, fee, reward or other benefit from a third party. The client should, in any event, be informed in writing of any such commission, fee, reward or other benefit which may be received by the member.
- (d) *Family or personal relationships:* a member must consider whether any personal or family relationship which he may have with the client would inhibit his or her ability to advise the client properly and impartially.
- (e) *Claims against a member:* if a client makes a claim against a member or notifies an intention to do so, or if the member discovers an act or omission which would justify such a claim, the member is under a duty to inform the client that independent advice should be sought at an early stage. The member should also inform his professional indemnity insurers and seek their advice. In such circumstances, the member should carefully consider whether he can continue to act for the client.

Conflict between the different clients:-

10.5

- (a) A member who is asked to act for both parties to a transaction should normally refuse to do so. However, this may present difficulties if both parties are existing clients.
- (b) Where the member is asked to act for both parties to a transaction and the parties are existing clients of the member, the member has three choices:-
 - To act for neither party: this is often the best course of action because of the potential conflict of interest between the parties. If the member is in any doubt as to whether acting for both parties would be in their best interests, he should act for neither.
 - To advise both clients of the conflict and to give each of them the opportunity to consider whether or not they wish the member to act or if 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 and provided that no preference is shown in advising one against the other. Sometimes, this may be difficult but, in practice, there may be sufficient “mutuality of interest” between the parties to allow this course to be followed.

- 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: in such cases it will usually be appropriate to inform both clients of the potential conflict and then to act only for the client who first sought advice. The member should be wary of changing allegiance after accepting instructions. 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.

11. MEMBERS IN EMPLOYMENT

Employees

- 11.1 These 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. An employed member should ensure that there is nothing in his contract of service which precludes him from complying with these Guidelines. 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.

Employees acquiring knowledge of taxation irregularities

11.2

- (a) An employed member who is responsible for dealing the employer’s taxation liabilities directly 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 an error or irregularity on the part of the employer, the member is required to draw the employer’s attention to the possible consequences of failure to disclose and to recommend the earliest possible voluntary disclosure.
- (b) An employer’s refusal to disclose may place the member in a difficult position. In such a case the member should refer to Section 4 (Acquiring knowledge of VAT errors and irregularities) and, if appropriate, he should consult with the Institute or seek specialist legal advice.
- (c) Even if not directly involved in compliance work for the employer, a member who becomes aware of an error or irregularity must adopt a similar stance.

12. MEMBERS WHO ARE SERVING OFFICERS OF HMRC

Members of the Institute who are also serving employees of HMRC should at all times discharge their responsibilities with integrity and within the guidelines of the Taxpayers Charter. HMRC members may also by virtue of their employment hold privileged or confidential information which should not unfairly influence or prejudice their dealings with other members of the Institute.

13. INSTRUCTING COUNSEL AND PAYMENT OF COUNSEL'S FEES

Instructions

- 13.1 Members of the Institute were given license to instruct barristers directly in 1999. Members may instruct barristers direct for advice in matters of a kind which fall generally within the professional expertise of the member. In general, save as mentioned below, the licence authorises members to instruct counsel to appear before the VAT and Duties Tribunals, but does not allow members to instruct counsel to appear in the County Court, Crown Court, Supreme Court, The Privy Council, the House of Lords, the Judicial Committee or the Employment Appeals Tribunal.

Since 2002, members' access to the Bar has been extended to allow members to instruct a barrister on an appeal in a tax matter to the High Court and Court of Appeal, where the member conducted that case (either representing the clients themselves or instructing a barrister) before General Commissioners' and Special Commissioners' Hearings or the VAT and Duties Tribunal.

Members may instruct barristers direct provided that the instructing member has undergone a suitable course of training on how to prepare such instructions.

Rules, Regulations and Terms of Work for licensed access matters are available from the Bar Council website: www.barcouncil.org.uk.

When instructing a barrister it is the member's responsibility to ensure so far as practicable that adequate instructions, supporting statements and documents are sent to counsel in good time. Also the barrister's attention should be drawn to any relevant time limits by the member endorsing a note in manuscript on the front page of the letter of instructions or on the back of the brief and also by informing the barrister's clerk over the telephone. Guidance Notes for instructing barristers in licensed access matters are available on the Bar Council website <http://www.barcouncil.org.uk>. Guidance notes for members of the Institute who wish to instruct a barrister to represent a client in proceedings in the High Court or above are available from the Institute.

Conferences

- 13.2 Where necessary and practicable, the member should arrange for conferences with counsel to enable the barrister to clarify the instructions by direct discussion with the member and/or the person or persons on whose behalf the member is acting, to discuss the facts, evidence and law with the member, and to give advice more directly than is possible in writing.

Attendance

- 13.3 Where counsel has been instructed to appear before a court or tribunal, the instructing member is under a duty to attend or arrange for the attendance of a responsible representative throughout the proceedings, save that attendance may be dispensed with in cases where the barrister who is instructed is satisfied that it is reasonable in the particular circumstances of the case that he should be unattended and, in particular, that the interests of the client and the interests of justice will not be prejudiced.

Members may not abrogate their responsibility to clients by instructing counsel.

Payment of Fees

- 13.4 Members will normally be contractually liable for payment of Counsel's proper fees. members are also personally liable as a matter of professional conduct for the payment of counsel's proper fees, whether or not they have been placed in funds by the client. This principle applies equally to members who are employed by non-members. However, a member who is employed should ensure that counsel and counsel's clerk are made aware at the outset of the matter that the member is so employed.

Disputes as to counsel's fees may be referred to a Joint Tribunal consisting of a Member of the Council of the Institute and a Queen's Counsel nominated respectively by the President of the Institute and the Chairman of the Bar.

14. CONTINUING PROFESSIONAL EDUCATION

[The Institute is currently reviewing the rules relating to CPD. Until members are advised of the amended rules the following will continue to apply.]

About CPD

- 14.1 The ever-changing technical and professional environment of the Indirect Tax Specialist demands that members must constantly be up-dating their knowledge and skills in order to maintain their professional competence.

It is not possible to achieve this purely through work experience, and effective CPD is one way in which members can ensure that they are maintaining, deepening and extending their professional and technical expertise.

Time spent by a member in assimilating knowledge on professional, technical and managerial subjects relevant to his or her own work, is considered to be an indication of CPD achievement.

All members owe it to themselves, and their fellow professionals, to ensure that they are professionally up-to-date and that the reputation and value of their qualification is safeguarded.

In order to offer a proper service to employers and clients, particularly in areas affecting the public interest, it is important that members demonstrate their commitment to a high standard of professional and technical competence.

The Institute requires all members to demonstrate such a commitment to CPD based on these Guidelines.

Achieving CPD

- 14.2 Because of the wide range of professional activities of its membership, the Institute relies on members and their firms to decide the relevance and usefulness of any CPD programme to their own circumstances.

Normally CPD will be of a technical nature. It is recognised, however, that it may be appropriate to include as an element of the CPD programme, time spent on the development of business, interpersonal or management skills.

A distinction can be made between “structured” and “unstructured” CPD. Structured CPD can be achieved through interaction with other individuals (not necessarily other members). For example, attendance at technical meetings, seminars, lectures, courses (including pre-course/meeting preparation) could constitute structured CPD. It may also be achieved through distance learning, where the course is assessed and/or leads to a further qualification and this can include some online seminars. Research for a new piece of work is also considered to be a structured activity since the knowledge gained will be actively applied.

Unstructured CPD will normally be achieved through private reading and study. It will usually be undertaken as part of a regular and gradual development programme.

Detailed examples of structured and unstructured CPD can be found in the examples at the end of these Guidelines. It is for individual members and their firms to decide what subject matter is useful and relevant to their needs.

Assessing CPD

- 14.3 To help in judging and assessing CPD achievement a points system is maintained. Members are required to undertake an average of 150 points each year - with three points being recorded for each hour of structured CPD and one point for each hour of unstructured activity (see examples in Annex B below). The annual requirement can be met by averaging this over any two consecutive years. Members are required to achieve at least 25 per cent of their CPD (i.e., 38 points/roughly two days) through structured activities.

Wef 1st January 2010 this system will be changed from one of points to one of hours. The minimum requirement for members will be 80 hours CPD per calendar year of which a minimum of 12 hours must be structured training and the remainder either structured or unstructured training. The annual requirement can be met on an averaging basis over any two years.

Recording and reporting CPD

- 14.4 Members will be required to maintain their own annual record of CPD undertaken and be able, when required, to confirm to the Institute that they have complied annually with the CPD Guidelines. If this has not been the case, it will be up to the individual to explain the reasons behind this. In addition, members should be prepared to explain the relevance of their CPD to their personal professional development. The Institute reserves the right to inspect and verify the member’s CPD records.

An example of how to maintain a CPD record is included at Annex E to these Guidelines.

Members are advised not to discard any of their CPD records until these are at least ten years old.

Examples of CPD

14.5 These examples below in 14.6 to 14.8 are designed to provide members with a guide to what may and may not constitute unstructured and structured CPD.

The examples are by no means exhaustive. Members should always be aware that the purposes of CPD is to maintain, deepen and extend their own professional competence and that CPD should be relevant to their own specific needs.

Unstructured CPD

14.6

(a) Individual home study

Examples include the general viewing of videos and television programmes, the use of audio tapes, participation in computer based learning programmes, distance learning, or any alternative form of learning where there is no interaction with other individuals, and no assessment (in the form of a further qualification) is provided.

Providers: Independent companies

Subject matter: Technical issues
May be VAT or duties related or appropriate to members'
current employment
Interpersonal skills

(b) Reading

It is accepted that general reading of indirect tax press is important and will normally constitute a major part of the CPD undertaken. Credit will only be given for technical articles.

It should be recognised that professional journals and magazines, etc., comprise a mix of both general and technical items. It is for the individual to decide to what extent particular items constitute CPD, and to record on their CPD form, those specific items.

Mere subscription to a publication does not constitute CPD.

Sources: Technical digests
Technical bulletins and updates
Professional briefings in professional journals
Technical manuals

Subject matter: Technical issues
Indirect tax or job related
Interpersonal skills

Structured CPD

14.7

(a) Courses, conferences, seminars and structured discussion meetings where these are controlled by a competent individual. This can include some online seminars/technical updates.

Providers: Likely to be Institute or independent providers
These could include internal technical meetings or Institute Branch Meetings

Subject matter: Technical and regulatory aspects (knowledge and application); and development of business, interpersonal and management skills

Allocation of CPD Credits Basic or introductory courses will not attract CPD credits, as members will already be expected to have reached a higher level of technical knowledge as a pre-requisite to joining the Institute unless the course is on an indirect tax outside of the members normal expertise.

Technical or more advanced courses conferences or seminars such as those dealing in a specific area of indirect taxation (i.e. partial exemption, land and property, HMRC duties, etc) will attract CPD credits at the level of three points for each hour of structured CPD.

Examples of the type of technical or advanced course which are acknowledged as qualifying for structured CPD credits are included at the end of these Guidelines. These examples are provided to members as a guide and are by no means exhaustive.

(b) Pre-course reading

Material provided in advance of a structured discussion, seminar or course is an example of this.

Providers: Institute, firms or companies and independent providers

Subject matter: Essential and specialist technical knowledge
Business, interpersonal and management skills

(c) Attendance at technical meetings

The committees should be recognised for their technical development within the profession.

Providers: Likely to be independent providers, firms or companies but could include branch meetings of the Institute

Subject matter: Technical knowledge

(d) Research and lecture preparation

This may include lecture preparation, presentation, research for a publication or article in the member's own name or research (including relevant reading) for a new piece of work to be undertaken.

Provider: The individual member in response to a demand from their employer or from the market, e.g., publications, conference organiser

Subject matter: This covers “specialist” knowledge and possibly the application. It is the depth of knowledge that is most pertinent to attaining CPD points
In all cases the depth of knowledge required should be more advanced than that required for the Institute’s professional examination
Only the first presentation of a lecture is worthy of credit

(e) Additional Qualifications

This may be through private study, distance learning or attendance at formal courses.

Providers: The Institute of Indirect Taxation or independent providers

Subject matter: Specialisation in particular accounting related field, e.g., insolvency, taxation

Higher management qualifications (members would need to assess the technical content of such courses to determine what could be considered relevant CPD)

Activities Not Considered to be Structured or Unstructured CPD

14.8	Normal working activities	-	Any activities carried out as part of a member’s(other than research) daily work
	General reading of the	-	In excess of 25% of unstructured CPD in any one year tax press
	Social activities		For example, annual dinners (even if they have prominent Institute members or office holders as guest speakers)
	Internal meetings		Held specifically for partners/managers and staff, ie, where the purpose is to acquaint participants with the mechanics and administration of the organisation.
	Discussions		Career development discussions Board/Partners’ meetings, AGMs, EGMs and similar (where the subject matter is not technical).

Of a promotional nature for the business, practice or service concerned.

Subscription to journals -
or CPD programmes
credit

Relevant reading and appropriate attendance/
viewing must accompany this to achieve

14.9 MEMBERS UNABLE TO COMPLY WITH THE RULES

Members who are experiencing real difficulty in complying with the Rules and wish to claim some exemption should make their request in writing. This should include brief details for the request and be addressed to the Secretary General.

15. DESIGNATORY LETTERS

A member is entitled to use designatory letters as awarded by the Institute to describe himself but should not allow others with whom he is associated in business but who are not so entitled to represent themselves as members of or in any way associated with the Institute.

16. THE NAMES AND LETTERHEADS OF PRACTISING FIRMS

Definition

16.1 For the purpose of this statement the term 'firm' includes sole practitioner, a partnership, and a corporation the main business of which is the provision of services customarily provided by indirect tax advisers and the term 'letterhead' means any of the firm's notepaper and documents used by the firm for communicating with clients or other parties.

General

16.2 Subject to the following guidance, a member may practise under whatever name or title he or she sees fit.

A practice name should be consistent with the dignity of the profession in the sense that it should not project an image inconsistent with that of a professional practice bound to high ethical and technical standards.

Misleading Information

16.3 It would be misleading for a firm with a very few offices to describe itself as 'international' merely on the ground that one of them was overseas. Similarly it would be misleading for a sole practitioner to add the suffix 'and Associates' to the name of his or her practice unless formal arrangements were agreed with two or more consultants or firms.

A practice name would be misleading if in all the circumstance there was a real risk that it could be confused with the name of another firm, even if the member(s) of the practice could lay justifiable claim to the name.

There is no objection to membership of an association (other than the Institute) being indicated on the firm's notepaper or elsewhere in proximity to the practice name.

However, the name of the firm should be clearly distinguishable from the name of such association.

Legal Requirements

- 16.4 A practice letter head must comply with partnership and company law as appropriate, and with the Business Names Act 1985.

New and Changed Names

- 16.5 Save where the name of a firm is based on the names of past or present members of the firm itself or of a firm with which it has merged or amalgamated, when a new firm is to be set up and when it is desired to change the name of an existing firm member are recommended, as a means of ensuring compliance with this guidance, to consult the Institute, as to the propriety of the proposed name.

Persons Named on Letterheads

- 16.6 It should be clear from the letterhead of a practice whether any person named thereon, other than persons named only in the name of the firm, is a partner of the practice, a sole practitioner or, in the case of a corporate practice, a director.

Firms should distinguish Institute members mentioned on the letterhead of a practice from persons not entitled to be so described by the use of designatory letters or otherwise.

No person name on the letterhead of a practice should be described by a title, description or designatory letters to which he or she is not entitled.

17. DISCIPLINE

Complaints

- 17.1 Complaints about a member of the Institute will be referred to the Ethics and Disciplinary Committee (“the Committee”) which will consist of at least three members of the Council of the Institute of which one will be the Chairman of the Committee. The Committee may receive complaints from Members’ clients, other members of the Institute or HMRC.

Procedure

- 17.2 The Chairman of the Committee will notify the complainant and ask him or her to give written particulars together with any documentary evidence of the complaint within 20 working days of the complainant receiving such notice.

Upon the Chairman of the Committee receiving such particulars and evidence from the Complainant, he will forward copies to the member concerned who will be asked to provide any explanation or comment in writing within 20 working days.

Upon the Chairman of the Committee receiving any such explanation or comment from the member concerned, he will forward copies to the complainant who will be asked to provide any explanation or comment in writing within 15 working days.

Upon the Chairman of the Committee receiving any such explanation or comment from the complainant, he will forward copies to the member concerned who will be asked to provide any explanation or comment in writing within 15 working days.

The Chairman of the Committee may extend the above time limits where it appears to him to be just to do so.

The Committee will not consider any complaint unless:-

- (a) the Chairman of the Committee considers that the written particulars and any evidence of the complaint provided by the complainant establish a prima facia case; and
- (b) copies of such written particulars and any such evidence have been forwarded to the member concerned.

The complaint, any explanation or comment thereon from the member concerned, any response to such explanation or comments from the complainant and any reply to such response from the member concerned will be considered at a meeting of the Committee as soon as practicable and a decision made, unless the Committee consider that, in the interest of justice, it would be appropriate for the matter to be dealt with by way of an oral hearing, in which event a hearing will be arranged as soon as practicable in accordance with such rules and procedures as the Committee may proscribe. The Committee's decision will be communicated in writing to the complainant and the member concerned as soon as practicable.

Disciplinary Measures

17.3 If the Committee decides that the complaint is justified they may:-

- (a) reprimand the member concerned;
- (b) suspend the membership of the member concerned for such period as they consider to be appropriate; or
- (c) expel the member concerned from the Institute.

Appeals

17.4 Any member receiving notice from the Committee that the complaint against him has been upheld may appeal to the Appeal Committee of the Institute ("the Appeal Committee") by giving written notice within 30 days of receipt of such notice from the Committee. Such appeal shall be by way of reconsideration or rehearing and the procedure which shall have applied to the Committee when it considered the complaint shall also apply, in so far as may be appropriate, to the consideration or hearing of the appeal by Appeal Committee.

The Appeal Committee shall consist of not less than three members of the Council of the Institute, of which one shall be the Chairman of such Committee. No member of the Ethics and Disciplinary Committee who shall have considered the complaint which is the subject of the appeal may serve on the Appeal Committee considering the appeal.

ANNEX A

EXAMPLES OF SOME STRUCTURED COURSES/CONFERENCES and ORGANISERS WHERE COURSES/CONFERENCES ATTRACT CPD CREDITS

If you have any queries please email enquiries@theiit.org.uk or call +44(0)1883 730658

Organiser	Name of course/conference	Length	Frequency
IIT	Annual Conference (Delegate)	1 day	Annual
IIT	Annual Conference (Speaker)	1 day + preparation time	Annual
IIT	Branch Meeting (Speaker)	½ day + preparation time	Monthly/ Quarterly
IIT	Branch Meeting (Attendee)	½ day	Monthly/ Quarterly
CCH/Croner/ Wolters Kluwer	Courses and conferences appropriate to IIT members		
IBC	Courses and conferences appropriate to IIT members		
Tolley (LexisNexis)	Courses and conferences appropriate to IIT members On line seminars eg. VAT updates and Seminars on line		

ANNEX B

THE INSTITUTE OF INDIRECT TAXATION

Record of CPD undertaken for the
year:

Member's Name: Membership
No:

STRUCTURED CPD

Date	Activity	Number of Hours (x 3 points per hour)	Number of Points
Month	1. Title of course attended		
	2. Brief description of subject matter covered (if not apparent from the title)		
	3. Name of Provider		
Month	1. Title of Technical Meeting		
	2. Brief description of subject matter covered (if not apparent from the title)		
	3. Name of Provider		
Month	1. Pre course reading		
	2. Indicate title of course		
	3. Brief summary of reading content		
Month	1. Research for new piece of work		
	2. Subject area covered		
	3. Publications referred to		
Month	1. Lecture/conference preparation		
	2. Title of lecture		
	3. Summary of topics covered		
	4. Name of conference where lecture given (+ date)		
Month(s)	1. Additional qualifications		
	2. Title of qualification being		

Date	Activity	Number of Hours (x 3 points per hour)	Number of Points
	studied for		
	3. Topics covered		
	4. Method of study (eg course reading)		
Month	1. Viewing of dvd/on line programme (only when used as a discussion group or basis of future discussion group)		
	2. Title of programme		
	3. Subject matter		
Month	1. Private reading		
	2. Title of publications		
	3. Topics covered		
Month	1. Viewing of dvd/on line programme etc (with no subsequent interaction with other individuals on the content)		
	2. Title of programme		
	3. Subject matter		

Annual Sub-total of Structured CPD Points: =

Annual Sub-total of Unstructured CPD Points: =

Total Annual CPD Points

- Note:**
1. The purpose of this specimen CPD Record is to help members format their own CPD details. It must be stressed however that this record is for *guidance only* and the examples are *by no means exhaustive*.
 2. The CPD Guidelines require that a Member achieves an average of 150 points each year, of which at least 25 per cent should be achieved through structured activities.

