



THE INSTITUTE OF INDIRECT TAXATION

Ethical Rules and Practice Guidelines

2011

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, whether electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of The Institute of Indirect Taxation except in accordance with the provisions of the Copyright, Designs and Patents Act 1988.

The Institute of Indirect Taxation does NOT accept any responsibility for any loss or damage suffered by any person in consequence of them acting or refraining from acting as a result of anything contained in or omitted from this publication.

THE IIT 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.

The members of any professional body have a public interest role, both in furthering the aims of their profession and in ensuring that the public can deal with members confident that they will be treated fairly. The Ethical Rules are the principles that should underlie a member's work. They are a bit like the rules of club. They are a requirement that must be complied with. A member who ignores them can expect to face disciplinary action. The Guidelines are intended partly as an aid to the interpretation of the Ethical Rules and partly as suggestions to help to run a practice. Members should not do anything to bring discredit to the Institute or bring the profession into disrepute.

ADOPTED: 4 JANUARY 2011

CONTENTS

1	INTRODUCTION.....	1
	PART 1: THE ETHICAL RULES	3
2	OVERVIEW OF THE ETHICAL RULES	3
	HONESTY.....	3
	OBJECTIVITY.....	3
	PROFESSIONAL COMPETENCE	4
	CONFIDENTIALITY	4
	PROFESSIONAL BEHAVIOUR	6
	RESPONSIBILITY TO THE INSTITUTE.....	6
	DEALING WITH CLIENTS' MONEY.....	7
	PROFESSIONAL INDEMNITY INSURANCE COVER.....	7
	CONTINUING PROFESSIONAL DEVELOPMENT (CPD).....	7
	PART 2: PRACTICE GUIDELINES	7
3	OTHER BODIES' PROFESSIONAL GUIDELINES	7
4	RELATIONSHIP WITH CLIENT	8
5	LEGAL PROFESSIONAL PRIVILEGE ('LPP')	9
6	FISCAL OFFENCES AND MONEY LAUNDERING	10
	Members In Employment.....	11
7	HUMAN RIGHTS.....	11
8	DEALINGS WITH HMRC IN RELATION TO STAMP TAXES	11
9	OBTAINING PROFESSIONAL WORK	12
	Practice Promotion	12
	Harassment	12
	Cold Calling.....	13
10	COMMUNICATION WITH EXISTING ADVISER OR PROSPECTIVE CLIENT.....	13
11	CONFLICTS OF INTEREST	13
12	MEMBERS IN EMPLOYMENT.....	13
	Employees	13
	Employees Acquiring Knowledge Of Default Or An Unlawful Act	14
	Employees Acquiring Knowledge Of Taxation Irregularities.....	14
13	MEMBERS WHO ARE SERVING OFFICERS OF HMRC.....	15
14	INSTRUCTING COUNSEL AND PAYMENT OF COUNSEL'S FEES.....	15
	Instructions	15
	Conferences.....	16
	Attendance	16
	Payment Of Fees	16
15	DESIGNATORY LETTERS	17
16	THE NAMES AND LETTERHEADS OF PRACTISING FIRMS	17
	Definition.....	17
	General	17
	Misleading Information	17
	Legal Requirements	18
	New And Changed Names.....	18

	Persons Named On Letterheads	18
17	CLIENTS' MONEY	18
18	FEES	20
19	DISCIPLINE	20
20	CONTINUING PROFESSIONAL DEVELOPMENT ('CPD')	21
21	MEMBERS UNABLE TO COMPLY WITH THE RULES	21
Appendices		
1	Rules for Compulsory Continuing Professional Development	22

1. **INTRODUCTION**

Scope

- 1.1 The purpose of this guidance is to assist and advise members on their professional conduct in relation to taxation.
- 1.2 Chapter 2 sets out the ethical rules which govern the conduct of members.
- 1.3 Chapters 3-18 provide guidance on a number of practice issues, as well as expanding the advice on the ethical rules in a number of areas. Discipline and continuing professional development are addressed in chapters 19 and 20 respectively. Chapter 21 deals with the position of members who for some reason cannot comply with these Rules.
- 1.4 The situations addressed in these Rules are not intended to be, nor should they be interpreted as being, an exhaustive list of all circumstances experienced by members which may create threats to compliance with the ethical rules. Consequently, it is not sufficient for members merely to comply with the examples presented; rather they should observe the ethical rules across all their professional activities.
- 1.5 This guidance includes practical advice about ethical and legal issues. If in doubt about the ethical or legal considerations of a particular case, a member should seek advice from his professional body and, where appropriate, his legal advisers. The professional bodies take no responsibility for failure to seek advice where appropriate.
- 1.6 The guidance supersedes all previous editions and is based on the law as at 1 October 2010. Members should satisfy themselves that there have been no subsequent changes which impact on how this guidance applies to their particular facts and circumstances.
- 1.7 While every care has been taken in the preparation of this guidance the Institute of Indirect Taxation and all those involved in the preparation and approval of this guidance do not accept any responsibility for any loss occasioned by reliance on it.

Application to all members

- 1.8 While this guidance is addressed primarily to members in a professional practice, the principles apply to all members whether or not they are in practice.
- 1.9 Where a member's employer is not prepared to follow the ethical approach set out in this guidance (despite the member's attempts to persuade him to do so) the member should take advice from his professional body. He should also consider whether he should seek legal advice.

- 1.10 A member who, for example, is based overseas or who is acting for a client who is subject to the tax jurisdiction of another country could be subject to different legal obligations under the tax law and general law of that country. Subject to that caveat, a member should apply the principles set out in this guidance to professional activities with non UK aspects.

Interpretation

- 1.11 In this guidance

- "Client" includes, where the context requires, "former client" and may in some cases refer to colleagues of a member (working in an "in-house" role for example)
- "Member" (and "members") includes "firm" or "practice" and the staff thereof
- The masculine gender imports the feminine gender; and
- Words in the singular include the plural and words in the plural include the singular.

Abbreviations

- 1.12 The following abbreviations have been used:

ACCA	The Association of Chartered Certified Accountants
ICAEW	The Institute of Chartered Accountants in England and Wales
CEMA 1979	Customs and Excise Management Act 1979
CIOT	The Chartered Institute of Taxation
FA	Finance Act
GAAP	Generally Accepted Accounting Practice
HMRC	HM Revenue and Customs
HRA 1998	The Human Rights Act 1998
ICAS	The Institute of Chartered Accountants of Scotland
LPP	Legal Professional Privilege
POCA 2002	Proceeds of Crime Act 2002
STC	Simons Tax Cases
STEP	The Society of Trust and Estate Practitioners

TA 1988	Income and Corporation Taxes Act 1988
TMA 1970	Taxes Management Act 1970
VATA 1994	Value Added Tax Act 1994

PART 1: THE ETHICAL RULES

2. OVERVIEW OF THE ETHICAL RULES

2.1 Members must observe the following ethical rules:

- **Members must be honest**
- **Members must be objective**
- **Members must not undertake professional work which they are not competent or qualified to perform**
- **Members must respect the confidentiality of information acquired as a result of professional and business relationships**
- **Members must avoid doing anything that could bring the Institute into disrepute**
- **Members must take care with clients' money and assets which must be maintained separately from members' own funds**
- **Members must maintain adequate professional indemnity insurance cover**
- **Members must keep their professional knowledge up to date as required by the Institute's CPD scheme**

Each of these ethical rules is discussed in more detail below in the context of indirect taxation services.

HONESTY

2.2 A member must act honestly in all his dealings with his clients, the tax authorities and any other parties and do nothing knowingly or negligently that might mislead.

OBJECTIVITY

2.3 A member may be exposed to situations that could impair his objectivity. It is impracticable to define and prescribe all such situations. Relationships which

bias or unduly influence the professional judgement of the member should be avoided.

PROFESSIONAL COMPETENCE

- 2.4 A member has a duty to serve his clients' interests within the relevant legal and regulatory framework and provide them with quality advice on managing their tax affairs. Accordingly, a member has a professional duty to carry out his work within the scope of the engagement with the requisite skill and care.
- 2.5 A member must carry out his work with a proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which he is not competent to perform. In such circumstances he should seek help from an appropriate specialist.
- 2.6 A member who is giving what he believes to be a significant opinion to a client should consider obtaining a second opinion to support the advice. Where the second opinion is to be obtained externally, due regard must be had to client confidentiality.
- 2.7 A member should not make exaggerated claims for the services that he can offer or make disparaging references or unsubstantiated comparisons to the work of others.
- 2.8 On occasions there may be more than one tenable interpretation of the law. Each case should be considered on its own individual facts and circumstances. In principle it is possible to put forward different tenable positions for different clients with different circumstances.

CONFIDENTIALITY

- 2.9 The duty of confidentiality is both a professional duty and a legal duty. It may be an express term of the engagement letter between the member and the client. Where it is not an express term, a court would in most circumstances treat confidentiality as an implied contractual term.
- 2.10 In general a member may only disclose information without his client's consent when required to do so by law. The anti money laundering regime provides a statutory code to determine in which circumstances:
- the public interest in reporting knowledge or suspicions of criminal activity to the authorities should take precedence; or
 - the public interest in clients receiving advice in confidence should take precedence.

Members must follow HMRC guidelines [<http://www.HMRC.gov.uk/agents/laundrying.htm#2> in conjunction with the Consultative Committee of Accountancy Bodies' guidance at <http://www.ccab.org.uk/PDFs/CCAB%20guidance%202008-8-26.pdf>

2.11 The duty of confidentiality is rigorously safeguarded by the courts and voluntary disclosure of confidential material concerning a client or employer should only be made where it is considered adequate, relevant and reasonably necessary for the administration of justice. In other words, when the member considers that it would otherwise impair the pursuit of his legitimate interests and rights if he was prevented from disclosing the information in all the circumstances. Only the minimum amount of information necessary to protect those interests may be disclosed. Examples of such circumstances may include, but are not limited to, the following:

- To enable the member to defend himself against a criminal charge or to clear himself of suspicion;
- To enable the member to defend himself in disciplinary proceedings;
- To resist proceedings for a penalty or civil proceedings in respect of a taxation offence, for example in a case where it is suggested that the member knowingly assisted or induced a client or employer to make or deliver incorrect returns or accounts;
- To resist a legal action made against him by a client or third party;
- To enable the member to sue for unpaid fees;
- To enable the member to sue for defamation arising from allegations of professional incompetence.

2.12 If there is any doubt that the above principle would apply, or there is the risk of challenge by a client or employer, the member is strongly recommended to seek legal advice. In particular, in the case of potential proceedings against the member in respect of a taxation offence, it might be appropriate for the member to ask HMRC to use an appropriate statutory power to secure access to the information required, so that there is a clearer authority (as required by law) for overriding the member's normal duty of confidentiality.

2.13 A member acquiring or receiving confidential information in the course of his 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 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.

PROFESSIONAL BEHAVIOUR

- 2.14 A member should comply with all relevant legal obligations when dealing with a client's tax affairs and assist his clients to do the same. Even if there is no legal duty to act in a particular way, the member should always act in a way that will not bring the Institute of Indirect Taxation in disrepute.
- 2.15 A member should behave with courtesy and consideration towards all with whom he comes into contact in a professional capacity.
- 2.16 Serving the interests of his clients will, on occasion, bring a member into disagreement or conflict with HMRC. A member should manage such disagreements or conflicts in an open, constructive and professional manner. However, a member should serve his clients' interests within these constraints as robustly as circumstances warrant.
- 2.17 A member's own tax affairs should be kept up to date. Neglect of the member's own affairs could raise doubts within HMRC as to the standard of the members' professional work and could bring the Institute of Indirect Taxation into disrepute.
- 2.18 A member must not undertake within their professional practice business activities which are incompatible with those normally undertaken by an indirect tax adviser.
- 2.19 A member must only seek or obtain work in a professional manner.

RESPONSIBILITY TO THE INSTITUTE

- 2.20 A member must at all times act in a way that cannot bring the Institute into disrepute.
- 2.21 A member must provide such information as is reasonably requested by the Institute and must reply to correspondence from the Institute requiring a reply, without undue delay.

- 2.22 A member must inform the Institute without delay if they:
- are convicted of a criminal offence (other than a “summary only” road traffic offence);
 - are notified of disciplinary action commenced against them by another professional body of which they are a member;
 - have a bankruptcy order made against them;
 - enters into a voluntary arrangement with their creditors; or
 - are disqualified as a director, or enters into a disqualification undertaking.

DEALING WITH CLIENTS’ MONEY

- 2.23 Care must be taken with clients’ money and assets which must be maintained separately from the members’ own funds. A member must ensure that clients’ money is properly accounted for in accordance with the Practice Guidelines in Chapter 17.

PROFESSIONAL INDEMNITY INSURANCE COVER

- 2.24 A member has a duty of care to his clients when carrying out work on their behalf (see Chapter 4). A member is liable in damages for his own professional negligence and that of his employees and subcontractors. A member must protect his clients, his practice and himself by having adequate professional indemnity insurance cover.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

- 2.25 A member of the Institute who is involved with indirect taxation either as a practitioner, an in-house advisor or as an academic etc, is required to keep their professional knowledge up to date and must fulfil the requirements of the Institute’s CPD scheme. These are set out in Appendix 1.

PART 2: PRACTICE GUIDELINES

3. OTHER BODIES’ PROFESSIONAL GUIDELINES

The IIT, ICAEW, CIOT, ICAS, STEP and ACCA have jointly agreed a set of Professional Guidelines covering tax advisors generally. Those augment these Guidelines and members may also wish to refer to them as appropriate. They can be found at <http://www.theiit.org.uk/PCRT2011.pdf>

4. **RELATIONSHIP WITH CLIENT**

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.

- 4.1 Detailed guidance notes on engagement letters for tax practitioners, formulated jointly by a number of UK professional bodies including the IIT can be found at <http://www.theiit.org.uk/Engagement.pdf> (Engagement Letters for Tax Practitioners) and members are encouraged to refer to these.
- 4.2 If the client is a corporate body, the client is the company and not the directors, although it is likely that instructions will be given on behalf of a company by a director or another responsible person. Where a default of any kind is discovered, the matter should be raised at the appropriate level in the client organisation. Where it would appear that directors' actions have resulted in tax liabilities being underdeclared whether accidentally or deliberately, references in these guidelines to the "client" should be regarded in the first instance as referring to the directors but, depending on the circumstances, members may need to seek recourse in the fact that their client is actually the company. 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. However, if the member has cause to believe that this advice will not be brought to the attention of the board as a whole, it should also be given to the remaining members of the Board, and then, if appropriate, also to shareholders.
- 4.3 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.
- 4.4 The other bodies' guidelines referred to at Chapter 3 above 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 those guidelines regarding termination of relationships with the client.
- 4.5 If a member believes that a relationship with the 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.

- 4.6 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 that 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.
- 4.7 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.
- 4.8 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.

Files and working papers

- 4.9 Members should keep copies of returns etc and organise their working papers to separate matters such as the preparation of accounts and tax returns and the provision of tax advice from those on which audit and other opinions may be expressed, because the later are normally protected from disclosure, although members should take account of the powers granted to HMRC under Schedule 36 FA 2008 as far as official requests for information from third parties generally and tax advisors in particular are concerned.

5. LEGAL PROFESSIONAL PRIVILEGE ("LPP")

- 5.1 Legal Professional Privilege arises under common law and may only be overridden if this is expressly or necessarily implicitly set out in legislation. It protects a party's right to communicate in confidence with a qualified lawyer, a solicitor, barrister or an appropriately qualified foreign lawyer¹. The privilege belongs to the client and not to the member. If a document is privileged:

- The client cannot be required to make disclosure of that document to HMRC and a member should be careful to ensure that his reasons for

¹ Following the decision of the Court of Appeal dated 13 October 2010 in R (on the application of Prudential plc and another) v Special Commissioner of income tax and another [2010] All ER (D) 132 (Oct)

advising a client nevertheless to make such a disclosure are recorded in writing.

- It must not be disclosed by any other party, including the member, without the client's express permission.

5.2 There are two types of legal professional privilege under common law:

Legal advice privilege

Documents passing between a client and his legal adviser (as described above) are privileged if they are prepared for the purposes of obtaining or giving legal advice.

Litigation privilege

Documents created for the dominant purpose of litigation are privileged. Litigation privilege may arise even where litigation has not begun, but is merely contemplated. Documents prepared by non-lawyer advisers (including tax advisers) may be privileged if brought into existence for the purposes of that litigation.

Other similar protections exist under statute law.

5.3 Whether a document is or is not privileged and protected from the need to disclosure is a complex issue, which will turn on the facts of the particular situation.

5.4 A member who receives a request for documentation, some of which he believes may be subject to privilege, should take independent legal advice on the position, unless expert in this area.

6. **FISCAL OFFENCES AND MONEY LAUNDERING**

6.1 The Money Laundering Regulations 2007 came into effect on 15 December 2007. These are partly consolidating regulations. They re-enact and repeal the Money Laundering Regulations 2003 with some modifications. They also introduce in Part 4 a new requirement for compliance with the rules to be monitored by a supervisory body. Together with the Proceeds of Crime Act 2002 these Regulations give effect to the First to Third EU Money Laundering Directives.

6.2 Detailed guidance and links to further reference materials can be found at <http://www.theiit.org.uk/ML.htm> (Money Laundering Guidance).

6.3 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 in 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

6.4 Whilst the guidelines set out in this Chapter are addressed primarily to members in practice, they apply equally to members employed in professional practice and in business.

7. HUMAN RIGHTS

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. 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.

8. DEALINGS WITH HMRC IN RELATION TO STAMP TAXES

8.1 Stamp duty is payable on the purchase of shares/securities as a paper transaction and on the purchase of property where the agreement for that was entered into but not completed before 1 December 2003. Where shares/securities are bought electronically as a paperless transaction stamp duty reserve tax is payable and is deducted automatically when the purchase is made. Although stamp duty is a voluntary tax, in the sense that HMRC has no specific 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.

8.2 In particular, Section 5 of the Stamp Act 1891 provides that all facts and circumstances affecting the liability of any instrument to stamp duty, or the amount of stamp duty with which any instrument is chargeable, are to be fully and wholly set forth in the instrument.

8.3 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.

9. **OBTAINING PROFESSIONAL WORK**

Practice Promotion

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

9.1.1 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.

9.1.2 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

9.2 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

- 9.3 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 9.2 above. Moreover, repeated cold calling may become offensive and lead to complaints.

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.

10. COMMUNICATION WITH EXISTING ADVISER OR PROSPECTIVE CLIENT

When a member is first approached by a prospective client he should use his discretion when deciding whether or not it is first necessary to communicate with an existing or previous adviser. If he decides to do so the member should ask the client to give the other adviser(s) written authority to discuss the client's affairs with the member. The member should then write to the existing adviser(s), as appropriate.

Where the existing adviser does not respond within a reasonable time the member should endeavour to contact the existing advisor 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.

11. CONFLICTS OF INTEREST

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 interest, whether that is between the member's own interests and those of the client or between two or more clients. 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.

12. MEMBERS IN EMPLOYMENT

Employees

- 12.1 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 Default Or An Unlawful Act

12.2 It is possible that an employed member, whether working in a tax practice or elsewhere, may acquire knowledge which suggests that his employer may have committed an unlawful act. In such circumstances the member should seek to establish the facts so that, as far as is possible, he has a clear understanding of the situation. He should then raise his concerns internally at an appropriate level.

Where an employer refuses to take corrective action the member is placed in a difficult position. Once a member is aware of the offence it is not acceptable for him to take no action. He could consider the following steps:

- Seek advice/guidance, for example from a legal adviser, Trade Union, Employee Support Helpline;
- Consider whether he needs to make a report to his employer's Nominated Officer as required by the Money Laundering Regulations 2003. An employee whose employer does not have a Nominated Officer should consider whether a direct report to the National Criminal Intelligence Service is necessary;
- Consider looking for alternative employment;
- Consider whether it is necessary to make a disclosure under the Public Interest Disclosure Act (whistle-blowing). A member may be protected under the Public Interest Disclosure Act 1998. Employed members should consider policies the employer has in place in relation to disclosures made under this legislation. It would be prudent to consider taking legal advice before making such a disclosure.

The member should keep a record of the personal actions he has taken in order to be able to demonstrate that he has acted properly throughout.

Employees Acquiring Knowledge Of Taxation Irregularities

12.3 The general guidelines set out in paragraph 12.2 above apply to employees acquiring knowledge of taxation irregularities. More specific guidance is that:

- 12.3.1 An employed member who is responsible for dealing with 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.
- 12.3.2 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.

13. **MEMBERS WHO ARE SERVING OFFICERS OF HMRC**

It is recognised that members of the Institute who are also serving employees of HMRC are required to discharge their responsibilities in accordance with HMRC's rules and the information published in their document entitled "Your Charter" in which are set out various taxpayers' rights and obligations and what they might expect from HMRC [<http://www.hmrc.gov.uk/charter/charter.pdf>]. HMRC members may 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. They should deal with each case on its own merits and not make assumptions about a person's knowledge or understanding of those merely because they are fellow members of the Institute.

14. **INSTRUCTING COUNSEL AND PAYMENT OF COUNSEL'S FEES**

Instructions

- 14.1 Members of the Institute were given licence to instruct barristers directly in 1999. Members may instruct barristers directly 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 First Tier of the Tax Tribunal, but does not allow members to instruct counsel to appear in the Country Court, Crown Court, Upper Tier of the Tax Tribunal, Supreme Court, The Privy Council, the House of Lords, the Judicial Committee or the Employment Appeals Tribunal.

It should be noted however that, 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 Upper Tier of the Tax Tribunal 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 First Tier of the Tax Tribunal (previous the VAT and Duties Tribunal).

Members may instruct barristers directly 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 and guidance notes for instructing barristers in those are available from the Bar Council website: <http://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 members 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 members of the Institute who wish to instruct a barrister to represent a client in proceedings in the Upper Tier of the Tax Tribunal or above are available from the Institute's website at http://www.theiit.org.uk/Licensed_access.pdf

Conferences

- 14.2 Where necessary and appropriate, the member should arrange for conferences with counsel to enable the barrister to clarify the instructions by direct discussions 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

- 14.3 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 within 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

- 14.4 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.

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, a Limited Liability 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 is permitted by law.

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 working alone 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 circumstances 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 note paper or elsewhere in proximity to the practice

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

Legal Requirements

16.4 A practice letterhead 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, members 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 If a firm's name includes either the name of or a reference to the Institute, it should be made clear in the letterhead whether any person named thereon, other than those named only in the name of the firm, is a partner of the practice, 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 named 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. CLIENTS' MONEY

17.1 A member who might receive clients' money in the course of acting on their behalf should address this possibility in any engagement letter (see <http://www.theiit.org.uk/Engagement.pdf> (Engagement letters for Tax Practitioners; Standard Terms and Conditions), paragraph 3) and should proceed on the basis of the following guidance.

17.2 '**Clients' money**' means money of any currency (whether in the form of cash, cheque, draft or electronic transfer) which a member or his firm holds or receives for or from a client, including money held by a member or his firm as stakeholder and which is not immediately due and payable on demand to the member or his firm for his/its own account. Clients money must be held in the currency in which it was received unless the client instructs otherwise in writing. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded.

- 17.3 Clients' money must be kept separate from money belonging to the member or his firm. For this reason, clients' money must be kept in a separate client account. A client account can be a current or deposit account at a bank or building society in the name of the member or his firm but it should also include the word "client" in the title of the account. Clients' money can be kept either in a general client account, or in separate client accounts each designated with the name of a specific client, or in both.
- 17.4 The following conditions apply to client accounts:
- 17.4.1 Written notice must be given to the bank concerned that all money standing to the credit of each client bank account is held by the member or his firm as clients' money, and that the bank is not entitled to combine the account with any other account, or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it on any other account of the member or his firm.
 - 17.4.2 Any interest payable in respect of sums credited to the account shall be credited to that account.
 - 17.4.3 The bank must describe the account in its records in such a manner to make it clear that the money in the account does not belong to the member or his firm.
 - 17.4.4 The bank should be required to acknowledge in writing that it accepts the terms of the notice.
- 17.5 Clients' money received by the member or his firm must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.
- 17.6 If a cheque, draft or electronic transfer includes both clients' money and non-clients' money, that cheque, draft or electronic transfer must be paid into the appropriate client account immediately and the non-clients' money must be withdrawn from the account as soon as the funds have cleared. Under no circumstances should clients' money be paid into the member's or his firm's own account.
- 17.7 Where money of any one client is in excess of £10,000 is held or is expected to be held by the member or his firm for more than 30 days, it is recommended that the money should be paid into a separate interest-bearing bank account designated as that of the client. In other cases, except where the amount of interest arising is likely to be immaterial (a matter for the member's judgement) clients' money must be deposited in an interest-bearing account. Except in the case of clients' money held by a member or his firm as stakeholder, the interest

credited to a designated client bank account must be paid to the client concerned. Unless otherwise agreed, interest earned on stakeholders' money is payable to the person to whom the stake is paid.

- 17.8 Money held in a client bank account may be withdrawn only where properly required for a payment to or on behalf of the client, including debts due to the member or his firm and agreed fees or commissions earned by the member or his firm.
- 17.9 A member or his firm must at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a client bank account, distinguishing the money of each client from the money of other clients and from firm money. Each client bank account must be reconciled against the balances shown in the clients' ledger at least at six-monthly intervals, and the records of such reconciliation must be kept for at least six years from the date of the last transaction recorded therein.
- 17.10 Members are reminded that converting or concealing criminal property or terrorist funds, for example, by allowing them to be passed through clients' accounts is a criminal offence under the money laundering legislation. However, there is no offence if a member makes a prompt report to the Serious Organised Crime Agency (SOCA) and their consent is obtained to continue with the transaction. If no decision has been received within 7 working days SOCA consent is automatically assumed in law.

18. **FEES**

- 18.1 Detailed advice on fees is given in paragraphs 55 to 64 of the guidance notes on engagement letters for tax practitioners, referred to earlier and which can be found at <http://www.theiit.org.uk/Engagement.pdf> (Engagement Letter for Tax Practitioners).
- 18.2 A member should be aware of the Tax Avoidance Disclosure regime where contingent fees are considered.

19. **DISCIPLINE**

- 19.1 Members are subject to the disciplinary processes of the Taxation Disciplinary Board Limited (TDB) and must comply with that and with any orders of the TDB in respect of a complaint against them, including orders in respect of costs and fines.
- 19.2 Failure to comply with such an order or with the TDB's disciplinary process will in themselves be disciplinary matters.

20. **CONTINUING PROFESSIONAL DEVELOPMENT (“CPD”)**

20.1 The CPD rules do not apply to students or affiliates of the Institute.

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

20.3 A compulsory CPD scheme applies to all Institute members with some minor exceptions. Full details are given in Appendix 1.

21. **MEMBERS UNABLE TO COMPLY WITH THESE RULES**

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

APPENDIX 1

Rules for Compulsory Continuing Professional Development

THE INSTITUTE OF INDIRECT TAXATION'S COMPULSORY CONTINUING PROFESSIONAL DEVELOPMENT REGULATIONS 2009

1. Citation, commencement and application

1.1 These Regulations may be cited as The Institute of Indirect Taxation's Compulsory Continuing Professional Development Regulations 2010.

1.2 These Regulations shall come into force on 1 January 2010.

1.3 These Regulations shall apply to all members of the Institute.

2. Introduction

2.1 In these regulations "CPD" means Continuing Professional Development and refers to the scheme constituted by these Regulations.

2.2 Rule 2.5 of the Institute's Ethical Rules states that "A member must carry out his professional work with a proper regard for the technical and professional standards expected". These Regulations have been designed to ensure that members maintain their ability to comply with this Professional Rule and are structured upon the following principles:

2.2.1 they should be relevant to the needs of members in their working fields;

2.2.2 they are sufficiently flexible to cater for the particular circumstances of members;

2.2.3 they do not create onerous demands;

2.2.4 they involve reasonable periods only having to be spent outside the normal working environment; and

2.2.5 they are not administratively burdensome.

2.3 All members of the Institute expect those not working in indirect taxation must comply with the CPD requirements save those exempted under Section 7 below. A member who is uncertain whether these Regulations apply, or who wishes to apply for exemption under Section 7 below, should consult with the Membership Department at the Institute.

3. **The basic requirements**

The minimum requirement for members of the Institute is 80 hours of 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 consecutive years.

4. **Definition of structured training**

Structured training includes:

- 4.1 Attendance at conferences, seminars, workshops, discussion meetings or similar events that involve active contribution by the member.
- 4.2 Preparation of lectures and other forms of presentation.
- 4.3 Writing books, articles or reviews.
- 4.4 All learning media, provided that they involve interaction with other individuals (including group research; listening to audio tapes; viewing tax videos/dvds and tax-specific television programmes; using video disks and computer-based training packages).

5. **Definition of unstructured training**

Unstructured training includes:

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

6. **Non-core subjects**

- 6.1 In Sections 4 and 5 above structured and unstructured training normally mean training in the field of UK indirect taxation. A member who practises in foreign tax may apply these Regulations by substituting the foreign tax for UK indirect taxation.
- 6.2 Training in law, accounting and finance services, practice management and administration, staff development and computer and software development may be included up to a maximum of one half of the total annual CPD requirement.

7. **Exceptions**

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.

For example, the following may be exempted:

- 7.1 Members not working in indirect taxation.
- 7.2 Members unable to meet the requirements due to ill health or disability.
- 7.3 Members on maternity leave or career break (an average of one hour per week of unstructured training will continue to be required).
- 7.4 Members who are unemployed.
- 7.5 Retired members.
- 7.6 Members exempted under discretionary powers reserved by the Institute.

Where members come within any of the above categories for only part of a calendar year the exemption will apply for that part only, on a pro rata basis where appropriate. Anyone wishing to claim exemption must make their request in writing and this should include brief details for the request and, where appropriate, confirmation that unstructured CPD will be undertaken. Requests should be addressed to the Secretary General.

8. **CPD requirements of other professional bodies and of professional firms**

- 8.1 A member is entitled to count towards the Institute's requirements any appropriate training undertaken to fulfil the CPD (or equivalent) requirements or recommendations of another professional body of which they are a member, and of their firm or company.
- 8.2 Where the requirements of the other professional body, or the firm or company, are for a year ending other than on 31 December the member may use for the purposes of these Regulations the CPD training for that other year whose end falls within the relevant calendar year.

9. **Records to be kept**

- 9.1 Members are 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 requirements. If this has not been the case it will be upon the member to explain the relevance of their CPD. Also members should be prepared to explain the relevance of their CPD to their personal professional

development. The Institute reserves the rights to inspect and verify the member's CPD records. The Institute does not provide a specific records sheet on which members are to record their CPD. Members may develop their own form and members of other professional bodies, or with firms or companies, which require them to keep CPD records may use that record sheet, suitably adapted where necessary.

- 9.2 Where members attend a meeting at which no attendance charge is made they must record their attendance in the record book kept by the organisers, if there is not record book members may wish to seek to get the organisers to confirm their attendance.
- 9.3 Members should keep their CPD records for a minimum of two complete calendar years. The Institute will make random checks by requesting some members to send in their CPD records covering a two-year period or, if a member of the Institute relies on the averaging provisions in Section 3.1 above, three complete calendar years.
- 9.4 A member who is requested to submit their CPD records under Section (9.1) above shall be required to produce these, and such other explanations as may reasonably be requested, within thirty days of the request.
- 9.5 Members who are subject to disciplinary proceedings must retain their existing CPD records for the duration of the proceedings and for a further period of twelve months after the end of the proceedings.

10. **Failure to meet the compulsory CPD requirements**

- 10.1 If a member of the Institute within the compulsory scheme fails to meet the requirements for any year the member will be required to achieve sufficient CPD units in the immediately preceding or next following year, so as to meet the requirements over the two-year averaging period.
- 10.2 Any investigation into a complaint made about a member will include checking the member's CPD records.
- 10.3 If practising certificates are introduced by the Institute a prerequisite to the issue of a certificate or to its renewal will be to have met the compulsory CPD scheme requirements.

11. **Failure to comply**

Failure to comply with the CPD requirements contained in these Regulations may result in disciplinary action being taken.

12. **Members not within the compulsory CPD scheme**

12.1 The Institute encourages all members not within the compulsory scheme to meet the CPD requirements on a voluntary basis, as a means of ensuring that they keep up to date in the ever-changing world of taxation.

12.2 All members not within the compulsory scheme must nevertheless comply with Rule 2.5 of the Institute's Ethical Rules and Practice Guidelines.

13. **Member enquiries**

All enquiries by members and course providers about CPD, including questions for guidance on whether an activity is structured or unstructured, should be addressed to the Membership Department at the Institute on +44 (0)1883 730658 or membership@theiit.org.uk