



**Chartered
Institute of
Taxation.**

Professional Indemnity Insurance (PII)

Guidance Notes

Effective from 1 January 2023

Contents

1. Definitions	2
2. How much PII should a member have?	3
3. Where can members get cover?	3
4. Gross fee income – how is it calculated?	3
5. Do employees need PII cover?	4
6. Do retired members need PII cover?	4
7. Volunteering and pro bono work?	4
8. What are the requirements on consultants and subcontractors?	6
9. How does a member ensure their policy complies with the PII regulations?	7
10. What is the position where a member belongs to another professional body which also has PII requirements? ..	7
11. What is the position where a member is based overseas?	7
12. What other insurances need to be considered?.....	8
13. What level of excess is permitted under the PII regulations?.....	8
14. What PII issues are there where liability caps are in place?.....	8
15. What is retroactive cover?	9
16. Continuity following cessation - “run off cover”	9
17. What happens if a member’s firm ceases or is sold?.....	9
18. Who provides run off cover?	10
19. How long is run off cover needed for?.....	10
20. What should a member do if they cannot get PII cover?.....	10
21. Who should members contact if they have any queries about the PII regulations?	10

1. Definitions

The following definitions apply for the purposes of the PII regulations:

'ADIT' affiliate means an individual who has passed the ADIT exams and has subscribed to become an ADIT Affiliate.

'ATT' means Association of Taxation Technicians.

'CIOT' means Chartered Institute of Taxation.

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

'Director' means a director (executive or non-executive) who is on the board of directors of a company providing taxation services and registered at Companies House. For the avoidance of doubt, it does not include members who hold the title 'Director' but who are not registered at Companies House.

'Firm' means a sole practitioner; a partnership; a limited liability partnership or a body corporate or unincorporated which provides taxation services.

'Gross fee income' should ordinarily be the aggregate of professional fees, net of VAT, disbursements and all other income earned in respect of and in the course of business during the accounting year immediately preceding the year in question.

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

'Member' means a member of the CIOT or the ATT and for these purposes includes students and ADIT Affiliates.

'Member in practice' is a member who provides taxation services on a full-time or part-time basis as a sole practitioner, a member of a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a director (registered at Companies House) of a company providing taxation services.

'Principal' means a sole practitioner, partner, member of a limited liability partnership or director (registered at Companies House) in a firm providing taxation services.

'Pro bono work' means, for the purposes of these regulations and related guidance, professional work undertaken voluntarily and without payment (although all reasonable expenses may be reimbursed). Pro bono work in this context does not include services provided by a firm at no charge as part of a business development or other commercial initiative.

'Taxation Disciplinary Board' means the independent body set up to run the complaints and disciplinary scheme for the CIOT and ATT.

'Taxation services' are services in relation to taxation and include the preparation and submission of tax returns, advice on tax planning, representation and defence of taxpayers before authorities and courts and the provision of overall advice, including the implementation of such advice, in the area of taxation and the

complementary accounting and legal service, which are provided, as a chartered tax adviser or as a taxation technician, with the intention that another person, body or organisation should rely on such services. For the avoidance of doubt taxation includes direct taxes, indirect taxes, NIC and any welfare or other benefits administered by HMRC (or any further tax or benefits related measures introduced under future legislation).

‘**Territorial scope**’ of these regulations is the UK. The regulations apply to members in practice based in the UK and members in practice based in any other country providing services to clients based in the UK.

2. How much PII should a member have?

The minimum levels of cover are set out in paragraph 5 of the PII regulations. They are £1 million for each and every claim unless the firm’s gross fee income is less than £400,000 in which case it is the greater of 2.5 x gross fee income or £100,000. Gross fee income is defined in the PII regulations and discussed at 4 below.

It is essential that members carry out a risk assessment before deciding the level of their firm’s PII cover rather than simply opting for the minimum. Points to take into consideration include:

- The risk profile of the work carried out for clients – is it routine work involving comparatively small sums or is it complex tax planning with large sums at stake?
- What is the risk profile of the firm’s clients?
- What resources are available to the firm to meet any claims in excess of the insured amount?
- Remember specific projects can be insured if necessary where, for example, the tax involved is in excess of existing PII cover.
- It is good practice to have effective systems and controls in place to minimise the risk of a claim arising out of administrative failures. Are these procedures kept under regular review? Lawyers dealing with tax-related PII claims suggest that most claims arise as a result of basic errors such as failure to meet deadlines or missing the time limit for a claim.

3. Where can members get cover?

Details of brokers who can provide a policy compliant with CIOT and ATT requirements are available on the websites. Note that the CIOT and ATT do not recommend or endorse brokers or insurers.

Information on a low cost policy available to those with annual fees of less than £5,000 or undertaking pro bono work can also be found on the websites.

4. Gross fee income – how is it calculated?

Gross fee income is defined in the PII regulations as follows:

'should ordinarily be the aggregate of professional fees, net of VAT, disbursements and all other income earned in respect of and in the course of business during the accounting year immediately preceding the year in question.'

In a member's first year in practice an estimate of gross fee income should be used. Equally if the most recent set of accounts are not for a full year, members may need to use an estimate.

Members must notify their insurer in advance of any major changes which take place in their firm, for example an acquisition or a demerger, so that the insurer can ensure that the PII continues to provide adequate cover for the changed circumstances. Members should also check with their insurer before moving into a new area of work.

Fees received in respect of work subcontracted to others must be included in gross fee income unless the work is clearly shown as a disbursement and the client knows that the member's firm is not taking professional responsibility for this work.

5. Do employees need PII cover?

Employees are not required to obtain PII in respect of work carried out in that role. However, members providing tax services outside their employment on a paid basis must have PII.

Directors in industry may be working in tax (for example on the tax affairs of their employer or their employees) but do not require PII cover.

6. Do retired members need PII cover?

Retired members are those who have retired from being a member in practice or from employment and therefore are not required to have PII (with the exception of the requirement to have PII run off cover as set out in paragraphs 7.1 and 7.2 of the regulations).

If they undertake pro bono work they should refer to the guidance in section 7 below. They are required to consider whether PII should be put in place and where they do not consider PII is required it would be good practice to retain a note of the matters considered and why they decided to not take out PII cover. Where no PII is in place the member must be transparent and must make the recipient of their advice aware that that is the case.

7. Volunteering and pro bono work?

Members sometimes wish to use their tax and related skills to assist friends, family, charitable

organisations or other not for profit bodies on a pro bono basis.

- **How is pro bono defined?**

In the regulations 'pro bono' is defined as:

“professional work undertaken voluntarily and without payment (although all reasonable expenses may be reimbursed). Pro bono work in this context does **not** include services provided by a firm at no charge as part of a business development or other commercial initiative”

It is recognised that those benefiting from the work may decide to provide a gift in kind to the member without them seeking or agreeing to this. As a guide, provided it is worth less than £100 per annum in total per voluntary post the work may continue to come within the definition of pro bono work.

- **Potential risk of offering advice or assistance without PII**

A claim can still be made against a member for advice given without charge if the advice given is defective and the recipient of the advice suffers a loss. To determine whether a case will succeed the court will ask the following questions:

- Was a duty of care owed to the client?
- Has that duty of care been breached?
- Was the breach causative of loss?

If the answer to all three questions is yes the claim will succeed irrespective of the size of the fee charged or if no fee is charged.

Where members are not covered by a PII policy and a mistake is made there is a real risk that a claim could be made against the member personally.

- **PII requirements for pro bono work**

Under the regulations a member is not required to have PII for pro bono work unless it is carried out as part of firm's business activities, for example as a business development exercise or charitable contribution, in which case PII is required. Members undertaking pro bono work are required to consider whether PII would be beneficial for the protection of the recipient of the services and the member in relation to that work. Details of a low cost PII policy referred to in 3 above can be found on the websites. Where no PII is in place the member must be transparent and must make the recipient of their advice aware that that is the case.

- **Members in practice and pro bono work**

Members in practice undertaking pro bono work in a personal capacity outside their practice are unlikely to be covered by the practice PII policy. In that case the member must consider whether PII would be beneficial for the protection of the recipient of the services and the member in relation to that work. Where they consider

it is not required it would be good practice to keep a note of the matters considered and why they reached this conclusion. Where no PII is in place the member must be transparent and must make the recipient of their advice aware that that is the case.

- **Employed members and pro bono work**

Pro bono work undertaken outside an employee's employment role is very unlikely to be covered by their employer's PII. The member must consider whether to take out PII cover in their own name. If they consider that PII is not required, it would be good practice to keep a note of the matters considered and why they reached this conclusion. Where no PII is in place the member must be transparent and must make the recipient of their advice aware that that is the case.

Before undertaking pro bono work outside their employment a member should check their employment contract to ensure there are no restrictions on doing so.

- **Retired members and pro bono work**

Retired members are not required to have PII in place (other than run off cover as set out in paragraphs 7.1 and 7.2 of the regulations). However, if they undertake pro bono work they must consider whether PII would be beneficial for the protection of the recipient of the services and the member in relation to that work. If they conclude that that PII is not required it would be good practice to keep a note of the matters considered and why they reached this conclusion. Where no PII is in place the member must be transparent and must make the recipient of their advice aware that that is the case.

Please note that where run off cover is in place this will not cover the member for pro bono work undertaken post retirement.

- **Will other organisations (such as charities) to whom pro bono work is provided have professional indemnity insurance in place?**

If a member acts for an organisation (for example a charity like 'Tax Help for Older People'), they should check whether that organisation has PII cover and that they are included under that cover. If they are not covered they should follow the guidance above as it relates to their circumstances.

8. What are the requirements on consultants and subcontractors?

A member who works as a consultant or subcontractor (whether on a self-employed basis or through a limited company) and provides taxation services must ensure their firm has PII cover unless they have obtained written confirmation from the contracting firm that:

- it has named the subcontractor on its own professional indemnity policy; and
- the insurer has waived their right to subrogation in relation to the subcontractor.

Where the contracting business is not a provider of taxation services it is unlikely to have relevant insurance and in those circumstances the member must take out PII which complies with the CIOT and ATT PII regulations.

9. How does a member ensure their policy complies with the PII regulations?

To ensure that members obtain a compliant policy it is advisable to provide the broker with a copy of the regulations when asking for quotes for PII cover.

Under the Insurance Act 2015 the insured has a Duty of Fair Presentation. Members should work with their Insurance Broker to ensure that the information provided is as complete as possible. Failure to comply with the Duty of Fair Presentation may give Insurers grounds to refuse to pay a claim, reduce the amount they do pay, alter the terms of the policy retrospectively, or even treat the policy as if it had never existed in some cases.

10. What is the position where a member belongs to another professional body which also has PII requirements?

Where a CIOT or ATT member is a member of another professional body which has PII obligations the member must meet the higher of the bodies' PII requirements.

11. What is the position where a member is based overseas?

Members in practice based overseas come within scope of the regulations if they provide services to clients based in the UK.

The CIOT and ATT do recognise that members based overseas may on occasion have difficulty in meeting the full requirements set out in the regulations because, for example, they may not be able to obtain a UK

policy. They should seek to obtain the nearest equivalent cover they can in the territory where they are based. They must be transparent with their clients about the level of PII in place.

Members based outside the UK who do not service clients in the UK are outside the scope of the regulations but are encouraged to seek PII of an equivalent standard to that set out in the regulations and they should be transparent with their clients about the level of PII in place.

12. What other insurances need to be considered?

PII is not the only type of insurance which CIOT and ATT members may need to put in place to protect themselves and their businesses. There are almost certainly other relevant insurances and a member should check the position with their insurance broker.

13. What level of excess is permitted under the PII regulations?

The PII regulations allow the PII policy to include an excess of up to £30,000 per principal (paragraph 5.3). For the protection of clients, the public and members themselves, the PII regulations require that when determining the appropriate level of excess the firm must be satisfied that it could meet the excess element of any claim which might arise.

As a general rule the higher the excess the lower the premium. Insurers tend to see insured persons with higher excesses as being more likely to have an interest in good risk management as it affects them in the pocket each time they get it wrong. There is obviously greater motivation to avoid a claim if a member is bearing say the first £5,000 than if a similar claim will, initially at least, only cost the member £500.

Equally, for policies with a higher excess the insurer will not be called upon to deal with time consuming small claims which tend to cost proportionately more to manage than the larger but generally less frequent claims.

If the member's firm has subsidiaries or associated firms and a group PII policy is in place the excess may be calculated on a group basis.

14. What PII issues are there where liability caps are in place?

Some firms include a clause in their engagement letter which seeks to cap the firm's liability to its client in the event of a claim being made. This may be effective in many instances and it is a reasonable step to take to minimise liability. However, it would be unwise to rely wholly on a liability cap as being effective in every case. Further information about liability capping is included in the engagement letter guidance. Members planning to use liability caps should discuss with their broker the implications in relation to their PII cover.

15. What is retroactive cover?

PII normally applies on a claims arising basis ie insurance must be in place at the time when a claim is made. It also needs to be retroactive in order to provide cover for past acts. Members should check the retroactive date included on their policy documentation to ensure cover extends to at least six years before the commencement date of the current policy (or when the practice commenced if sooner). Any claim made during the policy period on a loss that occurred before the retroactive date will not be covered.

16. Continuity following cessation - “run off cover”

Run off cover is a form of professional indemnity insurance that applies when a business (a partnership, a limited liability partnership, a body corporate, or unincorporated company) or individual stops trading. For example, this might be because the business has been sold, it has gone into administration or an individual has retired. 'Run off' covers claims made after the business has ceased but which relate to work carried out before trading stopped.

Run off protects the business's principals, partners or directors and employees by covering the cost of defending any claim made against those insured under the policy and reimbursing the losses incurred should the claim be upheld (within the limits of the policy). Note that even spurious or speculative claims (for example, having a claim made against a director personally where the company is no longer in existence) can be brought and require a defence so without run off cover these can be financially damaging. Claims can also be made against a deceased person's estate.

17. What happens if a member's firm ceases or is sold?

If a member plans to dissolve their company, they should check the position beforehand with their PII provider as in some cases the policy needs to be moved into the member's individual name.

Generally, the insurance premium in the first year after trading is similar to that for the last year of trading as that is when the risk of a claim being made is at its highest. As the likelihood of a claim reduces as time progresses, so the cost of a run off policy generally reduces year on year.

18. Who provides run off cover?

Standard practice dictates that it is the incumbent insurer at the time when trading ceased who provides the insurance. Alternative quotations can be very hard to obtain during the run off period. Because of this, it is important to check on purchasing PI cover from an insurer that they will ultimately also provide run off cover.

19. How long is run off cover needed for?

While the majority of claims are made within a few years of the work being completed, it is still possible for a claim to go back a number of years. That is why our PII regulations stipulate that members in practice must have run-off cover for not less than 6 years. Note that if the practice is sold to another practice and all its historic liabilities were taken on then the purchasing practice would cover the run off, although it is rare for a purchasing practice to want to do this.

20. What should a member do if they cannot get PII cover?

Members who are unable to obtain PII cover or PII run off cover should inform the Head of Professional Standards (standards@tax.org.uk or standards@att.org.uk) setting out the steps they have taken to obtain cover and the reasons why they have been refused.

21. Who should members contact if they have any queries about the PII regulations?

Members should contact the Professional Standards team at standards@ciot.org.uk or standards@att.org.uk.