THE CHARTERED INSTITUTE OF TAXATION

PROFESSIONAL RULES AND PRACTICE GUIDELINES 2006

The Association of Taxation Technicians

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INTERPRETATION

1. In this publication:

'**Affiliate'** means an affiliate of The Association of Taxation Technicians.

'**ATT**' means The Association of Taxation Technicians.

'**CIOT**' means The Chartered Institute of Taxation.

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

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

'**Firm**' means a sole practitioner, a partnership, a limited liability partnership or a body corporate or unincorporated.

'**HMRC**' means H M Revenue and Customs.

'**Laws of the CIOT and ATT**' means the rules and regulations of both bodies, including the byelaws of the CIOT, the memorandum and articles of the ATT, Professional Rules and Practice Guidelines, members' regulations and Council regulations.

'**Member**' means a member of the CIOT or the ATT.

'**Member in practice**' means 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 of, or an employee of, a company providing taxation services in which he or she has a financial interest which represents 5% or more of the equity capital.

'**Principal'** means a sole practitioner, partner, member of a limited liability partnership or director in a firm.

'**Student**' means a student registered as such for the time being with the CIOT or the ATT.

Words importing persons include bodies corporate.

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

2. These rules and guidelines are based on the law and practice in England and Wales. Members practising in other jurisdictions should have regard to relevant local law and practice. Attention is drawn to Appendices 9 (Scots law) and 10 (Northern Ireland law).

3. These rules and 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 CIOT or the ATT. They apply to every employed member irrespective of the nature of the activities or business of his employer.

4. References to an Act include any statutory modifications or re-enactment of it for the time being in force.

5. The Royal Charter and byelaws of the CIOT, the Memorandum and Articles of Association of the ATT, members' regulations and Council regulations which together with the PRPG form the Laws of the CIOT and ATT can be found on the CIOT and ATT websites – www.tax.org.uk and www.att.org.uk.

1. INTRODUCTION

1.1 Unless otherwise stated these rules and guidelines apply to:

- members of the CIOT
- members of the ATT
- affiliates of the ATT
- students of the CIOT
- students of the ATT
- firms authorised to use the designatory title Chartered Tax Advisers
- International Tax Affiliates of the CIOT

1.2 A tax adviser is a professional who gives tax advice. Tax advice means 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 in the area of taxation and complementary accounting and legal services.

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

1.4 A member has duties to the following:

- each of the member's clients
- clients generally
- the member's employer, if any
- the public
- third parties (in certain circumstances)
- HMRC
- the tax profession
- any partner of the member
- any employee of the member
- the CIOT and the ATT
- himself

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

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

1.7 This publication is divided into two parts. Chapter 2 contains the Professional Rules and Chapters 3 onwards the Practice Guidelines. Further practice guidelines are contained in the separately published **Professional Conduct in Relation to Taxation** which covers members' dealings with HMRC and in Standards for the Provision of Taxation Services both of which can be found on the websites www.tax.org.uk and www.att.org.uk.

1.8 The Byelaws of the CIOT and the Articles of the ATT provide that a member may be subject to disciplinary action if guilty of a breach of the Professional Rules and Practice Guidelines or of any other Laws of the CIOT or the ATT.

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

1.10 A member may have duties and obligations to other professional bodies and regulators, for example the Auditing Practices Board, and should have regard to these as relevant.

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

2 PROFESSIONAL RULES

2.1 Conduct

2.1.1 A member must:

- take due care in his conduct
- take due care in all his professional dealings
- uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT

2.1.2 A member must not:

- perform his professional work, or conduct his practice or business relationships, or perform the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or the ATT or to the members or any part of the membership or to the tax profession
- breach the Laws of the CIOT or the ATT

2.2 Integrity

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

2.2.2 A member must not be party to bribery or other illegal activity.

2.2.3 A member should not act if he considers that the fulfilment of his client's instructions involves a risk of assisting in a criminal activity.

2.3 Courtesy

2.3.1 A member must be courteous and considerate towards all with whom he comes into contact in the course of his professional work.

2.4 Competence

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

2.5 Objectivity and independence

2.5.1 A member must be objective in all work undertaken. Tax advisers should be morally and intellectually independent. This applies both to the representation of clients and to the resolution of conflicting interests as between tax advisers, clients, HMRC and any other interested parties. If such independence and objectivity may be impaired through conflict of interest the member must act in accordance with the guidelines in Chapter 6.

2.6 Confidentiality

2.6.1 A member owes a duty of confidentiality to his client or employer. The duty to observe confidentiality applies without time-limit to all information with which the member is entrusted by his clients or which is brought to his knowledge during or at any time after the carrying out of his assignment, or in the course of his professional practice in general. The same duty of confidentiality should be imposed on employees and subcontractors.

2.6.2 Information acquired in the course of a member's work must not be divulged in any way outside his organisation without the specific consent of the client or employer unless there is a legal or regulatory duty or professional obligation to disclose.

2.6.3 A member should safeguard the confidentiality of client information particularly where there could be a conflict of interest with another client.

2.6.4 Confidential information obtained in the course of the work must not be used for personal advantage by a member or anyone associated with him.

2.7 Clients' money and assets

2.7.1 Great care must be taken with money and assets that have to be maintained separately from the member's own funds. A member must ensure that clients' money is properly accounted for in accordance with the Practice Guidelines in paragraph 7.7.

2.8 Money laundering

2.8.1 Members must comply with the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003. A member must act in accordance with the CIOT and ATT anti money laundering guidance at www.tax.org.uk and www.att.org.uk.

2.9 Incompatible activities

2.9.1 A member must not undertake within his professional practice business activities which are not compatible with those normally undertaken by a tax adviser.

2.10 Practice development

2.10.1 A member must not obtain or seek professional work in any unprofessional manner. In this regard members are referred to Chapter 14 on advertising and Chapters 4 and 10 for guidance on the requirements on changes in a professional appointment.

2.11. Continuing Professional Development (CPD)

2.11.1 A member of the CIOT or the ATT who is engaged in the practice of taxation in industry, commerce or private practice should keep his professional knowledge up to date and in this regard must fulfil the requirements of the CPD scheme. See Appendix 1. The CPD rules do not apply to students of the CIOT nor to students or affiliates of the ATT.

2.12 Personal responsibility and Professional Indemnity Insurance (PII)

2.12.1 A member has a duty of care to his clients when carrying out his professional work (see paragraph 5.1.1). A member is responsible for his own work and that of his employees and subcontractors. 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 PII cover. See Appendix 3 for further details.

2.13 Provision of information to the CIOT and the ATT

2.13.1 A member must provide such information as is reasonably requested by the CIOT and ATT as a member without unreasonable delay. A member must reply to correspondence from the CIOT and the ATT which requests a response and again must do so without an unreasonable delay.

2.14 Compliance with the disciplinary process and orders from the Taxation Disciplinary Board Limited (TDB)

2.14.1 A member is subject to the disciplinary processes of the TDB in respect of a complaint against him. A member must comply with any order from the TDB including orders in respect of costs and fines. Failure to comply with such an order will in itself be a disciplinary matter.

2.15 Obligation to notify the CIOT and the ATT

2.15.1 A member must promptly inform the CIOT or the ATT if he:

- is convicted of a criminal offence (other than a 'summary only' road traffic offence)
- is notified of disciplinary action begun against him by another professional body to which the member belongs
- has a bankruptcy order made against him (see also paragraphs 3.9 and 3.10)
- enters into a voluntary arrangement with his creditors (see also paragraphs 3.9 and 3.10)
- is disqualified as a director, or enters into a disqualification undertaking

3 PRACTICE GOVERNANCE

3.1 Business structure

3.1.1 A member is recommended to have a memorandum of understanding or other governing document setting out the basis on which the business will be conducted and the arrangements between the principals.

3.1.2 A member is subject to the same Professional Rules and Practice Guidelines irrespective of the business structure of the firm. There may be statutory and professional requirements on the conduct of a member's professional activities through different structures which it is the member's responsibility to observe.

3.2 Multi-disciplinary practice

3.2.1 A member who is a principal in a firm may act in association with principals who are not members of the CIOT or the ATT provided that the associates (who may practise under the rules and regulations of another professional body) recognise these Professional Rules and Practice Guidelines. The firm's policy relating to the provision of tax services should be consistent with that of the CIOT and the ATT and be observed in the conduct of tax work by all so engaged. See also Appendix 4.

3.3 Names and letterheads of practices

3.3.1 In this paragraph letterheads mean material used by the member for external communications including practice notepaper, advertisements, electronic mail, facsimile and internet material.

3.3.2 A firm's name should convey a professional image consistent with the standards required of members of the CIOT and ATT.

3.3.3 A firm's name must comply with partnership and company law as appropriate and, in Great Britain, with the Business Names Act 1985 and the Company and Business Names Act 1999.

3.3.4 A firm's name should not be misleading. Generally it will not be misleading where a member practises under a name based on the names of past or present members of the firm or of a firm with which it has merged or to which it has succeeded. However:

- a firm with a limited number of offices should not describe itself as international simply because one of them is overseas

- where the firm's name might be confused with the name of another firm this should be avoided even if the member could reasonably justify a claim to the name

3.3.5 Letterheads, documents and other stationery, including nameplates, used by the practice should meet the following criteria:

- they should be of a suitable professional standard

- they must comply with legal requirements as to names of partners, principals and other participants
- they must comply with the practising designations guidelines (see paragraph 3.4 below)
- they should not advertise any specialist service unless the firm has the relevant expertise

3.4 Practising designations

3.4.1 A member may use his designatory letters at all times and personally describe himself as a member of the CIOT or the ATT as appropriate. However, the member must not allow business associates to use words or descriptions which indicate that they have qualifications to which they themselves are not directly entitled, except in accordance with the Regulations promulgated by the relevant Council.

3.4.2 A member of the CIOT may describe himself as a **Chartered Tax Adviser**. For partnerships, limited liability partnerships and companies see the rules prescribed in Appendix 4.

3.4.3 A member of the ATT may describe himself as a **Taxation Technician**.

3.5 Coats of Arms, Logos and Badges

3.5.1 The coats of arms of the CIOT and the ATT are their respective exclusive properties and must not be reproduced or used by anyone other than the CIOT or the ATT.

3.5.2 The logos of the CIOT and the ATT are their respective exclusive properties and must not be reproduced or used by anyone other than the CIOT or the ATT.

3.5.3 The rules for the use of the CIOT badge are set out in Appendix 5. Members of the ATT wishing to use the ATT badge must register under the Members in Practice Scheme. The current rules are set out in Appendix 2.

3.5.4 Copies of the coats of arms, logos and badges can be seen at Appendix 12.

3.6 Temporary incapacity of a sole practitioner

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

3.6.2 A member should consider whether his firm has sufficient resources to meet his obligations in his absence or whether those obligations should be discharged by another firm under a prior arrangement or by a practitioner acting on a locum basis. A member should be satisfied that a person or firm to whom the work is to be assigned has sufficient experience and expertise to act and is adequately insured for the work to be undertaken. Guidance notes and a draft agreement are available from the Membership Departments of the CIOT and the ATT and on the CIOT and the ATT websites www.tax.org.uk and www.att.org.uk.

3.7 Death or permanent incapacity of a sole practitioner

3.7.1 Similar considerations to those in paragraph 3.6 apply to the death or permanent incapacity of a sole practitioner, although the difficulties are potentially far greater for both the firm and its clients.

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

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

3.7.4 Arrangements should be set out in detail in a written agreement to avoid any doubt or confusion which may otherwise arise. The agreement should provide for the duration and extent of the manager's duties and responsibilities and the legal relationship with

the sole practitioner or his personal representatives. Members are recommended to consult a solicitor with appropriate experience in drawing up such an agreement. Members should also consider granting a power of attorney where appropriate.

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

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

3.8 Business continuity plan

3.8.1 A member should have in place a business continuity plan which would ensure the continuity of the business in the event of a serious incident such as fire, flood or major IT systems failure.

3.9 Bankruptcy and Individual Voluntary Arrangements (IVAs) – ATT

3.9.1 A member who enters into an IVA with his creditors or becomes subject to a bankruptcy order must notify the ATT within 3 months of the date of the IVA or bankruptcy order.

3.9.2 If a member fails to notify the ATT his membership of the ATT shall cease automatically upon the expiry of the 3 months.

3.9.3 Where a member notifies the ATT within the 3 month period the ATT will consider whether exclusion is appropriate or whether membership should continue.

3.9.4 A member who notifies within the 3 month period will be advised of the ATT's decision within 30 days of his notifying the ATT. Where, exceptionally, this is not possible the member will be notified within thirty days that his case is being considered.

3.9.5 A member whose membership is terminated following consideration by the ATT has the right of appeal to the Taxation Disciplinary Board Limited. Such an appeal must be made within 31 days of the date of the notification of exclusion.

3.10 Bankruptcy and Individual Voluntary Arrangements (IVAs) – CIOT

3.10.1A member who enters into an IVA with his creditors or becomes subject to a bankruptcy order must notify the CIOT within 30 days of the date of the IVA or bankruptcy order.

3.10.2 If a member fails to notify the CIOT his membership of the CIOT shall cease automatically upon the expiry of the 30 days.

3.10.3 Where a member notifies the CIOT within the 30 day period the CIOT will consider whether exclusion is appropriate or whether membership should continue.

3.10.4 A member who notifies within the 30 day period will be advised of the CIOT's decision within 2 months of his notifying the CIOT.

3.11 Dissolution or merger of practice

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

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

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

3.12 Cessation of practice

3.12.1 A member's liability in respect of services provided whilst acting for a client continues after the member has ceased to practice and continuing professional indemnity cover must be arranged. A retiring partner is also advised to consider obtaining an indemnity from the continuing partners in respect of claims made against him after his retirement.

3.13 A member's own tax affairs

3.13.1 A member's own tax affairs should be kept up to date and all returns and other relevant documents timeously lodged. Neglect of the member's own affairs could cause doubts in the minds of HMRC as to the standard of the member's professional work.

3.14 Honorary and pro bono work

3.14.1 A member's duty of care covers honorary work, pro bono work and work for family, friends and charitable organisations. Honorary work means a formal honorary post for charities, amateur organisations and other 'not for profit' organisations. Pro bono work means work for which absolutely no payment is made either in cash or kind.

3.14.2 A member should consider whether, in carrying out work of this nature, he comes within the definition of a 'member in practice' with the related obligations, and in particular the need for professional indemnity insurance. See Appendix 3 for guidance as to when PII is required.

3.15 Regulated investment business activities

3.15.1 This section concerns those activities defined in the Financial Services and Markets Act 2000 (the Act) as regulated activities (including exempt regulated activities). Regulated activities include investment and pension advice and from 14 January 2005, advice on general insurance contracts. See also paragraph 3.15.7.

3.15.2 A member should be careful not to breach the provisions of the Act. Membership of the CIOT or the ATT alone does not give any authority to provide any of the services regulated under this Act. A member who wishes to undertake activities covered by the Act must be with a firm which is either authorised by the Financial Services Authority (FSA) or a member (or controlled or managed by a member) of a Designated Professional Body ('DPB'). Full details of the requirements for authorisation with the FSA are available from the FSA. Details of DPB membership requirements and the rules for members wishing to provide those investment services permitted under the Act are available from the DPBs.

The FSA recognise the following Designated Professional Bodies:

- The Law Society (England and Wales)

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

3.15.3 Members who are with firms which are neither authorised by the FSA nor members of a DPB should not carry out regulated activities (nor exempt regulated activities) as to do so would be committing an offence.

3.15.4 A member who is with a firm which is a member of a DPB may provide a restricted range of investment services. These are described as 'exempt regulated activities' and further guidance should be available from the relevant DPB. It should also be noted that any exempt regulated activities carried on by the firm must be incidental to the provision by the firm of professional services. Furthermore the firm must not receive from anybody other than the client a pecuniary award or other advantage arising out of the carrying on of regulated activity (including exempt regulated activity) for which the firm does not account to the client.

3.15.5 A member who is with a firm which is authorised by the FSA will need to be approved by the FSA in relation to any 'controlled function' (this includes acting as an investment adviser) that he performs on the firm's behalf. Applications for approval as an approved person will be made on the member's behalf by the firm. An approved person may carry out those regulated (and exempt regulated) activities for which approval has been given.

3.15.6 What constitutes regulated activities (and exempt regulated activities) is a complex area and if a member is in doubt about whether he is carrying out such activities he should seek advice from the FSA or a DPB. The following example may be helpful in drawing a distinction in broad terms between the scope of the advice which can be given by different advisers.

- A member who is with a firm which is neither authorised by the FSA nor a member of a DPB may advise in general terms on the benefits of setting up pension arrangements but must not refer to any specific pension product provider.

- Provided that the advice concerned is incidental to the provision by the firm of professional services regulated by a DPB, a member who is with a firm which is registered with a DPB may also advise on the benefits of setting up a pension and can comment on advice given by an authorised financial adviser regarding pensions and the selection of pension products. However he cannot make alternative product recommendations.

- A member who is with a firm which is authorised by the FSA may, provided he is registered with the FSA as an Approved Person in this area, advise fully on pensions and can make specific product recommendations. Additional specific authorisation from the FSA is required before he can advise on pension transfers or opt-outs.

3.15.7 The Insurance Intermediation Directive came into effect on 14 January 2005 following which the provision of insurance contracts became regulated by the FSA. One of the effects of this relates to the self assessment system for tax returns and the methods that some firms use for charging clients for compliance work. The FSA have advised that if a firm charges its clients a fixed fee for compliance work, and if that fee includes dealing with any substantial HMRC enquiries, then that part of the fee is, in effect, an insurance payment against being selected for an investigation (including a random

investigation) by HMRC. Accordingly any firms providing such services, on such terms, or providing more specific insurance against HMRC investigations, will be caught by, and required to comply with, the relevant regulations.

4 NEW CLIENTS

4.1 Obtaining clients

4.1.1 A client has the right to choose or change professional advisers, or to take a second opinion, or to retain separate advisers on different matters.

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

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

- implying in an improper manner, whether orally or in correspondence or in any material that existing advisers are not competent to provide an adequate service to any client

- giving any commission, fee or reward to a third party, not being an employee, in return for the introduction of a client, which does not fall within the provisions in paragraph 4.1.4. In the case of a payment to an employee care should be taken to see that the employee has not breached the guidelines

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

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

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

4.1.5 The practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work ('cold calling') is not of itself unprofessional conduct. However, repeated cold calling may become offensive and lead to a complaint.

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

4.1.7 Subject to the above, a member may advertise his services to the public. Chapter 14 deals with advertising.

4.2 Client acceptance

4.2.1 A member who is invited to undertake professional work by a prospective client is under no obligation to act. Indeed, he should decline to do so if he believes he would be unable to assume the duty of care that he would have to that client (see paragraph 5.1).

4.2.2 Before accepting instructions to act for a new client, a member should

- Comply with the identification requirements set out in the anti money laundering guidance which can be found on the CIOT and ATT websites (www.tax.org.uk and www.att.org.uk).

- Consider whether the client will be an acceptable client in terms of the risks which will arise for the practice from acting for that client and whether the member has the capability to manage those risks. In assessing the risks relating to the client the member should consider the potential client's personal circumstances, business situation, financial standing, source of funds, integrity and attitude to disclosure in regard to compliance with taxation law.

- Consider whether the member and firm will have the skills and competence to service the client's requirements during the course of the engagement

- Consider whether there is any conflict of interest in accepting the client and if so whether and how it might be managed (See chapter 6).

- Proceed with caution when deciding to accept instructions from a client who refuses to give the existing tax adviser permission to disclose appropriate information about his affairs.

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

Members are encouraged to record the basis for client acceptance.

4.2.3 Having accepted the client, before starting work on any assignment for a client, the member should understand and agree with the client the scope of the assignment, having first assessed the client service risks, and be satisfied that the relevant skills and experience to perform the work are available or accessible.

4.3 Professional clearance

4.3.1 A member who is invited to undertake professional work in place of another tax adviser, particularly where any tax compliance services are concerned, should, before accepting the appointment, request the prospective client's permission to communicate with the existing adviser. If this permission is refused, the member should decline to accept the appointment other than in exceptional circumstances.

4.3.2 The objective of the communication referred to in paragraph 4.3.1 is to ensure that:

- The incoming adviser is fully aware of all factors that may be relevant to acceptance of the appointment and the effective handling of the client's tax affairs.

- The incoming adviser is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to HMRC.

- The client's affairs are properly dealt with, on a timely basis, and that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed in the transitional period.

4.3.3 When permission has been received from the prospective client for such communication, the member should ask the previous adviser, in writing, for all

information which, in the opinion of that previous adviser, is necessary to enable the member to decide whether or not to accept the appointment.

4.3.4 A member who receives a communication of the type referred to in paragraph 4.3.3 should ask the client for permission to discuss his affairs freely with the prospective new adviser. When the client's permission has been received, he should disclose to the prospective new adviser, either orally or in writing, all information which, in his opinion and based on his knowledge of the client and his affairs, may be needed to enable that adviser to decide whether or not to accept the appointment. If the client's permission is not received, that fact should be communicated to the prospective adviser who should normally not accept the appointment, unless satisfied that circumstances exist that make it appropriate to override the normal rule. It would require very exceptional circumstances to justify acceptance of the appointment and such cases are likely to be rare. A member who believes that such circumstances exist may wish to discuss them with the CIOT or the ATT. In any event, it would be advisable to document at that time the facts, circumstances and justification.

4.4 Engagement letter

4.4.1 On accepting instructions a member is strongly recommended to set out in a letter of engagement (see Appendix 6) to the client his understanding of the scope and nature of the assignment and invite the client to agree in writing. This exchange of letters serves as the contract between the member and the client although a contract still exists in the absence of such an exchange. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what the adviser has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the basis on which fees will be charged (including whether there will be a charge for the initial meeting). Members are recommended to consult the guidance note entitled **Engagement Letters for Tax Practitioners** (see Appendix 6). The original contract, whether oral or written, can subsequently be varied either orally or in writing, unless a specific procedure is agreed between the parties (eg that all variations must be in writing).

4.5 Requesting information from the existing adviser

4.5.1 When requesting information from a predecessor requests should be reasonable and relevant. Regard should be had to the likely cost to the client of supplying the information.

4.6 Obligations in respect of advice given by a predecessor

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

5 CLIENT SERVICE

5.1 Duty of care

5.1.1 When acting for a client a member places his professional expertise at the disposal of that client and, in so doing, the member assumes a duty of care towards the client which is recognised in law. A member must, therefore, exercise reasonable skill and care when acting for a client. A failure to do so may result in the member being liable for a claim for professional negligence. The member must understand the duties and responsibilities in respect of the client and the risks associated with a failure adequately to discharge those duties and responsibilities. The member must manage the risks associated with advising a particular client. In order to do so the member must assess his ability to discharge his duty of care to that client in respect of the matters on which advice is sought or the work to be undertaken. See also paragraph 7.2.

5.2 Professional competence

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

5.2.2 A member should advise only within the scope of his own professional competence and within the scope of the terms of the engagement (see paragraph 4.4).

5.3 Supervision and training

5.3.1 If work is delegated, the member should exercise sufficient supervision to confirm that the work performed is adequate. A member who considers any work done by subordinate staff is inadequate has a duty to remedy any defects before its completion.

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

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

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

5.4 Use of subcontractors

5.4.1 A member must obtain a client's consent before subcontracting work on that client's affairs to another firm. A member could consider including a clause authorising referral to a subcontractor within his engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral.

5.5 Consultation and second opinions

5.5.1 A member is encouraged to consult with fellow professionals when advising clients, where appropriate, to ensure that relevant skill and judgement is applied. It is a matter of judgement for the member whether consultation is necessary in any particular situation. If a member relies on consultation, evidence of it should be retained on the client file. Client confidentiality rules, especially those concerning consent, must be taken into account. See paragraph 2.6 for further details.

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

A significant opinion is one in respect of which either:

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

- the matters advised on are, for some other reason, of sufficient importance to the client to merit obtaining a second opinion.

5.6 Form and content of advice

5.6.1 On deciding on the form of advice provided to a taxpayer, a member should exercise professional judgement and should consider such factors as the following:

- the importance of the transaction and amounts involved
- the specific or general nature of the taxpayer's enquiry
- the time available for development and submission of the advice
- the technical complications presented
- the existence of authorities and precedents
- the tax sophistication of the taxpayer
- the need to seek other professional advice

5.6.2 An advice communication should normally set out:

- the purpose for which the advice is required and the client's objectives
- the background facts and assumptions on which the advice is based
- the alternatives open to the client
- the risks associated with the advice
- relevant caveats and exclusions

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

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

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

5.6.6 In any event the member should make and keep a contemporaneous and dated note on his file of the discussion and advice given. 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.

5.7 Keeping proper professional records

5.7.1 A member should make a proper professional record of all his dealings in connection with his client in order that:

- the member himself and his colleagues and successors can access a complete record of the client history to inform future client service
- the member is able to resolve any misunderstandings or complaints, including in relation to fees
- the member is able to defend any allegation of negligence

5.7.2 The records should include:

- all written communications relating to the client's affairs, including letters, faxes and e-mails
- file notes of meetings and telephone conversations, which should be contemporaneous and dated
- records of how the advice given is reached, including details of technical research, consultations and second opinions (see paragraph 5.5)
- all necessary permanent information and copies of such working documents as are likely to be required

5.7.3 Records should be organised so as to be accessible. Electronic records should be backed up.

5.7.4 The retention of working papers is an important issue. Members should put in place a policy which takes into account both statutory requirements and time limits for legal action against a member. Further guidance is given in Chapter 13: Legal Matters.

5.8 Time limits, due dates and interest

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

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

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

5.8.4 A member who has no compliance responsibilities for a particular client would not normally be expected to monitor relevant dates and tax payments, unless specifically requested to do so. In cases of doubt, a member is advised to discuss the issue with the client and incorporate the agreed position into the letter of engagement.

5.9 Representation before Commissioners and Tribunals

5.9.1 Members are referred to the Appendices for guidance on:

- Representation before Commissioners and Tribunals (Appendix 8)
- Acting as an advocate before Commissioners and Tribunals (Appendix 9)

Although the Guidance Notes in Appendix 9 were prepared specifically for members of the CIOT and refer only to a 'CIOT advocate', the Council of the ATT has endorsed these notes and confirmed that members of the ATT should follow this guidance if they are representing a client before the General or Special Commissioners or the VAT and Duties Tribunal.

6 CONFLICTS OF INTEREST

6.1 Professional independence

6.1.1 A member must, at all times, maintain his professional independence.

6 1.2 A member must not only remain professionally independent, but also be seen to be so by clients, the public, HMRC or other authorities and third parties, so particular care must be taken to preserve apparent, as well as actual, independence.

6.1.3 Conflicts of interest can arise between a member and his client or between two or more clients or potential clients.

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

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

6.2 Managing conflicts

6.2.1 There are many circumstances in which a member in practice may be presented with an actual or potential conflict of interest. It is not possible to envisage every possible situation but the more common occurrences are set out below in paragraphs 6.3 to 6.6, together with general guidance notes for each circumstance. It is not possible to provide guidance for every eventuality. This is a matter for the professional judgement of the member based upon the precise circumstances.

6.2.2 Points to consider are:

- Conflicts of interest are not always easy to recognise or anticipate. However, the member should always be aware of the possibility that a conflict may arise and of the fact that this may impair the ability to give independent advice to a client.

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

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

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

- If the conflict or potential conflict cannot be resolved the member must consider whether it is appropriate to continue to act. Usually, the existence of a conflict of interest will mean that it is inappropriate to continue to act for one or more of the clients concerned (as to which, see paragraphs 6.3 - 6.5 below). Should the member consider it appropriate to continue to act for a client despite the existence

of a conflict or potential conflict, he must inform the client fully and frankly of the existence of the conflict and should advise him to obtain independent advice on whether it is in the client's interests for the member to continue to act.

- Once agreed, arrangements for resolving or dealing with actual or potential conflicts of interest should be confirmed in writing to the client as should any agreement whereby a client agrees to a member continuing to act in circumstances where a conflict, or potential conflict, of interest exists. Once arrangements for dealing with a conflict have been made a member should regularly review them, and the circumstances.

6.3 Acting for both parties to a transaction

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

6.3.2 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 and the difficult position in which this may put the member. However, to refuse to act may occasionally not serve the interests of everyone concerned and, in these instances, may not be the best course. It is, however, the recommended course if the member is in any doubt.

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

  If both clients are agreeable the member may act provided that there is adequate disclosure of all relevant facts to both parties, so that they may formulate proper business judgements and provided that no preference is shown in advising one against the other and that the member is satisfied that the circumstances of the conflict can be managed. In practice this may be difficult but there may be sufficient 'mutuality of interest' between the parties to allow this course to be followed. In this situation, both clients should be advised to consider seeking independent advice on whether it is appropriate for the member to act for both parties.

  With the agreement of the client the member may also resolve the potential conflict by appointing a separate team to act for each client, who maintain ethical walls to prevent confidential information relating to one client becoming known to the team acting for the other.

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

  A member who decides to act only for the first instructing client should advise the other client of this decision in order to avoid any suggestion of acting improperly or misusing any confidential information concerning that client.

6.4 Acting for both an employer and his employees

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

6.4.2 If the employer discharges the member's fees for services which are of direct benefit to the employee, the employer should be reminded of the requirement to make an appropriate report to HMRC of any benefit in kind received by the employee.

6.5 Acting for both parties in a divorce settlement

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

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

6.6 Financial involvement with clients

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

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

6.6.3 Where a member, or the spouse or child of the member, makes a loan to a client, or guarantees a client's borrowing, or accepts a loan from a client or has borrowings guaranteed by a client, then a conflict of interest could occur. A member should consider carefully whether it would be better not to undertake such financial transactions with a client, or if such arrangements are already in force, not to act for that person. A member who considers it is still appropriate to act or continue to act in these circumstances should fully and frankly inform the client of the conflict or potential conflict and advise the client to take independent advice on whether it is appropriate for the member to act or continue to act. If the client agrees that the member acts or continues to act, that agreement should be properly documented.

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

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

7 OTHER CLIENT HANDLING ISSUES

7.1 Dealings with HMRC

The special relationship between the member and HMRC when acting for a client, including the member's particular duties in this regard, is dealt with in **Professional Conduct in Relation to Taxation** and the **Standards for the Provision of Taxation Services (s**ee www.tax.org.uk and www.att.org.uk).

7.1.1 Where a member is asked to certify something to HMRC he should examine carefully whether he is in a position to certify and whether or not he should agree to provide the certificate. He should also consider whether there is any flexibility on the wording of the certificate. If so detailed attention should be paid to the scope and caveats including possibly a disclaimer.

7.2 Managing liability to other third parties

7.2.1 Where a member provides advice or reports or other documents to clients with whom he has an engagement letter, he has the protection of a defined scope and exclusions. Where however he gives advice or reports or other documents to a third party he may be exposed to claims against him from the third party without the benefit of the reasonable contractual protections applying to the relationship with his client.

7.2.2 When dealing with third parties on a client's behalf a member must be careful not to breach client confidentiality or inadvertently assume a duty of care towards the third party. The following are ways in which the member may manage these risks:

- Unless required to do so by law the member must not release to a third party information provided by the client which can be said to be confidential without first obtaining the client's consent.

- The member should require, as a term of the engagement, that the client must seek his consent before advice, reports or other documents which he has produced, or with which his or his firm's name is associated, are released by the client to third parties.

- Before consenting to the release of documents the member may request that the third party and its agents or advisers undertake that the member will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.

- If no such undertaking is obtained the member should communicate to the third party the terms upon which the documents are released including caveats, eg limitations on scope or a warning that the advice is generic and may not apply in all circumstances, and confirmation that no responsibility is accepted, if appropriate. Where a number of third parties are involved, each with different circumstances and reasons for their interest, particular care and attention should be paid to the caveats.

- The member should consider whether it is possible to decline to provide the advice or reports or other documents if it is commercially practical, for example, he may be able to decline to provide a reference.

- In some cases it may be possible to obtain an indemnity from the client in respect of any possible claim against the member by the third party. This is most appropriate where the client has a strong interest in the advice, reports or other documents being provided to the third party; for example, where the client asks

the member to give access to his client files to a potential buyer of one of the client's subsidiaries.

- In some cases it may be appropriate for the member to accept that he owes a duty of care to the third party and manage that with a separate engagement letter. This can be done either by binding the third party into the engagement letter with the primary client or entering into a shorter agreement tailored for the situation. Possible situations include –

  - the member's client is a company but the shareholders wish to rely personally on the member's advice to the company

  - a client's wife wishes to use the advice given to her husband for a similar transaction

7.2.3 If a member becomes aware that any of the advice, reports or other documents which he has produced or with which he is associated and which are being used or relied upon by the third party are defective, he should insist that the client withdraws them from the third party. Failure to do this may, depending on the nature of the consents or warnings given, leave the member exposed to an action for damages by the third party if, on the strength of the documents, the third party sustained loss. It would be prudent for him to obtain proof of the withdrawal (eg a copy of a letter from the client to the third party withdrawing the document). If the client refuses to withdraw the document, the member should consider what further steps might be taken such as writing to the third party saying that the document can no longer be relied upon. However this should not be done without first taking legal advice.

7.3 Working with other professional advisers

7.3.1 A member should ascertain whether any other professional advisers are involved in any project or assignment which a client asks him to undertake or in any related services. It is advisable to define clearly the respective areas of responsibility and record this in the letter of engagement.

7.3.2 In some cases a member may enter into a direct relationship with another professional adviser rather than the taxpayer concerned. In such cases it is important to be clear whether the other professional adviser or the taxpayer is the client. Where the taxpayer is not the immediate client reference should be made to paragraph 7.2 on managing liability to other third parties.

7.3.3 When working alongside another professional, a member should be careful to observe his duty of client confidentiality (see paragraph 2.6). In cases of doubt, the member should obtain instructions from his client, preferably in writing. The member should advise his client of the advantages of permitting appropriate communication between the advisers on a project or assignment in order to progress the matter efficiently. Where the member is aware of information which will be properly required by another adviser in performing his duties and the client does not authorise direct communication, the member should ensure that his advice draws the client's attention to the matters of which the other adviser should be informed.

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

7.3.5 A member should deal promptly with all correspondence with other professional advisers, and maintain a file record of such correspondence, including fax, electronic

and telephone communications, and notes of any meetings. If any undue delay is likely to arise in responding to other advisers' communications then the other advisers should be notified promptly of this, together with the reasons and, if possible, an indication of the date when a response will be sent.

7.3.6 In certain circumstances a member may give instructions direct to barristers without using the services of a solicitor. Further details may be found on the websites, www.tax.org.uk and www.att.org.uk.

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

7.4 Working as a subcontractor to another professional adviser

7.4.1 A member working as a subcontractor to another professional adviser should ensure that there is a contract setting out terms and conditions of the arrangement. As a minimum there should be a written record of the agreement between the two parties.

7.4.2 The scope and basis of the work undertaken should be clear, for example, whether the subcontractor will rely wholly on information provided by the professional adviser or whether he will undertake his own research.

7.4.3 The subcontractor should ascertain how he will be held out to the end user and how his advice will be communicated to the client. For example, will he be in direct contact with the client or will he work 'behind the scenes' with all communication directed through the professional adviser.

7.4.4 A member working as a subcontractor should consider carefully his Professional Indemnity (PII) position. Further guidance is given on this area in the Guidance notes on PII – see www.tax.org.uk and www.att.org.uk.

7.5 Referrals to another professional adviser

7.5.1 A member who does not have the expertise or the staff resources available to meet his client's needs should refer the client to another professional adviser.

7.5.2 A member should take care when making referrals and should always aim to give the client a choice of adviser.

7.5.3 A member should make it clear to his client that the member has no responsibility for the work undertaken by the other professional adviser.

7.6 Money laundering

7.6.1 Members are referred to the Anti Money Laundering guidance issued by the CIOT and ATT in March 2004 and which can be found at www.att.org.uk and www.att.org.uk.

7.7 Clients' money

7.7.1 A member who receives clients' money in connection with the carrying on by the member of investment business (as defined by the Financial Services and Markets Act 2000) must handle that money in accordance with the regulations of the regulatory authority with whom he is registered relating to the handling of such funds. The following guidance addresses only non-investment business clients' money. See also paragraph 3.14.

7.7.2 Clients' money means money of any currency which a member holds or receives for or from a client, and which is not immediately due and payable on demand to the member for his own account. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded.

7.7.3 Clients' money must be kept separate from money belonging to the firm. For this reason, clients' money must be kept in a separate client account. A client account can be a current or deposit account at a bank or building society in the name of the member or his firm but it must 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.

7.7.4 The following conditions apply to client accounts:

- Written notice must be given to the bank concerned that all money standing to the credit of each client bank account is held by the firm as clients' money, and that the bank is not entitled to combine the account with any other account, or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it on any other account of the firm.

- Any interest payable in respect of sums credited to the account shall be credited to that account.

- 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.

- The bank should be required to acknowledge in writing that it accepts the terms of the notice.

7.7.5 Clients' money received by the firm must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.

7.7.6 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 firm's own account.

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

7.7.8 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 firm and agreed fees or commissions earned by the firm.

7.7.9 A firm must at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a client bank account, distinguishing the money of each client from the money of other clients and from firm money. Each client bank account must be reconciled against the balances shown in the client's ledger at least at six-monthly intervals, and

the records of such reconciliation must be kept for at least six years from the date of the last transaction recorded therein.

7.7.10 Members are reminded that converting or concealing criminal property or terrorist funds, for example by allowing them to be passed though the clients' money account is a criminal offence under the money laundering legislation. However there is no offence if a member makes a prompt report to the law enforcement agencies and their permission is obtained to continue the transaction.

8 CHARGING FOR SERVICES

8.1 Basis of charge

8.1.1 Before undertaking any work on behalf of a new client, a member should ensure that the client is aware of the basis on which fees will be charged and how expenses incurred on behalf of the client will be treated. It will usually be appropriate to set these matters out in the letter of engagement on accepting a new client (see Appendix 6). A member should make it clear at the outset whether he will charge for the initial meeting.

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

8.1.3 Fee arrangements are a matter for commercial negotiation by members. A member's fee should have regard to the responsibility, nature and importance of the work, the time devoted to it and the client relationship. The possible arrangements include:

- Time and expenses - where the member charges on the basis of time spent according to the skill and the resources deployed. This is likely to be the usual basis in the absence of any other arrangement and the rate to be charged can reflect the complexity of the engagement and the value of the benefit to the client.

- Fixed fees - where the member charges a fixed amount for an agreed assignment the fee should be based upon a proper costing of the work to be undertaken. When the arrangement is to run for any length of time, say beyond one year, there should be an appropriate variation clause in the engagement letter to enable additional work to be charged and cost escalation to be recouped.

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

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

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

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

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

8.2 Contingent fees and value billings

8.2.1 A client's instructions may be accepted where the fee basis is contingent upon success. However, members should be aware that such fees may be perceived by third parties, in particular HMRC, as reflecting adversely on the independence of the member. Accordingly, where a contingent fee basis is adopted, the member should take care to ensure that his conduct meets, and is seen to meet, the required standards

of integrity and objectivity, and that he can refute any challenge by HMRC on the standard of disclosure adopted in connection with the client's affairs.

8.2.2 In the following situations a member's objectivity might be impaired and he should consider carefully whether a contingent fee is appropriate.

- A contingent fee for the submission of a repayment claim, payable upon the refund of tax being made by HMRC.

  Under self assessment a tax repayment is triggered automatically upon the processing of the tax return. An error may be identified later if HMRC opens an enquiry into the tax return at which stage the refunded tax may be repayable.

- A fee for the preparation of a self assessment return contingent upon HMRC not opening an enquiry within a specified period.

A contingent fee may be appropriate where the tax outcome will certainly be subject to review by HMRC.

8.2.3 Particular care will be needed in preparing the letter of engagement to ensure that the fee basis is fully and effectively documented. Where contingent fees are used the engagement letter should stipulate the action to be taken should subsequent events cancel all or part of the benefits of the contingent fee arrangement. It should set out clearly and precisely whether part or all of the fee is to be repaid and whether interest is payable.

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

A member should be aware of the Tax Avoidance Disclosure regime where contingent fees are considered.

8.3 Disclosure of commission

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

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

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

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

8.3.5 The engagement letter should stipulate whether or not the member should account to the client for any commission received.

8.4 Retainers

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

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

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

8.4.4 To reduce the possibility of disputes arising with a client, any retainer arrangements should normally be set out in writing, with a view to ensuring that the member and the client clearly understand the extent, and limitations, of the arrangements. In particular, such a letter of engagement should make clear the point at which further charges may be levied: see Appendix 6.

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

8.5 Payments on account

8.5.1 Payments on account of work being performed, or in advance of work to be performed, may be part of the terms on which a member agrees to act for a client.

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

8.5.3 Any such payments should be reasonable in amount in relation to the likely level of fee which will be charged for the work performed or to be performed within a reasonable time scale.

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

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

8.5.6 Where a payment in advance has been received and the member becomes unable to start or complete the assignment, the member should promptly notify the client and repay to the client the advance payment received, after taking account of an

appropriate charge for any work performed and any disbursements incurred in undertaking the assignment for the client.

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

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

8.6 Clients who are slow to pay

8.6.1 A member should inform clients in writing of the payment terms of fees to be rendered. Normally, this should be incorporated in the letter of engagement sent to the client (see paragraph 4.4.1).

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

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

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

8.6.5 Alternatively, or in addition, the member may wish to notify the client that he will cease acting on behalf of that client unless payment is received within a stated period, being a reasonable period of time. See also Chapter 10.

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

8.6.7 A member should not settle his fees from money held, or received by the member on behalf of the client (eg a tax repayment), unless prior approval for such action has been obtained from the client. Any such arrangement should be in writing and have regard to the guidance in paragraph 7.7.

8.6.8A member should bear in mind the Consumer Credit Act 1974 and the potential need to apply for a consumer credit licence if they offer clients a payment by instalment facility or time to pay. Further advice can be found on the CIOT and ATT websites (www.tax.org.uk and www.att.org.uk).

8.7 Fee disputes

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

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

8.7.3 A member may exercise a lien in appropriate circumstances. A lien is the legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met. However before doing so the member should consider:

- whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the bill

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

- whether to take specialist legal advice or recommend the client to take specialist legal advice

See paragraph 13.9 for further advice.

8.7.4 It should be noted that neither the CIOT nor the ATT will arbitrate between a member and his client upon the amount of a disputed fee.

9. COMPLAINTS

9.1 Complaints to members

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

9.1.2 Such procedures should ensure that:

- Each new client is informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided, and of the ability to complain to the CIOT or the ATT. This information should be included in the engagement letter. An example of suitable wording is contained in Appendix 6.

- Each complaint is acknowledged promptly in writing.

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

- If the investigation finds that the complaint is justified in whole or in part, any appropriate action is taken.

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

9.1.4 Experience shows that the majority of complaints could have been avoided by taking some simple measures. The following paragraphs highlight a few areas to which attention can usefully be given and provide guidance on what to do when a client complaint is received.

9.1.5 Members are strongly recommended to issue an engagement letter in every new matter. Examples of engagement letters are contained in Appendix 6. Many complaints arise either because of confusion as to what the member has agreed to do, or over the fees charged. The engagement letter should define as precisely as possible the scope of the assignment. It should also set out clearly the basis upon which fees will be charged. Any change in the scope of the work or the fees quoted should be set out in writing and the client's agreement obtained.

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

9.1.7 A complaint received from a client should be treated seriously and immediate action taken. The objective should be to defuse the problem which has given rise to the complaint and remedy any defective work (so far as practicable) as quickly as possible. Time spent in dealing promptly with a complaint is often less than that required to deal

with it later. A speedy response often repairs any damage that may have been done to the member/client relationship.

9.1.8 If the complaint is found to be justified, a prompt acknowledgement of this and a suitable apology is often accepted. However if the subject matter of the complaint is such that a claim under the firm's Professional Indemnity Insurance may be required reference should be made to paragraph 9.1.9 prior to any admission of liability. If the complaint is felt, after investigation, not to be justified, this should be explained to the client in as simple terms as possible. Whether a complaint is justified or not, it is often helpful to try to see it from the client's point of view, and act accordingly.

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

9.2 Complaints to the CIOT or the ATT

9.2.1 A complaint received by the CIOT or the ATT (including a complaint by one member against another) about the standard of a member's work or the quality of the service provided will be passed directly to the Taxation Disciplinary Board (TDB) - an independent body set up by the CIOT and the ATT to deal with complaints against their members.

9.2.2 The role of the TDB is solely to determine whether a member has breached the laws of the CIOT or the ATT and where necessary apply an appropriate sanction. It does not become involved in claims for, nor have the powers to award, compensation or damages.

9.2.3 It may be possible for the TDB to resolve the complaint by conciliation to the satisfaction of both parties at this early stage, but all complaints will be considered by the Board's Investigation Committee to determine whether or not there is a prima facie case for the member to answer.

9.2.4 If the TDB's Investigation Committee concludes that there is a case to answer, it has the following powers:

- It may notify the member that no further action will be taken.
- It may admonish the member, or allow the complaint to rest on the file for three years, in either of which cases the member has the right to refuse to accept the decision and require the complaint to be referred to the TDB's Disciplinary Committee for determination (costs may be awarded against the member if the matter is dealt with in this way).
- It may refer the case to the TDB's Disciplinary Committee.

The decision of the Investigation Committee will be communicated to the complainant as well as to the member.

9.2.5 Where a complaint is referred to the Taxation Disciplinary Board's Disciplinary Committee, it will be presented before that Committee by the CIOT or the ATT, as appropriate. The member may present his own case, or may be represented, and may call witnesses as well as cross-examine any witnesses called on behalf of the presenter of the case. If the complaint is upheld in whole or in part the Disciplinary Committee may decide to apply one or more of the following sanctions:

- to reprimand the member

- to fine the member up to a prescribed maximum
- to expel or suspend the member from membership of the CIOT or the ATT, or both
- to require the member to pay all or part of the costs of the proceedings
- to order that its decision is publicised

9.2.6 The member may appeal against the order of the Disciplinary Committee. Any such appeal is then heard by the Appeal Committee of the Taxation Disciplinary Board. The Appeal Committee may uphold an appeal only on certain specified grounds. If it upholds an appeal the Appeal Committee may affirm the finding of the Disciplinary Committee, or overturn, vary or rescind the sanction applied. It may also, in certain circumstances, remit the case for re-hearing. In any case it may make an order as to costs.

9.2.7 If a complaint is dismissed by the Disciplinary Committee, or an appeal is upheld by the Appeal Committee, there is power to award costs to the successful member.

9.2.8 Students are also subject to the disciplinary process and the Disciplinary Committee has separate powers of sanction against a student against whom a complaint is upheld.

9.2.9 The following leaflets give further details about the disciplinary process. They are available from the TDB, the CIOT, the ATT and on the following websites, www.tax-board.org.uk, www.tax.org.uk and www.att.org.uk.

- Making a complaint – a guide for the public
- The Disciplinary Process – a guide for members
- The Disciplinary Process – a guide for students

10 CEASING TO ACT

10.1 Ceasing to act

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

- the client requires it; or
- the member gives reasonable notice to the client of his intention to cease to act. However, a member will need to have due regard to the terms of his engagement letter.

10.1.2 In no circumstances should the member cease acting for a client without notifying the client in writing that he is no longer acting. The member should continue to act until he has taken reasonable steps to notify the client that he is no longer acting.

10.1.3 Where a member has prepared tax returns and routinely dealt with correspondence on a client's behalf he should advise HMRC that he has ceased to act.

10.1.4 On ceasing to act, the member will usually discuss with the client the arrangements for settling unpaid fee accounts and billing work not yet invoiced. It is recommended that at this juncture consideration is given to the client's requirements for handing over papers to the member's successor and the member's costs associated with making the necessary arrangements. In this regard, members' attention is drawn to paragraph 13.9 and the limited right to retain papers belonging to a client until fees have been paid.

10.1.5 A member who after ceasing to act receives a communication from a successor should proceed as set out in paragraph 4.3.

10.1.6 If a member ceases to act and is not invited to hand over his client's affairs to a successor adviser he should put his client on notice and draw his attention to all open matters.

10.1.7 If a member is asked to hand over relevant papers to his former client or a successor, the following points should be considered:

- If the request does not come from the client direct, the member should obtain written consent from his former client prior to providing papers to a successor.
- Some documents on the member's files may belong to the client (see paragraph 13.1). The member is therefore required to provide these, subject to any lien the member may have (see paragraph 13.9). In the event of any dispute as to ownership of documents a member should normally seek specialist legal advice. Where the original documents are handed over, the member should first take copies, so that he can maintain proper professional records (see paragraph 5.7).
- Where documents belong to the member (see paragraph 13.1) the member should co-operate in providing copies of documents relevant to the client's ongoing tax affairs. If a significant amount of work is required, reasonable arrangements should be made for the member to be paid.
- If there is a risk that the former client may use the information provided to support a legal claim against the member, the member should consult his insurers and consider whether to take legal advice.

10.1.8 If after ceasing to act, the member subsequently receives any correspondence relating to the former client, he should pass that correspondence on without delay and advise the sender to address future correspondence direct to that client.

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

11 TRAINING AND CPD

11.1 Training contracts

11.1.1 Members of the CIOT and ATT qualify by examination and relevant practical experience. Detailed entry requirements are to be found in the CIOT's and the ATT's respective prospectuses **How to become a Chartered Tax Adviser** and **How to become a member of The Association of Taxation Technicians.**

11.1.2 The CIOT and ATT have prepared a model training contract which is available on the websites or on request from the CIOT and ATT. It is suggested that any training contract should deal with the following matters:

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

11.1.3 Provided that the student and his training principal are satisfied that no conflict will arise, such a training contract may run concurrently with studentship of other bodies.

11.2 Continuing Professional Development (CPD)

11.2.1 The CPD rules do not apply to students of the CIOT nor to students and affiliates of the ATT.

11.2.2 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 himself out to be competent to practise. A member must be prepared to meet the obligations necessary to provide the best possible service to clients or an employer.

11.2.3 A compulsory CPD scheme applies to all CIOT and ATT members with some minor exceptions. Full details are given in Appendix 1. For the current detailed requirements and guidelines, members should refer to the current issue of the CPD personal record issued annually.

12 MEMBERS IN EMPLOYMENT

12.1 Employees

12.1.1 These Professional Rules and Practice Guidelines apply equally to an employed member as they do to a member in practice whether or not his employer is a member of the CIOT or the ATT. They apply to every employed member irrespective of the nature of the activities or business of his employer.

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

12.2 Employees acquiring knowledge of default or an unlawful act

12.2.1 It is possible that an employed member, whether working in a tax practice or in industry, 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.

12.2.2 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 to which members are referred. Employed members should consider policies the employer has in place in relation to disclosures made under the Public Interest Disclosure Act. 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.

12.3 Employees acquiring knowledge of taxation irregularities

12.3.1 The general guidelines at paragraph 12.2 apply to employees acquiring knowledge of taxation irregularities. Further specific guidance relating to such irregularities is given below.

12.3.2 An employed member who is responsible for agreeing the employer's taxation liabilities with HMRC has the same duty as a member in practice to ensure that there is appropriate disclosure of all relevant information. Similarly, upon a discovery of default, negligence or fraud on the part of the employer, the member is required to draw the

employer's attention to the penalties for which the employer may become liable and to recommend the earliest possible voluntary disclosure.

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

12.4 Insurance arrangements

12.4.1 An employee can be sued jointly or severally with the employer by a client. For his own protection, therefore, a member should satisfy himself that his employer has adequate indemnity insurance covering the member as employee in respect of the taxation services provided to and on behalf of the employer by the member and that such cover protects the employee after he leaves the practice and also if the employer's practice ceases or is merged. In the absence of such insurance a member should consider effecting his own insurance cover. The member could consider drawing his employer's attention to the possibility of including a clause in the engagement letter stating that the client may only sue the firm/employer and not the employee.

12.4.2 It is also possible for an employee to be sued by his employer, for example, for breach of contract or tortious liability. A member at material risk of this should seek legal advice.

13 LEGAL MATTERS

13.1 Ownership of documents

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

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

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

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

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

However, where an agency relationship exists and the member has not been paid by the client for the work undertaken, the member has a lien over any relevant documents which belong to the client: see paragraph 13.9.

13.1.4 If a document was prepared by a member who was acting as a principal, the position depends upon the type of document in question. Generally, documents created by a member for the purposes of advising or carrying out work for the client belong to the member but not where the document is provided to the client. Therefore, documents created on the specific instructions of the client belong to him, whilst documents prepared by the member for his own purposes belong to the member. Examples of documents belonging to a member include copies of letters passing between the member and third parties, file notes, internal memoranda and drafts created in preparing advice for the client. However, the letter or document containing the advice sent to the client will belong to the client and the file copy will belong to the member.

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

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

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

13.2 Retention of records and time limits for court action

13.2.1 When deciding the period of retention for records (paper and electronic) a member should consider:

- the periods of retention set out in legislation
- the period of time during which actions may be brought in the courts and for which working papers may need to be available as evidence

13.2.2 Members who are uncertain about the time limits they should observe should seek legal advice.

13.2.3 Members should take steps to ensure that records are maintained securely and that client confidentiality is protected. All documents, regardless of ownership, created in the course of acting for a client are client confidential information (see paragraph 2.6).

13.2.4 A member should keep his working papers for at least seven years from the end of the tax year, or accounting period, to which they relate or such longer period as the rules of self assessment may require.

13.2.5 Papers and records which are legally the property of the client (or former client) should be returned to the client (or former client) or the client's permission obtained for their destruction.

13.2.6 Care should be taken if there are any open investigations into a client's affairs or any pending court action. In such circumstances records must be retained until the open matters are concluded.

13.2.7 There is a general principle that after the passing of a given period of time an action may not be brought before the courts. The law requires that persons with a legitimate cause should make their claim within a reasonable time.

Many statutes specify a time limit within which action must be taken. Where no such limit is given the Limitation Act 1980 sets out the general position on time limits as follows:

- Twelve years for actions upon a speciality (a contract under seal or an obligation under seal securing a debt) or a judgement given by the courts.
- For actions based upon a simple contract or tort the later of:
    - six years; or
    - three years from the earliest date on which the claimant or any person in whom the cause of action was vested first had both the knowledge required for bringing an action for damages in respect of the relevant damage, and a right to bring such an action, subject to a maximum period of fifteen years.

It is possible to override the statutory time limits by entering in to a contractual arrangement with the client.

13.3 Information requests from HMRC

13.3.1 A member should be aware that HMRC may in certain circumstances have the right to access members' and clients' papers and records.

13.3.2 Client confidentiality rules will apply to any disclosure of the member's records. A member cannot disclose papers to HMRC without the client's permission or a legally enforceable request by HMRC. Determining when HMRC has legally effective powers or whether the request may be discussed with the client can be a complex matter and a member should consider obtaining specialist advice particularly when a client refuses permission to disclose.

13.3.3 Upon receipt of an informal request for information from HMRC a member should advise his client whether he should provide the information or whether he should resist the information request until a legally enforceable request is made. Points to consider include:

- How onerous would it be to comply?
- Would complying with the request set an unwelcome precedent?
- Are the documents sought harmful to the client?
- Will HMRC ultimately be able to obtain the information either through legally enforceable powers or from another source?
- Is it possible to contain the scope of an information request through negotiation with HMRC?
- Are the documents requested relevant?

13.3.4 Where HMRC use or threaten to use statutory powers to obtain information, a member should

- inform his client unless legally prevented from doing so
- consider whether the statutory powers have been properly applied and seek specialist advice in cases of doubt
- consider whether legal professional privilege applies – see **Professional Conduct in Relation to Taxation** for further guidance on privilege
- consider whether Human Rights Act 1998 offers any protection

13.4 Direct Tax Search Warrants

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

13.4.2 An application by HMRC under this section is made without notice to the affected parties, so the first that the member is likely to know of the warrant is when HMRC's officers appear at the premises demanding to be allowed entry.

13.4.3 As stated above, if a member is raided in this way he should consult a solicitor immediately and, if at all possible, arrange for his immediate attendance at the member's offices. HMRC should be asked to take no steps until the solicitor has

arrived. If HMRC do not agree to this telephone legal advice should be sought since it would be an offence to obstruct the search. Upon arrival, the solicitor can then advise the member in relation to compliance with the warrant and can advise as to the appropriateness (or otherwise) of the use of this power. In appropriate cases, the member may have grounds for seeking an interim injunction to halt the search on suitable undertakings being given. Alternatively, he may seek to persuade the officer in charge that the search should be abandoned and, if appropriate, information provided voluntarily.

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

- some description of the fraud being investigated and the particular tax or taxes involved
- the names of customers or clients being investigated
- the authorised time of entry (usually not before 7.00 am or after 7.00 pm)
- the number of officers who can be involved in the search
- what items can be seized and removed by the searching officers (failing which, they can remove anything they reasonably believe may be required as evidence in proceedings)

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

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

13.4.7 One issue which may arise in the context of a search is the question of privileged documents. This is a particularly complex legal area and specialist advice should always be sought in this regard. See also **Professional Conduct in Relation to Taxation.**

13.5 Section 20BA TMA 1970 notices – orders for the delivery of documents

13.5.1 HMRC can obtain an order for the delivery of documents under s20BA requiring a person to deliver documents where tax fraud is suspected. Typically this is used to obtain information from innocent third parties in place of a raid. A member receiving such a notice must not tell the client. He should also consider obtaining specialist advice.

13.6 Indirect Tax Search Warrants

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

13.6.2 The provisions relating to the execution of such powers are similar to those for Direct Tax.

13.7 Request from other third parties

13.7.1 If a member receives a request for information or documents from any third party other than HMRC he should either obtain his client's permission or ensure that the request is legally enforceable and overrides client confidentiality. Determining whether the third party has legally effective powers or whether the request can be discussed with the client can be a complex matter and a member should consider obtaining legal advice, particularly when a client refuses permission to disclose.

13.8 Legal professional privilege

13.8.1 A member should consider whether documents requested by HMRC might be covered by legal professional privilege. See **Professional Conduct in Relation to Taxation** for further guidance.

13.9 Lien

13.9.1 A lien is a legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met.

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

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

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

- the documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client
- the documents must have come into the possession of the member by proper means
- fees must be due to the member in respect of work done on the client's instructions in respect of the documents and a bill for those costs must have been rendered
- the fees for which the lien is exercised must be outstanding in respect of that work and not in respect of other, unrelated, work

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

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

- whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the bill

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

- whether to take specialist legal advice or recommend the client to take specialist legal advice

If a third party has a legal right of access to a client's documents without the client's consent but the member has a lien over those documents, the member should seek legal advice before handing them over to the third party.

13.10 Drafting legal documents

13.10.1 There are certain categories of legal documents which may only be drafted for a fee by appropriately qualified people. A person convicted of drafting such documents without the appropriate qualifications will be liable to a fine. However, if a member merely indicates required amendments to a legal document, but does not himself amend them, he is not committing an offence.

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

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

- A Will or other document which transfers goods or property but does not take effect until the death of the person making the transfer.

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

- A letter or power of attorney.

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

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

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

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

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

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

13.10.5 A member who is not a solicitor or barrister may not prepare for a fee any instrument relating to legal proceedings.

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

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

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

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

13.11 Data protection

13.11.1 A member should comply with his obligations under the Data Protection Act 1998, for example:

- whether in electronic or paper form, he may not collect, process or store data about his clients without their consent
- he must store data confidentially and securely
- he may not use personal data for marketing purposes without his client's consent
- he must have in place systems and procedures which will enable him to confirm what data is held about a person, if asked
- clients or targets must be given the opportunity to be removed from a member's mailing list

14. ADVERTISING, PUBLICITY AND PROMOTION

14.1 General principles

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

14.1.2 For the purposes of this Practice Guideline, 'advertising' encompasses all forms of marketing of professional services, including all types of media advertising, whether for work, sub-contract work, staff recruitment, practice mergers, employment, publications, seminars, business cards, promotional gifts or general mail-shots. These guidelines apply equally to web-based marketing.

14.1.3 Members must comply with the law and must follow the standards and requirements of the British Code of Advertising, Sales Promotion and Direct Marketing, and the TV Advertising Standards Code and the Radio Advertising Standards Code notably as to legality, decency, honesty and truthfulness. Further guidance can be found on the following websites www.cap.org.uk and www.asa.org.uk.

14.1.4 If members are storing personal information about clients for marketing purposes they should ensure they have the necessary consents from the data subjects as set out in the Data Protection Act 1998. Members should also give the data subjects the opportunity to withdraw their consent before the information is used.

14.2 Specific guidelines

14.2.1 An advertisement should be clearly distinguishable as such.

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

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

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

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

14.2.6 Members may state the areas in which they specialise.

14.2.7 Promotional material should be factually and technically accurate, contain suitable disclaimers, include copyright notice, appropriate reference to the name of the firm and contact details. A member should be able to justify the truth of any factual statements in the promotional material and it should not contain any disparaging references to or disparaging comparisons with, the services of others. Promotional material would also include web-based material for this purpose.

14.3 Fees

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

APPENDIX 1

COMPULSORY CONTINUING PROFESSIONAL DEVELOPMENT

THE CHARTERED TAX ADVISERS' AND TAXATION TECHNICIANS' COMPULSORY CONTINUING PROFESSIONAL DEVELOPMENT REGULATIONS 2001

1. Citation, commencement and application

1.1 These Regulations may be cited as The Chartered Tax Advisers' and Taxation Technicians' Compulsory Continuing Professional Development Regulations 2001.

1.2 These Regulations shall come into force on 1 January 2002.

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

2. Introduction

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

2.2 Rule 2.4 of the Institute's and the Association's Professional 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:

(a) they should be relevant to the needs of members in their working fields;

(b) they are sufficiently flexible to cater for the particular circumstances of members;

(c) they do not create onerous demands;

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

(e) they are not administratively burdensome.

2.3 **All members of the Institute or the Association except those not working in taxation must comply with the CPD requirements.** A member who is uncertain whether these Regulations apply, or who wishes to apply for exemption under Regulation 7, should consult the Membership Department at the Institute or the Association (see Regulation 13).

3. The basic requirements

3.1 The minimum requirement for members of the Institute is 90 hours of CPD per calendar year, of which a minimum of 20 hours must be structured training and the remainder unstructured training. The annual requirement can be met on an averaging basis over any two consecutive years.

3.2 The minimum requirement for members of the Association is 45 hours per calendar year, of which a minimum of 15 hours must be structured training and the remainder unstructured training. The averaging basis is not available to Association members.

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 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 Regulations 4 and 5 structured and unstructured training normally mean training in the field of UK taxation. A member who practises in foreign tax may apply these Regulations by substituting the foreign tax for UK taxation.

6.2 Training in law, accounting and financial 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

A member who comes within any of the following categories for all or part of a calendar year will be excepted from the CPD requirements in Regulation 3 on a pro rata basis to the extent stated:

7.1 A member who is unable to meet the requirements due to ill health or disability.

7.2 A member of the Institute who is on parental leave, on a career break, or unemployed, is required to undertake a minimum average of one hour per week of unstructured training during the period of absence from work. A member of the Association in these circumstances is required to undertake a minimum average of two hours per month of unstructured training.

7.3 A member who is within the ‘retired member’ category.

7.4 A member (and especially a member working outside the UK) who, due to travel difficulties, would find it impracticable to attend conferences on UK taxation as part of the structured training requirement should apply to the Membership Department for consideration of alternative arrangements.

7.5 A member who is granted exemption by the Council of the Institute or the Association to the extent and upon the terms that the Council specifies.

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

8.1 A member is entitled to count towards the Institute's and the Association's requirements any appropriate training undertaken to fulfil the CPD (or equivalent) requirements or recommendations of another professional body of which he or she is a member, and of his or her 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 should use the form provided annually by the Institute or the Association on which to keep their CPD records for the particular year. 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.

9.3 Members should keep their CPD records for a minimum of two complete calendar years. The Institute and the Association 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 Regulation 3.1, three complete calendar years.

9.4 A member who is requested to submit their CPD records under Regulation 9.3 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. This averaging facility is not available to members of the Association.

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 or the Association, 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 and the Association encourage 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 2.4 of the Institute's and the Association's Professional Rules, reproduced in Regulation 2.2.

13. Membership 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 020 7235 9381 or the Association on 020 7235 2544.

APPENDIX 2

RULES OF THE REGISTRATION SCHEME FOR ASSOCIATION MEMBERS IN PRACTICE

THE ASSOCIATION OF TAXATION TECHNICIANS

RULES OF THE REGISTRATION SCHEME FOR MEMBERS IN PRACTICE

1. Introduction

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

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

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

2. Registration requirements

2.1 Members applying for registration must pay the registration fee as specified in paragraph 9.1, and provide the following information, declarations and documents to the Association.

i) member's name and membership number;
ii) business name, address, telephone number, fax number, electronic mail address and website address (if appropriate);
iii) commencement date of the business;
iv) brief details of their tax experience to date, as well as information about the type of work they are undertaking, or intend to undertake, when self-employed;
v) submission of a receipt or declaration by an insurance broker or insurer showing that current professional indemnity insurance (PII) is held which complies with the minimum requirement of the Council. The present requirement is at least two and half times gross fee income normally subject to a minimum of £100,000.
The PII cover should be held by the individual in the case of sole practitioners, held by the partnership in the case of partnerships, held by the partnership in the case of limited liability partnerships and held by the company in the case of limited companies;
vi) submission of CPD records for both the current year and the previous year. (The Association reserves the right to check CPD records with course providers or organisers);
vii) in the case of a partnership requiring to use the Association's badge and approved wording, a declaration from the managing partner is required confirming that the conditions in paragraph 4 have been met. Also a full list of partners is required indicating which partners are members of the Association;
viii) in the case of a limited liability partnership requiring to use the Association's badge and approved wording, a declaration from a member of the partnership is required confirming that the conditions in paragraph 5 have been met. Also a full list of members is required, indicating which members are members of the Association;
ix) in the case of a limited company requiring to use the Association's badge and approved wording, a declaration from a director of the company is required confirming that the conditions in paragraph 6 have been met. Also a full list of directors is required indicating which directors are members of the Association;
x) in the case of employees, a statement confirming that their self-employed status does not conflict with their contract of employment. If concurrent self-

employment is not explicitly mentioned or implied in the contract of employment, the member is recommended to obtain the employer's written agreement to his or her concurrent self-employment; and

xi) a draft of the firm's stationery

2.2 The appointment of an alternate is strongly recommended for good practice. Guidelines for the appointment of alternates should have been supplied with the registration pack, or can be obtained on request from the Association.

3. Administration of the scheme

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

3.2 Applications will be vetted before being put to the Registration Panel for consideration. The panel will consist of the Chairman of the Member and Student Services Committee or a member of Council, and a maximum of two other members of that Committee, one of whom should also be a Council member. Initial and renewal applications, where appropriate, may be considered by a minimum of any two from the panel. The panel has the authority to request additional information from applicants, if necessary, to establish whether an application can be accepted.

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

3.4 Registration will be effective from the 1st of the month following the month of acceptance by the Association.

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

3.6 Members whose applications are not considered by the panel to have met the requirement of the scheme will be notified in writing setting out the reasons for refusal. They will be invited to re-apply after satisfying the requirements.

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

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

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

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

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

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

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

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

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

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

7. Register for members approved under the scheme

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

8. Term of registration and annual renewal

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

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

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

8.3 The Association reserves the right to request the return of the Members in Practice certificate where the member no longer qualifies to be within the scheme.

9. Initial registration and annual renewal fees

9.1 The annual registration fee will be £36. Those joining the scheme during the year will pay £36 if they join in the period 1st January – 30th June and £20 if they join in the period 1st July – 31st December. These rates are subject to revision by Council.

10. Disputes

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

APPENDIX 3

COMPULSORY PROFESSIONAL INDEMNITY INSURANCE FOR CIOT AND ATT MEMBERS

The Chartered Institute of Taxation (CIOT)
Association of Taxation Technicians (ATT)
Compulsory Professional Indemnity Insurance Regulations

Professional Indemnity Insurance has been compulsory for CIOT **members in practice** since June 1997 and since January 2000 for ATT **members in practice**. If necessary, please contact the Secretariats for details of previous regulations.

With effect from 1 January 2006 ("the Specified Date") the following regulations apply.

In these regulations words importing the masculine gender include the feminine gender, words in the singular include the plural and words in the plural include the singular.

1. **Definitions**

1.1 The following definitions apply for the purposes of these regulations.

1.2 **'Council'** means the Council of the CIOT and/or the ATT.

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

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

1.4 **'Gross fee income'** is the aggregate of professional fees and all other income (including commissions) earned in respect of and in the course of business during the accounting year immediately preceding the year in question, but excluding any commission passed on to the client in full, and which is not retained to offset against fees.

1.5 **'Honorarium'** means a fee paid in respect of a formal honorary post for charities, amateur organisations and other 'not for profit' organisations.

1.6 **'Member'** means a member of the CIOT or the ATT.

1.7 **'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** of, or an employee of, a company providing taxation services in which he or she has a financial interest which represents 5% or more of the equity capital.

1.8 **'Principal'** means a sole practitioner, partner, member of a limited liability partnership or director in a firm providing taxation services.

1.9 **'Pro bono'** work means work for which absolutely no payment is made either in cash or kind.

1.10 **'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 the Inland Revenue (or in due course HM Revenue and Customs).

2. **Compliance**

2.1 Every **member** is required to comply with these regulations.

2.2 Subject to paragraph 3.1 below, every **member in practice** shall ensure that there is effected and maintained in respect of his **firm** professional indemnity insurance covered in accordance with paragraph 4.1 below.

2.3 A **member** who works on a self employed subcontract basis for a **firm** need not hold professional indemnity insurance in his own right provided he has obtained written confirmation from the contracting firm that its professional indemnity insurance policy complies with the CIOT and ATT's professional indemnity insurance regulations and that it covers him in his capacity as self employed consultant.

3. **Exemptions**

3.1 A **member in practice** shall be exempted from the obligation in paragraph 2.2 above if he satisfies all the following conditions:

(a) he has made an application to the CIOT or the ATT in such manner and accompanied by such fee and supporting evidence as the relevant Council may require and has provided information which is true in substance and in form and has disclosed to the CIOT or the ATT every fact reasonably likely to be regarded by the CIOT or the ATT as material;

(b) he holds a current authorisation from the CIOT or the ATT exempting him wholly or partly from the obligations contained in paragraph 2.2 above and in the case of a partial exemption he has complied with all the parts to which the exemption does not extend; and

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

3.2 A **member in practice** may appeal within 30 days of the date of the notification to him of the decision of the CIOT or ATT in response to his request for an exemption.

3.3 **Members** who receive an **honorarium** but who are not **members in practice** need not hold professional indemnity insurance cover. However, where the honorary post includes the provision of **taxation services** they must indicate in writing to the body paying the **honorarium** the fact that they have no professional indemnity insurance cover.

3.4 **Members** who carry out **pro bono** work but who are not **members in practice** are not required to have professional indemnity insurance cover. However, where the **pro bono** work includes the provision of **taxation services** they must indicate in writing to their **pro bono** client the fact that they have no professional indemnity insurance cover.

4. **Requirements for Professional Indemnity Insurance cover**

4.1 The insurance required to satisfy the obligations of paragraph 2.2 above means insurance which

(a) is either

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

(ii) if not so authorised is an insurance arrangement recognised and approved by a member of the Consultative Committee of Accountancy Bodies or The Law Society.

(b) covers all civil liability, including costs and expenses, incurred in connection with the provision of or the offering of **taxation services**;

(c) meets the required limit of liability set out in paragraph 5 below;

(d) save in the case of sole practitioners, is not avoidable by reason of any misrepresentation or non-disclosure or any other act or default of the insured; and

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

5. **Required Limit of Liability**

5.1 Except where paragraphs 3.1 or 5.2 apply, the annual minimum limit of indemnity for each and every claim is £1 million.

5.2 Where the **firm's gross fee income** is less than £400,000, the required annual minimum limit of indemnity for each and every claim is the greater of :

- 2.5 x the gross fee income; and
- £100,000 .

5.3 The insurance policy may include an excess provided that this excess does not exceed £20,000 per **principal**. Where a firm has subsidiary firms or associated firms and holds a group PII policy the excess may be calculated on a group basis. Before agreeing the level of excess, if any, to be included in the policy the firm must satisfy itself that it would be able to meet the cost of the excess element of any claims which might arise.

6. **Cover not available**

6.1 Where a **member in practice** is unable to obtain professional indemnity insurance complying with the regulations he must make an application to the CIOT or the ATT in accordance with paragraph 3.1 of these regulations for exception from all or part of these regulations.

7. **Continuity following cessation**

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

8. **Compliance with Professional Indemnity Insurance Regulations**

8.1 All **members** shall be obliged to provide to the CIOT or the ATT as and when required to do so by or under the authority of the relevant Council such evidence that may be sufficient to satisfy the CIOT or the ATT as to due compliance by such **member** of his obligations under these regulations.

8.2 Each **member in practice** required to hold professional indemnity insurance cover must, on request, provide the CIOT or the ATT with his professional indemnity insurance certificate and a copy of the insurance policy.

8.3 Failure to comply with the professional indemnity insurance regulations may result in disciplinary action being taken against the **member**.

PROFESSIONAL INDEMNITY INSURANCE (PII)
GUIDANCE NOTES FOR MEMBERS OF THE CIOT AND ATT

1. HOW MUCH PII COVER SHOULD I HAVE?

The minimum levels of cover are set out in paragraph 5 of the regulations. They are £1 million for each and every claim unless your 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 regulations and discussed at 2 below.

It is essential that you carry out a risk assessment before deciding the level of your firm's PII cover rather than simply opt for the minimum. Points to take into consideration include:

- The risk profile of the work you carry out for your clients – is it routine work involving comparatively small sums or is it complex and aggressive tax planning likely to be challenged by the tax authorities?

- What resources are available to the firm to meet any claims in excess of the insured amount?

- Remember you can insure a specific project if necessary where, for example, the tax involved is in excess of your existing PII cover.

- Does your firm 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.

The CIOT and ATT recommend that members should have cover of £1,000,000.

2. GROSS FEE INCOME – HOW IS IT CALCULATED?

Gross fee income is defined in the PII rules as

'the aggregate of professional fees and all other income (including commissions) earned in respect of and in the course of business during the accounting year immediately preceding the year in question, but excluding any commission passed on to the client in full, and which is not retained to offset against fees.'

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

It is advisable to notify your insurer of any major changes which take place in your firm, for example an acquisition or a demerger so that the insurer can ensure that your PII continues to provide adequate cover for the changed circumstances.

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.

3. I AM AN EMPLOYEE – DO I NEED PII COVER?

Subject to the exceptions below, as an employee you should be protected by your employer's PII policy or other insurance arrangements. This is the case whether you are working in industry or in the tax/accounting profession. However, you will need PII cover if:

- you are a director or an employee and you have a financial interest which represents 5% or more of the equity capital in your employer's taxation services firm; or

- you provide taxation services in a capacity other than as an employee. For example, in the evenings and weekends you prepare tax returns and offer tax advice to a handful of clients (including family and friends). There is no connection with or any involvement from your employer. In those circumstances you will need PII cover unless it is done on a pro bono or honorary basis. See also the guidance below on pro bono and honorary work.

4. HONORARIA AND PRO BONO WORK

In the PII regulations honorarium is defined as 'a fee paid in respect of a formal honorary post for charities, amateur organisations and other not for profit organisations'. Pro bono is defined as 'work for which absolutely no payment is made in cash or kind'.

The important point to bear in mind when you give advice for which you do not charge or charge a greatly reduced fee is that a claim can still be made against you if the advice you give is defective. To determine whether a case against you 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.

If you are a sole practitioner or partner in a firm pro bono advice/honorary work may in some circumstances be covered by your/the firm's PII's policy. For example if you give free advice to a local charity in order to raise your practice's profile in the local area that may be covered. However, free advice given to your neighbour in the pub is much less likely to be covered.

If you are an employee and give pro bono advice or undertake honorary work the first step is to check your employment contract to establish whether it prohibits you from carrying out such work. If you give advice outside the terms of your contract of employment it is unlikely you will be covered by your employer's PII policy. If such work is permitted under your contract of employment you may be covered by your employer's policy but cover will depend on a number of factors including whether you were acting as an employee or as a member of the public.

If you are not covered by your employer's policy and you make a mistake there is a real risk that a claim could be made against you personally. Therefore if you are giving advice on a pro bono/honorary basis you should consider carefully the need for PII cover in case of claims.

In any event under the PII regulations if you provide taxation services on an honorary or pro bono basis and do not have PII cover you are obliged to notify your client of this fact in writing. Remember you can be sued for honorary and pro bono work if the advice given later proves to have been defective.

5. CONSULTANTS AND SUBCONTRACTORS

A consultant may be sued for negligent advice and a claim may be brought against the firm for which he is working and/or against the consultant.

A member who works on a self-employed basis as a consultant for a firm which provides taxation services must have PII cover unless he has confirmation from the contracting firm that their policy complies with the CIOT and ATT PII regulations and covers him in his capacity as a self employed consultant (as not all policies will do so).

Some members provide taxation services on a self-employed subcontract/consultancy basis to businesses which are not themselves a provider of taxation services (for example, members who work in the taxation departments of large companies). The business using the services of the member is unlikely to have relevant insurance which would cover the member and which would comply with the CIOT and ATT PII regulations. A member in these circumstances must take out his own PII which does comply. However, it is open to that member to apply to the CIOT or the ATT for an exemption from the need to have PII cover if he has written assurance that the business contracting with him will not make a claim against him. Notwithstanding this, members should be aware that the CIOT and ATT strongly recommend that members should hold their own PII policy in such circumstances.

6. DOES MY POLICY COMPLY WITH THE PII RULES?

The following notes identify some of the less obvious requirements of a PII policy if it is to comply with the PII regulations.

Each and every claim

A member's PII policy must be on an 'each and every' claim basis.

A PII policy can effectively be on an 'aggregate' basis or an 'each and every' claim basis. In broad terms 'aggregate' means that for a £1m policy the maximum the insurer will pay out is £1m whether it is made up of several smaller claims or one large claim. With an 'each and every' basis policy the insurer will pay out up to £1m for each claim made during the lifetime of the policy. The 'each and every' basis is the industry norm for professionals such as tax advisers and taxation technicians and it affords greater protection to the member and his clients.

Civil liability

Under regulation 4.1b a member's PII policy must cover 'all civil liability'.

Not all insurance policies cover claims for civil liability. Examples of civil liability include claims which are made solely in contract and not in negligence. Some policies cover claims arising out of negligence but only some elements of a claim in contract. However, claims can be made in both negligence and/or contract and the damages payable may differ.

Example

A tax adviser may have a contract with a client in which he agrees to perform certain work within a timescale and agrees to pay penalties if the timescale is not met. The tax adviser carries out the work incompetently and late. The incompetence causes loss to the client but his tardiness does not.

The sums payable under the penalty clause in the contract would not be covered under a negligence only policy. This is because the cost of the penalties would constitute a claim in contract.

The loss arising from the incompetence is both a liability in negligence and contract and would be covered by both a policy covering negligence claims and one covering civil liability claims.

A policy that only covers you for negligence may not protect against all elements of a claim for breach of contract. Therefore it is advisable to ask your broker to ensure that your PII policy covers against all civil claims and not just claims in negligence.

Is the cover 'costs inclusive' or 'costs exclusive'?

Cover can be provided with costs inclusive (ie the costs of defending a claim can be in addition to the limit of indemnity) or with costs exclusive (ie where the costs are included within the limit of indemnity). Regulation 4.1b requires costs to be inclusive – the policy must provide cover for the limit of the indemnity plus defence costs in addition.

To ensure that your policy fully complies with the PII rules it is advisable to provide your broker with a copy of the rules when you ask him to obtain quotes for PII cover.

7. TAX IS ONLY AN INCIDENTAL PART OF MY WORK – DO I NEED PII?

Where a member works in a role which is predominantly non-tax related but from time to time he gives tax advice it is not always clear cut whether the member needs to have PII.
However, the starting point is always that if you hold yourself out as a member of the CIOT or the ATT and you provide taxation services, no matter how small, you must have PII.

The illustrations below set out some of the more common situations. They are intended as guidance only; if you are uncertain whether you need PII or not you should contact the CIOT or the ATT for further guidance (see 13 below for contact details).

Illustration 1

Adam is an ATT who is also a director and 25% shareholder of a wine importing company. From time to time he gives tax advice to his fellow directors on business transactions but his main role within the company is to maintain and develop relationships with customers and wine producers. For more complex tax matters the company consults its external tax advisers. Adam wonders whether he is required to have PII under the CIOT regulations.

Adam is not obliged to have PII cover as the company of which he is a director/ shareholder is not a provider of taxation services **and** when giving tax advice Adam makes it clear to his fellow directors that he is acting in his capacity as a director of the company and not as an ATT. He is not holding himself out to third parties as an ATT.

Illustration 2

Brian is a CTA who is also a self-employed management consultant. He feels he has the edge on many of his competitors in that he can give advice on tax matters as well as the usual management consultancy matters. He uses this as a selling point when meeting prospective clients and his tax qualification is included on his business card. However, in practice the tax element of his work is very small – typically less than 10% of his time spent on a project will be concerned with tax. Brian does not think he needs PII.

The basic rule is that where a member offers tax advice 'as a chartered tax adviser or as a taxation technician, with the intention that another person, body or organisation should rely on such services' (see regulation 1.10) he is required to have PII. Although Brian is predominantly a management consultant his promotion of his membership of the CIOT and his tax knowledge to win business is likely to lead clients to believe that he is giving tax advice as a CTA and as

such he must have PII. In any event, irrespective of the CIOT PII requirements Brian would be well advised to have PII to cover all aspects of his management consultancy practice.

8. FIDELITY GUARANTEE INSURANCE – DO I NEED IT?

Fidelity guarantee insurance provides cover against any acts of fraud or dishonesty by any partner, director or employee in respect of any money or property held in trust by the firm. Whilst it is not compulsory for members in practice to take out such cover it is recommended as best practice.

9. WHAT LEVEL OF EXCESS MAY I HAVE?

The regulations allow the PII policy to include an excess of up to £20,000 per principal. For the protection of clients, the public and members themselves the 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 you are bearing say the first £5,000 than if a similar claim will, initially at least, only cost you £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.

You can therefore minimise the cost of premiums by increasing the excess payable on your policy, subject of course to the overriding requirement that the excess is at a manageable level for your firm and within the CIOT and ATT limits. It is not acceptable to opt for a higher excess to reduce the premium payable unless you are confident of your firm's ability to meet its liabilities under any claims which arise.

If your firm has subsidiaries or associated firms and you have a group PII policy the excess may be calculated on a group basis.

10. LIABILITY CAPPING

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. It may also reduce the premium payable as insurers regard liability capping as an indicator of good risk management by the insured. However, it would be unwise to rely wholly on a liability cap as being effective in every case. There are a number of issues which you should take into account when considering liability caps.

- **No engagement letter**
  It may seem obvious but the liability cap will not be effective if there is no engagement letter in place. It is best practice to have engagement letters but sometimes the system falls down, for example, the engagement letter is not returned by the client, the costs of drawing up an engagement letter for a one off assignment were considered to be out of all proportion to the fee which could be charged for the work undertaken or it was a very rushed job and there simply wasn't time to draw up the engagement letter. Without the engagement letter it is most unlikely that the liability would be capped.

- **Work not covered by the engagement letter**

A client may engage a member to carry out work which is not covered by the engagement letter. For example, a compliance client asks for advice on trusts. It so happens that your firm employs a trust specialist who has a meeting with the client and follows it with a meeting note. The existing engagement letter does not cover the work undertaken and a new engagement letter was not drawn up. In those circumstances it is most unlikely that the liability would be capped.

- **Claim made by a third party**
  The liability cap included in the engagement letter would not extend to claims made by third parties. For example, you may give tax planning advice to a company on a corporate transaction and have an engagement letter (with a liability cap) signed by the directors on behalf of the company. However, the advice that you give could impact on the personal tax position of the shareholders (whom you were aware of and who you knew would rely on the advice and who took part in the transaction). If the advice that you give is wrong and has a detrimental effect on the shareholders you could face a claim from them. Any such claim would not be subject to the liability cap as they were not signatories to the engagement letter.

- **Liability cap rejected by the courts**
  It is possible that the courts could consider the liability cap to be unreasonable condition and as such unenforceable.

11. I CANNOT GET PII COVER – WHAT SHOULD I DO?

If you are unable to obtain cover you should apply to the CIOT or the ATT under regulation 3.1 setting out the steps you have taken to obtain cover and the reasons why cover has been refused. Your application will be considered and you will be advised of the outcome within 30 days. Where exceptionally it is not possible to meet this deadline you will be kept informed of progress and delays will be kept to a minimum.

12. APPEALS IN RESPECT OF APPLICATIONS FOR AN EXEMPTION OR EXCEPTION

If you apply for an exemption under regulation 3.1 and you are unhappy with the outcome you may submit an appeal to the Taxation Disciplinary Boards Limited within 30 days of the date of the notice advising you of the decision of the CIOT or the ATT. Appeals should be addressed to The Secretary, The Taxation Disciplinary Board Limited, 12 Upper Belgrave Street, London, SW1X 8BB.

13. WHO SHOULD I CONTACT IF I HAVE ANY QUERIES ABOUT THE PII RULES?

You should contact the Deputy Secretary (Jonathan Crump - jcrump@ciot.org.uk) at the CIOT or the Secretary (Andrew Pickering- apickering@att.org.uk) at the ATT.

APPENDIX 4

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

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

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

Definitions

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

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

4 A 'Firm' means a sole practitioner, a partnership[1] or a corporate body.

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

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

7 A 'Nominated Member' is a *Chartered Tax Adviser* who is either a partner[2] or director of a corporate body who completes the undertakings required by these Regulations, and who is duly authorised to accept responsibility to ensure that the Firm conducts itself so as not to bring the Institute or the tax profession into disrepute.

8 The 'prescribed minimum' is the number of partners[2] or directors who must be qualified as *Chartered Tax Advisers* for the purposes of Regulations 10(b) and 11(b) determined in accordance with the following table

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

[1] or a Limited Liability Partnerships (LLP)
[2] or a member of an LLP

Users of the description '*Chartered Tax Advisers'*

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

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

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

b) not fewer than 75% of the partners[1] are *Chartered Tax Adviser*s or hold Recognised Status, and not fewer than 75% of the Voting Rights are held by *Chartered Tax Adviser*s or those of Recognised Status provided that the number of partners who are *Chartered Tax Adviser*s shall be not less than the prescribed minimum; and

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

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

a) each director is a *Chartered Tax Adviser* or

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

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

12 (a) Firms complying with the requirement of Regulations 10(b) or 11(b) by the inclusion of partners[1] or directors of Recognised Status must include the following statement on business stationery:

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

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

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[1] or members of a Limited Liability Partnership.

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

Discipline

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

14 The Institute's disciplinary rules shall apply to complaints against partners[1] and directors in the tax practice who are not members of the Institute as it applies to complaints against members but the defendant in any such proceedings shall be the Firm.

15 In the application of disciplinary rules against a Firm under Regulation 14, the Disciplinary Committee of the Taxation Disciplinary Board Limited may order the suspension or removal of the right to use the description '*Chartered Tax Advisers*' or reprimand or fine the Firm such sum as the Disciplinary Committee think fit in the light of the size and gravity of the offence together with the imposition of costs provided that *Chartered Tax Adviser* members of the Firm have been afforded an opportunity to make such representations as they feel appropriate.

Fees

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

Recognised Status

17 Persons who are members of the following bodies

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

[1] or Limited Liability Partners (LLP)

APPENDIX 5

RULES FOR THE USE OF THE CIOT BADGE

RULES FOR THE USE OF THE INSTITUTE BADGE

1. The Badge may only be reproduced on:

1.1 the professional stationery and promotional material of:

(a) a sole practitioner who is a member of the Institute,

(b) A firm or company authorised by the Institute to use the designatory title Chartered Tax Advisers, or

(c) such other person, firm or company as the Council shall decide.

1.2 the personal business cards of a member of the Institute who is an employee.

2. Members, firms and companies may not use the Badge on commercial publications nor in any venture with a non-member, apart from firms and companies authorised by the Institute to use the designatory title Chartered Tax Advisers.

3. ‘Professional stationery and promotional material’ in these Rules includes:

Professional notepaper, 'With compliments' slips Business cards, reports and report covers, practice brochures, publicity leaflets, advertisements, premises nameplates and websites

Reproduction on a member's private stationery is not permitted.

4. Reproduction of the Badge must comply with the following rules:

4.1 The Badge should be printed in a single colour.

4.2 The Badge must be reproduced, unaltered in any way, from artwork supplied by the Institute, in the size range 10-25mm and commensurate with other matter on the document.

4.3 Reproduction on a nameplate may be up to 150mm.

4.4 If the Institute's Badge is used in conjunction with other Badges, they must be of equal prominence.

4.5 The name of the member firm or company must be displayed with each use of the Badge.

4.6 Such other rules as the Council shall from time to time decide.

5. Applications to use the Badge must be accompanied by a draft or sample of each of the items incorporating the Badge for which permission is sought, including a description of the colour.

6. Unless the Council shall otherwise decide, permission to use the Badge will lapse in any of the following circumstances:

6.1 If the applicant ceases to be a sole practitioner, firm or company within paragraphs 1.1(a) and (b) of these Rules;

6.2 If a breach of any of these Rules occurs;

6.3 If the Council shall so decide.

Application may be made to renew a lapsed permission.

7. Badge-users will be required to confirm annually that no changes have taken place which would invalidate the use of the Badge.

8. Any member who fails to observe these Rules or who otherwise uses the Badge in a way which might bring the Institute into disrepute will be subject to the normal disciplinary procedures of the Institute.

APPENDIX 6

ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

Guidance note issued in August 2001 by the Chartered Institute of Taxation & the Association of Taxation Technicians

CONTENTS

ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

INTRODUCTION

1. This statement provides guidance to tax practitioners about engagement letters for tax work. It replaces guidance issued in October 1997.

2. It is strongly recommended that practitioners should issue a letter of engagement for tax work in order to define the terms of the engagement and agree these with the client. A letter of engagement can be used to manage clients' expectations: it provides significant protection to the practitioner and is likely to be an important document in a dispute such as a claim for professional negligence. This is particularly so given the increasingly litigious world in which business is conducted. In this context the attention of practitioners is drawn to *Hurlingham Estates v Wilde & Partners [1997] STC 627* following which the Courts will infer that a practitioner has the knowledge and expertise appropriate to the ordinary competent professional practising in his particular field. The engagement letter defines the areas in which the practitioner's presumed expertise is applied for the client's benefit.

3. This general guidance gives examples of the content of engagement letters. It does not set out the work that a tax practitioner should or should not do, or how it should be done. The examples of tax engagement letters in the Annexes and in particular the text in square brackets should be amended to meet individual circumstances. It may, for example, be necessary to issue an engagement letter covering both tax and non-tax work or to tailor an example for a 'one-off' rather than a continuing assignment.

4. The example letters contained in the Annexes are designed for use by smaller practitioners but many practices will develop their own model engagement letters.

5. This guidance has been developed in conjunction with the Tax Faculty of the Institute of Chartered Accountants, the Association of Chartered Certified Accountants, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland, and the Institute of Indirect Taxation.

STATUS OF PRACTITIONER

6. In the course of their work for clients, practitioners may be acting as agent, for example where the work consists of preparing and submitting a tax return and agreeing the tax position, or as principal, for example where an income and expenditure account is prepared for a sole trader or consultancy work is undertaken. When drafting the terms of an engagement letter the practitioner should be clear about the distinction.

CONTENTS

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

   - the nature of the services to be provided (see paragraph 3 in Annexes A-C and paragraph 2 of Annex D);
   - the responsibilities of the client, including the obligation to provide full information (paragraph 4 of Annexes A-C and paragraph 3 of Annex D);

- quality of service and complaints procedures (paragraph 13 of Annexes A-C and paragraph 9 of Annex D); and
- fee arrangements (paragraph 14 of Annex A-C and paragraph 10 of Annex D).

INVESTMENT BUSINESS

8. Practitioners are currently subject to the Financial Services Act 1986 and, if authorised, to conduct investment business, to the Investment Business Regulations and Guidance issued by the Institute of Chartered Accountants in England and Wales (which were revised with effect from 1 July 1997).

9. With effect from 1 December 2001 practitioners will be subject to the Financial Services and Markets Act 2000. Practitioners authorised by the Financial Services Authority will be subject to the FSA's Conduct of Business Sourcebook. Practitioners who become licensed by a Designated Professional Body such as the Institute of Chartered Accountants in England and Wales effective from 1 December will be subject to the Designated Professional Handbook issued by ICAEW.

10. Practitioners need to include appropriate paragraphs in the tax engagement letter. The provision of specific investment business or corporate finance investment business services or, additionally with effect from 1 December 2001, exempt regulated activities, should be dealt with under a separate engagement letter.

11. Practitioners who are not authorised under the Financial Services Act 1986 (or, with effect from 1 December 2001, authorised or licensed under the Financial Services and Markets Act 2000), are not eligible to carry on investment business activities (or, with effect from 1 December 2001, undertake exempt regulated activities). Any engagement letter should make this clear to the client.

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

OTHER REGULATIONS AND GUIDANCE

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

14. The Data Protection Act 1998 came into force on 1 March 2000. It sets rules for processing personal information and applies to paper records as well as those held on computer. It replaces the Data Protection Act 1984. Because the circumstances of each practitioner are different, drafting a form of words appropriate to all is unlikely to be helpful. Practitioners may find the wording in paragraph 18 in Annexes A-C (paragraph 14 of Annex D) useful for the purposes of adaptation.

THE CLIENT

15. A separate engagement letter ought to be issued for each client to whom a service is provided. For example, separate engagement letters should be used if the practitioner provides tax services to:

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

16. When acting for a group of companies it may be more practical to send a single engagement letter to the parent company of the group. The letter should specify clearly that services to all the member companies of the group are covered; furthermore the practitioner should check that the parent company has the authority to bind all members of the group.

FEES

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

- time and expenses - where the practitioner charges on the basis of time spent according to the level of expertise required. The rate to be charged is likely to reflect the complexity of the engagement and the value of the benefit to the client;

- fixed fees - where the practitioner charges a fixed amount for an agreed assignment, the fee should be based upon a proper costing of the work to be undertaken. It is essential that there is an appropriate variation clause in the engagement letter to enable additional work to be charged and/or cost escalation to be recouped; and

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

18. Members should take steps to avoid fee disputes by giving an indication of fees before work is started or by agreeing fees before issuing invoices.

AGREEMENT OF LETTER

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

ONGOING WORK AND CHANGES

20. An engagement letter for ongoing work should be regularly reviewed and, if appropriate, an updated engagement letter agreed. This is so even if just one aspect of the engagement is changed, for example where the practitioner agrees to carry out a year's work for a fixed rather than a time-based fee. Generally a practitioner should review engagement letters for continuing services at least once in every three years. It is important for practitioners to keep the client informed about progress once the engagement is under way. It is prudent to write to the client when ceasing to act so that the client is on notice about any outstanding matters. These actions should help to avoid misunderstandings about the engagement and disputes about fees.

ANNEX A

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

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

Dear *[complete]*

PERSONAL [INCLUDING SOLE TRADER BUSINESS] TAX COMPLIANCE:

TERMS OF ENGAGEMENT

1. INTRODUCTION

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

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

2 PERIOD OF ENGAGEMENT

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

2.2 [We will deal with matters arising in respect of years prior to the above year, as appropriate.] [We will not be responsible for earlier years. Your previous advisers, *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.]

SCOPE

3. OUR SERVICE TO YOU

3.1 *Note: Paragraph 3.1 is intended for use where the business accounts comprise no more than an income and expenditure account drawn up for the purpose of completing the tax return. The terms of engagement for the preparation of more extensive accounts are outside the scope of this guidance..*

[Either]

[We will prepare the income and expenditure account of your business and the income tax computations based thereon from your accounting records and other information and explanations provided by you. We will not carry out an audit of those records.]

[Or]

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

3.2 We will prepare your personal tax return together with such supporting schedules as are appropriate and we will [prepare]/[check the Inland Revenue's calculation of] your self-assessment of tax [and Class 4 national insurance contributions].

3.3 We will send you your tax return[, business accounts, tax computations] *[sole traders]* and supporting schedules [in duplicate] *[optional]* for you to approve and sign. We will then submit it[, with the accounts and computations,] to the Inland Revenue. [You authorise us to file the return electronically.]

3.4 We will tell you how much tax [and national insurance contributions] you should pay and when. If appropriate we will initiate repayment claims when tax [and national insurance contributions] [has/have] been overpaid.

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

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

3.7 We will deal with all communications relating to your return addressed to us by the Inland Revenue or passed to us by you. However, if the Inland Revenue choose your return for enquiry [we will refer you to another practitioner]/[this work may need to be the subject of a separate assignment in which case we will seek further instructions from you]. (*See Annex D*)

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

4. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

4.1 You are legally responsible for making correct returns by the due date and for payment of tax on time. Failure to meet the deadlines may result in automatic penalties, surcharges and/or interest.

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

(a) that all returns are to be made on the basis of full disclosure of all sources of income, charges, allowances and capital transactions;

(b) to provide full information necessary for dealing with your affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;

(c) that we can approach such third parties as may be appropriate for information that we consider necessary to deal with your affairs;

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

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

(f) to keep us informed about significant changes in your circumstances if they are likely to affect your tax position.

5. OTHER SERVICES AND GENERAL TAX ADVICE

[Insert paragraphs from Annex E as appropriate]

5.1 We will be pleased to assist you generally in tax matters if you so require. To enable us to do this you will need to instruct us in good time.

5.2 Because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

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

6. INVESTMENT ADVICE

See paragraphs 8-12 of introduction

[If not authorised (or, with effect from 1.12.01, authorised or licensed)]

Investment business is regulated under the [Financial Services Act 1986]/[Financial Services and Markets Act 2000]. We are not authorised [or licensed] under that Act. *[Delete as appropriate]*

[Or, if authorised (or, with effect from 1.12.01, authorised or licensed)]

If we are required to provide investment advice we will issue a separate engagement letter.

Practitioners who are authorised to carry on investment business (or, with effect from 1.12.01, authorised by the Financial Services Authority to carry on investment business or licensed by a Designated Professional Body such as ICAEW to undertake exempt regulated activities) are referred to the investment business regulations and guidelines issued by the regulatory body who authorises (or licenses) them to conduct investment business. This guidance should be incorporated as appropriate into the client engagement letter to cover investment business services that are integral to tax advice. If investment services are separately identifiable, then separate engagement letters drafted in accordance with relevant guidance should be used.

7. EXCLUDED SERVICES

[Adapt as appropriate. See also paragraph 5 above]

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

- Pay As You Earn including year end returns and matters relating to your employees;
- forms P11D;
- obligations under IR35;
- returns for sub-contractors;
- VAT returns; and
- inheritance tax returns.

7.2 You will deal with claims and any related correspondence, appeals or other matters in respect of working tax credits and child tax credits.

7.3 We will be pleased to advise on any of these matters if so requested.

TERMS

8. PROFESSIONAL RULES AND PRACTICE GUIDELINES

We will observe the bye-laws, regulations and ethical guidelines of The Chartered Institute of Taxation/The Association of Taxation Technicians and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us authority to correct Inland Revenue errors. A copy of these guidelines is available for your inspection in our offices.

9. COMMISSIONS OR OTHER BENEFITS

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

10. CLIENT MONIES

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

11. RETENTION OF RECORDS

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

11.2 Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.

12. REGULATORY REQUIREMENTS

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

13. QUALITY OF SERVICE

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

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

14. FEES

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

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

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

15. LIMITATION OF LIABILITY

15.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

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

15.3 E-mail may be used to enable us to communicate with you. As with other means of delivery this carries with it the risk of inadvertent misdirection or non delivery.

It is the responsibility of the recipient to carry out a virus check on any attachments received.

16. ELECTRONIC COMMUNICATION

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after their despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

17. APPLICABLE LAW

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

18. DATA PROTECTION ACT 1998

To enable us to discharge the services agreed under this engagement, and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance, we may obtain, use, process and disclose personal data about you. You have a right of access, under data protection legislation, to the personal data that we hold about you. For the purposes of the Data Protection Act 1998, the Data Controller in relation to personal data supplied about you is *[name].*

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not effect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

20. AGREEMENT OF TERMS

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

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

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

Yours etc.,

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

Signed Date

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

Signed Date

Signed Date
(Spouse)

ANNEX B

EXAMPLE OF A CORPORATION TAX COMPLIANCE ENGAGEMENT LETTER

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

To the Directors of *[complete]*.

CORPORATION TAX COMPLIANCE: TERMS OF ENGAGEMENT

1. INTRODUCTION

1.1 This letter sets out the basis on which we [are to] act as tax agent and adviser to the company [and its subsidiaries. The following is a list of those subsidiaries:]

1.2 [For the purpose of what follows any reference to the company should be read as a reference also to the subsidiary companies.]

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

2 PERIOD OF ENGAGEMENT

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

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

SCOPE

3. OUR SERVICE TO THE COMPANY

3.1 We will prepare from the accounts and other information and explanations provided by you the company's corporation tax return and computations, together with all supporting schedules and, where necessary, amended returns.

3.2 We will send you the tax return and supporting schedules [in duplicate] [*optional*] for you to approve and sign. We will then submit it, with the accounts and computations, to the Inland Revenue. [You authorise us to file the return electronically.]

3.3 We will advise you of the amounts of corporation tax to be paid and the dates by which the company should make the payments. Where appropriate we will initiate repayment claims when tax has been overpaid.

3.4 If you wish, we will advise you whether quarterly corporation tax payments ought to be made, but in order to do this you will need to provide us with appropriate management information.

3.5 We will advise as to possible claims and elections arising from the tax return and from information supplied by you. Where instructed by you, we will make

such claims and elections in the form and manner required by the Inland Revenue.

3.6 We will deal with all communications relating to the company's tax return addressed to us by the Inland Revenue or passed to us by the company. However, if the Inland Revenue choose your return for enquiry this work may need to be the subject of a separate assignment in which case we will seek further instructions from you. *(See Annex D)*

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

4. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

4.1 The company is legally responsible for making correct returns by the due date and for payment of tax on time. Failure to meet the deadlines may result in automatic penalties and/or interest.

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

(a) that all returns are to be made on the basis of full disclosure of all sources of income, charges, allowances and capital transactions;

(b) to provide full information necessary for dealing with the company's affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;

(c) that we can approach such third parties as may be appropriate for information that we consider necessary to deal with the company's affairs;

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

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

(f) to keep us informed about significant transactions or changes in circumstances.

5. OTHER SERVICES AND GENERAL TAX ADVICE

[Insert paragraphs from Annex E as appropriate.]

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

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

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

6. INVESTMENT ADVICE

See paragraphs 8-12 of introduction

[If not authorised (or, with effect from 1.12.01, authorised or licensed)]

Investment business is regulated under the [Financial Services Act 1986]/[Financial Services and Markets Act 2000]. We are not authorised [or licensed] under that Act. *[Delete as appropriate]*

[Or, if authorised (or, with effect from 1.12.01, authorised or licensed)]

If we are required to provide investment advice we will issue a separate engagement letter.

[Practitioners who are authorised to carry on investment business (or, with effect from 1.12.01, authorised by the Financial Services Authority to carry on investment business or licensed by a Designated Professional Body such as ICAEW to undertake exempt regulated activities) are referred to the investment business regulations and guidelines issued by the regulatory body who authorises (or licenses) them to conduct investment business. This guidance should be incorporated as appropriate into the client engagement letter to cover investment business services that are integral to tax advice. If investment services are separately identifiable, then separate engagement letters drafted in accordance with the relevant guidance should be used.

7. EXCLUDED SERVICES

[Adapt as appropriate. See also paragraph 5 above]

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

- forms CT61;
- Pay As You Earn including year end returns and matters relating to your employees;
- forms P11D;
- obligations under IR35;
- returns for sub-contractors; and
- VAT returns.

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

8. PROFESSIONAL RULES AND PRACTICE GUIDELINES

We will observe the bye-laws, regulations and ethical guidelines of The Chartered Institute of Taxation/The Association of Taxation Technicians and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us authority to correct Inland Revenue errors. A copy of these guidelines is available for your inspection in our offices.

9. COMMISSIONS OR OTHER BENEFITS

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

10. CLIENT MONIES

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

11. RETENTION OF RECORDS

11.1 [During the course of our work we will collect information from you and others acting on behalf of the company and will return any original documents to you following preparation of the company's return. You should retain them for [...] years from the end of the relevant accounting period. This period may be extended if the Inland Revenue enquire into the company's tax return.] *[Practitioners who retain records on behalf of clients will need to amend this paragraph]*

11.2 Whilst certain documents may legally belong to the company, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.

12. REGULATORY REQUIREMENTS

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

13. QUALITY OF SERVICE

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

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

14. FEES

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

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

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

15. LIMITATION OF LIABILITY

15.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

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

15.3 E-mail may be used to enable us to communicate with you. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.

16. ELECTRONIC COMMUNICATION

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after their despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

17. APPLICABLE LAW

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

18. DATA PROTECTION ACT 1998

To enable us to discharge the services agreed under this engagement, and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance, we may obtain, use, process and disclose personal data about you. You have a right of access, under data protection legislation, to the personal data that we hold about you. For the purposes of the Data Protection Act 1998, the Data Controller in relation to personal data supplied about you is *[name].*

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not effect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

20. AGREEMENT OF TERMS

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

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

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

Yours etc.,

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

Signed Date

For and on behalf of [Company]

ANNEX C

EXAMPLE OF A PARTNERSHIP TAX COMPLIANCE ENGAGEMENT LETTER

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

Dear *[complete]*

PARTNERSHIP TAX COMPLIANCE: TERMS OF ENGAGEMENT

1. INTRODUCTION

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

1.2 We will communicate with [...] who is the representative nominated by you in relation to the partnership's tax affairs.

2 PERIOD OF ENGAGEMENT

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

2.2 [We will deal with matters arising in respect of years prior to the above year, as appropriate.] [We will not be responsible for earlier years. Your previous advisers, *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.]

SCOPE

3. OUR SERVICE TO YOU

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

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

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

3.3 We will send you the income tax and capital gains tax computations and the tax return and supporting schedules [in duplicate] *[optional]* for you to approve and sign. We will then submit it[, with the accounts and computations,] to the Inland Revenue. [You authorise us to file the return electronically.]

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

3.5 *[Include if the partnership will pay partnership tax liabilities on behalf of partners: omit if partners will meet their own tax liabilities including tax on partnership income and gains]* We will give advice to the partners so that they can inform the partnership what amounts of tax are due in respect of their partnership income and gains and we will advise as to appropriate amounts of tax and Class 4 national insurance contributions to be paid and the dates by which the partnership should make the payments. In order to do this we will need to be supplied with relevant information by the partners.

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

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

3.8 We will deal with all communications relating to the partnership return addressed to us by the Inland Revenue or passed to us by you. However, if the Inland Revenue choose the partnership tax return for enquiry [we will refer you to another practitioner]/[this work may need to be the subject of a separate assignment in which case we will seek further instructions from you]. *(See Annex D)*

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

4. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

4.1 The partnership is legally responsible for making correct returns by the due date.

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

(a) that all returns are to be made on the basis of full disclosure of all sources of income, charges, allowances and capital transactions;

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

(c) that we can approach such third parties as may be appropriate for information that we consider necessary to deal with the firm's affairs;

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

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

(f) to keep us informed about significant changes in your firm's circumstances if they are likely to affect the tax position.

5. OTHER SERVICES AND GENERAL TAX ADVICE

[Insert paragraphs from Annex E as appropriate.]

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

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

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

6. INVESTMENT ADVICE

See paragraphs 8-12 of introduction.

[If not authorised (or, with effect from 1.12.01, authorised or licensed)]

Investment business is regulated under the [Financial Services Act 1986]/[Financial Services and Markets Act 2000]. We are not authorised [or licensed] under that Act. *[Delete as appropriate]*

[Or, if authorised (or, with effect from 1.12.01, authorised or licensed)]

If we are required to give investment advice we will issue a separate engagement letter.

Practitioners who are authorised to carry on investment business (or, with effect from 1.12.01, authorised by the Financial Services Authority to carry on investment business or licensed by a Designated Professional Body such as ICAEW to undertake exempt regulated activities) are referred to the investment business regulations and guidelines issued by the regulatory body which authorises (or licenses) them to conduct investment business. This guidance should be incorporated as appropriate into the client engagement letter to cover investment business services that are integral to tax advice. If investment services are separately identifiable, then separate engagement letters drafted in accordance with relevant guidance should be used.

7. EXCLUDED SERVICES

[Adapt as appropriate. See also paragraph 5 above]

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

- Pay As You Earn including year end returns and matters relating to your employees;
- forms P11D;
- obligations under IR35;
- returns for sub-contractors; and
- VAT returns.

7.2 You will deal with claims and any related appeals in respect of working tax credits and child tax credits.

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

8. PROFESSIONAL RULES AND PRACTICE GUIDELINES

We will observe the bye-laws, regulations and ethical guidelines of The Chartered Institute of Taxation/The Association of Taxation Technicians and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us authority to correct Inland Revenue errors. A copy of these guidelines is available for your inspection in our offices.

9. COMMISSIONS OR OTHER BENEFITS

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

10. CLIENT MONIES

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

11. RETENTION OF RECORDS

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

11.2 Whilst certain documents may legally belong to the partnership, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.

12. REGULATORY REQUIREMENTS

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

13. QUALITY OF SERVICE

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

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

14. FEES

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

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

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

15. LIMITATION OF LIABILITY

15.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

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

15.3 E-mail may be used to enable us to communicate with you. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.

16. ELECTRONIC COMMUNICATION

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after its despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

17. APPLICABLE LAW

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

18. DATA PROTECTION ACT 1998

To enable us to discharge the services agreed under this engagement, and for other related purposes including updating and enhancing client records, analysis for

management purposes and statutory returns, crime prevention and legal and regulatory compliance, we may obtain, use, process and disclose personal data about you. You have a right of access, under data protection legislation, to the personal data that we hold about you. For the purposes of the Data Protection Act 1998, the Data Controller in relation to personal data supplied about you is *[name].*

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

20. AGREEMENT OF TERMS

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

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

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

Yours etc.,

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

Signed

Date

ANNEX D

EXAMPLE OF A CONSULTANCY ENGAGEMENT LETTER (INCLUDING A TAX INVESTIGATION)

This letter must be tailored to meet specific circumstances. Where this is a separate engagement for an existing client reference can be made to the original engagement letter in relation to the terms.

Dear *[complete]*

CONSULTANCY ENGAGEMENT LETTER

TERMS OF ENGAGEMENT

1. INTRODUCTION

This letter sets out the basis on which we are to act for you in relation to *[complete].*

SCOPE

2. OUR SERVICE TO YOU

[Either]

[We will prepare a report on the matters in relation to which you have instructed us.]

[or]

[We will carry out such work as we consider necessary in order to put ourselves in a position to provide a full and accurate response to the matters under enquiry.] [We will conduct a detailed investigation of your affairs so that we are in a position to prepare a report for the Inland Revenue setting out your financial affairs. This will include the preparation of capital statements and the reconciliation of your assets and liabilities.]

3. YOUR RESPONSIBILITIES: PROVISION OF INFORMATION BY YOU

[Either]

3.1 [You agree to give us access to full information about your tax affairs and the matters on which you have asked us to advise you.]

[or]

3.1 [To enable us to carry out our work you agree to provide us with full and accurate information regarding the matters under [enquiry]/[investigation]. In particular you agree that our work is to be carried out on the basis of full disclosure of relevant matters.]

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

4. PROFESSIONAL RULES AND PRACTICE GUIDELINES

We will observe the bye-laws, regulations and ethical guidelines of The Chartered Institute of Taxation/The Association of Taxation Technicians and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us authority to correct Inland Revenue errors. A copy of these guidelines is available for your inspection in our offices.

5. COMMISSIONS OR OTHER BENEFITS

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

6. CLIENT MONIES

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

7. RETENTION OF RECORDS

7.1 [During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you at the conclusion of the [engagement]/[enquiry]. You should retain them [for [...] years from 31 January following the end of the tax year][for [...] years from the end of the relevant accounting period][at least until the Inland Revenue issue a closure notice]. [This period may be extended if the Inland Revenue enquire into your tax return.] *[Practitioners who retain records on behalf of clients will need to amend this paragraph.]*

7.2 Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.

8. REGULATORY REQUIREMENTS

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

9. QUALITY OF SERVICE

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

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

10. FEES

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

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

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

11. LIMITATION OF LIABILITY

11.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

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

11.3 E-mail may be used to enable us to communicate with you. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.

12. ELECTRONIC COMMUNICATION

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after their despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

13. APPLICABLE LAW

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

14. DATA PROTECTION ACT 1998

To enable us to discharge the services agreed under this engagement, and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance, we may obtain, use, process and disclose personal data about you. You have a right of access, under data protection legislation, to the personal data that we hold about you. For the purposes of the Data Protection Act 1998, the Data Controller in relation to personal data supplied about you is *[name].*

15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not effect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

16. AGREEMENT OF TERMS

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

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

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

Yours etc.,

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

Signed Date

Name or for and on behalf of [Company/Partnership]

ANNEX E

OTHER TAXATION SERVICES

These paragraphs must be tailored to meet specific circumstances

For possible insertion at Annex A, paragraph 5

US taxation

1. You have engaged us also to prepare your Federal [and State]/[and City] United States individual income tax return[s] commencing with the return[s] for the [200...] calendar year. We will prepare your Federal return and any State and City returns that you instruct us to prepare for your approval and signature. We will prepare the return[s] from information supplied to us either by you or others acting on your behalf and, therefore, you should ensure that information therein is correct and complete before you sign the return[s] and return [it/them] to us for submission.

Inheritance tax

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

For possible insertion at Annex B, paragraph 5

Dividends, payments under deduction of tax and to participators

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

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

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

Payroll and year end returns

5. We will maintain your payroll records, supply you with completed [weekly/monthly] [wages/salary] payslips for you to pass to employees [with their wages/salary cheques which you will draw], supply you with a completed Inland Revenue payslip for the PAYE and national insurance contributions for you to send to the Collector of Taxes with a cheque which you will draw, complete your year end return form P35 with forms P14 and P60 and supply you with the completed form P35 for signature and submission by you to the Inland Revenue with forms P14 and the forms P60 that you will pass to each employee.
6. In order to do this we need to comply with the Employer's Guide to PAYE: we will consider with you the detailed information that is required and the form in which it is to be provided. *[It is recommended that practitioners specify a standard format for the provision of information and a deadline by which it should be received]*

Forms P11D

7. We will complete forms P11D for the [directors and]higher-paid employees for approval and submission by you to the Inland Revenue. You will supply the form P11D information to your employees by the due date.

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

Personal service companies (IR35)

9. We will advise on whether the company is subject to the personal services legislation on a contract by contract basis. You authorise us to seek an opinion from the Inland Revenue where we consider it appropriate. If there are contracts that we consider are within the personal services legislation we will calculate the deemed salary, prepare the corporation tax computations using the prescribed method, prepare and submit the supplementary P35 and P14 and advise you how much tax and national insurance to pay and by when and whether to pay any actual salary before the year end and if so how much.

Sub-contractors

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

VAT compliance

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

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

Working tax credits and child tax credits

13. We will advise you on your eligibility to make a claim and where appropriate prepare and submit a claim or a protective claim on your behalf. We will also advise you of the time limits involved.

    We will notify the Revenue of any changes in your circumstances or in your partner's/spouse's circumstances, as advised by you, which might affect your entitlement to working tax credit and/or child tax credit.

14. We will deal with award notices, final notices, adjustments or revisions to the tax credit award and any associated appeals to the extent that we are made aware of them.

15. You agree to make the necessary information available to us within the time limit specified in the request for the information. This may include details of your spouse's or partner's income. You also undertake to advise us of changes in your circumstances or your partner'/spouse's circumstances which might affect your entitlement to working tax credit or child tax credit.

16. Should your claim be selected for enquiry or examination [we will refer you to another practitioner]/[this work may need to be the subject of a separate assignment in which case we will seek further instructions from you].

APPENDIX 7

REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

Note:
In this Appendix references to '1811' and '1812' are to the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 SI 1994 no 1811 and to the General Commissioners (Jurisdiction and Procedure) Regulations 1994 SI 1994 no 1812; references to TMA are to the Taxes Management Act 1970, to 'VATA' are to the Value Added Tax Act 1994, to CPR are to the Civil Procedure Rules, and to the 'VAT Tribunal Rules' are to the Value added Tax Tribunal Rules 1986 SI 1986 no 590.

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

1.2 Right to representation before the General and Special Commissioners.

(a) The taxpayer may appear in person .

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

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

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

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

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

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

Note:

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

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

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

If not so satisfied,

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

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

A good reason will be required.

1.3 An appellant or the Commissioners of Customs & Excise may be represented by any person whom they may appoint for the purpose (VAT Tribunal Rules, Rule 25).

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

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

(b) the way in which hearings are conducted;

(c) the order of proceedings (see Appendix 9);

(d) the formalities which must be observed;

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

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

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

(h) the relevant procedural statutory instruments;

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

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

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

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

1.5. Where it appears likely that there will be an appeal, by either side, to the High Court or Court of Session, a member should consider carefully whether counsel or a solicitor with a High Court advocacy certificate should be briefed, even for the hearing before the Commissioners or VAT and Duties Tribunal.

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

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

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

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

(b) the amount of tax at stake;

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

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

SPECIAL POINTS RELATIVE TO APPEALS TO GENERAL AND SPECIAL COMMISSIONERS

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

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

1.11 If an adjournment is refused by the Commissioners and the assessment is confirmed, there are limited procedures available whereby the matter may be reopened. These include an application for review under 1811 r 19, 1812 r 17 and application for judicial review under CPR, Pt 54. Members should recognise that a taxpayer might have grounds for a claim in negligence against an adviser who had failed to attend the hearing, or (in appropriate cases) had permitted the taxpayer to pay the tax without exploring the possibility of mitigation.

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

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

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

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

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

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

(c) pre-hearing direction mechanisms and their uses (1811 r 9);

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

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

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

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

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

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

(j) the requirements with regard to the submission of expert evidence (1811 r 12, 1812 r 9);

(k) the constitution of the tribunal at the initial and any adjourned hearings (1812 r 13, 1812 r 11);

(l) whether the proceedings are public or private, and if the former how in appropriate cases to change to the latter, together with those entitled to be present (1811 r 15, 1812 r 13);

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

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

(o) the mechanisms for the giving of the tribunal's decision and how such decisions may be reviewed and whether published (1811 rr 18-20, 1812 rr 16-17);

(p) whether and in what circumstances costs may be awarded against a party to the proceedings before the Special Commissioners, what costs are for this purpose, and the procedure for having those costs taxed (ie vetted and possibly reduced as part of the judicial function in the county court) by the paying party (TMA s56C, 1811 r 21,
CPR, Pts 43-48);

(q) the special procedures relating to chargeable gains and value referrals for capital gains and/or inheritance tax to other tribunals (1811 rr 22-23, 1812 rr 18-19);

(r) the case stated procedure for appeals against decisions of the General Commissioners, including the draft revision process and the transmission to the relevant court (High Court in England, Court of Session in Scotland and Court of Appeal in Northern Ireland) (1812 rr 20-23 and TMA s56);

(s) the appeal mechanism from decisions of the Special Commissioners (TMA s56A);

(t) penalties for failure to comply with the directions of the Special Commissioners (1811 r 24);

(u) the effect which irregularities have on the tribunal function (1811 r 25, 1812 r 24);

(v) how notices are to be given and served, including substituted service (1811 rr 26-28, 1812 rr 25-27); and

(w) the need to ensure that clients are aware that the Special Commissioners have the power to publish reports of their decisions (TMA s56D) and how to take steps to ensure anonymity in appropriate circumstances.

1.16 Members should understand how appeals may be instigated against the summary determination of penalties (TMA s53) or in appropriate cases how applications for judicial review of the decision may be made (CPR, Pt 54), and the time limits involved in each case.

SPECIAL POINTS RELATIVE TO APPEALS TO VAT AND DUTIES TRIBUNAL

1.17 If a decision is taken to appeal to a VAT and Duties Tribunal, reference should be made to the rules for the procedures to be adopted as contained in the VAT Tribunal Rules 1986. Useful reference can also be made to the Explanatory Leaflet 'Value Added Tax Appeals and Applications to the Tribunals' issued by the President of the VAT Tribunal.

1.18 Certain preconditions must exist before an appeal can be made and a member should ensure that his client is not disadvantaged by a failure to comply with these conditions. In particular:

(a) in VAT cases Customs must have actually taken a 'decision' (rather than merely given guidance) on the point at issue;

(b) the decision that has been made by Customs must be one against which it is possible to appeal;

(c) in other appeals to the VAT and Duties Tribunal, Customs must have given a decision or have been deemed to give a decision following a departmental review;

(d) the notice of appeal giving the required details must be served at the appropriate Tribunal Centre before the expiration of 30 days after the date of the letter or assessment from Customs containing the disputed VAT decision, or, in the case of other appeals, 30 days from the decision or deemed decision after a departmental review;

(e) the client must have sufficient locus standi (ie interest in the decision); and

(f) the VAT and Duties Tribunal must have the jurisdiction to hear the appeal.

APPENDIX 8

CIOT ADVOCATES: GUIDANCE NOTES AND ETHICAL PRINCIPLES

(These Guidance Notes are also appropriate for members of the ATT - see paragraph 5.11)

INSTITUTE ADVOCATES: GUIDANCE NOTES AND ETHICAL PRINCIPLES

1. Introduction

From time to time a member of the Institute may represent a client in a tax appeal heard by the General or Special Commissioners or the VAT and Duties Tribunal. In this Appendix the expression 'CIOT advocate' is used to refer to a member acting in that capacity. The Appendix gives guidance and prescribes ethical standards which a CIOT advocate should observe. 'The tribunal' means the General or Special Commissioners or the VAT and Duties Tribunal, as the case may be.

2. General Principles

2.1 A CIOT advocate has fundamental duties and responsibilities towards (i) the tribunal (ii) his client and (iii) the profession of which he is a member.

2.2 As regards (i), a CIOT advocate has a high and overriding ethical duty to the tribunal to ensure in the public interest that the proper and efficient administration of the law is promoted. He must assist the tribunal in the administration of the law and must not deceive or knowingly or recklessly mislead the tribunal.

2.3 As regards (ii), a CIOT advocate has a duty to his client to promote and protect fearlessly his client's best interests by all proper and lawful means (but only by means which are proper and lawful). He must promote and protect his client's best interests without regard to his own interests or to any consequences for himself or any other person.

2.4 As regards (iii) a CIOT advocate must not engage in conduct which is dishonest or discreditable or which might bring into disrepute the tax profession of which he is a member. He must not compromise his professional standards in order to please his client or a third party.

2.5 A CIOT advocate is expected to exercise discretion and judgement with a view to complying with the foregoing fundamental duties and responsibilities. He should at all times keep in mind that his overriding duty and responsibility is that owed to the tribunal, as described in 2.2 above.

3. Before the Appeal Hearing

3.1 A CIOT advocate should not accept instructions to represent a client upon an appeal:

(a) if he lacks sufficient experience or competence to represent the client adequately;

(b) if having regard to his other commitments he will not have adequate time and opportunity to prepare for the appeal and to present his client's case in a satisfactory manner;

(c) if the matter is one in which there is a risk of a disclosure of confidential information learned by him from or in connection with another client or where the knowledge which he possesses of the affairs of another client would give an undue advantage to the client who currently wishes to instruct him.

3.2 If a CIOT advocate considers that for him to accept instructions to represent a client on an appeal will or may give rise to a conflict of interest of some description he should consider the guidance in 5 below before deciding whether or not to proceed in the case.

3.3 *Contact with witnesses*

3.3.1 If the appeal will involve the giving of evidence by the client or by other witnesses called on his behalf it is acceptable and desirable for the CIOT advocate or a professional colleague to meet the witnesses before the hearing. Guidance as to such meetings is given in 3.3.3 to 3.3.5 below.

3.3.2 Nevertheless a CIOT advocate or a professional colleague must not outside the tribunal:

(a) place a witness under any pressure to provide other than a truthful account of his evidence;

(b) rehearse, practise or coach a witness in relation to his evidence.

3.3.3 Subject to the principles stated in 3.3.2 the purpose of prior meetings with witnesses is (i) for the CIOT advocate to be informed of the evidence which the witnesses can give and (ii) to assist in securing that the witnesses will give their evidence efficiently, clearly, economically and relevantly.

3.3.4 It is good practice in any case where a witness's evidence is of any substance for the advocate or his colleague, having discussed the matter with the witness and listened to his account, to prepare in draft a statement of the evidence. The witness is then requested to read the draft statement, to amend it to the extent that he considers appropriate, and then to sign it as his evidence.

3.3.5 In some cases the tribunal may, either of its own motion or on application from the CIOT advocate, direct that the witness's signed statement will stand as his evidence in chief, in which case the witness's evidence given orally will consist primarily of his cross-examination by the advocate for the other party. Where such a direction has been given or the CIOT advocate intends to ask for one:

(i) the responsibility resting on the CIOT advocate to ensure that the statement is drafted conscientiously is all the greater, and

(ii) he should supply a copy to the advocate for the other party at a reasonable time before the hearing.

3.4 *The CIOT advocate as a witness*

If a CIOT advocate is instructed to act as advocate in an appeal in which he will or may also give evidence (including evidence relating to the client's accounts) he should consider the guidance in 6 before deciding whether to accept the instructions.

4. At the Appeal Hearing

4.1 A CIOT advocate when conducting an appeal before a tribunal:

(a) must be courteous at all times;

(b) is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked;

(c) should present his case in the form of submissions and should not (unless invited to do so by the tribunal) assert a personal opinion of the facts or the law;

(d) (subject to the guidance in 4.2) must ensure that the tribunal is informed of all relevant decisions and legislative provisions of which he is aware even if the effect is unfavourable to the client's case;

(e) must not devise facts which will assist in advancing the client's case;

(f) must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy a witness or some other person;

(g) must not, in the case of a witness for the other party whom he has had the opportunity to cross-examine, impugn the witness's evidence (for example by inviting the tribunal to reject the evidence as false) unless in cross-examination he has given the witness the opportunity to answer the allegation.

4.2 With reference to 4.1(d) the duty to ensure that relevant decisions and legislative provisions are drawn to the attention of the tribunal should be exercised with judgement and professionally-informed restraint. A CIOT advocate is not required to refer to decisions or provisions which are in his opinion, if relevant at all, only marginally so. He is entitled to take into account (if, as will be usual, it is the case) that the other party is the Revenue or Customs and would be unlikely to have overlooked a relevant decision or provision, particularly if it supported its case. Nevertheless, if it appears to the CIOT advocate that the other party's advocate has overlooked a point which is plainly relevant, it would be wrong for the CIOT advocate to do nothing about it. It is always possible, and in many cases would be sensible, for him to mention the point to the advocate for the other party and hear his views upon it, before finally deciding whether his own duty impels him to draw it to the attention of the tribunal.

5. Conflicts of Interest

5.1 It is not realistic to formulate precise rules by reference to which a CIOT advocate must determine whether a conflict of interest precludes him from representing a client on an appeal. When a CIOT advocate considers that a conflict might arise he should consider the following observations, which are deliberately and inevitably expressed in general terms.

5.2 Cases sometimes arise in which two or more taxpayers have been parties to a particular transaction or arrangement, where the tax treatment is controversial, and where the treatment which is favourable to one party (A) is unfavourable to another party (B). If a CIOT advocate is requested to represent A on an appeal, but the advocate or his firm also acts for B, there is a clear conflict and the advocate should decline to represent either A or B.

5.3 Cases arise where a CIOT advocate or his firm has two clients who are both affected by a point of law. It is essentially the same point but arises in the context of two completely separate transactions. Client C contends for interpretation X to be applied to his transaction. Client D contends for interpretation Y to be applied to his transaction. If the CIOT advocate is instructed to represent client C on an appeal he will know that, if his (the advocate's) submissions in support of interpretation X are successful, the result, though beneficial to client C, will be detrimental to client D. This is not the form of conflict which requires the CIOT advocate to decline to accept instructions from client C. He may choose not to accept the instructions, but that is a matter of choice, not of professional obligation.

5.4 Between the situations described in 5.2 and 5.3 there is a spectrum of cases within which the CIOT advocate should exercise his professional skill and judgement in determining (i) whether there is a conflict of any description and if so (ii) whether it is one which precludes him from representing a client on an appeal, or (iii) it is one which, while not precluding him from representing the client, nevertheless leads him to conclude that he will choose not to represent the client.

5.5 If a CIOT advocate perceives the possibility of a conflict it is possible for him (within the limits of preserving client confidentiality) to discuss the matter with both clients. Client A who could be adversely affected by the possible conflict might, after full disclosure by the advocate, be prepared to confirm that he has no objection to the advocate representing the other client, client B. This does not mean that client A has a right of veto over the CIOT advocate representing client B. The advocate could decide to go ahead and represent client B even if client A says that he would prefer the advocate not to. But any professional anxieties which the advocate may feel over accepting client B's instructions would be dispelled if client A states that he has no objection.

5.6 If a CIOT advocate feels unable to resolve a difficulty he may seek guidance from the Standards Committee of the Institute. Full particulars should be supplied to the Secretary-General, who will arrange for the matter to be referred to the Chairman of the Committee.

6. The CIOT Advocate as a Witness

The contents of 6 are referred to in 3.4 in connection with whether a CIOT advocate should accept instructions to act as advocate in an appeal in which he may also be a witness. Advice which the CIOT advocate should take into account in deciding whether or not to accept the instructions is given in 6.1 and 6.2. Sub-paragraph 6.3 below gives guidance which he is expected to observe if he does accept the instructions and acts as both advocate and witness in the same appeal.

6.1 In litigation generally it is better for the same person not to be both the advocate and a witness. For example the Code of Conduct of the Bar of England and Wales provides that a barrister must not accept any brief or instructions if the matter is one in which he has reason to believe that he is likely to be a witness. The CIOT does not consider it realistic to prescribe a similar mandatory rule for CIOT advocates. Nevertheless the CIOT recommends that in any appeal where the member expects to be a witness and is also requested by the client to act as advocate, he should consider the position carefully before deciding whether to agree to the request. Hearings in which the same person is both advocate and a witness can progress untidily, and procedural difficulties arise from confusions between the two capacities.

6.2 However, the CIOT recognises that, principally on grounds of minimising expense to the client and endeavouring to shorten hearings, there will continue to be cases in

which a CIOT member will consider it right to act as advocate even though he expects that some of the things that he will say will be in the nature of evidence. This may particularly be so where the member expects that his evidence will be short and wholly or largely uncontroversial. These guidelines lay down no rules on this matter, but leave it to the professional judgement of the member.

6.3 Where a CIOT advocate, as well as acting as advocate before a tribunal, also gives evidence he should assist the tribunal and the advocate for the other party in the following:

(a) he should explain to the tribunal the two capacities in which he is acting;

(b) he should keep them distinct in his own mind and seek to ensure that at all times it is clear to the tribunal and to the advocate for the other party whether what he is currently saying is argument of an advocate or evidence of a witness;

(c) he should endeavour to give all his evidence consecutively and in one piece, and should avoid delivering to the tribunal an address in which argument and evidence are jumbled together;

(d) at the point when he is about to make his statements which are evidence he should ask the tribunal to direct whether he should be placed on oath; and

(e) when he has completed the part of his address which he considers to be evidence he should say so and should tender himself for cross-examination.

APPENDIX 9

CONSIDERATION OF SCOTS LAW

CONSIDERATION OF SCOTS LAW

Members should note that although the majority of statutory references in these Professional Rules and Practice Guidelines apply to Scotland, the following should be considered. Members who are members of other professional bodies may have to comply with additional professional rules, for example: a Scottish solicitor cannot act for both parties in a divorce even with their consent.

CHAPTER 3 PRACTICE GOVERNANCE

3.6 Temporary incapacity of a sole practitioner

Although a member may make arrangements for the practice to continue in the event of illness or incapacity, clients are not bound by those arrangements if the contract is governed by Scots Law because a contract to provide professional services is personal and cannot be transferred without the consent of the client. In exceptional circumstances a Court in Scotland may appoint a judicial factor with powers to carry on a business. Should the Court adopt such an approach, clients would not be bound by the arrangement.

3.7 Death or permanent incapacity of a sole practitioner

For Scotland references to `personal representatives' should be replaced by ‘executors' and it should be noted that similar considerations to those in paragraph 3.6 would apply.

3.9 & 3.10 Bankruptcy and Individual Voluntary Arrangements (IVAs)

IVAs are not available in Scotland. The closest equivalent in Scotland is the Protected Trust Deed (“PTD”) which was introduced in the Bankruptcy (Scotland) Act 1985. The PTD is a form of trust deed, distinguished from an ordinary trust deed in that it is less likely to be superseded by sequestration. For Scotland, references to ‘IVA’ should be replaced by ‘PTD’.

CHAPTER 4 NEW CLIENTS

4.3 Professional clearance

In Scotland the professional courtesy letter is normally called a mandate. A member should obtain a mandate terminating the professional relationship from the client and authorisation to discuss affairs freely with a prospective new adviser and pass on papers that belong to the client. If such papers are not to be passed on to the new adviser they should be given to the client. (See also Section 12.1 with regard to ownership of documents.)

CHAPTER 5 CLIENT SERVICE

5.8 Keeping proper professional records

In some cases, members who are members of other professional organisations may be required to keep papers for longer periods, for example solicitors in Scotland, ten years, and it should be borne in mind that the Money Laundering Regulations generally impose a minimum period of five years. The position on returning or destroying papers may be covered in the letter of engagement.

CHAPTER 7 OTHER CLIENT HANDLING ISSUES

7.6 Money Laundering

The Money Laundering Regulations apply in Scotland. The Criminal Justice Act 1993 inserts provision, amending the Criminal Justice (Scotland) Act 1987 in regard to money laundering.

Members are advised that what constitutes ‘criminal conduct’ may differ between Scotland and elsewhere in the UK. Members who are in any doubt regarding their position should seek legal advice.

CHAPTER 8 CHARGING FOR SERVICES

8.2 Contingent fees and value billings

Scottish Solicitors are permitted to charge a fee on a speculative basis, but in Court actions, are prohibited from charging a fee proportional to the award made to the client. The latter is deemed contrary to public policy.

CHAPTER 13 LEGAL MATTERS

13.2 Time Limits for Court Action

In Scotland the law is set out in the Prescription and Limitation (Scotland) Act 1973. Negative prescription through lapse of time has the effect of extinguishing certain rights and obligations. A right or obligation that has been extinguished cannot be enforced in the courts.

In general terms, rights and obligations arising from:

(a) a liability to make reparation; and

(b) any breach of a contract or promise

are extinguished five years from the date on which the right or obligation becomes enforceable. The raising of a court action is effective to interrupt the prescriptive period.

13.9 Lien

In Scotland a lien is a right, founded on possession, to retain property until some debt or other obligation is satisfied. Liens are classed as general or special.

A general lien is a right to retain a client's property until balances or debts due from the client in respect of all similar contracts are settled. A special lien is a right implied by law to retain an article received in the course of a particular contract against the payment of a debt arising under that contract.

In the Scottish case of *Morrison v Fulwell's Trs. (1901) 9 SLT 34,* it was held that an accountant has a lien over papers entrusted to him only for his charge for work in connection with those papers, not a general lien for his whole professional account. One would expect that the same rule would apply to members unless also acting as solicitors who have a general lien.

13.9.2 Insert '(in Scotland, special)' after the word 'particular' in the first sentence.

Insert 'In England,' before the words 'a general lien may be difficult to establish'.

Add new fourth sentence: 'In Scotland, the existence of a general lien depends on the custom of certain professional trades. A Scottish solicitor (but not an accountant) has a general lien over all papers placed in his hands by the client.'

Gloag and Henderson (11^{1h} edition), paragraph 42.20, p. 703: '...an accountant has a lien over papers entrusted to him only for his charge for work done in connection with those papers, not a general lien for his whole professional account....'.

Gloag and Henderson, paragraph 42.16, p.700: '....it is immaterial that no work has actually been done on the article over which the lien is claimed and an accountant who has been placed in possession of business books in order to collect debts was held to be entitled to a lien over the books, and the defence that he had done no work on the books themselves was rejected.'. *(Meikle & Wilson v Pollard (1880) 8 R.69.)*

13.10 Drafting Legal Documents

13.10.2 Insert the words '(in Scotland, advocate)' after the word 'barrister';

In second bullet point, insert the words 'in England' before the words 'an agreement not intended';

Insert new bullet point: 'in Scotland, a document *in re mercatoria,* missive or mandate'.

13.10.3 Conveyancing

In Scotland a member who is not a solicitor, advocate or licenced conveyancer may not for a fee, gain or reward prepare any document in respect of recorded and registered land.

13.10.4 Probate

The Scottish equivalent is Confirmation.

A member who is not a solicitor or advocate may not for a fee, gain or reward take instructions for, nor prepare papers to obtain, Confirmation to an estate.

Insert the words '(or in Scotland, a qualified executry practitioner)' after the words 'a solicitor or barrister'.

13.10.6 Litigation

The sections of Courts and Legal Services Act 1990 containing the machinery referred to do not apply in Scotland.

13.4 Direct Tax Search Warrants

13.4.1 In Scotland the application for a warrant entitling HMRC to search premises under section 20C of the Taxes Management Act 1970 is made to a Sheriff. For Scotland, references in this section to 'circuit judge' should be replaced by 'Sheriff'

13.4.3 Insert after 'injunction' 'in Scotland, suspension'.

13.8 Legal professional privilege

Although the phrase 'legal professional privilege' ("LPP") has been used in some statutes which have effect in Scotland, the more appropriate term in Scotland is "confidentiality of communications". Confidentiality in Scotland and LPP in England and Wales developed as a result of very similar policy considerations. Although the infrequency of reported cases means that some aspects of privilege have not been judicially considered in Scotland in as much detail as in England and Wales, to the extent that LPP has been considered in Scotland, the courts have looked for authority to decisions of the courts in England and Wales. However, it does not automatically follow that interpretation of LPP in Scotland will necessarily be along the same lines as in England and Wales and members who are in any doubt regarding their position should seek legal advice.

APPENDIX 6 ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

Introduction

Members who are members of other professional bodies should also have regard to any standards set down by such other bodies. In particular, members who are also members of the Law Society of Scotland should adhere to new practice rules contained in the Solicitors (Scotland) (Client Communication) Practice Rules 2005 which came into effect on 1 August 2005. The new rules require solicitors to issue written letters of engagement which set out the costs and work agreed by the solicitor and client.

Exceptions apply where the same client regularly instructs the same solicitor in the same type of work; where there is no practical opportunity to provide a letter before the conclusion of the work; or where the client is aged under 12.

Annexes A-D

The Contracts (Rights of Third Parties) Act 1999 does not apply in Scotland.

APPENDIX 7 REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS Notes 1.2(b) and 1.3(b)

In Scotland if an officer of a company or a representative of the Revenue or Customs acts on behalf of the company or the appropriate tax authority that person cannot give evidence without the consent of the other side. That consent should be obtained at the outset because otherwise the other party may object to the evidence.

Notes 1.5 and 1.6

In cases going before the High Court of Justiciary and the Court of Session an Advocate or a Solicitor-Advocate must be instructed. Only a solicitor can instruct an Advocate before those Courts.

Note 1.11

In Scotland reference should be made to Rule 58 of the Rules of the Court of Session in regard to judicial review. A separate remedy of certiorari as given by the Court of Exchequer may also be competent. But generally one would not expect to deal with the matter by judicial review - see *Simpson v IRC 1992 SLT 1069.*

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APPENDIX 10

CONSIDERATION OF NORTHERN IRELAND LAW

CONSIDERATION OF NORTHERN IRELAND LAW

Members should note that, although the majority of statutory references in these Professional Rules and Practice Guidelines apply to Northern Ireland, the following should be considered.

CHAPTER SECTION 3 PRACTICE GOVERNANCE

3.3.3 A practice name must comply with partnership and company law as appropriate and in Northern Ireland with the Companies Order 1986 (as amended).

CHAPTER 12 MEMBERS IN EMPLOYMENT

12.2.2 For the Public Disclosure Act 1998 read the Public Interest Disclosure (Northern Ireland) Order 1998

CHAPTER 13 LEGAL MATTERS

13.2 Retention of records and time limits for court action

13.2.7 Reference should be to the Limitation (Northern Ireland) Order 1989 rather than the Limitation Act 1980.

13.10 Drafting legal documents

13.10.2 The position of licensed conveyancer does not exist in Northern Ireland.

13.10.3 A member who is not a solicitor or barrister may not prepare for a fee any document transferring or attaching a charge to registered land or make any application or lodge any document for registration at the Land Registry or Registry of Deeds.

13.10.4 However, an executor cannot charge for preparing papers to found or oppose a grant of probate or letters of administration. This part of the section does not apply.

13.10.6 This section does not apply to Northern Ireland

APPENDIX 6 ENGAGEMENT LETTERS FOR TAX PRACTITIONERS

17.1 For Jurisdiction and Law, insert 'Northern Ireland'

APPENDIX 7 REPRESENTATION BEFORE COMMISSIONERS AND TRIBUNALS

Note: The definition of 'proceedings in Northern Ireland' governed under those regulations is contained in TMA's.58(3). For CPR and the Civil Procedure Rules, read County Court Rules (NI) 1981 (as amended) and for Rules of the Supreme Court, read Rules of The Supreme Court (NI) 1980 (as amended).

For paragraphs 1.5 and 1.6, please read:

1.5 'Where it appears likely that there will be an appeal, by either side, to the Court of Appeal, members should consider carefully whether a solicitor should be instructed and given authority to brief Counsel even before the Hearing before the Commissioners or VAT and Duties Tribunal.'

1.6 'Similarly, the above should be considered where tax evasion may be involved.'

1.15(p) Reference in this clause should be to: County Court Rules (NI) 1981 (as amended) O55.

1.15(r) & (s) Note the provisions for proceedings in Northern Ireland in TMA s58 whereby a case stated by the General Commissioners under Regulation 22, General Commissioners Regulations, shall be heard by the Court of Appeal and appeals therefrom shall lie to the House of Lords. The procedure for stating a case is governed by the County Court Rules (NI) 1981 (as amended) O32.
O32.

CIOT AND ATT BADGES, LOGOS AND COATS OF ARMS

CIOT BADGE

CHARTERED TAX ADVISERS

CHARTERED TAX ADVISER

ATT BADGE

CIOT LOGO

THE CHARTERED INSTITUTE OF TAXATION

ATT LOGO

The Association of Taxation Technicians

CIOT COAT OF ARMS

ATT COAT OF ARMS

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