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Professional Conduct in Relation to Taxation



Professional conduct in relation to taxation

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Foreword

Professional Conduct in Relation to Taxation (PCRT) sets out the Fundamental Principles and Standards for Tax Planning all members are expected to follow.

Tax advisers operate in a complex business and financial environment and a core purpose of the tax system is to fund public services and to ensure the good health of our economy and society. Tax advisers therefore have a responsibility to serve their clients' interests whilst upholding the profession's reputation and the need to take account of the wider public interest.

PCRT is intended to guide members in their behaviour, to assist them and to ensure that they undertake work effectively and appropriately. If concerns are raised about members, we will take account of these Principles and Standards when deciding whether or not to take action and a failure to comply with PCRT could put members at risk.

Purpose of the Principles and Standards

PCRT describes behaviour required of members, consisting of five Principles and five Standards. There are accompanying help sheets which are intended to help members understand and be able to meet the Principles and Standards and provide guidance on issues which are not covered by legislation.

This document has a range of stakeholders covering members, clients, the professional bodies, the public and agencies including HMRC.

We acknowledge that members, students and those affiliated with the professional bodies work in different environments, both in the UK and overseas, and PCRT has been developed to apply to a wide variety of work settings. PCRT applies to all members providing advice on UK tax matters regardless of, contracts of employment, membership of other professional organisations or where in the world they work and reside (see 1.7 for further advice).

If we are notified of concerns about member's behaviour involving tax matters, we will take PCRT into consideration to determine whether disciplinary action is required and whether the member continues to uphold the high standards required for membership with our organisations. Members are professionals, able to make informed decisions relating to their work and therefore PCRT is designed to support this.

Tax evasion A member must never be knowingly involved in tax evasion, although, of course, it is appropriate to act for a client who is rectifying their affairs.

Development of this document

PCRT has been jointly produced by:

- Association of Accounting Technicians (AAT)
- Association of Chartered Certified Accountants (ACCA)
- Association of Taxation Technicians (ATT)
- Chartered Institute of Taxation (CIOT)
- Institute of Chartered Accountants in England and Wales (ICAEW),
- Institute of Chartered Accountants of Scotland (ICAS)
- Society of Trust and Estate Practitioners (STEP)

PCRT has evolved since its introduction in 1995 to take account of changing practices. Additionally, PCRT should be used alongside each organisations' existing Codes of Practice/Conduct, taking into account good practice guidance.

HMRC have incorporated PCRT into their own Standards for Tax Agents (published 4 January 2018).

(While every care has been taken in the preparation of this guidance the PCRT Bodies do not undertake a duty of care or otherwise for any loss or damage occasioned by reliance on this guidance. Practical guidance cannot and should not be taken to substitute appropriate legal advice.)

1 INTRODUCTION

Scope

The purpose of Professional Conduct in Relation to Taxation (PCRT) and its associated Help sheets is to assist and advise members on their professional conduct in relation to taxation, and particularly in the tripartite relationship between a member, client and HMRC. The PCRT consists of the Fundamental Principles and the Standards for Tax Planning.

- 1.2 Members have a responsibility to attain and thereafter at all times to adhere to the Fundamental Principles and the Standards for Tax Planning in PCRT. If a member fails to do so they are liable to be subject to disciplinary process.
- 1.3 The issues addressed in the Help sheets provide guidance on the application of the PCRT Fundamental Principles and Standards for Tax Planning when dealing with day-to-day work but they are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a member which may pose threats to compliance with the Fundamental Principles and Standards. Consequently, members must consider and observe the PCRT Fundamental Principles and Standards across all their professional activities.
- 1.4 If in doubt about the ethical or legal considerations of a particular case, a member should seek advice from their professional body and, where appropriate, their legal advisers. The professional bodies take no responsibility for failure to seek advice where appropriate.
- 1.5 A member must at all times fulfil their obligations under the anti-money laundering legislation. Anti-money laundering issues are not covered in detail in the PCRT; the member is instead referred to the Treasury approved [CCAB Anti-Money Laundering guidance for the Tax and Accountancy sector](#) (which includes an Appendix for the Tax Practitioner). A member working outside the tax and accountancy sector should refer to the relevant guidance for their sector or take advice as appropriate.
- 1.6 Nothing in PCRT overrides legal professional privilege. Similarly nothing in PCRT shall override a member's professional duties or be interpreted so as to give rise to any conflict under general law, statutory regulation, or professional regulation of solicitors or barristers, and in the event of any conflict general law, statutory regulation or such professional regulation shall prevail. For these purposes a conflict shall be considered to arise at least where such law, statutory or such professional regulation to which members are subject would prevent compliance with what would otherwise be required by PCRT.

Application to all members

- 1.7 While the content of PCRT is primarily applicable to members in professional practice, the Fundamental Principles and Standards apply to all members who practise in tax including:
 - Employees attending to the tax affairs of their employer or of a client; and
 - Those dealing with the tax affairs of themselves or others such as family, friends, charities etc whether or not for payment; and
 - Those working in HMRC or other public sector bodies or government departments.
- 1.8 Where a member's employer is not prepared to follow the Fundamental Principles and Standards and/or the ethical approach set out in the help sheets (despite the member's reasonable attempts to persuade them to do so) the member may contact their professional body and/or seek legal advice. Further advice can be found at <https://www.aat.org.uk/about-aat/professional-ethics>.
- 1.9 The Fundamental Principles and Standards will also apply to dealings with all devolved tax authorities within the UK. A member who is based overseas or who is acting for a client who is subject to the tax jurisdiction of another country could be subject to different legal obligations under the tax law and/or general law of that country. Subject to that caveat, a member must apply the Fundamental Principles and Standards to professional activities with non UK aspects.

1.10 HMRC acknowledges that PCRT is an acceptable basis for dealings between members and HMRC.

Status

1.11 PCRT has been prepared jointly by the:

- Association of Accounting Technicians
- Association of Chartered Certified Accountants
- Association of Taxation Technicians
- Chartered Institute of Taxation
- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Accountants of Scotland
- Society of Trust and Estate Practitioners

1.12 While every care has been taken in the preparation of PCRT, to the fullest extent permitted by law the author bodies do not accept or assume responsibility to any person or persons who suffer loss or damage occasioned by reliance on PCRT.

Interpretation

1.13 In PCRT:

- 'Client' includes, where the context requires, 'former client'.
- 'Member' (and 'members') includes 'firm' or 'practice' and the staff thereof.
- Words in the singular include the plural and words in the plural include the singular.

Abbreviations

1.14 In PCRT the following abbreviations have been used:

CCAB	Consultative Committee of Accountancy Bodies
DOTAS	Disclosure of Tax Avoidance Schemes
GAAR	General Anti-Abuse Rule in Finance Act 2013
HMRC	HM Revenue and Customs
MLRO	Money Laundering Reporting Officer
NCA	National Crime Agency (previously the Serious Organised Crime Agency 'SOCA')
POTAS	Promoters of Tax Avoidance Schemes
SRN	Scheme Reference Number

2 THE FUNDAMENTAL PRINCIPLES

2.1 Ethical behaviour in the tax profession is critical. The work carried out by a member needs to be trusted by society at large as well as by clients and other stakeholders. What a member does reflects not just on themselves but on the profession as a whole.

2.2 A member must comply with the following [Fundamental Principles](#).

- **Integrity**

To be straightforward and honest in all professional and business relationships.

- **Objectivity**

To not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

- **Professional competence and due care**

To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

- **Confidentiality**

To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the member or third parties.

- **Professional behaviour**

To comply with relevant laws and regulations and avoid any action that discredits the profession.

2.3 Each of these Fundamental Principles is discussed in more detail below in the context of taxation services.

Integrity

2.4 A member must act honestly in all their dealings with their clients, all tax authorities and other interested parties, and do nothing knowingly or carelessly that might mislead either by commission or omission.

Objectivity

2.5 A member may be exposed to situations that could impair their objectivity. It is impracticable to define and prescribe all such situations. Relationships which bias or unduly influence the professional judgement of the member must be avoided.

2.6 A member must explain to their client the material risks of the tax planning or tax positions and the basis on which the advice is given.

2.7 A member must always disclose to their client if they are receiving commission, incentives or any other advantage and the amounts they receive from a third party relating to the matter upon which they are advising their client. They must also follow their professional body's rules on disclosure of and accounting for commission.

Professional competence and due care

- 2.8 A member has a professional duty to carry out their work within the scope of their engagement and with the requisite skill and care. A member should take care not to stray beyond the agreed terms of the engagement; if they do exceed the scope they should agree revised terms with their client and check that their professional indemnity insurance covers the enhanced work.
- 2.9 A member is free to choose whether or not to act for a client both generally and as regards specific activities. However, where a member chooses to limit or amend the scope of services they provide to a client they should make this clear in writing.
- 2.10 When advising a client a member has a duty to serve that client's interests within the relevant legal and regulatory framework.
- 2.11 A member must carry out their work with a proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which they are not competent to perform unless they obtain appropriate assistance from a suitably qualified specialist.
- 2.12 A member who is giving what they believe to be a significant opinion to a client should consider obtaining a second opinion to support the advice. Where the second opinion is to be obtained externally, due regard must be had to client confidentiality.
- 2.13 Advice should be given in the context of the commercial and other non-tax objectives and the facts and circumstances of the client.
- 2.14 On occasions there may be more than one tenable interpretation of the law. Each case should be considered on its own individual facts and circumstances.

Confidentiality

- 2.15 Confidentiality is a professional principle and is also a legally enforceable contractual obligation. It may be an express term of the engagement letter between the member and the client. Where it is not an express term, a court would in most circumstances treat confidentiality as an implied contractual term.
- 2.16 A member may only disclose information without their client's consent when there is an express legal or professional right or duty to disclose.
- 2.17 The duty of confidentiality is rigorously safeguarded by the courts. Disclosure of confidential material in a member's own interest must be made only where it is considered adequate, relevant and reasonably necessary for the administration of justice - in other words, when a member considers that it would otherwise impair the pursuit of their legitimate interests and rights if they were prevented from disclosing the information in all the circumstances. Only the minimum amount of information necessary to protect those interests may be disclosed.

Examples of such circumstances may include, but are not limited to, the following:

- To enable a member to defend themselves against a criminal charge or to clear themselves of suspicion;
- To enable a member to defend themselves in disciplinary proceedings;
- To resist proceedings for a penalty, or civil or criminal proceedings in respect of a taxation offence, for example in a case where it is suggested that a member knowingly engaged in dishonest conduct with a view to bringing about a loss of tax revenue;
- To resist a legal action made against them by a client or third party;
- To enable a member to sue for unpaid fees;
- To enable a member to sue for defamation.

- 2.18 If there is any doubt that the circumstances in 2.17 would apply, or there is the risk of challenge by a client or employer, a member is strongly recommended to seek legal advice. See also the guidance on [Dealing With Errors](#).
- 2.19 The anti-money laundering regime provides a statutory code to determine when a disclosure must be made to NCA. While this is a mandatory regime, it also gives a structure for the assessment of the public interest in a tax context, including which of the following should take precedence, in a particular set of circumstances:
- The public interest in reporting knowledge or suspicions of criminal activity to the authorities; or
 - The public interest in clients receiving advice in confidence.
- 2.20 A member should follow the [Treasury approved CCAB guidance](#) and the [Treasury approved Appendix for the Tax Practitioners](#), in particular the guidance on 'Internal Reporting', 'Role of MLRO and SAR reporting'. See also the help sheet in [Request for Data by HMRC](#).

Professional behaviour

- 2.21 A member must always act in a way that will not bring them or their professional body into disrepute.
- 2.22 A member must behave with courtesy and consideration towards all with whom they come into contact in a professional capacity.
- 2.23 A member must comply with all relevant legal and regulatory obligations when dealing with a client's tax affairs and assist their clients to do the same. A member who has reason to believe that proposed arrangements are, or may be, tax evasion must strongly advise clients not to enter into them. If a client chooses to ignore that advice, it is difficult to envisage situations where it would be appropriate for a member to continue to act other than in rectifying the client's affairs.
- 2.24 Serving the interests of their clients will, on occasion, bring a member into disagreement or conflict with HMRC. A member should manage such disagreements or conflicts in an open, constructive and professional manner. However, a member should serve their clients' interests as robustly as circumstances warrant whilst applying these principles.
- 2.25 A member should consider whether any tax arrangements with which they might be associated on their own behalf or on behalf of a client might bring the member and the profession into disrepute. In this regard, members are referred to the Standards for Tax Planning set out in para 3.2 below (see also the guidance on [Tax Advice](#) for more detail).
- 2.26 A member's own tax affairs should be kept up to date. Neglect of a member's own affairs could raise doubts within HMRC as to the standard of the member's professional work and could bring them or their professional body into disrepute.
- 2.27 A member should ensure that their internal and external communications including those using social media are consistent with the principles in this guidance and in particular confidentiality.

3 THE STANDARDS FOR TAX PLANNING

3.1 In order to protect the reputation of members, the wider profession, and ensure that public interest concerns are met, the PCRT bodies have developed further Standards that members must observe when advising on UK tax planning. These seek to build on the Fundamental Principles set out above, focussing in particular on integrity, professional competence and behaviour. The Standards are a supplement to, and not a substitute for, the five Fundamental Principles. These standards have been developed in the specific context of the UK including the role of Parliament of making tax law, of HMRC in administering it, and the courts in enforcing it, and the roles of their devolved equivalents.

3.2 The Standards are set out below:

- **Client Specific**

Tax planning must be specific to the particular client's facts and circumstances. Clients must be alerted to the wider risks and the implications of any courses of action.

- **Lawful**

At all times members must act lawfully and with integrity and expect the same from their clients. Tax planning should be based on a realistic assessment of the facts and on a credible view of the law. Members should draw their clients' attention to where the law is materially uncertain, for example because HMRC is known to take a different view of the law. Members should consider taking further advice appropriate to the risks and circumstances of the particular case, for example where litigation is likely.

- **Disclosure and transparency**

Tax advice must not rely for its effectiveness on HMRC having less than the relevant facts. Any disclosure must fairly represent all relevant facts.

- **Advising on tax planning arrangements**

Members must not create, encourage or promote tax planning arrangements or structures that: i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation; and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.

- **Professional judgement and appropriate documentation**

Applying these requirements to particular client advisory situations requires members to exercise professional judgement on a number of matters. Members should keep notes on a timely basis of the rationale for the judgments exercised in seeking to adhere to these requirements.

Further discussion on the Standards is set out below.

Client Specific

3.3 The risks referred to in this Standard are those which are directly attributable to the planning and could be reasonably foreseeable by the member. There would not normally be a duty to comment on, for example, the commercial risk of the underlying transaction. The obligations of the member to the client continue to be governed by the engagement letter.

3.4 Where wider risks should be highlighted, the member may either advise on them, or identify them as matters on which separate advice should be sought by the client, depending on the scope of the member's practice and of the engagement.

3.5 Generic opinions or advice that does not take into account the position of specific taxpayers (or a

narrowly defined group of taxpayers such as a group of employees of the same company) pose particular risks. Members are entitled to make reasonable assumptions in giving advice (for example, where it would be reasonable on the facts to assume that the taxpayer(s) is/are UK resident), but assumptions should not be relied upon which are known to be unrealistic or unreasonable. If advice is generic, and/or depends on certain assumptions, this fact and the need for specific advice to be taken before acting should be highlighted with sufficient prominence to prevent any **misunderstandings arising**¹. Members should consider including in their advice the potential impact of a change in the assumptions made and/or the circumstances which might require specific or updated advice to be obtained.

Lawful

- 3.6 The requirement to advise clients on material uncertainty in the law (including where HMRC take a different view) applies even if the practical likelihood of HMRC intervention is considered low. Clients should be told what would be reasonable, at the time of the transaction, to expect HMRC to believe the application of the law to be (assuming HMRC was fully apprised of all the facts of the transaction). Where the likely view of HMRC is uncertain or not known, the member should include this fact as part of their advice.
- 3.7 The fact that the member may disagree with HMRC on a matter is not of itself indicative of behaviour that might breach these standards. A member may reasonably believe that an HMRC view is wrong in law but, if so, the client should be alerted to the fact that HMRC holds a different view of the law and should be advised of the risks and likely costs that might be incurred in order to determine any dispute.

Disclosure and transparency

- 3.8 Disclosure should be made whenever required by law and fuller disclosure must be recommended to clients wherever it is appropriate given a wider relationship or dialogue with HMRC relevant to that client. What is actually to be disclosed will inevitably reflect a professional judgement taking into account all relevant facts and law specific to the case in question and what the client consents should be disclosed.

Tax planning arrangements

- 3.9 Where a member has a genuine and reasonable uncertainty as to whether particular planning is in breach of this Standard, the member should:
- document the detailed reasoning and evidence sufficiently to be able to demonstrate why they took the view that any planning was not in breach of this Standard;
 - include in their client advice an assessment of uncertainties and risks involved in the planning see Standard Lawful above; and
 - include in their client advice an assessment of the relevant disclosures that should be made to HMRC in order to enable it, should it wish to do so, to make any reasonable enquiries – see Standard Disclosure and transparency above.

Professional judgement and appropriate documentation

- 3.10 Members are not required to complete paperwork for its own sake, but they should be prepared to identify, support and where appropriate defend the judgements they made in applying these requirements to their work.
- 3.11 Where the judgements made are reasonable, notes taken on a timely basis are likely to be the most convincing way of demonstrating compliance with the principles after the event, to the benefit of the member and the client and to satisfy any wider public concerns.

¹ For some suitably qualified members, this might, for example, include the preparation of standard wording for inclusion in contracts, Wills or other documents.

FURTHER GUIDANCE

For further explanatory guidance on the application of the Fundamental Principles and Standards to the work of a member working in tax, see the following help sheets:

[Help sheet A](#) – Submission of tax information and ‘tax filings’

[Help sheet B](#) – Tax advice

[Help sheet C](#) – Dealing with errors

[Help sheet D](#) – Request for data by HMRC

[Help sheet E](#) – Members’ Personal Tax Affairs

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