

CODE OF PRACTICE



INTERNATIONAL VAT ASSOCIATION

**FOR
MEMBERS**

This Code of Practice together with the Articles of Association represents the obligations of an International VAT Association member to act with integrity, professionalism and discipline in all matters.

A member's professional conduct should place his obligations under the law, their position as a member of the International VAT Association and the good standing of the profession above the interests of his clients, or of his own self interest.

The International VAT Association does not accept any responsibility for any loss or damage suffered by any person in consequence of them acting as a result of anything contained or omitted from this publication.

Exclusion of liability

The IVA nor its officers nor its servants shall be liable in any way for any act or omission arising out of or in connection with the services provided by a member.

1. PRELIMINARY

1.1

- The following guidelines are intended to assist members both generally in dealing with clients and the tax authorities and specifically in relation to irregularities and errors.
- A member's primary duty is to ensure that his actions comply with the law.
- He owes a contractual duty to the client to act for him with the requisite degree of skill and care, and the relationship should be governed contractually by a letter of engagement.
- The member also has duties to the tax authorities, notably of compliance with the law and the honest presentation of his client's circumstances.
- It is the taxpayer's responsibility to ensure that returns made to the tax authorities are correct and complete. It is for the member to assist him to decide on the extent and manner of disclosure of facts in relation to his tax affairs.
- Where a member becomes aware that irregularities have occurred in relation to a client's tax affairs he should advise the client of the consequences, and the manner of disclosure. If necessary, appropriate specialist advice should be taken.
- Where a client refuses to follow the advice of a member in relation to issues involving disclosure, the member should consider whether he should continue to act. If appropriate, specialist advice should be taken.
- Members may have statutory duties of disclosure where they have suspicions of criminal activity.
- When approached for information on a client's affairs by another adviser the member should ensure that he has his client's authority before making any disclosure.
- These guidelines apply equally to members, partners and employees employed in the members' professional practice/business.

Purpose of guidelines

- 1.2 These guidelines have been prepared for the assistance of IVA members and include practical advice about a range of legal and ethical issues. In some instances the guidance put forward goes beyond strict rights and duties. In following the guidelines it should be particularly borne in mind that each case depends upon its own circumstances and that a member who is in doubt about his position or responsibilities should seek specialist advice and, where appropriate, consult his legal advisers.
- 1.3 The guidelines are of general application and are intended as guidance in a range of circumstances.
- 1.4 The law and practice in the following pages generally reflects the position at September 2004. The guidance in these chapters addresses the changes introduced by the European Money Laundering Directive 91/308/EEC as amended by Directive 2001/97/EC and its implementation into National legislation and also developments concerning legal professional privilege. The guidance does not cover the provisions for disclosure of tax avoidance schemes, which could significantly impact how members should deal with the tax authorities.

Interpretation

- 1.5 In the guidelines ‘client’ includes where the context requires ‘former client’. ‘Member’ (and ‘members’) includes ‘firm’ or ‘practice’ and the staff thereof. ‘Tax authorities’ and ‘relevant authorities’ means competent VAT Administrations as appropriate. The masculine gender imports the feminine gender throughout this document.

Abbreviations

- 1.6 The following abbreviations have been used:

GAAP	Generally Accepted Accounting Practice
LPP	Legal Professional Privilege

2. PRINCIPLES APPLICABLE TO ALL TAXES

Generally

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

Cross Border taxes

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

Relationship with the client

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

'We will observe the Code of Conduct and Practice Guidelines of our professional Association 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 Taxation errors.'

In addition, the Money Laundering regulations have imposed strict requirements in terms of identification of new clients. We would strongly recommend you obtain copies of the following documents for your files.

- PASSPORT PREFERRED
- Proof of Identity
- Proof of Business Address
- Certificate of Incorporation
- Utility Bill

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

- 2.8 Every contractual relationship should be covered; if the member acts for a partnership and also for one or more of the partners, then the partnership and each partner acted for are separate clients for the purposes of these guidelines. Likewise, if the member acts for a husband and wife, each is a separate client.
- 2.9 If the client is a body corporate, the client is the company and not the directors. Where a default of any kind is discovered, the matter should be raised at the appropriate level in the client organisation. Where the directors' actions have resulted in the company defrauding the Tax Authorities, references in these guidelines to the 'client' should be regarded in the first instance as referring to the directors. For example, where the member has to advise a client to make a full disclosure to the tax authorities, the advice should be addressed to the directors. If it is believed that this advice will not be brought to the attention of the board as a whole, it should be given to each director, and then, if appropriate, to shareholders.
- 2.10 A member should deal with taxation work only on the basis that the client is prepared to make full disclosure to him. Such disclosures are governed by confidentiality as an implied contractual term.
- 2.11 These guidelines explain the position of members if a client refuses to act in accordance with the member's advice, for example where the client has unreasonably delayed either the production of information needed for the preparation of returns or claims or full disclosure of irregularities. The member should consider whether to continue to act for the client but should note the

recommendations contained later in these guidelines regarding termination of relationships with the client.

- 2.12 If a member believes that a relationship with a client has been or is likely to be terminated, whether by the client or by the member, the member needs to take extra care to make clear to the client in writing what matters within the terms of the engagement have been dealt with and what remains to be done, and by what date it should be done, and also what further action the member will, or will not, take.
- 2.13 A member is advised to keep detailed notes of meetings and telephone conversations with his clients, the tax authorities and any other third parties regarding his clients' affairs. By this means the member may protect himself in the event of a subsequent dispute over what was said at the time and, in the case of what the member perceives to be important meetings and conversations, he should consider ensuring that such notes are signed and dated by the originator.
- 2.14 It would be prudent for a member either to write to the client confirming oral advice as a matter of course or at least to make a note on file of advice given and he should consider sending a copy of that note to the client for his information and comment. This will allow the client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given. Exceptionally, where it is felt that the note is of particular importance, it may be sensible to have the creation of the file note witnessed.
- 2.15 Members will from time to time find themselves having to advise on matters which require additional specialist knowledge. In such circumstances they should be careful not to go beyond their own level of competence and, if necessary, should seek help from a specialist in the particular field.

Tax avoidance

- 2.16 Tax avoidance is legal and is to be distinguished from evasion which is illegal. All taxpayers have the right to arrange their affairs under the law to minimize their liability to tax. The member should consider carefully the merits of arrangements which may be considered artificial by the tax authority concerned. Such schemes should be considered in the light of the client's wider interests because of the risk that they may be challenged by the tax authorities. A scheme which depends fundamentally on concealment from the tax authorities may very well amount to tax evasion, or at least may be viewed in that light by the tax authorities.
- 2.17 Many tax authorities object to arrangements set up for no purpose other than to avoid tax. They see such artificial arrangements as fundamentally different from choosing one commercial approach which generates a lower tax bill than another, or the mere organisation of a taxpayer's affairs in such a way as to minimize the tax bill. This is a difficult and controversial area.

Disclosure

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

Files and working papers

- 2.19 As a matter of good practice, members should keep copies of returns etc. and organise their working papers to separate matters such as the preparation of claims and VAT returns from those on which other opinions may be expressed.

Responses to official requests

- 2.20 The starting point is that a member owes his client a contractual duty of confidentiality. Although the client's consent to the disclosure of relevant information is normally implied, if there is a real doubt about the information which the member proposes to disclose, it is wise to obtain the client's consent expressly. When doing so, the member will normally be able to advise the clients whether it is in the client's best interests to disclose such information. This section deals with the circumstances in which the member or the client can be compelled to provide further information.
- 2.21 A distinction must be made between a request for information informally ("informal requests") and those requests for information which are made in exercise of a power to require the provision of the information requested ("statutory requests"). In general, only the latter form of request is capable of overriding the member's contractual duty of confidentiality to his client. Informal requests may be merely forerunners of statutory requests compelling the disclosure of such information. Consequently, it will normally be sensible for the client to comply with such requests. The member should advise the client as to the reasonableness of the informal request and likely consequences of non-compliance and let the client make his decision. As regards statutory requests addressed to the client the member should advise the client about rights of appeal.
- 2.22 In relation to statutory requests, a distinction should be drawn between requests addressed to the client and those addressed to the member. Again, only the latter type of request is capable of overriding the member's contractual duty of confidentiality because the former type of request imposes duties on the client and not on the member. In relation to the former category of request, the member should provide the client with advice concerning the validity of the request, appropriate methods of complying with the request and the serious consequences of non-compliance. Normally, the client in receipt of such advice will consent to the member providing such information on his behalf.
- 2.23 A statutory request addressed to the member, if valid, imposes a set of legal obligations directly upon the member. Failure to comply with such obligations can expose the member to serious civil and criminal penalties. Save in relation to limited categories of information, a member can and should decide how he complies with a valid information request without requiring the consent of his client. Normally, he will be able to discuss such matters with the client, although certain powers may preclude communication between the member and the client.
- 2.24 Whether the statutory request is addressed to the client or the member, it will normally be helpful to answer the following questions:
- (a) Was the notice validly issued; for example did the officer making the request have the necessary authority to issue the notice and did he act in accordance with the various procedural safeguards?
 - (b) Do one or more of the pieces of information requested qualify as information which are either expressly or impliedly excluded from the ambit of the power authorising the request? For example, a client who receives a statutory notice is not obliged to disclose otherwise relevant information if it is covered by LPP and a barrister, solicitor or advocate who receives a notice under is not obliged and, therefore, not authorised, to disclose LPP material without his client's consent.

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

- 2.25 Where a category of documents falls outside the scope of the statutory request, the member remains under a duty to preserve the confidentiality of his client.
- 2.26 Where the member has ceased to act for a client, he remains subject to the duty of confidentiality. In relation to general and statutory requests which are addressed to the former

client, the member should refer the enquirer either to the former client or his new agent. In relation to statutory requests addressed to the member, the termination of his professional relationship with the client does not affect his duty to comply with that request.

- 2.27 Advice given by a member to his client is not normally disclosable by the member to the tax authorities because it is normally not relevant to the tax treatment of the underlying transaction. But this may not always be the case: for example, where the tax treatment depends upon whether the client had a tax avoidance purpose, the advice the client was receiving at the time about the alternatives open to him might be relevant. Subject to particular common law and statutory exceptions, the member might be compelled to disclose such advice although this is a difficult and contentious area.
- 2.28 A member should be aware of the powers of the tax authorities in relation to the removal of documents; he may also find it helpful to have identified a lawyer or other practitioner with relevant specialist knowledge of both civil and criminal law from whom he can obtain advice. If a member is faced with a situation in which the tax authorities are seeking to enforce disclosure by the removal of documents he should consider seeking immediate advice from such a source, before permitting such removal. Since there may be little time to take advice, the member should consider putting in place a protocol giving guidance to his colleagues and staff as to what preliminary steps should be taken in the event that the member's premises are subject to a raid.

Client-Lawyer Confidentiality / Legal professional privilege ('LPP')

- 2.29 LPP is related to but not quite the same as the general duty of confidentiality owed to a client. LPP, a part of the common law, was originally developed in the context of court proceedings, whether civil or criminal. In court or tribunal proceedings, the rule operates to exclude privileged material from having to be disclosed to the other party or, if known to the other party, being brought into evidence by him. Until recently, it was thought that the rule might not apply outside court or tribunal proceedings. However, some Courts have recognised that the public policy behind LPP can be achieved only if the confidentiality of such material is protected from information-gathering powers which are exercisable even when no court or tribunal proceedings are pending. Consequently, the protection given to LPP material potentially applies to limit the scope of the tax authorities' investigation powers.
- 2.30 Whilst it is held that the right to communicate in confidence with a legal adviser is a fundamental constitutional right, Money Laundering regulations adopted in many countries may override this right but only if statutes did so expressly or by necessary implications. General words of wide meaning are not enough to found such an inference. It is considered that this decision is of general application and all Tax Administrations' investigatory powers take effect subject to the right of the client's right to confidentiality in respect of the LPP material.
- 2.31 It is, therefore, of critical importance to ascertain whether the documents requested qualify as LPP material because the protection given to such material is more extensive than that conferred by the statutory exceptions. Due to the complexity of the common law rules on what qualifies as LPP material, specialist legal advice is likely to be required, particularly if the member or the client is minded not to disclose a document on the ground that it is privileged.
- 2.32 At common law the concept of LPP is complex. The protection it provides has significant limitations. It is not the case that every communication, of whatever nature, by or to a lawyer (barrister, advocate, or solicitor) is privileged. At common law the two significant situations in which privilege arises are as follows:

(a) *Litigation privilege*

Documents created for the dominant purpose of litigation are privileged. The privilege covers not only documents prepared by the lawyer, but also documents brought into existence by third persons for the predominant purpose of litigation. The existence of a second significant purpose will prevent the document from being privileged. Therefore, once litigation has started or is contemplated, documents prepared by non-lawyer advisers (including tax advisers) may be privileged. It is considered that litigation for this purpose

includes a tax appeal, although there appears to be no case in which this point has been expressly confirmed.

(b) *Advice privilege*

Documents passing between a client and his legal advisers are privileged if they are written for the purpose of obtaining or giving legal advice. Who is a legal adviser for this purpose is not entirely clear. The description is not restricted to lawyers in private practice and can include employed lawyers. On the present state of the authorities (many of which date from an era where the range of services offered by non-lawyers was much more limited), this type of privilege does not normally extend to documents recording communications to or from non-lawyers, even though such advisers may regularly advise on a particular area of the law and have professional qualifications to do so. So tax advice (not obtained for purposes of litigation) from a non-lawyer adviser is not privileged at common law. Nor are commissioned reports or investigations of companies. If a member is in any doubt in this very complex area he should seek legal advice.

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

Irregularities and errors

- 2.36 In the course of a member's relationship with the client, whether as agent or principal, he may become aware of irregularities or errors in the client's tax affairs. The client should be informed at once, normally in writing. Tact and diplomacy may be required and immediate corrective action may be difficult but the member should be seen to have acted correctly at the outset

Materiality

- 2.37 Counsel has advised that the concept of a 'true and fair view' incorporates the concept of materiality.

- 2.38 Whether an amount is to be regarded as material depends upon the facts and circumstances in each case. An amount which is not regarded as material for audit purposes may still be material for tax purposes. In the context of direct tax a figure of €200 or less might reasonably be seen as not material in the majority of circumstances. The tax authorities are not prepared to indicate whether there is an absolute minimum which they are prepared to disregard as not material.
- 2.39 In considering whether or not he must cease to act because a client refuses to make or permit a disclosure to the tax authorities a member may reasonably have regard to the materiality of the amount involved.

Fiscal offences and money laundering

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

Human Rights

- 2.45 Many tax authorities are constrained by the European Convention on Human Rights, which has been incorporated into the domestic legislation of many countries. Legislation should be construed if possible in a manner which is consistent with a Convention right. Similarly, public authorities are, subject to limited exceptions, obliged to act consistently with Convention rights, in particular in the exercise of their discretionary powers. Under Article 8 of the European Convention, everyone, including legal persons, has the right to respect for his private life and is entitled to privacy in relation to both his personal and business correspondence. A breach of that confidentiality is permitted only if and to the extent that it is authorised by law, it is in pursuit of a legitimate aim, which must constitute a pressing social need and the breach is no more than is proportionate to the social need which is sought to be advanced. Against this background, all requests for access to information held by a professional adviser should be considered carefully. In cases where doubts arise, members should seek guidance from a suitably qualified adviser.

VALUE ADDED TAX

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

3. DISCLOSURE

Relevant responsibilities in preparing VAT returns

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

Disclosure of specific transactions to the relevant authority

- 3.5 Normally, specific transactions need not be disclosed to the relevant authority. Nevertheless, a member may recommend to a client that a particular matter be disclosed in order to avoid uncertainty.
- 3.6 In such a case the full facts concerning it, including the reasons for doubt, should be disclosed to the relevant authority. The client can then generally rely on any unequivocal ruling in writing received from them on the point.
- 3.7 If a transaction is found to have been treated incorrectly but it can be shown that full information about it was disclosed to the relevant authority, the client may be able to request any assessment of VAT due be based on the correct ruling from the date the error was brought to the registered person's attention
- 3.8 A request of this nature will not be considered in cases where relevant authorities have been misled to obtain a specific ruling.
- 3.9 When disclosing transactions on which the member has previously advised, extra care may be needed to ensure that the full facts are disclosed. The advice given must not be allowed to affect the member's objectivity.
- 3.10 General guidance may occasionally be overridden by a specific ruling relating to the affairs of a particular taxpayer. Whether a specific ruling is applied retrospectively will depend on whether the general guidance could reasonably have been read as covering the particular case.

Requests for rulings from relevant authorities

- 3.11 Once the member is satisfied that it is appropriate to apply for a ruling he should ensure that the client understands the issues and implications of the proposed course of action. This advice to the client should normally be confirmed in writing.

- 3.12 Rulings should normally be sought by means of a written request. Rulings should normally be confirmed by the relevant authority in writing. If necessary the client, or the member, should write to the relevant authority confirming the facts and the ruling that is understood to have been given.
- 3.13 If a written ruling appears to the member to be incorrect, he should consider whether it is clear that full facts were disclosed (the amount of VAT involved may be a material fact) and whether it is clear from the wording of the ruling that the officer of the relevant authority has understood the question.

Effect of rulings and official practice

- 3.14 Members are entitled to apply official authority practices and rulings where these are favourable to their clients. However, there are limits to the extent to which the relevant authorities are bound by undertakings and statements of policy which they have given or issued.
- 3.15 If relevant authorities refuse to stand by a ruling given, whether generally or specifically to the client, there may be a remedy in judicial review before the Courts. In this event, the member should seek legal advice as soon as possible as to the applicable time limits for such procedures. An application may also be made to an independent Adjudicator dealing with reviews of tax matters.
- 3.16 If an error was obvious in the records available when a control officer visited, this should prevent any suggestion of fraudulent evasion or recklessly negligent conduct entailing a criminal penalty; and may also obviate the risk of an accusation of conduct involving dishonesty which could lead to a civil penalty. However, unless it can be shown that the officer saw the specific records in question and failed to point out the error this is difficult to prove.
- 3.17 If a member obtains a ruling with which he disagrees, he may advise the client to consider an appeal to an independent tax Tribunal having regard to the applicable time limits. The member should be aware that an appeal can only be made against a ruling which has been given in respect of an actual transaction. It is not possible to appeal against a ruling given in respect of a proposed transaction.

Demands by relevant authorities for information

- 3.18 Authorities' powers to demand information and their policy on access to working papers etc. vary from one member state to the next. Specific information on the Statement of Practice should be sought from each competent authority. As a general rule lawyers advise that relevant authorities have no statutory powers to compel the disclosure of LPP material. Furthermore, the information powers must be interpreted by the Courts and applied by the VAT' officers in a manner which is consistent with the client's and the member's rights under Article 8 of the European Human Rights Convention.
- 3.19 Enquiries from relevant authorities are often unexpected and informal and usually arise from a visit to the client. The member should consider whether authorisation to reveal the information requested is needed from the client. The nature of the enquiry may not be immediately apparent and the position may need reviewing as it progresses.
- 3.20 A member who is in doubt about the implications of a question should consider asking for it to be put in writing so that a response may be agreed with the client.
- 3.21 Relevant authorities should recognize the client's common law privilege, both in relation to legal professional privilege and litigation privilege, however, disputes may arise as to whether or not a particular document is protected by privilege.

4. ACQUIRING KNOWLEDGE OF VAT ERRORS AND IRREGULARITIES

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

Generally

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

Money laundering

- 4.6 Where appropriate, members should bear in mind the legislation on money laundering and the duties which this places upon them.

Human rights

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

Materiality

- 4.8 In considering the action which he should take in the circumstances outlined in this section, the member may take account of materiality but reference should be made to previous sections. However the Administration position is that any error ought to be corrected.

VAT errors

- 4.9 Correction of errors must be dealt with in accordance to the legislation of the relevant authority.
- 4.10 Authorities issue differing guidelines regarding the disclosure of errors after a visit date has been arranged. In most instances disclosure will be rejected where there is reason to believe that:
- (a) the errors were disclosed only because of the visit; or
 - (b) disclosure made during or after a visit was prompted only by Authorities' enquiries.

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

Advice to be given where an irregularity is admitted

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

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

When relevant authorities are not aware of an irregularity

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

When relevant authorities allege that irregularities may have occurred

- 4.13 When a relevant authority alleges that an irregularity may have occurred, but it has not been identified by the member or his client, the member should establish from the relevant authority such details as he can of the alleged irregularity and the circumstances in which it occurred. This should take place at a meeting between the member and the relevant authority officer or in the course of correspondence, depending on the circumstances.
- 4.14 The member should then discuss the position with his client and establish with him the full facts relating to the alleged irregularity. The member should evaluate allegations of the relevant authority in the light of the facts as they have been explained by the client. Where appropriate,

he should advise his client to make a full disclosure to the relevant authority and to offer them all facilities for investigation. In the course of his evaluation the member should consider whether to recommend to his client to take legal advice prior to making a disclosure. In particular, where there is a real possibility that the tax authorities may still bring criminal proceedings against the client even if he provided full disclosure the client needs to have proper legal advice concerning his right to silence and the privilege against self-incrimination before deciding which course to take.

- 4.15 It may be appropriate for the member, having agreed this with his client, to offer that a full report of the facts behind and surrounding the alleged irregularity be prepared by the member on behalf of the client with a view to making a full disclosure to the relevant authority.

When the relevant authority is aware of an irregularity

- 4.16 If a relevant authority intends to prosecute a person for evading tax, they should administer a warning or caution to that person in accordance with the law in force in the country where the offence is believed to have taken place. Therefore, when a relevant authority is aware that a serious irregularity has occurred, an interview under caution may be sought. If the member is made aware of such an interview, he should attempt to ascertain the relevant authority officers' reasons for the interview and then notify his client of the seriousness and the potential implications of the allegations. If the interview under caution is already taking place, and no legal advice has been sought, the member should repeat the need to take legal advice which the relevant authority should in any case have indicated at the outset as the client's legal right. The member should also advise the client of his right to silence and his privilege against self-incrimination. If the member does not feel competent to advise on these matters, he should seek to arrange legal advice on these matters for the client as soon as possible.
- 4.17 A tax adviser who is not a lawyer has no right to attend his client's interview under caution. Tax authorities have indicated that when a client is being interviewed in a criminal investigation, that client may already be under arrest and there is no obligation to allow a tax adviser to be present during such an interview unless that adviser is also a lawyer. It is therefore unlikely, in most instances, that tax advisers will have access to their clients in such circumstances.
- 4.18 There may be benefit in full co-operation and complete disclosure in civil fraud cases. If this approach is offered, the relevant authority will prosecute only if a fraud is likely to continue or the trader refuses to answer four standard questions. In criminal cases co-operation may facilitate the agreement of offers to compound criminal offences and the mitigation of penalties although it will not always prevent prosecution. If the tax authority seeks to rely in criminal or tax geared penalty proceedings upon statements or documents produced by the client following such procedure as comprising accurate evidence of the client's involvement in the irregularity, then it is possible that such reliance would be a breach of the client's privilege against self-incrimination under Article 6 of the European Convention. It should be noted that tax-gearred penalty proceedings will normally be regarded as criminal proceedings for the purposes of Article 6 of the European Convention. Again, this is a matter on which specialist legal advice should be sought as soon as possible.
- 4.19 An interview under caution is an early indication of the possibility of a criminal prosecution. If it appears likely that criminal charges will be brought, the member should advise the client to take advice from a criminal law specialist. Even if the relevant authorities are prepared to accept a financial settlement in lieu of prosecution it may still be appropriate to take legal advice.
- 4.20 If the advice is to co-operate, the member should advise his client to make a full disclosure to the relevant authority. In the case of a criminal investigation under caution, the advice of a specialist professional should be taken throughout in respect of full disclosure and production of documents etc.

The importance of confirming admissions of irregularities by clients

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

Instructions to disclose

- 4.22 Provided the member has the client's written permission (or a note of oral instructions which he has confirmed in writing to the client) to disclose an error he should write to the relevant authority giving as much detail of the inaccuracy in the return(s) as is available. This action should be taken in conjunction with any national legislation relating to the correction of VAT errors.
- 4.23 It may be more appropriate for the letter of disclosure to be sent by the client. In this case the member may either draft the letter for the client or review the client's draft to ensure that adequate disclosure has been made.
- 4.24 The disclosure should be made to the relevant authority as soon as possible in order to minimize the risk of their becoming aware of the problem before they are told. Care should be taken to ensure that the disclosure is as full as practicable concerning the number and the amount of irregularities which have been detected.
- 4.25 The member should also consider the need to make a similar disclosure to other tax authorities where the nature of the VAT error will have an effect on other accounting reports.

Unwillingness or refusal to disclose an admitted irregularity

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

- 4.31 Where the member either prepares or assists in the preparation of VAT returns, and the client refuses to disclose errors which occurred during or before the period in respect of which the member has acted, it may be necessary to cease to act in relation to the client's VAT affairs, or indeed all his affairs.
- 4.32 If the tax authorities are aware that the member has been acting for a particular client, the member should, when appropriate, notify them that he has ceased to act for that client.
- 4.33 If the member is engaged to provide VAT advice and is required to deal with tax authorities on the client's behalf, the member might not be in a position to do so in good faith whilst aware of an undisclosed error and the member should consider ceasing to act. This does not apply where the member has advised on VAT matters, or otherwise, without dealing with the relevant authority, but the member should consider his position carefully.

Where the client refuses to admit an irregularity

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

Consequences of ceasing to act

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

Suspicious circumstances

- 4.38 A member who acts in relation to VAT matters and has good grounds to suspect that a client has committed a material tax irregularity should discuss the position with the client to confirm or remove the suspicion. This applies whether or not the member has acted in relation to the actual matter concerned. If the suspicion is confirmed, the member would then have actual knowledge of the irregularity and these guidelines should be followed.
- 4.39 If the member finds no confirmation but remains suspicious such that the relationship of trust which must exist between the member and the client may have been impaired, the member should consider whether he should continue to act.

Request for information from a new adviser

- 4.40 On changes in a professional appointment the initiative to request information lies with the new adviser who should obtain the proposed client's authorization to communicate with the member. The member should not volunteer information to a new adviser in the absence of any such request by the new adviser or his former client.

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

5. VAT AND ACCOUNTS

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

6. CONFIDENTIALITY

Improper Disclosure

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

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

Improper Use of Information

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

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

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

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

7. COMMUNICATION WITH EXISTING ADVISER OF PROSPECTIVE CLIENT

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

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

8. CONFLICTS OF INTEREST

Introduction

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

Conflict between a member and the client

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

Situations where a member may be in conflict with the client

- 8.3 The following is a list of examples of situations where a member may be in conflict with the client, but the list is not exhaustive:
- (a) *Financial involvement with the client*: this could arise in a number of ways, for example holding shares in the client company or the making of loans to or receiving them from a client. Not every financial involvement with the client will result in a member being in conflict with the client. Whether such a conflict arises will depend upon the nature and extent of the financial involvement.

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

Conflict between different clients:-

8.4 A member who is asked to act for both parties to a transaction should normally refuse to do so. However, this may present difficulties if both parties are existing clients.

Where the member is asked to act for both parties to a transaction and the parties are existing clients of the member, the member has three choices:-

- To act for neither party: this is often the best course of action because of the potential conflict of interest between the parties. If the member is in any doubt as to whether acting for both parties would be in their best interests, he should act for neither.
- To advise both clients of the conflict and to give each of them the opportunity to consider whether or not they wish the member to act or if they wish to seek alternative representation: if both clients are agreeable, the member may act, provided that there is adequate disclosure of all relevant facts to both parties and provided that no preference is shown in advising one against the other. Sometimes, this may be difficult but, in practice, there may be sufficient "mutuality of interest" between the parties to allow this course to be followed.
- If a member has acquired relevant knowledge concerning a client who has instructed him in relation to a transaction and is then instructed by the other party to the transaction: in such cases it will usually be appropriate to inform both clients of the potential conflict and then to act only for the client who first sought advice. The member should be wary of changing allegiance after accepting instructions. A member who decides to act only for the first instructing client should advise the other client of this decision in order to avoid any suggestion of acting improperly or misusing any confidential information concerning that client.

9. DISCIPLINE

Complaints

9.1 Complaints about a member of the Association will be referred to the Ethics and Disciplinary Committee ("the Committee") which will consist of at least three members of the Council of the Association of which one will be the Chairman of the Committee. The Committee may receive complaints from Members' clients, other members of the Association or tax authorities.

Procedure

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

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

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

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

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

The Committee will not consider any complaint unless:-

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

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

Disciplinary Measures

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

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

Appeals

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

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