

IRISH TAXATION INSTITUTE
CODE OF PROFESSIONAL CONDUCT AND
RECOMMENDED BEST PRACTICE GUIDELINES

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IRISH TAXATION INSTITUTE (“the Institute”) CODE OF PROFESSIONAL CONDUCT

1 INTRODUCTION

Objects and Powers of the Irish Taxation Institute

Article 2 (A) (c) of the Memorandum of Association of the Institute (as amended) provides that one of the main objects of the Institute is to promote high standards amongst all persons in private practice or in public service who are engaged or to be engaged in the provision and delivery of taxation services to the public. Article 2 (B) (e) of the Memorandum of Association provides that the Institute shall strive for a high standard of professional conduct among all persons engaged in public taxation services, including the establishment of rules and regulations binding upon members of the Institute, supported by disciplinary procedures and appropriate sanctions. This Code of Professional Conduct with accompanying Recommended Best Practice Guidelines sets out the standards expected by the Institute from its Members. The disciplinary procedures and sanctions available to the Institute are contained in Bye-Law No. 1 (which is reproduced at Appendix A).

International Practice

The Institute is the Irish member organisation of the Confédération Fiscale Européenne (CFE). CFE consists of almost 30 national taxation Institutes across Europe representing in excess of 150,000 tax advisers. The Institute’s Code of Professional Conduct has been drafted in accordance with best practice recommended by CFE.

Core Principles

The Institute expects that all its Members and Students should, at all times, carry out their professional activities with integrity and in accordance with the principle of independence set out in this Code. The Institute also expects all its Members and Students to exercise care and conscientiousness in all professional dealings, and that they would take all reasonable steps to ensure they are informed on relevant developments in the administration and practice of taxation. The Institute expects that all its Members and Students should be responsible for their professional actions or advice. The Institute expects all its Members and Students to ensure that they are fully tax compliant in relation to their own affairs and that they encourage tax compliance among the public. The Institute expects that all:-

- (i) Associates or Fellows who provide advice, consulting or guidance in tax including without limitation those in private practice, the public sector or in a corporate role;
- (ii) Associates or Fellows not falling into (i) above but who use the designation, “CTA” or “Chartered Tax Adviser”; and
- (iii) Tax Technician Members

shall fully comply with Continuing Professional Development requirements as set out in Bye-Law No. 4 (as may be amended from time to time) as well as, where applicable, the Regulations governing the use of Designation.

Sanctions

The Institute requires that all Members and Students shall in all their professional and business dealings observe the rules as set out in this Code of Professional Conduct, both in the letter and the spirit. The Institute has the power under Article 14 of this Code of Professional Conduct to set up procedures under which it may exercise disciplinary sanctions on Members found to have breached this Code of Professional Conduct. The procedures to be followed and the disciplinary sanctions available to the Institute are contained in Bye-Law No. 1. The Council has the right to amend Bye-Law No. 1 as it deems appropriate without further recourse to the Members.

Statutory and Regulatory Obligations

Tax professionals are subject to a number of statutory regulatory obligations independently of this Code of Professional Conduct. The penalty for contravention of these regulatory obligations range from civil fines to criminal prosecution. These requirements include: an obligation to report suspected money-laundering offences, an obligation to report suspected tax evasion, a prohibition on assisting a taxpayer to file an incomplete tax return and a prohibition on directly or indirectly

assisting a taxpayer to evade tax. The Institute requires all its Members and Students to take whatever steps are necessary to ensure they comply with the applicable statutory regulatory requirements. In the event that a sanction is imposed by the Courts for such a regulatory breach on a Member, that Member is liable to separate disciplinary sanctions being imposed by the Institute. Members of the Institute who are also subject to regulation by another body with a regulatory function are expected to ensure they are familiar with the regulatory requirements of that other body.

Amendment of Code of Conduct

The Institute adopted the Code of Professional Conduct at an Extraordinary General Meeting on 26 May 1992 to take effect from 1 July 1992. The Code of Professional Conduct was subsequently amended and adopted at the Annual General Meeting of the Institute in 2006 and again in 2011. The amended Code takes effect from 18 January, 2012. The Council has the power to make further amendments to the Code of Professional Conduct with effect from the date of any such amendments, or such later date as decided by Council, without further recourse to Members. Members will be advised of any such amendments in the Institute's official journal, the *Irish Tax Review*.

Application of Code

This Code of Professional Conduct applies equally to practising Members or Students either on their own account or as employees of a partnership, sole practitioner or directors of a Company as it does to non-practising Members in employment who are not advising clients on tax affairs. The Recommended Best Practice Guidelines herein applies to all Members and Students.

Interpretation of Code of Professional Conduct and Recommended Best Practice Guidelines

The Recommended Best Practice Guidelines envisage the practical application of the Code of Professional Conduct so that some of the concepts of the Code of Professional Conduct may be repeated in the Recommended Best Practice Guidelines, which are not, and are not to be taken as, a replacement or amendment of the Code of Professional Conduct. In all matters, the Code of Professional Conduct will take precedence. In the Code of Professional Conduct and in the Recommended Best Practice Guidelines, words importing the singular only shall include the plural and vice versa, and words importing the masculine gender only shall include the feminine gender. Headings do not affect the interpretation of the Code of Professional Conduct.

Definitions

In this Code and Recommended Best Practice Guidelines:

- (a) "Member" means an Associate, Fellow, Ordinary Member or Tax Technician Member of the Institute and includes any of these four who are in employment or acting as a director of a corporate entity: and also includes Students who, for the period in question, are registered with the Institute as a Student of the Institute or as a Tax Technician Student of the Institute.
- (b) "Designation" means the trade marks CTA/Chartered Tax Adviser.
- (c) "Designations" means the trade marks, "AITI CTA" Logo/ "AITI Chartered Tax Adviser" Logo/ "AITI Chartered Tax Advisers" Logo/ "FITI CTA" Logo / "FITI Chartered Tax Adviser" Logo/ "FITI Chartered Tax Advisers" Logo.
- (d) "Relevant Members" means (i) Associates or Fellows who provide advice, consultancy or guidance in tax including without limitation those in private practice, the public sector or in a corporate role; (ii) Associates or Fellows not falling into (i) above but who use the Designation; (iii) Tax Technician Members.

ARTICLES OF THE CODE

Independence

While carrying out his duties, the Member should always have complete moral, intellectual and economic freedom. This applies both to the representation of a client's interests and to the settlement of conflicting interests as between a Member, the client, the Revenue authorities and any other interested parties.

In accepting or continuing a professional assignment or occupation, Members shall always have regard to any

factors that might, in the view of a reasonable observer, reflect adversely upon their independence, integrity and objectivity in relation to that assignment or occupation.

RECOMMENDED BEST PRACTICE

1.1 Importance of Independence

1.1.1 Performance

A Member must, at all times, perform his work objectively, impartially and independently. In order to do so, it is essential that a Member remains free from any influence that could impair his independence.

1.1.2 Preservation of Independence

Professional independence is largely an attitude of mind that often cannot be measured or defined precisely. Thus, any evaluation of independence will often be made on the basis of ascertainable facts, taken in conjunction with relationships, generally accepted practices and subjective perceptions. As a result, particular care is needed to preserve apparent, as well as actual, independence.

1.1.3 Removals of Obstacles

If there is any factor that might affect his independence, then a Member should take the necessary action to resolve the situation in an appropriate and professional manner. If a client is to be advised, this should be done as soon as it is clear that there is any possible or potential danger to his independence so as to enable the client and the Member to consider whether the Member can continue to act and whether any limitations are required on the scope of the Member's work.

1.1.4 Avoid Occasions

Most problems can be avoided by being alert to potential occasions of danger to independence, e.g., conflicts of interest (Article 7), and by not accepting assignments where it seems likely that independence will be impaired.

1.2 Commencing to Act

1.2.1 Change in Professional Appointments

Before accepting any professional assignment or occupation, Members shall make such enquiries as are reasonable and necessary to ensure that there are no factors that might reflect adversely upon their integrity and objectivity in relation to that assignment or occupation.

1.2.2 Permission to Obtain Information

In particular, before acting for a new client on compliance matters, a Member, with the prospective client's permission, should communicate with his predecessor.

1.3 Issues for the Employed Members

1.3.1 Employees

Members in employment are expected to maintain the same high standards in their professional work as practising Members, irrespective of whether their employer is a Member of the Institute. Consistent with this principle, Members' conduct should always have regard to:

- Confidentiality
- Integrity
- Objectivity
- Competence
- Courtesy and consideration

2. Continue Professional Development (“CPD”) Requirements and Use of Designations

The Institute requires that Relevant Members fully comply with the CPD Requirements set out in Bye-Law No. 4. as may be amended from time to time as well as (where applicable) the Regulations governing the Use of the Designations.

For avoidance of doubt, if a Relevant Member fails to comply with the CPD Requirements, the Institute may, at its sole discretion, by sending notice in writing to the Relevant Member revoke permission to use the Designations and upon revocation, the Relevant Member shall cease all use of the Designations, removing the Designations from premises, invoices, letterheads, advertisements, documents, labels, websites or any other locations or materials (in whatever form or medium). In addition, the Institute may, at its sole discretion, (i) exercise disciplinary sanctions on the Relevant Member who has breached the CPD Requirements, the disciplinary procedure being set out in Bye-Law No. 1; and/or (ii) amend the Register of Members in order to indicate that the Relevant Member is no longer entitled to use the Designation.

The Institute shall not be liable for any loss or damage caused directly or indirectly in connection with the refusal to grant permission to use the Designations or the revocation of the permission granted to a Relevant Member to use the Designations.

3. Care and Conscientiousness

Members shall carry out their professional work with due care and with regard to the technical standards expected of them as Members, and shall not undertake or continue professional work that they are not themselves competent to perform unless they obtain such advice and assistance as will enable them to competently carry out that work.

It is expected that, where appropriate, Members will have properly trained staff, together with suitable administrative structures, to respond to the needs of their clients. Members are responsible for their own work and for that carried out by those in their employment.

If a Member feels that he is not sufficiently independent or competent to carry out an assignment, he should not accept that assignment. The Institute considers it essential that Members should keep up to date with tax changes and developments, and encourages Members to maintain their skills and technical knowledge after qualification by attending courses and by independent study.

RECOMMENDED BEST PRACTICE

3.1 Standards of Service

3.1.1 Due Care and Timeliness

A Member shall perform his professional services with due care and timeliness.

3.1.2 Professional Competence

Members shall sustain their professional competence by keeping themselves apprised of changes to taxation law, and by having regard to developments in professional standards in all functions in which they practice or are relied upon. In addition, Relevant Members shall comply with the CPD Requirements set out in Bye-Law No. 4 as may be amended from time to time.

3.1.3 Relationship

The relationship with a client is that of professional adviser or tax compliance agent. The Member should recognise his own limitations and, if not competent in a particular field, should obtain such advice and help as shall enable him to fulfil his obligations to his client, or refer the client to such other professional advisor who shall adequately service the client in that particular field.

3.1.4 Standards Without prejudice to the foregoing, Members shall carry out their work according to principles laid down in any statements of the Code of Professional Conduct that the Institute may issue from time to time, having regard to the guidance given in those Statements. In all events, a Member should be totally objective in dealing with client affairs and be truthful and honest in all his professional work.

3.1.5 Benefits from Third Parties Members should not, in connection with any transaction involving a client, benefit from any fee or other remuneration from a third party without prior notice in writing to the client. Members shall not, in connection with any transaction involving their employer, benefit from any fee or other remuneration or any other benefit from a third party without their employer's consent.

Where advice given by Members to a client or to their employer is such that, if acted upon, it will result in a benefit provided by a third party to those Members or persons associated with them, special care shall be taken that the advice is in the best interests of the client or employer, and the client should be advised on the benefit to be derived.

3.1.6 Death or Permanent Illness or Incapacity A Member should make suitable arrangements to ensure that his practice can continue to be carried on in the event of his death or of his illness or incapacity. Unless appropriate arrangements are made beforehand, serious difficulties may arise, prejudicing the interests of clients. In addition, a Member must consider whether his practice could continue in the event of his prolonged absence and make such prior arrangements with such other Member, firm or company as may be necessary to ensure that the interests of his clients are protected, including such professional indemnity cover as may be necessary. Similar provisions as to prior arrangements with other Members, firms/company shall apply in relation to the death of a Member as they apply in the event of permanent illness or incapacity.

In the event of the death of a Member, his executors and family should be aware of any arrangements he has made.

3.2 Conduct of the Work

3.2.1 Working Papers In order to perform his work adequately, a Member should ensure that:

- (a) his work papers are so organised that he retains on his files, in an accessible form, all necessary permanent information, together with copies of such working documents as are likely to be required;
- (b) all persons engaged on the client's affairs are adequately trained and (where appropriate) supervised so as to ensure that they have the competence either to carry out the work themselves or to recognise occasions when they need to seek further assistance from others; and
- (c) where appropriate or necessary, proper file notes are kept of telephone conversations and meetings and of advice given.

3.2.2 Compliance Procedures A Member is advised to institute a system to ensure that warning is given of relevant time limits for filing returns, and for appeals and claims, and appropriate action taken. The Member should also be in a position to advise clients of the date by which action must be taken, in particular the due date of payment of tax and the rules governing interest and penalties.

- 3.2.3 Period to Retain Papers A Member should keep his working papers (including electronic records) for at least six years from the end of the tax year, or accounting period, to which they relate, and for longer where required by law to do so. The Member should also consider how long he should retain papers belonging to the client, e.g., dividend counterfoils.
- 3.2.4 Time Recording If a client is being charged on a time basis, then a Member should record the time spent on a client's affairs, sub-divided between tasks if this is appropriate.
- 3.2.5 Review System Wherever practicable, a Member should institute an internal review system in his office. The purpose of such a review would be to help ensure that clients' instructions are being observed and that the level of services being provided is competent and appropriate.
- 3.3 Letters of Engagement
- 3.3.1 Letters of Engagement On accepting instructions, it is advisable that a Member should set out in a letter of engagement to the client his understanding of the scope and nature of the assignment and invite the client to provide confirmation. This exchange of letters serves as a contract between the Member and his client. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what his adviser has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the way in which fees will be computed. This is dealt with in more detail in Article 13.
- 3.4 Use of Properly Trained staff
- 3.4.1 Delegation A Member is responsible for the standard of work undertaken on his files and should be satisfied that any work he delegates is undertaken by staff who have been adequately trained to carry out the work involved, whether or not the staff are Members of the Institute.
- 3.4.2 Dissatisfaction with Competence Where the Member is an employee or officer of a company, and he is not satisfied that staff (who are not Members) have adequate training or skills to perform their duties in relation to taxation services, he should report the situation to his employer with any appropriate recommendation as to further training, replacement or recruitment of staff. The Member should also indicate to his employer the potential consequences of his recommendation being ignored, so far as he is reasonably able to do so.
- 3.4.3 Supervisor A Member is responsible for ensuring an appropriate level of supervision over work undertaken by subordinate staff.
- 3.4.4 Remedy Defects If a Member has any reservation as to the adequacy of the work performed, it is his duty to remedy any defects before its completion and to ensure that it is adequately performed. If he is unable to ensure this, he should draw the situation to the attention of his employer, or, where he is the employer, he should discuss the position with his client and, if necessary or appropriate, resign from the engagement. Normally the client should not bear any costs relating to the rectification of the position, and it may also be appropriate to consider abating the normal fee.

4. Professional Indemnity Insurance

Every Member in private practice, whether solely or in partnership or in corporate practice, must ensure that adequate professional indemnity insurance or self-insurance cover is held by him or the business entity through which he practises. The Council of the Institute may, in relation to a particular Member, waive or relax this requirement if satisfied that special circumstances exist, which, in the opinion of the Council, make such waiver or relaxation necessary.

5. Relations between Members and Clients

The duty to observe confidentiality applies to all information with which the Member is entrusted regarding the affairs of his client, except where there is a public duty to disclose or there is a legal, professional or regulatory requirement to disclose. The same rule of confidentiality applies also to Members acting as employees or officers. The duty to observe confidentiality precludes the unauthorised use of professional or business secrets.

RECOMMENDED BEST PRACTICE

5.1 Confidentiality

5.1.1 Disclosure

Information acquired by Members in the course of professional work shall not be disclosed, except where consent has been obtained from the client, employer or other proper source, or where there is a public or statutory duty to disclose, or where there is a legal, regulatory or professional requirement to disclose. If one of these exceptions applies, a Member should endeavour where possible to obtain his client's consent or should seek legal advice before making any disclosure. However, where this is not possible, a Member shall disclose the information.

5.1.2 Information

Members acquiring information in the course of professional work shall neither use nor appear to use that information, directly or indirectly, for their personal advantage or for the advantage of their family or dependants or of a third party.

5.1.3 Client's Interests

A Member has a duty to uphold the interests of his client without regard to his own interests or any consequences to himself or any other person.

5.1.4 Client's Papers

Papers delivered to a Member are the property of the client. The Member has no right, without the consent of the client, to lend them or reveal their contents to any person otherwise than as may be necessary for the proper discharge of his duties as adviser or as may be required by law.

5.1.5 Member's Duties

A Member is under a duty not to communicate to any third person information (save as provided for by law) in whatever form entrusted to him by or on behalf of his client, and not to use such information to his client's detriment or to his own or another client's advantage. This duty continues at all times after the relationship of adviser and client has ceased and after the death of his client, and subsists unless he has the consent of his client to make such a communication, or it is necessary to make such a communication when answering accusations against him by his client.

The foregoing duty applies also to a Member in relation to information entrusted to his employer and coming to his knowledge in the course of his employment.

6. Relationships with Other Professional Advisers

A Member should neither obtain nor seek professional work for himself or another Member in a manner that is unprofessional. He must always act ethically when working with other tax consultants, whether or not they are

Members of the Institute. This applies in particular when handling the affairs of a client jointly with another consultant, or following a transfer of responsibility, or if acting on a once-off consultancy assignment.

RECOMMENDED BEST PRACTICE

6.1 Working with Other Professional Advisers

- 6.1.1. Scope A Member should ascertain whether any other professional advisers are involved in any project or assignment that a client asks him to undertake, and the scope of their involvement. Subject to obtaining his client's consent, he should ensure that the other professional advisers become aware of the scope of his involvement and establish appropriate working relationships with them in order to progress the work efficiently.
- 6.1.2. Recommendations Where the Member's advice is sought as to the appointment of other suitable professional advisers, he should make recommendations to his client's (or employer's) perceived best interests. This may involve providing several names from which his client (or employer) can choose.
- 6.1.3. Reporting The Member should establish whether he is reporting directly to his client (or employer) or to another professional adviser involved. In the former case, he should ensure that he takes due account of the other adviser's advice in formulating his own advice. In the latter case, he should ascertain to whom any fee note arising should be rendered.
- 6.1.4. Competence The Member should ensure that he advises only within the scope of his own professional competence and within the scope of the terms of his engagement.
- 6.1.5. Written Advice Normally, any advice he gives should be communicated in writing, including written (including e-mail) confirmation of advice given orally at a meeting or by telephone.
- 6.1.6. Direct Access A Member may give instructions directly to barristers practising without using the services of a solicitor, in accordance with the conditions for the time being of the Direct Professional Access Scheme.
- 6.1.7. Duty of Care In working with other professional advisers, particular attention may have to be devoted to the Member's duty of care as regards the extent of disclosure of client (or employer) confidential information. In cases of difficulty and doubt, the Member should refer the matter to his client (or employer) and obtain instructions on the point, preferably in writing.

6.2 Obtaining New Clients

- 6.2.1 Unprofessional Conduct A Member should neither obtain nor seek professional work for either himself or another Member in a manner that is unprofessional. The question as to what constitutes unprofessional conduct can be determined only in the light of all the relevant facts and circumstances. However, the Institute considers that, *inter alia*, the following would be regarded as unprofessional conduct:
- (a) Implying, whether orally or in correspondence, or in any brochure, circular or other literature, that existing advisers are not competent to provide service or services to any client;
 - (b) giving any commission, fee or reward to a third party to induce a

prospective client to breach a previous professional relationship.

The above two items are designed to be illustrative; they do not constitute an exhaustive list.

- 6.2.2 Unsolicited Approaches The practice known as “cold calling” (i.e., the making or instigating of an unsolicited approach to a non-client with a view to obtaining professional work) is not, of itself, unprofessional conduct. However, repeated “cold calling”, which becomes offensive and which may lead to a complaint by the recipient of the approaches, would normally be regarded as unprofessional conduct.
- 6.2.3 Direct Mailing Direct mailing and the sending of unsolicited brochures, circulars and other literature about the firm to non-clients would not, of themselves, amount to unprofessional conduct, unless they breached one of the other guidelines (e.g., 6.3.1. (a) or (b) below), but Members should comply with current data protection and other legal requirements.
- 6.2.4 Advertising Subject to the above and in accordance with “Advertising” (Article 12), a Member may advertise his services to the public.
- 6.3 Ceasing to Act
- 6.3.1 When to Cease Once he has accepted a client’s instructions, a Member should not cease to act for the client until the relevant work has been completed, unless:
- (a) the client requires him to do so; or
 - (b) he has good cause and gives reasonable notice to the client; or
 - (c) he is obliged by law to do so.
- 6.3.2 Information to Successor If, after ceasing to act, a Member receives a communication from a successor, he should supply the documentation or information required but only on the former client’s written authorisation.
- 6.3.3 Handing over Papers Subject to 13.2., if a former client asks a Member to hand over copies of relevant papers either to the client or a successor agent, the Member should co-operate. In particular, he should bear in mind that, with the exception of those working papers for which the client has not specifically paid, many of the documents on his files will in practice belong to the client (see Article 3). In the event of a dispute, a Member should normally seek legal advice.

7. Tax Evasion

A Member must not do anything to knowingly assist a client to evade any tax or to commit any other illegal act in relation to the client’s tax affairs or otherwise. Where a Member acquires information that leads him to conclude that a client has committed any such offence, he should urge his client to make the necessary disclosure to the appropriate authorities, unless legally prevented from doing so. If the client is unwilling to do so, the Member should advise the client of the seriousness of the matter and of the penalties and other potential consequences of non-disclosure. If that client still fails to make the necessary disclosure, the Member should cease to act for that client, and in any event the Member should consider what reporting obligations, statutory or otherwise, he is required to follow.

A Member who has reason to believe that a prospective client has engaged in any tax evasion should only accept the appointment on the basis that full disclosure has been or will be made. If, after accepting the appointment, the

Member finds that full disclosure is not made within a reasonable time, he should cease to act.

RECOMMENDED BEST PRACTICE

7.1 Occasions when it would be Appropriate to Decline to Act

- 7.1.1. Refusal of Information Members should proceed with caution before accepting instructions from a client who refuses to give the existing tax agent permission to disclose appropriate information about his affairs.
- 7.1.2. Illegality A Member must do nothing to knowingly assist a client to commit any criminal offence or to facilitate tax evasion. Where a Member acquires information that leads him to conclude that a prospective client has been guilty of tax evasion, he should only accept appointment on the basis that full disclosure or settlement has been or will be made.
- 7.1.3. Client's Duty to Disclose Where a Member acquires such information about an existing client, he should urge his client to make a full disclosure. If the client is unwilling to take appropriate action, the Member should take such steps as will safeguard his own professional position. In particular, he should ensure that the client is aware of:
- (a) the nature and seriousness of any possible offence and the penalties which may arise; and
 - (b) the potential consequences of non-disclosure.
- 7.1.4. Denial of Duty to Disclose If, despite this, the client refuses permission for disclosure to be made, the Member should, if he has acted in relation to the matters from which the possible offence arise, cease to act for the client.
- 7.1.5. Independent Legal Advice The Member may wish, or need, to take independent legal advice, particularly if there is an implication that he himself has been involved in any illegal act, or there is statutory compulsion to make disclosure to any other body as required by law.
- 7.1.6. Refusal to Allow Information In either case, the Member should, on receiving a communication from a prospective successor, request permission from the client to disclose all relevant matters. In the absence of such permission, the prospective successor will, as explained at 5.1.1. above, be on notice that he should exercise extreme caution before accepting the appointment.

8. Member's Own Tax Affairs

A Member should keep his own tax affairs in good order, ensure that his own tax returns and accounts are filed in full and on time, and that any correspondence with the Revenue authorities is handled promptly and courteously.

9. Regulatory and Reporting Obligations

Each Member must keep up to date and comply with the regulatory requirements pertaining to his professional tax qualification. This will include (but is not limited to) Reporting Obligations including money laundering reporting obligations and mandatory disclosure of certain transactions to the Revenue Commissioners.

10. Conflicts of Interest

There are many circumstances in which a Member may be presented with an actual or potential conflict of interest. The question of when a conflict of interest arises is a matter for the personal professional judgement of the Member,

based upon the precise circumstances, and it is incumbent that the Member considers the matter and takes whatever steps are necessary.

RECOMMENDED BEST PRACTICE

10.1. Conflict of Interest – General Guidance

10.1.1 Situations of Conflict

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

10.1.2 Guidance

The most important points of general guidance are:

- (a) Conflicts of interest are not always easy to recognise or anticipate. However, the Member should always be cognisant of the possibility and of the fact that this may impair his ability to give independent advice to a client.
- (b) The existence of a conflict of interest is frequently not one of fact but of appearance or perception. Thus he must view the position and his actions, not only in the light of his own view of the possible conflict, but in the light of the perceptions of others – i.e., the client, the public, regulators and other third parties.
- (c) The Member should acknowledge the conflict to the relevant clients as soon as it occurs.
- (d) The Member should immediately address the conflict and seek a solution that is compatible with high professional standards and the duty that he owes to his client or clients.
- (e) Should he wish to continue to act despite the conflict (or potential conflict), he must ensure that the client or clients for whom he is acting are advised of the situation so that they can consider the need to obtain independent advice.

10.2 Acting for Different Parties to a Transaction

10.2.1 Avoid Situation

A Member should not normally act for parties on different sides of a transaction. However, this may present particular difficulties if both the parties are existing clients. The Member cannot give preference in providing services to one client rather than the other. He must act in the best interests of both.

10.2.2 Options

A Member has three main options:

- (a) To advise both clients of the conflict and to give both the opportunity to consider whether or not they wish him to act or whether they wish to seek alternative advice. If both clients are agreeable to him acting, he may do so provided there is adequate disclosure of all relevant facts to both parties, so that they may formulate proper business judgements, and provided that no preference is shown in advising one against the other. In practice, this may be difficult, but there may be sufficient “mutuality of

interest” between the parties to allow this course to be followed.

- (b) To advise both clients of the conflict and then to act for only one. This may be appropriate where, for example, both clients agree, or where the Member acts for the client from whom instructions were first received, and providing that there are no circumstances (such as the receipt of confidential information) that would render it inappropriate for the Member to act for only one of the clients in this way.
- (c) To act for neither. This avoids any conflict of interest but may not be the desired outcome for either prospective client.

10.3 Acting for Both an Employer and his Employees

- 10.3.1. Who is the Client? A Member may frequently be asked by an employer to provide tax or other advice to his employee. It is the Member’s responsibility to ensure that all involved, including the employer and employee, understand and accept the basis upon which such advice is to be provided, and the extent to which confidential information pertaining to the employee may be given to the employer without the express approval of the employee (and vice versa). Where the nature of the assignment is such that there is a requirement for a report to the employer, this fact should be made clear in the engagement letter submitted to the individual employee before confidential information is received from any such employee.

10.4 One-Client Practitioners

- 10.4.1 Standards The size of a practice, either in terms of fee income or number of clients, does not reduce a Member’s responsibility for maintaining standards expected of all practising Members of the Institute to all clients.
- 10.4.2 Conflicts of Interests A Member acting for a single client, or having one client whose fee income predominates, may find conflicts of interest occur more frequently and that objectivity is more difficult to achieve than for the average Member in practice. The need for the utmost care in ensuring records are kept of advice given is correspondingly greater.
- 10.4.3 Competence A Member with a narrow client base who, as a result, may have limited experience in particular areas of tax practice should be mindful of those limitations, and the necessity to seek assistance or specialist advice.

11. Fiduciary Responsibilities

Where Members handle money or other property in trust, they shall do so in accordance with the terms of the trust and the general law relating to trusts and any other legal requirement, and shall maintain such records as are necessary to account properly for the money or other property. Money held in trust shall be kept in a separate trust bank account or accounts.

At the conclusion of any matter a Member should account to his client for monies received on the client’s behalf, setting out details of all charges and outlays incurred.

12. Advertising

Members who advertise should follow the standards laid down by the Advertising Standards Authority for Ireland – i.e., all advertisements should be legal, decent, honest and truthful.

RECOMMENDED BEST PRACTICE

12.1 Advertising

- 12.1.1 Definition For the purposes of this practice guideline, “advertising” encompasses all forms of marketing of professional services, including:
- (a) all types of media advertising whether to work, sub-contract work, staff recruitment, practice mergers or employment;
 - (b) publications;
 - (c) seminars;
 - (d) business cards;
 - (e) promotional gifts; and
 - (f) general “mailshots”
- 12.1.2 Standards Members should follow the standards laid down by any official advertising standards authority – i.e., all advertisements should be legal, decent, honest and truthful.
- 12.1.3 Truthful Advertising should not be misleading in any way. For example, a Member should not appear to hold himself as having expertise in a particular field that he does not in fact possess.
- 12.1.4 Unambiguous Every Member should ensure that any advertising or publicity for which he may be held responsible is accurate, is not ambiguous and is not likely to cause public offence.
- 12.1.5 Responsibility A Member remains responsible for an advertisement, even if the work is delegated to an advertising agency or other intermediary.
- 12.1.6 Specialist Members may state the areas in which they specialise.
- 12.1.7 Unprofessional Conduct Members’ attention is also drawn to the section of those guidelines dealing with the acquisition of new clients.

13. Charging for Services

Each Member is responsible for setting his own fees and the manner in which those fees are calculated. The Institute does not recommend any particular method of charging or any fee scales. Members should ensure, however, that the letter of engagement referred to in Article 3 clearly sets out an estimate of the proposed fees and the method for calculating those fees (e.g., hourly rates, etc.).

RECOMMENDED BEST PRACTICE

13.1 Charging for Services

- 13.1.1 Considerations Each Member will determine the rates of charge for himself and members of staff, and such rates may vary according to such matters as the complexity of the work involved, the skill and knowledge required, the nature of the responsibility that the work entails, and the overall practice costs. The impact of any regulation or prices legislation may also need to be borne in mind.

- 13.1.2 Fair Charges The submission of an equitable and sound charge for services involves good judgement; it is not merely a question of applying a fixed scale to the time involved in completing the assignment. The charges should be acceptable and fair to the client in relation to the value of the services performed. These guidelines have to be interpreted in the light of that general principle.
- 13.1.3 Expenses Specific overhead expenses, such as travel, telephone, fax and courier costs incurred on behalf of clients, may either be treated as part of the Member's general pool of overheads in determining the rate of charge or be charged separately to the client in addition to the professional fee.
- 13.1.4 Method of Billing Normally, it is not necessary for fully detailed bills to be sent automatically to clients unless a prior request has been made. However, the Member's records should be adequate to enable a fully detailed bill to be prepared at a later date if required.
- 13.1.5 Basis of Charge Before undertaking any work on behalf of a client, a Member should ensure that the client is aware of the basis on which fees will be charged and how expenses incurred on behalf of the client will be treated. It will be in the interest of the client and Member to set these matters out in the letter of engagement on accepting a new client and on accepting new work from an existing client.
- 13.2 Lien on Working Papers for Unpaid Fees
- 13.2.1 Definition A lien is the right of a person to retain possession of the owner's property until the owner pays what he owes to the person in possession. General liens, which rarely occur and are difficult to establish, are not considered here. Particular liens are liens over property that can be retained only until payment of a particular debt due in respect of it is paid; a Member will probably have a particular lien over documents belonging to his client in respect of which he has performed work for which he has not been paid any fee due.
- 13.2.2 Conditions Having taken all possible steps to recover the amount due, the following four conditions must all be met if a right of lien is to exist:
- (a) the documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;
 - (b) the documents must have come into the possession of the Member by proper means;
 - (c) work must have been done by the Member upon the documents;
 - (d) the fees for which the lien is exercised must be outstanding in respect of that work and not in respect of other, unrelated work.
- 13.2.3 Legal Advice If not legally qualified, a Member should take legal advice when considering exercising a particular lien, and possibly recommend to the client that he should also do so, in any but the most straightforward cases. It should be borne in mind, for example, that special considerations may

apply in the case of bankruptcies, liquidations and receiverships.

14. **Disciplinary Procedures and Sanctions**

The Institute has the power to exercise disciplinary sanctions on Members who are considered to have breached this Code of Professional Conduct (including without limitation failure by Members to pay or who are in arrears in respect of applicable membership fees due to the Institute), and the disciplinary procedures and sanctions can be found in Bye-Law No. 1.

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