

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

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 available at www.taxinstitute.ie).

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.

Fundamental Principles

The Institute expects that all its Members and Students should, at all times, carry out their professional activities in accordance with the fundamental principles of integrity, objectivity, professional competence, confidentiality and due care as 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.

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 12 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.

Obligation to notify the Institute

A Member must promptly inform the Secretary of the Institute if he/she :

- (a) Is convicted of a criminal offence (other than a "summary only" road traffic offence) or is charged with any financial crime such as fraud or money-laundering;
- (b) Is notified of disciplinary and/or regulatory action begun against him by another professional body to which the Member belongs or by a regulator;
- (c) Is notified of disciplinary action for misconduct/gross misconduct or is dismissed for misconduct/gross misconduct by his employer;
- (d) Has a bankruptcy order made against him;
- (e) Enters into an individual voluntary arrangement with his creditors under the provisions of the Personal Insolvency Act, 2012;
- (f) Is disqualified as a director or trustee, or enters into a disqualification undertaking.

The Secretary shall decide, in accordance with Clause 2.8 of Bye Law No 1 as to whether the matter should be put before the Taxation Disciplinary Board where notification of such a matter to the Secretary will not automatically result in a matter being referred to the Taxation Disciplinary Board and this is at the Secretary's discretion.

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 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 and this version of the Code takes effect from 15 September, 2015.

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. Breaches of either the Code of Professional Conduct or the Recommended Best Practice Guidelines may give rise to disciplinary action against a Member. 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. The Recommended Best Practice Guidelines are intended to give guidance to Members in relation to the application of the Code of Professional Conduct and should not be interpreted as an exhaustive list of potential breaches of the Code of Conduct.

Definitions

In this Code and Recommended Best Practice Guidelines:

“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.

ARTICLES OF THE CODE

1. Fundamental Principles

A Member shall comply with the following fundamental principles:

Integrity: To be responsible and honest in all professional and business relationships.

Objectivity and Independence: To have complete moral, intellectual and economic freedom when carrying out his professional or business duties and not to allow bias, conflict of interest or undue influence of others to override professional or business judgements. 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.

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

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

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

RECOMMENDED BEST PRACTICE

1.1. Integrity

- 1.1.1. A Member must be honest in his professional work. In particular, a Member must not knowingly or recklessly supply information or make any statement which is false or misleading. Furthermore, a Member must not knowingly fail to provide relevant information where the proposed recipient of the information is legally entitled to receive it.
- 1.1.2. A Member must not engage or be party to any illegal activity.
- 1.1.3. A Member must not carry out a client's instructions if he considers that to do so would involve a risk of assisting in a criminal activity.
- 1.1.4. Great care must be taken with money and assets should be maintained separately from the Member's own funds. A Member must ensure that client money's is properly accounted for.
- 1.1.5. A Member must not obtain or seek work in any unprofessional manner.

1.2. Objectivity and Independence

- 1.2.1. A Member must be independent, impartial and objective in all work undertaken. In order to do so it is essential that a Member remains free from any influence that could impair his independence. This applies both to the representation of clients and to the resolution of conflicting interests as between tax advisers, clients, Revenue and any other interested parties.
- 1.2.2. 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.
- 1.2.3. Most problems can be avoided by being alert to potential occasions of danger to independence e.g. conflicts of interest and by not accepting assignments where it seems likely that independence will be impaired.

1.3. Professional competence and due care

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

1.4. Confidentiality

- 1.4.1. A Member owes a duty of confidentiality to his client or employer. Client specific or confidential client 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. 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.
- 1.4.2. Members shall, for the avoidance of doubt, be entitled to apply information obtained in the course of advising one client (e.g. counsel's opinion, Revenue ruling or appeal commissioner decision) when advising a different client on a related issue provided that no confidential information in respect of one client is divulged to another client without consent.
- 1.4.3. 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.

- 1.4.4. Papers delivered to a Member are the property of the client. The Member ought not to, without the consent of the client, to lend them or reveal their contents to any person outside of his firm or practice otherwise than as may be necessary for the proper discharge of his duties as adviser or as may be required by law.
- 1.4.5. The foregoing duty applies to a Member in relation to information entrusted to his employer and coming to his knowledge in the course of his employment.

1.5. Professional Behaviour

- 1.5.1. A Member must take due care in his conduct and uphold the professional standards of the Institute.
- 1.5.2. A Member must not perform his professional work, or conduct his practice or business relationships or perform the duties of his employment improperly or incompetently to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the Institute, or to the members or any part of the membership or to the tax profession.

1.6. Professional Indemnity Insurance and Personal Responsibility

- 1.6.1. A member must protect his clients, his practice and himself by having adequate PII cover as he has a duty of care to his clients when carrying out his professional work. A Member is responsible for his own work and that of his employees and subcontractors. Members should refer to the Institute's guide to PII cover.

1.7. Commencing to Act

- 1.7.1. 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.
- 1.7.2. In particular, before acting for a new client on compliance matters, a Member, with the prospective client's permission, should communicate with his predecessor.

1.8. Issues for the Employed Members

- 1.8.1. 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.
- 1.8.2. Members have a professional obligation to comply with the Code of Professional Conduct and the fundamental principles. There may be times when employed members find themselves in situations that threaten their compliance with the Code of Professional Conduct and the fundamental principles by being put under pressure to:
 - (a) Act contrary to professional standards; or
 - (b) Act contrary to law/regulation.

- 1.8.3. If an employed Member, whether working in a tax practice or in industry, acquires knowledge which suggests taxation irregularities or that his employer may have committed an unlawful act, he should seek to establish the facts and identify the affected parties so that, as far as is possible, he has a clear understanding of the situation. He should then:
- (a) First raise any concern internally within the organisation at the appropriate level and follow the organisation's applicable procedure. The content and outcomes of any discussions held should be noted down;
 - (b) If a Member discloses a concern internally and he is worried either that he has not been dealt with seriously or handled effectively, or if he feels unable to talk to anyone internally for whatever reason, he can contact the Institute;
 - (c) Explore available external routes or seek legal advice;
 - (d) Where possible, disassociate himself from the matter.

2. 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. A Member is required to comply with the Institute's Continuing Professional Development (CPD) Policy, a copy of which is available on the Institute's website (www.taxinstitute.ie) and Member's should refer separately to this policy in respect of their annual CPD requirements.

RECOMMENDED BEST PRACTICE

2.1. Standards of Service to the Public

- 2.1.1. A Member shall perform his professional services with due care and timeliness.
- 2.1.2. When acting for a client, a Member places his professional expertise at the disposal of that client. A Member must exercise reasonable skill and care when acting for a client. The Member must manage the risks associated with advising a particular client. In order to do so the Member must assess his ability to discharge his duty of care to that client in respect of the matters on which advice is sought or the work is to be undertaken.

- 2.1.3. In conjunction with their obligations to comply with the Institute's CPD policy, 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 by attending at seminars and functions for continuing professional education organised by the Institute and any other such relevant professional events.
- 2.1.4. If a Member delegates work to a colleague or a more junior member of staff, the Member remains primarily responsible for the work so should exercise sufficient supervision to confirm that the work performed is adequate and that it is undertaken by staff who have been adequately trained to carry out the work involved. This also applies to sub-contractors and consultants engaged by a Member on behalf of his client.
- 2.1.5. Due to the need to preserve client confidentiality, a Member must obtain a client's consent before subcontracting work on that client's affairs to another firm or before instructing an expert or third party to assist with the matter. A Member could consider including a clause authorising referral to a subcontractor within his engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral.
- 2.1.6. 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.
- 2.1.7. 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.
- 2.1.8. When dealing with third parties on a client's behalf a Member must be careful not to breach client confidentiality or inadvertently assume a duty of care towards the third party.
- 2.1.9. 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 and Best Practice Guidelines that the Institute may issue from time to time.

2.2. Death or Permanent Illness or Incapacity

- 2.2.1. 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. 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. A Member should be satisfied that the Member, firm or company to whom the work is to be assigned has sufficient experience and expertise to act and is adequately insured for the work to be undertaken.

- 2.2.2. In the event of the death of a Member, his executors and family should be aware of any arrangements he has made. Arrangements should be set out in detail in a written agreement to avoid any doubt or confusion which may otherwise arise. Members are recommended to consult a solicitor with appropriate experience in drawing up such an agreement. Members should also consider granting a power of attorney where appropriate.

2.3. Business Continuity Plan

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

2.4. Conduct of the Work

- 2.4.1. 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.

- 2.4.2. Unless set out in a separate document (such as terms and conditions or an engagement letter) an advice communication should normally set out:

- (a) the purpose for which the advice is required and the client's objectives;
- (b) the background facts and assumptions on which the advice is based and whether or not the facts have been verified by the adviser;
- (c) the alternatives open to the client;
- (d) the risks associated with the advice;
- (e) relevant caveats and exclusions.

- 2.4.3. A Member should make it clear that the advice given is current and may be affected by subsequent changes in the law.

- 2.4.4. Advice should normally be given in writing. If a Member gives advice in meetings or by telephone, the Member should consider carefully whether to confirm in writing. It may be prudent for a Member to make a note on file of advice given orally and he should consider confirming the advice in writing he considers this to be appropriate.

- 2.4.5. 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.
- 2.4.6. If a Member believes that he has no responsibility for monitoring the relevant dates for a client, a specific exclusion to that effect should be incorporated in the letter of engagement or otherwise communicated to the client in writing. Where a Member has not been paid for work done and is not undertaking any further work for the client but remains registered as the client's agent on the Revenue online system (ROS) the Member should confirm to his client in writing that he will not continue to act until such time as his fees are paid and that he will not be responsible for any filings or deadlines which arise prior to the resolution of the issue of the outstanding fees and request that the client remove him as his agent from ROS.
- 2.4.7. A Member should keep his working papers (including electronic records) for at least seven 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. Papers and records which are the property of the client (or former client) should be returned to the client (or former client) where necessary or destroyed once the appropriate retention period has expired and where practicable the client should be notified in advance of the proposed destruction.
- 2.4.8. 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.
- 2.4.9. A Member should consider having 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.

2.5. Letters of Engagement

- 2.5.1. 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.
- 2.5.2. Members are strongly recommended to issue an engagement letter at the outset of an engagement and review it annually and also when the scope of the engagement changes significantly.

2.6. Use of Properly Trained staff

- 2.6.1. 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.

- 2.6.2. Where the Member is an employee or officer of a company, and he is not satisfied that staff 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.
- 2.6.3. A Member is responsible for ensuring an appropriate level of supervision over work undertaken by subordinate staff.
- 2.6.4. If a Member has any reservation as to the adequacy of the work being performed, it is his duty to remedy any defects before its completion and to ensure that it is adequately performed.

2.7. Obtaining New Clients

- 2.7.1. 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.

- 2.7.2. 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.
- 2.7.3. 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, but Members should comply with current data protection and other legal requirements.
- 2.7.4. Subject to the above and in accordance with “Advertising” (Article 10), a Member may advertise his services to the public.

2.8. Acting for a New Client

2.8.1. In acting for a new client a Member should

- (a) comply with the identification requirements set out in the anti-money laundering guidance
- (b) consider whether the potential client will be an acceptable client in terms of the risks which will arise for the practice from acting for that client and whether the Member has the capability to manage those risks. In assessing the risks relating to the client the Member should consider the potential client's personal circumstances, business situation, financial standing, source of funds, integrity and attitude to disclosure in regard to compliance with taxation law;
- (c) consider whether the Member and firm will have the skills and competence to service the client's requirements during the course of the engagement; and
- (d) consider whether there is any conflict of interest in accepting the client and if so whether and how it might be managed.

2.9. Professional Clearance

2.9.1. Before accepting an appointment in place of another tax advisor, the Member should request the prospective client's permission to communicate with the existing advisor.

2.9.2. The objective of the communication is to ensure that:

- (a) The incoming advisor is fully aware of all factors that may be relevant to acceptance of the appointment and the effective handling of the client's tax affairs;
- (b) The incoming advisor is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to the appropriate authorities;
- (c) The client's affairs are properly dealt with, on a timely basis, and that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed in the transitional period.

2.9.3. When permission has been received from the prospective client for such communication, the Member should ask the previous advisor, in writing, for all information which, in the opinion of that previous advisor, is necessary to enable the Member to decide whether or not to accept the appointment.

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

2.9.5. Unless the client requires otherwise, a Member has no duty to investigate advice given by a predecessor, but if becomes aware that such advice is incorrect, he has a duty to tell the client.

2.10. Ceasing to Act

- 2.10.1. 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 the client requires him to do so; or
- (a) he has good cause and gives reasonable notice to the client; or
 - (b) he has not received payment for reasonable fees which are properly due and owing in accordance with the terms of engagement or which have otherwise been agreed; or
 - (c) he is obliged by law to do so.
- 2.10.2. The Member should continue to act until he has taken reasonable steps to notify the client in writing that he is no longer acting.
- 2.10.3. 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.
- 2.10.4. 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, subject to Article 11.2 in the case of unpaid fees. 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. In the event of a dispute, a Member should normally seek legal advice.
- 2.10.5. Where the original documents are handed over, the Member should first take copies, so that he can maintain proper professional records.
- 2.10.6. If after ceasing to act, the Member subsequently receives any correspondence relating to the former client, he should forward that correspondence without delay and advise the sender to address future correspondence direct to that client.
- 2.10.7. Further to Article 2.4.6 in the event of a Member ceasing to act it is the client's responsibility to notify ROS and to have the Member's name removed as their agent. The Member should write to their former client notifying them of their obligation in this regard.

2.11. Cessation of Practice

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

3. 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

3.1. Working with Other Professional Advisers

- 3.1.1. 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.
- 3.1.2. In some cases a Member may enter into a direct relationship with another professional adviser rather than the taxpayer concerned. In such cases it is important to be clear whether the other professional adviser or the taxpayer is the client.
- 3.1.3. Where the Member's advice is sought as to the appointment of other suitable professional advisers, he should aim to give the client a choice of appropriate advisers.
- 3.1.4. The Member should establish whether he is reporting directly to his client (or employer) or to another professional adviser involved and he should ascertain to whom any fee note arising should be rendered.
- 3.1.5. 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.
- 3.1.6. As is the case when dealing directly with his client when a Member gives advice to another professional he should consider the guidelines set out at Article 2.4 as if he were providing advice directly to his client.
- 3.1.7. 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.
- 3.1.8. 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.
- 3.1.9. A Member should deal promptly with all material correspondence with other professional advisers, and maintain a file record of such correspondence, including fax, electronic and telephone communications, and notes of any meetings.

3.2. Working as a subcontractor to another professional adviser

- 3.2.1. A Member working as a subcontractor to another professional adviser should ensure that there is a written record of the agreement between the two parties.
- 3.2.2. The scope and basis of the work undertaken should be clear, for example, whether the subcontractor will rely wholly on information provided by the professional adviser or whether he will undertake his own research.
- 3.2.3. The subcontractor should ascertain how he will be held out to the end user and how his advice will be communicated to the client. For example, will he be in direct contact with the client or will he work "behind the scenes" with all communication directed through the professional adviser?
- 3.2.4. A Member working as a subcontractor should carefully consider his Professional Indemnity (PII) position.

4. 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

4.1. Occasions when it would be Appropriate to Decline to Act

- 4.1.1. 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 where there does not appear to be any reasonable basis for this refusal.
- 4.1.2. 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.

- 4.1.3. 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.
- 4.1.4. 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.
- 4.1.5. 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.
- 4.1.6. 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 be on notice that he should exercise extreme caution before accepting the appointment. It would require exceptional circumstances to justify acceptance of the appointment and such cases are likely to be rare. It would be advisable to document at that time the facts, circumstances and justification.

5. 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.

6. Regulatory and Reporting Obligations

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

7. 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

7.1. Conflict of Interest – General Guidance

- 7.1.1. There are many circumstances in which a Member in practice may be presented with an actual or potential conflict of interest. It is not possible to envisage every possible situation, but the more common occurrences are set out below in 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.
- 7.1.2. 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. If no appropriate action can be taken to remove the threat to the Member's independence, the Member should refuse to act on the matters in question or, if already acting when becoming aware of the adverse factor, should cease to act.
 - (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.
 - (f) How a conflict is resolved should be confirmed in writing to the client, including any agreement where the Member continues to act. These arrangements should be regularly reviewed by the Member.

7.2. Acting for Different Parties to a Transaction

7.2.1. 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.

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

7.2.3. However, to refuse to act may not serve the interests of everyone concerned and in these instances, may not be the best course. It is, however, the recommended course if the Member is in any doubt.

7.3. Acting for Both an Employer and his Employees

7.3.1. 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.

7.4. One-Client Practitioners

7.4.1. 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. A Member who acts for a single client should pay particular attention to his duty of independence as outlined in the Fundamental Principles of the Code of Conduct.

- 7.4.2. 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.

7.5. Financial Involvement with clients

- 7.5.1. Having a financial involvement with a client may be perceived as impairing a Members ability to act objectively. Even in situations where there are no regulatory restrictions on such an involvement as existing (for example in respect of the firm's audit clients) Members should exercise care before entering into any kind of financial arrangement with a client. This includes, for example lending money or investing in the business of a client.

8. 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.

RECOMMENDED BEST PRACTICE

8.1. Clients' Money

- 8.1.1. Unless a Member or their business firm is registered in accordance and accordingly regulated under the Investment Intermediaries Act 1995 they should, where possible, avoid handling Client money. In circumstances where a Member is required to handle clients' money they must at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a client account, distinguishing the money of each client from the money of other clients and from firm money.
- 8.1.2. "Clients' money" means money of any currency which the Member holds or receives for or from a client, and which is not immediately due and payable on demand to the Member for his own account. Fees paid in advance for professional work agreed to be performed and clearly identifiable as such are excluded.
- 8.1.3. The Institute has no role in the inspection of or monitoring of Member's business accounts, including client accounts, however, a Member is obliged to follow these guidelines in respect of the handling and management of clients' monies and any failure to do so would be considered to a breach of this Code of Conduct.

- 8.1.4. A firm must at all times maintain records so as to show clearly the money it has received on account of its clients and the details of any other money dealt with by it through a client account, distinguishing the money of each client from the money of other clients and from firm money. Each client account must be reconciled against the balances shown in the clients' ledger at least at six-monthly intervals, and the records of such reconciliation must be kept for at least six years from the date of the last transaction recorded therein.

9. Professional Indemnity Insurance

Every Member in 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. Members are advised to refer to the Institute's separate Guidance note on Professional Indemnity Insurance.

10. 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

10.1. Advertising

10.1.1. 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”

10.1.2. Members should follow the standards laid down by any official advertising standards authority – i.e., all advertisements should be legal, decent, honest, clear and truthful.

10.1.3. 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.

- 10.1.4. 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.
- 10.1.5. A Member remains responsible for an advertisement, even if the work is delegated to an advertising agency or other intermediary.
- 10.1.6. Members may state the areas in which they specialise.
- 10.1.7. Members' attention is also drawn to the section of those guidelines dealing with the acquisition of new clients.
- 10.1.8. If Members are storing personal information about clients for marketing purposes they should ensure they have the necessary consents from the data subjects as set out in the Data Protection Acts. Members should also give the data subjects the opportunity to withdraw their consent before the information is used.
- 10.1.9. If reference is made in promotional material to fees, the basis on which fees are calculated and what services are covered should be clearly stated.

11. 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 2.5 clearly sets out an estimate of the proposed fees and the method for calculating those fees (e.g., hourly rates, etc.).

RECOMMENDED BEST PRACTICE

11.1. Charging for Services

- 11.1.1. 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.
- 11.1.2. 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.
- 11.1.3. 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.
- 11.1.4. A Member should take steps to avoid fee disputes by agreeing fees before issuing fee notes or giving indicative fees before work is started and regularly keeping the client informed.

- 11.1.5. 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.
- 11.1.6. 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.
- 11.1.7. When charging costs or fees to different projects or different but connected clients, care should be taken to ensure that the allocation is commercially justifiable and reflects the work done for those clients.
- 11.1.8. Where a Member gives advice to a client which, if acted upon, will result in the receipt by the Member of commission or other reward from a person other than a client, the Member should inform the client of this fact at the time the advice is given, and of the amount of the commission or reward which the Member expects to receive. Where the amount of commission is unknown, the Member should either explain to the client the basis on which the commission will be calculated, or notify the client of the amount when it is received.
- 11.1.9. If a commission or reward is receivable the Member should take care to preserve normal standards of professional care and competence, and should ensure that any advice given is in the best interests of the client. If required to do so, the Member should be able to justify the advice given by reasons other than the receipt of the commission.
- 11.1.10. A Member must comply with the requirements imposed by regulatory bodies in respect of commissions arising from regulated business activities (e.g. investment business advice). The way in which commission is to be treated should be agreed with the client and it is recommended that this is detailed in the engagement letter or otherwise confirmed in writing.
- 11.1.11. Any such payments should be reasonable in amount in relation to the likely level of fees which will be charged for the work performed or to be performed within a reasonable time scale.
- 11.1.12. Members are reminded that where professional work paid for in advance by the client is not carried out, such fees paid in advance must be repaid. Substantial payments in advance should be treated with caution and a Member should ensure that he has sufficient funds (including interest) available to refund the client where necessary
- 11.1.13. If a client does not settle an account within the agreed terms and if there is no satisfactory explanation for the non-payment of the fee and the Member had drawn the unpaid fee to the client's attention, the Member may wish to consider taking legal action to recover it if all other attempts to recover the fees have been unsuccessful.

- 11.1.14. Alternatively, or in addition, the Member may wish to notify the client that he will cease acting on behalf of that client unless payment is received within a reasonable, specified period.
- 11.1.15. A Member should not settle his fees from money held, or received by the Member on behalf of the client (e.g. tax repayment), unless prior approval for such action has been obtained from the client, Any such arrangement should be in writing and have regard to the guidance in Article 8.

11.2. Lien on Working Papers for Unpaid Fees

- 11.2.1. 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.
- 11.2.2. Before exercising a lien, the Member should consider whether all possible steps have been taken to remove any genuine sense of grievance on the client's part as to the amount of the fee note.
- 11.2.3. If a third party has a legal right of access to a client's documents without the client's consent but the Member has a lien over those documents, the Member should seek legal advice before handing them over to the third party.
- 11.2.4. 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.
- 11.2.5. It follows that a failure by a director of a company to pay fees for personal tax work does not give a Member a lien over the company's documents. Further if a Member receives documents belonging to a client from a third party in error, the Member is not entitled to exercise a lien over those documents.
- 11.2.6. Documents belonging to or created for a client which relate to one engagement for that client for which no fees are outstanding may not be treated by the Member as subject to a lien in relation to other unpaid fees. It will only be the documents relating to the work undertaken for which fees are outstanding which will be subject to the particular lien.

- 11.2.7. 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.

12. 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, and the disciplinary procedures and sanctions can be found in Bye-Law No. 1.

RECOMMENDED BEST PRACTICE

12.1. Provision of Information

- 12.1.1. A Member must provide such information as is reasonably requested by the Institute and/or the Investigation Committee. A Member must reply to correspondence from the Institute and/or the Investigations Committee which requires a response and must do so without an unreasonable delay.

12.2. Comply with Orders

- 12.2.1. A Member must comply with any order from the Institute including orders in respect of costs and fines.