Fundamental principles

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Mandy Pearson and *Sharon Baynham* explain why the Professional Conduct in Relation to Taxation is such a valuable document for tax advisers

Key Points

What is the issue?

The public debate over avoidance in recent years has left tax advisers reeling and trust in the profession at an all-time low

What does it mean to me?

In such a complex and shifting world how can a tax adviser ensure they do not bring into disrepute themselves, the firms they work for, or the profession more generally?

What can I take away?

Professional Conduct in Relation to Taxation details the fundamental principles that should guide a tax adviser's behaviour and help navigate the current storms

Six years ago, a colleague took some time out from her job as a tax adviser. She told a friend that she was going to write a novel. The friend asked what it would be about and was told, jokingly, that it would be called 'The confessions of a tax adviser'. 'Ooh,' replied the friend. 'The confessions of a taxi driver – that sounds exciting.'

At the time the misunderstanding was funny. But today a book promising a 'behind the scenes' look at tax advice might well fly off the shelves, although it is unlikely that the content would live up to the hype.

The public debate on avoidance in recent years has left the tax profession reeling. As a breed we do not naturally seek the limelight but we have been thrust into it and it makes many of us uncomfortable.

At times the quality of the debate has been frustrating but it has revealed a deep misunderstanding, fuelled by several high-profile exposés about what we do. The perception is that the profession spends its days designing, reworking and finessing the dark art of tax avoidance in a never-ending game of cat and mouse with HMRC. It has been a feeding frenzy that has left the profession bewildered: unsure how it ended up here and exactly what it is guilty of.

We live in a complex and shifting world. The public debate has driven a political agenda and tax has become the poster child for social responsibility. This is not to deny that there needs to be some change in behaviour.

Tax advice has become subject to rafts of new regulation, such as the general anti-abuse rule (GAAR), the ever-widening scope of the disclosure of tax avoidance scheme regime, and the promoters of tax avoidance schemes (POTAS, or high-risk promoters) regime where reputable advisers are not the stated target, but could be

caught.

There are more demands for transparency over what taxpayers do. A recently published consultation on improving large business tax compliance contains proposals that businesses must publish their tax strategy and uses terminology such as ‘approach’, ‘attitude’ and ‘oversight’. More recent regulations and proposals are intertwined with the increasingly popular concept of ‘naming and shaming’, a phrase that chills the bones of even the most compliant and reputable.

The direction of travel is clear. This is not just about financial penalties. It is about the reputational damage our actions can do to ourselves as individuals, the firms we work for, the clients we serve and the profession as a whole. It is about behaviour. It is about ‘doing the right thing’. It is about trying to restore trust in a profession that appears, to the public at least, irreparably broken.

And we should not forget that this does not just affect those working in practice. In-house tax professionals will also face challenges such as managing an effective tax rate that is subject to a range of expectations from management.

We all face difficult ethical dilemmas in our work, even when no ‘tax avoidance’ is in play. How should you handle the client that refuses to disclose an error to HMRC? What planning should you recommend to your board?

To navigate the current storms responsibly, the adviser must set a course anchored in the fundamental principles of the profession so that, when the riptides come, there is a tried and tested line that can be held on to.

The major accountancy and tax bodies have all adopted the three-part *Professional Conduct in Relation to Taxation* (PCRT). The first part covers the fundamental principles; part 2 applies those principles to tax returns and tax advice; part 3 provides more detailed guidance for specific circumstances.

This PCRT is a dynamic document written by members for members, although it also welcomes adoption by non-members. It is based on real queries and situations that professionals have encountered.

The latest edition was published in May 2015. Many of the changes came as a result of the public debate about tax. The work in this area will continue to evolve and we can expect further changes and developments.

However, whatever regulations covering the tax profession are enacted and however public views of the profession shift and change, if we stick to the fundamentals we shouldn't go too far wrong. It is on the fundamental principles of the tax profession, as set out in chapter 2 of PCRT, we should focus.

Principles can sometimes appear bland, even irrelevant or unnecessary, when read in isolation. But it is when you set them alongside a particular piece of planning or an ethical situation that they shine as a guide to 'doing the right thing'.

The fundamental principles set out in PCRT require tax advisers to act with integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. They are sensible and broadly cover what you would expect. It is when you dig deeper that you uncover pearls of wisdom.

Imagine, say, we live in a world without the GAAR. Some might take the position that, as long as a piece of tax planning is legal, it is acceptable to do it. It is the government's responsibility to enact good law and prevent the transactions they wish to stop. If they are unable or unwilling to do this there is nothing to prevent a tax adviser designing a legal piece of planning, even if it produces a spurious result and is arguably abusive.

How does this stand up to scrutiny against the fundamental principles? The professional behaviour principle requires that members should not act in a way that brings him or his professional body into disrepute: in other words, don't tarnish the tax profession brand.

The landscape was very different 20 or even ten years ago. Tax was considered a purely legal matter and courts generally applied the law prescriptively, so a lot of planning was ultimately successful. The tripartite relationship between taxpayer, tax adviser and tax authority was more combative and there was a resulting culture of tax minimisation and aggressive planning was more commonplace.

Today we have a different society. There is an expectation of social responsibility. This is reflected in legal judgments where, if the intended outcome seems wrong, the courts will seek to find a way to defeat it.

Now society demands transparency and, in today's digital world, reputations can be built or destroyed in a heartbeat on social media.
To cap it all, the world is in the aftermath of recession with countries struggling for

tax revenues and gripped by austerity. ‘Fairness’ is the new watchword.

The change has been slow but steady. A transaction that would probably have been considered acceptable 20 years ago would have been questionable ten years ago. Today it is highly unlikely that the same transaction would be considered acceptable. Not only could this type of behaviour taint the perception of the profession as a whole, but a good adviser would need to alert their client to the reputational risks of implementing such planning, as well as the limited chances of success should it be litigated.

In today’s world, not doing this kind of planning seems like the right answer. The principle has stood the test of time.

When faced with a challenging ethical question PCRT will often deal with the situation specifically. If not, focusing on the fundamental principles of what it means to be a tax adviser will generally deliver an answer that inherently feels right.

This is why PCRT is such a valuable document for tax advisers and its value becomes more apparent the more you use it.

Alongside this document we should also use our common sense, consult colleagues and review any internal guidance available to us in the workplace.

Sadly, in our experience, many advisers are not aware of the existence of PCRT and are unfamiliar with its content. In today’s complex world, where reputation is as important as technical competence, it should have a place on every tax professional’s desk, next to the legislation itself.