President's page, December 2016

Welcomes

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Raising standards

On 1 November, seven professional bodies launched the latest version of professional standards for their members – known as Professional Conduct in Relation to Taxation, or PCRT. The seven bodies are three tax bodies (CIOT, the ATT and STEP) and four accountancy bodies (ICAEW, ICAS, ACCA and AAT). The members of these seven bodies provide the majority of tax advice and tax compliance services in the UK. Unusually, the updated standards do not take effect for four months – from 1 March 2017. The reason for this period of notice is to make sure that all members have the opportunity to understand the changes, have time to train staff and to reflect the changes in how they carry out their work.

Let’s start with what hasn’t changed: the fundamental principles. These govern the basic standards in acting as a tax professional.

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

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

Professional competence and due care: To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service.

Confidentiality: To respect the confidentiality of information acquired as a result of professional and business relationships.

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

The updated and new standards cover tax planning:

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

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

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

Tax planning arrangements: Members must not create, encourage or promote tax planning arrangements or structures that i) set out to achieve results that are contrary to the clear intention of

Parliament in enacting relevant legislation and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.

Professional judgement and appropriate documentation: Applying these requirements to particular client advisory situations requires professional judgement on a number of matters. Members should keep notes on a timely basis of the rationale for the judgements exercised in seeking to adhere to these requirements.

The impetus for these new requirements comes both from views from the public and parliamentarians, as well as a request from the government to 'take on a greater lead and responsibility in setting and enforcing clear professional standards around the facilitation and promotion of avoidance to protect the reputation of the tax and accountancy profession and to act for the greater public good'. It is clear that all the professional bodies needed to respond to this request. It is important that the professional bodies continue to maintain standards which are responsive to the society of which we are part.

The three areas to consider are the requirement not to give generic advice; the requirement not to create arrangements contrary to the clear intention of Parliament; and the requirement to document the rationale for our judgements. The CIOT Council is confident that these new standards reflect what the vast majority of members are already doing. Discussions at our conferences and with a wide range of members confirmed this.

Some will ask about requirements for lawyers. Firstly, the new PCRT makes it clear that nothing overrides existing standards set by the Solicitor's Regulation Authority and the Bar Standards Board. Secondly, HMRC is in discussions with both bodies about similar principles for the legal profession. The SRA said on publication: 'We welcome the setting out of standards for tax advisers in the new PCRT. These standards reflect our own principles, particularly that solicitors must be honest and act with integrity, and uphold the rule of law.'

The CIOT will be offering webinars on the new standards and the Professional Standards team is of course ready to help members understand the new rules.