

Professional Conduct in Relation to Taxation (PCRT) Helpsheet A: submission of tax information and 'tax filings'

This helpsheet provides guidance on the application of the [PCRT Fundamental Principles and Standards for Tax Planning](#) when dealing with the day-to-day work of filing tax information and completing tax filings, including the issues of: responsibilities, materiality, disclosure and approval.

If appropriate, please also refer to [Helpsheet B: tax advice](#).

Definition of filing of tax information and tax filings (filing)

1. For the purposes of this guidance, the term 'filing' includes any online submission of data, online filing, or other filing, that is prepared on behalf of the client for the purposes of disclosing to any taxing authority details that are to be used in the calculation of tax due by a client or a refund of tax due to the client or for other official purposes. It includes all taxes, NIC and duties.
2. A letter, or online notification, giving details in respect of a filing or as an amendment to a filing including, for example, any voluntary disclosure of an error should be dealt with as if it was a filing.

Making Tax Digital and filing

3. Tax administration systems, including the UK's, are increasingly moving to mandatory digital filing of tax information and returns.
4. **Except in exceptional circumstances, a member will explicitly file in their capacity as agent. A member is advised to use the facilities provided for agents and to avoid knowing or using the client's personal access credentials.**
5. **A member should keep their access credentials safe from unauthorised use and consider periodic change of passwords.**
6. A member is recommended to forward suspicious emails to phishing@hmrc.gsi.gov.uk and then delete them. It is also important to avoid clicking on websites or links in suspicious emails, or opening attachments.
7. Firms should have policies on cyber security, anti-money laundering (AML) and the General Data Protection Regulation (GDPR).

Responsibilities: taxpayer's responsibility

8. The taxpayer has primary responsibility to submit correct and complete filings to the best of their knowledge and belief. The final decision as to whether to disclose any issue is that of the client, but in relation to your responsibilities see paragraph 12 below.
9. In annual self-assessment returns or returns with short filing periods, the filing may include reasonable estimates where necessary.

Responsibilities: member's responsibility

10. A member who prepares a filing on behalf of a client is responsible to the client for the accuracy of the filing based on the information provided.
11. In dealing with HMRC in relation to a client's tax affairs, a member should bear in mind their duty of confidentiality to the client and that they are acting as the agent of their client. They have a duty to act in the best interests of their client.
12. A member should act in good faith in dealings with HMRC in accordance with the fundamental principle of integrity. In particular, the member should take reasonable care and

exercise appropriate professional scepticism when making statements or asserting facts on behalf of a client.

13. Where acting as a tax agent, a member is not required to audit the figures in the books and records provided, or verify information provided by a client or by a third party. However, a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, nor to assert tax positions in a tax filing which they consider to have no sustainable basis.
14. When a member is communicating with HMRC, they should consider whether they need to make it clear to what extent they are relying on information which has been supplied by the client or a third party.

Materiality

15. Whether an amount is to be regarded as material depends upon the facts and circumstances of each case.
16. The profits of a trade, profession, vocation or property business should be computed in accordance with generally accepted accounting principles (GAAP), subject to any adjustment required or authorised by law in computing profits for those purposes. This permits a trade, profession, vocation or property business to disregard non-material adjustments in computing its accounting profits.
17. The application of GAAP, and therefore materiality, does not extend beyond the accounting profits. Thus, the accounting concept of materiality cannot be applied when completing tax filings.
18. It should be noted that for certain small businesses an election may be made to use the cash basis instead; for small property businesses the default position is the cash basis. Where the cash basis is used, materiality is not relevant.

Disclosure

19. If a client is unwilling to include in a tax filing the minimum information required by law, the member should follow the guidance in [Helpsheet C: dealing with errors](#). The paragraphs below (20-24) give guidance on some of the more common areas of uncertainty over disclosure.
20. In general, it is likely to be in a client's own interests to ensure that factors relevant to their tax liability are adequately disclosed to HMRC because:
 - Their relationship with HMRC is more likely to be on a satisfactory footing if they can demonstrate good faith in their dealings with them. HMRC notes in 'Your Charter' that 'We want to give you a service that is fair, accurate and based on mutual trust and respect'; and
 - They will reduce the risk of a discovery or further assessment and may reduce exposure to interest and penalties.
21. It may be advisable to consider fuller disclosure than is strictly necessary. Reference to 'The Standards for Tax Planning' in PCRT may be relevant. The factors involved in making this decision include:
 - a filing relies on a valuation
 - the terms of the applicable law
 - the view taken by the member
 - the extent of any doubt that exists
 - the manner in which disclosure is to be made
 - the size and gravity of the item in question.

22. When advocating fuller disclosure than is necessary, a member should ensure that their client is adequately aware of the issues involved and their potential implications. Fuller disclosure should only be made with the client's consent.
23. Cases will arise where there is doubt as to the correct treatment of an item of income or expenditure, or the computation of a gain or allowance. In such cases a member ought to consider what additional disclosure, if any, might be necessary. For example, additional disclosure should be considered where:
 - There is inherent doubt as to the correct treatment of an item, for example, expenditure on repairs which might be regarded as capital in whole or part, or the VAT liability of a particular transaction; or
 - HMRC has published its interpretation or has indicated its practice on a point, but the client proposes to adopt a different view, whether or not supported by Counsel's opinion. The member should refer to the guidance on the [Veltema case](#) and the paragraph below. See also [HMRC guidance](#).
24. A member who is uncertain whether their client should disclose a particular item or of its treatment should consider taking further advice before reaching a decision. They should use their best endeavours to ensure that the client understands the issues, implications and the proposed course of action. Such a decision may have to be justified at a later date, so the member's files should contain sufficient evidence to support the position taken, including timely notes of discussions with the client and/or with other advisers, copies of any second opinion obtained and the client's final decision. A failure to take reasonable care may result in HMRC imposing a penalty if an error is identified after an enquiry.

Supporting documents

25. For the most part, HMRC does not consider that it is necessary for a taxpayer to provide supporting documentation in order to satisfy the taxpayer's overriding need to make a correct filing. HMRC's view is that, where it is necessary for that purpose, explanatory information should be entered in the 'white space' provided on the filing. However, HMRC does recognise that the taxpayer may wish to supply further details of a particular computation or transaction in order to minimise the risk of a discovery assessment being raised at a later time. Following the uncertainty created by the decision in Veltema, HMRC's guidance can be found in [SP1/06 – Self Assessment: Finality and Discovery](#).
26. [Further HMRC guidance](#) says that sending attachments with a tax filing is intended for those cases where the taxpayer 'feels it is crucial to provide additional information to support the filing but for some reason cannot utilise the white space'.

Reliance on HMRC published guidance

27. Whilst it is reasonable in most circumstances to rely on HMRC published guidance, a member should be aware that the Tribunal and the courts will apply the law even if this conflicts with HMRC guidance.
28. Notwithstanding this, if a client has relied on HMRC guidance which is clear and unequivocal and HMRC resiles from any of the terms of the guidance, a judicial review claim is a possible route to pursue

Approval of tax filings

29. The member should advise the client to review their tax filing before it is submitted.
30. The member should draw the client's attention to the responsibility which the client is taking in approving the filing as correct and complete. Attention should be drawn to any judgemental areas or positions reflected in the filing to ensure that the client is aware of these and their implications before they approve the filing.
31. A member should obtain evidence of the client's approval of the filing in electronic or non-electronic form.

Exceptions

32. Where a filing is not reviewed by the client before submission, then, because of the risk to the adviser, the terms of the engagement should make clear that filings are completed on the basis of the information provided by the client, and the client is no less responsible for errors in filings which have been prepared on the basis of that information than if they had approved and signed the filings personally.
33. A member may approve tax filings in their capacity as liquidator, receiver or administrator, or under a personal appointment as trustee, executor, attorney or director. If a member is approving a tax return on behalf of a client, the member should carefully consider:
 - their legal authority to do so (for example, is a power of attorney required?)
 - the process whereby the client will review and take responsibility for the contents of the return
 - any legal implications of approving the return for both the practice and the individual signatory.

Referrals/second opinions

34. A member needs to be mindful of the Code of Ethics requirement regarding professional competence. For example, a member who generally advises on annual tax compliance but receives a request from a client regarding IHT planning should consider whether they have the relevant skills and knowledge to properly service the client on that matter. If not, the member should refer the client to another member who is a specialist in this area. (See *Mehjoo v Harben Barker* 2014 [EWCA](#) Civ 358.)
35. Where a second opinion is sought on any tax advice, it should be from a suitably qualified and experienced professional who is subject to the requirements of PCRT or its equivalent.

Support

36. A member may wish to put in place arrangements with another firm or a member of one of the professional bodies to be able to seek support when necessary and to ensure that there would be a minimum of disruption, in the event of the incapacity or death of the sole practitioner.

Alternates

37. Note that it is a requirement of the Client Money Regulations, should the member hold client monies, to have an alternate to ensure that there would be a minimum of disruption, in the event of the incapacity or death of the sole practitioner.

Third-party advice involving tax planning arrangements

38. If a member, acting in their capacity as an agent submitting a tax filing on behalf of a client, is asked by the client to include in their tax return specific items of tax planning based on third-party advice, the member may have concerns. The member should satisfy themselves that such third-party advice is reasonable by considering:
 - Does it accord with their understanding of the law?
 - Is the person giving the advice appropriately qualified and a member of a PCRT body or an equivalent regime?
39. For more complex planning, and with the PCRT Standards for Tax Planning in mind, the member should consider:
 - Do the background facts set out in the advice agree with their understanding of the client?
 - Do any legal opinions in the advice relate specifically to the advice?

- Is the advice current?
- Does the tax planning provided by the third party appear to involve contrived avoidance?
- If so, does this look like a spotlighted scheme?
- Might this scheme be caught by the General Anti-abuse Rule (GAAR) or the Scottish General Anti-Avoidance Rule (SGAAR)?
- If the member has concerns about the third-party advice, is it so significant that the member needs a second opinion rather than caveating their compliance responsibility?

These points are discussed further in [Helpsheet B: tax advice](#).

While every care has been taken in the preparation of this guidance the PCRT Bodies do not undertake a duty of care or otherwise for any loss or damage occasioned by reliance on this guidance. Practical guidance cannot and should not be taken to substitute appropriate legal advice.

