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# INTERPRETATION

1. In this publication:

‘**CITN**’ means The Chartered Institute of Taxation of Nigeria.

‘Commencement date’ means the effective date of the Procedural Rules and Practice Guidelines i.e. October 16, 2009

‘**Client**’ includes, where the context requires, former client.

‘**Council**’ means the governing body of the CITN.

‘**CTP**’ means Chartered Tax Practitioner

‘**Firm**’ means a sole CTP, a partnership, a limited liability partnership or a body corporate or unincorporated.

‘**Laws of the CITN**’ means the rules and regulations including the Charter, byelaws of the CITN, the Professional Rules and Practice Guidelines, members’ regulations and Council regulations.

‘**Member**’ means a member of the CITN.

‘**Member in practice**’ means a member who provides taxation services on a full-time or part time basis as a sole CTP, a member of a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a director of, or an employee of, a company providing taxation services in which he or she has a financial interest in the equity capital.

‘**Principal**’ means a sole CTP, partner, member of a limited liability partnership or director in a firm.

‘**PRPG**’ means Professional Rules and Practice Guidelines

‘**TA**’ means Tax Authority which includes the Federal Inland Revenue Service (FIRS) or the relevant State Internal Revenue Service (SIRS), State Board of Internal Revenue (SBIR) or any other tax authority.

‘**Student**’ means a student registered as such for the time being with the CITN.

Words importing “persons” include “bodies corporate”.

Words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular.

**ATT** means Association of Taxation Technicians

2. These rules and guidelines are based on the law and practice in Nigeria. Members practising in other jurisdictions should have regard to relevant local law and practice.
3. These rules and guidelines apply equally to an employed member as they do to a member in practice whether or not his employer is a member of the CITN or the ATT. They apply to every employed member irrespective of the nature of the activities or business of his employer.
4. References to an Act include any statutory modifications or re-enactment of it for the time being in force.
5. The CITN Charter and byelaws of the CITN, members' regulations and Council regulations which together with the PRPG form the Laws of the CITN can be found on the CITN's website – [www.citn.org](http://www.citn.org).

## **1. INTRODUCTION**

1.1 Unless otherwise stated these rules and guidelines apply to:

- a) Members of the CITN
- b) Students of the CITN
- c) Firms authorised to use the designatory title Chartered Tax Practitioner (CTP)
- d) International Tax Affiliates of the CITN

1.2. A CTP is a professional who gives tax advice. Tax advice means the preparation and submission of tax returns, advice on tax planning, representation and defence of taxpayers before authorities and courts and the provision of overall advice in the area of taxation and complementary accounting and legal services.

1.3 The hallmark of a professional should be his honesty, integrity and objectivity.

1.4 A member has duties to the following:

- a) Each of the member's clients
- b) Clients generally
- c) The member's employer, if any
- d) The public
- e) Third parties (in certain circumstances)
- f) Tax Authorities (TA)
- g) The taxation profession
- h) Any partner of the member
- i) Any employee of the member
- j) The CITN
- k) Himself

1.5 From time to time those duties may conflict. Resolving such conflicts may involve careful questions of judgement. Often it will be appropriate for the member to seek the advice and guidance of others. The purpose of these Professional Rules and Practice Guidelines is to provide a framework within which to make those judgements.

1.6 No rules and guidelines can cover every set of facts and circumstances that affect professional conduct. Moreover, the danger of attempting to codify guidance in this area is that anything that is not specifically forbidden may come to be regarded as permissible. To adopt such an approach is to miss one of the fundamental principles of professional practice. It is important to observe the spirit, as much as the letter, of these Professional Rules and Practice Guidelines and use professional judgement when applying them in practice.

1.7 This publication is divided into two parts. Chapter 2 contains the Professional Rules and Chapters 3 onwards the Practice Guidelines. Further practice guidelines are contained in the separately published Statements of Taxation Standards which can be found at the CITN's library, bookshop and website.

1.8 The Rules and Regulations of the CITN provide that a member may be subject to disciplinary action if guilty of a breach of the Professional Rules and Practice Guidelines or of any other Laws of the CITN.

1.9 A member in practice is required to comply with the law of the country in which he practises. These Professional Rules and Practice Guidelines apply unless the law or generally accepted practice in that country is to the contrary.

1.10 A member may have duties and obligations to other professional bodies and regulators, for example the Nigerian Accounting Standards Board, and should have regard to these as relevant.

1.11 A member seeking further guidance should contact the CITN. However, as members will appreciate, they can only advise. Any decision is a matter for judgement by the member himself.

## **2 PROFESSIONAL RULES**

### **2.1 Conduct**

2.1.1 A member must:

- a) Take due care in his conduct
- b) Take due care in all his professional dealings
- c) Uphold the professional standards of the CITN as set out in the Laws of the CITN.

2.1.2 A member must not:

- a) Perform his professional work, or conduct his practice or business relationships, or perform the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CITN or to the members or any part of the membership or to the taxation profession
- b) Breach the Laws of the CITN

### **2.2 Integrity**

2.2.1 A member must be honest in all his professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information.

2.2.2 A member must not be party to bribery or other illegal activities.

2.2.3 A member should not act if he considers that the fulfilment of his client's instructions involves a risk of assisting in a criminal activity.

### **2.3 Courtesy**

2.3.1 A member must be courteous and considerate towards all with whom he comes into contact in the course of his professional work.

### **2.4 Competence**

2.4.1 A member must carry out his professional work with a proper regard for the 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 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.

## **2.5 Objectivity and independence**

2.5.1 A member must be objective in all works undertaken. CTPs should be morally and intellectually independent. This applies both to the representation of clients and to the resolution of conflicting interests as between CTPs, clients, TA and any other interested parties. If such independence and objectivity may be impaired through conflict of interest the member must act in accordance with the guidelines in Chapter 6.

## **2.6 Confidentiality**

2.6.1 A member owes a duty of confidentiality to his client or employer. The duty to observe confidentiality applies without time-limit to all information with which the member is entrusted by his clients or which is brought to his knowledge during or at any time after the carrying out of his assignment, or in the course of his professional practice in general. The same duty of confidentiality should be imposed on employees and subcontractors.

2.6.2 Information acquired in the course of a member's work must not be divulged in any way outside his organisation without the specific consent of the client or employer unless there is a legal or regulatory duty or professional obligation to disclose.

2.6.3 A member should safeguard the confidentiality of client information particularly where there could be a conflict of interest with another client.

2.6.4 Confidential information obtained in the course of the work must not be used for personal advantage by a member or anyone associated with him.

## **2.7 Clients' Money and Assets**

2.7.1 Great care must be taken with money and assets that have to be maintained separately from the member's own funds. A member must ensure that clients' money is properly accounted for in accordance with the Practice Guidelines in paragraph 7.7.

## **2.8 Money Laundering**

2.8.1 Members must comply with the Money Laundering (Prohibition) Act 2004.

## **2.9 Incompatible Activities**

2.9.1 A member must not undertake within his professional practice business activities which are not compatible with those normally undertaken by a CTP.

## **2.10 Practice Development**

2.10.1 A member must not obtain or seek professional work in any unprofessional manner. In this regard members are referred to Chapter 14 on advertising and Chapters 4 and 10 for guidance on the requirements on changes in a professional appointment.

## **2.11. Mandatory Professional Training Programme (MPTP)**

2.11.1 A member of the CITN who is engaged in the practice of taxation in industry, commerce or private practice should keep his professional knowledge up to date and in this regard must fulfil the requirements of the MPTP scheme. See Chapter 11 and Appendix 1. The MPTP rules do not apply to students of the CITN.

## **2.12 Personal Responsibility and Professional Indemnity Insurance (PII)**

2.12.1 A member has a duty of care to his clients when carrying out his professional work (see paragraph 5.1.1). A member is responsible for his own work and that of his employees and subcontractors. A member is liable in damages for his own professional negligence and that of his employees and subcontractors. A member must protect his clients, his practice and himself by having adequate PII cover. See Appendix 3 for further details.

## **2.13 Provision of Information to the CITN**

2.13.1 A member must provide such information as is reasonably requested by the CITN as a member without unreasonable delay. A member must reply to correspondence from the CITN which requests a response and again must do so without an unreasonable delay.

## **2.14 Compliance with the Disciplinary Process and orders from the CITN's Investigation Panel and Disciplinary Tribunal**

2.14.1 A member is subject to the disciplinary processes of the Panel or Tribunal in respect of a complaint against him. A member must comply with any order from the Panel or Tribunal

including orders in respect of costs and fines. Failure to comply with such an order will in itself be a disciplinary matter.

## **2.15 Obligation to Notify the CITN**

2.15.1 A member must promptly inform the CITN if he:

- a. Is convicted of a criminal offence (other than a ‘summary only’ road traffic offence)
- b. Is notified of disciplinary action initiated against him by another professional body to which the member belongs;
- c. Has a bankruptcy order made against him (see also paragraphs 3.9 and 3.10)
- d. Enters into a voluntary arrangement with his creditors (see also paragraphs 3.9 and 3.10)
- e. Is disqualified as a director, or enters into a disqualification undertaking

### **3. PRACTICE GOVERNANCE**

#### **3.1 Business Structure**

3.1.1 A member is recommended to have a memorandum of understanding or other governing document setting out the basis on which the business will be conducted and the arrangements between the principals.

3.1.2 A member is subject to the same Professional Rules and Practice Guidelines irrespective of the business structure of the firm. There may be statutory and professional requirements on the conduct of a member's professional activities through different structures which it is the member's responsibility to observe.

#### **3.2 Multi-Disciplinary Practice**

3.2.1 A member who is a principal in a firm may act in association with principals who are not members of the CITN provided that such associates (who may practise under the rules and regulations of another professional body) recognise these Professional Rules and Practice Guidelines. The firm's policy relating to the provision of tax services should be consistent with that of the CITN and be observed in the conduct of tax work by all so engaged. See also Appendix 4.

#### **3.3 Names and Letterheads of Practice**

3.3.1 In this paragraph letterheads mean material used by the member for external communications including practice notepaper, advertisements, electronic mail, facsimile and internet material.

3.3.2 A firm's name should convey a professional image consistent with the standards required of members of the CITN.

3.3.3 A firm's name must comply with the requirements for registration under the Companies and Allied Matters Act, Chapter 59, Laws of the Federation of Nigeria, 2004.

3.3.4 A firm's name should not be misleading. Generally it will not be misleading where a member practises under a name based on the names of past or present members of the firm or of a firm with which it has merged or to which it has succeeded. However:

- A firm with a limited number of offices should not describe itself as international because one of them is overseas
- Where the firm's name might be confused with the name of another firm this should be avoided even if the member could reasonably justify a claim to the name

3.3.5 Letterheads, documents and other stationery, including nameplates, used by the practice should meet the following criteria:

- They should be of a suitable professional standard
- They must comply with legal requirements as to names of partners, principals and other participants
- They must comply with the practising designations guidelines (see paragraph 3.4 below)
- They should not advertise any specialist service unless the firm has the relevant expertise

### **3.4 Practising Designations**

3.4.1 A member may use his designatory letters at all times and personally describe himself as a member of the CITN as appropriate. However, the member must not allow business associates to use words or descriptions which indicate that they have qualifications to which they themselves are not directly entitled, except in accordance with the Regulations promulgated by the relevant Council.

3.4.2 A member of the CITN may describe himself as a **Chartered Tax Practitioner**. For partnerships, limited liability partnerships and companies see the rules prescribed in Appendix 3.

### **3.5 CITN Practice Licence and Seal**

3.5.1 The Practice licence and Seal of the CITN is the Institute's exclusive property and must not be reproduced or used by anyone other than the CITN.

3.5.3 The rules for the use of the CITN Seal and Licence are set out in Appendix 4.

3.5.4 Specimen copies of the licence and seal can be seen at Appendix 9.

### **3.6 Temporary Incapacity of a Sole Practitioner**

3.6.1 A member who is a sole CTP should make suitable arrangements to ensure that his firm can continue to carry on in the event of his illness or temporary incapacity. Without contingency arrangements serious difficulties may arise, prejudicing the interests of clients.

3.6.2 A member should consider whether his firm has sufficient resources to meet his obligations in his absence or whether those obligations should be discharged by another firm under a prior arrangement or by a CTP acting on a locum basis. A member should be satisfied that a person or firm 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. Guidance notes and a draft agreement are available from the Secretariat of the CITN and on the Institute's website, [www.citn.org](http://www.citn.org).

### **3.7 Death or Permanent Incapacity of a Sole Practitioner**

3.7.1 Similar considerations to those in paragraph 3.6 apply to the death or permanent incapacity of a sole CTP, although the difficulties are potentially far greater for both the firm and its clients.

3.7.2 If a member dies his property vests in his personal representatives. If he is permanently incapacitated his rights and obligations remain vested in him.

3.7.3 In arranging for the future management of his firm, the member should ensure that the practice to which it is to be entrusted is compatible with his firm.

3.7.4 Arrangements should be set out in detail in a written agreement to avoid any doubt or confusion which may otherwise arise. The agreement should provide for the duration and extent of the manager's duties and responsibilities and the legal relationship with the sole CTP or his personal representatives. 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.

3.7.5 A member who acts as a manager of a firm is under the same standard of duty to the sole CTP or his personal representatives as he is to any client. Such a member must not use his position to seek any personal gain other than the agreed remuneration.

3.7.6 In the case of death, adequate provision should be made by will to enable executors to manage the firm personally or to appoint a member or other professionally qualified person to do so. If a CTP dies intestate, delay may be encountered in the appointment of administrators and their statutory powers of administration will be limited. For this reason, members are reminded of the importance of making an appropriate will. Care should be taken when arranging professional indemnity insurance to ensure that the cover remains in force after death.

### **3.8 Business Continuity Plan**

3.8.1 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.

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

### **3.9 Bankruptcy and Individual Voluntary Arrangements (IVAs) – CITN**

3.9.1 A member who enters into an IVA with his creditors or becomes subject to a bankruptcy order must notify the CITN within 30 days of the date of the IVA or bankruptcy order.

3.9.2 If a member fails to notify the CITN and the bankruptcy order is brought to the notice of the CITN, his membership of the CITN shall cease automatically upon the expiry of the 30 days.

3.9.3 Where a member notifies the CITN within the 30 day period the CITN will consider whether exclusion is appropriate or whether membership should continue.

3.9.4 A member who notifies within the 30 day period will be advised of the CITN's decision within 2 months of his notifying the CITN.

### **3.10 Dissolution or Merger of Practice**

3.10.1 A merger of two or more practices or the dissolution of a practice should normally be notified to all clients who will thus be given the opportunity of deciding whether they wish to continue to instruct the newly constituted practice.

3.10.2 Care should be taken to ensure that appropriate professional indemnity insurance cover remains in place in accordance with the guidance notes and regulations in Appendix 3.

3.10.3 Members should also consider taking specialist legal advice in respect of matters such as the assignment of engagements and other contractual matters.

### **3.11 Cessation of Practice**

3.11.1 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 from the continuing partners in respect of claims made against him after his retirement.

### **3.12 A Member's Own Tax Affairs**

3.12.1 A member's own tax affairs should be kept up to date and all returns and other relevant documents lodged within the stipulated time. Neglect of the member's own affairs could cause doubts in the minds of TA as to the standard of the member's professional work.

### **3.13 Honorary and Pro Bono Work**

3.13.1 A member's duty of care covers honorary work, pro bono work and work for family, friends and charitable organisations. Honorary work means a formal honorary post for charities, amateur organisations and other 'not for profit' organisations. Pro bono work means work for which absolutely no payment is made either in cash or kind.

3.13.2 A member should consider whether, in carrying out work of this nature, he comes within the definition of a 'member in practice' with the related obligations, and in particular the need for professional indemnity insurance. See Appendix 3 for guidance as to when PII is required.

## **4 NEW CLIENTS**

### **4.1 Obtaining clients**

4.1.1 A client has the right to choose or change CTPs, or to take a second opinion, or to retain separate CTPs on different matters.

4.1.2 A member should not obtain or seek professional work for himself, another member or anyone else in a manner which is unprofessional.

4.1.3 What constitutes unprofessional conduct can only be determined in the light of all the relevant facts and circumstances. The following are illustrations of unprofessional conduct:

- a. Implying in an improper manner, whether orally or in correspondence or in any material that existing CTPs are not competent to provide an adequate service to any client;
- b. Giving any commission, fee or reward to a third party, not being an employee, in return for the introduction of a client, which does not fall within the provisions in paragraph 4.1.4. In the case of a payment to an employee care should be taken to see that the employee has not breached the guidelines.

4.1.4 A member may pay a fee or commission, or provide some other gift or favour, to a third party in return for the introduction of a new client (or further work for an existing client) provided that:

- a. The member has no reason to believe, and does not believe, that undue pressure or influence was exerted on the prospective client by the third party; and
- b. Before accepting instructions, the member has disclosed to the prospective client, in writing, both the amount and nature of the fee, commission, gift or favour, and the identity of the third party recipient.

4.1.5 The practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work ('cold calling') is not of itself unprofessional conduct. However, repeated cold calling to a particular non client may become offensive and lead to a complaint.

4.1.6 Direct mailing and the sending of unsolicited electronic material, brochures, circulars and other literature about the member or his firm to non-clients would not, of themselves, amount to unprofessional conduct, unless they breach one of the other guidelines.

4.1.7 Subject to the above, a member may advertise his services to the public. Chapter 14 deals with advertising.

## **4.2 Client Acceptance**

4.2.1 A member who is invited to undertake professional work by a prospective client is under no obligation to act. Indeed, he should decline to do so if he believes he would be unable to assume the duty of care that he would have to that client (see paragraph 5.1).

4.2.2 Before accepting instructions to act for a new client, a member should

- a) Comply with the identification requirements set out in the anti money laundering guidance which can be found on the CITN website ([www.citn.org](http://www.citn.org)).
- b) Consider whether the 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 skill and competence to service the client's requirements during the course of the engagement.
- d) Consider whether there is any conflict of interest in accepting the client and if so whether and how it might be managed (See chapter 6).
- e) Proceed with caution when deciding to accept instructions from a client who refuses to give the existing CTP permission to disclose appropriate information about his affairs.
- f) Note that a member must do nothing to assist a client to commit any criminal offence, or (save to the extent permitted by law) to shield the client from the consequences of having defrauded the government of tax or of having been negligent in regard to direct or indirect tax matters. A member who acquires information which leads him to conclude that a prospective client may have been guilty of taxation misdemeanours should only accept the appointment on the basis that full disclosure will be made to the appropriate authorities.

Members are encouraged to record the basis for client acceptance.

4.2.3 Having accepted the client, before starting work on any assignment for a client, the member should understand and agree with the client the scope of the assignment, having first assessed the client service risks, and be satisfied that the relevant skills and experience to perform the work are available or accessible.

### **4.3 Professional Clearance**

4.3.1 A member who is invited to undertake professional work in place of another CTP, particularly where any tax compliance services are concerned, should, before accepting the appointment, request the prospective client's permission to communicate with the existing CTP. If this permission is refused, the member should decline to accept the appointment.

4.3.2 The objective of the communication referred to in paragraph 4.3.1 is to ensure that:

- a. The incoming CTP 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 CTP is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to TA.
- 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.

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

4.3.4 A member who receives a communication of the type referred to in paragraph 4.3.3 should ask the client for permission to discuss his affairs freely with the prospective new CTP. When the client's permission has been received, he should disclose to the prospective new CTP, either orally or in writing, all information which, in his opinion and based on his knowledge of

the client and his affairs, may be needed to enable that CTP to decide whether or not to accept the appointment. If the client's permission is not received, that fact should be communicated to the prospective CTP who should normally not accept the appointment, unless satisfied that circumstances exist that make it appropriate to override the normal rule. It would require very exceptional circumstances to justify acceptance of the appointment and such cases are likely to be rare. A member who believes that such circumstances exist may wish to discuss them with the CITN. In any event, it would be advisable to document at that time the facts, circumstances and justification.

4.3.5 The request for professional clearance to the retiring CTP should be responded to within a reasonable time and should not be unduly delayed or withheld.

#### **4.4 Engagement Letter**

4.4.1 On accepting instructions a member is strongly recommended to set out in a letter of engagement (see Appendix 6) to the client his understanding of the scope and nature of the assignment and invite the client to agree in writing. This exchange of letters serves as the contract between the member and the client although a contract still exists in the absence of such an exchange. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what the CTP has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the basis on which fees will be charged (including whether there will be a charge for the initial meeting). Members are recommended to consult the guidance note entitled **Engagement Letters for CTPs** (see Appendix 6). The original contract, whether oral or written, can subsequently be varied either orally or in writing, unless a specific procedure is agreed between the parties (e.g that all variations must be in writing).

#### **4.5 Requesting Information from the existing Practitioner**

4.5.1 When requesting for information from a predecessor, requests should be reasonable and relevant. Regard should be given to the likely cost to the client for supplying the information.

#### **4.6 Obligations in respect of advice given by a Predecessor**

4.6.1 Unless the contract provides otherwise, a member is under no duty to advise a new client on matters on which advice has been given by a predecessor, unless he becomes aware that the

advice given by the predecessor in the area of the member's engagement was incorrect or had been overtaken by events.

## **5 CLIENT SERVICE**

### **5.1 Duty of Care**

5.1.1 When acting for a client a member places his professional expertise at the disposal of that client and, in so doing, the member assumes a duty of care towards the client which is recognised in law. A member must, therefore, exercise reasonable skill and care when acting for a client. A failure to do so may result in the member being liable for a claim for professional negligence. The member must understand the duties and responsibilities in respect of the client and the risks associated with a failure to adequately discharge those duties and responsibilities. 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 to be undertaken. See also paragraph 7.2.

### **5.2 Professional Competence**

5.2.1 A member should advise a client only when he has an adequate understanding of that client's personal and business circumstances and tax position. In addition, the member should fully understand the issues under consideration and the objectives of the advice.

5.2.2 A member should advise only within the scope of his own professional competence and within the scope of the terms of the engagement (see paragraph 4.4).

### **5.3 Supervision and Training**

5.3.1 If work is delegated, the member should exercise sufficient supervision to confirm that the work performed is adequate. A member who considers any work done by subordinate staff as inadequate has a duty to remedy any defects before its completion.

5.3.2 A member who delegates work should be satisfied that it is undertaken by staff who have been adequately trained to carry out the work involved.

5.3.3 The principles of this chapter will also apply to sub-contractors and consultants engaged by a member.

5.3.4 A member who is an employee and is not satisfied that staffs have adequate training or skills to perform their duties 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 ignoring the recommendation, so far as it is reasonably possible.

#### **5.4 Use of Sub-contractors**

5.4.1 A member must obtain a client's consent before subcontracting work on that client's affairs to another firm. A member could consider including a clause authorising referral to a sub consultant within his engagement letter. Subject to the client accepting those terms this would eliminate the need to seek client consent for each referral.

#### **5.5 Consultation and Second Opinions**

5.5.1 A member is encouraged to consult with fellow professionals when advising clients, where appropriate, to ensure that relevant skill and judgement is applied. It is a matter of judgement for the member whether consultation is necessary in any particular situation. If a member relies on consultation, evidence of it should be retained on the client file. Client confidentiality rules, especially those concerning consent, must be taken into account. See paragraph 2.6 for further details.

5.5.2 A member who is giving a significant opinion to a client should consider obtaining a second opinion to support the advice. This may be obtained by requesting formally an independent view from a colleague, or by instructing another member or tax counsel. In addition, in any case where the risks for the member, assessed in terms of professional reputation or financial exposure of his practice, of giving wrong advice are high, the member should consider taking a second opinion. It is a matter of judgement for the member whether a second opinion should be obtained in any situation. If a member relies on a second opinion, evidence of it should be retained on the client file.

A significant opinion is one in respect of which either:

- a. The amount of tax at stake, or potentially at stake, in relation to the matters advised on is significant for the client and there is a real risk that a contrary view to that taken by the member on those matters could be reached; or
- b. The matters advised on are, for some other reason, of sufficient importance to the client to merit obtaining a second opinion.

## **5.6 Form and Content of Advice**

5.6.1 In deciding on the form of advice provided to a taxpayer, a member should exercise professional judgement and should consider such factors as the following:

- a. The importance of the transaction and amounts involved
- b. The specific or general nature of the taxpayer's enquiry
- c. The time available for development and submission of the advice
- d. The technical complications presented
- e. The existence of authorities and precedents
- f. The tax sophistication of the taxpayer
- g. The need to seek other professional advice

5.6.2 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
- c. The alternatives open to the client
- d. The risks associated with the advice
- e. Relevant caveats and exclusions

5.6.3 When formulating advice the member should refer to the relevant taxation legislation and the practice of TA. Due regard should also be given to case laws.

5.6.4 A member should make it clear that the advice given is current and may be affected by subsequent changes in the law. To reduce the risk of misunderstanding, a member may wish to make it clear in the engagement letter that no responsibility is accepted to inform the client automatically that advice previously given, by either the member or a predecessor, has been

affected by a change in the law but that he is willing to receive instructions to reconsider such advice.

5.6.5 If it is intended that a client should place reliance on taxation advice, the advice should be sufficient for the purpose and normally be given in writing. However, frequently a member will give impromptu advice in meetings or by telephone, endeavouring to be responsive to the needs of the client. It is for the member to decide whether to confirm in writing advice given orally, particularly where the client is not a fellow tax professional. It would be prudent for a member either to write to the client confirming oral advice as a matter of course or at least to make a note on file of advice given and he should consider sending a copy of that note to the client for his information and comment. This will allow the client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given.

5.6.6 In any event the member should make and keep a contemporaneous and dated note on his file of the discussion and advice given. This means that the member may protect himself in the event of a subsequent dispute over what was said at the time and, in the case of what the member perceives to be important meetings and conversations, he should consider ensuring that such notes are signed and dated by the originator.

## **5.7 Keeping proper professional records**

5.7.1 A member should make a proper professional record of all his dealings in connection with his client in order that:

- a. The member himself and his colleagues and successors can access a complete record of the client history to inform future client service.
- b. The member is able to resolve any misunderstandings or complaints, including in relation to fees
- c. The member is able to defend any allegation of negligence

5.7.2 The records should include:

- a. All written communications relating to the client's affairs, including letters, faxes and e-mails

- b. File notes of meetings and telephone conversations, which should be contemporaneous and dated;
- c. Records of how the advice given is reached, including details of technical research, consultations and second opinions (see paragraph 5.5)
- d. All necessary permanent information and copies of such working documents as are likely to be required.

5.7.3 Records should be organised so as to be accessible. Electronic records should be backed up.

5.7.4 The retention of working papers is an important issue. Members should put in place a policy which takes into account both statutory requirements and time limits for legal action against a member. Further guidance is given in Chapter 13: Legal Matters.

## **5.8 Time Limits, Due Dates and Interest**

5.8.1 A member should maintain a diary system to ensure that warning is given of all relevant time limits including appeals, claims and elections, and that appropriate action is taken. A 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 objection, payment of tax, rules governing interest and penalties, etc.

5.8.2 Where a member undertakes tax compliance work for a client this will normally include responsibility for keeping the client informed of the amount of tax due for payment, the due date for payment and drawing the client's attention to the fact that interest accrues from that date.

5.8.3 If a member believes that he has no responsibility for monitoring the relevant dates for a compliance client, a specific exclusion to that effect should be incorporated in the letter of engagement.

5.8.4 A member who has no compliance responsibilities for a particular client would not normally be expected to monitor relevant dates and tax payments, unless specifically requested to do so. In cases of doubt, a member is advised to discuss the issue with the client and incorporate the agreed position into the letter of engagement.

## **5.9 Representation Before Commissioners and Tribunals**

5.9.1 Members are referred to the Appendices for guidance on:

- a. Representation before Commissioners and Tribunals (Appendix 6)

- b. Acting as an advocate before Commissioners and Tribunals (Appendix 6)

## **6 CONFLICTS OF INTEREST**

### **6.1 Professional Independence**

6.1.1 A member must, at all times, maintain his professional independence.

6.1.2 A member must not only remain professionally independent, but also be seen to be so by clients, the public, TA or other authorities and third parties. Particular care must be taken to preserve apparent, as well as actual, independence.

6.1.3 Conflicts of interest can arise between a member and his client or between two or more clients or potential clients.

6.1.4 If a member becomes aware of any factor which affects or might affect his independence in respect of a matter (or which might be perceived to do so) the member should immediately take action to address that factor in order to preserve his professional independence. If no appropriate action can be taken to remove the threat to the member's professional 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.

6.1.5 Most problems can be avoided by being alert to potential conflicts of interest and by not accepting an assignment where it seems likely that a conflict of interest could occur.

### **6.2 Managing conflicts**

6.2.1 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 paragraphs 6.3 to 6.6, together with general guidance notes for each circumstance. It is not possible to provide guidance for every eventuality. This is a matter for the professional judgement of the member based upon the precise circumstances.

6.2.2 Points to consider are:

- a. Conflicts of interest are not always easy to recognise or anticipate. However, the member should always be aware of the possibility that a conflict may arise and of the fact that this may impair the ability to give independent advice to a client.
- b. A member must seek not only to avoid conflicts of interest but also to avoid situations where it may be perceived that a conflict of interest exists. The member must, therefore, consider his position and his actions not only in the light of his own views about whether a conflict exists, but also in the light of the way in which the situation will be perceived by the client, the public, the authorities and third parties.
- c. A member should acknowledge the existence of a conflict or potential conflict as soon as he becomes aware of it and must conduct himself accordingly thereafter.
- d. A member should immediately address any conflict or potential conflict and seek a solution which is compatible with high professional standards and the duty owed to the client or clients.
- e. If the conflict or potential conflict cannot be resolved the member must consider whether it is appropriate to continue to act. Usually, the existence of a conflict of interest will mean that it is inappropriate to continue to act for one or more of the clients concerned (as to which, see paragraphs 6.3 - 6.5 below). Should the member consider it appropriate to continue to act for a client despite the existence of a conflict or potential conflict, he must inform the client fully and frankly of the existence of the conflict and should advise him to obtain independent advice on whether it is in the client's interests for the member to continue to act.
- f. Once agreed, arrangements for resolving or dealing with actual or potential conflicts of interest should be confirmed in writing to the client as should any agreement whereby a client agrees to a member continuing to act in circumstances where a conflict, or potential conflict, of interest exists. Once arrangements for dealing with a conflict have been made a member should regularly review them, and the circumstances.

### 6.3 Acting for both parties to a transaction

6.3.1 In most circumstances, a member who is asked to act for both parties to a transaction should refuse to do so. However, this may present difficulties if both the parties are existing clients. The member has an in-built conflict if he shows preference in providing services to one client and not the other, and an added conflict if he does not act in the best interests of both.

6.3.2 The member has three choices:

- a. **To act for neither party.** This is often the best course of action because of the potential conflict of interest between the parties and the difficult position in which this may put the member. However, to refuse to act may occasionally 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.
- b. **To advise both clients of the conflict** and to give both the opportunity to consider whether or not they wish the member to act or whether they wish to seek alternative representation.

If both clients are agreeable the member may act provided that 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 and that the member is satisfied that the circumstances of the conflict can be managed. In practice this may be difficult but there may be sufficient 'mutuality of interest' between the parties to allow this course to be followed. In this situation, both clients should be advised to consider seeking independent advice on whether it is appropriate for the member to act for both parties.

With the agreement of the client the member may also resolve the potential conflict by appointing a separate team to act for each client, who maintains ethical walls to prevent confidential information relating to one client becoming known to the team acting for the other.

- c. **To act for only one client.** Generally this will be the client who first sought advice. If a member has acquired relevant knowledge concerning a client who has

instructed him in relation to a transaction and is then instructed by the other party to the transaction, it may be appropriate to inform both clients of the potential conflict and then to act only for the client who first sought advice. To change allegiance after accepting instructions could present a conflict in relation to the use of information already supplied as it would be a breach of client confidentiality to release such information, in any form, to another party without express approval of the client who provided such information.

A member who decides to act only for the first instructing client should advise the other client of this decision in order to avoid any suggestion of acting improperly or misusing any confidential information concerning that client.

#### **6.4 Acting for both an employer and his employees**

6.4.1 An employer may ask a member to provide tax or other advice to his employees. It is important for the member to identify with whom the client relationship exists. No confidential information pertaining to an employee should be given to the employer without the express approval of the employee (preferably in writing). 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.

6.4.2 If the employer discharges the member's fees for services which are of direct benefit to the employee, the employer should be reminded of the requirement to make an appropriate report to TA of any benefit in kind received by the employee.

#### **6.5 Acting for both parties in a divorce settlement**

6.5.1 Acting for both parties in a divorce settlement can present difficulties, particularly if the member has previously acted for both parties.

6.5.2 It will rarely, if ever, be appropriate to act for both parties in relation to a divorce settlement as it is highly unlikely there will be sufficient mutuality of interest between them. Usually it will be necessary to act for only one of the parties or for neither of them.

## **6.6 Financial involvement with clients**

6.6.1 Financial involvement with a client may affect a member's independence. Such involvement could arise in a number of ways, for example holding shares in a client company or by the making of loans to or receiving them from a client.

6.6.2 A member in practice should formulate a policy in respect of shareholdings in client companies to be followed by partners and staff. Procedures should be put in place to monitor compliance with the policy.

6.6.3 Where a member, or the spouse or child of the member, makes a loan to a client, or guarantees a client's borrowing, or accepts a loan from a client or has borrowings guaranteed by a client, then a conflict of interest could occur. A member should consider carefully whether it would be better not to undertake such financial transactions with a client, or if such arrangements are already in force, not to act for that person. A member who considers it is still appropriate to act or continue to act in these circumstances should fully and frankly inform the client of the conflict or potential conflict and advise the client to take independent advice on whether it is appropriate for the member to act or continue to act. If the client agrees that the member acts or continues to act, that agreement should be properly documented.

6.6.4 Similarly, acceptance of goods, services or hospitality of any kind that could influence a member's independence should not be accepted, unless of a modest amount or on terms similar to those generally available to the employees of that client.

6.6.5 A member should make sure that any financial involvement with a client does not lead to less favourable service being given to any other client.

## **7 OTHER CLIENT HANDLING ISSUES**

### **7.1 Managing Liability to Other Third Parties**

7.1.1 Where a member provides advice or reports or other documents to clients with whom he has an engagement letter, he has the protection of a defined scope and exclusions. Where however he gives advice or reports or other documents to a third party he may be exposed to claims against him from the third party without the benefit of the reasonable contractual protections applying to the relationship with his client.

7.1.2 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. The following are ways in which the member may manage these risks:

- a. Unless required to do so by law the member must not release to a third party information provided by the client which can be said to be confidential without first obtaining the client's consent.

- b. The member should require, as a term of the engagement, that the client must seek his consent before advice, reports or other documents which he has produced, or with which his or his firm's name is associated, are released by the client to third parties.
- c. Before consenting to the release of documents the member may request that the third party and its agents or CTPs undertake that the member will be held harmless from liability as a consequence of making the advice, reports or other documents available to them.
- d. If no such undertaking is obtained the member should communicate to the third party the terms upon which the documents are released including caveats, eg limitations on scope or a warning that the advice is generic and may not apply in all circumstances, and confirmation that no responsibility is accepted, if appropriate. Where a number of third parties are involved, each with different circumstances and reasons for their interest, particular care and attention should be paid to the caveats.
- e. The member should consider whether it is possible to decline to provide the advice or reports or other documents if it is commercially practical, for example, he may be able to decline to provide a reference.
- f. In some cases it may be possible to obtain an indemnity from the client in respect of any possible claim against the member by the third party. This is most appropriate where the client has a strong interest in the advice, reports or other documents being provided to the third party; for example, where the client ask the member to give access to his client files to a potential buyer of one of the client's subsidiaries.
- g. In some cases it may be appropriate for the member to accept that he owes a duty of care to the third party and manage that with a separate engagement letter. This can be done either by binding the third party into the engagement letter with the primary client or entering into a shorter agreement tailored for the situation. Possible situations include –
- h. The member's client is a company but the shareholders wish to rely personally on the member's advice to the company.

- i. A client's wife wishes to use the advice given to her husband for a similar transaction.

7.1.3 If a member becomes aware that any of the advice, reports or other documents which he has produced or with which he is associated and which are being used or relied upon by the third party are defective, he should insist that the client withdraws them from the third party. Failure to do this may, depending on the nature of the consents or warnings given, leave the member exposed to an action for damages by the third party if, on the strength of the documents, the third party sustained loss. It would be prudent for him to obtain proof of the withdrawal (e.g a copy of a letter from the client to the third party withdrawing the document). If the client refuses to withdraw the document, the member should consider what further steps might be taken such as writing to the third party saying that the document can no longer be relied upon. However this should not be done without first taking legal advice.

## **7.2 Working with other Professional Practitioners**

7.2.1 A member should ascertain whether any other CTPs are involved in any project or assignment which a client asks him to undertake or in any related services. It is advisable to define clearly the respective areas of responsibility and record this in the letter of engagement.

7.2.2 In some cases a member may enter into a direct relationship with another CTP rather than the taxpayer concerned. In such cases it is important to be clear whether the other CTP or the taxpayer is the client. Where the taxpayer is not the immediate client reference should be made to paragraph 7.2 on managing liability to other third parties.

7.2.3 When working alongside another CTP, a member should be careful to observe his duty of client confidentiality (see paragraph 2.6). In cases of doubt, the member should obtain instructions from his client, preferably in writing. The member should advise his client of the advantages of permitting appropriate communication between the CTPs on a project or assignment in order to progress the matter efficiently. Where the member is aware of information which will be properly required by another CTP in performing his duties and the client does not authorise direct communication, the member should ensure that his advice draws the client's attention to the matters of which the other CTP should be informed.

7.3.4 A member should keep appointments and meet commitments entered into with other CTPs as regards timely supply of information and the giving of advice. He should attend meetings, as agreed, and ensure that proper arrangements are made for any meeting for which he is responsible, including adequate notice of the meeting, advising its date, time and venue and the provision of all necessary facilities at the meeting.

7.2.5 A member should deal promptly with all correspondence with other CTPs, and maintain a file record of such correspondence, including fax, electronic and telephone communications, and notes of any meetings. If any undue delay is likely to arise in responding to other CTPs' communications then the other CTPs should be notified promptly of this, together with the reasons and, if possible, an indication of the date when a response will be sent.

7.2.6 Where the progress of work involves the contribution of other CTPs, a member should endeavour to ensure that his client is kept informed on the state of progress so far as he reasonably can ensure this.

### **7.3 Working as a Subcontractor to another Professional Practitioner**

7.3.1 A member working as a sub consultant to another CTP should ensure that there is a contract setting out terms and conditions of the arrangement. As a minimum there should be a written record of the agreement between the two parties.

7.3.2 The scope and basis of the work undertaken should be clear, for example, whether the sub consultant will rely wholly on information provided by the CTP or whether he will undertake his own research.

7.3.3 The sub consultant 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 CTP.

7.3.4 A member working as a sub consultant should consider carefully his Professional Indemnity (PII) position. Further guidance is given on this area in the Guidance notes on PII.

## **7.4 Referrals to Another Professional CTP**

7.4.1 A member who does not have the expertise or the staff resources available to meet his client's needs should refer the client to another professional CTP.

7.4.2 A member should take care when making referrals and should always aim to give the client a choice of CTP.

7.4.3 A member should make it clear to his client that the member has no responsibility for the work undertaken by the other CTP.

## **7.5 Money Laundering**

7.5.1 Members shall comply with the Money Laundering (Prohibition) Act 2004 or any amendment thereto.

7.5.2 In particular, members shall bear reporting responsibilities to the National Advisory Council against Money Laundering or the Special Control Unit against Money Laundering (SCUML) in the area of:

- a. Rendition of Currency Transaction Reports (CTRs), and
- b. Rendition of Suspicious Transaction Reports (STs)

7.5.3 A member shall be liable and may be charged for professional misconduct to the CITN Disciplinary Committee if he supports, aids, abets or participates in Money Laundering activities or terrorists financing.

7.5.4 Every member has an obligation to promptly report through CITN to SCUML any money laundering activity that comes to his knowledge in the course of his professional practice provided that no report will be made if it cannot be factually and professionally substantiated.

7.5.5 Members should also strive to know their clients well to be able to discern their nature of their businesses. In this wise, each member should devise a Know Your Customer checklist and administer on each client.

## **7.6 Clients' money**

7.6.1 A member who receives clients' money in connection with the carrying on by the member of investment business (as defined by the Nigerian Investment and Securities Act 2007)

must handle that money in accordance with the aspects of the regulations of the regulatory authority with which he is registered relating to the handling of such funds. The following guidance addresses only non-investment business clients' money. See also paragraph 3.14.

7.6.2 Clients' money means money of any currency which a 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.

7.6.3 Clients' money must be kept separate from money belonging to the firm. For this reason, clients' money must be kept in a separate client account. A client account can be a current or deposit account at a bank or mortgage institutions in the name of the member or his firm but it must also include the word 'client' in the title of the account. Clients' money can be kept either in a general client account, or in separate client accounts each designated with the name of a specific client, or in both.

7.6.4 The following conditions apply to client accounts:

- a. Written notice must be given to the bank concerned that all money standing to the credit of each client bank account is held by the firm as clients' money, and that the bank is not entitled to combine the account with any other account, or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it on any other account of the firm.
- b. Any interest payable in respect of sums credited to the account shall be credited to that account.
- c. The bank must describe the account in its records in such a manner to make it clear that the money in the account does not belong to the member.
- d. The bank should be required to acknowledge in writing that it accepts the terms of the notice.

7.6.5 Clients' money received by the firm must be paid immediately into the appropriate client account or paid to the client direct or otherwise dealt with as the client instructs.

7.6.6 If a cheque, draft or electronic transfer includes both clients' money and non-clients' money, that cheque, draft or electronic transfer must be paid into the appropriate client account immediately and the non-clients' money must be withdrawn from the account as soon as the funds have cleared. Under no circumstances should clients' money be paid into the firm's own account.

7.6.7 Where money of any one client in excess of **N500,000.00 (Five Hundred Thousand Naira)** is held or is expected to be held by the firm for more than 30 days, it is recommended that the money should be paid into a separate interest-bearing bank account designated as that of the client. In other cases, except where the amount of interest arising is likely to be immaterial (a matter for the member's judgement) clients' money must be deposited in an interest-bearing account. Except in the case of clients' money held by a firm as stakeholder, the interest credited to a designated client bank account must be paid to the client concerned. Unless otherwise agreed, interest earned on stakeholders' money is payable to the person to whom the stake is paid.

7.6.8 Money held in a client bank account may be withdrawn only where properly required for a payment to or on behalf of the client, including debts due to the firm and agreed fees or commissions earned by the firm.

7.6.9 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 bank account, distinguishing the money of each client from the money of other clients and from firm money. Each client bank account must be reconciled against the balances shown in the client's 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.

7.6.10 Members are reminded that converting or concealing criminal property or terrorist funds, for example by allowing them to be passed through the clients' money account is a

criminal offence under the money laundering legislation. However there is no offence if a member makes a prompt report to the law enforcement agencies and their permission is obtained to continue the transaction.

## **8 CHARGING FOR SERVICES**

### **8.1 Basis of Charge**

8.1.1 Before undertaking any work on behalf of a new 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 usually be appropriate to set these matters out in the letter of engagement on accepting a new client (see Appendix 5). A member should make it clear at the outset whether he will charge for the initial meeting.

8.1.2 The calculation of an appropriate 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. These guidelines should be interpreted in the light of the general principle that charges should be fair in relation to those services performed and the benefit of these services to the client.

8.1.3 Fee arrangements are a matter for commercial negotiation by members. A member's fee should have regard to the responsibility, nature and importance of the work, the time devoted to it, the client relationship and associated risk involved. The possible arrangements include:

- a. Time and expenses - where the member charges on the basis of time spent according to the skill and the resources deployed. This is likely to be the usual basis in the absence of any other arrangement and the rate to be charged can reflect the complexity of the engagement and the value of the benefit to the client.
- b. Fixed fees - where the member charges a fixed amount for an agreed assignment the fee should be based upon a proper costing of the work to be undertaken. When the arrangement is to run for any length of time, say beyond one year, there should be an appropriate variation clause in the engagement letter to enable additional work to be charged and cost escalation to be recouped.

8.1.4 It is vital to be as clear as possible as to the basis of fees and to include in the letter of engagement provision for varying the amount to be charged where extra work is performed.

8.1.5 Members should take steps to avoid fee disputes by agreeing fees before issuing invoices or giving indicative fees before work is started.

8.1.6 Normally, it is not necessary for a fully detailed bill to be sent automatically to the client 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.

8.1.7 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 benefit of the work to those clients.

## **8.2 Contingent Fees and Value Billings**

8.2.1 A client's instructions may be accepted where the fee basis is contingent upon success. However, members should be aware that such fees may be perceived by third parties, in particular TA, as reflecting adversely on the independence of the member. Accordingly, where a contingent fee basis is adopted, the member should take care to ensure that his conduct meets, and is seen to meet, the required standards of integrity and objectivity, and that he can refute any challenge by TA on the standard of disclosure adopted in connection with the client's affairs.

8.2.3 Particular care will be needed in preparing the letter of engagement to ensure that the fee basis is fully and effectively documented. Where contingent fees are used the engagement letter should stipulate the action to be taken should subsequent events cancel all or part of the benefits of the contingent fee arrangement. It should set out clearly and precisely whether part or the entire fee is to be repaid and whether interest is payable.

8.2.4 Where a contingent fee forms the basis of reward for the member, the basis should be disclosed in any public document on which a third party may rely.

A member should be aware of the Tax Avoidance Disclosure regime where contingent fees are considered.

### **8.3 Retainers**

8.3.1 Although retainer arrangements are not a common practice, there is no objection to a member seeking to charge, or accept fees from a client simply for the retention by that client of the member's services, whether or not additional fees will be charged for specific services which may subsequently be rendered.

8.3.2 Normally, under retainer arrangements, the client is able to call for certain services without any further charge.

8.3.3 A member may undertake to provide specific professional services for a fixed fee. Arguably, this is not the same as a retainer arrangement. Nevertheless, in both cases there is clearly a need for a carefully worded letter of engagement.

8.3.4 To reduce the possibility of disputes arising with a client, any retainer arrangements should normally be set out in writing, with a view to ensuring that the member and the client clearly understand the extent, and limitations, of the arrangements. In particular, such a letter of engagement should make clear the point at which further charges may be levied: see Appendix 5.

8.3.5 When a member agrees to a retainer arrangement, under which the client can call on that member's services at any time, the member should recognise that, in fulfilling his obligations to that client he may be unable to fulfil his obligations to other clients because of a conflict of interest. It is for this reason that members are advised to consider carefully all the implications before entering into material retainer arrangements and should normally include in the letter of engagement provision for terminating the arrangements in the event of a conflict of interest.

8.3.6 When entering into a retainer arrangement the member is advised to consider the commerciality of the arrangement and carefully consider the nature and scope of the services to be provided. The retainer fee should be commensurate with the expected activity on the client account. Where there is higher than expected activity, the member may wish to consider some limitation of scope within the retainer to avoid cost over runs.

## **8.4 Payments on Account**

8.4.1 Payments on account of work being performed, or in advance of work to be performed, may be part of the terms on which a member agrees to act for a client.

8.4.2 The terms of such payments, and any circumstances in which they might become repayable with or without interest, should be incorporated in the letter of engagement to the client before the member starts to act for that client.

8.4.3 Any such payments should be reasonable in amount in relation to the likely level of fee which will be charged for the work performed or to be performed within a reasonable time scale.

8.4.4 On completion of the work, the member should provide a fee note for the services rendered, detailing the total fee charged and deducting there from payments on account or received in advance.

8.4.5 A member who is asked to cease acting at any stage should promptly prepare a fee note for the services rendered; if any earlier payment on account or in advance was greater than this fee, the member should promptly return the excess to the client.

8.4.6 Where a payment in advance has been received and the member becomes unable to start or complete the assignment, the member should promptly notify the client and repay to the client the advance payment received, after taking account of an appropriate charge for any work performed and any disbursements incurred in undertaking the assignment for the client.

8.4.7 If a substantial payment is received in advance for work to be performed, the member should recognise the contingent liability of having to return it in whole or in part to the client should the member be unable to complete the assignment or should the client subsequently require the member to cease acting. The member should keep adequate funds to repay in whole or part any advance payment (together with any interest thereon) in excess of the billing value of work done.

8.4.8 The member should ensure that there is proper accounting for any VAT that may arise in respect of payments on account or advance payments.

## **8.5 Clients Who are Slow to Pay**

8.5.1 A member should inform clients in writing of the payment terms of fees to be rendered. Normally, this should be incorporated in the letter of engagement sent to the client (see paragraph 4.4.1).

8.5.2 If a client does not settle an account within a reasonable time, a member should first ensure that the fees have been properly addressed to the client and endeavour to obtain confirmation that the relevant fee notes were received by the client. Normally, this can best be done by direct contact with the client. Alternatively, the use of a recorded delivery letter to the client should be considered.

8.5.3 Thereafter, the member should endeavour to ascertain the reason for the non-payment of the fee. This may have arisen through circumstances beyond the client's control (eg absence on business, holidays or hospitalisation). The non-payment may also have arisen because the client is dissatisfied with the service received, or the amount of the fee, or both. In the light of the client's comments, the member may need to consider whether to pursue collection of the fee and whether to continue to act for that client.

8.6.4 If there is no satisfactory explanation for the non-payment of the fee and the member has drawn the unpaid fee to the client's attention, the member may wish to take legal action to recover it.

8.5.5 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 stated period, being a reasonable period of time. See also Chapter 10.

8.5.6 A member who has a client who is persistently dilatory in settling accounts may wish to consider whether to continue to act for that client. A member may agree with a client that interest

will be charged on fees rendered and not paid by the due payment date. The rate of interest charged should be reasonable. Moreover, the terms on which this interest would be charged must be clearly explained to the client in writing (eg in the letter of engagement) or in the fee documentation.

8.5.7 A member should not settle his fees from money held, or received by the member on behalf of the client (eg a 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 paragraph 7.7.

## **8.6 Fee Disputes**

8.7.1 Fee arrangements are a matter for commercial negotiation by members. Steps should be taken, so far as possible, to avoid disputes with clients over fees. A little foresight can often avoid a dispute and a number of suggestions to achieve this are made in the immediately preceding paragraphs. However, if a client does consider the amount of a bill excessive, an attempt should normally be made to settle the difference by negotiation; court action should be considered as a last resort.

8.6.2 If a client who disputes a bill offers to pay a smaller sum on account, the amount tendered may be accepted without disadvantage provided it is made clear to the client at the time of acceptance, preferably in writing, that it is accepted as part payment only and not in full settlement.

8.6.3 A member may exercise a lien in appropriate circumstances. A lien is the legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met. However before doing so the member should consider:

- a. 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 bill.
- b. Whether the potential loss of goodwill, both towards the member and towards the taxation profession as a whole, which may be caused by such formal legal action outweighs the financial considerations.

- c. Whether to take specialist legal advice or recommend the client to take specialist legal advice.

See paragraph 13.9 for further advice.

8.6.4 It should be noted that the CITN will arbitrate between a member and his client upon the amount of a disputed fee.

## **9. COMPLAINTS**

### **9.1 Complaints to Members**

9.1.1 A member in practice is strongly recommended to have in place and operate procedures to handle complaints from clients.

9.1.2 Such procedures should ensure that:

- a. Each new client is informed in writing of the name and status of the person to be contacted in the event of the client wishing to complain about the services provided, and of the ability to complain to the CITN. This information should be included in the engagement letter. An example of suitable wording is contained in Appendix 5.
- b. Each complaint is acknowledged promptly in writing.
- c. Each complaint is investigated thoroughly and without delay by a person of sufficient experience, seniority and competence who preferably was not directly involved in the act or omission giving rise to the complaint, and the client is told about the investigation.
- d. If the investigation finds that the complaint is justified in whole or in part, appropriate action should be taken.

9.1.3 If the client refers the complaint to the CITN the member may be required to show how the complaint has been dealt with. Members are therefore recommended to maintain a careful written record of each complaint and of the steps taken.

9.1.4 Experience shows that the majority of complaints could have been avoided by taking some simple measures. The following paragraphs highlight a few areas to which attention can usefully be given and provide guidance on what to do when a client complaint is received.

9.1.5 Members are strongly recommended to issue an engagement letter in every new matter. Examples of engagement letters are contained in Appendix 6. Many complaints arise either because of confusion as to what the member has agreed to do, or over the fees charged. The engagement letter should define as precisely as possible the scope of the assignment. It should also set out clearly the basis upon which fees will be charged. Any change in the scope of the work or the fees quoted should be set out in writing and the client's agreement obtained.

9.1.6 Many complaints arise because the member, although doing his work properly, has failed to inform the client of what is happening. Lengthy gaps in communicating with the client should be avoided. Members should reply promptly to correspondence. If an early response to an enquiry cannot be given, the member should explain to the client why that is so and provide an estimate of when a full reply will be sent. If the client complains about delay in completing the assignment, the member should provide a completion date which should then be kept. If delay is caused by third parties, this should be explained to the client, who should be told what is being done about it. If the client fails to provide information that the member has requested, a reminder should be sent after a reasonable interval.

9.1.7 A complaint received from a client should be treated seriously and immediate action taken. The objective should be to defuse the problem which has given rise to the complaint and remedy any defective work (so far as practicable) as quickly as possible. Time spent in dealing promptly with a complaint is often less than that required to deal with it later. A speedy response often repairs any damage that may have been done to the member/client relationship

9.1.8 If the complaint is found to be justified, a prompt acknowledgement of this and a suitable apology is often accepted. However if the subject matter of the complaint is such that a claim under the firm's Professional Indemnity Insurance may be required reference should be made to paragraph 9.1.9 prior to any admission of liability. If the complaint is felt, after investigation, not to be justified, this should be explained to the client in as simple terms as possible. Whether a

complaint is justified or not, it is often helpful to try to see it from the client's point of view, and act accordingly.

9.1.9 Whenever a complaint is received it is important to consider whether it is such that it may result in a claim under the member's professional indemnity insurance policy. If so, insurers should be informed immediately of the potential claim, and the member should take into account any advice that they give. The member should also consider whether to take legal advice.

## **9.2 Complaints to the CITN**

9.2.1 A complaint received by the CITN (including a complaint by one member against another) about the standard of a member's work or the quality of the service provided will be passed directly to the CITN Investigation Panel - a body set up by the CITN to deal with complaints against its members.

9.2.2 The role of the Investigation Panel is solely to determine whether a member has breached the laws of the CITN in a case of an alleged Professional misconduct and where necessary, apply appropriate sanction. It does not become involved in claims, nor, have the powers to award costs, compensation or damages.

9.2.3 It may be possible for the Investigation Panel to resolve the complaint by conciliation to the satisfaction of both parties at this early stage, but all complaints will be considered by the Board's Investigation Committee to determine whether or not there is a prima facie case for the member to answer.

9.2.4 If the Investigation Panel concludes that there is a case to answer, it has the following powers:

- a. It may notify the member that no further action will be taken.
- b. It may admonish the member, or allow the complaint to rest on the file for three years, in either of which cases the member has the right to refuse to accept the decision and require the complaint to be referred to the CITN for determination (costs may be awarded against the member if the matter is dealt with in this way).

- c. It may refer the case to the CITN Disciplinary Tribunal.

The decision of the Investigation Panel will be communicated to the complainant as well as to the member.

9.2.5 Where a complaint is referred to the CITN Disciplinary Tribunal, it will be presented before that Tribunal by the CITN. The member may present his own case, or may be represented, and may call witnesses as well as cross-examine any witnesses called on behalf of the presenter of the case. If the complaint is upheld in whole or in part the Disciplinary Tribunal may decide to apply one or more of the following sanctions:

- a. To reprimand the member
- b. To fine the member up to a prescribed maximum
- c. To expel or suspend the member from membership of the CITN or the ATT, or both
- d. To require the member to pay all or part of the costs of the proceedings
- e. To order that its decision is publicised

9.2.6 The member may appeal against the order of the Disciplinary Committee. Any such appeal is then heard by the Appeal Committee of the Taxation Disciplinary Board. The Appeal Committee may uphold an appeal only on certain specified grounds. If it upholds an appeal the Appeal Committee may affirm the finding of the Disciplinary Committee, or overturn, vary or rescind the sanction applied. It may also, in certain circumstances, remit the case for re-hearing. In any case it may make an order as to costs.

9.2.7 If a complaint is dismissed by the Disciplinary Tribunal, or an appeal is upheld by the Appeal Committee, there is power to award costs to the successful member.

9.2.8 Students are also subject to the disciplinary process and the Council may sanction such erring student against whom a complaint is upheld.

9.2.9 The following give further details about the disciplinary process. They are available on the Institute's website at [www.citn.org](http://www.citn.org).

- Schedule 2 of the CITN Charter
- Section IV of the CITN members' rules and regulations 2007

## **10 CEASING TO ACT**

### **10.1 Ceasing to Act**

10.1.1 A member who has accepted a client's instructions should not cease to act for the client until the relevant work has been completed unless:

- a. The client requires it; or
- b. The member gives reasonable notice to the client of his intention to cease to act.  
However, a member will need to have due regard to the terms of his engagement letter.

10.1.2 In no circumstances should the member cease acting for a client without notifying the client in writing that he is no longer acting. The member should continue to act until he has taken reasonable steps to notify the client that he is no longer acting.

10.1.3 Where a member has prepared tax returns and routinely dealt with correspondence on a client's behalf he should advise TA that he has ceased to act.

10.1.4 On ceasing to act, the member will usually discuss with the client the arrangements for settling unpaid fee accounts and billing work not yet invoiced. It is recommended that at this juncture consideration is given to the client's requirements for handing over papers to the member's successor and the member's costs associated with making the necessary arrangements. In this regard, members' attention is drawn to paragraph 13.9 and the limited right to retain papers belonging to a client until fees have been paid.

10.1.5 A member who after ceasing to act receives a communication from a successor should proceed as set out in paragraph 4.3.

10.1.6 If a member ceases to act and is not invited to hand over his client's affairs to a successor CTP he should put his client on notice and draw his attention to all open matters.

10.1.7 If a member is asked to hand over relevant papers to his former client or a successor, the following points should be considered:

- a. If the request does not come from the client direct, the member should obtain written consent from his former client prior to providing papers to a successor.
- b. Some documents on the member's files may belong to the client (see paragraph 13.1). The member is therefore required to provide these, subject to any lien the member may have (see paragraph 13.9). In the event of any dispute as to ownership of documents a member should normally seek specialist legal advice. Where the original documents are handed over, the member should first take copies, so that he can maintain proper professional records (see paragraph 5.7).
- c. Where documents belong to the member (see paragraph 13.1) the member should co-operate in providing copies of documents relevant to the client's ongoing tax affairs. If a significant amount of work is required, reasonable arrangements should be made for the member to be paid.
- d. If there is a risk that the former client may use the information provided to support a legal claim against the member, the member should consult his insurers and consider whether to take legal advice.

10.1.8 If after ceasing to act, the member subsequently receives any correspondence relating to the former client, he should pass that correspondence on without delay and advise the sender to address future correspondence direct to that client.

10.1.9 Unless the contract provides otherwise, a member is under no duty to inform a former client that advice previously given is affected by a change in law or practice which occurs after the relationship of client and CTP has ended.

## **11 MPTP**

### **11.1 Mandatory Professional Training Programme (MPTP)**

11.1.1 The MPTP rules do not apply to students of the CITN nor to students and affiliates of the ATT.

11.1.2 It is important that a member keeps fully up to date in relation to statute and case law and practice in areas where the member holds himself out to be competent to practise. A member must be prepared to meet the obligations necessary to provide the best possible service to clients or an employer.

11.1.3 A compulsory MPTP scheme applies to all CITN members with some minor exceptions. Full details are given in Appendix 1. For the current detailed requirements and guidelines, members should refer to the current issue of the CITN MPTP Training Programmes Brochure.

## **12 MEMBERS IN EMPLOYMENT**

### **12.1 Employees**

12.1.1 These Professional Rules and Practice Guidelines apply equally to an employed member as they do to a member in practice whether or not his employer is a member of the CITN. They apply to every employed member irrespective of the nature of the activities or business of his employer.

12.1.2 An employed member should ensure that there is nothing in his contract of service which precludes him from complying with these Professional Rules and Practice Guidelines.

### **12.2 Employees Acquiring Knowledge of Default or An Unlawful Act**

12.2.1 It is possible that an employed member, whether working in a tax practice or in industry, may acquire knowledge which suggests that his employer may have committed an unlawful act. In such circumstances the member should seek to establish the facts so that, as far

as is possible, he has a clear understanding of the situation. He should then raise his concerns internally at an appropriate level.

The member should keep a record of the personal actions he has taken in order to be able to demonstrate that he has acted properly throughout.

### **12.3 Employees Acquiring Knowledge of Taxation Irregularities**

12.3.1 The general guidelines at paragraph 12.2 apply to employees acquiring knowledge of taxation irregularities. Further specific guidance relating to such irregularities is given below.

12.3.2 An employed member who is responsible for agreeing the employer's taxation liabilities with TA has the same duty as a member in practice to ensure that there is appropriate disclosure of all relevant information. Similarly, upon a discovery of default, negligence or fraud on the part of the employer, the member is required to draw the employer's attention to the penalties for which the employer may become liable and to recommend the earliest possible voluntary disclosure.

12.3.3 Even if not directly involved in compliance work for the employer, a member who becomes aware of malpractice must adopt a similar stance.

### **12.4 Insurance Arrangements**

12.4.1 An employee can be sued jointly or severally with the employer by a client. For his own protection, therefore, a member should satisfy himself that his employer has adequate indemnity insurance covering the member as employee in respect of the taxation services provided to and on behalf of the employer by the member and that such cover protects the employee after he leaves the practice and also if the employer's practice ceases or is merged. In the absence of such insurance a member should consider effecting his own insurance cover. The member could consider drawing his employer's attention to the possibility of including a clause in the engagement letter stating that the client may only sue the firm/employer and not the employee.

12.4.2 It is also possible for an employee to be sued by his employer, for example, for breach of contract or tortious liability. A member at material risk of this should seek legal advice.

## **13 LEGAL MATTERS**

### **13.1 Ownership of Documents**

13.1.1 When considering the ownership of a document, the terms of the contract between the member and his client should first be reviewed. If they provide expressly for the ownership of the documents prepared during the engagement; that concludes the matter. Alternatively, the contract terms may imply who owns the documents prepared during the engagement.

13.1.2 If the contract makes no express or implied provision as to the ownership of documents, a member will have to consider whether he is acting in the particular engagement as the agent of the client or as a principal. An agency relationship exists, for example, where the work done by the member is of a tax compliance nature, such as preparing returns and computations for TA. However, the member will be acting as a principal where he is retained to carry out advisory or consultancy work.

13.1.3 Where there is an agency relationship, the client has a right to documents prepared by the member for the client. Such documents would include any tax return, supporting documentation for that return and copies of letters passing between the member and third parties. However, a member's working papers belong to him. For example, where a member is instructed to prepare a computation, his working papers compiled to enable him to produce the computation will belong to the member. Only the computation itself, and any supporting schedules, belong to the client.

Correspondence with TA in connection with compliance work is conducted by the member as agent for the client. Therefore, copies of letters written by the member to TA, and the originals of letters received from them, belong to the client.

However, where an agency relationship exists and the member has not been paid by the client for the work undertaken, the member has a lien over any relevant documents which belong to the client: see paragraph 13.9.

13.1.4 If a document was prepared by a member who was acting as a principal, the position depends upon the type of document in question. Generally, documents created by a member for the purposes of advising or carrying out work for the client belong to the member but not where the document is provided by the client. Therefore, documents created on the specific instructions of the client belong to him, whilst documents prepared by the member for his own purposes belong to the member. Examples of documents belonging to a member include copies of letters passing between the member and third parties, file notes, internal memoranda and drafts created in preparing advice for the client. However, the letter or document containing the advice sent to the client will belong to the client and the file copy will belong to the member.

13.1.5 A document created by the client or a third party before any client relationship has begun, whether sent to the member by his client or by a third party, is held on behalf of the client or third party as the case may be.

13.1.6 Where a document is sent by the client to the member and the title to that document is intended to pass to the member, then the document belongs to the member. Examples include letters, authorities and instructions.

13.1.7 In practice, there may be difficulty in identifying whether the member or the client owns a particular document. The member may wish to take specialist legal advice on this if it becomes a material issue and on the extent to which he may be obliged to allow access to his files and working papers, including those documents which he owns.

## **13.2 Retention of Records and Time Limits for Court Action**

13.2.1 When deciding the period of retention for records (paper and electronic) a member should consider:

- a. The periods of retention set out in legislation
- b. The period of time during which actions may be brought in the courts and for which working papers may need to be available as evidence

13.2.2 Members who are uncertain about the time limits they should observe should seek legal advice.

13.2.3 Members should take steps to ensure that records are maintained securely and that client confidentiality is protected. All documents, regardless of ownership, created in the course of acting for a client are client confidential information (see paragraph 2.6).

13.2.4 A member should keep his working papers for at least six years from the end of the tax year, or accounting period, to which they relate or such longer period as the rules of self assessment may require.

13.2.5 Papers and records which are legally the property of the client (or former client) should be returned to the client (or former client) or the client's permission obtained for their destruction.

13.2.6 Care should be taken if there are any open investigations into a client's affairs or any pending court action. In such circumstances records must be retained until the open matters are concluded.

13.2.7 There is a general principle that after the passing of a given period of time an action may not be brought before the courts. The law requires that persons with a legitimate cause should make their claim within a reasonable time.

Many statutes specify a time limit within which action must be taken. Where no such limit is given by the Limitation Act, Laws of the Federation of Nigeria (LFN) 2004 sets out the general position on time limits as follows:

- a. Twelve years for actions upon a speciality (a contract under seal or an obligation under seal securing a debt) or a judgement given by the courts.
- b. For actions based upon a simple contract or tort the later of:
  - i. six years; or
  - ii. Three years from the earliest date on which the claimant or any person in whom the cause of action was vested first had both the knowledge required for bringing an action for damages in respect of the relevant

damage, and a right to bring such an action, subject to a maximum period of fifteen years.

It is possible to override the statutory time limits by entering into a contractual arrangement with the client.

### **13.3 Information Requests from TA**

13.3.1 A member should be aware that the TA may in certain circumstances have the right to access members' and clients' papers and records.

13.3.2 Client confidentiality rules will apply to any disclosure of the member's records. A member cannot disclose papers to the TA without the client's permission or a legally enforceable request by the TA. Determining when the TA has legally effective powers or whether the request may be discussed with the client can be a complex matter and a member should consider obtaining specialist advice particularly when a client refuses permission to disclose.

13.3.3 Upon receipt of an informal request for information from the TA a member should advise his client whether he should provide the information or whether he should resist the information request until a legally enforceable request is made. Points to consider include:

- a. How onerous would it be to comply?
- b. Would complying with the request set an unwelcome precedent?
- c. Are the documents sought harmful to the client?
- d. Will TA ultimately be able to obtain the information either through legally enforceable powers or from another source?
- e. Is it possible to curtail the scope of information request through negotiation with TA?
- f. Are the documents requested relevant?

13.3.4 Where TA use or threaten to use statutory powers to obtain information, a member should:

- a. Inform his client unless legally prevented from doing so

- b. Consider whether the statutory powers have been properly applied and seek specialist advice in cases of doubt.
- c. Consider whether legal professional privilege applies – see Professional Conduct in Relation to Taxation for further guidance on privilege
- d. Consider whether Human Rights Act 1998 offers any protection

### **13.4 Search Warrants**

13.4.1 The TA has power to apply under the relevant Tax Law for a warrant entitling them to search premises where there is reasonable ground for suspecting there may be evidence relating to a serious tax fraud. This power has been used to ‘raid’ the premises of taxable persons, CTPs and other professionals. Members should take any search extremely seriously. They need to be fully aware of the TA’s powers in this regard and should take legal advice from a suitably qualified solicitor in the event of such a raid. Failure to do so could expose the member to a claim for damages for professional negligence.

13.4.2 An application by the TA under this section is made without notice to the affected parties, so the first that the member is likely to know of the warrant is when the TA’s officers appear at the premises demanding to be allowed entry.

13.4.3 As stated above, if a member is raided in this way he should consult a solicitor immediately and if possible, arrange for his immediate attendance at the member’s offices. The TA should be asked to take no steps until the solicitor has arrived. If the TA does not agree, a legal advice should be sought since it would be an offence to obstruct the search. Upon arrival, the solicitor can then advise the member in relation to compliance with the warrant and can advise as to the appropriateness (or otherwise) of the use of this power. In appropriate cases, the member may have grounds for seeking an interim injunction to halt the search on suitable undertakings being given. Alternatively, he may seek to persuade the officer in charge that the search should be abandoned and, if appropriate, information provided voluntarily.

13.4.4 Although not actually required by statute, warrants typically include the following information:

- a. Some description of the fraud being investigated and the particular tax or taxes involved
- b. The names of customers or clients being investigated
- c. The authorised time of entry (usually not before 7.00 am or after 6.00 pm)
- d. The number of officers who can be involved in the search
- e. What items can be seized and removed by the searching officers (failing which, they can remove anything they reasonably believe may be required as evidence in proceedings)

13.4.5 Where any documents are seized and taken away, the member is entitled to ask for access to them or for copies of them. The officer in charge of the investigation has a limited discretion whether or not to grant this request. In any event, the member should at least ask for a record of what has been removed.

13.4.6 It is essential that the person whose premises are raided (and his solicitor) read the warrant very carefully to ensure that the TA are not given access to any documents of the client under investigation which are not covered by the warrant or to documents which are confidential to other clients.

13.4.7 One issue which may arise in the context of a search is the question of privileged documents. This is a particularly complex legal area and specialist advice should always be sought in this regard.

### **13.5 Orders for the Delivery of Documents**

13.5.1 The TA can obtain an order for the delivery of documents under the relevant tax regulation requiring a person to deliver documents where tax fraud is suspected. Typically this is used to obtain information from innocent third parties in place of a raid. A member receiving such a notice must not tell the client. He should also consider obtaining specialist advice.

### **13.6 Request from Other Third Parties**

13.6.1 If a member receives a request for information or documents from any third party other than TA he should either obtain his client's permission or ensure that the request is legally

enforceable and overrides client confidentiality. Determining whether the third party has legally effective powers or whether the request can be discussed with the client can be a complex matter and a member should consider obtaining legal advice, particularly when a client refuses permission to disclose.

### **13.7 Legal Professional Privilege Modified**

13.7.1 A member should consider whether documents requested by the TA might be covered by legal professional privilege.

### **13.8 Lien**

13.8.1 A lien is a legal right to retain possession of property until a financial claim that the holder of the property has against its owner has been met.

13.8.2 A lien can be either general or particular. A general lien gives the person holding the lien the right to retain possession of all property that he holds belonging to the person who owes him the debt until that debt has been paid, whether or not that property relates to the debt in question. A general lien may be difficult to establish and is not considered further here.

A particular lien is a lien over specific property in relation to which work has been done and a debt is owed. A member will probably have a particular lien over documents belonging to the client in respect of which he has performed work for which he has not been paid the fee due.

13.8.3 The following conditions must all be met if a right of particular 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. Fees must be due to the member in respect of work done on the client's instructions in respect of the documents and a bill for those costs must have been rendered.
- 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.

It follows that a failure by a director to pay fees for personal tax work does not give a member a lien over the company's documents.

13.8.4 A member may exercise a lien in appropriate circumstances, but before doing so he should consider:

- a. 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 bill.
- b. Whether the potential loss of goodwill, both towards the member and towards the taxation profession as a whole, which may be caused by such formal legal action outweighs the financial considerations.
- c. Whether to take specialist legal advice or recommend the client to take specialist legal advice.

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.

### **13.9 Drafting Legal Documents**

13.9.1 There are certain categories of legal documents which may only be drafted for a fee by appropriately qualified people. A person convicted of drafting such documents without the appropriate qualifications will be liable to a fine. However, if a member merely indicates required amendments to a legal document, but does not himself amend them, he is not committing an offence.

13.9.2 A member who is not a solicitor, barrister or licensed conveyancer may not prepare for a fee any document relating to real property (i.e land) or personal property (ie goods other than land).

However, a member may draft a document which falls within one of the following exceptions:

- a. A Will or other document which transfers goods or property but does not take effect until the death of the person making the transfer.

- b. An agreement not intended to be executed as a deed (except any contract for the sale of land). This means any document which is not a deed or was not intended to be a deed on the face of the document.
- c. A letter or power of attorney.
- d. A transfer of stock ‘containing no trust or limitation thereof’. There are no clear guidelines on what this means but it is thought to mean any document transferring shares which does not create a trust or similarly limit the transferee’s rights in the shares.

In practice, it may be difficult to ascertain whether a member may or may not draft a particular document and the member may wish to take specialist legal advice on this matter.

13.9.3 A member who is not a solicitor, barrister or licensed conveyancer may not prepare for a fee any document transferring or attaching a charge to registered land or make any application or lodge any document for registration at the Land Registry.

13.9.4 A member who is not a solicitor or barrister may not prepare for a fee papers on which to apply for, or oppose, a grant of probate or letters of administration to the estate of a deceased person.

However, a member may provide assistance to a person who is applying for a grant in person, or to a solicitor who is acting in the estate. It is therefore permissible for a member to provide information or prepare material, such as schedules of figures, which are used by an applicant in person or the solicitor to prepare the documents forming the application for the grant of probate. In addition, a member who is appointed an executor under a Will can charge for his services in accordance with the terms of the charging clause in the Will. However, an executor cannot charge for preparing papers to found or oppose a grant of probate or letters of administration.

13.9.5 A member who is not a solicitor or barrister may not prepare for a fee any instrument relating to legal proceedings.

However, a litigant may always act in person and therefore a member may always conduct litigation on his own behalf. A member can also assist a client who is litigating in person in an administrative capacity (such as giving advice and taking notes).

In addition, a member who is not a solicitor may not issue any claim or commence, prosecute or defend any proceedings in any civil or criminal court. Anyone breaching these particular rules is liable to criminal prosecution with the possibility of imprisonment if convicted and is also guilty of contempt of court.

13.9.6 This paragraph sets out the present position. However, the Courts contain machinery for individuals and bodies other than solicitors to be authorised to carry out a number of these activities.

13.9.7 Before preparing any document which has legal effect (and is not in a prohibited class) a member should consider carefully whether he is competent to draft it as he may be exposing himself to the risk of a claim for negligence. He should also consider whether it is in the best interests of the client that he should prepare the document or whether it should be referred to a lawyer or other professional.

### **13.10 Data protection**

13.10.1 A member should observe the following:

- a. Whether in electronic or paper form, he may not collect, process or store data about his clients without their consent.
- b. He must store data confidentially and securely.
- c. He may not use personal data for marketing purposes without his client's consent.
- d. He must have in place systems and procedures which will enable him to confirm what data is held about a person, if asked.
- e. Clients or targets must be given the opportunity to be removed from a member's mailing list.

## **14. ADVERTISING, PUBLICITY AND PROMOTION**

### **14.1 General principles**

14.1.1 Members may seek publicity for their professional standing, experience and services by means of advertising or other forms of promotion, subject to the general requirement that the medium should not reflect adversely on the member, the CITN, or other members and fellow professionals.

14.1.2 For the purposes of this Practice Guideline, ‘advertising’ encompasses all forms of marketing of professional services, including all types of media advertising, whether for work, sub-contract work, staff recruitment, practice mergers, employment, publications, seminars, business cards, promotional gifts or general mail-shots. These guidelines apply equally to web-based marketing.

### **14.2 SPECIFIC GUIDELINES**

14.2.1 An advertisement should be clearly distinguishable as such.

14.2.2 Advertising should not be misleading in any way. For example, members should not appear to hold themselves out as having expertise in a particular field that they do not in fact possess.

14.2.3 Members who are members of any Council, Committee, Sub-committee or working party of the CITN may publicise their membership in any book, article or advertising material for any conference at which they are lecturing or acting as chairman. A member must not publicise such membership in any other way without the prior consent of the CITN. Such members must use reasonable endeavours to ensure that this Guideline is observed by any person, firm or corporate body with which they are associated.

14.2.4 Members should ensure that any advertising or publicity for which they may be held responsible is accurate, is not ambiguous and is not likely to cause public offence.

14.2.5 A member remains responsible for an advertisement even if the work is delegated to an advertising agency or other intermediary.

14.2.6 Members may state the areas in which they specialise.

14.2.7 Promotional material should be factually and technically accurate, contain suitable disclaimers, include copyright notice, appropriate reference to the name of the firm and contact details. A member should be able to justify the truth of any factual statements in the promotional material and it should not contain any disparaging references to or disparaging comparisons with, the services of others. Promotional material would also include web-based material for this purpose.

### **14.3 Fees**

14.3.1 If reference is made in promotional material to fees, the basis on which fees are calculated, or to hourly or other charging rates, great care must be taken to ensure that such reference does not mislead as to the precise range of services and time commitment that the reference is intended to cover. Members should not make comparisons in such material between their fees and the fees of others, whether members or not.

**APPENDIX 1**

**MANDATORY**

**PROFESSIONAL**

**TRAINING PROGRAMME**

**(MPTP)**

## **MANDATORY PROFESSIONAL TRAINING PROGRAMME**

### **1. Citation, Commencement and Application**

1.1 These Regulations may be cited as The Chartered Institute of Taxation of Nigeria Mandatory Professional Training Programme Regulations 2010.

1.2 These Regulations shall come into force on 16<sup>th</sup> October 2009.

1.3 These Regulations shall apply to all members of the Institute.

### **2. Introduction**

2.1 In these Regulations ‘MPTP’ mean Mandatory Professional Training Programme.

2.2 In furtherance of Rule 2.4 of the Institute’s Professional Rules which states that for the technical and professional standards expected, these regulations are designed upon the following principles:

They-

- (a) should be relevant to the practical needs of members ;
- (b) are sufficiently flexible to cater for the particular circumstances of members;
- (c) do not create onerous demands;
- (d) involve reasonable periods; and
- (e) are not administratively burdensome.

2.3 It is mandatory for all members to comply with the MPTP requirements. A member who is uncertain whether these Regulations apply, or who wishes to apply for exemption under Regulation 7, should contact the Education Department at the Institute (see Regulation 13).

### **3. The Basic Requirements**

3.1 The minimum requirement for each member is 35 hours of MPTP per calendar year, of which a minimum of 20 hours must be structured training and the remainder unstructured training. The annual requirement can be met on an averaging basis over any two consecutive years.

### **4. Definition of Structured Training**

Structured training includes:

- 4.1 Attendance at conferences, seminars, workshops, discussion meetings or similar events that involve active contribution by the member.
- 4.2 Preparation of lectures and other forms of presentation.
- 4.3 Writing books, articles or reviews.
- 4.4 All learning media, provided that they involve interaction with other individuals (including group research; listening to audio tapes; viewing tax videos and tax-specific television programmes; using video disks and computer-based training packages).

## **5. Definition of unstructured training**

Unstructured training includes:

- 5.1 Reading.
- 5.2 Any other form of learning where there is no interaction with other individuals. This would include the learning media in Regulation 4.4 where undertaken on a personal basis.

## **6. Non-Core Subjects**

- 6.1 In Regulations 4 and 5 structured and unstructured training normally mean training in the field of Nigerian taxation. A member who practises in foreign tax may apply these Regulations by substituting the foreign tax for Nigerian taxation.
- 6.2 Training in law, accounting and financial services, practice management and administration, staff development and computer and software development may be included up to a maximum of one half of the total annual MPTP requirement.

## **7. Exemptions**

The following members are exempted from MPTP requirements on a pro rata basis:

A member -

- 7.1 Who is unable to meet the requirements due to ill health or disability.
- 7.2 who is on maternity leave, or a career break, or unemployed is required to undertake a minimum average of one hour per week of unstructured training during the period of absence from work.

7.4 and especially a member working or residing outside Nigeria who, due to travel difficulties, would find it impracticable to attend conferences on Nigerian taxation as part of the structured training requirement should apply to the Membership Department for consideration of alternative arrangements.

7.5 who is granted exemption upon the approval of the application by Council.

## **8. MPTP Requirements of Other Professional Bodies and of Professional Firms**

8.1 A member is entitled to count towards the Institute's requirements any appropriate training undertaken to fulfil the MPTP (or equivalent) requirements or recommendations of another professional body of which he or she is a member, and of his or her firm or company provided a prior approval of the Institute has been obtained.

8.2 Where the requirements of the other professional body, or the firm or company, are for a year ending other than on 31 December the member shall use for the purposes of these Regulations the MPTP training for that other year whose end falls within the relevant calendar year.

## **9. Records to be kept**

9.1 Members shall use the form provided annually by the Institute on which to keep their MPTP records for the particular year. Members of other professional bodies, or with firms or companies, which require them to keep MPTP records may use that record sheet, suitably adapted where necessary.

9.2 Where members attend a meeting at which no attendance charge is made they must record their attendance in the record book kept by the organisers.

9.3 Members should keep their MPTP records for a minimum of two complete calendar years. The Institute will make random checks by requesting some members to send in their MPTP records covering a two-year period or, if a member of the Institute relies on the averaging provisions in Regulation 3.1, three complete calendar years.

9.4 A member who is requested to submit their MPTP records under Regulation 9.3 shall be required to produce these, and such other explanations as may reasonably be requested, within thirty days of the request.

9.5 Members who are subject to disciplinary proceedings must retain their existing MPTP records for the duration of the proceedings and for a further period of twelve months after the end of the proceedings.

## **10. Failure to meet the MPTP requirements**

10.1 If a member of the Institute fails to meet the requisite unit for any year the member will be required to make up adequate units in the following year in addition to the normal units for that year.

10.2 Any investigation into a complaint made about a member will include checking the member's MPTP records.

10.3 The requirement for the issuance and renewal of practising license should include fulfilment of MPTP credit units.

## **11. Failure to comply**

Failure to comply with the MPTP requirements contained in these Regulations may Invoke sanctions by council.

## **12. Encouragement of Exempted Members**

12.1 All exempted members are encouraged to meet the MPTP requirement on voluntary basis.

12.2 All members not within the compulsory scheme must nevertheless comply with Rule 2.4 of the Institute's Professional Rules, reproduced in Regulation 2.2.

## **13. Membership enquiries**

All enquiries by members should be addressed to the Registrar Chief Executive of the Institute on (234) 01-774-1273, 01-8936023.

**APPENDIX 2**

**COMPULSORY**

**PROFESSIONAL**

**INDEMNITY INSURANCE**

**FOR**

**MEMBERS**

## **Mandatory Professional Indemnity Insurance Regulations**

In these regulations words importing the masculine gender include the feminine gender, words in the singular include the plural and words in the plural include the singular.

### **1. Definitions**

1.1 The following definitions apply for the purposes of these regulations.

1.2 **‘Council’** means the Council of the CITN.

1.3 **‘Director’** means a director (executive or non-executive) who is on the board of directors of a company providing taxation services. For the avoidance of doubt it does not include members who hold the title ‘Director’ but who are not members of the board.

1.4 **‘Firm’** means a sole CTP; a partnership; a limited liability partnership or a body corporate or unincorporated which provides taxation services.

1.5 **‘Gross fee income’** is the aggregate of professional fees and all other income (including commissions) earned in respect of and in the course of business during the immediately preceding accounting year.

1.6 **‘Honorarium’** means a fee paid in respect of a formal honorary post for charities, amateur organisations and other ‘not for profit’ organisations.

1.7 **‘Member’** means a member of the CITN.

1.8 **‘Member in practice’** is a **member** who provides **taxation services** on a full-time or part-time basis as a sole CTP, a member of a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a **director** of, or an employee of, a company providing taxation services in which he or she has a financial interest which represents 5 percent or more of the equity capital.

1.9 **‘Principal’** means a sole CTP, partner, member of a limited liability partnership or director in a firm providing taxation services.

1.10 **‘Pro bono’** work means work for which absolutely no payment is made either in cash or kind.

1.11 **‘Taxation services’** are services in relation to taxation and include the preparation and submission of tax returns, advice on tax planning, representation and defence of taxpayers before authorities and courts and the provision of overall advice, including the implementation of such advice, in the area of taxation and the complementary accounting and legal service, which are provided, as a CTP, with the intention that another person, body or organisation should rely on such services. For the avoidance of doubt taxation includes direct taxes, indirect taxes and any welfare or other benefits administered by the State Tax Authorities.

## **2. Compliance**

2.1 Every **member** is required to comply with these regulations.

2.2 Subject to paragraph 3 below, every **member in practice** shall ensure that there is effected and maintained in respect of his **firm a** professional indemnity insurance covered in accordance with paragraph 4.1 below.

2.3 A **member** who works on a self employed subcontract basis for a **firm** need not hold professional indemnity insurance in his own right provided he has obtained written confirmation from the contracting firm that its professional indemnity insurance policy complies with the CITN ’s professional indemnity insurance regulations and that it covers him in his capacity as self employed consultant.

## **3. Exemption**

3.1 **Members** who receive an **honorarium** but who are not **members in practice** need not hold professional indemnity insurance cover. However, where the honorary post includes the provision of **taxation services** they must indicate in writing to the body paying the **honorarium** the fact that they have no professional indemnity insurance cover.

3.2 **Members** who carry out **pro bono** work but who are not **members in practice** are not required to have professional indemnity insurance cover. However, where the **pro bono** work includes the provision of **taxation services** they must indicate in writing to their **pro bono** client the fact that they have no professional indemnity insurance cover.

#### 4. **Requirements for Professional Indemnity Insurance Cover**

4.1 “The insurance required to satisfy the obligations of paragraph 2.2. above means insurance which is underwritten by an insurer for the time being authorized by law to carry on in Nigeria and which:-

- (i) Covers all civil liability, including costs and expenses incurred in connection with the provision of or the offering of taxation services;
- (ii) Meets the required limit of liability set out in paragraph 5 below; and
- (iii) In respect of which all premiums have been paid as and when they fall due.

#### 5. **Required Limit of Liability**

5.1 Except where paragraphs 3 or 5.2 apply, the annual minimum limit of indemnity for each and every claim is as council may approve.

5.2 Where the firm’s gross fee income is less than ₦5,000, 000, (Five Million Naira) the required annual minimum limit of indemnity for each and every claim is the greater of :

- a. 2.5 x the gross fee income; and
- b. N1,000,000 . 00 (One Million Naira)

5.3 The insurance policy may include an excess provided that this excess does not exceed N1,000,000 (One Million Naira) per principal. Where a firm has subsidiary firms or associated firms and holds a group PII policy the excess may be calculated on a group basis. Before agreeing the level of excess, if any, to be included in the policy the firm must satisfy itself that it would be able to meet the cost of the excess element of any claims which might arise.

#### 6. **Continuity Following Cessation**

6.1 Members in practice must ensure that arrangements exist for the continued existence of professional indemnity insurance for a period of not less than six years after they cease to engage

in public practice. Such professional indemnity insurance shall be on terms satisfying the requirements of the professional indemnity insurance regulations as applied to their firm during the year immediately preceding such cessation.

## **7. Compliance with Professional Indemnity Insurance Regulations**

7.1 All members shall be obliged to provide to the CITN as and when required to do so by or under the authority of the Council such evidence that may be sufficient to satisfy the CITN as to due compliance by such member of his obligations under these regulations.

7.2 Each member in practice required to hold professional indemnity insurance cover must, on request, provide a copy to the CITN with his professional indemnity insurance certificate and a copy of the insurance policy.

7.3 Failure to comply with the professional indemnity insurance regulations may result in disciplinary action being taken against the member.

# **PROFESSIONAL INDEMNITY INSURANCE (PII)**

## **GUIDANCE NOTES FOR MEMBERS**

### **1. How Much PII Cover Should I Have?**

The minimum levels of cover are set out in paragraph 5 of the regulations. They are ₦1 million for each and every claim unless your firm's gross fee income is less than N5,000,000 (Five Million Naira) in which case it is the greater of 2.5 x gross fee income or N5,000,000 (Five Million Naira) . Gross fee income is defined in the regulations and discussed in 2 below.

It is essential that you carry out a risk assessment before deciding the level of your firm's PII cover rather than simply opt for the minimum. Points to take into consideration include:

- 1.1 The risk profile of the work you carry out for your clients – is it routine work involving comparatively small sums or is it complex or aggressive tax planning likely to be challenged by the tax authorities?
- 1.2 What resources are available to the firm to meet any claims in excess of the insured amount?
- 1.3 Remember you can insure a specific project if necessary where, for example, the tax involved is in excess of your existing PII cover.
- 1.4 Does your firm have effective systems and controls in place to minimise the risk of a claim arising out of administrative failures? Are these procedures kept under regular review? Lawyers dealing with tax-related PII claims suggest that most claims arise as a result of basic errors such as failure to meet deadlines or missing the time limit for a claim.

The CITN and ATT recommend that members should have cover of N1,000,000 (One Million Naira).

### **2. Gross Fee Income – How Is It Calculated?**

Gross fee income is defined in the PII rules as 'the aggregate of professional fees and all other income (including commissions) earned in respect of and in the course of business during the immediately preceding accounting year. In your first year in practice an estimate of your gross fee income should be used. Equally if the most recent set of accounts are not for a full year you

may need to use an estimate. It is advisable to notify your insurer of any major changes which take place in your firm, for example an acquisition or a demerger so that the insurer can ensure that your PII continues to provide adequate cover for the changed circumstances. Fees received in respect of work subcontracted to others must be included in gross fee income unless the work is clearly shown as a disbursement and the client knows that the member's firm is not taking professional responsibility for this work.

### **3. I Am An Employee – Do I Need PII Cover?**

Subject to the exceptions below, as an employee you should be protected by your employer's PII policy or other insurance arrangements. This is the case whether you are working in industry or in the tax/accounting profession. However, you will need PII cover if:

- a. You are a director or an employee and you have a financial interest which represents 5% or more of the equity capital in your employer's taxation services firm; or
- b. You provide taxation services in a capacity other than as an employee. For example, in the evenings and weekends you prepare tax returns and offer tax advice to a handful of clients (including family and friends). There is no connection with or any involvement from your employer. In those circumstances you will need PII cover unless it is done on a pro bono or honorary basis. See also the guidance below on pro bono and honorary work.

### **4. Honoraria and Pro Bono Work**

The important point to bear in mind when you give advice for which you do not charge or charge a greatly reduced fee is that a claim can still be made against you if the advice you give is defective. To determine whether a case against you will succeed the court will ask the following questions:

- a. Was a duty of care owed to the client?
- b. Has that duty of care been breached?
- c. Was the breach causative of loss?

If the answer to all three questions is yes the claim will succeed irrespective of the size of the fee charged.

If you are a sole CTP or partner in a firm pro bono advice/honorary work may in some circumstances be covered by your/the firm's PII's policy. For example if you give free advice to a local charity in order to raise your practice's profile in the local area that may be covered. However, free advice given to your neighbour in the pub is much less likely to be covered.

If you are an employee and give pro bono advice or undertake honorary work the first step is to check your employment contract to establish whether it prohibits you from carrying out such work. If you give advice outside the terms of your contract of employment it is unlikely you will be covered by your employer's PII policy. If such work is permitted under your contract of employment you may be covered by your employer's policy but cover will depend on a number of factors including whether you were acting as an employee or as a member of the public.

If you are not covered by your employer's policy and you make a mistake there is a real risk that a claim could be made against you personally. Therefore if you are giving advice on a pro bono/honorary basis you should consider carefully the need for PII cover in case of claims.

In any event under the PII regulations if you provide taxation services on an honorary or pro bono basis and do not have PII cover you are obliged to notify your client of this fact in writing.

Remember you can be sued for honorary and pro bono work if the advice given later proves to have been defective.

## **5. Consultants and Sub-consultants**

A consultant may be sued for negligent advice and a claim may be brought against the firm for which he is working and/or against the consultant.

A member who works on a self-employed basis as a consultant for a firm which provides taxation services must have PII cover unless he has confirmation from the contracting firm that their policy complies with the CITN regulations and covers him in his capacity as a self employed consultant (as not all policies will do so).

Some members provide taxation services on a self-employed subcontract/consultancy basis to businesses which are not themselves a provider of taxation services (for example, members who work in the taxation departments of large companies). The business using the services of the member is unlikely to have relevant insurance which would cover the member and which would comply with the CITN PII regulations.

A member in these circumstances must take out his own PII which does comply. However, it is open to that member to apply to the CITN for an exemption from the need to have PII cover if he has written assurance that the business contracting with him will not make a claim against him. Notwithstanding this, members should be aware that the CITN strongly recommend that members should hold their own PII policy in such circumstances.

## **6. Does My Policy Comply With The PII Rules?**

The following notes identify some of the less obvious requirements of a PII policy if it is to comply with the PII regulations.

### Each and every claim

A member's PII policy must be on an 'each and every' claim basis.

A PII policy can effectively be on an 'aggregate' basis or an 'each and every' claim basis. In broad terms 'aggregate' means that for a N1m policy the maximum the insurer will pay out is N1m whether it is made up of several smaller claims or one large claim. With an 'each and every' basis policy the insurer will pay out up to Nxxm for each claim made during the lifetime of the policy. The 'each and every' basis is the industry norm for professionals such as CTPs and taxation technicians and it affords greater protection to the member and his clients.

### Civil liability

Not all insurance policies cover claims for civil liability. Examples of civil liability include claims which are made solely in contract and not in negligence. Some policies cover claims arising out of negligence but only some elements of a claim in contract. However, claims can be made in both negligence and/or contract and the damages payable may differ.

## **Example**

A CTP may have a contract with a client in which he agrees to perform certain work within a timescale and agrees to pay penalties if the timescale is not met. The CTP carries out the work incompetently and late. The incompetence causes loss to the client but his tardiness does not.

The sums payable under the penalty clause in the contract would not be covered under a negligence only policy. This is because the cost of the penalties would constitute a claim in contract.

The loss arising from the incompetence is both a liability in negligence and contract and would be covered by both a policy covering negligence claims and one covering civil liability claims.

A policy that only covers you for negligence may not protect against all elements of a claim for breach of contract. Therefore it is advisable to ask your broker to ensure that your PII policy covers against all civil claims and not just claims in negligence.

## **Is the Cover ‘Costs Inclusive’ or ‘Costs Exclusive’?**

Cover can be provided with costs inclusive (i.e the costs of defending a claim can be in addition to the limit of indemnity) or with costs exclusive (i.e where the costs are included within the limit of indemnity).

**To ensure that your policy fully complies with the PII rules it is advisable to provide your broker with a copy of the rules when you ask him to obtain quotes for PII cover.**

## **7. Tax is only an incidental part of my work – do i need PII?**

Where a member works in a role which is predominantly non-tax related but from time to time he gives tax advice it is not always clear cut whether the member needs to have PII.

However, the starting point is always that if you hold yourself out as a member of the CITN and you provide taxation services, no matter how small, you must have PII.

The illustrations below set out some of the more common situations. They are intended as guidance only; if you are uncertain whether you need PII or not you should contact the CITN for further guidance (see 12 below for contact details).

### Illustration 1

Adam is a CTP who is also a director and 25% shareholder of a wine importing company. From time to time he gives tax advice to his fellow directors on business transactions but his main role within the company is to maintain and develop relationships with customers and wine producers. For more complex tax matters the company consults its external CTPs. Adam wonders whether he is required to have PII under the CITN regulations.

Adam is not obliged to have PII cover as the company of which he is a director/ shareholder is not a provider of taxation services **and** when giving tax advice Adam makes it clear to his fellow directors that he is acting in his capacity as a director of the company and not as a CTP. He is not holding himself out to third parties as a CTP.

### Illustration 2

Brian is a CTP who is also a self-employed management consultant. He feels he has the edge on many of his competitors in that he can give advice on tax matters as well as the usual management consultancy matters. He uses this as a selling point when meeting prospective clients and his tax qualification is included on his business card. However, in practice the tax element of his work is very small – typically less than 10% of his time spent on a project will be concerned with tax. Brian does not think he needs PII.

The basic rule is that where a member offers tax advice ‘as a CTP, with the intention that another person, body or organisation should rely on such services’ (see regulation 1.10) he is required to have PII. Although Brian is predominantly a management consultant his promotion of his membership of the CITN and his tax knowledge to win business is likely to lead clients to believe that he is giving tax advice as a CTP and as such he must have PII. In any event, irrespective of the CITN PII requirements Brian would be well advised to have PII to cover all aspects of his management consultancy practice.

## **8. Fidelity Guarantee Insurance – Do I Need It?**

Fidelity guarantee insurance provides cover against any acts of fraud or dishonesty by any partner, director or employee in respect of any money or property held in trust by the firm. Whilst it is not compulsory for members in practice to take out such cover it is recommended as best practice.

## **9. What Level Of Excess May I Have?**

The regulations allow the PII policy to include an excess of up to N5,000,000 per principal. For the protection of clients, the public and members themselves the regulations require that when determining the appropriate level of excess the firm must be satisfied that it could meet the excess element of any claim which might arise.

As a general rule the higher the excess the lower the premium. Insurers tend to see insured persons with higher excesses as being more likely to have an interest in good risk management as it affects them in the pocket each time they get it wrong.

There is obviously greater motivation to avoid a claim if you are bearing say the first N1,500,000.00 than if a similar claim will, initially at least, only cost you N150,000.00.

Equally, for policies with a higher excess the insurer will not be called upon to deal with time consuming small claims which tend to cost proportionately more to manage than the larger but generally less frequent claims.

You can therefore minimise the cost of premiums by increasing the excess payable on your policy, subject of course to the overriding requirement that the excess is at a manageable level for your firm and within the CITN limits. It is not acceptable to opt for a higher excess to reduce the premium payable unless you are confident of your firm's ability to meet its liabilities under any claims which arise.

If your firm has subsidiaries or associated firms and you have a group PII policy the excess may be calculated on a group basis.

## **10. Liability Capping**

Some firms include a clause in their engagement letter which seeks to cap the firm's liability to its client in the event of a claim being made. This may be effective in many instances and it is a reasonable step to take to minimise liability. It may also reduce the premium payable as insurers regard liability capping as an indicator of good risk management by the insured. However, it would be unwise to rely wholly on a liability cap as being effective in every case. There are a number of issues which you should take into account when considering liability caps.

- **No engagement letter**

It may seem obvious but the liability cap will not be effective if there is no engagement letter in place. It is best practice to have engagement letters but sometimes the system falls down, for example, the engagement letter is not returned by the client, the costs of drawing up an engagement letter for a one off assignment were considered to be out of all proportion to the fee which could be charged for the work undertaken or it was a very rushed job and there simply wasn't time to draw up the engagement letter. Without the engagement letter it is most unlikely that the liability would be capped.

- **Work not covered by the engagement letter**

A client may engage a member to carry out work which is not covered by the engagement letter. For example, a compliance client asks for advice on trusts. It so happens that your firm employs a trust specialist who has a meeting with the client and follows it with a meeting note. The existing engagement letter does not cover the work undertaken and a new engagement letter was not drawn up. In those circumstances it is most unlikely that the liability would be capped.

- **Claim made by a third party**

The liability cap included in the engagement letter would not extend to claims made by third parties. For example, you may give tax planning advice to a company on a corporate transaction and have an engagement letter (with a liability cap) signed by the directors on behalf of the company. However, the advice that you give could impact on the personal tax position of the shareholders (whom you were aware of and who you knew would rely on the advice and who took part in the transaction). If the advice that you give is wrong and has a detrimental effect on the shareholders you could face a claim from them. Any such claim would not be subject to the liability cap as they were not signatories to the engagement letter.

- **Liability cap rejected by the courts**

It is possible that the courts could consider the liability cap to be unreasonable condition and as such unenforceable.

### **11. I Cannot Get PII Cover – What Should I Do?**

If you are unable to obtain cover you should apply to the CITN under regulation 3.1 setting out the steps you have taken to obtain cover and the reasons why cover has been refused. Your application will be considered and you will be advised of the outcome within 30 days. Where exceptionally it is not possible to meet this deadline you will be kept informed of progress and delays will be kept to a minimum.

### **12. Who Should I Contact If I Have Any Queries About The PII Rules?**

You should contact the Registrar/Chief Executive, Chartered Institute of Taxation of Nigeria's secretariat.

**APPENDIX 3**

**RULES FOR THE USE OF  
THE DESIGNATORY  
TITLES ‘CHARTERED TAX  
PRACTITIONERS’ BY  
COMPANIES AND**

# PARTNERSHIPS AND SOLE PRACTITIONERS

## RULES FOR THE USE OF THE DESIGNATORY TITLES

1 The following regulations apply in Nigeria. Outside Nigeria, members shall consult with the Registrar/Chief Executive on the adaptations needed to the regulations so as to comply with local practice and local legal requirements.

### Definitions

- 1 Words and phrases used in these regulations have the same meaning as in the Charter unless specifically amended within the regulations.
- 2 The term ‘CTP’ *within the context of this appendix* means a member of the Institute with Practising Licence.
- 3 A ‘Firm’ means a sole CTP, a partnership<sup>1</sup> or limited liability company.
- 4 The term ‘Voting rights’ means the rights to vote on matters at meetings of the firm.
- 5 ‘Recognised Status’ is afforded to those persons set out in Regulation 17.
- 6 A ‘Nominated Member’ is a Chartered Tax Practitioner who is either a partner<sup>2</sup> or director of a corporate body who completes the undertakings required by these Regulations, and who is duly authorised to accept responsibility to ensure that the Firm conducts itself so as not to bring the Institute or the taxation profession into disrepute.
- 7 The ‘prescribed minimum’ is the number of partners<sup>2</sup> or directors who must be qualified as *Chartered Tax Practitioners* for the purposes of Regulations 9 (b) and 10(b) determined in accordance with the following table:

<sup>1</sup> or a Limited Liability Partnerships (LLP)

<sup>2</sup> or a member of an LLP

<b>Size of firm</b>	<b>Prescribed minimum Number of Partners/Directors who are CTPs</b>
1 – 11	1
12 - 20	2
21 – 31	3
32 – 44	4
45 and over	5

#### **Users of the description ‘Chartered Tax Practitioner’**

- 8 A member who is a sole CTP in public practice shall be entitled to describe the Firm as *Chartered Tax Practitioners*.
- 9 Members engaged in public practice as partners in a Firm which is a partnership shall be entitled to describe it as ‘Chartered Tax Practitioner’ only if:
- a) Each partner is a *Chartered Tax Practitioner*, or
  - b) Not fewer than 75% of the partners<sup>1</sup> are *Chartered Tax Practitioners* or hold Recognised Status, and not fewer than 75% of the Voting Rights are held by *Chartered Tax Practitioner* or those of Recognised Status provided that the number of partners who are *Chartered Tax Practitioners* shall be not less than the prescribed minimum; and
  - c) The Firm has furnished to the Registrar/Chief Executive of the Institute a written undertaking in such form as the Institute shall from time to time prescribe signed by the Nominated Member confirming that the Firm and each of its partners will comply with the relevant obligations and liabilities of a member of the Institute and be bound by the CITN Charter, Bye-Laws, Members’ Regulations and other requirements of the Institute as from time to time in force and that they will observe and uphold the ethical standards of the Institute.

10. Members engaged in public practice as directors of a Firm which is a corporate body shall be entitled to describe the Firm as ‘CTPs’

only if:

- a) Each director is a CTP or
- b) Not fewer than 75% of the directors are *Chartered Tax Practitioners* or hold Recognised Status, and not less than 75% of the Voting Rights in the Board of Directors, committee or other management body are held by *CTPs* or those of Recognised Status provided that the number of directors who are *CTPs* shall be not less than the prescribed minimum, and
- c) The Firm has furnished to the Registrar/Chief Executive of the Institute a written undertaking in such form as the Institute shall from time to time prescribe signed by the Nominated Member confirming that the company and each of its directors will comply with the relevant obligations and liabilities of a member of the Institute and be bound by the CITN Charter, Bye-Laws, Members’ Regulations and other requirements of the Institute as from time to time in force and that they will observe and uphold the ethical standards of the Institute.

11 (a) Firms complying with the requirement of Regulations 10(b) or 11(b) by the inclusion of partners<sup>1</sup> or directors of Recognised Status must include the following statement on business stationery:

‘Practicing member of The Chartered Institute of Taxation of Nigeria as a firm of *Chartered Tax Practitioners*.’

(b) Firms complying with the requirements of Regulations 9, 10(a) or 11(a) may include the following statement on business stationery:

‘Practicing member of The Chartered Institute of Taxation of Nigeria as a firm of *Chartered Tax Practitioners*.’

### **Discipline**

12. These Regulations shall not confer any rights, acknowledgements, status or designatory letters other than those conferred on a member by other regulations of the Institute. No firm or individual who is not a member shall make any public representation that he has such rights, acknowledgements, status or letters.

<sup>1</sup> or members of a Limited Liability Partnership.

13. The Institute’s disciplinary rules shall apply to complaints against partners<sup>1</sup> and directors in the tax practice who are not members of the Institute as it applies to complaints against members but the defendant in any such proceedings shall be the Firm.

14. In the application of disciplinary rules against a Firm under Regulation 14, the Disciplinary Tribunal of the CITN Investigation Panel may order the suspension or removal of the right to use the description ‘Chartered Tax Practitioners’ or reprimand or fine the Firm such sum as the Disciplinary Tribunal think fit in the light of the size and gravity of the offence together with the imposition of costs provided that *Chartered Tax Practitioner* members of the Firm have been afforded an opportunity to make such representations as they feel appropriate.

### **Fees**

15. Firms wishing to take advantage of Regulations 10(b) and 11(b) will only be permitted to do so on payment of fees for the time being in force as determined by the Council of the Institute.

### **Designatory Letters of Members**

16. Every member of the Institute shall be entitled to use the following designatory letters after his or her name:

- i. In the case of a Fellow, the letters FCTI (representing the words “Fellow of the Chartered Institute of Taxation of Nigeria”).
- ii. In the case of an Associate, the letter ACTI (representing the words “Associate of the Chartered Institute of Taxation of Nigeria”).

### **Recognised Status**

17. Persons who are members of the following bodies

- The Chartered Institute of Taxation in UK;
- The Chartered Institute of Taxation in Ghana
- or a body which the Council of the Institute recognises as being a similar body in the West African Region.

<sup>1</sup> or Limited Liability Partners (LLP) <sup>i</sup>

**APPENDIX 4**

**RULES FOR THE USE OF  
THE CHARTERED  
INSTITUTE OF TAXATION  
LICENCE AND SEAL IN  
PUBLIC PRACTICE**

**A member shall be eligible to practice as a Chartered Tax Practitioner if:**

The member has been in continuous practice for a period of 18 months (of which period could be pre or/ and post admission as an associate) has been engaged in tax practice,

Of which there must be evidence of existence of a corporate office and contact address (es),

He possesses proof of full payment of subscription, practicing license and seal fees,

Member must have acquired the required number of credit hours on Mandatory Professional Training Program (MPTP) and other Institute activities. There must be evidence of membership of district society.

No member of the Institute shall practice as a Chartered Tax Practitioner unless he/she has applied for and has been granted a licence to practice by Council having complied with the provisions of (1) above.

Every member who has been issued a license number shall be required to produce an evidence of registration of the firm by the Corporate Affairs Commission (CAC) as “Chartered Tax Practitioner” before collecting a seal and purchasing a set of pre-numbered stamps from the Institute.

The seal and signature of the licensed member shall be placed on all relevant documents submitted to any Tax Authority and opinion given to clients.

The license, stamp, seal remains the property of the Institute and same must be returned to the Institute at any time the holder ceases to be entitled thereto under the Institute’s regulations.

In the performance of his duties as a CTP, a licensed member shall be described as “Chartered Tax Practitioner” in all his stationeries and publications, no other description shall be allowed.

# **APPENDIX 5**

## **ENGAGEMENT LETTERS FOR CHARTERED TAX PRACTITIONERS**

**ENGAGEMENT LETTERS FOR CTPS  
CONTENTS**

**Paragraph**

<b>Introduction</b>	<b>1-5</b>
<b>Status of CTP</b>	<b>6</b>
<b>Contents</b>	<b>7</b>
<b>Investment business</b>	<b>8-12</b>
<b>Other regulations and guidance</b>	<b>13-14</b>
<b>The client</b>	<b>15-16</b>
<b>Fees</b>	<b>17-18</b>
<b>Agreement of letter</b>	<b>19</b>
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**Annex**

<b>Personal (including sole trader) tax compliance engagement letter</b>	<b>A</b>
<b>Corporation tax compliance engagement letter</b>	<b>B</b>
<b>Partnership tax compliance engagement letter</b>	<b>C</b>
<b>Tax consultancy engagement letter (including a tax investigation)</b>	<b>D</b>

## **ENGAGEMENT LETTERS FOR CHARTERED TAX PRACTITIONERS (CTP)**

### **INTRODUCTION**

1. This statement provides guidance to CTPs about engagement letters for tax work.
2. It is strongly recommended that CTPs should issue a letter of engagement for tax work in order to define the terms of the engagement and agree these with the client. A letter of engagement can be used to manage clients' expectations: it provides significant protection to the CTP and is likely to be an important document in a dispute such as a claim for professional negligence. This is particularly so given the increasingly litigious world in which business is conducted. In this context a CTP is deemed to have the requisite knowledge and expertise appropriate to the ordinary competent professional practising in his particular field. The engagement letter defines the areas in which the CTP's presumed expertise is applied for the client's benefit.
3. This general guidance give examples of the content of engagement letters. It does not set out the work that a CTP should or should not do, or how it should be done. The examples of tax engagement letters in the Annexes and in particular the text in square brackets should be amended to meet individual circumstances. It may, for example, be necessary to issue an engagement letter covering both tax and non-tax work or to tailor an example for a 'one-off' rather than a continuing assignment.
4. The example letters contained in the Annexes are designed for use by smaller CTPs but many practices will develop their own model engagement letters.
5. This guidance has been developed in conjunction with the Tax Faculties of the Chartered Institute of Taxation of Nigeria and the Tax Practice Monitoring Committee.

### **Status of a CTP**

6. In the course of their work for clients, CTPs may be acting as agent, for example where the work consists of preparing and submitting a tax return and agreeing the tax position, or as principal, for example where an income and expenditure account is prepared for a sole trader or consultancy work is undertaken. When drafting the terms of an engagement letter the CTP should be clear about the distinction.

## **Contents**

7. An engagement letter should set out the scope of the engagement and the terms of business, to include as a minimum:
  - The nature of the services to be provided (see paragraph 3 in Annexes A-C and paragraph 2 of Annex D);
  - The responsibilities of the client, including the obligation to provide full information (paragraph 4 of Annexes A-C and paragraph 3 of Annex D);
  - Quality of service and complaints procedures (paragraph 13 of Annexes A-C and paragraph 9 of Annex D); and
  - Fee arrangements (paragraph 14 of Annex A-C and paragraph 10 of Annex D).

## **THE CLIENT**

8. A separate engagement letter should be issued for each client to whom a service is provided. For example, separate engagement letters should be used if the CTP provides tax services to:
  - a. A husband and wife;
  - b. An individual and, following death, the personal representatives administering the deceased's estate;
  - c. A partnership and the individual partners;
  - d. A company and its shareholders;
  - e. A company and its directors;
  - f. A company and its employees where for example a bulk tax return service is provided; and
  - g. A trust and its beneficiaries.
9. When acting for a group of companies it may be more practical to send a single engagement letter to the parent company of the group. The letter should specify clearly that services to all the member companies of the group are covered; furthermore the CTP should check that the parent company has the authority to bind all members of the group.

## **FEES**

10. Fee arrangements are a matter for commercial negotiation by CTPs. Due regard should be given to the nature of the engagement and client relationship when setting fees.

Possible arrangements include:

- a. Time and expenses - where the CTP charges on the basis of time spent according to the level of expertise required. The rate to be charged is likely to reflect the complexity of the engagement and the value of the benefit to the client;
  - b. Fixed fees - where the CTP charges a fixed amount for an agreed assignment, the fee should be based upon a proper costing of the work to be undertaken. It is essential that there is an appropriate variation clause in the engagement letter to enable additional work to be charged and/or cost escalation to be recouped; and
  - c. Contingent or success fees - these should be used with care and should not be adopted as commercial terms if there is a risk that professional independence and integrity will be impaired in the conduct of work.
11. Members should take steps to avoid fee disputes by giving an indication of fees before work is started or by agreeing fees before issuing invoices.

### **Agreement of Letter**

12. The client should be asked to agree to the scope and terms of the engagement in writing, usually by signing and returning a copy of the engagement letter.

### **Ongoing Work and Changes**

13. An engagement letter for ongoing work should be regularly reviewed and, if appropriate, an updated engagement letter agreed. This is so even if just one aspect of the engagement is changed, for example where the CTP agrees to carry out a year's work for a fixed rather than a time-based fee. Generally a CTP should review engagement letters for continuing services at least once in every three years. It is important for CTPs to keep the client informed about progress once the engagement is under way. It is prudent to write to the client when ceasing to act so that the client is on notice about any outstanding matters. These actions should help to avoid misunderstandings about the engagement and disputes about fees.

## **ANNEX A**

### **EXAMPLE OF A PERSONAL (INCLUDING SOLE TRADER) TAX COMPLIANCE ENGAGEMENT LETTER**

*This is not intended to be used in all cases and must be tailored to meet specific circumstances.*

Dear *[complete]*

#### **PERSONAL [INCLUDING SOLE TRADER BUSINESS] TAX COMPLIANCE: TERMS OF ENGAGEMENT**

##### **1. Introduction**

1.1 This letter sets out the basis on which we [are to] act as your tax agent and adviser.

1.2 Your spouse is legally responsible for [his/her] own tax affairs and should be dealt with independently. [However, if both spouses sign this letter you agree that we can disclose to your spouse such details of your financial affairs as are required to consider your combined tax position.]

##### **2 Period of Engagement**

2.1 This engagement will commence with your tax returns for the fiscal year commencing [--].

2.2 [We will deal with matters arising in respect of years prior to the above year, as appropriate.] [We will not be responsible for earlier years. Your previous advisers, *[insert name of Tax CTPs]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.]

#### ***SCOPE***

##### **3. Our Service to You**

3.1 *Note: Paragraph 3.1 is intended for use where the business accounts comprise no more than an income and expenditure account drawn up for the purpose of completing the tax return.*

*The terms of engagement for the preparation of more extensive accounts are outside the scope of this guidance.*

*[Either]*

[We will prepare the income and expenditure account of your business and the income tax computations based thereon from your accounting records and other information and explanations provided by you. We will not carry out an audit of those records.]

*[Or]*

[We will prepare the income tax computations based on the accounts of your business from the accounting records and other information and explanations provided by you.]

3.2 We will prepare your personal tax return together with such supporting schedules as are appropriate and we will [prepare] your self-assessment of tax. / check the tax authority's computation of your tax liability.

Based on the information made available to us:

3.3 We will send to you your tax returns [ business accounts, tax computations] and supporting schedules [in duplicate] *[optional]* for you to approve and sign. We will then submit it [ with the accounts and computations,] to the Tax authority. [You authorise us to file the return electronically.]

3.4 We will advise you how much tax you should pay and when. If appropriate we will initiate repayment claims when tax [has/have] been overpaid.

3.5 We will deal with the Tax authority regarding any amendments required to your return and prepare any amended returns which may be required.

3.6 We will advise as to possible claims and elections arising from the tax return and from information supplied by you. Where instructed by you, we will make such claims and elections in the form and manner required by the Tax authority.

3.7 We will deal with all communications relating to your return addressed to us by the Tax authority or passed to us by you. However, if the Tax authority choose your return for enquiry [we will refer you to another CTP]/[this work may need to be the subject of a separate assignment in which case we will seek further instructions from you]. (*See Annex D*)

3.8 [We will check PAYE notices of coding where such notices are forwarded to us.]

#### **4. Your Responsibilities: Provision of Information by You**

4.1 You are legally responsible for making correct returns by the due date and for payment of tax on time. Failure to meet the deadlines may result in automatic penalties, surcharges and/or interest.

4.2 To enable us to carry out our work you agree:

- (a) That all returns are to be made on the basis of full disclosure of all sources of income, charges, allowances and capital transactions;
- (b) To provide full information necessary for dealing with your affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;
- (c) That we can approach such third parties as may be appropriate for information that we consider necessary to deal with your affairs;
- (d) To provide us with information in sufficient time for your tax return to be completed and submitted by the [due date]/[selected date] of [...] following the end of the tax year. In order that we can do this, we need to receive all relevant information by [...]. [You have asked us to submit your self-assessment tax return by ---- (specify any date within the first three months following the year of assessment)].
- (e) To forward to us on receipt copies of all Tax authority statements of account, any notices of assessment, letters and other communications received from the Tax authority to enable us to deal with them as may be necessary within the statutory time limits; and

(f) To keep us informed about significant changes in your circumstances if they are likely to affect your tax position.

## **5. Other Services and General Tax Advice**

*[Insert paragraphs from Annex E as appropriate]*

5.1 We will be pleased to assist you generally in tax matters if you so require. To enable us to do this you will need to instruct us in good time.

5.2 Because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.3 It is our policy to confirm in writing advice upon which you may wish to rely.

## **6. Excluded Services**

*[Adapt as appropriate. See also paragraph 5 above]*

6.1 You will continue to deal with other matters required by law, such as:

- a. Pay As You Earn including yearend returns and matters relating to your employees;
- b. Employer's Annual Declaration Form H1;
- c. Obligations under (Personal Income Act);
- d. VAT returns.

6.2 We will be pleased to advise on any of these matters if so requested.

## ***TERMS***

### **7. Professional Rules and Practice Guidelines**

We will observe the bye-laws, regulations and ethical guidelines of The Chartered Institute of Taxation of Nigeria and accept instructions to act for you on the basis that we will act in accordance with those guidelines. A copy of these guidelines is available for your inspection in our offices.

## **8. Client Monies**

We may, from time to time, hold money on your behalf. Such money will be held in trust in a client bank account, which is segregated from the firm's funds.

## **9. Retention of Records**

9.1 [During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you following preparation of your return. You should retain them for [6] year[s] from the 1<sup>st</sup> of January following the end of the tax year. This period may be extended if the Tax authority enquires into your tax returns.] *[CTPs who retain records on behalf of clients will need to amend this paragraph]*

9.2 Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store which are more than six years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.

## **10. Regulatory Requirements**

We reserve the right to disclose our files to regulatory bodies in the exercise of their powers. *[Adapt as necessary and for firms who voluntarily undergo external peer review].*

## **11. Quality of Service**

11.1 We aim to provide a high quality of service at all times. If you would like to discuss with us how our service could be improved or if you are dissatisfied with the service you are receiving please let us know by contacting *[insert name]*.

11.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with The Chartered Institute of Taxation.

## **12. Fees**

*[This is an example: if fees are calculated on any other basis, for example a fixed amount or contingency fee, then different wording should be substituted.]*

12.1 Our charges are computed on the basis of fees for the time spent on your affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. [If work is required which is outside the scope of this letter, for example dealing with Tax authority enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable.] We will issue invoices at [monthly/quarterly/six-monthly] intervals during the course of the year. We will add value added tax, if applicable, at the current rate.

12.2 Our invoices are payable on presentation. We reserve the right to charge interest at [...] % per [month/year] [over base rate] in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a way which is unfair or unreasonable.

### **13. Limitation of Liability**

13.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

13.2 We will provide the professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or from the failure by you or others to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

13.3 E-mail may be used to enable us to communicate with you. As with other means of delivery this carries with it the risk of inadvertent misdirection or non delivery.

It is the responsibility of the recipient to carry out a virus check on any attachments received.

### **14. Electronic Communication**

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after their despatch. For this reason it may be

inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

## **15. Applicable Law**

This engagement letter is governed by, and construed in accordance with, [Nigeria] [*amend as appropriate*] law. The Nigerian courts will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

## **16. Contracts (Rights of Third Parties)**

A person who is not party to this agreement shall have no right under the Contracts to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the relevant law in force.

## **17. Agreement of Terms**

17.1 This letter supersedes any previous engagement letter for the period covered. Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

17.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

17.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

I acknowledge receipt of your above letter dated *[complete]* which fully records the agreement between us relating to your appointment to carry out the work described in it.

Signed Date

[I agree that you can disclose to my spouse such details of my financial affairs as you consider necessary (see paragraph 1.2)]

Signed Date

Signed Date

(Spouse)

## **ANNEX B**

### **EXAMPLE OF A CORPORATION TAX COMPLIANCE ENGAGEMENT LETTER**

*This is not intended to be used in all cases and may be adapted to meet specific circumstances.*

To the Directors of *[complete]*.

### **CORPORATION TAX COMPLIANCE: TERMS OF ENGAGEMENT**

#### **1. Introduction**

1.1 This letter sets out the basis on which we [are to] act as tax agent and adviser to the company [and its subsidiaries. The following is a list of those subsidiaries:]

1.2 [For the purpose of what follows any reference to the company should be read as a reference also to the subsidiary companies.]

1.3 We will communicate with [...] in relation to the company's tax affairs.

#### **2. Period of Engagement**

2.1 This engagement will commence with the company's tax returns for the accounting period to [...]

2.2 We will deal also with matters arising in respect of periods prior to the above period as appropriate.] [We will not be responsible for earlier periods. The company's CTPs, *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.]

### ***SCOPE***

#### **3. Our Service to The Company**

3.1 We will prepare from the accounts and other information and explanations provided by you the company's income tax and computations, together with all supporting schedules and, where necessary, amended returns.

3.2 We will send you the tax return and supporting schedules [in duplicate] [*optional*] for you to approve and sign. We will then submit it, with the accounts and computations, to the Tax authority. [You authorise us to file the returns.]

3.3 We will advise you of the amounts of company Income tax to be paid and the dates by which the company should make the payments. Where appropriate we will initiate repayment claims when tax has been overpaid.

3.4 If you wish, we will advise you whether quarterly corporation tax payments ought to be made, but in order to do this you will need to provide us with appropriate management information.

3.5 We will advise as to possible claims and elections arising from the tax return and from information supplied by you. Where instructed by you, we will make such claims and elections in the form and manner required by the Tax authority.

3.6 We will deal with all communications relating to the company's tax returns addressed to us by the tax authority or forwarded by the company. However, if the tax authority chooses your returns for enquiry this engagement may need to be the subject of a separate assignment in which case we will seek further instructions from you. (*See Annex D*)

3.7 We will [prepare]/[help you in preparing] the tax provisions and disclosures to be included in the company's statutory accounts.

#### **4. Your Responsibilities: Provision of Information By You**

4.1 The company is legally responsible for making correct returns by the due date and for payment of tax on time. Failure to meet the deadlines may attract penalties and/or interest.

4.2 To enable us to carry out our work, you agree:

(a) That all returns are to be made on the basis of full disclosure of all sources of income, charges, allowances and capital transactions;

- (b) To provide full information necessary for dealing with the company's affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;
- (c) That we can approach such third parties as may be appropriate for information that we consider necessary to deal with the company's affairs;
- (d) To provide us with information timely for the company's tax returns to be completed and submitted by the due date of [...] following the end of the accounting period. To enable us do this, we need to receive all relevant information by [...];
- (e) To forward to us on receipt copies of notices of assessment, letters and other communications received from the Tax authority from time to time to enable us to deal with them as may be necessary within the statutory time limits; and
- (f) To keep us informed about significant transactions or changes in circumstances.

## **5. Other Services and General Tax Advice**

*[Insert paragraphs from Annex E as appropriate.]*

5.1 We will be pleased to assist the company generally in tax matters if you advise us in good time of any proposed transactions and request advice. We would, however, warn you that because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.2 It is our policy to confirm in writing advice upon which the company may wish to rely.

5.3 We will be pleased also to advise the directors and executives on their personal income tax and capital tax affairs. In such cases we will need to agree separate terms with the individuals concerned.

## **6. Excluded Services**

*[Adapt as appropriate. See also paragraph 5 above]*

6.1 We will continue to deal with other matters required by law, such as:

- a. Pay As You Earn including year end returns and matters relating to your employees;

- b. Obligations under (insert the relevant Personal Income Tax Law;
- c. Returns for sub-contractors; and
- d. VAT returns.

6.2 We will be pleased to advise on any of these tax matters if so requested.

## ***TERMS***

### **7. Professional Rules and Practice Guidelines**

We will observe the charter, regulations and ethical guidelines of The Chartered Institute of Taxation of Nigeria and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you will give us authority to correct Tax authority errors. A copy of these guidelines is available for your inspection in our offices.

### **8. Client Monies**

We may, from time to time, hold money on behalf of the company. Such money will be held in trust in a client bank account, which is segregated from the firm's funds.

### **9. Retention of Records**

9.1 [During the course of our work we will collect information from you and others acting on behalf of the company and will return any original documents to you following preparation of the company's return. You should retain them for [...] years from the end of the relevant accounting period. This period may be extended if the Tax authority enquire into the company's tax return.] *[CTPs who retain records on behalf of clients will need to amend this paragraph]*

9.2 Whilst certain documents may legally belong to the company, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You may have to inform us if you require retention of a particular document.

### **10. Regulatory Requirements**

We reserve the right to disclose our files to regulatory bodies in the exercise of their powers. *[Adapt as necessary and for firms who voluntarily undergo external peer review].*

## **11. Quality of Service**

11.1 We aim to provide a high quality of service at all times. If you would like to discuss with us how our service could be improved or if you are dissatisfied with the service that you are receiving please let us know by contacting *[insert name]*.

11.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with The Chartered Institute of Taxation.

## **12. Fees**

*[This is an example: if fees are calculated on any other basis, for example a fixed amount or contingency fee, then different wording should be substituted.]*

12.1 Our charges are computed on the basis of fees for the time spent on the company's affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. [If work is required which is outside the scope of this letter, for example dealing with Tax authority enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable.] We will issue invoices at [monthly/quarterly/six-monthly] intervals during the course of the year. We will add value added tax, if applicable, at the current rate.

12.2 Our invoices are payable on presentation. We reserve the right to charge interest at [...] % per [month/year] [over base rate] in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a way which is unfair or unreasonable.

## **13. Limitation of Liability**

13.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

13.2 We will provide the professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or

additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or from the failure by you or others to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

13.3 E-mail may be used to enable us to communicate with you. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.

#### **14. Electronic Communication**

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after their despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

#### **15. Applicable Law**

This engagement letter is governed by, and construed in accordance with, [Nigeria] [*amend as appropriate*] law. The Nigerian Courts will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it.

#### **16. Contracts (Rights of Third Parties)**

A person who is not party to this agreement shall have no right under the Contracts to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to any related Act.

#### **17. Agreement of Terms**

17.1 This letter supersedes any previous engagement letter for the period covered. Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

17.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

17.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

[I/We] acknowledge receipt of your above letter dated *[complete]* which fully records the agreement between you and the company relating to your appointment to carry out the work described in it.

Signed Date

For and on behalf of [Company]

## **ANNEX C**

### **EXAMPLE OF A PARTNERSHIP TAX COMPLIANCE ENGAGEMENT LETTER**

*This is not intended to be used in all cases and must be tailored to meet specific circumstances.*

Dear *[complete]*

### **PARTNERSHIP TAX COMPLIANCE: TERMS OF ENGAGEMENT**

#### **1. Introduction**

1.1 This letter sets out the basis on which we [are to] act as tax agent and adviser to your firm. We will issue separate engagement letters to individual partners where we deal with their personal affairs.

1.2 We will communicate with [...] who is the representative nominated by you in relation to the partnership's tax affairs.

#### **2 Period of Engagement**

2.1 This engagement will commence with the partnership's tax return for the year to [...].

2.2 [We will deal with matters arising in respect of years prior to the above year, as appropriate.] [We will not be responsible for earlier years. Your previous advisers, *[insert name of advisers]*, will deal with outstanding returns, assessments and other matters relating to earlier periods and will agree the position with the tax authorities.]

### ***SCOPE***

#### **3. Our Service to You**

*Note: the terms of engagement for the preparation of partnership accounts are outside the scope of this guidance note.*

3.1 We will prepare the income tax and capital gains tax computations based on the partnership accounts from the accounting records and other information and explanations provided by you.

3.2 We will prepare the firm's annual partnership return, including the partnership statement of total income, gains, losses, tax credits and charges of the firm for each period of account ending in the return period.

3.3 We will send you the income tax and capital gains tax computations and the tax return and supporting schedules [in duplicate] *[optional]* for you to approve and sign. We will then submit it [with the accounts and computations] to the Tax authority. [You authorise us to file the return electronically.]

3.4 We will advise all the partners who were partners in the firm during the period of their respective shares of the firm's total income, gains, losses, tax credits and charges so that they are able to file their personal self-assessment tax returns within the relevant time period.

3.5 *[Include if the partnership will pay partnership tax liabilities on behalf of partners: omit if partners will meet their own tax liabilities including tax on partnership income and gains]* We will give advice to the partners so that they can inform the partnership what amounts of tax are due in respect of their partnership income and gains and we will advise as to appropriate amounts of tax to be paid and the dates by which the partnership should make the payments. In order to do this we will need to be supplied with relevant information by the partners.

3.6 We will deal with the Tax authority regarding any amendments required to the partnership return and prepare any amended returns which may be required.

3.7 We will advise as to possible claims and elections arising from the tax return and from information supplied by you. Where instructed by you, we will make such claims and elections in the form and manner required by the Tax authority.

3.8 We will deal with all communications relating to the partnership return addressed to us by the Tax authority or passed to us by you. However, if the Tax authority choose the partnership tax return for enquiry [we will refer you to another CTP]/[this work may need to be the subject of a separate assignment in which case we will seek further instructions from you]. (*See Annex D*)

3.9 We will [prepare]/[help you in preparing] the tax provisions and disclosures to be included in the partnership's financial accounts.

#### **4. Your Responsibilities: Provision of Information By You**

4.1 The partnership is legally responsible for making correct returns by the due date.

4.2 To enable us to carry out our work you agree:

- (a) That all returns are to be made on the basis of full disclosure of all sources of income, charges, allowances and capital transactions;
- (b) To provide full information necessary for dealing with the partnership's affairs: we will rely on the information and documents being true, correct and complete and will not audit the information or those documents;
- (c) That we can approach such third parties as may be appropriate for information that we consider necessary to deal with the firm's affairs;
- (d) To provide us with information in sufficient time for the partnership tax returns to be completed and submitted by the [due date]/[selected date] of [...] following the end of the [tax year/accounting period]. In order that we can do this, we need to receive all relevant information by [...];
- (e) To forward to us on receipt copies of all Tax authority statements of account, notices of assessment, letters and other communications received from the Tax authority to enable us to deal with them as may be necessary within the statutory time limits; and
- (f) To keep us informed about significant changes in your firm's circumstances if they are likely to affect the tax position.

#### **5. Other Services and General Tax Advice**

*[Insert paragraphs from Annex E as appropriate.]*

5.1 We will be pleased to assist the partnership generally in tax matters [including VAT] if you advise us in good time of any proposed transactions and request advice. We would, however, warn you that because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.2 It is our policy to confirm in writing advice upon which you may wish to rely.

5.3 We will be pleased also to advise the partners on their personal tax affairs. In such cases we will need to agree separate terms with the individuals concerned.

## **6. Excluded Services**

*[Adapt as appropriate. See also paragraph 5 above]*

6.1 You will continue to deal with other matters required by law, such as:

- a. Pay As You Earn including yearend returns and matters relating to your employees;
- b. Direct assessment Forms;
- c. Obligations under (the relevant Tax authority law);
- d. Returns for sub-contractors; and
- e. VAT returns.

7.2 You will deal with claims and any related appeals in respect of personal allowances and reliefs.

7.3 We will be pleased to advise on any of these tax matters if so requested.

## ***TERMS***

### **8. Professional Rules and Practice Guidelines**

We will observe the bye-laws, regulations and ethical guidelines of The Chartered Institute of Taxation of Nigeria and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us authority to correct Tax authority errors. A copy of these guidelines is available for your inspection in our offices.

### **9. Client Monies**

We may, from time to time, hold money on behalf of the partnership. Such money will be held in trust in a client bank account, which is segregated from the firm's funds.

## **10. Retention of Records**

10.1 [During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you following preparation of your return. You should retain them for 6 years from 1st January following the end of the tax year. This period may be extended if the Tax authority enquire into the partnership's tax return.] *[CTPs who retain records on behalf of clients will need to amend this paragraph]*

10.2 Whilst certain documents may legally belong to the partnership, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.

## **11. Regulatory Requirements**

We reserve the right to disclose our files to regulatory bodies in the exercise of their powers. *[Adapt as necessary and for firms who voluntarily undergo external peer review].*

## **12. Quality of Service**

12.1 We aim to provide a high quality of service at all times. If you would like to discuss with us how our service could be improved or if you are dissatisfied with the service that you are receiving please let us know by contacting *[insert name]*.

12.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with The Chartered Institute of Taxation of Nigeria.

## **13. Fees**

*[This is an example: if fees are calculated on any other basis, for example a fixed amount or contingency fee, then different wording should be substituted.]*

13.1 Our charges are computed on the basis of fees for the time spent on the partnership's affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. [If work is required which is outside the scope of this letter, for example dealing with Tax authority enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable.] We will issue invoices at

[monthly/quarterly/six-monthly] intervals during the course of the year. We will add value added tax, if applicable, at the current rate.

13.2 Our invoices are payable on presentation. We reserve the right to charge interest at [...] % per [month/year] [over base rate] in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a way which is unfair or unreasonable.

#### **14. Limitation of Liability**

14.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

14.2 We will provide the professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or from the failure by you or others to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

14.3 E-mail may be used to enable us to communicate with you. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.

#### **15. Electronic Communication**

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after its despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

#### **16. Applicable Law**

This engagement letter is governed by, and construed in accordance with, [English] [*amend as appropriate*] law. The Courts of [Nigeria] will have exclusive jurisdiction in relation to any

claim, dispute or difference concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

### **17. Contracts (Rights of Third Parties)**

A person who is not party to this agreement shall have no right under the Contracts to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to any related law.

### **18. Agreement of Terms**

18.1 This letter supersedes any previous engagement letter for the period covered. Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

18.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

18.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

As representative partner I acknowledge receipt of your above letter dated *[complete]* which fully records the agreement between you and the partnership relating to your appointment to carry out the work described in it.

Signed

Date

## **ANNEX D**

### **EXAMPLE OF A CONSULTANCY ENGAGEMENT LETTER (INCLUDING A TAX INVESTIGATION)**

*This letter may be adapted to meet specific circumstances. Where this is a separate engagement for an existing client reference can be made to the original engagement letter in relation to the terms.*

Dear *[complete]*

#### **CONSULTANCY ENGAGEMENT LETTER**

### **TERMS OF ENGAGEMENT**

#### **1. Introduction**

This letter sets out the basis on which we are to act for you in relation to *[complete]*.

#### ***SCOPE***

#### **2. Our Service to You**

*[Either]*

[We will prepare a report on the matters in relation to which you have instructed us.]

*[or]*

[We will carry out such work as we consider necessary in order to put ourselves in a position to provide a full and accurate response to the matters under enquiry.] [We will conduct a detailed investigation of your tax affairs so that we are in a position to prepare a report for the Tax authority setting out your financial affairs. This will include the preparation of capital statements and the reconciliation of your assets and liabilities.]

#### **3. Your Responsibilities: Provision of Information by You**

*[Either]*

3.1 [You agree to give us access to full information about your tax affairs and the matters on which you have asked us to advise you.]

*[or]*

3.1 [To enable us to carry out our work you agree to provide us with full and accurate information regarding the matters under [enquiry]/[investigation]. In particular you agree that our work is to be carried out on the basis of full disclosure of relevant matters.]

3.2 You agree that we can approach third parties as may be appropriate for information that we consider necessary to deal with your tax affairs and the matters on which you have asked us to advise you.

## ***TERMS***

### **4. Professional Rules and Practice Guidelines**

We will observe the Charter, regulations and ethical guidelines of The Chartered Institute of Taxation of Nigeria and accept instructions to act for you on the basis that we will act in accordance with those guidelines. A copy of these guidelines is available for your inspection in our office (s).

### **5. Client Monies**

*We may, from time to time, hold money on your behalf. Such money will be held in trust in a client bank account, which is segregated from the firm's funds.*

### **6. Retention of Records**

6.1 [During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you at the conclusion of the [engagement]/[enquiry]. You should retain them [for [6.] years from 1<sup>st</sup> of January following the end of the tax year][for [...] years from the end of the relevant accounting period][at least until the Tax authority issue a closure notice]. [This period may be extended if the Tax authority enquire into your tax return.] *[CTPs who retain records on behalf of clients will need to amend this paragraph.]*

6.2 *Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. You must tell us if you require retention of a particular document.*

## **7. Regulatory Requirements**

We reserve the right to disclose our files to regulatory bodies in the exercise of their powers.  
*[Adapt as necessary and for firms who voluntarily undergo external peer review.]*

## **8. Quality of Service**

8.1 We aim to provide a high quality of service at all times. If you would like to discuss with us how our service could be improved or if you are dissatisfied with the service you are receiving please let us know by contacting *[insert name]*.

8.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may take up the matter with The Chartered Institute of Taxation of Nigeria /The Association of Taxation Technicians.

## **9. Fees**

*[This is an example: if excise or contingency fees are calculated on any other basis, for example a fixed amount, then different wording should be substituted.]*

9.1 Our charges are computed on the basis of time spent on your tax affairs (which depends on the levels of skill and responsibility involved) and disbursements incurred in connection with the engagement. *[If work is required which is outside the scope of this letter, for example dealing with Tax authority enquiries into the tax return, then this will be a separate engagement for which additional fees will be chargeable.]* We will issue invoices at *[monthly/quarterly/six-monthly]* intervals during the course of the year. We will add value added tax, if applicable, at the current rate.

9.2 Our invoices are payable on presentation. We reserve the right to charge interest at *[...]*% per *[month/year]* *[over base rate]* in the case of overdue accounts. We may terminate our engagement and cease acting if payment of any fees billed is unduly delayed. However, it is not our intention to use these arrangements in a manner which is unfair or unreasonable.

## **10. Limitation of Liability**

11.1 The advice which we give to you is for your sole use and does not constitute advice to any third party to whom you may communicate it.

10.2 We will provide the professional services outlined in this letter with reasonable care and skill. However, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect or incomplete information, or from the failure by you or others to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or the tax authorities.

10.3 E-mail may be used to enable us to communicate with you. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.

## **11. Electronic Communication**

As internet communications are capable of data corruption we do not accept any responsibility for changes made to such communications after their despatch. For this reason it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially-sensitive information relating to your business are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

## **12. Applicable Law**

This engagement letter is governed by, and construed in accordance with, [Nigeria] *[amend as appropriate]* law. The Nigerian Courts will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

### **13. Contracts (Rights of Third Parties)**

A person who is not party to this agreement shall have no right under the Contracts to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to any related law.

### **14. Agreement of Terms**

14.1 [This letter supersedes any previous engagement letter for the services and period covered.] Once agreed, this letter will remain effective from the date of signature until it is replaced. You or we may vary or terminate our authority to act on your behalf at any time without penalty. Notice of variation or termination must be given in writing.

14.2 We should be grateful if you would confirm your agreement to the terms of this letter by signing and returning the enclosed copy.

14.3 If this letter is not in accordance with your understanding of the scope of our engagement, please let us know.

Yours etc.,

[I/we] acknowledge receipt of your above letter dated *[complete]* which fully records the agreement between us relating to your appointment to carry out the work described in it.

Signed Date

Name or for and on behalf of [Company/Partnership]

# **APPENDIX 6**

## **REPRESENTATION BEFORE TAX APPEAL TRIBUNALS AND COMMISSIONERS**

## **REPRESENTATION BEFORE THE TAX APPEAL TRIBUNAL AND TAX APPEAL COMMISSIONERS**

1.1 This Section deals with representation of clients before the Tax Appeal Tribunal, the Tax Appeal Commissioners and other Tribunal or body that may be established for tax adjudication in Nigeria (Hereinafter referred to as “the Appeal Tribunals”).

1.2 Right to representation before the Tax Appeal Tribunal and Body of Appeal Commissioners.

- (a) The taxpayer may appear in person.
- (b) A company may (subject to (c) below) be represented by its proper officer (who is the secretary or person acting as secretary unless a liquidator has been appointed when he is the proper officer) or except where a liquidator has been appointed through any person who has the express, implied or apparent authority so to act
- (c) A taxpayer may be represented by any person who is lawfully qualified.

1.3 Before a member undertakes to represent a client before an appeal tribunal the member should be satisfied that he is familiar with the following:

- (a) The way in which appeals have to be initiated;
- (b) The way in which hearings are conducted;
- (c) The order of proceedings;
- (d) The formalities which must be observed;
- (e) The procedure for expressing dissatisfaction with the tribunal’s decision;
- (f) Other alternatives that may be available, including review, and the strict time limits that may apply to those alternatives;
- (g) A good working knowledge of evidence, and who is competent to give that evidence;
- (h) The circumstances in which a tribunal may impose a penalty under any relevant statute;
- (i) The distinction between an appeal and a review;
- (j) The circumstances in which ex parte applications may be made.

1.4. Where it appears likely that there will be an appeal, by either side, to the High Court or Tax Tribunal, a member should consider carefully whether a counsel or a solicitor with a High Court advocacy should be briefed, even for the hearing before the Tax Appeal Tribunal as contained in FIRS Establishment Act.

1.5 Similarly, briefing counsel or a solicitor with an appropriate advocacy experience (High Court or criminal) should also be considered where tax evasion may be involved.

1.6 The Tax Appeal Tribunal is the final arbiters on questions of fact. Thus, the importance of ensuring that all facts are well presented cannot be over-emphasised, no matter how self-evident or trivial those facts may, at first sight, appear to be. In some cases it may be desirable to provide the Commissioners or Tax Appeal Tribunals with an agreed statement of facts, which has been settled with the relevant Revenue. That agreed statement should contain as much detail as possible; it is an opportunity for the taxpayer to take the initiative in the way in which relevant facts are presented. However, it should be recognised that the Commissioners, or Tribunal members, may ask supplementary questions.

1.7 The decision on whether to make an appeal should be made by the client, albeit the member will probably have to make a recommendation. In considering what to recommend, the member will have to consider a number of factors, including:

- (a) The costs to the taxpayer, both in terms of time and money;
- (b) The amount of tax at stake;
- (c) The strength of the client's case; and
- (d) Publicity and the consequences thereof for the client and/or his business.

1.8 In principle, the onus of proof generally rests with the taxpayer i.e. subject to the Commissioners' powers to increase an assessment. An assessment will stand unless the taxpayer satisfies a majority of the Commissioners that he has been overcharged by the assessment.

1.9 It will normally be advisable for the appellant or his representative to attend every meeting at which an appeal is listed for hearing.

1.10 If an assessment is confirmed by the Commissioners, there are limited procedures available whereby the matter may be reopened. Members should recognise that a taxpayer might have grounds for a claim in negligence against an adviser who had performed below a standard expected of an averagely competent CTP.

1.11 Members are advised to operate an adequate system for ensuring that all notices from tribunals are logged, for noting the date of hearing of each appeal and of each adjournment, and for ensuring that the client is represented at every appeal hearing unless there is a written confirmation that attendance at the hearing will not be required.

1.12 A member should understand how appeals may be settled by agreement and the effect thereof.

1.13 A member should be familiar with the various provisions governing procedures before the Tribunal, in particular:

- (a) The procedures for listing appeals and the notification thereof
- (b) The need, where appropriate, to arrange for witness summonses
- (c) Pre-hearing direction mechanisms and their uses.
- (d) The legal effects of agreed documents
- (e) The mechanism whereby two or more proceedings before the Tribunal may be heard together or consecutively.
- (f) The rules with regard to the joinder of additional parties and where appropriate transfer to the most appropriate zone/division of the Tribunal.
- (g) The procedures with regard to preliminary hearings
- (h) The power of the Tribunal to obtain information and the penalties for failure to comply.
- (i) How to obtain adjournments.
- (j) The requirements with regard to the submission of expert evidence.
- (k) The composition of the Tribunal at the initial and any adjourned hearings.
- (l) Whether the proceedings are public or private, and if the former how in appropriate cases to change to the latter, together with those entitled to be present.
- (m) The mechanisms of giving evidence.
- (n) The competence of parties and witnesses to give evidence.

- (o) The mechanisms for the giving of the Tribunal's decision and how such decisions may be reviewed.
- (p) Whether and in what circumstances costs may be awarded against a party to the proceedings before the Tribunal and why costs are awarded and the procedure for payment of cost.
- (q) The case stated or similar procedure to the relevant court where applicable.
- (s) The appeal mechanism from decisions of the Appeal Tribunal.
- (t) Penalties for failure to comply with the directions of the Appeal Tribunal.
- (u) The effect which irregularities have on the Appeal Tribunal function.
- (v) How notices are to be given and served, including substituted service; and
- (w) The need to ensure that clients are aware that the Appeal Tribunal have the power to publish reports of their decisions and how to take steps to ensure anonymity in appropriate circumstances.

1.14 Members should understand how appeals may be instituted in appropriate cases and the time limits involved.

# **APPENDIX 7**

## **THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA ADVOCATES: GUIDANCE NOTES AND ETHICAL PRINCIPLES**

## **CITN ADVOCATES: GUIDANCE NOTES AND ETHICAL PRINCIPLES**

### **1. Introduction**

From time to time a member may represent a client in an Appeal heard by a Tax Tribunals. Tax Tribunals mean Body of Appeal Commissioners. In this Appendix the expression ‘CITN advocate’ is used to refer to a member acting in that capacity. The Appendix gives guidance and prescribes ethical standards which a CITN advocate should observe. ‘The tribunal’ means Tax Appeal Tribunal, the Tax Appeal Commissioners and other Tribunal or body that may be established for tax adjudication in Nigeria.

### **2. General Principles**

2.1 A CITN advocate has fundamental duties and responsibilities towards (i) the tribunal (ii) his client and (iii) the Institute.

2.2 A CITN advocate has a high and overriding ethical duty to the tribunal to ensure in the public interest that the proper and efficient administration of the law is promoted. He must assist the tribunal in the administration of the law and must not make false representation or knowingly or recklessly mislead the tribunal. In representing his client he should maintain the highest standards of professional integrity at all times.

2.3 A CITN advocate has a duty to his client to promote and protect his client’s best interests by all proper and lawful means, without fear or favour and without regard to his own interests or to any consequences for himself or any other person.

2.4 A CITN advocate must not engage in conduct which is dishonest or discreditable or which might bring into disrepute the taxation profession. He must not compromise his professional standards in order to please his client or a third party.

2.5 A CITN advocate is expected to exercise discretion and judgement with a view to complying with the foregoing fundamental duties and responsibilities. He should at all times keep in mind that his overriding duty and responsibility to the tribunal, as stated in 2.2 above.

### **3. Matters to be considered before accepting an instruction**

3.1 A CITN advocate should not accept instructions to represent a client upon an appeal if:

- (a) He lacks sufficient experience or competence to represent the client adequately;
- (b) Having regard to his other commitments he will not have adequate time and opportunity to prepare for the appeal and to present his client's case in a satisfactory manner;
- (c) The matter is one in which there is a risk of a disclosure of confidential information learned by him from or in connection with another client or where the knowledge which he possesses of the affairs of another client would give an undue advantage to the client who currently wishes to instruct him.

3.2 If a CITN advocate considers that for him to accept instructions to represent a client on an appeal will or may give rise to a conflict of interest of some description he should consider the guidance in 5 below before deciding whether or not to proceed in the case.

#### *3.3 Contact with witnesses*

3.3.1 If the appeal will involve the giving of evidence by the client or by other witnesses called on his behalf it is acceptable and desirable for the CITN advocate or a professional colleague to meet the witnesses before the hearing. Guidance as to such meetings is given in 3.3.3 to 3.3.5 below.

3.3.2 Nevertheless a CITN advocate or a professional colleague must not outside the tribunal:

- (a) Place a witness under any pressure to provide an truthful account of his evidence;
- (b) Rehearse, practise or coach a witness in relation to his evidence.

3.3.3 Subject to the principles stated in 3.3.2 the purpose of prior meetings with witnesses is:-

- (i) For the CITN advocate to be informed of the evidence which the witnesses can give and
- (ii) To assist in securing that the witnesses will give their evidence efficiently, clearly, economically and relevantly.

3.3.4 It is good practice in any case where a witness's evidence is of any substance for the advocate or his colleague, having discussed the matter with the witness and listened to his account, to prepare in draft a statement of the evidence. The witness is then requested to read the draft statement, to amend it to the extent that he considers appropriate, and then to sign it as his evidence.

3.3.5 The responsibility resting on the CITN advocate to ensure that the statement is drafted conscientiously is all the greater.

#### 3.4 *The CITN advocate as a witness*

If a CITN advocate is instructed to act as an advocate in an appeal in which he will or may also give evidence (including evidence relating to the client's accounts) he should consider the guidance in 6 before deciding whether to accept the instructions.

### **4. At the Appeal Hearing**

4.1 A CITN advocate when conducting an appeal before a tribunal:

- (a) Must be courteous at all times;
- (b) Is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked;
- (c) Should present his case in the form of submissions and should not (unless invited to do so by the tribunal) assert a personal opinion of the facts or the law;

- (d) (subject to the guidance in 4.2) must ensure that the tribunal is informed of all relevant decisions and legislative provisions of which he is aware even if the effect is unfavourable to the client's case;
- (e) Must not devise facts which will assist in advancing the client's case;
- (f) Must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy a witness or some other person;
- (g) Must not, in the case of a witness for the other party whom he has had the opportunity to cross-examine, impugn the witness's evidence (for example by inviting the tribunal to reject the evidence as false) unless in cross-examination he has given the witness the opportunity to answer the allegation.

4.2 With reference to 4.1(d) the duty to ensure that relevant decisions and legislative provisions are drawn to the attention of the tribunal should be exercised with judgement and professionally-informed restraint. A CITN advocate is not required to refer to decisions or provisions which are in his opinion, if relevant at all, only marginally so. He is entitled to take into account (if, as will be usual, it is the case) that the other party is the would be unlikely to have overlooked a relevant decision or provision, particularly if it supported its case. Nevertheless, if it appears to the CITN advocate that the other party's advocate has overlooked a point which is plainly relevant, it would be wrong for the CITN advocate to do nothing about it. It is always possible, and in many cases would be sensible, for him to mention the point to the advocate for the other party and hear his views upon it, before finally deciding whether his own duty impels him to draw it to the attention of the tribunal.

## **5. Conflicts of Interest**

5.1 It is not realistic to formulate precise rules by reference to which a CITN advocate must determine whether a conflict of interest precludes him from representing a client on an appeal. When a CITN advocate considers that a conflict might arise he should consider the following observations, which are deliberately and inevitably expressed in general terms.

5.2 Cases sometimes arise in which two or more taxpayers have been parties to a particular transaction or arrangement, where the tax treatment is controversial, and where the treatment

which is favourable to one party (A) is unfavourable to another party (B). If a CITN advocate is requested to represent A on an appeal, but the advocate or his firm also acts for B, there is a clear conflict and the advocate should decline to represent either A or B.

5.3 Cases arise where a CITN advocate or his firm has two clients who are both affected by a point of law. It is essentially the same point but arises in the context of two completely separate transactions. Client C contends for interpretation X to be applied to his transaction. Client D contends for interpretation Y to be applied to his transaction. If the CITN advocate is instructed to represent client C on an appeal he will know that, if his (the advocate's) submissions in support of interpretation X are successful, the result, though beneficial to client C, will be detrimental to client D. This is not the form of conflict which requires the CITN advocate to decline to accept instructions from client C. He may choose not to accept the instructions, but that is a matter of choice, not of professional obligation.

5.4 Between the situations described in 5.2 and 5.3 there is a spectrum of cases within which the CITN advocate should exercise his professional skill and judgement in determining:

(i) Whether there is a conflict of any description and if so (ii) whether it is one which precludes him from representing a client on an appeal, or (iii) it is one which, while not precluding him from representing the client, nevertheless leads him to conclude that he will choose not to represent the client.

5.5 If a CITN advocate perceives the possibility of a conflict it is possible for him (within the limits of preserving client confidentiality) to discuss the matter with both clients. Client A who could be adversely affected by the possible conflict might, after full disclosure by the advocate, be prepared to confirm that he has no objection to the advocate representing the other client, client B. This does not mean that client A has a right of veto over the CITN advocate representing client B. The advocate could decide to go ahead and represent client B even if client A says that he would prefer the advocate not to. But any professional anxieties which the advocate may feel over accepting client B's instructions would be dispelled if client A states that he has no objection.

5.6 If a CITN advocate feels unable to resolve a difficulty he may seek guidance from the Tax Practice Monitoring Committee of the Institute. Full particulars should be supplied to the Registrar/Chief Executive, who will arrange for the matter to be referred to the Chairman of the Committee.

## **6. The CITN Advocate as a Witness**

The contents of 6 are referred to in 3.4 in connection with whether a CITN advocate should accept instructions to act as advocate in an appeal in which he may also be a witness. Advice which the CITN advocate should take into account in deciding whether or not to accept the instructions is given in 6.1 and 6.2. Sub-paragraph 6.3 below gives guidance which he is expected to observe if he does accept the instructions and acts as both advocate and witness in the same appeal.

In litigation generally it is better for the same person not to be both the advocate and a witness. The CITN recommends that in any appeal where the member expects to be a witness and is also requested by the client to act as advocate, he should consider the position carefully before deciding whether to agree to the request.

Hearings in which the same person is both advocate and a witness can progress untidily, and procedural difficulties arise from confusions between the two capacities.

6.2 However, the CITN recognises that, principally on grounds of minimising expense to the client and endeavouring to shorten hearings, there will continue to be cases in which a CITN member will consider it right to act as advocate even though he expects that some of the things that he will say will be in the nature of evidence. This may particularly be so where the member expects that his evidence will be short and wholly or largely uncontroversial. These guidelines lay down no rules on this matter, but leave it to the professional judgement of the member.

6.3 Where a CITN advocate also gives evidence he should assist the tribunal and the advocate for the other party in the following:

- (a) He should explain to the tribunal the two capacities in which he is acting;

- (b) He should keep them distinct in his own mind and seek to ensure that at all times it is clear to the tribunal and to the advocate for the other party whether what he is currently saying is argument of an advocate or evidence of a witness;
- (c) He should endeavour to give all his evidence consecutively and in one piece, and should avoid delivering to the tribunal an address in which argument and evidence are lumped together;

# APPENDIX 8

## CITN'S TAX CERTIFICATION REPORT FOR TAX RETURNS

### CITN'S COUNCIL APPROVED TAX CERTIFICATION REPORT - SPECIMEN

The Firm's Logo & The Firm's Letter Headed Paper (bearing CTPs)

TAX	CERTIFICATION	REPORT
XYZ NIGERIA LTD – 2008	TIN 0001111, ASSESSMENT	FILE # MC/0123456 YEAR

We have prepared this report and reviewed the tax and capital allowances computations of XYZ Company Ltd set out on pages --- to -----.

This report, capital allowances and tax computations were prepared based on the documents and information provided by our client which to the best of our knowledge are believed to be true and correct.

#### CERTIFICATION

The Capital allowances and Tax Computations are in accordance with the existing tax laws of the Federal Republic of Nigeria and the Statements of Taxation Standards issued by the Chartered Institute of Taxation of Nigeria.

SGD

AKP & Co CITN SEAL CITN STAMP

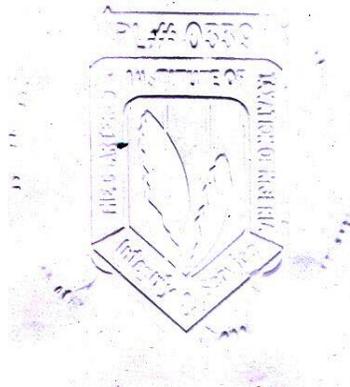
Chartered Tax Practitioner

Abuja, Nigeria

31st October, 20....

# APPENDIX 9

## SPECIMEN OF CITN LICENCE AND SEAL



**SEAL**



**STAMP**<sub>138</sub>

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**The Chartered Institute of Taxation  
of Nigeria**

**Tel: (234) 01-774-1273, 893-6023**

**E-mail: [citn@citn.org](mailto:citn@citn.org)**

**Website: [www.citn.org](http://www.citn.org)**