THE STANDARDS FOR TAX PLANNING

2.28 In order to protect the reputation of members, the wider profession and ensure that public interest concerns are met, the PCRT bodies have developed further Standards that members must observe when advising on UK tax planning. These seek to build on the Fundamental Principles set out above, focussing in particular on integrity, professional competence and behaviour. The Standards are a supplement to, and not a substitute for, the five Fundamental Principles. These Standards have been developed in the specific context of the UK including the role of Parliament in making tax law, of HMRC in administering it and the courts in enforcing it and the roles of their devolved equivalents.

2.29 The Standards are set out below.

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

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

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

- **Tax planning arrangements**
  Members must not create, encourage or promote tax planning arrangements or structures that i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.

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

2.30 Further guidance on these Standards is discussed in more detail below.

**Client Specific**

2.31 The risks referred to in this standard are those which are directly attributable to the planning and could be reasonably foreseeable by the member. There would not normally be a duty to comment on, for example, the commercial risk of the underlying transaction. The obligations of the member to the client continue to be governed by the engagement letter.
2.32 Where wider risks should be highlighted, the member may either advise on them, or identify them as matters on which separate advice should be sought by the client, depending on the scope of the member’s practice and of the engagement.

2.33 Generic opinions or advice that does not take into account the position of specific taxpayers (or a narrowly defined group of taxpayers such as a group of employees of the same company) pose particular risks. Members are entitled to make reasonable assumptions in giving advice (for example, where it would be reasonable on the facts to assume that the taxpayer(s) is/are UK resident), but assumptions should not be relied upon which are known to be unrealistic or unreasonable. If advice is generic, and/or depends on certain assumptions, this fact and the need for specific advice to be taken before acting should be highlighted with sufficient prominence to prevent any misunderstandings arising. Members should consider including in their advice the potential impact of a change in the assumptions made and/or the circumstances which might require specific or updated advice to be obtained.

Lawful

2.34 The requirement to advise clients on material uncertainty in the law (including where HMRC take a different view) applies even if the practical likelihood of HMRC intervention is considered low. Clients should be told what would be reasonable, at the time of the transaction, to expect HMRC to believe the application of the law to be (assuming HMRC was fully appraised of all the facts of the transaction). Where the likely view of HMRC is uncertain or not known, the member should include this fact as part of their advice.

2.35 The fact that the member may disagree with HMRC on a matter is not of itself indicative of behaviour that might breach these standards. A member may reasonably believe that an HMRC view is wrong in law but, if so, the client should be alerted to the fact that HMRC holds a different view of the law and should be advised of the risks and likely costs that might be incurred in order to determine any dispute.

Disclosure and transparency

2.36 Disclosure should be made whenever required by law and fuller disclosure must be recommended to clients wherever it is appropriate given a wider relationship or dialogue with HMRC relevant to that client. What is actually to be disclosed will inevitably reflect a professional judgement taking into account all relevant facts and law specific to the case in question and what the client consents should be disclosed.

Tax planning arrangements

2.37 Where a member has a genuine and reasonable uncertainty as to whether particular planning is in breach of this Standard, the member should;
(a) document the detailed reasoning and evidence sufficiently to be able to demonstrate why they took the view that any planning was not in breach of this Standard;
(b) include in their client advice an assessment of uncertainties and risks involved in the planning see Standard Lawful above; and
(c) include in their client advice an assessment of the relevant disclosures that should be made to HMRC in order to enable it, should it wish to do so, to make any reasonable enquiries – see Standard Disclosure and transparency above.

Professional judgement and appropriate documentation

1 For some suitably qualified members, this might, for example, include the preparation of standard wording for inclusion in contracts, Wills or other documents.
2.38 Members are not required to complete paperwork for its own sake, but they should be prepared to identify, support and where appropriate defend the judgements they made in applying these requirements to their work.

2.39 Where the judgements made are reasonable, notes taken on a timely basis are likely to be the most convincing way of demonstrating compliance with the principles after the event, to the benefit of the member and the client and to satisfy any wider public concerns.