

PERSONAL TAX

STUDY TEXT

Qualifications and Credit Framework

AQ2016

Finance Act 2019

For assessments from 1 January to 31 December 2020

This Study Text supports study for the following AAT qualifications:

AAT Professional Diploma in Accounting – Level 4

AAT Level 4 Diploma in Business Skills

AAT Professional Diploma in Accounting at SCQF Level 8

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INTRODUCTION

HOW TO USE THESE MATERIALS

These Kaplan Publishing learning materials have been carefully designed to make your learning experience as easy as possible and to give you the best chance of success in your AAT assessments.

They contain a number of features to help you in the study process.

The sections on the Unit Guide, the Assessment and Study Skills should be read before you commence your studies.

They are designed to familiarise you with the nature and content of the assessment and to give you tips on how best to approach your studies.

STUDY TEXT

This study text has been specially prepared for the revised AAT AQ2016 qualification.

It is written in a practical and interactive style:

- key terms and concepts are clearly defined
- all topics are illustrated with practical examples with clearly worked solutions based on sample tasks provided by the AAT in the new assessment style
- frequent activities throughout the chapters ensure that what you have learnt is regularly reinforced
- 'pitfalls' and 'examination tips' help you avoid commonly made mistakes and help you focus on what is required to perform well in your assessment
- 'test your understanding' activities are included within each chapter to apply your learning and develop your understanding.

ICONS

The study chapters include the following icons throughout.

They are designed to assist you in your studies by identifying key definitions and the points at which you can test yourself on the knowledge gained.



Definition

These sections explain important areas of knowledge which must be understood and reproduced in an assessment.



Example

The illustrative examples can be used to help develop an understanding of topics before attempting the activity exercises.



Test your understanding

These are exercises which give the opportunity to assess your understanding of all the assessment areas.



Reference material/tax tables

These boxes will direct you to the AAT reference material or tax tables that you can access during your real assessment. A copy of the reference material is included as an Appendix at the end of Chapter 1 and the tax tables are at the end of this section.



Links to other syllabus areas

These refer to areas of interaction with other parts of your syllabus, either in other AAT units which you have studied, or may go on to study, or even further professional qualifications that you may decide to pursue on completion of AAT.

Quality and accuracy are of the utmost importance to us so if you spot an error in any of our products, please send an email to mykaplanreporting@kaplan.com with full details, or follow the link to the feedback form in MyKaplan.

Our Quality Coordinator will work with our technical team to verify the error and take action to ensure it is corrected in future editions.

Progression

There are two elements of progression that we can measure: first how quickly students move through individual topics within a subject; and second how quickly they move from one course to the next. We know that there is an optimum for both, but it can vary from subject to subject and from student to student. However, using data and our experience of student performance over many years, we can make some generalisations.

A fixed period of study set out at the start of a course with key milestones is important. This can be within a subject, for example 'I will finish this topic by 30 June', or for overall achievement, such as 'I want to be qualified by the end of next year'.

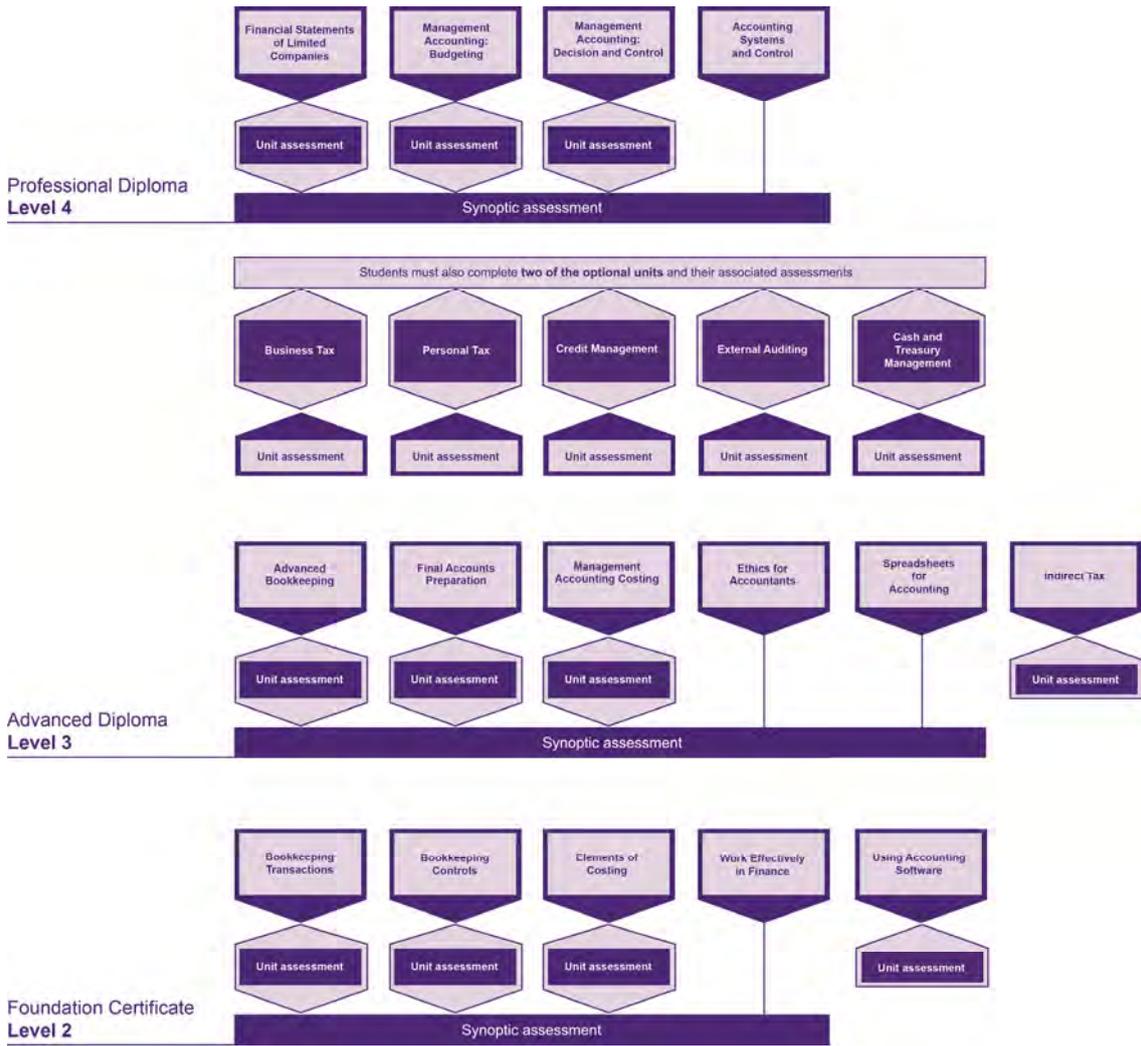
Your qualification is cumulative, as earlier papers provide a foundation for your subsequent studies, so do not allow there to be too big a gap between one subject and another.

We know that exams encourage techniques that lead to some degree of short term retention, the result being that you will simply forget much of what you have already learned unless it is refreshed (look up Ebbinghaus Forgetting Curve for more details on this). This makes it more difficult as you move from one subject to another: not only will you have to learn the new subject, you will also have to relearn all the underpinning knowledge as well. This is very inefficient and slows down your overall progression which makes it more likely you may not succeed at all.

In addition, delaying your studies slows your path to qualification which can have negative impacts on your career, postponing the opportunity to apply for higher level positions and therefore higher pay.

You can use the following diagram showing the whole structure of your qualification to help you keep track of your progress.

PERSONAL TAX



UNIT GUIDE

Purpose of the unit

This unit is about the key aspects of taxation that affect UK taxpayers. Income tax, National Insurance (NI), capital gains tax and inheritance tax are covered within this unit.

This unit provides learners with the underpinning theory on taxation, such as what makes for a fair and equitable taxation system. Learners then explore three core areas of income that contribute to a taxpayer's income tax liability: employment income, income from investments and income from property. Deductions and reliefs that apply to this income are then covered, so that learners can compute the net income tax payable, or reclaimable, for a UK taxpayer.

NI as applicable to employment income is covered, together with the key principles that are part of capital gains tax and inheritance tax.

Learners are also expected to demonstrate their knowledge and understanding of how, legally, UK taxpayers can minimise their tax liability. For example, investing in an individual savings account (ISA) will mean that interest will be exempt from tax, whereas an investment in a building society will usually give rise to a tax implication. The ethical issues that surround this complex area will also be considered.

Taking all areas together, learners will gain the knowledge and understanding on all key areas of UK tax that can affect an individual UK taxpayer.

Learning outcomes

This unit will enable the learners to:

- 1 Analyse the theories, principles and rules that underpin taxation systems
- 2 Calculate a UK taxpayer's total income
- 3 Calculate income tax and National Insurance (NI) contributions payable by a UK taxpayer
- 4 Account for capital gains tax
- 5 Discuss the basics of inheritance tax

Scope of content

The unit consists of five learning outcomes, which are further broken down into assessment criteria. These are set out in the following table with reference to the relevant chapter within the text.

In any one assessment, learners may not be assessed on all content, or on the full depth or breadth of a piece of content. The content assessed may change over time to ensure the validity of assessment, but all assessment criteria will be tested over time.

		Chapter
1	Analyse the theories, principles and rules that underpin taxation systems	
1.1	Evaluate the objectives and functions of taxation	
	Students need to know:	
	<ul style="list-style-type: none"> • the principles underpinning tax systems 1 • the features of tax systems, including tax bases and structures 1 • how to compare progressive, regressive and proportional tax criteria used in evaluating a tax system. 1 	
1.2	Differentiate between tax planning, tax avoidance and tax evasion	
	Students need to know:	
	<ul style="list-style-type: none"> • definitions of tax planning, tax avoidance and tax evasion 1 • ethical implications of avoidance and evasion 1 • requirements to report suspected tax evasion under current legislation. 1 	
1.3	Discuss the roles and responsibilities of a taxation practitioner	
	Students need to know:	
	<ul style="list-style-type: none"> • AAT's expectations of its members, as set out in the <i>AAT Code of Professional Ethics</i> 1 • principles of confidentiality, as applied in taxation situations 1 • how to deal with clients and third parties. 1 	

Delivering this unit

This unit has the following links across the AAT Professional Diploma in Accounting.

Unit name	Content links	Suggested order of delivery
Business Tax	<p>This unit is an optional unit at Professional level, so it does not need to be taken after another unit has been studied. The Professional level unit, Business Tax, is associated with this unit, although these units can be taken separately.</p> <p>Knowledge developed in either of these units will be useful in the later study of the other unit.</p>	N/A

THE ASSESSMENT

Test specification for this unit assessment

Assessment type	Marking type	Duration of exam
Computer based unit assessment	Partially computer/ partially human marked	2 hours 30 minutes

The assessment for this unit consists of 13 compulsory, independent, tasks.
The competency level for AAT assessment is 70%.

Learning outcomes	Weighting
1 Analyse the theories, principles and rules that underpin taxation systems	10%
2 Calculate a UK taxpayer's total income	28%
3 Calculate income tax and National Insurance (NI) contributions payable by a UK taxpayer	23%
4 Account for capital gains tax	27%
5 Discuss the basics of inheritance tax	12%
Total	100%

Sample assessment

The sample assessment has 13 tasks.

An analysis of the AAT sample assessment is set out below.

Task	Learning outcome	Topic
1	1.2, 1.3	Professional conduct in relation to taxation
2	2.1	Employment income benefits – provision of cars
3	2.1	Employment income benefits – other benefits
4	2.2	Investment income
5	2.3	Income from property
6	3.1, 3.2, 3.3	Calculation of income tax liability
7	3.4	National insurance contributions
8	3.5	Minimising tax
9	4.1, 4.2	Knowledge of capital gains tax
10	4.3	Chargeable gain on a disposal of shares
11	4.4	Calculation of capital gains tax
12	5.1	Knowledge of inheritance tax
13	5.2	Calculation of inheritance tax

STUDY SKILLS

Preparing to study

Devise a study plan

Determine which times of the week you will study.

Split these times into sessions of at least one hour for study of new material. Any shorter periods could be used for revision or practice.

Put the times you plan to study onto a study plan for the weeks from now until the assessment and set yourself targets for each period of study – in your sessions make sure you cover the whole course, activities and the associated test your understanding activities.

If you are studying more than one unit at a time, try to vary your subjects as this can help to keep you interested and see subjects as part of wider knowledge.

When working through your course, compare your progress with your plan and, if necessary, re-plan your work (perhaps including extra sessions) or, if you are ahead, do some extra revision/practice questions.

Effective studying

Active reading

You are not expected to learn the text by rote, rather, you must understand what you are reading and be able to use it to pass the assessment and develop good practice.

A good technique is to use SQ3Rs – Survey, Question, Read, Recall, Review:

1 Survey the chapter

Look at the headings and read the introduction, knowledge, skills and content, so as to get an overview of what the chapter deals with.

2 Question

Whilst undertaking the survey ask yourself the questions you hope the chapter will answer for you.

3 Read

Read through the chapter thoroughly working through the activities and, at the end, making sure that you can meet the learning objectives highlighted on the first page.

4 Recall

At the end of each section and at the end of the chapter, try to recall the main ideas of the section/chapter without referring to the text. This is best done after a short break of a couple of minutes after the reading stage.

5 Review

Check that your recall notes are correct.

You may also find it helpful to re-read the chapter to try and see the topic(s) it deals with as a whole.

Note taking

Taking notes is a useful way of learning, but do not simply copy out the text.

The notes must:

- be in your own words
- be concise
- cover the key points
- be well organised
- be modified as you study further chapters in this text or in related ones.

Trying to summarise a chapter without referring to the text can be a useful way of determining which areas you know and which you don't.

Three ways of taking notes

1 Summarise the key points of a chapter

2 Make linear notes

A list of headings, subdivided with sub-headings listing the key points.

If you use linear notes, you can use different colours to highlight key points and keep topic areas together.

Use plenty of space to make your notes easy to use.

3 Try a diagrammatic form

The most common of which is a mind map.

To make a mind map, put the main heading in the centre of the paper and put a circle around it.

Draw lines radiating from this to the main sub-headings which again have circles around them.

Continue the process from the sub-headings to sub-sub-headings.

Annotating the text

You may find it useful to underline or highlight key points in your study text – but do be selective.

You may also wish to make notes in the margins.

Revision phase

Kaplan has produced material specifically designed for your final assessment preparation for this unit.

These include pocket revision notes and an exam kit that includes a bank of revision questions specifically in the style of the new syllabus.

Further guidance on how to approach the final stage of your studies is given in these materials.

Further reading

In addition to this text, you should also read the 'Accounting Technician' magazine every month to keep abreast of any guidance from the assessors.

TAX RATES AND ALLOWANCES

The following tax rates and allowances will be available for you to refer to in the assessment.

1 Tax rates and bands

Rates	Bands	Normal rates %	Dividend rates %
Basic rate	£1 – £37,500	20	7.5
Higher rate	£37,501 – £150,000	40	32.5
Additional rate	£150,001 and over	45	38.1

2 Allowances

	£
Personal allowance	12,500
Savings allowance	
Basic rate taxpayer	1,000
Higher rate taxpayer	500
Dividend allowance	2,000
Income limit for personal allowances ¹	100,000

[¹ Personal allowances are reduced by £1 for every £2 over the income limit]

3 Property allowance

Annual limit	£1,000
--------------	--------

4 Individual savings accounts

Annual limit	£20,000
--------------	---------

5 Car benefit percentage

Emission for petrol engines	%
0 g/km to 50 g/km	16
51 g/km to 75 g/km	19
76 g/km to 94 g/km	22
95 g/km or more	23 + 1% for every extra 5 g/km above 95 g/km
Diesel engines ²	Additional 4%

[² The additional 4% will not apply to diesel cars which are registered after 1 September 2017 and they meet the RDE2 standards.]

6 Car fuel benefit

Base figure	£24,100
-------------	---------

7 Approved mileage allowance payments (employees and residential landlords)

Mileage	Payment
First 10,000 miles	45p per mile
Over 10,000 miles	25p per mile
Additional passengers	5p per mile per passenger
Motorcycles	24p per mile
Bicycles	20p per mile

8 Van scale charge

Basic charge	£3,430
Private fuel charge	£655
Benefit charge for zero-emission vans	60%

9 Other benefits in kind

Expensive accommodation limit	£75,000
Health screening	One per year
Incidental overnight expenses: within the UK	£5 per night
Incidental overnight expenses: overseas	£10 per night
Job-related accommodation	£Nil
Living expenses where job-related exemption applies	Restricted to 10% of employees net earnings
Loan of assets annual charge	20%
Low-rate or interest free loans	Up to £10,000
Mobile telephones	One per employee
Non-cash gifts from someone other than the employer	£250 per tax year
Non-cash long service award	£50 per year of service
Pay while attending a full time course	£15,480 per academic year
Provision of eye tests and spectacles for VDU use	£Nil
Provision of parking spaces	£Nil
Provision of workplace childcare	£Nil
Provision of workplace sports facilities	£Nil
Removal and relocation expenses	£8,000
Staff party or event	£150 per head
Staff suggestion scheme	Up to £5,000
Subsidised meals	£Nil
Working from home	£4 per week / £18 per month

PERSONAL TAX

10 HMRC official rate

HMRC official rate 2.5%

11 National insurance contributions

	%
Class 1 employee: Below £8,632	0
Above £8,632 and below £50,000	12
£50,000 and above	2
Class 1 employer Below £8,632	0
£8,632 and above	13.8
Class 1A	13.8
Employment allowance	£3,000

12 Capital gains tax

Annual exempt amount £12,000

13 Tax rates

	%
Basic rate	10
Higher rate	20

14 Inheritance tax – tax rates

	£
Nil rate band	325,000
Additional residence nil-rate band ³	150,000
%	
Excess taxable at: Death rate	40
Lifetime rate	20

[³ Applies when a home is passed on death to direct descendants of the deceased after 6 April 2017. Any unused band is transferrable to a spouse or civil partner.]

15 Inheritance tax – taper relief

	% reduction
3 years or less	0
Over 3 years but less than 4 years	20
Over 4 years but less than 5 years	40
Over 5 years but less than 6 years	60
Over 6 years but less than 7 years	80

16 Inheritance tax – exemptions	£
Small gifts	250 per transferee per tax year
Marriage or civil partnership: From parent	5,000
Grandparent	2,500
One party to the other	2,500
Others	1,000
Annual exemption	3,000

17 Deemed domicile criteria

Deemed domicile	Criteria
Condition A	Was born in the UK and domicile of origin was in the UK Has acquired a non-UK domicile of choice Is resident in the UK and was resident in the UK in at least one of the previous two tax years
Condition B	Has been UK resident for at least 15 of the 20 years immediately before the tax year

Introduction to personal tax

1

Introduction

This chapter provides a context for the subsequent chapters in this text.

It outlines the features of a tax system and sets out the manner in which a professional tax adviser should behave when giving advice and dealing with clients.

It then introduces the four taxes covered within personal tax and concludes by setting out the rules relating to residence and domicile.

ASSESSMENT CRITERIA

Principles underpinning tax systems (1.1)

Features of tax systems, including tax bases and structures (1.1)

How to compare progressive, regressive and proportional tax criteria used in evaluating a tax system (1.1)

Definitions of tax planning, tax avoidance and tax evasion (1.2)

Ethical implications of avoidance and evasion (1.2)

Requirements to report suspected tax evasion under current legislation (1.2)

AAT expectations of its members, as set out in the AAT Code of Professional Ethics (1.3)

Principles of confidentiality, as applied in taxation situations (1.3)

How to deal with clients and third parties (1.3)

Definition of residence and domicile (1.4)

The impact each of these has on the taxation position of a UK taxpayer (1.4)

CONTENTS

- 1 Features of tax systems
- 2 Duties and responsibilities of a tax adviser
- 3 Tax planning, avoidance and evasion
- 4 Taxes within the Personal Tax assessment
- 5 Tax residence
- 6 Tax domicile
- 7 Professional conduct in relation to taxation

1 Features of tax systems

1.1 Tax system

The government needs tax revenues to finance expenditure such as the health service, retirement pensions, social benefits and government borrowing.

The government will use tax to stimulate one sector of the economy and control another. For example, allowances on capital expenditure may develop the manufacturing sector, while high taxes on tobacco and alcohol may discourage sales.

A good tax system is:

- fair (reflecting a person's ability to pay) and transparent
- absolute (certain rather than arbitrary)
- convenient (easy to pay). For example, the UK tax system uses the PAYE (pay as you earn) system to collect tax at source on salaries and wages
- efficient, with low collection costs.

1.2 Direct and indirect taxes

Direct taxes

Direct taxes are imposed directly on the person or enterprise required to pay the tax, i.e. tax on personal income such as salaries, tax on business profits or tax on disposals of chargeable assets.

The person or enterprise must pay the tax directly to the tax authorities. Income tax, capital gains tax and national insurance contributions are direct taxes.

Indirect taxes

Indirect taxes are imposed on one part of the economy with the intention that the tax burden is passed on to another. Value added tax (VAT) is an indirect tax.

VAT is imposed on the final consumer of the goods or services. The more the consumer consumes the greater the tax paid.

1.3 Tax base and tax rate structures

Taxes are classified according to their tax base (i.e. what is being taxed).

- Income or profits – e.g. income tax and corporation tax
- Assets – e.g. capital gains tax
- Consumption – e.g. VAT.

There are three types of taxes:

Progressive taxes

These take an increasing proportion of income as income rises. For example, income tax where tax is charged at 20%, then 40% and finally 45%.

Proportional taxes

These take the same proportion of income as income rises.

Regressive taxes

These take a decreasing proportion of income as income rises. For example, national insurance contributions which are charged at 12% and then at 2%.



Test your understanding 1

Tax systems

Read the following statements and state whether they are true or false.

- 1 Income tax is a direct regressive tax.
- 2 National insurance is a direct regressive tax.
- 3 VAT is an indirect tax.

2 Duties and responsibilities of a tax adviser

2.1 AAT expectations

The AAT expects its members to:

- master skills and techniques through learning and maintain them through continuing professional development
- adopt an ethical approach to work as well as to their employers and clients
- acknowledge their professional duty to society as a whole
- maintain an objective outlook
- provide professional services to the highest standards of conduct and performance
- achieve public acceptance that AAT members provide accountancy services in accordance with these high standards and requirements.

These expectations are discussed in greater depth in the 'Code of Professional Ethics' that can be found on the website (www.aat.org.uk).

A person advising either a company or an individual on taxation issues has duties and responsibilities towards both:

- his client, and
- HM Revenue and Customs (HMRC).

An adviser owes the greatest duty to his or her client.

2.2 Professional conduct in relation to taxation

Guidance on how tax advisers should conduct themselves has been published by the professional accountancy bodies in 'Professional conduct in relation to taxation' (PCRT).



Reference material

Extracts from PCRT are available for you to refer to in the assessment. These extracts are set out in the appendix to this chapter.

In the assessment you may be required to use this guidance to determine how a tax adviser should behave in a particular situation. Accordingly, you should ensure that you are very familiar with the matters covered in these extracts so that you are able to find the information you need.

2.3 Providing tax advice

When providing tax advice and preparing tax returns, a person should act in the best interests of his client.

However, he must ensure that his services are consistent with the law and are carried out competently.

At all times an adviser must not in any way impair his:

- integrity, such that he is straightforward and honest in all professional and business relationships; or
- objectivity, such that he does not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

2.4 Providing information to HMRC/other authorities

The 'Guidelines on Professional Ethics' require that a member should not be associated with any return or communication where there is reason to believe that it:

- contains a false or misleading statement
- contains statements or information furnished recklessly, or
- omits or obscures information required to be included and such omission or obscurity would mislead the tax authorities.

2.5 Confidentiality

A tax adviser has an overriding duty of confidentiality towards his client. Under normal circumstances a client's tax affairs should not be discussed with third parties. This duty remains even after the adviser no longer works for the client.

The exceptions to this rule mentioned in the Guidelines are where:

- authority has been given by the client, or
- there is a legal, regulatory or professional duty to disclose (e.g. in the case of suspected money laundering).

The duty of confidentiality also relates to dealings with HMRC.

However, the tax adviser must ensure that, whilst acting in the client's best interests, he consults with HMRC staff in an open and constructive manner (see below).

2.6 Money laundering

Money laundering is the exchange of funds acquired through crime for funds that do not appear to be linked to crime.

The AAT and its members are required to comply with the money laundering laws and regulations.

A tax adviser should check the identity of prospective clients via a review of appropriate documentation, for example, a passport.

A firm of accountants must appoint a money laundering officer.

Suspicion that a person is involved in money laundering should be reported to the money laundering officer who will determine whether it needs to be reported to the appropriate authorities.



Test your understanding 2

Which of the following statements is not correct?

- A Accountants need to follow the rules of confidentiality even in a social environment.
- B If money laundering is suspected, accountants are allowed to break the rules of confidentiality.
- C Rules of confidentiality towards a client must be followed even after the business relationship has ended.
- D Accountants must follow the rules of confidentiality irrespective of the situation.

3

Tax planning, avoidance and evasion

3.1 Tax planning and tax avoidance

It has already been noted that a tax adviser is required to act in the best interests of his client. This would include providing advice on how a client's affairs should be structured in order to minimise tax liabilities.

Tax planning is the use of legitimate means in order to reduce a tax liability such as making use of investment income generated by an ISA which would be exempt from income and capital gains tax.

Tax avoidance, although lawful, is where planning may not be deemed to comply with the spirit of the law i.e. to divert investments outside the UK to attract overseas tax rates which may be much lower than those in the UK.

Advice of this nature may subject the client and the adviser to scrutiny, investigation and possible public criticism. An adviser should therefore consider carefully when giving tax advice and factor in any potential negative impacts.

3.2 Tax evasion

Tax evasion is unlawful. A taxpayer who dishonestly withholds or falsifies information in order to evade tax may be subject to criminal proceedings or suffer civil penalties.

3.3 Dealing with problems

In spite of guidelines being available, there can be situations where the method of resolving an ethical issue is not straightforward.

In those situations additional advice should be sought from:

- a supervisor
- a professional body, or
- a legal adviser.

3.4 Dealing with errors and omissions in clients' tax returns

Where a tax adviser realises that an error or omission has been made in a client's or employer's tax return he must recommend that the client/employer informs HMRC.

If the client/employer refuses to do so, the member must not act for them in connection with that return or related matters. The member may also have to consider whether to cease acting for the client.

Dishonestly retaining funds acquired as a result of an error or omission amounts to money laundering.



Test your understanding 3

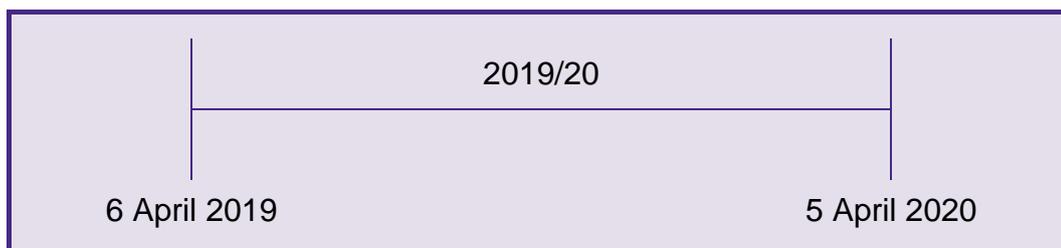
When an accountant is advising a client, to whom does he owe the greatest duty of care?

- A HMRC
- B The professional body to which the accountant belongs
- C The client
- D The public

4 Taxes within the Personal Tax assessment

4.1 The tax year

This study text is based on the tax year 2019/20.

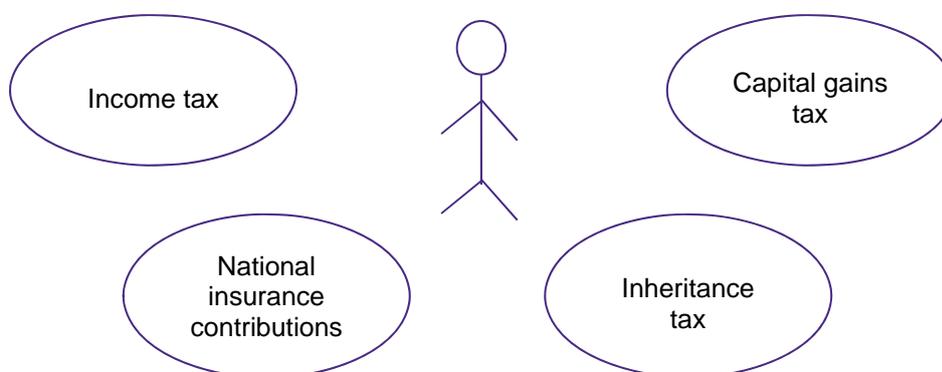


The tax year 2019/20 runs from 6 April 2019 to 5 April 2020.

This study text will explain which items go into the tax computations for the tax year.

4.2 The taxes within personal tax

The four taxes within personal tax are:



- income tax (Chapters 2 – 8)
- national insurance contributions (Chapter 9)
- capital gains tax (Chapters 10 – 12)
- inheritance tax (Chapter 13)

4.3 Income tax

Income tax applies mainly to:

- amounts earned in day to day work, and
- income generated from assets (for example dividend income on shares).

You will discover how to calculate an individual's income tax payable.

The ways in which the income tax payable by an individual can be reduced are also considered.

4.4 National insurance contributions (NICs)

The personal tax assessment requires knowledge of class 1 NICs, which are payable by employers and employees in respect of employment income as well as class 1A NICs, which are payable by employers in respect of taxable benefits received by the employees.

The NICs payable by the self-employed (class 2 and class 4) are covered in Business Tax.

You will discover how to calculate the class 1 NICs payable by both the employer and the employee and class 1A NICs payable by the employer.

4.5 Capital gains tax (CGT)

CGT applies mainly when assets are sold.

However, certain assets are exempt from CGT and there are other ways of reducing the gains.

You will discover how to calculate an individual's CGT payable.

4.6 Inheritance tax (IHT)

IHT applies mainly on the death of an individual in respect of the assets owned at death. It can also be payable in respect of gifts made by an individual during their lifetime.

Certain exemptions from IHT are available and there are other ways of reducing an individual's liability to IHT.

You will discover how to calculate an individual's IHT liability.

5 Tax residence

5.1 Tax residence status

The residence status of an individual determines whether his overseas income is subject to income tax in the UK.

- individuals who are resident in the UK are subject to UK income tax on both their UK and overseas income
- individuals who are not resident in the UK are subject to UK income tax on their UK income only.

5.2 Determination of residence

An individual is resident for the whole of a tax year if he:

- does not meet one of the automatic non-UK residence tests, and
- meets one of the automatic UK residence tests, or
- meets one or more of the sufficient ties tests.

In order to determine the tax residence status of an individual:

- 1 Check the automatic non-UK residence tests
 - if one test satisfied = non-UK resident
 - if not, go to step 2.
- 2 Check the automatic UK residence tests
 - if one test satisfied = UK resident
 - if not, go to step 3
- 3 Consider the number of ties the individual has with the UK
 - determine whether the individual has been UK resident in any of the last three tax years or has not
 - determine how many days the individual has spent in the UK
 - identify the relevant number of ties for the individual
 - determine how many ties the individual has with the UK
 - if the individual's ties are greater than or equal to the relevant number of ties = UK resident

5.3 Automatic non-UK residency tests

An individual is automatically not UK resident if he is 'in the UK' in the tax year for less than:

- 16 days, or
- 46 days, and he has not been UK resident in any of the previous three tax years, or
- 91 days, and he works full-time overseas.

Note that an individual is 'in the UK' if he is in the UK at midnight.

5.4 Automatic UK residency tests

An individual is automatically UK resident if:

- he is in the UK for at least 183 days in the tax year, or
- his only home is in the UK, or
- he work full-time in the UK.

If the individual does not satisfy any of the automatic tests, his residency status is determined by:

- how many of the five 'sufficient ties tests' are satisfied, and
- the number of days spent in the UK.

5.5 Sufficient ties tests

The number of days the individual has spent in the UK, together with his resident status in the three previous tax years determines the relevant number of ties. This is set out in the table below:

Days in the UK	Previously resident in any of the last three tax years	Not previously resident in any of the last three tax years
Less than 16	Automatically not resident	Automatically not resident
16 to 45	Resident if 4 UK ties (or more)	Automatically not resident
46 to 90	Resident if 3 UK ties (or more)	Resident if 4 UK ties
91 to 120	Resident if 2 UK ties (or more)	Resident if 3 UK ties (or more)
121 to 182	Resident if 1 UK tie (or more)	Resident if 2 UK ties (or more)
183 or more	Automatically resident	Automatically resident

The ties are set out below:

This tie with the UK exists if the individual:

- | | | |
|---|---------------|---|
| 1 | Family | has close family (a spouse/civil partner or minor children) in the UK |
| 2 | Accommodation | has a house in the UK which is used during the tax year |
| 3 | Work | does substantive work in the UK |
| 4 | Days in UK | has spent more than 90 days in the UK in either, or both, of the previous two tax years |
| 5 | Country | spends more time in the UK than in any other country in the tax year |



Test your understanding 4

Residency status

Explain whether or not the following individuals are resident in the UK in the tax year 2019/20.

- 1 Dieter was born in Germany. He has lived in his home town in Germany until the tax year 2019/20 when he came to the UK to visit on 10 June 2019 until 18 January 2020.
- 2 Simone was born in France. She has lived in her home town in France until the tax year 2019/20 when she came to the UK to visit for a month.
- 3 Fred has always spent more than 300 days in the UK and has therefore been UK resident.

He gave up work on 5 April 2019 and on 18 May 2019 he set off on a round the world holiday. He did not return until 6 April 2020.

Initially he spent 5 weeks in his holiday home in Portugal but then did not spend more than 10 days in any other country whilst he was away.

Whilst he was away he kept in touch with his wife and young children who remained in the family home.

6 Tax domicile

The domicile status of an individual differs from the concepts of nationality and residence. It is based on the individual's permanent home. A person can only have one domicile at any one time.

- At birth an individual has the same domicile as his or her father. This is known as a domicile of origin.
- Until the individual is 16 years old, any change in his or her father's domicile also changes the domicile of the individual. This is known as a domicile of dependence.
- Once the individual is 16, it is possible to acquire a new country of domicile by severing all ties with the old country and establishing residence in the new country on a permanent basis. This is known as a domicile of choice.

On 6 April 2017 the government introduced a deemed domicile status. This means that even if an individual is non-domiciled they will be treated as UK domiciled for tax purposes if they meet either condition A or B.

Condition A

- The individual was born in the UK. **and**
- the individual had a UK domicile of origin, **and**
- the individual is resident in the UK and was resident in the UK in at least one of the two previous tax years.

Condition B

The individual has been UK resident for at least 15 out of the 20 tax years immediately before the current tax year.



Tax tables

The deemed domicile conditions are included in section 17 of the tax tables provided in the real assessment, so you do not need to learn them.

Why not look up the correct part of tables in the introduction to this text book now?

An individual's domicile status is only relevant for inheritance tax in the assessment, but can impact other taxes.



Test your understanding 5

Domicile status

Explain whether the following individuals are domiciled or deemed domiciled in the UK in the tax year 2019/20.

- 1 Sunita was born in America. Her father has always been domiciled in the UK. Sunita occasionally visits the UK, and does not have a permanent home in any one country.
- 2 Françoise was born in the UK and his father was domiciled in the UK at his birth. Françoise moved to France when he was 20 years old and changed his domicile to France at that time. Françoise moved to the UK on 1 March 2018 and lived in the UK throughout the tax years 2018/19 and 2019/20.
- 3 Petra was born and is domiciled in Spain. She has lived in the UK since 6 April 2005.

7

Professional conduct in relation to taxation

In the assessment you will be able to consult the reference material relating to professional conduct in relation to taxation. This will be available through pop-up windows. The full document has been included in an appendix at the end of this chapter.

Approach to answering written questions

The chief assessor has written a guidance document to assist students with written answers. With the permission of AAT some of the key points of this advice are set out below.

The full document can be found on the AAT website, however, the task discussed covers material which will not be assessed under AQ2016. You may still benefit from reading the advice given regarding how to handle this task, but you will not be able to practise writing an answer to it.

Firstly, it's important you understand that the software in which you are answering the task is not Microsoft Word. So there's no:

- spell checker
- grammar checker
- automatic correcting of typos.

You won't see any different coloured lines highlighting any of these issues. It's quite clear from assessments we've marked so far that too many students are not proofreading their answers, and are failing to correct obvious mistakes.

So, when you type:

"i DON'T LIKE ANWSERING WRITEN QUETSIONS."

... this is exactly how it will look to the assessor. While the sentence can be read and understood, it's poor practice and would certainly not be allowed in the workplace.

You **must** proofread what you've written and correct any obvious spelling and grammatical errors. There's often a mark for presentation of the answer, and the assessor is looking for whether the way you've presented your work would be acceptable in the workplace. This mark is independent of the technical answer, and what we look for is whether a client would find the answer acceptable from a visual perspective.

Length of answer

It may not be obvious when you first look at the answer box on the screen, but this is a never-ending answer box. When you get to the last visible line, you can scroll down for extra writing space. So don't start your answer assuming that it needs to be condensed or short.

You should also remember that in many cases, the model answer the assessor is working from is in much more depth than the answer you'd need to give to gain full marks. It's acknowledged that it can be very difficult to write every aspect of all the areas applicable in a written question, and usually it's not necessary to do so.

Before you start to type:

You must read the question in detail. We've noticed that students often scan read a question, decide what it's about in an instant and then write the answer without giving any thought or consideration to the details. You should:

- read through once to get the general feel of the question
- read through again, slower this time, concentrating on key words or phrases

- plan your answer, ensuring all key areas are covered
- decide the structure of your answer, considering where you'll use things like an email, a memo or bullet points
- type up your answer
- proofread your answer, correcting any errors.

Too many times it would seem that students only follow the fifth of these points. If you do this it **will** affect your marks.

Consider exactly who you're writing to. Most likely it will be a client, so this needs to influence your approach.

Remember, if the client is writing to you for advice, they don't know the answer. We often see students give half answers which the assessor will understand, but which a client would not. As a result, they lose marks.

Similarly, be sure to avoid:

- abbreviations
- technical jargon
- SMS/text message speak.

Use the following test your understanding questions to familiarise yourself with the content of the reference material.



Test your understanding 6

PCRT familiarisation part 1

Answer the following questions by referring to PCRT Help sheet A: Submission of tax information and 'Tax filings', which will be available for you to refer to in the assessment. You should answer each question by writing a complete sentence.

- 1 What is meant by the term 'filing'?
- 2 What is the email address to which a member should forward suspicious emails?
- 3 Who has primary responsibility for submitting a correct tax return?
- 4 When acting as a tax agent, is a member required to verify information provided by the client?
- 5 Can the accounting concept of materiality be applied when completing tax filings?
- 6 When might it be advisable to consider fuller disclosure to HMRC than is strictly necessary?

- 7 When should attachments be included with a tax filing?
- 8 If HMRC guidance conflicts with the law, which will be applied by courts in the event of a dispute with HMRC?
- 9 What should a member bring a client's attention before the client approves a tax filing?



Test your understanding 7

PCRT familiarisation part 2

Answer the following questions by referring to PCRT Help sheet B: Tax advice, which will be available for you to refer to in the assessment. You should answer each question by writing a complete sentence.

- 1 What are the five standards for tax planning?
- 2 Is it acceptable for a member to act for a client who is trying to rectify their tax affairs having previously been involved in tax evasion?
- 3 What sort of tax planning must members refrain from promoting?



Test your understanding 8

PCRT familiarisation part 3

Answer the following questions by referring to PCRT Help sheet C: Dealing with errors, which will be available for you to refer to in the assessment. You should answer each question by writing a complete sentence.

- 1 When should a member alert a client to a possible error in the client's tax affairs?
- 2 If a client is unwilling to disclose an error to HMRC and your firm has decided to cease to act for the client, how should the client be informed?



Test your understanding 9

PCRT familiarisation part 4

Answer the following questions by referring to PCRT Help sheet D: Requests for data by HMRC, which will be available for you to refer to in the assessment. You should answer each question by writing a complete sentence.

- 1 What is data in the context of PCRT?
- 2 Who will HMRC normally contact when initiating a compliance check?
- 3 Is a member obliged to comply with an informal request from HMRC?
- 4 What is the most common statutory notice issued to clients by HMRC?
- 5 Is a member obliged to comply with a formal request from HMRC?
- 6 What are the two types of legal privilege under common law?



Test your understanding 10

Barque Ltd

You work for a firm of accountants. Barque Ltd, one of your clients, has told you that they are considering carrying out some aggressive tax planning which you feel is unlikely to be successful.

Using the extracts from PCRT, which will be available for you to refer to in the assessment, explain your responsibilities in relation to this matter.



Test your understanding 11

Qual Systems Ltd

You work for a firm of accountants. You have received a telephone call from HM Revenue and Customs requesting information in relation to Qual Systems Ltd. Qual Systems Ltd was a client of your firm until 31 October 2016.

Using the extracts from PCRT, which will be available for you to refer to in the assessment, explain your responsibilities in relation to this matter.

8

Summary

It is important that you do not neglect this chapter. Much of the information here could be tested in a written question, and such questions are, perhaps, more difficult to answer well than computational questions. So you should learn as much of this material as you can.



Links to other syllabus areas

In this chapter you learned about the ethical principles that guide AAT students and members. This is assessable in the AVSY synoptic assessment and is also fundamental to your AAT membership.

Test your understanding answers



Test your understanding 1

- 1 False Income tax is a direct **progressive** tax.
- 2 True
- 3 True



Test your understanding 2

The answer is **D**.

The duty of confidentiality can be overridden if the client gives authority or if there is a legal, regulatory or professional duty to disclose.



Test your understanding 3

The answer is **C**.



Test your understanding 4

Residence status

- 1 Dieter has been in the UK for 222 days in the tax year 2019/20, which is more than 183 days.
Accordingly, he will automatically be treated as UK resident in the tax year 2019/20.
- 2 Simone has not been resident in the UK in any of the three previous tax years, and has been in the UK for less than 46 days.
Accordingly, she will automatically be treated as **not UK resident** in the tax year 2019/20.

- 3 Fred spent 42 days in the UK in the tax year 2019/20.
- He has spent too many days in the UK to be automatically not resident (i.e. > 16 days as previously resident in UK).
 - He is not automatically resident as he has not been in the UK for sufficient days, has an overseas home and has not had full-time work in the UK during the tax year 2019/20.

Fred has been UK resident and is now leaving the UK.

He was in the UK in the tax year 2019/20 for between 16 and 45 days and will be UK resident if he meets at least four of the UK ties tests.

Fred meets the:

- close family tie
- accommodation tie (made use of a UK house)
- days in UK tie (spent more than 90 days in UK in both of previous two tax years), and
- country tie (spent more time in UK than any other country).

He is therefore UK resident in the tax year 2019/20.



Test your understanding 5

Domicile status

- 1 Sunita has a domicile of origin in the UK. She does not appear to have made a domicile of choice and therefore is still domiciled in the UK. She is not deemed domiciled in the UK under condition A, as she was not born in the UK and is not resident in the UK.
- 2 Françoise was born in the UK and had a domicile of origin in the UK. Although he has a domicile of choice in France, he was UK resident in both of the tax years 2018/19 and 2019/20, therefore he is treated as deemed domiciled in the UK under Condition A.
- 3 Petra has been resident in the UK for 14 tax years immediately prior to the tax year 2019/20 (the tax years 2005/06 to 2018/19). She is not deemed domiciled in the tax year 2019/20 but will become so in the following tax year under Condition B.

**Test your understanding 6****PCRT familiarisation part 1**

The answers are in the following paragraphs of PCRT Help sheet A: Submission of tax information and 'Tax filings':

1 Definition of filing of tax information and tax filings

Paragraph 1 – The term 'filing' includes any online submission of data, online filing or other filing that is prepared on behalf of the client for the purposes of disclosing to any taxing authority (such as HMRC) details that are to be used in the calculation of tax due by a client or a refund of tax due to the client or for other official purposes.

2 Making Tax Digital and filing

Paragraph 6 – A member is recommended to forward suspicious emails to phishing@hmrc.gsi.gov.uk and then delete them.

3 Taxpayer's responsibility

Paragraph 8 – The taxpayer has primary responsibility to submit correct and complete filings to the best of their knowledge and belief.

4 Member's responsibility

Paragraph 13 – Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party.

5 Materiality

Paragraph 17 – The accounting concept of materiality cannot be applied when completing tax filings.

6 Disclosure

Paragraph 21 – It might be advisable to consider fuller disclosure to HMRC than is strictly necessary if, for example, a filing relies on a valuation.

7 Supporting documents

Paragraph 26 – Attachments should be included with a tax filing where the taxpayer feels it is crucial to provide additional information to support the filing but for some reason cannot utilise the white space provided on the return.

8 Reliance on HMRC published guidance

Paragraph 27 – If HMRC guidance conflicts with the law, the law will be applied by courts in the event of a dispute with HMRC.

9 Approval of tax filings

Paragraph 30 – Before a client approves a tax filing the member should draw the client's attention to the responsibility which the client is taking in approving the filing as correct and complete. Attention should be drawn to any judgmental areas or positions reflected in the filing to ensure that the client is aware of these and their implications.



Test your understanding 7

PCRT familiarisation part 2

The answers are in the following paragraphs of PCRT Help sheet B: Tax advice:

1 The Standards for Tax Planning

Paragraph 1 – The five standards for tax planning are: client specific; lawful; disclosure and transparency; tax planning arrangements; professional judgement and appropriate documentation.

2 Tax evasion

Paragraph 3 – It is acceptable for a member to act for a client who is trying to rectify their tax affairs having previously been involved in tax evasion.

3 Tax planning and advice

Paragraph 4 – Members must refrain from promoting tax planning arrangements that either set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation and/or are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.



Test your understanding 8

PCRT familiarisation part 3

The answers are in the following parts of PCRT Help sheet C: Dealing with errors:

1 **Introduction**

Paragraph 2 – A member should alert a client to a possible error in the client's tax affairs as soon as the member identifies such a possibility

2 **Flowchart**

Box 'YOU MUST CEASE TO ACT' – If a client is unwilling to disclose an error to HMRC and your firm has decided to cease to act for the client, how should the client be informed in writing.



Test your understanding 9

PCRT familiarisation part 4

The answers are in the following parts of PCRT Help sheet D: Requests for data by HMRC:

1 **Introduction**

Paragraph 1 – in the context of PCRT, data includes documents in whatever form (including electronic) and other information.

2 **Informal requests addressed to the client**

Paragraph 10 – HMRC normally contact a client's appointed agent when initiating a compliance check.

3 **Informal requests addressed to the member**

Paragraph 15 – A member is not obliged to comply with an informal request from HMRC, but a member should advise the client whether it is in the client's best interests to disclose data requested in this way, as lack of cooperation may have a direct impact on penalty negotiations after the enquiry.

4 **Formal requests addressed to the client**

Paragraph 20 – The most common statutory notice issued to clients and third parties by HMRC is under Schedule 36 FA 2008.

5 **Formal requests addressed to the client**

Paragraph 22 – A member is obliged to comply with an informal request from HMRC and this override the professional duty of confidentiality.

6 **Privileged data**

Paragraph 28 – The two types of legal privilege under common law are legal advice privilege and litigation privilege.



Test your understanding 10

Barque Ltd

In order to comply with the fundamental principles set out in 'Professional conduct in relation to taxation' we must:

- be straightforward and honest in our professional and business relationships; and
- comply with relevant laws and regulations and avoid any action that discredits the profession.

It is our firm's responsibility to provide the services set out in our engagement letter competently and with due care. It may be that, due to the terms of the letter, we owe a duty of care to Barque Ltd in respect of this matter. In such a situation we would have to state that we are unwilling to assist them and suggest that the company seeks alternative advice.

We can point out the potential risks and rewards of adopting a strategy which, in our opinion, is unlikely to be successful but it is up to Barque Ltd to decide on their tax strategy. If Barque Ltd decides to go ahead despite our advice, we should ensure that we have documented the restricted advice which we have given.

We should also ensure that we document all of our discussions on this matter so that we have a record to which we can refer in the future if necessary.

We should be aware that the involvement of the firm in aggressive tax planning could have a negative effect on the public's perception of the profession.

Finally, if we are of the opinion that the strategy which Barque Ltd intends to adopt amounts to tax evasion we should explain the implications of this to the company and, of course, have no involvement whatsoever in the proposals.



Test your understanding 11

Qual systems Ltd

In order to comply with the fundamental principles set out in 'Professional conduct in relation to taxation' we must:

- be straightforward and honest in our professional and business relationships
- respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose; and
- comply with relevant laws and regulations and avoid any action that discredits the profession.

The duty to respect the confidentiality of information still applies in relation to Qual Systems Ltd even though it is no longer a client.

A telephone call is an informal request for information as opposed to one that is statutory. Accordingly, we need permission from Qual Systems before we can provide the information requested. In addition, it may be advisable to ask HM Revenue and Customs to put the request in writing.

We should point out to Qual Systems Ltd that, although there is no obligation to comply with the request, it may be in their best interest to do so. In connection with this, we should advise the company of the possible consequences of refusing to provide the information, for example it may be superseded by a more onerous statutory request.

Appendix

Professional conduct in relation to taxation

Extracts relevant for Personal Tax (PLTX) unit AQ2016

Introduction

This document comprises data that you may need to consult during your Personal Tax computer-based assessment. The material can be consulted during the sample and live assessments through pop-up windows. It is made available here so you can familiarise yourself with the content before the test.

Do not take a print of this document into the exam room with you. Unless you need a printed version as part of reasonable adjustments for particular needs, in which case you must discuss this with your tutor at least six weeks before the assessment date.

This document may be changed to reflect periodical updates in the computer-based assessment, so please check you have the most recent version while studying. This version is for use in AAT assessments 1 January – 31 December 2020.

We are grateful to the Association of Accounting Technicians for permission to reproduce this reference material. The page numbering shown below refers to the pages where the content can be found within the reference material.

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1 Interpretation and abbreviations

Context

Tax advisers operate in a complex business and financial environment. The increasing public focus on the role of taxation in wider society means a greater interest in the actions of tax advisers and their clients.

This guidance, written by the professional bodies for their members working in tax, sets out the hallmarks of a good tax adviser, and in particular the fundamental principles of behaviour that members are expected to follow.

Interpretation

1.1 In this guidance:

- 'Client' includes, where the context requires, 'former client'.
- 'Member' (and 'members') includes 'firm' or 'practice' and the staff thereof.
- Words in the singular include the plural and words in the plural include the singular.

Abbreviations

1.2 The following abbreviations have been used:

AML	Anti-Money Laundering
CCAB	Consultative Committee of Accountancy Bodies
DOTAS	Disclosure of Tax Avoidance Schemes
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti-Abuse Rule in Finance Act 2013
GDPR	General Data Protection Regulation
HMRC	Her Majesty's Revenue and Customs
MTD	Making Tax Digital
MLRO	Money Laundering Reporting Officer
NCA	National Crime Agency (previously the Serious Organised Crime Agency, SOCA)
POTAS	Promoters of Tax Avoidance Schemes
PCRT	Professional Conduct in Relation to Taxation
SRN	Scheme Reference Number

2 Fundamental principles

Overview of the fundamental principles

- 1 Ethical behaviour in the tax profession is critical. The work carried out by a member needs to be trusted by society at large as well as by clients and other stakeholders. What a member does reflects not just on themselves but on the profession as a whole.
- 2 A member must comply with the following fundamental principles:

Integrity

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

Objectivity

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

Professional competence and due care

To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

Confidentiality

To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the member or third parties.

Professional behaviour

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

3 PCRT Help sheet A: Submission of tax information and 'Tax filings'

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

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

Making Tax Digital and filing

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

Taxpayer's responsibility

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

Member's responsibility

- 10 A member who prepares a filing on behalf of a client is responsible to the client for the accuracy of the filing based on the information provided.
- 11 In dealing with HMRC in relation to a client's tax affairs a member should bear in mind their duty of confidentiality to the client and that they are acting as the agent of their client. They have a duty to act in the best interests of their client.
- 12 A member should act in good faith in dealings with HMRC in accordance with the fundamental principle of integrity. In particular the member should take reasonable care and exercise appropriate professional scepticism when making statements or asserting facts on behalf of a client.
- 13 Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. However, a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, not to assert tax positions in a tax filing which they consider to have no sustainable basis.
- 14 When a member is communicating with HMRC, they should consider whether they need to make it clear to what extent they are relying on information which has been supplied by the client or a third party.

Materiality

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

Disclosure

- 19 If a client is unwilling to include in a tax filing the minimum information required by law, the member should follow the guidance in Help sheet C: Dealing with Errors. The paragraphs below (paras 20 – 24) give guidance on some of the more common areas of uncertainty over disclosure.
- 20 In general, it is likely to be in a client's own interests to ensure that factors relevant to their tax liability are adequately disclosed to HMRC because:
- Their relationship with HMRC is more likely to be on a satisfactory footing if they can demonstrate good faith in their dealings with them. HMRC notes in 'Your Charter' that 'We want to give you a service that is fair, accurate and based on mutual trust and respect'; and
 - They will reduce the risk of a discovery or further assessment and may reduce exposure to interest and penalties.
- 21 It may be advisable to consider fuller disclosure than is strictly necessary. Reference to 'The Standards for Tax Planning' in PCRT may be relevant. The factors involved in making this decision include:
- A filing relies on a valuation;
 - The terms of the applicable law;
 - The view taken by the member;
 - The extent of any doubt that exists;
 - The manner in which disclosure is to be made; and
 - The size and gravity of the item in question.
- 22 When advocating fuller disclosure than is necessary a member should ensure that their client is adequately aware of the issues involved and their potential implications. Fuller disclosure should only be made with the client's consent.
- 23 Cases will arise where there is doubt as to the correct treatment of an item of income or expenditure, or the computation of a gain or allowance. In such cases a member ought to consider what additional disclosure, if any, might be necessary. For example, additional disclosure should be considered where:
- There is inherent doubt as to the correct treatment of an item, for example, expenditure on repairs which might be regarded as capital in whole or part, or the VAT liability of a particular transaction; or

- HMRC has published its interpretation or has indicated its practice on a point, but the client proposes to adopt a different view, whether or not supported by Counsel's opinion. The member should refer to the guidance on the Veltema case and the paragraph below. See also HMRC guidance.
- 24 A member who is uncertain whether their client should disclose a particular item or of its treatment should consider taking further advice before reaching a decision. They should use their best endeavours to ensure that the client understands the issues, implications and the proposed course of action. Such a decision may have to be justified at a later date, so the member's files should contain sufficient evidence to support the position taken, including timely notes of discussions with the client and/or with other advisers, copies of any second opinion obtained and the client's final decision. A failure to take reasonable care may result in HMRC imposing a penalty if an error is identified after an enquiry.

Supporting documents

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

Reliance on HMRC published guidance

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

Approval of tax filings

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

4 PCRT Help sheet B: Tax advice

The Standards for Tax Planning

- 1 The Standards for Tax Planning are critical to any planning undertaken by members. They are:
 - Client Specific
Tax planning must be specific to the particular client’s facts and circumstances. Clients must be alerted to the wider risks and 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 client’s 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 judgements exercised in seeking to adhere to these requirements

Guidance

- 2 The paragraphs below provide guidance for members when considering whether advice complies with the Fundamental Principles and Standards for Tax Planning.

Tax evasion

- 3 A member should never be knowingly involved in tax evasion, although, of course, it is appropriate to act for a client who is rectifying their affairs.

Tax planning and advice

- 4 In contrast to tax evasion, tax planning is legal. However, under the Standard members 'must not create, encourage or promote tax planning arrangements 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'.
- 5 Things to consider:
 - Have you checked that your engagement letter fully covers the scope of the planning advice?
 - Have you taken the Standards for Tax Planning and the Fundamental Principles into account? Is it client specific? Is it lawful? Will all relevant facts be disclosed to HMRC? Is it creating, encouraging or promoting tax planning contrary to the 4th Standard for Tax Planning.
 - How tax sophisticated is the client?
 - Has the client made clear what they wish to achieve by the planning?
 - What are the issues involved with the implementation of the planning?
 - What are the risks associated with the planning and have you warned the client of them? For example:
 - The strength of the legal interpretation relied upon.
 - The potential application of the GAAR.

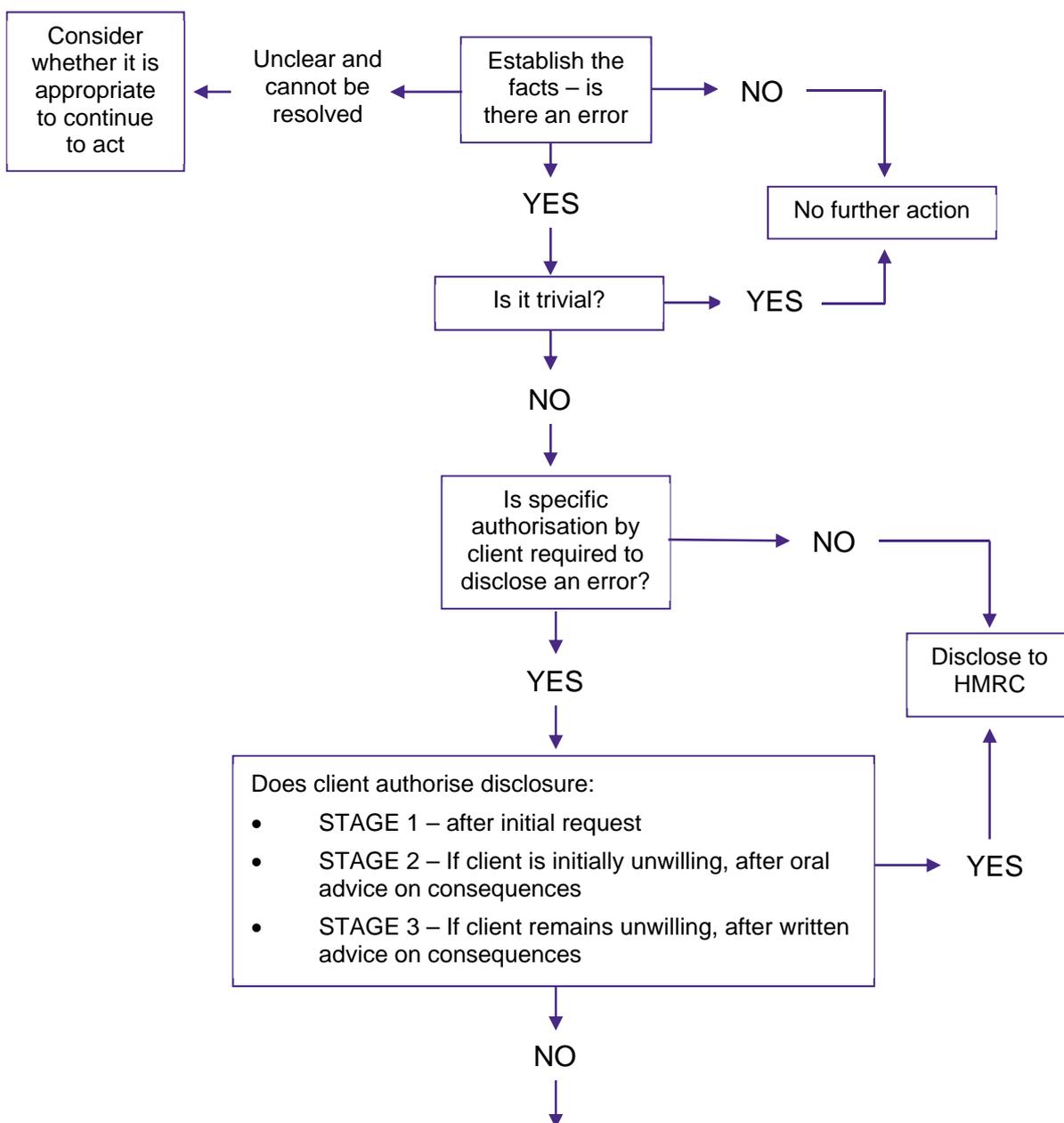
- The implications for the client, including the obligations of the client in relation to their tax return, if the planning requires disclosure under DOTAS or DASVOIT and the potential for an accelerated payment notice or partner payment notice?
- The reputational risk to the client and the member of the planning in the public arena.
- The stress, cost and wider personal or business implications to the client in the event of a prolonged dispute with HMRC. This may involve unwelcomed publicity, costs, expenses and loss of management time over a significant period.
- If the client tenders for government contracts, the potential impact of the proposed tax planning on tendering for and retaining public sector contracts.
- The risk of counteraction. This may occur before the planning is completed or potentially there may be retrospective counteraction at a later date.
- The risk of challenge by HMRC. Such challenge may relate to the legal interpretation relied upon, but may alternatively relate to the construction of the facts, including the implementation of the planning.
- The risk and inherent uncertainty of litigation. The probability of the planning being overturned by the courts if litigated and the potential ultimate downside should the client be unsuccessful.
- Is a second opinion necessary/advisable?
- Are the arrangements in line with any applicable code of conduct or ethical guidelines or stances for example the Banking Code, and fit and proper tests for charity trustees and pension administrators?
- Are you satisfied that the client understands the planning proposed?
- Have you documented the advice given and the reasoning behind it?

5 PCRT Help sheet C: Dealing with errors

Introduction

- 1 For the purposes of this guidance, the term 'error' is intended to include all errors and mistakes whether they were made by the client, the member, HMRC or any other party involved in a client's tax affairs, and whether made innocently or deliberately.
- 2 During a member's relationship with the client, the member may become aware of possible errors in the client's tax affairs. Unless the client is already aware of the possible error, they should be informed as soon as the member identifies them.
- 3 Where the error has resulted in the client paying too much tax the member should advise the client to make a repayment claim. The member should advise the client of the time limits to make a claim and have regard to any relevant time limits. The rest of this Help sheet deals with situations where tax may be due to HMRC.
- 4 Sometimes an error made by HMRC may mean that the client has not paid tax actually due or they have been incorrectly repaid tax. There may be fee costs as a result of correcting such mistakes. A member should bear in mind that, in some circumstances, clients or agents may be able to claim for additional professional costs incurred and compensation from HMRC.
- 5 A member should act correctly from the outset. A member should keep sufficient appropriate records of discussions and advice and when dealing with errors the member should:
 - give the client appropriate advice';
 - if necessary, so long as they continue to act for the client, seek to persuade the client to behave correctly;
 - take care not to appear to be assisting a client to plan or commit any criminal offence or to conceal any offence which has been committed; and
 - in appropriate situations, or where in doubt, discuss the client's situation with a colleague or an independent third party (having due regard to client confidentiality).
- 6 Once aware of a possible error, a member must bear in mind the legislation on money laundering and the obligations and duties which this places upon them.
- 7 Where the member may have made the error, the member should consider whether they need to notify their professional indemnity insurers.

- 8 In any situation where a member has concerns about their own position, they should consider taking specialist legal advice. For example, where a client appears to have used the member to assist in the commissioning of a criminal offence and people could question whether the member had acted honestly in in good faith. Note that The Criminal Finances Act 2017 has created new criminal offences of failure to prevent facilitation of tax evasion.
- 9 The flowchart below summarises the recommended steps a member should take where a possible error arises. It must be read in conjunction with the guidance and commentary that follow it.



YOU MUST CEASE TO ACT

- Advice client in writing that you no longer act for them in respect of any tax matters and, if relevant, any other client matters.
- Notify HMRC that you have ceased to act, if relevant.
- Consider if you need to advise HMRC that any accounts/statements carrying a report signed by you should no longer be relied upon.
- Consider whether a report should be made to MLRO/NCA.
- Carefully consider your response to any professional enquiry letter.

At all times consider your obligations under anti money laundering legislation and whether you need to submit a Suspicious Activity Report.

6 PCRT Help sheet D: Requests for data by HMRC

Introduction

- 1 For the purposes of this help sheet the term 'data' includes documents in whatever form (including electronic) and other information. While this guidance relates to HMRC requests, other government bodies or organisations may also approach the member for data. The same principles apply.
- 2 A distinction should be drawn between a request for data made informally ('informal requests') and those requests for data which are made in exercise of a power to require the provision of the data requested ('formal requests').
- 3 Similarly, requests addressed to a client and those addressed to a member require different handling.
- 4 Where a member no longer acts for a client, the member remains subject to the duty of confidentiality. In relation to informal requests, the member should refer the enquirer either to the former client or if authorised by the client to the new agent. In relation to formal requests addressed to the member, the termination of their professional relationship with the client does not affect the member's duty to comply with that request, where legally required to do so.
- 5 A member should comply with formal requests and should not seek to frustrate legitimate requests for information. Adopting a constructive approach may help to resolve issues promptly and minimise costs to all parties.
- 6 Whilst a member should be aware of HMRC's powers it may be appropriate to take specialist advice.
- 7 Devolved tax authorities have separate powers.
- 8 Two flowcharts are at the end of this help sheet;
 - Requests for data addressed to the member, and
 - Requests for data addressed to the client.

Informal requests addressed to the client

- 9 From time to time HMRC chooses to communicate directly with clients rather than with the appointed agent.
- 10 HMRC has given reassurances that it is working to ensure that initial contact on compliance checks will normally be via the agent and only if the agent does not reply within an appropriate timescale will the contact be directly with the client.
- 11 When the member assists a client in dealing with such requests from HMRC, the member should advise the client that cooperation with informal requests can provide greater opportunities for the taxpayer to find a pragmatic way to work through the issue at hand with HMRC.

Informal requests addressed to the member

- 12 Disclosure in response to informal requests can only be made with the client's permission.
- 13 In many instances, the client will have authorised routine disclosure of relevant data, for example, through the engagement letter. However, if there is any doubt about whether the client has authorised disclosure, the member should ask the client to approve what is to be disclosed.
- 14 Where an oral enquiry is made by HMRC, a member should consider asking for it to be put in writing so that a response may be agreed with the client.
- 15 Although there is no obligation to comply with an informal request in whole or in part, a member should advise the client whether it is in the client's best interests to disclose such data, as lack of cooperation may have a direct impact on penalty negotiations post—enquiry.
- 16 Informal requests may be forerunners to formal requests compelling the disclosure of data. Consequently, it may be sensible to comply with such requests.

Formal requests addressed to the client

- 17 In advising their client a member should consider whether specialist advice may be needed, for example on such issues as whether the notice has been issued in accordance with the relevant tax legislation and whether the data request is valid.
- 18 The member should also advise the client about any relevant right of appeal against the formal request if appropriate and of the consequences of a failure to comply.
- 19 If the notice is legally effective the client is legally obliged to comply with the request.
- 20 The most common statutory notice issued to clients and third parties by HMRC is under Schedule 36 FA 2008.

Formal requests addressed to the member

- 21 The same principles apply to formal requests to the member as formal requests to clients.
- 22 If a formal request is valid it **overrides the member's duty of confidentiality** to their client. The member is therefore obliged to comply with the request. Failure to comply with their legal obligations can expose the member to civil or criminal penalties.

- 23 In cases where the member is not legally precluded by the terms of the notice from communicating with the client, the member should advise the client of the notice and keep the client informed of progress and developments.
- 24 The member should ensure that in complying with any notice they do not provide information or data outside the scope of the notice.
- 25 If a member is faced with a situation in which HMRC is seeking to enforce disclosure by the removal of data, or seeking entrance to inspect business premises occupied by a member in their capacity as an adviser, the member should consider seeking immediate professional advice, to ensure that this is the legally correct course of action.

Privileged data

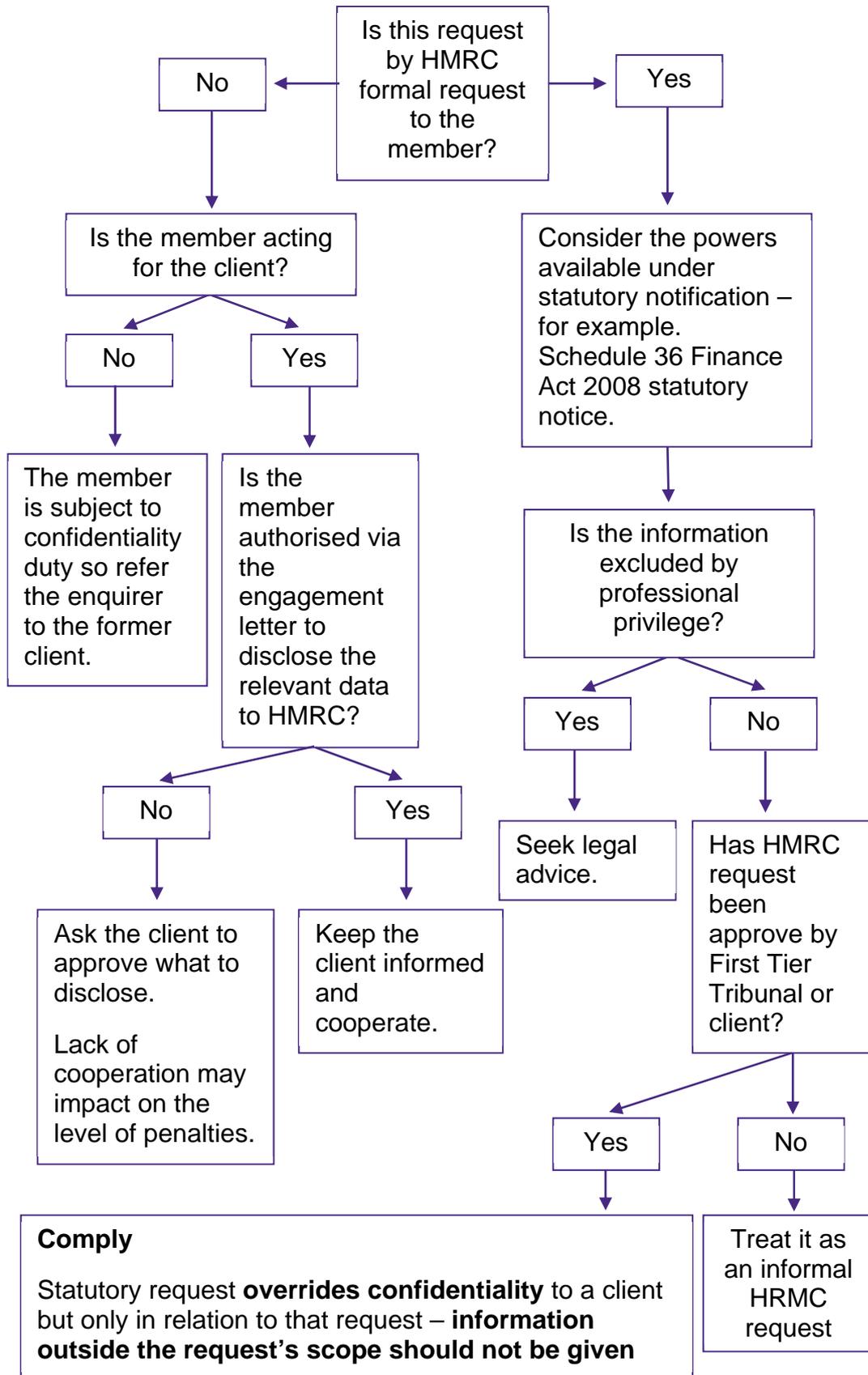
- 26 Legal privilege arises under common law and may only be overridden if this is set out in legislation. It protects a party's right to communicate in confidence with a legal adviser. The privilege belongs to the client and not to the member.
- 27 If a document is privileged: The client cannot be required to make disclosure of that document to HMRC. Another party cannot disclose it (including the member), without the client's express permission.
- 28 There are two types of legal privilege under common law: legal advice privilege and litigation privilege.
 - (a) Legal advice privilege

Covers documents passing between a client and their legal adviser prepared for the purposes of obtaining or giving legal advice. However, communications from a tax adviser who is not a practising lawyer will not attract legal advice privilege even if such individuals are giving advice on legal matters such as tax law.
 - (b) Litigation privilege

Covers data created for the dominant purpose of litigation. Litigation privilege may arise where litigation has not begun, but is merely contemplated and may apply to data prepared by non-lawyer advisers (including tax advisers). There are two important limits on litigation privilege. First, it does not arise in respect of non-adversarial proceedings. Second, the documents must be produced for the 'dominant purpose' of litigation.

- 29 A privilege under Schedule 36 paragraphs 19, (documents relating to the conduct of a pending appeal), 24 and 25 (auditors, and tax advisers' documents) might exist by "quasi-privilege" and if this is the case a tax adviser does not have to provide those documents. Care should be taken as not all data may be privileged.
- 30 A member who receives a request for data, some of which the member believes may be subject to privilege or 'quasi-privilege', should take independent legal advice on the position, unless expert in this area.

Help sheet D: Flowchart regarding requests for data by HMRC to the Member.



Help sheet D: Flowchart regarding requests for data by HMRC to the Client.

