



The Chartered Tax Adviser Examination

May 2008

PAPER IV – PROFESSIONAL RESPONSIBILITIES, ETHICS AND LAW

Suggested Answers

Question 1 – Continuing Professional Development

The basic rules to which members must adhere are Rule 2.4 of the Institute's Professional Rules, which states "A member must carry out his professional work with a proper regard for the technical and professional standards expected" and Rule 2.11 which states "A member of the CIOT or the ATT who is engaged in the practice of taxation in industry, commerce or private practice should keep his professional knowledge up to date and in this regard must fulfill the requirements of the CPD scheme." The Professional Rules of the Institute contain Regulations concerning CPD which are structured upon the following principles:

- They should be relevant to the needs of member in their working fields;
- They are sufficiently flexible to cater for the particular circumstances of the member;
- They involve reasonable periods only being spent outside the normal working environment; and
- They are not administratively burdensome.

The Chartered Institute of Taxation has a compulsory CPD scheme which applies to all members working in the field of taxation

Basic requirements

Each member should undertake a minimum of 90 hours CPD, of which a minimum of 20 hours must be structured training. The remainder can be met through unstructured training. This annual requirement can be achieved by averaging any two consecutive years.

Structured Training

This includes:

- Attendance at seminars or events where active contribution is required from the member.
- Preparation of lectures and other presentations.
- Writing books, articles or reviews.
- All learning media, provided they require interaction with other individuals – this includes group research, viewing DVDs or listening to audio tapes.

Unstructured Learning

This includes:

- Reading
- Any other form of learning where there is no interaction with others.

Training referred to above means training in the field of UK taxation.

A member who practises in foreign tax can substitute that foreign tax for UK taxation.

It is possible to meet one-half of the annual requirements through training in law, accounting and financial services, practice management and administration, staff development and computer and software development.

Records

The Institute provides a form for this purpose and this should be retained for a minimum of two complete calendar years, or if the averaging basis is to be used, a minimum of three complete calendar years.

If there is no attendance charge for a meeting, members must record their attendance in the record book kept by the organisers.

Exceptions

The Institute recognises that there may be occasions when it is impracticable for a member to meet the requirements, in which case there will be no disciplinary proceedings for the failure.

Examples are where a member is unwell for a protracted period of time or is absent from employment. The requirements on such occasions are pro-rated to recognise the periods of illness or absence. However a minimum of 1 hour unstructured training per week is expected where a member is absent from employment

Failure to comply

Disciplinary proceedings may be commenced against any member who fails to comply with these requirements.

Question 2

My Firm
Any Avenue
Any Town
AT1 23

Mr Jones
Any Avenue
Any Town
AT1 23

Dear Mr Jones,

I refer to your recent letter.

Your terms of engagement with the client are embodied in the letter of engagement and this defines the scope and exclusions of the contract. This protection is not, however, in place when dealing with third parties.

Client Confidentiality

You should obtain client consent before releasing any documents to West Valley Ltd. This should be obtained in writing and should be drafted in such a way as to permit the release of any relevant documents rather than having to seek approval for individual documents.

Third Party Liability

You should ensure that the letter of engagement is drafted such that the client must seek your approval before any advice or documents with which your firm's name is associated is released to third parties.

You should consider, prior to consenting to the release of the documents, requesting that the third party undertake that you will be held harmless from liability as a consequence of making any of the documents available to them.

If no such undertaking is obtained, you should communicate to the third party the terms under which the documents are released. This should include caveats such as limitation of scope and confirmation that no liability will be accepted in respect of decisions made upon the documents.

You could consider whether or not a document should be released; you can refuse to authorise the release of particular documents.

We would suggest that you obtain an indemnity from the client in respect of any possible claim against you by West Valley Ltd. Such an indemnity is highly appropriate in such as a transaction as you describe.

It may be that you consider it inevitable that you will assume a duty of care to the third party. You should then consider defining the scope of that duty through the issue of a separate letter of engagement or by tying West Valley Ltd into the letter of engagement currently in place with your existing client.

Should it come to light that any document provided to the third party is defective, you should insist that your client withdraws them. It would be prudent to receive proof that the document has been withdrawn. Should the client refuse, you should consider writing directly to West Valley Ltd advising them that the document can no longer be relied upon; we would suggest you seek legal advice before taking that course of action.

Yours sincerely

T Adviser

Question 3

The CIOT guidance on this matter is set out in Professional Rules and Practice Guidelines.

Regulated activities are defined in the Financial Services and Markets Act 2000. Any investment and pension advice will be included, as will advice on insurance contracts.

The nature of the advice that can be given will depend on whether the firm is a member of a Designated Professional Body (DPB) or is authorised directly by the FSA.

The following bodies are recognised as DPB's:

- The Law Societies (England and Wales, Scotland and Northern Ireland);
- The Institutes of Chartered Accountants in England and Wales, Scotland and Ireland
- The Association of Chartered Certified Accountants;
- The Institute of Actuaries.

I am not aware of the authorisation status of this firm, so have covered both possibilities in this paper.

Members in firms which are DPB's can only provide a restricted range of investment advice services, which are 'exempt regulated activities'. The precise services which can be offered are available from the relevant DPB. These must be incidental to the professional services offered by the firm, and furthermore if any pecuniary or other reward is received for carrying out the services, from anyone other than the client, (eg commission) this must be accounted for to the client.

Thus if the firm is recognised as a DPB by the FSA the prospective new recruit will be limited in the advice he can give.

If the firm is (or becomes) directly authorised by the FSA then the new recruit will be able to give advice as an 'approved person' when he is advising on the firm's behalf. This is a personal approval given by the FSA in relation to specific 'controlled functions' including investment advice.

The prospective new recruit is likely to be already FSA approved, but if not, an application can be made for approval by the firm on his behalf.

As an example, the different advice that can be given in respect of pensions in the various circumstances outlined above, is:

- If the firm is neither recognised as a DPB nor directly authorised by the FSA, then practitioners may only advise in general terms on the benefits of setting up pension arrangements, but must not refer to specific product providers;
- If the firm is a DPB then a practitioner can advise on the benefits of setting up a pension, as above, and can also comment on advice given by an authorised financial advisor regarding pensions and the selection of products. However, he cannot make investment recommendations;
- If the firm is FSA authorised and the practitioner is registered as an Approved person in this area, he may advise fully on pension and can make specific product recommendations. Additional specific FSA authorisation is required to enable the practitioner to advise on pension transfers or opt-outs.

It is also worth noting that the Insurance Intermediation Directive came into force on 14 January 2005, with the result that advice on insurance products is now FSA regulated. This includes providing insurance for dealing with HMRC enquiries in the event of an investigation.

Therefore, we need to be aware of this if we offer insurance to clients against dealing with HMRC enquiries, as this will be a regulated activity.

This will be the case whether there is a direct charge for insurance, or if a fixed fee is charged for tax compliance, and this fee is stated to include dealing with enquiries.

Question 4

The CIOT guidance on this matter is set out in Professional Rules and Practice Guidelines.

Firstly, when invited to act for a client, a member must be aware that he is under no obligation to act. In particular he should decline to do so if he is not able to assume the duty of care that he would have to that client.

In particular, he should:

- Comply with the identification requirements set out in the anti money laundering guidance on the CIOT website;
- Consider whether the client will be an acceptable client in terms of the risks which will arise for the practice from acting for the client and whether the member has the capability to manage those risks. In assessing the risk relating to the client, the member should consider the potential client's personal circumstances, business situation, financial standing, source of funds, integrity and attitude to disclosure in regard to compliance with taxation law;
- Consider whether the member and the firm will have the skills and competence to service the client's requirements during the course of the engagement;
- Consider whether there is any current or potential conflict of interest in accepting the client, and if so whether and how it could be managed;
- Proceed with caution when deciding to accept instructions from a client who refuses to give the existing tax advisor permission to disclose information about his affairs;
- Note that a member must do nothing to assist a client to commit any criminal offence, or (save to the extent permitted by law) to shield the client from the consequences of having defrauded the Crown of tax or of having been negligent on regard to direct or indirect tax matters. A member who acquires information which leads him to conclude that a prospective client may have been guilty of tax misdemeanours should only accept the appointment on the basis that full disclosure will be made to the appropriate authorities.

The basis for client acceptance should be recorded.

It is also important to ensure that the scope of the engagement is discussed and agreed with the client, and that the skills and experience are available to carry out the work.

Question 5

If the dispute arises as to whether, or in what way, a statute applies to a particular actual event, the Court must interpret the statute and decide what it means and whether or not it does apply to the given case. Unless a statute contains express words to the contrary it is presumed that:-

- 1 A statute does not alter existing law or repeal other statutes
- 2 If a statute deprives a person of his property he is to be compensated for the loss.
- 3 A statute does not have retrospective effect to a date before it became law.
- 4 A statute does not bind the Crown.
- 5 Any point on which the statute leaves a gap or omission is outside the scope of the statute.
- 6 A statute operates throughout the UK.
- 7 A statute comes into force on the day it receives Royal Assent.
- 8 A statute does not impose liability without fault.

Question 6

Part 1

An offer is the expression of willingness to be bound by the specific terms proposed. An offer may be expressed (in words or writing) or implied (by conduct). Only a person to whom an offer has been made can accept it. It is possible to make an offer to the public at large for acceptance by those persons who wish to do so. Only an offer that is made with the intention of becoming binding when accepted is regarded as forming part of a contract.

In scenario A, Fred's advert in his car is an invitation to treat. It is an invitation to invite others to make offers. It is not an offer to sell unless the terms of the advert suggest otherwise.

In scenario B, Fred's intention to sell a car for a specified price is a declaration of intent and not an offer to sell it.

Fred is giving an answer to an enquiry about the price of the car. This is not necessarily an offer to sell it at that price as he is merely supplying information.

Part 2

An offer may be terminated in one of the following ways:

Refusal. Rejection of an offer by the offeree terminates the offer. He cannot subsequently change his mind and accept. An offer is impliedly rejected if the offeree, instead of accepting the original offer, makes a counter offer, which varies the terms proposed by the offeror. The counter offer itself forms a new offer capable of acceptance, if desired, by the party whose original offer was rejected.

Revocation by offeror. The offeror is free to revoke or withdraw an offer at any time before acceptance. Revocation is effective only once it has been communicated to the offeror.

Options. An option is a separate binding contract granting the offeree a period of time during which to decide whether to accept or reject the offer. If, during the period of the option, the offer is revoked, the offeror commits a breach of contract for which the offeree can recover damages. Because the option itself is a contract, it must satisfy all the essential requirements of a contract.

Lapse of time. An offer lapses if it is not accepted within the period stated by the offeror. If a precise period of time is not stipulated then acceptance must be made within a reasonable time which depends on the circumstances of the individual case under consideration.

Failure of condition precedent. An offeror may be expressly or impliedly subject to a condition precedent, the failure of which terminates it automatically.

Death. The death of the offeree or (usually) the offeror terminates the offer.

Question 7

Part 1:

Regulations

Regulations are directly applicable in all Member States, automatically becoming part of national law.

Directives. Directives are binding as to the result to be achieved but leave the national authority the choice of form and methods for their implementation

Decisions. Decisions are binding only upon those to whom they are addressed

Recommendations. These have no binding force, but are essentially persuasive

Opinions. Opinions express the point of view of an institution and are also not binding

Part 2:

- (1) If a provision of Community law has direct effect, it gives rise to rights or obligations which individuals may enforce before the national courts
- (2) The conditions which a Treaty provision must satisfy to have direct effect are:
 - (a) the wording of the provision must be clear and unambiguous
 - (b) it must be unconditional
 - (c) its operation must not be dependent on further action being taken by the EC or national authorities, or leave them any discretion
- (3) Vertical direct effect is a provision which may be invoked by an individual against a Member State. Horizontal direct effect is a provision which may be invoked by one individual or business against another.

Question 8

To: Marcia Brady
From: Tax consultant
Date: XX May 2008
Subject: BigPharma Ltd Heads of Terms

Key points of a licence

An intellectual property licence allows the intellectual property owner to extract value from the intellectual property without completely disposing of the underlying asset; licences can be for particular products or commercial fields, or can be general.

A licence does not usually guarantee any positive rights and is merely an agreement that the licensor will not sue the licensee.

The principal terms of a licence to be considered include:

- (a) is the licence exclusive or non-exclusive: can BigPharma licence the drug to other businesses?
- (b) is the licence worldwide or limited to particular territories?
- (c) is the licence one-way, or mutual (a cross-licence)?
- (d) is the licence limited to particular items, or does it cover all relevant intellectual property including intellectual property not yet in existence?
- (e) does the licence include a release for past infringement or is it wholly a licence for future activities?
- (f) is the licence time-limited or perpetual?
- (g) is the licence terminable or revocable?

Typical licence payment terms include:

- (a) a lump sum which may be payable in instalments
- (b) an advance on royalties which is generally not refundable if sales fail to meet expectations
- (c) a minimum royalty, usually paid quarterly
- (d) a royalty calculated at a given rate per unit manufactured or sold
- (e) a percentage royalty, calculated on sales revenue or a similar figure