



Professional Standards



Briefing

March 2017

Mortgage lenders and providing financial references

Our guidance has been updated to include advice and some practical tips on providing financial references for clients. In summary the guidance highlights the following key points:

- It is reasonable to make a charge to your client for the provision of a reference.
- The fee should be agreed up front and you should ensure such a service is covered by your engagement letter and professional indemnity insurance.
- Charging a third party (the lender) for the reference is likely to create a duty of care to the third party and is not recommended.
- Reasonable disclaimers are important and whilst you cannot guarantee they will eliminate exposure they can potentially reduce risk.
- Members should only base the reference on factual information which can be verified.

Legal advice was taken to ensure this guidance is fit for purpose and the full text can be found at:

<http://www.tax.org.uk/mortgage-lenders> and
<https://www.att.org.uk/sites/default/files/Financial%20References%20Guidance.pdf>

Professional Conduct in Relation to Taxation (PCRT)

The updated PCRT came into effect from 1 March 2017. The purpose of PCRT is to assist and advise members on their professional conduct in relation to taxation and particularly the tripartite relationship between a member, client and HMRC.

The updated guidance includes five standards for tax planning which members must adhere to. The full versions of the guidance can be found at:

http://www.tax.org.uk/sites/default/files/PCRT%20Effective%201%20March%202017%20FINAL_211216.pdf and <http://www.att.org.uk/file/pcrt-effective-1-march-2017-finalpdf>

Additional guidance has also been provided in the form of frequently asked questions:

<http://www.tax.org.uk/sites/default/files/PCRT%20Effective%201%20March%202017%20FAQ.pdf> and <http://www.att.org.uk/file/pcrt-effective-1-march-2017-faqpdf-0>

A recent webinar also gives a helpful outline of the changes to PCRT:

<http://www.tax.org.uk/policy-technical/newsdesk/pcrt-webinar-%E2%80%93-14-february> and <http://www.att.org.uk/technical/newsdesk/pcrt-webinar-%E2%80%93-14-february>

Referrals to other professional advisers

A member should advise only within the scope of his own professional competence and where a member does not have the expertise or the staff resources available to meet his client's needs he should refer the client to another professional adviser.

Care should be taken when referring clients and where possible the client should be given a choice of adviser. The find a CTA and find an ATT member tools on the website can be a useful way of identifying fellow professionals with the required specialisms (<http://core.tax.org.uk/> and <http://core.att.org.uk/>)

The member should make it clear he is not responsible for the advice given by the other professional adviser.

In cases where commission is received by members for referring work to another adviser it should be disclosed to a client.

For further guidance see section 7.5 and paragraph 8.3 of Professional Rules and Practice Guidelines (PRPG):

<http://www.att.org.uk/file/131030-prpg-2011pdf> and

<http://www.tax.org.uk/sites/default/files/PRPG%20-%20March%202011.pdf>

Client accounts

Where a member carries on an investment business (as defined by the Financial Services and Markets Act 2000) they must handle that money in accordance with the regulations of the regulatory authority with whom they are registered.

Where members do not carry on an investment business the CIOT and ATT would recommend that members avoid handling client money wherever possible. Where it is necessary to handle client money members are reminded that client money **must** be kept separate from money belonging to the firm. Tax refunds are included in the definition of client money and must therefore be handled through a separate client account.

Conditions applying to client accounts are set out in section 7.7 of PRPG.

Arrangements on client money should be agreed with the client and documented in an engagement letter. Members are also reminded to consider the money laundering legislation when allowing money to be passed through the client account.

Professional Clearance

Members regularly contact the Professional Standards team for advice on professional clearance letters and requests for handover information.

Chapter 10 of PRPG includes guidance on ceasing to act for clients and chapter 4 covers guidance on new clients.

Where requests for professional clearance and handover information are received a member should check with a client first before releasing information. When the client's permission has been received, he should disclose to the prospective new adviser, either orally or in writing, all information which, in his opinion and based on his knowledge of the client and his affairs, may be needed to enable that adviser to decide whether or not to accept the appointment and which will ensure an efficient handover of the client's tax affairs. Note however that where a Suspicious Activity Report (SAR) has been made, he should not disclose that due to the potential offence of 'tipping off'.

A member should take care where retaining records until fees are paid as liens are a complex area. Further advice is included in section 13.5 of PRPG.

Conflicts of Interest

A member must maintain his professional independence. A conflict of interest may impair this independence and care should be taken to identify these and seek a solution to them immediately.

Where a member is called upon to act for more than one party to a transaction there are three options:

- Advise both clients of the conflict and give them the opportunity to consider whether they would like you to act for both (consider the use of ethical walls).
- Act for only one client
- Act for neither party

Members should also consider the conflict of interest which may arise where they have a financial involvement with a client. Members should therefore also exercise care in relation to this area.

More detailed guidance is included in chapter 6 of PRPG.

Corporate offence of failure to prevent criminal facilitation of tax evasion

This offence has been introduced through the Criminal Finances Bill and is expected to become law by autumn 2017.

The three stages of the new offence are:

Stage 1 - criminal tax evasion by a taxpayer (individual or entity).

Stage 2 - criminal facilitation of this offence by a person acting on behalf of the company. This has to involve deliberate actions on the part of the individual.

Stage 3 - the corporation failed to take reasonable steps to prevent those who acted on its behalf from committing the act at stage 2

There will be a defence if the corporation can show that:

- It has put in place reasonable prevention procedures to prevent the facilitation of tax evasion; or
- It is unreasonable to expect them to have such procedures in place.

We are currently working on further guidance for members on this issue so look out for that over the coming months.

New Continuing Professional Development (CPD) Regulations and Guidance

The updated CPD regulations came into effect from 1 January 2017. In summary the changes are:

- The Regulations now apply to all members either working in tax, or holding themselves out as members.
- The hours requirement has been removed and members should be undertaking CPD which is relevant to their role. They will need to be able to explain how their CPD meets the requirements of the regulations if asked.

Members can choose to meet the new requirements by continuing to use the hours basis but they need to ensure the hours of CPD undertaken are relevant to their role.

The full text of the new regulations and guidance can be found here:

<http://www.tax.org.uk/professional-standards/professional-rules/continuing-professional-development-regulations> and <http://www.att.org.uk/professional-standards/professional-rules/continuing-professional-development-regulations>

If you have any queries in relation to any of the points covered in this briefing or Professional Standards in general please email standards@ciot.org.uk or standards@att.org.uk.