

IN THE DISCIPLINARY TRIBUNAL OF THE
TAXATION DISCIPLINARY BOARD

TDB/2020/17
TDB/2022/44

**THE TAXATION DISCIPLINARY
BOARD**

TDB

-and-

**SHELLEY BAKER
(CIOT MEMBER NO. 163673)**

Defendant

DECISION AND REASONS

Date of Hearing

17 – 18 March 2025

Venue

Virtual using Microsoft Teams

Tribunal Members

Legally Qualified Chair

Brett Wilson

Professional Member

Stuart McKinnon

Lay Member

Amran Hussain

Tribunal Clerk

Nigel Bremner

**Taxation Disciplinary Board
(‘TBD’)**

Represented by Mr Brodsky of counsel

Ms Baker

Represented by Mr Hickey and Mr
Foster (both) of counsel

Background

1. Ms Baker is a member of the Chartered Institute of Taxation (‘CIOT’).
2. Ms Baker faced 6 charges. The charges are set out at Appendix 1 to this document. The regulations which are referred to in the charges are set out at Appendix 2. In this decision the document at Bundle D at pages 2 to 8, which sets out the charges, will be referred to as the ‘Charge Sheet’.
3. In summary, charges 1, 2, 3 and 4 relate to Ms Baker’s alleged conduct arising out of a scheme known as ‘Alchemy’. Charge 5 relates to an alleged failure to ensure that companies of which she was a director (namely Root2 Tax Ltd and Root2 Tax (Dispute Resolution Ltd)) had adequate insurance cover. Charge 6 can be described as a ‘catch-all’, liability for which depends on the Tribunal’s findings on the other charges.
4. The Tribunal was assisted by skeleton arguments from counsel for the TDB and Ms Baker. Further assistance was given by way of concise and focused opening speeches and closing submissions. This enabled the Tribunal to focus on the issues of alleged professional misconduct arising from a complicated area of tax law.

The TDB’s case

5. In essence, the TDB alleged that Ms Baker was a director and shareholder of Root2 Tax Ltd ('Root 2') and Root2 Tax (Dispute Resolution Ltd) ('Root 2 DR') and that is not disputed by Ms Baker. It also seems uncontroversial that Root2 developed a scheme known as 'Alchemy' which was intended to minimise individual's tax liabilities. Alchemy used a system of spread betting and novation of debts and contracts. Two bets were placed. One would win and the other would lose. The losing bet would be novated to the individual's company (which was also their employer) and accounted for as a cost to the business. The individual would take the proceeds from the winning bet and would argue that as the monies were from gambling they were therefore not subject to tax. In short, this was a scheme intended to allow an individual to take money out of their company in a way that minimised their tax liability compared to being paid a salary or dividends.
6. The TDB argued that Alchemy was not properly notified to HMRC under the Disclosure of Tax Avoidance Schemes ('DOTAS') or, alternatively, that the notification was not sufficiently prompt. The TDB relied on the outcome of the decision of the First-tier Tribunal (Tax Chamber) ('FTT') in *HMRC v Root2 Tax Ltd, Root3 Tax Ltd* [2017] UKFTT 696 (TC) in which the FTT decided that the Alchemy scheme was disclosable under DOTAS.
7. The TDB also prays in aid the FTT decision in *Root2 Tax Ltd v HMRC* [2019] UKFTT 0744 in which the FTT held that the Alchemy scheme was ineffective and that payments made under it were liable to tax and national insurance.
8. Moving on from the issues regarding notification under DOTAS, the TDB alleged that Ms Baker breached her professional duties under the Professional Conduct in relation to Taxation 2011 ('PCRT 2011') and later editions and under the Professional Rules and Practice Guidelines 2011 ('PRPG 2011') and later editions, in the manner in which she advised clients about Alchemy, failed to identify and deal with a potential conflict of interest and in her engagement with HMRC. This forms the basis of charges 2, 3, and 4.

9. The TDB argued that as a consequence of her conduct arising from any or all of the charges 1 to 5, Ms Baker brought the profession into disrepute.
10. The TDB argued that the professional indemnity insurance of Root2 and Root2 DR expired on 3 May 2020 but both firms continued to trade. This relates to charge 5.

Ms Baker's case

11. Ms Baker denied charge 1 and argued that she relied on advice from leading counsel in relation to DOTAS and also case law which supported the view that proceeds from gambling were not taxable (*Graham v Green* (1925) 9 TC 309 and *Hakki v Secretary of State for Work and Pensions & Anor* [2014] EWCA Civ 530).
12. In relation to allegations regarding her dealings with clients and HMRC (including managing potential conflicts of interest), it was argued on behalf of Ms Baker that detailed letters were sent to clients which explained the tax consequences and financial risk, and the standard letter was approved by leading counsel. It was argued that Ms Baker actively participated in meetings with HMRC and entered into extensive written correspondence.
13. Ms Baker challenged allegations relating to her integrity. She denied that she had brought the profession into disrepute.
14. Ms Baker pointed out the age of the matters complained of and she admitted charge 5 relating to the lack of indemnity insurance.

Procedural Issues

15. The Tribunal accepted that the applicable procedural rules are the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016). They were effective from 1 February 2014. The Rules were amended in January 2024 but the January 2024 version does not apply to these matters as that version is clear that the Tribunal must apply the rules that were in force at the time when the decision to refer a complaint to a Disciplinary Tribunal was made. In this case both cases TDB/2020/17 and TDB/2022/44 were referred to the Disciplinary Tribunal in 2022 and 2023.
16. As indicated above, Ms Baker denied charges 1, 2, 3, 4 and 6. She admitted charge 5.
17. There were no preliminary issues or applications.

Evidence

18. The Tribunal was provided with documentary evidence contained in 5 bundles. The Tribunal heard oral evidence from Ms Baker and Mr Fallows and it read their witness statements and exhibits.

Burden and Standard of Proof

19. The burden of proof rests upon the TDB. Ms Baker did not need to prove that she was innocent of the matters which she faced. The standard of proof is the civil standard which is the balance of probabilities.
20. The Tribunal noted that it was not put to either witness that they had lied or been untruthful, but some of the regulations of the PCRT and/or the PRPG which the TDB say Ms Baker had breached include issues of honesty. If the Tribunal found that those regulations had been breached and gave rise to a finding that Ms Baker had not been honest, it was fair that the Tribunal directed itself in full as per *Lucas* (1981) 73 Cr App R 159, CA.

21. The Tribunal adopted the approach often seen in other tribunals and the civil courts when assessing evidence. This allowed the Tribunal to consider all the evidence before it. It did not compartmentalise the evidence or speculate, but it drew inferences that were reasonable in the circumstances applying common sense. It recognised the submissions made on behalf of Ms Baker regarding similar-fact evidence and that Ms Baker has an unblemished record and that would go to her credit when the Tribunal was assessing her credibility and the reliability of her evidence.

The Witnesses

22. The Tribunal found Ms Baker to be clear and straightforward in her answers to questions. The Tribunal did not consider her to be evasive or a poor historian. She gave credible evidence and made appropriate concessions.
23. The Tribunal also found Mr Fallows to be a helpful witness who answered questions clearly.

Findings

Charge 1

24. The Panel considered the allegations set out in the Charge Sheet. The Panel noted that largely, paragraphs 1 to 5 are uncontroversial and set out the background and procedural history. Equally it seems to be accepted that at all material times, Ms Baker was a director and shareholder of Root2 and Root2 DR (as pleaded in paragraph 6). The same observations apply to the factual averments in paragraph 7.
25. The factual issue is whether, as alleged in paragraph 8 of the Charge Sheet, the Alchemy Scheme was not properly notified under DOTAS or, in the alternative, was not notified sufficiently promptly.

26. The Tribunal is unable to go behind the findings of the FTT and was of the view that even when exercising caution when considering obiter comments, the conclusion of the FTT was that ultimately the Alchemy Scheme was notifiable under DOTAS.
27. The Tribunal reminded itself of the mischief that the pleaded aspects of PRPG 2011 and PCRT 2011 are intended to address.
28. The Tribunal considered the various aspects of the PRPG and PCRT and it concluded that either collectively or individually they do not impose strict liability on a member. Rather there needs to be consideration of reasonableness.
29. Therefore, the Tribunal was of the view that it does not automatically follow that a failure to notify under DOTAS until the conclusion of the hearing before the FTT or a delay following that decision renders Ms Baker in breach of regulations 2.6.1, 2.6.2 and 5.1.1 of the PRPG or regulations 2.13, 8.1, 8.11 of the PCRT.
30. In deciding whether the acts or omissions of Ms Baker were so serious as to amount to misconduct and thereby a breach of the PRPG 2011 and PCRT 2011, the Tribunal reminded itself that in disciplinary regulatory proceedings, not every deviation from a standard or regulation amounts to breach. That is exemplified in the context of medical professionals in the case of *Roylance v GMC* [2011] 1 AC 311.
31. The Tribunal found the TDB case rather confusing. In paragraph 14 of the Charge Sheet the TDB say that it was on 15 April 2011 that Root2 became aware of a transaction which formed part of notifiable arrangements. The TDB refers to the FTT judgment of 2021 and avers that Root2 did not receive formal advice on DOTAS until 21 June 2012.
32. The averment at paragraph 14 goes on to say that Ms Baker cannot pray in aid the opinion of Mr [REDACTED] KC and that if she seeks to rely on an earlier opinion she has not properly

disclosed it. The Tribunal did not consider that point to be of assistance and it did not seem to be pursued in the TDB's skeleton argument.

33. The Tribunal struggled to see how that assists it. The Tribunal was of the view that whether Alchemy was disclosable under DOTAS was an issue and, as argued on behalf of Ms Baker, it was open to her to dispute and litigate any view that HMRC held on the matter until a decision had been made by a court or tribunal.
34. The Tribunal noted that Ms Baker had exhibited copies of counsel's opinion to her witness statement and a summary of the engagement with leading counsel is set out in the skeleton argument for Ms Baker at paragraph 35 and the summary of her response to the charges which appears towards the end of the skeleton.
35. In addition to receiving written opinions, the Tribunal noted that Ms Baker had instructed Mr [REDACTED] KC to advise in conference as per the instructions dated 21 January 2011 (page 69 of Bundle E). The instructions of 21 January 2011 provided the details of the Alchemy Scheme. At paragraph 58 of the instructions, counsel was asked to advise on the application of DOTAS.
36. A preliminary opinion was provided in response to those instructions (page 96 of Bundle E). The view of counsel was 'In my view DOTAS rules do not apply'. The Tribunal was of the view that this appeared to be unqualified advice and questioned what Ms Baker was then expected to do other than rely on it. The opinion is signed by Mr [REDACTED] and dated 17.2.11.
37. The Tribunal noted that Mr Hughes then wrote to Mr [REDACTED] KC by email on 18 April 2011 which appeared to be updating instructions. The updating instructions included a question as to whether counsel agreed that DOTAS didn't apply. A further email was sent to Mr [REDACTED] KC on 2 August 2011 which referred to a conference with Mr [REDACTED] KC. Ms Baker was copied into that email. A further email dated 29 July 2011 referred to a conference with Mr [REDACTED] KC the previous day.

38. The Tribunal noted that a further written opinion was provided by Mr [REDACTED] KC (page 190 of Bundle E) in which counsel advises again in clear terms that DOTAS did not apply.
39. The Tribunal noted that Ms Baker provided notes of a conference with Mr [REDACTED] KC on 1 August 2011 and there was another 73 page advice (dated 9 May 2012) provided thereafter. The Tribunal noted that counsel gave a more detailed view on the application of DOTAS and whilst he opined that the question of whether DOTAS applied was ‘more difficult’, he gave a detailed explanation and concluded that, “...in my opinion the DOTAS rules do not apply”.
40. Correspondence and engagement with Mr [REDACTED] KC continued through to 2016 regarding DOTAS.
41. The Tribunal noted that the issue of DOTAS was a matter that Root2 continued to seek advice about as confirmed in the emails to Mr [REDACTED] KC and Mr [REDACTED] of counsel in which their advice was sought in relation to, and following meetings, with HMRC regarding DOTAS.
42. The Tribunal had regard to the provisions of 8.11 of PCRT regarding the delegation of decisions. However, the Tribunal concluded that until the decision of the FTT was handed down, which clarified the position under DOTAS, it was reasonable for Ms Baker and her colleagues in Root2 and/or Root2 DR to challenge and dispute HMRC’s position. The Tribunal had regard to the correspondence to and from HMRC, which includes letters from counsel arguing Root 2’s case in 2015 and guidance being sought from other professionals. It cannot be said to be acting unreasonably to litigate a matter or to seek advice from counsel on points of law.
43. The Tribunal was of the view that it was reasonable for Ms Baker to seek counsel’s advice in writing and in conference and the evidence summarised herein shows that there was an ongoing engagement with counsel and provision of updating information. The chronology and her evidence shows that she had numerous meetings and written exchanges with very experienced counsel and it was reasonable for her to rely on that advice in making a decision.

44. The Tribunal therefore concluded that it is not established, on the balance of probabilities, that in entering into litigation about the DOTAS issue and acting on counsel's advice, Ms Baker acted in a manner which was so unreasonable as to amount to improper behaviour or a significant departure from the standard of a tax advisor so as to amount to a breach of regulations 2.6.1, 2.6.2 and 5.1.1 of the PRPG or regulations 2.13, 8.1, 8.11 of the PCRT.
45. The other aspect of charge 1 is whether, upon receiving the FTT's decision regarding DOTAS, Ms Baker unreasonably delayed in notifying HMRC.
46. The Tribunal noted that on 6 June 2016, Mr Hole of HMRC informed Mr Sample that HMRC intended to make an application to the FTT. This appears to have come about as HMRC and Root2 were unable to agree a position. HMRC made its application on 10 June 2016. The decision was made in 2017 and the Tribunal had sight of the exchanges that took place shortly after the decision was made.
47. Correspondence showed that there were issues regarding the publication of the decision (after the hearing on 1 and 2 March 2017) in September 2017.
48. The Tribunal noted that whilst the FTT sat on 1 and 2 March 2017, the judgment itself was not released until 11 September 2017 and there appears to have been discussions and submissions to the FTT about including wording about the judgment being appealable.
49. On 21 September 2017, Root2 submitted its DOTAS disclosure as evidenced in the 'Disclosure of avoidance scheme (notification by scheme promoter)' form (at page 573 of Bundle E) which was signed on that date.
50. HMRC issued a reference number 70274540 on 27 September 2017.
51. In October 2017, Root2 wrote to HMRC explaining that they wished to ensure that they complied fully with their obligations. The Tribunal had regard to the exchanges that followed with HMRC.

52. However, it was not until 3 October 2017 that HMRC advised Root2 that its disclosure of 21 September 2017 was not valid. The Tribunal was of the view that in deciding whether Ms Baker had delayed or caused Root2 to delay in disclosing to HMRC, it is fair to consider the exchanges of correspondence. The Tribunal noted that there were a number of requests and replies from HMRC as well as Root 2 before the parties arrived at the required and correct position.
53. The Tribunal was of the view that in all the circumstances, taking into account that the initial disclosure was 10 days after publication of the judgment, on the balance of probabilities the TDB have not proved that Root2 and/or Ms Baker did not act sufficiently promptly as to amount to a breach of regulations 2.6.1, 2.6.2 and 5.1.1 of the PRPG or regulations 2.13, 8.1, 8.11 of the PCRT.

Charge 2

54. The issue in charge 2 is the alleged defective and inadequate advice to clients.
55. The Tribunal was of the view that whilst advice may have been taken on the content of letters that Root2 used with clients, counsel's involvement was limited to marking up and proposing some amendments. He did not write the advisory letters in their entirety. The Tribunal was of the view that ultimately, it was Root2, Ms Baker and her colleagues to reflect on the advice from counsel, consider his proposed changes, evaluate the risks associated with the Alchemy Scheme and choose what advice was given to clients. Ms Baker had to decide how to balance attracting new clients with providing advice in way which was in compliance with her professional obligations under the PRPG 2011 and the PCRT 2011.
56. The Tribunal was of the view that a reasonable interpretation of counsel's advice, a summary of which is set out above in relation to charge 1, was that Alchemy was not completely free of risk. Counsel advised on the prospects of HMRC investigations, changes in legislation and the approach taken by the courts.

57. The Tribunal accepts the submissions made by the TDB in its skeleton argument regarding the applicable regulations in the PRPG 2011 and the PCRT 2011. These regulations relate to content and detail of advice to clients (paragraphs 51 to 54 of the TDB's skeleton argument). That is not controversial and easily confirmed by reference to the regulations that were helpfully provided in Bundle D.
58. The issue at the heart of charge 2 is the content of the advice letter which Root2 provided to its clients. The TDB drew the Tribunals attention to the sample letter at page 776 of Bundle A (the 'Advice Letter'). The Tribunal considered the points raised in the TDB's skeleton argument. The Tribunal also accepted the submissions made on behalf of Ms Baker that a letter or document which was being assessed should be considered in its entirety.
59. The Advice Letter is the focus of charge 2. Whilst there were a number of standard letters and documents in the bundles, it is this letter which is specifically referred to by the TDB in its skeleton argument. The letter states that it sets out the advice in respect of Alchemy and that it supersedes any previous oral or written communication. The Tribunal attached significant weight to this statement. It emphasised the importance of the Advice Letter over any other document or oral advice.
60. The Advice Letter states that it is based on an opinion from Mr [REDACTED] KC but goes on to say that the advice is for Root2's benefit only and cannot be relied on by the client. The Tribunal noted that during the cross-examination of Ms Baker, she was asked about the inability of a Root2 client being able to sue Mr [REDACTED] KC. Whilst the Advice Letter states that counsel's advice was for Root 2's benefit only, the Tribunal had to consider what was therefore the purpose of referring to it.
61. The Advice Letter provided a client with a summary of the transactions that the client was looking to undertake before stating that it set out Root2's advice on the UK tax consequences of entering into the transactions.

62. The Advice Letter referred to the potential for the client to suffer a charge to capital gains tax and that, if the client's annual CGT allowance was not available, the rate would be 28%. It goes on to set out the circumstances in which the client could be liable to income tax and national insurance contributions, and also where 'any other benefit' that the client could derive from the transactions is such that it is not taxable.
63. In both cases, the Advice Letter refers to advice from counsel.
64. The Advice Letter goes on to expressly state that winnings on bets are tax-free, and that counsel has agreed that winnings that the client enjoys from the spread bet would be free of tax.
65. The Advice Letter contains two paragraphs that deal with risk. The letter states that there is risk of the threshold not being hit and that the client suffers a tax charge on the novation but does not receive a benefit from the spread bet. It goes on to say that there is a risk that HMRC 'may' enquire about the arrangements and that counsel has given a 'very favourable opinion' on the transactions and that they believed that the strategy was 'difficult to attack'. The Advice Letter points out an argument that HMRC 'may' advance and the court 'may' agree with HMRC resulting in the client having to pay more tax.
66. The letter went on to state that counsel had opined that the transactions did not fall under DOTAS and were not an avoidance scheme.
67. In cross-examination, it was put to Ms Baker that the Advice Letter should have stated that HMRC "will" enquire about the scheme and she replied that in meetings with clients that was stated to them, and that clients were not surprised to receive letters from HMRC. She was pressed further and stated that 'with hindsight that should be in there'.
68. Ms Baker confirmed that there were webinars with clients and it was stated that the tax analysis had been agreed by counsel. It was put that the purpose of saying that was to make

people more comfortable with the scheme. Ms Baker replied, 'not really, I don't agree with that'. She went on to say that her role wasn't to encourage them (i.e. clients) to enter into the scheme, it was just to explain to them and for them to decide alone or with an adviser. She explained that counsel's advice gave her comfort. It was suggested to Ms Baker that people would rely on counsel's advice. She replied, 'not wholly agree, there were some factors'.

69. Ms Baker was cross-examined about other standardised documents but the Tribunal has found that line of questioning and the answers provided by Ms Baker of limited assistance in considering the allegations relating to charge 2 which, in the Tribunal's view pivots on the Advice Letter.
70. The Tribunal read the Advice Letter in full. It also read the letter at page 128 of Bundle A. That is referred to in the skeleton argument on behalf of Ms Baker but the Tribunal could not identify any (or any significant) difference between that and the Advice Letter. The skeleton refers to a number of other documents and letters, but the Tribunal was of the view that largely they did not provide any more detailed advice compared to the Advice Letter. Further, the Tribunal has already noted that the Advice Letter was clearly marked as superseding all previous oral and written advice. Without wishing to be repetitive, the Tribunal therefore concluded that it was this particular letter that was intended to be relied upon, by a client, above all other advice.
71. The Tribunal had regard to the various written opinions from Mr [REDACTED] KC. The Tribunal noted that in his initial opinion dated 17 February 2011, Mr [REDACTED] KC had expressed concern about the approach that the court's might take (E/106). He also advised that the view of HMRC **will** be to try and put the transaction back and argue that it produces a payment. In his closing paragraph he stated that this is tax planning and likely to be closely investigated. He goes on to say that the planning is robust.

72. The Tribunal was of the view that the use of the word ‘will’ is significant as it creates an impression that an event is more likely to occur, with an air of certainty. On the other hand the use of the word ‘may’ leaves the question of the likelihood of occurrence as open to interpretation and possibly leaving the person to whom the advice is intended with the impression that occurrence is less than certain.
73. In Mr [REDACTED] KC’s opinion dated 6 May 2011, the Tribunal noted that he appeared to be less equivocal about the risks that is then presented in the Advice Letter prepared by Root2. This can be seen in his concluding paragraphs when he says that the strategy is likely to be investigated by HMRC and the courts can take a different view to what the ‘tax world’ envisaged.
74. The Tribunal was of the view that it was not necessary for the Advice Letter to refer to the opinions of Mr [REDACTED] KC in order for Root2 to give advice to its clients. The Tribunal noted that Ms Baker argued that she was not advising any client whether the Alchemy scheme was right for them. However, in order for a client to make an informed decision, it was reasonable for the client to expect accurate advice on the risks.
75. Any view of risk could have been presented as the result of analysis undertaken by Root 2, having undertaken its own risk assessments. The Tribunal concluded that it is more likely than not that Root2 included references to counsel’s opinion to bolster the credibility of its advice and that was not sufficiently mitigated by the caveat in the letter which refers to counsel’s advice being for the benefit of Root2 only. In more simple terms, if the advice was addressed to Root2 only, then why was it referred to at all in the Advice Letter?
76. The Tribunal also concluded that the language used in the Advice Letter was softer than that used by Mr [REDACTED] KC. The Tribunal was of the view that in his opinions, Mr [REDACTED] KC does appear to give advice which is favourable and supportive of the Alchemy scheme but he is

also firmer in his views about the prospect of HMRC investigating than is set out in the advice letter. The Tribunal repeats its observations set out in paragraph 71 above.

77. Having had regard to the letters and counsel's advice on the same, the Tribunal concluded that it was not a case that Ms Baker and Root2 had deliberately set out to misrepresent the advice given or the risks involved with the Alchemy Scheme, but had seriously misjudged the advice on risk which Mr [REDACTED] KC had provided. The Tribunal recognised the difficulty in summarising lengthy and detailed counsel's opinions which were, on the whole, favourable to Root2. However, the Tribunal concluded that Ms Baker and Root2 did not achieve the correct balance and tone on important areas of risk which clients would undoubtedly been focused on when making a decision on whether to enter into the Alchemy Scheme. This difficult balancing exercise was complicated by the competing objectives of attracting clients and giving independent advice which is considered further in charge 3.
78. Applying those conclusions to the regulations pleaded by the TDB in paragraph 16 of the Charge Sheet, the Tribunal was of the view that the failure to provide a more detailed and accurate assessment of risk and the unnecessary and inappropriate reference to counsel's opinion meant that Ms Baker did not exercise due care in her practice (which gives rise to breaches of regulations 2.6.1, 2.6.2 and 5.1.1 of the PRPG 2011), but the real mischief here is the lack of care and diligence in relation to the advice which is the breaches of regulations 5.6.2 to 5.6.4. For the avoidance of doubt, the Tribunal has found that the Advice Letter doesn't make reference to case law or legislation.
79. For these same reasons, the Tribunal has found that Ms Baker has breached regulations 2.4 and 7.5 of the PCRT 2011. As to regulation 7.4, the Tribunal was of the view that this is not proved as this is not really a case of acting without the required technical competence but more of being careless. This was not a deliberate intention to deceive or mislead clients.

Charge 3

80. In relation to charge 3, the Tribunal considered the particulars of the allegations at paragraphs 19 to 22 of the Charge Sheet.
81. The Tribunal was of the view that in general terms, it appears that what is being alleged is that due to her own involvement in Alchemy, there was a risk of conflict of balancing the commercial interest of seeking clients to participate in the Alchemy Scheme against the professional duty to deliver independent advice. The Tribunal was of the view that for the reasons outlined below, that Ms Baker should have recognised that this could have been a risk and addressed it. She failed to do so.
82. The Tribunal noted the submissions made on behalf of the TDB and that the focus of the TDB's case is the Advice Letter which has been reviewed as part of the Tribunal's consideration of charge 2. As the Tribunal has noted, that letter is expressly marked as superseding all previous oral and written advice and therefore it can be reasonably inferred that it was intended to be the main or sole document upon which a client could rely.
83. It can also be reasonably inferred that a client would expect to have received information about any potential conflict of interest. There was a balance to be struck between encouraging clients to participate in Alchemy and providing information in an independent and impartial manner.
84. The Tribunal considered Ms Baker's oral evidence and that of Mr Fallows. It was put to Ms Baker that she provided advice to potential clients and that if the client did not enter into the scheme, their fee would be refunded. She confirmed that to be the case and that if the client went ahead, a fee would be payable and that would be set out in the engagement letter. She confirmed that the fee varied and was a percentage of the investment.
85. The Tribunal noted the submissions made on behalf of Ms Baker. It noted that she has an unblemished record and the Tribunal did not rely on similar fact evidence. The Tribunal considered the Advice Letter and noted that it contained no indication or reference that would

allow a client to know of Ms Baker's involvement in Alchemy which would have allowed them to assess the reliability of Ms Baker's advice due to a potential conflict of interest.

86. Ms Baker had a key role in Root2. In paragraph 10 of her witness statement she explained that she had general oversight and implementation of the advice provided by the company.
87. In her statement, Ms Baker described the process by which clients would be engaged via referrers. She stated that Root2 did not solicit clients itself. She described the advice process. However, as the Tribunal previously noted, any oral advice was said to be superseded by the Advice Letter. Further, the Tribunal noted that Ms Baker seemed not to appreciate the need to explain to a client her own interest in Alchemy. Even if Ms Baker and her fellow directors were not advising any client whether the scheme was right for them, the Tribunal was of the view that in order for any client to be able to fully evaluate the advice given, they would need to assess the credibility of the adviser, and they rely on the adviser disclosing any financial or commercial interest they might have. In more simple terms it allows a client to distinguish between marketing and advice.
88. Therefore, the Tribunal concluded that, on the balance of probabilities, it is proved that:
 - a. Ms Baker allowed to herself to be compromised and failed to properly disclose her potential conflict of interest (as pleaded in paragraph 18 of the Charge Sheet);
 - b. as a fact, Ms Baker stood to gain financially if others participated in Alchemy and she took part in Alchemy herself (as pleaded in paragraph 19 of the Charge Sheet);
 - c. this meant that she was unable to give independent, objective advice. Her involvement was potentially going to influence the manner in which she gave advice, even if that was unintentional. The Tribunal was of the view that this is a natural consequence of her interest and involvement in Alchemy (as pleaded in paragraphs 20 and 21 of the Charge Sheet);

- d. as aforesaid, the Advice Letter makes no reference to Ms Bakers or Root 2's involvement or interest in Alchemy to allow a client to identify a potential conflict of interest (as pleaded in paragraph 22 of the Charge Sheet.
89. The Tribunal applied those findings to the alleged breaches of the PRPG 2011 and the PCRT 2011. The Tribunal has concluded that the failure to disclose or manage the risk of a potential conflict of interest gives rise to a breach of regulation 2.1 and 2.2.1 of the PRPG 2011 but, for the avoidance of doubt, the Tribunal finds that this was a failure to consider the potential conflict of interest and take appropriate steps. The Tribunal has not seen evidence to show that Ms Baker identified a conflict and then wilfully decided to conceal it from clients. The Tribunal has not found that Ms Baker was dishonest.
90. The Tribunal is of the view that the findings that it has made give rise to a breach of regulations 2.2.1 and 2.3.1 as these expressly related to the need for a member to be objective and to perform their work properly and efficiently.
91. The Tribunal is of the view that the real mischief arising out of charge 3 is a breach of regulations 6.1.1, 6.1.2, 6.1.3. The Tribunal has found that these regulations are breached as they clearly impose a duty on a member to act independently and take care to preserve perceived as well as actual independence.
92. The Tribunal is of the view that for the same reasons, Ms Baker is in breach of regulations 2.1, 2.2, 2.3 and 2.4 of the PCRT 2011. As per the Tribunal's decision in relation to the PRPG 2011, the Tribunal does not consider these breaches to be dishonest.

Charge 4

93. The Tribunal noted that it is submitted on behalf of Ms Baker that there was extensive correspondence with HMRC and that, on occasions, letters and requests for information which were lengthy and detailed. The Tribunal had regard to Ms Baker's statement and the

particular provisions that are brought to its attention in the skeleton argument prepared on her behalf.

94. The letters that were sent to HMRC and which appear in the bundle before the Tribunal appear to be reasonable in tone, but the Tribunal noted the observations made by the judge in the FFT case as reported in *HMRC v Root2Tax Ltd* [2017] UKFTT 696 (TC) as set out in the skeleton argument prepared on behalf of the TDB.
95. The remarks were made by a judge who would have considered all the written evidence and heard oral evidence. Whilst it was submitted that care should be taken in relation to obiter comments, it would be somewhat perverse for the Tribunal to go behind the views of the judge at the FTT.
96. The Tribunal considered the particulars of charge 4. The Tribunal was of the view on the facts that it is evident from the correspondence that, as pleaded in paragraph 24 of the Charge Sheet, Root 2, through Ms Baker, was engaged with HMRC regarding notification of the Alchemy scheme under DOTAS. The Tribunal is also of the view that the remarks of the judge of the FTT regarding the ‘unwillingness to be forthcoming’ and ‘deflection’ show that on the balance of probabilities, it is proved that Root 2, through Ms Baker, did not engage with HMRC in an open, constructive and professional manner as this follows from an ordinary interpretation of an ‘unwillingness to be forthcoming’ and ‘deflection’.
97. The Tribunal concluded that it follows that Ms Baker has breached regulation 2.15 of the PCRT 2011 as that requires a member to manage disagreements with HMRC in an open, constructive and professional manner.

Charge 5

98. The Tribunal has recorded that Ms Baker admits charge 5.

Charge 6

99. In relation to Charge 6, the Tribunal found that in light of its findings in relation to Charges 2 to 4, and upon Ms Baker's admission of Charge 5, Ms Baker has brought the profession into disrepute. The Tribunal is of the view that a reasonable and informed member of the public would have concerns about members of the profession failing to give full and detailed advice, failing to manage a potential conflict of interest, practicing without insurance and not then dealing with HMRC in an open, constructive and professional manner.
100. Accordingly, the Tribunal found that Ms Baker has breached regulations 1.7 and 2.6.2 of the PRPG 2011 (and from November 2018, regulations 1.7 and 2.6.3 of the PRPG 2018) and clauses 2.1 and 2.13 of the PRCT 2011.

Brett Wilson

Chair

9 May 2025

APPENDIX 1

Charge Sheet / Summary of Charges

1. Ms Baker has at all material times been a member of the Chartered Institute of Taxation (CIOT) and Association of Tax Technicians (ATT), with membership number 163673.
2. Complaints against Ms Baker were referred to the Taxation Disciplinary Board (TDB) by the CIOT and ATT as follows:
 - a. On 21 April 2020, a complaint was referred in respect of Ms Baker's connection to a tax avoidance scheme known as "Alchemy" (the Alchemy Complaint)
 - b. On 19 November 2020, a complaint was referred in respect of Ms Baker's failure to ensure that firms on which she was a director and shareholder had appropriate professional indemnity insurance (the Insurance Complaint).
3. In each case, the Investigation Committee of the TDB referred the complaints to the Disciplinary Tribunal pursuant to reg. 5(4)(e) of the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016).
4. This document refers to the following rules and regulations:
 - (a) Professional Conduct in relation to Taxation 2011 (**PCRT 2011**) (and later editions),
 - (b) Professional Rules and Practice Guidelines 2011 (**PRPG 2011**) (and later editions),
 - (c) Compulsory Professional Indemnity Insurance Regulations 2013 (**CPIIR**).

5. For the avoidance of doubt, where the charges set out below relate to conduct which spanned different editions of the PCRT and PRPG, references to provisions in the PCRT 2011 and PRPG 2011 include reference to the successor provisions in later editions.

General Particulars

6. Ms Baker was at all material times one of three shareholders and directors of Root 2 Tax Ltd (**Root2**) and Root2 Tax (Dispute Resolutions) Ltd (**RootDR**). Root2 was incorporated on 10 February 2011 and RootDR on 11 December 2014.
7. In 2011, Root2 developed, marketed and implemented a tax avoidance scheme known as “Alchemy” (The Alchemy Scheme). The idea behind The Alchemy Scheme was that certain spread betting and option arrangements could be entered into triggering only minimal tax liabilities on the basis that the returns were tax free gambling winnings, whilst the employer nevertheless received a corporation tax deduction. Ms Baker Herself took part in the Alchemy Scheme together with Root2. Root2 continued to market and advise on The Alchemy Scheme in subsequent years and assist clients with its implementation.
8. The Alchemy Scheme was not properly notified to Her Majesty's Revenue and Customs (**HMRC**) under the rules relating to the Disclosure of Tax Avoidance Schemes (**DOTAS**) set out in the Finance Act 2004 (**FA 2004**), Part 7 or alternatively was not notified sufficiently promptly. Certain disclosures were made belatedly on 21 September 2017, 13 October 2017 and 5 April 2019. HMRC did not consider any of these disclosures to satisfy the requirements of s. 308 FA 2004 and in any event the disclosures should have been made more promptly.
9. In *HMRC v Root2Tax Ltd, Root 3Tax Ltd* [2017] UKFTT 696 (TC), the First-tier Tribunal (Tax Chamber) (**FTT**) held that the Alchemy Scheme was notifiable under DOTAS (see [47]) and should have been notified to HMRC by Root2 under section 308 FA (see [30]). The FTT held Root2's position was not “*seriously arguable*” and that “*the only reasonable conclusion*” was this was a scheme designed to secure a tax advantage (see [45]). The FTT

further found that the taxpayer companies had attempted to “*deflect*” HMRC with an “*unwillingness to be forthcoming*” (see [50]). The FTT’s findings properly reflected the law and factual history.

10. In *Root2Tax Ltd v HMRC* [2019] UKFTT 0744, the FTT held that the Alchemy Scheme was ineffective, in that payments made under it were liable to tax and national insurance contributions as employment income. The FTT’s findings properly reflected the law and relevant facts.
11. On 3 May 2020, the professional indemnity insurance of Root2 and RootDR expired without further cover being in place. Nevertheless both firms continued to trade.

Charge 1: DOTAS Disclosure

Allegation

12. In contravention of regs 2.6.1 and 2.6.2 and 5.11 of PRPG 2011 and clauses 2.13, 8.1, 8.11 of PCRT 2011, Ms Baker did not properly disclose The Alchemy Scheme under the DOTAS provisions then in force when she should have done nor did she make any attempt to effect such disclosure by Root2.

Particulars of allegation

13. Ms Baker was at all material times a controlling mind of Root2. Root2 was a promoter of the Alchemy Scheme which should have been disclosed to HMRC by Root2 under DOTAS, but was not properly disclosed (alternatively, the Scheme was not disclosed sufficiently promptly).
14. Root2 became aware of a transaction forming part of a notifiable arrangement on 15 April 2011 (see [2021] UKFTT 346 (TC), [9]) but did not receive formal advice on DOTAS until the opinion of Mr [REDACTED] dated 21 June 2012. For that reason Ms Baker cannot pray in

aid the opinion of Mr [REDACTED]. To the extent that Ms Baker relies on any earlier opinion of Mr [REDACTED], it has either (a) not been properly disclosed to the TDB and/or (b) was not properly retained on the client file in accordance with regs. 5.5.1, 5.5.2 PRPG 2011.

15. Further and in any event, the opinion of Mr [REDACTED] was heavily caveated, predicated on unsafe assumptions and referred to the “question of whether the DOTAS rules apply” as being “more difficult”. In all the circumstances, Ms Baker should have exercised her professional judgment to disclose the Alchemy Scheme notwithstanding the opinion of Mr [REDACTED].

Charge 2: Nature of advice to clients

Allegation

16. In contravention of regs. 2.6.1, 2.6.2, 5.1.1, 5.6.3, 5.6.4 of PRPG 2011 and clauses 2.4, 2.5, 7.5 of PCRT 2011, Ms Baker of Root2 did not adequately advise clients.

Particulars of Allegation

17. The advice provided by Root2 to clients was defective and inadequate; in particular:
 - (a) It failed to give full and fair summary of the risks of engaging in the Alchemy Scheme, including the risks of successful HMRC challenge. The advice overstated the prospects of success and failed to fairly convey the downside risk.
 - (b) The advice provided by Root2 referred to the opinion of tax counsel [REDACTED] but did not fairly reflect the risks, caveats and assumptions referred to and highlighted by Mr [REDACTED].
 - (c) The advice expressly relied upon and referred to the opinion of tax counsel, despite the fact that clients of Root2 were not legally entitled to rely on Mr [REDACTED] opinion which itself stated “*anyone adopting the Strategy must not rely on this opinion*”.

Charge 3: Independence, objectivity, integrity

Allegation

18. In contravention of regs. 2.1, 2.2.1, 2.3.1, 2.6.2, 6.1.1, 6.1.2, 6.1.3 PRPG 2011 and clauses 2.2, 2.2, 2.3, 2.4 PCRT 2011 Ms Baker:
- (a) allowed her independence, integrity and objectivity to be compromised, and further put herself in a position of potential conflict of interest.
 - (b) failed to properly disclose the nature and extent of her (and/or Root2's) potential conflict of interest, lack of independence and compromised objectivity, such being information relevant to clients.

Particulars of Allegation

19. Through her interests in particular in Root2, Ms Baker stood to gain financially from others' participation in the Alchemy Scheme. Ms Baker also took part in the Alchemy Scheme herself and was therefore interested in its success.
20. Ms Baker was financially incentivised to provide, through Root2, favourable advice on the Alchemy Scheme. Ms Baker was therefore in a position where her personal interests conflicted or potentially conflicted with the interests of her clients, whose interests were best served by securing independent, objective and realistic advice.
21. Given her interest in the Alchemy Scheme, directly and through Root2, Ms Baker was unable to be objective or properly provide independent advice. Ms Baker nevertheless, through Root2, marketed and provided advice to clients on the merits of the Alchemy Scheme.

22. Further, there was no or no sufficient disclosure by Ms Baker and/or Root2 as to the extent of their potential conflict of interest, lack of independence and/or compromised objectivity.

Charge 4: Engagement with HMRC

Allegation

23. Contrary to clause 2.15 PCRT 2011, Ms Baker failed to manage the disagreement with HMRC as to the notifiability of the Alchemy Scheme in an open, constructive and professional manner.

Particulars of Allegation

24. Root2, including through Ms Baker, were engaged with HMRC from July 2014 or earlier as to the question of whether or not the Alchemy Scheme was notifiable under DOTAS.
25. Root 2, including through Ms Baker, did not engage with HMRC in an open, constructive and professional manner. Rather, Root2 (including through Ms Baker) were not forthcoming and made attempts to deflect HMRC.

Charge 5: Professional Indemnity Insurance

Allegation

26. In contravention of regs. 2.6.2, 2.6.3 and 2.7.1 of PRPG 2018 and regs. 2.1 and 2.2 of CPIIR, Ms Baker failed to ensure that Root2, and the associated company Root 2 Tax (Dispute Resolutions) Ltd (**RootDR**), had a valid policy of professional indemnity cover in her capacity as director of each of those companies.
27. Root2 and RootDR first experienced difficulty in renewing their professional indemnity cover from late September 2018, when their then-provider declined to offer renewal terms.

The firms were able, with difficulty, to find further cover at this time but such cover expired on 3 May 2020 without further cover being in place or being arranged. Nevertheless both firms continued to trade and charge clients for work.

Charge 6: Disrepute

Allegation

28. In light of the matters referred to under Charges 1 to 5 above, Ms Baker brought the profession into disrepute, contrary to regs. 1.7, 2.6.2 PRPG 2011 (and, from November 2018, regs. 1.7 and 2.6.3 PRPG 2018) and clauses 2.1, 2.13 PCRT 2011.
29. The Particulars set out under Charges 1 to 5 are here repeated.

APPENDIX 2

Regulations referred to in the Charges

Professional Rules and Practice Guidelines 2011

1.7 - Introduction

A member owes a duty not to act in such a way as to bring CIOT/ATT into disrepute, or in any way which would harm the reputation or standing of CIOT/ATT. Further, a member may have duties and obligations to other regulators and professional bodies, for example, HMRC or the Audit Practices Board, and should have regard to these as relevant.

2.1 Overview of the fundamental principles

A member shall 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, 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.

2.2.1 - Integrity

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

2.3.1 - Objectivity

A member must be independent and objective in all work undertaken. This applies both to the representation of clients and to the resolution of conflicting interests as between tax advisers, clients, HMRC and any other interested parties. If such independence and objectivity may be impaired through conflict of interest, the member must act in accordance with Chapter 6.

2.6.1 – Professional behaviour

A member must:

- take due care in his conduct
- take due care in all his professional dealings
- uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT.

2.6.2

A member must not:

- perform his professional work, or conduct his practice or business relationships, or perform the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or the ATT or to the members or any part of the membership or to the tax profession
- breach the Laws of the CIOT or the ATT

5.1.1 – Duty of care

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

5.5.1 – Consultation and second opinions

A member is encouraged to consult with fellow professionals when advising clients, where appropriate, to ensure that relevant skill and judgement is applied. It is a matter of judgement for the member whether consultation is necessary in any particular situation. If a member relies on consultation, evidence of it should be retained on the client file. Client confidentiality rules, especially those concerning consent, must be taken into account. See paragraph 2.5 for further details.

5.5.2

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

A significant opinion is one in respect of which either:

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

5.6.2 – Form and content of advice

Unless set out in a separate document (such as terms and conditions or an engagement letter) an advice communication should normally set out:

- the purpose for which the advice is required and the client's objectives
- the background facts and assumptions on which the advice is based and whether or not the facts have been verified by the adviser
- the alternatives open to the client
- the risks associated with the advice
- relevant caveats and exclusions.

5.6.3

When formulating advice a member should refer to the relevant taxation legislation and the practice of HMRC. Due regard should also be given to case law.

5.6.4

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

6.1.1 – Professional independence

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

6.1.2

A member must not only remain professionally independent, but particular care must be taken to preserve perceived, as well as actual, independence. A conflict of interest may impair a member's professional independence.

6.1.3

If a member becomes aware of any factor which affects or might affect his independence in respect of a matter (or which might be perceived to do so) the member should immediately take action to address that factor in order to preserve his professional independence. If no appropriate action can be taken to remove the threat to the member's professional independence, the member should refuse to act on the matters in question or, if already acting when becoming aware of the adverse factor, should cease to act.

Professional Rules and Practice Guidelines 2018

1.7 - Introduction

A member owes a duty not to act in such a way as to bring CIOT/ATT into disrepute, or in any way which would harm the reputation or standing of CIOT/ATT. Further, a member may have duties and obligations to other regulators and professional bodies, for example, HMRC or the Financial Reporting Council, and should have regard to these as relevant.

2.6.2 – Professional behaviour

A member must:

- Uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT;
- Take due care in their professional conduct and professional dealings.

2.6.3

A member must not:

- Perform their professional work, or conduct their practice or business relationships, or perform the duties of their employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to themselves, to the CIOT or ATT or to the tax profession;

- Breach the Laws of the CIOT or ATT;
- Conduct themselves in an unbefitting, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT or ATT (as the case may be). For the avoidance of doubt, conduct in this context includes (but it not limited to) conduct as part of a member's personal or private life.

2.7.1 – Professional Indemnity Insurance (PII) and Personal Responsibility

A member in practice must protect their clients, their practice and themselves by having PII cover that complies with the CIOT/ATT PII Regulations (see the CIOT and ATT websites) as they have a duty of care to their clients when carrying out their professional work. A member is responsible for their own work and that of their employees and subcontractors. A member may be liable to pay damages for loss caused by their own professional negligence and that of their employees and subcontractors.

Professional Conduct in relation to Taxation 2011

2.1 – Overview of the fundamental principles

A member shall comply with the following fundamental principles:

- **Integrity**
To be straightforward and honest in all professional and business relationships.
- **Objectivity**
To not allow bias, conflicts 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.

Each of these fundamental principles is discussed in more detail below in the context of taxation services.

2.2 – Integrity

A member must act honestly in all his dealings with his clients, all tax authorities and other interested parties, and do nothing knowingly or carelessly that might mislead.

2.3 - Objectivity

A member may be exposed to situations that could impair his objectivity. It is impracticable to define and prescribe all such situations. Relationships which bias or unduly influence the professional judgement of the member should be avoided.

2.4 – Professional competence and due care

A member is free to choose whether or not to act for a client both generally and as regards specific activities. When advising a client each member has a duty to serve that clients' interests within the relevant legal and regulatory framework and provide them with appropriate advice on managing their tax affairs. Accordingly, a member has a professional duty to carry out his work within the scope of the engagement with the requisite skill and care.

2.5

A member must carry out his work with a proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which he is not competent to perform unless he obtains help from an appropriate specialist.

2.13 – Professional behaviour

A member should comply with all relevant legal obligations when dealing with a client's tax affairs and assist his clients to do the same. Even if there is no legal duty to act in a particular way, the member should always act in a way that will not bring his professional body into disrepute.

2.15

Serving the interests of his clients will, on occasion, bring a member into disagreement or conflict with HMRC. A member should manage such disagreements or conflicts in an open, constructive and professional manner. However, a member should serve his clients' interests within these constraints as robustly as circumstances warrant.

7.5 – Arrangements which may be considered to be artificial

Members should ensure that clients are fully aware of the risks of undertaking transactions that HMRC may regard as 'unacceptable' and that such transactions may be subject to litigation or possible changes in law.

8.1 – Introduction

There are two different regimes covering the disclosure to HMRC of tax avoidance schemes. Under the tax avoidance scheme for VAT (see paragraphs 8.3 and 8.4) responsibility lies with the taxpayer to make the disclosure; for other taxes (see paragraphs 8.5 – 8.13) the responsibility lies with the promoter of the scheme. Disclosure and registration of a tax avoidance scheme with HMRC is not a clearance or approval process; successful registration does not imply HMRC's acceptance of a scheme.

8.11 – Other taxes

Whilst a member may take advice from others, such as Counsel, or, where practicable, listen to the views of his client upon disclosure regime matters, the member remains responsible for the disclosure. A member should ensure that he retains control over his disclosure regime decisions and does not cede control over such decisions to his client or third parties.

Compulsory Professional Indemnity Insurance Regulations 2013

2.1 – Compliance

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

2.2

Every **member in practice** shall ensure that there is effected and maintained in respect of their **firm** professional indemnity insurance covered in accordance with paragraph 4.1 below.

4.1

The insurance required to satisfy the obligations of paragraph 2.2 above means insurance which a. is either

- i. underwritten by an insurer for the time being authorised by law to carry on in any member State of the European Union insurance business in respect of the specified risks referred to in this paragraph ; or
 - ii. if not so authorised is an insurance arrangement recognised and approved by a member of the Consultative Committee of Accountancy Bodies, The Law Society or The Bar Council.
- b. covers all civil liability, including costs and expenses, incurred in connection with the provision of or the offering of **taxation services**;
- c. meets the required limit of liability set out in paragraph 5 below;
- d. save in the case of sole practitioners, is not avoidable by reason of any misrepresentation or nondisclosure or any other act or default of the insured; and
- e. in respect of which all premiums have been paid as and when they fall due