12 February 2013

South African Revenue Service
Private Bag X923
PRETORIA
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BY E-MAIL: bdeklerk@sars.gov.za

SUBMISSION: SARS RECOGNITION OF CONTROLLING BODIES UNDER SECTION 240A OF THE TAX ADMINISTRATION ACT

Dear Sir/Madam


Our comments are presented under the headings used in the Discussion document and follows:

**Point: 4.1 - Minimum Qualifications and Experience**

SARS proposes that the minimum qualification should be “Tertiary or post grade 12 relevant qualification” or a “Grade 12 (NQF 4)” plus experience and then also a commitment from the body that it would ensure that members of the body with a NQF 4 increase their qualification to at least NQF 5 in the 3 years subsequent to joining the controlling body.

SAICA does not have a problem with the proposal, but wish to point out that the section 240(1) of the Tax Administration Act refers to a “natural person who provides advice ... or completes or assists in completing a return by another person...” The Act does not
differentiate between the person providing advice and the one merely assisting in completing a return and requires of both to be registered with SARS and to belong to a recognised controlling body. The minimum qualification for a person who merely “completes or assists in completing a return by another person” may well be lower than an NQF5. It would be possible to recognise a tiered membership in this regard.

**Point: 4.2 - Membership**

*Tax clearance certificate*

SARS recommends that “members must produce a current Tax Clearance Certificate (TCC) attesting to their tax compliance status on registration and on annual renewal.”

It is SAICA’s view that the requirement to produce a tax clearance certificate is not provided for in the Tax Administration Act and is *ultra vires* the provisions of section 240A(2). While we are not against this requirement in principle, it should rather be written into the Tax Administration Act and should apply equally to members of statutory controlling bodies and approved controlling bodies. Furthermore, it should not be the responsibility of controlling bodies to police such a requirement but rather should be policed by SARS, seeing as the information relating to the tax status of all tax practitioners is within its knowledge.

*Criminal record*

SARS recommends that “the body should verify the criminal record by the applicant providing the necessary proof on registration” or in the alternative that “bodies could request self-declaration of criminal status, provided that the member provides to the body with the necessary proof of criminal status within 12 months after registering as a tax practitioner with that recognised professional body”.

Section 240(3) of the Tax Administration Act provides that a person may not register as a tax practitioner if that person has been convicted of certain offences. This requirement relates to registration as a tax practitioner with SARS and not registration with a controlling body. Accordingly, it should be the responsibility of SARS to police the requirement and not the responsibility of controlling bodies. In any event, imposing this requirement on controlling
bodies is *ultra vires* section 240A. Furthermore, this requirement in the Tax Administration Act applies to members of all controlling bodies and not only to approved controlling bodies. Any requirement to provide proof of criminal status should apply to members of all controlling bodies and not only those approved by SARS. The requirement to provide proof of criminal status is impractical. It is submitted that a self-declaration should suffice and the criminal record of tax practitioners can be verified by SARS if considered necessary.

*Members suspended or removed from a controlling body*

SARS recommends that “any tax practitioner suspended / removed by a recognised controlling body and suspended from that body cannot be accepted as a member of another recognised controlling body.”

The requirement that a person removed from a controlling body cannot be accepted as a member of another controlling body is, firstly, *ultra vires* section 240A. Secondly, such a requirement is unnecessary as section 240(3) provides that such a person may not register as a tax practitioner.

*Point: 4.3 - Continuous Professional Development (CPD)*

It is stated that SARS will recognise controlling bodies – in terms of section 240A – that subscribe to the terms of the continuous professional development (mentioned in the discussion document) of their membership. It is also stated that SARS recognises that bodies generally provide opportunities for members to undertake CPD however it is recommended that in this instance, particular CPD in terms of taxation is required.

Given that most of the controlling bodies applying for recognition are not specific to tax professionals, it is impractical to expect them to require minimum tax related CPD hours per year in terms of their membership requirements. This should rather be a requirement incorporated into the Tax Administration Act itself and apply equally to all tax practitioners and not just members of the approved controlling bodies. Notably, lawyers would have no minimum tax related CPD requirements. Given the above, SARS should administer tax related CPD and not the controlling bodies.
Point: 4.4 - Code of Conduct

Honesty and integrity

It is suggested that objectivity is also very important. Tax practitioners must remain objective and cannot allow bias, conflicts of interest or undue influence of others to override professional or business judgements.

Contingency fees

SARS’s proposal relating to contingency fees is ultra vires section 240A. This section does not provide SARS with the power to prescribe the content of any code of conduct. It merely provides that a controlling body must have a relevant and effective code of conduct. Any attempt to ban contingency fees should be incorporated into the Tax Administration Act so as to apply equally to all controlling bodies. Lawyers are not prevented from charging contingency fees, although these are capped in relation to 'proceedings' in terms of the Contingency Fees Act. Furthermore, it is entirely acceptable in terms of most codes of conduct to charge contingency fees. In fact the IRBA code allows contingency fees for tax work, with the exception of the completion of tax returns. Accordingly, the proposal for an outright ban on contingency fees goes far beyond the current position at law which applies to registered auditors and lawyers. If a ban on contingency fees is to be introduced it should be incorporated into the Tax Administration Act, apply to all tax practitioners and be limited to tax returns.

Tax non-compliance

Tax non-compliance is a disciplinary offence - this proposal is ultra vires section 240A. It should rather be incorporated into the legislation as suggested above (under the tax clearance certificate comments) so as to apply equally to all tax practitioners and should be enforced by SARS.

Reporting of the outcomes of all disciplinary hearings of tax practitioners

SARS proposes that the “outcomes of all disciplinary hearings of tax practitioners that have been found guilty must be reported to SARS as well as the client concerned.”
It is again submitted that the requirement to report to SARS should be incorporated into the Tax Administration Act and also apply to statutory controlling bodies.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

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