Dear Madam

CALL FOR COMMENT: DRAFT REGULATION OF TAX PRACTITIONERS BILL

We refer to the call for comment on the above-mentioned document. Set out below please find SAICA’s comments.

1. Introduction

1.1. We welcome the introduction of a “Professional Body” that will now regulate those practitioners that are not members of any other professional body that upholds ethical standards.

1.2. The purpose of this Act is to regulate the tax practitioner profession to ensure that tax practitioners are appropriately qualified, adhere to ethical practices and are held accountable for their professional conduct. No mention is made of the minimum requirements (education or practice) and this is obviously left to the discretion of the Board. The objective refers to this as “to prescribe appropriate standards of qualification for accredited tax practitioners”.

1.3. However, in respect of members of other professional bodies, this means a duplication of registrations, a duplication of fees, continuing professional education (“CPE”) and administration. Consideration should be given to identifying other professional bodies and exempting persons from paying additional fees and levies. Section 105A gives ample scope for members of other professional bodies to be sanctioned by these professional bodies.
1.4. With South Africa’s complex tax legislation, taxpayers are forced to turn to advisors for help and by regulating the industry; taxpayers may in future try to complete tax returns themselves without having the required level of knowledge and expertise.

CHAPTER II: INDEPENDENT REGULATORY BOARD FOR TAX PRACTITIONERS

Part I – Establishment, objects and powers of Board

2. Section 7 – Powers of the Board

2.1. We would have expected some guidance to be given to the Board regarding the different categories of tax practitioners envisaged per section 7(e). It is not clear if the Board may utilize other existing regulated bodies, such as South African Institute of Chartered Accountants (“SAICA”) for instance, to assist them in meeting their objective and it is suggested that the legislation should make provision for the guidance.

2.2. The first objective of the board is to “protect the public interest in the Republic through the regulation of the tax practitioner profession” this objective is very wide reaching and does not necessarily protect the interest of tax practitioners themselves as members of the public and might encompass matters not related to the tax industry.

2.3. A further function of the Board is to “participate in the activities of bodies registered under the South African Qualifications Authority Act, 1995”. Would the intention of the Board now be to participate in the activities of SAICA?

2.4. Section 7(g) – Clarity is sought regarding the further financing of the Board. When this concept was first introduced, it was stated that the South African Revenue Service (SARS) would fund the first year. It is therefore anticipated that the subsequent years will be funded by means of fees, levies and the appropriation of funds from Parliament. Could an indication be given of what these fees or levies would amount to?

2.5. There does not appear to be a requirement for SARS’ employees to register as tax practitioners. Surely the quality of SARS would be improved if persons employed in senior positions (i.e. supervisory) are also governed by this proposed Bill.

2.6. Section 7(h) requires the proposed Regulatory Board to determine the need for, and the nature and level of, indemnity and fidelity insurance to be carried by accredited tax practitioners. Currently, those tax practitioners employed by audit firms and law firms will be covered by the indemnity and fidelity insurance policies taken out by their respective firms. It is important that the level of cover required by smaller tax practitioners is not excessive and does not act as a disincentive to persons from conducting business as tax practitioners in South Africa.
2.7. Although the purpose of indemnity and fidelity insurance to be carried by tax practitioners is to protect the interests of the members, we do not share the view that this should be prescribed by legislation. Furthermore, an appropriate worded engagement letter could adequately limit a member's liability in this instance.

Part II – composition and members of Board

3. Section 8 – Composition of Board

3.1. Section 8(5) provides that the Board will consist of a maximum of 10 persons with a maximum of 5 members being accredited tax practitioners. It is believed that the majority of the members should be accredited tax practitioners in order to demonstrate appropriate commitment and appreciation of issues.

3.2. It is believed, to ensure equality of votes, that it is more feasible to have a Board with 9 or 11 members, as an even numbered Board could be problematic in reaching decisions.

3.3. Section 8(6) suggests that the Minister should appoint the Chairman and Deputy Chairman of the Board. This puts an unfair onus on the Minister and may cause delays in the appointments.

3.4. The representative accredited tax practitioner should be elected by the members who are then officially appointed by the Minister. This appointment by the Minister can lead to delays as has been the case with previous appointments to the previous IRBA.

3.5. The legislation contained in section 8(7) is unclear with regard to whether other members of the Board may be from the SARS. Clarity should be provided in the wording of this section.

3.6. While we do support the initiative of proposing the formation of a Board, the effectiveness of this Board may not produce the desired result if it stands in its current form.

4. Section 9 – Period of appointment and reappointment of members

Appointments to the Board are for a period of three years. Consideration should be given to achieve continuity of the Board. This could be achieved by amending this section to require that other than the first 3 years, the board should comprise at least 25% of the board members for the previous 3 years or that only for instance 25% of the members must retire each year.
Part III – Procedural matters relating to meetings and decision of Board

5. **Section 14 - Meetings**

   The current legislation does not define the notice period for meetings. The concept of “notice period” should be defined in this section.

6. **Section 15 – Procedure for conduct of meetings**

   Allowance is not made for proxy voting, which we believe should be considered for the effective running of meetings.

Part IV – Funds and financial management of Board and payments to members

7. **Section 19 – Remuneration and re-imbursement for expenses**

   7.1. This provision needs more regulation on remuneration e.g. benchmark against market related remuneration packages.

   7.2. It is not clear what the services charged by the board to members will include and the extent to which Government will fund the Board. The funding by Government may well impact on the impartiality of the Board. The Minister is the executive authority for the Board in terms of the Public Finance Management Act and the Board is accountable to the Minister.

CHAPTER IV: REGISTRATION, DUTIES OF ACCREDITED TAX PRACTITIONERS AND REMOVAL FROM REGISTER

Part I – Registration of accredited tax practitioner

8. **Section 24 – Registration of accredited tax practitioner**

   8.1. Section 24 requires those natural persons providing advice to other persons in respect of the application of any Act administered by the Commissioner to register as an accredited tax practitioner with the Board.

   8.2. It is not necessary to register where a natural person provides advice or assistance to, for example, family members for no consideration or provides advice to his or her employer. Tax practitioners that are conducting business in partnership would clearly need to register if they fall within the provisions of section 24. Many of the tax practitioners are directors of companies owned by the audit firms or law firms, or are directors of incorporated practices, and on the face of it, those directors and executives would not be required to register under section 24 of the Bill.
8.3. It is recalled that at the time of the insertion of section 67A into the Income Tax Act No. 58 of 1962, (the Act) it was intended that group tax managers working for large corporates would not be required to register as tax practitioners. Where an incorporated practice or company renders tax services to various clients, is it not the intention that the principals rendering the tax services to the clients of the incorporated practice should not be registered as tax practitioners? Section 24 does not appear to have this effect.

8.4. This Bill essentially creates a “SAICA” for tax practitioners – perhaps persons, who are members of one of these organisations, should be exempt from payment of membership to the other – it’s expensive to be members of both.

8.5. Section 24(1)(c) – This leaves insurance brokers able to provide advice without registration. This is a problem since such individuals are generally not qualified to provide such advice.

8.6. The provisions of the Act do not apply in respect of a person “who provides advice solely as an incidental or subordinate part of providing goods or other services to another person”. This section includes financial consultants of banks and other financial institutions that regularly provide these services as an incidental to their main function of providing financial advice. These persons are often not “qualified” to provide these services and should be required to be registered as accredited tax practitioners.

8.7. Sections 5 and 26(1)(c) refer to the requirement for continuing professional tax education. Many of the tax practitioners that register under section 67A are members of SAICA and will thus be required to comply with the rules governing continuing professional development imposed by SAICA. It is important therefore, that the Board is empowered to recognise the proof of continuing professional development submitted by Chartered Accountants to SAICA and similar bodies.

Part II – Duties of accredited tax practitioners

9. Section 29 – Discharging of duties of accredited tax practitioner

Section 29(c) implies the tax practitioner must audit the taxpayer to ensure all records are “proper” and correct. The section should simply state that all records supporting the submissions in the tax return are appropriately retained as this requirement is impractical.

10. Section 31 – Duty to report on irregularities

10.1. During the course of conducting business as a tax practitioner, a client may approach their tax advisor with a view to the advisor assisting the client to regularise a particular matter with the Commissioner: SARS. Section 31 should be clarified to cater for such eventuality. It would appear to be somewhat nonsensical to require a tax practitioner to report an irregularity to
the client where the client has in fact come forward to the tax practitioner for advice on how to regularise a particular problem.

10.2. It is believed that 30 days might be too short to actually rectify the irregularity, perhaps 30 days should be provided to advise how to rectify the irregularity and 90 further days should be given to complete the rectification.

10.3. The definition of a reportable irregularity includes any contravention of any Act administered by the Commissioner. A tax practitioner who notes that a client has not paid over PAYE or VAT in terms of the relevant Act now has to report this contravention. It is suggested that a minimum monetary value be considered to prevent that every small error does not give rise to a reportable irregularity having to be reported.

10.4. Tax practitioners will now become “inspectors” of SARS which makes it extremely onerous. In addition, section 31(2) provides that for purposes of determining whether any reportable irregularity has taken place or is taking place, an accredited tax practitioner may carry out such investigations as is necessary and must have regard to all the information which comes to his or her knowledge from any source. Is it the intention that the accredited tax practitioner will be remunerated for the time spent in conducting the investigation? In addition, how is it proposed that the accredited tax practitioner deal with hearsay? Is this requirement practical?

CHAPTER V: IRREGULARITIES AND DISCIPLINARY MATTERS

Part I – Reporting irregularities

11. Section 37 – Board to inform Commissioner of reportable irregularities

In the context of Section 31 and the lack of a de minimus rule, this requirement is impractical as the Board and the Commissioner could be inundated with reportable irregularities.

Part IV – Disciplinary proceedings

12. Section 41 – Charge of improper conduct

12.1. It is of concern that if a person is acquitted in a Court of Criminal law i.e. shown not to be “guilty” it should not be within the power of this Act for the Board still to proceed against him/her on the same issue.

12.2. Many tax practitioners are members of other professional bodies and if the rules of those professional bodies are violated especially, for example, SAICA, they will be subject to disciplinary proceedings. The Bill does not appear to remove the problem of double jeopardy that is, the possibility of an accredited
tax practitioner being sanctioned both by the proposed board and by the tax practitioner’s other professional controlling body. It is inequitable that a tax practitioner should be subjected to sanctions both by, for example, SAICA and the proposed board for the same offence.

13. Section 42 – Disciplinary hearing

Section 42(1)(d) refers to “with the necessary changes”, it is unclear what this sub-paragraph means as surely privilege applies under normal rules. Furthermore, this is dealt with in section 45.

14. Section 43 – Proceedings after hearing

This section only deals with situations where the tax practitioner is found guilty. Surely, SARS should not adopt the view that all tax practitioners would be proven guilty. It does not address the situation if the tax practitioner is found innocent of the charge brought against them. We request clarity on which party would bear the costs in this instance.

Part V – Board to inform Commissioner of finding and punishment

15. Section 45 – Provisions relating to privilege

15.1. Currently, the client’s right to claim professional privilege is limited to those cases where advice is obtained from an attorney or an advocate. On 12 July 2002, SAICA proposed that legal professional privilege be extended to Chartered Accountants (South Africa). A copy of that submission forwarded to the Commissioner is attached hereto.

15.2. It is highly inequitable that clients of advocates and attorneys enjoy legal professional privilege whereas clients choosing to consult with accountants or other tax practitioners that are not lawyers or attorneys are not protected by legal professional privilege. This constitutes unfair discrimination in accordance with section 9 of the Constitution of the Republic of South Africa, Act 108 of 1996, as amended. The right to equality provides that everyone is equal before the law and has the right to equal protection and benefit of the law. There is no basis in law for attorneys and advocates consulting in the tax arena to enjoy preferential treatment over those persons who are not attorneys or advocates.

15.3. South Africa is out of step with a number of other democracies where accountants’ clients have been conferred professional privilege. In Australia, for example, the Commissioner of Taxation has extended similar rights to certain documents passing between professional accountants and their clients. (See D Bentley, Taxpayers’ Rights: An International Perspective (The Revenue Law Journal, School of Law Bond University, Queensland, Australia, 1998) at 7).
15.4. In Germany, tax advisors, tax accountants, auditors and certified accountants’ clients enjoy a form of legal professional privilege. (See C Daiber in Chapter 7, The Protection of Taxpayers’ Rights in Germany in D Bentley’s Taxpayers’ Rights: An International Perspective at 173).


15.6. In the United States of America, The Taxpayer Bill of Rights 3 specifically confers, at section 7525(a), privilege on communications between a taxpayer and any federally authorised tax practitioner, to the extent that the communication would be considered a privileged communication if it were between a taxpayer and an attorney. Thus, tax practitioners registered with the Internal Revenue Service United States of America, whether they are accountants or attorneys, is treated in the same way insofar as privilege is concerned. (The full title of the legislation in the United States of America is the Internal Revenue Service Restructuring and Reform Act of 1998, House of Representatives 2676).

15.7. Based on the above it is submitted that it is disappointing that the Bill does not confer legal professional privilege regardless of whether taxpayers consult or seek advice from attorneys, advocates or accountants.

16. **General comments**

16.1. The Bill should specifically provide that tax practitioners are appointed by their clients to act in the interests of their clients and are not servants of the Commissioner: SARS.

16.2. It seems that the whole tone of setting up this regulatory authority is to make tax practitioners more responsible and that in so doing lessen the work of SARS by ensuring that all tax submissions are true and fair. While there is no real problem with this, the onus on tax practitioners becomes much higher. The Bill does not indicate or allude to any benefit that this regulatory body offers its members or any protection. Yet they must pay members fees and incur other costs like fidelity insurance.

16.3. There are many smaller tax practitioners who are also Chartered Accountants (SA), who already aspire to a code of ethics in any event, who may now prefer not to do tax work as there are no benefits. These clients will then submit their own returns however they wish to, causing the problem to revert back to SARS.

16.4. The Bill only refers to a natural person, whereas many of these duties are attended to in a general office of a company. Professional insurance covers the individual and the company. Basic tax returns are not required to be signed off by the partner at present; introduction of this Bill will now require partners to
sign off all tax returns. Where an employee completes tax returns, it can not be expected for them to take on personal liability which is not in line with their status as an employee.

16.5. It is feared that tax practitioners, who are at the moment battling with SARS (who are not adequately staffed with experienced and suitably qualified persons) may leave the profession if this Bill becomes law.

16.6. We note that nothing in the proposed Bill provides the tax practitioner with recourse in the event that a SARS official unreasonably delays the finalization of a matter.

Please do not hesitate to contact me should you require further information.

Yours faithfully

M Kendall CA(SA)
TECHNICAL ASSISTANT: TAX
The South African Institute of Chartered Accountants

Encl.: 1. SAICA’s proposal that legal professional privilege be extended to Chartered Accountants (South Africa)
       2. Regulation of Tax Practitioners – SAICA submission dated 14 June 2005
12 July 2002

Mr P Gordhan
Commissioner: SARS
South African Revenue Service
Private Bag X923
PRETORIA
0001

Dear Sir

PROPOSAL THAT LEGAL PROFESSIONAL PRIVILEGE BE EXTENDED TO CHARTERED ACCOUNTANTS (SOUTH AFRICA)

The South African Institute of Chartered Accountants (SAICA) previously issued Circular 5/98: “The right of SARS to call for audit files” after consultation with your office to regulate the procedures that would be followed by the Commissioner: SARS and its officers in calling for audit working files.

SAICA and SARS have now agreed that that circular should be withdrawn and we are awaiting finalisation of the procedures to be followed in the withdrawing of Circular 5/98 and the notification to SAICA by SARS of the procedures that will be followed by SARS personnel before calling for audit working papers.

The Minister of Finance announced in the 2002 Budget Speech that it is intended to regulate tax advisors in South Africa. SAICA has previously indicated its support for such a move and in this regard your attention is drawn to SAICA’s submission presented to the Portfolio Committee on Finance on 7th June 2002. A copy of that submission is attached hereto for ease of reference and we draw your attention to paragraph 36 thereof.

In view of the fact that the regulation of tax advisors is under discussion, we believe it appropriate at this time to recommend that the Commissioner: SARS seriously consider, as part and parcel of the enabling legislation to introduce the regulation of tax advisors, that a limited right of privilege be extended to Chartered Accountants and tax advisors generally in South Africa.

Currently, only attorneys advising a client in South Africa obtain a right of privilege such that certain documentation is protected and cannot be called for by SARS or indeed any other party unless the client waives the right to privilege or the attorney is ordered to do so by a
competent Court. Chartered Accountants in South Africa have a duty of confidentiality insofar as their client’s affairs are concerned but are, in our view, at a disadvantage in that attorneys obtain a greater right under the common law as a result of the right of privilege attached to the attorney/client relationship.

The New Zealand Minister of Revenue, Dr Michael Cullen, has announced that the New Zealand government is considering extending the legal privilege to Chartered Accountants in protecting tax advice given by them to their clients so as to treat attorneys and accountants equally in this regard. We attach hereto a copy of the relevant pages of the ATP Weekly Tax Bulletin of 31 May 2002, which deals with this matter as well as copies of documents published by Inland Revenue New Zealand on its website.

It is appropriate to point out that Circular 5/98 only related to the SARS right to call for audit working papers and not opinions issued by an accountant to its client. There was therefore an informal agreement such that the accounting practitioner retained the right to retain opinions issued on fiscal legislation and, in fact, to remove same from audit working papers in accordance with the agreement reached in accordance with Circular 5/98.

It is accepted that this arrangement was probably beyond the scope of the various statutory provisions in South Africa and it is for this reason that it is submitted that it is appropriate to review the rules relating to legal professional privilege insofar as tax opinions particularly are concerned and that such privilege also be extended to accountants and indeed other tax advisors that will be regulated by the Commissioner.

It is appropriate also to have regard to the comments made by D Bentley writing in “Taxpayers’ Rights: An International Perspective” (published by the Revenue Law Journal, School of Law, Bond University, Queensland, Australia 1998) where at page 7 the following is stated:

“For example, take legal professional privilege. It is a right protected by a statute or at common law in many jurisdictions. In its basic form it provides professional privilege in respect of documents passing between lawyers and their clients in certain situations. (footnote 17 - for a recent discussion in the context of the tax law see Schabe D, “Privilege the New Evidence Act” (1995 - 96) 4 Taxation In Australia Red Edition 243). Professional privilege can also be given administrative protection. For example, in Australia, it is only lawyers who can claim legal professional privilege under the law. By an administrative concession, the Commissioner of Taxation has extended similar rights to certain documents passing between professional accountants and clients. (Footnote 18 - ATO, Guidelines for the Exercise of Access Powers in relation to External Accountants’ Papers issued 16 November 1989 and ATO, Complex Audits: Guidelines for the conduct of Taxpayers and Taxation Auditors issued 17 July 1991 (updating original guidelines issued 15 December 1989)). Lawyers can claim a narrow privilege that is defined and protected by the judiciary, and that can only be overridden by the legislature. Accountants can claim a broader privilege that is given at the discretion of the Commissioner of Taxation, and which can be withdrawn by the Commissioner of Taxation at any time. The difference between the rights in this example illustrates “the fact that legal rights at this level tend to be narrower in scope than administrative rights purporting to cover the same ground.””
Further at page 52 Bentley makes the following comments that are appropriate insofar as the extension of privilege to accountants is concerned:

"Certain information in most jurisdictions is protected as privilege. Usually this covers documents passing between lawyers and their clients where the documents either contain advice or relate to a case which is to heard before the court. Some systems extend this privilege to similar documents where advice is given by an accountant or other tax adviser. Privilege means that the tax authority is not entitled to the information contained in the documents covered. The basis for privilege is found in the confidential nature of advice given by lawyers and other privileged persons. It is seen as fundamental to the freedom of the individual."

The effective operation of the law and the legal system relies on lawyers being able to advise their clients as to the correct operation of the law. Such advice is based on a full and frank disclosure of the facts of each case. If clients suspect that any information that they give might be revealed to a third party, they are unlikely to provide the necessary information and the system breaks down. Advice is given on the basis of incomplete information, and there is a strong risk that the taxpayer would act unlawfully. The rationale for privilege means that it should extend to all professionals giving advice on the interpretation and application of the tax rules. The interests of the community in having effective representation by legal and other privileged advisers outweighs the disadvantages that arise from keeping the information confidential."

It is also appropriate to refer to "Taxpayers’ Rights and Obligations: A Survey of the Legal Situation in OECD Countries" published by the OECD in 1990. That work contains the results of a survey of the rights of taxpayers and obligations of the Revenue authorities in the OECD countries at that time. Paragraph 3.20, on page 17 of that work states as follows:

"It can be seen from the first three columns of Table 9(B) that there are a number of limitations on the information powers of tax authorities. In all countries, except Denmark, Finland, Italy, Japan and Norway, the liberal professions (e.g. lawyers, doctors) are given a privileged treatment and in a few (e.g. Austria, Belgium, Greece, Luxemburg, Ireland, Portugal, Switzerland) the same applies to banks."

We attach hereto a copy of table 9(B) for your information. It is noted that in the case of Austria accountants have the same right of privilege that is applicable to lawyers.

In "The Protection of Taxpayers’ Rights - An International Codification" by Philip Baker and Anne-Miecke Groenhagen (published by the European Policy Forum during 2001) the following is stated in respect of privilege at page 49:

"One specific issue for debate is whether privilege should extend not just to lawyers but also to accountants or other tax representatives who are involved in preparing the taxpayer’s return or his responses to Revenue inquiries.

Two points might be made in this context. First, there is no reason why tax should be a special case: If there are good arguments for protecting professional privilege in ordinary civil or criminal cases, those arguments are equally good
where tax is at issue. Secondly, tax is an area where professionals other than lawyers are commonly involved. If a client would enjoy privilege for communications with a lawyer, it seems logical that that privilege should apply equally to communications with another professional whom the taxpayer chooses to utilise in place of a lawyer.”

In Bentley’s work, the chapter dealing with the protection of taxpayers’ rights in Germany at page 173 the following is stated:

“There is some relief for third parties from the obligation to provide information. Priests, parliamentarians, and their assistants or trainees, together with members of the press, may be granted relief from their obligation to provide information (s102(1) and (2) AO). So too may attorneys, lawyers, tax advisers, tax consultants, auditors, certified accountants and, subject to certain restrictions, notaries (s102(1) AO). However, the taxpayer may withdraw the secrecy obligation of these professionals (s102 (3) AO). Tax authorities are not obliged to inform these professionals of their right to remain silent. If they provide information anyway, whether it can be used in an assessment which cannot be appealed on that ground is disputed. However, to ensure the effective protection of the taxpayer, it must be argued that any information which has not been obtained in accordance with the law should not be used in an assessment unless the information could also have been obtained legally.”

In deciding to introduce regulations governing the conduct of tax advisors it is appropriate in our view that the question of legal professional privilege be extended to those persons advising clients on tax matters.

It is apparent, when one has regard to international experience, that legal professional privilege insofar as it relates to tax matters does not only apply to the attorney/client relationship but is in a number of democracies extended to accountants and tax advisers generally. Accordingly, the Commissioner is urged to seriously consider this aspect in designing the regulations that will govern tax advisers in South Africa in the future.

Yours faithfully

J H Dijkman
LEGAL AND ETHICAL DIRECTOR

Encl.

cc. Dr M Grote – National Treasury
14 June 2005

Mr J J Louw
Law Administration
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P O Box 402
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0001

Dear Kosie

REGULATION OF TAX PRACTITIONERS

Background

In the 2002 Budget Review, the Minister of Finance announced that discussions would be held regarding the regulation of tax practitioners in South Africa. The reason for the proposed regulation was “to promote better compliance and ensure that taxpayers receive advice consistent with the tax legislation”. Following this announcement, SARS issued a discussion paper in November 2002 and SAICA made a submission in response to this paper in February 2003.

As a first step in the process of regulation, an amendment to the Income Tax Act was effected by way of the introduction of section 67A, which required specified persons to register by 30 June 2005. It was stated in the Explanatory Memorandum to the Second Revenue Laws Amendment Bill, 2004 that legislation to introduce regulation would be drafted in 2005. SAICA advised SARS early in 2005 that we wished to make detailed recommendations on how the regulation process should be implemented, with specific reference to how our members would be affected, and that we wished to work closely with SARS as the legislation was developed. It is against this background that we set out our recommendations hereunder.
Process of developing recommendations

In order to ensure that these recommendations reflect, as far as possible, the consensus view of our members who are tax practitioners, SAICA has consulted widely with our members. Ten workshops were held around the country in April and May 2005, at which the requirements of section 67A of the Income Tax Act were explained and members participated in discussions around the key areas of regulation. The comments from members at those workshops, as well as from correspondence received, are reflected in our recommendations below.

What is SAICA?

The South African Institute of Chartered Accountants (SAICA) is the pre-eminent accountancy body in South Africa. It has established itself as one of the leading Institutes in the world, playing its part in a highly dynamic business sector. SAICA was formed in March 1980, although the profession has been in the country for over 100 years as the Institute of Accountants and Auditors was formed in 1894. SAICA provides a wide range of support services to its members enabling them to play a key role in developing the rapidly changing South African economy. Members of SAICA are entitled to use the highly regarded and prestigious designation CA(SA) after their names. The designation is widely associated with someone who has considerable expertise in the theory and practice of accountancy in its broadest context. Qualifications required for admission as a member of SAICA are:

- A Certificate in the Theory of Accountancy (CTA) or equivalent qualification obtained from an accredited educational institution. At present there are 14 such accredited institutions in South Africa. The CTA is a postgraduate, or fourth year of university study that is done after successfully completing a three-year (full-time) Bachelor of Commerce or equivalent.
- Passing both parts of the Qualifying Examination (QE). Part 1 may be written in the year after successfully completing the CTA; the second part may only be written after passing Part 1 and after the candidate has undergone at least 18 months training.
- Completion of a three year training contract with a firm of Chartered Accountants in public practice or with an Approved Training Organisation in commerce and industry.

SAICA currently has 23 080 members, of which 25% are in public practice. In reality, a larger percentage carries on accountancy/tax practice in some form. A number of our members may carry on practice in addition to another “main” occupation, for example, some academics or members in commerce and industry may also consult and therefore carry on practice in that regard.

Admission to membership is dependant upon the acceptance by the member of SAICA’s Code of Professional Conduct (“the Code”), which requires stringent minimum standards of professionalism to be adhered to. An extract of the Code is set out in Annexure I, whilst the full Code can be accessed on SAICA’s website (www.saica.co.za).
A member who is reported to SAICA for failing to comply with the Code is subject to disciplinary action. The disciplinary process is available on SAICA’s website and an overview is set out in Annexure II for ease of reference.

All SAICA members are required to comply with stipulated minimum Continuing Professional Development (“CPD”) requirements that ensure that all our members take the necessary steps to ensure that they keep up to date with technical developments.

From what has been described above, it is clear that SAICA members have attained a high level of academic qualification and practical experience and are regulated by a well-established and stringent code of conduct backed up by strict disciplinary procedures, which are enforced.

The question of regulation

If regulation is to be introduced it must apply to all tax practitioners and not to a certain group only. It is also recommended that, if the public interest is to be protected, any person completing a tax return on behalf of another should be regulated, not only those who do so for reward, as rewards may be in various forms which may not easily be detected e.g. weekends away.

It is essential that a “level playing field” is maintained. However, within the regulatory framework, recognition should be given to those professional associations that already have a well-established Code of Conduct and properly functioning disciplinary procedures.

It is clear, from what has been explained above, that SAICA members are already regulated, and in some cases may be regulated twice, as those in public practice are regulated by both SAICA and the Public Accountants and Auditors Board (PAAB).

In the submission made in 2003 SAICA supported the proposal for regulation “by virtue of the fact that a large number of tax practitioners are not required to be registered with a professional organization that has professional conduct rules in place as well as disciplinary steps that can be taken against defaulting members”. We also made the point that “the establishment of a separate regulatory body for tax practitioners would be a duplication of effort” where practitioners were already regulated. Therefore, whilst we accept the need for regulation, we are firmly of the view that any regulation that is introduced should recognise that SAICA members are already regulated, as far as possible, the existing regulatory structures should be used.

In the SARS Discussion Paper it is stated “…existing codes of professional conduct are normally not tax specific and professional bodies may encounter difficulties when prosecuting misconduct with specific reference to tax.” SAICA’s Code contains numerous references to “professional work” which is defined to include taxation services, being “(t)he interpretation and application of revenue laws and procedures and of tax planning”.

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As SAICA members are already regulated, we do not believe that the regulation process is specifically necessary for our members. Nonetheless, we accept that all tax practitioners need to be subject to the same standard of regulation and, therefore, we reluctantly accept the need to ensure that SAICA’s regulation of its members is equal to the requirements imposed on all other tax practitioners, although we believe them to be very stringent at present.

There are existing provisions in the Income Tax Act, notably section 105A, which provide a facility for SARS to report instances of unprofessional conduct, yet this avenue is seldom, if ever, used with regard to SAICA members. At this point, we would like to point out that the provisions of section 105A are not applicable exclusively to SAICA members, but apply to members of any professional body. The question arises whether there is any point creating a new vehicle when a facility for regulation exists but is not used. The concern is that “just another toothless watchdog” will be created.

The Discussion Paper states:

“A closely related problem is that complainants are not always aware of the code of professional conduct binding a member of a particular profession. Without this knowledge complainants are not in a position to evaluate whether a tax practitioner’s conduct is in breach of the particular code of professional conduct that might bind him/her.”

The avenue created by section 105A of the Income Tax Act allows the Commissioner to report unprofessional conduct and, as SAICA’s Code of Conduct is freely available on our website, any SARS official who is faced with questionable professional behaviour by a SAICA member could easily refer to the Code and establish whether there are grounds for applying the provisions of section 105A.

**Code of conduct**

The members of the regulatory Board will include many who are already members of existing professional bodies with their own, established codes of conduct, as well as many others who are not otherwise subject to any regulation. If over-regulation is to be avoided, it is important that some recognition be given to those codes of conduct that already exist in professional bodies such as SAICA. Although the Discussion Paper had reservations in this regard, stating that “existing codes of professional conduct are normally not tax specific” this problem could be relatively easily overcome as the professional bodies can adapt their codes of conduct to ensure that they meet certain minimum criteria. We suggest that the Regulatory Board establish its own code of professional conduct and disciplinary procedures and other professional bodies be allowed a period of time in which to amend their Codes and procedures to meet the same criteria with regard to tax-specific requirements. The Regulatory Board should then recognize those professional bodies whose codes and procedures meet the minimum criteria. The members of those recognised professional bodies should then be regulated by their own professional bodies and the regulatory Board should then rely on their Codes, and disciplinary processes. We understand that this approach is followed in Australia and believe that this will be most effective in South Africa and will minimize duplication of effort and cost.
SAICA and the PAAB already have a joint disciplinary process and we consider it unnecessary to replicate this effort and cost with a new Regulatory Body for members of SAICA and PAAB.

Tax practitioners who are not members of a recognized professional body should be subject to the Code of Conduct, disciplinary and review procedures of the Regulatory Board, which would essentially be the same with regard to tax work.

In this regard, it may be appropriate to have “accredited members”, which would refer to tax practitioners who are members of an approved professional body, such as SAICA members, and “general members”, being those who do not belong to an approved professional body. All members must be required to adhere to the minimum requirements of the regulatory Board.

Safeguards

There is concern that regulation in itself will not put a stop to the problem of exploitation, especially if appropriate disincentives are not introduced as part of the regulation.

Adequate safeguards must be incorporated into the legislation to ensure that individuals performing tax services cannot escape the regulation. In addition, suitable punishment must be introduced to act as a disincentive for non-compliance. For example, the Australian model should be followed which imposes a substantial fine on any person completing tax returns who is not a registered tax agent. Furthermore, measures must be introduced to prevent “moonlighting practitioners” from exploiting other practitioners’ regulation status.

Autonomy

We understand that a regulatory Board is to be established to administer the regulatory function and we strongly recommend that such a Board should be completely autonomous from SARS. If the intention behind the regulation is to protect the public interest, then it is inappropriate for the regulation to be carried out by SARS, as this approach would reduce the regulatory Board to no more than another tax-collection arm. More importantly, the lack of independence in the minds of the public will become a major disincentive to use tax practitioners who are regulated by SARS. This will give tax practitioners, who for whatever reason, fall outside the regulation, an unfair competitive advantage.

Admission requirements

The SARS Discussion Paper that was issued in 2002 set out stringent requirements for admission to the Regulatory Board and it is generally considered that these requirements may have been too onerous. SAICA commented extensively on this aspect in our 2003 submission and we do not, therefore consider it necessary to make
further detailed comments in these recommendations. It seems likely that admission will require some level of academic qualification or, in the absence thereof, a prescribed amount of practical experience. As all SAICA members would, by definition, surpass either or both of these minimum criteria we strongly recommend that all SAICA members should be given automatic admission to the regulatory Board.

To expedite the process of registration, we would prefer that SAICA members do not have to register themselves with the board. Instead, those who wish to register with the regulatory Board should be allowed to indicate this to SAICA and SAICA will then register these members with the regulatory Board as a bulk registration.

This approach would also be appropriate in view of our recommendations above that SAICA members should continue to be regulated by SAICA, with the avenue open to the regulatory Board to report any unacceptable behaviour to SAICA and ensure that appropriate action is taken timeously.

**Membership of the board**

In view of the stringent requirements for admission to SAICA membership and the status of the CA(SA) qualification, it is a concern to SAICA that all members of the regulatory Board must not be grouped together and given one identity. Clearly, the academic standard and professional requirements of Chartered Accountants is higher than any other professional accountancy body in South Africa and it is essential that this accomplishment is not diminished in any way through the regulation process. This could be achieved by recognising SAICA members as “accredited members”. Alternatively, it may be necessary to have different tiers of membership of the regulatory Board, with admission to each tier dependant upon the academic qualification, experience and professional level of the member. If this approach is followed, SAICA members must be admitted to the highest tier of membership, given their qualifications and compulsory practical training and requirements for CPD.

It is important, if this latter route is followed, that the requirements for each tier of membership are clearly determined and applied. For example, those with no academic qualifications but with the required minimum amount of experience could be admitted to level 1, those who have successfully completed at least one year full-time university/technikon level course in taxation and two years accounting could be admitted to level 2 and level 3 would require the successful completion of at least two years’ full-time university/technikon level course in taxation, one year of law and four years of accounting and/or extensive practical experience.

If the tiered membership is adopted, the scope of tax work that members are permitted to provide should vary depending on the tier of membership. The scope of work permitted within each tier of membership must be clearly established, and properly publicized, taking into account the level of skill required for the work allowed. For example, only members on the higher tiers should be allowed to complete the tax returns of companies that are required to report their financial results in accordance with International Financial Reporting Standards (IFRS) (unless such returns are completed by employees of those companies).
In terms of our professional Code of Conduct, SAICA members are required to ensure that they only perform work for which they consider that they are suitably qualified and, as members in the highest tier, they would therefore be permitted to do any tax work, but subject to their professional Code of Conduct. We do not consider that it would be appropriate for the Regulatory Board to constrain the scope of work that may be done by SAICA members and for this reason, we believe that it would be appropriate to admit SAICA members to the highest level of membership.

Furthermore, if the tiered membership is adopted, the membership certificate or similar document should clearly reflect the level of membership and the public must be made aware of the different levels and scope of work allowed.

**Funding**

It has been indicated that SARS will fund the regulatory Board for the first year and, thereafter, the board will have to be self-funding. Our view is that the regulatory Board must be streamlined as far as possible to minimize the cost to the tax practitioners, which is one of the key concerns regarding regulation.

Although the Discussion Paper suggested that the regulatory Board should provide a variety of functions, including training and research, we strongly recommend that the board should be streamlined as far as possible. Creating an establishment capable of performing all the functions suggested in the Discussion Paper will require substantial funding that will ultimately have to be provided by the members, placing upon them an onerous financial burden. Many, if not almost all, of these functions could be effectively outsourced to other institutions. For example, universities and technikons are well placed to provide training and carry out research. Their tax courses should be accredited rather than new courses being developed and run by the regulatory Board.

We understand that the Estate Agency Affairs Board (EAAB) has been considered by SARS as a suitable model on which to base the tax practitioners’ Regulatory Board. The main objectives of the EAAB are to –

1. require practitioners to meet certain standards in order to become licenced; and
2. prohibit unethical conduct in the practice of estate agency.

We recommend that the objectives of the tax practitioners’ regulatory Board should be kept to a similar level of simplicity, except that the regulatory Board should not conduct exams as these are best conducted by the universities, technikons and colleges. In essence, all that the regulatory Board should do is to set the criteria for admission, establish a code of professional conduct and a clear constitution, maintain a database of members and act on complaints.

If our recommendation is followed that the codes of conduct of approved professional bodies are recognized by the Regulatory Board, this will also assist in minimizing the cost of membership as, in the case of those members, complaints could be referred to the relevant professional body, which will have to agree at the outset that certain disciplinary processes will be followed. Even in the case of other-unregulated
members, the disciplinary process could be outsourced to an institution, such as SAICA or others that have well-established disciplinary processes.

It is also suggested that the fees paid by tax practitioners, as members of the regulatory Board, should vary according to the extent that they rely on, or make use of, the Board. In other words, accredited members (as discussed above) should be on a different fee structure from “general members” as the reliance of each group of members on the resources of the regulatory Board will be very different. Specifically, SAICA members who register with the Board should be on a different fee structure due to the fact the disciplinary measures and regulation will be carried out by SAICA, with the cooperation and oversight of the board, whereas other practitioners who are not otherwise regulated, will be fully reliant on the regulation and disciplinary processes of the board, and their fee structure should be adapted accordingly.

**Board of Directors**

The Board of Directors governing the regulatory Board should comprise a combination of government and private-sector representatives and we recommend that there should be a greater number of private-sector representatives. Government-appointed directors should be selected to represent SARS, the DTI and, possibly, the Auditor-General and the private-sector representatives should represent the constituency of the tax practitioners who are registered. The criteria for appointment to the Board of Directors must be clearly established and it is important that stakeholders are suitably represented. We strongly recommend that the regulatory Board must be independent of SARS and, therefore, the Chairperson of the Board of Directors should preferably report to the Minister of Trade and Industry, or, alternatively to the Minister of Finance. It would not be appropriate for the Chairperson to report to the Commissioner for the South African Revenue Service for the reasons already set out previously.

**Penalties**

The penalties for non-compliance with the requirements pertaining to regulation must be sufficiently severe to act as a strong deterrent for deviant behaviour, including continuing to render tax services without being admitted to the Regulatory Board.

In addition, those knowingly using the services of unregulated tax practitioners should be suitably penalized.

**Fees**

The fees charged by members of the Regulatory body should not be prescribed, but should be determined by the practitioners depending on commercial realities. This is most important to ensure that it does not fall foul of anti-competitiveness laws. No fee disputes should be referred to the Regulatory Board.
**Marketing and public awareness**

Publicity and marketing of the regulation process is of paramount importance in order for the regulation process to achieve its desired objective.

Tax practitioners, and even the general public, need to be properly informed about the regulation process. This includes a full explanation of the need for regulation and the way in which the regulation is to be effected. There is wide concern and much speculation about the reason behind the regulation and how regulation will affect tax practitioners in the future and these aspects need to be clarified if the regulation process is to gain support. In this regard, there also needs to be more publicity about the registration process and the fact that registration in itself does not validate any tax practitioner or guarantee that the practitioner will be admitted to the regulatory body, once it is formed. We stress at this point that the interim measure of registration of tax practitioners will undoubtedly create the perception in the mind of the public that a tax practitioner has been accredited. For this reason we believe that more damage will be done to the tax profession by tacitly accrediting so called “fly by night” individuals.

It is also important for tax practitioners to be given certain benefits as a *quid pro quo* for regulation. At the very least, members of the Regulatory board should be given access to certain information to enable them render their services more efficiently. For example, they should be allowed access to certain information from SARS on current practice and procedure and they should also be allowed to view certain documents, such as statements of account and update taxpayers’ information, such as changes of address. The benefits of regulation should be clearly publicized to encourage optimum participation in the regulation process.

**Legal professional privilege**

It has been mentioned above that the “playing fields” on which tax practitioners carry on business must be level and that certain benefits should be extended to tax practitioners as a *quid pro quo* for regulation. To address both of these concerns, we recommend that legal professional privilege should be extended to members of the Regulatory Board. To minimize any encumbent risk in this regard, this could be extended only to those members in the highest tier of membership. As SAICA has previously demonstrated to SARS, this approach has been followed in New Zealand, where legal professional privilege has been extended to Chartered Accountants.

**SARS employees**

It appears that it is not intended to require SARS employees to belong to the Regulatory Board. It is, however, necessary for SARS employees to be seen to be regulated in a way that is equivalent to that of tax practitioners and it is therefore essential that the SARS Code of Conduct is finalized, publicized and seen to be enforced constantly.
It is recommended that SARS employees who complete, or assist with the completion of, tax returns for the public (even if not for reward) should also be members of the Regulatory Board.

It is also essential that, just as tax practitioners will be required to maintain certain standards by undergoing training, SARS employees should also be required to be trained to ensure that they meet the same standards as those required for tax practitioners.

**Tax Ombudsman**

We strongly believe that with the regulation of tax practitioners a Tax Ombudsman should be introduced to complete the circle and truly level the playing fields as regards taxpayers, tax practitioners and tax collectors. We shall be glad to provide more detailed input with regard to the creation of the office of the Tax Ombudsman.

Please do not hesitate to contact me should you wish to discuss any of these matters further.

Yours faithfully

Jackie Arendse  
**Project Director: Tax**
ANNEXURE 1

EXTRACT FROM SAICA’S CODE OF PROFESSIONAL CONDUCT

INTRODUCTION

The Board of the Institute has identified skills and integrity as the preeminent professional attributes of Chartered Accountants (South Africa). The same principles are applicable to associates and students of the Institute. The Board is committed, in the interests of the accountancy profession as a whole, to enhancing these qualities in all members, associates and students by providing appropriate guidance. This Code deals with professional attitudes and behaviour. Guidance on the other aspects of professionalism relating to knowledge and skills is given in other documents issued by the Institute, the Public Accountants' and Auditors' Board (the PAAB) and the Accounting Practices Board. The PAAB also issues a Code of Professional Conduct and rules and regulations dealing with the conduct of those members and associates who are registered in terms of the Public Accountants' and Auditors' Act (the Act).

This Code is consistent in all material respects with the Code of Ethics for Professional Accountants issued by the International Federation of Accountants.

The Code is established on the basis that unless a limitation is specifically stated the objectives and fundamental principles are equally valid for all members, associates and students whether they be in public practice, industry, commerce, the public sector or education.

A profession is distinguished by certain characteristics including:
(a) Mastery of a particular intellectual skill, acquired by training and education;
(b) Acceptance of duties to society as a whole in addition to duties to the client or employer;
(c) An outlook which is essentially objective;
(d) Rendering personal services to a high standard of conduct and performance.

DEFINITIONS

For the purposes of this Code the following terms have the following meanings assigned to them. These definitions are for guidance only and are not intended to be complete or exhaustive.

... (aa) Practice – A sole practitioner, a partnership or a corporation of professional accountants which offers professional services to the public.
(bb) Professional work, professional services and professional business – Any service requiring accountancy or related skills performed by a member or associate. This includes, but is not limited, to the following:
   (i) The attest function (audit services)
      • The examination, in accordance with generally accepted auditing standards, of financial statements with the objective of expressing an opinion as to their fairness and as to their compliance with the requirements of applicable statutes.
      • The audit of other reports and representations of a financial nature.
   (ii) The financial reporting function (accounting services)
• External financial reports: The preparation of financial statements in accordance with generally accepted accounting practice and applicable statutes and the interpretation of those financial statements.

• Internal financial systems and reports: The design and operation of internal accounting systems to provide management with information which will enable management to plan, monitor and control its business.

(iii) The advising function (advisory and fiduciary services)

• Taxation services: The interpretation and application of revenue laws and procedures and of tax planning.

• Management consulting services: The provision of consulting services to management of enterprises; these services include advisory services relating to planning, control, cost accounting, financial management and reporting, data processing and related systems.

• Other services: These services include investigations, valuations, secretarial services, trusteeships, the planning and administration of estates, judicial management and liquidation and insolvency work.

THE PUBLIC INTEREST

A distinguishing mark of a profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of members, associates or students to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective well-being of the community of people and institutions the member, associate or student serves.

A member’s, associate’s or student’s responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the accountancy profession are heavily determined by the public interest, for example:

(a) independent auditors help to maintain the integrity and efficiency of the financial statements presented to financial institutions in partial support for loans and to stockholders for obtaining capital;

(b) financial executives serve in various financial management capacities in organisations and contribute to the efficient and effective use of the organisation's resources;

(c) internal auditors provide assurance about a sound internal control system which enhances the reliability of the external financial information of the employer;

(d) tax experts help to establish confidence and efficiency in, and the fair application of, the tax system;

(e) management consultants have a responsibility toward the public interest in advocating sound management decision making.

OBJECTIVES

The Code recognises that the objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement set out above. These objectives require four basic needs to be met:

(a) Credibility
In the whole of society there is a need for credibility in information and information systems.

(b) Professionalism
There is a need for individuals who can be clearly identified by clients, employers and other interested parties as professional persons in the accountancy field.
(c) Quality of Services
There is a need for assurance that all services obtained from a member, associate or student are carried out to the highest standards of performance.
(d) Confidence
Users of the services of members, associates or students should be able to feel confident that there exists a framework of professional ethics which governs the provision of those services.

FUNDAMENTAL PRINCIPLES
In order to achieve the objectives of the accountancy profession, members, associates and students have to observe a number of prerequisites or fundamental principles.
The fundamental principles are:

(a) Integrity (see Section 2)
Integrity is essentially an attitude of mind. Adherence to certain standards of conduct and moral behaviour consistently practiced will ensure integrity. A member or associate should be straightforward and honest in performing professional services.
(b) Objectivity (see Sections 2 and 3)
Objectivity is essentially the quality of being able to maintain an impartial attitude. It requires a member or associate to be fair and not to allow prejudice or bias or influence of others to override objectivity.
(c) Professional Competence and Due Care (see Section 4)
A member or associate, in agreeing to provide professional services, implies that there is a level of competence necessary to perform professional services and that the knowledge, skill and experience of the member or associate will be applied with reasonable care and diligence. Members or associates should therefore refrain from performing any services which they are not competent to carry out unless advice and assistance is obtained to ensure that the services are performed satisfactorily.
A member or associate should perform professional services with due care, competence and diligence and has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques.
(d) Confidentiality (see Section 5)
A member or associate should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.
(e) Professional Behaviour (see Sections 6-10)
A member, associate or student should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession. A member, associate or student, should conduct himself with courtesy and consideration towards clients, third parties, other members, associates or students of the accountancy profession, staff, employers and the general public.
(f) Technical Standards (see Sections 11-19)
A member or associate should carry out professional services in accordance with the relevant technical and professional standards. Members and associates have a duty to carry out with care and skill, the instructions of the client or employer in so far as they are compatible with the requirements of integrity, objectivity and, in the case of members or associates in public practice, independence (see Section 11). In addition, they should conform with the technical and professional standards promulgated by the Institute, relevant authorities and relevant legislation.

16.
Paragraphs .29, .36, .43 and .49 of the Institute's By-laws sets out acts and practices which shall be offences and which, if committed by a member, associate or student, render him liable to penalties.
ANNEXURE II

DISCIPLINARY PROCEDURE

INTRODUCTION

SAICA's disciplinary process becomes operative once an allegation of improper conduct has been made against a member or associate. SAICA obtains its powers from its Constitution and By-laws, and it is important that the disciplinary process is conducted in accordance with these provisions. The By-laws determine a different process to be followed when the person against whom a complaint is being made is both a Registered Accountant and Auditor (RAA) and a Chartered Accountant (CA), or a CA or associate only. For this reason, one needs to distinguish between RAAs and CAs, (who might not necessarily be RAAs), and the disciplinary processes to which they are subject.

The Public Accountants' and Auditors' Board (PAAB) is a statutory body which controls that part of the accountancy profession which is involved with public accountancy, primarily regulating auditors and the performance of the attest function. The PAAB functions in terms of the Public Accountants and Auditors Act, Act 80 of 1991 (“the Act”). Its mission is inter alia, to protect the financial interests of the public and others. In terms of sections 13 (b)(i), 23 and 24 of the Act, it is responsible for disciplining Registered Accountants and Auditors (RAAs).

The public is often unaware that an accountant need not necessarily be a Chartered Accountant (CA), but may be a member of one or several other accounting bodies, or none at all. The rules of SAICA apply only to those individuals who have become members of SAICA. Similarly, the rules of the PAAB govern only those persons who are RAAs.

A person can be disciplined by the two separate bodies for the same offence if he is registered with the PAAB and is also a member of SAICA.

Where the person is registered with the PAAB only, the matter is dealt with by the PAAB's Investigation Committee and/or Disciplinary Committee. The conduct of the person is not considered by SAICA. The same applies to a firm of Registered Accountants and Auditors whom are not dealt with by SAICA as SAICA has jurisdiction over individual members and associates only.

Where the person is a member of SAICA only, the complaint is referred immediately to SAICA's Standards Division, and is not dealt with by the PAAB.

Where the member of SAICA is or was registered with the PAAB at the time of the alleged offence, the matter is forthwith referred to the PAAB as SAICA and the PAAB run a joint disciplinary process, administered by the Legal Department of the PAAB.

How a complaint is dealt with

Once it has been established that the complaint should be lodged with SAICA, an affidavit, setting out in precise terms the nature of the conduct complained of, should be sent to the Standards Division. Attach all relevant documentation to the affidavit. The original affidavit should be sent to the Standards Division, The South African Institute of Chartered
Accountants, P O Box 59875, KENGRAY, 2100 or it should be hand delivered to our offices at Bruma Lake, Johannesburg.

On receipt of such an affidavit, the Standards Division will deal with the complaint in terms of the provisions of the By-laws. If there appears to be no prima facie case against the member or associate, the matter will be closed and the parties advised thereof.

Where there appears to be a prima facie case, the matter will be investigated. Where the offence appears to be of a minor nature, the complaint will be discussed with all the parties concerned with a view to resolving the dispute amicably. Where the offence is more serious, a charge sheet will be sent to the member or associate. The response thereto will be put to the Professional Conduct Committee (PCC) who will consider the matter on the papers before them. If a person is found guilty, the PCC has limited powers to impose a sentence. It may caution, reprimand or impose a fine of not more than half the maximum amount that the Disciplinary Committee (DC) may impose. This amount is currently R100 000, therefore the PCC may impose a fine of up to R50 000.

If the PCC is of the opinion that the matter is so serious that it will justify a more severe penalty, it may refer the matter to the Disciplinary Committee. The DC will convene a full hearing where oral evidence is heard. The accused and witnesses will be able to testify in person and be subject to cross-examination. The DC may impose the following penalties:

1. a caution;
2. a reprimand;
3. a fine of up to a maximum amount to be determined by the Board from time to time, currently R100 000;
4. suspension from membership, associateship or registration as a trainee accountant for a period not exceeding 5 years;
5. exclusion from membership or associateship, or from registration as a trainee accountant;
6. permanent disqualification from applying for membership.