

SAIT MEMBER CODE OF CONDUCT

GENERAL ETHICS STANDARDS

(August 2023)

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PREAMBLE

These General Ethics Standards are derived from both South African sources and from the Chartered Institute of Taxation (CIOT), a Tax Institute registered in the United Kingdom.

Without derogating from the above, these standards take into account:

- The By-Laws of SAIT as well as the associated Code of Conduct;
- CIOT's Professional Rules and Practice Guidelines as well as the Fundamental Principles and Standards of CIOT's Professional Conduct in Relation to Taxation;
- The Criteria for Recognition of Controlling Bodies issued by SARS, as amended from time to time; and
- The codes of conduct of other recognised controlling bodies.

This document is divided into five parts as follows:

- Part I covers the general professional standards,
- Part II covers practice management,
- Part III covers client management,
- Part IV covers member as employees, and
- Part V covers the disciplinary process and liability.

Further practice standards unique to tax are contained in separate SAIT guidelines.

DEFINITIONS AND INTERPRETATION

In this document and any annexures thereto:

- Headings of the clauses are for the purposes of convenience and reference only and shall not be used in the interpretation or modification of the terms of this document or any clause hereof, unless a contrary intention clearly appears.
- Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include created entities (incorporated or unincorporated) and vice versa.
- If any phrase or term is defined within a clause, other than this interpretation clause, that phrase or term shall bear the meaning ascribed to it wherever it is used in this document, unless the context expressly indicates a contrary intention.
- Expressions and words which are defined in this interpretation clause or in any other clause shall bear the same meanings in any annexures unless they are defined differently in any such annexure.
- When any number of days is prescribed, that number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday, or public holiday, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- The use of the words 'including', and/or 'such as' and/or 'for example', followed by specific example(s) shall not be construed as creating a closed category that limits the meaning of the general wording preceding these words.
- For purposes of this document, the following definitions apply throughout:
 - 'SAIT' means The South African Institute of Taxation NPC.

- 'Firm' means a business regardless of legal form.
- 'SARS' means the South African Revenue Service.
- 'Member' means a member of SAIT.



PART I: GENERAL PROFESSIONAL STANDARDS

1. INTRODUCTION

- 1.1 This Code of Conduct seeks to raise the level of professionalism, and the quality of service to clients and others relying upon the skills of members.
- 1.2 Members are professionals. As such, members should conduct themselves as a “fit and proper person” in terms of professional, business and personal relationships (as a minimum). These General Ethics Standards provide further detail with regard to a member’s “fit and proper” obligations. These standards also provide a framework of general professional obligations while highlighting common factual circumstances in which ethical issues may arise.
- 1.3 In addition to the public-at-large, a member has specific duties to the following:
 - 1.3.1 Each of the member’s clients;
 - 1.3.2 third parties to whom the member has professional or business dealings, such as employers, employees and partners;
 - 1.3.3 SARS; and
 - 1.3.4 the tax profession as a whole, including SAIT.
- 1.3.5 In accordance with the Constitution, no member may discriminate against any person on any grounds relating to race, gender or sexual orientation. Members should also



avoid sexual harassment, abusive language or inappropriate activities of a similar nature.

- 1.4 No set of standards can cover every set of facts and circumstances that affect professional conduct. Moreover, the danger of attempting to codify guidance in this area is that anything that is not specifically forbidden may come to be regarded as permissible. To adopt such an approach is to miss one of the core principles of professional practice. Members must accordingly observe the spirit, as much as the letter, of these General Ethics Standards and use professional judgement when applying these standards in practice.
- 1.5 This Code of Conduct applies to all members (with or without voting rights) unless a specific limitation or exclusion exists to the contrary.
 - 1.5.1 Members may be accountable for the actions of others under their direction and control or for the actions of others in which the member participates.
 - 1.5.2 SAIT may apply disciplinary action against a member (including that member's removal) if that member is found guilty of a breach of these General Ethics Standards or of other professional ethics standards as they pertain to a member (including SAIT's standards in relation to taxation).
 - 1.5.3 Members must comply with South African law and the law of any country in which members practice. These General Ethics Standards apply unless the law or generally accepted practice in South Africa or of any applicable country states to the contrary. The burden of proof in this regard falls on the member. Members must pay particular attention to the applicable tax laws, exchange control laws and anti-money laundering laws (as well as any accounting



standards to the extent members are providing accounting services).

- 1.5.4 A member should have regard to additional duties and obligations to other applicable professional bodies and regulators.
- 1.5.5 From time-to-time, the duties of a member may conflict, often requiring careful questions of judgement. In these circumstances, it may often be appropriate for the member to seek the guidance of others, especially legal counsel. One purpose of these General Ethics Standards is to provide a framework within which to make these judgements.

2. “FIT AND PROPER” CONDUCT AND FUNDAMENTAL PRINCIPLES

2.1 Overview

- 2.1.1 Members must operate in the standard befitting a “fit and proper” person as described under South African case law. This standard takes into account member conduct involving professional, business, and personal relationships as well as upholding the professional standards of SAIT.
- 2.1.2 As part of being “fit and proper”, members must begin by considering five fundamental principles namely: (i) integrity, (ii) objectivity and independence, (iii) competence and due care, (iv) confidentiality, and (v) behaviour.
- 2.1.3 These five fundamental principles are designed to provide a framework to guide members and prevent members

from conducting their affairs (both professional and personal) in a manner that is dishonourable, dishonest, irregular and/or may bring the Institute, its members and/or the tax profession in disrepute.

3. FUNDAMENTAL PRINCIPLES

3.1 Fundamental Principle #01: Integrity

3.1.1 In order to be acting with integrity in terms of this Code of Conduct, members must be straight-forward and honest in all professional, work, business, and personal dealings. Integrity implies fair dealing and truthfulness.

3.1.2 Conversely, a member must not:

3.1.2.1 knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information;

3.1.2.2 be party to bribery or any other illegal activity; nor

3.1.2.3 undertake any activity that involves a risk of assisting in a criminal activity.

3.2 Fundamental Principle #02: Objectivity and independence

3.2.1 A member must be objective in all work undertaken, meaning that members must not compromise judgements because of bias, conflict of interest or undue influence of others. In this vein, members must not take



overly optimistic positions in the hope of obtaining or retaining clients (or otherwise enhancing fees).

- 3.2.2 Members should be morally and intellectually independent. This independence applies both to the representation of clients and to the resolution of conflicting interests as between clients, tax professionals, SARS and any other interested parties.
- 3.2.3 Members must explain the material risks associated with any advice or other support given to clients.
- 3.2.4 Members must avoid being involved in a situation in which any advantage is received from a third party relating to any client matter (and disclose this situation to a client, in writing, if that situation arises).

3.3 Fundamental Principle #03: Professional competence and due care

- 3.3.1 Members must provide professional knowledge and technical skill at the proper standard required to ensure that a client (or employing organisation) receives competent and diligent professional service. This standard includes the exercise of sound judgment.
- 3.3.2 Competence requires continuing awareness and understanding of relevant technical, professional, and legal developments. Continuing professional development required by professional bodies is designed to facilitate this awareness and understanding. Members must accordingly keep their professional knowledge up to date, which includes satisfying SAIT's continuing professional



development requirements in accordance with its annual retention criteria.

- 3.3.3 Members must ensure that they are familiar with and implement measures in their practice and/or firm to ensure that they are mindful of other laws outside of tax when advising clients. Typical non-tax legislation of recurring concern includes company and commercial law, exchange control (e.g. Financial Surveillance), anti-money laundering (Financial Intelligence Centre Act) and anti-corruption laws.
- 3.3.4 Diligence encompasses the responsibility to act in accordance with the requirements of any assignment (such as exercising due care, thoroughness, and timeliness).
- 3.3.5 Members must not undertake professional work which those members are not competent to perform (e.g. because the member lacks experience or necessary technical or other skills). An exception to this principle exists if appropriate advice or assistance can be obtained to ensure that the work is properly completed.
- 3.3.6 Professional competence and due care encompass employees and other parties working under a member's supervision. Members must accordingly take reasonable steps to ensure that those working under a member's supervision have appropriate training and supervision.
- 3.3.7 A member's duty of care extends to honorary work, pro bono work and work for family, friends, and charitable organisations. These types of arrangements include a

formal honorary post for charities, amateur organisations and other 'not for profit' organisations.

3.4 Fundamental principle #04: Confidentiality

3.4.1 Confidentiality is a professional principle and is also a legally enforceable contractual obligation. Confidentiality is often an express term of engagement letters. Even if not expressly stated in the engagement letter, confidentiality is often accepted as an implied contractual term.

3.4.2 The duty to observe confidentiality applies without limit as to time in terms of all information with which members are entrusted by their clients. This duty applies to the extent to which that information is brought to the knowledge of those members in the course of (or at any time after) their assignments or in the course of their professional practice in general.

3.4.3 The same duty of confidentiality applies to members who are employees and subcontractors. Members must take reasonable steps to ensure that personnel under their control have a similar respect for the concept of confidentiality.

3.4.4 Information acquired in the course of a member's work must not be divulged in any way outside that member's organisation without the specific consent of the client or employer unless there is a legal duty, regulatory duty, or professional obligation to disclose. In such event, prior notice should as far as reasonably possible be given to the client of the member's intention to disclose, and the nature of and reason for the intended disclosure, to enable the



client to take whatever legal steps the client may wish to take to protect the client's interest.

- 3.4.5 Members should safeguard the confidentiality of client information, particularly where there could be a conflict of interest with another client. This duty includes information disclosed by prospective clients seeking a working engagement. This duty also continues after client engagements have ended.
- 3.4.6 Confidential information obtained in the course of the work must not be used for personal advantage or for the benefit of that member or anyone associated with that member.
- 3.4.7 Members must be alert to the possibility of inadvertent disclosure. Inadvertent disclosure can easily arise in a social environment, especially with immediate and close family members or when engaging with close business associates.
- 3.4.8 In short, the duty of confidentiality must be rigorously safeguarded. Even disclosure of confidential material to protect a member's own interest may only be made to the extent disclosure is considered relevant, reasonably necessary and justified within applicable legal parameters. Some examples of these circumstances include:
 - 3.4.8.1 To enable a member to defend against a criminal charge or to clear the member of suspicion;
 - 3.4.8.2 To enable a member to defend against a disciplinary proceeding;



- 3.4.8.3 To resist proceedings against a charge of a tax offense or other tax penalty (for instance, where it is suggested that a member knowingly engaged in dishonest conduct in order to illegitimately reduce tax revenue).
- 3.4.8.4 To resist a legal action made against a member by a client or other third party; or
- 3.4.8.5 To enable a member to sue for unpaid fees.

3.4.9 The above examples do not constitute legal advice and may not apply in all circumstances. Members are strongly advised to seek legal advice prior to embarking on any disclosure of confidential information for whatever reason.

3.5 Fundamental principle #05: Behaviour

- 3.5.1 Members must not undertake behaviour in professional, business, or personal life that may discredit themselves, the tax profession, SAIT or its members (or otherwise may place any of these stakeholders in disrepute). Conduct that might discredit or place any of the aforementioned stakeholders in disrepute includes conduct that a reasonable and informed third party would likely conclude adversely affects the good reputation of other parties or the profession itself.
- 3.5.2 In this regard, a member will automatically be deemed to undertake disreputable behaviour:
 - 3.5.2.1 if the member has been convicted of tax violations, theft, bribery, fraud, forgery or issuing



a forged document or of perjury, or of any offence of which dishonesty is an element, or of any offence which in the opinion of the Board reflects adversely on the applicant's fitness to be a member; or

- 3.5.2.2 if the member has been removed from an office of trust on account of misconduct as determined by a court of law or any other regulatory body.
- 3.5.2.3 Disreputable behaviour may especially include being subject to a civil judgment (or accepting civil liability for) activities associated with theft, corruption, fraud, forgery, perjury, misrepresentation, or breach of fiduciary duty. Disreputable conduct includes behaviour that results in the removal from a position of a directorship, public office, office of trust, employment on the same basis.
- 3.5.3 Special care must be taken to ensure that members do not misuse their credentials or expertise to wrongly facilitate tenders with government or any agency thereof for their own benefits or on behalf of others.
- 3.5.4 Members must promptly notify SAIT of any conviction, removal or civil judgement or settlement in terms of disreputable behaviour as enumerated above.
- 3.5.5 Members, as professionals, should avoid abusive language, rude / offensive behaviour, or false accusations in their professional and business dealings.

3.5.6 Tax professional must act as role models in this regard for their clients. Neglect of a member's own tax affairs may cause doubts in the mind of clients as to the standard of a member's own professional work.

3.5.6.1 Members must accordingly keep their own tax affairs up to date (including the timeous submission of tax returns and related tax documents) in accordance with SAIT's annual retention criteria.

3.5.6.2 Members should also be mindful of the tax affairs of entities where they have sole or dominant control, especially where that entity is engaged in the business of tax practice. Many members are the sole owners of their tax firms. Members may be held accountable for their tax firms where those firms fall short of tax compliance.



PART II: PRACTICE MANAGEMENT

1. PRACTITIONER CONTINUITY

1.1 Temporary incapacity of a sole practitioner

1.1.1 A member who is a sole practitioner should make suitable arrangements to ensure that the member's firm can continue to be carried on in the event of illness or temporary incapacity. Without contingency arrangements, serious difficulties may arise, prejudicing the interests of clients.

1.1.2 Members should consider whether their firm has sufficient resources to meet their obligations in their absence or whether those obligations should be discharged by another firm under a prior arrangement (or by another practitioner), and subject to maintaining client confidentiality. A member should be satisfied that a person or firm to whom the work is to be assigned has sufficient experience and expertise to act and is adequately insured for the work to be undertaken.

1.2 Death or permanent incapacity of a sole practitioner

1.2.1 Similar considerations apply to the death or permanent incapacity of a sole practitioner, although the difficulties are potentially far greater for both the firm and its clients.



1.2.2 Arrangements should be set out in a detailed written agreement to avoid any doubt or confusion. The agreement should provide for:

- (i) the duration and extent of the engagement,
- (ii) the appointed duties and responsibilities, and
- (iii) the exact nature of the legal relationship with the practitioner.

1.2.3 In the case of death, adequate provision should be made by will to enable executors to manage the firm personally or to appoint a member or other professionally qualified person to do so. If a practitioner dies intestate, delay may be encountered in the appointment of administrators and their statutory powers of administration will be limited. For this reason, members are reminded of the importance of making an appropriate will. Care is needed when arranging professional indemnity insurance to ensure that cover remains in force after death.

1.3 Business continuity plan

1.3.1 Members should have a business continuity plan that would ensure the continuity of the business in the event of a serious incident such as fire, major IT systems failure or criminal disruption.

1.4 Merger or dissolution of practice

1.4.1 A merger of two or more practices or the dissolution of a practice should normally be notified to all clients who will thus be given the opportunity of deciding whether they



wish to continue with the newly constituted practice or seek new support.

- 1.4.2 Care should be taken to ensure that appropriate professional indemnity insurance cover remains in place.
- 1.4.3 Members should also consider taking specialist legal advice in respect of matters, such as the assignment of engagements and other contractual matters.
- 1.4.4 A member's liability in respect of services provided whilst acting for a client continues after the member has ceased to practice and continuing professional indemnity cover must be arranged. A retiring partner is also advised to consider obtaining an indemnity from the continuing partners in respect of claims made after retirement.

2. BRANDING AND MARKETING

- 2.1 Practising designations and logos (SAIT and SARS)
 - 2.1.1 Members may use designatory letters and personally describe themselves as members of SAIT as prescribed by SAIT.
 - 2.1.2 Members must not allow business associates (including employees) to use words or descriptions that wrongfully indicate that they are members of SAIT or to claim qualifications to which they themselves are not directly entitled.

2.1.3 Members must not use words or descriptions or logos in their business activities that indicate a special connection with SAIT when no such connection exists.

2.1.4 The logo (and trademark) of SAIT is the exclusive property of SAIT and may not generally be reproduced or used by anyone other than SAIT. However, SAIT members may use logos in accordance with the rules that set out the terms and conditions for their use so as to indicate SAIT membership as opposed to other affiliations or connections.

2.1.5 Members may not use any SARS logos because as the use of a SARS logo could be interpreted by other parties as implying a special connection to SARS. Prohibited use of a SARS logo includes the use of the SARS logo on business or personal correspondence, e-mail signatures, business signage and websites. Of great concern is the misuse of SARS logos as an indication to clients and the public of an insider relationship with SARS that could mislead clients and the public into believing that they have a special advantage in terms of tax matters.

2.1.6 Member's attention is drawn to Section 30 of the South Africa Revenue Service Act, 34 of 1997) (SARS Act) that prohibits any person from claiming an association or representing a connection with SARS. A contravention of this section of the SARS Act could lead to a fine, or imprisonment not exceeding 10 years, or both.



3. ADVERTISE, PUBLICITY AND PROMOTION

3.1 General principles

3.1.1 SARS' registered trademarks ("SARS", the SARS, the SARS triangle logo, eFiling and eFiling logo, Easyfile and easyfile logo, etc.) are also registered trademarks in the name of SARS. Consequently, any unauthorised use thereof constitutes a trademark infringement in terms of the Trademarks Act, 1993. These trademarks were registered to prevent unauthorised use thereof that would be detrimental to the national interests of South Africa. In addition, SARS is the owner of the copyright associated with the SARS logo, and the logo is accordingly protected as an original artistic work in terms of the Copyright Act, 1978.

3.1.2 Members may seek publicity for their professional standing, experience, and services by means of advertising or other forms of promotion. However, advertising and promotions should be respectable and should not reflect adversely on the member, other members, fellow tax professionals or SAIT.

3.1.3 For the purposes of this document, 'advertising' encompasses all forms of marketing of professional services, including all types of media advertising, whether for work, sub-contract work, staff recruitment, practice mergers, employment, publications, seminars, business cards, promotional gifts, or general emailing / post



distribution. These General Ethics Standards apply equally to web-based marketing.

- 3.1.4 Members must comply with the law and follow the standards and requirements of applicable codes covering advertising, sales promotion, and direct marketing (such as decency and truthfulness).
 - 3.1.4.1 One key law to consider is the Protection of Personal Information Act, 2013 so as to prevent unwarranted access to personal information and unwarranted communication to recipients who have not consented.
 - 3.1.4.2 Aggressive marketing / soliciting of clients should be avoided, especially those forms of soliciting viewed adversely by the public, such as cold calling, spamming and excessive distribution of brochures and flyers.

3.2 Specific standards

- 3.2.1 An advertisement should be clearly distinguishable as such.
- 3.2.2 Advertising should not be misleading in any way. For example, members should not appear to hold themselves out as having expertise in a particular field that the member does not in fact possess. Advertising should also not contain exaggerated claims.
- 3.2.3 Members should ensure that any advertising or publicity for which the member may be held responsible is accurate,



unambiguous and unlikely to cause public offence. Most notably, a member should be able to justify the truth of any factual statements in the promotional material.

- 3.2.4 A member remains responsible for an advertisement even if the work is delegated to an advertising agency or other intermediary.
- 3.2.5 Advertisement and promotional material should be factually and technically accurate, contain suitable disclaimers, copyright notices, and appropriate references to the name of the firm and contact details.
- 3.2.6 Advertisement and promotional material should not contain any disparaging references to, or disparaging comparisons with, the services of others.
- 3.2.7 Advertisement and promotional material should not state (or be designed to imply) that the member has a special connection to SARS or to any Government department, the judiciary, agency or other entity that would imply any special influence over the official outcome of tax or regulatory matters.

If advertisements include references to fees or the basis on which fees are calculated (including hourly or other charging rates), great care must be taken to ensure that these references are not misleading as to the precise range of services and time commitment that the reference is intended to cover. Members should not make comparisons in this material between their fees and the fees of other members or tax professionals in general.



4. INFORMATION RETENTION AND DATA PROTECTION

4.1 Information Retention

4.1.1 When deciding how long information (e.g. electronic or paper documents) should be retained, a member should be mindful of:

4.1.1.1 the periods of retention set out in legislation (and perhaps periods beyond in case prescription is lost or denied in relation to the records at issue); and

4.1.1.2 the period of time during which actions may be brought in the courts and the utility of those records as evidence.

4.1.2 Members should take steps to ensure that records / documents comply with the requirements imposed by SARS, are maintained securely and that client confidentiality is protected. All records / documents created in the course of acting for a client are client confidential information, regardless of ownership.

4.1.3 Care should be taken if there are any open investigations into a client's affairs or any pending court action. In such circumstances, records/documents must be retained at least until the open matters are concluded.

4.2 Data protection (e.g. Protection of Personal Information Act)

4.2.1 A member should comply with the obligations under applicable legislation dealing with the protection of personal information, such as the Protection of Personal



Information Act. Provided below are some key considerations.

- 4.2.2 Members should not collect, process or store data about clients without their consent.
- 4.2.3 Members must store data confidentially and securely.
- 4.2.4 Members may not use personal data for purposes other than for which the data was initially collected.
- 4.2.5 Members must have in place systems and procedures that can confirm the nature and details of data held about a person if asked.

PART III: CLIENT MANAGEMENT

1. NEW CLIENTS

1.1 Obtaining clients

- 1.1.1 A client has the right to choose or change professional advisers, to take a second opinion, or to retain separate advisers on different matters.
- 1.1.2 Members should not obtain or seek professional work for themselves (or anyone else) in a manner that is unprofessional.
- 1.1.3 Whether one is seeking work unprofessionally can only be determined in the light of all relevant facts and circumstances. The following are illustrations:

- 1.1.3.1 implying in an improper manner, whether orally or in correspondence or in any material, that existing advisers are not competent to provide an adequate service; or
- 1.1.3.2 providing any commission, fee, or reward to a third party, not being an employee, in return for the introduction of a client.

1.1.4 The practice of making or instigating an unsolicited approach to a non-client with a view to obtaining professional work ('cold calling') is not necessarily of itself unprofessional conduct. However, repeated cold calling may become offensive and lead to a complaint:

- 1.1.4.1 Members must consider the provisions of the POPI Act regarding cold calling. Section 69 of POPI Act prohibits unsolicited electronic communication (i.e automatic calling machines, facsimile machines, SMS's or e- mail) unless:
 - (i) the data subject is an existing client.
 - (ii) the data subject has provided consent to the direct marketing.
 - (iii) the data subject has not previously withheld consent.
 - (iv) consent was obtained in the prescribed manner and form.

1.1.4.2 Members should also be aware of the provisions and codes of other Recognised Controlling Bodies dealing with cold calling.



1.1.5 Direct mailing and the sending of unsolicited electronic material, brochures and other advertisements to non-clients does not necessarily amount to unprofessional conduct. However, these activities should not become repetitive so as to become intrusive (e.g. spamming), breach one of the other General Ethics Standards or are in violation of any legislation (such as the Protection of Personal Information Act).

1.2 Client acceptance

1.2.1 A member who is invited to undertake professional work by a prospective client is under no obligation to act. Indeed, the member should decline to act if the member believes that the member would be unable to assume the duty of care owed to that client.

1.2.2 Before accepting instructions to act for a new client, a member should:

1.2.2.1 Comply with the requirements of the anti-money laundering, anti-corruption and other legislation and rules applicable that may prohibit or limit the engagement.

1.2.2.2 Consider whether the client will be an acceptable client in terms of the risks that will arise for the practice from acting for that client and whether the member has the capability to manage those risks. In assessing the risks relating to the client, the member should

consider the potential client's personal circumstances, business situation, financial standing, source of funds, integrity, and attitude to disclosure in regard to compliance with the various tax laws.

1.2.2.3 Consider whether the member and firm will have the skills and competence to service the client's requirements during the course of the engagement.

1.2.2.4 Consider whether there is any conflict of interest in accepting the client and if so whether and how the conflict might be managed.

1.2.2.5 Consider whether the member has sufficient time and resources to dedicate to the client's matters given the member's resources and time available.

1.2.2.6 Member's should proceed with caution when deciding to accept instructions from a client who refuses to give the client's previous tax professional permission to disclose appropriate information about the client's affairs.

1.2.3 A member must not assist or facilitate a client to commit any criminal offence, shield the client from the consequences of having defrauded the SARS of tax or of having been negligent in regard to tax matters unless the law so specifically allows (such as facilitating an application to the voluntary disclosure programme or an amnesty).



1.2.4 A member who acquires information that leads the member to conclude that a prospective client may have been guilty of tax misdemeanours should at least consider:

- 1.2.4.1 the scope, nature and impact of such misdemeanour;
- 1.2.4.2 whether it is appropriate to accept the instruction,
- 1.2.4.3 whether acceptance of the instruction may expose the member to potential liability, and
- 1.2.4.4 whether to impose any conditions on acceptance (for example, that full disclosure be made to the appropriate authorities).
- 1.2.4.5 When criminal or civil violations have occurred, members are encouraged to record the basis for client acceptance, especially in terms of how these matters will be handled.

1.3 Professional clearance for replacing another tax professional

1.3.1 A member who is invited to undertake professional work in place of another tax professional should request the prospective client's permission to communicate with the existing adviser before accepting the appointment. If this permission is refused, the member should decline to accept the appointment other than in exceptional circumstances.

1.3.2 The objective of the communication to the prior tax professional is to ensure that:

1.3.2.1 The incoming member is fully aware of all the factors that may be relevant to acceptance of the appointment and the effective handling of the client's tax affairs;

1.3.2.2 The incoming member is fully aware of all factors that may have a bearing on ensuring full disclosure of all relevant facts to SARS; and

1.3.2.3 The client's affairs are properly dealt with on a timely basis (e.g. that no filing deadlines, time limits for claims, elections, notices of appeal and other similar matters are missed during the transitional period).

1.3.3 Once permission has been received from the prospective client for the above communication, the member should ask the previous tax professional in writing for all information that is reasonable and necessary to enable the member to decide whether to accept the appointment.

1.3.4 A member receiving a communication from a prospective new tax professional should ask the client for permission to discuss the client's affairs freely with the prospective new tax professional. When a client's permission has been received, the member should disclose to the prospective new tax professional all information which the member believes may be necessary to enable that tax professional to decide whether to accept the appointment (taking into



account the member's knowledge of the client and the client's affairs).

1.3.5 If the client's permission is not received, this fact should be communicated to the prospective tax professional who should normally not accept the appointment unless satisfied that exceptional circumstances exist that make the acceptance appropriate. If exceptional circumstances exist, it would be advisable to document the circumstances and justification at the time of the acceptance.

1.4 Engagement letter

1.4.1 Members have a professional duty to carry out their work within the scope their engagement (preferably in the form of an engagement letter as described below).

1.4.2 Members should transmit an engagement letter to the client outlining the member's understanding of the scope and nature of the assignment as well as the respective parties' obligations. The client should then agree in writing. This exchange of letters serves as an explicit contract between the member and the client. Careful wording is needed to ensure that the scope of the work is fully defined, and that the client understands the nature of the work that the member has agreed to undertake. This written agreement equally limits the scope of services to be provided.

1.4.3 Members are free to choose whether to act for a client generally or in terms of specific activities.

- 1.4.4 Members should take care not to stray beyond the agreed terms of the engagement. If a member's activities exceed the scope of agreed upon engagement, the member should adjust the terms of the engagement with the client in writing. This adjustment or any desired amendment to the engagement letter should again be in writing.
- 1.4.5 It is usually appropriate to agree in writing the basis on which fees will be charged, including whether there will be a charge for the initial meeting. The original contract can subsequently be varied unless a specific procedure is agreed between the parties (e.g. that all variations must be in writing).
- 1.4.6 Unless the engagement letter provides otherwise, a member is under no duty to advise a new client on matters on which tax services were performed by a prior tax professional unless the member becomes aware that the prior tax work in the ambit of the member's engagement was incorrect.

2. CHARGING FOR SERVICES

2.1 Basis of charge

- 2.1.1 Before undertaking any work on behalf of a new client, a member should ensure that the client is aware of the basis on which fees will be charged and how expenses incurred on behalf of the client will be treated. It will usually be appropriate to set these matters out in the letter of engagement upon accepting a new client. Whether a charge will exist for the initial meeting must be made clear at the outset.

2.1.2 The calculation of an appropriate charge for services involves good judgment; it is not merely a question of applying a fixed scale to the time involved in completing the assignment. These General Ethics Standards should be interpreted in the light of the general principle that charges should be fair in relation to those services performed and the benefit that these services provide to the client.

2.1.3 Fee arrangements are a matter for commercial negotiation by members. Notable possible arrangements include:

2.1.3.1 Time and expenses: Members often charge on the basis of time spent according to the skill and the resources deployed. This fee method is likely to be the usual basis in the absence of any other arrangement. The rate to be charged can reflect the complexity of the engagement as well as the value to the client.

2.1.3.2 Fixed fees: Where members charge a fixed amount for an agreed assignment, the fee should be based upon a proper upfront costing of the work to be undertaken. It may often be advisable for an appropriate variation clause to be contained within the engagement letter to enable additional work to be charged.

2.1.4 In terms of the letter of engagement, it is vital to be as clear as possible as to the basis and explanation of fees as well as to make provision for varying the amount to be charged to the extent extra work is performed. Reimbursements (e.g. for travel and other external costs) should be listed separately from service fees.



- 2.1.5 Members should take steps to avoid fee disputes by agreeing fees before issuing invoices or giving indicative fees before work is started.
- 2.1.6 Sometimes, members will be placed in the position of charging fees to different projects of the same client or to different but connected clients. In these circumstances, care should be taken to ensure that the basis of these allocations are properly documented and that the allocations are legally and commercially justifiable.

2.2 Commissions

- 2.2.1 The payment or receipt of a commission by a member could impair objectivity and independence. A member should therefore not pay a commission in order to obtain a client, nor should a commission be accepted for referral of a client to a third party.
- 2.2.2 A member should not accept, directly or indirectly, a commission, brokerage fee or other remuneration for the referral of the products or services of others as an incident to servicing any client, except with the prior knowledge and consent of that client.

2.3 Retainers

- 2.3.1 Although retainer arrangements are not commonly utilised in the tax field, members may accept amounts from a client simply for retention in respect of potential future member services.
- 2.3.2 To reduce the possibility of disputes arising with a client, retainer arrangements should normally be set out in



writing, taking into account the arrangement's extent and limitations. In particular, the arrangement should make clear the point at which further charges may be levied.

2.3.3 When a member agrees to a retainer arrangement under which the client can call on member services at any time, the member should recognise that the member may be unable to fulfil obligations to other clients because of a conflict of interest (or due to time limitations). Members are accordingly advised to normally include a provision for terminating these arrangements when necessary or expedient.

2.4 Advance payments

2.4.1 Payments for advanced tax work to be performed are permissible. However, the member should keep adequate funds to repay advanced payments with these funds being kept in a separate account from the member's own funds. These separate funds should only be used for the benefit of the services undertaken for that client.

2.4.2 The terms of advanced payments, and any circumstances in which they might become repayable with or without interest, should be incorporated into the letter of engagement with the client.

2.4.3 Similar to other fees, advanced payments should be reasonable in amount in relation to the likely fee that will eventually be charged for the work performed.

2.4.4 In terms of advanced work, the member should provide an ongoing list of the services rendered, detailing the total fee



charged and deducting advanced payments received. Advanced payments held in excess of services rendered should be returned to the client upon completion of the work required (if any).

2.4.5 If advanced payment is received and the member becomes unable to complete the assignment, the member should promptly notify the client and repay to the client the advance payment received (after taking into account any work performed).

2.5 Difficulties in client collections

2.5.1 A member should normally inform clients of payment terms in the letter of engagement.

2.5.2 If a client does not settle an account within a reasonable time, a member should first ensure that the fee invoice has been properly transmitted to the client and obtain client confirmation.

2.5.3 Members should seek to ascertain the reason for client non-payment. Non-payment may have arisen through circumstances beyond the client's control (e.g. client business difficulties or hospitalisation) or client dissatisfaction with the service received and/or the fee amount. The member may need to reconsider whether to pursue fee collection and/or whether to continue to act for the client in view of the information obtained.

2.5.4 If no satisfactory explanation exists for non-payment, the member may seek legal action for recovery. The member



may also notify the client that the member will cease acting on the client's behalf.

- 2.5.5 A member should not withhold client SARS profiles for non-payment. This action will likely lead to disciplinary action from SARS because this action disrupts SARS enforcement and collection.
- 2.5.6 If a fee invoice is in dispute with the client, part-payment may be accepted from the client without disadvantage as long as the member clarifies in writing that the amount accepted will only be viewed as part-payment (and not as full settlement).

3. CLIENT CONFLICT OF INTEREST

3.1 Professional independence

- 3.1.1 Members must maintain professional independence at all times.
- 3.1.2 A member must not only remain professionally independent, but also be seen to be independent by clients, the public, SARS, other authorities and third parties. Therefore, particular care must be taken to preserve perceived as well as actual professional independence.
- 3.1.3 Conflicts of interest can arise between a member and the client (or between two or more clients or potential clients).
- 3.1.4 If a member becomes aware of any factor that adversely affects or might adversely affect the member's actual or perceived independence in respect of a matter, the



member must take swift action to address the factor of concern in order to preserve the member's professional independence and make all relevant parties aware to the extent the adverse factor cannot be removed. More notably, if no appropriate action can be taken to remove this adverse factor, the member should refuse or cease to act except for special circumstances.

- 3.1.5 Most problems can be avoided by being alert to potential conflicts of interest and by not accepting an assignment where a conflict of interest seemingly likely to occur.
- 3.1.6 Further points to consider are:
 - 3.1.6.1 A member should seek a solution that is compatible with high professional standards and the duty owed to any parties involved.
 - 3.1.6.2 The existence of a conflict of interest will usually mean that it is inappropriate for a member to continue to act for one or more of the clients concerned. Should the member consider it appropriate to continue to act for a client despite the existence of a conflict or potential conflict because of the unique circumstances, the member must inform the client fully and frankly of the concern and should advise the client to obtain independent advice on whether it is in the client's best interests for the member to continue to act.
 - 3.1.6.3 If it is decided that the member can proceed with the matter despite the existence of actual or



potential conflicts, written acceptance of the continued engagement should be received from the client as well as a detailed description of the overall concern. The situation should also be regularly reviewed for continued viability.

3.1.7 There are many circumstances in which a member in practice may be presented with an actual or potential conflict of interest. The more common occurrences are set out below.

3.2 Acting for both parties to a transaction

3.2.1 In most circumstances, a member who is asked to act for both parties to a transaction should refuse to do so. However, it is understood that this refusal may present practical difficulties if both the parties are existing clients. In these circumstances, the member may have a conflict of interest if the member shows preference in providing services to one client and not the other.

3.2.2 The member has three choices:

3.2.2.1 To act for neither client: This option is often the best course of action because of the potential conflict of interest between the parties and the difficult position in which this conflict may put the member. However, to refuse to act may occasionally not serve the interests of everyone concerned. In these circumstances, the member must consult closely with both parties to determine whether a better option is available



and obtain proper client confirmation if this better option is pursued.

3.2.2.2 To act for both clients: The member may act provided that adequate disclosure exists in terms of all relevant facts to both parties. In these circumstances, no preference may be shown in advising one client versus another. In practice, this lack of preference may be difficult, but there may be sufficient 'mutuality of interest' between the parties so as to avoid further difficulties. If this option is to be pursued, both clients should initially be informed to consider seeking independent advice on whether it is appropriate and whether it is in the best client interests.

With the agreement of the clients, the member may also resolve the potential conflict by appointing a separate team to act for each client. These separate teams will be required to maintain ethical walls to prevent confidential information relating to one client becoming known to the team acting for the other.

3.2.2.3 To act for only one client: This option will generally be available for the client who first sought the member's advice.

Unless specifically provided for in the letter of engagement, it may be appropriate to inform both clients of the potential conflict and then to act only for the client who first sought advice. To change allegiance after accepting instructions



would leave the member in an awkward position with the first client and could easily present a conflict in relation to the use of information already supplied.

A member who decides to act only for the first instructing client should advise the other client of this decision. The member should take cautionary measures to ensure that continued action for the first instructing client will not create a meaningful conflict for the second client.

3.3 Acting for both a client and a client's employees

3.3.1 A client may ask a member to provide tax services to the client's employees. In these circumstances, no confidential information pertaining to an employee should be given to the employer without the express approval of the employee. If the nature of the assignment is such that there is a requirement for a report to be made to the employer, this fact should be made clear in the engagement letter submitted to the individual employee.

3.3.2 If the employer pays for the services of the member that are of direct benefit to the employee, the employer and employee should be reminded for the employer to make an appropriate report to SARS of any fringe benefit in-kind received by the employee.

3.4 Acting for both parties in a divorce settlement

3.4.1 Acting for both parties in a divorce settlement can present difficulties.

3.4.2 It will rarely be appropriate to act for both parties in relation to a divorce settlement because it is highly unlikely there will be sufficient mutuality of interest between them, especially given the adverse emotions involved. The member may have to forego both clients or work with the client in which the member has a longer standing relationship.

3.5 Financial involvement with clients

3.5.1 Financial involvement with a client may affect a member's independence. Such involvement could arise in multiple ways. For example, a member may hold shares in a client company or may be acting as a creditor or debtor in relation to a loan with a client. The best way to resolve this conflict is either to terminate this other financial relationship with the client or not to enter into a service agreement with that client.

3.5.2 If a member still considers client engagement to be appropriate, the member should fully and frankly inform the client of the conflict and advise the client to take independent advice on whether the member's client engagement is in the client's best interests. If the client ultimately consents that the member should act, the client's consent should be properly documented.

3.5.3 Similarly, acceptance of goods or services of any kind from a client could influence a member's independence. These types of engagements should generally not be accepted unless the goods or services are of a modest amount or provided on terms that are generally available to employees of that client.

4. CLIENT SERVICE

4.1 Duty of care and competence

4.1.1 When acting for a client, members place their professional expertise at the disposal of that client. In so doing, the member assumes a duty of care towards the client that is fully recognised in law. A member must accordingly exercise reasonable skill and care when acting for a client. A failure to do so may result in the member being liable for a claim of professional negligence.

4.1.2 A member should advise or otherwise provide services to a client only when that member has an adequate understanding of that client's business and overall circumstances and tax position. In addition, the member should fully understand the issues under consideration and the underlying objectives of the services to be provided.

4.1.3 A member should only act within the scope of the member's own professional competence and within the scope of the terms of the engagement. Members are accordingly encouraged to refer matters outside of their competence or skills base to other professionals so as to avoid the risk of becoming liable for a claim of professional negligence.

4.1.4 Members should not attempt to restrict a client's freedom of choice to seek further support or advice in respect of any tax matter.

4.2 Delegation and subcontracting

- 4.2.1 If tax work is delegated to an employee or external tax professional subcontractor (e.g. consultant), the member should exercise sufficient supervision to confirm that the work performed is adequate. If a member considers any work performed by subordinate staff to be inadequate, the member has a duty to remedy any defects before the work's completion.
- 4.2.2 A member who delegates work should be satisfied that the delegated party has been adequately trained (or has the necessary expertise) to carry out the work involved.
- 4.2.3 If a member is a managing employee and that member is not satisfied that staff have adequate training or skills to perform the duties required, that managing employee should report the situation to the employer with any appropriate recommendation (such as further training, replacement or recruitment of staff).
- 4.2.4 A member must obtain a client's consent before subcontracting work on that client's affairs to another firm. In this regard, it may be preferable that a member consider including a clause authorising referral to a subcontractor within the engagement letter.

4.3 External consultation and second opinions

- 4.3.1 A member is encouraged to consult with fellow professionals when advising or otherwise servicing clients to ensure that relevant skill and judgement is applied.



- 4.3.2 It is a matter of judgement for the member whether external consultation is necessary in any particular situation. If a member relies on external consultation, evidence should be retained in the client file. Client confidentiality rules, especially those concerning consent, must be taken into account when seeking external support.
- 4.3.3 A member providing an opinion to a client in respect of a potentially significant risk (for the client or the member) should consider obtaining a second opinion as further support. This second opinion may be obtained by making a formal request for an independent view from a colleague, or by instructing another member / tax professional, attorney or tax counsel. If a member relies on a second opinion, evidence of this second opinion (and for which it was obtained) should be retained on the client file.
- 4.3.4 Second opinions are typically obtained when the application of the law to the facts are uncertain and when the amount at stake is relatively high (either in terms of the transaction itself or in terms of recurring transactions).

4.4 Form and content of advice

- 4.4.1 On deciding on the form of advice provided to a taxpayer, a member should exercise professional judgement and should consider such factors as the following:
 - 4.4.1.1 the importance of the transaction and amounts involved;

- 4.4.1.2 the specific or general nature of the taxpayer's enquiry;
- 4.4.1.3 the time available for development and submission of the advice;
- 4.4.1.4 the technical complications presented; and
- 4.4.1.5 the existence of authorities and precedents.

4.4.2 An advice communication should normally set out:

- 4.4.2.1 the purpose for which the advice is required and the client's objectives;
- 4.4.2.2 the background facts and assumptions on which the advice is based;
- 4.4.2.3 the alternatives open to the client;
- 4.4.2.4 the risks associated with the advice; and
- 4.4.2.5 relevant caveats and exclusions.

4.4.3 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 clarify in the engagement letter that no responsibility is accepted to inform the client automatically about advice previously given.

4.4.4 If it is intended that a client should place reliance on taxation advice, the advice should be sufficient for the purpose and normally be given in writing. However,

frequently a member will give impromptu advice in meetings or by telephone, endeavouring to be responsive to the needs of the client. It is for the member to decide whether to confirm in writing advice given orally, particularly where the client is not a fellow tax professional. It would be prudent for a member to write to the client confirming oral advice as a matter of course or at least make a note on file of advice given. The member may even consider sending a copy of that note to the client for the client's information and comment. This confirmation will allow the client a chance to correct any mistaken assumptions set out in the note and to have a written record of the advice given.

4.5 Keeping proper client records

- 4.5.1 Members should make proper professional records of all their dealings in connection with their clients in order that:
 - 4.5.1.1 the members themselves, co-workers and successors can access a complete record of the client history to inform future client service;
 - 4.5.1.2 the members can resolve any misunderstandings or complaints, including in relation to fees; and
 - 4.5.1.3 the members can defend any allegation of negligence.
- 4.5.2 These records should include:



- 4.5.2.1 all written communications relating to the client's affairs, including letters and e-mails;
- 4.5.2.2 file notes of meetings and telephone conversations, all of which should be contemporaneous and dated; and
- 4.5.2.3 records of how any advice or decisions are reached, including details of technical research, consultations and second opinions.

4.5.3 Members should put in place a record keeping system that takes into account both requirements and time limits for legal action against a member.

4.6 Time periods and due dates

- 4.6.1 A member should maintain a diary system to ensure that warnings exist for all relevant time periods and due dates (including for SARS information requests and objections) so that appropriate action is taken. A member should also be able to advise clients upfront, and preferably in writing, of the date by which action must be taken (especially for government payment due dates and the rules governing interest and penalties), and what action and/or information and/or documents are required from the client, and by when, to enable the member to comply with any professional obligations.
- 4.6.2 If a member engaged in compliance believes that the member has no responsibility for monitoring the relevant dates for a compliance client, a specific exclusion to that effect should be incorporated in the letter of engagement.



5. EXTERNAL ACCESS TO CLIENT INFORMATION

5.1 Information requests from SARS

- 5.1.1 A member should be aware that SARS may have the right of access to member and client records / documents.
- 5.1.2 Client confidentiality rules will apply to any disclosure of the member's records / documents. A member cannot disclose records / documents to SARS without the client's permission or a legally enforceable request by SARS.
- 5.1.3 Determining when SARS has legally effective powers can be a complex matter. Members should consider obtaining specialist advice particularly when a client refuses permission to disclose.
- 5.1.4 Where SARS uses or threatens to use its legal powers to obtain information, a member should:
 - 5.1.4.1 unless legally prevented from doing so, inform the client of the intention to disclose and the scope and reason for the disclosure, to enable the client to take legal action as the client may deem necessary to protect the client's interests;
 - 5.1.4.2 consider whether the powers have been properly applied and seek legal or specialist advice in cases of doubt; and
 - 5.1.4.3 consider whether legal professional privilege applies.

5.2 Request from other third parties

- 5.2.1 If a member receives a request for records / documents from any third party other than SARS, the member should either: (i) obtain the client's permission, or (ii) ensure that the request is legally enforceable and overrides client confidentiality.
- 5.2.2 Determining when other third parties have legally effective powers to obtain access to records/documents can be a complex matter. A member should consider obtaining legal advice particularly when a client refuses permission to disclose.
- 5.2.3 A member should also consider whether records / documents requested by any third party are covered by legal professional privilege (i.e. nothing in this guidance overrides legal professional privilege).
- 5.2.4 Unless legally prevented, a member should inform the client of the member's intention to disclose (including the scope and reason for the disclosure) at a reasonable time before disclosure.

6. OTHER CLIENT HANDLING ISSUES

6.1 Dealings with SARS

- 6.1.1 Given the special relationship between the member and SARS when acting for a client, the member's duties in this regard are dealt with in the document "Professional Conduct in Relation to Taxation".

6.2 Managing liability to other third parties

- 6.2.1 If a member provides written or oral support to clients as part of an engagement, the member should have the protection of a defined scope and exclusions as covered by the letter of engagement or related contract.
- 6.2.2 If a member provides similar support to third parties, that member may be exposed to claims from these third parties without the benefit of these protections, and members are advised to take precautionary steps to guard against this potential liability.
- 6.2.3 When dealing with third parties on a client's behalf, a member must be careful not to breach client confidentiality or inadvertently assume a duty of care towards a third party. The following are ways in which the member may manage these risks:
 - 6.2.3.1 Unless required by law, the member must not release information provided by the client to third parties that can be perceived as confidential without first obtaining the client's consent.
 - 6.2.3.2 As a term of the engagement, the member should require that the client seek the member's consent before advice, reports or other documents which the member has produced (or with which the member's firm's name is associated) are released by the client to third parties.

6.2.3.3 Before consenting to the release of documents as referred to above, the member may request that the third party (or its agents / advisers) undertake in writing that the member will be held harmless from liability arising from the advice, reports, or other documents available.

If no such undertaking is obtained, the member should communicate to the third party the terms upon which the documents are to be released, including caveats/limitations on the scope, a warning that the advice is generic and may not apply in all circumstances, and confirmation that no responsibility is accepted in respect of any known undisclosed third party relying on such documents. If a number of third parties are involved, each with different circumstances and reasons for their interests, particular care and attention should be paid to the caveats.

6.2.3.4 In some cases, it may be possible to obtain an indemnity from the client in respect of any possible claim against the member by a third party. This is most appropriate where the client has a strong interest in the advice, reports or other documents being provided to the third party (for example, where the client asks the member to give access to client files to a potential buyer of one of the client's subsidiaries).

6.2.3.5 In some cases, it may be appropriate for the member to accept a duty of care to a third party



and manage third party interests with a separate engagement letter. This duty of care can be achieved either by binding the third party into the engagement letter with the primary client or entering into a shorter agreement tailored for the situation. Possible situations include:

- 6.2.3.5.1 the member's client is a company, but the shareholders wish to rely personally on the member's advice to the company; or
- 6.2.3.5.2 a married person who wishes to use the advice given to the spouse for a similar transaction.

6.3 Working with other professional advisers

- 6.3.1 A member should ascertain whether any other professional advisers are directly or indirectly involved in any client assignment. In these circumstances, it is advisable to clearly define the respective areas of responsibility and record these areas in the letter of engagement.
- 6.3.2 In some cases, a member may enter into a direct relationship with another professional adviser rather than the taxpayer concerned. In these cases, it is important to be clear whether the other professional adviser or the taxpayer is the client. If the taxpayer is not the immediate client, reference should be made to the rules relating to work for another professional.
- 6.3.3 When working alongside another professional, a member should remain careful to observe the duty of client



confidentiality. In cases of doubt, the member should obtain instructions from the client.

6.3.4 A member should deal promptly with all correspondence from professionals, including the maintenance of a file record. If any undue delay is likely to arise in responding to professionals, the other professionals should be promptly notified.

6.4 Working for another professional adviser

6.4.1 A member working directly for another professional should ensure that there is a contract setting out terms and conditions of the arrangement.

6.4.2 The scope and basis of the work undertaken should be clear (for example, whether a subcontracting member will rely wholly on information provided by the other professional or whether the subcontracting member will undertake the member's own research).

6.4.3 The primary professional should ascertain how the subcontracting professional will be held out to the end-user and how the subcontracting professional's advice will be communicated to the client. For example, will the subcontracting professional be in direct contact with the client, or will the subcontracting professional work occur 'behind the scenes' with all communication directed through the primary professional?



6.5 Referrals to another professional adviser

- 6.5.1 A member who does not have the expertise or the staff resources available to meet the client's needs should refer the client to another professional.
- 6.5.2 A member should take care when making referrals and should always aim to give the client a choice.
- 6.5.3 A member should make it clear to the client that the member has no responsibility for the work undertaken by the other professional.

7. CLIENT TERMINATION

7.1 Ceasing to act

- 7.1.1 A member who has accepted instructions from a client should not cease to act for the client until the relevant work has been completed unless:
 - 7.1.1.1 the client requests that the member cease to act;
or
 - 7.1.1.2 the member provides reasonable notice to the client of the member's intention to cease (with due regard to the terms of the client engagement letter).
- 7.1.2 In no circumstances should the member cease acting for a client without notifying the client in writing. The member must continue to act in the meantime.

7.2 Client transition

- 7.2.1 On ceasing to act, and unless otherwise provided for in the letter of engagement, the member will usually discuss the arrangements for settling unpaid fee accounts and billing for work not yet invoiced.
- 7.2.2 At this juncture, it is recommended that consideration be given to the client's requirements for handing over papers or electronic files to the member's successor.
- 7.2.3 Members are not allowed to unduly retain papers or electronic files belonging to a client even if fees have not yet been paid. A member's withholding of client papers or files could lead to disciplinary action (including actions by SARS which has an interest in speedy client compliance).
- 7.2.4 Notwithstanding any terms contained in the member's letter of engagement, members may not prevent the transfer of a client's e-filing profile.
- 7.2.5 If a member is asked to hand over relevant papers (including electronic profiles and files) to a former client or a successor providing tax services to the client, the following points should be considered:
 - 7.2.5.1 If the request does not come from the client directly, the member should obtain written consent from the (former) client before providing papers to a successor.
 - 7.2.5.2 As a general rule, documents on the member's files belonging to the client should be freely



provided. The member should retain copies to maintain proper professional records.

- 7.2.5.3 Where documents belong to the member, the member should co-operate in providing copies of documents relevant to the client's ongoing tax affairs in circumstances where acceptable alternative security has been provided to secure the member's outstanding fees. If a significant amount of work is required in terms of providing copies, reasonable arrangements should be made for the member to be compensated for these costs.
- 7.2.5.4 If there is a risk that the former client may use the information provided to support a legal claim against the member, the member should consult with relevant insurers and seek legal advice.
- 7.2.6 If the member subsequently receives correspondence relating to a former client after ceasing to act for that client, the member should provide the correspondence without delay and advise the sender to address future correspondence directly to the former client.

PART IV: MEMBERS AS EMPLOYEES

1. EMPLOYEES

1.1 Member employee responsibilities



- 1.1.1 These General Ethics Standards apply equally to employed members of a tax firm or in industry (e.g. in-house tax staff providing tax support solely for their employer's tax compliance).
- 1.1.2 Employed members (whether working in a tax practice or in industry) may acquire knowledge that suggests that their employer may have committed an unlawful act. In these circumstances, members should seek to establish the facts for a full and clear understanding of the situation. Members should then raise their concerns internally at an appropriate level (if possible).
- 1.1.3 An employed member who is responsible for signing off on the employer's tax liabilities with SARS (such as a taxpayer representative) has the same duty as a SARS tax practitioner to ensure that there is appropriate disclosure of all relevant information. Similarly, upon a discovery of default, negligence, or fraud on the part of the employer, the member is required to draw the employer's attention to the penalties for which the employer may become liable and to recommend the earliest possible voluntary disclosure.

1.2 Need for corrective action

- 1.2.1 If an employer refuses to take corrective action, the member is placed in a difficult position. Once a member is aware of the offense, the member must take some form of action. A member in these circumstances could consider the following steps:

- 1.2.1.1 Seek guidance from confidential outsiders, such as legal counsel;
- 1.2.1.2 In extreme circumstances, search for alternative employment;
- 1.2.1.3 Consider whether the member is required to make disclosure under any legislation, such as the voluntary disclosure programme; and
- 1.2.1.4 Consider the employer's policies in terms of disclosures relating to unlawful acts.

PART V: DISCIPLINARY PROCESS AND LIABILITY

1. COMPLAINTS

1.1 Complaints by clients to members

- 1.1.1 Members are strongly recommended to maintain and utilise operating procedures to handle client complaints.
- 1.1.2 These procedures should ensure that:
 - 1.1.2.1 Each new client is informed in writing of the name and status of the person to be contacted if a client wishes to complain about the services provided. This information should be included in the engagement letter.

- 1.1.2.2 Each complaint is acknowledged promptly in writing along with the ongoing progress of the investigation.
- 1.1.2.3 Each complaint is investigated thoroughly and without delay by a person of sufficient experience, seniority and competence. This person preferably should not be directly involved in the act or omission leading to the complaint.
- 1.1.2.4 If upon investigation it is determined that the complaint is wholly or partly justified, appropriate action must be taken to remedy the situation.

1.1.3 Experience shows that many complaints can be avoided by taking some simple measures. The following paragraphs highlight three common considerations so as to reduce the risk of potential complaints.

- 1.1.3.1 Members are strongly recommended to issue an engagement letter for every new matter (even with the same client). Many complaints arise either because of confusion as to what the member has agreed to perform, the obligations and responsibilities of the parties, and/or over the fees charged.
- 1.1.3.2 The engagement letter should define the scope of the assignment as precisely as possible. The letter should also clearly define the basis upon which fees will be charged. Any change in the



scope of work or the fees quoted should be in writing with the client's agreement.

1.1.3.3 Many complaints arise because the member has failed to inform the client of what is happening (even if the member is properly performing the work). Lengthy gaps in communication with the client should be avoided. If a prompt response to an enquiry cannot be given, the member should explain the delay and provide a time estimate of future action. If the client complains about delays, the member should provide action dates, and these dates should be met. If a client fails to provide information requested by a member, a reminder should be sent after a reasonable interval and an indication of how this failure will cause member delays.

1.1.4 Complaints received from a client should be treated seriously with immediate action taken. The objective should be to defuse the problem leading to the complaint and remedy any defective work (so far as practicable). A speedy response often repairs any damage that would have otherwise adversely impacted the member/client relationship.

1.1.5 When a complaint is received, members must consider whether the complaint may result in a claim under the member's / firm's professional indemnity insurance policy. If so, insurers should be informed immediately of the potential claim. The member should also consider any advice offered by the insurer and consider whether to take legal advice.



1.2 Complaints to SAIT

- 1.2.1 A client complaint received by SAIT (as well as a complaint by one member against another) about the standard of a member's work or the quality of the service provided will be passed directly to SAIT's disciplinary structures.
- 1.2.2 If the client refers the complaint to SAIT, the member may be required to demonstrate how the complaint has been handled. Members are therefore recommended to maintain a careful written record of each complaint and of the steps taken.

1.3 Personal liability and professional Indemnity Insurance

- 1.3.1 As part of their duty of care to their clients, members may be liable for damages for their own professional negligence and that of their employees and subcontractors.
- 1.3.2 Members should have adequate professional indemnity cover. SAIT membership accordingly includes indemnity insurance. Members should familiarise themselves with the terms and conditions of this insurance and conduct themselves so as not to inadvertently breach these terms and conditions.
- 1.3.3 Notwithstanding the above, members must ensure that they maintain a sufficient level of insurance to protect their clients' interests, members should obtain additional insurance if necessary.

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