



Professional Ethical Code Of Conduct -Tax Return Compliance-

Presenters:

Keith Engel

Adrian Modikwe

YOUR KEY TO THE TAX COMMUNITY

Introduction

The South African Institute of Taxation has conducted a full review of current professional and ethics standards. The newly proposed standards are closely tailored to echo the standards of ethical practice as issued by the Chartered Institute of Taxation (CIOT). We are currently reviewing these standards before finalisation to ensure these standards squarely fit within the South African paradigm..

Fundamental ethics framework:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behaviour

Stakeholders and Applicability of Proposed Professional and Ethical Standards

Relevant Stakeholders	
	The client-taxpayer
	Government agencies including the SARS
	SAIT Members
	The general public
	Other Professional Bodies

Tax Return Responsibilities

Taxpayer Responsibilities

- The taxpayer is ultimately responsible for all matters concerning their returns:
 - Submission of complete, correct and reliable information to the tax practitioner;
 - Review and approval of final return before signature.

Key Questions:

- What does “completeness” mean?
- What is the extent of accountability on the client in administration of tax affairs?
- What are the implications of approval by the Client Taxpayer?

Tax Return Responsibilities

Member Responsibilities

- Members are responsible to the client for the accuracy of the return as based on the information provided by the client.
- Good faith dealings with SARS
- Fiduciary duty towards client
- Audit not required but care should be taken not to be associated with the facts known / believed to be incorrect or misleading

Key Questions:

- How does a practitioner bear accountability for inaccuracies?
- What is the extent of interrogation into information provided to the tax practitioner?
- What are the implications of signature by the Tax practitioner?

Proposed Ethics Standards

Key Discussion Points

- False and misleading statements;
- Information distributed negligently or recklessly;
- Documentation which “omits or obscures” information leading to unreliable or otherwise misleading facts;



Preparation of Tax Returns

Key Discussion Points:

- Practitioner's obligation to disclose
- Unclear tax positions (legal interpretation v.s factual bases)
- Discrepancies and errors
- When and how does not the member disclose (temporal factors)
- Voluntary Disclosure Programme
- Consequences of Voluntary Disclosure (manner and potential implications)

Practice Generally Prevailing

- Taxpayers should be aware of SARS practice prevailing even if untested or different from the courts (risk of audit)

Dealing with Errors on Returns (Irregularities)

Establishing the facts

Where the client fails to explain apparent errors, the member should consider whether it is appropriate to continue to act on behalf of the client (***see following slide on ceasing to act***).

Points of Discussion:

- Voluntary Disclosure Programme;
- Punitive system of disclosure

Trivial Errors

As a general principle all known errors should be corrected:

Members should:

- Put their advice that disclosure is required in writing.
- Inform the Client in writing that they may cease to act should disclosure not be made.
- Inform the Client of any foreseeable adverse inferences or repercussions of SARS enquiry.



Ceasing to Act Errors (Irregularities)

- Where the member should cease to act in relation to the client's tax affairs, they should **inform the client and SARS of this in writing.**

A member may not cease to act for the client if:

- Work already accepted is incomplete and required by the Client; or
- The member has not given reasonable notice of its intention to cease to act.



Contingency Fee Standards

SARS Standard

Contingency Fees Prohibited on all tax returns and reviews to prevent the termed '*perverse incentive*'.

Key Ethical Concerns:

- Disproportionate fees to the work undertaken;
- Compromised integrity and objectivity (conflict of interest); and
- Hamper the administration and collection of tax

Proposed Standard

Recognising the utility the use of contingency fees may be permissible under limited circumstances:

Reasonableness Test

Ought to be based on utility factors:

- Nature of monetary claim;
- Nature and complexity of work;
- Type and Size of Client;
- Actual v.s Potential prejudice to Client;
- Actual v.s Potential risk to Practitioner; and
- Client affordability profile.