

# General Ethics Standard

SAIT Member Code of Conduct

Presented by Caryn Maitland CA(SA)

# Caryn Maitland CA(SA)



- Caryn is CA(SA and RA, who has lectured extensively at UKZN (and other institutes) specialising in Advanced Financial Accounting, returning to this space in 2023. Subsequently, Caryn specialised in facilitating Ethics conversations, keeping assurance practitioners updated and unpacking legislation for the financial sector.
- Caryn has conducted training for accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, Caryn has focussed on being a technical freelance consultant and trainer to the accounting profession.
- Caryn has worked extensively with analysts, directors and other users of financials to interpret, prepare, analyse and forecast information based on these financials.
- Caryn is also a member of the following SAICA bodies and committees: Eastern Region Council, National Small and Medium Practices Forum, the Accounting Practices Committee, and Chairs the Legal Practices and Accountants Committee and the Midlands District Association

# Agenda

- Introduction
- Part I: General Professional Standards
- Part II: Practice Management
- Part III: Client Management
- Part IV: Members as Employees
- Part V: Disciplinary Process and Liability

# Introduction

# What is this General Ethics Standards Code based on?

- Derived from both taking into account South African sources and requirements and the Code from the Chartered Institute of Taxation (CIOT) (UK tax Institute)
- Code factors in
  - By-Laws of SALT and its associated Code of Conduct
  - CIOT's Professional Rules and Practice Guidelines, together with their Fundamental Principles and Standards of COITs Professional Code of Conduct
  - SARS's criteria for RCB's
  - Code of Conduct of other RCB's

# Why do we need a Code of Conduct?

- We are professionals
  - Fit and proper
- Provides a framework
- Accountability
  - Public interest
  - Self, peers and profession
  - SARS
- Provides guidance
  - Principle based, with specific expectations
- Measure members behaviour
  - Disciplinary procedures

# Part I: General Professional Standards

# Compliance with Law

- Legal Compliance
  - Members must comply with South African law and laws of any country where they practice.
  - Tax laws, exchange control laws and Anti Money Laundering Laws
- Additional Duties
  - Members must consider duties to other professional bodies and regulators.
- Conflict Resolution
  - Members may seek guidance in conflicting situations, emphasizing professional judgment.
  - Legal Counsel



# “Fit and Proper” Conduct

- Overview

- Members required to operate as "fit and proper" persons according to South African case law.
- Considers conduct, personal, business and professional

- Fundamental Principles

- Integrity,
- Objectivity and Independence,
- Competence and Due Care,
- Confidentiality, and
- Behavior.

# Integrity

- Straightforward and honest conduct
- Fair dealings and truthfulness.
- A Member must not:
  - knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information;
  - be party to bribery or any other illegal activity; nor
  - undertake any activity that involves a risk of assisting in a criminal activity

# Objectivity and Independence

- Must be objective in your work,
- Don't compromise judgements due to
  - bias
  - conflict of interest
  - Undue influence
- Be careful of taking an overly optimistic position – to make the client happy.
- Need to be morally and intellectually independent in our conduct.
  - Independent from client and when resolving conflicts between stakeholders
- Need to disclosing material risks of advice
- Need to avoid receiving any advantage from a third-party (disclose to client if not possible).

# Professional Competence and Due Care

- Provide professional knowledge and technical skill
- Exercise sound judgement
- Providing competent and diligent service.
- Continuing professional development
- Awareness of relevant laws outside of tax (as well as other skills eg financial accounting).
- Diligence in assignments and duties to others.
  - Due care, thoroughness and timeliness
- Stay in your lane (use other professionals if outside your scope)
- Includes those you are responsible for – staff, trainees etc
- Applies to ALL engagements undertaken

# Confidentiality

- Professional ethical responsibility vs Contractual obligation?
- Engagement letters
- Professional Accountants – NOCLAR?
- Safeguarding information, disclosure only with legal or professional obligation.
- Beware of inadvertent disclosure
- Seek legal advice...

# Professional Behaviour

- Avoiding behavior discrediting the profession or stakeholders.
- **Criteria for disreputable behavior\***
- Prompt notification of convictions or judgments to SALT.
- Should not use abusive language or rude/offensive behaviour
- Should not make false accusations
- Should not misuse their credentials or expertise
- Keeping tax affairs up to date and acting as role models

# Criteria for disreputable behaviour

## Automatically deemed disreputable behaviour

- if the member has been convicted of tax violations, theft, bribery , fraud, forger or issuing a forged document or of perjury, or of any offence of any which dishonesty is an element , or of an offence which in the opinion of the Board reflect adversely on the applicants fitness to be a member ; or
- 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.
- Disreputable behaviour may especially include being subject to a civil judgment (or accepting civil liability for any of the above

# Part II: Practice Management



# Practice Continuity (Succession Planning)

- **Temporary Incapacity:**
  - Sole practitioners must arrange for firm continuity in case of illness.
  - Contingency plans should address resource availability and client confidentiality.
  - Should another firm be engaged to assist?
- **Death or Permanent Incapacity:**
  - Detailed agreements should outline duties and responsibilities in case of death.
  - Adequate will provision for firm management is essential.
  - Professional indemnity insurance?
- **Business Continuity Plan:**
  - Members need a plan for major incidents like fire or IT failure.
- **Merger or Dissolution:**
  - Notify clients in case of merger or dissolution.
  - Ensure professional indemnity insurance remains in place.
  - May need legal counsel

# Branding and Marketing

- **Practicing Designations and Logos:**

- Proper use of designations and logos prescribed by SAIT.
- Strict adherence to rules for SAIT and SARS logos.

- **Advertising, Publicity, and Promotion:**

- Respectable advertising is allowed, complying with laws and decency.
- Accuracy, truthfulness, and avoidance of disparaging statements are crucial.

# Information retention and data protection

- **Information Retention:**

- Consider legal retention periods and court actions when deciding how long to keep records.
- Maintain records securely and protect client confidentiality.

- **Data Protection:**

- Comply with Protection of Personal Information Act.
- Obtain client consent for data collection and use.
- Ensure confidential and secure storage of personal data.
- Data recovery procedures???

# Part III: Client Management

# Client Management

- New Clients
- Charging for services
- Client conflict of interests
- Client service
- External Access to client information
- Other client handling issues
- Client termination

# New Clients

## **Obtaining Clients:**

- Clients have the right to choose advisors.
- Members should not seek work unprofessionally.
- Cold calling and direct mailing are acceptable within limits.

## **Client Acceptance:**

- Members assess risks, conflicts, and competence before accepting a new client.
- Caution needed with clients refusing disclosure of previous tax professionals.
- Members must not assist clients in criminal activities.

# New Clients

## **Professional Clearance for Replacing Tax Professional:**

- Communication with the prior tax professional is essential.
- Permission for communication should be obtained from the client.
- Full disclosure is crucial in client transition.

## **Engagement Letter:**

- Members must define the scope and nature of work in an engagement letter.
- Written agreement limits the scope of services.
- Caution needed to avoid exceeding agreed terms.

# Charging for Services

## **Basis of Charge:**

- Clear communication of fee basis and expenses to the client.
- Fair charges related to services provided.

## **Commissions:**

- Avoidance of commissions for obtaining or referring clients.

## **Retainers:**

- Rarely used in tax field but should be clearly outlined in writing.



# Charging for Services

## **Advance Payments:**

- Permissible with clear terms and separate funds.
- Refund if services cannot be completed.

## **Difficulties in Client Collections:**

- Inform clients of payment terms.
- Legal action may be taken in case of non-payment.
- Caution against withholding client information for non-payment

# Client's conflict of interest

## **Professional Independence:**

- Members must maintain and be seen as independent.
- Swift action required to address factors affecting independence.

## **Acting for Both Parties to a Transaction:**

- Generally advised against; if necessary, disclose and seek client consent.

## **Acting for Both a Client and a Client's Employees:**

- Confidentiality must be maintained; clear communication in engagement letter.

# Client's conflict of interest

## **Acting for Both Parties in a Divorce Settlement:**

- Rarely appropriate due to lack of mutuality of interest.

## **Financial Involvement with Clients:**

- Members should avoid financial involvement that may affect independence.
- If necessary, full disclosure and client consent are essential

# Client Service

## **Duty of Care and Competence**

- Members must exercise reasonable skill and care.
- Adequate understanding of the client's business is essential.
- Act within professional competence and engagement terms.
- Avoid restricting a client's freedom to seek advice.

## **Delegation and Subcontracting**

- Supervision required for delegated tasks.
- Delegated parties must be adequately trained.
- Obtain client consent before subcontracting.

## **External Consultation and Second Opinions**

- Encouraged to consult with professionals for expertise.
- Second opinions advised for significant risks.
- Clear documentation of external support in client files.

# Client Service

## **Form and Content of Advice**

- Consideration of transaction importance and technical complexities.
- Advice communication should include purpose, background, alternatives, risks, and caveats.
- Clearly state the advice's current nature and the potential impact of future legal changes.

## **Keeping Proper Client Records**

- Maintain comprehensive records for client history, complaint resolution, and defense against allegations.
- Record written communications, meeting notes, and details of advice.

## **Time Periods and Due Dates**

- Maintain a diary system for relevant time periods and due dates.
- Clearly inform clients of necessary actions and deadlines.

# External Access to Client Information

## **Information Requests from SARS**

- SARS may have access to member and client records.
- Members should inform clients before disclosing to SARS and consider legal professional privilege.

## **• Request from Other Third Parties**

- Obtain client permission or ensure legally enforceable requests before disclosing to third parties.
- Consider legal advice when clients refuse disclosure.

# Other Client Handling Issues

## **Dealings with SARS**

- Addressed in "Professional Conduct in Relation to Taxation."

## **Managing Liability to Other Third Parties**

- Define scope and exclusions in engagements.
- Take precautions when supporting third parties.

## **Working with Other Professional Advisers**

- Define responsibilities in engagement letters when working alongside other professionals.
- Promptly respond to correspondence from other professionals.

# Other Client Handling Issues

## **Working for Another Professional Adviser**

- Clear contracts needed when working for another professional.
- Define scope and basis of work.

## **Referrals to Another Professional Adviser**

- Refer clients to other professionals when necessary.
- Clearly communicate lack of responsibility for work undertaken by the referred professional.



# Client Terminations

## **Ceasing to Act**

- Do not cease acting until work is completed, unless requested by the client.
- Notify the client in writing before ceasing to act.

## **Client Transition**

- Discuss arrangements for settling fees and handing over documents.
- Do not unduly retain client papers; consider client requests.

# Part IV: Members as Employees

# Employees

# Part V: Disciplinary Process and Liability



Questions?