

# SAIT ETHICS -ENGAGEMENT LETTERS IN COMPLIANCE-

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# Introduction

Tax Practitioners may choose whether to act for a client generally or in terms of specific activities. However, considering the professional duty to perform within scope of work and latent adverse circumstances such as SARS inquiry, contractual disputes and potential litigation between practitioner and client, best practice requires that all terms and conditions of engagement be set out in written engagement letters or formal contracts to protect both practitioner and client, and also limit the scope of work.

## **Professional ethics framework:**

- Integrity
- Objectivity
- Best Practice standards
- Professional competence and due care
- Professional behaviour

# Part 1: Client Intake Survey



# Client Viability Assessment

All key areas of assessment relate to the type of work commissioned and the type of client to establish client acceptability based on:

- Alignment with organizational policy;
- Branding;
- Client risk profiling;
- K.Y.C Assessment (*“know your client”*)
- Global engagement (*domestic v.s global clients*)

## Key Discussion Points

- Proper due diligence and risk assessment:
  - Association risks
  - Commercial risks
  - Legality of work
  - Morality and ethical values



# Proper Risk Assessment

Most larger firms make use of the “Know Your Client” checklist to evaluate client acceptability and conflict of interest. This process to clear a client is infamously lengthy.

## **Basic Elements:**

- Certificate of Incorporation (for Companies, Trusts);
- Company tax number and compliance;
- Confirmation of company address;
- Passport/Driver's License of Primary Contact and Directors;
- Tax file Number of Primary Contact and Directors.
- Type of work (audit, accounting or tax);
- Type of industry (mining, financial)
- Group affiliations and systems;
- Geographical (global) status and location of client (legal)



# Part 2: Key Features of Engagement Letters



# Fundamental Elements of Engagement Letters

A good engagement letter must contain some key basic features to be agreed upon prior to commencement of work.

These features will differ and require customization based on:

1. The needs of the client; and
2. The type of tax work commissioned.
  - Personal Income Tax work
  - Corporate Tax work
  - VAT

## Examples for content:

- Nature, extent and scope of the service(s) to be rendered (instructions);
- Duration of engagement (including termination);
- Duties and responsibilities of the client and tax practitioner;
- Terms and conditions for tax services;
- The client's agreement to all terms and conditions;
- Variation clause;
- Confidentiality and appropriate disclosures by clients;
  - Reticent clients
  - POPIA applicability

# Professional Fees

## Transparency requires fees to be based on:

- Complexity of work and projected scope;
- Time devoted to work; and
- The client relationship (act in good faith and in the best interests of the client).

## General Principles

Terms should:

- Be detailed in engagement letter and variation clauses;
- Provide clarity on basis and nature of fees charged;
- Outline rules on fees structure and managing expenses;
- Based on good judgment and commercial justifiability; and
- Properly negotiated payment arrangements (i.e., Fixed fees or time/expense-based).



# Fee Disputes

A member should take reasonable steps, including negotiation, to avoid disputes with clients over fees. Court action should be considered as a last resort.

## **Late Paying Clients**

- Follow proper debt collection process of notification;
- Ensuring all billing communications are directed and received by the client;
- Allow for alternative payment arrangements based on reason for non-payment;
- Consider any appropriate interest and collection fees within applicable law;
- Consider cessation of services;
- Outstanding fees must not be settled from funds held on behalf of client; and
- Only once all debt collection avenues are exhausted, legal action may be appropriate.



# Limitation of Liability

## General Principles

Terms relating to personal liability and PI Insurance:

- Based on detailed mutual responsibilities outlined;
- Provide clarity on 3<sup>rd</sup> party engagement and liability for loss or damage (i.e POPIA);
- Must make provision for maximum claims arising from any form of breach (contract, delict, or negligence);
- Must provide for management of claims including compensation against Professional Indemnity Insurance.

***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.***

# Part 3: Maintaining the Client Relationship



# Ongoing Maintenance of Contract

Members will apply professional judgment to decide various matters affecting the initial terms and conditions agreed upon. These include, among others:

1. Full review of terms and conditions for tax services;
2. Full review of mutual duties and responsibilities;
3. Amendment to scope of work, chargeable fees and payment terms;
4. Inclusion of provisions for claims against practitioner Professional Indemnity Insurance; and
5. Variation Orders and governing rules.