



South African Revenue Service

SARS Tax Practitioner Readiness Programme

Module 2 of 8

Criteria for the Recognition of Controlling Bodies

Learning Objectives

At the end of this module, you are expected to

- Understand criteria for the recognition of a controlling body
 - Minimum qualifications and experience requirements;
 - Continuing professional education requirements;
 - Codes of ethics and conduct;
 - Disciplinary process and procedures.
- Understand the impact of not adhering the Code of Conduct of RCBs

Criteria for SARS to Recognise a Controlling Body

For a Controlling Body to be recognised by the Commissioner of SARS as a Recognised Controlling Body, it must meet the following criteria:

1. The body must be approved in terms of section 30B of the Income Tax Act for purposes of section 10(1)(d)(iv),
2. The body must have a minimum of 1 000 members when applying for recognition or there are reasonable prospects of having 1 000 members within a year of applying,
3. The body must ensure with regards to natural persons that the following are maintained relevant and effective:
 - a) Minimum qualifications and experience requirements;
 - b) Continuing professional education requirements;
 - c) Codes of ethics and conduct;
 - d) Disciplinary process and procedures.

Recognition Criteria: Minimum Qualifications

For registration of a tax practitioner on and after 1 June 2022, the following requirements apply:

NQF Levels

- a) NQF level 6 and above with at least one accounting module and one tax module, plus at least 1 year's tax working experience,
- b) NQF level 5 plus at least 4 years' tax working experience, or
- c) NQF level 4 plus 10 years' tax working experience.

Please note that the tax working experience must be verifiable by the employers or clients.

AND

SARS Tax Practitioner Readiness Programme

Successful completion of the SARS Readiness Programme: From 1 July 2022, a tax practitioner must attend SARS Tax Practitioner Readiness Programme and successfully pass the assessment.

Recognition Criteria: Continuous Professional Education

Criteria – CPE

Minimum of 18 verifiable CPE hours per year, which consists of:

- 10 tax related hours,
- 2 ethics related hours, and
- 6 hours relating to the service provided.

Please note: CPE records of individual tax practitioners must be retained for five years.

Minimum Regulatory Codes

- Codes of Ethics and Conduct: Honesty & Integrity
- Codes of Ethics and Conduct: Professional Competence
- Codes of Ethics and Conduct: Confidentiality and Fees
- Codes of Ethics and Conduct: Disciplinary Code & Procedures

Codes of Ethics and Conduct: Professional Competence

Tax practitioners must attain and maintain knowledge and skills relevant to the service provided to clients. They must

- Take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement being made on behalf of the client.
- Ensure that taxation laws are applied correctly and lawfully to the circumstances of the particular client.
- Not knowingly obstruct the proper administration of the tax laws.
- Ensure that they advise their clients of their rights and obligations under the taxation laws in the country.
- Exercise due diligence and care in their interaction with SARS on behalf of their clients.

Codes of Ethics and Conduct: Professional Competence

Examples of when a tax practitioner might be in breach of this code:

- Withholding a client's e-filing profile due to fees owed by the client
- Not advising a client regarding the correct date of liability and registration for a tax type (e.g. client's turnover exceeds R1 million, but the tax practitioner does not advise the client to register for VAT)
- Providing questionable advice which does not match the facts of the matter: e.g. An employee has reached retirement age but the employer still needs the services of such employee. The tax practitioner has advised the employee to open a company so that the employer can continue paying a salary to the employee. However, the employee is not issuing invoices, and does not meet the definition of an independent contractor.

Codes of Ethics and Conduct: Honesty & Integrity

Tax practitioners should be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

- Tax practitioners must be compliant in respect of the taxation laws, in the conduct of their personal affairs. A Tax Compliance Status is to be provided to their RCB.
- Tax practitioners must not knowingly be associated with reports, returns, communications or other information where the practitioner believes that the information:
 - contains a materially false or misleading statement;
 - contains statements or information furnished recklessly;
 - omits or obscures information required to be included, where such omission or obscurity would be misleading.
- When a tax practitioner becomes aware that the above has occurred, the he/she must cease to represent the taxpayer concerned if the taxpayer does not remedy the situation.
- This should be done in line with TAACT, as these are chargeable offences under the Act.

Codes of Ethics and Conduct: Honesty & Integrity

Examples of when a tax practitioner might be in breach of this code:

- Tax Practitioners are non-compliant with tax laws in their personal capacity – they have outstanding returns or debt.
- Under declaration (e.g. Failure to submit accurate figures from the accounting practice), Late/Non Filing of returns, Late/Non Payment of tax debt without payment arrangement or suspension of payment in place.
- When a client requests that you submit NIL returns for them, knowing that they are trading or have disposed of assets.
- Impersonate clients when engaging with SARS

Codes of Ethics and Conduct: Confidentiality and Fees

Confidentiality of the Client

- Tax practitioners must maintain the confidentiality of their clients and should not disclose client information to a third party without the clients' permission, unless there is a legal obligation to do so.
- Information disclosed by the client should not be used by the tax practitioner for personal gain or advantage.

Fees

- Fees charged by a tax practitioner for work undertaken on behalf of a client must be commensurate with the nature and complexity of the task at hand.
- The charging of a contingency fee, for the completion of tax returns, is not an acceptable form of remuneration for tax practitioners.

Codes of Ethics and Conduct: Criminal Status Verification

Criminal status must be verified by RCBs as follows:

- **For tax practitioners registered on or after 1st June 2022:**

An independently verified criminal free certificate in terms of section 240(3) of the Act must be produced and provided to RCBs.

Thereafter, an annual confirmation is required that the status remains the same. Following this, a sworn in affidavit indicating the tax practitioners are criminal free in terms of section 240(3) of the Act, must be produced and provided to RCBs once every 5 years.

- **For tax practitioner registered prior to 1 June 2022:**

At commencement of the new criteria, a sworn in affidavit is required to be produced and provided to the RCBs attesting to criminal free status. Thereafter an annual confirmation is required that the status remains the same. A sworn in affidavit must then be produced and provided to RCBs once every 5 years.

Codes of Ethics and Conduct: Disciplinary Code & Procedures

- Complaints may be lodged to the controlling body by SARS, clients, general public or other professional bodies.
- The disciplinary code must address the complaints that may be lodged in terms of Section 241 of the Tax Administration Act, 2011.
- Disciplinary processes and procedures must be in place.
- Sanctions must fit the offence committed.
- There must be a range of sanctions that can address the severity and the effect of the non-compliant behaviour of a member. This could include warnings; recommendations for the tax practitioner to undertake educational courses to increase competency in their practice; financial sanctions. and removal as a member, etc.

Codes of Ethics and Conduct: Disciplinary Code & Procedures

- The sanction must effectively change the behaviour of the tax practitioner.
- Repeated non-compliant behaviour must receive a harsher sanction than was imposed previously.
- Outcomes of all disciplinary hearings of tax practitioners that have been found guilty, must be reported to SARS as well as the client concerned.
- When a disciplinary hearing results in the removal of a member, the identity and the sanctioning of the member must be published on the controlling body's website.
- The controlling body must retain jurisdiction over its members, notwithstanding that they may have resigned, provided that the conduct under investigation took place at the time they were a member of the controlling body.

E.g. A tax practitioner cannot resign from his/her current RCB and join a new RCB if the current case is not finalised by the current RCB. This will not finalise the case in question.

Codes of Ethics and Conduct: Disciplinary Code & Procedures

- The controlling body must require members to declare that they have not been removed from a controlling body for misconduct and that they do not have a criminal record, as set out in Section 240(3) of the Tax Administration Act, 2011. The controlling body must either agree procedures with SARS to verify a random selection of its members' criminal records or assist SARS with the verification of the criminal records of members randomly identified by SARS. Selected members must provide the recognised controlling body with the necessary proof.
- A tax practitioner removed by a recognised controlling body for serious misconduct cannot be accepted as a member of another recognised controlling body.

Thank you



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