

# EXTERNAL GUIDE

## REPORTING UNPROFESSIONAL CONDUCT

## 1 PURPOSE

- The purpose of this guide is to provide information regarding circumstances under which any person can report a registered tax practitioner or a person who carries on a profession in an unprofessional manner.
- This guide also sets out the procedure that SARS will follow when reporting such conduct to the controlling body if the person/tax practitioner is registered with a controlling body.

## 2 SCOPE

- The guide applies to the reporting of unprofessional conduct of registered tax practitioners or persons who carry on a profession governed by a controlling body and covers the following:
  - the reporting of unprofessional conduct of a tax practitioner or a person who carries on a profession governed by a controlling body;
  - disclosure requirements by SARS before lodging the complaint; and
  - consideration of the complaint by the recognised controlling body.
- The guide also covers the completion of the form for reporting a tax practitioner for an alleged unprofessional conduct.
- The guide excludes the process to be followed when reporting misconduct of a tax practitioner or a person who carries on a profession but does not belong to a recognised controlling body. In this instance an RSN01 should be completed.

## 3 REFERENCES

### 9.2 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act No. 28 of 2011
Other Legislation:	Promotion of Administrative Justice Act No. 3 of 2000
<b>International Instruments:</b>	<b>None</b>

### 9.3 CROSS REFERENCES

- None

## 4 DEFINITIONS AND ACRONYMS

<b>Controlling body</b>	<ul style="list-style-type: none"><li>• A body established, whether voluntary or under a law, with power to take disciplinary action against a person who, in carrying on a profession, contravenes the applicable rules or code of conduct for the profession</li></ul>
<b>Recognised controlling body</b>	<ul style="list-style-type: none"><li>• A controlling body recognised by the Commissioner under section 240A</li></ul>
<b>Registered tax</b>	The duty to register as a tax practitioner applies to:

<b>practitioner</b>	<ul style="list-style-type: none"> <li>• Every natural person who: <ul style="list-style-type: none"> <li>▫ Provides advice to another person with respect to the application of a tax Act; or</li> <li>▫ Completes or assists in completing a document to be submitted to SARS by another person in terms of a tax Act; <ul style="list-style-type: none"> <li>○ Such a person must register or fall under the jurisdiction of a “recognised controlling body” by later the later of 1 July 2013 or 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return; and</li> <li>○ Such a person must register with SARS as a tax practitioner in the prescribed form and manner, within 21 business days after the date on which that person for the first time provides the advice, or completes or assists in completing the return.</li> </ul> </li> </ul> </li> <li>• The duty to register as a tax practitioner does not apply to a person who only: <ul style="list-style-type: none"> <li>▫ Provides the advice and completes or assists in completing a return for no consideration to that person or his or her employer or a “connected person”, as defined in section 1 of the Income Tax Act No.58 of 1962</li> <li>▫ Provides the advice in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;</li> <li>▫ Provides the advice as an incidental or subordinate part of providing goods or other services to another person;</li> <li>▫ Provides the advice or completes or assists in completing a return:- <ul style="list-style-type: none"> <li>○ to or in respect of the employer by whom that person is employed on a full time basis or to or in respect of that employer and “connected persons” in relation to that employer; or</li> <li>○ under the supervision of a registered practitioner who has assigned or approved the assignment of those functions to the person.</li> </ul> </li> </ul> </li> <li>• A tax practitioner who has assigned or approved the assignment of functions to a person is regarded as accountable for the actions of that person in performing those functions for the purposes of a complaint to a recognised controlling body.</li> <li>• A person may not register as a tax practitioner if :- <ul style="list-style-type: none"> <li>▫ During the five years preceding the registration has been removed from a related profession by a “controlling body” for serious misconduct; or</li> <li>▫ During the preceding five years has been convicted (whether in the Republic or elsewhere) of : <ul style="list-style-type: none"> <li>○ theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004), or</li> <li>○ any offence involving dishonesty for which the person has been sentenced to a period of imprisonment exceeding two years without option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines, 1991 (Act No.101 of 1991)</li> </ul> </li> </ul> </li> </ul>
<b>SARS official</b>	<ul style="list-style-type: none"> <li>• The Commissioner, an employee of SARS or a person contracted by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner</li> </ul>
<b>Senior SARS official</b>	<ul style="list-style-type: none"> <li>• The Commissioner; or</li> <li>• A SARS official who has specific written authority from the Commissioner to excise the power; or</li> </ul>

	A SARS official occupying a post designated by the Commissioner for this purpose
<b>Tax ACT</b>	<ul style="list-style-type: none"> <li>The Tax Administration Act No. 28 of 2011 or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act</li> </ul>

## 5 BACKGROUND

- SARS respects the right of taxpayers to obtain professional advice. This often facilitates more accurate reporting and is an efficient method of engaging with a taxpayer. Tax is often not a taxpayer's area of expertise, and by appointing a professional to assist, a taxpayer is able to maintain focus on core operations while obtaining the best professional advice. Often it is a mutually beneficial practice. SARS endorses the principle of tax self-determination, but this emphasises the need for integrity in the relationship between the professional and a taxpayer.
- It is unfortunately the experience that in some instances a taxpayer's actions are informed by advice and suggestions provided by a tax practitioner that contravene the code of conduct established by the recognised controlling body for tax practitioners or persons who carry on a profession . In such instances this misconduct negatively impacts on a taxpayer's affairs. Such misconduct also impacts upon the relationship between SARS and the taxpayer. These kinds of actions of a few tax practitioners could result in an antagonistic and combative relationship between SARS' officials, tax professionals and taxpayers, and could generally erode the foundational principles on which a system of self-assessment must rest.
- In an effort to uphold the integrity of South Africa's tax system, to promote a healthy relationship of mutual respect and trust between SARS and both the professional sector and taxpayers, it is necessary that SARS officials be authorised to report specific instances of misconduct to a controlling body for tax practitioners or persons who carry on a profession .

## 6 GOVERNING LEGISLATION

- Tax Administration Act No. 28 of 2011 (TAA)
  - Sections 239 to 243

### 241. Complaint to controlling body

- A senior SARS official may lodge a complaint with a 'controlling body' if a person who carries on a profession governed by the 'controlling body', did or omitted to do anything with respect to the affairs of a taxpayer, including that person's affairs, that in the opinion of the official—
  - was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act;
  - by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under a tax Act; or
  - constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the person by the body; or
  - constitutes conduct under subsection (2) by a registered tax practitioner.
- A senior SARS official may lodge a complaint with a 'recognised controlling body' if a registered tax practitioner has, in the opinion of the official—

- a) without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit or other document relating to matters affecting the application of a tax Act;
- b) unreasonably delayed the finalisation of any matter before SARS;
- c) given an opinion contrary to clear law, recklessly or through gross incompetence, with regard to any matter relating to a tax Act;
- d) been grossly negligent with regard to any work performed as a registered tax practitioner;
- e) knowingly given false or misleading information in connection with matters affecting the application of a tax Act or participated in such activity; or
- f) directly or indirectly attempted to influence a SARS official with regard to any matter relating to a tax Act by the use of threats, false accusations, duress, or coercion, or by offering gratification as defined in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

## 7 HOW CAN A PERSON REPORT UNPROFESSIONAL CONDUCT

- Any person may lodge a complaint against a person who carries on a profession governed by a “controlling body” where such a person is believed to have contravened the provisions section 241 of the TAA.
- To report unprofessional conduct, the application form for reporting a tax practitioner ‘RTP001 – Reporting of a Tax practitioner’ must be completed in full.

**Note:** Certain information fields are mandatory and if not completed will result in the automatic rejection of the application.

- This application form can be obtained through the following channels:
  - The SARS website [www.sars.gov.za](http://www.sars.gov.za)
  - The SARS Contact Centre on 0800 00 SARS (7277) or
  - At a SARS branch.

## 8 COMPLETION OF RPT001 FORM

### 8.1 Details of complainant

- **Personal details**
  - These are the personal details of the complainant.

Personal Details	
Surname	<input type="text"/>
First Two Names	<input type="text"/>
Taxpayer Reference No.	<input type="text"/>
ID No.	<input type="text"/>

- Complete the following personal details for the complainant:
  - Surname
  - First two names
  - Initials

**Note:** The above fields are mandatory.

- Taxpayer Reference No
  - This is the registration number that a taxpayer obtains from SARS when registering for tax. This can be a reference number for any tax type.
- ID No
  - If an incorrect identity number is entered the following message will be populated.
  - *“The ID No. you have entered does not seem to be valid. Please ensure that it is correct.”*

**Note:** The above fields are not mandatory.

- **Contact Details**

- These are contact details of the complainant.

Contact Details	
Email	<input style="width: 95%; height: 15px;" type="text"/>
Cell No.	<input style="width: 40%; height: 15px;" type="text"/> Home Tel No. <input style="width: 40%; height: 15px;" type="text"/>
Bus Tel No.	<input style="width: 40%; height: 15px;" type="text"/> Fax No. <input style="width: 40%; height: 15px;" type="text"/>

- Complete the following contact details for the complainant:

- Email
- Cell No.
- Bus Tel No.
- Home Tel No.
- Fax No.

**Note:** At least one of the above fields must be completed

## 8.2 Details of Taxpayer

- **Personal Details**

- These are details of the taxpayer.
- This section must only be completed if the details of the taxpayer are different from the details of the complainant.

Personal Details (if applicable)	
Surname	<input style="width: 95%; height: 15px;" type="text"/> Initials <input style="width: 10%; height: 15px;" type="text"/>
First Two Names	<input style="width: 95%; height: 15px;" type="text"/>
Taxpayer Reference No.	ID No. <input style="width: 40%; height: 15px;" type="text"/>

- Complete the following personal details of the taxpayer:

- Surname
- First two names
- Initials

**Note:** The above fields are mandatory.

- Taxpayer Reference No
  - This is the registration number that the taxpayer obtains from SARS when registering for tax. This can be a reference number for any tax type.
- ID No

**Note:** The ID and Taxpayer Reference Number fields are not mandatory.

- **Entity Details**

- These are entity details of the taxpayer.
- These details must only be completed if applicable.

Entry Details (if applicable)	
Registered Name	<input type="text"/>
Trading Name	<input type="text"/>
Taxpayer Reference No.	<input type="text"/>
Company / CC / Trust Reg No.	<input type="text"/>

- **Registered Name**

- This is the name that the business is legally registered under with the relevant authority e.g. Companies and Intellectual Property Commission (CIPC).

- **Trading Name**

- This is the name under which the business trades or by which it is generally known to its customers.

- **Taxpayer Reference No.**

- This is the registration number that the taxpayer obtains from SARS when registering for tax. This can be a reference number for any tax type.

- **Company /CC Registration No.**

- This is the registration number that a close corporation, co-operative or company obtains when it registers with CIPC (Companies and Intellectual Property Commission).

**Note:** Completion of this section is not mandatory.

- **Contact details**

- These are contact details of the taxpayer.

Contact Details	
Email	<input type="text"/>
Cell No.	<input type="text"/>
Home Tel No.	<input type="text"/>
Bus Tel No.	<input type="text"/>
Fax No.	<input type="text"/>

- Complete the following contact details of the taxpayer:

- Email
- Cell No.
- Bus Tel No.
- Home Tel No.
- Fax No.

**Note:** Completion of above fields is not mandatory.

### 8.3 Details of Tax Practitioner

- **Personal Details**

- ◻ These are the details of the tax practitioner.
- ◻ Complete as much details as possible.

Details of Tax Practitioner <i>(please complete as many details as possible)</i>	
Personal Details	
Surname	<input type="text"/>
First Name	<input type="text"/>
Other Name	<input type="text"/>
Initials	<input type="text"/>
Date of Birth (CCYYMMDD)	<input type="text"/>
ID No.	<input type="text"/>

- Complete the following personal details of the tax practitioner.

- ◻ Surname
- ◻ First Name
- ◻ Other Name
- ◻ Initials
- ◻ Date of Birth
- ◻ ID No

**Note:** The above fields are not mandatory.

- **Contact Details**

- ◻ These are the contact details of the tax practitioner

Contact Details	
Email	<input type="text"/>
Cell No.	<input type="text"/>
Home Tel No.	<input type="text"/>
Bus Tel No.	<input type="text"/>
Fax No.	<input type="text"/>

Complete the following fields:

- ◻ Email Address
- ◻ Cell Number
- ◻ Home Tel No.
- ◻ Business Tel No.
- ◻ Fax No.

**Note:** Completion of the above section is not mandatory.

- **Business Address Details**

Business Address Details	
Unit No.	<input type="text"/>
Complex (if applicable)	<input type="text"/>
Street No.	<input type="text"/>
Street / Farm Name	<input type="text"/>
Suburb / District	<input type="text"/>
City / Town	<input type="text"/>
Country Code	<input type="text"/>
Postal Code	<input type="text"/>

- This is the physical address of the business i.e. the premises the business is trading from.

- ◻ If the business is trading from a flat or townhouse, the actual flat or townhouse unit number must be inserted in "unit no"



- The name of the block or the block of flats or townhouse complex must be inserted in “complex” and
  - Where the business does not trade from a flat, townhouse or complex these fields are left blank
  - Street no
  - Street/Name of farm
  - Suburb/District
  - City/Town and
  - Postal code.
  - Country Code
    - This field a drop-down list containing a list of valid country names. The popup also contains two buttons: “Ok” and “Cancel”.
    - If a country has been selected, and the Ok button is clicked, then selected country code will be displayed in the field.
    - If the Cancel button is clicked, the popup will close.
- **Postal Address**
  - This is the postal address details of the tax practitioner being reported.
  - This section requires completion in cases where the postal address differs from the business address above.

Postal Address	
Mark here with an 'X' if same as above or complete your Postal Address	<input type="checkbox"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
Country code (e.g. South Africa = ZA)	<input type="text"/>
Postal Code	<input type="text"/>

- This is the address that the letters/notices will be posted to. It may be the same as its business address above or it may be a post box number or other address. If it is the same as the business address simply mark the relevant box with an “X”.
- If the answer is “No”, the following fields will be displayed as open and editable:
  - Postal Agency or Other Sub-unit (if applicable) (e.g. Postnet Suite ID)
  - PO Box: Indicate on the applicable tick box if the postal address is ‘P.O. Box’ or ‘Private Bag’
  - Private Bag: Indicate on the applicable tick box if the postal address is ‘P.O. Box’ or ‘Private Bag’
  - Other PO Special Service (specify)
  - Number
  - Post Office
  - Postal Code
  - Registered Postal Address indicator

**Note:** This section is not mandatory.

- **Other Details**
  - This container contains additional details in respect of the tax practitioner being reported.

Other Details	
Practitioner Website	<input type="text"/>
Practice or Firm Name	<input type="text"/>
Tax Practitioner Registration No.	<input type="text"/>
Taxpayer Reference No.	<input type="text"/>
Province in which the practitioner operates	<input type="text"/>
City / Town in which the Practitioner Operates	<input type="text"/>

Complete the following fields:

- Practitioner website
- Practice or Firm Name
- Tax Practitioner Registration No.
- City/Town in which the Practitioner Operates
- Taxpayer Reference No.
- City/Town in which the Practitioner Operates

**Note:** This section is not mandatory.

- **Nature and Details of Complaint**
- This container enables you to indicate what the complaint against the Tax Practitioner is all about.

Nature and Details of Complaint											
<b>Nature of Complaint</b>											
Not registered as a practitioner	<input type="checkbox"/>	Unprofessional conduct	<input type="checkbox"/>	Unlawful conduct	<input type="checkbox"/>	Not acting in the taxpayer's interest	<input type="checkbox"/>				
<b>Nature of Relationship with Practitioner</b>											
Client of practitioner	<input type="checkbox"/>	SARS staff member	<input type="checkbox"/>	Other (Please Specify)	<input type="checkbox"/>						
<b>Nature of Tax Practitioner Relationship (If "Other" is selected above)</b>											
<input type="text"/>											
<input type="text"/>											

- **Nature of Complaint**
- At least one of the following fields must be completed
  - Not registered as a practitioner
  - Unprofessional conduct
  - Unlawful conduct
  - Not acting the taxpayer's interest

**Note:** If one of the fields is completed, the rest are not mandatory.

- **Nature of relationship with Practitioner**
- At least one of the following fields must be completed
  - Client of practitioner
  - SARS staff member
  - Other.
    - If other is selected specify nature of relationship with practitioner in the field provided.

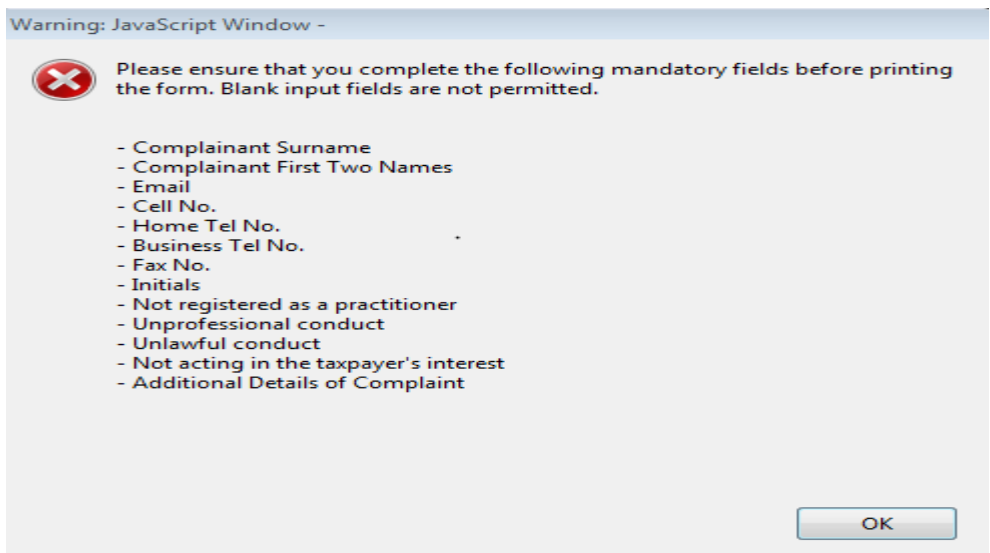
**Note:** If one of the fields is completed, the rest are not mandatory.

- **Additional Details of Complaint**
- Provide details on the complaint that is being lodged against the specific tax practitioner.

Additional Details of Complaint																									
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**Note1:** This section is mandatory.

**Note2:** If the complainant prints the RTP001 form without completing mandatory fields the following pop-up message will be displayed:



**Note:** If the complainant does not want to submit the form immediately as they are unsure about necessary details or want to restart capturing the form; the taxpayer can either:

- Click “Save” to capture necessary information at the later stage
- Click “Reset” to restart capturing the return or
- Click “Print” to print the form to sign and submit to SARS.



- **Signature**
- Once all the information has been completed the complainant is required to complete, print and sign on the last page of the application form. Failure to do so will result in the complaint not being considered.

**Signature**

For enquiries go to [www.sars.gov.za](http://www.sars.gov.za) or call 0800 00 SARS (7277)

Date (CCYYMMDD)

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Please ensure you sign over the 2 lines of X's above

- The completed form can be submitted to the Tax Practitioner Unit at: practitionersunit@sars.gov.za
- The completed form can also be submitted at a SARS branch.

## 9 WHEN CAN SARS LODGE A COMPLAINT TO A CONTROLLING BODY

- A senior SARS official may lodge a complaint with a controlling body if a registered tax practitioner or a person who carries on a profession governed by a controlling body did or omitted to do anything with respect to the affairs of a taxpayer where in the opinion of the senior SARS official the actions of such a registered tax practitioner:
  - were intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer in terms of a tax Act;
  - by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of the obligation; or
  - constitutes a contravention of a rule or code of conduct for the profession as accepted by the controlling body which may result in disciplinary action being taken against the registered tax practitioner or person by the body.
- A senior SARS official may disclose the information relating to a person's tax affairs to the controlling body to which the complaint is made as he/she considers necessary to deal with the complaint.

### 9.1 Issue a letter of intention to lodge a complaint

- SARS must deliver by mail or via email to the taxpayer and the tax practitioner against whom the complaint is to be made notification of the intended complaint and information to be disclosed before the complaint is lodged or the information is disclosed to the controlling body.
- The taxpayer or tax practitioner has 21 business days in which to object.

### 9.2 Remedies available to a taxpayer or tax practitioner

- The taxpayer or tax practitioner may, within 21 business days after the date of notification, object to the lodging of the complaint or the disclosure of the information.
- If on the expiry of the period of 21 business days no objection has been lodged or, if the objection has been lodged and SARS is not satisfied that the objection should be sustained, a senior SARS official may lodge the complaint with the controlling body of a registered tax practitioner or a person who carries on a profession or a person governed by the professional body.

### 9.3 Complaint considered by controlling body

- The controlling body is to consider the complaint according to its rules.
- A hearing of the matter where the details of the taxpayer's tax affairs will be disclosed may be attended only by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.
- The controlling body and its members must preserve the confidentiality of the taxpayer's affairs that are disclosed by SARS or are determined through an investigation into the complaint.
- The controlling body must not communicate the information concerning a taxpayer's tax affairs to any person other than the person concerned, or the person against whom the complaint is lodged. The only exception is if the disclosure of such information is ordered by a competent court of law.
- A Senior SARS Official may attend the hearing of the matter by the controlling body where the details of the person's tax affairs will be disclosed, if required.
- A Senior SARS Official may request feedback from the controlling body on the progress or outcome of the hearing or investigation of the reported case.

#### **DISCLAIMER**

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

#### **For more information about the contents of this publication you may:**

- Visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za)
- Visit your nearest SARS branch
- Contact your own tax advisor/tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 SARS (7277)
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).