

Criteria for the recognition of controlling bodies

Section 240A of Tax Administration Act, 2011

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1. Introduction

This document sets out the criteria for bodies seeking the status of recognised controlling body by SARS. The objectives of this process are to ensure that:

- tax practitioners possess minimum education qualifications and experience to provide adequate tax advice;
- tax practitioners' tax knowledge is relevant and current;
- clients have recourse to a recognised controlling body if improper advice was dispensed by a tax practitioner.

The criteria are only applicable to those members of controlling bodies who are registered as tax practitioners with SARS.

2. Legislation

Section 240 of the Tax Administration Act, 2011, requires tax practitioners that are not specifically excluded to register with or fall under the jurisdiction of a recognised controlling body from 1 July 2013. The Tax Administration Act, 2011, defines certain bodies to be recognised controlling bodies. They are:

- the Independent Regulatory Board for Auditors (IRBA);
- a Law Society established in terms of Chapter 3 of the Attorneys Act, 1979;
- the General Council of the Bar of SA, a Bar Council and a Society of Advocates referred to in Section 7 of the Admission of Advocates Act, 1964;
- a statutory body that the Minister is satisfied is similar to the statutory bodies listed.

The Act further stipulates that the Commissioner may recognise a controlling body, if the body –

- Maintains relevant and effective:
 - minimum qualifications and experience requirements;
 - continuing professional education requirements;
 - codes of ethics and conduct; and
 - disciplinary codes and procedures.
- Is approved in terms of section 30B of the Income Tax Act, 1962, for purposes of Section 10 (1)(d)(iv) of that Act;
- Has at least 1000 members when applying for registration or reasonable prospects of having 1000 members within a year of applying.

3. Requirements

3.1 Minimum Qualifications and Experience

In reviewing the minimum qualifications and experience criteria, SARS has recognised that there are individual practitioners who have no formal education yet successfully perform their duties to taxpayers.

SARS will therefore recognise controlling bodies in terms of Section 240A of the Tax Administration Act, 2011, if they subscribe to the following minimum qualifications and experience for their membership:

Criteria:

1. NQF 6 or higher tertiary or post Grade 12 relevant qualification (B Com, etc), with at least one accounting, commercial law or tax law module.
or
2. NQF 4 (Grade 12)
plus
 - If previously employed, five years of working experience in interpreting and applying the various tax Acts – verified by a letter from the employer attesting to the experiential requirements.
or
 - If the individual tax practitioner is self-employed – five years working experience interpreting and applying the various tax Acts must be in evidence, supported by client references. A schedule of client references confirming a tax practitioner's status and the number of years that the professional relationship has been in place is sufficient.
plus
3. Commitment by the controlling body to ensure that members with the minimum education requirement of NQF 4, increase their qualifications to at least NQF 5 in the three years subsequent to joining the controlling body.
4. Controlling bodies may make provision for tax practitioners who may not be able to or do not wish to acquire further education, e.g. due to their age, by considering different tiers of membership so that basic practitioners can still register and be subject to their codes of conduct and disciplinary codes – to protect the public interest.

3.2 Continuous Professional Education (CPE)

SARS will recognise controlling bodies that subscribe to the following in terms of the continuous professional education (CPE) of their membership. SARS recognises that bodies generally provide opportunities for members to undertake CPE, however specific tax related CPE is required for tax practitioners.

Criteria:

1. Minimum of 15 tax related CPE hours per year.
2. 60% of tax related CPE must be verifiable by the controlling body.
3. 40% of tax related CPE may be non-verifiable CPE provided that the controlling body requires its members to record their CPE and furnish details to the controlling body if required.
4. CPE records of individual tax practitioners must be retained for five years.

3.3 Codes of Ethics and Conduct

This document defines the different areas that should be covered to reflect the responsibilities of tax practitioners, as well as to protect the general public. The intention is, therefore, to ensure that recognised controlling bodies incorporate these broad principles into their respective codes of conduct - especially for tax practitioners. The four key areas outlined have particular reference to the objective of the regulation of tax practitioners.

Controlling bodies that either incorporate the key areas into their existing code or demonstrate to SARS that these areas are covered by their existing code will be recognised.

Criteria:

1. Honesty & Integrity

Definition: 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.
- 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 practitioner must cease to represent the taxpayer concerned if the taxpayer does not remedy the situation.

2. Professional Competence

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

- Tax practitioners 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.
- Tax practitioners must ensure that taxation laws are applied correctly and lawfully to the circumstances of the particular client.
- Tax practitioners must not knowingly obstruct the proper administration of the tax laws.
- Tax practitioners must ensure that they advise their clients of their rights and obligations under the taxation laws in the country.
- Tax practitioners must exercise due diligence and care in their interaction with SARS on behalf of their clients.

3. Confidentiality of the Client

Definition: Tax practitioners must maintain the confidentiality of their clients and should not disclose client information to a third party without a client's 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.

4. Fees

Definition: 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. The principles of the Contingency Fees Act, 1997, should be considered when a contingency fee is to be agreed upon in other circumstances.

3.4 Disciplinary Code & Procedures

The need to discipline members for the benefit of taxpayers as well as the integrity of the industry cannot be overemphasised. SARS will recognise controlling bodies that subscribe to the following in terms of their disciplinary code and procedures for their membership.

Criteria:

1. In addressing breaches of the codes of ethics and conduct, the disciplinary code must address the complaints that may be lodged in terms of Section 241 of the Tax Administration Act, 2011.
2. Disciplinary process and procedures must be in place.
3. Cases may be reported to the controlling body by SARS, clients or other professional bodies.
4. Sanctions must fit the offence committed.
5. 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.
6. The sanction must effectively change the behaviour of the practitioner.
7. Repeated non-compliant behaviour must receive a harsher sanction than was imposed previously.
8. Outcomes of all disciplinary hearings of tax practitioners that have been found guilty must be reported to SARS as well as the client concerned.
9. 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.
10. 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.

3.5 Membership

In terms of membership, the following criteria apply:

Criteria:

1. 1000 or more full members – excluding trainees and students.
2. 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.
3. A tax practitioner removed by a recognised controlling body for misconduct cannot be accepted as a member of another recognised controlling body.

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