

SARS Tax Practitioner Readiness Programme

Module 2: Criteria for the Recognition of Controlling Bodies and Registration of Tax Practitioners

Learning Objectives

At the end of this module, you are expected to understand:

- Criteria for SARS to recognise a Controlling Body;
- Requirements in relation to prospective and existing tax practitioner members;
- Code of ethics and conduct of members;
- Examples of when a Tax Practitioner might be in breach of Code of Ethics and Conduct;
- Tax Practitioner Registration Requirements and individuals who are exempt from registering as tax practitioners; and
- Requirements for Tax practitioners who change their RCBs.

Criteria for SARS to Recognise a Controlling Body

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

- **For the entity, the following requirements are applicable:**
 - Be a controlling body for natural persons who provide advice with respect to the application of a tax Act or complete returns;
 - Be approved in terms of section 30B of the Income Tax Act for purposes of section 10(1)(d)(iv) of that Act; and
 - Have a minimum of 1 000 members or a reasonable expectation of reaching 1000 members by the end of the first year of recognition.
- **The entity must maintain:**
 - The minimum qualifications and experience and continuing professional education requirements that are set by SARS and all RCBs;
 - Relevant and effective codes of ethics and conduct, including tax compliance and criminal record requirements; and
 - Relevant and effective disciplinary process and procedures.
- When an entity is recognised as an RCB, it must submit an annual report which contains the information stipulated in the External Guide to SARS no later than 31 March of the following year. The link of the External Guide is provided at the end of this presentation.

Criteria for SARS to Recognise a Controlling Body

The following steps are to be followed for SARS to recognise the controlling body:

- Ensure that the minimum requirements listed on the Act are met;
- Download the Recognition as an RCB Application (RRC01) form from the SARS website;
- Complete the downloaded RRC01 form. Refer to the steps on how to complete the RRC01 form available on the SARS website;
- Email the completed RRC01 form together with the required documentation to Reportingunprofessionalconduct@sars.gov.za ;
- Await SARS response indicating the success or rejection of the application;
- If successful, the RCB must submit a list of all their tax practitioner members to SARS on eFiling; and
- Refer to the SARS website www.sars.gov.za regarding –
 - How to submit information and maintain members using eFiling; and
 - Registration as an RCB on eFiling.

Requirements in Relation to Prospective and Existing Tax Practitioner Members

- An RCB that intends to register an individual as a tax practitioner, must ensure that the individual meets the requirements as set out in the External Guide.
- An RCB must ensure that its existing tax practitioner members meet the requirements as already outlined in the External Guide.
- Additionally, RCBs must –
 - Verify at least 20% of its tax practitioner members' CPE records per year and retain the records of such verification.
 - Verify the tax compliance status of tax practitioner members at least once a year; and
 - Notify SARS as and when they have dismissed a member due to serious misconduct or become aware that a member has been convicted of an offence.

Code of Ethics and Conduct of Members

RCBs should incorporate the following broad principles into their respective codes of conduct to reflect the responsibilities of tax practitioners, as well as to protect the public:

- Honesty & Integrity;
- Professional Competence;
- Confidentiality and Fees; and
- Disciplinary Code & Procedures.

Honesty and Integrity

Tax practitioners should be straightforward and honest in all professional and business relationships. Integrity requires fair dealing and truthfulness which means that they must:

- be compliant in respect of the taxation laws in the conduct of their personal affairs;
- be open and honest in respect of their criminal record;
- not knowingly be associated with reports, returns, communications and other sources of information where the practitioner believes that the information:
 - contains materially false or misleading statements;
 - contains statements or information furnished recklessly; or
 - omits or obscures information required to be included.

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.

Code of Ethics and Conduct of Members

Professional Competence

Tax practitioners must:

- Attain and maintain knowledge and skills relevant to the service provided to clients;
- Take reasonable care in ascertaining a clients' 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, whether in a return submission or otherwise;
- 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; and
- Exercise due diligence and care in their interaction with SARS on behalf of their clients.

Confidentiality and Fees

Confidentiality of the Clients' information

Tax practitioners must maintain the confidentiality of their clients' information and should not disclose information to a third party without a 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 completion or revision of tax returns, is not an acceptable form of remuneration for tax practitioners. However, the charging of a contingency fee is acceptable:
 - when there is a dispute between the taxpayer and SARS under Chapter 9 of the TA Act; and
 - when the taxpayer brings an application for SARS to review its decisions under section 9 of the TA Act.

Code of Ethics and Conduct of Members

- Where contingency fees are allowed, the tax practitioner must enter into a written agreement with his/her client. The agreement should contain sufficient information on:
 - The details of the tax practitioner and the taxpayer;
 - The outcome upon which the contingency fees are based and its percentage;
 - The consequences if the outcome is not achieved; and
 - When the contingency fees are charged.
- The agreement should also contain a clause that gives:
 - The taxpayer the right to refer the agreement to the relevant RCB for review; and
 - The RCB has the authority to set aside any provision of the agreement or any fees claimable in terms of the agreement if the RCB finds such provision or fees unreasonable or unjust.

Disciplinary Code & Procedures

The principles applicable to disciplinary code and procedures for tax practitioner membership should include the following:

- The types of complaints that may be lodged under section 241 of the Act;
- Provision must be made for cases to be reported to the RCB by SARS, clients, other professional bodies, or members of the public;
- A list of offences and sanctions must be drawn up;
- Sanctions must fit the offence committed and address the severity and the effect of the non-compliant behaviour of a member. This could include warnings, a requirement that the tax practitioner undertake educational courses to increase competency in their practice, financial sanctions, suspension or removal as a tax practitioner member;
- Repeated non-compliant behaviour must receive a harsher sanction than was imposed previously; and
- Outcomes of all disciplinary hearings of tax practitioners that have been found guilty must be reported to SARS as well as the client concerned.

Code of Ethics and Conduct of Members

- The controlling body must retain jurisdiction over its tax practitioner 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.
- 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.
- A person removed by a recognised controlling body for serious misconduct are not permitted to .

Examples of When a Tax Practitioner Might be in Breach of Code of Ethics and Conduct

- Tax Practitioners being non-compliant with tax laws in their personal capacity or in their businesses. (Failure to register for a tax type when required to do so, under declaration (e.g. failure to submit accurate figures), 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 a tax practitioner submit NIL returns for them and the tax practitioner does so, while being aware that the client is trading;
- Impersonate clients when engaging with SARS;
- Misrepresenting taxpayers' information;
- Illegal use of the SARS logo or trademark;
- Withholding a client's e-filing profile due to fees owed by the client;
- Charging of contingency fees for the submission of returns;
- 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); and
- Providing questionable advice which does not match the facts of the matter.

Tax Practitioner Registration Requirements

- To register as a tax practitioner, an individual must be registered with both an RCB and SARS. This means that an individual who wishes to register as a tax practitioner and is not yet registered with an RCB should ensure that they meet the requirements below, as well as the additional requirements specified by the RCB with which they choose to register.
- Once the individual has registered with an RCB as a tax practitioner member, the individual is then required to register with SARS as a tax practitioner via their own eFiling.
- SARS requires the following from an individual who wishes to register as a tax practitioner:
 - The individual must be registered with an RCB; and
 - The individual must have an active tax reference number.
- An individual who is not registered as a tax practitioner must register as a tax practitioner within 21 business days after the date on which they for the first time provide tax advice to or complete or assist in completing a return on behalf of another for a fee, or cease such activities.

Tax Practitioner Registration Requirements

Admission Requirements

An individual who intends to register as a tax practitioner or an RCB who intends to register an individual as a tax practitioner member, must ensure that they meet the following minimum requirements;

- Qualifications and experience:
 - NQF level 6 and above with at least one accounting module and one tax module, plus at least 1 year tax working experience;
 - NQF level 5 plus at least 4 years' tax working experience; or
 - NQF level 4 plus 10 years' tax working experience.

Note: The tax working experience must be verifiable by employers or clients.

- Successfully completes the SARS Tax Practitioner Readiness Programme, i.e., passed the assessment.
- Be tax compliant.
- Not have been removed by a controlling body for serious misconduct in the preceding five years, or not have convicted of an offence as described on the next slide;

Tax Practitioner Registration Requirements

Criminal Records

An individual cannot be registered as a tax practitioner and a tax practitioner cannot remain registered if their criminal record reflects that during the preceding 5 years, they have been convicted (whether in the Republic or elsewhere) of –

- a serious tax offence as defined in section 1 of the Act; or
- theft, fraud, forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty, for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

Requirements: Criminal Record

- The individual must submit an independently verified criminal record check to their RCB, e.g., a certificate issued by the South African Police Service. This certificate must not be older than 3 months from the date of issue.
- Once registered, the tax practitioner must produce an annual confirmation indicating that their criminal status remains unchanged. Once, every 5 years, an affidavit indicating that the tax practitioners' criminal record remains in compliance with the above, must be produced and provided to RCBs or at shorter time period as specified by RCBs.

Tax Practitioner Registration Requirements

Continuous Professional Education (CPE)

A registered tax practitioner must ensure that they adhere to the CPE requirements that are set out below:

- A tax practitioner must have a minimum of 18 verifiable CPE hours per year, which consists of 10 tax hours, 2 ethics hours, and 6 hours relating to the service provided; and
- A tax practitioner is required to retain a record of their CPE for 5 years, e.g., competency certificates.

Please note: A year commences on 1 January and ends on 31 December of a year, and therefore the 18 hours is calculated on a pro rata basis for newly registered tax practitioners depending on the registration date.

Tax Practitioner Registration Requirements

Serious Misconduct

- An individual cannot be registered as a tax practitioner and a tax practitioner cannot remain registered if during the preceding 5 years, they have been removed by an RCB or the controlling body of a related profession for serious misconduct.
- Tax practitioners are required to adhere to the following:
 - At the time of joining an RCB, with the aim of registering as a tax practitioner, an individual must declare to the RCB truthfully, whether they have been removed by a previous RCB or a controlling body of a related profession, for serious misconduct.

Tax Practitioner Registration Requirements

Tax Compliance

- An individual cannot be registered as a tax practitioner and a tax practitioner cannot remain registered if during the preceding 12 months, they have for an aggregate period of at least six months not been tax compliant to the extent referred to in section 256(3) of the Tax Administration Act No.28 of 2011 and have failed to –
 - demonstrate that they have been compliant for that period; or
 - remedy the noncompliance, within the period specified in a notice by SARS.
- Tax practitioners are required to provide to their RCBs:
 - their tax compliance status at the time of registration; and
 - annually or at shorter period as specified by the RCB.

Tax practitioners who change their RCBs

This applies to all tax practitioners moving between RCBs, regardless of whether the releasing RCB is an active RCB or ceases to be an RCB for any reason. The following definitions apply:

- **Releasing RCB** means the RCB that a registered tax practitioner was previously registered with and has ceased to be a member thereof for any reason.
- **Receiving RCB** means the RCB that a registered tax practitioner joins after leaving the releasing RCB.
- **Amended criteria** refers to the criteria for recognition of controlling bodies and requirements for registration of tax practitioners amended in 2022 with an effective date of 1 June 2022.

Change of RCB due to - Resignation

- A tax practitioner resigns from the releasing RCB due to perceived advantages of the receiving RCB or the releasing RCB ceased to be recognised either voluntarily, or in terms of the Act,
- A registered tax practitioner is required to provide the receiving RCB with a Letter of Good Standing issued by the releasing RCB. This letter should not be more than six months old. The letter should at least contain the following information of the tax practitioner:
 - The full name, the Identity number or passport number, the PR Number, the date of the registration and the date of the resignation of the tax practitioner; and
 - Information on the member indicating that:
 - CPE is up to date;
 - tax compliance was verified and proved to be compliant;
 - a criminal verification check status was provided; and
 - there are no pending disciplinary cases against the member.
 - If a registered tax practitioner has joined the receiving RCB in the period of less than six months from the resignation date and has submitted the Letter of Good Standing, they must be treated as follows:
 - Minimum qualification and working experience:
 - ✓ If they were registered as a tax practitioner prior to 1 June 2022, the requirements in the 2013 criteria document apply; or
 - ✓ If they were registered as a tax practitioner on or after 1 June 2022, the amended criteria apply.

Change of RCB due to - Resignation (*Continuation*)

- SARS Tax Practitioner Readiness Programme
 - ✓ If they were registered as a tax practitioner prior to 1 July 2022, the requirement for successfully passing the assessment does not apply although they are encouraged to attend the programme,
 - ✓ If they were registered as a tax practitioner on or after 1 July 2022, they are required to provide evidence of having passed the assessment. The evidence may be a letter from the releasing RCB, or a certificate issued by the institution who conducted the assessment.
- Tax compliance: they must be tax compliant at the time of joining the receiving RCB.
- Criminal record check: they are required to submit an affidavit stating that they have not committed any crime listed in section 240(3) of the Act.
- Continuous Professional Education: They are required to provide the evidence of the CPE status for the year.
- If a registered tax practitioner has joined the receiving RCB six months or longer after the resignation from the releasing RCB, they are treated as a new registration, hence all amended criteria must be met.

Change of RCB due to - Membership Terminated

This covers the situation where a tax practitioner's membership is terminated by the releasing RCB due to non-compliance with its rules:

- Where a tax practitioner's membership was terminated by the releasing RCB, they would not be issued with a letter of good standing. Therefore, no receiving RCB is allowed to register them as a tax practitioner; and
- The tax practitioner may only be registered with a receiving RCB once they meet all the registration requirements as stipulated under **change of RCB due to resignation**.

Change of RCB due to - Serious Misconduct Or Court Judgment

If a tax practitioner's membership is deregistered by the releasing RCB, or the tax practitioner's status is deregistered by SARS, in terms of section 240(3)(a), section 240(3)(b) or section 240(3)(c) of the Act:

- No RCB is permitted to register them as a tax practitioner unless the period of five years, from the date of the deregistration by the releasing RCB or the date of the conviction, has lapsed; or
- After the five-year period has lapsed, a receiving RCB may register the individual as a tax practitioner if they meet the amended criteria. This is treated as a new registration.

Change of RCB due to - Continuous Tax Non-Compliance

A tax practitioner's membership is deregistered by the releasing RCB, or the tax practitioner status is deregistered by SARS, in terms of section 240(3)(d) of the Act:

- No RCB is permitted to register a deregistered tax practitioner as a tax practitioner unless they can demonstrate to the receiving RCB that they have been tax compliant for at least 6 months in the preceding 12 months. Once the individual has demonstrated that they have been tax compliant for at least 6 months in the preceding 12 months, a receiving RCB may register them as a tax practitioner if they meet the amended criteria. This is treated as a new registration.

Change of RCB due to - Suspension by the RCB or by SARS

A tax practitioner's membership may be suspended by the RCB they are registered with, or their tax practitioner status may be suspended by SARS, in terms of section 240(4) of the Act.

- If prosecution for a serious tax offence has been instituted but not finalised against a registered tax practitioner and if the registered tax practitioner continues with the commission of a serious tax offence after the criminal proceedings have been instituted, SARS must suspend the registration of the registered tax practitioner in terms of section 240(4) of the Act, and their RCB must suspend their membership. Once fully acquitted, their RCB must reactivate their tax practitioner status.
- If the tax practitioner wishes to change their RCB after the reactivation of the tax practitioner status, the requirements similar to change of RCB due to resignation will apply.

Refer to the below guides for more information on the Criteria for the Recognition of Controlling Bodies and the Registration of Tax Practitioners:

- [Criteria for the Registration of Tax Practitioners](#)
(GEN-GEN-59-G01 – Criteria for the Registration of Tax Practitioners – External Guide)
- [Criteria for the Recognition of Controlling Bodies](#)
(GEN-GEN-60-G01 – Criteria for the Recognition of Controlling Bodies – External Guide)



Thank you
Re a leboha
Re a leboga
Ndza Khensa
Dankie
Ndi a livhuwa
Ngiyabonga
Enkosi
Ngiyathokoza