

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON TAX ADMINISTRATION LAWS AMENDMENT BILL, 2019

We appreciate the opportunity of submitting the following comments on the above-mentioned Bill.

1. The Law Society of South Africa (LSSA) agrees with the proposed amendment of subsection 240A(1)(b) to make provision for reference to the Legal Practice Council established under the Legal Practice Act, No. 28 of 2014 (the LPA).
2. We are however not clear on the rationale for the proposed retention of section 12(2)(b) of the Tax Administration Act, 2011 as per the Bill dealing with advocates, while deleting the corresponding provision as regards attorneys. For ease of reference, paragraph 2 of Schedule 6 to the Constitution deals with transitional arrangements. It states that:

“2. (1) All law that was in force when the new Constitution took effect, continues in force, subject to
a. any amendment or repeal; and
b. consistency with the new Constitution.

(2) Old order legislation that continues in force in terms of subitem
a. does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and
b. continues to be administered by the authorities that administered it when the new Constitution took effect, subject to the new Constitution.”
3. It must be noted that the LPA specifically makes provision for transitional arrangements. In particular section 114 (1) of provides that: “Any person who has been admitted by the High Court and authorised to be enrolled as an advocate, attorney, conveyancer or notary in terms of any Act in the former Republic of South Africa and former homelands which is still applicable before the date referred to in section 120(4), must be regarded as having been admitted to practice and, where applicable, subject to any condition imposed by the High Court, must be enrolled as a legal practitioner, conveyancer or notary in terms of this Act, subject to the terms of any order of court whereby any such person has been suspended from practice as an advocate, attorney, conveyancer or notary.”
4. Furthermore, the LPA retained the distinction between ‘attorney’ and ‘advocate’, including the recognised ‘referral rule’ with the exception of an advocate referred to under section 34(2)(b) of the LPA who is required to hold a Fidelity Fund certificate.
5. This accordingly begs the question whether all references to ‘attorney’ under the Tax Administration Act should merely be replaced with ‘legal practitioner’. For example, section 35 of the Bill proposes that section 141 (1) of the Tax Administration Act be amended to read:

“(1) A party may by notice in writing lodged with the ‘registrar’ and the opposite party or the opposite party’s [attorney] legal practitioner or agent, abandon the whole or a part of a judgment in the party’s favour.”

6. The written lodgement of the notice should be with the opposite party's attorney or, where applicable, an advocate referred to under section 34(2)(b) of the LPA who is required to hold a Fidelity Fund certificate – not an advocate operating according to the referral rule.