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Standing Committee on Finance

*Public Hearings:  
Draft Tax Administration  
Amendment Bill 2012*

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***Agenda***

- I. Registration of Tax Practitioners
- II. Provisional Tax Penalty
- III. Legal Professional Privilege

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## ***Registration of tax practitioners***

### **Requirement to register (clause 57)**

#### **S240 prescribes:**

- tax practitioners must register with recognised controlling body and with SARS
- circumstances where a person may **not** register

#### **BUT:**

- No ability for SARS to cancel registration
- No prohibition/restriction on re-registration of a person whose registration has been cancelled

#### Submission

- SARS should be empowered to cancel a registration
- Immediate re-registration should be restricted



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## ***Registration of tax practitioners***

### **Recognised controlling bodies (clause 58)**

Includes South African Legal Practice Council (SALPC)

- Legal Practice Bill not yet enacted and only effective on date to be fixed by President
- Contemplates “transitional SALPC” initially
  - actual SALPC could be operational only up to 3 years later

#### Submission

SALPC should be removed until Legal Practice Act effective



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## ***Registration of tax practitioners***

### **Recognised controlling bodies (clause 58)**

- SARS must recognise specified professional bodies
- Failure to register as a tax practitioner is a criminal offence

**Concern :** Will there be sufficient time from enactment to due date for :

- SARS to formally recognise controlling bodies; **and**
- tax practitioners to register

We note existing suggestion for due date 1-Apr-13

#### Submission

Postpone to 1-Jul-13 (or later)



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## ***Provisional tax penalties***

### **Provisional Tax Penalty (Clause 15)**

Para 20(1)(a): Penalty if underestimate by taxpayer

- Current law: SARS must first consider the taxpayer's calculations before imposing penalty
- Proposal: Automatic penalty (no review by SARS)

**BUT**

- No opportunity for taxpayer to request remission

#### Submission

Discretion to remit penalty should be extended



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## ***Legal Professional Privilege***

Regulation of tax practitioners is back in focus

### Submission

Legal privilege must be debated as part of regulation

Consider

- The current regulation proposal is the appropriate context for this debate
- Rationale for privilege
- Why tax practitioners?
- Additional commentary



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## ***Legal Privilege***

### **Context – Current regulation proposals**

- Previous SARS position that Privilege discussion should be deferred until regulation discussion
  - Regulation of tax practitioners – back in focus
- Current suggestion that Privilege discussion should be deferred until Phase II of regulation proposals
  - BUT: Phase II might never happen (if Phase I successful)



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## *Legal professional privilege* **Rational for Privilege**

Fundamental  
human right

Legal matters  
are complex

Not all people are  
schooled in law

Protect  
confidentiality of  
communications

Promotes open  
communication between  
legal advisors and clients

Public interest of encouraging  
full disclosure between client  
and legal advisor

**Ultimately, enhances compliance and fair treatment of taxpayers**



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## *Legal professional privilege* **Why should tax advice privilege extend to registered tax practitioners**

Same rationale as  
for common law  
legal privilege

Specialist area  
of law

Development of common  
law not kept pace with  
realities of modern world

Non-lawyers have right of  
appearance in Tax Court

Tax practitioners fulfil a  
vital role, including in  
taxpayer compliance

Most tax advice  
provided by  
non-lawyers

Uneven playing field; Unjustified  
competitive advantage between  
lawyers & non-lawyers



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*Legal professional privilege*  
**Additional comment**

- Strict requirements before privilege applies
- Arguments ***for*** privilege outweigh arguments ***against***
- International precedent



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***Principal legislation in amendment acts***

- Clause 1 – International agreements on combined border control posts
- Inappropriate to include principal legislation in amendment acts
- **Submission** – Insert in Customs and Excise Act



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## ***Thank you***

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