

The South African Institute of
Chartered Accountants
(SAICA) presentation to the Standing
Committee on Finance

Presented by:

Piet Nel: Project director: Tax
Colin Wolfsohn
Member of SAICA's tax
committee



The Tax Administration Amendment Act, 2012



Issues raised

Regulation of tax practitioners

Provisional tax

Sundry issues

Note:

We are aware that National Treasury and SARS responded on 11 September 2012 to some of the issues raised.

Regulation of tax practitioners



Current law:

The Act currently defines a “controlling body” as a body established, whether voluntarily 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

... and requires of a tax practitioner to be registered with SARS.

The “... for no consideration...” exclusion.

Complaint considered by a controlling body.

SAICA presentation to ScoF
– October 2012

3

Brief overview of the instances where practitioners are engaged



Transaction
or tax event

Obtaining
information

Financial
report

Furnish
return

SARS
assesses

Tax
clearance

Objection
and appeal

Interpreting
complex legislation

Disputes

Tax opinion

Penalties

SAICA presentation to ScoF
– October 2012

4

Regulation of tax practitioners



Clauses 23, 52 and 55 - 59

Purpose: ... to regulate tax practitioners

It introduces a “recognised controlling body” as being a ‘controlling body’ recognised by the Commissioner under section 240A

And makes it compulsory for all tax practitioners to register with such a body.

It then specifies the instances which would prompt a SARS official to lodge a complaint with such a body.

The Explanatory Memorandum states that a “second phase will be the establishment of an independent regulatory board for tax practitioners”.

5

Recognition of controlling bodies



SAICA's comments – pages 62 - 63

Proposals

The proposal that the listed bodies (240A(1)) would automatically be recognised whilst the other bodies (240A(2)) “may be recognised” by SARS

Comment

Risk that if the approval process commences when the Act is promulgated some qualifying bodies may not yet be recognised

and some current tax practitioners, who may well meet the minimum requirements, but not of the existing bodies may then not be able to assist taxpayers.

The difference between a regulator and a controlling body

SAICA presentation to ScoF
– October 2012

6

Recognition of controlling bodies



SAICA's comments – pages 62 - 63

Proposals

Relating to the “minimum qualification and experience requirements”; and “continuing professional education requirements”

Comment

... it is recommended that it is specifically stated that these are in the field of taxation. The tax practitioner must not only be competent and maintain an up to date skill, but must be a person who is competent in tax.

It is suggested that the SARS staff meet the same minimum requirements regarding training and CPE in tax.

We recommend that the wording be expanded to provide some clarity and specifics with regard to “minimum qualification and experience requirements”

SAICA presentation to ScoF
– October 2012

Provisional tax



Clauses 14 - 18

SAICA's comments – pages 62 - 63

SAICA welcome the amendment which follows from our submission and will now exclude “retirement fund lump sum benefits, retirement fund lump sum withdrawal benefits or any severance benefits from the provisional tax regime.

The Bill proposes to amend the provisions relating to the additional tax where taxable income is underestimated.

The Tax Administration Act already deals with “understatement penalties” in chapter 16.

It makes it compulsory for SARS to levy the penalty.

It is recommend that existing system be retained, i.e. the penalty may be levied if SARS is not satisfied that it was seriously calculated and will not automatically be levied at 20%.

SAICA presentation to ScoF
– October 2012

8

Sundry issues



Clarification of date of registration
for value-added tax purposes

Mentioned in budget – not addressed in the draft legislation

With regard to the 1 October
2012 effective date.

Research and development - Regulations not yet issued

Section 31 – transfer pricing – guidance not yet available

9

We thank you for your time



pietn@saica.co.za

10

Ref#: 403767

Submission File

31 July 2012

National Treasury
Private Bag X115
Pretoria
0001

BY E-MAIL: nomfanelo.mpotulo@treasury.gov.za

Dear Sir/Madam

RE: CALL FOR COMMENTS ON DRAFT TAXATION LAWS AMENDMENT BILL, 2012, DRAFT EXPLANATORY MEMORANDUM AND DRAFT TAX ADMINISTRATION AMENDMENT BILL, 2012

We refer to the call for comments on the above-mentioned documents. Set out below please find the SAICA National Tax Committee's submission. As requested, the comments are arranged such that they follow the sequence of the Explanatory Memorandum.

DRAFT TAXATION LAWS AMENDMENT BILL, 2012 ("DTLAB") AND DRAFT EXPLANATORY MEMORANDUM ("EM")

General comment

The DTLAB contains a number of amendments with retrospective proposed dates of commencement, the effect of which is the back-dating of the proposed legislation. We submit that the back-dating of amendments to the legislation creates huge uncertainty and is considered unfair. An example is the proposed amendment to section 64K(1)(d) (clause 8 of the Tax Administration Amendment Bill).

‘conversion transaction’ means any transaction in terms of which

(a) a close corporation is converted to a company , or

(b) a co-operative is converted to a company as contemplated in section 40B’

6. Clause 115 to amend paragraph 10 of the Eight Schedule refers to Act XX of 2012.

DRAFT TAX ADMINISTRATION AMENDMENT BILL, 2012 (“DTAAB”)

CLAUSE 58

Comment

The DTAAB provides that the Commissioner must recognise as “a statutory body...” the IRBA, SALPC and other statutory bodies. It is not clear if these bodies are intended to be the ultimate controlling bodies – IRBA is a **regulatory body**. The proposed section then proposes that SARS “may” recognise the other bodies.

Recommendation

It is recommended that the controlling bodies are in fact the bodies envisaged in section 240A(2) and that existing bodies, like SAICA, that meet the requirements, must also be approved by the Commissioner. If the Commissioner requires amendments to the existing bodies’ constitutions, this can be addressed before the approval is granted.

There is a risk that there may otherwise be a period where there are no bodies that can specifically be recognised and that the abovementioned bodies cannot allow persons who are only tax practitioners as members of their organisations, as these individuals would not meet the entrance requirements.

Comment

It is unclear as to whether there is an expectation that the continuing professional education (‘CPE’) requirement includes specific tax CPE. If so, this will have implications for CPE policies which may not specify in what area the person should gain their CPE.

Recommendation

With regard to the minimum qualification and experience requirements as well as the CPE requirements it is recommended that it is specifically stated that these are in the field of taxation. The tax practitioner must not only be competent and maintain an up to date skill, but must be a person who specialises in tax. The DTAAB should emphasise this.

It is also suggested that the SARS staff meet the same minimum requirements regarding training and CPE.

Comment

The fact that the body must set minimum qualifications *etcetera* is very vague. This could lead to a wide discrepancy in skill and knowledge areas.

Recommendation

We recommend that the wording be expanded to provide some clarity and specifics in this regard. We also suggest that as part of the code of conduct, there is a requirement that a person cannot take on the role of tax practitioner unless they have the necessary competence to carry out the work and that due professional care be exercised when undertaking such assignments.

Comment

The DTAAB states that the Minister may appoint a panel of judges to deal with disciplinary matters. There is some concern as to whether this will be appropriate as it may result in the cost being shared by SARS and the body and many of the smaller bodies may not be able to afford this.

Recommendation

We recommend that the DTAAB specifically address the concerns above.

CLAUSES 14 to 18**Comment**



The DTAAB proposes to change the principal of levying a penalty for provisional taxpayers whose taxable income exceeds R1 million. The proposal is that these penalties will automatically be levied and at a fixed percentage (20%). It is also not clear why the penalty which was previously capped at maximum of 20% must now automatically be levied at the maximum.

Recommendation

It is recommend that existing system be retained, i.e. the penalty may be levied if SARS is not satisfied that it was seriously calculated and will not automatically be levied at 20%.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

Piet Nel CA(SA)

PROJECT DIRECTOR: TAX

Muneer Hassan CA(SA)

SENIOR EXECUTIVE: STANDARDS

The South African Institute of Chartered Accountants

cc: nalberts@sars.gov.za

acollins@sars.gov.za