SARS Tax Practitioner Readiness Programme

Module 1 of 8

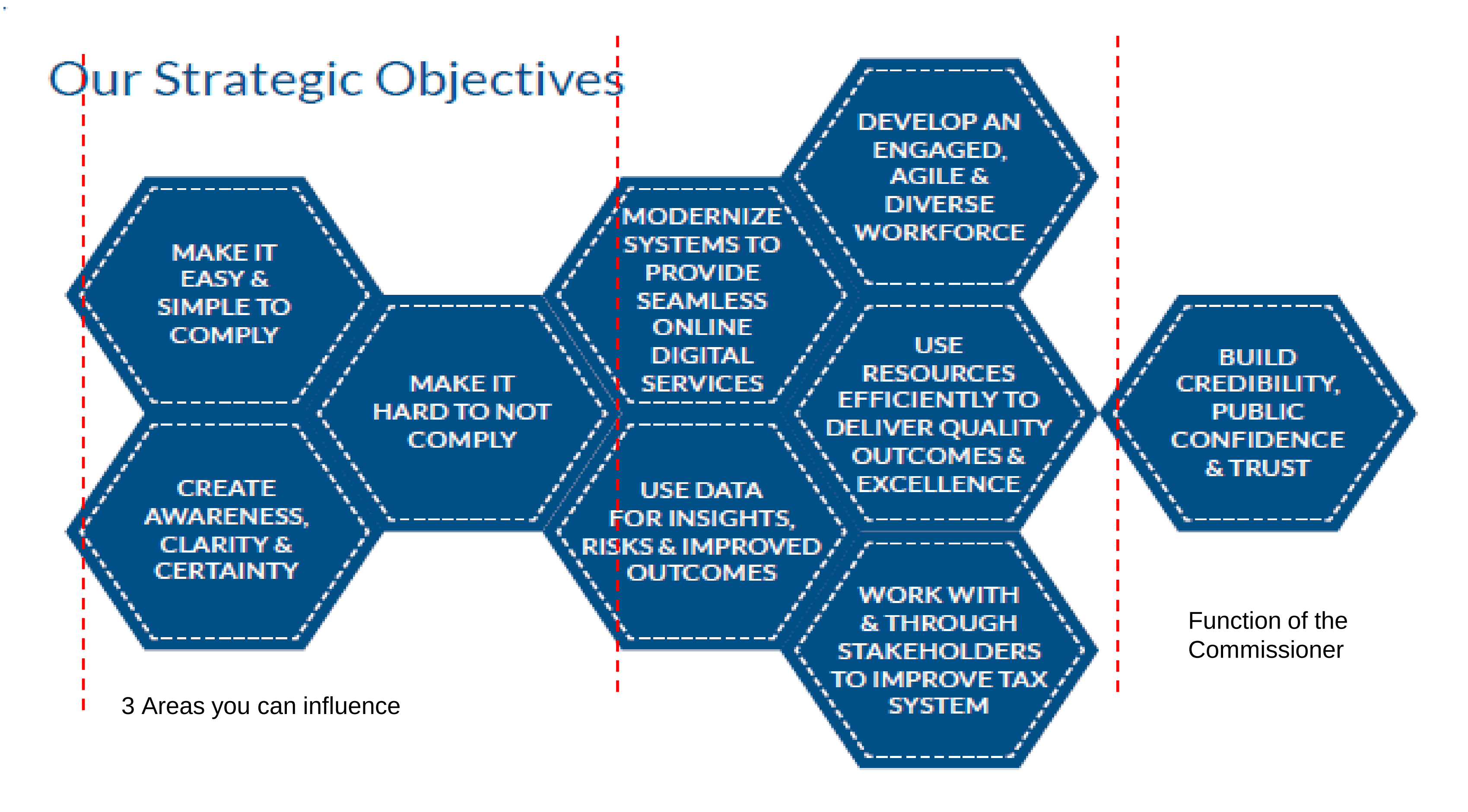
Legislation

Learning Objective

At the end of this module, you are expected to

- Understand the role you play as a tax practitioner in advancing voluntary compliance
- Understand how the legislation, code of conduct, and the recognition criteria for controlling bodies influences:
  - Your conduct
  - The advice you provide to your clients
  - The consequence of noncompliance

SARS Strategic Objectives



Clarity and Certainty

Provide **Clarity & Certainty** of tax obligations

As a tax practitioner you are required to educate your clients on:

- Both their rights and their obligation as taxpayers
- The correct income and deductions to declare
- The accuracy of records and the importance of record keeping.

Tax practitioners are urged to help taxpayers to understand the progress on their tax matters by communicating timeously with them on their tax status with SARS.

Make it Easy

Make it **Easy for Taxpayers & Traders to Comply** & fulfil their obligations

A tax practitioner can make it easy for his/her clients by:

- Having shared access on e-filing. This allows their clients to navigate the system without fear of making mistakes.
- Allowing them to view tax returns on e-filing so they can see where and how income and deductions are completed on the returns. This builds their capability to better understand the concept of return completion.
- Explaining the importance of submitting supporting documents requested by SARS within the specified turnaround times.
- Releasing their eFiling profiles when appropriate. When a client no longer uses your services, it is your obligation to release their profile (whether to the client or to another tax practitioner) to enable the fulfilment of tax obligations.

Make Non-Compliance Hard and Costly

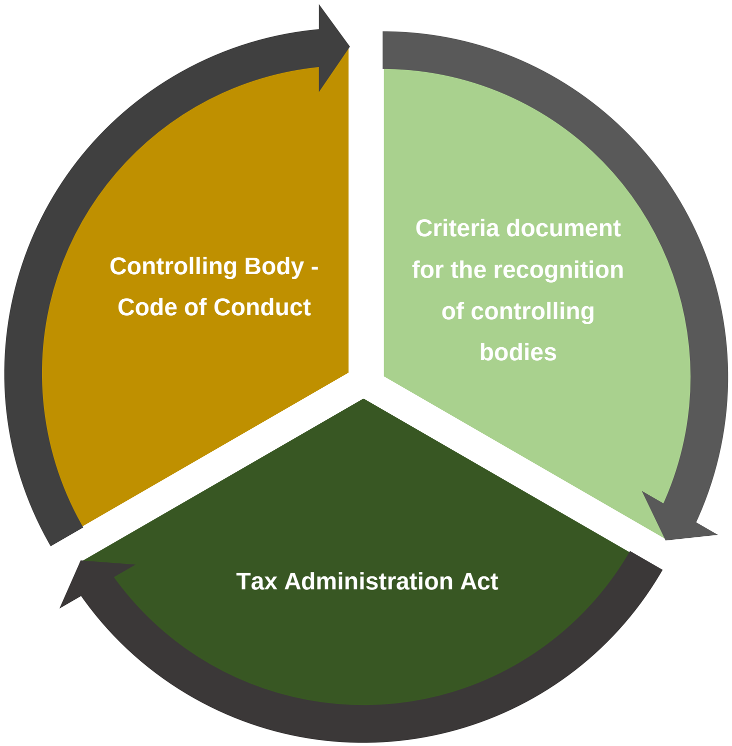
Detect Taxpayers and Traders who do not comply, and **make non-compliance hard and costly** obligations

Tax practitioners can prevent this from occurring by making it less complex and less costly for clients to become and remain compliant. This can be done in the following ways:

- Advising clients on methods to maintain proper records which would make it easier, and quicker to access. Clients can be instructed on how to sequence records. This will allow the tax practitioner to focus on other more strategic matters of tax compliance. It can be used to grow the client base.
- Making it less costly to comply by using electronic services provided by SARS to raise inquiries on behalf of clients using the Digital Channels. Instead of contacting the Contact Centre or the SARS Branch Offices, the Digital and Self Help channels can be used.
- Submitting tax returns and payments on time. This will prevent the imposition of penalties and interest.

TAA - Criteria Document - Code of Conduct

All three play a part in regulating the conduct of registered tax practitioners.



TAA - Criteria Document - Code of Conduct

Tax Administration Act

- Legislation in terms of the Tax Administration Act, refers to Sections 239 to Section 243, that govern tax practitioners. These sections of the Act focuses on different aspects of the Law that tax practitioners need to abide by.
- Understanding the application of the Law plays an important role for tax practitioners as it has an overall impact with their RCB, SARS and clients, when not adhering to the Act. For example, it can lead to them being deregistered as a tax practitioner.
- The full extract of the Sections mentioned above can be viewed under Annexure A of the presentation

TAX ADMINISTRATION ACT

Outline of Section 239 to Section 243

Section 239 – Definitions

- Controlling Body
- Recognised Controlling Body
- Registered Tax Practitioner

Section 240 – Registration of tax practitioners

- Section 240(1) – registration requirements
- Section 240(2) – exemptions to registration
- Section 240(3) – preclusion from registration

Read in conjunction with Section 234 to 238 which focuses on criminal offences

Section 240A – Recognition of controlling bodies

Outline of Section 239 to Section 243

Section 241- Complaint to a Controlling body

- Section 241(1) – complaint to a Controlling body
- Section 241(2) – complaint to a Recognised Controlling Body

Section 242 – Disclosure of information regarding complaint

Section 243 – Complaint considered by a Controlling Body

Legislation: Definitions

239. Definitions — In this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks, have the following meanings—

'controlling body' means 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

'recognised controlling body' means a 'controlling body' recognised by the Commissioner under section 240A.

'registered tax practitioner' means a person registered as a tax practitioner in terms of section 240(1).

Legislation: Synopsis

A person can only be referred to as a tax practitioner if he/she is registered with a Recognised Controlling Body (RCB) and SARS.

This means that he/she has met all the requirements set out by the RCB, successfully completed the SARS Tax Practitioner Readiness Programme, and does not full under any category of section 240(3).

A person who does not meet the above-mentioned requirements may not submit tax returns or assist taxpayers in the application of a tax Act for a fee.

Note:

- If a tax practitioner registers with more than one RCB, they will need to inform SARS which is their primary RCB as the registration process with SARS allows one RCB only.

Legislation: Registration

Section 240 – Registration of tax practitioners

- Section 240(1) – registration requirements – An individual may register as a tax practitioner, (excludes partnerships and companies).
- With which bodies do they need to register and what are their obligations.
- Section 240(2) – exemption from registration – Who may not register as a tax practitioner and why.

Example:

1. Where the tax advice or service is incidental to the provision of the main service, there may not be a requirement to register as a tax practitioner, as the requirements set out in the TAA are not met. E.g. an Insurance Broker who sells Retirement Annuities, and as an add on service - providing advise to his clients on its tax implication.
2. Employees of a tax practitioner, who work under supervision of the tax practitioner, will not be required to register as a tax practitioner.

Legislation: Synopsis S240 – S240A

- Section 240(3) – preclusion from registration
  - A person may not be registered as a tax practitioner if he/she was
    - convicted of a criminal offence or any offence involving dishonesty in the proceeding 5 years, or
    - Removed by a controlling body due to misconduct in the proceeding 5 year.
  - SARS may deregistered a registered tax practitioner if he/she
    - was convicted of a criminal offence or any offence involving dishonesty, or
    - Continuous tax non-compliance.

Note: In the event that a criminal case is not finalised against the tax practitioner, but the tax practitioner repeats the offence, SARS may stop any registration or suspend such registration of a tax practitioner in terms of S240(4) of the TAACT.

- Section 240A – Recognition of controlling bodies

List of Recognised Controlling Bodies - June 2022

The following controlling bodies were **automatically recognised** in terms of the Act:

- Independent Regulatory Board for Auditors (IRBA)
- Legal Practice Council (LPC)

List of **Commissioner Recognised Controlling Bodies**

- Chartered Institute of Management Accountants (CIMA)
- Chartered Governance Institute of Southern Africa (CGISA, formerly known as CSSA)
- Financial Planning Institute (FPI)
- Institute of Accounting and Commerce (IAC)
- SA Institute of Chartered Accountants (SAICA)
- SA Institute of Professional Accountants (SAIPA)
- SA Institute of Taxation (SAIT)
- The Association of Chartered Certified Accountants (ACCA)
- Southern African Institute for Business Accountants (SAIBA)

Reporting Unprofessional Conduct

Complaints to RCBs due to unprofessional conduct in terms of section 241:

- Withholding taxpayers' eFiling profiles, which prevents taxpayers from being tax compliant,
- Failure to perform tax practitioners' duties,
- Fraudulent submission of returns, e.g., submitting nil return while knowing taxpayer is trading
- Fabricating SARS letters in order to charge taxpayers for additional fees,
- Charging contingency fees, i.e., charge a % of refunds taxpayers received from SARS or reduction of taxpayer's liabilities
- Abusive behavior towards taxpayers or SARS employees
- Illegal use of SARS trademark and logo

Reporting Unprofessional Conduct

Tax practitioners deregistered due to convictions on the following and sentenced to a period of imprisonment exceeding two years without the option of a fine [section 240(a) to (c)]:

- theft, fraud, forgery or uttering a forged document,
- Offence involving dishonesty
- Serious tax offence

Consequence

The deregistered tax practitioners have wait for at least five years before being allowed to register as a tax practitioner again. This is to satisfy the requirements in section 240(3)(a) to (c).

Reporting Unprofessional Conduct

Tax non-compliance in their personal capacity* [sec240(3)(d)]:

- 132 tax practitioners were deregistered in 2021/2022

* *Personal capacity: including the practitioners' personal compliance, and his/her tax practice's tax compliance.*

Consequence

The deregistered practitioners have to wait at least 6 months before being able to re-register as a tax practitioner. This is to satisfy the requirements in section 240(3)(d).

Legislation - Complaints

Section 241- Complaint to controlling body

- Section 241(1) – complaint to a controlling body – A senior SARS official would submit a complaint to a relevant controlling body relating to the conduct of a tax practitioner regarding his/her conduct stemming from either a complaint received from a taxpayer or identified risk established.
- Section 241 (2) – complaint to a RCB – A senior SARS official would inform a RCB if a tax practitioner acted outside of the Law, unlawfully submitted tax returns, gave wrong information, gross negligence.
- Section 242 – Disclosure of information regarding complaint - Despite section 69, the senior SARS official lodging a complaint under section 241 may disclose the taxpayer information as in the opinion of the official is necessary to lay before the 'controlling body' to which the complaint is made.
- Section 243 – Complaint considered by Controlling Body - The complaint is to be considered by the 'controlling body' according to its rules or code of conduct.

Legislation: Synopsis S241 – S243

- It is important to remember that section 240(1) and 240(2), is aligned to the Code of Conduct of a RCB
- Taxpayers who are clients of a tax practitioner may submit a complaint to SARS and the RCB
- A tax practitioner taking on a new client from an existing tax practitioner, may submit a complaint to the RCB if the previous tax practitioner was in violation of the Act or Code of conduct.
- Tax practitioners are recommended and encouraged to report any tax practitioners who are in breach of the legislative requirements including the necessary codes of conduct of controlling bodies.

Legislation: Criminal Offences

<u>Section 234</u> - **Criminal offences relating to noncompliance with Tax Acts**

- Issuing of false documents, fail to notify SARS of changes, Fail to register as a tax practitioner under S240, does not retain proper records

<u>Section 235</u> - **Evasion of tax and obtaining undue refunds by fraud or theft**

- Submitting fraudulent documentation, false statements in order to defraud the state

<u>Section 236 -</u> Criminal offences relating to secrecy provisions

- A person who contravenes the provisions of section 67 (2), (3) or (4), 68 (2), 69 (1) or (6) or 70 (5) is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

<u>Section 237 -</u> Criminal offences relating to filing return without authority

- Submitting returns without someone's permission, no Power of Attorney (POA) in place

<u>Section 238 -</u> Jurisdiction of courts in criminal matters

- A person charged with a tax offence may be tried in respect of that offence by a court having jurisdiction within any area in which that person resides or carries on business, in addition to jurisdiction conferred upon a court by any other law.

Thank you

www.sars.gov.za

SARS Contact Centre 0800 00 SARS (7277)

Visit your nearest SARS branch (to locate a branch visit www.sars.gov.za)

Open: Monday, Tuesday, Thursday & Friday 08:00 to 16:00;
Wednesday 09:00 to 16:00

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Thank you

Re a leboha

Re a leboga

Ndza Khensa

Dankie

Ndi a livhuwa

Ngiyabonga

Enkosi

Ngiyathokoza

SARS

South African Revenue Service