

**GUIDE TO ENGAGEMENTS ON TAX MATTERS**

For the holder of a SAIBA Tax Practitioner Licence

The mission of the Chartered Institute for Business Accountants NPC trading as SAIBA (“SAIBA”) is to serve the public interest, strengthen the accountancy profession in Southern Africa and contribute to the development of a strong regional economy by establishing and promoting adherence to high-quality professional standards, furthering co-operation on such standards and speaking out on public interest issues where the profession’s expertise is most relevant. This will enable SAIBA to deliver trusted advisors to Southern African small businesses and support staff to big businesses.

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**INTRODUCTION**

This Guide to Engagements on the Tax Matters (“this Guide”) was commissioned by SAIBA to provide guidance to members on engaging clients in relation to the provision of tax consulting and advisory services, including the compilation and filing of tax returns.

**Only those SAIBA members that have been awarded a Tax Practitioner Licence or are registered as a tax practitioner with another Recognised Controlling Body may provide the above tax services to clients. Where the Guide refers to “member”, the reference is to a duly licensed or registered SAIBA member.**

## This guide merely provides members with useful templates in relation to the responsible engagement of clients. You hereby absolve SAIBA and its employees, officers, directors, contractors and agents (“the Indemnified Parties”) from all liability and indemnify them from any claim for damages, penalties or loss of whatever nature (including but not limited to consequential damages or special damages) arising from your use of this Guide and/or the templates contained herein.

## Before using the templates contained below, members should ensure that the document is amended to reflect their requirements, the requirements of the client and to include any other additional services that the member will provide.

Nicolaas van Wyk

CEO

September 2022

# Agreeing the Engagement

## All engagements between members and their clients should be performed in terms of applicable statutory requirements, common law principles relating to care, skill and diligence and SAIBA’s code of conduct and ethics.

## Before accepting any engagement, members should ensure that they clearly understand the purpose of the engagement, and the terms of the engagement have been agreed with and countersigned the client.

## The engagement letter must clearly describe the nature of the engagement, including:

### the scope of the engagement and the services to be provided by the member;

### the duties and responsibilities of the client, including the duty to provide the member with all information that the member reasonably requires to perform the engagement, and which is true and correct in all respects;

### the fees payable to the members for the engagement; and

### the member’s applicable terms and conditions for conducting the engagement.

# Completing the Engagement Letter

## A template engagement letter for tax services is included in paragraph 3 below. Before using the template, the member should ensure that the document is amended to reflect their requirements, the requirements of the client and to include any other additional services that the member will provide.

## When completing the letter of engagement:

## **Addressee**

## The member must ensure that the engagement letter is addressed to the individual client or, in the case of a corporate client, a representative of that client who has the necessary authority to conclude the engagement.

## **Objects and Scope of the Engagement**

### This section must clearly set out all of the services that the member will provide to the client, including what the member will not be doing for the client.

### These services may include the following responsibilities:

#### the submission of all necessary returns and information provided by the client to SARS;

#### the preparation of the income and expenditure statement of the client’s personal tax and/or entity and the income tax computations on the basis of the client’s records and explanations;

#### the preparation of the client’s personal tax returns with supporting schedules;

#### advising on the amount of tax to be paid and the due date for such payment;

#### interacting and communication with SARS in relation to the client’s returns; and

#### disclosing the minimum requirements of the SARS eFiling terms and conditions to the client.

### If the member will be providing services to the client using the client’s eFiling profile, the member must obtain the appropriate acknowledgments and permissions from the client in the engagement letter. These should include, at a minimum, the following acknowledgments:

#### the member acts as a duly authorised agent on the client’s behalf;

#### the client, as the taxpayer, will be liable to SARS for the due and timeous fulfilment of all of its obligations towards SARS;

#### all of the information furnished by the member to SARS on behalf of the client via eFiling is be based on information received from the client, which is responsible for ensuring that such information is true and correct in all respects;

#### the member will not be liable to the client for any penalties, fines or other liabilities imposed on the client by SARS for any reason whatsoever;

#### the client shall be responsible and liable to SARS for the payment of amounts due to SARS, including penalties, fines and interest.

## **Client Responsibilities**

## This section must set out the functions that the client is required to undertake to enable the member to perform the engagement. This will vary depending on whether the client is a private individual or a commercial entity.

## Examples of these responsibilities (in addition to those identified in the template engagement letter) include the following:

### disclose all sources of income, expenses, allowances and capital transactions to the member;

### the provision of all necessary supporting documents in the client’s possession to enable the member to substantiate all amounts and complete the tax returns accurately and timeously;

### the provision of balances of assets and liabilities if required by the member to complete a statement of assets;

### advise the member of any capital gain that should be included in a tax return;

### maintenance of the appropriate records to allow for the accurate reporting and calculation in respect of taxes; and

### pay all amounts due and owing to SARS by the due date.

## **Fees**

## The manner in which the client will be charged for the services (whether it be in accordance with hourly rates or fixed fees) must be agreed with the client upfront and included in this section of the engagement letter. If the fee is likely to change, the basis on which the fee may increase should also be explained.

## This section must also identify any disbursements that the client will be liable for such as travelling.

## **Invoicing and Payment**

## The intervals on which the member will invoice the client must be recorded in this section together with when payment will be due

# TEMPLATE ENGAGEMENT LETTER FOR TAX SERVICES

**[TO BE PLACED ON MEMBER’S LETTERHEAD]**

MANAGEMENT / THE BOARD OF DIRECTORS

[NAME OF CUSTOMER]

[ADDRESS]

OUR REF.: [INSERT]

[DATE]

Dear Sirs,

**ENGAGEMENT LETTER: TAX SERVICES**

# INTRODUCTION

We would be pleased to accept your instruction to act as your tax advisors.

This letter sets out the terms and conditions upon which we will perform our engagement and the nature of the services we are to provide to you and the limitations of such services.

In order to commence our engagement and file any tax returns on your behalf, we require a copy of this engagement letter signed by you or your organisation representative.

# OBJECTS AND SCOPE OF ENGAGEMENT

## We will perform the following tax and ancillary services:

### [The scope of the tax consulting and advisory services to be rendered are to be described here. The scope should include the services that will be rendered and describe the services that will not be performed. Members are encouraged to state the requirements of any specific laws and regulations governing the provision of the services which are applicable.]

### [General income and business tax advisory services, including income tax, employee tax, capital gains, VAT, customs and excise duties, international tax implications and interpretation]

### [Preparation and submission of monthly and annual corporate income/provisional tax returns, and/or the review thereof]

### [Preparation and submission of employee tax, deductions and contributions, including relevant returns and reconciliations]

### [Preparation and submission of returns through SARS E-Filing]

### [Preparation and submission of VAT returns and/or the review thereof]

### [Establishment and registration of new entities, including registration of employee income tax, VAT and payroll services]

### [Managing SARS queries, audits and assessments]

### [Assisting with the regularisation of errors or omissions in income tax, employee tax, capital gains, VAT and customs and excise duties]

### [General and/or specialised tax opinions – limited to Tax Practitioner: Advisor and Tax Practitioner: Master]

### [Tax dispute mediation – limited to Tax Practitioner: Master]

## In return, you acknowledge and agree that:

### in conducting our engagement, we will adopt such procedures and conduct such enquiries in relation to the entity as agreed with you and consider necessary in the circumstances, which will include obtaining and relying on representations obtained by you regarding the entity’s compliance with applicable legislation, such as the Income Tax Act (58 of 1962), the Value-Added Tax Act (89 of 1991), the Unemployment Insurance Fund Act (63 of 2001), the Companies Act (71 of 2008), the Tax Administration Laws Amendment Act (21 of 2012) and the Broad Based Black Economic Empowerment Act (53 of 2003);

### our engagement does not contemplate obtaining an understanding of the entity’s internal control, assessing fraud risk, tests of accounting records observation, confirmation, or the examination of source documents and other procedures ordinarily performed in an audit and therefore we do not provide any assurances relating to the entity’s compliance with the aforesaid legislation or whether the representations made to us in this regard provide a true and fair view;

### accordingly, our engagement cannot be relied upon to disclose errors, fraud, or illegal acts that may exist. However, we will naturally inform you if such acts come to our attention during the course of our engagement; and

### if we become aware of any instances of non-compliance with the relevant sections of the aforesaid legislation whilst performing our engagement, we may be required to disclose such non-compliance and/or report certain contraventions to the responsible authority.

## This engagement letter authorises us to perform the engagement described in paragraph 1.1 above. Any other services that you may request from us will be subject to separate engagement letters.

# CLIENT RESPONSIBILITIES

## You are responsible for:

### making all management decisions and performing all management functions;

### designating an individual who possesses suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the engagement;

### evaluating the adequacy and results of the services performed;

### accepting responsibility for the results of the services;

### establishing and maintaining internal controls, including monitoring ongoing compliance with all applicable legislation;

### providing us with access to all information of which you are aware that is relevant to the engagement, such as records, documentation and other matters, additional information that we may request from you for the purpose of the engagement;

### providing us with access to reasonable facilities and access to data and information; and

### providing us with unrestricted access to persons within the entity from whom we determine it necessary to obtain information.

## As part of engagement procedures, we may require certain written representations from management about the entity’s compliance with legislation and matters related thereto. Our engagement is dependent on the information submitted by you and we are entitled to assume that all such information is true, accurate and complete in all respects. We will not be liable, and you indemnify us against any claim, by you or any third party for damages, penalties or loss of whatever nature (including but not limited to consequential damages or special damages) arising from any information provided to you by us or a failure by you to disclose any relevant information to us.

## You warrant that where data provided to us pertains to third parties, such as customers and/or suppliers, that you have obtained the necessary consent from the third party and indemnify us against any claims that may be instituted as a result of the failure to procure such consent.

## We will use all reasonable efforts to complete the engagement within the agreed-upon time frames. However, we will not be liable for failures or delays in performance that arise from causes beyond our control, including the untimely performance of the responsibilities set out in this paragraph 1.

# FEES

## Our fee proposal for these services will be as follows:

### [insert];

## In accordance with our recent discussion, we believe that the engagement fee will not exceed Rxxxx [Exclusive/Inclusive of VAT]. However, if we encounter unexpected circumstances that require us to devote more staff hours to the engagement than estimated, we will discuss the matter with you.

## In order to assist your business, the above engagement fee is payable as follows:

### Rxxxx on [DATE];

### Rxxxx on [DATE];

### Rxxxx on [DATE];[[1]](#footnote-2)

## We will charge you for all disbursements and out-of-pocket expenses incurred in the performance of our engagement, such astravelling, subsistence and goods and services purchased for and/or on your behalf.

## You acknowledge and accept that we may suspend the provision of services until such time that all amounts due are paid in full.

# INVOICING AND PAYMENT

## We will present our invoices for fees and expenses/disbursements as agreed or on completion of the engagement. Invoices are payable [on receipt or within 30 days of receipt of invoice].

## We reserve the right to charge interest on overdue amounts at 2% per month.

# ACCESS AND REPORTS TO REGULATORY AUTHORITIES

## We may be required to submit information related to your entity to relevant statutory authorities that are empowered by law or regulation to request this information. In some instances, we are not allowed to inform you should we receive such a request.

## By accepting this engagement letter, you authorise us to share the information disclosed to us during the engagement with these authorities. We may also be required to provide access to our working papers or your client documentation to our professional membership body.

# USE OF REPORTS AND OTHER DELIVERABLES

## Any advice, report, certificate, schedule or other deliverable provided to you is based on your particular facts and circumstances at a particular point in time and on any applicable prevailing rules and regulations in force. As a result, any such advice, report, certificate, schedule or other deliverable may not be relevant to the circumstances of third parties. We can neither warrant nor guarantee that relevant facts and circumstances will remain constant in the future, nor warrant or guarantee specific future outcomes or events.

## Our advice, reports, certificates, schedules or other deliverables arising from or in connection with the services we provide, may only be used and relied upon by the party or parties to whom it is addressed, and for the purpose for which it was prepared. No other party may place any reliance thereon in any manner or for any purpose.

## Notwithstanding paragraph 6.2 above, you indemnify and hold us harmless against any claim by any third party arising from the unauthorised misuse of any advice, report, certificate, schedule or other deliverable addressed to you.

## Draft reports, certificates, schedules or other deliverables will be provided to you exclusively for discussion purposes. Only final reports, certificates, schedules or other deliverables may be relied and acted upon.

# FINANCIAL ADVICE

## We confirm that we are not a registered financial advisor and do not provide financial advice in accordance with the provisions of the Financial Advisory and Intermediary Services Act, 37 of 2002 (“FAIS Act”). Should any financial advice be provided, that would be co-incidental and informal. The individual or the firm does not intend that any such advice be acted upon and therefore the individual or the firm shall not be responsible for any loss, damage and/or expenses incurred by the client for acting on such advice. If financial advice is required, we can refer you to a registered financial advisor.

# ACCESS TO DOCUMENTS

## Any document produced, altered or originated by us during our engagement remains our property and will not be shared with any party.

## Upon payment, in full, of monies owed to us, your documents shall be released to you

# NON-EXCLUSIVITY

## The provision of the services to yourselves will not prevent us from providing the same or similar services to other parties.

# CONFIDENTIALITY

## We will keep confidential all information obtained from you, except such information that is in the public domain or where you have consented to disclose such information to any other party.

## Notwithstanding the above clause, you acknowledge that we may be required to disclose confidential information to our legal advisers, insurers or to any other party as required by law or in terms of a judicial order. Disclosure in any of these instances will be permissible and will not be a breach of confidentiality, provided that in relation to disclosure to legal advisers and insurers these parties undertake confidentiality substantially similar to this paragraph 11.

## You agree to keep confidential any methodologies, technology, know how, trade secrets, software and tools used or provided and/or developed by us in providing and delivering the services. Similarly, any information provided and/or developed by us in relation to the services will be kept confidential, unless expressly provided consent in writing is obtained from you to disclose such confidential information to any other party.

## You acknowledge that we are required, in terms of professional standards, to retain documentation to support the work done and any deliverables provided. Where this documentation contains your confidential information, you give consent to retain such documentation for such purposes.

# FICA

## We are required in terms of the Financial Intelligence Centre Act, 38 of 2001 to report suspicious or unusual transactions of which we become aware which have no evident business or lawful purpose. This statutory obligation overrides any duty of confidentiality owed to our clients.

# PERSONAL INFORMATION

## By entering into this agreement, you consent to our processing of personal information provided by you to us in accordance with relevant data protection laws in effect in South Africa, including the Protection of Personal Information Act, 4 of 2013. This consent shall extend to the processing of your personal information by our service providers and professional advisors, who may be located outside South Africa.

## Where such personal information relates to third parties, such as your clients or suppliers, you warrant that you have obtained the necessary consent for us to process their personal information.

# DISPUTE RESOLUTION

Any dispute that may arise between our firm or any staff member and you will be subject to our Dispute Resolution Policy. Any matter must be referred to our firm to be resolved. If any matter remains unresolved, we may refer the matter to our professional body to mediate the issue.

# LIMITATION OF LIABILITY

## You hereby agree to indemnify, defend, and hold harmless our firm and its partners, agents, or employees, from and against any and all losses, costs (including legal fees), damages, expenses, claims, demands, or liabilities arising out of or in consequence of this engagement save for liability arising from our wilful misconduct or gross negligence.

## Our liability in terms of this engagement is limited, in accordance with all applicable laws, to the fees charged by us for the engagement.

# TERMINATION

## You are entitled to terminate our mandate at any time by written notice to us but without prejudice to all our accrued rights and obligations, whether actual, prospective or contingent.

## We reserve the right to terminate our mandate should a conflict of interest arise, should payment which is due to us not be made, where we are required to recuse ourselves in terms of any applicable law or code of ethics, or should we be unable to obtain full and proper instructions, information and/or representations timeously.

## Upon termination of our engagement, you will pay our charges and disbursements incurred prior to the date of termination. Upon payment, in full, of monies owed to us, your documents and/or other information shall be released to you.

# GENERAL

## This engagement shall be governed exclusively, in all respects by, and shall be interpreted in accordance with the laws of South Africa.

## This engagement letter, once accepted and signed, constitutes the entire agreement with us. No amendments or variations of this agreement shall be of any force or effect, unless reduced to writing and signed.

## You hereby consent to our subcontracting the services to the extent that such subcontract will be subject to the same terms and conditions as contained in this engagement letter. It is specifically recorded that you shall remain liable for the obligations of its subcontractors.

## Where it is intended that the tax consultancy and advisory services should also be provided to group companies and/or divisions, any approvals given will be deemed to also apply to services to be provided by a member company which is part of your group in terms of a separate engagement letter or agreement that may be concluded with the group company or division concerned.

## If any provision or clause of this engagement letter becomes invalid or unenforceable, such provision or clause shall be divisible and be regarded as *pro non-scripto* and the remainder of this engagement letter shall remain in force and be binding.

## We look forward to a continued relationship with your company, and we are available to discuss the contents of this letter or other professional services you may desire. If the foregoing is in accordance with your understanding, please sign the copy of this letter in the space provided and return it to us.

Yours faithfully,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[INSERT NAME OF SIGNATORY]

[DESIGNATION]

[SAIBA MEMBERSHIP NUMBER]

Acknowledged and agreed on behalf of [INSERT NAME OF CLIENT] by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME:

CAPACITY:

DATE:

1. Only applicable if the client is permitted to pay the engagement fee in instalments. Otherwise, this clause should be deleted. [↑](#footnote-ref-2)