

Statements on Standards for Tax Services

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saiba

SOUTHERN AFRICAN INSTITUTE
FOR BUSINESS ACCOUNTANTS

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SAIBA Tax Standards (“STS”)

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Abbreviations used in the Standards:

CPD	- Continued Professional Development
IESBA	- International Ethics Standards Board for Accountants
ITA	- Income Tax Act, No. 58 of 1962
NOCLAR	- Non-compliance with laws and regulations
SARS	- The South African Revenue Services
NamRA	- Namibia Revenue Agency
STS	- SAIBA Tax Standards
TAA	- Tax Administration Act, No. 28 of 2011
FIC	- Financial Intelligence Centre

PREFACE

SAIBA is a professional body for accountants and finance executives. Our Designations are symbols of quality, commitment, ability, and trust. Employers and clients value these characteristics.

Standards are the foundation of a profession.

SAIBA aids its members in fulfilling their ethical responsibilities by instituting and maintaining standards against which their professional performance can be measured. Compliance with professional standards of tax practice also reaffirms the public's awareness of the professionalism that is associated with SAIBA designations.

This publication provides SAIBA members with enforceable tax practice standards, called SAIBA Tax Standards (STSs or statements). These statements apply **to all designated SAIBA members** who have applied to become a Licensed Tax Practitioner on either of the following levels:

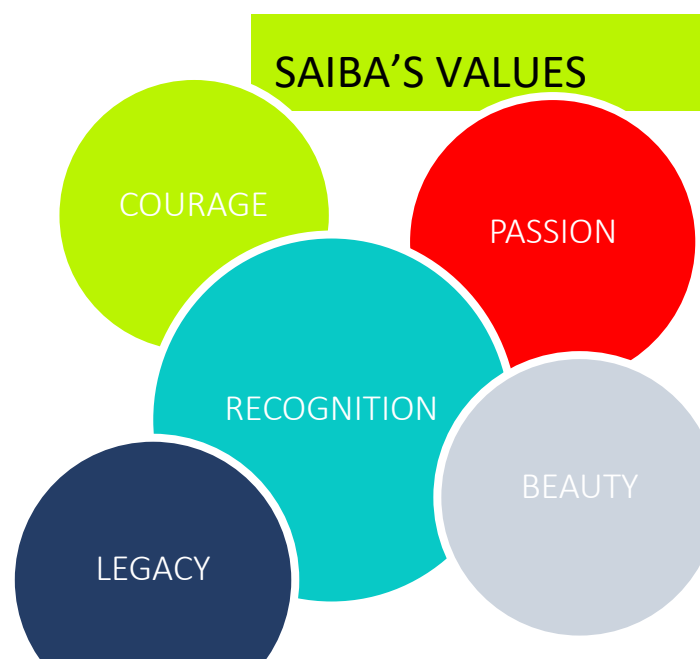
- Tax Compiler (NQF5)
- Tax Advisor (NQF7)

Interpretations of these statements may be issued as guidance to assist in understanding and applying the statements. The STSs and their interpretations are intended to complement other standards of tax practice and general statements issued on Tax Practitioner Conduct and disciplinary procedures by SARS and NamRA from time to time.

The STSs are written in as simple and objective a manner as possible. However, by their nature, practice standards provide for an appropriate range of behaviour and need to be interpreted to address a broad range of personal and professional situations. The STSs recognize this need by, in some sections, providing relatively subjective rules and by leaving certain terms undefined. These terms are generally rooted in tax concepts and, therefore, should be readily understood by tax practitioners.

Members that have obtained a tax practitioners' license are also expected to adhere to the SAIBA disciplinary procedures and ethical and professional standards as expected by SAIBA and available on our website https://saiba.org.za/terms_and_conditions

We trust that members' tax consulting journeys will be both rewarding and fulfilling from a professional and personal point of view and we trust that tax license holders will never compromise on our shared SAIBA values.



STS 110

Ethics and ethical constraints

Purpose

The purpose of this statement is to set the standard and detail the requirements of members to be considered to act in an ethical way in performing their duties related to the delivery of tax services. This statement applies to all tax work undertaken by a member, irrespective of the scope of the work or the assignment.

As taxation in South Africa is largely based on a system of “Self-Assessment” which is defined as “the determination of the amount of tax payable under a tax Act by a taxpayer and

- (a) submitting a return which incorporates the determination of the tax; or
- (b) if no return is required, making a payment of the tax.”

Ethics in Taxation matter as Section 241 of the Tax Administration Act allows for SARS to lodge a complaint with a controlling body, if a person who carries on a profession governed by the ‘controlling body’, did or omitted to do anything with respect to the affairs of a taxpayer, including that person’s affairs, that in the opinion of the official:

- (a) was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act;
- (b) by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under a tax Act;
- (c) constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the person by the body; or
- (d) constitutes conduct under subsection (2) by a registered tax practitioner (refer to STS130).

Statement

Common law dictates that professional advisors should be accountable to ethical best practice. Every SAIBA member is required to familiarise themselves with the IESBA Ethics Handbook, which was adopted by SAIBA. This handbook can be found on the following link:

<https://www.ethicsboard.org/international-code-ethics-professional-accountants>

Ethical behaviour includes professional scepticism, which requires members to act with an attitude that includes a questioning mind. Although members are not required to verify the information provided by clients, members should always be alert to possible misstatements and inaccuracies due to errors or incorrect information provided by the client. Members should not merely accept what has been provided to them but critically analyse the information based on facts and their understanding of the underlying financial accounting landscape.

Members are required to comply with laws in so far as it is relevant to the work assignment being performed. Members should ultimately hold themselves accountable for the quality of the deliverable.

Members should use common sense and strive to make the most ethical decision in every scenario that might be presented in tax practice.

A member must not engage in or be party (directly or indirectly) to any illegal activity or acts in such a way that will discredit the tax profession.

Explanation

Professional accountants and tax practitioners – including SAIBA members - play a vital role in the community and indirectly, to the South African Economy. In addition to a member's responsibility to its client, a member also has an obligation to the tax system. Because of this vital role, and the commitment to professionalism, ethics plays a very important part. Members should contribute positively towards the tax profession as a whole.

Furthermore, members deal in matters of great importance to their clients and are therefore entrusted with huge responsibilities and obligations. Given these inherent obligations, members' work typically involves circumstances where carelessness, inadequate skills, or breach of ethics would be significantly damaging to the client and his fortunes.

Ethical behaviour also serves to promote and maintain a high level of public trust and confidence in the individual member, its employer as well as in SAIBA. Members are required to apply moral principles in any given situation and make their professional judgements as to what is right, what is wrong, just or unjust in terms of human behaviour and fairness to the Ficus and their fellow South African in general.

STS 120

Personal competencies and skillset

Purpose

The purpose of this statement is to set the standard and requirements for members to ensure professional knowledge and skill are maintained at the level required to ensure that a client or employer receives competent, professional service. This includes keeping up to date with current developments in practice and legislation.

Statement

Members must ensure that they comply with the minimum SAIBA CPD policy on an annual basis.

This policy can be found on the following link:

https://saiba.org.za/downloads/guides/Company_Rules_and_Policy_for_CPD.pdf

International best practice and local rules dictate that accountants shall commit to a specific number of hours in a year and reflect on their CPD learning. SAIBA members are required to obtain CPD in the areas that they provide services to clients. Services should not be attempted without having CPD to ensure good quality. SAIBA is required in terms of the Companies Regulations, 2010 and the National Qualifications Framework Act, 67 of 2008 to require members to do CPD, monitor their CPD points, and report findings to authorities.

A member must not accept an assignment or professional work or communicate with third parties, SARS or NamRA on behalf of a client, if such member does not have the proper technical competencies to do so or the authority (engagement letter and power of attorney), whether because of lack of experience or the necessary technical or other skills. It is a member's responsibility to ensure that appropriate support, training and/or assistance be obtained to ensure high standards of technical competence and quality of deliverable as is expected of a SAIBA member.

Taxation is a highly specialised area, as such members must be skilled in the various tax laws in which the member advises. Members must keep their skillset up to date and must be recognised as a person with specialist skills.

If a member delegates work covered by an engagement he/she is primarily responsible for, delegation should be to a person who has been suitably trained to carry out the work involved and the necessary supervision should be provided. Members must not hesitate to refer a client to a person with the suitable skills whenever required.

Explanation

Members that invest in their own development are aware of legislative changes and developments in the profession and are therefore better equipped to provide relevant tax and related services to their clients. Up to date technical knowledge contributes to members being able to exercise their professional judgement and professional scepticism and advise clients on potential opportunities/risks.

Competence can be developed through various methods, including:

- Professional education
- CDP, including self-study, reading of articles, etc.
- Work experience
- On the job training by more experienced colleagues

CDP is widely recognised as fundamental to the improvement of standards and skills for individuals and their industries.

STS 130

Non-compliance with laws & regulations

Purpose

The purpose of this statement is to set the standard and requirements for members:

- To comply with laws and regulations at all times in all their dealings
- On what the requirements are when clients are not complying with laws and regulations.

Section 241(2) of the Tax Administration Act allows for a senior SARS official to lodge a complaint with a 'recognised controlling body' if a registered tax practitioner has, in the opinion of the official:

- (a) without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit or other document relating to matters affecting the application of a tax Act;
- (b) unreasonably delayed the finalisation of any matter before SARS;
- (c) given an opinion contrary to clear law, recklessly or through gross incompetence, with regard to any matter relating to a tax Act;
- (d) been grossly negligent with regard to any work performed as a registered tax practitioner.

The compliance responsibility on tax license holders is therefore mandated not only by SAIBA polices, but also by specific sections in the Tax Administration Act placing a larger impetus on the importance of legal and regulatory requirements.

Non-compliance with laws and regulations comprises acts of omission or commission, intentional or unintentional, committed by a client/management/any person working under direction of a client which are contrary to the prevailing laws or regulations.

A distinguishing factor in the accounting profession is its acceptance of the responsibility to act in the public interest.

Statement 1 – Members to comply with laws and regulations

Members must comply with the laws and regulations in so far as it is relevant to the work or engagement performed. Members must only provide advice to clients within the framework of the applicable law.

Members must not engage or be party to any illegal activity, whether directly or indirectly.

Members must not conduct themselves in an inappropriate, unlawful or illegal manner, including in a own personal capacity, that could bring dishonour upon a member or may damage the reputation of the profession or SAIBA.

Statement 2 – Clients to comply with laws and regulations

If a member becomes aware of an instance where a client had not complied with laws and regulations in so far as the engagement that the member is assisting with, the member should immediately consult with a person in a suitable senior position – if applicable – and contact the client regarding the matter.

Where clients are not willing to take corrective steps to correct the incidence of non-compliance, the member should evaluate its ongoing relationship and association with the client.

Members should also consider its reporting obligations under the NOCLAR standard under such cases. This standard sets out a framework to guide auditors and other professional accountants in what actions to take in the public interest when they become aware of a potential illegal act, known as non-compliance with laws and regulations, or NOCLAR, committed by a client or employer.

The NOCLAR standard sets out a framework to guide auditors and other professional accountants in what actions to take in the public interest when they become aware of a potential illegal act, known as non-compliance with laws and regulations, committed by a client or employer.

For more information on the requirements envisaged by the NOCLAR standard, please refer to <https://www.ethicsboard.org/publications/responding-non-compliance-laws-and-regulations-15>

Explanation

The tax professional should contribute positively towards the tax profession as a whole. Non-compliance with laws and regulations can discredit the profession, lead to a damaged reputation, litigation, lawsuits, hefty fines or imprisonment for the client or any participant – which could be the individual member.

STS 210

Client/engagement acceptance and continuation

Purpose

The purpose of this statement is to set the standard and requirements for members to accept new engagements and for (at least) annual evaluation of re-accepting engagements with existing clients.

One of the most important decisions that a firm can make, is whom to accept or retain as a client. A poor decision can lead to non-billable time, unpaid fees, additional stress on partners and staff, loss of reputation and worst of all, potential lawsuits and criminal proceedings.

Statement

Members that are approached by prospective new clients do not have any obligation to accept such appointment:

- if they believe, for any reason, they do not have the competencies and skills to deliver the service the client is requiring, or do not have sufficient resources, or
- if they have reason to believe the client does not act with integrity, or if any association risk will arise or damage the reputation of the member, their employer or the profession should the client be accepted.

A new engagement should be screened and assessed before the engagement letter is finalised and signed.

The screening process consist of several activities, including:

- Interviewing the client (for guidance refer to STS Annexure A - Understanding a New Client – The Initial Interview)
- Reviewing documents, responses, personal and contact details of the client and the client's business entity, including registration details (for further guidance refer to STS Annexure B - Documents to Review).
- Obtaining evidence of registered address and registration documents.
- Reading available financial statements and prior year tax returns.
- Communicate with the predecessor practitioner and send a courtesy letter. (For an example refer to STS Annexure C – Courtesy Letter to prior Tax Practitioner).
- Contact third parties familiar with the potential client.
- Considering whether it is necessary to file a report to the FIC based on relevant circumstances.

The screening and assessment should include:

1. Developing an understanding of the client's business and financial processes.
2. Considering conflict of interest that might impact the relationship, and whether it is on an acceptable level that can be managed.

3. Considering indications of suspicious and illegal transactions (for guidance refer to STS Annexure D - New Taxation Engagement Considerations).
4. Determining if the current tax affairs will be disclosed. Assignments from new clients should only be accepted on the basis that the client is willing to make full disclosure of its current tax affairs across all taxes
5. Considering whether the client fits the business model of the practitioner.

On acceptance of new clients, members should issue and sign an engagement letter with the new client. This letter should be specific to each client and set out, as a minimum:

- the terms and conditions under which the work will be performed
- the scope of the assignment
- the basis on which fees will be charged
- limitation of risk and
- the responsibilities of both parties to the agreement.

Should the scope of the assignment change, the letter should be adjusted to reflect this change.

Members should evaluate on an ongoing basis if clients should be retained or re-accepted. Factors such as if there were changes to the clients' business, shareholding or management, as well as long outstanding unpaid fees should be taken into consideration when deciding if a relationship with the client should be continued. Where a conflict of interest with an existing client occurs that cannot be managed at an acceptable level, a member should not re-accept the client. Re-acceptance of clients should also be evaluated whenever the client expects the member to act outside the framework of any law.

Explanation

Screening of new engagements and documented terms of engagement constitute best practice and lays a solid foundation for a working relationship between clients and members. It provides clarification to both parties on their obligations and rights and demonstrate professionalism from the outset.

Documented terms of service will also reduce the risk of scope creep and reduces professional indemnity insurance premiums. Many insurers require this before a claim will be accepted. It therefore provides significant protection to members and is likely to be an important piece of evidence in case of any dispute.

Initial as well as ongoing evaluation of conflict of interest is important since conflict of interest can impact the ethical behaviour of members. This includes real as well as perceived conflict of interest. Throughout a member's relationship with a client, circumstances may change and potential conflicts of interest may arise which should be evaluated when deciding if the client is to be retained or not, or if this conflict can be managed.

STS 220

Quality deliverables

Purpose

The purpose of this statement is to set the standard and requirements for members when issuing deliverables to clients for any type or nature of assignment including but not limited to:

- tax return positions taken
- preparing tax returns to be submitted to SARS and NamRa
- use of estimates by taxpayers in tax returns
- departure of a previous position concluded in an administrative proceeding or court decision
- error in prior returns

A tax return position is:

- a position reflected on a tax return on which a member has specifically advised a taxpayer or
- a position about which a member has knowledge of all material facts and, on the basis of those facts, has concluded whether the position is appropriate.

It further addresses the requirement that the deliverable should be supported by evidence of the work performed and the requirement to retain the deliverable and supporting documents for a certain period of time.

Statement

General

Members must ensure that any deliverable is of the highest possible quality. Members are required to ensure that all deliverables and conclusions reached are supported by appropriate supporting evidence that would be able to be referred to without consultation of the member.

A member should, where it is their responsibility, maintain a system to ensure that all relevant time limits and deadlines are monitored, and appropriate action taken timeously.

When preparing a return or any other deliverable, a member may in good faith rely, without verification, on information furnished by the taxpayer or by third parties. Members should apply their professional scepticism and knowledge of the client's business to determine whether information provided is appropriate and correct for the member to rely on. The engagement letter should also state that the information that is relied on had not been audited, and reliance is placed on the accuracy of the information supplied by the client wherever relevant.

Members should however maintain their professional scepticism and apply their wealth of knowledge and experience to determine the accuracy and reliability of information provided by the client. Wherever verification can be done (such as through reference to audited/non-audited Annual Financial Statements), members are required to use all sources of information to their disposal to reasonable reach a conclusion on the accuracy and reliability of information provided.

Tax Returns and tax positions taken

The ultimate responsibility for the correctness of the tax return remains with the taxpayer, specifically the Public Officer. Where members complete and submit the tax returns on behalf of the taxpayer, full and true disclosure should be made to reflect this on the tax return in the section “Tax Practitioners Details”.

Even when members complete this section and declares that the return was completed by the relevant tax practitioner, it does not replace the ultimate responsibility that the Public Officer has towards the tax authorities. However, a member should comply with all the applicable laws, if any, that are imposed by SARS and NamRa when preparing and completing a tax return, advising on the correct disclosures or when recommending a tax return position.

The public officer is responsible for all acts, matters or things relating to the company under the various tax Acts.

These duties could include the following:

- attending to the various tax registrations such as VAT, payroll taxes, Customs and Excise;
- attending to all tax matters of the entity, including submission of the tax returns for VAT, employees’ tax, employee tax reconciliations, income tax, dividends tax and provisional taxes;
- the individual is also responsible for the timeous payment of taxes due to SARS and NamRA; and
- notifying SARS and NamRA of any change of the registered particulars such as registered address, year-end change, name change and verifying bank details.

Chapter 10 of the Tax Administration Act (No. 28 of 2011) (“TAA”) provides all the rights, duties and procedures relevant to tax liability and payment and recovery of tax respectively. It should be noted that SARS has a whole arsenal of weapons when it comes to the collection of tax and a public officer, director or senior manager may be held liable in its capacity as such, as a shareholder or as a person owing money to the company.

Before submitting a tax return on e-Filing, members should obtain approval from the Public Officer to do so, either by way of signoff on the return, or in other written form. This approval should be kept in line with the retention of documents standards set out below.

For purposes of these standards a tax return position is:

- a position reflected on a tax return on which a member has specifically advised a taxpayer or
- a position about which a member has knowledge of all material facts and, on the basis of those facts, need to conclude whether the position is appropriate.

If any tax position is of material nature to the taxpayer, it is advisable that the involvement of an external specialist is strongly considered, in line with STS 410, especially to avoid understatement penalties in terms of section 223 of the TAA.

Members must advise a taxpayer of relevant tax return disclosure requirements and potential penalties that might be levied in terms of the TAA. A member should make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return.

Use of estimates

Unless prohibited by law or by rule, a member may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the member determines that the estimates are reasonable based on the facts and circumstances known to the member. The taxpayer's estimates should be presented in a manner that does not imply greater accuracy than exists.

Estimates does not include where the ITA allows for certain tax items to be equal to the accounting value thereof.

Departure of a previous position concluded in an administrative proceeding or court decision on a prior return

For purposes of this statement, "administrative proceeding" includes an examination by SARS relating to a return or a claim for refund.

For purposes of this statement, "court decision" means a decision by any South African court having jurisdiction over tax matters.

The tax return position with respect to an item as determined in an administrative proceeding or court decision does not restrict a member from recommending a different tax position in a later year's return, unless the taxpayer is bound to a specified treatment in the later year, such as by a formal court ruling. Therefore, the member may recommend a tax return position or prepare a tax return that departs from the treatment of an item as concluded in an administrative proceeding or court decision with respect to a prior return of the taxpayer provided all laws are still adhered to.

Error in prior year tax return

A member should inform the taxpayer promptly upon becoming aware of an error in a previously filed return, an error in a return that is the subject of an administrative proceeding, or a taxpayer's failure to file a required return. A member also should advise the taxpayer of the potential consequences of the error and recommend the corrective measures to be taken. The member is not allowed to inform SARS of any of these matters without the taxpayer's permission, except when required by law.

If a member is requested to prepare the current year's return and the taxpayer has not taken appropriate action to correct an error in a prior year's return, the member should consider whether to withdraw from preparing the return and whether to continue a professional or employment relationship with the taxpayer. If the member does prepare such current year's return, the member should take reasonable steps to ensure that the error is not repeated.

A member should also advise the taxpayer on its options available to rectify the error such as the completion of a request for correction, SARS Voluntary Disclosure Program or an objection if still within allowed time frame, whichever course of action deems most appropriate.

If a member is representing a taxpayer in an administrative proceeding such as a SARS audit or request for information with respect to a return that contains an error of which the member is aware, the member should request the taxpayer's agreement to disclose the error to the tax authority.

Record retention

A member should take steps to ensure that all records and working papers are maintained securely and that client confidentiality is protected. All documents, regardless of ownership or authorship, concerning a client, their financial affairs and their personal data are client confidential information.

A member should keep proper professional record of all their dealings in connection with their client in order that:

- They are able to communicate effectively, including with SARS and NamRA if and where necessary
- They, their colleagues and successors can access a record of the client history to inform future client service
- They are able to resolve any misunderstandings or complaints, including in relation to fees
- They are able to defend any allegation of negligence.

These records should include:

- All written communications relating to the client's affairs, including letters and e-mails;
- File notes of meetings and telephone conversations, which should be dated
- Records of how the advice given is reached, including details of technical research, consultations and external advice or opinions
- All permanent information such as engagement letters.

Records should be organised so as to be accessible. If only electronic records are kept, a back up should be maintained off-site or in the cloud.

Record keeping should comply with the requirements of the TAA and any other Act that prescribes time frame and format for records to be kept in.

Explanation

Members should hold themselves ultimately accountable for the quality of their work with the client.

In managing client expectations, a member should seek to agree a realistic timetable for delivery of services. Clients should be kept informed at all times of deadlines, progress on engagements, potential need for scope extension etc.

Where a member undertakes tax compliance work for a client this will normally include responsibility for keeping the client informed of the amount of tax payable, the due date for payment and drawing the client's attention to the fact that interest accrues from that date. However, a member is not responsible for ensuring that the client does actually pay the tax due.

Even though there is no requirement to examine underlying documentation, a member should encourage the taxpayer to provide supporting data where appropriate.

If an administrative proceeding or court decision has resulted in a determination concerning a specific tax treatment of an item in a prior year's return, a member will usually recommend this same tax treatment in subsequent years. However, departures from consistent treatment may be justified under such circumstances as the following:

- Taxing authorities tend to act consistently in the disposition of an item that was the subject of a prior administrative proceeding but generally are not bound to do so if all facts, circumstances and the nature of the transaction are not the same in all material respects.

- Similarly, a taxpayer is not bound to follow the tax treatment of an item as consented to in an earlier administrative proceeding.
- The determination in the administrative proceeding or the court's decision may have been caused by a lack of documentation. Supporting data for the later year must be available.
- A taxpayer may have agreed or settled in the administrative proceeding for settlement purposes or not appealed the court decision.
- Court decisions, rulings, or other authorities that are more favourable to a taxpayer's current position may have developed since the prior administrative proceeding was concluded or the prior court decision was rendered.

The consent in an earlier administrative proceeding and the existence of an unfavourable court decision are factors that the member should consider in evaluating whether deviating from the previous position taken.

SARS's tax system of self-assessments can function effectively only if taxpayers file tax returns that are true, correct, and complete. A tax return is prepared based on a taxpayer's representation of facts, and the taxpayer has the final responsibility for positions taken on the return.

The retention of working papers is an important issue. A member should put in place a policy which takes into account both statutory requirements and time limits for legal action against a member.

STS 230

Form & content of advice to taxpayers

Purpose

The purpose of this statement is to set the standard and requirements for members on what the format and content of advice should be when provided to clients. It also addresses the requirement for members to inform clients in the event of changes in legislation or other information subsequent to providing such information or advice to clients.

Statement

A member should use professional judgment to ensure that tax advice provided to a taxpayer reflects competence and appropriately serves the taxpayer's needs. Advice should be based on and supported by reasonable and factual information as provided by the client.

A member should use professional judgment about any need to document oral advice. A member is not required to follow a standard format when communicating or documenting oral advice.

A member should assume that tax advice provided to a taxpayer will affect the manner in which the matters or transactions considered would be reported or disclosed on the taxpayer's tax returns. Therefore, for tax advice given to a taxpayer, a member should consider, when relevant (a) return reporting and disclosure standards applicable to the related tax return position and (b) the potential penalty consequences of the return position.

This statement accepts that, given the wide range of variables in terms of application, and the inherent constraints of legal application, a member might be in a situation where he/she in good faith believes that more than one tax position meets the standards set forth in the STS200's. A member's advice concerning alternative acceptable positions may include a discussion of the likelihood that each such position might or might not cause the taxpayer's tax return to be examined and whether the position would be challenged in an examination. The member should, in so far possible, quantify the likelihood in order to equip the client to make a determination of the chose course of action based on a educated, well researched position-recommendation from the Member.

Members should make it clear that the advice given is current and may be affected by subsequent changes in the law. To reduce the risk of misunderstanding, a member may wish to make it clear in the engagement letter that no responsibility is accepted to inform a client automatically that advice previously given, by either a member or a predecessor, has been affected by a change in the law but that they are willing to receive instructions to reconsider such advice.

The exception is however where a member is assisting a taxpayer in implementing procedures or plans associated with the advice provided or when a member undertakes this obligation by specific agreement.

Explanation

Tax advice is recognised as a valuable service provided by members. The form of advice may be oral or written and the subject matter may range from routine to complex. Because the range of advice is so extensive and because advice should meet the specific needs of a client, neither a standard format nor guidelines for communicating or documenting advice to the taxpayer can be established to cover all situations.

Although oral advice may serve a clients' needs appropriately in routine matters or in well-defined areas, written communications are recommended in important, unusual, substantial value, or complicated transactions. The member may use professional judgment about whether, subsequently, to document oral advice.

In deciding on the form of advice provided to a taxpayer, a member should exercise professional judgment and consider such factors as the following:

- The importance of the transaction and amounts involved
- The specific or general nature of the taxpayer's inquiry
- The time available for development and submission of the advice
- The technical complexity involved
- The existence of authorities and precedents
- The tax sophistication of the taxpayer
- The need to seek other professional advice
- The type of transaction and whether it is subject to heightened reporting or disclosure requirements
- The potential penalty consequences of the tax return position for which the advice is rendered
- Whether any potential applicable penalties can be avoided through disclosure
- Whether the member intends for the taxpayer to rely upon the advice to avoid potential penalties.

A member may assist a taxpayer in implementing procedures or plans associated with the advice offered. When providing such assistance, the member should review and revise such advice as warranted by new developments and factors affecting the transaction.

Sometimes a member is requested to provide tax advice but does not assist in implementing the plans adopted. Although developments such as legislative or administrative changes or future judicial interpretations may affect the advice previously provided, a member cannot be expected to communicate subsequent developments that affect such advice unless the member undertakes this obligation by specific agreement with the taxpayer.

Taxpayers should be informed that:

- the advice reflects professional judgment based upon the member's understanding of the facts, and the law existing as of the date the advice is rendered and
- subsequent developments could affect previously rendered professional advice.

Members may use precautionary language to the effect that their advice is based on facts as stated and authorities that are subject to change.

In providing tax advice, a member should be aware of applicable confidentiality privileges.

STS 240

Engagement hand over to successor tax professional

Purpose

The purpose of this statement is to set the standard and requirements for members in situations where an existing engagement is to be handed over to a successor tax profession.

Statement

If a member is asked to hand over documents and information to a successor tax professional taking over the tax responsibilities the member held, the following points should be considered:

- If the request does not come from the client directly, a member should obtain written consent from their former client prior to providing any information to the successor
- Some documents on a member's files may belong to the client. A member is therefore required to provide these on request to the successor.

Disputes over fees, unpaid fees or the deterioration in the relationship between the former client and a member are not professional reasons why a member should not hand over the information to the successor. The member should also not decline to release and transfer of the SARS electronic e-Filing profiles where they held such profiles on behalf of the client.

Where original documents are handed over, a member should retain copies for their records for any future reference should it be necessary, for whatsoever reason. The termination of a professional relationship does not change a member's requirement to maintain proper professional records of work performed, even if a former client requests the destruction of all copies held by a member. Refer STS 220 for retention of documentation.

Where documents belong to a member, a member should co-operate in providing copies of documents relevant to the client's ongoing tax affairs to the successor.

If, after handover, a member subsequently receives any correspondence relating to the former client, they should forward that correspondence without delay to the client, and advise the sender to address future correspondence direct to the client.

Explanation

There may be various reasons why a client decides to end a professional relationship for tax services rendered. Whatever the reason, members should not be in any way obstructive during the handover process. A member is required to act in a professional manner in all circumstances and at all times, this includes the ending of a professional relationship with a former client and communications with the successor tax advisor where necessary.

Members should handover information that is vital to the ongoing tax compliance of the former client, but should retain copies of the information in case this might be needed to refer to in future for any queries regarding the work performed by the member.

Although there are not formal provisions in the ITA or TAA that prohibits a member from refusing to release and transfer the SARS electronic e-Filing profiles, SARS does require that a taxpayer be compliant and a practitioner failing to allow the transfer might hinder a taxpayer to be compliant. This could have a negative impact on the member or its employer if the former client decides to take legal action against the member or holds the member responsible for any penalties imposed due to non-compliance by the client.

Members may not knowingly obstruct the proper administration of the tax laws, which will be the case should a members' actions lead to the prevention of a taxpayer from submitting his or her return as a result of withholding the e-Filing profile.

The subsequent tax professional should also at all times refrain from bringing the former tax professional in disrepute and correspondence with the taxpayer should not bring the professionalism or competency of a fell tax professional in disrepute.

STS 310

Interaction with third parties

Purpose

The purpose of this statement is to set the standard and requirements for members when interacting with third parties. A third party is a person that is not party to the main engagement agreement between the member and the client and does not have principal authority to act on behalf of the client. These might include, but is not limited to: SARS, NamRA, external specialists, another member, lawyers, etc.

Statement

A member should treat all information provided to them by the client as confidential and should only share or disclose such information as and when necessary.

Unless required to do so by law or where it is considered reasonably necessary for the administration of justice, such as to enable a member to defend themselves in disciplinary proceedings, a member must not release confidential information to a third party without first obtaining the client's written consent, clearly specifying the scope of such disclosure.

After obtaining such consent, a member should only disclose and share information that are necessary and required under the specific circumstances and in line with the specifications of the consent provided.

Instances that might warrant the disclosure of information is the following, but not all inclusive:

- Audit, investigation or request for information by SARS and NamRA
- Liaising with external specialists (refer statement STS 410)
- Defence in legal proceedings or claims against the member or its employer.

Explanation

Members are trusted advisors to clients and are trusted with information that are of particular importance to their fortunes and business.

The disclosure of advice, reports or other documents or information to third parties without consent may give rise to a number of potential risks, including the following:

- Breach of client confidentiality
- Damaging the reputation of the member and/or his/her employer
- Unintended consequences for the client
- A damages claim against a member from the client.

It is likely that a member will have a contractual obligation under the engagement letter or entered into a non-disclosure agreement with the client, as well as a professional obligation, to maintain client confidentiality. Keeping this trust with the client is fundamental to the client relationship. Disclosing information without consent can ruin the relationship and have dire negative consequences.

STS 410

Evaluation need for involvement of external specialist

Purpose

The purpose of this statement is to set the standard and requirements for members on when to involve an external specialist on an engagement and what information to share with the external specialist.

Statement

A member is encouraged to consult, or to refer work of specialist nature to fellow professionals when the member is of the opinion that he/she does not have the necessary skillset or competencies to advise the clients on that specific matter. In addition to this, it is accepted that the Tax compiler's functions differ from the tax advisor functions in that the tax advisor is expected to perform all compliance and non-complex advisory functions (which is expected of the tax compiler) but also to be able to provide in depth tax opinion assistance and well as dispute resolution of a more complex nature with SARS.

The level of complexity and risk associated with the typical engagement entered into by the Tax Advisor places a higher requirement level on the assurance and professional competency and experience level on the tax advisor than the tax compiler.

A member should apply professional judgement in determining whether a specialist's involvement is necessary in any particular situation. If a member relies on work performed by an external specialist, evidence of it should be retained on the client file.

A member should take into account client confidentiality rules and should obtain consent from the client first before consulting with the external specialist.

Members should only share information with the external specialist that is necessary and relevant to the specific matter or transaction, and only after permission from the client has been obtained.

Members may in good faith rely without verification upon information furnished by the external specialist.

Explanation

Taxation is a highly specialised area and all members might not have the same skillset and areas of specialisation. A member should only accept engagements for which he/she is suitably skilled. Accepting engagement for which members are not skilled could damage the reputation of the

member, bring disrespect the profession and result in lawsuits and legal proceedings against the member itself or its employer.

SARS can impose financial penalties on taxpayers based on their behaviour in terms of section 223 of the TAA. These behaviours are the following and taxpayers could find themselves in one of these categories because of incorrect advice given by members not having sufficient skillsets and competencies to have advised on a specific matter:

- Reasonable care not taken in completing return
- No reasonable grounds for 'tax position' taken
- Impermissible avoidance arrangement (refer section 221 of the TAA for definition)
- Gross negligence
- Intentional tax evasion.

A member should therefore not hesitate to consult with or refer a client to a person with the suitable skills whenever required.

The following are examples of where a member should consider involving an external specialist, i.e. where the matter is of significant nature:

- The amount of tax at stake, or potentially at stake, in relation to the matters advised on is significant for a client and there is a real risk that a contrary view could be presented by another party or SARS; or
- The matters to be advised on are of sufficient importance to a client to merit obtaining a specialist opinion due to their nature or impact of an incorrect position taken; or
- Where the risks for a member, assessed in terms of professional reputation or financial exposure, of giving wrong advice are high.