

## TAX PRACTITIONER REQUIREMENTS: THE REGISTRATION, DE-REGISTRATION, RE-INSTatement PROCESS AND THE TRANSFER OF TAX PRACTITIONERS BETWEEN RCB'S

### 1. Background

Section 240 of the Tax Administration Act, 2011 (the TAA), requires every natural person who:

- provides advice to another person with respect to the application of a tax Act; or
- completes or assists in completing a return;

to register with or fall under the jurisdiction of a 'recognised controlling body' (RCB), as referred to in section 240A of the Tax Administration Act, 2011 (the TAA), 21 business days after the date on which that person, for the first time, becomes liable to register. Such a person must also register with SARS as a tax practitioner within 21 business days after becoming liable to register. Certain exceptions do apply as set out in section 240 of the TAA.

The TAA defines certain bodies to be recognised controlling bodies (RCBs). They are:

- Legal Practice Council
- a statutory body that the Minister is satisfied that it is similar to the statutory bodies listed above. The Act further stipulates that the Commissioner may recognise a controlling body, if the body:

Maintains relevant and effective:

- minimum qualifications and experience requirements;
  - continuing professional education requirements;
  - codes of ethics and conduct; and
  - disciplinary codes and procedures.
- is approved in terms of section 30B of the Income Tax Act, 1962, for purposes of Section 10 (1)(d)(iv) of that Act; and
  - has at least 1 000 members when applying for registration or reasonable prospects of having 1 000 members within a year of applying.

SAICA, together with a number of other professional bodies, applied for and were approved as RCBs, by SARS. A member of SAICA therefore does not need to register with any other body in order to register as a tax practitioner. However, there are specific requirements that members need to adhere to and steps to be taken to enable registration.

## 2. Requirements for registration

In order to qualify for registration as a tax practitioner, all SAICA members must complete the Tax practitioner registration form. To maintain this registration on an ongoing basis, all of the following requirements must be met:

1. The person must belong to or fall under the jurisdiction of an RCB;
2. The person must have the minimum qualifications and experience as set out by the relevant RCB:

An RCB may register an individual as a tax practitioner, if the individual meets the following requirements for minimum qualifications and experience:

- NQF level 6 and above with at least one accounting module and one tax module, plus at least 1 year's tax working experience; or
- NQF level 5 plus at least 4 years' tax working experience; or
- NQF level 4 plus 10 years' tax working experience. The tax working experience must be verifiable by the employers or clients.

### 3. SARS Tax practitioner readiness programme:

Individuals wishing to register as tax practitioners are required to attend a SARS readiness programme and successfully complete the related assessment by obtaining a 90% pass mark. Once the individuals have been registered as tax practitioners, they will be required to meet the Continuing Professional Education (CPE), over and above the SARS readiness programme.

4. The person must not have been removed from any other controlling body, within the last five years, as a result of serious misconduct;
5. The person must not have criminal convictions in respect of the offences described in section 240(3) of the Tax Administration Act during the last five years, that is:
  - theft, fraud, forgery or uttering a forged document, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2014; or
  - any offence involving dishonesty,

for which such person has been sentenced to two years in prison without the option of a fine or a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991;

Note: Individuals applying to be registered as tax practitioners for the first time are required to submit as part of their application an independently verified criminal-free certificate to SAICA, e.g. provide a police clearance certificate from SAPS.

Once the individual is registered as a tax practitioner, the tax practitioner must on an annual basis confirm to SAICA that their criminal-free status remains unchanged through the annual declaration

process. Following this, tax practitioners must submit a sworn affidavit to their RCB once every 5 years indicating that their criminal-free status remains unchanged.

6. The person must not have been convicted of a serious tax offense within the last five years;

Note: Individuals applying to be registered as tax practitioners for the first time are required to submit as part of their application a Tax Compliance Status to SAICA. Once the individual is registered as a tax practitioner, the tax practitioner must on an annual basis confirm to SAICA their Tax Compliance status.

7. The registering member must be compliant with SAICA's code of ethics;

8. The person must participate and comply with the CPE requirements as set by SARS.

The SARS requirement for tax practitioners applies from the date of registration (that is, apportionment applies).

Tax Practitioner members must attain a minimum of 18 verifiable CPE hours annually, consisting of the following:

- 10 tax hours;
- 2 ethics hours; and
- 6 hours relating to the service provided by the individual – e.g. audit, financial reporting, etc. If the individual provides only tax services, then presumably additional tax CPE hours will fulfill this requirement

Note that SAICA verifies this on an annual basis as part of the annual tax practitioner declaration and audit process.

### **3. Registration process**

Registration as a tax practitioner is a two-pronged approach as, in terms of the process defined by SARS, one needs to register both with SARS and the RCB, which is, in this case, SAICA.

#### **3.1 SARS registration**

- Members must first register as an eFiler, if this has not already been done.
- Following this, members must register as a tax practitioner on their eFiling profile.
- Guidance is provided on the SARS website and may change from time to time depending on SARS system changes. It is important that members select SAICA as their designated RCB on the RAV01 (registration, amendment, and verification form) on their eFiling profile.

#### **3.2 SAICA registration**

During the 2018 year, SAICA introduced a tax practitioner regulatory subscription fee to cover the cost of regulating tax practitioners. No concessions have been granted to lifetime members or

members with smaller practices as the cost to regulate is the same per member, regardless of specific circumstances.

SAICA's membership department is responsible for processing the registration, subject to the abovementioned fee being settled.

### **3.2.1. Normal SAICA Registration Process:**

- All Members and Associates are required to submit an online application via the Member Portal (under the Membership menu) for registration as Tax Practitioners with SAICA the RCB.
- For queries regarding registration (i.e. after having completed the online registration form), please use the Member Portal or reply to the registration case that would have been send to you after successful submission of your application.
- Note that SARS issues the tax practitioner number (e.g. PR-1234567) and SAICA will not be informed of this. Once you receive your PR number, we'd appreciate if you'd send this to [saica@saica.co.za](mailto:saica@saica.co.za) to assist us in updating the member database. If you do not receive you PR number within 3 days of SAICA having confirmed your registration, please contact the person who assisted with your registration to ensure that the matter is escalated appropriately.

### **3.2.2. Transfer Registration Process for Tax practitioners who resigned from releasing RCB:**

#### **3.2.2.1 Tax Practitioner transferring from an RCB within six months**

- I. An existing Member or Associate of SAICA may transfer his/her RBC his/her Tax Practitioner Status to SAICA within six months from date of termination with the releasing RCB. The following supporting documentation would be required:
  - o Letter of good standing from releasing RCB

The Letter of Good Standing issued by the releasing RCB should not be more than six months old and should contain the following information of the tax practitioner:

- The full name, the Identity number or passport number, the PR Number, the date of the registration and the date of the resignation of the tax practitioner, and
- An indication that the member's
  - CPE is up to date,
  - tax compliance was verified and proved to be compliant,
  - criminal verification check status, and o that there are no pending disciplinary cases against the member.

- o Proof of payment
- II. If a registered tax practitioner has joined the receiving RCB in the period of less than six months from the resignation date and has submitted the Letter of Good Standing, the Receiving RCB is required to obtain the following documentation:
- The receiving RCB is required to verify tax compliance status at the time the tax practitioner joined, and the person must be tax compliant.
  - Criminal record check: the tax practitioner is required to submit an affidavit stating that he/she has not committed any crime listed in section 240(3) of the Act.
  - Continuous Professional Education: the Tax practitioner is required to provide the evidence of the CPE status for the year

### **3.2.2.2 Tax Practitioner transferring from an RCB six months or longer**

If a registered tax practitioner has joined SAICA six months or longer after resignation from the releasing RCB, he/she must be treated as a new registration, hence meet all amended criteria. The following supporting documentation will be required:

- Proof of having completed the SARS Tax Practitioner Readiness Programme
- Proof of Tax compliance Status
- Evidence of the CPE compliance status
- Proof of the minimum qualification and working experience (Applicable to Associate Technicians only)
- Criminal Free Status
- Proof of payment

### **3.2.3 Transfer Registration Process for Tax practitioners who were terminated, deregistered or suspended from releasing RCB**

#### **3.2.3.1 Tax practitioners whose membership was terminated by the releasing RCB due to non-compliance of its rules**

Where a tax practitioner's membership was terminated by the releasing RCB, he/she would not be issued with a letter of good standing. Therefore, no receiving RCB is allowed to register him/her as a tax practitioner. He/she may only be registered with a receiving RCB once he/she meet all the requirements in as set out in 3.2.2 above.

### **3.2.3.2 Tax Practitioners who were deregistered by the releasing RCB or SARS due to serious misconduct or court judgement**

Where a Tax practitioner's membership is deregistered by the releasing RCB, or the tax practitioner's status is deregistered by SARS, in terms of section 240(3)(a), section 240(3)(b) or section 240(3)(c) of the Act then no RCB is permitted to register a deregistered tax practitioner as a tax practitioner unless the period of five years, from the date of the deregistration by the releasing RCB or the date of the conviction, has lapsed.

After the five-year period has lapsed, a receiving RCB may register the individual as a tax practitioner if he/she meet the amended criteria. This is treated as new registration.

### **3.2.3.3 Tax Practitioners who were deregistered by the releasing RCB or SARS due to Tax non-compliance**

Where a Tax practitioner's membership is deregistered by the releasing RCB, or the tax practitioner's status is deregistered by SARS, in terms of section 240(3)(d), no RCB is permitted to register a deregistered tax practitioner as a tax practitioner unless he/she can demonstrate to the receiving RCB that he/she has been tax compliant for at least 6 months in the preceding 12 months.

Once the individual demonstrated that he/she has been tax compliant for at least 6 months in the preceding 12 months, a receiving RCB may register him/her as a tax practitioner if he/she meet the amended criteria. This is treated as new registration.

### **3.2.3.4 Tax Practitioners whose membership was suspended by the releasing RCB or SARS**

If prosecution for a serious tax offence has been instituted but not finalised against a registered tax practitioner and if the registered tax practitioner continues with the commission of a serious tax offence after the criminal proceedings have been instituted, SARS will suspend the registration of the registered tax practitioner in terms of section 240(4) of the Act, and his/her RCB must suspend his/her membership. Once fully acquitted, his/her RCB must reactivate his/her tax practitioner status.

If the tax practitioner wishes to change his/her RCB after the reactivation of the tax practitioner status, the requirements in 3.2.2 will apply.

## **3.2.4. Reinstatement Registration Process**

### **3.2.4.1 Reinstatement where a Tax practitioner was deregistered by SAICA due to non-compliance of SAICA Bylaws**

A Member or Associate of SAICA whose Tax Practitioner status was struck-off for non-payment or voluntary request to be removed as Tax Practitioner may apply to have his or her status as Tax

Practitioner reinstated within six months from the date of deactivation as a Tax Practitioner where SAICA was the RCB. The following supporting documents would be required and must be submitted via the online application form:

- o Affidavit (see attached template)
- o Proof of payment (if applicable)

A Member or Associate whose Tax Practitioner status has been deactivated for more than six months will be treated as a new application.

#### **3.2.4.2 For reinstatement where a Tax Practitioners was deregistered by SARS due to serious misconduct or court judgement**

Where a Tax practitioner's membership is deregistered is deregistered by SARS, in terms of section 240(3)(a), section 240(3)(b) or section 240(3)(c) of the Act then SAICA is not permitted to register a deregistered tax practitioner as a tax practitioner unless the period of five years, from the date of the conviction, has lapsed.

After the five-year period has lapsed, SAICA may register the individual as a tax practitioner if he/she met the criteria set out in section 5 of this document. This is treated as new registration.

#### **3.2.4.3 For reinstatements of Tax Practitioners who were deregistered by SARS due to Tax Non-compliance**

Where a Tax practitioner's membership is deregistered by SARS, in terms of section 240(3)(d), SAICA is not permitted to register a deregistered tax practitioner as a tax practitioner unless he/she can demonstrate that he/she has been tax compliant for at least 6 months in the preceding 12 months.

Once the individual demonstrated that he/she has been tax compliant for at least 6 months in the preceding 12 months, SAICA may register him/her as a tax practitioner if he/she meets the Section 5 of this document. This is treated as new registration.

**3.2.4.4 For all other types of reinstatements**, members will need to follow the new Tax practitioner registration provided they meet the requirements set out in section 5 of this document.

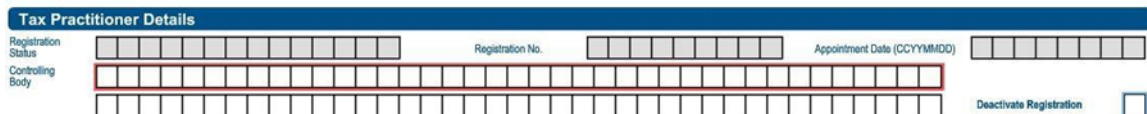
## **4. Deregistration process**

Deregistration as a tax practitioner may be effected on your personal eFiling profile and is immediate. You will also need to advise SAICA of your deregistration and SAICA will also effect the deregistration on our eFiling profile. Note that once you have deregistered, you may not provide tax services for a fee as doing so whilst not registered, is considered a criminal offense.

### **4.1 SARS Deregistration**

See below extract from the SARS guide to assist with deactivation as a tax practitioner with SARS:

This functionality will only deactivate the registration of the tax practitioner, which means that you will not be able to practice as a tax practitioner nor be assisted by SARS through any of the tax practitioner channels. In the tax practitioner container on the RAV01 form, there is a tick box that may be selected if you wish to deactivate your tax practitioner registration.



A warning message will be displayed to ensure that you want to deactivate the registration.



Select "Ok" to continue or "Cancel" if you do not want to deactivate the registration. If you click "Ok", the tick box will be selected.



You will receive a Deregistration notice that you can view by following the steps in the section below "Tax Practitioner Notices".

**Note:** If you select to deactivate your registration, you will not be able to assist any taxpayer in your capacity as a registered tax practitioner. You will still be allowed to act as a representative on behalf of others, provided the service is not for payment.

Should you encounter difficulties with the deregistration process, please call the SARS Contact Centre for assistance.

If SARS are unable to assist, contact SAICA and complete the form accessible via the link below.

## 4.2 SAICA Deregistration

A Member or Associate of SAICA that is also a Tax Practitioner with SAICA as the RCB must submit his/her deregistration request via the Member Portal under the My Profile menu.



## 5. Deregistration of Tax Practitioners for SARS Non-Compliance to section s240 (3)a)–(d)

### 5.1 Background

Section 240(3)(a) - (d) of the Tax Administration Act, 2011 provides:

‘A person may not register as a tax practitioner under subsection (1) or SARS may deregister a registered tax practitioner if the person or the registered tax practitioner, as the case may be—...

- a) during the preceding five years has been removed from a related profession by a ‘controlling body’ for serious misconduct;
- b) during the preceding five years has been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 or any offence involving dishonesty for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
- c) during the preceding five years has been convicted of a serious tax offence; or
- d) during the preceding 12 months has for an aggregate period of at least six months not been tax compliant to the extent referred to in section 256(3) and has failed to—
  - (i) demonstrate that he or she has been compliant for that period; or
  - (ii) remedy the non-compliance,

within the period specified in a notice by SARS.

### 5.2 Impact

The impact of the above deregistration is that tax practitioners will lose their access to the tax practitioner eFiling profile and will effectively be prevented to reregister as a tax practitioner unless section 3.2.3 has been met. of . They will also not be able to make use of the SARS tax practitioner channel.

This will also have a material impact on the clients of these tax practitioners and members should ensure that where they are affected by such deregistration they take appropriate actions to minimise the impact on clients, including timeously communicating to them and ensuring that they have sufficient time to transfer any eFiling taxpayer profiles before the deregistration becomes effective.

### 5.3 Ensure Ongoing Tax Compliance

All members should ensure that they maintain compliance with all aspects of the SARS requirements and Amended criteria. tax practitioners should lead by example in this regard.

#### **5.4 Confirm your registered controlling body on eFiling or with SARS**

Members who are tax practitioners are also requested to please ensure that you verify your current registered controlling body on your eFiling profile and that it is correct, especially if you have changed controlling bodies in the last few years.

