ACCFIN

SOFTWARE THAT WORKS THE WAY YOU THINK

Webinar Tax Practitioners 1 March 2022

Contents

1. ADVICE TO TAX PRACTITIONERS

Source: ***Prof Anneline Venter***

"Your desire to advise other people, grows in line with your perception... that assumes you're wiser than them." – Toba Beta, Master of Stupidity.

In the context of tax advisory services, this is not necessarily a bad desire as long as you are actually "wiser" than your taxpayer clients. This is a great responsibility, as taxpayers come to us for advice voluntarily and assume that we have the necessary knowledge and "wisdom" to safely guide them on the path to necessary compliance.

Taxpayers are not alone in their perception of our wisdom, the tax authorities are now starting to actually demand a certain level of wisdom from us, as they have high stakes in the taxpayer eventually reaching the compliance goal. Since we as tax practitioners can be a convenient scapegoat for everything that can go wrong in the quest for compliance; let us make sure that we exhibit this wisdom to ensure that we remain the wise old priests presenting the offerings on the altars of Treasury, and that we do not become the sacrifice ourselves.

Be an eternal student

Keeping abreast with changes in tax legislation can be a daunting task; however, staying updated is the cornerstone of any successful tax practice and will ensure that the practitioner has the necessary knowledge to provide up-to-date advice to clients. Stay informed by:

- *Visiting the SARS website regularly*, to find SARS interpretations of certain areas of legislation, administrative practices, deadlines, strategy changes and plans, risk areas, legislation changes, etc. SARS guides and interpretation notes should be downloaded and saved for easy access. Often, older guides or interpretation notes provide beneficial information that does not reappear in later ones. The SARS website also contains useful links and templates, especially for small businesses.

- *Visiting websites of Professional bodies* such as SAIT, SAICA, SAIPA provide regular information on changes in the Act, interpretation of the changes as well as judgments in tax cases.
- *Listening to and studying budget speeches* and be specifically attentive to rate changes that may come into effect immediately after the budget speech.
- *Attending tax update seminars* presented by professionals.
- *Reading the Explanatory Memoranda* by Treasury on the Taxation Laws Amendment Bills when it is published (these can be obtained on Treasury's website.
- *Ensuring your qualifications are up to date*. Many universities present Higher Diploma in Tax courses, and some are even on-line. Basic technical diploma courses and short courses are also available on-line for persons with a less technical background on tax, such as lawyers.

Specialise or seek specialist advice

There are certain areas in tax that present a higher risk due to the complexity of the legislation. Ensure that you specialize in these areas if you give advice on these issues or alternatively seek specialist advice. For larger companies these may be areas such as transfer pricing, or complex capital gains tax implications, where superficial compliance attempts will increase risk significantly. Generally high-risk areas include typical anti-avoidance legislation.

Consider your conduct

Tax practitioners are expected to display professional conduct. Professional conduct includes, amongst many other things, meeting your responsibilities toward the taxpayer and the tax authority. This means that the tax practitioner should provide excellent service, by way of advice provided, treatment of client, and handling tax officials. It is imperative that the tax practitioner should fulfill the role as lynch pin between the taxpayer and tax official by finding a balance between, maintaining a positive attitude toward SARS, and insisting on fair and professional treatment of the taxpayer by the revenue officials. Good, timely and professional communication skills will be an important factor in achieving these goals.

Limit your liability

In future the tax practitioner will have to be more vigilant in preventing claims against the tax practice by taxpayers related to errors, failure to advise and inappropriate tax treatment of income. Informal advice over the telephone should be eliminated, as the tax practitioner will not have evidence for his understanding of the facts, scope and the advice provided. To limit risk associated with future claims:

- ensure sufficient information is provided by the client, and request additional information if necessary;
- document conversations including date, client, advice required, responses to questions, issues not included in scope, filing requirements and risks;
- engagement letters should be compiled and signed by both the taxpayer and tax practitioner, which delineate the specific scope, and clearly exclude additional issues. Avoid automatic renewal engagement letters that stay unchanged from year to year; and
- keep comprehensive records of all activities, information provided, filings done, payments made, advice provided.

Emphasise ethics

The days are long gone where the tax practitioner can act as an accomplice in tax avoidance and evasion activities with absolutely no consequences, except for a huge bank account. Tax planning these days should have, as a priority; the avoiding of astronomical additional tax and penalties, and the only way to accomplish that is to increase compliance levels and manage tax audit risks. With the aggressive audits observed in South Africa currently, a good tax practitioner is one that can assist the taxpayer in successfully demonstrating compliance to the revenue official and avoids abuse of the taxpayer by managing the tax auditor. To add risky avoidance structures to this mix will only increase the taxpayers' risk exposure and create unrealistically low expectations for the taxes to be paid. As tax practitioners become more regulated, avoidance advice can present a great risk to the tax practitioner who might be held responsible later on.

Link to Linkedin

Discussion forums on professional networking sites, such as "Linked-In" provide a great opportunity for tax practitioners to share experience, ask questions, discuss contentious issues, and thereby increase their practical knowledge and become aware of issues that other practitioners have encountered and dealt with successfully. Become connected to your fellow tax practitioners by joining a tax discussion group.

Get acquainted with tax administration

Most tax practitioners with an accounting background are not specifically well versed in the administrative side of taxation. If this is the case, it means that your clients will not get the benefit of solid tax administration advice or education on their constitutional rights and administrative obligations. With the recent rather aggressive Tax Administration Act that was promulgated, accountants can no longer ignore tax administration. Tax Practitioners must ensure that SARS officials follow due process and comply with the Tax Administration Act. Obtain Tax Administration knowledge by attending seminars on the Tax Administration Act or attending on-line courses on Tax Procedural Law (information available from SAIT).

Find a solid source

Any advice is only as good as the source from which it is gleaned. Many tax practitioners never consult the relevant Tax Act, but only rely on either previous knowledge obtained in seminars, or one specific textbook. Textbooks and seminar presenters only provide an interpretation of the actual legislation, which may vary from person-to-person. These interpretations are not always accurate. To ensure that the sources used for advice are solid, make sure to read the wording of the section in the relevant Tax Act; and make use of several sources (for instance more than one textbook) to provide you with an accurate and comprehensive picture of the legislation and its common interpretations.

Eliminate errors

Ensure that filing errors are eliminated from the tax practitioner’s side by:

- double checking all filing and extension due dates;
- instructing clients formally to give you notification immediately if they receive SARS notices;
- using a diary system or tax administration software to trace tasks, filing and dates;
- including all applicable deadlines in communication with clients; and
- ensuring good management of manual submissions and proof of submissions

Ensure that calculation errors are eliminated by:

- double checking all calculations and spreadsheet prepared by clients;
- comparing current and prior year income, deductions and other important information. Obtain explanations of differences from the taxpayer;
- utilizing built-in quality controls in tax software. Beware of program "bugs" in software programs including data import errors, calculation errors and out of date software (especially for employee's tax);
- utilising professional staff to do spot checks, but keep confidentiality in mind;
- maintaining a healthy attitude of professional skepticism; and
- reconciling income tax, VAT, employees tax and customs information, if possible.

Don't risk your reputation

Tax Practitioners are currently high-risk taxpayers according to SARS. Ensure that you maintain an excellent reputation by maintaining a high level of perceived personal compliance and being a model taxpayer in order to avoid unnecessary audits.

2 TAX RETURN PRODUCTION

2.1 eFiling Capture of Tax Returns on the SARS Website

This is the most popular form of tax return data captured currently. Once the taxpayer is registered on SARS eFiling you may go onto the SARS eFiling website and enter the tax return data directly into the Adobe or Flash forms.

If you make any kind of error in data capture and you submit it you will only be able to fix it by objecting to the assessment through a new mechanism on the website to rectify data capture errors or do another version before it is assessed.

The Adobe form does no calculations and is designed for only inputting the raw data and doing various validations. Certain figures you enter are the consolidated figures based on income statements and schedules. It is imperative that you calculate tax outside the system so that you have something to check the assessment to when the taxpayer is assessed.

The website has a basic calculation facility but cannot do more complicated calculations. By running the SARS calculation a few times you risk being audited because SARS thinks you are playing what-if.

Before you submit any tax return you need to convey to your client what is being submitted and to satisfy all the risk control requirements of your firm.

There is a dis-connect between the data on the SARS side and the data you have on file as this is a duplication of data.

There is no management and tracking and control of tax return submissions on the SARS e Filing system.

2.2 Use and benefits of a back-office system

You should note that it has become absolutely essential for Tax Practitioners to build their own internal systems to track and control tax returns in their office and reduce their risks. You can't do this on the SARS e Filing website without having a back office system to support you.

A tax calculation system is the only sure way that you can reduce the ***risk of errors*** when submitting tax return data via the electronic route, because you are able to validate and check the data before you submit it. Tax calculation systems gives you the ability to calculate the tax owing or a refund due pulling through the provisional tax payments that have been made from the system. Before you submit any tax return you need to convey to your client what is being submitted and to satisfy all the risk control requirements of your firm.

By not connecting a tax computation program to the tax return e Filing process you are at risk of making a serious error or forgetting to enter some part of the tax return data inadvertently. This will be like preparing a trial balance without adding it up to see if it balances. You need to have something to balance to, to ensure the integrity of the data entered and submitted to SARS e Filing as all you are doing is entering raw meaningless and sometimes consolidated data into the form and it is quite easy to make a capturing error.

Tax calculation systems will allow you to print out a facsimile tax return document which should be approved by the partner or manager and then by the client. Your client must sign a tax return replica as approval for the information submitted. This document is to be filed in the clients tax file as well as in the tax calculation as a scanned document and is the proof that the information you have submitted to SARS eFiling is correct and you have confirmation that the taxpayer supplied the data. You may use this document to check the assessment when you receive it back.

Tax back office system actually checks the assessments automatically. Assessment checking should become virtually automatic right down to the source code level.

The system should allow you the storage of various scanned ***supporting documents*** like IRP5's certificates, RA certificates, schedules etc which should attach to each taxpayer record and keep on file. This will allow you at any time to easily access the documentation and print it out for audit purposes. Later on, in the notes we deal with the authenticity of the scanned document and whether they can be used as an original for the purpose of proving a claim.

2.3 The various methods of processing Tax Returns

There are various ways of handling tax return submissions.

2.3.1 Tax Return IT12 eFiling Individual and Trusts Using The Direct Interface

Back office systems have the ability to build up and prepare an individual's tax return as well as a trust tax return. There are a number of checks and balances that have to be complied with before you submit. It is critically important in regard to the individual's tax return that a statement of assets and liabilities is done where applicable and the capital reconciliation is looked into as this is the only real check that the income reported is correct. There is a huge amount of functionality and one needs to spend time in getting all aspects of this right. At the end of the process the system will produce a report pack which one will submit for signature and approval before it is e Filed.

2.3.2 Processing ITR14's

By making use of back offices systems you have the ability to process all the information on ITR14's by either entering the data manually or the ability to import a trial balance provided it is in Excel. Enter all the source codes and all the amounts which will automatically be posted to the appropriate part of the tax calculator.

You can also import directly from Draftworx working papers. Draftworx will automatically allow you to enter the source codes into the trial balance area so that when the data is imported it is posted to the correct slot on the tax return.

The tax calculators also has an ability to do all the add backs completing supporting schedules, completing the questions and has the ability to produce a total tax report pack for the client.

By making use of tax calculation programs you will have the ability to ensure that you take care and skill in carrying out all the routines in building up the return in a risk free-way.

2.3.3 Typing directly Into the Adobe Form On the SARS website

Where you don't have an electronic calculation system you will be typing directly into the cells or white spaces of the Adobe form on the SARS e Filing website. Besides the Adobe form telling you what is missing there is no validation on the figures that you input into the form. It is easy to type incorrectly and not spot the errors. If you have a tax calculation system then at least you can print out reports and tick the figures off against the adobe form.

2.3.4 The Solution to Tax Return Production

By making use of the direct interface method we will be sending tax data straight out of the tax calculation application through to SARS. Posting the tax information contained in the Adobe form on a local system across the internet or updating the web site it would take a minimum of 10 seconds per taxpayer reducing the bandwidth usage equating to a 98 percent saving. Then there is a question of how many times you have to load the Adobe Form before you finally press the submit button.

Most accounting firms use some form of external system to calculate and build up the tax return doing all the necessary checks to ensure that the taxpayer complies with all the tax requirements. They are spending the time doing this anyway. They would prefer entering the data into their own electronic systems and e Filing directly from within those systems.

Systems are reaching the stage where we can track the status of every tax return and every assessment.

2.5 Retaining scanned copies of supporting documents

I have often said that the change from manual processes to electronic processes and the fact that SARS does not need any supporting documentation whatsoever (unless they call for it) is a huge change in mind-set. Tax practitioners now also need to change their mind-set. It has now become absolutely essential to keep all supporting documentation in an electronic format so that it can be easily accessed, uploaded or e-mailed to SARS and transported around the office. So therefore one of the tasks or steps is to ensure that the necessary documents are converted and stored into an electronic format and filed. There is no question that in the future, systems have to cater for electronic filing of paper to reduce the costs of paper filing.

In the Tax Practitioners Guide Page 21 point 13 deals with the security of Adobe or PDF forms. The principal here is that you should retain all your supporting documents, scanning them into an Adobe format. This will allow you to retain them and then reproduce them as an original document when called upon to do so.

A tax calculation should you the added functionally of attaching any document to the taxpayer in question.

The Income Tax Act does not contain any specific provisions relating to the storing and scanning of electronic images although the Income Tax Act and various documents could certainly be interpreted as allowing scanned images of supporting documents to be submitted as evidence.

The document talks about keeping all the scanned supporting documents in an Adobe format where tampering is traceable through forensic investigation, JPEG images can be altered and therefore would not be permissible.

Where it can be shown that the internal controls of scanning and storing documents are intact this section indicates that where an original is called for the scanned Adobe image can be presented as the original. We need to refer to other electronic standards notably the Electronic Communications And Transactions Act, the ECT Act of 2002 which deals with all electronic communications. Please look at that act with a view to signing documentation electronically.

2.6 Management Of The Tax Return Submission Process

In this section we talk about how a Tax Practitioner should manage the whole tax return submission process. It's important to manage the process so that no steps are missed which could cause risk to the Tax Practitioner. Later on we will talk about how task management helps in this process and we will give some of the steps in the process. Task management is really just about managing each step in the process.

2.7 Important Steps in the Process

There are two critical steps in the tax return process that must be adhered to.

Ensuring that you have an updated ***mandate letter*** on file is critical to being risk averse in your tax practice and probably the most important step that you carry out before submitting a tax return. It is important to ensure that the client approves the tax return that you are going to submit before it is eFiled.

There should be documented steps in the process that at least deals with the following even if you are a very small practice.

* Check that the mandate is signed and up to date

If you ***don't*** have a signed mandate in your possession do not submit the tax return as SARS could hold you responsible for anything that SARS finds wrong with the tax return.

* Taxpayer to approve the return before submission

Another important step would be to get the taxpayer to sign the return or facsimile or report as acceptance that they agree with the figures that are being submitted to SARS.

Each firm should devise a step-by-step procedure or check list whereby each function can be ticked off as completed. The tasking system will take care of all the steps in the process ensuring that your firm becomes risk averse.

In a tax calculation system one can set up a system to ensure that all the steps are carried out before electronic submission is allowed. An example is that if say the client has not approved the tax return it can't be submitted by mistake.

It is clear that before a Tax Practitioner can submit any document on the eFiling website namely a provisional tax return or an income tax return it is imperative that he gets the clients approval before the document flows through to SARS. In other words the client must indicate that he has agreed with the return prepared by the Tax Practitioner and the practitioner should have evidence to this effect.

It is also no good to have an email for the approval but it is misplaced and can't be found when you really need it.

For convenience there should be a disclaimer for every tax return that the taxpayer must sign.

> ***This tax return is prepared by My Firm based on information received from you. You confirm that you have signed the letter of mandate and you indicate your agreement with the net income as shown in this documentation and confirm that the figures are supported by the information and supporting records that you have supplied to us by signing this page. You also confirm that we can go ahead with the filing of your income tax return. On signature of this page we confirm that we will proceed with the electronic submission of your tax return***.

Before the Tax Practitioner submits the return electronically the client must sign the printed report which is retained in the taxpayers file. One could also email the report to the client and by the client clicking on a button created in the email this would signify the clients assent.

Running or managing the various processes in a tax department is extremely difficult owing to the stop start nature of the tax return process and the large number of people involved in the process. The more taxpayers you have the more control you need. We at Accfin have developed a technology which we call ***task management*** which is integrated into all aspects of our software. Tasks help manage the process or the steps of each function in building up a tax return using the cradle to the grave approach.

In the previous chapter we dealt with the two most important tasks that should be signed off even for the smaller practice i.e. Mandate and approval of the return.

By making use of task management systems a user or the manager of a tax department can define the steps in the process that they wish to manage. The steps could be simple, perhaps a three step process or they could be more complex perhaps a ten step process. Later in this section we define some of the tasks that you would need to consider.

Task can be either electronic or manual. It is just that if these tasks are manual they would be much harder to control. With the electronic approach used in Accfin's tax solution you will easily be able to see exactly what tasks are outstanding at any point in time.

3 LIABILITY OF TAX PRACTITIONERS

3.1 Introduction

The Guide for Practitioners published by SARS (amended version) under the heading Liability of Practitioners deals with some very important issues in regard to the liability of Tax Practitioners and it is important that Tax Practitioners understand all the implications. Please note that this is a discontinued publication but provides important information and principles for the Tax Practitioner. The most important principle being stated below.

> **"*In essence as long as the information on the return accords with the taxpayer's instructions and there is no dishonesty on the part of the practitioner, practitioners cannot incur any liability."***

Dishonesty is one thing, but besides this the practitioner must show that he has complied with the rules of good tax practice in building up the tax return and that he has applied his professional skill in making sure that what he is filing is correct and cannot be questioned and conforms with the information that the client has supplied. If for instance a Tax Practitioner does not do a capital reconciliation for the client to ensure that all the income has been accounted for as well as including the taxpayer's assets and liability on the return. In this case has he the Tax Practitioner really applied due care and skill in preparing the tax return of his client? Of course this would only apply to a more complex tax return situation. If however the Tax Practitioner does not complete the statement of assets this may very well result in a material non-disclosure.

When e Filing started there was a misconception that Tax Practitioners would incur greater liability by e Filing tax returns. According to page 12 of the Guide for Tax Practitioners – *“**using the e Filing channel does not impose greater accountability or liability on you than of our manual channels**”.* As this is contained in an official publication I believe that this is exactly what SARS has intended and confirms the discussion from some years ago when the terms and conditions were onerous and made e Filing far more dangerous for Tax Practitioners. SARS agreed to change the conditions so that the liability between manual and electronic filing were exactly the same.

The real issue here is that because SARS in the past has acted aggressively against Tax Practitioners there is mistrust of SARS’s intentions. There are many well known cases of this aggression especially in some of the statements that SARS have made.

3.2 Signing Tax Returns

There is some confusion in regard to the signing of tax returns and many misconceptions. In order to determine the liability of practitioners in regard to signing tax returns we have to examine some of the sections of the law. The electronic way of doing things changes everything we know.

In terms of Section 66(6) of the income tax act tax returns must be signed by either the taxpayer or his duly authorized agent. I would just like to point out that the sections shown below have been deleted by the Tax Administration Act. I am discussing these sections because they really emphasize the proper position as I don’t think that the current law deals with some of these items properly.

> *6) Any return furnished as contemplated in this section shall be signed by the taxpayer or by his <u>agent</u> duly authorized in that behalf, and any person signing any such return shall be deemed for all purposes in*

connection with this Act to be cognizant of all statements made in that return.

The person who signs a return is deemed to be cognizant of all statements made in that return. So, it is very important that when completing the return, the Tax Practitioner gets the taxpayer to sign their approval, something we discuss in these notes. Nevertheless, the Tax Practitioner must apply his mind and understand all the components of the return, because by submitting any information to SARS the practitioner confirms that to the best of his knowledge such information is correct and complete, and that all the necessary information has been disclosed to SARS. Remember the Tax Practitioner details are being entered on the return. The same rules apply whether the return is completed manually or by electronically means.

The above applies perfectly when doing a manual tax return, however when doing an electronic tax return, it is the Tax Practitioners who press the submit button who are effectively signing the tax return for and on behalf of the taxpayer. The question then arises who in actual fact signed the tax return – the Tax Practitioner or the Taxpayer. Some would argue that the Tax Practitioner signed the return. This might be the situation where the taxpayer has done something wrong.

The **letter of mandate** or **engagement letter** should cover when signing the tax return on an electronic basis. It is therefore very important that Tax Practitioners get from their client a proper mandate and must get a positive confirmation that the taxpayer agrees with the contents of the return. In my view the mandate up front and then confirmation each time a return is submitted confirming the contents of the form.

A return is deemed to have been duly made and signed by the taxpayer, unless the taxpayer proves that the return was not made or signed by him or on his behalf, section 66(7).

7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act, shall be deemed to be duly made and signed by the person affected unless such person proves that such return was not made or signed by him or on his behalf.

7A) The Commissioner may, in the case of any return furnished by a taxpayer or a taxpayer's authorised agent in electronic format, accept electronic or digital signatures as valid signatures for the purposes of subsection (7).

A taxpayer cannot avoid responsibility by having his Tax Practitioner sign the return on his behalf. The taxpayer remains liable to SARS for the due and timeous fulfilment of all the taxpayers' obligations towards SARS. There is also a presumption in law that a false statement on a return is attributable to the taxpayer.

If there is a dispute as to whether a Tax Practitioner completed a return and applied his signature to the return with or without the consent of the taxpayer in either a manual or an electronic format it will be assumed that the signature was with the consent and authority of the taxpayer. See Section 66(7)(c). Of course if the Tax Practitioner has an engagement letter and mandate in place which is properly signed there can be no doubt that the taxpayer is responsible. It is these simple formalities that will prevent a lot of heartache in the long term.

7C) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a taxpayer affixed to any return as contemplated in subsection (7A), was used with or without the consent and authority of that taxpayer, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was so used with the consent and authority of that taxpayer.

3.3 Responsibility of Information When Submitting a Return

When submitting a return, it is absolutely imperative that there is confirmation by the taxpayer of what is being submitted and that the taxpayer is in total agreement because if the taxpayer changes their mind because of a SARS query or audit or the taxpayer is caught in a lie then at least the practitioner has the signature of the taxpayer of exactly what has been submitted and approved by the taxpayer. This could cause a huge problem for the Tax Practitioner if there is a dispute later, and this is one of the reasons why a practitioner should obtain confirmation from the taxpayer that all the information contained in the return was provided by the taxpayer and is correct. The mandate conditions will cover many of these aspects so we now see that the engagement letter and mandate are now extremely critical and it is really important to have it on file before you submit the tax return.

In the Tax Practitioner Guide it clearly says that information submitted to SARS should be based on information received from the taxpayer and the taxpayer is responsible for ensuring that such information is true and correct regardless of whether the information is submitted to SARS manually or electronically.

In these notes we deal with the mandate at length, so based on the above interpretation when a tax return is finalized by a practitioner that some form of document is printed out with a statement which will appear on the bottom of the summary of the tax calculation, which when the taxpayer signs his approval that he is aware of all the information that went into building up the tax return and he is aware that it is the information that he the taxpayer has provided for the completion of his tax return. Another way of doing this is for the taxpayer to sign a printout of the Adobe form but we would also suggest that a summary of the calculation is printed and the taxpayer signs it as well. This way he understands the total impact of the amounts that he is declaring.

If you were to use a tax preparation system then on a tax calculation summary or cover we would suggest something like this on the bottom of the calculation.

> ***Prepared by My Firm based on information received from you. You confirm that you have signed the letter of mandate and you confirm your agreement with the net income as displayed in this documentation and confirm that the figures are supported by the information and supporting documentation that you have supplied to us by signing this page. On signature of this page we confirm that we will proceed with the electronic submission of your tax return***.

3.4 When Practitioners Could Potentially Incur Some Liability.

In the Tax Practitioners Guide there is a section which deals with when practitioners could potentially incur some liability. The points below come from the guide.

If a Tax Practitioner signs a return without reasonable grounds for believing it to be true, or if they make use of any “fraud, art or contrivance is used.” It would be a good idea for the Tax Practitioner to establish some reasonableness tests to establish the reasonableness of the data been submitted on the tax return. It could be that a capital reconciliation exercise would be a reasonable exercise to establish that the living expenses are reasonable. It would be a very reasonable test to compare from one year to the next.

If Tax Practitioners use the electronic or digital signature of another person without their consent and authority.

If a Tax Practitioner does or omits to do anything that he is intended to, enable or assist a taxpayer to avoid or unduly postpone the performance of any duty or obligation imposed on imposed on the taxpayer. It could be the late rendition of a tax return in order to reduce the next years provisional tax could fall foul of this.

If a Tax Practitioner’s negligence results in the avoidance or undue postponement of the performance of a duty or obligation imposed on a taxpayer. Again the late rendition of a tax return in order to reduce the next year’s provisional tax could fall foul of this.

If a Tax Practitioners action or omission constitutes a contravention of a rule or a code of conduct laid down by the controlling professional body. Remember the Tax Practitioner has to be registered with a controlling body.

Action by SARS will only be taken if it is clear that the Tax Practitioner is guilty of a serious or persistent dereliction of duty involving dishonesty or subterfuge or the circumstances indicate an intention to obstruct or mislead SARS.

In terms of the TAA the Tax Practitioner can be reported to their controlling body by SARS for any dereliction of duty.

The mere act of submission either manually or electronically does not expose a practitioner to any liability.

4. TERMS AND CONDITIONS – MANDATE LETTER

4.1 Some History on Terms and Conditions of e-filing

Up and until about June 2006 there were some really horrendous terms and conditions on the SARS e-Filing website. It was only after moves from SAICA and the accounting profession in general to point out to SARS e-Filing that the profession would not be making use of the SARS e-Filing website unless the terms and conditions changed. What was necessary was that the terms and conditions of e-Filing would have the same liability as if a Tax Practitioner filed a return manually. Why should a Tax Practitioner have more liability just by filing tax returns electronically? I think it is important to understand just how anti-Tax Practitioner these terms were and how they have matured to the current position.

On the main website at that time some of the terms of conditions were as follows:

e-Filing agents;

The taxpayer will be liable to SARS for the due and timeous fulfilment of all the taxpayers' obligations towards SARS. The ***e-Filer will be jointly and severally liable with the taxpayer to SARS*** if the e-Filer intentionally or negligently submits false information to SARS on behalf of the taxpayer.

The above proves to be totally unacceptable to the profession as a whole and everyone threatens that they won't use e-Filing unless these terms are changed.

There was another contentious paragraph;

"The e-Filer acknowledges that they are solely responsible for the accuracy and the correctness of all information submitted to SARS for e-Filing." **[What is the position if a client gave the e-Filer inaccurate data either on purpose or negligently and the e-Filer is unaware of it? What happens if the e-Filer inputs some of the data incorrectly?]**

There were at that time another set of terms of conditions which could be found under IT12S and IT12SS filing.

“the e-Filer and the taxpayer are jointly and severally liable towards SARS for all claims that SARS might have in terms of this agreement against the e-Filer and / or the taxpayers.” **[Could the e-filer be responsible for unpaid taxes in this situation?]**

It was ironic to note that at this time that SARS e-Filing were going all out to market their new “free” e-Filing service. They even went as far to withdraw the copyright on software vendors producing their own IRP6 forms to try and force Tax Practitioners to use e-Filing for processing provisional tax. They were also pushing hard to get all the software vendors to interface their systems, but of course without the terms and conditions being right from a Tax Practitioner liability point of view nobody was going to use the e-Filing system. Good sense eventually prevailed and the terms change in effect making manual and electronic liability identical.

Before we deal with the current terms let’s have a look at the requirements for engagement letters.

4.2 Engagement Letters

With all the risk implications for Tax Practitioners, at that time SAICA published a document dealing with an engagement letter for services other than for an audit. It is imperative that you have an engagement letter or mandate; however you will need to insert some of the terms and conditions which are contained on the e-Filing website. An engagement letter with the e-Filing terms and conditions should be sufficient and give the Tax Practitioner a sufficient mandate to handle all e-Filing aspects.

I believe it is necessary to set up a separate engagement letter for the tax department other than an engagement letter that covers audits and other work, in fact this would be highly recommended. I would seriously recommend this because this document has to be reviewed each year as terms and conditions and as circumstances may change.

Some paragraphs required in a mandate taken from the original SAICA paragraph are listed below;-

> "*You have requested us to assist you in the preparation and submission to the South African Revenue Service (SARS) of your income tax returns, to register you for e-Filing your tax return electronically.*
>
> *You have also requested us to review the related tax assessments and to assist you to respond to queries from SARS and to errors on assessments identified by our or your review of assessments, and to lodge objections where considered necessary*
>
> *The work to be performed will be based on our interpretation of the tax law at the relevant time. These tax laws are subject to change occasioned by future legislative amendments and court decisions. You are cautioned to keep abreast of such developments and are welcome to engage our services again for this purpose.*
>
> *We confirm that it is your responsibility to provide us with complete, reliable and accurate information in respect of your tax affairs, so that we can provide the required services*
>
> *We specifically confirm that our services with regard to tax compliance will* ***commence with the 2015 tax year****."*

(The last paragraph above is compulsory when taking on a new client. Its purpose is to establish the first year that your firm is responsible for tax compliance. The drafter must take care that the new client's expectations regarding tax issues from prior years are managed. Where appropriate, specific scope limitations pertaining to prior year issues may be necessary)

> *You agree that MY FIRMS postal or electronic address will be used for all communications with SARS in respect of our services to you. If SARS has not recorded our address as your official postal or electronic address, we cannot be held responsible for any penalties or interest on the late*

submission of returns or late payments of any taxes if the returns, assessments, and other relevant documents were not timeously presented to us for action.

The engagement letter must include the terms and conditions as specified on the SARS e Filing web site

4.3 e Filing Terms and Conditions

We will now discuss the current e Filing terms and conditions that need to be inserted in the engagement letter. You can do it by way of an addendum to your normal engagement letter as below for the tax department or you could include it in the engagement letter. I would suggest an engagement letter just for tax so that there are no conflicts and the clients understand.

*Please be advised that South African Revenue Services (SARS) has now forced us to make use of their E-filing Services and we require your mandate for **MY FIRM** to register as an E-filer on your behalf. Once this is done the following additional terms and conditions in regard to E-filing shall apply:*

- ***MY FIRM** the e-Filer acts as a duly authorised agent on your behalf.*
- *You will be liable to SARS for the due and timeous fulfilment of all your obligations towards SARS.*
- *Any information submitted by **My Firm** to SARS by means of the e-Filing service will be based on information received from you and you are responsible for ensuring that such information is true and correct.*
- *Before we submit any information to SARS by means of the E-filing service we will need your confirmation that the information being submitted is a true and correct reflection of what you have provided.*
- ***MY FIRM** has disclosed the minimum conditions for the mandate to you and;*
- *Where SARS changes the conditions of E-filing on their website, the effect of such changes will take three months. **MY FIRM** will disclose*

any change and minimum conditions within the three month period to you.

Beside the engagement letter the SAICA document also deals with ***terms of business*** which they recommend each firm to produce and get their clients to sign. Most of the international firms have this kind of document in place; however the feeling from smaller firms is that perhaps this is overkill. As a firm you need to make a decision as to whether you want the terms of business. If not a properly worded engagement letter with the E-filing conditions should be adequate. If you are not sure take it up with your lawyers or SAICA or your controlling body. I have provided a sample engagement letter below.

If you have looked at the e filing terms and conditions recently you would note that they have changed without any notification from SARS. The 6 bullet points above have been totally removed and replaced by the following term listed below:-

All the terms and conditions have been rewritten. In particular what is of concern is the following under ***additional terms of use No 5***:

If the e-Filer is a registered tax practitioner or a person referred to in section 240(2)(d) of the Act, the e-Filer must obtain a written mandate from the taxpayer, ***which mandate must be provided to SARS*** and at a minimum –

1. ***detail the authority*** granted to the e-Filer by the taxpayer; and
2. ***contain an acknowledgement by the taxpayer*** that any and all liabilities under a tax Act remains with the taxpayer.

In the light of these changes how must Tax Practitioners who are e-Filers on behalf of taxpayers handle this mandate issue? I assume that form TPPOA is the form to use. What would the procedure be? I assume that SARS would require this mandate to be filed in the following instances handled by the Tax Practitioner:-

1. Provisional tax
2. Tax Return processing and submission

The issue that I am raising is this:-

“the e-Filer must obtain a written mandate from the taxpayer, **which mandate must be provided to SARS and at a minimum –** “

What is meant by “**must be provided to SARS”**. Does this mean that the Tax Practitioner’s must submit (provided to) to SARS a mandate to cover everything? This wording is confusing, because if this is the case then SARS must provide a facility for this. If this is not the case then SARS should change the words. I think what SARS may be trying to say is that the Tax Practitioner should have a signed mandate in his or her possession which passes the risk of the return back to the taxpayer before any e-Filing can be done.

It appears that this term also applies to a person mentioned in S240 (d) of the TAA.

S 240 (d) provides the advice or completes or assists in completing a document solely—

(i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of that employer and connected persons in relation to that employer; or

(ii) under the direct supervision of a person who is registered as a tax practitioner in terms of subsection (1).

1.8 Tasks That You Should Set Up

Detailed below is a list of suggested procedures that could be followed in a tax department in order to satisfy risk control and put good management controls in place.

- ✓ ***Mandate*** – Make sure you have an up to date mandate.
- ✓ ***Pre-Season letter –*** Make sure you send a pre-season letter.
- ✓ ***Data collection process*** – make sure you get all the data to complete the tax return before you start processing the tax return. This will include financial statements and interest and dividend certificates. Make sure you obtain all the necessary information for the statement of assets if required.
- ✓ ***Input IRP5*** – make sure that you have all the IRP5 forms and that they are correct – pay particular question to the medical aid figures.
- ✓ ***Provisional tax*** Make sure you confirm the actual payments otherwise the amount due could be wrong. Sky Tax gets this data back from SARS.
- ✓ ***Preparation of schedules in process*** – complete all the schedules that you need for supporting figures in the tax return.
- ✓ ***Inputting the data into Tax Calculator*** – capture the data making sure that that you select the correct source codes.
- ✓ ***Checking the tax calculation*** – check the calculation making sure that the figures tie up with your schedules and input documents.
- ✓ ***Submit the tax return to a manager for vetting*** – manager to review the tax return making sure that it is correct.
- ✓ ***Client to sign documents*** – arrange for client to come in and sign the return – make sure that the client understands the full implications of what he is signing.
- ✓ ***Submit to E-filing*** –submit the data from the back office system to e Filing.