



Attention: Ms Lijuan Wang
SARS
By e-mail: lwang@sars.gov.za

Date: 31 January 2023

Dear Lijuan,

COMMENTS ON THE DRAFT CRITERIA GOVERNING MOVEMENT OF TAX PRACTITIONERS BETWEEN RCBS DATED 9 JANUARY 2023.

CIBA would like to thank you for the opportunity to comment on this draft document titled Criteria Governing Movement of Tax Practitioners Between RCBS (Draft Criteria). Please find our comments are included below for your consideration.

1. Applicability of the Promotion of Administrative Justice Act, No 3 of 2000 (PAJA)

1.1 Background

The general legislative framework for recognized controlling bodies (RCBs) is prescribed by the Tax Administration Act, No. 28 of 2011 ("TAA"). Section 240A(2) of the TAA provides for the registration of RCB and sets their responsibilities which have been subject to further clarification via RCB engagements and policy letters communicated, notably pass marks, police clearances, and transition between RCBs. Also relevant are sections 241 to 243 which sets the procedures SARS and RCB should follow in the event of transgressions.

In addition, private organisations exercising a public function should follow administrative actions that are subject to judicial review under Promotion of Administrative Justice Act ("PAJA"). Based on case law we can say that RCBs are private organisations which exercise a public function when registering members with SARS as tax practitioners. Consequently, the implementation of the TAA should be done in an 'administratively fair' manner as required by PAJA.

Relevant case laws are listed below.

- **Private organizations providing a public service:**
 - The Constitutional Court in *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council* 2007 (1) SA 343 (CC)
 - *Dawnlaan Beleggings (Edms) Bpk v Johannesburg StockExchange* 1983 (3) SA 344
 - *R v. Panel on Take-overs and Mergers, Ex parte Datafin Plc* [1987] Q.B. 815

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- **Fair procedures in terms of erroneous registration:**
 - *Maleka v The Health Professions Council of South Africa* 2005 JDR 0417 (E)
 - The doctrine of *functus officio* which provides that an administrator is not able to simply revoke or vary a final decision in the absence of express or implied legal authority to do so.

1.2 Our comments and recommendations

During operationalizing the requirements of the TAA, RCBs should also follow PAJA in implementing administratively fair practices. The applicability of PAJA should be referred to in SARS requirements emphasizing that RCBs should always follow these practices when registering and de-registering tax practitioners.

2. The purpose or a letter of good standing and additional actions by receiving RCB

2.1 Background

Par 3.1.1 of the Draft Criteria requires that “a registered tax practitioner is required to provide the receiving RCB with a Letter of Good Standing issued by the releasing RCB, which should not be more than six months old. The letter should at least 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 on
 - CPE is up to date,
 - tax compliance was verified and proved to be compliant,
 - criminal verification check status, and
 - that there are no pending disciplinary cases against the member.”

In addition, par. 3.1.2 requires that the following for transferring tax practitioners:

- Tax compliance: he/she must be tax compliant at the time of joining the receiving RCB.
- Criminal record check: he/she 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: He/she is required to provide the evidence of the CPE status for the year.



2.2 Our comments and recommendations

The responsibilities of receiving RCBs needs clarification in identifying the specific actions that should be taken in addition to obtaining a letter of good standing from the releasing RCB as per par 3.3.1.

It is not clear from the requirements whether receiving RCBs are required to perform additional procedures to obtain proof listed in par 3.1.2.

3. Transitional provision for implementing the Amended Criteria

3.1 Background

The Amended Criteria for RCBs relating to the registration and management of their tax practitioner members was communicated on 17 May 2022. The Amended Criteria brought in new requirements for tax practitioners registered from 1 June 2022 in the form of police clearance certificates and for those after 1 July 2022 making the Tax Practitioner Readiness Programme compulsory.

Given the internal processes to register tax practitioners' registrations that were finalized and approved on the internal systems on 31 May 2022 were only approved on SARS system during early June 2022. The same principles applied in the case of 1 July 2022 deadline of the amended criteria.

3.2 Our comments and recommendations

The amended criteria should provide clear definition for what is meant by 'registration'. Requirements should also provide for due transitional period to facilitate the fair implementation of such requirements in terms of the internal processes of the RCBs. The transitional period would enable the RCBs to communicate the new requirements to members and make administrative changes to systems.

4. SARS site visit to confirm systems implemented by RCBs

4.1 Background

SARS recently commenced site visits of RCBs where the systems and processes are reviewed. CIBA had the first visit which was extremely helpful in identifying areas where improvements were necessary.



4.2 Our comments and recommendations

RCBs SARS should conduct a site visit to ensure that the systems are set up to enable the compliance with all the requirements. Such visit should be conducted before the RCB starts registering tax practitioners.

5. Single reference document for all tax practitioner requirements

5.1 Background

Requirements to be followed by tax practitioners and RCBs are contained in various documents and platforms, including:

- Tax Administration Act Sections 239-243
- Amended Criteria which was communicated via email to RCBs
- Information on tax practitioners and RCBs displayed on the SARS website
- FAQs addressing various questions displayed on the SARS website.

Requirements are currently de-fragmented making understanding and ensuring compliance difficult.

5.2 Our comments and recommendations

All requirements relating to registration, maintenance and de-registration of tax practitioners should be contained in a single reference document which can be maintained and updated regularly with new changes. This would serve to ensure that there is no confusion

6. Conclusion

We appreciate your time and consideration regarding the above recommendations. Please do not hesitate to contact us should the need arise.

Yours sincerely

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CIBA Technical Manager