

Business Accounting Network

# BAN BULLETIN

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Going Beyond Accounting, Taking Business Forward



## Accountants and Bookkeepers Required to be Qualified and Registered

By Monique Sharland

Law and regulations have changed the way accountants and bookkeepers interact with their clients and cut-throat, fly-by-night, unqualified operators who, in the past, would customise a client's tax, VAT or payroll return in line with a client's instructions (often for a low fee) have effectively been taken out of the market.

The advent of regulating Tax Practitioners who completes or assists in completing a document to be submitted to SARS in terms of any tax Act or provides advice to another person with respect to the application of any tax Act for a fee have a real professional obligation to the law.

Jumping from one accountant to another will not achieve anything since all registered tax practitioners will insist on compliance with the tax laws as they are held personally accountable through the Tax Administration Act, so taxpayers won't get a different outcome by shopping around.

Tax practitioners now find themselves in the same position as lawyers and medical doctors who can be "struck off the role" for negligence and illegal activities and thus be prevented from practicing their profession.

Having to be qualified and registered as a tax practitioner does not apply to accountants and bookkeepers employed by an employer on a full-time basis and who complete tax, VAT, payroll and other SARS returns on behalf of their employer.

### WHY SHOULD BUSINESS USE A REGISTERED TAX PRACTITIONER?

Surprisingly, many smaller business owners turn to a friend, colleague or business associate when faced with the daunting task of completing and filing a SARS return. This can pose many risks for the business owner, even jail time!

**Tax Law is Complex:**

The multifaceted aspect of tax law and tax administration, which incorporates income tax, employee tax, capital gains tax, VAT and tax administration, is not only complex, but there is the fact that tax legislation changes every year. The consequences of not complying correctly can be harsh for both business and the individual.

**It is Illegal:**

The law does not only make it illegal for accountants and bookkeepers to provide any tax service for the payment of a fee if they are not both qualified and registered as a member of a professional Controlling Body as well as with SARS as a Tax Practitioner, but makes it a criminal offence with the possibility of 2 years imprisonment or a fine for any contravention.

**Recourse for Complaints**

Besides breaking the law by using an unregistered tax practitioner, you will have no recourse whatsoever if that person acts negligently, unethically or lacks knowledge, causing errors with unwelcome consequences! If a tax practitioner is responsible for completing your tax return and fails to inform you of the relevant deadlines and the documents you need to send to him or her, that's not professional and not in keeping with the code of conduct. You can report unprofessional conduct of a registered tax practitioner to SARS, who will in turn lodge a formal complaint with the relevant professional Controlling Body for investigation. However, you should not expect your accountant to send you numerous reminders.

**WHAT IS YOUR LEGAL RESPONSIBILITY AS A TAXPAYER?**

You are ultimately responsible for filing all SARS returns, even if a tax practitioner submits the return on your behalf. And if the South African Revenue Service (SARS) levies a penalty and interest for the late or non-submission of your return, you – not the practitioner – are liable to pay it.

The responsibility for submitting documents rests with you, the taxpayer or representative taxpayer, so it is common for just one reminder to be sent from your tax practitioner. While tax practitioners can be held accountable, you also need to take responsibility and get involved in your and your business's tax affairs.

**TERMS OF ENGAGEMENT OR CONTRACT**

You should have terms of engagement or a contract with your accountant, explaining clearly what is required of you and what is expected of the practitioner rendering the service.

The letter of engagement needs to be detailed so that you know what you are paying for, what the fee includes, and what happens if SARS requires additional supporting documentation or information after you have submitted your return or if the assessment received disallows certain or all of your expenses or VAT inputs. Who is responsible for requesting reasons for this discrepancy and who is responsible for objecting to the assessment if you do not agree with it or the reasons provided?

**AND IMPORTANTLY .....**

Despite the duties and responsibilities of a tax practitioner, in terms of the Tax Administration Act, you still have the responsibility for the accuracy of all of your SARS returns. It is therefore important for you to ensure that the tax practitioner is legitimate, knowledgeable and diligent. Before you engage an accountant or bookkeeper, request them to produce his or her SARS practice number and professional Controlling Body membership number. You can check proof of their registration on their relevant professional Controlling Body web-site.

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