

The draft **Regulation of Tax Practitioners Bill** and consequential amendments to Acts administered by the Commissioner for SARS are hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by **5 April 2007**. Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by SARS. A further opportunity to comment on the draft legislation will be available when the revised Bill is before the Parliamentary Committees.

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REPUBLIC OF SOUTH AFRICA

**REGULATION OF TAX
PRACTITIONERS BILL**

(As introduced in the National Assembly as a section 75 Bill)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B - 2006]

BILL

To regulate the tax practitioner profession; to make provision for an Independent Regulatory Board for Tax Practitioners and to provide for incidental matters.

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BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

CHAPTER I INTERPRETATION, PURPOSE AND APPLICATION

Part I

Interpretation

Definitions

1. In this Act, unless the context otherwise indicates—

“accredited tax practitioner” means an individual registered as such with the Board in terms of section 27;

“Board” means the Independent Regulatory Board for Tax Practitioners established in terms of section 4;

“Commissioner” means the Commissioner for the South African Revenue Service;

“Minister” means the Minister of Finance;

“practice” in relation to an accredited tax practitioner means the provision of services contemplated in section 24;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“South African Revenue Service” means the institution established under section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997); and

“reportable irregularity” means any unlawful act or omission committed by any person which—

- (a) constitutes a contravention of any Act administered by the Commissioner; or
- (b) is fraudulent or amounts to theft or is otherwise dishonest.

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Part II

Purpose and Application of Act

Purpose of Act

2. The purpose of this Act is to regulate the tax practitioner profession to ensure that tax practitioners are appropriately qualified, adhere to ethical practices and are held accountable for their professional conduct.

Application of Act

3. (1) This Act applies in respect of every individual who is required to register with the Board in terms of section 24.

CHAPTER II

INDEPENDENT REGULATORY BOARD FOR TAX PRACTITIONERS

Part I

Establishment, objects and powers of Board

Establishment and legal status of Board

4. (1) A juristic person, known as the Independent Regulatory Board for Tax Practitioners, is hereby established and must exercise its functions in accordance with this Act and any other relevant law.

(2) The Board is subject to the Constitution of the Republic of South Africa, 1996 and the Public Finance Management Act.

Objectives of Board

5. The Board has as its objectives—

- (a) to protect the public interest in the Republic through the regulation of the tax practitioner profession;
- (b) to maintain a registration system and a register for accredited tax practitioners;
- (c) to prescribe appropriate standards of qualification for accredited tax practitioners;

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- (d) to implement a code of professional conduct for accredited tax practitioners;
- (e) to ensure that accredited tax practitioners maintain high standards by following a program of continuing professional education;
- (g) to ensure disciplinary action under this Act;
- (h) to liaise with all accredited tax practitioners on matters of common interest; and
- (i) to consider and pass comment on actual or impending legislation in the Republic of South Africa affecting the profession or otherwise.

Duties of Board

6. (1) The Board must at all times, either on its own or in co-operation with any other appropriate body, ensure that clear and appropriate requirements exist with which a person must comply to be registered as an accredited tax practitioner.

(2) The Board must set requirements for the development and achievement of professional competence for accredited tax practitioners.

Powers of Board

7. For purposes of carrying out its duties and achieving its objectives, the Board must—

- (a) take any steps necessary to promote the integrity of the tax practitioner profession, including—
 - (i) to investigate alleged improper conduct, conduct disciplinary hearings and impose sanctions for improper conduct; and
 - (ii) to make application to any court of competent jurisdiction for an order prohibiting any person not registered as an accredited tax practitioner from committing or continuing to commit any act which is reserved under this Act for accredited tax practitioners or which is in conflict with any law, if the Board has reason to believe such an act is being or is about to be committed by that person;
- (b) establish and maintain a registration system and register for accredited tax practitioners which provides for different categories of accredited tax practitioners and different practices within the different categories;

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- (c) ensure that the register is at all reasonable times open for inspection by any member of the public;
- (d) consider applications for registration as accredited tax practitioners;
- (e) prescribe the standards of professional qualifications for the different categories of accredited tax practitioners;
- (f) ensure that the standards of professional qualifications, competence, ethics and service of accredited tax practitioners are maintained;
- (g) prescribe—
 - (i) registration fees which are payable by accredited tax practitioners;
 - (ii) any other fees which may be payable under this Act; and
 - (iii) charges for any services provided by the Board to accredited tax practitioners;
- (h) determine the need for and the nature and level of indemnity or fidelity insurance to be carried by accredited tax practitioners;
- (i) participate in the activities of bodies—
 - (i) registered under the South African Qualifications Authority Act, 1995 (Act No.58 of 1995), which are responsible for establishing education and training standards or qualifications for the tax practitioner profession;
 - (ii) accredited under that Act which are responsible for monitoring tax practitioner achievements in respect of the standards or qualifications referred to in subparagraph (i); or
 - (iii) whose main purpose is the development and setting of tax practitioner standards, whether national or international;
- (j) employ persons to assist it in the performance of its functions;
- (k) hire, purchase or otherwise acquire movable or immovable property for the effective performance of its functions, and let, sell or otherwise dispose of such property;
- (l) borrow or raise money in accordance with the Public Finance Management Act;
- (m) invest its funds in a manner it deems fit;
- (n) publish a journal and issue newsletters and circulars or any other publication containing information and guidelines relating to the tax practitioner profession;
- (o) encourage and, in appropriate circumstances, finance education in connection with, and research into any matter affecting the tax practitioner profession;
- (p) formally or informally co-operate with or assist any other organisation with similar objectives, whether inside or outside the Republic;
- (q) prescribe the period in which accreditation with the Board must be renewed; and
- (r) do anything which is reasonable or necessary to achieve its objectives.

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Part II

Composition and members of Board

Composition of Board

8. (1) The Board consists of not more than ten principal members appointed by the Minister who must be persons with suitable qualifications or experience.

(2) When making the appointments, the Minister must take into consideration, amongst other factors—

- (a) the need for transparency and representivity within the broader demographics of the South African population;
- (b) any nominations received in terms of subsection (3); and
- (c) the availability of persons to serve on the Board.

(3) Before the Minister makes the appointments a notice must be published in the *Gazette* and in any national newspaper inviting nominations from members of the public.

(4) The Minister may appoint an alternate member for every principal member of the Board appointed under subsection (1).

(5) Not more than half of the members of the Board appointed respectively under subsections (1) and (4) may be accredited tax practitioners.

(6) The Minister must appoint a chairperson and deputy chairperson from the principal members of the Board.

(7) The Minister may appoint an official of the South African Revenue Service as an additional member of the Board who has the same rights as the principal members, other than the right to vote.

(8) If the Board considers it necessary for its proper functioning, it may invite one or more suitable persons to serve in an advisory capacity, which persons may participate in all the proceedings of the Board, other than voting.

Period of appointment and reappointment of members

9. (1) An appointment of a member of the Board is valid for the period indicated in the appointment, which may not exceed three years.

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(2) A member whose period of appointment has expired may be reappointed as a member of the Board but may not serve more than two consecutive terms of office.

Publication of notice of appointment

10. Upon receipt from the Minister of a notice of an appointment of a member, the Board must publish a notice in the *Gazette* containing the name of the appointed member and the member's alternate (if any), the date from which the appointment takes effect and the duration of the appointment.

Provisions relating to alternate members

11. (1) The procedure for the appointment of alternate members is the same as that for the appointment of principal members.

(2) Subject to subsection (3), an alternate member may attend a meeting of the Board only where the principal member is absent, and at any such meeting the alternate member is entitled to participate and vote in all the proceedings.

(3) The chairperson of the Board may allow an alternate member to attend a meeting of the Board even though the principal member is present, but in this case the alternate may not vote in any of the proceedings.

Disqualification from membership

12. No person may serve as a principal or alternate member of the Board if that person—

- (a) has at any time been removed from an office of trust on account of misconduct;
- (b) has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, corruption, money-laundering, forgery (including uttering a forged document), perjury or any other offence which involves dishonesty, in respect of which that person has been sentenced to imprisonment without the option of a fine or to a fine exceeding an amount determined from time to time by the Minister for this purpose;
- (c) is an unrehabilitated insolvent;

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- (d) is for the time being declared by a competent court to be of unsound mind or unable to manage his or her own affairs;
- (e) has in terms of this Act been found guilty of an improper conduct; or
- (f) is not permanently resident in the Republic.

Termination of membership

13. The appointment of a member of the Board terminates if—

- (a) the period of his or her appointment expires;
- (b) the member resigns by giving written notice to the Board;
- (c) the member becomes disqualified from being a member in terms of section 12;
- (d) the Minister terminates the appointment on the grounds of misconduct, incapacity or incompetence; or
- (e) the member has without leave been absent from two consecutive meetings of the Board.

Part III

Procedural matters relating to meetings and decisions of Board

Meetings

14. (1) The Board meets as often as circumstances require, but must meet at least twice every calendar year.

(2) The Board meets at such time and place as the Board may from time to time determine.

(3) The chairperson of the Board may at any time convene a special meeting of the Board at a time and place determined by the chairperson.

(4) Upon a written request signed by not less than three members of a Board, the chairperson concerned must convene a special meeting to be held within three weeks after receipt of the request which takes place at a time and place determined by the chairperson.

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Procedure for conduct of meetings

15. (1) The Board must determine rules of procedure for the conduct of its meetings and the meetings of its committees, including rules on taking decisions in writing when the relevant members are not gathered at a meeting.

(2) The majority of the members of the Board present at a duly constituted meeting who are entitled to vote constitute a quorum.

(3) Every member of the Board, including the chairperson but excluding the member appointed from the South African Revenue Service and an alternative member attending the meeting with his or her principal member, has one vote.

(4) In the event of an equality of votes, the chairperson of the meeting has a second or casting vote.

Decisions of Board

16. (1) The Board may decide on a matter if the number of members present constitutes a quorum.

(2) A decision of the Board requires the support of the majority of the members of the Board present at the meeting.

(3) No decision taken or act authorised by the Board is invalid by reason only of the fact that any person not entitled to sit or act as a member of the Board participated in that meeting at the time the decision was taken or act was authorised, provided the members of the Board who were present followed the required procedure for that decision or authorisation.

Part IV

Funds and financial management of Board and payments to members

Funds of Board

17. (1) The funds of the Board consist of—

(a) fees and monies levied under this Act; and

(b) any funds appropriated for that purpose by Parliament.

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(2) All monies received by the Board must be paid into one or more accounts kept at one or more registered financial institutions.

Financial management, financial statements and annual report of Board

18. The financial management and the preparation and submission of financial statements and annual report must be in accordance with the Public Finance Management Act.

Remuneration and re-imburement for expenses

19. (1) The Board must in consultation with the Minister, determine the remuneration and allowances payable to its members, alternative members, members of committees.

Part V

Establishment of committees

Establishment of committees

20. (1) The Board may establish one or more committees to assist it in the performance of its duties and it may at any time dissolve or reconstitute any such committee.

(2) The Board must, at least, establish the following permanent committees—

- (a) an investigating committee; and
- (b) a disciplinary committee.

(3) A committee consists of as many persons as the Board considers necessary who may be appointed from outside the ranks of the Board and tax practitioner profession.

(4) The investigating and disciplinary committees must include individuals with significant legal experience and the disciplinary committee must be chaired by a retired judge or senior advocate.

(3) The provisions of sections 12, 14, 16 and 19 relating to disqualification from membership, meetings, decisions, remuneration and reimbursement for expenses, respectively, apply *mutatis mutandis* in respect of any committee established by the Board.

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Assigning of powers to committee

21. (1) The Board may assign to a committee established in terms of section 20(1), any of its powers (excluding the power to make rules) as it may deem fit.

(2) The Board is not divested of any power assigned to a committee and the Board may at any time amend or withdraw any power so assigned.

(3) Unless the context otherwise indicates, any reference in this Act to the Board in relation to the exercise of a power which has been assigned to a committee, must be construed as including a reference to that committee.

(4) The Board may confirm, vary or revoke any decision taken by a committee as a result of any delegation or assignment in terms of subsection (1).

Funding of committees

22. The Board must provide funding to its committees in such a way that the committees can perform their functions effectively.

CHAPTER III OVERSIGHT AND REPORTING

Oversight by Government through National Treasury

23. (1) The Minister is the executive authority for the Board in terms of the Public Finance Management Act and the Board is accountable to the Minister.

(2) The Minister must—

(a) ensure that the Board complies with this Act, the Public Finance Management Act and any other applicable legislation;

(b) ensure that the Board is managed responsibly and transparently and meets its contractual and other obligations;

(c) establish and maintain clear channels of communication between him or her and the Board; and

(d) monitor and annually review the performance of the Board.

(2) The Minister may designate officials of the National Treasury as his or her representatives to the Board.

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(3) Ministerial representatives designated in terms of subsection (2) represent the Minister as participating observers at meetings of the Board.

(4) The Minister or his or her designated representatives may at any time call a meeting of the Board in order for the Board to give account for action taken by it.

(5) A ministerial representative must represent the Minister faithfully at meetings of and with the Board, without consideration of personal interest or gain, and must keep the Minister informed of what transpired at meetings of the Board.

(6) A ministerial representative must act in accordance with the instructions of the Minister and may be reimbursed by the Minister for expenses in connection with his or her duties as a ministerial representative, but may not receive any additional compensation or salary for such duties.

(7) The Minister may at any time request the Board to investigate any matter at its own cost or against full or partial payment by the Minister.

(8) The Minister, at any time, may investigate the affairs or financial position of the Board and may recover from the Board reasonable costs incurred as a result of an investigation.

(9) The Board must provide the Minister or his or her ministerial representative with access to any information as may be reasonably requested.

CHAPTER IV

REGISTRATION, DUTIES OF ACCREDITED TAX PRACTITIONERS AND REMOVAL FROM REGISTER

Part I

Registration of accredited tax practitioner

Registration of accredited tax practitioner

24. (1) Every natural person who—

- (a) provides advice to any other person with respect to the application of any Act administered by the Commissioner; or
- (b) completes or assists in completing any document to be submitted to the Commissioner by any other person in terms of any such Act,

must register as an accredited tax practitioner with the Board.

(2) The provisions of this section do not apply in respect of a person who—

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- (a) provides advice or completes or assists in completing any document, as contemplated in subsection (1), solely for no consideration to that person or his or her employer or a connected person in relation to that person or employer;
- (b) provides advice as contemplated in subsection (1) solely in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;
- (c) provides advice contemplated in subsection (1) solely as an incidental or subordinate part of providing goods or other services to another person;
- (d) provides advice or completes or assists in completing any document, as contemplated in subsection(1) 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 any person who is registered as a tax practitioner in terms of subsection(1): or
- (e) is a licensed clearing agent referred to in section 64B of the Customs and Excise Act, 1964 (Act No.91 of 1964).

Application for registration as accredited tax practitioner

25. (1) An individual (other than an individual who has registered with the Commissioner in terms of section 67A of the Income Tax Act, 1962 (Act No. 58 of 1962)) who must register as an accredited tax practitioner must lodge a written application for registration with the Board within 30 days from the date that this Act becomes applicable to that individual.

(2) The application contemplated in subsection (1) must be in the form and contain such information as prescribed by the Board and must be accompanied by the fee prescribed by the Board.

Approval of application for registration

26. (1) The Board must approve an application for registration as accredited tax practitioner if the Board is satisfied that the applicant—

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- (a) complies with the appropriate standards of qualification for accredited tax practitioners determined by the Board;
- (b) will comply with the code of professional conduct for accredited tax practitioners determined by the Board;
- (c) has appropriate mechanisms in place for ensuring participation in continuing professional tax education determined by the Board;
- (d) is a fit and proper person;
- (e) is not disqualified from registration under any of the provisions of subsection (2); and
- (f) meets any other requirements determined by the Board from time to time.

(2) The Board may not approve an application for registration as accredited tax practitioner if the applicant—

- (a) has at any time been removed from an office of trust on account of misconduct;
- (b) has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, corruption, money-laundering, forgery (including uttering a forged document), perjury or any other offence which involves dishonesty, in respect of which that applicant has been sentenced to imprisonment without the option of a fine or to a fine exceeding an amount determined from time to time by the Minister for this purpose;
- (c) is an unrehabilitated insolvent;
- (d) is for the time being declared by a competent court to be of unsound mind or unable to manage his or her own affairs; or
- (e) is disqualified from registration under a disciplinary punishment imposed under this Act.

Registration and issue of certificate

27. If an application for registration as accredited tax practitioner is approved in terms of section 26(1), the Board must enter the applicant's name in the register of accredited tax practitioners and issue to the applicant a certificate of registration.

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Part II

Duties of accredited tax practitioners

Duties with regard to practice of accredited tax practitioner

28. (1) Except with the consent of the Board, an accredited tax practitioner may not knowingly—

- (a) employ in connection with the practice of that tax practitioner any person who is for the time being suspended from practice under any provision of this Act;
- (b) employ in connection with the practice of that tax practitioner any person whose name has been removed from the register of accredited tax practitioners by virtue of a finding of improper conduct and punishment imposed on the person under section 43(3);
- (c) engage in practice if any fees or monies determined by the Board under this Act have not been paid in full;
- (d) subject to subsection (2), sign any statement, report or other document which purports to represent advice given or work performed by the tax practitioner, unless the advice was given or the work was performed by the accredited tax practitioner;
- (e) engage in the practice of a accredited tax practitioner during any period that he or she has been suspended from practice;
- (f) engage in practice without carrying professional indemnity or fidelity insurance as required by the Board; or
- (g) fail to account or unreasonably delay in accounting for any money or property received for or on behalf of a client or any other person when called upon to do so.

(2) Subsection (1)(d) does not apply in respect of work performed—

- (a) under the personal supervision or direction of the accredited tax practitioner;
- (b) by or under the personal supervision or direction of any other accredited tax practitioner who is a partner, co-director, co-member or supervisor in relation to him or her;
- (c) on behalf of the accredited tax practitioner by any other accredited tax practitioner;
- (d) by any other accredited tax practitioner in a partially completed assignment which that other accredited tax practitioner could not complete as a result of death, disability or other cause not under his or her control and which assignment the accredited tax practitioner concerned is engaged to complete; or

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- (e) outside the Republic by a member of a professional body outside the Republic whose status, in the opinion of the Board, is at least equal to that demanded by the Board for the profession in the Republic.

Discharging of duties of accredited tax practitioner

29. An accredited tax practitioner must discharge his or her duties as accredited tax practitioner in respect of the tax affairs of a person subject to the following criteria—

- (a) that tax practitioner carried out those duties free of any form of restriction;
- (b) that in carrying out any of those duties, that tax practitioner complied with—
 - (i) any Act administered by the Commissioner; and
 - (ii) the code of professional conduct determined by the Board for accredited tax practitioners;
- (c) that proper tax records have been kept in one of the official languages of the Republic in connection with that person so as to reflect and explain all transactions as required in terms of the relevant Acts administered by the Commissioner;
- (d) that tax practitioner has obtained all information, vouchers and other documents which in the opinion of that tax practitioner was necessary for the proper performance of those duties; and
- (e) if applicable, that tax practitioner sent a report to the Board under section 31(3)(a) with regard to any reportable irregularity relating to that person.

Information to be provided by accredited tax practitioner

30. An accredited tax practitioner must, within 14 days of receipt of a written request from any person for whom he or she acts in that capacity, or any person who proposes to appoint him or her as its accredited tax practitioner, furnish to that person—

- (a) the accredited tax practitioner's full name and business address;
- (b) particulars of the title under which that tax practitioner practises; and
- (c) particulars of the place or places of business in which that tax practitioner is in practice.

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Duty to report on irregularities

31. (1) If an accredited tax practitioner who acts for a person is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of the tax affairs of that person, that tax practitioner must send a notice containing a request to rectify that irregularity within 30 days to—

- (a) that person; or
- (b) if that person is an entity with a management board, the management board.

(2) For the purpose of determining whether any reportable irregularity has taken place or is taking place, an accredited tax practitioner may carry out such investigations as is necessary and must have regard to all the information which comes to his or her knowledge from any source.

(3) If the reportable irregularity is not rectified by that person or management board within the period stated in the notice contemplated in subsection (1) the accredited tax practitioner must without delay—

- (a) send a written report to the Board giving particulars of that irregularity, together with such other information as that tax practitioner considers appropriate; and
- (b) send a copy of the report to that—
 - (i) person; or
 - (ii) management board.

Duty to inform Board of change of particulars

32. An accredited tax practitioner must notify the Board of any change in his or her name or business address not later than 30 days after the date on which the change takes place.

Part III

Withdrawal of approval and removal from register

Withdrawal of approval and removal from register

33. (1) The Board must withdraw approval of an accredited tax practitioner and remove his or her name from the register of accredited tax practitioners, if—

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- (a) that registration was made in error or on information subsequently proved to be false;
- (b) subsequent to registration he or she becomes subject to any of the disqualifications contemplated in section 26(2); or
- (c) prior to accreditation he or she was guilty of any improper conduct which causes the Board to be of the opinion that he or she is not a fit and proper person.

(2) The Board may withdraw approval of an accredited registered tax practitioner and remove his or her name from the register of accredited tax practitioners if he or she fails to pay any fee, monies or portion thereof after it has become payable in terms of this Act.

(3) Before withdrawing an approval under subsection (1) or (2), the Board must—

- (a) give written notice to the accredited tax practitioner concerned of its intention to withdraw approval and the reasons for withdrawal; and
- (b) afford the tax practitioner a period of at least 21 days, but not more than 30 days, in which to submit reasons for not withdrawing the approval.

Removal from register at request of tax practitioner

34. The Board must remove an accredited tax practitioner's name from the register of accredited tax practitioners upon the written request of that tax practitioner.

Publication of notice of removal from register

35. As soon as practically possible after an accredited tax practitioner's name has been removed from the register of accredited tax practitioners, the Board must publish a notice of that removal either in the *Gazette* or in any official publication dealing with the tax practitioner profession which is distributed or circulated on a national basis to members of that profession.

Effect of removal from register

36. The removal of an accredited tax practitioner's name from the register of accredited tax practitioners does not—

- (a) affect any liability incurred by that tax practitioner prior to the date of removal; or

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- (b) prevent the Board from instituting any disciplinary proceedings for conduct committed by that tax practitioner prior to the date of removal.

CHAPTER V IRREGULARITIES AND DISCIPLINARY MATTERS

Part I

Reporting of irregularities

Board to inform Commissioner of reportable irregularities

37. The Board must, as soon as practically possible after receipt of a report under section 31(3)(a)—

- (a) inform the Commissioner of the details of the reportable irregularity to which the report relates; and
- (b) disclose any information relating to the person concerned which has been provided to the Board under this section to the Commissioner.

Part II

Reporting and referral of proof or allegation of improper conduct

Court and official to inform Board of *prima facie* proof of improper conduct

38. (1) If, in the course of any proceedings before any court of law, it appears to the court that there is *prima facie* proof of improper conduct on the part of an accredited tax practitioner the court must direct a copy of the record of the proceedings, or such part thereof as relates to that conduct, to be sent to the Board.

(2) Despite the provisions of any other law, whenever it appears to an official of any body charged with regulation or supervision of any entity or profession that there is *prima facie* proof of improper conduct on the part of an accredited tax practitioner, the official must forthwith send a report of that conduct to the Board.

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Referral of allegations of improper conduct

39. The Board must refer a matter brought against an accredited tax practitioner to the investigating committee established under section 20(2) if the Board—

- (a) on reasonable grounds suspects that an accredited tax practitioner has committed an act which may render him or her guilty of improper conduct;
- (b) is of the opinion that a complaint or allegation of improper conduct, whether prescribed or not, which has been made against an accredited tax practitioner by any person appears to be justified; or
- (c) receives any record or report under section 38.

Part III

Investigation of allegation of improper conduct

Investigation of allegation of improper conduct

40. (1) At the request of the Board, the investigating committee must—

- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in its opinion the accredited tax practitioner concerned should be charged and, if so, recommend to the Board the charge or charges that may be preferred against that tax practitioner.

(2) The investigating committee may not question the accredited tax practitioner concerned unless the investigating committee informs the accredited tax practitioner that he or she-

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement made may be used in evidence against that tax practitioner.

(3) In investigating a charge of improper conduct the investigating committee may—

- (a) subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) or any other law, require the accredited tax practitioner to whom the charge relates or any other person to produce to the committee any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that tax practitioner or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of that tax practitioner;

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- (b) inspect and, if the investigating committee considers it appropriate, retain any such information for the purposes of its investigations; and
- (c) make copies of and take extracts from such information.

(4) The provisions of subsection (3) apply regardless of whether that tax practitioner or that person is of the opinion that such working papers, statements, correspondence, books or other documents contain confidential information about a client.

(5) The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the Board regarding any matter referred to it in terms of this section.

(6) The Board and investigating committee must in exercising their powers or performing their duties in terms of this section consider the delegation or assignment of such powers and duties in accordance with section 21(1).

Part IV

Disciplinary proceedings

Charge of improper conduct

.41. (1) The Board must charge an accredited tax practitioner with improper conduct if the investigating committee recommends that sufficient grounds exist for a charge to be preferred against that tax practitioner.

(2) The Board must furnish a charge sheet to the accredited tax practitioner concerned by hand or registered mail.

(3) A charge sheet must inform the accredited tax practitioner charged—

- (a) of the details and nature of the charge;
- (b) that the accredited tax practitioner must, in writing, admit or deny the charge;
- (c) that the accredited tax practitioner must, together with the admission or denial, submit a written explanation regarding the improper conduct with which charged; and
- (d) of the period, which must be reasonable but may not exceed 60 days, within which the plea in terms of paragraph (b) must be submitted to the Board.

(4) If the accredited tax practitioner charged admits guilt to the charge, that tax practitioner is considered to have been found guilty as charged.

(5) The Board must on the expiry of the period referred to in subsection (3)(d) refer the charge sheet and any plea received to the disciplinary committee to be dealt with in

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accordance with section 42, or, where the accredited tax practitioner admitted is guilty to the charge, to be dealt with in accordance with section 43.

(6) The acquittal or the conviction of an accredited tax practitioner by a court of law on a criminal charge is not a bar to proceedings against that tax practitioner under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which that tax practitioner was acquitted or convicted or any other offence of which that tax practitioner might have been acquitted or convicted at the trial on the criminal charge.

Disciplinary hearing

42. (1) A disciplinary hearing must be conducted by the disciplinary committee established in terms of section 20(2).

(2)(a) The disciplinary committee, for the purposes of this section, must appoint a person to present the charge to the disciplinary committee, which person may be a member of the investigating committee.

(b) The disciplinary committee may at any time prior to or during the disciplinary hearing terminate and replace a person referred to in paragraph (a), if the committee is of the opinion that that person is not fulfilling the obligations.

(3) The disciplinary committee may at any time prior to the conclusion of a disciplinary hearing amend the charge sheet or a charge on the grounds that an error exists in its formulation or that a charge is not properly articulated in the original charge sheet.

(4)(a) Subject to paragraph (b), a hearing before the disciplinary committee is held in camera except where, in the opinion of the chairperson of the disciplinary committee, any part of the hearing should be open to the public.

(b) Where during the hearing of the disciplinary committee details of the tax affairs of a taxpayer will be disclosed, the hearing may only be attended by persons whose attendance, in the view of the chairperson of the disciplinary committee, is necessary for the proper consideration of the complaint.

(5)(a) The disciplinary committee may, for the purposes of a hearing, subpoena any person—

(i) who may be able to give material information concerning the subject of the hearing; or

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- (ii) who it suspects or believes has in his or her possession or custody or under such person's control any information, including but not limited to any working papers, statements, correspondence, books or other documents, which has any bearing on the subject of the hearing, to appear before the disciplinary committee at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents.
- (b) A subpoena issued in terms of paragraph (a) must-
- (i) be in the prescribed form;
 - (ii) be signed by the chairperson of the disciplinary committee or, in that person's absence, by any member of the disciplinary committee; and
 - (iii) be served on the person concerned personally or by sending it by registered mail.

(6) The disciplinary committee may retain any information, including but not limited to any working papers, statements, correspondence, books or other documents produced in terms of subsection (5), for the duration of the hearing.

(7) The chairperson of the disciplinary committee may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (5).

(8) At a hearing the accredited tax practitioner charged—

- (a) may be assisted or represented by another person in conducting the proceedings;
- (b) has the right to be heard;
- (c) may call witnesses;
- (d) may cross-examine any person called as a witness in support of the charge;
- (e) may have access to documents produced in evidence; and
- (f) may admit at any time before the conclusion of the disciplinary hearing that he or she is guilty of the charge, despite the fact that he or she denied the charge or failed to react in terms of section 41(3)(b) or (c), in which case he or she is considered as guilty of improper conduct as charged.

(9) The person referred to in subsection (2) may during a hearing—

- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
- (b) question any person who was subpoenaed in terms of subsection (5); or
- (c) call anyone to give evidence or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or

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her possession or custody or under his or her control, which such person suspects or believes to have a bearing on the subject of the hearing.

- (10)(a) A witness who has been subpoenaed may not—
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
 - (iv) fail to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary committee from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary committee be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of any information, including but not limited to any working papers, statements, correspondence, books or other documents, or to the production of such information to the disciplinary committee by any person called in terms of this section as a witness.
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing any information, including but not limited to any working papers, statements, correspondence, books or other documents, which he or she is in terms of this section required to give or produce.

(11) The record of evidence which has a bearing on the charge before the disciplinary committee, and which was presented before any committee which investigated an event or conduct, is admissible without further evidence being led if-

- (a) the record is accompanied by a certificate from the chairperson; and
- (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

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(12) If the improper conduct with which the accredited tax practitioner is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the accredited tax practitioner as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

(13) In exercising its powers or performing its duties in terms of this section, the disciplinary committee must consider the assignment of such powers and duties in accordance with section 21(1).

Proceedings after hearing

.43. (1) After the conclusion of a hearing the disciplinary committee must, within 30 days-

- (a) decide whether or not the accredited tax practitioner is guilty as charged of improper conduct;
- (b) if the disciplinary committee finds that the accredited tax practitioner charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances; and inform the accredited tax practitioner charged and the Board of the finding.

(2) An accredited tax practitioner found guilty of improper conduct in terms of this section may—

- (a) address the disciplinary committee in mitigation of sentence; and
 - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3)(a) If the accredited tax practitioner charged is found guilty of improper conduct, or if the accredited tax practitioner admits to the charge, the disciplinary committee must either-
- (i) caution or reprimand the accredited tax practitioner;
 - (ii) impose on the accredited tax practitioner a fine not exceeding the amount calculated according to the ratio for two or five years imprisonment prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), depending on the offence;
 - (iii) suspend the right to practice as a accredited tax practitioner for a specific period: or

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- (iv) cancel the registration of the accredited tax practitioner concerned and remove his or her name from the register referred to in section 7(b)
- (b) The disciplinary committee may impose more than one of the sanctions referred to in paragraph (a).
 - (4) A disciplinary committee may order any person who—
 - (a) admitted guilt in terms of section 41(4); or
 - (b) was convicted of improper conduct after a hearing under section 42 ,to pay such reasonable costs as have been incurred by an investigating committee and the disciplinary committee in connection with the investigation and hearing in question, or such part thereof as the disciplinary committee considers just.
 - (5) The Board may, if it deems it appropriate, publish the finding and the sanction imposed in terms of subsection (3).
 - (6)(a) The Board must give effect to the decision of the disciplinary committee.
 - (b) Where an order as to costs has been made under subsection (4), the amount thereof shall be recoverable by the Board from the person concerned, and any amount so recovered must be paid into the funds of the Board.

Part V

Informing Commissioner of outcome and use and disclosure of information

Board to inform Commissioner of finding and punishment

44. If any punishment was imposed on a person by the disciplinary committee and the chairperson of the disciplinary committee so directs on the grounds that it is appropriate to do so in the circumstances of the case, the Board must inform the Commissioner of—

- (a) the name of the person concerned;
- (b) the details of the punishment so imposed; and
- (c) the concise details of the finding pursuant to which the punishment was imposed.

Provisions relating to privilege

45. (1) Nothing in this Chapter affects the law relating to professional privilege or the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules.

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(2) In a hearing before a disciplinary committee, the provisions of the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or thing before a court of law, applies.

Disclosure of information

46. A person who is or was concerned with the performance of any function under this Chapter may not disclose any information obtained in the performance of that function except—

- (a) for the purpose of an investigation or a hearing under this Chapter;
- (b) in the performance of his or her functions under this Act;
- (c) to a person authorised by the Board and who of necessity requires it for the performance of any function under this Act;
- (d) when required to do so by order of a court of law; or
- (e) at the written request of any competent authority established by law which requires it for the institution of criminal prosecution or an investigation with a view to the institution of any criminal prosecution.

CHAPTER VI OFFENCES

Failure to register in terms of Act

47. (1) A person who fails to register as an accredited tax practitioner when this Act requires him or her to register is guilty of an offence.

(2) A person convicted of an offence under this section is liable to a fine or to imprisonment for a term not exceeding five years or both such fine and imprisonment.

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Offences in connection with duties as accredited tax practitioner

48. (1) An accredited tax practitioner who knowingly or recklessly contravenes the code of professional conduct for tax practitioners determined by the Board is guilty of an offence.

(2) A person convicted of an offence under this section is liable to a fine or to imprisonment for a term not exceeding five years or both such fine and imprisonment.

Offences relating to practice of tax practitioner

49. (1) Any person who contravenes or fails to comply with any provision of section 28 or section 31(3)(a) is guilty of an offence.

(2) A person convicted of an offence under this section is liable to a fine or to imprisonment not exceeding five years or to both such fine and such imprisonment.

Offences relating to disciplinary hearings

50. (1) A person is guilty of an offence if—

- (a) having been duly summoned under section 42(5), the person fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until excused from further attendance by the chairperson of the disciplinary committee, as the case may be;
- (b) having been called under section 42(5) and having possession, custody or control of, any book, document or thing refuses, to produce it when required to do so;
- (c) having been called under section 42(7), the person refuses to be sworn in or to affirm as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of the person's knowledge and belief all questions lawfully put concerning the subject of the hearing;
- (d) having been duly sworn in or having made an affirmation, gives a false answer to any question lawfully put to him or her or makes a false statement on any matter, knowing the answer or statement to be false;

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(e) he or she wilfully hinders any person acting in the capacity as member of the disciplinary committee in the exercise of any power conferred upon that person by or under Chapter V.

(2) A person convicted of an offence under this section is liable to a fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.

CHAPTER VII MISCELLANEOUS MATTERS

Powers of Minister

51. (1) The Minister may, by notice in the *Gazette*, make regulations regarding-

- (a) any matter relating to the functioning of the Board that is necessary to ensure the Board's efficiency or to promote good order;
- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act; and
- (c) any transitional matters on the introduction of this Act.

(2) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to make such regulations and the power to appoint the members of the Regulatory Board, to the Director-General or any other official of the National Treasury.

Indemnity of Board, committees, members and employees

52. Neither the Board, any member or employee thereof, nor any committee of the Board or member thereof, incurs any liability in respect of an act or omission performed in good faith under or by virtue of any provision of this Act, unless that performance was grossly negligent.

Rules and administrative matters

53. (1) The Board may make rules on any matter—

- (a) which is under this Act required or permitted to be prescribed by the Board; and

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(b) which the Board deems necessary or expedient to be prescribed for the better achieving of the objects of the Board and of this Act.

(2) The Board may make different rules as regards different persons or different matters relevant to the functions of the Board under this Act, provided that no such differentiation may amount to unfair discrimination.

(3) Before the Board prescribes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice asking the public to comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.

(4) If the Board alters a rule because of any comment, it need not publish the alteration before prescribing the rule.

(5) The Board may, if circumstances necessitate the immediate publication of a rule, publish that rule without the consultation contemplated in subsection (3).

Furnishing of registration information to Board

54. Notwithstanding the provisions of section 4 of the Income Tax Act, 1962 (Act No. 58 of 1962), the Commissioner may furnish the registration information of tax practitioners collected in terms of section 67A of that Act to the Board.

Short title and commencement

55. (1) This Act is called the Regulation of Tax Practitioners Act, 2006.

(2) This Act comes into force on a date to be determined by the President by proclamation in the *Gazette*.

(3) Different dates may be determined by the President in relation to different provisions and for different purposes.

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PROPOSED CONSEQUENTIAL AMENDMENTS AS A RESULT OF THE INTRODUCTION
OF THE REGULATION OF TAX PRACTITIONERS BILL

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

Income Tax Act, 1962 (No. 58 of 1962)

1. (1) Section 67A of the Income Tax, 1962, is hereby repealed.

(2) Subsection (1) shall come into operation on the date that the Regulation of Tax Practitioners Act, xxxx, comes into force.

67A. Registration of tax practitioners

(1) Every natural person who—

- (a) provides advice to any other person with respect to the application of any Act administered by the Commissioner; or
- (b) completes or assists in completing any document to be submitted to the Commissioner by any other person in terms of any such Act,

must register with the Commissioner as a tax practitioner, in such form as the Commissioner may determine, at the later of 30 June 2005 or 30 days after the date on which that person for the first time so provides advice or completes or assists in completing any such document.

(2) The provisions of this section do not apply in respect of a person who—

- (a) provides advice or completes or assists in completing any document, as contemplated in subsection(1), solely for no consideration to that person or his or her employer or connected person in relation to that employer or that person;
- (b) provides advice contemplated in subsection (1) solely in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;
- (c) provides advice contemplated in subsection (1) solely as an incidental or subordinate part of providing goods or other services to another person;
- (d) provides advice or completes or assists in completing any document, as contemplated in subsection(1) solely—

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- (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 any person who is registered as a tax practitioner in terms of subsection(1): or
- (e) provides advice solely with respect to the application of the Customs and Excise Act, 1964 (Act No.91 of 1964), or completes or assists in completing any documents for purposes of that Act.

2. (1) Section 75 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (aA) of the following paragraph.

“(aA) **[any person who]** fails to register as a taxpayer or to inform the Commissioner of any change of address as contemplated in section 67;” and

(b) by the deletion of paragraphs (aB).

(2) Subsection (1) shall come into operation on the date that the Regulation of Tax Practitioners Act, xxxx, comes into force.

Section 75(aB) of the Income Tax Act, 1962, currently reads as follows:

“(aB) any person who fails to register as a tax practitioner as contemplated in section 67A;”

3. (1) Section 105A of the Income Tax Act, 1962, is hereby amended by the substitution for the section of the following section.

“105A. Reporting of unprofessional conduct.

(1) For the purposes of this section “**controlling body**” means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any taxpayer, done or omitted to do anything which in the opinion of the Commissioner—

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- (a) (i) was intended to enable or assist such taxpayer to avoid or unduly postpone the performance of any duty or obligation imposed on such taxpayer by or under this Act or any other Act administered by the Commissioner, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation; and
- (ii) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body, or

(b) constitutes misconduct contemplated in subsection (3) by a person required to register as an accredited tax practitioner in terms of section 24 of the Regulation of Tax Practitioners Act, xxxx , (Act No. xx of xxxx)

the Commissioner may lodge a complaint with the said controlling body.

(3) The Commissioner may lodge a complaint with the Independent Regulatory Board for Tax Practitioners if a person who is required to registered with that Board in terms of section 24 of the Regulation of Tax Practitioners Act, xxxx (Act No. xx of xxxx) has, in the opinion of the Commissioner—

- (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 ay Act administered by the Commissioner;
- (b) unreasonably delayed the finalisation of any matter before the Commissioner;
- (c) been grossly negligent with regard to any work performed as a accredited tax practitioner;
- (d) knowingly given false or misleading information in connection with matters affecting the application of any Act administered by the Commissioner or participated in such activity;
- (e) directly or indirectly attempted to influence any person employed by the Commissioner with regard to any matter relating to any Act administered by the Commissioner by the use of threats, false accusations, duress, or coercion, or by offering gifts, favours, or any special inducements;
- (f) used abusive language, made false accusations or statements knowing them to be false, circulated or published malicious or libelous matter; or
- (g) given a false opinion knowingly, recklessly or through gross incompetence with regard to any matter relating to an Act administered by the Commissioner.

[(3)] (4)(a) Notwithstanding the provisions of section 4 of this Act or any similar provision in any other Acts administered by the Commissioner, the Commissioner may in

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lodging any complaint under subsection (2) or (3) disclose such information relating to the taxpayer's affairs as in the opinion of the Commissioner it is necessary to lay before the controlling body to which the complaint is made.

(b) Before lodging any such complaint or disclosing such information the Commissioner shall deliver or send to the taxpayer and the person against whom the complaint is to be made a written notification of his intended action setting forth particulars of the said information.

(c) The taxpayer or the said person may within 30 days after the date of such written notification lodge in writing with the Commissioner any objection he may have to the lodging of the said complaint.

(d) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2) or (3).

~~[(4)](5)~~ The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public unless approved by the chairperson of the controlling body and where details of the tax affairs of any taxpayer will be disclosed, may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

~~[(5)](6)~~ The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the taxpayer as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whomsoever other than the taxpayer concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law."

(2) Subsection (1) shall come into operation on the date that the Regulation of Tax Practitioners Act, xxxx, comes into force.

Customs and Excise, 1964 (Act No. 91 of 1964)

4. (1) Section 99A of the Customs and Excise Act, 1964 (Act No. 91 of 1964 is hereby repealed.

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(2) Subsection (1) shall come into operation on the date that the Regulation of Tax Practitioners Act, xxxx, comes into force.

Section 99A of the Customs and Excise Act, 1964, currently reads as follows:

“99A. Consultant and agent not being clearing agent required to register.

(1) No person, except—

(a) a licensed clearing agent referred to in section 64B; or

(b) a person specified by rule,

shall, from a date specified by the Commissioner by notice in the Gazette, represent any principal referred to in section 99 (2) as a consultant or agent for the purpose of transacting any business on behalf of such principal in relation to customs and excise matters unless such a person is registered with the Commissioner.

(2) An application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.”