

8 January 2020

**NOTICE TO ALL LEGAL PRACTITIONERS
GIVING TAX ADVICE
THE FINANCIAL INTELLIGENCE CENTRE ACT**

Legal Practitioners giving tax advice

1. The Legal Practice Council has met with representatives of the S A Revenue Service (“SARS”), at the request of SARS, to discuss issues relating to tax practitioners.
2. Section 240(1) of the Tax Administration Act of 2011 (“the Act”) provides that every natural person who (i) provides advice to another person with respect to the application of a tax Act (i.e. any tax Act), or (ii) completes or assists in completing a return by another person must both –
 - 2.1 register with or fall under the jurisdiction of a recognised controlling body within 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return; and
 - 2.2 register with SARS as a tax practitioner within 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return.
3. The provisions of paragraph 2 above do not apply in respect of a person who only -
 - 3.1 provides the advice or completes or assists in completing a return for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;
 - 3.2 provides the advice in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;
 - 3.3 provides the advice as an incidental or subordinate part of providing goods or other services to another person; or

- 3.4 provides the advice or completes or assists in completing a return -
- 3.4.1 to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of the employer and connected persons in relation to the employer; or
- 3.4.2 under the supervision of a registered tax practitioner who has assigned or approved the assignment of those functions to the person.
4. Under the Act as it stands, the former Law Societies and the General Council of the Bar, a Bar Council and a Society of Advocates referred to in section 7 of the Admission of Advocates Act are some of the recognized controlling bodies. There are also others, such as the Independent Regulatory Board for Auditors (“IRBA”).
5. The Act will be amended in the near future to substitute the Legal Practice Council as a controlling body in place of the Law Societies and the various Bar Councils mentioned in the Act.
6. Once the LPC becomes a recognized controlling body it will be obliged to submit to SARS a list of its members to whom the provisions of section 240(1) apply. SARS will then compare this with its own database of tax practitioners.
7. All legal practitioners are urged to acquaint themselves with the provisions of the Act and to ensure that they are appropriately registered if they provide advice of the nature referred to in paragraph 2 above, which is very wide, unless the advice is exempted under paragraph 3 above.
8. This notice does not set out all the relevant provisions of the Act, which should be considered in detail by all legal practitioners to whom it may apply.

The Financial Intelligence Centre Act

1. In terms of Schedule 2 to the Financial Intelligence Centre Act (“FICA”) the former provincial Law Societies were designated as supervisory bodies. Supervisory bodies are, in terms of section 45 of FICA, responsible for supervising and enforcing compliance with FICA, or any order, determination or directive made in terms of FICA, by all accountable institutions regulated or supervised by them.
2. In terms of FICA, all practitioners who practice as defined in section 1 of the Attorneys Act are accountable institutions. The Financial Intelligence Centre (“the Centre”) advised the Legal Practice Council, as the successor to the Law Societies, that the Minister of Finance had decided, prior to the LPC coming into being on 1 November 2018, to remove the Law Societies from Schedule 2 to FICA and that the Centre would take over that supervisory function.

3. The amendment to Schedule 2 has been delayed, but the Centre asked the Council to enter into a Memorandum of Understanding in terms of which the Council delegates its powers to the Centre until such time as the amendment takes place.
4. The Council agreed to enter into such an MOU, and this was signed by the LPC on 5 November 2019, on which date it took effect.
5. Attorneys should therefore note that the Centre is now the entity that supervises compliance by attorneys with FICA.
6. FICA does not yet deal with trust account advocates, but it will no doubt be amended to cover them as well as attorneys. Advocates with trust accounts are therefore urged to acquaint themselves with the relevant provisions of FICA, not only to prepare themselves for amendments to FICA but also to reduce the risk of their trust accounts being utilized for money laundering.

Yours truly



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