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Advisory to Legal practitioners on giving tax advice:

1. On 12 October 2020 the Council issued an advisory to all tax practitioners - <https://lpc.org.za/notice-to-all-legal-practitioners-giving-tax-advice/>.
2. The Council has again met with representatives of the S A Revenue Service ("SARS"), at the request of SARS, to discuss the implications of the Tax Administration Act of 2011 ("the Act") for the Council and tax practitioners.
3. Section 240(1) of 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 –
 - 3.1 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
 - 3.2 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.
4. The provisions of paragraph 3 above do not apply in respect of a person who only –
 - 4.1 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;
 - 4.2 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;
 - 4.3 provides the advice as an incidental or subordinate part of providing goods or other services to another person; or

- 4.4 provides the advice or completes or assists in completing a return –
- 4.4.1 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
- 4.4.2 under the supervision of a registered tax practitioner who has assigned or approved the assignment of those functions to the person.
- 5 Since the previous Advisory, the Act has been amended to provide that the Council is a recognised controlling body. There are also other such bodies, such as the Independent Regulatory Board for Auditors (“IRBA”).
- 6 As the Council is now a recognised controlling body it is obliged in terms of section 240A(3) of the Act to submit to SARS a list of legal practitioners who are tax practitioners, in terms of section 240(1) of the Act. 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, with both SARS and the Council, if they provide advice of the nature referred to in paragraph 3 above, which is very wide, unless the advice is exempted under paragraph 4 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, but the attention of tax practitioners is drawn to section 241(2) of the Act, which provides that:
- “A senior SARS official may lodge a complaint with a 'recognised controlling body' if a registered tax practitioner has, in the opinion of the official-*
- 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 a tax Act;*
 - b) unreasonably delayed the finalisation of any matter before SARS;*
 - c) given an opinion contrary to clear law, recklessly or through gross incompetence, with regard to any matter relating to a tax Act;*
 - d) been grossly negligent with regard to any work performed as a registered tax practitioner;*
 - e) knowingly given false or misleading information in connection with matters affecting the application of a tax Act or participated in such activity; or*
 - f) directly or indirectly attempted to influence a SARS official with regard to any matter relating to a tax Act by the use of threats, false accusations, duress, or coercion, or by offering gratification as defined in the Prevention and Combating of Corrupt Activities Act, 2004 ([Act 12 of 2004](#))”*
- 9 The Council will then consider the complaint in terms of its rules.

- 10 In terms of section 234 of the Act any person who fails or neglects to register as a tax practitioner as required under section 240 is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

Issued by the Legal Practice Council