

The South African Taxation Standard 7000

Knowledge of error: Administrative proceedings

SATS 7000

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Introduction

- .01 This statement sets out guidance on the applicable standards for a SAIT tax practitioner who becomes aware of an error in a return that is the subject of an administrative proceeding, such as an examination by the South African Revenue Service (“SARS”).
- .02 This standard must be read in conjunction with the ‘Professional Code of Conduct in relation to taxation’.
- .03 For the purposes of this statement an “administrative proceeding” includes:-
- any ruling arising from examination by SARS of a tax return in the course of an enquiry;
 - determination or assessment by SARS of a tax position in relation to a return or a claim for refund.

The term “administrative proceeding” does not include a criminal proceeding. The term error includes any position, omission, or method of accounting that, at the time the return is submitted, fails to meet the standards set out in South African Taxation Standard (SATS) 2000 Filing Tax Returns. The term error also includes a position taken on a prior year’s return that no longer meets these standards due to legislation, judicial decisions, or statements of practice issued by SARS having a retrospective effect on the taxpayer’s liability. However, an error does not include an item that has an insignificant effect on the taxpayer’s tax liability.

- .04 For the purposes of this guidance, a taxpayer is a SAIT tax practitioner's client, a SAIT tax practitioner's employer, or any other third party recipient of tax services.
- .05 This guidance applies whether or not the SAIT tax practitioner prepared the return that contains the error. Special considerations may apply when a SAIT tax practitioner has been engaged by legal counsel to provide assistance in a matter relating to the counsel's client.
- .06 Whilst this guidance has primarily been drafted in respect of the preparation of income tax returns, it is also relevant to the preparation of other returns for submission to SARS.

Standard

- .07 If a SAIT tax practitioner is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the SAIT tax practitioner is aware, the SAIT tax practitioner should inform the taxpayer promptly upon becoming aware of the error. The SAIT tax practitioner should recommend the corrective measures to be taken. The SAIT tax practitioner is not obliged to inform SARS, and may not do so without the taxpayer's permission, except when required by law.
- .08 A SAIT tax practitioner should request the taxpayer's agreement to disclose the error to SARS. Lacking such agreement, the SAIT tax practitioner should withdraw from representing the taxpayer in the administrative proceeding and consider whether to continue a professional or employment relationship with the taxpayer.

Guidance

- .09 When the SAIT tax practitioner is engaged to represent the taxpayer in an administrative proceeding with respect to a return containing an error of which the SAIT tax practitioner is aware, the SAIT tax practitioner should advise the taxpayer to disclose the error to SARS. If the SAIT tax practitioner believes that the taxpayer could be subject to criminal prosecution, the taxpayer should be advised to seek specialist advice, before taking any action.

- .10 It is the taxpayer's responsibility to decide whether to correct the error. If the taxpayer does not correct an error, a SAIT tax practitioner should withdraw from representing the taxpayer in the administrative proceeding and consider whether to continue a professional or employment relationship with the taxpayer.
- .11 A SAIT tax practitioner should consider consulting with his or her own legal counsel before deciding on recommendations to the taxpayer and whether to continue a professional or employment relationship with the taxpayer. The potential for breaching client confidentiality or infringing tax law and the potential adverse impact on a taxpayer of a SAIT tax practitioner's withdrawal, as well as other considerations may create a conflict between the SAIT tax practitioner's interests and those of the taxpayer.
- .12 Once disclosure is agreed on, it should not be delayed to such a degree that the taxpayer or SAIT tax practitioner might be considered to have failed to act in good faith or to have, in effect, provided misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.
- .13 A SAIT tax practitioner should advise the taxpayer that if an error is not disclosed he may prejudice the basis of any assessment or determination made, or any contract of settlement he reaches with SARS. In addition there may be implications in regard to any Certificate of Disclosure that the taxpayer may be requested to give, by SARS, as a condition of a settlement.
- .14 Whether an error has no more than an insignificant effect on the taxpayer's liability is left to the professional judgment of the SAIT tax practitioner based on all the facts and circumstances known to the SAIT tax practitioner. In judging whether an error has more than an insignificant effect a SAIT tax practitioner should consider the method's cumulative effect as well as its effect on the return that is the subject of the administrative proceeding.

Compatibility with International Taxation Standards

- .15 This South African standard is consistent with international tax standards and best practice in all material respects as followed by members of the International Tax Directors' Forum.