

[Legal Notice No.]

Tax Administration Act 2009

Tax Agent Code of Conduct and Discipline Regulations 2018

Table of Contents

1. Citation and Commencement
2. Interpretation
3. Purpose of the Code of Conduct
4. Rules on Code of Conduct
5. Complaints against Registered Tax Agents
6. Investigation
7. Disciplinary Actions
8. Appeal to Tax Tribunal for review of Boards decision to cancel registration

Tax Administration Act 2009

Tax Agent Code of Conduct and Discipline Regulations 2018

IN exercise of the powers conferred on me by section 112 of the Tax Administration Act 2009, I hereby make these Regulations —

Citation and Commencement

1. – (1) These Regulation may be cited as the Tax Agent Code of Conduct and Discipline Regulations 2018.

(2) These Regulation shall come into force on the date of publication in the Gazette.

Interpretation

2. – In these Regulations, unless the context otherwise requires-

"**Code of Conduct**" means the rules in regulation 4;

"**tax agent**" means a natural person who is a registered tax agent under section 113 of the Tax Administration Act 2009;

"**Tax Agents' Board**" means the Tax Agents' Board established under section 110 of the Tax Administration Act 2009;

"**Tax Tribunal**" as defined in the Tax Administration Act 2009.

"**Secretary**" means Secretary to the Tax Agents' Board.

Purpose of the Code of Conduct

3. – The purpose of the Code is to –
 - (a) establish expected standards of conduct and ethics for Tax Agents registered under the Tax Administration Act 2009; and
 - (b) provide guidance on the fulfillment of Tax Agents professional and ethical obligations.

Rules on Code of Conduct

4. – The Code –

- (1) A tax agent must act honestly and with integrity.
- (2) A tax agent must comply with the taxation laws in the conduct of their personal affairs.
- (3) The tax agent must account to their client for the money or other property, if the tax agent -
 - (a) receives money or other property from or on behalf of a client; and
 - (b) hold the money or other property in trust
- (4) A tax agent must act lawfully and to act in the best interests of their client ensuring tax compliance at all times.
- (5) A tax agent must have in place adequate arrangements and relevant policies and procedures for the management of conflicts of interest that may arise in relation to the activities that the tax agents undertake in the capacity as a registered person.
- (6) A tax agent must not disclose any information relating to a client's affairs to a third party without the client's permission, unless the tax agent is required by law to do so.
- (7) A tax agent must ensure that a service provided by the tax agent, or that provided on behalf of the tax agent, is provided competently with reasonable due care. The responsibility and accountability for such service lies with the tax agent.
- (8) A tax agent must maintain adequate knowledge and skills relevant to the tax agent services that the tax agent provides.
- (9) A tax agent must take reasonable care and due diligence in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement the tax agent is making or a service that the tax agent is doing on behalf of a client.
- (10) A tax agent must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which the tax agent is providing advice to a client. Any material issues must be explicitly included as notes or advise to client.
- (11) A tax agent must not obstruct the proper administration of the tax laws.

(12) A tax agent must advise their client of the taxpayer rights as well as tax compliance obligations under the tax laws.

(13) A tax agent may maintain professional indemnity insurance that the Board may require from the tax agents.

(14) A tax agent must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

Complaints against Registered Tax Agents

5. – (1) Any person who seeks to make a formal complaint against a tax agent shall make such complaint in the first instance to the Secretary.

(2) Every such complaint shall be made in writing as required by the Board to the Secretary.

(3) If the Secretary receives a complaint under this Regulation, the Secretary must within 7 days inquire and be satisfied that there may be grounds for such complaint, before forwarding such complaint to the Board.

(4) Subject to sub regulation (3), if the Secretary is satisfied that there are reasonable grounds for such complaints, the Secretary shall forward to the Board, stating the –

(a) complaint;

(b) facts of the matter;

(c) preliminary findings on the complaint; and

(d) reasons for forwarding such complaints to the Board with preliminary recommendations.

Investigation

6. – (1) Upon receipt of the complaints made through the Secretary, the Board may within 28 days-

(a) call upon the Secretary or any representative to the Board to conduct whatever investigation;

(b) require the production for inspection by the Secretary or any representative to the Board of any books, documents or papers which may relate to or be connected with the subject matter of the investigation; and

(c) require the tax agent concerned, as the case may be, to give all information in relation to any such books, documents or papers which may be reasonably required by the Secretary or any representative to the Board for investigation.

(2) Any tax agent who, without lawful excuse, refuses or fails to produce to the Secretary or any representative to the Board for the purposes of the investigation any book, documents or papers required of him or fails to give any such information relating thereto shall be liable to a fine not exceeding \$25,000 or shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$50,000 or imprisonment to a term of 10 years or both a fine and imprisonment.

(3) Before any preliminary investigation begins in respect of any matter under this Regulation, the Secretary shall post or deliver to the tax agent concerned notice in writing of the commencement of the investigation.

(4) It shall be the duty of the Secretary to refer to the Board any matter inquired under this regulation without undue delay.

(5) If, on considering any complaint, the Board is of the opinion that there is no prima facie case made against the tax agent concerned, as the case may be, the Board must dismiss the complaint, and the Secretary must inform the parties concerned accordingly.

Disciplinary Actions

7. – (1) If the Board is satisfied that the Tax Agent has breached the Code, the Board may;

(a) cancel the registration of the tax agent under section 114(i) of the Tax Administration Act 2009; or

(b) impose a fine not exceeding \$50,000; or

(c) upon conviction, to imprisonment for a term not exceeding 10 years or both a fine and imprisonment.

(d) publish the list of tax agents whose license is cancelled.

(2) The registration of a tax agent must not be cancelled under sub regulation (1) of regulation 7 by reason of any offence committed before the date of his registration if, at that date, the Board was aware of the tax agent's conviction in respect of that offence.

(3) The Board may appoint a legal adviser who may be present at any inquiry into any matter to advise the Board on any matters of law.

Appeal to Tax Tribunal for review of Board's decision to cancel registration

8. - (1) A Tax Agent dissatisfied with the Board's decision to cancel his or her registration can challenge such notice of intention to cancel the registration only under section 82 of the Tax Administration Act 2009.

(2) Subject to sub regulation (3), the actual cancellation of the registration under regulation (7) takes effect 30 consecutive days after the tax agent has been served with the actual cancellation.

(3) Where the actual cancellation has been effected, and such a Tax Agent gives notice to the Board of his intention to appeal, such cancellation becomes effective if affirmed by the Tax Tribunal upon appeal.

(4) For the purpose of appeals of the Boards decision, the tax tribunal procedures under the Tax Administration Act 2009 shall be followed.

Made this day.....of 2018.

.....

V. DAS

Chairperson, Tax Agents' Board