



# DAVEY'S Locker



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## Tax practitioners

### Registration now a twofold affair

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The recently published Tax Administration Act and amendments already made to it (s 240) require natural persons who either provide tax advice or assist in completing tax returns to register both with a recognized controlling body and SARS.

Exemptions apply. Financial advisers (called 'financial service providers in the FAIS Act), especially, will need to evaluate the nature of their services in this regard.

#### Nature of services

Every natural person who provides advice to another person with respect to the application of a tax Act or completes or assists in completing a return to be submitted to SARS by another person in terms of a tax Act is required to register with SARS as a tax practitioner within thirty days after providing such services.

#### Exemptions

The main exemptions apply to the following natural persons:

- Those providing the advice or completing or assisting in completing a document solely for no consideration, that is to say, no fee is charged for the tax service.
- Those providing advice solely in anticipation of or in the course of litigation to which the Commissioner is a party or in which the Commissioner

is a complainant, that is to say, attorneys and advocates litigating in tax forums.

- Those providing advice solely as an incidental or subordinate part of providing goods or other services to another person, that is to say, financial advisers who in the course of advising on a financial product also discuss its tax implications.

This last exemption draws a fine line, since many financial planners offer a dual service pertaining to both a client's tax-return submissions and advice on financial products. The simple and safe solution here is to charge no fee for the tax service, rather than attempt to argue that the tax service is incidental.

#### Controlling body

Before registering with SARS, a natural person must register with a 'recognized controlling body'. Such bodies must be recognized by SARS and have membership criteria pertaining to qualifications, experience, continuous professional development and disciplinary procedures.

Examples laid down by law include accounting and tax institutes and law societies.

[The Commissioner has yet to reveal which other bodies he recognizes.—Ed]

*t.s/h*