

EXPERT'S CORNER

- WHO OWNS THE E-FILING PROFILE?



In line with our newsletter's theme of "Tax Filing Season", Fair Play has included an opinion piece that seeks to address some of the important issues that taxpayers encounter during the tax filing season, namely the sometimes uncertain responsibilities of and relationship between taxpayers and their tax representatives. Fair Play invited the South African Institute of Professional Accountants (SAIPA) representatives Sibusiso Thungo and Aysha Naino to give insight.

RELATIONSHIPS BETWEEN TAX PRACTITIONERS AND THEIR CLIENTS USUALLY START OUT VERY WELL BUT WHAT HAPPENS IF THE RELATIONSHIP TURNS SOUR? WHO OWNS A CLIENT'S E-FILING PROFILE?

The South African Institute of Professional Accountants (SAIPA) often receives queries and formal complaints against tax practitioners for refusing to release the e-filing profiles of clients who have terminated their mandate and appointed a new tax practitioner. In their defence, tax practitioners say this is the only way to reclaim their fees.

WHO OWNS THE E-FILING PROFILE?

The e-filing profile is created on the SARS portal to assist taxpayers and tax practitioners in meeting their statutory requirements. The e-filing profile is the property of SARS and no individual or company has a right to claim it as their own.

THE EFFECTS OF HOLDING THE E-FILING PROFILE TO RANSOM

Preventing a client from accessing his or her profile may constitute a criminal offence in terms of section 234 of the Tax Administration Act. The misconduct of a tax practitioner may also result in his or her tax practitioner status being revoked by the controlling body concerned. The SAIPA code of conduct requires all members to act in a professional manner and with integrity. Bringing the institute into disrepute comes with consequences, and tax practitioners should find alternative means of settling payment disputes with their clients instead of resorting to a ransom approach.

DOING THE RIGHT THING

Tax practitioners are advised to follow the correct legal procedures when collecting debt.

They should always have a letter of engagement ready, setting out the steps they will take if the client is in breach of their engagement. These are challenging economic times and the chances of a tax practitioner receiving a delinquent client are high.

It is advisable that the new tax practitioner discusses the e-filing profile matter with the former tax practitioner in writing. Should this courtesy discussion fail, the tax practitioner should consider reporting the matter to the controlling body of the defaulting tax practitioner.

SAIPA advises tax practitioners to avoid the following tactics when collecting debt:



Do not call the client at unreasonable hours.



Never lie about how much the client owes you or add additional fees or interest that were not part of the original engagement.



Never make it personal, always be professional.



Never charge a contingency fee for tax-related work – it is illegal.



If you have a significant amount of uncollected debts, hire a reputable third-party debt collector and make sure that they adhere to the law when collecting debts.