



# **JOINT MEMORANDUM ON THE PROPOSED CODE OF ETHICS FOR TAX AGENTS**

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**JOINT MEMORANDUM ON  
THE PROPOSED  
CODE OF ETHICS  
FOR  
TAX AGENTS**

INLAND REVENUE BOARD  
MALAYSIA

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# Joint Memorandum On The Proposed Code of Ethics For Tax Agents

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## CODE OF ETHICS FOR TAX AGENTS

### 1. INTRODUCTION

The success of the Self-assessment System (SAS) depends on the abilities of the parties concerned, such as the Inland Revenue Board (IRB), taxpayers and the tax agents to play their roles in ensuring increased tax compliance. Tax agents who represent taxpayers are responsible to protect the interests of the taxpayers, the government and the country. The IRB should ensure that taxpayers keep complete records and report their income correctly as well as pay the appropriate taxes. The implementation of SAS has resulted in tax agents being given a greater role and responsibility to act as the advisers and consultants to the taxpayer.

**Comments:** While the tax agents, like any citizen, do have the general interest of the Government and nation in mind, the engagement with a client is based on the fact that tax agents would assist them in maximising tax benefits under the existing legislative provisions. This is similar to what is practiced in other jurisdictions. It should be noted that with the liberalisation of trade and services, foreign tax agents may be allowed to practice in Malaysia too.

Further it should also be noted that the role of tax agents remains essentially the same, both under the official assessment and the self-assessment systems. Tax agents are always under the same obligation to provide information correctly based on the particulars given by their clients and to give reasonable advice to their clients. They will be subject to civil litigation if they failed to do so.

Recognizing that not all tax agents belong to a professional body, which would have its own Code of Professional Conduct and Ethics to discipline its members, ~~the importance of the role played by the tax agents,~~ this code of ethics has been prepared to provide a minimum ethical standard for all tax agents ~~to ensure that tax agents deliver services to clients with unquestioned integrity.~~ This code of ethics and should be observed by all tax agents ~~for~~ in all tax matters when dealing with the IRB officers to ensure that tax agents deliver services with unquestioned integrity.

### 2. PRINCIPLES

This code of ethics is based on the principles of integrity, accountability, transparency, efficiency and social responsibility. A tax agent has a social responsibility to the nation as a whole. He should give the best advice to his clients and impress upon the clients the obligation to pay taxes as required by the law.

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## 3. OBJECTIVES

- 3.1 This code of ethics aims to promote good tax practices by enhancing the level of tax compliance and representation to achieve the following objectives:
- (a) To inculcate professionalism among tax agents to ensure that all work handled is correct, fair, efficient and comprehensive.
  - (b) To instil a sense of responsibility in line with the principles / practices of existing tax legislation and regulations;
  - (c) Uphold the sense of social responsibility in line with public morals, and
  - (d) Be a good example (role model) to his clients and provide advice to the clients responsibly.

## 4. CODE OF CONDUCT

A tax agent must comply with the code of ethics as follows:

### 4.1 Integrity

A tax agent shall:

- 4.1.1 Be of good conduct, honest, trustworthy and transparent in performing his work and always gives full co-operation when dealing with the IRB. In handling his client's case, he shall furnish information provided by his client, which to his knowledge, is correct and accurate.

**Comments:** Tax agents rely on taxpayers to provide the relevant information and need to trust the information provided is correct. Tax agents are not in a position to verify the information. Even the auditor, whose job is to verify the accounts, can only certify the state of accounts as true and fair in accordance with the various standards that are in force and does not undertake to verify every transaction in the accounts. We, therefore, suggest that the last sentence should be amended as indicated.

- 4.1.2 Respect the rights of his clients as follows:

- a) maintains a high level of confidentiality towards information given to him; and
- b) treats all the information provided as "classified materials". Such information cannot be used for purposes other than tax matters and cannot be leaked to any other party without

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specific authorisation unless otherwise permitted or required under any written law, or where it is the duty or right of the tax agent to disclose, when not prohibited by law, such as (i) to comply with the quality review of the professional bodies or (ii) to comply with technical standards and ethics requirements or (iii) for purposes of legal proceedings.

**Comments:** It is not clear where the tax agent also receives the same information from other sources or in another capacity, how would this rule operate?

**“Classified material”** means any returns/documents/information ~~that are acquired by~~ which comes to the notice of a classified person as defined in Subsection 138(5), Income Tax Act 1967, in his capacity as such.

A **“classified person”** means any person or his employee who ~~has access to classified material when representing a client in taxation matters~~ advises or acts for a person who is or may be chargeable to tax.

**Comments:** The Institutes are of the view that the definition be amended in line with Section 138(5) as indicated

4.1.3 Inform and advise his client on the progress of the case accurately.

4.1.4 Not to misuse any monies entrusted by his client for payment of taxes. Proof of payment of taxes shall be given to his client for record purposes.

4.1.5 Not to allow his tax agent licence to be used by an unapproved tax agent to carry out the latter's work. ~~make any arrangements with an unqualified person to support the work of that unqualified person.~~

**Comments:** The Institutes are of the view that the terms “arrangements” and “an unqualified person” are not clear and the scope of the paragraph is too wide. The Institutes suggest that the paragraph be amended as indicated above.

4.1.6 Not to persuade or otherwise abet the IRB's officers to reveal the confidential activities of the IRB or provide non-public information that may be detrimental to the IRB, government and country.

~~4.1.7 Not to use political influence or influential people or persuade clients to do the same so as to get special treatment from the IRB.~~

**Comments:** Tax agents are only agents of the taxpayers (principals). However, if the principal has some connections and decides to use such connections, the agent cannot be held accountable as it has no control over its principal's action! A tax agent does not advise on such matters

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simply because it will complicate the delivery of tax services and the eventual billings by the tax agent.

The Institutes are concerned that where a client uses such influence, does it mean that the IRB officers will 'blacklist' the tax agents? It is therefore suggested that the Paragraph 4.1.7 be removed.

4.1.8 Not to be involved in any arrangement or scheme that may affect the revenue of the country in contravention of the provisions of the Income Tax Act 1967.

**Comments:** The original wording of the above is too wide. Advising a client to apply for the tax incentives available, for example, will also have an impact on the Government's tax revenue. Hence, the Institutes would like to propose changes to the above as indicated.

### 4.2 Competency

A tax agent shall :

4.2.1 Always exhibit a high level of professionalism, competency and authority in discharging his duties.

4.2.2 Ensure that his knowledge in the field of taxation is enhanced in line with the changes in the current tax laws and practices.

4.2.3 Ensure that his staff is well-trained and skilled in taxation matters and the tasks performed by them meet the required level.

4.2.4 Ensure that all information in the income tax returns submitted to the IRB is completed correctly based on the information provided by the clients and accurate. Tax computations should be based on the provisions of the relevant tax laws.

4.2.5 Handle only cases that are within his experience and capability to avoid any unsatisfactory work

**Comments:** The Institutes are of the view that a tax agent may collaborate with another tax expert who has the expertise he is lacking to perform an assignment. In the course of the collaboration, he may enhance his knowledge on the area. There is always a beginning to be able to gain experience in the first place.

The Institutes would like to highlight that factors contributing to the unsatisfactory work are many and the tax agents should not be singled out to take the blame.

4.2.6 Ensure that submission of appeals against any assessment has a valid ground.

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- 4.2.7 Provide accurate and complete answers to the IRB's queries, based on the information as provided by the client, within the stipulated time.

**Comments:** It is the tax agent's duty to reply to enquiries from the IRB and the relevant authorities. However, it is the duty of the taxpayer to provide accurate and complete information on time. Tax agents cannot be held accountable if the taxpayers fail to discharge their duties.

- 4.2.8 Understand and advise the client on ~~adhere to~~ the rulings and guidelines issued by the IRB / relevant government agencies.

**Comments:** Since public rulings and guidelines are interpretations of the law by the IRB, it should not be binding on the taxpayer. The requirement to understand and adhere to the rulings and guidelines issued by the IRB / relevant government agencies is therefore onerous. Tax agent should adhere to the legislation, case law and subsidiary legislation with the force of law such as Regulations.

- 4.2.9 ~~Manage~~ Handle the tax affairs of the clients as required by the clients in accordance with the compliance procedures set by the IRB.

**Comments:** What "procedures" are we expected to comply with or follow? Reading the sentence literally, the requirement is onerous. Perhaps, it is not intended that procedures be set by the IRB on management of tax affairs but rather that tax agents should observe procedures set by the IRB in relation to the administration of the Income Tax Act 1967.

### 4.3 *Professionalism*

A tax agent shall:

- 4.3.1 Provide advice and explain to his clients the obligations and responsibilities as taxpayers under the prevailing tax laws and practices.
- 4.3.2 ~~Explain to his clients the obligations and responsibilities as taxpayers under the law and educate~~ Advise his clients on the importance of maintaining proper records for all transactions especially in business cases.
- 4.3.3 Advise clients to comply with tax payment arrangement that have been established.



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## 5. GENERAL MATTERS

Compliance with this code of ethics will be used as one of the criteria for confirming and renewing a tax agent's licence. However, any areas of non-compliance shall be made known to the relevant tax agent and he/she would be given an opportunity to be heard before an independent panel prior to rejecting the renewal of tax agent's licence. In this code of ethics, a "tax agent" means a tax agent as defined in Section 153 of Income Tax Act 1967.

**Comments:** To enhance transparency and impartiality, the Institutes suggest that the independent panel should comprise representatives from the Ministry of Finance, the IRB and the professional bodies.

- 5.1 A tax agent approved under Paragraph 153(3)(c) of the Income Tax Act 1967 shall quote the approval number and ~~the date of approval~~ on all correspondences with the IRB.

**Comments:** Since the approval number already indicates the date of expiry of the licensing period, it is unnecessary to quote the date of approval.

- 5.2 A tax agent shall inform the IRB if he ceases to be the tax agent of a client. Letters addressed to the said clients shall be returned with an appropriate notation.

- 5.3 A tax agent should always keep his own tax affairs up-to-date. Tax returns and letters/documents should be submitted on time and the tax payable should be paid within the time allowed.

- 5.4 A tax agent should endeavour to use the electronic services provided by the IRB.

**Comments:** The Institutes appreciate the need to encourage the usage of electronic services. Nevertheless the use of the word "ALWAYS" is too onerous and needs to be amended. It will be noted that tax agents require consent from a client to submit the clients' tax returns by way of e-filing. As such, this cannot be forced onto a tax agent as this is solely the discretion of the taxpayer. The tax agent is encouraged to use his best effort to utilise the electronic services provided by the IRB.