

10 October 2016

Attention: Mr Imran Vanker
The Director – Standards
Independent Regulatory Board for Auditors
P.O. Box 8237
GREENSTONE
1616

Dear Imran

PROPOSED AMENDMENTS TO THE IRBA CODE IN RESPONSE TO NOCLAR

We appreciate the opportunity to provide comments on the proposed amendments to the IRBA Code of Professional Conduct for Registered Auditors.

RESPONSES TO QUESTIONS POSED

1. Do registered auditors require clarification on the relationship between the proposed Code amendments (the Code) and the statutory requirement contained in Section 45 Reportable Irregularities (RIs) of the Auditing Profession Act, 2005?

We are of the view that clarification of the relationship between the Code and the requirement of Section 45 of the Auditing Profession Act, 2005 (the APA) may be required in the following circumstances:

a. **The scope of Section 225 of the Code versus the definition of an RI in terms of the APA.**

The Code recognises that in some jurisdictions, *“there are legal or regulatory provisions governing how professional accountants should address non-compliance or suspected non-compliance which may differ or go beyond this section”* and further, that *“the professional accountant has a responsibility to obtain an understanding of those provisions and comply with them”*.

In South Africa, the professional accountant (PA) is indeed subject to such legal and regulatory provisions, including Anti-Money Laundering legislation, and most notably, the reporting obligation in terms of Section 45 of the APA.

The immediate question that arises is whether the definition and/or scope of an RI is different to the scope of Section 225.5 of the Code. For example, if a matter is not deemed to be an RI, could it still represent a matter that require further action in terms of Section 225.18 & 225.19 of the Code: *Addressing the Matter?*

Conversely, where a PA reports an RI in terms of Section 45 of the APA, is it possible for this matter to be excluded from the scope of section 225, i.e. a matter that does not require to be addressed in terms of section 225.18 – 19, and/or 225.35 – 36 of the Code.

It is our assumption that the scope of the Code may be more onerous when compared with the requirements of Section 45 of the APA. We believe further clarification or guidance is required in this respect.

b. Advise management Section 225.18 – 19 of the Code

Section 225.18 – 19 of the Code requires the PA to *inter alia* advise management to take appropriate and timely actions.

Clarification may be required on the extent of the advice to management and, if applicable, to those charged with governance. Is this merely a notification that action is required in a timely manner or is the requirement more onerous? Considering the converse, if specific advice is provided:

- i. Does this not impair the auditor's independence by inadvertently assuming management responsibility (Section 290.159 – 163 of the IRBA Code of Conduct)?
- ii. If implemented by the client, is this particular advice deemed to be sufficient and appropriate when considering the 2nd letter to the IRBA when concluding on the RI process, i.e. to conclude that "... adequate steps have been taken for the prevention or recovery of any loss as a result thereof" (of the RI)?

c. Timing of discussions with client

Pursuant to Section 225.18-20 of the Code, South African laws and regulations are likely to override the requirement, manner and timing in which reporting to an authority should take place. Clarification is required whether the requirements to engage with and to provide advice to management is in any way prohibited or constrained when considering the initial reporting timelines set out in Section 45 of the APA. Specific reference is made to the requirement to the report to the IRBA "without delay" when a Registered Auditor is satisfied or has reason to believe that a RI is taking or has taken place.

Additionally, clarification is required as to whether, considering Section 45 of the APA, the PA is able to comply with Section 225.18 of the Code without undermining the ability to provide an opinion in the 2nd report to the IRBA as contemplated in Section 45(c)(3) of the APA.

d. Requirement to determine whether further action is required

Section 225.23 of the Code stipulates:

The professional accountant shall assess the appropriateness of the response of management and, where applicable, those charged with governance.

Clarification is required as to the relationship, if any, between the PA's 2nd report to the IRBA and this provision of the Code. For example, if the 2nd report of the PA (in terms of Section 45 of the APA) concludes that "*adequate steps have been taken for the prevention or recovery of any loss as a result of the RI*", does this by default imply that the response of management is deemed appropriate and the requirement of Section 225.23 of the Code has been met?

Section 225.25 of the Code stipulates:

In light of the response of management and, where applicable, those charged with governance, the professional accountant shall determine if further action is needed in the public interest.

Clarification may be required in the following circumstances:

- Will a PA, when reporting a RI in terms of Section 45 of the APA, ever be in a position where “*further action is required*”, bearing in mind that all RIs are reported to the IRBA?
- Similar to our comments in 1(a), is the scope of a RI, in terms of Section 45 of the APA, the same (or otherwise) as a matter “*in the public interest*”, as contemplated in Section 225.25 of the Code. For example, the APA refers to *inter alia* the “prevention or recovery of any loss”, whereas the Code and the requirement of Section 225.25 refers to an assessment made in the public interest, which may include, but not be limited to “loss” as contemplated by the APA.

e. Impact on audit report

Section 45 of the APA describes the impact of an RI on the PA’s reporting responsibilities. Clarification may be required on the PA’s reporting responsibilities, compared to the responsibilities in Section 45, when responding to non-compliance or suspected non-compliance in terms of:

- Discussion with client (Section 225.18 – 20 of the Code) and
- Circumstances where it is determined that further action is needed due to public interest or other considerations (Section 225.35 & 36 of the Code).

2. Are there other matters of clarification that you would like to bring to the attention of the CFAE?

- Professional services other than audits of financial statements

The Code is not limited to the audit of financial statements but also apply to other professional services. When a PA is engaged to provide professional services other than an audit of financial statements, and becomes aware of information concerning an instance of non-compliance or suspected non-compliance the PA is required to obtain an understanding and discuss the matter with the appropriate level of management, and where appropriate, those charged with governance. Additionally the PA is also required, as contemplated in Section 225.44 of the Code, to communicate the non-compliance or suspected non-compliance within the firm (in the case of an audit client of the firm) to the entity’s external auditor, and a requirement to consider communicating the non-compliance or suspected non-compliance to the firm that is the entity’s external auditor (if not an audit client of the firm).

- As the engagement of the PA for non-audit services precludes the PA from the Section 45 APA requirement, the PA may continue to apply the requirements of the Code. Does this impact the external auditor and their ability to comply with Section 45 APA, if applicable? Especially when the RI is reported to the IRBA by the external auditor and both the external auditor and the PA for non-audit services are required to assess whether further action is required (as contemplated in Section 225.25 and Section 225.49 of the Code)? If more than one PA actions in the public interest, there may be situations where the actions may be conflicting which could confuse markets and possibly lead to

consequences that was not anticipated and in the public interest. Should there be some guidelines for collaboration in this instance?

- Practical guidance on how to distinguish and extinguish the requirements of the Code when there are more than one PA engaged with the client (for e.g. non-audit and audit professional services).

3. Other

- Practical guidance when a subsidiary or component PA performs and audit for purposes of the group audit engagement and there is no requirement for a statutory audit. The RI guide May 2015 indicates that the component PA will not have a responsibility to report a RI, would similar principles apply in the application of the Code for instances of non-compliance or suspected non-compliance?
- The Section 45 requirement in terms of the APA relates to the performance of an audit as defined. This definition appears to be broader than that of an audit engagement in the Code. Should there be guidelines that clarify the classifications of responsibilities in the APA and the Code for the types of engagements or services provided?

Conclusion

We would be pleased to discuss our letter with you or your staff at your convenience. If you have any questions, please do not hesitate to contact George Tweedy via email at gtweedy@deloitte.co.za.

Yours faithfully,



Per George Tweedy

Partner

Deloitte & Touche