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BOARD NOTICE 714 OF 2025

IRBA
INTEGRITY | PUBLIC INTEREST | AUDIT QUALITY

BOARD NOTICE

NOTICE OF AN INVITATION TO COMMENT ON PROPOSED DECISIONS RELATING TO THE RETENTION OF VARIOUS FEES PRESCRIBED FOR THE 2019/2020 AND 2020/2021 FINANCIAL YEARS

I. In the matter of ***IRBA v East Rand Member District of Chartered Accountants*** (SCA, 22 July 2024) the Supreme Court of Appeal ordered that the following decisions taken by the Independent Regulatory Board for Auditors ("***IRBA***") be set aside and remitted to it for a decision to be taken afresh, by no later than 31 March 2025, after it has given effect to the right of registered auditors to procedurally fair administrative action, as contemplated in the Promotion of Administrative Justice Act 3 of 2000 (PAJA):

1. The decision published under Board Notice 24 of 2019 in Government Gazette No 42258 dated 1 March 2019, in terms of which the IRBA **removed the concession to registered auditors over the age of 65** in the form of a 50% discount of their individual annual fees (the fee concession).
2. The decision published under Board Notice 47 of 2020 in Government Gazette No 43110 dated 20 March 2020, in terms of which the IRBA failed to reverse its previous decision to remove the fee concession.
3. The decision to prescribe fees in relation to **the registration, annual renewal of registration and the reinstatement of the registration of tax practitioners** who elected the IRBA as their recognised controlling body, published under:
   (a) Board Notice 24 of 2019 in Government Gazette No 42258 dated 1 March 2019;
   (b) Board Notice 82 of 2019 in Government Gazette No 42511 dated 5 June 2019; and
   (c) Board Notice 47 of 2020 in Government Gazette No 43110 dated 20 March 2020
4. The decision to increase the **annual renewal fees for registration and administrative fees for reinstatement**, published under paragraph 2.1 and 2.3 of Board Notice 24 of 2019 and Board Notice 47 of 2020, with 35% and 50%

respectively, which increases were above the consumer price inflation (CPI) when compared to the equivalent fees payable during the 2018/2019 financial year.

5. The decision to prescribe assurance fees in respect of Category C assurance work and all administration fees in respect of assurance fees, published under:
   (a) Board Notice 24 of 2019 in Government Gazette No 42258 dated 1 March 2019;
   (b) Board Notice 82 of 2019 in Government Gazette No 42511 dated 5 June 2019; and
   (c) Board Notice 47 of 2020 in Government Gazette No 43110 dated 20 March 2020

II. The IRBA is considering confirming the decisions that have been set aside and retaining all the above fees and/or decisions which applied in respect of the 2019/2020 and 2020/21 financial years with the exception of the administration fees referred to in paragraph 1.5 above. The proposed administrative action is for the following reasons:

1. Section 8 of the Auditing Profession Act 26 of 2005 (APA), as amended, gives the IRBA the power to prescribe the fees that are payable to the regulator by registered auditors to fund the performance of its legislated functions and provides that it must prescribe accreditation, registration, registration renewal and re-registration fees and annual fees, or a portion thereof in respect of a part of a year. It also empowers the IRBA to grant exemption from payment of any fees prescribed in terms of section 8(1) or (2).
2. The IRBA's other principal source of funding is moneys appropriated by Parliament. In the 2018/19 Medium-Term Expenditure Framework National Treasury announced a reduction in the Board's base budgetary allocation of R8.7 million.
3. Section 53(3) of the Public Finance Management Act (PFMA) does not allow the IRBA, as a public entity, to budget for a deficit without obtaining prior written approval from the National Treasury (NT). IRBA has been informed by NT that it has not granted it approval to budget for a deficit for the 2025/26, 2026/27 and 2027/28 financial years and that the IRBA must ensure that the budget is in accordance with section 53(3) of the PFMA.

4. The decisions by the IRBA in 2019 to increase the prescribed fees and introduce new fees were made in the light of the reduction in the NT allocation. At the same time, the IRBA's inspections revealed a continued decline in audit quality. This increased risk required the IRBA to enhance the scope of its work.
5. The shortfall arising from the reduced NT allocation and the need to fund the increased scope of activities was met principally by way of increases in the prescribed fees contemplated by section 25 of the APA.
6. The continued risk of poor audit quality demanded that the IRBA's strategy to extend the scope of its work to improve audit quality be retained so as to fulfil the IRBA's statutory mandate to protect the public interest.
7. The IRBA's financial situation remains such that it cannot afford to reverse its decision with regard to the 2019 and 2020 fee increases and new fees, thereby incurring the liability to reimburse the payments already made by the registered auditors. The fee increases and new fees introduced in 2019 were necessary to preserve the IRBA's financial sustainability. The fees collected in terms of the 2019 and 2020 decisions have been expended to fund the IRBA's activities in those financial years. Since the IRBA cannot maintain a deficit, the repayment obligation would have to be met by increasing other prescribed fees. It is not open to the IRBA to deduct from future fee income to meet an obligation to repay the 2019 and 2020 fees as this would deleteriously affect the IRBA's ability to continue to perform its statutory duties and to deliver on its strategic objectives to improve audit quality.

III. With regard to the particular decisions that must be taken afresh as described above, the following particular considerations apply:

A. Removal of the 50% concession to registered auditors over the age of 65

1. In years prior to 2019, the IRBA granted a concession to registered auditors over the age of 65 in the form of a 50% discount on their individual annual fees.
2. In 2019, to assist it in addressing its budgetary challenges, the IRBA resolved to remove the over-65 fee concession.
3. Consequently, in terms of Board Notice 24 of 2019 with effect from 1 April 2019, all registered auditors were invoiced for the same annual fee.

4. In 2020, in terms of Board Notice 47 of 2020 the IRBA retained the removal of the over-65 concession for the 2020/2021 financial years.
5. This remained the position in each of the Board's subsequent annual fee determinations – i.e., those for the 2021/2022, 2022/2023, 2023/2024 and 2024/2025 financial years.

B. Tax practitioner registration, annual renewal and/or reinstatement fees

1. In terms of s 240 of the Tax Administration Act 28 of 2011 (TAA), all tax practitioners are required to be registered with a Recognised Controlling Body (RCB). Both the IRBA and the South African Institute for Chartered Accountants (SAICA) were RCBs.
2. SAICA decided to levy a separate subscription fee on all its members (chartered accountants) who chose SAICA as their RCB. As a result, a number of registered auditors who were tax practitioners and members of SAICA informed SARS that the Board was their RCB, so as to avoid the fees charged by SAICA.
3. In 2018, the IRBA informed registered auditors of its intention from the 2019/2020 financial year, to levy a separate additional annual fee which would be payable by tax practitioners who had elected the IRBA as their RCB.
4. An annual fee of R2 100.00 was prescribed for annual renewal of tax practitioner status payable by any registered auditor who is recognised as a tax practitioner with the IRBA as RCB and an administration fee of R1 050.00 was prescribed for reinstatement of tax practitioner recognition in Board Notice 24 of 1 March 2019.
5. The fee was retained in the 2020/2021 fee determination at the rate of R2 270.00 for annual registration and R4 375.00 for reinstatements, as prescribed in Board Notice 47 of 20 March 2020.
6. The registration and reinstatement fees were retained in the subsequent fee determination for 2022/2023.
7. The reason behind the imposition of tax practitioner fees was to cover the administration costs related to the performance of the IRBA's functions in relation to the registration of tax practitioners (including the development and implementation of systems to interact with SARS systems), receipt and

investigation of complaints against tax partitioners, initiation of disciplinary processes, when necessary, as well as the implementation of measures necessary for the strengthening and monitoring of compliance with the IRBA continuing professional development requirements by tax practitioners.

8. With effect from 5 January 2023, as a result of the coming into effect of the Tax Administration Laws Amendment Act 16 of 2022, the IRBA was no longer a RCB under the Act and no longer performed RCB functions with effect from 1 April 2023.

C. Above CPI increases on annual renewal fees for registration and reinstatement

1. The decision of the IRBA in 2019 to prescribe above-inflation fee increases in respect of the annual fees for registration and the reinstatement of registration was necessitated by the need to meet the shortfall in the NT allocation described above by increasing the proportion of the IRBA's funds derived from prescribed fees. In addition, the IRBA had additional regulatory and oversight responsibilities as a result of the increased number of high-profile disciplinary matters as well as the increased number of reportable irregularities received. This in turn necessitated increased regulatory efforts on the part of the IRBA, and consequently, increased budgetary needs.
2. As a consequence, limiting the increase to the CPI inflation rate would have been wholly inadequate and posed a threat to the financial viability of the IRBA and its ability to execute its regulatory mandate.
3. Accordingly, in terms of Board Notice 24 of 1 March 2019 the fees prescribed for registration and reinstatement of registration were 35 per cent and 50 per cent, respectively, higher than those for the previous financial year.
4. In 2020, and in all subsequent years these particular fees have been increased by a percentage between 5 – 8, in line with increases implemented before 2019, but calculated on the baseline of the increased fees for the 2019/2020 financial year.

D. Category C assurance fees and related administration fees

1. With effect from 2012 IRBA prescribed assurance fees which are billed twice a year based on a percentage of the total assurance work invoiced by the firm and declared every calendar year by the firm for each registered auditor.
2. Prior to 2019, the assurance fee was prescribed only in respect of Category A (High-Risk) assurance work.
3. In 2019, the IRBA decided to extend the prescribed assurance fee to encompass all assurance work, including fees derived from Category C (Low-Risk) assurance work. This was gazetted in Board Notice 82 of 5 June 2019. The decision was made in terms of section 8(2)(b) of the Act which provides that the Board may prescribe fees payable for an inspection or review undertaken by the Regulatory Board in terms of section 47.
4. The decision was necessitated by the need to meet the shortfall in the NT allocation by increasing the proportion of the IRBA's funds derived from prescribed fees and to fund the IRBA's additional regulatory and oversight responsibilities, as described above.
5. In 2020, the IRBA resolved to retain the Category C assurance fee at the same percentage as prescribed for 2019/2020 year. However, it did not gazette this decision.
6. The SCA held that the prescription of annual fees – continuing for the period of one year – is a peremptory requirement under s 8(1)*(b)* of the Act. The fees payable in terms of Board Notice 82 of 2019 were payable from 1 April 2019 to 31 March 2020 and the obligation to pay those fees ceased on 31 March 2020. The failure to gazette the assurance fees in the 2020/2021 financial year resulted in the cessation, on 31 March 2020, of the obligation to pay those fees.
7. Assurance fees were prescribed for Category C assurance work in the 2021/2022, 2022/2023, 2023/2024 and 2024/2025 financial years.
8. As regards the IRBA's 2019 decision to extend the assurance fee to encompass Category C assurance work, the SCA held that section 8(2)(b) of the Act, which the IRBA had relied upon as the empowering provision, envisages the recovery of costs in relation to inspections. Section 8(2)(b) did not permit the Board to prescribe those fees on the basis of a percentage of Category C assurance work, where the costs of inspections bear no relation to the fees charged.

9. Assurance fees are a critical source of income for the Board and are used to cover its general costs of operation, including inspections.
10. The IRBA has been advised by external legal counsel that it may prescribe such fees in respect of both Category A and Category C assurance work under the general fee raising powers granted to it by section 8(1) of the Act rather than the specific provisions of section 8(2)(b). The fees are part of the general fee income of IRBA raised annually to cover the costs of performing its statutory mandate and envisaged in section 25(1)(a) of the Act. Given the reduction in the contribution from the fiscus announced by the NT in 2019 and retained since then, if the fees are not levied in this particular form it would be necessary for IRBA to fill the gap by increasing one or other of the other annual fees prescribed.
11. The IRBA is consequently considering taking a fresh decision in terms of section 8(1) of the Act to impose the assurance fees applicable to Category C assurance work in respect of the 2019/2020 and 2020/2021 financial years at the same percentages of declared assurance fees as were prescribed in those years.
12. In the *ERMDCA v IRBA* matter, certain related administrative fees introduced in 2019, namely penalties for late submission of the assurance work affidavit and supporting documents and for the under-declaring of assurance fees prescribed in relation to Category C assurance work were set aside by the High Court on the basis that the IRBA has no power to impose such penalties. On appeal, the SCA remitted this decision to the IRBA for reconsideration but the IRBA resolved, following the High Court decision, that it would not reimpose the fees and has refunded them to auditors.

Registered auditors and members of the public are invited to submit comments in connection with the above proposed decisions to the IRBA no later than 30 days after publication of the notice.

Submission Requirements

1. Comments on the proposed decisions must be submitted electronically to board@irba.co.za for the attention of Mr Marius Fourie **on or before 17h00 on 3 March 2025**. Comments received after the closing date will not be considered.

2. Any enquiries regarding this communication can be directed to the aforementioned email address.

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