



SOUTH AFRICAN INSTITUTE OF
PROFESSIONAL ACCOUNTANTS™

■ YOUR WEALTH

SAIPA YOUR LAW : VOLUME 11 ISSUE 1, 26 JANUARY 2016

This newsletter

This newsletter covers new relevant National laws up to 25 January 2016.

You may wish to peruse the list and follow the hyperlinks (AFTER FIRST LOGGING IN to www.gazette.co.za) to laws that are of interest to you. Consider using Ctrl + Right-click on a hyperlink.

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FINANCIAL

1. FINANCIAL SECTOR REGULATION BILL: ENFORCEMENT - PART 2 (COURT PROCEEDINGS, DEBARMENT ORDERS AND LENIENCY AGREEMENTS)

[Chapter 10](#) deals with a variety of what it terms "enforcement powers". A [previous article](#) dealt with the first three groups of enforcement powers (guidance notes, binding interpretations and directives).

This article deals with three other types of "enforcement powers", as well as enforcement measures found in other parts of the Bill (administrative penalties and criminal prosecution).

THE POWER TO INSTITUTE COURT PROCEEDINGS

[Part 4](#) of Chapter 10 empowers the [responsible authority](#) for a [financial sector law](#) to bring an application in the High Court for:

- (i) An order that a person do, or not do, a specified thing to ensure compliance with the financial sector law; and
- (ii) Any ancillary order.

The High Court may make the above order applied for, even if another remedy is available, if:

- (i) It appears to the High Court that the person is engaging, or proposes to engage, in conduct contravening a financial sector law;
- (ii) The person has previously engaged in such conduct; and

(iii) There is a danger of substantial or irreparable damage, prejudice or harm if the person engages in such conduct.

No security for damages

It is specifically provided that the High Court may not require the responsible authority to give any undertaking as to damages in connection with the application for an order in terms of these provisions.

Compulsory publication

The responsible authority must publish each court order that it obtains in terms of these provisions, except for interlocutory orders.

THE POWER TO MAKE DEBARMENT ORDERS

The Bill empowers the responsible authority for a specific financial sector law to make an order debarring an individual from:

- (i) Providing, or being involved in the provision, of specified [financial products](#) or [financial services](#);
- (ii) Providing specified financial services to a [financial institution](#); or
- (iii) Acting as a [key person](#) to a financial institution.

See the [past overview](#) on debarment orders for more particulars about this enforcement power.

THE POWER TO ENTER INTO LENIENCY AGREEMENTS

The responsible authority for a specific financial sector law is empowered to enter into a leniency agreement with a person.

Such leniency agreement must provide that the responsible authority undertakes not to impose an administrative penalty on the person in respect of specified conduct.

An undertaking in a leniency agreement may be given in exchange for a person's co-operation in an investigation or in proceedings in relation to conduct that contravenes or may contravene a financial sector law for which the authority is responsible.

Persons to whom the leniency may apply

Apart from the person (individual or juristic person) who gives the co-operation, a leniency agreement with such person may provide that the leniency agreement also extends to:

- (i) Specified persons in the service of, or acting on behalf of the co-operating person; or
- (ii) Specified partners or associates of the co-operating person.

Requirements

The responsible authority may not enter into a leniency agreement with a person unless it is satisfied that it is appropriate to do so. In this respect it has to have regard to, among other matters, the following:

- (i) The nature and effect of the contravention concerned;
- (ii) The nature and extent of the person's involvement in the contravention; and
- (iii) The extent of the person's co-operation.

Publication

The responsible authority that enters into a leniency agreement must publish it, unless that authority determines that the publication may:

- (i) Create an unjustifiable risk to the safety of a person; or
- (ii) Prejudice an investigation into a contravention of a law.

Termination

The responsible authority that enters into a leniency agreement may terminate it:

- (i) If the person to whom it has been given, agrees;
- (ii) If that person gave the responsible authority false or misleading information in relation to entering into the agreement;
- (iii) If that person has failed to comply with the agreement; or
- (iv) In circumstances specified in the agreement.

IMPOSITION OF ADMINISTRATIVE PENALTIES

The responsible authority is empowered to impose administrative penalties for persons engaging in conduct that contravenes a financial sector law or the regulations or the regulatory instruments made in terms of that law.

Please see the [past overview](#) on administrative penalties for more detail about the penalties, and the applicable administrative justice procedures and requirements.

CRIMINAL PROSECUTION

🚩 If a [financial institution](#) commits an offence in terms of any [financial sector law](#), each member of the governing body of the financial institution also commits the offence.

A governing body will refer to a person or body or persons, whether elected or not, that:

- (i) Manages the institution;
- (ii) Controls the institution;
- (iii) Formulates the policy and strategy of the institution;
- (iv) Directs the affairs of the institution; or
- (v) Has the authority to exercise the powers and perform the functions of the financial institution.

The concept of governing body includes, among other possibilities, the following:

- (i) The board of directors of a company;
- (ii) The members of a close corporation;
- (iii) The trustees of a trust;
- (iv) The board of a pension fund;
- (v) The general partner of an *en commandite* partnership or the partners of any other partnership.

This means, for instance, that if a financial institution which is a company, commits an offence, each director of that company can be prosecuted for that offence and be subject on a conviction to a fine up to the maximum fine that may be imposed for that offence.

The only way in which a director can escape criminal liability for an offence by the financial institution or the board of which he or she serves is to establish that he or she took all reasonably practical steps to prevent the commission of the offence.

The same applies to a member of the board of a pension fund or a trustee of a trust which is a financial institution. It also applies to any person or member of a body of persons who fall under the broad definition of "governing body" referred to above.

Liability for conduct of key person

A [financial institution](#) is also subject to liability for the conduct of a key person of that financial institution. Apparently, this also includes criminal liability.

In terms of [section 266\(2\)](#), if a key person of a financial institution engages in conduct relating to the provision of [financial products](#) or [financial services](#) that amounts to a contravention of a [financial sector law](#), the financial institution must be taken also to have engaged in that conduct.

The only way in which the financial institution can escape liability for such conduct is to establish that it took all reasonably practicable steps to prevent the conduct.

Conducting business not in accordance with a licence

It will be a criminal offence for a person (individual or juristic) to provide a financial service, financial product or [market infrastructure](#), as a business or part of a business otherwise than in accordance with a licence.

Such a licence must be:

- (i) A licence issued in terms of a specific financial sector law or the [National Credit Act](#); or
- (ii) If no specific financial sector law provides for such a licence, a licence issued in terms of the future Financial Sector Regulation Act itself.

A [section 2 financial product](#) or [section 3 financial service](#) may only be provided as a business, or part of a business, in accordance with a licence issued in terms of [chapter 8](#).

The maximum sentence for these offences is a fine of R15m and/or imprisonment for 10 years.

Wrongful description as being licensed

The following criminal offences are also subject to a maximum sentence of R15m and/or 10 years imprisonment:

- (i) A person (individual or juristic) describing himself, herself or itself, or holding out as being, licensed in terms of a financial sector law, or licensed to provide particular financial products, financial services or market infrastructure, if not so licensed; and
- (ii) A person (individual or juristic) permitting another to identify himself, herself or itself as being licensed, if that is not the case.

Non-compliance with reporting obligations

A licensee must promptly report to the responsible authority that issued the license the fact that the licensee has contravened or is contravening:

- (i) A financial sector law;
- (ii) A regulator's directive or a section 200 directive - also see [past overview](#);
- (iii) An enforceable undertaking;
- (iv) An order of court made in terms of a financial sector law; and
- (v) A decision of the tribunal.

A licensee must also promptly report to the responsible authority the fact that the licensee has become aware that information given in connection with the application for the licence was false or misleading.

Non-compliance with these reporting obligations is a criminal offence subject to a maximum fine of R5m.

Non-compliance with compulsory disclosure

A licensed financial institution must:

- (i) Identify the licence that it holds in all its business documentation, and in all its advertisements and other promotional material, relating to the licensed activity; and
- (ii) Make its licence or a copy of its licence available at no cost to any person on request.

If a financial institution's licence has been suspended, the institution must during the period of suspension identify the licence and state that it is suspended in all its business documentation, and in all its advertisements and other promotional material, relating to the licensed activity.

Non-compliance is a criminal offence, subject to a maximum fine of R1m.

Offences relating to accounts and records

A person who is required in terms of a financial sector law to keep accounts or records commits an offence if the accounts and records do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Such a person (individual or juristic person) is liable on conviction to a fine not exceeding R5m and/or imprisonment for a period not exceeding 5 years. **However**, the maximum penalty increases to R10m and/or 10 years if that person:

- (i) Knew that, or was reckless whether, the accounts or records did not correctly record and explain the matters, transactions, acts or operations to which they relate;
- (ii) Intended to deceive or mislead a financial sector regulator or an investigator; or
- (iii) Intended to hinder or obstruct a financial sector regulator or an investigator in performing his or her duties in terms of a financial sector law.

Providing false or misleading information

A person (individual or juristic person) who provides information that is false or misleading to a financial regulator or the Reserve Bank, in connection with the operation of a financial sector law, commits an offence.

This includes information that is false or misleading by omission.

The maximum penalty for this offence is a fine not exceeding R5m and/or imprisonment for a period not exceeding 5 years. **However**, the maximum penalty increases to R10m and/or 10 years if that person knew or believed, or ought reasonably to have known or believed, that the information was false or misleading.

Offences relating to notification of group company status

An eligible financial institution must, within 14 days of becoming part of a group of companies (as meant in the [Companies Act](#)), notify the [Prudential Authority](#) of that event.

The following are eligible financial institutions for this purpose:

- (i) A financial institution licensed or required to be licensed as a bank in terms of the [Banks Act](#);
- (ii) A financial institution licensed or required to be licensed as a long-term insurer in terms of the [Long-term Insurance Act](#) or as a short-term insurer in terms of the [Short-term Insurance Act](#);
- (iii) A [market infrastructure](#); and
- (iv) A financial institution prescribed in regulations for the purposes of the definition of an eligible financial institution.

An eligible financial institution that does not make the required notification within the 14 days allowed commits an offence and is liable on conviction to a fine not exceeding 5 percent of its annual turnover in South Africa during its preceding financial year.

If an eligible financial institution commits the above offence, its holding company commits the like offence and is liable on conviction to the same penalty.

Offences by holding companies

The Prudential Authority is empowered to require the holding company of a financial institution by notice to be licensed in terms of the future Financial Sector Regulation Act if it is not licensed in terms of a financial sector law.

The Prudential Authority may also require the holding company of a financial institution by notice to be a non-operating company.

A holding company of a financial conglomerate which does not comply with such a notice commits an offence, which may on conviction result in a fine not exceeding 10 percent of the annual turnover in South Africa during its preceding financial year.

[Section 164](#) provides that a holding company of a financial conglomerate may not acquire or dispose of a material asset as defined in prudential standards made for this section, without the approval of the Prudential Authority.

A holding company that contravenes this prohibition commits an offence and is liable on conviction to a fine not exceeding 10 percent of the value of the material asset concerned.

In addition, an acquisition or disposal in contravention of the prohibition has no legal effect.

Offences by valuers and auditors

[Section 240](#) requires a valuator or auditor of a licensed financial institution or of a holding company of a financial conglomerate to submit a detailed written report on certain matters.

These matters are restricted to matters of which the valuator or auditor becomes aware in the course of performing functions and duties as a valuator or auditor.

The detailed written report is required in respect of any matter that the valuator or auditor considers:

- (i) Is causing or is likely to cause the financial institution to be financially unsound;
- (ii) Is contravening or may contravene a financial sector law; or
- (iii) In the case of an auditor, that it may result in an audit not being completed or may result in a qualified or adverse opinion on accounts.

The detailed written report must be submitted without delay to:

- (i) The Prudential Authority;
- (ii) The governing body of the financial institution; and
- (iii) In the case of a financial conglomerate, also to the holding company of the financial institution.

A valuator or auditor of a financial institution or holding company of a financial conglomerate is also on resignation or termination required to submit to the Prudential Authority a written statement of:

- (i) The reasons for resignation; or
- (ii) The reasons that the valuator or auditor believes are the reasons for termination.

In the case of an auditor, any report under the Auditing Professions Act that the auditor would, but for the resignation or termination, have had reason to submit, must also be submitted to the Prudential Authority.

A valuator or auditor who does not comply with the requirements set out above commits an offence and is liable on conviction to a fine not exceeding R5m.

Bill 34 of 2015



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TAX

2. INCOME TAX ACT: TAXATION LAWS AMENDMENTS 2015

Amendments made by the Taxation Laws Amendment Act 2015 on 8 January 2015 or earlier

(i) Definitions:

- Collateral arrangement, connected person, foreign partnership, identical security, and identical share (section 1);

(ii) Rebates:

- Normal tax rebates (section 6),
- rebate or deduction for foreign taxes on income (section 6quat), and
- rebate for foreign taxes on income from source within SA (section 6quin);

(iii) Deeming provisions:

- Certain amounts to be included in income or taxable income (section 8),
- source of income (section 9),
- circumstances in which certain amounts received or accrued from disposal of shares are deemed to be of a capital nature (section 9C),
- trading stocks (section 22),
- gains or losses on foreign exchange transactions (section 24I),
- permanently separated spouses (section 25A),
- taxation of REITs (section 25BB), and
- long-term insurance business (section 29A);

(iv) Interest and debt and royalties:

- Interest on hybrid instruments deemed to be dividends in specie (section 8F),
- hybrid interest deemed to be dividends in specie (section 8FA),
- reduction of debt (section 19),

- limitation of interest deductions in respect of reorganisation and acquisition transactions (section [23N](#)),
- Shari'a compliant financing arrangements (section [24JA](#)),
- incurral of interest in terms of certain debts (section [24O](#)),
- exemption from withholding tax on royalties (section [49D](#)),
- withholding of withholding tax on royalties by payers of royalties (section [49E](#)), and
- exemption from withholding tax on interest (section [50D](#));

(v) Foreign and headquarter entities:

- Net income of controlled foreign companies (section [9D](#)),
- change of residence, ceasing to be controlled foreign company or becoming headquarter company (section [9H](#)),
- ring-fencing of interest and royalties incurred by headquarter companies (section [20C](#)), and
- non-resident sellers of immovable property (section [35A](#));

(vi) Exemptions:

- Insurance and banks, dividends, employees, scholarships and bursaries, government grants (section [10](#)), capital element of purchased annuities (section [10A](#)),
- films (section [12O](#)),
- government grants (section [12P](#)),
- international shipping (section [12Q](#)),
- tax free investments (section [12T](#)), and
- small business funding entities (section [30C](#));

(vii) Deductions and allowances:

- General (section [11](#)),
- farming or renewable energy (section [12B](#)),
- manufacturers or hotelkeepers or aircraft or ships or agricultural products (section [12C](#)),
- industrial policy projects (section [12I](#)),
- venture capital company shares (section [12J](#)),
- energy efficiency savings (section [12L](#)),
- hotel keeper buildings (section [13bis](#)),
- urban development zone buildings (section [13quat](#)),

- donations to certain organizations (section 18A),
 - limitation of certain deductions (section 23H),
 - limitation of deductions in respect of reorganisation and acquisition transactions (section 23K),
 - future expenditure on contracts (section 24C),
 - National Key Point or specified important place or area (section 24D),
 - future repairs to certain ships (section 24P), and
 - co-operatives (section 27);
- (viii) Special provisions relating to companies (sections 38, 40C and 40E);
- (ix) Special rules relating to certain transactions and distributions (sections , 41, 42, 44, 45, 46, 47);
- (x) Dividends tax (sections 64D, 64EB and 64F);
- (xi) First schedule farming operations (paragraphs 7, 9, 11, 13, 14, 19 and 20);
- (xii) Second schedule lump sum benefits (paragraphs 3, 3A, 4, 5 and 6);
- (xiii) Sixth schedule micro businesses (section 48C and paragraphs 1, 3, 10, 11 and 13);
- (xiv) Seventh schedule employment or office benefits (paragraphs 1, 2, 6, 7, 9, 11, 12 and 12A;
- (xv) Eight schedule CGT (paragraphs 2, 3, 4, 11, 12A, 20, 29, 31, 35, 43, 55, 57A, 64B, 65, 66, 76B and 80); and
- (xvi) Tenth schedule oil and gas paragraph 8 and Eleventh Schedule (government grants).

Amendments to be made by the Taxation Laws Amendment Act 2015 on 1 March 2016 or later

- (i) Definitions: Insurance Act, pension fund, pension preservation fund, provident fund, provident preservation fund, remuneration proxy, and retirement annuity fund (section 1);
- (ii) Rebates: Normal tax rebates (section 6);
- (iii) Deeming provisions:
- trading stocks (section 22),
 - short-term insurance business (section 28), and
 - long-term insurance business (section 29A);
- (iv) Interest and debt:
- Limitation of interest deductions in respect of debts (section 23M),
 - credit agreements and debtors allowance (section 24), and
 - withholding tax on interest definitions (section 50A);

(v) Deceased estates:

- Disposal by deceased person (section [9HA](#)), and
- taxation of deceased estates (section [25](#));

(vi) Deductions and allowances:

- machinery, plant, implements, utensils and articles under instalment credit agreement (section [11](#)),
- special economic zones (section [12R](#)), and
- mining operations (section [15](#));

(vii) Withholding tax on service fees (Chapter 2 [part 4C](#));

(viii) Second schedule lump sum benefits (paragraphs [5](#) and [6](#));

(xiv) Seventh schedule employment or office benefits (paragraphs [1](#), [2](#) and [12D](#)); and

(xv) Eight schedule capital gains tax (paragraphs [11](#), [13](#), [23](#), [40](#), [41](#), [64C](#), [67](#) and [80](#));

Further stylistic improvements and textual corrections were also made - the full amendments made or to be made by the remaining parts of the 2013, 2014 and 2015 amendment Acts can be found by [clicking here](#).

GG39588 / 8 January 2016 (Incorporated into the [Income Tax Act](#) and [Its regulations](#))



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3. TAX ADMINISTRATION ACT: TAX ADMINISTRATION LAWS AMENDMENTS 2015

The following amendments were made generally 8 January 2016, with some amendments made from an earlier date:

- (i) Definitions: Customs and excise legislation, international tax standard, and tax Act ([Chapter 1](#));
- (ii) Administration: Inclusion of international tax standards in administration, and SARS official authorisation ([Chapter 2](#));
- (iii) Registration: Registration required if responsible for third party returns ([Chapter 3](#));
- (iv) Returns and records: International tax standards information and returns may be required, reportable arrangement participant definition amended, and Financial Markets Act reference correction ([Chapter 4](#));
- (v) Information gathering: Procedure prescribed where legal professional privilege is asserted, right to request relevant material extended (including from connected person), production of relevant material extended (including from employee or office holder), solemn declaration may be required during field audit or criminal investigation, and grounds for inquiry order expanded ([Chapter 5](#));
- (vi) Confidentiality: Reference to customs and excise legislation, and limitation relating to information to other entities extended ([Chapter 6](#));
- (vii) Assessments: Extended grounds for reduced assessments, and further exceptions to the time limitations on when an assessment may be made ([Chapter 8](#));
- (viii) Dispute resolution: When considering whether settlement is appropriate, and SARS cost of litigation in comparison to the possible benefits will only be with reference to the prospects of success in court ([Chapter 9](#));

🚩 (ix) **Recovery of tax:** Requirements must be met before SARS may require a person who holds or owes money for or to a taxpayer (including a pension, salary, wage or other remuneration), to pay the outstanding tax debt of that taxpayer (Chapter 11);

(x) **Interest:** SARS may not make a direction that interest is not payable due to certain circumstances beyond the control of the taxpayer after the expiry of three years (in the case of an assessment by SARS) or five years (in the case of self-assessment), from the date of assessment of the tax in respect of which the interest accrued (Chapter 12);

🚩 (xi) **Refunds:** A SARS refund must include interest thereon, paying back refunds mistakenly given include interest paid by SARS, the manner in which refunds are to be regarded payments to the National Revenue Funds has been amended, limitation on objection and appeal, and duty on banks to report reasonable suspicion of a tax offence by a depositor (and possibly suspend the transaction and pay tax on behalf of the depositor) (Chapter 13);

(xii) **Administrative penalties:** Reportable arrangement penalties amended (Chapter 15);

(xiii) **Understatement penalty:** Definition of default and requirements for voluntary disclosure amended (Chapter 16);

🚩 (xiv) **Criminal offences:** Deeming provision for falsification of a statement, and additional offence of disclosing SARS and taxpayer confidential information (Chapter 17);

🚩 (xv) **General:** Delivery of documents to email address, and SARS may confirm a tax compliance status as at the date of the request, or a previous date as prescribed, by an organ of state or a person to whom the taxpayer has presented the tax compliance status confirmation (Chapter 19); and

(xvi) **Transitional:** Calculation of interest on an understatement penalty (Chapter 20).

Amendments will also be made at a future date to the [general interest rules](#).

GG39586 / 8 January 2016 (Incorporated into the [Tax Administration Act](#) and [Its regulations](#))

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OTHER

4. NOTABLE ONE LINERS

 **Draft African Exploration Mining and Finance Corporation Act:** The [Draft Bill](#) proposes establishing a corporation to acquire and develop any mining permit, mining right or mining interest granted to the Corporation on behalf of the State, ensure that mineral resources are developed in a sustainable manner to the best interest of the people of South Africa, and to give effect to state participation, optimise socio-economic development and drive the nation's developmental imperatives through mining, such as industrialisation, beneficiation, infrastructure development, food security and security of energy (Comment deadline 60 days from 22 January 2016).

Agreement South Africa Act: Once a commencement date has been gazetted the [Act](#) will incorporate Agreement South Africa as a juristic person that, amongst others, provides assurance to specifiers and users of the quality and value for money of non-standardised construction related products or systems and minimizes risk associated with such products and systems.

Animal Diseases Act: The comment deadline for the [draft veterinary procedural notice for buffalo disease risk management](#), available from the Department of Agriculture, Forestry and Fisheries, has been extended to 31 January 2016.

 **Basic Conditions of Employment Act:** A correction notice has been gazetted for the sectoral determination for the [private security sector](#) (which refers to alarm monitoring and response and physically or electronically guarding or protecting fixed property, premises, goods, persons or employees, including [deemed security employer-employee relationships](#) and excluding collective agreements or bargaining council agreements).

Competition Act:

🚩 (i) Draft [guidelines on the assessment of public interest provisions in merger regulation](#) have been gazetted (comment deadline 29 January 2016).

(ii) The [South African Petroleum Industry has applied for exemptions](#) relating to agreements and practices required to ensure continuity and stability of liquid fuels supply to various sectors and the geographic locations of the SA economy - also see the [temporary exemption until 30 June 2016](#).

(iii) [SAA has been given conditional exemption relating to its participation in the Star Alliance](#) until 31 December 2020.

🚩 [Constitution of the Republic of South Africa](#): A commission of inquiry has been established to consider the [feasibility of making higher education and training fee free](#) in South Africa.

[Criminal Laws \(S Offences and Related Matters\) Amendment Act](#): The [Judicial Matters Amendment Act 2015](#) will amend the Minister requirements to report on the actual implementation of this Act (once a commencement date has been gazetted).

Criminal Procedure Act:

(i) Once a commencement date has been gazetted, the [Criminal Matters Amendment Act 18 of 2015](#) will introduce more rigid bail conditions and higher penalties relating to an essential infrastructure offence, or any offence involving ferrous or non-ferrous metal which formed part of essential infrastructure (including non-compliance with an International Trade Administration Act notice on regulating imports or exports, or on import or export or rebate permit conditions and Second-hand Goods Act offences). **Note:** *Essential infrastructure offence refers to unlawfully and intentionally tampering with, damaging or destroying essential infrastructure (or colluding with or assisting another person in such an activity) while the person should have reasonably known that it is essential infrastructure.*

(ii) The Judicial Matters Amendment Act 24 of 2015 [repealed the Criminal Procedure Act 1955 provision regarding Binding over of persons to keep the peace](#), and [amended or will amend the Child Justice Act](#) regarding annual reports on implementation of the Act and expungement of certain criminal records of children.

Customs and Excise Duty Act:

(i) The Taxation Laws Amendment Act 2015 will provide for [imported fuel levy goods that are not removed to a customs and excise manufacturing warehouse](#), and has provided for [transitional arrangements](#).

(ii) The Tax Administration Laws Amendment Act 2015 has made (or will make) amendments relating to [key transitional measures](#), legitimate [external searches](#) (and repealing [criminal prosecution measures](#)), warehouse [home consumption entry/home use clearance](#) provisions, and increased [agent liability duration](#).

 (iii) [Currency conversions for determining value of goods exported or to be exported](#) have been gazetted.

Customs Control Act: The Tax Administration Amendment Act 2015 will [make further amendments](#), once a commencement date is gazetted for the principal Act.

Customs Duty Act: The Tax Administration Amendment Act 2015 will make [further amendments](#), once the principal Act commences.

Debt Collectors Act: The [fees that debt collectors may charge](#) have been nominally increased, given that increases do not seem to take place on an annual basis.

Defence Act: The Defence Laws Repeal and Amendment Act 17 of 2015 will repeal the [Demobilisation Act](#), once a commencement date has been gazetted.

Disaster Management Act: Once a commencement date is gazetted, the [Amendment Act](#) will, amongst others, [define and regulate climate change and disaster risk reduction actions](#), [redefine emergency preparedness, mitigation and vulnerability](#), require [calling for assistance](#) and [progress reports](#), and increase [disaster management plans](#) requirements by national public entities, [municipalities](#) and [other organs of state](#).

 **Electricity Regulation Act:** A [nuclear programme determination](#) has been gazetted.

 **Electronic Communications Act:** A [draft code of conduct for premium rated services](#) has been gazetted (comment deadline 16 February 2016).

Electronic Communications and Transactions Act: Internet domain names registered in the net.za, web.za and org.za second level domain are now also open to alternative dispute resolution under the [ADR regulations](#).

Employment Tax Incentive Act: The Taxation Laws Amendment Act 2015 amended [wage regulating measures](#), and made a [numbering correction](#).

 **Estate Duty Act:** The Taxation Laws Amendment Act 2015 included, to a certain extent, pension fund, provident fund, or retirement annuity fund contributions in the [property of a deceased estate](#).

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act: [New fees](#) relating to registration, renewal, amendment, appeal, advertisements, import permits, document requests and free sale certificates have been gazetted.

Financial Markets Act: Reminder that the [conflict of interest assessment requirements of market infrastructures](#) commenced 31 December 2015.

 **Immigration Act:**

- (i) The [Draft Immigration Amendment Bill 2015](#) proposes that
 - illegal foreigners who have overstayed, as prescribed, do not qualify for a port of entry visa, a visa, admission into the Republic or a permanent residence permit during the prescribed period, and
 - any foreigner who leaves the Republic after the expiry of his or her visa shall be dealt with in terms of prohibition placed on illegal foreigners (Comment deadline 20 January 2016) - it does not consider exceptional circumstances where a foreigner may overstay for reasons beyond their control.
- (ii) A [list of occupations in high demand in 2015](#) has been gazetted.

 **Income Tax Act:**

- (i) From 1 March 2016 the Income Tax Act will require valuation of contributions made by employers to certain retirement funds, which will include [contribution certificate information prescribed by the Minister](#) and a [determination of the fund member category factor](#).
- (ii) [Notice has been gazetted](#) that new employees tax deduction tables came into operation on 1 March 2015.
- (iii) The Tax Administration Laws Amendment Act 2015 has made or will make [reference updates and stylistic corrections](#) (see, for example, [section 64K](#)), overhauling the [list of sections subject to objection and appeal](#), providing when [withholding of amounts from payments to non-resident sellers of immovable property](#) will be deemed a final tax, redefining Fourth Schedule [provisional taxpayer and remuneration](#), requiring [applications from non-compliant employers](#) for absolution or deduction from future remuneration, amending employer [medical and share deduction](#), [repeal of SITE](#), [employee tax certificate](#) and [refunds requirements](#), and amending [provisional tax payment and registration](#), [compulsory returns and no objection or appeal on increased estimates](#) and [penalties](#) (and repealing [exemptions](#)).
- (iv) The Taxation Laws Amendment Act 2013 introduced the [definition of portfolio of a hedge fund collective investment scheme](#), and amended the provisions relating to [net income of controlled foreign companies](#), [service fee exemption](#), [limitation of interest deductions in respect of reorganisation and acquisition transactions](#).
- (v) The Taxation Laws Amendment Act 2014 amended the provisions relating to [exemption of foreign dividends and dividends paid or declared by headquarter companies](#), [taxation of long-term insurers](#), [voluntary deregistration](#), and [taxable capital gain](#).

Labour Relations Act: The [accreditation](#) of the Hairdressing, Cosmetology, Beauty and Skincare Industry; Wood and Paper Sector; Laundry, Cleaning and Dyeing (Cape); Education Labour Relations; South African Local Government; Building (North and West Boland); and Electrical Industry; has been gazetted.

Magistrates Courts Act: The Judicial Matters Amendment Act 2015 made [amendments regarding the appointment of judicial officers](#), as well as further regulating, in the Magistrates Act, [benefits of magistrates appointed as judges](#).

Meat Safety Act: The [draft meat inspection scheme](#) proposes a compulsory meat inspection service for all abattoirs (unless exempted) that acts independently at all abattoirs, and acts independently at export approved cutting plants, processing plants and cold stores, and import approved cold stores where deemed necessary by the NEO.

Medical Schemes Act: A medical scheme is [limited in the manner in which it may compensate brokers](#), including a capped amount of [R80.00 plus VAT payable for accredited broker services and commission](#) based on a prior written agreement - the nominal increase in the amount applies from 1 January 2016.

Medicines and Related Substances Act:

-  (i) Once a commencement date is gazetted, the [Amendment Act](#) will make key definition amendments (see advertisement, biological medicines, complementary medicines, cosmetic, foodstuff, IVD, medicine, medical device, product and vigilance), and strengthen the provisions relating to the South African Health Product Regulatory Authority (including issuing registration certificates, rejecting registration applications, cancelling registrations based on "public interest", prohibit sale of medical devices or IVDs without a label).
- (ii) Notice has been gazetted as to what [information must be provided by manufacturers and/ or importers when applying for the single exit price adjustment](#) for 2016.

Mineral and Petroleum Resources Royalty Act: The Tax Administration Laws Amendment Act 2015 amended the [penalty for underestimation section](#).

 **National Credit Act:** [Draft application, registration, renewal and branch fees](#) have been gazetted (comment deadline 30 days from 21 January 2016).

National Environmental Management Air Quality Act: [Draft national pollution prevention plans](#), to be required from certain persons involved in coal mining or production of crude oil; natural gas; coal or gas liquid fuels; cement; glass; ammonia; nitric acid; carbon black; iron; steel; ferro-alloys; aluminium; polymers; pulp; paper; or electricity, have been gazetted - also see [draft declaration of priority pollutant greenhouse gases](#) (Comment deadline 30 days from 8 January 2016)

National Environmental Management Biodiversity Act: Amendments have been proposed to the [norms and standards for marking of rhinoceros and rhinoceros horn and hunting of rhinoceros for trophy hunting purposes](#) (comment deadline 30 days from 12 January 2016).

 **National Health Act:**

(i) [Terms of reference for the national health insurance work streams](#) have been gazetted. The comment deadline for the [white paper on national health insurance](#) is 3 months from 15 December 2015. The proposals may be overviewed in a later newsletter.

(ii) Extensive national environmental health norms and standards for premises and acceptable monitoring standards for environmental health practitioners have been gazetted, and will be incorporated in due course.

 **National Heritage Resources Act:** Regulations have been gazetted relating to the [registration of dealers in heritage objects and the control of trade in heritage objects](#) - Registration shall entitle such person to get incentives on export permit applications.

Occupational Health and Safety Act: The following safety standard will be incorporated into the [electrical installation regulations](#) as from 1 April 2016: SANS 10142-2: The wiring of premises Part 2: Medium-voltage installations above 1 kV a.c. not exceeding 22 kV a.c. and up to and including 3 MVA installed capacity

Draft Perishable Products Export Control Act: The [Draft Bill](#) proposes repealing the current [Perishable Products Export Control Act](#), and regulating the cold chain for the export of perishable products (including monitoring

perishable products and cold chain information system management), and promoting BBBEE by black farmers, rural communities and exporters.

🚩 **Prescribed Rate of Interest Act:** On 8 January 2016 the Judicial Matters Amendment Act 24 of 2015 made the prescribed rate of interest the Reserve Bank repurchase rate plus 3,5 percent per annum.

Prevention of Organised Crime Act: Once a commencement date has been gazetted, the **Criminal Matters Amendment Act 18 of 2015** will allow the High Court to make a preservation order if there are reasonable grounds to believe that the property concerned is an instrumentality in an essential infrastructure offence, and a forfeiture order if it is shown on a balance of probabilities that the property concerned is an instrumentality of an essential infrastructure offence. **Note:** *Essential infrastructure offence refers to unlawfully and intentionally tampering with, damaging or destroying essential infrastructure (or colluding with or assisting another person in such an activity) while the person should have reasonably known that it is essential infrastructure.*

Promotion of Access to Information Act:

🚩 (i) The **exemption for private bodies** that do not employ more than 50 employees, or do not have a total annual turnover that exceeds the notice parameters has been extended to 31 December 2020. A further positive development is that the parameters have been raised with consideration of inflationary and other pressures on the Rand value.

(ii) The **Judicial Matters Amendment Act 2015** includes regional courts within the Act, requires the Magistrates Commission to keep a list of designated presiding officers, and gives the responsibility for training courses for presiding officers to the South African Judicial Education Institute.

Promotion of Administrative Justice Act: The **Judicial Matters Amendment Act 2015** includes regional courts within the Act, requires the Magistrates Commission to keep a list of designated presiding officers, and give the responsibility for training courses for presiding officers to the South African Judicial Education Institute.

Promotion of Equality and Prevention of Unfair Discrimination Act: The [Judicial Matters Amendment Act 2015](#) includes regional courts within the Act, and gives the responsibility for training courses for presiding officers to the South African Judicial Education Institute.

 **Protection of Investment Act:** A commencement date must still be gazetted for [the Act](#) - you may wish to consider the [past overview](#).

Public Finance Management Act:

 (i) The [standard interest rate on loans](#) granted by the State out of the State Revenue Fund and/or all other debts which must be paid into the State Revenue Fund is 9,75% per annum as from 1 January 2016.

(ii) The [Finance Act](#) has allowed the use of National Revenue Fund funds to cover unauthorised expenditure incurred by The Presidency, the past Department of Women, Children and People with Disabilities, the Department of Social Development and the Department of Trade and Industry.

(iii) The [New Development Bank Special Appropriation Act](#) has allowed use of National Revenue Fund funds to pay the first capital instalment to the New Development Bank.

Skills Development Act:

(i) The Tax Administration Laws Amendment Act 2015 has redefined the Skills Development Levies Act definition of [penalty](#), and amended the levy [refund](#) arrangements.

(ii) A cryptic notice has been given that [regulation 4\(4\)](#) of the SETA grant regulations has been re-promulgated - it is unclear what the notice actually means.

Superior Courts Act:

(i) Criteria have been gazetted for the determination of the [judicial establishment of the Supreme Court of Appeal and divisions of the High Court](#).

(ii) Once a commencement date has been gazetted, the Judicial Matters Amendment Act 24 of 2015 will make the Secretary-General of the Office of the Chief Justice responsible for the general administration of the [Judges' Remuneration and Conditions of Employment Act](#), will make [name changes](#) in the Judicial

Service Commission Act and will [make reference updates](#) to the Office of the Chief Justice and Secretary-General of that Office.

Tax Administration Act:

 (i) [Third party return requirements](#) have been gazetted for certain banks, financial institutions, listed companies, estate agents, attorneys, medical schemes, person liable to pay withholding tax on interest, issuers of a financial instrument or policy in respect of a tax free investments, state-owned companies, organs of state, and purchasers of any livestock, produce, timber, ore, mineral or precious stones from a primary producer other than on a retail basis.

(ii) The [threshold for the amount of tax in dispute](#) for purposes of the hearing of an appeal by the tax board (noted on or after 1 January 2016) has been set at R1 000 000.

 **Transfer Duty Act:** The Taxation Laws Amendment Act 2015 replaced reduction of rates with [alteration of rates](#).

Value-added Tax Act:

(i) The Taxation Laws Amendment Act 2015 has or will make [reference updates](#) (including referencing an [error made in stipulating the consideration agreed upon](#)), amend the [definition of commercial accommodation](#) (also see the enterprise definition and inclusion of water in related domestic goods and services definition), repeal the [deeming of supplies](#) involving the national housing programme (also see [zero rating](#)), make an exception to the deeming of the time of a supply if the [supplier and recipient are connected persons](#), [deem the value of supply](#) to be the open market value where the whole of the consideration cannot be determined at the time of supply, amend [zero-rating provisions](#) including vocational training to employees, [exempt lodging](#) by schools, universities etc, and disallow [payments basis VAT accounting](#) for regional electricity distributors (and allowing it for the SABC).

(ii) The Tax Administration Laws Amendment Act 2015 made, or will make, amendments relating to additional [documentation circumstances where input tax deductions will be allowed](#), [formal tax invoice requirements](#), [credit and debit note requirements](#), the [5 year prescription](#) limitation, and a [commencement date related to interest on delayed refunds](#).



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Kind regards,

SAIPA Technical and Standards Department



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