SOUTH AFRICAN INSTITUTE OF PROFESSIONAL ACCOUNTANTS™

YOUR WEALTH

SAIPA YOUR LAW : VOLUME 11 ISSUE 3, 24 FEBRUARY 2016

This newsletter

This newsletter covers new relevant National laws up to 23 February 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.

Log-in details for SAIPA Members

SAIPA Technical will keep you up to date with these changes so login and read the SAIPA YOUR LAW. Please see the last page for log-in details. Please provide SAIPA with your membership number when updating your details.

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REGULATORY UPDATES

1. CONSUMER REGULATORY PLAN

General

The Regulatory Universes have all been revised to reflect changes that took place during January and February this year, for example, referencing the Expropriation Bill, adding the Estate Duty Act as a related law to the Pension Funds Act, adding further tax reporting duties to the reasons for making the Tax Administration Act a key law, and removing laws recently repealed.

Consumer Regulatory Plan

The following items have been reviewed, to simplify text and make other stylistic improvements:

Item 1 Respect Consumers	Item 16 Misleading Marketing
Item 2 Direct Marketing	Item 17 Promotions / Pricing
Item 3 Longterm Agreements	Item 18 Supply not made in person
Item 4 Give Options	Item 19 Inducements
Item 5 Deliver / Perform	Item 20 Good practices - revisit any controls you made as the item has been substantially changed
Item 6 Return Goods	Item 21 Promotional Competitions

Item 7 Unsolicited Goods	Item 22 Exclusionary Terms - revisit any controls you made as the item has been substantially changed
Item 8 Notices / Prices	Item 23 Risk Notifications - revisit any controls you made as the item has been substantially changed
Item 9 Labels / Description	Item 24 Written Agreements
Item 10 Sales Records	Item 25 Prohibited Terms (1)
Item 11 Intermediary Information	Item 26 Prohibited Terms (2)
Item 12 Avoid Fraud	Item 27 Justify Terms (1) - revisit any controls you made as the item has been substantially changed
Item 13 Implied Provisions	Item 28 Justify Terms (2)
Item 14 Quality Assurance	Item 29 Lay-by Agreements
Item 15 Safety Assurance	Item 30 Prepayments / Consumer Property

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EQUALITY

2. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT: REPEAL OF CODES

The Construction Sector Code and Chartered Accountancy Sector Code were summarily repealed, with no consideration of possible practical transitional periods or further guidance to affected entities, other than to state all their B-BBEE Verifications can be conducted using the general code which came into operation on 1 May 2015.

The entities affected here include:

(i) All enterprises involved in the design, planning, expansion, creation and/or maintenance of fixed assets related to residential or non residential buildings, infrastructure, or any other form of construction works in South Africa, including but not limited to residential building contractors, non-residential building contractors, civil engineering contractors and built environment professionals; and

(ii) IRBA, SAICA, the Auditor-General, Training Outside of Public Practice Organisations, accredited education institutions and persons registered with IRBA and/or SAICA, for application and implementation by that profession.

GN184 GG39703 / 17 February 2016 (Incorporated into the BBBEE Act and Regulations)

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EQUALITY

3. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT: DRAFT REGULATIONS

The Draft Regulations (comment deadline 30 days from 17 February 2016) propose, amongst others:

(i) Qualification criteria for issuing of licenses, concessions and other authorizations in respect of economic activity (not defined) limited to B-BBEE certificate level 1 to 8 recognition levels, with more consideration to be given if the applicant or renewer is 51% black owned;

- The same is to apply when an organ of state or public entity awards incentives, grants or investment schemes or implements its preferential procurement policy;
- The same is to apply when an organ of state or public entity displays its assets for sale, except that it must also:
  - promote accelerated transformation;
  - make reasonable accommodation for beneficiaries who qualify for equal opportunity;
  - provide preference that is not motivated by prejudice nor conscious intention to discriminate;
  - empower beneficiaries to achieve equality without lowering the standards and without limiting the prospects of existing beneficiaries unduly; and
  - ensure beneficiaries are fairly represented.

Note*: Nothing shall preclude such BBBEE beneficiaries from obtaining financial aid or guarantees from another organ of state or public entity to secure the sale of state-owned assets.*

- The same is to apply when an organ of state or public entity wishes to conduct business in partnership with any private entity, except that it must also have a skills development programme that ensures the private entity provides timeous information and updates on matters including (but apparently not limited to) its governance structure, management, procurement, economic activities and continuity plan (for purposes of these regulations)

Note*: Where an entity is black owned, further preference must be given to entities with black female ownership or ownership by broad-based designated groups;*

(ii) What will be regarded as restricted information, and that it may be released:

- To a person that paid a fee to inspect or copy any Commission record to the extent permitted, and subject to any conditions imposed, by the regulation or an order of a competent court of law;
- In a particular complaint the Commission may release otherwise restricted information, other than confidential information, relating to a possible agreement of terms of an appropriate order;
- The Commission may release restricted information to, or permit access to it, by the person who provided that information to the Commission, the person to whom the confidential information belongs; and any other person, with the written consent of the person to whom the information belongs;
- The Commission may, subject to valid confidentiality claim, use the information submitted for the registration of a major BBBEE transaction in producing a report or trends that the Commission may publish as it deems appropriate;

***Note**: The Commission's approach to, and ability to protect, private, confidential information illustrated in the Promotion of Access to Information Act and other confidential information such as common law legally privileged information raise some red flags, as does the fact that the regulation can be amended any time - Those who can afford legal advisors may need to get their assistance for any dealings with the Commission.*

(iii) How an organ of state or public entity can apply to exceed the qualification criteria for procurement and other economic activities and if granted new BBBEE streams on top of the general codes and divergent codes for 10 years, possibly subject to conditions - also see organ of state or public entity application for exemption or deviation;

***Note**: Related laws here may include the Prevention and Combatting of Corrupt Activities Act, for example persons that are supposed to act in the public interest using the guise of increased transformation to give a tender to someone they have a relationship with and who would not otherwise be justified in receiving the tender.*

(iv) How JSE-listed public companies, government spheres, public entities, organs of state and SETAS must report on their compliance with BBBEE in audited annual financial statements and reports;

(v) The Commission may charge reasonable fees for services rendered by its office;

(vi) How complaints will be managed, including that the Commission can create its own complaint and that investigations can take up to a year to start; and

***Note**: The Commission seems to be both the investigator and the tribunal, and no direct reference is made to the possibility of appealing a finding to a court (Right to access courts) or to the Promotion of Administrative Justice*

Act requirements (Right to administrative justice) or to steps to be taken against vexatious or fraudulent complainants.

(vii) A party that enters into a major BBBEE transaction (transaction above a gazetted threshold) has 15 days after concluding the transaction, apply for registration of the transaction so that the Commission can at any-time assess the transaction to determine adherence and advise the registering party of concerns.

GN185 GG39704 / 17 February 2016 (Incorporated into the BBBEE Act and Regulations)

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TAX

4. INCOME TAX ACT: RETIREMENT FUNDS 2016

A number of substantial changes to the income tax dispensation relating to contributions and benefits from retirement funds come into operation on 1 March 2016 (see the front page of the Income Tax Act for exact changes to be made).

These changes involve major changes to:

(i) The annual tax deduction for contributions to all retirement funds (pension funds, provident funds and retirement annuity funds); and

(ii) The tax treatment of employer contributions to retirement funds, and consequently on the structuring of salary packages to derive tax benefits from high employer contributions.

Deferral of certain provisions

The core changes were enacted in the Taxation Laws Amendment Act of 2013, to commence 1 March 2015.

The commencement date was extended to 1 March 2016 by the Taxation Laws Amendment Act of 2014, to allow NEDLAC to debate the issues involved.

Further alterations were made in the Taxation Laws Amendment Act of 2016, which retained the 1 March 2016 commencement date.

On 18 February 2016 the Minister of Finance announced that an amendment bill will be urgently passed to defer the coming into operation of two measures, for two years until 1 March 2018.

These are:

(i) The requirement that provident fund members, in order to enjoy tax deductibility, may only receive one-third of their retirement interest as a cash lump sum on retirement, and that the remaining two-thirds must be utilised to pay annuities to the member; and

(ii) The provisions that transfers from pension funds to provident funds will be tax free.

All the other provisions dealing with taxation relating to retirement funds will still come into force on 1 March 2016 as enacted.

Tax deductibility from 1 March 2016

Two of the main objectives of the amendments are to:

(i) Harmonise the deductibility for income tax purposes of contributions to all retirement funds in order to promote fairness; and

(ii) Incentivise more taxpayers to make and maintain sufficient provision for their retirement.

Prior to the 1 March 2016 change, different rules apply to different types of retirement funds, with different rules of deductibility applying to contributions to pensions funds, to contributions to retirement annuity funds, and to combinations of contributions to more than one type of fund. Provident fund members currently enjoy no tax deduction for their contributions.

From 1 March 2016 there will be a single annual limit for contributions in respect of a taxpayer to any and all retirement funds. The limit will be the higher of 27,5% of taxable income or of remuneration up to a maximum of R350 000 per year.

In spite of the deferral of the mandatory annuitisation requirement, provident funds will also enjoy this tax deductibility from 1 March 2016. The Minister has indicated that this will be reviewed if agreement is not reached on the mandatory annuitisation requirement.

Employer contributions from 1 March 2016

Another main objective of the legislative changes is to consolidate contributions made by both the employer and the employee in order to promote fairness and to reduce the scope for tax structuring. The tax structuring involved constructing salary packages which included high employer contributions to provident and other retirement funds.

This was possible due to the employer receiving a tax deduction on employer contributions (up to 20% of approved remuneration), while such a contribution was not a taxable fringe benefit in the hands of the employee.

In the case of tax exempt entities there were no tax-related constraints on the amounts or percentages paid as employer's contributions to retirement funds.

From 1 March 2016 contributions to retirement funds by employers for the benefit of fund members will be taxed as a fringe benefit. It will be included in the gross income of the member/employee for the calculation of his or her income tax.

The employer's contributions to a retirement fund will be regarded as contributions by the member/employee. It will therefore be eligible for deduction by the member/employee, together with the member's own contributions.

The annual deductibility limits (the 27.5% and R350 000 limits covered above) will apply to the combined total of own contributions and employer contributions.

On the other hand, the deduction by the employer of contributions to retirement funds will no longer be subject to a special 20% of approved income rule. It will be dealt with in terms of the general rules applicable to expenditure incurred in the production of income.

Employer contributions to retired employees from 1 March 2016

In some instances employer contributions are made to both current and retired employees. This is particularly prevalent in the case of deferred benefit funds.

From 1 March 2016 the employer will enjoy a tax deduction regardless whether the fund allocates the contribution to a current or a retired employee.

However, no fringe benefit will arise in the case of an employer contribution allocable by a retirement fund to a retired member of the fund.

Exception to the mandatory annuitisation requirement from 1 March 2016

Contributions to pension funds and retirement annuity funds enjoy tax deductibility only if the rules of the fund comply with certain requirements set out in the Income Tax Act.

The most important of these requirements is that a maximum of one-third of the retirement interest of a fund member may be taken in cash on retirement. At least two-thirds must be annuitised, that is used to provide regular monthly retirement benefits over time for the fund member.

Pension funds and retirement annuity funds that do not meet this requirement do not receive the tax deductibility benefits provided for in the Income Tax Act.

There is a threshold limit below which the mandatory annuitisation requirement does not apply and the fund member may receive his or her entire retirement interest in a lump sum on retirement.

With effect from 1 March 2016 this threshold is increased from R75 000 to R247 500.

At this stage it will apply to pension funds and retirement funds. While provident funds have no mandatory annuitisation requirement the threshold provision will have no practical effect on them.

Provident fund mandatory annuitisation from 1 March 2018

In extending tax deductibility of contributions to provident funds, the same requirements that apply to pension funds and retirement annuity funds for tax deductibility, were also extended to provident funds.

This was done by the Taxation Laws Amendment Act of 2013 which requires that from 1 March 2016 the rules of provident funds have to comply with the same requirements, including the limitation of the lump sum which may be paid to a member on retirement to one-third of the member's retirement interest.

The following measures were enacted to ease the transition for provident fund members:

(i) Balances in provident funds as at the commencement date, as well as any subsequent growth thereon, need not be annuitised at retirement, but can be taken out in full in a lump sum;

(ii) If a provident fund member is older than 55 and a member of the fund at the commencement date, the mandatory annuitisation requirements do not apply to contributions made by that person (and to any growth thereon).

As mentioned, the Minister has announced that the provisions dealing with mandatory annuitisation requirements for provident funds will be deferred to 1 March 2018 to create scope for further consultations.

Tax free transfers between pension funds and provident funds from 1 March 2018

The other measure that was enacted to come into operation on 1 March 2016, but is now to be deferred to 1 March 2018, is the provision for transfers from pension funds to provident funds to be tax free.

GG39588 / 8 January 2016 and GG39586 / 8 January 2016 (Incorporated into the Income Tax Act and Regulations)

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OTHER

5. NOTABLE ONE LINERS

Administrative Adjudication of Road Traffic Offence Act: The comment deadline for the proposals to introduce demerit points for failing to comply with the directions of a road traffic sign by using a toll road without paying the toll charge, introduce an infringement notice for multiple camera or electronically captures infringements, and amend issuing authority codes, has been extended (Comment deadline 30 days from 8 February 2016).

Animal Diseases Act: New tariffs apply for import permits, export permits, master import permits, certified copes, courier services and speed services, and new tariffs have been introduced for emergency application and for extension, dispensation or amendment letters.

Draft Aquaculture Bill: The Draft Bill has been gazetted (Comment deadline 31 March 2016).

Basic Conditions of Employment Act: A new wholesale and retail sectoral determination will apply from 1 March 2016 to employers mainly associated for procuring products from any supplier or manufacturer to sell to any person on a wholesale or retail basis, to related activities such incidental or supportive merchandising, warehousing or distribution operations, and to any other activity conducted by an employer whose core business falls within the wholesale and retail sector on or at the premises where that business is conducted. Note: The determination will not apply where another sectoral determination applies, or where employees are covered by a bargaining council agreement.

Compensation for Occupational Injuries and Diseases Act:

(i) A proposal has been made to increase, from 1 April 2016, the maximum amount on which an assessment is calculated (to R377 097 per year), as well as the monthly pensions (comment deadline in both instances is a strangely expired 31 December 2015 date); and

(ii) The compensation payable in terms of the Act will increase on 1 April 2016.

Estate Agency Affairs Act:

(i) The fidelity fund and registration certificate regulations commenced 19 February 2016 and set out certificate fees payable, annual fees payable, information updates that must be given and returns that must be provided; and

(ii) A late penalty fee (for applying late for a fidelity fund certificate or a registration certificate, or for not including the levy in an application) will commence from January 2017 or with regards to fidelity fund certificates issued from 1 November 2016 - the notice gives two commencement dates. No certificate may be issued until the penalty is paid.

Genetically Modified Organisms Act: New fees for applications relating to the import, export, use or release of genetically modified organisms, and fees for status certificates, apply as from 1 April 2016.

Income Tax Act:

(i) The provisions relating to special economic zones and deductions in respect of buildings in special economic zones, and the related amendments to additional training and investment allowances in respect of industrial policy projects, commenced 9 February 2016;

(ii) A deceased estate will be a provisional taxpayer, and SITE will be removed (including from the refund limitation provision), from 1 March 2016; and

(iii) The definition of remuneration proxy and the definition of interest for purposes of the withholding tax on interest, and the provisions relating to normal tax rebates, disposals by deceased persons, taxation of deceased estates, from 1 March 2016.

Long-term Insurance Act: The additional penalty for failure to furnish Registrar with returns, information or documents is now R5 549 per day of non-compliance, from 28 February 2016.

Magistrates Courts Act: The rules regarding judgment by default, declaration, failure to deliver pleading, set-down of trial date, and fees for defended actions will be amended on 22 March 2016.

National Energy Act: A draft review of the Regulatory Reporting Manual Volume 1 (general regulatory reporting procedures and administrative matters in the electricity, piped-gas and petroleum pipelines industries) is available on the NERSA website (Comment deadline 16 March 2016).

National Health Act: The comment deadline for the white paper on national health insurance has been extended to 31 May 2016 - you may wish to note the past overview, and the terms of reference for the national health insurance work streams.

National Regulator for Compulsory Specifications Act: Reminder that the application of the energy efficiency and labeling of electrical and electronic apparatus specification will, from 26 February 2016, be extended to electric ovens, refrigerators, freezers, dishwashers, tumble dryers, washer-dryer combinations and washing machines. Products that are already in the market and approved by the NRCS for safety requirements are to comply with this compulsory specification from 26 May 2016.

National Road Traffic Act: Exemption permit fees have been gazetted - the notice refers to proposed fees but the text indicates these are final fees.

National Water Act: The Draft National Sanitation Policy highlights considerations such as: Landowners to contribute to the capital cost and declare additional connections to the municipal sewage system (for backyard dwellers); Priority to sanitation technologies that minimise the use of natural resources; Free basic sanitation to indigent households (subject to conditions); Corrective steps in case of serious malpractice or negligence affecting effective water resource management; Norms and standards for grey water management; Reduce, reuse, recycling and/or recovery conditions attached to license applications; Polluter pays approach to effluent management; and Economic regulation will be applied throughout the water and sanitation value chain.

Short-term Insurance Act: The penalty for failure to furnish Registrar with returns, information or documents is now R5 549 per day of non-compliance, from 28 February 2016.

Special Economic Zones Act: The Act commenced on 9 February 2016, with regulations included in the same commencement proclamation - you may also wish to consider the past overview.

South Africa. National Roads Agency Act: Gauteng etoll tariffs will increase on 1 March 2016.

Superior Courts Act: The rules relating to applications, and notice of motion forms, will be amended 22 March 2016.

Tax Administration Act: Disclosure rights in terms of the Act have been given in to the Department of Home Affairs and the Government Pensions Administrations Agency, in addition to the CIPC and municipalities - you may also wish to consider the past overview.

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SAIPA member log-in details and support

Please DO NOT register on www.gazette.co.za if you are a SAIPA member (unless you wish to add a non-SAIPA member) as SAIPA has given members full access to the website.

To access www.gazette.co.za and www.rmonline.co.za simply use the following:

- Username: first initial + surname + last two digits of membership number (e.g. pstassen32)
- Password: full membership number (e.g. 5432).

Contact support@gazette.co.za for log-in queries or if you wish to change your personal details. Please note that if you are **not** receiving the newsletter twice a month you may need to ask your IT department to check whether it is being blocked by your IT systems or check that SAIPA has your newest email address.

Kind regards,

SAIPA Technical and Standards Department

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