

# MONTHLY COMPLIANCE & LEGISLATION UPDATE

## WEBINAR MATERIAL: **FEBRUARY & MARCH 2020**

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# ACCOUNTING UPDATE

## 1. IFRS MONTHLY NEWS SUMMARY

This is a brief summary of news and events from the International Accounting Standards Board (Board) and the IFRS® Foundation over the past month of **JANUARY 2020**:

### 1. New member to join the International Accounting Standards Board

The Trustees of the IFRS Foundation have [appointed Bruce Mackenzie](#) as a member of the Board from 1 October 2020.

### 2. Help shape IFRS Standards in 2020

2020 is shaping up to be a busy year for consultations and calls for stakeholder views. Read more about our current work plan and [have a say in our standard-setting projects](#).

### 3. IASB consults on approach to updating its IFRS for SMEs Standard

We recently opened consultation on the IFRS for SMEs Standard and we are asking for views on our approach to [updating this simplified accounting standard for small and medium-sized entities](#). Also, read the latest [IFRS for SMEs Update](#), which touches on this consultation and includes links to online resources that support the implementation and consistent application of IFRS Standards.

### 4. IASB clarifies requirements for classifying liabilities as current or non-current

The Board recently issued narrow-scope amendments to IAS 1 Presentation of Financial Statements to clarify [how to classify debt and other liabilities as current or non-current](#) (set out below).

The International Accounting Standards Board (Board) has today issued narrow-scope amendments to IAS 1 *Presentation of Financial Statements* to clarify how to classify debt and other liabilities as current or non-current.

The amendments aim to promote consistency in applying the requirements by helping companies determine whether, in the statement of financial position, debt and other liabilities with an uncertain settlement date should be classified as current (due or potentially due to be settled within one year) or non-current. The amendments include clarifying the classification requirements for debt a company might settle by converting it into equity.

The amendments clarify, not change, existing requirements, and so are not expected to affect companies' financial statements significantly. However, they could result in companies reclassifying some liabilities from current to non-current, and vice versa; this could affect a company's loan covenants. Thus, to give companies time to prepare for the amendments, the Board has set the **effective date at January 2022**. Early application of the amendments is permitted.

This is a brief summary of news and events from the International Accounting Standards Board (Board) and the IFRS® Foundation over the past month of **FEBRUARY 2020**:

### 5. Listen to the latest podcasts

Catch up on recent IFRS 17 developments by following the [dedicated podcast](#), and refresh your memory on what happened at [February's Board meeting](#). You can find [all IFRS Foundation podcasts here](#).

### 6. Bill Coen appointed Chair of the IFRS Advisory Council

The Trustees of the IFRS Foundation have appointed Bill Coen as [Chair of the IFRS Advisory Council](#), effective immediately.

**7. SME Implementation Group—call for members**

The Trustees of the IFRS Foundation invite nominations of suitable candidates for membership of the [SME Implementation Group](#) (SMEIG), which supports the adoption and implementation of the *IFRS for SMEs* Standard.

**8. Webinar recording: Exposure Draft General Presentation and Disclosures**

Follow the project team's discussion of the proposals outlined in the [Exposure Draft General Presentation and Disclosures](#), which was published by the Board late last year. Presentations in other languages will become available over the new few weeks—follow our [Primary Financial Statements project page](#) for details as they are released.

## **AUDITING (AND OTHER ASSURANCE SERVICES)**

### **1. NOTHING NEW DURING THIS PERIOD**

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## COMPANY SECRETARIAL

### 1. NOTICE 1 OF 2020 – DISPARITY OF REGISTRATION NUMBERS AND INCORPORATION DATES

- Date published = 6 January 2020
- 1-page document
  - ❑ You may find that the registration number of your application submitted last year is 2019 and the incorporation date (or registration date) is 2020. This is due to the automation of CIPC's system.
  - ❑ CIPC assigns the year of registration as the year within which the application was received, while the incorporation date is the actual date that the company was registered.

*This Notice is available to you as a Source Document*

### 2. NOTICE 4 OF 2020 – DISCONTINUATION OF 3RD PARTY MODEL

- Date published = 3 January 2020
- 1-page document
  - ❑ CIPC will be discontinuing the Third Party Model as a transactional channel.
  - ❑ This means that no new 3<sup>rd</sup> parties will be registered on the CIPC website.
  - ❑ Support to existing 3<sup>rd</sup> parties that have registered with CIPC will be ended by 30 September 2020

Send any queries to [thirdparties@cipc.co.za](mailto:thirdparties@cipc.co.za)

*This notice is available to you as a Source Document*

### 3. NOTICE 5 OF 2020 – COMPULSORY NAME RESERVATION FOR CO-OPERATIVES

- Date published = 31 January 2020
- 1-page document
  - ❑ As per Notice 60 of 2019, before a Co-Op can be registered, the name of the Co-Op must be approved first.
  - ❑ CIPC have noticed the practice that Co-Op applications are files with CR5 and not an approved name as prescribed in the Act.
  - ❑ Effective from 1 April 2020, an approved name (CoR 9.4) must be attached and accompany an application to the registrar for registration of a new co-op or name change. *Otherwise, your application will be rejected.*
    - An approved name is valid for 6 months from date of approval.

*This notice is available to you as a Source Document*

### 4. NOTICE 6 OF 2020 – EXPANSION OF MOBILE SERVICES

- Date published = 14 February 2020
- 1-page document

- CIPC launched Short Standard Private Company Registration and B-BBEE certificate (affidavit) on CIPC Mobile (available on the Android version only)
- Can still do: Name reservation, Disclosure certificate & Annual returns on CIPC Mobile

*This notice is available to you as a Source Document*

## 5. NOTICE 9 OF 2020 – UPDATE ON COMPANIES COMPLIANCE CHECKLIST ON E-SERVICES

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- Date published = 3 March 2020
- 2-page document
- CIPC confirms that this **only applies to companies that are audited/independently reviewed (both mandatory & voluntary)**
- The Compliance Checklist now contains a **comment box** for each question, should companies wish to explain their specific answers given to the CIPC.
- Compliance Year** is clarified = is aligned to the anniversary date of a company's incorporation

### More detail on this important notice:

- CIPC has issued an update on which companies must submit the Compliance Checklist
- **With effect from 3 March 2020, it is mandatory for 5 relevant types of companies to confirm if the company's annual financial statements are audited or independently reviewed.**
- If NO (the company's AFS are not audited or independently reviewed), then the company will not be required to complete the Compliance Checklist.
- An email will be sent to all active directors and to the person who submitted this information
- If YES (the company's AFS are audited or independently reviewed), then you **MUST** complete the Compliance Checklist.
- Upon submitting the Compliance Checklist, an email will be sent to all active directors and to the person who submitted the Compliance Checklist confirming the information sent on behalf of the company.
- Reference to Compliance Year in the Compliance Checklist is aligned to the anniversary date of a company's incorporation.
- The Compliance Checklist is a standalone service and the information required must therefore be submitted by a company to the CIPC within 30 business days after the anniversary of the company's date of incorporation.
- They have also issued an update Companies Compliance Checklist – which now contains a comment box for each question should companies wish to explain their specific answers given to the CIPC.
- This enhanced Compliance Checklist can be accessed by logging on to the CIPC's E-services platform, clicking on TRANSACT and then on the Compliance Checklist icon.

### **Remember:**

- **The 5 types of companies are: Incorporated – Inc. (21); Proprietary Limited – (Pty) Ltd (07); Limited – Ltd (06); State Owned Company – SOC (30); Non Profit Company – NPC (08)**
- **Any of the above types of companies that are audited or independently reviewed, MUST complete this Compliance Checklist.**
- **Once you access the Compliance Checklist online in CIPC's E-services, you will need to answer whether or not the company is audited or independently reviewed by answering YES or NO.**



- *If you answer NO, then you DO NOT NEED to complete the Compliance Checklist*
- *The Compliance Checklist is a standalone service and the information required must therefore be submitted by a company to the CIPC within 30 business days after the anniversary of the company's date of incorporation.*
- *The Compliance Checklist now contains a comment box for each question, should companies wish to explain their specific answers given to the CIPC.*
- *Once you select Yes, No or N/A whilst completing the checklist online, the comment box will automatically open for each question.*
- *For any questions or specific points of clarification on the Compliance Checklist please send an email to [COR135.1complaints@cipc.co.za](mailto:COR135.1complaints@cipc.co.za)*

*This notice is available to you as a Source Document*

# EMPLOYMENT LAW

## 1. AMENDED REGULATIONS IN TERMS OF THE BCEA

*Werksmans article*

### New BCEA summary to be displayed in the workplace

- On 22 January 2020 the Minister of Employment and Labour amended the Regulations in terms of the Basic Conditions of Employment Act.
- One of annexures affected is annexure BCEA 1A, the summary of the BCEA to be kept by the employer which must be displayed in the workplace.
- The new summary now provides for 'parental leave', 'adoption leave' and 'commissioning parental leave'.
- Employers should obtain copies of the new summary

**Refer to the 8 pages in GG notice 42965 for the information that must be in the new summary – as per Schedule 1A of the GG notice**

*The GG notice is available to you as a Source Document*

### Summary of previous BCEA amendments

**The following was included in the MCLU for January 2020:**

#### **Paid parental leave for dads kicked in on 1 January 2020**

#### **Cosatu hails the extension of leave for parents of newborns**

*30 December 2019*

The law providing for paid parental leave for parents of new-born children, which takes effect on Wednesday, has been welcomed by trade union federation Cosatu.

**From January 1 2020 all parents will now be entitled to 10 days' paid parental leave when their children are born.** This does not apply to mothers who have given birth, because they are already entitled to paid maternity leave. It covers fathers of new-born children and mothers of children born through surrogacy.

Parents will be entitled to take paid parental leave once a calendar year and will be required to apply for leave from their employer.

“This is a historic and long fought for victory for workers, parents, children and families across SA,” Cosatu parliamentary co-ordinator Matthew Parks said Monday.

“This is now an act of parliament, assented by the president and promulgated. It is not a matter of negotiations or concessions by employers. It is law,” he said.

“Employers are asked to embrace the progressive spirit of the law. Those who seek to behave like rogue Neanderthals will be treated accordingly, named and shamed, taken to the CCMA [Commission for Conciliation, Mediation and Arbitration] and labour courts and forced to abandon their backwardness.”

Parks explained that in terms of the law workers will be entitled to claim payments from the Unemployment Insurance Fund (UIF) should their employers refuse to pay them their full salary for the leave period. **The UIF will pay those workers 66% of their salary up to the earnings cap of R205,433.30 a year, as laid down in the Basic Conditions of Employment Act.**

#### **Legal Summary:**

## INTRODUCTION

On 23 December 2019 a proclamation was published in terms of which sections 1, 2, 3, 4, 5, 6, and 7 of the Labour Laws Amendment Act 10 of 2018 ("LLAA") became effective as of 1 January 2020.

This is in addition to those provisions of the LLAA which came into effect on 1 November 2019. While those prior amendments impacted the Unemployment Insurance Act 63 of 2001 ("UI Act"), by providing for the payment of unemployment insurance benefits for parents who are on parental leave, the recent amendments impact, mainly, the Basic Conditions of Employment Act 75 of 1997 ("BCEA").

## AMENDMENTS: EFFECTIVE 1 JANUARY 2020

The LLAA amends the BCEA by:

- inserting definitions into the BCEA, which include: 'adoptive parent,' 'adoption order' and 'prospective adoptive parent.' The additional terms are defined in accordance with their respective definitions in the Children's Act 38 of 2005 ("CA");
- providing that an employee, who is a parent of a child, is entitled to at least ten consecutive days' parental leave. The parental leave may commence on the day that the employee's child is born or whichever is earlier: the date that the adoption order is granted; or the date that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child;
- providing that an employee, who is an adoptive parent of a child who is below the age of two, is entitled to adoption leave of at least ten weeks consecutively or the parental leave referred to above;
- providing that an employee, who is a commissioning parent in a surrogate motherhood agreement is entitled to a commissioning parental leave of at least ten weeks consecutively or the parental leave referred to above. The definition of 'commissioning parent' as well as 'surrogate motherhood agreement' has the meaning assigned to it in the CA; and
- providing that a collective agreement concluded in a bargaining council may alter, replace or exclude any basic condition of employment if the collective agreement is consistent with the purpose of the BCEA and the collective agreement does not reduce an employee's entitlement to parental leave, adoption leave, and to commissioning parental leave.

## SO WHAT DO THE AMENDMENTS MEAN FOR EMPLOYERS?

The amendments are of significant importance in that it provides employees with the right to the above-mentioned leave and, conversely, imposes an obligation on employers to provide same. It is important for employers to adequately cater for these provisions in their policies and procedures.

## OTHER LAWS & REGULATIONS

### 1. THIS PERIOD'S BIG 5 (3 SETS)

*Volume 15 Issue 1 covers new relevant National laws up to 20 January 2020.*

The Big 5 in issue 1 include:

- [1] The Companies Act (Annual return compliance checklist) – *Dealt with in Company Secretarial section*;
- [2] The Constitution of the Republic of South Africa (Draft Amendment Bill);
- [3] The Income Tax Act (Amendment Acts);
- [4] The Public Administration Act (Draft regulations); and
- [5] The Occupational Health and Safety Act (Ergonomics regulations).

*Volume 15 Issue 2 covers new relevant National laws up to 3 February 2020.*

The Big 5 in issue 2 include:

- [1] The Basic Conditions of Employment Act (Summary to be kept by an employer) – *Dealt with in Employment Law section*;
- [2] The Constitution of the Republic of South Africa (Comment deadline extension);
- [3] The Foodstuffs, Cosmetics and Disinfectants Act (Reduction in sodium levels);
- [4] The National Environmental Management Act (Environmental assessment practitioner registration); and
- [5] The Special Investigating Units and Special Tribunals Act (Investigations).

*Volume 15 Issue 3 covers new relevant National laws up to 17 February 2020.*

The Big 5 in issue 3 include:

- [1] The Auditing Profession Act (Amendment Bill 2020);
- [2] The Competition Act (Buyer power and price discrimination);
- [3] The Competition Act (Draft guidelines automotive aftermarket industry);
- [4] The Foodstuffs, Cosmetics and Disinfectants Act (Maximum pesticide residues); and
- [5] The Special Investigating Units and Special Tribunals Act (Masters offices).

*These SAICA Legal Update documents are available to you as Source Documents, and contain all the relevant summaries and one-liner reminders.*

### 2. EXPAT TAX – EFFECTIVE FROM 1 MARCH 2020

**Expat tax kicked in on 1 March 2020 – Here's what you need to know**

*Fin24 article published on 11 February 2020*

If you are a South African working abroad and still a tax resident in South Africa, take note that the so-called "expat tax" will come into effect in South Africa as from 1 March, 2020. In effect, the amendments to the Income Tax Act mean that South Africans working overseas will now only be exempt from paying tax on the first R1 million they earn elsewhere.

The rest of their earnings – including all fringe benefits, like housing, education and flight allowances – will now be taxed according to the normal tax tables for the year, which can go up to 45% in some cases.

"The expat tax exemption has always been there, it is now just being capped. This is because the intention was never to have South Africans working abroad not paying any tax at all. Yet this ended up being the case in certain places where no personal taxes are raised, like Dubai," Tim Mertens, chair of Sovereign Trust SA, tells Fin24.

"It is not a sudden change to penalise South Africans working abroad. The SA Revenue Service is merely looking to see where it can find more revenue and the legislation was not intended to give exemption where you end up not paying tax in both your home country and the place where you are working abroad."

He expects the impact will be particularly severe for the thousands of South Africans currently living and working in tax-free geographies, like most countries in the Middle East.

"Don't just keep quiet and do nothing," he advises.

### Three options

Richard Neal, managing director of Sovereign Trust (SA), explains that there are basically three options for South Africans earning an income abroad.

#### 1. Moving back to South Africa

Apparently, some South Africans are considering this option, as the new tax law regime will make it difficult to maintain their lifestyles abroad while continuing to honour local commitments, he says.

In Neal's view, however, this is not really an option for many who left for better opportunities, and may struggle to find a job in a tough economy in SA.

#### 2. Financial emigration

Financial emigration is the formal process of changing one's tax status with the SA Revenue Service (SARS) and the SA Reserve Bank (SARB) from "resident" to "non-resident".

Neal says one must beware that this is not as simple or cheap.

"If you decide to financially emigrate, you will have to pay capital gains tax on your local assets and impose restrictions on assets remaining and that you might want to acquire in SA. Also, if you come back after five or ten years, your actions will be viewed with some suspicion," he adds.

#### 3. Set up tax-efficient structures

If emigration or financial emigration isn't an option, you could consider setting up a structure to limit your liability and protect your foreign income and assets, he suggests.

For example, this could be setting up an offshore professional services company in a tax-friendly jurisdiction that could then invoice an international employer. However, this would have to take into account the new substance requirements introduced in most of the offshore jurisdictions.

Another option to consider would be an investment portfolio housed within an international retirement plan, especially if retirement contributions fall into the new "expat tax" threshold.

Neal says this will minimise your tax exposure, as plans like these are exempt from capital gains tax on the initial capital invested, there is no tax on interest earned and there is potentially no estate duty, which makes it an efficient succession planning mechanism.

# TAXATION

## 1. DRAFT GUIDE TO BUILDING ALLOWANCES (ISSUE 2)

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Issued on 14 January 2020

*27-page document*

- The guide provides general guidance on building allowances available to owners and lessees of buildings.
- The Guide has been updated to take into account legislative amendments, clarification on certain aspects and the fact that some of the sections are now the subject of separate Interpretation Notes.
- *Due date for comments was 28 February 2020*

*The Draft Guide is available to you as a Source Document*

## 2. LIST OF QUALIFYING PHYSICAL IMPAIRMENT OR DISABILITY EXPENDITURE

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**Effective 1 March 2020**

Issued on 16 January 2020

*10-page document*

- Expenditure prescribed by SARS and which is necessarily incurred and paid for by the taxpayer in consequence of a physical impairment or disability is a qualifying medical expense under section 6B of the Act, subject to specified limitations.
- See also the [Confirmation of Diagnosis of Disability Form \(ITR-DD\)](#)

*The updated List is available to you as a Source Document*

## 3. GUIDE ON VENTURE CAPITAL COMPANIES

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Issued on 18 February 2020

*53-page document*

- Section 12J has requirements at the level of the VCC and at the level of the “qualifying company” whose shares are held by the VCC. A VCC is taxed as a company and does not enjoy any special tax concessions because of its VCC status.
- This guide provides users with general guidance on venture capital companies and investments in such companies.

*The updated Guide is available to you as a Source Document*

## 4. TAX GUIDE FOR SHARE OWNERS (ISSUE 7)

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*Issue 7*

Issued on 21 February 2020

*55-page document*

- Section 12J has requirements at the level of the VCC and at the level of the “qualifying company” whose shares are held by the VCC. A VCC is taxed as a company and does not enjoy any special tax concessions because of its VCC status.
- This guide provides users with general guidance on venture capital companies and investments in such companies.

*The updated Guide is available to you as a Source Document*

## 5. INTERPRETATION NOTE 67 (ISSUE 4) – CONNECTED PERSONS

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Issued on 28 January 2020

48-page document

**40 examples**

### Purpose

- This Note provides guidance on the interpretation and application of the definition of “connected person” in section 1(1).

Deals with:

- Section 1(1) – definition of “connected person”

**NB = Annexure B** – Diagram illustrating the rule for determining persons who are related within the third degree of consanguinity

*The updated Interpretation Note is available to you as a Source Document*

## 6. INTERPRETATION NOTE 16 (ISSUE 3) – EXEMPTION FROM INCOME TAX: FOREIGN EMPLOYMENT INCOME

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Issued on 31 January 2020

20-page document

**5 examples**

### Purpose

- This Note discusses the interpretation and application of the foreign employment remuneration exemption in section 10(1)(o)(ii).

Deals with:

- Section 10(1)(o)(ii)

*Due date for comments was 28 February 2020*

*The updated Interpretation Note is available to you as a Source Document*

## 7. INTERPRETATION NOTE 75 (ISSUE 3) – EXCLUSION OF CERTAIN COMPANIES AND SHARES FROM A “GROUP OF COMPANIES” AS DEFINED IN SECTION 41(1)

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Issued 21 February 2020

19-page document

### 3 examples

#### Purpose

- The draft IN discusses the requirements of the public benefit activity (PBA) contemplated in paragraph 3(c) in Part I of the Ninth Schedule to the Income Tax Act 58 of 1962 (the Act). PBA 3(c) provides for residential care to be provided to retired persons.
- An organisation carrying on that PBA as its sole or principal object may apply for approval as a public benefit organisation under section 30(3) of the Act, and if approved by the Commissioner, obtains preferential tax treatment under section 10(1)(cN), if all of the prescribed requirements are met.

*Due date for comments = 30 April 2020*

*The updated Interpretation Note is available to you as a Source Document*

## 8. INTERPRETATION NOTE 44 (ISSUE 3) – PUBLIC BENEFIT ORGANISATIONS: CAPITAL GAINS TAX

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Issued on 21 February 2020

*17-page document*

### 9 examples

#### Purpose

- This Note provides guidance on the application and interpretation of paragraph 63A which deals with the disregarding of a capital gain or capital loss on the disposal of an asset by a PBO; and
  - **NB = must be read with IN 24 “Income Tax: PBOs: Trading Rules – Partial Taxation of Trading Receipts”.**

Deals with:

- Paragraph 63A of the Eighth Schedule

*The updated Interpretation Note is available to you as a Source Document*

## 9. DRAFT INTERPRETATION NOTE – DOUBTFUL DEBTS AND ACCOMPANYING DOCUMENTS

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Issued on 18 February 2020

*18-page document*

### 5 examples

#### Purpose

- This draft Note provides guidance on calculating the section 11(j) doubtful debt allowance. Taxpayers should pay attention to the accompanying document outlining the application process, the requests for information (RFIs) and the excel-based Loss Allowance Models

*Due date for comments = 31 March 2020*

**NB = Refer to these accompanying documents:**

1. [Notes outlining the application process](#)
2. [Request for information \(RFI\) A](#) – section 11(j)(i)
3. [Request for information \(RFI\) B](#) – section 11(j)(ii)



4. [Excel-based Loss Allowance Models](#) [Note that there are two excel forms, relating to subparagraphs (i) and (ii) respectively]

*The Draft Interpretation Note is available to you as a Source Document*

## 10. DRAFT INTERPRETATION NOTE – PUBLIC BENEFIT ORGANISATIONS: PROVISION OF RESIDENTIAL CARE FOR RETIRED PERSONS

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Issued 21 February 2020

*19-page document*

**3 examples**

### **Purpose**

- The draft IN discusses the requirements of the public benefit activity (PBA) contemplated in paragraph 3(c) in Part I of the Ninth Schedule to the Income Tax Act 58 of 1962 (the Act). PBA 3(c) provides for residential care to be provided to retired persons.
- An organisation carrying on that PBA as its sole or principal object may apply for approval as a public benefit organisation under section 30(3) of the Act, and if approved by the Commissioner, obtains preferential tax treatment under section 10(1)(cN), if all of the prescribed requirements are met.

*Due date for comments = 30 April 2020*

*The Draft Interpretation Note is available to you as a Source Document*

## 11. BPR 337 – AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

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*BPR = Binding PRIVATE Ruling*

- *Generally, a Binding Private Ruling (BPR) is issued in response to an application and clarifies how the Commissioner would interpret and apply the provisions of the tax laws relating to a specific proposed transaction.*
- 3-page document
- Issued on 9 January 2020

### **Deals with:**

- Section 44

### **Summary:**

This ruling determines the income tax effect of an amalgamation transaction for consideration involving the assumption of liabilities only.

*This BPR is available to you as a Source Document*

## 12. BPR 338 – DONATIONS OF MONEY MADE TO A PUBLIC BENEFIT ORGANISATION AT A FUNDRAISING EVENT

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*BPR = Binding PRIVATE Ruling*

- *Generally, a Binding Private Ruling (BPR) is issued in response to an application and clarifies how the Commissioner would interpret and apply the provisions of the tax laws relating to a specific proposed transaction.*

- 2-page document
- Issued on 17 January 2020

**Deals with:**

- Section 18A

**Summary:**

This ruling determines the tax treatment of payments made to the applicant, a public benefit organisation (PBO) approved under section 30, at a fundraising event.

*This BPR is available to you as a Source Document*

### **13. BPR 339 – TRANSFER OF LISTED SHARES TO A COLLECTIVE INVESTMENT SCHEME IN EXCHANGE FOR PARTICIPATORY INTERESTS**

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*BPR = Binding PRIVATE Ruling*

- *Generally, a Binding Private Ruling (BPR) is issued in response to an application and clarifies how the Commissioner would interpret and apply the provisions of the tax laws relating to a specific proposed transaction.*

- 3-page document
- Issued on 21 February 2020

**Deals with:**

- Sections 9C and 42 of the Act, and
- Section 8(1)(a)(i) of the STT Act

**Summary:**

This ruling determines the tax consequences of a transfer of listed shares to a collective investment scheme (CIS) in exchange for participatory interests in that CIS.

*This BPR is available to you as a Source Document*

### **14. BPR 340 – SHARE BUY-BACK AT NOMINAL VALUE**

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*BPR = Binding PRIVATE Ruling*

- *Generally, a Binding Private Ruling (BPR) is issued in response to an application and clarifies how the Commissioner would interpret and apply the provisions of the tax laws relating to a specific proposed transaction.*

- 4-page document
- Issued on 27 February 2020

**Deals with:**

- Sections 1(1) – Definitions of “Dividend” and “Gross Income”, 55(1), 58(1) and

- Paragraphs 11(1)(a), 11(2)(b) and 38(1) of the Eighth Schedule to the Act

**Summary:**

This ruling determines the income tax and donations tax consequences of a share buy-back at nominal value pursuant to a proposed cancellation agreement.

*This BPR is available to you as a Source Document*

## 15. BGR 9 (ISSUE 4) – TAXES ON INCOME AND SUBSTANTIALLY SIMILAR TAXES FOR PURPOSES OF SOUTH AFRICA’S TAX TREATIES

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*BGR = Binding GENERAL Ruling*

- *BGRs are issued in respect of matters of general importance.*
- *They provide clarity on the application of tax laws in these general matters and can be applied across board*

- Issue 4
- 3-page document
- Issued on 30 January 2020

**Summary:**

This ruling identifies the taxes administered by SARS which in its opinion constitute taxes on income or substantially similar taxes for purposes of South Africa’s tax treaties.

*This BGR is available to you as a Source Document*

## 16. DRAFT BGR – UNBUNDLING OF UNLISTED COMPANY: IMPACT OF NON-QUALIFYING SHAREHOLDERS

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*BGR = Binding GENERAL Ruling*

- *BGRs are issued in respect of matters of general importance.*
- *They provide clarity on the application of tax laws in these general matters and can be applied across board*

- 4-page document
- Issued on 13 February 2020

**Deals with:**

- Section 46

**Summary:**

The draft BGR provides clarity on what constitutes an unbundling transaction under section 46(1) of the Income Tax Act 58 of 1962 when an unbundling company having non-qualifying shareholders unbundles shares in an unlisted unbundled company. A non-qualifying shareholder is a shareholder of the unbundling company that does not form part of the same group of companies as the unbundling company.

*This Draft BGR is available to you as a Source Document*

## 17. NOTICE 37 – DEFINITION OF “DETERMINED VALUE”

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- Date published = 17 January 2020
- GG 42961
- 4-page document
- Amending regulations under items (a) and (c) of the definition of "determined value" in paragraph 7(1) of the Seventh Schedule to the Income Tax Act, 1962, on the retail market value in respect of right of use of motor vehicle, as initially published by Government Notice R.362 of 28 April 2015
- = The price of acquisition of the motor vehicle paid by the employer (incl VAT) or where the motor vehicle was acquired at no cost = the market value of that vehicle
- *Regulation 2 of the Regulations is hereby amended by the substitution for paragraph (c) of the following paragraph:*  
*"(c) in cases other than motor vehicle manufacturers, motor vehicle importers, motor vehicle dealers or motor vehicle rental companies, in respect of any year of assessment, the price of acquisition of the motor vehicle paid by the employer (including value -added tax) or where the motor vehicle was acquired at no cost, the market value of that vehicle."*

**Effective date = 1 March 2020**

*This Notice is available to you as a Source Document*

## 18. EXPLANATORY MEMORANDUM ON THE TAXATION LAWS AMENDMENT BILL, 2019

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- Date published = 21 January 2020
- 70-page document

### **Sets out each change with:**

- Background
- Reasons for change
- Proposal
- Effective date

***Remember that this is still part of getting the 2019 budget speech written into the Act***

*This publication is available to you as a Source Document*

## 19. FINAL RESPONSE DOCUMENT ON THE 2019 DRAFT TAX BILLS

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- Date published = 21 January 2020
- 62-page document
- This response document includes a summary of the key written comments received on the 2019 Draft Rates Bill, 2019 Draft Income Tax Amendment Bill, 2019 Draft TLAB and 2019 Draft TALAB released for public comment as well as other key issues raised during the public hearings held by both the SCoF and SECoF on 10 September 2019

*This publication is available to you as a Source Document*

## 20. UPDATED TABLE OF INTEREST RATES: TABLE 3 – RATES AT WHICH INTEREST-FREE OR LOW INTEREST LOANS ARE SUBJECT TO INCOME TAX

The term “official rate of interest” is defined in section 1(1) of the Income Tax Act 58 of 1962 (the Act)

- Where a loan is obtained by an employee from his or her employer in terms of which no interest is payable or where the interest payable is less than the “official rate of interest”, the difference between the amount which would have been payable if the loan was granted at the official rate and the amount actually paid by the employee, is taxed as a fringe benefit
- **Note:** The “official rate” as defined in section 1(1) of the Act is linked to the repurchase rate plus one per cent. The official rate is adjusted at the beginning of the month following the month during which the Reserve Bank changes the repurchase rate.

Updated in January 2020

- **Table 3:** Rates at which interest-free or low interest loans are subject to income tax
  - The South African Reserve Bank changed the "repo rate" in January 2020

### Summary

**Official rate decreased from 7,5% to 7,25% as from 1 August 2019**

*This Updated Table is available to you as a Source Document*

## 21. SECTION 12I TAX ALLOWANCE PROGRAMME – DEPARTMENT OF TRADE AND INDUSTRY – PUBLICATION OF DECISIONS TO APPROVE, NOT APPROVE OR WITHDRAW APPROVAL OF APPLICATIONS RECEIVED FOR THE TAX ALLOWANCE PROGRAMME UNDER SECTION 12I(12)(A)(I)(AA) AND (19)(D)

- Date published = 7 February 2020
- GG 42999 Notices 50, 51 & 52

➤ 13 decisions published – each with their own implementation date, as set out in the table below:

Nr	Publication Date	GG and Notice Numbers	Description	Implementation Date
1.	7 February 2020	GG 42999 Notice 52	Section 12I Tax Allowance Programme <ul style="list-style-type: none"> <li>• <a href="#">Notice 52 – Robor (Pty) Ltd – Elandfontein FD Mill</a></li> </ul> Approval withdrawn	4 July 2019
2.	7 February 2020	GG 42999 Notice 52	Section 12I Tax Allowance Programme <ul style="list-style-type: none"> <li>• <a href="#">Notice 52 – AGCO South Africa (Pty) Ltd</a></li> </ul> Approval withdrawn	4 July 2019
3.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme <ul style="list-style-type: none"> <li>• <a href="#">Notice 51 – Wispeco (Pty) Ltd</a></li> </ul> Not approved	9 April 2019
4.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme <ul style="list-style-type: none"> <li>• <a href="#">Notice 51 – Alpen Food South Africa (Pty) Ltd</a></li> </ul> Approval withdrawn	24 July 2018
5.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme <ul style="list-style-type: none"> <li>• <a href="#">Notice 51 – Siyanda Chrome Smelting Company (Pty) Ltd</a></li> </ul>	24 May 2019

			Approval withdrawn	
6.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme • <a href="#">Notice 51 – Mara Phones South Africa (Pty) Ltd</a>	30 January 2019
7.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme • <a href="#">Notice 51 – Tiger Consumer Brands Ltd</a> Not approved	24 May 2019
8.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme • <a href="#">Notice 51 – Sonae Arauco South Africa (Pty) Ltd – White River Expansion Project</a> Not approved	1 November 2018
9.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme • <a href="#">Notice 51 – Nampak Products Ltd</a> Not approved	16 May 2019
10.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme • <a href="#">Notice 51 – B Braun Medical (Pty) Ltd</a> Duplicated in Notice 50	17 July 2018
11.	7 February 2020	GG 42999 Notice 51	Section 12I Tax Allowance Programme • <a href="#">Notice 51 – CCL Label South Africa (Pty) Ltd</a>	24 July 2018
12.	7 February 2020	GG 42999 Notice 50	Section 12I Tax Allowance Programme • <a href="#">Notice 50 – B Braun Medical (Pty) Ltd</a> Duplicated in Notice 51	17 July 2018
13.	7 February 2020	GG 42999 Notice 50	Section 12I Tax Allowance Programme • <a href="#">Notice 50 – RCL Foods Consumer (Pty) Ltd</a>	18 July 2018

## 22. NOTICES 270 & 271 RE SUBSISTENCE & RATE PER KM

Income tax notices, scheduled for publication in the Government Gazette, under section 8(1) relating to daily amounts in respect of meals and incidental costs, and rate per kilometre in respect of motor vehicles

- Date published = 6 March 2020

### GG 43073 Notice 270

#### Subsistence:

- **Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c)**

The following amounts will be deemed to have been actually expended by a recipient to whom an allowance or advance has been granted or paid—

- where the accommodation, to which that allowance or advance relates, is in the Republic and that allowance or advance is paid or granted to defray—

(i) incidental costs only, an amount equal to R139 per day; or

(ii) the cost of meals and incidental costs, an amount equal to R452 per day; or

- where the accommodation, to which that allowance or advance relates, is outside the Republic and that allowance or advance is paid or granted to defray the cost of meals and incidental costs, an amount per day determined in accordance with the 'Table: Daily Amount for Travel Outside the Republic' under Notice 268 published in Government Gazette No. 42258 dated 1 March 2019.

- **NB** = See [GG 42258 Notice 268](#) dated 1 March 2019, for the '**Table: Daily Amount for Travel Outside the Republic**', which remains in force effective 1 March 2019 until communicated otherwise.

### GG 430373 Notice 271



**Reimbursive rate per km**

• **Fixing of rate per kilometre in respect of motor vehicles – section 8(1)(b)(ii) and (iii)**

**1. Definition**

In this Schedule, “value” in relation to a motor vehicle used by the recipient of an allowance as contemplated in section 8(1)(b)(ii) and (iii) of the Income Tax Act, 1962, means—

- (a) where that motor vehicle (not being a motor vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by that recipient under a bona fide agreement of sale or exchange concluded by parties dealing at arm’s length, the original cost thereof to him/her, including any value-added tax but excluding any finance charge or interest payable by him/her in respect of the acquisition thereof;
- (b) where that motor vehicle—
  - (i) is held by that recipient under a lease contemplated in paragraph (b) of the definition of “instalment credit agreement” in section 1 of the Value-Added Tax Act, 1991; or
  - (ii) was held by him/her under such a lease and the ownership thereof was acquired by him/her on the termination of the lease, the cash value thereof as contemplated in the definition of “cash value” in section 1 of the Value-Added Tax Act; or
- (c) in any other case, the market value of that motor vehicle at the time when that recipient first obtained the vehicle or the right of use thereof, plus an amount equal to value added tax which would have been payable in respect of the purchase of the vehicle had it been purchased by the recipient at that time at a price equal to that market value.

**2. Determination of rate per kilometre**

The rate per kilometre referred to in section 8(1)(b)(ii) and (iii) must, subject to the provisions of paragraph 4, be determined in accordance with the cost scale set out in paragraph 3, and must be the sum of—

- (a) the fixed cost divided by the total distance in kilometres (for both private and business purposes) shown to have been travelled in the vehicle during the year of assessment: Provided that where the vehicle has been used for business purposes during a period in that year which is less than the full period of that year, the fixed cost must be an amount which bears to the fixed cost the same ratio as the period of use for business purposes bears to 365 days;
- (b) where the recipient of the allowance has borne the full cost of the fuel used in the vehicle, the fuel cost; and
- (c) where that recipient has borne the full cost of maintaining the vehicle (including the cost of repairs, servicing, lubrication and tyres), the maintenance cost.

**3. Cost scale**

Where the value of the vehicle –	Fixed Cost R	Fuel Cost c/km	Maintenance Cost c/km
does not exceed R95 000	31 332	105.8	37.4
exceeds R95 000 but does not exceed R190 000	55 894	118.1	46.8

exceeds R190 000 but does not exceed R285 000	80 539	128.3	51.6
exceeds R285 000 but does not exceed R380 000	102 211	138.0	56.4
exceeds R380 000 but does not exceed R475 000	123 955	147.7	66.2
exceeds R475 000 but does not exceed R570 000	146 753	169.4	77.8
exceeds R570 000 but does not exceed R665 000	169 552	175.1	96.6
exceeds R665 000	169 552	175.1	96.6

#### 4. Simplified method

Where—

- (a) the provisions of section 8(1)(b)(iii) are applicable in respect of the recipient of an allowance or advance; and (b) no other compensation in the form of a further allowance or reimbursement (other than for parking or toll fees) is payable by the employer to that recipient, that rate per kilometre is, at the option of the recipient, equal to **398 cents per kilometre**.

#### 5. Effective date

The rate per kilometre determined in terms of this Schedule applies in respect of years of assessment commencing on or after 1 March 2020.

**Effective date = 1 March 2020**

*This publication is available to you as a Source Document*

## 23. TAXATION PROPOSALS AS TABLED BY THE MINISTER OF FINANCE DURING THE 2020 NATIONAL BUDGET REVIEW ON 26 FEBRUARY 2020

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- Date published = 26 February 2020
- 6-page document
- Sets out items with Rate of Excise Duty

*This publication is available to you as a Source Document*

## 24. DRAFT BILL – DRAFT 2020 RATES AND MONETARY AMOUNTS AND AMENDMENT OF REVENUE LAWS BILL

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- Date published = 26 February 2020
- 19-page document
- National Treasury published the Draft 2020 Rates and Monetary Amounts and Amendment of Revenue Laws Bill as supporting information to the 2020 Budget proposals.
- It is expected that the actual Bill will be introduced later in the year.

*Due date for comments was 30 March 2020*

*This publication is available to you as a Source Document*



## 25. 9 TAX COURT CASES

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**Decisions on 9 Tax Court Cases were published by SARS:**

**IT 13798, IT13931 & IT 14294**

### [Link to Case File](#)

- 28-page document
- Date of judgment = 17 September 2019
- Tax Court – JHB
- Re: Income Tax Act & Tax Administration Act

**Issue = Capital gains tax and capital losses – employee share incentive scheme and trust – meaning of ‘asset’ and ‘right’ as defined in the Eight Schedule to the Income Tax Act**

- **Outcome:**

(1) The understatement penalties imposed by the respondent in respect of the 2013 year of assessment in the amount of R2 275 206 be and is hereby waved and / or remitted.

(2) Save to the extent reflected in para (1) above, the appeals by the appellant against the additional assessments for the tax years 2007 to 2013 are dismissed.

(3) Save to the extent reflected in para (1) above, the additional assessments raised by the respondent in respect of the appellant’s 2007 to 2013 years of assessment are confirmed.

(4) There shall be no order as to cost, including in relation to the interlocutory application heard by Meyer J in which he handed down an order on the 11th of July 2018 in terms of which the cost of that interlocutory application was reserved.

*Click on the link above to download the full court case file*

**VAT 1390**

### [Link to Case File](#)

- 23-page document
- Date of judgment = 14 June 2016
- Tax Court – Cape Town
- Re: Value-added tax: sections 7(1)(a), 7(2) and 10; definitions of "consideration", "enterprise" and "supply" in section 1(1)

**Issue = Whether the delivery of food orders to the taxpayer’s customers constitutes a service supplied by it for consideration in the course, or in furtherance, of its enterprise, and hence whether the delivery charges were subject to output tax**

- **Outcome:**

(a) The appeal is dismissed with costs.

(b) It is declared that the taxpayer is accountable for value-added tax on the delivery charges (also referred to as ‘drivers petrol money’) raised against its customers in terms of the invoices presented for payment when food orders were delivered during the taxpayer’s 02/2008 – 02/2011 tax periods.

(c) The matter is referred back to the Commissioner for assessment in accordance with this judgment.

*Click on the link above to download the full court case file*

**IT 24819**

[Link to Case File](#)

- 11-page document
- Date of judgment = 19 December 2019
- Tax Court – Cape Town
- Re: Income Tax Act; Loan

**Issue = Whether the Appellant was liable for a late payment penalty for payroll taxes under paragraph 6(1) of the Fourth Schedule**

- **Outcome:**

In the result the appeal is dismissed with costs

*Click on the link above to download the full court case file*

**VAT 2063**

[Link to Case File](#)

- 9-page document
- Date of judgment = 15 November 2019
- Tax Court – JHB
- Re: Income Tax Act Section 17(1) and proviso (iii);

Vendor making both exempt and taxable supplies in course of conducting enterprise of, amongst others, providing money-transfer services and mobile phone credit and bureau de change services; vendor consequently having mixed-purpose input tax deductions requiring apportionment under section 17.

**Issue = Whether vendor entitled to retrospective permission to use the transaction count based (TCB) method as opposed to the default standard turnover based (STB) method prescribed in Binding General Ruling 16**

- **Outcome:**

1. The appeal is dismissed.
2. The costs of the application before Binns-Ward J are to borne by the respondent on the scale as between party and party

*Click on the link above to download the full court case file*

**TAdm 00052/2018**

[Link to Case File](#)

- 6-page document
- Date of judgment = 3 May 2019
- Tax Court – JHB
- Re: Income Tax Act Section 99(1)(a) read with section 99(2)

**Issue = Assessment made more than three years after date of original assessment to tax capital gain previously disclosed as income;**

**application for order requiring SARS to provide reasons for assessment in order to enable applicant to formulate its objection to additional assessment;**

**Court holding that not only must SARS show that there was non-disclosure of material facts during the three-year period but that such non-disclosure caused SARS not to tax the relevant amount in the original assessment or during the three years thereafter;**

**Court finding that reasons given in finalisation of audit letter insufficient but that such shortcoming rectified in SARS's answering affidavit.**

- **Outcome:**

1. Declaring that paragraphs 1.1.1 and 2.3 of SARS' finalisation of audit letter dated 6 March 2018 read with paragraphs 32 and 33 of SARS' answering affidavit in these proceedings constitute the reasons in compliance with Rule 6 sufficient to enable the applicant a formulated objection to the additional assessment for the 2012 year of assessment issued by respondent on 6 March 2018.
2. Directing respondent to pay the costs

*Click on the link above to download the full court case file*

<b>TAdm 24643</b>
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[Link to Case File](#)

- *6-page document*
- Date of judgment = 3 May 2019
- Tax Court – JHB
- Re: Tax administration; section 223; imposition of understatement penalty of 100%; SARS's grounds of assessment under rule 31

**Issue = Whether such statement lacked sufficient averments necessary to sustain a finding of gross negligence**

- **Outcome:**

1. It is declared that the statement of grounds of assessment and opposing appeal delivered by the South African Revenue Service on 7 November 2018 lacks averments necessary to sustain a finding of gross negligence and the imposition of an understatement penalty at the rate of 100%.
2. The respondent is granted 15 (fifteen) days in order to remedy the defect in its Rule 31 statement.
3. The respondent is to pay the costs of this application

*Click on the link above to download the full court case file*

<b>VAT 1610</b>
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[Link to Case File](#)

- *11-page document*
- Date of judgment = 19 June 2019
- Tax Court – JHB

- Re: Value-added tax; input tax; output tax; whether the Appellant was entitled to input tax and output tax claims relating to reorganising loans and substituting foreign loans; input tax; output tax

**Issue = Whether the Appellant was entitled to input tax and output tax claims relating to reorganising loans and substituting foreign loans**

- **Outcome:**
  1. The appeal is dismissed.
  2. The additional assessments raised by the Commissioner for the tax periods 04/2012, 06/2012, 07/2012, 08/2012 and 10/2012 are confirmed.
  3. The Commissioner is ordered to remit the penalty which has been imposed.
  4. No order is made as to costs

*Click on the link above to download the full court case file*

## 26. 10 HIGH COURT CASES

**Decisions on 10 High Court Cases were published by SARS:**

**Dragon Freight (Pty) Limited and Others v CSARS (82686/19) [2019]**

[Link to Case File](#)

- *10-page document*
- Date of judgment = 29 November 2019
- Tax Court – Pretoria
- Re: Customs and Excise; section 88(1)(a)

**Issue = Whether SARS entitled to seize containers of clothing because of alleged understatement of declared transaction value. Applicant bringing urgent review application to have such seizure set aside**

- **Outcome:**
  1. The application is heard on an urgent basis in terms of Rule 6(12) and all the requirements with regard to form and service provided for in the Uniform Rules of Court are dispensed with
  2. The non-compliance with the period of 30 days specified in section 96 (1)(a)(i) of the Customs and Excise Act, No 91 of 1964 is condoned.
  3. The Commissioner’s decision not to release the 8 containers (EGHU9706330, MSKU9476816, MRKU3495191, TCNU1677060, EITU1526903, DRYU9573963, TEMU6264829 and TEMU8845611) referred to hereunder is reviewed and set aside and, subject to 5 below, the respondent is ordered immediately to release such containers and the goods contained in them.
  4. The Commissioner’s decision to seize 3 containers (MSKU1672026, BSIU9249814 & TLLU4768117) is reviewed and set aside and, subject to 5 below, the respondent is ordered immediately to release such containers and the goods contained in them.
  5. Release of the goods referred to in paragraphs 3 and 4 of the order is dependent on the applicants paying the customs duties calculated on the transactional values of the goods as assessed in accordance with the documents submitted by them to the respondent, all fees due to the respondent lawfully determined on the basis of any error as to quantities of goods or tariff categorisations made by the applicants and provisional payments being made by the applicants to the respondent in the amounts set out in the schedule (refer to the case file)

6. The respondent is ordered to pay the costs of the first to ninth applicants, such costs to include the costs of two counsel.

*Click on the link above to download the full court case file*

**Siphayi and Another v CSARS and Others (34975/2019) [2019]**

[Link to Case File](#)

- 5-page document
- Date of judgment = 25 October 2019
- Tax Court – JHB
- Re: Tax Administration; section 184; whether the deducting of funds from the bank account of the first applicant in respect of a tax debt of the second applicant is unlawful and invalid

**Issue = Whether SARS should be ordered and directed to resend notices of intention to hold the first applicant liable for the tax debts of the second applicant**

- **Outcome:**
  - (a) Pending the re-enrolment of this application by either party, the first and second respondents are interdicted from deducting monies from the first applicant’s bank account in terms of section 184 of the tax administration act 28 of 2011.
  - (b) The first and second respondents are directed to resend notices of intention to hold the first applicant liable for the tax debts of the second applicant at the following email addresses: (to be supplied).
  - (c) The remainder of the relief sought in this application is postpone sine die.
  - (d) Costs are reserved

*Click on the link above to download the full court case file*

**Glencore Operations SA (Pty) Limited v CSARS (11696/18) [2019]**

[Link to Case File](#)

- 12-page document
- Date of judgment = 24 October 2019
- Tax Court – Pretoria
- Re: Customs and Excise; section 47(9)(e); Schedule 6

**Issue = Appeal against the decision by SARS to refuse an internal appeal lodged by the applicant against a determination by the Commissioner not to allow certain rebates in respect of distillate diesel fuel purchased and used in mining operations conducted by the appellant**

- **Outcome:**
  1. The period of one year referred to in section 96(1)(b) of the Customs and Excise Act, 91 of 1964 is extended until 21 February 2018 in respect of the relief sought in prayers (2) to (5) below;
  2. The applicant’s appeal against the determination by the respondent contained in Annexure “FA3” to the founding affidavit that the applicant does not qualify for diesel refunds claimed by the applicant under rebate item 670.04 in Schedule 6 to the Customs and Excise Act, be upheld and the determination be set aside;

3. The aforesaid determination be substituted with a determination that the diesel refunds claimed by the applicant qualify under rebate item 670.04;
4. The respondent is to pay the costs, such costs to include the cost of senior counsel.

*Click on the link above to download the full court case file*

**Flordis South Africa (Pty) Limited v CSARS (61689/2015) [2019]**

**[Link to Case File](#)**

- 15-page document
- Date of judgment = 17 October 2019
- Tax Court – Pretoria
- Re: Customs and Excise; appeal under section 47(9)(e) against tariff determination made under Schedule No 1 to the Act

**Issue = Whether Ginsana capsules should be classified as Foodstuffs under tariff heading TH 2016.90.90 (as contended by SARS) or as Medicaments under TH 3004.90.90 (as contended by applicant)**

- **Outcome:**
  1. The tariff determination 34/2013 dated 6 March 2014 classifying the Ginsana capsules in tariff heading 2106.90.90 of Part 1 of Schedule No 1 to the Customs and Excise Act, 91 of 1964 is set aside.
  2. The Ginsana capsules imported under cover of Bill of Entry No 60401 dated 21 August 2012 is classified in tariff heading 3004.90.90 of Part 1 of Schedule No 1 to the above Act.
  3. The Respondent is ordered to pay the Applicant’s costs, inclusive of the costs of Prof du Toit and inclusive of previously reserved costs.

*Click on the link above to download the full court case file*

**Gold Kid Trading CC v CSARS (2016/31842) [2018]**

**NB – There are 2 judgments for this case**

**[Link to 1<sup>st</sup> Case File – Leave to Appeal](#)**

- 6-page document
- Date of judgment = 21 October 2018
- Tax Court – JHB
- Re: Tax administration; section 7(2) of the Promotion of Administration of Justice Act 3 of 2000; section 17 of the Superior Courts Act 10 of 2013

**Issue = Whether applicant entitled to leave to appeal to the high court in respect of a matter pending before the tax court**

**The jurisdiction of the High Court to entertain ordinary review applications not ousted by the legislative powers given to the Tax Court**

- **Outcome:**  
In the premises the applicant’s application for leave to appeal is dismissed with costs.

**[Link to 2<sup>nd</sup> Case File](#)**

- 13-page document
- Date of judgment = 19 July 2018
- Tax Court – JHB
- Re: Promotion of Administrative Justice Act, 2000 & Tax Administration Act, 2011 & Value-Added Tax Act, 1991

**Issue = The jurisdiction of the High Court to entertain ordinary review applications not ousted by the legislative powers given to the Tax Court. The Tax Court has no power to entertain reviews under the Protection of Administration of Justice Act (PAJA). Principles governing failure to exhaust internal remedies envisaged in section 7(2) of PAJA. The court declined to review the decision of SARS pending the outcome of the appeal that the applicant had lodged with the High Court**

- **Outcome:**

In the circumstances the Applicant’s application is struck of the roll with costs.

*Click on the links above to download the full court case files*

<b>Agricultural and Industrial Mechanisation (Pty) Ltd v CSARS (21164/2017)</b>
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[Link to Case File](#)

- 9-page document
- Date of judgment = 29 August 2019
- Tax Court – JHB
- Re: Tax administration; sections 197 and 200; taxpayer placed in voluntary business rescue; requesting SARS to compromise and permanently write off an amount it owed to SARS under TA Act; SARS declining applicant's request

**Issue = Whether compromise under Companies Act a compromise under TA Act**

- **Outcome:**

- In this regard I do grant that extension. I make an order in terms of the prayers sought in the notice of motion as to the question of costs section 130 of the TAA deals with costs orders made by a Tax Court. This is a matter of review and not something and I am not sitting as a Tax Court. A Tax Court may in terms of section 130 grant an order for costs in favour of the party if SARS grants an assessment or decisions are held to be unreasonable if the appellant’s grounds of appeal are held to be unreasonable and a number of other aspects which relate really to a decision by a Tax Court and not a decision with me sitting as a High Court. Unfortunately, this is not an aspect that was fully traversed by counsel. I did not ask them to traverse it. In a draft order prepared on behalf of the applicant Adv Dreyer did ask that the costs of the application are to be paid by the respondent. She handed up two draft orders the one related to the setting aside of the decision and that the matter be referred back to the respondent for reconsideration with the specific directive that SARS take into account that the business rescue plan dated 19 June 2013 was not a compromise agreement under section 197 and 200 of the Tax Act. As indicated I have not heard argument on the question of costs specifically and it was for that reason that I reserve the question and costs and direct that the parties must come and argue the question of costs of this application as soon as possible and certainly within the next few weeks before the end of term and it is for that reason that I reserve the costs. The order that I make is contained in the draft order save for the deletion of prayer 6 and the amendment to prayer 5 that the costs are reserved.

- In the result I make an order in terms of the draft where the matter must be referred back to the respondent for consideration and taking into account that I make an order that the approved business rescue plan adopted by the creditors is not a compromise as set out in terms of the TAA.

*Click on the link above to download the full court case file*

**Peter v CSARS (3158/2018)**

[Link to Case File](#)

- 11-page document
- Date of judgment = 31 May 2019
  - *Citation corrected on 16 January 2020*
- Tax Court – JHB
- Re: Tax administration; section 164; applicant objecting to additional assessments and requesting suspension of payment; such request refused and taken on review; court setting aside decision and remitting to SARS for reconsideration; taxpayer making fresh request but this refused by tier 3 committee

**Issue = Whether tier 3 committee empowered to make decision; whether taxpayer had been frivolous and vexatious**

- **Outcome:**
  - The amendment to the applicant’s notice of motion is granted.
  - The applicant is order to pay the costs associated with the amendment on an attorney and client scale
  - The decision by the respondent to refuse the applicant’s request to suspend payment of his tax liability for years of assessment 2005, 2006, 2007, 2008, 2009, 2010 and 2011 pending the finalisation of his tax appeal pending before the Tax Court is reviewed and set aside;
  - The applicant’s request to suspend payment of his tax liability for years of assessment 2005, 2006, 2007, 2008, 2009, 2010 and 2011 pending the finalisation of his tax appeal pending before the Tax Court is remitted to the respondent for reconsideration;
  - Save as provided for in order (b) above, the respondent is ordered to pay the costs of this application.

*Click on the link above to download the full court case file*

**Brits and 3 Others v CSARS (2017-44380)**

[Link to Case File](#)

- 7-page document
- Date of judgment = 28 November 2017
- Tax Court – JHB
- Re: Tax administration; value-added tax; Tax Administration Act (section 42); Constitution of the Republic of South Africa (section 32)
- **Issue = Applicant subject of VAT audit; letter of audit findings that all transactions fictitious and that all input tax to be written back; SARS having seized all documentation relating to transactions in question refused to give appellant access to same; Applicant unable to respond meaningfully to audit findings without documentation; applying to court to direct SARS to provide said documentation; court upholding applicant’s request**



- **Outcome:**

1. The application is urgent.
2. In terms of prayers 1, 2, 3 and 4 (as amended) of the draft order, which I have marked 'X', signed and dated.
3. The respondent shall pay the applicants' cost of the urgent application

*Click on the link above to download the full court case file*

<b>Canyon Resources (Pty) Ltd v CSARS (68281/2016) [2019]</b>
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[Link to Case File](#)

- 22-page document
- Date of judgment = 27 March 2019
- Tax Court – JHB
- Re: Customs and excise; rebate item 670.04; "diesel refund"; application for setting aside determination made by Commissioner; "wet rates" and "dry rates"

**Issue = Interpretation of post-recovery and post-mining activities; interpretation of in respect of mining of coa**

- **Outcome:**

1. The Applicant's application for the setting aside and substitution of the determination by the Commissioner of the South African Revenue Services ("the Commissioner") regarding the diesel refunds claimed by the Applicant under rebate item 670.04 provided for in the Customs and Excise Act No 91 of 1964 in respect of the first two assessment periods of the Applicant's contractor Close-Up as well as the claims in respect of the Applicant's contractors Ni-Da and Minopex, is dismissed and the determination is upheld.
2. The issue of whether the records of the Applicant and its contractors Close-up (in respect of the third period), Alcedopro and Trollope demonstrate with sufficient particularity the entitlement to a diesel refund and the extent thereof in respect of diesel utilized by the said contractors and whether the Commissioner's determination of a refusal thereof should be upheld or not, is referred for the hearing of oral evidence on a date to be allocated by the Deputy Judge President.
3. The evidence in respect of the abovementioned referral shall be that of any witnesses whom the parties or either of them may elect to call, subject, however, to the following:
  - a. Save in the case of those witnesses who have already deposed to affidavits in these proceedings, neither party shall be entitled to call any witness unless it has served on the other party at least 20 days prior to the hearing (in the case of the Applicant) and at least 10 days (in the case of the Respondent) a statement on oath wherein the evidence to be given is set out or the Court, at the hearing permits such person to be called despite the fact that no such statement has been served in respect of his or her evidence.
  - b. Either party may subpoena any person to give evidence at the hearing, whether such a person has consented to furnish a statement or not.
  - c. The fact that a party has served a statement as envisaged above, shall not oblige such a party to call the witness concerned.
  - d. Within 60 days from date of this order each of the parties shall make discovery on oath of all documents relating to the issue referred for the hearing of oral evidence whereafter the rules of court pertaining to discovery, inspection and production of documents as for trials shall apply.

These rules shall also apply in respect of any expert evidence which the parties may wish to present.

4. Prayers 3 and 8 of the Applicant’s notice of motion are refused.
5. No order is made in respect of prayers 2, 4, 5, 6 and 7 of the Applicant’s notice of motion.
6. The incidence of costs (and the scale thereof) incurred up to now are reserved to be determined after the hearing of oral evidence.

*Click on the link above to download the full court case file*

**Medtronic International v CSARS (33400/19) [2020]**

[Link to Case File](#)

- 14-page document
- Date of judgment = 17 February 2020
- Tax Court – Pretoria
- Re: Tax Administration Act, 2011 & Promotion of Access to Justice Act, 2000 & Supreme Court Act, 1959

**Summary** = Rule 30A(1) of the High Court rules; record of review proceedings is still to be determined by relevance; relevance is not dependant upon the pleaded issues in the initial review application; relevance remains to be determined by the decision sought to be reviewed.

**Issue** = **Whether CSARS should have included internal e-mail correspondence between staff as part of the record in a Rule 53 review application**

- **Outcome:**  
The application in terms of Rule 30A dated 23 August 2019 is dismissed with costs.

*Click on the link above to download the full court case file*

## 27. SUPREME COURT OF APPEAL CASE

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**CSARS v South African Breweries (Pty) Ltd (442/2017) [2018]**

Classification of products for determination of excise duty rate

[Link to Case File](#)

- 17-page document
- Date of judgment = 27 June 2018
- Tax Court – JHB
- Re: Revenue; section 47 of the Customs and Excise Act 91 of 1964

**Summary** = **Classification of products for determination of excise duty rate; general rules of Interpretation restated; classification of goods primarily on explanatory notes incorrect; appeal dismissed**

*Click on the link above to download the full court case file*

## REGULATOR NEWS

### 1. IRBA FORESEES AUDIT REFORMS WILL REGAIN CONFIDENCE IN PROFESSION IF AUDIT FIRMS FOLLOW SUIT

*IRBA Press release 26 February 2020*

The Independent Board for Auditors (IRBA) has welcomed government's support for reform of the audit profession and the backing of its legislative amendments, which formed part of Minister Mboweni's budget speech today.

Says Bernard Agulhas, CEO of IRBA: "The IRBA has already done some review of the profession following the events of 2017, pertaining to the Gupta Leaks and the collapse of Steinhoff. In our review we identified more than 40 projects as part of restoring confidence in auditing and many are far advanced and beginning to yield some improvement in audit quality.

"The IRBA will be pleased to have the backing of government for a broader review of the audit landscape and profession and are hopeful that the scope of the proposed independent panel will include examining the broader financial reporting chain. We have long advocated for comprehensive regulation and this review may well be the opportune time to assess the potential benefits of such a model of regulating the broader financial reporting chain.

"The IRBA is committed to leading changes in the profession, as we have demonstrated with our initiatives over the last two years, and will support National Treasury in the review process which will no doubt seek to find solutions which will enhance the effectiveness of the audit product and reduce the expectation gap between what auditors do and what the public expects.

Auditing is not a profession best characterised by innovation. Auditors do not manufacture products; therefore, the practical rules of product innovation do not apply. Other than the Enron moment in 2001 which led to the Sarbanes-Oxley Act of 2002, very little has changed in the role of auditors or in the audit product. However, as a result of a series of large corporate collapses in jurisdictions around the world, the profession has in recent years faced unprecedented pressure to change. Not just here in South Africa, but globally.

"The IRBA's participation on international structures, and in particular at the International Forum of Independent Audit Regulators, has given us insight into how regulators around the world are contending with how to balance innovation with regulation and achieve a right touch framework which delivers audit quality, trust in auditor opinions and which attempts to close the 'expectation gap'."

The IRBA has frequently referred to the fact that auditors are not selling an audit; auditors are in the business of selling confidence to investors. So, the question becomes, how does one innovate confidence which is a "product" that resides in the heart and minds of the users and not the in the hands of the auditors?

Says Agulhas: "The rise of independent audit regulators around the globe through the growth of IFIAR, which now represents 54 countries, all of which have audit regulators which meet the independence criteria of the forum, is absolutely key. As we have seen with state capture here in South Africa, any capture, including regulatory capture, can and often does result in influence peddling and the advancing of individual agendas, which is not always in the public interest.

"At the heart of independent audit regulation is the requirement to be free of influence from the audit firms, to focus on public interest and remain independent from political agendas. It is this independence of the audit regulator which will give the public confidence in the strength of oversight, and that the regulator will act in the best interest of the public and investors. This is what will build confidence in audit opinions and stimulate investment."

The UK government has further recognised that it is not only the auditors who should be regulated but also directors and audit committees. The proposed Auditing Reporting Governance Authority (ARGA) will have a broad mandate to have oversight over the broader financial reporting chain.

Locally, the Auditing Profession Act amendments process is underway. While this only addresses regulation of auditors, it provides the IRBA with increased powers at the investigation stage which will help to speed up investigations into improper conduct. The amendments also simplify the requirements for the disciplinary hearing process, which will increase the pool of members on which to draw to establish hearing panels, and reduce the hearing panel from six to three members. This will ensure the IRBA can set down more matters and run hearings concurrently with multiple panels, far more cost effectively and quickly. These improved and simplified processes will ultimately lead to better investor and public protection.

At the heart of the expectation gap is the fact that not every business failure is an audit failure. Auditors are not trained to detect fraud. Part of the regulatory response is to review the fraud risk standards to see whether auditors should be expected to do more work around fraud. It will therefore be important for the IRBA to review auditor competencies in respect of public expectations, and in response to Minister Mboweni’s objectives to address corruption.

Says Agulhas: “A review of the profession is not unexpected, Sir Donald Brydon conducted a UK government probe into the profession during 2019, which sought to identify ways to improve the effectiveness of audits. While his findings apply to the UK, the IRBA has already reviewed the recommendations to see where the IRBA can add further projects to our activities to restore confidence.”

Recently Brydon was quoted as saying that "it is not auditors that cause companies to fail; that’s the result of the actions of directors, I’m a little troubled by the current mood that reaches for a shotgun aimed at auditors every time there’s a corporate problem."

Says Agulhas: “What Brydon describes is the sort of kneejerk reaction we’ve seen in South Africa as well, which aims for the auditors and lets directors, executives and others off the hook for their role in what happened. This is why the IRBA fully backs the World Bank’s recommendations - first detailed in its 2013 report on accounting and auditing - that the full reporting chain should be regulated.

“Recognising that there are other role players with whom lies certain responsibilities and accountability, does not mean that auditors don’t have work to do. Locally, the profession needs to reassert the primacy of professional scepticism and independence.

If the profession in South Africa wants to get serious about restoring trust in its corporate sector, it will have to face the fact that changing the audit product to narrow the gap is becoming a necessity. Resistance to changes demanded by those who rely on audit opinions is futile. While the IRBA can respond to such issues raised by the public, the regulator can only do so much to create the environment for change. Real change will come about when the audit firms follow suit.

**More about the IRBA:**

*The IRBA is a public protection statutory body established to protect the financial interests of the public by ensuring registered auditors and their firms deliver services of the highest quality. It upholds audit firm independence to ensure that audit quality is such that it enhances the accuracy and credibility of financial performance reporting. In this way, the IRBA has an important role to play in building the reputation of South Africa as an investment market for both local and global investors and driving economic growth for the country.*

*The IRBA also registers suitably qualified accountants as auditors, who must adhere to the highest ethics standards, and promotes the auditing profession through the effective regulation of assurance conducted in accordance with internationally recognised standards and processes.*

Issued by: Lorraine van Schalkwyk APR  
 Manager: Special Projects and Media Relations  
 The Independent Regulatory Board for Auditors (IRBA)  
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On behalf of: Bernard Peter Agulhas  
 Chief Executive Officer

## 2. IRBA: IFIAR ISSUES REPORT ON THE 2019 GLOBAL INSPECTIONS FINDINGS SURVEY

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*IRBA Communiqué issued on 21 February 2020*

The International Forum for Independent Audit Regulators (IFIAR) recently released its report on the results of its seventh annual survey of inspection findings. The Global Inspections Findings Survey is based on IFIAR's 54 member regulators individual inspections of audit firms affiliated with the six largest global audit firm networks. IFIAR collected information about two categories of activities: inspections performed on firm-wide systems of quality control and inspections of individual audit engagements.

IFIAR members reported in the 2019 survey that 33% of audit engagements inspected had at least one significant deficiency reported, compared to 37% in the 2018 survey and to 47% in the first survey capturing this percentage (2014 survey). While the downward trend is encouraging, IFIAR urged the Global Public Policy Committee (GPPC) networks (the six firms and their member firms) to continue efforts to improve audit quality.

The survey results do not measure precisely and are not the sole factor when considering developments in a firm's progress in improving audit quality. A comprehensive evaluation of audit quality involves consideration of various factors beyond numerical information about deficiencies identified and reported over the course of an inspection.

Although the frequency of findings from inspections of individual audit engagements has reduced on an overall basis compared to the last survey, progress is not experienced in all jurisdictions or at the same rate.

To augment the survey's information about inspection findings, in the 2019 survey IFIAR collected information about its members' practices with respect to reporting the results of inspections to the inspected audit firms, audit committees / those charged with governance, and the public.

The IFIAR Report on the [2019 Global Inspections Findings Survey](#) and the [survey press release](#) can be downloaded on the IRBA website at [www.irba.co.za](http://www.irba.co.za) or on the IFIAR website at [www.ifiar.org](http://www.ifiar.org)

**Imre Nagy**

**Director: Inspections**

**About the IRBA**

The objective of the IRBA is to endeavour to protect the financial interests of the South African public and local and international investors in South Africa through the effective and appropriate regulation of registered auditors, in accordance with internationally recognised standards, codes and legislation

## 3. IRBA: NEW PROCESS: ONLINE SUBMISSION OF ASSURANCE WORK DECLARATION AND FIRM RELATED INFORMATION 2020

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*IRBA Communiqué 1 February 2019*

The IRBA is introducing a new online process, on the IRBA website, for submission of the assurance work declaration and firm related information.

The new functionality is linked to an RA's profile and is available when RAs log onto the IRBA website: <https://www.irba.co.za/registered-auditor?subcmd=login>

The explanatory memo (available on the website) contains detailed instructions for completion and submission of the firm assurance work declaration and supporting documents.

**Please note that no email submissions will be accepted.**

The deadline for submission of the assurance work declaration is **31 March 2020**.

Kind regards

Nitasha Naicker

**Director: Operations**

## 4. REVISED SAICA GUIDE IN RESPECT OF THE DUTIES OF THE COMMISSIONER OF OATHS (VERSION 4)

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Updated guide released in January 2020

16-page document

- Deals with those aspects related to the powers of Commissioners of Oaths and the administering of an oath or affirmation
- Also includes some information on the certification of documents

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### 1. Introduction

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### 10. Oaths and Affirmations outside the RSA

### Appendix I: Examples of Wording

*This Revised Guide is available to you as a Source Document*

## 5. SAICA'S TOP TIPS FOR SMES

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[Two IESBA webinars to explain proposed revisions to international independence standards](#)

These 2 webinars were held on 17 & 19 March 2020 respectively, with the focus on the recently released Exposure Drafts with proposals relating to Non-assurance services (NAS) and fees that further reinforce auditor independence.

[Change to practice on sanctions for improper conduct](#)

The board of the IRBA approved a change to the practice on Sanctions for Improper Conduct in relation to resigned Registered Auditors.

[Ten improvements in data quality provided by the internet of things](#)

Good data quality is the foundation from which accountants provide effective decision-support and business partnering.

[The blue book of co-branding for CA\(SA\) and AGA\(SA\) members](#)

How we communicate contributes greatly to the image people have of SAICA and your business. Please use this manual as a working reference for all forms of visual communications involving the SAICA brand.

[Client newsletter CA\(SA\)DotNews](#)

Every month your clients and prospective clients could receive a personalised e-newsletter sent to them using your firm's compliments slip. The information in CA(SA)DotNews is short, simple, topical and valuable to your clients.

*All of the above links can be followed to access the detail and additional documents on each topic*

## 6. COMPANIES TRIBUNAL: CASES

**6 Decisions reached on cases heard re 1 Name dispute, 1 Directors dispute, 3 Exemptions, 1 AGM, 0 Reviews**

JANUARY & FEBRUARY 2020

**Remember: The Tribunal has jurisdiction to consider and hear matters relating to:**

1. Company and defensive names reservation or registration disputes;
2. Amendments to memorandum of incorporation;
3. Review Compliance orders of the Companies and Intellectual Property Commission (CIPC);
4. Review Notices by the CIPC in respect of the appointment of a company secretary, auditor or audit committee;
5. Exemptions relating to the appointment of a social and ethics committee;
6. Exemptions from the applicable provision of the Act on the basis of related and inter-related persons, and control relationships;
7. Anti-avoidance exemptions and substantial compliance of the Act;
8. Extension of Annual General Meetings (AGM);
9. Application to hold AGM;
10. Removal of a director;
11. Company disputes arising from the Act may be referred to the Tribunal for mediation, conciliation and arbitration.

The following is a **summary of the 6 cases** that were decided upon during JANUARY & FEBRUARY 2020:

NO	CASE NUMBER	PARTIES	TYPE	STATUS	DATE
1	<a href="#">CT010MAY2015</a> 12 pages	Kganya Brands (Pty) Ltd, Kganya Investment Holdings (Pty) Ltd vs Kganya Ya Rona (Pty) Ltd	Name Disputes	Dismissed	6 January 2020
<p><i>This is an application for default order in respect of objection to company name –whether the first respondent’s name does not satisfy the provisions of section 11(2) of the Companies Act 71 of 2008 when considered against the applicants’ trade marks “KGANYA” and “SEDI LA KGANYA” – application issued in 2015, but interrupted by settlement negotiations and deregistration process, and revived in December 2019 with trade marks expiring in the meantime in 2016 and 2017 – trade marks no longer offer protection after their expiry date – overall no likelihood of confusion or deception as the first respondent’s name is clearly distinguishable from the applicants’ trade marks.</i></p>					

NO	CASE NUMBER	PARTIES	TYPE	STATUS	DATE
2.	<a href="#">CT00241ADJ2019</a> 3 pages	Maudi Lentsoane vs Busisiwe Maureen Brown	Directorship Disputes	Refused	6 January 2020
		<i>This is an Application for a default order in terms of Regulation 153, praying for an order to remove the Respondent as a director of Theromba Group Propriety Limited Registration No 2018/388625/07.</i>			
3.	<a href="#">CT00273ADJ2020</a> 4 pages	South African Airways Technical SOC Limited	Annual General Meeting	Granted	10 January 2020
		<i>This is an application in terms of Section 61(7)(b) read with Section 9(1) of the Companies Act 71 of 2008 (“the Act”), for an administrative order to extend the date for Applicant to hold its 2019 annual general meeting (AGM) to a date that is no later than 31 March 2020.</i>			
4.	<a href="#">CT00268ADJ2020</a> 7 pages	Outlook Farms CC	Exemptions	Dismissed	3 February 2020
		<i>The Applicant seeks an exemption from the requirement to appoint a Social and Ethics Committee (SEC) in terms of sections 72(5) of the Companies Act 71 of 2008 (“The Companies Act”), read with regulation 43(2)(b) of the Regulations to the Companies Act.</i>			
5.	<a href="#">CT00297ADJ2020</a> 7 pages	Outlook Farms CC	Exemptions	Dismissed	4 February 2020
		<i>The Applicant seeks an exemption from the requirement to appoint a Social and Ethics Committee (SEC) in terms of sections 72(5) of the Companies Act 71 of 2008 (“The Companies Act”), read with regulation 43(2)(b) of the Regulations to the Companies Act</i> <b>Outcome:</b> <i>The applicant is a close corporation, and not a company, and has not been converted to a company. Therefore, the requirement of a social and ethics committee does not apply to the applicant. Furthermore, the Tribunal does not have jurisdiction over close corporations.</i>			
6.	<a href="#">CT00277ADJ2020</a> 23 pages	Samsung Electronics South Africa (Pty) Ltd	Exemptions	Dismissed	25 February 2020
		<i>This is an application for an exemption from the requirement in regulation 43(4) of the Companies Regulations, 2011 to appoint (for purposes of a social and ethics committee (SEC)).</i> <b>Summary:</b> <i>Application for an exemption from the requirement in regulation 43(4) of the Companies Regulations, 2011 to appoint (for purposes of a social and ethics committee (SEC)) a director who is not involved in the day-to-day management of the company’s business (non-executive director) – exemption not sought in terms of the provisions of section 72(5) of the Companies Act 71 of 2008, but generally – sections 6(2) and (3) of the Companies Act deemed applicable – non-inclusion of non-executive director in SEC serves no reasonable purpose other than to defeat or reduce the effect of the requirement in regulation 43(4).</i>			

Each of the above Case file documents are available to you as Source Documents

## 7. FIC: PCC 42: DISCLOSURE OF FACTS OR INFORMATION REGARDING THE CONTENTS OF SECTION 29 REPORTS

FIC = Financial Intelligence Centre

PCC = Public Compliance Communication

- **General notice Issued on 28 February 2020**



FIC has issued PCC 42 which provides clarity on certain provisions of the FIC Act that allow certain supervisory bodies access to facts or information regarding reports submitted in terms of section 29 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) to the FIC.

The PCC 42 further explains the process that must be followed by all supervisory bodies should they request section 29 reports or information contained in these reports from the reporting entity (including accountable, reporting institutions and other persons).

PCC 42 was made available for comments from supervisory bodies and all reporting entities from Thursday, 19 December 2019, which comments were due Monday, 20 January 2020. All comments received have been considered and incorporated into PCC 42 where appropriate.

For any queries please contact the FICs Compliance Contact Centre on 012 641 6000, select option 1, or submit a web query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx>

*This document and the 12-page PCC are available to you as Source Documents*

## 8. FIC: PCC 43: DEALING WITH CUSTOMER DUE DILIGENCE (CDD) IN RELATION TO SHARED CLIENTS

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*FIC = Financial Intelligence Centre*

*PCC = Public Compliance Communication*

### ○ **General notice Issued on 27 February 2020**

FIC has issued PCC 43 dealing with customer due diligence (CDD) in relation to shared clients.

The PCC 43 provides guidance to accountable institutions on how to apply the principles of the withdrawn exemptions 4, 8 and 9, using assistance from third party accountable institutions for the collection of CDD documentation and information.

PCC 43 was made available for comments from accountable institutions, supervisory bodies and other persons from Monday, 28 October 2019. Comments were due Tuesday, 19 November 2019. All comments received have been considered and incorporated into PCC 43 where appropriate.

For any queries please contact the FICs Compliance Contact Centre on 012 641 6000, select option 1, or submit a web query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx>

*This document and the 8-page PCC are available to you as Source Documents*

## 9. FIC: CALL FOR COMMENTS: DRAFT PCC 109 ON THE COMMENCEMENT AND ENFORCEMENT OF THE FIC ACT AS AMENDED BY THE FIC AMENDMENT ACT

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*FIC = Financial Intelligence Centre*

### ○ **General notice Issued on 27 February 2020**

FIC is calling for comments from supervisory bodies, accountable and reporting institutions on the draft PCC 109.

The draft PCC 109 clarifies that all the obligations as brought about by the Financial Intelligence Centre Amendment Act, 2017 (Act 1 of 2017) (FIC Amendment Act) which commenced on 2 October 2017, applies in respect of the accountable institution's entire client population.

Comments on the draft PCC 109 are invited from supervisory bodies and all reporting entities (including accountable and reporting institutions and other persons), to reach the FIC by no later than Friday, 20 March 2020 via e-mail on [Consult@fic.gov.za](mailto:Consult@fic.gov.za).

For any queries please contact the FICs Compliance Contact Centre on 012 641 6000, select option 1, or submit a web query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx>

*This document and the 5-page Draft PCC are available to you as Source Documents*

## 10. FIC: CALL FOR COMMENTS: DRAFT PCC 107 ON THE USE OF AN AUTOMATED TRANSACTION MONITORING SYSTEM FOR THE DETECTION AND SUBMISSION OF REGULATORY REPORTS

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*FIC = Financial Intelligence Centre*

### ○ **General notice Issued on 31 January 2020**

FIC is calling for comments from supervisory bodies, accountable and reporting institutions on the draft PCC 107.

The draft PCC 107 provides guidance on requirements as set out in the Directive 05 of 2019 which relates to the use of an Automated Transaction Monitoring System (ATMS).

Directive 05 of 2019 places certain obligations on accountable and reporting institutions and other persons who use an ATMS to enable them to monitor client transactions and activity in order to identify suspicious and unusual transactions.

The FIC invites comments on draft PCC107 by no later than Friday, 21 February 2020. Feedback comments can be e-mailed to the FIC at [Consult@fic.gov.za](mailto:Consult@fic.gov.za).

For any queries please contact the FICs Compliance Contact Centre on 012 641 6000, select option 1, or submit a web query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx>

*This document and the 6-page Draft PCC are available to you as Source Documents*

## 11. FIC: CALL FOR COMMENTS: DRAFT PCC 106 ON ITEM 1 OF SCHEDULE 1 TO THE FIC ACT

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*FIC = Financial Intelligence Centre*

### ○ **General notice Issued on 24 January 2020**

FIC is calling for comments from supervisory bodies, accountable and reporting institutions on the draft PCC 106.

The Legal Practice Act, 2014 (Act 28 of 2014) has replaced the Attorneys Act, 1979 (Act 53 of 1979) (Attorneys Act). Item 1 of Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) lists a practitioner who practices as defined in section 1 of the Attorneys Act as an accountable institution. Draft PCC 106 sets out guidance on the interpretation of Item 1 of Schedule 1 to the FIC Act, in line with the changes as brought about by the Legal Practice Act.

Comments on the draft PCC 106 are invited from accountable institutions, supervisory bodies and other persons, to reach the FIC by no later than Friday, 14 February 2020 via e-mail on [Consult@fic.gov.za](mailto:Consult@fic.gov.za).

For any queries please contact the FICs Compliance Contact Centre on 012 641 6000, select option 1, or submit a web query by clicking on: <http://www.fic.gov.za/ContactUs/Pages/ComplianceQueries.aspx>

*This document and the 6-page Draft PCC are available to you as Source Documents*

## 12. CGSO NEWSLETTER

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*CGSO = Consumer Goods & Services Ombud*

- Quarterly Newsletter

- 4<sup>th</sup> issue of 2019
- Published in January 2020
- 7 pages

**Contents:**

- Message from the Ombudsman
- A Word from the CEO
- Participant Compliance Drive
- Welcome Aboard
- Consumer and Participant Awareness Drive
- Coming Soon: CGSO SMS Short Code – *Consumers will be able to dial 48030, and we'll call them back*
- Social Media
- Call Centre Statistics
- Complaints Received and Closed
- Nature of Complaints
- Outcome of Complaints
- Case Study – *Do consumers have any recourse for goods bought on auction?*
  - *Answer = They don't, but that doesn't mean that auctioneers can act with impunity*
- Useful Contacts

*This Newsletter is available to you as a Source Document*

### 13. NCC NOTES WITH CONCERN ATTEMPTED BRIBERY OF ITS OFFICIALS BY SUPPLIERS

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*NCC = National Consumer Commission*

- *Media statement Issued on 22 January 2020*

**NCC notes with concern attempted bribery of its officials by suppliers**

The National Consumer Commission (NCC) notes with concern attempts of bribery by certain suppliers in the textile industry who do not want to comply with the Consumer Protection Act (CPA). The NCC is mandated by law to investigate any suspicious contravention of the Act.

The textile industry in the country is vulnerable to imports from other countries. This has resulted in local manufacturers suffering enormously as South African businesses began importing cheaper textiles and clothing from foreign countries. As such most retail outlets operating in South Africa are selling imported merchandise with misleading labels, which state that goods or finished products are made in South Africa when in fact they are not.

Section 24(5) of the Consumer Protection Act (CPA) requires that every merchandise imported into the Republic must have a label permanently affixed clearly indicating the following:

- A country of origin of the goods; and
- Any other prescribed information (including country of origin of the fabric used, whether printed or finished in the Republic).

NCC’s Acting Commissioner Ms Thezi Mabuza says the Commission’s investigators are empowered by the CPA to investigate consignments that get and in particular every consignment that is detained by custom officials to verify whether it meets the requirements. “While Government encourages people to start their own businesses, the NCC will never tolerate acts of bribery by unscrupulous suppliers. Our investigators will continue to conduct these inspections in ensuring that suppliers do comply with the CPA. Where we find reasonable suspicion of suppliers flouting the CPA, we will decisively take appropriate actions against those suppliers” Mabuza said.

“The NCC wants to reiterate its commitment to implementing the CPA with the purpose of promoting and advancing the social and economic welfare of consumer in the country” she concluded.

*For media enquiries please contact:*

*Phetho Ntaba*

*Cell: 082 809 2031*

*Email: [P.Ntaba@thencc.org.za](mailto:P.Ntaba@thencc.org.za)*

## 14. FSCA: INTERGOVERNMENTAL FINTECH WORKING GROUP PUBLISHES A REPORT ON ITS 2019 WORKSHOPS

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*FSCA = The Financial Sector Conduct Authority*

- *FSCA Press release – 6 February 2020*
- *1 page*

### **Intergovernmental FinTech working group publishes a report on its 2019 workshops**

Today, the Intergovernmental Fintech Working Group (IFWG) publishes a report highlighting discussions held during its financial technology (fintech) workshops in 2019.

The IFWG hosted its inaugural workshop during April 2018 with the market outreach signalling that regulators took note of the importance of fintech innovation and its potential benefits to South Africa. The 2018 post-workshop report highlighted two key outcomes, namely: further workshops going forward and an innovation policy framework, aside from the ongoing crypto asset policy work and accompanying workshops.

Due to the extent of technological developments in the finance environment, the 2019 IFWG workshops – six separate workshops – were held over two days, 3 and 4 September at the Sandton Convention Centre.

The themes for the six workshops were (i) artificial intelligence; (ii) central bank issued digital currencies; (iii) cybersecurity; (iv) digital identity; (v) innovation for economic growth; and (vi) open banking. The IFWG provided feedback at the workshops on the design and launch of a cross-regulator innovation hub, which was promised at the previous year’s workshop. The innovation hub will be launched during the first half of 2020.

Implementing and embedding the innovation hub will be a key IFWG priority during 2020.

This report captures the conversations and input from the sector on a range of fintech issues.

The IFWG thanks all speakers, panel members and attendees for their valuable contributions in the workshops and looks forward to further engagement during 2020.

Please click on the link below to access the 2019 post-workshop report:

<https://www.fsca.co.za/Documents/IFWG%202019%20Workshops%20Report.pdf>

**Enquiries:** Financial Sector Conduct Authority

Email address: [fscacommunications@fsca.co.za](mailto:fscacommunications@fsca.co.za)

Telephone: 012 422 2842

## 15. FSCA PRESS RELEASE ON 36ONE ASSET MANAGEMENT (PTY) LTD

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FSCA = The Financial Sector Conduct Authority

- FSCA Press release – 23 January 2020
- 1 page

### **36ONE Asset Management's application against FSCA dismissed by Financial Services Tribunal, fined R350 000**

The Financial Services Tribunal has dismissed an application by 36One Asset Management (Pty) Ltd (36ONE) to have a decision taken by the Financial Sector Conduct Authority (FSCA) that 36ONE had solicited investment into unapproved funds set aside.

The FSCA imposed an administrative penalty of R350 000 on 36ONE, which the tribunal upheld. The ruling was made on 20 January 2020.

The FSCA's decision relates to the publication by 36ONE of certain unapproved offshore funds on their website, periodic newsletters and presentations made to their clients between August 2015 and March 2018. The FSCA found that by publishing and marketing these funds, 36ONE effectively solicited investment in those unapproved funds which contravened section 65(3) of the Collective Investment Schemes Control Act 45 of 2002 (CISA).

Collective investment schemes are governed by CISA and in terms of section 65(1), soliciting of investment in offshore hedge funds may only be done upon approval by the FSCA. Section 65(3) criminalises soliciting of investment in unapproved offshore investment funds.

In their argument, 36ONE contended that the word solicit in CISA means an "intentional and earnest request to the public to invest", and that although the unapproved funds were included in their publications, this did not mean there was intent to promote investment into those funds.

The tribunal, however, rejected this argument as improbable, and agreed with the FSCA that the unapproved funds were promoted in these publications, and this amounted to soliciting.

The judgement was also clear that the publication of investment funds in a company's portfolio, whose business entails administration of those investment funds, cannot be separated from the marketing of those funds.

36ONE also contested the quantum of the administrative penalty levied by the FSCA, indicating that no investment actually materialised from the relevant publications and therefore no penalty should have been imposed. The FSCA said that when considering the appropriate administrative penalty it sought to strike a balance between effective deterrence from contravention of financial sector laws and unreasonably harsh penalties.

The Tribunal ruled that in the context of a fund manager that manages assets worth over R14 billion, as at the relevant period, the administrative penalty was not deemed to be inappropriate.

"The significance of the risk posed by soliciting investment in unapproved or unregulated funds cannot be over-emphasised in a society like ours, this is why this ruling is so important," says the FSCA.

To access the full order, click on the following link:

[https://www.fsca.co.za/Enforcement-Matters/Publications%20and%20Documents/Decision%20-%2036ONE%20Asset%20Management%20\(Pty\)%20Ltd%20v%20FSCA.pdf](https://www.fsca.co.za/Enforcement-Matters/Publications%20and%20Documents/Decision%20-%2036ONE%20Asset%20Management%20(Pty)%20Ltd%20v%20FSCA.pdf)

**Enquiries:** Financial Sector Conduct Authority  
Email address: [fscacommunications@fsca.co.za](mailto:fscacommunications@fsca.co.za)  
Telephone: 012 422 2823

*This document is available to you as a Source Document*

## 16. FSCA – 10 WARNINGS ISSUED

### The FSCA issued the following warnings against FSPs:

#### FSCA warns the public against Moneyweb Private Bank

*FSCA Press release – 24 January 2020*

The Financial Sector Conduct Authority (FSCA) warns the public not to conduct any financial services business or invest funds with Moneyweb Corporate Bank Limited (also trading as Moneyweb Private Bank). The Authority has been made aware of suspected breaches of financial sector laws by this entity. Moneyweb Private Bank is not authorised in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), to render any financial advice and intermediary services.

According to information received by the FSCA, Moneyweb Private Bank is fraudulently using the logo of Moneyweb – a South African media company, to solicit investments from the public. Based on the information received, the FSCA has reason to believe that Moneyweb Private Bank Limited is unlawfully operating as a financial services provider by rendering financial services without authorisation. Any entities or individuals rendering financial services without a licence or being appointed as representatives are acting in contravention of the FAIS Act. Such a contravention is an offence which carries a fine not exceeding R10 million or a period of imprisonment not exceeding 10 years.

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA reminds customers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on [https://www.fsca.co.za/Fais/Search\\_FSP.htm](https://www.fsca.co.za/Fais/Search_FSP.htm) whether such institution or person is authorised to render financial services.

**Enquiries:** Communications

Email address: [Communications@fsca.co.za](mailto:Communications@fsca.co.za)

Telephone: 0800 203 722

#### FSCA warns the public against Mr Tom Zambon

*FSCA Press release – 29 January 2020*

The Financial Sector Conduct Authority (“FSCA”) published a media release on 21 November 2019 warning the public against the activities of Mr Tom Zambon.

It is now brought to the attention of the FSCA that there was another Mr Tom Zambon who was employed by Ashburton in Jersey in the past. The person purporting to be Mr Tom Zambon in South Africa using social media to solicit funds from the public is not the same Mr Tom Zambon who used to be employed by Ashburton in Jersey.

According to the FSCA’s records, the individual purporting to be Mr Tom Zambon in South Africa is not an authorised Financial Services Provider (FSP); is not a representative of an authorised FSP and there is no record of an application to become an authorised FSP with the FSCA, therefore, he is not authorised to render financial services as contemplated in the FAIS Act. The public is warned not to do financial services business with the said Mr Tom Zambon.

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are

instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA reminds customers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on [https://www.fsca.co.za/Fais/Search\\_FSP.htm](https://www.fsca.co.za/Fais/Search_FSP.htm) whether such institution or person is authorised to render financial services.

**Enquiries:** Communications

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Telephone: 012 422 2842

### FSCA warns the public against Mr Martin Sethole and Nadex Investments

*FSCA Press release – 29 January 2020*

The Financial Sector Conduct Authority (FSCA) warns the public against doing any financial services business with Mr Martin Sethole and Nadex Investments (Pty) Ltd, Neither Mr Sethole nor Nadex Investments are authorised to give any financial advice or render any intermediary services in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act).

The FSCA received information that Mr Sethole is encouraging members of the public to invest in a binary options strategy with Nadex Investments and promises high returns within 48 hours. He alleges that Nadex Investments is a subsidiary of AIP Capital Management (Pty) Ltd, an authorised financial services provider with FSP number (48828). AIP Capital Management have confirmed that it does not own any subsidiaries and has no relationship with Nadex Investments or Mr Sethole.

It is the FSCA’s view that Mr Sethole and Nadex Investments (Pty) Ltd are conducting unregistered business and providing financial services without the necessary authorisation.

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA reminds customers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on [https://www.fsca.co.za/Fais/Search\\_FSP.htm](https://www.fsca.co.za/Fais/Search_FSP.htm) whether such institution or person is authorised to render financial services.

**Enquiries:** Communications

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Telephone: 012 422 2842

### FSCA warns the public against fraudulent FSCA correspondence

*FSCA Press release – 31 January 2020*

The Financial Sector Conduct Authority (FSCA) warns the public to be cautious of fraudulent messages from entities impersonating the FSCA. The FSCA has become aware of emails purporting to be from ‘FSCA COMMUNICATIONS’ misleading customers or offering them opportunities to receive financial services provider (FSP) licences. These emails have no connection to the FSCA and members of the public should be extremely vigilant.

The FSCA has seen some of these emails, which come from a [fscacommunications@gmail.com](mailto:fscacommunications@gmail.com) email address. The individuals using this fraudulent ‘FSCA COMMUNICATIONS’ email address claim to have tried to contact customers

on suspicion of operating pyramid schemes due to irregular activity they have observed on their bank accounts. The recipient is then threatened with legal action or freezing of bank accounts, unless a fine of R200 000.00 is paid and the licence application is received.

The FSCA will never send communication from a Gmail account, or any domain other than the FSCA domain. Any communication that is not sent from the FSCA domain must be regarded as not coming from the FSCA.

The FSCA encourages anyone who may have received similar type of correspondence to report it immediately to the Authority. Customers can check with the FSCA on either the toll free number (0800 110 443) or <https://www.fsca.co.za/Pages/Contact-Us.aspx>.

**Enquiries:** Communications

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Telephone: 012 422 2842

### FSCA warns the public against Tradefarm (Pty) Ltd

*FSCA Press release – 31 January 2020*

The Financial Sector Conduct Authority (FSCA) warns the public against doing any financial business with Tradefarm (Pty) Ltd. Tradefarm is not authorised in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) to render any financial advice and intermediary services.

It was brought to the attention of the FSCA that Tradefarm claims to be an authorised financial services provider, taking funds from the members of the public to invest on their behalf. This constitutes financial services business as defined by the FAIS Act. According to the FSCA's records, Tradefarm is neither an authorised financial service provider (FSP) nor a representative of an authorised FSP and there is no record of an application to become an authorised FSP with the FSCA. Therefore, Tradefarm is in breach of financial sector laws and consumers should not do any financial services business with this entity.

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA encourages anyone who may have received similar type of correspondence to report it immediately to the Authority. Customers can check with the FSCA on either the toll free number (0800 110 443) or <https://www.fsca.co.za/Pages/Contact-Us.aspx>.

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### FSCA warns the public against Blue Alpha Alliance Group

*FSCA Press release – 7 February 2020*

The Financial Sector Conduct Authority (FSCA) warns the public to act with caution when dealing with Blue Alpha Alliance Group. Blue Alpha Alliance Group is not authorised in terms of the Financial Advisory and Intermediary Services Act, 2002 ("FAIS Act"), to render any financial advice and intermediary services.

The FSCA received information that there is a person soliciting funds from people, purporting to act for a company named Blue Alpha Alliance Group. Blue Alpha Alliance Group offers share investments in the "Uber and Taxify business".



Blue Alpha Alliance Group is using the name and logo of a legitimate financial service provider, Blue Alpha Investment Management (Pty) Ltd FSP 118. Blue Alpha Investment Management is in no way associated with Blue Alpha Alliance Group.

It is the FSCA's view that the abovementioned entity is conducting unregistered business and providing advisory and intermediary services without the necessary authorisation.

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA reminds customers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on [https://www.fsca.co.za/Fais/Search\\_FSP.htm](https://www.fsca.co.za/Fais/Search_FSP.htm) whether such institution or person is authorised to render financial services.

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### FSCA warns the public against Financial Services Board impersonators

*FSCA Press release – 7 February 2020*

The Financial Sector Conduct Authority (FSCA) warns the public against a company called Western Loan Finance. The company falsely uses the now defunct Financial Services Board (FSB) name and brand to defraud members of the public by offering them opportunities to receive financial loans.

According to the information received by the FSCA, the abovementioned company uses the 'FSB' name in a deceitful manner to offer loans to the public and request an enclosure fee in order to release the loan. It is the FSCA's view that this company and all individuals linked to it are conducting unregistered business and in breach of various financial sector laws including the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act).

The FSB ceased to exist as the market regulator and was replaced by the FSCA on 1 April 2018. No correspondence under the FSB brand has been sent since then by the Authority. Members of the public should report any such correspondence from this counterfeit 'FSB' company to the FSCA immediately. Click on the link for an example of such correspondences.

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA reminds customers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on [https://www.fsca.co.za/Fais/Search\\_FSP.htm](https://www.fsca.co.za/Fais/Search_FSP.htm) whether such institution or person is authorised to render financial services.

**Enquiries:** Communications

Email address: [fscacommunications@fsca.co.za](mailto:fscacommunications@fsca.co.za)

Telephone: 012 422 2842

## FSCA warns the public against Zoom Executive Investments (ZEI)

*FSCA Press release – 21 February 2020*

The Financial Sector Conduct Authority (FSCA) warns the public against doing financial services business with Zoom Executive Investments. Zoom Executive Investments is not authorised in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) to render any financial advice and intermediary services.

The FSCA received information that Zoom Executive Investments Fund is using Numus Capital (Pty)(Ltd)'s financial services provider (FSP) licence number 43348 and is portraying itself as a registered financial services provider. It is alleged that Zoom Executive Investments is offering investments and related services to the public. Numus Capital has confirmed that it does not have any relationship with Zoom Executive Investment.

It is the FSCA's view that Zoom Executive Investments is conducting unregistered business and providing advisory and intermediary services without the necessary authorisation

Members of the public should always check that an entity or individual is registered with the FSCA to provide Financial Advisory & Intermediary Services and what category of advice it is that the entity is registered to provide. There are instances where persons are registered to provide basic advisory services for a low risk product and then offer services of a far more complex and risky nature.

The FSCA reminds customers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on [https://www.fsc.co.za/Fais/Search\\_FSP.htm](https://www.fsc.co.za/Fais/Search_FSP.htm) whether such institution or person is authorised to render financial services.

**Enquiries:** Communications

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Telephone: 012 422 2842

## FSCA warns the public against Marlvern Trading CC

*FSCA Press release – 25 February 2020*

The Financial Sector Conduct Authority (FSCA) warns the public against doing any financial services related business with the entity called Marlvern Trading CC trading as Marlvern Guarantees (Marlvern). Marlvern is not authorised under any legislation administered by the Financial Sector Conduct Authority (FSCA). The FSCA has found that Marlvern issued guarantee policies to municipalities, in contravention of section 7(1) of the Short-Term Insurance Act No 53 of 1998 (STIA)

Marlvern was not authorised under the STIA. The FSCA imposed an administrative penalty of R25 million on Marlvern for contravening the STIA.

Mr. Khuphukile Dube (Dube) the sole member of Marlvern has been debarred for a period of 10 (ten) years from providing or being involved in the provision of financial services. The FSCA has issued a directive to both Marlvern and Dube to immediately cease issuing guarantee policies.

The FSCA again reminds consumers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on the website [www.fsc.co.za](http://www.fsc.co.za) as to whether or not such institution or person is authorised to render financial services.

**Enquiries:** Communications

Email address: [fscacommunications@fsc.co.za](mailto:fscacommunications@fsc.co.za)

Telephone: 012 422 2842

## FSCA warns the public against GFK (Pty) Ltd t/a Royal Sureties

*FSCA Press release – 25 February 2020*

The Financial Sector Conduct Authority (FSCA) warns the public against doing any financial services related business with the entity called GFK (Pty) Ltd t/a Royal Sureties (GKF). GKF is not authorised under any legislation administered by the Financial Sector Conduct Authority (FSCA). The FSCA has found that GKF issued guarantee policies to municipalities, in contravention of section 7(1) of the Short-Term Insurance Act No 53 of 1998 (STIA)

GKF was not authorised under the STIA. The FSCA imposed an administrative penalty of R5 million on GKF for contravening the STIA.

Mr. Mashure Sikhumbuzo Matangadura (Mr. Mutangadura), Mrs. Brenda Tendakai Matangadura (Ms. Matangadura) and Ms. Morwesi Rose Masiu (Masiu) have been debarred for a period of 10 (ten) years from providing or being involved in the provision of financial services. The FSCA has issued a directive to both GKF and Mr. Mutangadura, Mrs. Mutangadura and Ms. Masiu to immediately cease issuing guarantee policies.

The FSCA again reminds consumers who wish to conduct financial services with an institution or person to check beforehand with the FSCA on either the toll free number (0800 110 443) or on the website [www.fsc.co.za](http://www.fsc.co.za) as to whether or not such institution or person is authorised to render financial services.

**Enquiries:** Communications

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*These warnings issued are available to you as Source Documents*

## 17. SARS WINS 10-YEAR BATTLE AGAINST NON-COMPLIANT TAXPAYER

*SARS Press release – 28 February 2020*

South African Revenue Service (SARS) Commissioner Edward Kieswetter has welcomed the court victory against Mr Gary Van der Merwe and various entities he controls after a 10-year court battle which ended up in the Constitutional Court.

On 5 February 2020, the Constitutional Court of South Africa dismissed Mr Van der Merwe’s application for leave to appeal an eviction order requiring him to vacate his home, which is held by Zonnekus Mansion (Pty) Ltd. The court held that the application bore no reasonable prospect of success.

The Constitutional Court order paved the way for the liquidators of Zonnekus to finally take control of the last remaining asset of Zonnekus. The Sheriff has evicted Mr Van Der Merwe from the property and placed it under the control of the liquidators. The liquidators can now finally sell the remaining property in order to recover the outstanding tax debt.

The SARS investigation originated from a Financial Intelligence Centre (FIC) report regarding a suspicious transaction, involving the amount of approximately \$15-million (R142-million).

Commissioner Kieswetter praised the SARS litigation team for their sterling work in this drawn-out matter.

“While the organization is rebuilding the capacity that was deliberately destroyed over the years, there are women and men who retain the wherewithal to effectively manage large and complex legal matters. This court victory shows that despite the aforesaid obstacles, the organization will continue to confront the recalcitrant taxpayers.

“In this respect, SARS will make it costly for those who are determined to be non-compliant and will oppose vexatious and frivolous litigation up to the highest court of the land,” Kieswetter said.

He assured compliant taxpayers who want to do the right thing that SARS would do everything in its power to assist them to comply with their tax and customs obligations.

However, SARS would take a tough stand against wilfully defaulting taxpayers and bring them to book, no matter how big the challenge. Other recent court victories involving fraudulent VAT refunds also attest to this resolve on the part of SARS to deal with tax criminals. In all, more than 80 individuals have received lengthy jail terms for defrauding SARS.

Commissioner Kieswetter reiterated his earlier comments that- “tax crime, just like corruption, is not a victimless crime. It directly affects the poorest of the poor who are dependent on basic services including social security safety net for old age pensioners and child grants as well as provision of housing and education amongst others.

SARS is therefore determined to enforce the tax and customs laws of the country without fear or favour in a responsible manner when all other legal avenues have been exhausted. This victory confirms SARS’ unwavering commitment to out root any non-compliant behaviour”.

## 18. SARS: TAX FRAUDSTERS SENTENCED IN HIGH COURT

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*SARS Press release – 21 February 2020*

### **Case against SARS accomplice postponed for a further pre-trial.**

Two Cape Town businesspersons were sentenced to 16 and 17 years respectively direct imprisonment in the Cape High Court earlier today. They were found guilty on 487 counts of VAT fraud and alternative charges such as racketeering, money laundering and corruption in terms of the Prevention of Organised Crime Act.

Mr Luis Filipe Duarte D’Almeida [Fernandes] from Melkbosstrand and Mr Nazmien Warner of Glenhaven, Bellville both pleaded guilty in terms of a plea bargain reached with the state following an in-depth investigation by the Criminal Investigation Unit of SARS in Cape Town.

Mr Fernandes pleaded guilty to 471 charges relating to racketeering, fraud as well as corruption and for corrupting a SARS official. He was sentenced to 158 years of imprisonment. With sentences running concurrently, he will spend 17 years in jail.

Mr Warner pleaded guilty to 409 charges, including to racketeering, fraud and corruption in terms of the POCA Act. He was sentenced to 136 years imprisonment. With sentences running concurrently, he will serve an effective 16 years jail sentence. Mr Warner will pay SARS R900 000 as well as the proceeds of the sale of nine properties.

The charges emanated from a R115 million VAT fraud scheme ran by Mr Fernandes and Mr Warner between 2008 and 2015.

During this time, they claimed fraudulent Value-Added Tax Returns amounting to R115 million with the use of fictitious invoices from non-existent businesses, misrepresenting to SARS that they purchased goods in South Africa and exported this to countries in Africa. Mr Fernandes and Mr Warner furthermore forged export documents as well as supplier invoices and handed this to SARS upon request for supporting documents. SARS was prejudiced by R111 million.

Fraud charges emanating from Mr Fernandes misrepresenting to his employees that the PAYE deducted from their remuneration was paid to SARS while the companies were never registered with SARS as employers, were also included in the indictment.

The accused admitted that they had enlisted the services of a SARS accountant to assist them with authorisation of refunds and get the refunds paid out fast. The case against the SARS employee has been postponed, although Messieurs Fernandes and Warner have agreed to testify against him.

According to the two accused they used the money to fund several failed business ventures, an internet gaming and social interaction website, low cost housing projects in Namibia and Cameroon, the importation and installation of revolving doors and a pre-paid fuel card.

They also used the money to maintain a high lifestyle, spending money on travel, motor vehicles, and luxuries. Mr Warner also invested his share in properties.

Contrary to popular belief, tax crime is not victimless. By deliberately defrauding the tax system including claiming a refund one is not entitled to, one is stealing from the whole community and disadvantaging South Africans who do the right thing.

Today's result demonstrates SARS' commitment to detecting and prosecuting tax crimes and should serve as a warning to those who think they can flout the law and get away with it.

SARS Commissioner, Edward Kieswetter highlights that "Slowly the institutional rebuilding gains momentum, and whilst it is our strategic intent to make things easier for honest taxpayers, we are improving our capability to detect criminal and negligent taxpayer behavior to ensure they are successfully prosecuted".

If a taxpayer suspects or is aware of a SARS employee who is involved in tax fraud, they can report it confidentially at 0800 002 870.

## GENERAL ANNOUNCEMENTS / NEWS RELEASES

### 1. NEW PERKS WHICH COULD BE WIDELY INTRODUCED AT SOUTH AFRICAN COMPANIES

*BusinessTech article – 8 February 2020*

Companies are increasingly softening to the ideas of remote working and flexitime as the understanding of the importance of employee wellness on productivity starts gaining ground.

This was one of the major trends identified in a new survey by executive search firm Jack Hammer.

The survey polled HR directors from 28 major companies across various industries including Fintech, Financial Services, Health, Education, Retail, Media, Manufacturing, and the NGO sector.

“Globally, the trend is for companies’ talent retention strategies to look beyond mere financial incentive, and to implement measures that ensure employee buy-in and engagement as a result of the focus on their wellbeing. We were therefore interested to see how South African companies fare in this regard, and to find out what measures have been introduced in local workplaces,” said Advaita Naidoo, chief operations officer at Jack Hammer.

Naidoo said the survey allowed for open-ended response answers to the strategies companies have employed that had a notably positive result on employee engagement, wellness and productivity.

**The most popular “new ways of working” reported by South African companies polled, included:**

- Remote working solutions (54% of companies);
- In-house catering at company expense (25%);
- Flexible hours (54%);
- Purpose-designed engaging workspaces – including pause-and-rest areas, sleeping pods, ergonomic furniture, and green spaces (36%);
- Physical and mental wellness options (29%).

**Other interventions, which are at the beginning stages of being introduced locally, include:**

- Relaxed dress codes;
- Extended/non-traditional leave policies;
- International secondments;
- Study options for employees and families;
- Sabbatical for long tenure;
- On-site childcare.

“Companies are really starting to take on board the importance of being outcome rather than output and process-driven, and the fact that treating employees like adults actually empowers them, leading to an increase in engagement and productivity,” said Naidoo.

As with previous surveys, the fintech and financial services sectors continued to score higher on implementation of new ways of working measures, but that there is a definite shift towards other industries getting on board, with retail close on the heels of the leaders.

“From all the respondents we are seeing an understanding that a culture of trust is paramount, and that policing should be giving way to a focus on deliverables and engagement,” Naidoo said.

“As we have noted through our US office, companies focus very heavily on their employee value proposition and employer brand, because this is a critical talent magnet. And the impact of top talent is immeasurable.

“In the South African market, competition for talent is less robust, but in the tech space, the same principles apply, with a high demand for skills which are in short supply.

“What makes the difference then, is workplace culture and benefits. Of course, because of our economy, employers are also searching for ways to incentivise and retain talent, and this is where these non-financial incentives can make a difference.”

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