

Monthly Compliance and Legislation

Presenter: Caryn Maitland

*Stay informed on the multitude of
Compliance and Legislation Updates*

This webinar covers changes during the month of July 2021

Ask Questions

To ask questions and interact during the webinar please use the chat sidebar to the right of the video / presentation on the screen.

Feel free to ask your questions during the webinar in the chat, these will be address in the formal Q & A at the end of the presentation.

Presenter

Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.



Course Outline

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Quote

*Care about what other
people think and you will
always be their prisoner*

- Tao Tzu

Accounting Update

Accounting Update:

Standards – What's new?

- IFRS Monthly news summary

Accounting issues

- Focus on sustainability reporting
- IFRS 17 Insurance Contracts and IFRS 9 Financial Instruments
- Reviewing disclosure requirements for subsidiaries
- ED Disclosure Requirements in IFRS Standards– a Pilot approach

Assurance Update

Auditing Update:

Standards:

Auditing of Less Complex Entities (ED)

Quality Management Standards - implementation guides and other related material

Other:

IRBA to refer non audit complaints to professional bodies

IRBA heeds stakeholder calls and opens consultation on Enhancing Disclosures in Audit Reports

Auditing Profession Act (Inspection fees)

Fees payable from 1 April 2021 to 31 March 2022, for an inspection or review by IRBA, gazetted

Access to the Recording of South Africa's Launch Event of the IAASB's Non-Authoritative

Guidance on Applying ISAE 3000 (Revised) to Extended External Reporting (EER) Assurance Engagements

Company Secretarial Update

CIPC Notices

Notices and Practice Notes issued (enforcement and to customers):

- Notice No 35 of 2021 Rotation of Auditors in terms of S92 of Companies Act
- Notice No 36 of 2021 [Discontinuation of enterprise search on the CIPC e-services website](#)
- Notice No 38 of 2021 CIPC File Transition Project
- Notice No 39 of 2021 Accounting and Auditing Professional Bodies (independent Review)

Company Secretarial

Corporate Law Committee is back at work

- PI Score

Access to information conversation (S26)

Fiduciary assets and assurance

- Attorneys trusts, Estate agents, sheriffs, etc
- Whilst we are here. IFRS vs IFRS for SMEs????

COVID-19 Update

COVID-19 Update

- Declaration of COVID-19 as a national disaster extended to 15 September 2021 "taking into account the need to continue augmenting the existing legislation and contingency arrangements undertaken by organs of state to address the impact of the disaster"

COVID-19 Update

- Disaster Management Act (COVID-19) COVID-19 regulations amended (adjusted level 4 regulations as at 12 July 2021, table and forms).
Note: The following general offence was also added on 28 June 2021 (*to incite, instigate, command or procure another person to commit any offence in terms of the regulations*).
- Further note: The Cabinet member responsible for small business development will issue directions in respect of the extension of licences and permits which expired between 29 May 2020 and 30 June 2021.

COVID-19 Update

- Further note: Limitations placed on, amongst others, business premises and workplaces; gyms, fitness centres, swimming pools; accommodation; dining; schools (early childhood development centres to remain open); higher education; funerals and cremations; sporting activities; and agricultural and game auctions.
- Further note: Closures mandated for older persons residential facilities visits; liquor activities; Conferencing, exhibitions, and entertainment facilities; museums, galleries, archives, and libraries; flea markets; fetes and bazaars; night clubs; taverns, shebeens and similar establishments; and initiation practices. Final note: Gathering prohibitions placed on, amongst others, faith-based gatherings; social gatherings; political events; traditional council meetings' and cinema, theatre, casino, museum, gallery, archives, library, conference, exhibition, and entertainment facility venues.

Employment Issues

Relevant issues

- Unemployment Insurance Act (Looting and damage temporary financial relief)

An employer who had to close or partially close its business due to the civil unrest in Gauteng and Kwa-ZuluNatal 9 to 18 July 2021 may apply for temporary financial relief for its affected employees and/or workers if it is registered with the UIF; its closure is directly linked to the destruction, damage or looting of its workplace (Harm); it accepts the terms of the scheme; and it provides prescribed details of the Harm and any other information that the Commissioner may require.

Relevant issues

- The legal timing of a financial incentives in lieu resignation (case law)
- Workplace attendance by employees during the Covid-19 pandemic
- Employee discipline in the face of Covid-19 workplace protocols
- Exemption from minimum wage rule
- UIF and Covid-19: How to ensure you meet your obligations

Other Laws and Regulations Update

The Big 5 (Part 1)

Issue 12 - this Update overviews new relevant National laws up to 9 July 2021

The Big 5 in this Update include:

The Disaster Management Act (COVID-19 workplace safety directions);

The National Environmental Management Act (Environmental impact assessments);

The Promotion of Access to Information Act (Information manual exemption);

The Protection of Personal Information Act (Prior authorisation processing); and

The Upstream Petroleum Resources Development Bill.

The Big 5 (Part 2)

Issue 13 - this Update overviews new relevant National laws up to 26 July 2021

The Big 5 in this Update include:

The Competition Act (Exemption of essential goods);

The Disaster Management Act (Regulations and directions);

The National Health Act (Certificates of need);

The National Water Act (Hydraulic fracturing and underground gasification); and

The Occupational Health and Safety Act (Draft pressure equipment regulations).

CYBERCRIMES ACT

The newly enacted [Cybercrimes Act](#) (“Act”) not only creates offences but also codifies and imposes penalties on cybercrimes and

- **defines cybercrime** as including, but not limited to, acts such as: the unlawful access to a computer or device such as a USB drive or an external hard drive; the illegal interception of data; the unlawful acquisition, possession, receipt or use of a password; and forgery, fraud and extortion online.

The Act criminalises

- the disclosure of data messages which are harmful and the disclosure of data messages that contain intimate images and

- seeks to implement an integrated cybersecurity legislative framework to effectively deal with cybercrimes and address aspects pertaining to cybersecurity.

CYBERCRIMES ACT

The Act creates 20 new cybercrime offences and prescribes penalties related to cybercrime.

It provides overarching legal authority on how to deal with cybercrimes, by regulating how these offences must be investigated which includes searching and gaining access to, or seizing items in relation to cybercrimes

Section 3 of the Act makes provision for offences relating to personal information (as defined in the [POPI Act](#)) including

- the abuse, misuse and the possession of personal information of another person or entity
- where there is reasonable suspicion that it was used, or may be used, to commit a cybercrime.

It provides for

- the establishment of a 24/7 point of contact for all cybercrime reporting,
- the establishment of various structures to deal with cybersecurity (which includes a cyber response committee, a cyber security centre and a national cybercrime centre).

CYBERCRIMES ACT

The Act imposes an obligation on electronic communications service providers (“ECSPs”) and financial institutions, such as banks, to report cyber offences within 72 hours of becoming aware of them.

- They must preserve any information which may be of assistance in the investigation and they are required to work with law enforcement, where applicable, in the investigation of cybercrimes.
- In certain instances, this may involve the handing over of data and hardware. ECSPs and financial institutions must report cyber offences without undue delay and within 72 hours of becoming aware of them, failing which, they may be liable to a fine of up to R50,000.

CYBERCRIMES ACT

The Act provides the [South Africa Police Services](#) with the authority to not only investigate, search, access and seize but to also co-operate with foreign states to investigate cybercrimes. Further, the National Director of Public Prosecutions is obligated, in terms of the Act, to compile a report on the number and results of prosecutions for cybercrimes for the National Prosecuting Authority.

The Act further affords South African courts with jurisdiction to adjudicate over any act or omission alleged to constitute an offence under the Act and affecting a person in South Africa, even in instances where such a defined cybercrime is committed outside of South Africa.

More importantly, the Act prescribes certain sentences for offenders, which entail fines ranging from R5 million to R10 million and/or imprisonment ranging from 5 to 10 years, with other more serious offences attracting imprisonment of up to 15 years and an imprisonment period not exceeding 25 years for computer related terrorist activity and related offences. The Act imposes lesser sentences for the dissemination of data messages which advocates, promotes, or incites hate, discrimination, or violence to imprisonment not exceeding 2 years, or a fine.

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CYBERCRIMES ACT

The courts have also been afforded with a discretion to impose any sentence that it deems appropriate under section 276 of the [Criminal Procedure Act 51 of 1977](#) to anyone that is found guilty of cyber fraud, cyber forgery and uttering.

Individuals will need to educate themselves and be very careful when corresponding, especially over social media.

Companies, especially ECSPs and financial institutions, will need to initiate training and programmes to ensure compliance with the Act.

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Taxation Update

M&A Newsletters – July 2021

July 2021

Exchange Control – SARB

Emigration - Application for a Tax Compliance Status: Non-resident applicants cannot apply for a tax compliance status (TCS), if they are no longer registered on the SARS registered database. Applications for a TCS by such non-residents must include a Manual Letter of Compliance to transfer of funds where they receive -

an inheritance or life insurance policy (excluding lump sum benefits from pension preservation, provident preservation, retirement annuity funds and annuities from insurers) above R10 million; or

a distribution from a South African Trust as a beneficiary, irrespective of the amount.

A request with the necessary supporting documents can be emailed to MLCA@sars.gov.za. For more information, see [supporting documents for Emigration](#).

M&A Newsletters – July 2021

Home office expenses – SARS webinar

Cryptocurrencies

After the release of the white papers last year, there was a time frame for feedback and discussion. The Intergovernmental Fintech Work Group has now confirmed that this industry will become subject to formal regulation as suggested in a phased manner. See links for more detail:

[Crypto assets to be brought into South African regulatory purview](#)

[Position paper on crypto assets](#)

[FAQs on crypto assets](#)

Donations Tax

Submission of donations tax declarations: Members are advised that the DonationsTax@sars.gov.za mailbox is no longer in use. IT144 declarations should be emailed to pcc@sars.gov.za.

A case number will be issued for all submissions to the PCC mailbox.

M&A Newsletters – July 2021

SARS means business with the Transfer pricing and HNWI units

SAICA and SARS have signed an agreement under which SAICA will assist SARS in finding suitable talent to work in the two above named units. The intent is for this to be an across the board initiative, ranging from trainees through to senior specialists. SARS is clearly putting their money where their mouth is...

OECD –Prevention of base erosion

It has been widely reported for years, if not decades and close to centuries that wealth has been stripped out of Africa, both legally and illegally. The latest report from the OECD looks at how greater transparency and information sharing can help combat the illicit flow of funds:

<https://www.oecd.org/tax/transparency/documents/Tax-Transparency-in-Africa-2021.pdf>

M&A Newsletters – July 2021

- RAV01 has now officially been converted from Adobe to HTML.
- Issue 12 of the Medical Credits Guide has been issued.
- List of physical disabilities has been withdrawn.
- Comprehensive Guide to Dividends Tax (Issue 4)
- [Binding Class Ruling \(BCR\) 077](#) – Capital gains tax consequences of *in specie* distribution by company to its shareholders
- [Binding Private Rulings \(BPRs\)](#)
 - BPR 366 – Distribution *in specie* of shares
 - BPR 365 – Interpretation and application of the de-grouping provision in section 45(4)(b)

M&A Newsletters – July 2021

Tax Cases

IEA Taxpayer v Commissioner for the South African Revenue Service (VAT 1908) [2021] ZATC 7 (21 June 2021)

The gist of this case revolves around the definition of financial service and insurers. In short, the taxpayer found clients, gave them a policy on behalf of the insurer, collected the policy payments and managed the claims of their clients. The taxpayer attempted to deregister for tax on the grounds that it was providing a financial service, and therefore should not be subject to VAT. SARS disagreed, stating that the taxpayer was more in the lines of an administrative middle man between the client and the actual insurance provider. The contract between the taxpayer and the respective insurance provider even stated that their primary purpose was “administrative assistance”. SARS won – please be very careful with your contracts.

M&A Newsletters – July 2021

Tax Cases

LDC Taxpayer v Commissioner for the South African Revenue Service (IT 24888) [2021] ZATC 6 (18 June 2021)

Taxpayers beware – for two reasons. This case serves to underscore two core principles in tax law which most taxpayers find unfair.

Firstly – capital gains tax is payable when the contract is concluded NOT when the payments are due. The only delay can occur is if there are suspensive conditions in a contract. A property sale agreement is concluded when the contract is legally binding, not when transfer occurs or when the payment is received.

Secondly – the fact that all taxes are eventually paid is no argument against understatement penalties. The statement in law is “any loss to the fiscus” which includes not just the tax, but also the utilisation in resources to find the contravention. You are not safe just because you ultimately paid the tax.

M&A Newsletters – August 2021

Further COVID relief

The following measures have been announced:

- Extension of the ETI programme
- Reintroduction of the PAYE deferral
- Deferral of alcohol excise increases

The full detail of the changes are available here:

<http://www.treasury.gov.za/public%20comments/Tax%20Bills%202021%20Draft/>

M&A Newsletters – August 2021

Draft Tax Amendments

The draft Tax Amendments were released for discussion and contains most of the recommendations/suggestions made in the Budget Speech. There are two key changes which I think will have a significant impact going forward:

- Assessed losses may no longer be applied in full in companies. The assessed loss is capped at 80% and the remainder rolled forward. Effective date is all years of assessment starting on or after 1 April 2022.
- Retirement funds that are held by individuals emigrating will trigger a tax consequence that is deferred until the amounts are cashed out. I personally think this section will still be reviewed, but it does change some current tax planning strategies being followed.

Comments close on the 28th of August.

Regulator Update

Regulators News

None – see above

SAICA press releases and other publications:

- Impact on recent unrest on Auditing Standards
- Emergency Room project

CIPC:

- Notices above
- Broken register between Companies Register and Trade Mark Register (article)

Consumer Regulator (CGSO)

- The Coffee Clean Up (article)

SAIBA:

- Accounting Weekly Newsletter
- CFO Talks

Regulators News

LPC:

- Attorney Trust Engagement Deadline
- Managing assets in a fiduciary capacity – a discussion

National Credit Regulator

Financial assistance – Must companies register as a Credit Provider

SARS:

- Tax implications from devastating insurrection and carnage (moneyweb article <https://www.moneyweb.co.za/mymoney/moneyweb-tax/tax-implications-arising-from-the-devastating-insurrection-and-carnage/>)

Regulators News

Information Regulator:

- POPIA Alert: When does public interest trump your right to privacy
- Maintaining compliance with POPIA - Application and Exceptions
- The POPIA prior authorisation conundrum - What is it and do you need it

Protection of Personal Information Act (Prior authorisation processing)

The Regulator has made a revised determination stating that 1 February 2022 will now be the date that section 58(2) (aspect of duty of responsible parties to notify Regulator if processing is subject to prior authorisation) applies to processing in terms of section 57 (processing subject to prior authorisation).

Note: Section 58(2) does not apply to processing referred to in section 57, which is taking place on the date of commencement of this Act, until the Regulator determines otherwise by notice in Gazette.

Further note: Section 58(2) states that responsible parties may not carry out information processing that has been notified to the Regulator in terms of section 57(1) until the Regulator has completed its investigation or until they have received notice that a more detailed investigation will not be conducted.

Regulators News

FSCA publications & press releases:

- Financial Advisory and Intermediary Services Act (Reports)

FAIS communication 16 of 2021, available from the FSCA, states that compliance reports do not need to be submitted during 2021; and that there is no prescribed handover report format for 2021. Note: The communication also provides reminders that irregularity reports, if any, must be provided in addition to handover reports; and that any outstanding compliance reports for years up to 2018 must still be submitted.

- Insurance Act (Contingent business interruption claims)

FSCA press release dated 12 August 2021 (update on contingent business interruption claims), available from the FSCA, requests that policyholders proactively collate all the necessary information and/or documents (with examples given in the notice); and contact the claims department of the insurer, the loss adjusters or broker if assistance is required.

- Insurance Law- Business insurance policies to rescue businesses (article)

- Should an insured be penalised for untrue information supplied (Article)

Regulators News

Competitions Act:

- Difficult times require the easing of the Competitions Act (article)

Competition Act (Exemption of essential goods)

Block exemption from prohibited horizontal and vertical communication and coordination practices for supplying essential goods, until 15 August 2021 (solely to prevent critical shortages of essential goods, and to promote equitable distribution of scarce essential goods across the country to consumers).

Note: Defines essential goods as basic food and consumer items, emergency products, medical and hygiene supplies (including pharmaceuticals products), refined petroleum products and emergency clean-up products - includes the final good and supply chain inputs required for production, distribution and retail.

Further note: The exemption does not extend to price-fixing and collusive tendering relating to essential goods or production inputs used; does not authorise discussion of the pricing of essential goods or production inputs used; and is subject to the disaster management consumer protection competition regulations.

The regulations apply where the essential goods suppliers have notified the Department and the Commission of anticipated shortages, and the need to engage in communication and coordination practices (as set out in the regulations) to address such shortages prior to engaging in such conduct.

Regulators News

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General Announcements

Media articles

Media articles and Other thoughts...

Why mark documents and correspondence “without Prejudice”

Electronic signatures and email – What you need to know

Protecting your IP – Think outside the box but make sure the box is locked

Dealing with Small Claims Court

Understanding contracts and dealing with contractual disputes

**Thank you for your
participation**