

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 September 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

Table of Content

Accounting Update

Auditing Update

Company Secretarial Update

COVID-19 Update

Employment Law Update

Other Laws & Regulations Update

Taxation Update

Regulator News

General Announcements

Quote

*Waste no more time arguing
about what a good person
should be.*

Be one...

- Marcus Aurelius

Accounting Update

Accounting Update:

Standards – What's new?

IFRS Monthly news summary

IASB Work plan

Accounting issues

Investor Perspectives: Disclosures in financial statements to better reflect investor needs

Right-of-Use Assets (Conceptual Framework issues)

Assurance Update

Auditing Update:

Standards:

Quality Management Standards

IFAC - First-time Implementation Guide for ISQM I Updated and Reissued

ISA315 (Revised): Identifying and Assessing the Risks of Material Misstatement – effective date reminder

Company Secretarial Update

CIPC Notices

Re-registration of companies and close corporations due to failure to submit annual returns

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

Notice No 48 of 2021 [Notice to accounting and auditing professional bodies: Independent review survey 2021](#)

The Commission has issued an Independent Review Survey 2021 accessible on the website and through the link below. The purpose of the survey is to gauge the practical problems experienced in the performance of independent reviews and reporting of reportable irregularities as required in terms of Regulation 29 of the Companies Regulations 2011. Notice

CIPC Notices

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

Notice No 49 of 2021 [Important changes to CIPC electronic platforms relating to short standard private and short standard non-profit without members company registrations](#)

The Companies and Intellectual Property Commission (“CIPC”) accordingly would like to advise customers of important changes to its various platforms and services relating for short standard private company (Form CoR15.1A) and short standard non-profit company without members (Form CoR15.1C)

Company Secretarial

Companies Act Amendment Bill

COVID-19 Update

COVID-19 Update

IFAC COVID Response to Recovery

<https://www.ifac.org/knowledge-gateway/discussion/covid-19-response-recovery>

Important changes:

- Lockdown adjusted to Alert level 1
- Vaccines registrations open for 12 to 17 year olds

Articles:

The right to refuse a vaccination is not cast in stone

Employment Issues

Relevant issues

- Proposed amendments to the Employment Equity Act
- Is your company conducting disciplinary hearings in line with legislation? (article)
- Is it fair discrimination to exclude unvaccinated people (article)
- To be or not to be.... vaccinated against Covid-19 (article)
- Quantifying compensation for unfair dismissal - Labour Relations Act (article)

Other Laws and Regulations Update

The Big 5

Issue 17 - this Update overviews new relevant National laws up to 1 October 2021

The Big 5 in this Update include:

The Companies Act (Draft Companies Amendment Bill);

The Constitution of the Republic of South Africa (Constitution Eighteenth Amendment Bill);

The Disaster Management Act (COVID-19 regulations);

The Financial Sector Laws Amendment Bill 2020; and

The Liquor Products Act (Liquor Products Amendment Act).

Taxation Update

M&A Newsletters – September 2021

Directors beware!

During August, a director of a company was found guilty of submitting nil VAT returns while the company was actually actively trading. Historically, this type of behaviour did not result in very heavy punishments. In this case however, the director was convicted on 10 counts of fraud, resulting in the following sentences:

5 years suspended imprisonment, conditional on the director paying SARS a portion of the VAT not submitted.

A further 6 month count, suspended for 2 years

The company was sentenced to a fine of R500 000 and R10 000

The message is real – criminal charges will be levied.

In addition, SARS has obtained civil judgements for the attachment of assets for another entity which had submitted VAT and PAYE returns yet did not make the corresponding payments. Unlike the usual third party appointments we are used to seeing, this resulted in the sheriff arriving on premises to attach assets. To quote SARS Commissioner Edward Kieswetter:

“Companies and their directors must note that SARS will take all action legally possible to ensure compliance and ensure that VAT and PAYE payments are made. As per third party agreement, PAYE is collected from employees on behalf of SARS and is not for the benefit of the company. To then utilize collected tax for other purposes than pay it over to SARS, is a criminal offence.”

M&A Newsletters – September 2021

Odds and sods

- IN 20 – Learnership agreements has been updated.
- IN 43 dealing with s9C has been updated.
- IN 79 – Produce held by Nurseries updated.
- IN 69 – Game farming has been updated.
- Draft Interpretation Note: Meaning of “readily apparent undisputed error” has been released.
- BPR 367 – Confirmation that a supposed “training programme” did not meet the requirements of the ETI Act.
- Updated Guide for Franchisees and Franchisors has been released.

Efiling now works with MAC's

M&A Newsletters – September 2021

Tax Cases

PERI Formwork Scaffolding Engineering (Pty) Ltd v Commissioner for the South African Revenue Service (A67/2020) [2021] ZAWCHC 165 (23 August 2021)

This was an appeal on two issues. The taxpayer firstly objected that a late payment penalty could be raised on a payment that was a day late. The second was that SARS had disallowed the request for remission for the first instance of non compliance.

On the first, the appeal confirmed that the law is very clear. If you miss the due date, the late payment penalty must be paid.

With the second, the Court did find that the taxpayer had attempted to rectify the issue pro actively, and allowed for the remission to be granted. So the taxpayer did get let off, but probably not in a way that will be helpful to all.

ITC 13395

This case will be considered fairly specialist, as it deals with the calculation of capital gains and losses for individuals who had taken advantage of the 2003 Exchange Control Amnesty. This is however a good case to keep in mind as many of these amnesty structures are now being unwound.

M&A Newsletters – October 2021

Tax issues

MTBS

The date has now officially been announced – 4 November. It's a bit later than usual, but I imagine that with a new Finance Minister and, well, 2021 being 2021, this won't have been an easy budget. No huge changes or surprise announcements are expected.

M&A Newsletters – October 2021

Tax issues

Update on Draft Tax Amendments

National Treasury has had its first rounds of feedback and discussion with all stakeholders regarding the draft amendments. The final commentary on this will be available after the Parliamentary session which is scheduled for mid October. Until this document is released, we have no finality on the status of the updates. However, given the course of the discussion, here is my assessment of the most controversial changes proposed in the Draft Amendments.

- Expanding s7C to include Trust to Trust loans. I would be very surprised if this is promulgated as is. It is overbroad, doesn't meet the stated objective and has a large number of unintended consequences. It will either be deferred or shelved.
- Proposed "emigrations disposal" of retirement funds, the new s9HC: The discussions with National Treasury really highlighted that there is a problem to fix, however the problem lies within the DTA framework and network, not really within our current tax law. Any attempt to "fix" the DTA issue within our law is always going to be problematic. National Treasury has provisionally agreed with this view. My view? A change will be implemented, but more industry consultation is needed.
- Limitation of assessed losses: This is close to a 100% bet that it will be implemented.
- Limitation of interest deductions: I suspect a few minor tweaks may be made, but overall, this is likely to pass.

M&A Newsletters – October 2021

Tax issues

Crypto assets

It seems SARS has started fielding far more queries on this matter. There is now a section of the SARS website dedicated to the tax treatment of crypto assets. It doesn't really add anything new in terms of information or guidance, it simply is collating information on the topic into one page. It's available here: <https://www.sars.gov.za/individuals/crypto-assets-tax/>

Refund fraud / eFiling profile hijacking:

Please be aware! The various RCB's have received multiple complaints regarding eFiling profiles that appear to have been 'hijacked', returns submitted and refunds paid into an incorrect bank account. The new tax type transfer process seems to have created a greater opportunity for this kind of fraud given that profiles may be transferred without the knowledge/approval of the existing tax practitioner. Please remain vigilant and [read more](#) about this and other scams and how to report these.

M&A Newsletters – October 2021

Note from SARS – difference between verification and audit

What is the difference between a verification and an audit? Being selected for an audit and being selected for verification are two different processes.

What is Verification? Verification is a face-value verification of the information declared by the taxpayer on the declaration or in a return. We will notify you that the return or declaration is subject to verification. SARS will conclude the verification within **21 business days** from the date all required relevant material is received, if your return is for the current filing period.

What is an Audit? An audit is an examination of the financial and accounting records and/or the supporting documents of the taxpayer to determine whether the taxpayer has correctly declared his/her tax position to SARS. A notification of the audit will be issued as well as a notification where additional material is required. Progress reports of the stage of the audit will be issued at intervals of **90 calendar days** from the date of the Notification of Audit.

For more information, see our [Being Audited or Selected for Verification webpage](#).

M&A Newsletters – October 2021

Some eFiling changes

A once-off penalty will be imposed for late submission of Personal Income Tax returns for taxpayers who responded to the auto assessment after SARS has issued an original assessment based on estimate.

IT34's have been transferred to the new format since the 10th of September. Please check the updated Guide for details.

Deferral of Payment Arrangements can now be made via eFiling. Currently only available for: Personal Income Tax (PIT), CIT, Dividends Withholding Tax, VAT, PAYE/UIF/SDL and Admin-Penalties.

More forms have been converted from PDF to Html, amongst others, the RAV01 amendment form

Odds and sods

Updated Guide released: [Taxation in South Africa 2021](#)

Update - [Guide on Income Tax and the Individual \(2020/21\)](#)

M&A Newsletters – October 2021

Tax Cases

Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service (Case no 520/2020) [2021] ZASCA 116 (16 September 2021)

VAT, apportionment and methods other than turnover. As you may recall, in *VAT 1626* the Courts confirmed that a taxpayer is entitled to adjust their prior VAT returns where an error is made in the apportionment methodology. In this case, the taxpayer had applied the turnover method as required by s 17, however it wanted to apply a different method, being the “Transactions count” method.

As required by the law, they applied to SARS to have the TC method approved for their use. SARS approved this, however would only allow the vendor to change the apportionment method for the last year, citing proviso (iii) of s 17(1) of the VAT Act – which limits SARS’s ability to authorise methods other than turnover retrospectively.

The Courts upheld SARS’s view. If you want to use a method other than turnover, you can’t amend your VAT returns past “a period that ends within the last year of assessment”. We need to be proactive rather than reactive.

Regulator Update

Regulators News

IRBA News & press releases:

48% of JSE Listed Entities have rotated auditors

Fraud and the role of auditors - what more can be done to detect fraud risk

SAICA press releases and other publications: (none)

CIPC:

Notices above

Considering business rescue for financially distressed companies (article)

Revisiting blockchain technology and Intellectual Property (article)

Consumer Regulator (CGSO)

Can money in your account be used when it belongs to someone else (article)

SAIBA:

Accounting Weekly Newsletter

CFO Talks

Regulators News

LPC: none

National Credit Regulator: none

SARS: none

Regulators News

Information Regulator:

(Article) The impact of the Cybercrimes Act on electronic communication.

(Article) Further obligations of an information officer in terms of PAIA

(Article) Disclosure of medical or confidential information - When it is permitted

Regulators News

FSCA publications & press releases: none

General Announcements

Media articles

Media articles and Other thoughts...

Artificial Intelligence identified as inventor of a patent

Don't mess with neighbourhood watches in communities

Department of agriculture takes steps to prevent misleading descriptions

Are influencers inciting their followers to buy counterfeit products_

Are tests for provisional and final liquidation orders really different

Understanding the legal implications of property sale agreements

Landlord and tenant – Understanding the relevant laws

Where to next_ The case for crypto-asset regulation just got bigger

**Thank you for your
participation**