

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 November 2021



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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.



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We make a living by what we get, but we make a life buy what we give.

- Winston Churchill

Accounting Update

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IASB Work Plan

Comprehensive Review

Project	Next Milestone	Expected Date	Comments due	Related Standards
Availability of Refund (IFRIC 14)	Decide Project Direction	-	-	IFRIC 14 IAS19
Business Combinations under Common Control	DP Feedback (FB)	Dec 2021	-	IFRS 3
Cash received via EFT as settlement for Financial Asset	Tentative Agenda Dec FB	Q1 2022	25/11/21	IFRS 9
Classification of Debt with Covenants as Current or Non-Current	ED	Nov 2021	-	IAS 1
Demand Deposits with Restrictions on Use (IAS 7)	Tentative Agenda Dec FB	Q1 2022	25/11/21	IAS 7
Disclosure Initiative – Subs without Public Accountability	ED Feedback	H1 2022	31/01/22	
Disclosure Initiative – Targeted Standards – level Review of Disclosures	ED Feedback	Jan 2022	12/01/22	IAS1, IAS19 IFRS 3

Comprehensive Review

Project	Next Milestone	Expected Date	Comments due	Related Standards
Dynamic Risk Disclosure	Decide Project Direction	H1 2022	-	IFRIC 14 IAS19
Economic Benefits from Use of Windfarm (IFRS 16)	Tentative Agenda Dec FB	Nov 2021	-	IFRS 3
Equity Method	Decide Project Direction	-	-	IFRS 9
Extractive Activities	Decide Project Direction	H1 2022	-	IAS 1
Financial Instruments with Characteristics of Equity	ED	-	-	Conceptual FW, IAS32 IFRS9
Goodwill and Impairment	Decide Project Direction	-	-	IFRS 3 IAS36
IFRS Taxonomy Update 2021 – General Improvements and Common Practice	Proposed IFRS Taxonomy Update	Dec 2021	-	-

Comprehensive Review

Project	Next Milestone	Expected Date	Comments due	Related Standards
IFRS Taxonomy Update 2021 – Technology Update	Proposed IFRS Taxonomy Update	Dec 2021	-	-
IFRS Taxonomy Update 2021 – General Improvements and Common Practice	Proposed IFRS Taxonomy Update	Dec 2021	-	-
IFRS Taxonomy Update 2021 – Amendments to IAS 1, IAS 8 and IFRS Practice Statement 2 (material judgements)	IFRS Taxonomy Update	Dec 2021	-	IAS 1 and 8 PS2
IFRS Taxonomy Update 2021 – Amendments to IFRS 17 and IFRS 9 (Comparative Info amendments to IFRS 17)	Final Amendments	Dec 2021	-	IFRS 17 and IFRS 9
Initial Application of IFRS 17 and IFRS 9 (Comparative Info)	Proposed IFRS Taxonomy Update	Dec 2021	-	IFRS 17 and IFRS 9
Lack of Exchangeability (Amendments IAS 21)	ED Feedback	Jan 2022	-	IAS 21
Lease liability – Sale and Leaseback	Decide Project Direction	Dec 2021	-	IFRS 16

Comprehensive Review

Project	Next Milestone	Expected Date	Comments due	Related Standards
Management Commentary	ED Feedback	Q1 2022	23/11/21	Prac Stmt 1
Pension Benefits that depend on Asset Returns	Project Summary	-	-	IAS 19
Post Implementation Review of IFRS 10, IFRS 11, and IFRS 12	Feedback Statement	-	-	IFRS 10 to IFRS 12
Post Implementation Review of IFRS 9 Classification and Measurement	Request for Info Feedback	H1 2022	-	IFRS 9
Primary Financial Statements	IFRS Standard	-	-	IAS1 IAS 7
Provisions – Targeted Improvements	Decide Project Direction	-	-	Conceptual FW, IAS37 IFRIC 21
Rate Regulated Activities (regulatory deferral accounts)	ED Feedback	Nov 2021	-	IFRS 14

Comprehensive Review

Project	Next Milestone	Expected Date	Comments due	Related Standards
2 nd Comprehensive review of IFRS for SMEs	ED	-	-	IFRS for SMEs
Supplier Finance Arrangements	ED	Nov 2021	-	IAS 7, IFRS 7 (CFS)
Third agenda Consultation	Request for Info Feedback	Nov 2021	-	-
TLTRO III Transactions (Govt Grants)	Tentative Agenda Dec Feedback	Nov 2021	-	IAS 20 IFRS 9

Accounting for Cryptocurrencies



Digital Asset or Financial Asset

- Cryptographic assets:
 - No legal definition
 - Cryptographic assets are used for a variety of purposes, including as a means of exchange, as a medium to provide access to blockchain-based goods or services, and as a way to raise funding for an entity developing activities in this area
- Cryptocurrencies are a subset of cryptographic assets

IASB

- In June 2019, the IFRS IC published its agenda decision on ‘Holdings of Cryptocurrencies’, and it considered a subset of cryptographic assets with the following characteristics:
- a digital or virtual currency recorded on a distributed ledger that uses cryptography for security;
- not issued by a jurisdictional authority or other party; and
- does not give rise to a contract between the holder and another party

- The IFRS IC concluded that
 - IAS 2, 'Inventories', applies to such assets where they are held for sale in the ordinary course of business.
 - If IAS 2 is not applicable, an entity applies IAS 38, 'Intangible Assets', to holdings of cryptocurrencies.

Relevant Characteristics for Accounting Purposes

- For the purposes of determining which accounting standard applies
- A single, generally accepted framework for the classification of these varied cryptographic assets does not currently exist.
- There is consequently no generally applied definition of a cryptographic asset.
- This reflects the **broad variety of features and bespoke nature** of the transactions in practice.
- There are some characteristics that can be used to classify cryptographic assets into similar types.
 - the primary purpose of the cryptographic asset; and
 - how the cryptographic asset derives its inherent value.
- Although a range of other characteristics exist, we view these as not being fundamental to determining a common accounting treatment.

Subsets of Assets

Asset	Purpose	Inherent Value
Cryptocurrency	Cryptocurrencies are digital tokens or coins based on blockchain technology, such as Bitcoin. They currently operate independently of a central bank and are intended to function as a medium of exchange.	None – derives its value based on supply and demand.
Asset Backed token	An asset-backed token is a digital token based on blockchain technology that signifies and derives its value from something that does not exist on the blockchain but instead is a representation of ownership of a physical asset (for example, natural resources such as gold or oil).	Derives its value based on the underlying asset.

Subsets of Assets

Asset	Purpose	Inherent Value
Utility Token	Utility tokens are digital tokens based on blockchain technology that provide users with access to a product or service, and they derive their value from that right. Utility tokens give holders no ownership in a company's platform or assets and, although they might be traded between holders, they are not primarily used as a medium of exchange.	Value is derived from the demand for the issuer's service or product
Security token	Security tokens are digital tokens based on blockchain technology that are similar in nature to traditional securities. They can provide an economic stake in a legal entity: sometimes a right to receive cash or another financial asset, which might be discretionary or mandatory; sometimes the ability to vote in company decisions and/or a residual interest in the entity	Value is derived from the success of the entity, since the holder of the token shares in future profits or receives cash or another financial asset.
*Hybrid transactions		

Cryptocurrencies help for own account

- **Cash or a currency**
- IFRS contains no explicit definition of the terms 'cash' or 'currency'. Can argue for accounting purposes, the words 'cash' and 'currency' are interchangeable.
- IAS 32, 'Financial Instruments: Presentation', makes a connection between currency and cash, and IAS 21, 'The Effects of Changes in Foreign Exchange Rates', makes a connection between cash, currency and monetary items.
- Judgement is therefore required to determine whether cryptocurrencies can be considered cash or a currency. Cryptocurrencies do not have some of the common properties of cash and currency, especially:
 - cryptocurrencies are not legal tender and mostly are not issued or backed by any government or state; and
 - cryptocurrencies are currently not capable of setting prices for goods and services directly.
- The assessment should consider the facts and circumstances for each cryptocurrency.
- Currently, we have not seen a cryptocurrency that could be considered cash or a currency under IFRS.
- Potential Venezuela has government-backed cryptocurrency.....

Cryptocurrencies help for own account

- **Financial Asset – other than cash**
- Holding a unit of a cryptocurrency typically does not
 - give the holder a contractual right to receive cash or another financial asset, nor
 - does the cryptocurrency come into existence as a result of a **contractual relationship**.
- Moreover, cryptocurrencies do not provide the holder with a residual interest in the assets of an entity after deducting all of its liabilities.
- Therefore, cryptocurrencies that we have seen so far do not meet the definition of a financial asset.

Cryptocurrencies help for own account

Property, plant and equipment

- Cryptocurrencies do not fall into the scope of IAS 16, 'Property, Plant and Equipment', because they are not tangible items.

Inventory

- IAS 2 does not require inventories to be in a physical form, but inventory should consist of assets that are held for sale in the ordinary course of business.
- Inventory accounting might be appropriate if an entity that actively trades the cryptocurrencies,
 - purchasing them with a view to their resale in the near future and generating a profit from fluctuations in the price or traders' margin,
- However, if the entity holds cryptocurrencies for investment purposes (that is capital appreciation) over extended periods of time, it would likely not meet the definition of inventory.
- However, if the entity holds crypto tokens for investment purposes (that is, capital appreciation) over extended periods of time, it would likely not meet the definition of inventory
 - Commodities... FV through P&L

Cryptocurrencies help for own account

Intangible Assets

- If a cryptocurrency does not meet the definition of any of the above categories, it will likely meet the definition of an intangible asset under IAS 38, 'Intangible Assets', because:
 - it is a resource controlled by an entity (that is, the entity has the power to obtain the economic benefits that the asset will generate and to restrict the access of others to those benefits) as a result of past events and from which future economic benefits are expected to flow to the entity;
 - it is identifiable, because it can be sold, exchanged or transferred individually;
 - it is not cash or a non-monetary asset; and
 - it has no physical form. IAS 38 applies to all intangible assets except those excluded specifically from its scope (for example, inventories).

Cryptocurrencies help for own account

Prepayments

- Crypto tokens might provide the holder with a right to future goods or services.
- May be a prepayment of an intangible asset.
- If not an intangible asset, the accounting will be similar to the accounting for other prepaid assets.

Underlying asset

- In some situations, crypto tokens provide the holder with an interest in an underlying asset.
- The underlying assets might be commodities (such as gold or oil), intangible assets (such as a licence or a patent), artwork or real estate.
- While some asset-backed tokens represent a real claim on the asset itself, others have no ability to redeem the actual underlying.
- Where the crypto token represents a contractual right to receive cash equivalent to the value of the underlying asset, it might meet the definition of a financial asset.
- If the crypto token represents a right to the asset itself, it might be accounted for in a manner similar to the underlying asset. **Crypto tokens that are accounted for in a manner similar to the underlying asset will be measured following the relevant accounting standard for the underlying asset.**

Measurement considerations

Applicable standard	Initial measurement	Subsequent measurement	Movements in carrying amount
Inventory (IAS 2) - Other	Cost	Lower of cost and net realisable value	Movements above cost - N/A Movements below cost - Profit and loss
Inventory (IAS 2) - Commodity broker/trader exception	Cost	Fair value less costs to sell	Profit and loss
Intangible assets (IAS 38) - Revaluation model (accounting policy choice but requires existence of active market)	Cost	Fair value less any accumulated amortisation and impairment*	Movements above cost - OCI Movements below cost - Profit and loss
Intangible assets (IAS 38) - Cost model	Cost	Cost less any accumulated amortisation and impairment*	Movements above cost - N/A Movements below cost - Profit and loss

Body Corporate Illustrative Financials



Assurance Update

Auditing Update:

Standards:

New proposal for Less Complex Entities

Legal/Ethics:

IRBA opens draft proposed Disciplinary Rules for Registered Auditors for public comment

Other:

IRBA successfully defends challenge to MAFR by East Rand Member District of Chartered Accountants

Auditing Profession Act (Draft disciplinary rules)

The draft disciplinary rules

covering investigations;

disciplinary hearings;

procedural matters;

search and seizures that relate only to matters reasonably believed to be relevant or questions that are relevant to the search and seizure and its purpose; and

referrals of non-audit complaints within the confines of the constitution and rules of the accredited professional body referred to **propose replacing the current disciplinary rules**.

Deadline for comments 18 January 2021.

Auditing Profession Act (Draft disciplinary rules)

Note: The draft rule include noteworthy definitions for

- 'a person apparently in control of the premises' (including certain persons at private dwellings);
- audit;
- certificate of authority;
- documents;
- non-audit complaint; and
- premises (which should potentially be expanded beyond reference to a building).

Auditing Profession Act (Draft disciplinary rules)

Further note: Proposed provisions:\

- such as rule 3(2) (employ any means considered necessary for the proper and expeditious investigation of the complaint or allegation) or

- rule 21 (any other relevant non-monetary sanction)

- may as a matter of course be tempered by other laws such the Bill of Rights; the Prevention and Combating of Corrupt Activities Act; the common law right to legal privilege; and section 57A protection of information.

Final note: Rule 23 proposes that the decisions of the investigating, enforcement or disciplinary committee, and/or the Panel may only be susceptible to review and not be subject to any appeal process.

Company Secretarial Update

CIPC Notices

Practice Note 1 of 2022: Re-instatement Requirements for Companies and CC's in terms of Reg 4(2)(b)

- will take effect 1 January 2022.

Re-instatement applications submitted to the CIPC via the dedicated e-mail address on or after 1 January 2022 will no longer require multiple deed searches (only required to confirm whether no-objection letter is required) and if immovable property, the no objection letter from Department of Public Works.

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

Notice No 59 of 2021 [Public companies contravening annual financial statements filing obligations](#)

The purpose of this notice is to inform public companies about their annual financial statements filing requirements

CIPC Notices

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

Notice No 61 of 2021 [Compliance obligations of companies and close corporations in business rescue](#)

The Companies and Intellectual Property Commission (“CIPC”) hereby remind companies and close corporations and specifically business rescue practitioners, which finds itself in business rescue or considering to commence business rescue proceedings, that Chapter 6 of the Companies Act, 2008 (“the Act”) does not suspend the company or close corporation's compliance obligation in terms of the Act or Close Corporations Act, 1984.

CIPC Notices

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

Notice No 59 of 2021 [Appointing and resignation of auditors using the online services](#)

Due to the complaints received from companies regarding the appointment and/or resignation of auditors in the company and in line with Section 85(3), only the current directors and/or the current company secretary of the company will be eligible to file electronic change of auditors via our Eservices platform

COVID-19 Update

COVID-19 Update

Important changes:

- Wait and see space

- Vaccines registrations open for 12 to 17 year olds – second part of vaccine

- Mandatory vaccination policy??

- MTN, Discovery, Sanlam, Curro, Old Mutual (Jan 2022), Standard Bank (April 2022)

- Game 10% discount if can show proof of vaccinations (purchases up to R10 000)

- Big Concerts International – proof of vaccination to attend events

COVID-19 Update

Disaster Management Act (COVID-19)

COVID-19 state of disaster declaration 16th extension to 15 December 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".

Disaster Management Tax Relief Act (Taxation Laws Amendment Bill)

The Bill proposes amending the preamble, section 8 (deduction in respect of donation to COVID-19 disaster relief organisation and increase in annual donations limit for donations to Solidarity Fund), and section 11 (application of sections); and the Employment Tax Incentive Act

COVID-19 Update

Articles:

Compensation Fund vaccine injury claims to be covered

The Compensation Fund has laid out its requirements before it will accept Covid-19 vaccine injuries as on-the-job injuries, and pay.

Vaccination must be an "inherent" job requirement, says the fund, and it wants to see the employers paperwork around that.

It then wants to see a clear link between the side effects and the vaccination, and may ask for more tests.

- South Africa Business Heads push for mandatory vaccines

- MTN makes Covid-19 vaccine mandatory

Other Laws and Regulations Update

The Big 5

Issue 17 - this Update overviews new relevant National laws up to 26 November 2021

The Big 5 in this Update include:

The Auditing Profession Act (Draft disciplinary rules) (**see assurance section**);

The National Environmental Management Act (Hazardous chemicals and pesticides);

The Promotion of Access to Information Act (Manual, guide and disclosure);

The Tax Administration Act (Administrative penalties and disclosure);

The Tax Administration Laws Amendment Bill 2021 and Taxation Laws Amendment Bill 2021.

Promotion of Access to Information Act (Public body rights of refusal)

The Gauteng High Court (Pretoria 88359/2019) held, which order may be subject to appeal, and which has been referred to the Constitutional Court for confirmation,

- that section 35 (mandatory protection of certain records of SARS) and 46 (mandatory disclosure of public body records in the public interest)
- are unconstitutional and invalid
- to the extent that they preclude access to tax records by a person other than the taxpayer ('a requester') even in circumstances where the requirements set out in section 46(a) and (b) are met.

Note: The declarations of invalidity are suspended for 2 years from 19 November 2021 to enable Parliament to correct the relevant defects.

Final note: Pending the correction of the defects section 46 shall be read as if the phrase "35(1)", appeared immediately after the phrase "section 34(1)" contained therein..

Promotion of Access to Information Act (PAIA Manual Exemption)

Reminder that the end-date for the current exemption of certain private bodies from compiling a PAIA manual is 31 December 2021.

Promotion of Access to Information Act (PAIA guide)

Notice gazetted that the PAIA guide initially compiled by the SA Human Rights Commission has been updated, and is available at the Regulator's website.

Note: An information officer of a public body must make copies of the PAIA guidelines available in the prescribed manner.

Taxation Update

Tax Articles

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DP Naik (Oakbay) gets 10 year sentence for defrauding SARS of R18million

'We will leave no stone unturned' — Sars warns tax fraudsters targeting eFiling profiles

Tax Administration Act

Tax Administration Act (Administrative penalties)

As from 1 January 2022 a natural person will be subject to revised fixed amount penalties for failure to submit an income tax return, including having 1 outstanding income tax return for years of assessment commencing on or after 1 March 2020.

Tax Administration Act

Tax Administration Act (Income tax return)

Extension for due date for income tax returns gazetted so that any person that is not a company must submit income tax returns on or before 2 December 2021 if the return is submitted electronically through the assistance of a SARS official at an office of SARS or manually; or if the return does not relate to a provisional taxpayer and is submitted by using the SARS eFiling platform.

Tax Administration Act

Tax Administration Act (Tax Administration Laws Amendment Bill 2021)

The Bill proposes amending sections 93 (reduced assessments - clarification that grounds to be considered separately from each other); 95 and 99 (elaboration on SARS estimation of assessments procedure where return or relevant material was lacking); and 149 and 233 (correction regarding exception to prohibition on disclosure to other entities in register of settlements and reporting or reporting of voluntary disclosure agreements).

Tax Administration Act

Tax Administration Act (Disclosure)

The Gauteng High Court (Pretoria 88359/2019) held, which order may be subject to appeal, and which is referred to the Constitutional Court for confirmation, that section 67 (general prohibition of disclosure) and 69 (secrecy of taxpayer information and general disclosure) are **unconstitutional and invalid** to the extent that they preclude access to information being granted to a requester in respect of tax record in circumstances where the requirements set out in section 46(a) and (b) of the Promotion of Access to Information Act are met; and they preclude a requester from further disseminating information obtained as a result of a Promotion of Access to Information Act request.

Note: The declarations of invalidity are suspended for 2 years from 19 November 2021 to enable Parliament to correct the relevant defects.

Further note: Pending the correction of the defects section 67(4) shall be read as if the phrase “unless the information has been received in terms of the Promotion of Access to Information Act” appeared immediately before the full stop.

Final note: Pending the correction of the defects section 69(2) shall be read as if it contained an additional subsection (bA) after existing sub-section (b), which provides: “(bA) where access has been granted for the disclosure of the information in terms of the Promotion of Access to Information Act”.

Income Tax Act (Tax Administration Laws Amendment Bill 2021)

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Proposes amending sections:

- (i) 1 (definitions); 7C (loan, advance or credit by connected person to trust); and 8 (certain amounts to be included in income);
- (ii) 8E (certain dividends deemed to be interest); 8F (interest on hybrid instruments); and 8FA (hybrid interest);
- (iii) 9D (net income of controlled foreign company); and 9H (change of residence, ceasing to be a CFC or becoming a headquarter company);
- (iv) 12DA (rolling stock deduction); 12F (airport and port assets deduction); 12H (learnership agreements deduction); 12I (industrial policy projects); and 13quat (urban development zones deductions);
- (v) 19 (reduction of debt); 20 (set-off of assessed losses); and 23M (interest limitations regarding debts owed to persons not subject to tax);

Income Tax Act (Tax Administration Laws Amendment Bill 2021)

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Proposes amending sections:

- (vi) 25 (deceased estates); 28 (short-term insurance business); 29A (long-term insurers); and 31 (tax payable in respect of international transactions to be based on arm's length principle);
- (vii) 40CA (shares or options for no consideration); 41 (general); and 42 (asset-for-share transactions);
- (viii) 45 (intra-group transactions); 46 (unbundling company); 46A (expenditure limitations regarding shares in unbundling company); and 47 (liquidation, winding-up and deregistration);
- (ix) 49E (withholding taxes on royalties); 50A (withholding tax on interest); and 64G and 64H (withholding of dividends tax); and
- (x) 57B (disposal of the right to receive an asset which would otherwise have been acquired in consequence of services rendered or to be rendered)

Income Tax Act (Tax Administration Laws Amendment Bill 2021)

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Note: Amendments are also proposed to the
Second schedule (lump sum benefits),
Fourth schedule (employees and provisional tax),
Seventh schedule (employment or office benefits),
Eighth schedule (capital gains tax) and
Eleventh schedule (exempted government grants).

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Tax issues

Legal issues

Another win for SARS in their fraud investigations, in this case a taxpayer who was sentenced to 5 years in prison for VAT fraud.

More details here: <https://www.sars.gov.za/media-release/businessman-gets-5-year-jail-term-for-vat-fraud/>

While SARS' efforts to curb taxpayer abuse are certainly to be lauded, this really should serve as a cautionary note to us all.

Anecdotally, I have, in the last month heard of three investigations where SARS has started similar investigations against taxpayers.

Perhaps the most chilling was where two family members went into business together. The one cousin listed their cousin as the representative taxpayer on with SARS and promptly absconded with the VAT and PAYE payments. The innocent cousin is now facing criminal charges from SARS for non payment of taxes – and SARS is entitled to bring this claim under the provisions of the Tax Administration Act. Tread lightly and do not presume that trading in a company insulates you from personal risk.

In addition, purely related to COVID tenders (PPE and other related services), SARS has already achieved the following:

- 11 Companies convicted;

- 7 cases currently in court;

- 29 cases with the NPA;

- 33 companies linked to politically exposed persons are under investigation;

- An unquantified number of companies sentenced for failing to register for VAT;

- R170 million in unpaid taxes recovered; and

- R500 million under preservation orders;

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Tax issues

Tax Directives

Please keep an eye on the Tax Directives page. SARS has announced a number of sweeping changes to the directives process, which will be rolled out starting from late October to the end of November.

Odds and sods

SARS is looking to decommission their browser. It is expected to no longer be available by the end of November

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Tax Cases

CSARS v Samsung Electronics South African (Pty) Ltd (35255/2018) [2021] ZAGPPHC (12 October 2021)

SARS is engaged with a tariff dispute with Samsung and had requested certain user manual and technical spec sheets from Samsung. Samsung did not believe they needed to deliver them. SARS then lodged a Rule 35 application (under the Uniform Rules of the Court) with the Court to compel discovery of the documents. The Courts upheld SARS's request as SARS managed to prove that without this information it would not be in a position to prove its case. In addition, due to the nature of the information requested, Samsung was the only entity in a position to provide it. Samsung was therefore compelled to release the documents to SARS.

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Tax Cases

The Commissioner for The South African Revenue Service v Spur Group (Pty) Ltd (Case no 320/20) [\[2021\] ZASCA 145 \(15 October 2021\)](#)

There are a few cases that have now come forward dealing with this issue. Massmart had already lost a case in which they tried to claim a capital loss on contributions made to an employee share trust. In this case, Spur made contributions to an employee share trust and had deducted the contributions, arguing that it related to an employee benefit and was therefore deductible under s11(a). Spur had claimed a total of R48 million over the anticipated duration of the benefit, ie from 2005 to 2012. A few key paragraphs are extracted from the judgement:

[24] The law governing the approach to be adopted when determining whether an expense was incurred in the production of income, as contemplated in s 11(a) of the ITA, is clear. *In Port Elizabeth Electric Tramway Co Ltd v Commissioner for Inland Revenue (PE Tramway)*,^[2] Watermeyer J explained the position as follows:

‘[I]ncome is produced by the performance of a series of acts, and attendant upon them are expenses. Such expenses are deductible expenses, provided they are so closely linked to such acts as to be regarded as part of the cost of performing them.

A little reflection will show that two questions arise (a) whether the act, to which the expenditure is attached, is performed in the production of income, and (b) whether the expenditure is linked to it closely enough.’ (Emphasis added.)

[35] However, as was confirmed by Mr Field in his testimony, the contribution by Spur was in effect a funding mechanism for the scheme, which was to remain in place for most of the duration of the scheme.

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Tax Cases

The Commissioner for The South African Revenue Service v Spur Group (Pty) Ltd (Case no 320/20) [\[2021\] ZASCA 145 \(15 October 2021\)](#)

The purpose was always for the R48 million to remain within the Spur Group and not to transfer it to the benefit of the participants. As shown above, that is ultimately what the contribution achieved, ie the R48 million was returned to the trust where it still resides, in the form of shares, with Spur HoldCo as the sole capital beneficiary.

[38] Applying *PE Tramway*, I find that the purpose of Spur in incurring the expenditure was not to produce income, as required by s 11(a) of the ITA, but to provide funding for the scheme, for the ultimate benefit of Spur HoldCo. There was only an indirect and insufficient link between the expenditure and any benefit arising from the incentivisation of the participants. The contribution was therefore not sufficiently closely connected to the business operations of Spur such that it would be proper, natural and reasonable to regard the expense as part of Spur's costs in performing such operations.

This overturns the Tax Court decision and will, I believe send a few companies scrambling to revise their tax returns.

The second bombshell from this case was with respect to prescription. Spur had argued that certain of the returns could not be reopened. SARS however contended that there had been a misrepresentation in the tax return, which would enable the returns to be reopened under the provisions of s 99(2) of the TAA. The Court held that there had indeed been a misrepresentation as Spur had not:

Disclosed the s23H limitation on a separate line item as required by the return.

Had ticked “no” to the question regarding trust contributions.

The court did not accept the argument that putting in the AFS was enough to meet the disclosure criteria. SARS was therefore allowed to reopen all relevant assessments.

Tax Cases

ITC 14232

Just because you don't have a specific piece of paper, you can still prove your case. However, you must be able to demonstrate a cohesive argument. In this case, the presence of an independent report used by the Board made a huge difference.

The facts of the case are as follows. SARS opened up old assessments based on amounts deposited in the taxpayers bank account. Taxpayer contended that they were repayments of loans he had made to offshore entities. What made SARS raise their eyebrows? AFS of D Company were updated to reflect the session and still showed an asset of offshore loans. Taxpayer had nothing else to show why he got the cash and not D Company.

The relevant extract from the case refers:

[12.1] The taxpayer referred to two loans he advanced to GP Africa through D Company, a company incorporated by him in the British Virgin Islands ('BVI') during January 2000, when he resided in Zimbabwe. Over the years, the taxpayer made loans to D Company of approximately \$1 500.

[12.2] The two loans advanced to GP comprised:

[12.2.1] \$1 073 591.27 on 1 October 2004; and

[12.2.2] €60 000 on 28 February 2006.

[12.3] D Company, in anticipation of it being wound up, ceded its loan claims against GP Africa to the taxpayer during 2007. The taxpayer was substituted as GP Africa's creditor in the sum of R8 532 735.00.

[12.4] This was the reason why GP Africa repaid the D Company loans to the taxpayer and debited D Company's loan account.

Tax Cases

ITC 14232

The judgement held as follows:

[25] SARS criticised the absence of relevant documents substantiating the taxpayer's version. Such documents included those reflecting payment of the monies advanced by the taxpayer to the Trust. The absence of documentation was reasonably and objectively ascribed by the taxpayer to the time lapse between the dates that he advanced the loans to the Trust for onward payment to D Company, and the date of the additional assessments raised by SARS. In addition, the taxpayer's attempts to access relevant substantiating documents from Zimbabwe in preparing for the appeal were fruitless.

[26] However, the absence of such documentation does not in and of itself, render the taxpayer's oral testimony any less credible than it would otherwise be. The entire body of evidence placed before the Court during the appeal stands to be considered in determining the outcome of the matter.

94] The report evidenced that the parties as between them implemented the cession of which the taxpayer testified, and, established the existence of the cession. Accordingly, the parties by reason of their dealings with each other enforced the cession agreement. SARS, as a stranger to the cession agreement, cannot contradict that

[95] SARS argued correctly that the taxpayer did not provide evidence linking the specific withdrawals or payments referred to in the B report to specific deposits in the taxpayer's bank accounts. However, SARS' argument overlooked the independence of the report from the taxpayer, and the statements in the report that GP repaid the D Company loan account in the amount of R7 514 360.00 to the taxpayer directly.

[96] In the circumstances, this Court finds that GP repaid the D Company loan account in GP directly to the taxpayer and debited the D Company loan account in GP's books and records accordingly.

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Tax Cases

ITC 25242

A very interesting read on the applicability of s12C. The basic facts were that the taxpayer had bought a number of assets from a connected party. The taxpayer then paid for the assets with the issue of shares. On questioning by SARS, the taxpayer was unable to substantiate the valuation of the shares issued nor provide a detailed list of the costs ascribed to each of the assets purchased. The deduction was therefore deemed to be Rnil.

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Tax issues

Tax Practitioner declarations

It's that time of year again! Please keep an eye out for your declarations. The SAICA declarations are due by 5 January 2022.

M&A Newsletters – December 2021

Disability expenditure

SARS has revised the school fees rule retrospectively from 1 March 2020.

Previous Wording	Amended Wording
<p><u>The 2020 Disability List published January 2020</u> stated that when claiming school fees the difference will be calculated as follows –</p> <ul style="list-style-type: none">• If the learner with a disability attended a <u>private special needs school</u>, then the difference in fees between this school and the <u>closest fee-paying private school</u> (not specialising in learners with special education needs) to where they live; and• If the learner with a disability attended a <u>public special needs school</u>, then the difference in fees between this school and the <u>closest fee-paying public school</u> (not specialising in learners with special education needs) to where they live	<p><u>The amended 2020 Disability List published 29 October 2021</u> states that when claiming school fees the difference will be calculated as follows –</p> <ul style="list-style-type: none">• If the learner with a disability attended a <u>special needs school</u>, then the difference in fees between this school and <u>the closest fee-paying public school</u> not specialising in learners with special educational needs. <p>(SARS has simply reverted to the wording published in the 2012 Disability List relating to school fees).</p>

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Diesel rebate

Another round of stakeholder meetings was held with National Treasury, SARS and other industry bodies. Some of the key highlights are:

- All classes of taxpayers will be able to register for the rebate, not just corporate entities.
- SARS has agreed to simplify the logbook process.
- National Treasury has agreed to look into methods other than the current dipstick requirements, as long as the taxpayer can show a consistent measurement method.
- The current system will remain operational for 2 years after the implementation of the new system to facilitate the processing of historical refund claims that originated under the present legislation and administration (as claims can be made after 2 years of purchase of diesel).

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Odds and sods

- Draft interpretation note has been released for extraordinary dividends as per s 22B and para 43A.
- The draft interpretation note on home office expenses is now open for round 2 of comments.

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Tax Cases

[Arena Holdings \(Pty\) Ltd t/a Financial Mail and Others v CSARS and Others](#)

This case will not make huge waves in our day to day interactions with SARS, but does deal with the weighty issue of confidentiality. In this case, the courts balance SARS's obligation to keep the affairs of a taxpayer private as directed by s 69 of the Taxation Administration Act, with the right to access information as enshrined in section 32 of the Constitution. The Promotion of Access to Information Act was considered by Parliament to be the detailed interpretation of s 32 of the Constitution, and would therefore need to be assessed.

The catalyst for this was the publication of The President's Keepers, written by Jacques Pauw. Amongst other charges, Mr Pauw made some serious allegations about the poor tax compliance by then President Zuma. The applicants in this case argue that the tax compliance of the head of state of South Africa, particularly where serious charges have been levelled against him in the public domain, is in the public interest.

SARS's argument against this claim was that the expectation of privacy makes it more likely for taxpayers to fully disclose their financial affairs. In addition, SARS argued that the "full disclosure" provisions required in the Taxation Administration Act deprive the taxpayer of their right to not incriminate themselves.

The judge was not swayed by these arguments of SARS – particularly the idea that tax compliance is so closely linked to the "bargain of secrecy". Interestingly enough, Judge Davis recommended that the Taxation Administration Act be amended to include a clause stating that the PAIA provisions override the secrecy provisions.

This does not mean that everyone's tax returns are now fair game – there must be a public interest factor.

Regulator Update

Regulators News

IRBA News & press releases: (none)

SAICA press releases and other publications:

SAICA Special Board Meeting 5 December 2021 (APC exam)

CPD Declarations

Annual Subscriptions

Compulsory Ethics Reflection

Sustainability Development Goals Report 2021

CIPC:

Notices above

Consumer Regulator (CGSO) (none)

SAIBA:

Accounting Weekly Newsletter

CFO Talks

Regulators News

LPC: (none)

National Credit Regulator: (none)

SARS: (none)

Information Regulator: (none)

FSCA publications & press releases: (none)

General Announcements

Media articles

Media articles and Other thoughts...

Auditor General concerned about weak internal controls on SOEs –highlights R3.21 billion in unauthorised expenditure

Public Servants to face lifestyle audits from Feb 2022 (Public Service Commission)

**Thank you for your
participation**