



# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update

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#### This Update

This newsletter overviews new relevant National laws up to **26<sup>th</sup> November 2021**.

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## General

### 1. NOTABLE ONE LINERS

#### 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.

*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).*

*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.*

#### Carbon Tax Act (Rates and Monetary Amounts Bill)

The Bill proposes amending the [rate of carbon tax on greenhouse gas emissions](#).

#### Carbon Tax Act(Taxation Laws Amendment Bill)

The Taxation Laws Amendment Bill 2021 proposes amending [sections 6](#) (calculation); and [12](#) (carbon budget allowance), as well as [schedule 2](#).

### [Commissions Act \(State capture, corruption and fraud in the public sector\)](#)

[Commission of inquiry](#) due date for report and recommendations now 3 months from 1 October 2021.

### [Competition Act \(Memorandum of agreements\)](#)

Memorandum between the [Competition Commission and the National Empowerment Fund](#), and the [Competition Commission and the National Association of School Governing Bodies](#), gazetted.

### [Customs and Excise Act \(Rates and Monetary Amounts Bill\)](#)

Schedule 2 (available from SARS) of the Bill proposes amending schedule 1 part 2A, and several tariffs and rebates, as from 24 February 2021.

### [Customs and Excise Act \(Tax Administration Laws Amendment Bill\)](#)

The Bill proposes amending [section 1](#) (department references); [6](#) (degroupping depots); [60](#) (licensing heading); [38A](#) and [64E](#) (accredited clients); [75](#) (distillate fuel levy refund application); and [79](#) (offences involving customs uniforms).

### [Customs and Excise Act \(Taxation Laws Amendment Bill\)](#)

The Bill proposes [continuation of amendments of schedules](#).

### [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](#).

### Disaster Management Tax Relief Administration Act (Tax Administration Laws Amendment Bill)

The Bill proposes amending the [definition of qualifying employee](#); and amending the provisions relating to [deferral of employees' tax](#).

### Electronic Communications Act (COVID-19)

New [COVID-19 communication standards directions](#) gazetted to provide for special type approval measures; for assignment of provisional radio frequency spectrum and international mobile communications radio frequency spectrum licensees duties; and for overriding minimum standards.

*Note: The standards relate to submission of applications; complaints resolution; tariffs notification; deployment of electronic communications facilities; sound and television broadcasting services performance period; programme syndication; television broadcasting services to persons with disabilities; and community broadcasting service licensees community meetings.*

*Further note: The COVID-19 directions state that the COVID-19 regulations will prevail in the event of conflict between the regulations and other ICASA regulations.*

### Employment Tax Incentive Act (Taxation Laws Amendment Bill)

The Bill proposes amending [section 1](#) (employee); and [6](#) (qualifying employees).

### Estate Duty Act (Tax Administration Laws Amendment Bill and Taxation Laws Amendment Bill)

The Bills propose making textual corrections to [section 5](#) (determination of value of property) and [section 13](#) (right of recovery by executor).

### Home Loan and Mortgage Disclosure Act (Transfer of functions)

[The Act](#), that requires that a financial institution (as defined) must disclose the information prescribed by the Act in its annual financial statements, has been transferred to the Minister of Human Settlements.

*Note: Related laws to consider in conjunction with this Act include, amongst many others, the [Protection of Personal Information Act](#); the [Financial Intelligence Centre Act](#); the [Banks Act](#); the [National Credit Act](#); the [Pension Funds Act](#); the [Insolvency Act](#) (section 87 and 88); and the [Alienation of Land Act](#).*

### Housing Act (Transfer of functions)

**The Act**, that allocates funds for national housing and facilitative programmes; provides for the obtaining of funds for land acquisition, infrastructure development, housing provision and end-user finance; and provides for the financing of national housing programmes, has been transferred to the Minister of Human Settlements.

*Note: Related laws include, amongst others, the [Prevention and Combatting of Corrupt Activities Act](#) (section 4 and 6 specifically); and the [Housing Development Agency Act](#) and [Social Housing Act](#) (also transferred to the Minister of Human Settlements).*

### Housing Consumers Protection Measures Act (Transfer of functions)

**The Act**, that applies to any home builder (a person who carries on the business of a home builder, or an owner builder as defined who has not applied for section 10A exemption or whose home is not part of an approved PHP project as defined), has been transferred to the Minister of Human Settlements.

*Note: Related laws to consider include, amongst others, the [Consumer Protection Act](#); the [Housing Development Schemes for Retired Persons Act](#); the [National Building Regulations and Building Standards Act](#); the [Occupational Health and Safety Act](#) [construction regulations](#); and the [Protection of Personal Information Act](#).*

### Income Tax Act (Rates and Monetary Amounts Bill)

The Bill proposes confirming 1 March 2021 amendments (see [section 6](#), [section 6A](#), and the Seventh Schedule [paragraph 9](#)).

### Income Tax Act (Tax Administration Laws Amendment Bill 2021)

The Bill proposes amending [sections 18A](#) (information requests re donation deductions); [49F](#) (withholding taxes on royalties return submission); and [64LA](#) (refund of tax re dividends in specie time limit); as well as the [First](#) (livestock deduction assessments and records), [Fourth](#) (estimation if total amount of employees tax unknown, and penalty correction if estimation found incorrect), [Fourth](#) (provincial tax where year of assessment under 6 months) and [Seventh Schedule](#) (certificates by employers penalty).

### [Independent Communications Authority of South Africa Act \(Procedures\)](#)

Amendments proposed to the [Complaints and Compliance Committee procedures](#) including, amongst others, clarifying that a vexatious complaint or dispute can either be a complaint that is persistently filed and/or without any reasonable grounds; and clarifying that the CCC is not empowered to award costs. Comment deadline 30 working days from 26 November 2021.

### [Labour Relations Act \(Bargaining councils\)](#)

[Bargaining council accreditation](#) gazetted for the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry; the Bargaining Council for the Laundry, Cleaning and Dyeing Industry (KZN); and the National Bargaining Council for the Wood and Paper Sector.

### [Labour Relations Act \(Sporting events\)](#)

Essential service designation of [security in stadiums for sporting events](#) corrected to reflect for events attended by more than 2000 people.

### [Labour Relations Act \(Weather services\)](#)

[Essential service](#) investigations gazetted relating to whether to declare weather services in support of marine and disaster management services an essential service, and whether to include cleaning services in the public health designation.

*Note: An essential services declaration means a party to a dispute is precluded from participating in a strike or lock-out and must follow a specific conciliation-arbitration approach.*

### [Legal Practice Act \(Rules\)](#)

[Rules](#) amended (opening of practice accounting records; absence of candidate attorneys; conversion of enrolment; and application for Fidelity Fund certificate).

### [Legal Practice Act \(Sharing of offices\)](#)

Sharing of office amendments made to the [code of conduct](#) (see clauses 13, 25 and 41).

### Marine Living Resources Act (Commercial fishing rights)

General policy, and sector specific policies, on the allocation and management of commercial fishing rights 2021 available from the Department.

### Medical Schemes Act (Levies)

Medical scheme levy proposed for the 2022/23 levy year. Comment deadline 10 December 2021.

### Medicines and Related Substances Act (COVID-19 vaccines)

2 year exclusion, from seller restrictions, of COVID-19 vaccines sold by the Department of Health to certain licensed wholesalers, distributors or health services.

### Mineral and Petroleum Resources Development Act (Mining charter)

Various media report that the North Gauteng High Court ruling, which found that the mining charter 2018 is a policy instrument and not regulation; and that several clauses are to be set aside or amended, including capital goods procurement targets and 30% black empowerment targets, will not be appealed.

### National Environmental Management Act (Hazardous chemicals and pesticides)

The prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, that apply to importers and exporters of chemicals listed in Annex III of the Rotterdam Convention and to pesticides and industrial chemicals controlled under SA legislation, has been suspended for 12 months from 19 November 2021.

*Note: Related laws to consider may include, amongst many others, the [Agricultural Products Standards Act](#); the [Consumer Protection Act](#); the [Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act](#); the [Foodstuffs, Cosmetics and Disinfectants Act](#); the [Hazardous Substances Act](#); the [Medicines and Related Substances Act](#); the [National Environmental Management Waste Act](#); the [National Health Act](#); the [National Water Act](#); and the [Occupational Health and Safety Act](#).*



### National Environmental Management Air Quality Act (Greenhouse gas emissions)

Technical guidelines for the validation and verification of greenhouse gas emissions available from the Department of Forestry, Fisheries and the Environment.

*Note: Related laws to consider may include [national greenhouse gas emission reporting; declaration of greenhouse gases as priority air pollutants](#); [the Carbon Tax Act](#); and [the duty of care and remediation of environmental damage](#).*

### National Environmental Management Biodiversity Act (Cheetah)

Draft non-detriment findings for the cheetah available from the Department. Comment deadline 30 days from 26 November 2021.

### National Forests Act (Protected trees)

Amendments have been proposed to the [list of protected tree species](#) (trees and their product that require a licence or exemption before they may be cut, disturbed, damaged, destroyed, possessed, collected, removed, transported, exported, purchased, sold, donated or otherwise acquired or disposed of).

### Postal Services Act (COVID-19)

New [COVID-19 communication standards directions](#) gazetted that revisit the requirement placed on the SA Post Office to make available its national address system, including any relevant database, in certain instances for tracking and tracing persons infected with COVID-19, and/or persons that may have been in direct physical contact with such infected persons.

*Further note: The COVID-19 directions state that the COVID-19 regulations will prevail in the event of conflict between the regulations and other ICASA regulations.*

### Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (Transfer of functions)

[The Act](#), that places limits on the eviction of unlawful occupiers (as defined), has been transferred to the Minister of Human Settlements.

*Note: Related laws to consider may include, amongst many others, the Disaster Management Act [COVID-19 regulations](#) (limitations on eviction and demolition of places of residence); the [Extension of Security of Tenure](#)*

*Act; the National Health Act (health standards for premises); the Occupational Health and Safety Act (duty to safeguard premises); the Prescription Act; the Rental Housing Act; and the Trespass Act.*

### 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.*

### 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 (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.*

### Public Service Act (State Security Agency)

The executive authority of the State Security Agency is now the Presidency.

*Note: Related laws to consider include, amongst others, the Critical Infrastructure Protection Act; the Cybercrimes Act (not commenced yet); the Intelligence Services Act; the Intelligence Services Oversight Act; and the National Strategic Intelligence Act.*

### Securities Transfer Tax Act (Taxation Laws Amendment Bill)

The Bill proposes amending [sections 1](#) (collateral arrangement); and [8](#) (exemptions).

### Standards Act

New, proposed, amended, and withdrawn standards gazetted for [12 November 2021](#).

### 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 (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 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 (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 sub-section (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”.*

#### **Transfer Duty Act (Taxation Laws Amendment Bill)**

The Bill proposes amending [section 9](#) (exemptions from duty).

#### **Value-added Tax Act (Taxation Laws Amendment Bill 2021)**

The Bill proposes amending [sections 18D, 9, 10 and 16](#) (temporary letting of residential property); [section 2](#) (life insurance policies); and [11](#) (international telecommunications services); as well as [schedule 2](#) (zero rating super fine maize meal).



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## Tax

### 2. INCOME TAX ACT (TAXATION LAWS AMENDMENT BILL 2021)

The Taxation Laws Amendment Bill 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);
- (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).

*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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