

**FEDHASA
LEGISLATION BRIEF & UPDATE
MARCH / APRIL 2008**

NATIONAL GOVERNMENT

DEPARTMENT OF COMMUNICATIONS

Film & Publications Act & Regulations – (see Feb/March report)

Update - Publication Board responds to Fedhasa. March 17, 2008

Dear Fedhasa, As you know, section 27A(1)(a) of the Films and Publications Act, No 65 of 1996, requires all Internet service providers (ISP) to register with the Board, and take all reasonable steps to prevent such services from being used for the hosting or distribution of child pornography. An ISP is defined in the Act as any person who carries on the business of providing access to the Internet by any means. It has been argued that the provision of access to the Internet must be the primary business in order to come within the definition of an ISP. If a hotel, for instance, provides its clients with facilities to access the Internet, the hotel is not an ISP since it is in the hospitality business. However, if the hotel provides facilities to access the Internet at a cost which includes a profit to the hotel, it would be regarded as also running the business of providing access to the Internet. But if the costs simply cover the actual cost of such service, then one might argue that that is not a business. I think the issue will have to be determined on a case-by-case basis. Regards, Iyavar

Copy Right Act / Performance Protection Act & Regulations – (see Feb/March report)

Update - SAMRO has registered as a Collecting Society and will now be in a position to collect the new levy as provided for under the Copy Right Act/Performance Protection Act & Regulations

DEPARTMENT OF EDUCATION

SA schools may close during 2010 WC (News Article - April)

South Africa's education department is proposing a five-week break for schools for the duration of the 2010 World Cup. The proposed calendar will see pupils getting a mid-year break which will potentially run from June 10 to July 12. Chief Director responsible for national and provincial co-ordination, Sihle Mlambo, drew up the proposal after the department was inundated with requests from the transport department to alter the school period. The department was asked to consider things like infrastructure, absenteeism and transportation issues. Mlambo added it was the best possible solution as the country will be faced with a massive influx of tourists which will create a major strain on both the transport and hospitality industries.

DEPARTMENT OF FINANCE

Taxation Laws Amendment Bill No 13 – March 2008

The Bill amends the Income Tax Act, 1962, so as to fix the rates of normal tax; to amend and insert certain definitions; to delete certain obsolete definitions; to delete certain obsolete provisions; to delete certain obsolete references; to effect textual and consequential amendments; to exclude certain amounts from the net income of a controlled foreign company; to add, amend and remove certain exemptions; to add, amend and remove certain deductions; to amend provisions relating to: the deemed receipt or accrual of income, certain limitations in respect of deductions, special corporate rules, the determination of the net amount of a dividend, the treatment of certain tax claims and refunds, the determination of S.I.T.E., public benefit activities and the taxation of fringe benefits, persons commencing or ceasing to be residents, capital distributions and oil and gas companies; Customs and Excise Act, 1964, so as to amend rates of duty in Schedule No. 1; Value-Added Tax Act, 1991, so as to amend thresholds; Collective Investment Schemes Control Act, 2002, so as to effect a textual correction; Revenue Laws Amendment Act, 2006, so as to amend provisions with regard to the 2010 FIFA World Cup; Diamond Export Levy Act, 2007, so as to effect textual corrections; Securities Transfer Tax Act, 2007, so as to substitute a word; and Revenue Laws Amendment Act, 2007, so as to amend effective dates; to amend provisions relating to the amalgamation of sporting bodies; to effect textual amendments; and to provide for matters connected therewith.

Link – Fedhasa website - legislation – government documents – SA Revenue Services – Bills or

<http://www.sars.gov.za/legislation/Bills%20Memos/Taxation%20Laws%20Amendment%20Bill%2013%20of%202008.pdf>

Taxation Laws Second Amendment Bill No 14 – March 2008

The Bill amends the Income Tax Act, 1962, so as to amend certain definitions; to delete certain obsolete provisions; to amend provisions relating to the submission of tax returns and reconciliations; to provide for the imposition of penalties; to effect textual and consequential amendments; Value-Added Tax Act, 1991, so as to effect textual amendments; Diamond Export Levy (Administration) Act, 2007, so as to clarify provisions relating to registration; and Securities Transfer Tax Administration Act, 2007, so as to effect a textual correction; and to provide for matters connected therewith.

Link – Fedhasa website - legislation – government documents – SA Revenue Services – Bills or

<http://www.sars.gov.za/legislation/Bills%20Memos/Taxation%20Laws%20Second%20Amendment%20Bill%2014%20of%202008.pdf>

Explanatory Memorandum on Taxation Laws Amendment Bill - March 2008

The Taxation Laws Amendment Bill, 2008, introduces amendments to the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Collective Investment Schemes Control Act, 2002, the Revenue Laws Amendment Act, 2006, the Diamond Export Levy Act, 2007, the Securities Transfer Tax Act, 2007 and the Revenue Laws Amendment Act, 2007.

Link – Fedhasa website - legislation – government documents – SA Revenue Services – Bills or

<http://www.sars.gov.za/legislation/Bills%20Memos/Memos/2008/Legislation%20-%20Bills%20and%20Explanatory%20Memoranda%202008.htm>

Companies should review Articles of Association - (News Article – March)

The Corporate Laws Amendment Act, which became law at the end of last year, has introduced a number of changes to company legislation. "The Act has introduced the concept of a 'widely held' company and described certain compliance requirements which must be met," says Stephen Kennedy-Good, a Deney's Reitz associate. A company will be "widely held" if its articles provide for the unrestricted transfer of its shares. This means the shares of the company are not subject to pre-emptive rights in favour of all shareholders in every proposal to sell to a third party; or it is permitted by its articles to offer shares to the public; or it decides by special resolution to be a widely held company; or if it is a subsidiary of a company in one of the previous categories. As all public companies must be

permitted by their articles to offer shares to the public, it follows that public companies will be classified as "widely held".

But private companies will need to review their company's articles of association to see whether they contain the pre-emptive rights described above or whether they are a "limited interest" company. Kennedy-Good says the Act stipulates that "widely held" companies must meet additional compliance requirements. For example, the company will have to appoint an audit committee which will be responsible for the appointment of an auditor, auditor independence and the approval of fees to be paid to the auditor. The company will also have to report financial information in accordance with international financial reporting standards. "We recommend that senior management review the articles of association of their company and, if necessary, take steps to ensure compliance with the Act or evaluate whether it would be desirable, and in fact possible, to amend their company's articles for that company to fall outside the definition of a "widely held" company," Kennedy-Good says.

New accounting framework for SME's (News Article – March)

A new accounting framework released recently by the International Accounting Standards Board for small and medium sized enterprises (SMEs) will provide relief from many of the stringent reporting requirements. Garth Coppin, national director of accounting at Ernst & Young, said, "the Accounting Practices Board decided the standard of general accepted accounting practice (Gaap) for SMEs may be applied by limited interest companies and other entities with no public accountability as long as they meet the SME definition." The new reporting requirements come in the light of the amended definition of companies in the Corporate Laws Amendment Act. The act defines a company as being "widely held" if its articles provide for unrestricted transfer of its shares and permit it to offer shares to the public. A "limited interest" company is one that is not widely held.

DEPARTMENT OF HEALTH

Tobacco Products Control Amendment Bill [B 7–2008]

The Tobacco Products Control Amendment Bill No B7 of 2008 has been published for public comment. The Parliamentary Portfolio Committee on Health (National Assembly) encourages interested individuals and organisations to submit written comment on the Tobacco Products Control Amendment Bill (B7 – 2008). The public hearings will take place on 6 and 7 May 2008 at Parliament. Written submissions and requests for verbal submissions must be addressed to –

The Committee Secretary PO Box 15, Cape Town, 8000 for attention Ms Vuyokazi Majalamba and must reach her by no later than 11 April 2008 at 12:00

Contact - Ms Vuyokazi Majalamba Tel 021 4033642 Cell 073 0209249 email

vmajalamba@parliament.gov.za

Link:- <http://www.info.gov.za/gazette/bills/2008/b7-08.pdf> or it can be downloaded from the Fedhasa website –

The Bill seeks to:

- Amend the Tobacco Products Control Act, 1993, so as to define certain expressions and to amend certain definitions
- Provide anew for the advertising, sponsorship, promotion, distribution and information required in respect of the packaging and labeling of tobacco products
- Make the standards that apply to manufacturers of tobacco products applicable to importers of tobacco products
- Prohibit the sale of tobacco products to and by persons under the age of 18 years
- Extend the provisions in respect of free distribution to tobacco products
- Provide anew for tobacco sales by means of vending machines
- Extend the Minister's power to make regulations

- Adjust the provisions in respect of offences and penalties

DEPARTMENT OF HOME AFFAIRS

Cabinet declares May 2 a holiday (News Article – March)

Cabinet has declared the second of May a national holiday. The decision has been taken because Human Rights Day and Good Friday fall on the same day. Government spokesperson, Themba Maseko, says President Thabo Mbeki will issue a proclamation in a few days' time, declaring the day as a national holiday. Cabinet's decision follows consultations with all stakeholders.

Smart card pilot ID's by year end (News Article April 2008)

A pilot project on a smart-card identity system, which will replace the current green ID books, is to be rolled out before the end of the year. The new identity card system forms part of Msimang's strategy to clean up a department beset by corruption related to the issuing of IDs. Although he admitted the new smart card IDs would not be "beyond vulnerability", he said they were far less of a security risk than the current ID books. He could not say how long the pilot project would run, but hinted that the rollout will happen next year.

DEPARTMENT OF LABOUR

Compensation Fund deadline extended

Employers have until April 30 to submit their Return Of Earnings (ROE) forms. Spokeswoman Zolisa Sigabi said the decision was in line with the fund's approach of partnering clients to ensure strict adherence to the law, which requires employers to submit their returns each year. The Compensation Fund is urging employers who have not submitted forms to do so immediately to avoid penalties. Further enquiries can be directed to the Fund on 0860-1053-50 or fax forms to 012 357 1817. – **Sapa**

Bargaining Council Employers & Employees deadlocked (News Article 6th April 2008)

Unions representing workers in the catering industry want the lowest paid employee to earn R3 500 a month but would be prepared to settle for R2 500, according to union organiser Malinge ka Plaatjie. Ka Plaatjie, the national organiser from the Hotel, Liquor, Catering, Commercial and Allied Workers' Union (Hotellica), said the union would decide in three weeks on the action it would embark on should employers continue to refuse a 15 percent increase, plus medical aid, a provident fund, a 13th cheque, four months' paid maternity leave and an end to the employment of contract workers. Last week Hotellica, the SA Commercial, Catering and Allied Workers' Union, and the Industrial, Commercial and Allied Workers' Union declared a dispute with the employers after the negotiations at the bargaining council for the restaurant, catering and allied trades in Johannesburg reached a deadlock. The matter has been referred to the Commission for Conciliation, Mediation and Arbitration.

DEPARTMENT OF MINERALS AND ENERGY

Objections to Eskom price hike encouraged - April 03, 2008 (News Article)

Electricity consumers will be given the opportunity to object to Eskom's proposed 53 percent increase, says Buyelwa Sonjica. The minister of minerals and energy affairs said the government would be encouraging people, **including businesses**, to take part in the public participation meetings. The objection period is from April 8 to May 28.

DEPARTMENT OF PUBLIC ENTERPRISES

High penalty tariffs to begin in July (News Article – March)

High penalty tariffs are to be charged for electricity consumption in excess of a quota limit with effect from 1 July 2008, Minister for Public Enterprises Alec Erwin has promised. The minerals and energy department is also looking at energy efficiency regulations, which will ban certain practices and enforce compulsory norms and standards.

DEPARTMENT OF SPORTS & RECREATION

“Legal viewing” guide for 2010 World Cup (News Article – March)

Private undertakings will be allowed to publically broadcast the Confederations Cup 2009TM and the 2010 Fifa World CupTM provided they do not charge patrons for viewing the events. The SABC has announced that access to the broadcast signal for non-commercial public viewing events will be granted free of charge to interested parties who wish to host such events within South Africa during the Confederations Cup and the World Cup. Niclas Ericson, Fifa Director TV, said it is important that people know the difference between a commercial and non-commercial public viewing event. "A public viewing event is considered a 'commercial public viewing event' if an exhibitor stages it for commercial purposes by, for example, charging a direct or indirect admission fee to the event or sponsorship or other commercial rights of association are exploited relating to the event." Interested parties who want to organise a public viewing event of a commercial nature will have to apply for a public viewing licence from Fifa through the official website www.fifa.com.

A non-commercial public viewing event, on the other hand, involves no money-making incentive. This event can be staged in any place other than a private dwelling, including at cinemas, bars, restaurants, stadiums, open spaces, offices, construction sites, buses, schools and hospitals. Advocate Dali Mpofu, SABC group CEO said the broadcast signal will be available free of charge and no physical licence will be required by non-commercial entities wishing to stage non-commercial public viewing events. There will also be facilities to grant licences to those commercial entities that wish to stage commercial public viewing events.

SOUTH AFRICAN REVENUE SERVICES – SARS

SARS Interpretation Note No. 41 - Application of VAT to the Gambling Industry

The purpose of this Interpretation Note is to provide clarity on the value-added tax (VAT) implications of specific transactions undertaken in the gambling and casino industry. This interpretation note, unless otherwise specifically stated, does not constitute a binding general ruling as envisaged in section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act.

Link -

[http://www.sars.gov.za/it/Interpretation%20Notes/2008/Interpretation%20Note%20No%2041%20\(Issue%202\).pdf](http://www.sars.gov.za/it/Interpretation%20Notes/2008/Interpretation%20Note%20No%2041%20(Issue%202).pdf)

SARS Draft Interpretation Note - Right of use of Motor Vehicle

This Note provides guidance on the taxable position that arises when an employer grants an employee the right of use of a motor vehicle, commonly known as the “company car fringe benefit”.

Link -

<http://www.sars.gov.za/it/Draft%20Interpretation%20Notes/Draft%20Interpretation%20Note%20%20Right%20of%20use%20of%20company%20car.pdf>

SARS Draft Interpretation Note - Scholarships or Bursaries

This Note provides clarity on the tax implications of any bona fide scholarship or bursary granted to enable or assist any person to study at a recognised educational or research institution. This Note replaces Practice Note: No. 17 of 12 March 1993.

Link -

<http://www.sars.gov.za/it/Draft%20Interpretation%20Notes/Draft%20Interpretation>

Draft Interpretation Note: Income Tax - Deduction of Security Expenditure

Taxpayers incur a variety of expenditure for the purpose of preventing and combating crime in South Africa. This Interpretation Note provides clarity on the deductibility of security expenditure.

Link - Fedhasa website or

<http://www.sars.gov.za/it/Draft%20Interpretation%20Notes/Draft%20Interpretation%20Note%20-%20Income%20Tax%20-%20Deduction%20of%20Security%20Expenditure.pdf>

Tax Guide on the Deduction of Medical Expenses (Issue 2)

This guide provides general guidelines regarding the deductibility of medical expenses for income tax purposes. It does not delve into the precise technical and legal detail that is often associated with tax, and should, therefore, not be used as a legal reference.

Link - Fedhasa website or -

[http://www.sars.gov.za/it/brochures/Tax%20%20Guide%20on%20the%20Duction%20of%20Medical%20Expenses%20\(Issue%202\).pdf](http://www.sars.gov.za/it/brochures/Tax%20%20Guide%20on%20the%20Duction%20of%20Medical%20Expenses%20(Issue%202).pdf)

Tax Guide on the incentive in respect of Learnership Agreements

This guide provides general guidelines regarding the tax incentive in respect of learnership agreements. It is not meant to delve into the precise technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference. The guide is not a binding general ruling in terms of Part IA of Chapter III of the Income Tax Act, No. 58 of 1962 (the Act).

Link - Fedhasa website or -

<http://www.sars.gov.za/it/brochures/Guide%20on%20the%20tax%20incentive%20in%20respect%20of%20learnership%20agreements.pdf>

VAT 409 – Draft Guide for Fixed Property and Construction

Deals with aspects of Commercial Accommodation and Rental Pools amongst others

The Guide for Vendors (VAT 404) is an important source of information to which most vendors regularly refer for guidance on the VAT implications of their day-to-day business transactions. The document deals with a broad range of VAT related topics and is aimed at providing general information and guidance to all vendors. It therefore focuses on the most important VAT concepts and most common VAT issues arising in the business environment so that vendors are in a position to correctly account for VAT on their business transactions, and generally to comply with the obligations imposed under the Value-Added Tax Act, 1991.

Web Link - [http://www.sars.gov.za/new/VAT%20409%20-%20Guide%20for%20Fixed%20Property%20and%20Constuction%20\(Draft\).pdf](http://www.sars.gov.za/new/VAT%20409%20-%20Guide%20for%20Fixed%20Property%20and%20Constuction%20(Draft).pdf)

SARS on small business taxation (News Article – March)

SA Revenue Service (Sars) commissioner Pravin Gordhan met businesspeople in Soweto last week to discuss the new tax regime for South Africa's very small businesses. His visit came after finance minister Trevor Manuel's budget announcement of a presumptive turnover tax, which would replace income tax and value-added tax (VAT) for businesses with a turnover of less than R1 million a year. "The system is likely to be implemented next year," said Gordhan. "It is aimed at ensuring compliance for very small businesses. The amount you pay will depend on the turnover of your business." The new tax system will be applicable to sole proprietors, partnerships and incorporated entities. Businesses with profit

of less than R100 000 will be exempt from paying tax. Soweto business people welcomed the introduction of the single tax system.

Jerry Vilakazi, the chief executive of Business Unity SA, commended Sars and the treasury, saying the proposed tax system would create and stimulate growth in the small business sector. "The change in the tax system will not only result in more money in the pockets of SMME owners, but it will also pave the way for participation in the mainstream economy," said Vilakazi. Gordhan said Sars wanted to be seen as a partner of these small businesses. He said: "We have identified the need to improve our image and be seen more as a partner than an enemy of small businesses. We believe that our improved tax collection packages will attract more businesses to our database and result in the collection of more tax." Sars collected R571 billion in the past tax year, with 24 percent coming from businesses and 28 percent from VAT. More than 300 000 applications were received for the small business amnesty, which ended in May. The last batch of amnesty applicants will know the outcome of their applications

Tax deduction for security costs (News Article – April)

Businesses might be able to claim tax deductions for security expenses in future, according to a draft proposal which was recently released by the South African Revenue Service (SARS), writes Sanchia Temkin. Businesses are having to fork out millions of rands annually to prevent and combat crime in SA, say tax analysts. "Businesses are finding that it is imperative to protect their employment base and should accordingly be allowed a corporate tax deduction," said Gerald Seegers, a tax partner at PriceWaterhouseCoopers. SARS spokesman Adrian Lackay said yesterday the proposal was a discussion document in the light of rising crime.

DEPARTMENT OF TRADE & INDUSTRIES

Price fixing will be costly for Directors (News Article – March)

Company directors and bosses face the prospect of having to pay huge fines out of their own pocket if they are found to be involved in cartel or price-fixing activities, according to tough new legislation being prepared for the cabinet's approval. The move to hold directors personally liable represents a major change in SA's approach to anti-competition legislation. At present, competition authorities can only fine companies up to 10% of revenue. The Competition Amendment Bill is part of the government's attempt to crack down on cartel activity in a broader attempt to drive down the cost of basic foodstuffs. The new law is expected to be presented to the cabinet in April. The proposals also recommend that directors who engage in cartel activity be disbarred or disqualified for an unspecified period, and also be fined. There is also the possibility of directors being placed on a blacklist.

Confusion over self BEE ratings (News Article – March)

Rating agencies are still sowing confusion among business owners by insisting that those who do business with corporates will have to get a BEE rating from a verification agency as self-assessment will no longer be permitted. On the other hand, the department of trade and industry says business owners can still conduct their own ratings. The first rating agencies are set to be accredited next month. An empowerment rating can cost anything from R2 000 to R10 000 for a small company. The BEE codes apply to all enterprises with annual turnovers of R5 million or more. The Association of BEE Verification Agencies (Abva) and one of its members have issued e-mails saying self-ratings were not permissible. But the acting chief director of BEE, Nomonde Mesatywa, said Abva was "wrong" in insisting that business owners who supply corporates must have a verified agency rating. Business owners could conduct a rating as long as it was supported by suitable documents detailing how they arrived at their score. If a corporate insisted on verified ratings, she said, it should elect to cover the cost of its suppliers' ratings.

PROVINCIAL GOVERNMENT

LIMPOPO

Limpopo Liquor Bill published for comment

The Limpopo Draft Liquor Bill 2007 was published and advertised for public comment with a deadline date of the 31st March 2008. The draft Bill and a written submission from FEDHASA, on behalf of the members, can be downloaded from the Fedhasa website www.fedhasa.co.za - click on legislation (top of page) click on Government Documents.

WESTERN CAPE

Draft Liquor Bill published for public comment

The Western Cape Liquor Bill [B 2—2008] has been finalised and published for public comment. Provincial Gazette Extraordinary 6509 Friday, 14 March 2008. Any person or organisation wishing to comment on the said Bill is requested to lodge their comment in writing before or on 16 April 2008: by posting it to: The Secretary: Western Cape Provincial Parliament Attention: Ms N Manjezi P.O. Box 648 Cape Town 8000 or by e-mail to nmanjezi@wcpp.gov.za or by fax to N Manjezi (021) 487-1685

LOCAL GOVERNMENT

JOHANNESBURG

New rates tariff for Johannesburg (News Article – March)

The City of Johannesburg has approved its proposed new rates tariff structure which values property according to overall market value of the land and improvements. In terms of the Municipal Property Rates Act, residential owners will pay 0.004 cents - less than half a cent - per rand value of their property for their rates from July 1. Sectional title holders will pay individual rates for the first time - at a proposed 0.0032 cents per rand value, but will enjoy a rebate of 20 percent. Newly rateable properties will be phased in over four years with 25 percent payable in the first year, 50 percent the second, 75 percent the third and 100 percent in the fourth.

Business, commercial and industrial properties will pay 1.2 cents per rand, education 0.002 cents, farming 0.004 cents, mining 1.2 cents and vacant land 1.6 cents. The rates on vacant land will be higher to encourage development on the sites, the city said at a briefing. There will be a R150 000 value exclusion from all residential property. For more information ratepayers can consult www.joburg.org. Objections can be lodged until May 27.