

August 2016

"The only way of finding the limits of the possible is by going beyond them into the impossible" – C. Clarke

FIVE TO SEVEN YEARS FOR COMPANY RECORDS

The Companies Act states that any documents, accounts, books, writing, records or other information pertaining to a company must be kept for a period of 7 (seven) years. However, the Income Tax Act, the Customs and Excise Act and the Value Added Tax Act require records of a company to be kept for a period of no longer than 5 (five) years. This leads to controversy when considering the question as to whether a company will be in contravention of the Companies Act should it dispose of records after only five years, as permitted by the South African tax legislation.

The Companies Act states that should there be an inconsistency between any provision of the Companies Act and a provision of any other national legislation, the provisions of both Acts must be applied concurrently, to the extent that it is possible. Should it not be possible to apply or comply with one of the inconsistent provisions without contravening the second, the Companies Act prescribed a number of national legislative documents that will prevail over the provisions of the Companies Act.

Neither the Income Tax Act, the Customs and Excise Act nor the Value Added Tax Act are listed, the implication being that the provisions of the Companies Act will prevail. Taxpayers, being companies regulated by the Companies Act, will have to keep records for a period of 7 (seven) years before disposing thereof.

Law & Laughter

Joke: "If you think lawyer jokes are funny"
Lawyer: "next time you're in a jam, call a comedian"

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CLOSING THE GAP ON TRUSTS

The draft Taxation Laws Amendment Bill, 2016 ("TLAB") was published on 08 July 2016. The TLAB proposes further rules in respect of the taxation of interest free loans made to trusts.

A person can transfer assets to a trust in any of the following manners:

1. A donation of assets to the trust, which triggers donations tax at 20% (twenty percent) of the fair market value of the asset in the hands of the person donating; or
2. A sale of the assets to the trust on loan account at an arm's length interest rate being charged, in which instance the person lending the money will be liable for normal tax on the interest portion of the loan repayments, provided the interest is market related; or
3. A sale of the assets to the trust on loan account and no interest charge or interest below market related.

In terms of the new rules proposed by the TLAB and expected to come into effect on 01 March 2017, should a person sell assets to a trust on loan account and charge no interest or charge interest below market related, an amount equal to the difference between:

- the interest that would arise as determined with reference to the official rate of interest (as determined in terms of the Seventh Schedule to the Income Tax Act and calculated to be 8% (eight percent) at this stage); and
- the actual applicable rate of interest on the loan below market rates made to a trust;

will be regarded as an amount of income accrued or received by the lender.

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