Theron Le Roux

Accountants / Rekenmeesters

Assosiaat Algemene Rekenmeester (SA • Associate General Accountant (SA)
Professionele Rekenmeester (SA) • Professional Accountant (SA)
Belastingpraktisyn • Tax practitioner

We care about your business

38 Akasia Street George East 6529 • ✉ 4529 George East 6539 • Tel: 044 871 5067 • Fax: 044 871 5082

WITH COMPLIMENTS

e-mail : jgmt@jgmt.co.za

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In this Issue

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POPI (THE PROTECTION OF PERSONAL INFORMATION ACT) – HOW WILL IT AFFECT YOU AND YOUR BUSINESS?

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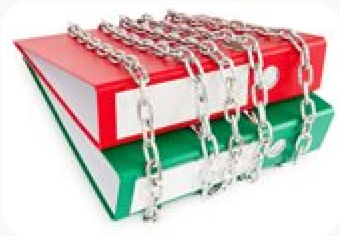


Technology has unleashed enormous power which has altered the way we live and do business. It brings with it concentration of data which is easily accessible. When this data affects private information, protections need to be built in.

POPI (which was gazetted in November) is aimed at codifying the use of and the safeguarding of such information. **This has substantial implications for business, particularly in the area of staff records. The fact that the Act imposes penalties of up to a R10 million fine or ten years imprisonment should further focus business.**

The Act in a nutshell

- Firstly, what is personal information? POPI defines this as including - a person's name (including a juristic person e.g. a company), contact details, religion, sexual orientation, personal views, private correspondence, health records, employment records, financial records, biometrics (DNA, fingerprints) etc.

- Eight self-explanatory principles govern the Act:

    1. Accountability
    2. Processing limitation
    3. Purpose
    4. Further processing limitation
    5. Information quality
    6. Openness
    7. Security
    8. Right of access

- Further restrictions apply for the use of "special personal information" like political affiliation or sexual orientation.

- A regulatory body known as the Information Regulator is to be established with the following powers and duties:-

    - Search and seizure powers
    - May impose administrative fines
    - May sue on behalf of the subject
    - Can decide if the law is being complied with
    - Receives and acts on complaints
    - May issue notices

  Note that it is a criminal offence to make false statements to, or to not comply with notices from, the Regulator.

- POPI makes provision for cross-border uses of personal information

- In terms of direct marketing, there is a clause requiring opt-in. This is contrary to current laws where the norm is to require opt-out. This means permission must be sought from people whose information will be used, **prior to** direct marketing taking place. The only exception is in respect of existing customers/clients.

- Twelve month transition period – businesses have twelve months from commencement (whilst POPI has been passed into law, the President is still to determine a date from which it commences and becomes effective) to comply.

  This transition period is going to be onerous on businesses. They need to determine what information falls into the Act, how it is used, protected, stored, who has access to it. Businesses will also need to get the relevant consents from staff and other stakeholders. What privacy statements do you need to make, what protocols do you need to put in place over your information and website?

As there are onerous penalties and these requirements concern the safety of your staff's (amongst other) information, it is well worth investing time and taking advice to get the right procedures in place now.

RECORD RETENTION: PLENTY TO KEEP TRACK OF!

There are many statutory requirements to comply with. Each has its own period for keeping records. We have tried to simplify the most important ones in table format.

The following tables (largely adapted from tables obtained from SAICA and from CIPC) show record retention for:

- Companies and Close Corporations,
- Tax records,
- Staff records.

1. *Companies/Close Corporations*

COMPANIES/CLOSE CORPORATIONS			
No	**Description**	**Retention Period Companies**	**Retention Period CCs**
1	Accounting records, including supporting schedules and documentation relating to all accounting records	7 years	15 years
2	Registration Certificate/Founding Statement (CK1)	Indefinite	Indefinite
3	Memorandum of Incorporation and amendments/alterations. Amendments to Founding Statements (CK2, CK2A)	Indefinite	Indefinite
4	Annual financial statements	7 years	15 years
5	Minutes and resolutions of directors' (members') meetings and sub-committees	7 years	Indefinite
6	Rules	7 years	Indefinite*
7	Register of company secretary and auditors	Indefinite	Indefinite*
8	Microfilm of original record	7 years*	Indefinite
9	Shareholder meetings (including annual general meeting), resolutions and all communication with shareholders	7 years	See point 5 for CCs
10	Share register	Indefinite	CK2 above - indefinite
11	Regulated companies (subject to Takeover Regulations)	Indefinite	Indefinite*
12	Directors and past directors	7 years	Indefinite*
** = Not explicitly stated but makes sense as shown*			

2. *Tax*

TAX - Part 1			
No	**Act**	**Description**	**Retention Period**
1	Income Tax	**Employer to keep employee records**: Remuneration paid Tax deducted Employee tax number Any other prescribed information EMP 501 (half yearly PAYE reconciliation)	5 years
2	Income Tax	**Micro Business to retain records of:** Annual turnover Dividends declared Every fixed asset with a cost in excess of R10,000 Liabilities at year end greater than R10,000	5 years
3	Tax Administration	**Income tax submission – Individuals and Businesses** If submission late	5 years 5 years from submission date
4	Tax Administration	If advised by SARS of a tax audit or if taxpayer lodges an objection	5 years, plus keep all records until audit/objection is finalised

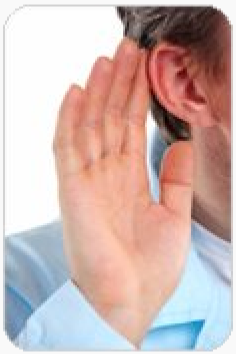
TAX - Part 2			
No	**Act**	**Description**	**Retention Period**
5	Value Added Tax	**Vendors are obliged to retain the following:** Record of all goods and services The rate of tax applicable to the supply and the suppliers or their agents Invoices Tax invoices Credit notes Debit notes Bank statements Deposit slips Stock lists Paid cheques	5 years
6	Value Added Tax	Evidence of zero rating	5 years
7	Value Added Tax	**Importation of goods and services:** Bill of entry Substantiation that VAT paid Any other prescribed records	5 years
8	Value Added Tax	**Change in basis of accounting:** Records of debtors and creditors in month prior to change	5 years
9	Value Added Tax	Agents to maintain documentation in terms of Customs and Excise Act to ascertain VAT number, address and name of principal	5 years

3. Staff Matters

STAFF MATTERS			
No	**Act**	**Description**	**Retention Period**
1	Basic Conditions of Employment	**Employers to keep**: Employee details after termination Employee's name plus occupation Salary paid to staff member Period worked If employee less than 18, date of birth	3 years
2	Labour Relations	**Employers to keep:** Records for each employee detailing The nature of any disciplinary offences What action was taken by the employer and The reasons for the actions	Indefinite
3	Labour Relations	**Employer to keep documentation of:** Collective agreements Arbitration awards	3 years
4	Labour Relations	**Employer to keep:** Documentation of any strike, lock-out or protest by staff	Indefinite

(If the tables above do not display correctly, please see the "online version" – link above the compliments slip)

TAX OMBUD APPOINTED AND GEARING UP TO HEAR YOUR COMPLAINTS



The position of Tax Ombudsman was created by the Tax Administration Act, Act 28 of 2011. Retired Judge Bernard Ngoepe was appointed as the first Ombudsman which effectively means the Office of Tax Ombudsman can begin to operate. A website is now being set up, the Office is being staffed (by transferring SARS officials to the Office) and it expects to be operating at full capacity in the first quarter of 2014.

Role of the Tax Ombud

The Office has no jurisdiction over tax law, tax policy, SARS practices and policies. Structures already exist for such matters, namely objections, ADR (alternative dispute resolution), Tax Boards (for simple and lower value cases), Tax Courts (appeals from Tax Boards and more complex higher value cases) and finally the civil Courts themselves.

Simply put the Ombud deals with service problems and administrative and procedural complaints. Taxpayers need to have exhausted existing channels before contacting the Tax Ombudsman. These are –

- Contacting the SARS call centre to register a complaint,
- Working through the closest SARS branch,
- Escalating the complaint to the SARS Service Monitoring Office,
- And only then to the Tax Ombudsman.

It should also be borne in mind that findings of the Ombudsman are not binding on SARS or the taxpayer.

However the Office of the Tax Ombudsman will be independent of SARS and its annual report will be tabled in Parliament. Judge Ngoepe has got off to a good start by setting a target of 15 business days to resolve complaints. He has the background and experience to make this a meaningful Office.

Whilst it will be cumbersome to register a complaint, the fact that the Office is independent and that its work will be visible to Parliament means it is worth giving the Tax Ombud's Office a chance to prove that it can be effective.

BUSINESS 101: LESS RED TAPE AND MORE INCENTIVES FOR SMALL BUSINESS?

Johann Rupert recently said he does not know how people start companies, considering, amongst other things, the amount of red tape in South Africa. A recent study found that only 14% of South Africans plan to open a business which is barely half the global norm. Ongoing compliance requirements from SARS plus new and revised laws are placing a heavy burden on small business.

There could be an upside

In his budget speech this year, Minister Pravin Gordhan set up a panel to review how to use tax revenues to best grow employment, promote economic growth and sustainable development. The panel, known as the Davis Tax Committee (DTC), was also required to work within the framework of the National Development Plan.

Judge Davis has made it a priority to focus on finding ways to stimulate the growth of small businesses. The DTC is also studying the amount of onerous red tape placed on small business.

In addition, the Employment Tax Incentive Act came into effect on 1 January 2014 (except section 10 which deals with reimbursements, commencement date still to be gazetted). You may, with a few exceptions, claim up to 50% of the cost of the wages of youths employed from ages 18 - 29 with a South African ID. The incentive will be in the form of a reduction of PAYE paid to SARS. Many businesses would like to employ more people but are put off by, amongst other things, the high cost of labour – this will certainly help reduce it for them.

What these two bits of information add up to is that government is aware of the difficulties faced by business, particularly small business, and is beginning to take steps which could stimulate the growth of small businesses which are the prime creator of jobs.

YOUR TAX DEADLINES FOR JANUARY (AND A SCAM WARNING FROM SARS)

Provisional taxpayers must submit their 2013 Income Tax returns via eFiling by Friday 31 January 2014.

SARS regularly gives "scam alert" updates – it is worth reading the "Scams and Phishing Attacks" section on the SARS website at http://www.sars.gov.za/TargTaxCrime/Pages/Scams-and-Phishing.aspx?k.

Have a Healthy, Happy and Successful 2014!

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