

GUIDE ON THE RETENTION OF RECORDS

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PREFACE

This guide has been issued by The South African Institute of Chartered Accountants' (SAICA's) Legal Compliance Committee (LCC).

The guide seeks to inform members of the requirement to retain documents for a certain time period.

Every effort has been made to ensure that where quotes, extracts and paragraphs from legislation are referred to these references are correct. The information contained in the guide is for information purposes only.

Every effort has been made to ensure that the advice given in this guide is correct. Nevertheless, that advice is given purely as guidance to members of SAICA to assist them with particular problems relating to the subject matter of the guide, and SAICA will have no responsibility to any person for any claim of any nature whatsoever that may arise out of, or relate to, the contents of this guide.

RETENTION OF RECORDS

Owing to various legislative requirements, documents must be retained for a certain number of years, depending on the legislation.

This guide refers to the legislation and identifies the timeframe in which certain documents have to be kept.

The guide does not attempt to include all legislation, but only refers to the general legislation that impact on a wide variety of entities.

The guide has been compiled to assist SAICA members to meet the legislative requirements when they deal with clients.

The guide is structured to refer to the relevant Act and then to the documents that should be kept and to the period of retention.

Multiple legislative requirements

Where different legislation refers to the retention of the same records/information, business must consider adhering to the most **stringent of the legislative requirements**. For example the Value Added Tax Act states that invoices should be kept for 5 years from the submission of the return. However, the Companies would require the financial records to be kept for a minimum of 7 years and therefore the company should adhere to the most stringent requirement of 7 years. Where legislation refers to different records (e.g. employment records versus accounting records), then each requirement is specific to that legislation and should be applied accordingly to the specific records.

It is important to note that the Companies Act, No 71 of 2008, has a general requirement, in respect of *any* information that a company is required to keep (whether in terms of the Companies Act or any other legislation), to retain such information for a period of at least seven years (or the longer period specified in the applicable legislation). Therefore, companies should ensure that company records and information are retained for no less than seven years.

Retention of records for an “indefinite” period

In certain instances, legislation requires that records be kept for an “indefinite” period. The term “indefinite” is not defined in the legislation, but clearly requires that documents be retained for as long as the relevant entity exists. We note, however, that once an entity ceases to exist, the obligation on that entity to retain documents “indefinitely” also ceases to exist. In the case of a company, for example, the obligation to retain documents in terms of the Companies Act, No 71 of 2008, only applies to an entity that remains registered as a company.

After an entity ceases to exist, other legislation may require records to be retained, but typically only for a period of time and no longer “indefinitely”. In the case of liquidation or sequestration in terms of the Insolvency Act, No 24 of 1936, specific requirements apply to the retention of documents, discussed under Section 10 “Insolvency and Liquidation” below. As a company that has been deregistered can be re-registered, or litigation may follow in respect of the deregistered company, we propose that the records of a deregistered company be retained for a reasonable period after deregistration (we propose not less than three years).

1 AUDITORS

Auditing Profession Act, No 26 of 2005

The **Auditing Profession Act, No 26 of 2005**, implicitly requires that documents should be retained for three years. Section 47 requires the regulatory board, or any person authorised by it, to inspect or review the practice of a registered auditor that audits a public company at least every three years.

Section 5 of the IRBA Manual of Information 2014/15 states the following under the heading “Act”: “Inspections are performed in terms of Section 47 of the Auditing Profession Act, 2005. Functions of the IRBA include promoting the integrity of the auditing profession through conducting inspections. Audit firms performing mandatory audits of financial statements of entities, as defined by the Companies Act of 2008, are subject to firm inspections at least once in a 3 year cycle.”

The International Standard on Quality Control (ISQC 1) paragraph A61 specifically requires the retention period for audit engagements to be no shorter than five years from the date of the auditor’s report, or, if later, the date of the group auditor’s report.

	Document	Retention period
	Reference: ISQC 1, para A61	
1.1	Working papers, statements, correspondence, books or other documents in the possession or under the control of a registered auditor	5 years after completion of the audit

2 CLOSE CORPORATIONS

Close Corporations Act, No 69 of 1984

The **Close Corporations Act, No 69 of 1984**, has the goal of providing for the management, control and liquidation of close corporations. The Administrative Regulations identify the various periods that documents relating to the Close Corporation must be retained.

	Document	Retention period
	Schedule 3 amended by Government Notice R1664 of 1982	
2.1	Accounting records, including supporting schedules to accounting records and ancillary accounting records	15 years
2.2	Amended Founding statement (forms CK 2 and CK 2A)	Indefinite
2.3	Annual financial statements, including annual accounts and the report of the accounting officer	15 years
2.4	Founding statement (Form CK 1)	Indefinite
2.5	Microfilm image of any original record reproduced directly by the camera – the “camera master”	Indefinite
2.6	Minutes books as well as resolution passed at meetings	Indefinite

3 COMPANIES

Companies Act, No 71 of 2008

The **Companies Act, No 71 of 2008**, consolidates and amends the law that relates to companies. This Act became effective on 1 May 2011 and should be read with the Companies Amendment Act, No 3 of 2011, and the Companies Regulations, 2011.

The Act expressly provides that records must be kept “in written form, or other form or manner that allows that information to be converted into written form within a reasonable time”.

	Document	Retention period
	Reference: Section 24	
3.1	General rule for company records: Any documents, accounts, books, writing, records or other information that a company is required to keep in terms of the Act and other public regulation	7 years or longer (as specified in other public regulation)
3.2	Notice of Incorporation (Registration certificate)	Indefinite
3.3	Memorandum of Incorporation and alterations or amendments	Indefinite
3.4	Rules	Indefinite
3.5	Register of company secretary and auditors	Indefinite
3.6	Regulated companies (companies to which chapter 5, part B, C and Takeover Regulations apply) - Register of disclosures of person who holds beneficial interest equal to or in excess of 5% of the securities of that class issued	Indefinite
3.7	Notice and minutes of all shareholders meeting including: - Resolutions adopted - Document made available to holders of securities	7 years
3.8	Copies of reports presented at the annual general meeting of the company	7 years
3.9	Copies of annual financial statements required by the Act	7 years
3.10	Copies of accounting records as required by the Act	7 years
3.11	Record of directors and past directors, after the director has retired from the company	7 years
3.12	Written communication to holders of securities	7 years
3.13	Minutes and resolutions of directors' meetings, audit committee and directors' committees	7 years
	Reference: Section 50	
3.14	Securities register and uncertificated securities register	Indefinite

4 CONSUMER PROTECTION

Consumer Protection Act, No 68 of 2008

The **Consumer Protection Act, No 68 of 2008**, seeks to promote a fair, accessible and sustainable marketplace, to provide for improved standards of consumer information and to prohibit certain unfair marketing and business practices. The Act became effective on 31 March 2011 and should be read with the Consumer Protection Act Regulations. There are specific requirements for information to be kept by intermediaries, for auctions and promotional competitions.

	Document	Retention period
	Reference: Section 27(3)(b) and Regulation 10 Disclosure by intermediary	
4.1	Information provided to a consumer by an intermediary - <ul style="list-style-type: none"> - Full names, physical address, postal address and contact details; - Id number and registration number; - Contact details of public officer in case of a juristic person; - Service rendered; - Intermediary fee; - Cost to be recovered from the consumer; - Frequency of accounting to the consumer; - Amounts, sums, values, charges, fees or remuneration specified in monetary terms 	3 years
4.2	Disclosure in writing of a conflict of interest by the intermediary in relevance to goods or service to be provided	3 years
4.3	Record of advice furnished to the consumer reflecting the basis on which the advice was given	3 years
4.4	Written instruction sent by intermediary to the consumer	3 years
	Reference: Section 36(11)(b) and Regulation 11(6) Promotional competitions	
4.5	A person who conducts a promotional competition must retain: <ul style="list-style-type: none"> - full details, including identity or registration numbers, addresses and contact numbers of the promoter; - rules of promotional competition; - copy of offer to participate in promotional competition; - names and identity numbers of persons responsible for conducting the promotional competition; - full list of prizes offered in promotional competition; - a representative selection of materials marketing the promotional competition; - list of all instances when the promotional competition was marketed, including dates, medium used and places where marketing took place; - names and identity numbers of persons responsible for conducting the selection of prize winners in the promotional competition; - acknowledgement of receipt, identity number and the date of receipt of the prize by the prize winner; - declarations or affirmation that prize winners are not employees, directors, agents, or consultants who directly or indirectly controls or is controlled by the promoter or marketing service provider in respect of the promotional 	3 years

	competition, or the spouses, life partners, business partners or immediate family members; - basis of determining the prize winners; - summary describing the proceedings to determine the winners; - whether an independent person oversaw the determination of the prize winners; - the means by which the prize winners were announced and frequency; - list of names and identity numbers of prize winners; - list of dates when prizes were handed over to the prize winners; - steps taken by the promoter to contact the winner; - reasons for prize winner not receiving or accepting the prize and steps taken by promoter to hand over the prize	
	Document Section 45 and Regulation 31	
	Auctions	
4.6	Written agreement that contains the terms and conditions upon which the auctioneer accepts the goods for sale.	3 years

Protection of Personal Information Act, 4 of 2013

The Protection of Personal Information Act, No 4 of 2013, aims to give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations.

Section 14 of the Protection of Personal Information Act states that personal information must not be retained for any longer than is necessary to achieve the purpose for its collection. If there is no legal requirement to keep the information, it should be deleted. The Act therefore places an obligation on the person collecting the data to delete or remove it at a certain time.

Records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless:

- (a) retention of the record is required or authorised by law;
- (b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;
- (c) retention of the record is required by a contract between the parties thereto; or
- (d) the data subject or a competent person where the data subject is a child has consented to the retention of the record.

5 CREDIT AGREEMENTS

National Credit Act, No 34 of 2005

The public is protected by the National Credit Act, No 34 of 2005 (“NCA”), which aims to promote and advance the social and economic welfare of consumers by promoting a fair and transparent credit industry and assisting consumers to make more informed decisions before buying goods and services on credit. To ensure that this process occurs, certain documents must be retained.

	Document	Retention period
	Reference: National Credit Regulations, Regulation 55(1)(b)	
5.1	Records of registered activities to be retained by Credit Providers, in respect of each consumer: <ul style="list-style-type: none"> - application for credit; - application for credit declined; - reasons for decline of application for credit; - pre-agreement statement and quote; - documentation in support of steps taken in terms of section 81(2) of the Act; - record of payments made; and - documentation in support of any steps taken after default by consumer. 	3 years from the earliest of the dates on which the registrant created, signed or received the document
	Reference: National Credit Regulations, Regulation 55(1)(c)	
5.2	Records of registered activities to be retained by Credit Providers, in respect of operations: <ul style="list-style-type: none"> - record of income, expenses and cash flow; - credit transaction flows; and - management accounts and financial statements. 	3 years from the earliest of the dates on which the registrant created, signed or received the document
	Reference: National Credit Regulations, Regulation 17(1) Retention period applicable to credit bureau information	
5.3	Details and results of disputes lodged by the consumers	0.5 years
5.4	Enquiries	1 years
5.5	Payment Profile	5 years
5.6	Adverse classification of enforcement action	1 year
5.7	Adverse classification of consumer behavior	1 year
5.8	Debt restructuring	Until a clearance certificate is issued
5.9	Civil court judgments	The earlier of 5 years or until the judgment is rescinded by a court or abandoned by the credit provider in terms of section 86 of the Magistrate’s Court Act, 32 of 1944
5.10	Maintenance judgments	Until the judgment is rescinded by a court
5.11	Administration orders	5 years or until order

		is rescinded by court
5.12	Sequestration order	5 years or until rehabilitation order is granted
5.13	Rehabilitation orders	5 years
	Reference: National Credit Regulations, Regulation 55(1)(d)	
5.14	Records of registered activities to be retained by Credit Bureaux, 1. All documents relating to disputes, inclusive of but not limited to: - documents from the consumer; - documents from the entity responsible for disputed information; - documents pertaining to the investigation of the dispute; 2. Correspondence addressed to and received from sources of information as set out in <u>section 70(2)</u> of the Act and Regulation 18(7) pertaining to issues of disputed information.	3 years from the earliest of the dates on which the registrant created, signed or received the document
	Reference: National Credit Regulations, Regulation 55(1)(a)	
5.15	Records of registered activities to be retained by Debt Counsellors, in respect of each consumer - application for debt review; - copy of all documents submitted by the consumer; - copy of rejection letter (if applicable); - debt restructuring proposal; - copy of any order made by the tribunal and/or the court; and - copy of clearance certificate.	3 years from the earliest of the dates on which the registrant created, signed or received the document
	Reference: National Credit Regulations, Regulation 56	
5.16	Records to be kept in terms of section 170 of the Act in respect of each consumer: - records of all applications for credit, credit agreements and credit accounts	3 years from the date of termination of the credit agreement; or, in the case of an application for credit that is refused or not granted for any reason, from the date of receipt of the application

6 ELECTRONIC COMMUNICATION

Electronic Communication and Transaction Act, No 25 of 2002

The **Electronic Communication and Transaction Act, No 25 of 2002**, regulates electronic communication and prohibits the abuse of information. Certain principles are stated for the electronic collection of personal information and also the timeframe in which this information must be kept.

	Document	Retention period
	Reference: Section 51	
6.1	Personal information and the purpose for which the data was collected must be kept by the person who electronically requests, collects, collates, processes or stores the information	As long as information is used, and at least 1 year thereafter
6.2	A record of any third party to whom the information was disclosed must be kept for as long as the information is used	As long as information is used and at least 1 year thereafter
6.3	All personal data which has become obsolete	Destroy

7 FINANCIAL ADVISORY AND INTERMEDIARY SERVICES

Financial Advisory and Intermediary Services Act, No 37 of 2002

The **Financial Advisory and Intermediary Services Act, No 37 of 2002**, seeks to regulate the rendering of certain financial advisory and intermediary services to clients and to provide for matters incidental to these services.

	Document	Retention period
	Reference: Section 18	
7.1	<p>An authorised financial services provider must maintain the following records regarding-</p> <ul style="list-style-type: none"> - known premature cancellations of transactions or financial products by clients of the provider; - complaints received together with an indication whether or not any such complaint has been resolved; - the continued compliance with the requirements referred to in section 8; - cases of non-compliance with this Act, and the reasons for such non-compliance; and - the continued compliance by representatives with the requirements referred to in section 13(1) and (2). 	5 years (except to the extent exempted by the registrar)
	GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDER AND REPRESENTATIVES Section 3(2)	
7.2	<p>Specific duties of provider</p> <p>A provider must have appropriate procedures and systems in place to-</p> <ul style="list-style-type: none"> - record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act; - store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and - keep such client records and documentation safe from destruction. <p>All such records must be kept for a period after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.</p> <p>Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar's request.</p> <p>Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.</p>	5 years

9 HEALTH AND SAFETY

Compensation for Occupational Injuries and Diseases Act, No 130 of 1993

The **Compensation for Occupational Injuries and Diseases Act, No 130 of 1993**, provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment or for death by these injuries at their place of work.

The Act states that certain records that relate to the earnings should be retained.

	Document	Retention period
	Reference: Section 81(1) and (2)	
9.1	A register or other record of the earnings and other prescribed particulars of all the employees	4 years

Occupational Health and Safety Act, No 85 of 1993

The **Occupational Health and Safety Act, No 85 of 1993**, was enacted to provide for the health and safety of employees at work and for people using plant and machinery and working in other hazardous employment conditions. Certain documents have to be kept based on the Administrative Regulations.

	Document	Retention period
	Reference: Section 20(2)	
9.2	A health and safety committee shall keep record of each recommendation made to an employer in terms of issues affecting the health of employees and of any report made to an inspector in terms of the recommendation	3 years
9.3	Records of incidents reported at work (Annexure 1 of the General Administration Regulations, 2003)	3 years
	Reference: Asbestos Regulations, 2001, Regulation 16(e) and (f)	
9.4	Records of assessments and air monitoring, and the asbestos inventory	Min of 40 years
9.5	Medical surveillance records	Min of 40 years
	Reference: Hazardous Biological Agents Regulations, 2001, Regulation 9(1) and (2)	
9.6	Records of risk assessments and air monitoring results	40 years
9.7	Medical surveillance records	40 years
	Reference: Hazardous Chemical Substance Regulations, 1995, Regulation 9	
9.8	Records of assessments and air monitoring	30 years
9.9	Medical surveillance records	30 years
	Reference: Lead regulations, 2001, Regulation 10	
9.10	Records of assessments and air monitoring	40 years
9.11	Medical surveillance records	40 years
	Reference: Noise Regulations (MOSA) Regulation 11	
9.12	All records of assessments and noise monitoring	40 years
9.13	All medical surveillance records, including the baseline audiogram of every employee	40 years

10 INSOLVENCY AND LIQUIDATION

Insolvency Act, No 24 of 1936

The **Insolvency Act, No 24 of 1936**, states that various documents relating to insolvent estates can only be destroyed after a certain period; care should therefore be taken that the documents are kept until this period has passed.

	Document	Retention period
	Reference: Section 155	
10.1	In respect of all insolvent estates which have been finally liquidated or in course of liquidation at the commencement of this Act, and only with the permission of the Master, the trustee may destroy all books and records in his possession relating to the estate	6 months from the confirmation by the Master of the final trustees' account
10.2	In respect of all insolvent estates which have been finally liquidated, all records in his office relating to the estate of that insolvent	After 5 years have lapsed from the rehabilitation of an insolvent

11 LABOUR RELATIONS

Employee relations are governed by a variety of legislation, including the Basic Conditions of Employment Act and the Labour Relations Act.

Basic Conditions of Employment Act, No 75 of 1997

The **Basic Conditions of Employment Act, No 75 of 1997**, states that various documents relating to employees should be kept for future reference.

	Document	Retention period
	Reference: Section 29(4)	
11.1	Written particulars of employee must be kept after termination of employment	3 years from the date of the last entry in the record.
	Reference: Section 31	
11.2	Employee's name and occupation	3 years from the date of the last entry in the record.
11.3	Time worked by each employee	
11.4	Remuneration paid to each employee	
11.5	Date of birth of any employee under 18 years of age	
11.6	Any other prescribed information	

A reference exists that an employer who keeps records in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

Employment Equity Act, No 55 of 1998

The **Employment Equity Act, No 55 of 1998**, provides for employment equity and applies to employers and employees. The Act has certain requirements with regard to the retention of certain documents.

	Document	Retention period
	Reference: Section 26	
11.7	An employer must establish and maintain records in respect of its workforce, its employment equity plan and other records relevant to its compliance with this Act.	5 years after expiry of plan
	Employment Equity Regulations, 2014 Reference: Regulation 9(3)	
11.8	A designated employer must retain their Employment Equity Plan	
	Reference: Section 21 Employment Equity Regulations, 2014 Reference: Regulation 10(9)	
11.9	A designated employer must submit a report to the Director General once every year. This report should be retained after submission to the Director General	5 years

Labour Relations Act, No 66 of 1995

The **Labour Relations Act, No 66 of 1995**, applies to employees, employers, trade unions and employers' organisations and provides a framework where the parties can collectively bargain regarding remuneration, basic conditions of service and other matters of importance.

Various records relating to the structures created in this Act have to be kept for future reference.

	Document	Retention period
	Reference: Section 53(4)	
11.10	Every Council must preserve the following documents in original or reproduced form: <ul style="list-style-type: none"> - books of account - supporting vouchers - income and expenditure statements - balance sheets - auditor's reports - minutes of its meetings (Reference: Section 54) 	3 years from the end of the financial year to which they relate
	Reference: Section 98(4)	
11.11	Registered trade unions and registered employers' organisation must preserve the following documents in original or reproduced form: <ul style="list-style-type: none"> - books of account - supporting vouchers - records of subscriptions or levies paid by its members - income and expenditure statements - balance sheets - auditor's reports 	3 years from the end of the financial year to which they relate.
(a)	Reference: Section 99	
11.12	Registered trade unions and registered employers' organisation must keep a list of its members	Indefinite
11.13	Minutes of its meetings, in an original or reproduced form from the end of the financial year to which they relate	3 years
11.14	Registered trade unions and registered employers' organisation must keep the ballot papers for a period of three years from the date of every ballot	3 years
	Reference: Section 205(1) and (2)	
11.15	Every employer must keep the records in their original form or a reproduced form that an employer is required to keep in compliance with any applicable: <ul style="list-style-type: none"> - collective agreement; - arbitration award; - determination made in terms of the Wage Act 	3 years from the date of the event or end of the period to which they relate
	Reference: Section 205(3)	
11.16	Employer must keep prescribed details of any strike, lock-out or protest action involving its employees	Indefinite
	Schedule 8, Section 5	
11.17	Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions	Indefinite
	Schedule 3, Section 8(a)	
11.18	The Commission must keep the following records: <ul style="list-style-type: none"> Books of accounts Records of income, expenditure, assets and liabilities 	Indefinite

Unemployment Insurance Act, No 63 of 2002

The **Unemployment Insurance Act, No 63 of 2002**, applies to all employers and workers, but not to –

- Workers working less than 24 hours a month for an employer;
- Learners;
- Public servants;
- Foreigners working on contract;
- Workers who get a monthly State (old age) pension; or
- Workers who only earn commission.

Domestic employers and their workers have also been included under the scope of the Act since 1 April 2003.

	Document	Retention period
	Reference: Section 56(2) (c)	
11.19	Employers must maintain personal records of each of their current employees in terms of <ul style="list-style-type: none">- names;- identification numbers;- monthly remuneration; and- address where the employee is employed	Refer to 13.6 under Income Tax Act

12 STATE-OWNED ENTITIES

Public Finance Management Act, No 1 of 1999

State-owned entities have to apply the **Public Finance Management Act (PFMA), No 1 of 1999**. Entities that fall under the definition of the PFMA are national and provincial government, which include entities such as the Human Rights Commission, the Competition Board, Eskom and Denel. The PFMA has a list of all the entities that it applies to in the schedules attached to the Act.

Section 40(1)(a) of the PFMA states that: “The accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards.”

Section 55(1)(a) of the PFMA states that: “The accounting authority for a public entity must keep full and proper records of the financial affairs of the public entity.”

The Treasury Regulations, Regulation 17(2) to the PFMA states that accounting officers must retain all financial information in its original form as follows:

- (1) Information relating to one financial year – should be retained for one year after the audit report for the relevant financial year has been tabled in Parliament or the provincial legislature.
- (2) Information relating to more than one financial year – should be retained for one year after the audit report for the last of the financial years to which the information relates.

If the retention period has expired the information may be stored in an alternative form that still ensures the integrity and reliability of the information. The Treasury Regulations provide the detailed guidance to this section of the PFMA regarding the retention of documents.

State-owned entities that are registered companies must comply with the requirements that are the most stringent between the Companies Act and PFMA.

	Document	Retention period
	Reference: Treasury Regulations, Regulation 17(2)	
12.1	General ledger and cash books or similar records	15 years
12.2	Internal audit reports	10 years
12.3	Main transaction summary records, including general journals and transaction summaries	10 years
12.4	Primary evidentiary records, including copies of forms issued for value, vouchers to support payments made, pay sheets, returned warrant vouchers or cheques, invoices and similar records associated with the receipt or payment of money	5 years
12.5	Source documents; General and incidental source documents not included above, including stock issue and receivable notes, copies of official orders (other than copies for substantiating payments or for unperformed contracts), bank deposit books and post registers	5 years
12.6	Subsidiary ledgers, including inventory cards and records relating to assets no longer held or liabilities that have been discharged	5 years
12.7	Supplementary accounting records, including, for example, cash register strips, bank statements and time sheets	5 years
12.8	System appraisals	10 years

Municipal Finance Management Act, No 56 of 2003

The **Municipal Finance Management Act (MFMA), No 56 of 2003**, applies to all municipalities and municipal entities and has the goal of securing sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government.

With regard to the retention of documents, it states in Section 62(1) (b) that:

The accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards.

Owing to the absence of more specific guidelines, we advise that the same periods as for the PFMA are used, except where other specific Regulations are available for use in the various industries.

13 TAX

The **Income Tax Act, No 58 of 1962**, is the Act that governs all the laws relating to income taxes and donations and the **Value Added Tax Act, No 89 of 1991**, provides for the taxation of the supply of goods and services as well as the importation of goods. The **Tax Administration Act, No 28 of 2011**, has been effective from 1 October 2012. This Act has not removed the retention requirements from the Income Tax Act and the Value Added Tax Act and has included the requirements for document keeping in the Act.

Tax Administration Act, No 28 of 2011

Section 29 of the Tax Administration Act (TAA), No 28 of 2011, contains the general record retention requirements for all Acts administered by the Commissioner (Schedule 1 of the South African Revenue Service Act, 1997) and states that a person must keep the records, books of account or documents that:

- enable the person to observe the requirements of a tax Act;
- are specifically required under a Tax Act or by the Commissioner by public notice; and
- will enable the South African Revenue Service (SARS) to be satisfied that the person has observed these requirements.

	Document	Retention period
	Reference: Section 29(3)(a)	
13.1	Taxpayers that have submitted a return	5 years from date of submission
	Reference: Section 29(3)(b)	
13.2	Taxpayers who were meant to submit a return, but haven't for that period	Indefinite, until the return is submitted – then the 5-year rule applies
	Reference: Section 29(3)(c)	
13.3	Taxpayers who were not required to submit a return, but received income, had capital gains/losses or engaged in any other activity that is subject to tax or would be subject to tax but for the application of a threshold or exemption	5 years from the end of the relevant tax period
	Reference: Section 32(a)	
13.4	A person who has been notified or is aware that the records are subject to an audit or investigation	In addition to the 5-year rule, records must be retained until the audit is concluded or the assessment or decision becomes final. In this regard the extended retention period will apply irrespective of whether the assessments have prescribed in terms of section 99.

	Reference: Section 32(b)	
13.5	A person who has lodged an objection or appeal against an assessment or decision under the TAA	In addition to the 5-year rule, records must be retained until the audit is concluded or the assessment or decision becomes final

Form in which records may be retained

Aside from the general record retention requirements, taxpayers must also be aware of the form in which records must be retained. According to section 30 of the TAA, records can be kept:

- a) in their original form in an orderly fashion at a safe place,
- b) in any other form (including electronic) as may be prescribed by the SARS Commissioner in a public notice, or
- c) in a form specifically authorised by a senior SARS official.

The SARS Commissioner published [notice 787](#) to provide taxpayers with more detailed guidance regarding the retention of documents in electronic form. As a general matter, electronic records must be kept at a place physically located in South Africa. However, a senior SARS official may authorise for electronic records to be kept at a place physically located outside of South Africa if certain requirements are met. Additionally, records retained in an electronic format or computer software commonly recognised in South Africa are subject to less stringent requirements, for the purposes of the public notice.

Income Tax Act, No 58 of 1962

	Document	Retention period
	In addition to the records required in Chapter 4, part A of the Tax Administration Act, every employer must keep the records as indicated below	
	Reference: 4th Schedule, para 14(2)	
13.6	In addition to the records required in section 29 TAA, in respect of each employee the employer shall keep a record showing (para 14(1)(a)-(d)): <ul style="list-style-type: none"> - amount of remuneration paid or due by him to the employee; - the amount of employees' tax deducted or withheld from the remuneration paid or due; - the income tax reference number of that employee; - any further prescribed information 	5 years from the date of submission of the return evidencing payment (i.e. EMP201)
	Reference: 4th Schedule, para 14(3)	
13.7	In addition to the records required in section 29 Tax Administration Act, in respect of each employee the employer shall keep a record showing (para 14(1)(a)-(d)): <ul style="list-style-type: none"> - amount of remuneration paid or due by him to the employee; - the amount of employees' tax deducted or withheld from the remuneration paid or due; - the income tax reference number of that employee; - any further prescribed information; 	5 years from the date of submission of the return required by gazette (i.e. EMP501)
	Reference: 6th Schedule, para 14(a) – (d)	
13.8	Notwithstanding the provisions of Part A of Chapter 4 of the Tax Administration Act, a registered micro business must only retain a record of: <ol style="list-style-type: none"> (a) amounts received by that registered micro business during a year of assessment; 	5 years from date of submission or 5 years from end of the relevant tax year depending on type of

	<p>(b) dividends declared by that registered micro business during a year of assessment;</p> <p>(c) each asset of that registered micro business as at the end of a year of assessment with a cost price of more than R10 000; and</p> <p>(d) each liability of that registered micro business as at the end of a year of assessment that exceeded R10 000.</p>	transaction
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Value Added Tax Act, No 89 of 1991

	Document	Retention period
	In addition to the records required in Chapter 4, part A of the Tax Administration Act, every vendor must keep the records as indicated below.	
	Reference: Section 15(9)	
13.9	Where a vendor's basis of accounting is changed, the vendor shall prepare lists of debtors and creditors showing the amounts owing by the debtors and owing to the creditors at the end of the tax period immediately preceding the changeover period.	5 years from date of submission of the return
	Reference: Section 16(2)	
13.10	Records of importation of goods and documents <ul style="list-style-type: none"> - bill of entry, or - other documents prescribed by the Custom and Excise Act; - proof that the VAT charge has been paid to SARS <p>Section 16 refers to Section 55 of the VAT Act</p>	5 years from date of submission of the return
	Reference: Section 55(1)(a)	
13.11	Vendors are obliged to keep the following records: <ul style="list-style-type: none"> - record of all goods and services supplied by and to the vendor - the rate of tax applicable to the abovementioned supplies; and - invoices - tax invoices - credit notes - debit notes - bank statements - deposit slips - stock lists - paid cheques relating thereto 	5 years from date of submission of the return
	Reference: Interpretation Note 31 – 30 March 2013	
13.12	Documentary proof substantiating the zero rating of supplies	5 years from date of submission of the return
13.13	Where a tax invoice or credit or debit note has been issued in relation to a supply by an agent or to an agent or a bill of entry as described in the Customs and Excise Act, the agent shall maintain sufficient records to enable the name, address and VAT registration number of the principal to be ascertained.	5 years from date of submission of the return

Transfer Duty Act, No. 40 of 1949

	Document	Retention period
13.14	In addition to the records required to be kept by Chapter 4, part A of the Tax Administration Act, every auctioneer or person who has effected a sale (or other type of transfer) of property on behalf of some other person shall keep:	
	Reference: Section 15(1)	
13.15	A record of the sale, including <ul style="list-style-type: none"> - a description of the property sold - the person by whom the property has been sold - the person to whom the property has been sold; and - the price paid for the property 	5 years from date on which the sale was effected
	Reference: SARS Transfer Duty Guide	
13.16	Other records to be kept by the abovementioned persons include: <ul style="list-style-type: none"> - signed transfer duty returns submitted to SARS - manual and/or eFiling receipts received from SARS regarding payment of the duty - exemption certificates (if applicable) 	5 years from date on which these records were submitted to, or received from SARS

Securities Transfer Tax Administration Act, No. 26 of 2007

	Document	Retention period
	In addition to the records required to be kept under section 29 of the Tax Administration Act, the below-mentioned persons must retain sufficient record of a security transfer in order to enable that person to observe the requirements of this Act and satisfy the Commissioner that the requirements of this Act have been met.	
	Reference: Section 13(1)	
13.17	A 'member', 'participant' (as defined in section 1 of the Securities Transfer Tax Act, 2007) who has effected the transfer of a listed security A person to whom a listed security has been transferred.	5 years from date of transfer of the security
	Reference: Section 13(2)	
13.18	A company or close corporation that issued an unlisted security must keep records of every transfer of an unlisted security issued by it. These records must be obtained from a person to whom an unlisted security is transferred, who is required to inform the aforementioned company of the transfer.	5 years from date of transfer of the security

Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, No. 35 of 2013

	In addition to the documentary retention requirements under Chapter 4, part A of the Tax Administration Act, every person receiving 'contributing oil' ¹ in the Republic must keep the following records and documents:	
	Reference: Sections 5(a) and (b)	
13.19	(a) Import declarations required for customs purposes for contributing oil, and (b) Records and books of account that set out the type and quantity of the contributing oil in respect of which the levy imposed by section 2 of the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013 may be payable	3 years from date of submission of the return

Mineral and Petroleum Resources Royalty (Administration) Act 28 of 2008

	Document	Retention period
	In addition to the records required to be kept under section 29 of the Tax Administration Act, a person registered in terms of this Act must retain the following records:	
	Reference: Section 8(a) - (f)	
13.20	<ul style="list-style-type: none"> - particulars of "earnings before interest and taxes" as mentioned in section 5 of the Mineral and Petroleum Resources Royalty Act, 2008 (the 'Royalty Act') with sufficient detail to identify all the gross sales, income and allowable deductions in respect of those earnings; - particulars of "gross sales" as mentioned in section 6 of the Royalty Act with sufficient detail to identify all transferred mineral resources in respect of those gross sales and the persons acquiring those transferred mineral resources; - the quantity of mineral resources extracted but not transferred and those transferred by that registered person with sufficient detail to identify those extracted and transferred mineral resources; - the accounting income with sufficient detail to identify the "earnings before interest and taxes" as mentioned in section 5 of the Royalty Act that relate to that accounting income; - a ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and - any information required by the Commissioner. 	3 years from date of submission of the return

¹ As defined in section 1 of the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013]

Diamond Export Levy (Administration) Act, No. 14 of 2007

	Document	Retention period
	In addition to the records required to be kept under section 29 of the Tax Administration Act, a person registered in terms of this Act must retain the following records:	
	Reference: Section 7(a) - (i)	
	<ul style="list-style-type: none"> - the original note of receipt or purchase in respect of a unpolished diamond as described in section 56 of the Diamonds Act No. 56 of 1986 (the 'Diamonds Act'); - a register in respect of unpolished diamonds as described in section 57 of the Diamonds Act; - a record of all unpolished diamonds imported into or exported from the Republic by that person with sufficient detail to identify diamonds, values, purchasers and sellers involved; - a copy of any temporary exemption certificate described in section 5 of the Diamond Export Levy Act No. 15 of 2007 (the 'Levy Act'); - a copy of any exemption from section 48A of the Diamonds Act pursuant to section 74 of that Act; - a copy of any permit to export, granted pursuant to section 26 (<i>h</i>) of the Diamonds Act; - any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account, or financial statement; and - any other information required by the Commissioner or the South African Diamond and Precious Metals Regulator. 	3 years from date of submission of the return

Approved by LCC 17 March 2016
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