A legal regulatory timeline for South African private equity

Year	Event	Description
1995	Thin capitalisation and transfer pricing	Section 31 of the South African Income Tax Act, 1962, is introduced to limit the deductibility of interest if there is a disproportionate ratio between loan capital and equity in certain circumstances, and to adjust the prices of goods and services in terms of certain transactions concluded between connected persons, to reflect an arm's length price.
1998	Competition Act, 1998, is promulgated (comes into full effect during 1999)	
2001	Capital gains tax	Capital gains realised on disposal of assets become subject to normal tax and the provisions of the Eighth Schedule.
	Corporate rules	Sections 42 to 47 of the South African Income Tax Act introduce tax roll-over relief for transactions between group companies, or founding shareholders and their company.
2002	Financial Advisory and Intermediary Services (FAIS) Act, 2002, is promulgated	
2003	Broad-Based Black Economic Empowerment Act (B-BBEE), 2003, is promulgated	
2007	Codes of Good Practice	The B-BBEE Codes of Good Practice are published. These Codes encourage companies in South Africa to implement black economic empowerment initiatives against which they are scored and obtain a B-BBEE recognition level. The Codes of Good Practice introduce criteria for the recognition of shareholding through a private equity fund and being ownership held by black people.
2009	Special dispensation for Venture Capital Companies	Section 12J of the South African Income Tax Act introduces a deduction of expenditure actually incurred in acquiring venture capital shares.
	Intra-group transactions: Closure of disguised sales	Section 45 is amended to limit the misuse of intra-group relief.
2010	Exchange control approval for African investments	In support of the broader strategy to make South Africa the gateway into Africa, private equity funds mandated to invest into Africa may apply to Exchange Control for an annual approval, subject to certain conditions.
2011	Companies Act, 2008, is promulgated	The Companies Act, 2008 comes into force on 1 May 2011. One of the material changes brought about by the New Act is that fundamental transactions (for example, disposal of all or a greater part of the company's assets or undertaking, amalgamations or mergers and schemes of arrangement) require the approval by special resolution. In addition the New Act provides greater remedies for minorities who dissent against such special resolution.
	Revised Regulation 28	Revised Regulation 28 that gives effect to section 36(1)(bB) of the Pension Funds Act, 1956, comes into effect. Regulation 28 prescribes limits for various types of investment that may be made by a retirement fund and was promulgated in order to guide funds that invest in their own name. Notably, the key amendment for private equity is that pension funds are allowed to invest up to 10% of contributions into private equity funds; this is an increase from the previous limit of 2.5%.
	Promulgation of the Alternative Investment Fund Managers Directive ("AIFMD")	The AIFMD is a European Union Directive aimed at increasing investor protection and reducing systemic risk by establishing a harmonised EU framework for regulating alternative investment fund managers.
	Proposed suspension of intra-group transactions and intra-group debt subject to approval	National Treasury proposes to suspend section 45 of the South African Income Tax Act, but opts for the introduction of section 23K to limit the deductibility of interest.
2012	Dividends Tax	Dividends Tax is introduced, which moves the taxation of dividends from company level to shareholder level. The rate of taxation is increased to 15%.
	Financial Sector Charter	The Financial Sector Charter is published to regulate black economic empowerment in this sector.
2013	Revised Codes of Good Practice	The DTI publishes revised B-BBEE Codes of Good Practice. The Revised Codes rationalise the pillars against which companies are measured to ownership, management control, skills development, enterprise and supplier development and socio-economic development. Ownership becomes a priority element together with skills development and enterprise and supplier development including sub-minimum thresholds need to be achieved in each of these pillars. The Revised Codes of Good Practice expand on the criteria for recognition of shareholding through a private equity fund being ownership held by black people.
	FATCA Inter-Governmental Agreement signed	USA and South Africa enter into an inter-governmental agreement. This legislation requires South African financial institutions to exchange information with SARS, which SARS will then exchange with the US in terms of the legal framework provided for in the relevant double taxation agreement.
	Revised interest limitation rules	Section 23N of the South African Income Tax Act is introduced and limits the deduction available in respect of interest incurred in financing reorganisation and acquisition transactions, with specific reference to section intra-group transactions and liquidation distributions.
2015	Revised interest limitation rules	Section 23M of the South African Income Tax Act is introduced and limits the deduction available in respect of interest incurred on debt owed to a person not subject to tax in South Africa (including persons exempt from tax such as pension funds)[1].
	Withholding tax on interest	Section 50A of the South African Income Tax Act is introduced to impose tax on interest paid to non-resident persons at a rate of 15%.
2016	Withholding tax on service fees	Section 51A of the South African Income Tax Act will come into operation and imposes tax on technical, managerial and consultancy fees services paid to non-resident persons at a rate of 15%.

[1] Amendments proposed in 2014 Taxation Laws Amendment Bill, which has not been promulgated at date of printing.

Source: Webber Wentzel