

Simplifying tax obligations for new entrepreneurs and new businesses.

Start-up entrepreneurs usually want to know what taxes are applicable to their new enterprise.

They do not always understand why they are supposed to pay tax in the first place! Their priority, understandably, is enterprise development and business growth, not compliance with taxes!



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Exploring tax obligations once a company is registered

Newly established entrepreneurs who have been running an enterprise for over a year or two usually have tax compliance and tax structuring headaches. This newsletter addresses some of these pressing issues.

The taxes to be registered are:

- Income tax – to be registered as soon as the company starts to trade. Income tax registration is compulsory for all companies in South Africa.
- Employees tax – to be registered as soon as the company is required to pay remuneration
- Value Added Tax (VAT) – it becomes mandatory to be registered for VAT once taxable supplies exceed R1 million over a 12 month period or on a voluntary basis once taxable supplies exceed R50,000.

Why should I register for income tax?

Principles for acting in good faith

A company should register for income tax to comply with the Income Tax Act (ITA) and the Companies Act.

First and foremost, a company is registered and regulated by the Companies Act.

The Companies Act places an obligation on the directors to act in good faith and in the best interest of the company.¹



We simplify why a newly formed company should register for income tax.

Acting in good faith and in the best interest of the company includes ensuring that the company complies with all the laws of the Republic of South Africa, including the ITA. If the directors of the company do not comply with the laws of RSA, then they are not acting in good faith and not in the best interest of the company.

Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return as requested by the South African Revenue Service (SARS) must apply to the Commissioner to be registered as a taxpayer².

The ITA places an obligation on the company to register for income tax.

The company must register and submit an annual income tax return to SARS to comply with this law.

The Companies and Intellectual Property Commission (CIPC), which is the National Office responsible for the registration of companies in RSA, submits a list of registered companies to SARS and SARS automatically allocates income tax numbers to registered companies.

This does not absolve the directors from their duty to ensure that the company is registered for income tax.

The directors must ascertain the registered tax number and ensure that the company's income tax return is submitted annually, as is required by law.

The deadline for the submission of the income tax return is, based on historic practice, one year after the end of the financial period of the company.

Failure to submit the income tax return is an offence and SARS will charge the company a tax penalty for non-submission of the income tax return.

¹ Section 76 of the Companies Act 71 of 2008

² Section 67 of Income Tax Act No.58 of 1962



Employees Tax

Employees tax refers to tax required to be deducted by an employer from an employee's remuneration. This process of deducting tax from an employee's remuneration is referred to as PAYE.

Remuneration, in simple terms, is a salary or any payment made for services rendered. The company must withhold PAYE from salary payments. In effect, the company is obliged to deduct PAYE and pay it over to SARS.

An employer is also required to register with SARS for the payment of Unemployment Insurance Fund (UIF) contributions.

The company must:

- Register for employee's tax with SARS as soon as it is liable to pay remuneration³.
- Submit the employees tax return by the 7th of every month to SARS. If the 7th falls on a weekend or public holiday, then submission must be made the Friday or day before the holiday.
- Make payment of employee's tax with the submission of the employees tax return, on the 7th monthly.
- Failure to make payment will result in a penalty charge and directors may be held guilty of an offence.

EYE ON IT

A common mistake

In the case of entrepreneurs who start, own and run their own companies, a common mistake is not to treat executive directors as employees (and therefore not withholding PAYE from their remuneration).

Executive directors are employees and receive a salary for their work as employees. They may also be owners (shareholders) and may therefore earn dividends as shareholders.

Yet, as employees, their remuneration is subject to PAYE and the company must withhold PAYE from their remuneration.

³ Paragraph 15 of Part 4 of Fourth Schedule of Income Tax Act

Understanding Value Added Tax

When the company's taxable supplies exceed R1 million over a consecutive 12 months period or when the taxable supplies are anticipated to exceed R1 million for the following 12 months, in terms of a written contractual obligation, the company must register for VAT. The company registers at month-end when the taxable supplies exceed R1 million or at the beginning of the month when the taxable supplies per the written contract will exceed R1 million in the next 12 months.

A company may register for VAT on a **voluntary basis** if the company is supplying goods or services on an ongoing continuous or regular basis for consideration, whether for profit or not, and when the taxable supplies exceed R50,000 over the past 12 consecutive months or if the taxable supplies are expected to exceed R50,000 in the next 12 months⁴.

Once the company is registered for VAT it will be entitled to claim input tax (VAT incurred on qualifying supplies by the company). The company pays net VAT to SARS: it deducts from the VAT charged on its consideration to its customers the VAT incurred on its purchases from its suppliers.

Not all supplies made by a company are chargeable with VAT. Some supplies are not charged VAT and some supplies are charged VAT at 0%, whilst some at the full rate of 15%. It is important for the company to understand the supplies it provides and if they are supposed to charge VAT or not.

⁴ Section 23 of the Value Added Tax Act No. 89 of 1991



Penalty and interest

The non-payment of these taxes at the prescribed date and time will result in SARS charging a penalty.

Interest is levied on outstanding capital taxes.

It is important to note that non-compliance with the provisions of any tax legislation is an offence and directors can be held guilty of an offence.

Conclusion

A company is a separate legal person which provides the entrepreneur with the ability of developing an enterprise that can raise finance, employ staff and survive the life of the entrepreneur.

As such, the company is a legal person and is obliged to comply with the laws under which it was registered. It is also obliged to comply with all applicable laws. The directors of a company must ensure that, at a minimum, the income tax, employees' tax and VAT are registered, and their regulations are complied with. These are the primary taxes that must be registered.

If you need assistance with the set-up, registration and/or compliance with the above contact our office on 087 802 6376 or at tshepo@amphaka.co.za.



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