



Experience Isn't Expensive... It's Priceless

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Client Survey

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Public Officer

Please note that section 101 of the Income Tax Act has been repealed by section 271 of the Tax Administration Act of 2011. This means that since October 2012, Public Officers are no longer regulated under the Income Tax Act but under section 246 of the Tax Administration Act of 2011. There are several concerns and uncertainty surrounding a company's Public Officer. In this newsletter we address certain questions previously received regarding Public Officers.

Who must have a Public Officer?

Every company carrying on business or having an office in South Africa must have a Public Officer.

Who may be a Public Officer?

There are 4 requirements that must be complied with to be a Public Officer, namely:

- must be an individual;
 - No definition is included in the Tax Administration Act on what an individual is, considering the general definition of individual, one can assume that an individual is a natural person and not a legal entity.
- must be resident in South Africa;
- be a senior official of the company; and
- be approved by SARS.

Who may appoint a Public Officer?

The Public Officer must be appointed by the company or by an agent or attorney who has authority to appoint such a representative.

It is recommended that the board of directors pass a formal resolution to approve the appointment of the Public Officer in view of the importance of the appointment.

What is the designation of a Public Officer?

The title will be Public Officer of the company.

This title is only of relevance to SARS who will regard the Public Officer as the SARS contact person in the company. The title of Public Officer should not be confused with "prescribed officer" which is a term used in the Companies Act of 2008 and under normal circumstances relate to senior executives of a company.

When must a company appoint a Public Officer?

A Public Officer must be appointed within one month after the company begins to carry on business or acquires an office in South Africa.

SARS must be notified within 21 business days of any change in the Public Officer of the company.

A Public Officer appointed or regarded as appointed and holding office immediately before October 2012 (when the Tax Administrative Act came into effect), is regarded as a Public Officer appointed under section 246 of the Tax Administration Act.

When is a Public Officer considered to be appointed in terms of SARS?

A Public Officer will be deemed appointed once SARS receive a notice specifying the name of the Public Officer and an address for service or delivery of notices and documents.

Who is the Public Officer if none was appointed?

If a Public Officer is not appointed as required in terms of section 246, the Public Officer is the managing director, director, secretary or other officer of the company that SARS designates for that purpose.

This is not ideal and it is thus strongly recommended that a Public Officer be formally appointed by the board of directors and that the Public Officer is duly informed of his/her duties and the implications of the appointment.

What are the responsibilities of a Public Officer?

A Public Officer is responsible for all acts, matters or things that the company for which the individual acts as Public Officer must do under the following legislation:

- Union and Southern Rhodesia Death Duties Act, 1933 (Act No. 22 of 1933).
- Transfer Duty Act, 1949 (Act No. 40 of 1949).
- Estate Duty Act, 1955 (Act No. 45 of 1955).
- Income Tax Act, 1962 (Act No. 58 of 1962).
- Value-Added Tax Act, 1991 (Act No. 89 of 1991).
- Section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994).
- Sections 56 and 57 of the Income Tax Act, 1995 (Act No. 21 of 1995).
- Tax on Retirement Funds Act, 1996 (Act No. 38 of 1996).
- Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998).
- Demutualisation Levy Act, 1998 (Act No. 50 of 1998).
- Skills Development Levies Act, 1998 (Act No. 9 of 1999).
- Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002).
- Small Business Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006).
- Second Small Business Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006).
- Diamond Export Levy Act, 2007 (Act No. 15 of 2007).
- Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007).
- Securities Transfer Tax Act, 2007 (Act No. 25 of 2007).
- Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007).
- Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, 2010 (Act No. 8 of 2010).
- Tax Administration Act, 2011 (Act No. 28 of 2011).
- Any regulation, proclamation, government notice or rule issued in terms of the abovementioned legislation or any agreement entered into in terms of this legislation or the Constitution.

The Public Officer will also receive all notices in terms of any of the legislation mentioned above. It is thus important to notify SARS within 21 business days of any changes to the delivery address.

Companies should be cognisant of the duties imposed upon the Public Officer and should empower that individual accordingly to enable that person to properly fulfil those duties.

What are the responsibilities of a Public Officer during the liquidation or winding up of the company?

In the event of a company being placed in voluntary or compulsory liquidation, the liquidator is required to exercise all the functions and assume all the responsibilities of a Public Officer during the continuance of the liquidation.

How do the actions of a Public Officer reflect on the company?

All actions carried out in his capacity as a Public Officer are deemed to have been done by the company.

How is SARS involved?

The Public Officer must be registered with SARS.

Note that iThemba can provide assistance in this regard.

Remember that if SARS is of the opinion that a person is no longer suitable to represent the company as Public Officer, SARS may withdraw its approval.

The role of the Public Officer is of extreme importance in a company. He is the "face of the company" for tax purposes. All actions carried out in his capacity as a Public Officer are deemed to have been done by the company.

Companies should be aware of the requirement to appoint a Public Officer, and both the company and the Public Officer should be aware the duties and risk imposed upon the person taking up such a position.

Contact us should you require assistance with the appointment of a Public Officer for your company.

Meet the Team

Lerato Zwane has been with iThemba for three years as a statutory administrator. As from September 2013 her position in the Company has changed from Statutory Manager to Research and Client Liaison. She is a student with the Institute of Chartered Secretaries Southern Africa. In addition to fulfilling her career dreams through iThemba, Lerato also carries the important titles of mother and wife which she treasures and thoroughly enjoys.



Our Tip for the month

"There is abundant evidence of directors becoming involved in 'groupthink', where unspoken assumptions are taken for granted and sensible common sense options are ignored. It is often when the group consensus is strongest that there is the greatest need for a devil's advocate who will ask unpopular questions and force his or her colleagues to square up to reality."

What you should know about Corporate Governance, Wixley and Everingham, 2002

Interesting Article

An article posted by Jeffrey Stein on the meeting between The Lead Director Network and the North American Audit Committee Leadership Network held on 4 June 2013 and 5 June 2013 where they discussed the risk oversight and effective board and committee leadership, [read more...](#)

Keeping you up to Date

- CIPC will be closed to the public on Friday 29 November 2013 and will reopen on 2 December 2013. This means that all reserved names that would have lapsed on 29 November 2013, will now have their reservation dates move forward to Monday 2 December 2013 and will only lapse on that date.

- CIPC will be closed to the public from 10h00 Tuesday, 24 December 2013 until Friday 3 January 2013. On Monday 23 December 2013, lodgement will be accepted until 15h30.