

**UHELP DESK**

Connecting Opportunities

## REGISTRATION OF A PRIVATE COMPANY

Private companies are registered with the Companies and Intellectual Property Commission (CIPC) in accordance with the provisions of the Companies Act, no 71 of 2008. This act constitutes a completely new corporate law for South Africa, and replaces the Companies Act of 1973 (as amended by the Corporate Laws Amendment Act), and amends the Close Corporation Act of 1984. No new close corporations will be registered and the requirement that private companies below a certain turnover do not need to be audited every year, has been instituted.

To set up a company you require a pre-incorporation contract in terms of the Memorandum of Incorporation. Registration and incorporation procedures may be complicated and you may elect to engage the services of a consultant or accountant to assist you with the process. ([Link to member](#))

CIPC will issue you with a Certificate of Incorporation which will prove that you have met all the statutory requirements and that your company has been registered in terms of the Act.

The characteristics and benefits of trading as a private company are the following:

- It is a legal entity separate from its shareholders;
- Members' liability are limited to their original contribution;
- The company continues in perpetuity and is not affected by the change of individual directors;
- A private company must have at least 1 director;
- Shareholders/members can transfer shares freely, unless restricted by the Memorandum of Incorporation;
- Shareholders cannot act as agents of the company;
- Shareholders have the right to elect directors at the Annual General Meeting;
- Directors exercise their powers through the Memorandum of Incorporation;
- Private companies are prohibited from offering shares to the public.

## TRADING ENTITY NAME RESERVATION

Firstly, the name of the trading entity should be reserved on a CoR 9.1 form. This can be done online or through the services of a consultant or accountant.

## REGISTRATION REQUIREMENTS FOR A PRIVATE COMPANY

CIPC will require the following documents when applying for your registration:

- The original Memorandum of Incorporation;
- Particulars of the name reserved for the company, including its translation and its short form (if applicable);
- Application for registration of the translated name and shortened form must be lodged on a CoR 9.1 form;
- Notice of where the company's registered office is situated and postal address must be submitted on a CoR 14.1 form;
- A CoR 14.1 Annexure A and B detailing the appointment of the directors;

- Written consent of the auditor (if applicable) you have appointed, or a printed letterhead of his or her business;
- Appointment of Secretary (if applicable);
- Proof of payment of the registration fee and annual duty.

## MEMORANDUM OF INCORPORATION

The Memorandum must state:

- The name of the company;
- Any special conditions;
- Any pre-incorporation contracts;
- The amount of share capital and division into shares of the fixed account.

## REGISTERED OFFICE

Every company must have a registered office. The CoR15.1A form gives details of the registered office and its postal address. The company receives all notices and legal documents at this address.

## RECORDS WHICH THE REGISTERED OFFICE MUST KEEP

The Registered Office must keep the following documents and records:

- The minute book of the general meetings of the company;
- Accounting records, including a register of fixed assets;
- Registers of allotment of shares, members' pledges and bonds, debenture holders, directors and officers, the material interest of directors and other insiders in the shares and debentures of the company and attendance of directors' and managers' meetings.

## REQUIREMENTS FOR OBTAINING A REGISTRATION CERTIFICATE

You must lodge the following with the Registrar:

- An application for a certificate to commence business on a CoR14.3 form;
- Particulars of directors and officers as entered into the register of the company must be lodged on a CoR 14.1.

## REGISTER WITH SARS

The Companies and Intellectual Property Commission will notify SARS when the company is formed and SARS will automatically register the company for income tax purposes. The year of assessment of the company will coincide with their financial year-end. The Income Tax return, IT14, must be submitted annually within 6 months of the financial year-end. A company will pay 28% on its taxable income.

You will be required to register with SARS for the following periodic returns:

- Register your business for Income Tax (Form IT77C);
- Register yourself as a taxpayer – if you have never been registered before (Form IT77);
- Register for Employees Tax, Skills Development Levy & Unemployment Insurance Fund (or Commissioner) Contri-

butions (Form EMP101);

- Register for VAT (Form VAT101).

## E-FILING

It is advisable to register with e-Filing yourself or through a qualified consultant or accountant. The purpose of e-Filing is to facilitate the electronic submission of tax returns and the payment of various taxes owed to SARS.

E-filing makes provision for the following services:

- VAT 201 returns;
- PAYE/SDL/UIF returns (EMP 201);
- provisional tax returns (IRP 6);
- tax directives and secure internet payment facilities.

Registration with e-Filing can be done through their website at [www.sarsefiling.co.za](http://www.sarsefiling.co.za).

## PAYMENTS TO SARS

Payment of VAT, STC, Assessed Tax, PAYE, Provisional Tax, Tax on Retirement Funds and SDL can be made as follows. Please note that these are the existing manual payment methods.

- Cash and cheque deposits can be made at SBSA, FNB, ABSA and First National Bank directly into the SARS account using the Beneficiary Id's;
- Electronic Funds Transfer (EFT) for those using Internet banking can be made via FNB, ABSA, SBSA and First National Bank, directly to the SARS account also using a Beneficiary ID. In instances where your payments are in excess of R5 million, ensure that your bank caters for EFT's for these amounts;

## REGISTERING THE BUSINESS FOR INCOME TAX

You must complete Form IT77C in full and submit it to your SARS office for registration of the business as a taxpayer if the company are not registered before. CIPC will notify SARS when a company has been formed and the company is then registered as a taxpayer. The year of assessment of private companies will coincide with their financial year-end.

An Income Tax return or IT14 must be submitted to the SARS within 6 months from the end of the year of assessment. An application for an extension of time in which to submit the tax return must be made if the tax return cannot be submitted by the due date. A company is permitted to have a tax year ending on a date that coincides with its financial year. If the financial year-end is 28 February, its tax year or year of assessment will run from 1 March to 28 February.

Unlike individuals, a company or close corporation pays tax at a flat rate of 28% on its taxable income for the tax year. Dividends Tax is at 20%, prior to 22 February 2017 it was 15%.

## INDIVIDUAL'S REGISTRATION

As soon as you commence business you are required to register as a provisional taxpayer with your (SARS) office by completing form IT77. An individual's year of assessment ends on the last day of February each year and an Income Tax return – form IT12 must be submitted by the date set by the Commissioner.

Income tax returns are issued annually to registered taxpayers after the end of each tax year. The tax year for individuals covers a period of 12 months and commences on 1 March of a specific year and ends on the last day of February of the following year. Income tax returns must be submitted by a specific date each year. From the information furnished in the tax return submitted, SARS raises an assessment showing the tax due or refundable, as the case may be, for the tax year covered by the tax return.

The payment of provisional tax is intended to assist taxpayers in meeting their tax liabilities. This occurs by the payment of two instalments (August and February) in respect of income received or accrued during the relevant tax year and an optional third payment after the end of the tax year. The first provisional tax payment must be made six months after the commencement of the tax year and the second payment not later than the last day of the tax year. The third or topping up payment is voluntary and may be made within six months after the end of the tax year if your accounts close on a date other than the last day of February. If your tax year ends on the last day of February, the third payment must be made within seven months after the end of the tax year. Further information regarding the payment of provisional tax, can be found in the guide for Provisional Taxpayers - IRP 12 which is obtainable from your local SARS office or on the SARS website under PAYE/Guidelines/Income Tax Tables.

## REGISTER FOR EMPLOYEES' TAX (PAYE)

When you employ staff, whether on a permanent or part-time basis, you must register with the South African Revenue Service (SARS) as an employer for Pay as You Earn (PAYE), Skills Development Levy (SDL) & Unemployment Insurance Fund (UIF) contributions.

- You must complete and submit form EMP 101 to your local SARS office. This must be done within 14 days of you becoming an employer. The EMP 101 is available at all SARS offices and on the SARS website, [www.sars.gov.za](http://www.sars.gov.za) under "PAYE".
- Once your business has been registered, SARS will send you a monthly form for completion (IRP 201). IRP201 must be completed and submitted together with the deducted Employees' Tax within seven days of the month following the month for which the tax was withheld.
- IRP 5 is to be completed by employer and that reflects the employee's annual earnings, pension, PAYE, medical aid, Unemployment Insurance Fund (UIF), etc., that will be deducted during the year.
- EMP 501 is used by the employer to reconcile the IRP 5's.
- EMP 10 contains the tax deduction tables that are sent to all employers annually or whenever income tax rates are changed. Information in this regard is also available on the SARS website under "PAYE".

You do NOT need to register for or pay the Skills Development Levy if your annual wage bill is less than R500, 000.

## THE SKILLS DEVELOPMENT LEVY (SDL) EXPLAINED

An employer must pay SDL if the employer pays annual salaries, wages and other remuneration in excess of R500, 000 or the employer is liable for registration with SARS for employees' tax for employees who are liable to pay PAYE/SITE irrespective of whether the annual payroll is in excess of R500,000 or not.

- SDL is currently 1% of the business's total payroll and is used for the funding of education and training of employees. It is calculated as a percentage of a leviable amount, which is more or less equal to the earnings of the employees.
- The application form to register for SDL is the same form that is used to register for employees' tax (EMP101).
- The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment.
- Further information in this regard is available in the SDL10 – "Guidelines to Employers" which is available at SARS offices and on the SARS website under SDL.

Since 1 August 2005 a new exemption rule applies in terms of which employers with an annual payroll of R500 000 or less (whether employers are registered for PAYE/SITE or not) are exempt from the payment of SDL.

## UNEMPLOYMENT INSURANCE FUND (UIF) CONTRIBUTIONS EXPLAINED

The Unemployment Insurance Fund insures employees against the loss of earnings due to termination of employment, illness and maternity leave. A monthly contribution has to be made by the employer (1%) and the employee (1%) based on the earnings of the employee.

- The contributions are calculated as a percentage of the remuneration paid to the employee for services rendered.
- An employer who is registered for Employees' Tax or the Skills Development Levy is automatically registered for UIF contributions—the forms used are the same forms that are used for SDL and PAYE purposes.
- An employer that is not liable for the payment of employees' tax or SDL must register for U.I.F purposes with the Unemployment Insurance Commissioner at the Department of Labour.
- An employer is obliged to pay contributions in respect of each employee as well as himself to the UI Commissioner each month.
- Members of a CC and Directors of a (Pty) Ltd pay 1% Skills and 1% UIF to a ceiling value of R14, 872 earnings per month. This means that even if you or your employees earn more than R14, 872 per month, you will calculate the 1% Skills and 1% UIF as a percentage of R14, 872 only, not your gross salary.
- Further information in this regard is available in the Unemployment Insurance Contributions Guidelines to Employers which is available on the SARS website under "UIF". The Department of Labour's website, [www.uif.gov.za](http://www.uif.gov.za) also has useful information in this regard.

## REGISTER FOR VAT

Value added Tax (VAT) is an indirect tax levied in terms of the Value added Tax Act 89 of 1991. VAT must be included

in the selling price of every taxable supply of goods and/or services provided by a business owner during the course of his normal business activities (output tax). The standard VAT rate is currently 15%.

Supplies such as stock and operational expenses may be claimed as input tax. There is however some supplies exempt from VAT and will therefore not form part of your taxable expenditure and can't be claimed as input tax. Examples of these in your business may be:

- The provision of medical aid;
- Interest on loans;
- Life insurance and retirement fund benefits.

Section 12 of the VAT Act provides for those supplies that are exempt from VAT.

The charging of VAT is conducted in the following manner:

- You provide a service to your customers and charge them 15% on the invoice price for that service. In other words, you sell goods for R1000 you must charge the customer an additional 15% on that R1000 and the total you invoice the customer is therefore R1150. This is output tax.
- When you purchase paint, tools and other business supplies or pay your business operating expenses such as rent, telephone, cell phone, petrol, etc., you are being charge 15% VAT by the supplier. This is your input tax.
- Now you have to calculate how much VAT you must pay SARS and quite simply you must subtract the input amount from the output amount and the difference is payable to SARS. If the input amount is greater than the output then a refund will be due to you by SARS.
- Remember that you're classified as a VAT vendor – the VAT portion of your income is not yours, you're acting as a collection agent for SARS and must therefore hand over the VAT on a periodic basis.

## REGISTRATION PROCESS

Any person who conducts a business and whose total value of taxable turnover exceeds R1 000 000 in any 12 month period, must register for VAT. In certain instances, the VAT Act allows a person to register as a vendor even though his taxable turnover does not exceed R1 000 000 in a 12 month period. Further information can be obtained at [www.sars.gov.za](http://www.sars.gov.za). It should be noted that the R300 000 compulsory registration threshold was increased to R1 000 000 effective 1 March 2009 (refer s23(1)(a) of the VAT Act as amended by s113 (1) (a) of the Revenue Laws Amendment Act, 2008).

It must be borne in mind that it may be advantageous for a person to register voluntarily if the vendor supplies goods or services mainly to other vendors so as to allow the purchasing vendor to claim the VAT incurred on the supply (i.e. input tax). Where the person supplies mainly services to non-vendors, i.e. people who are not registered for VAT, it will generally not be advantageous to voluntarily register for VAT.

Registration for VAT may only take place once the entity proves that it does a turnover of at least R50 000 per annum.

Application for registration as a vendor must be made on form VAT101 (obtainable from your local SARS office or on the SARS website), within 21 days of becoming liable to register. The VAT402 guide will assist in completion of the VAT101 form. The following documents must be submitted along with the VAT 101:

- Copy of the CoR15.1; and 14.3;
- Certified copies of all the directors' identity documents;
- Letter from Bank;
- Proof of address for Entity and directors;
- 3 month's bank statements, stamped;
- Invoices exceeding R50 000 per annum issued by the vendor;
- Letter from franchisee's Accountant;
- Details pertaining to any business contracts.

Generally, a vendor must account for VAT on the invoice basis. In other words, output tax must be accounted for as at the date of the invoice or when payment is received against that invoice. Input tax may only be claimed when the vendor is in possession of a valid tax invoice, irrespective of whether payment has been made to the supplier or not. However, should payment not be made within 12 months after the expiry of the tax period within which the input tax was claimed, output tax must be accounted for on that portion of the payment that has not been made.

## TAX PERIODS

This is the period in which a vendor is required to lodge a VAT return. There are five different types of tax periods. The following two are applicable to you and your business:

- Two monthly: known as Category A or B which is applicable to vendors whose turnover is less than R30 million a year. The applicable category is determined by the Commissioner;
- Four monthly: known as Category F and applies to vendors whose turnover is less than R1 million a year.

## REGISTRATION WITH THE COMPENSATION COMMISSIONER

If you employ staff, you must register with the Compensation Commissioner for Compensation for Occupational Injuries & Diseases (COIDA). You must complete and submit form WAs 2 to the Compensation Commissioner in Pretoria. Once your business is registered, you will receive the following forms:

- WAs 8 - is filed within 30 days of the financial year-end of the business. It reconciles the account.
- WAs 6a - shows the assessment made by the Commissioner for amounts of premium payable, less amounts paid

in advance.

- Forms WG30, WAs2 and WAc1(E) are all sent to you when you register with the Compensation Commissioner. These forms must be kept in a safe place as when an employee has an accident in the workplace, he or she must be issued with these forms in order for a claim to be processed.
- The forms can be viewed or downloaded from the Department of Labour website on [www.labour.gov.za](http://www.labour.gov.za).
- Letter of good standing annually.

### **PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)**

In terms of this Act which was taken into law in 2000, public and private companies, are required to compile and publish manuals of their records. The initial deadline for publication of the records was 31 August 2003; however, the Minister of Justice exempted small businesses and private bodies from submitting the manuals until 31 December 2015. There are certain exemptions to this deadline and these can be found on the SAHRC website (address detailed below).

The SARS manual on the Promotion of Access to Information Act, 2000 is available on the SARS website under Brochures and Guides and also at the South African Human Rights Commission website on [www.sahrc.co.za](http://www.sahrc.co.za).

You must compile your manual using the guidelines provided by the South African Human Rights Commission and then submit the completed document to them. You can view a sample manual online and even generate your PAIA manual online. Alternatively, once you've completed your manual you can email it to [paia@sahrc.co.za](mailto:paia@sahrc.co.za).