

Tax & Exchange Control

ALERT | 11 April 2024



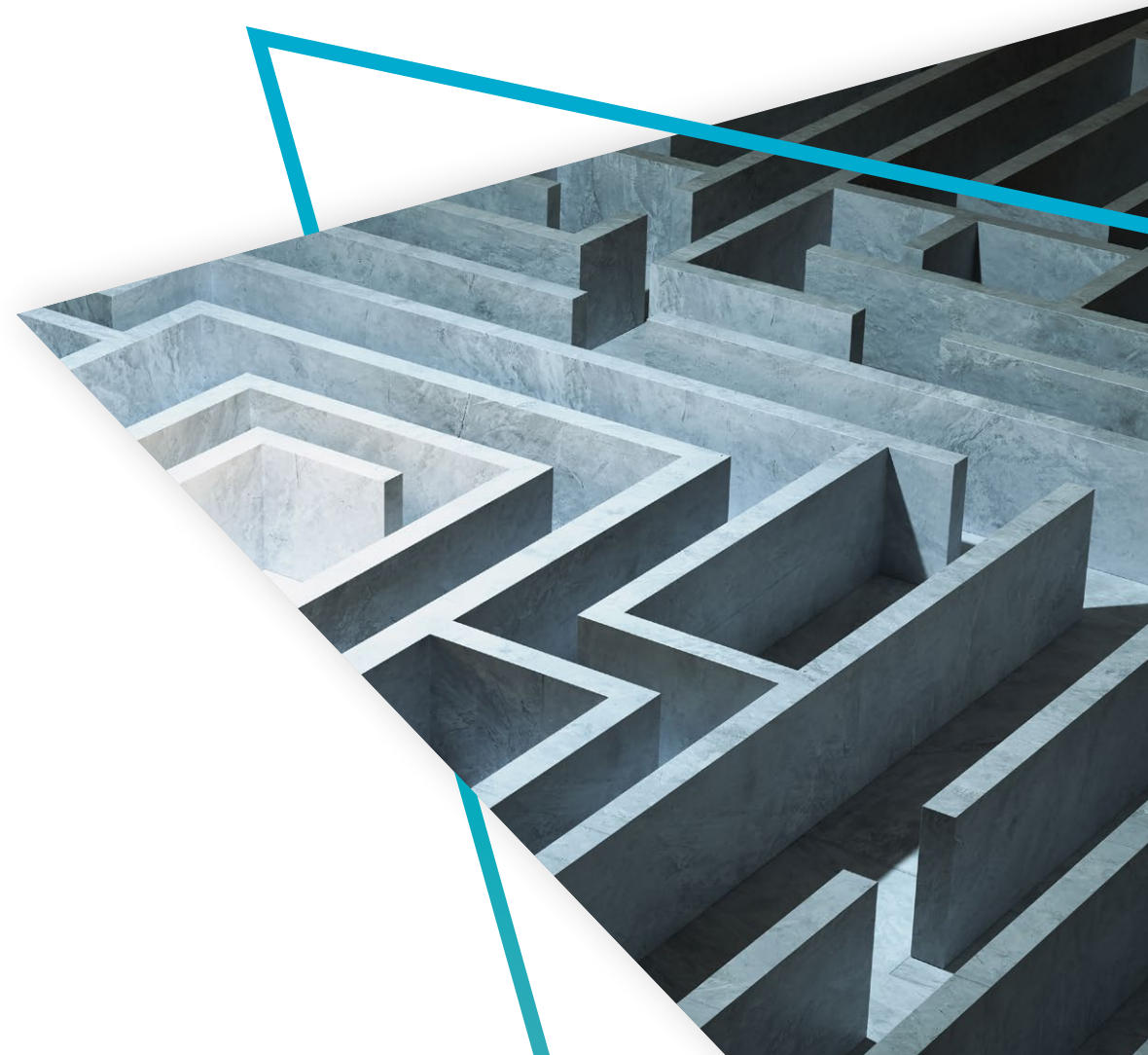
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SOUTH AFRICA

Don't kill my dream: I promise to comply with my tax obligations



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Don't kill my dream: I promise to comply with my tax obligations

"Nothing is certain but death and taxes." This infamous proverb confirms the obligation that we all have to pay tax – in some way or another. However, how many of us are actually aware of this obligation and how to go about discharging it?

In a [previous alert](#), the tax consequences that may arise in respect of the different types of businesses were discussed. This article will consider some of the tax obligations that flow from the operation of a business. Where differences may exist between the different forms of businesses, this article will only consider the differences between a sole proprietor and a company. However, the obligations noted for a sole proprietor will equally apply to partners in a partnership, freelancers, and independent contractors.

As a starting point, it should be noted that different tax obligations arise in respect of the different types of taxes. This article is limited to a consideration of the registration requirements for income tax, employees' tax (also known as PAYE), and value-added tax (VAT).

Income tax

Irrespective of the type of business you choose to operate, it will be liable for income tax if it has a taxable income (income less expenses) in a particular year of assessment, in terms of the Income Tax Act 58 of 1962 (Act). However, registration for income tax would only be required if the business is required to submit an income tax return for that year, in terms of the annual notice published by SARS in the Government Gazette. For example, for the 2023 year of assessment, any company with a gross income of more than R1,000 and any individual conducting a trade (like a sole proprietor), had to submit an income tax return and therefore, also had to be registered for income tax.

As a sole proprietor, no formal registration is required *per se*. Given that a sole proprietorship is not taxed separately from the individual that operates it, the individual may already be registered with SARS as a taxpayer. If that is the case, the sole proprietor will be required to include all amounts earned through the operation of the business in their income and deduct all expenses incurred in the production of such income (as provided for in terms of the Act) in their annual personal income tax return (ITR12). Practically, the ITR12 provides for an individual to declare each business (trade) conducted as a sole proprietorship, including the income and permissible deductions attached to that business, separately. For example, if an individual carries on business as an accountant in their own name but is also a share trader in their spare time, they would likely have to declare the income derived from and expenses incurred in respect of each business (trade) separately.

A company, on the other hand, will automatically be registered with SARS as a taxpayer when it completes its registration with the Companies and Intellectual Property Commission. As such, a separate registration with SARS is not required.

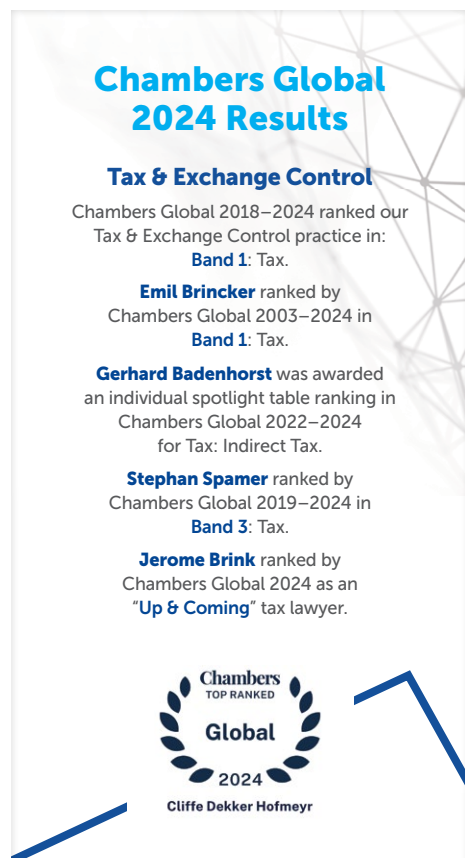
PAYE

Registration for PAYE is required when your business becomes an employer that pays remuneration to an employee. The terms "*employer*", "*remuneration*" and "*employee*" are defined in the Fourth Schedule to the Act, and it is only when all three of these elements are present in an employer-employee relationship that a business will be required to register for PAYE. It is, therefore, important to have an understanding of these terms to be able to determine whether there is an obligation for your business to register as an employer or not.

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In this context, an “*employer*” is defined as: “*any person... who pays or is liable to pay to any person any amount by way of remuneration*”.

The definition of “*remuneration*”, on the other hand, can be divided into three parts:

1. The general definition, which defines “*remuneration*” to mean any amount of income that is paid or is payable to a person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not for services rendered.
2. The extended definition, which expressly includes certain items into the definition, such as amounts referred to under specific paragraphs of the “*gross income*” definition, including fringe benefits, allowances and advances, travelling allowances, and the like.
3. The excluding part of the definition, which expressly excludes certain amounts from the definition, such as income earned by independent contractors, or any annuity received under an order of divorce or agreement of separation.

An “*employee*” is:

- any person who receives remuneration or to whom remuneration accrues;
- any person who receives remuneration or to whom remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;

- any labour broker; and
- any personal service provider.

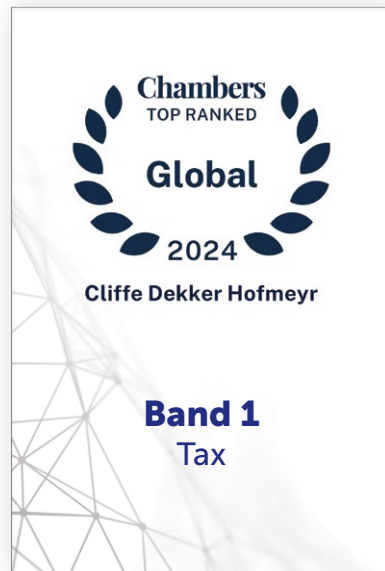
In addition to the above persons/category of persons, the Minister of Finance may also declare any person/class/category of persons to be an employee for purposes of the definition in the Fourth Schedule by notice in the Government Gazette.

Therefore, to the extent that the above three elements are present, the business will be required to register with SARS as an employer within 21 business days of becoming an employer, unless none of the employees are liable for normal tax (i.e. they earn below the minimum threshold for tax which is currently R95,750 for persons younger than 65 and R148,217 for persons older than 65 for the 2025 year of assessment).

Registration for PAYE can be completed on SARS’ eFiling system through the RAV01 form. Alternatively, a taxpayer can register through a SARS branch. It should be noted that where a business is required to register for PAYE, it may also be required to register for the Skills Development Levy (SDL) and the Unemployment Insurance Fund (UIF) contribution. Although registration for SDL and UIF takes place with SARS, the requirements for registration differ from those applicable to PAYE. A business should therefore take this into account when registering for PAYE and obtain the relevant advice in respect thereof.

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VAT

The registration requirements for VAT are contained in section 23 of the Value-Added Tax Act 89 of 1991 (VAT Act). Section 23(1) provides that any person who carries on any enterprise will become liable to register for VAT where the total value of taxable supplies made by that person exceeds (or is likely to exceed) R1 million in a 12-month period. This is commonly referred to as the compulsory registration requirement.

However, the VAT Act contains a proviso which states that where the threshold for registration is met (i.e. R1 million) solely as a consequence of:

- any cessation of, or any substantial and permanent reduction in the size or scale of, any enterprise carried on by that person; or
- the replacement of any plant or other capital asset used in any enterprise carried on by that person; or
- abnormal circumstances of a temporary nature,

then registration will not be required.

The VAT Act also makes provision for voluntary registration. The benefit of registering for VAT is that the business will not bear the cost of the value added on supplies purchased to make taxable supplies. In other words, the business will be able to pass the cost on to its customers by being able to deduct an amount of input tax on supplies purchased in the making of its own taxable supplies.

The voluntary registration requirement states that a person may register for VAT where the total value of taxable supplies made by that person exceeds R50,000 in a 12-month period.

Like PAYE, registration for VAT will, therefore, be required (or possible, in the case of voluntary registration) if the following elements are present:

- the person is carrying on an "enterprise";
- the enterprise makes "taxable supplies"; and
- the total value of the supplies exceeds R1 million in a 12-month period, in the case of compulsory registration, or R50,000 in a 12-month period, in the case of voluntary registration.

An enterprise is widely defined in the VAT Act and the definition contains several provisos and exceptions. However, generally, an enterprise is:

- any activity;
- carried on continuously or regularly by any person;
- in or partly in South Africa;
- in the course or furtherance of which;
- goods or services;
- are supplied;
- to any other person for consideration, whether or not for profit.

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The above definition contains several elements that are in and of themselves defined and require careful consideration, especially given that South Africa's VAT system does not have any place of supply rules. As such, it can get tricky trying to determine whether a business is indeed carrying on an enterprise and required to register.

In addition to carrying on an enterprise, the business needs to be making "taxable supplies". A "taxable supply" is any supply of goods or services that is subject to tax as contemplated in sections 7 and 11 of the VAT Act – i.e goods or services that are subject to VAT at the standard rate (currently 15%) or zero-rate. Therefore, where your business only makes exempt supplies (supplies not subject to VAT, such as the service of caring for children by a creche or an after-school centre), there will be no need to register for VAT as there is no input tax to claim.

Registration for VAT can also be completed through the eFiling system, alternatively, an appointment can be made at a SARS branch.

Overall compliance is important

Over and above the registration requirements noted in this article, the various tax acts also impose ongoing obligations on taxpayers which need to be adhered to, to ensure compliance. It should also be noted that the above does not consider the obligations that may arise in respect of other taxes that may be applicable to your business, depending on the type of industry the business operates in – for example, carbon tax.

It is therefore important that taxpayers familiarise themselves with all of their tax obligations as failure to do so may lead to the imposition of serious penalties, interest, and, in extreme cases, criminal sanctions. Employing the services of a professional in this regard is therefore prudent and advisable to keep the dream going, as they say.

Puleng Mothabeng

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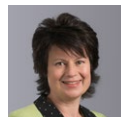
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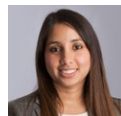
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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