Business Accounting Network

BAN BULLETIN

December 2015

Going Beyond Accounting, Taking Business Forward

THIS MONTH'S FOCUS

Personal Liability of Directors and Members for Company Taxes

Tugela Internet (Pty) Ltd* had 3 shareholders, Mr Thabo, Mrs Sangita and Mr Burns* all of whom were appointed directors of the company. In terms of the Tax Administration Act, Mr Burns was appointed as the representative taxpayer with SARS when the company registered for income tax, and as an employer (PAYE) and VAT.

After some years of trading, a dispute arose amongst the directors whereby Mr Burns e-mailed his resignation to the other directors with immediate effect. More than two years after his resignation, Mr Burns received a "Notice of Personal Liability of Representative Taxpayer" letter from SARS demanding payment of R175 000 for arrear employee taxes for Tugela Internet (Pty) Ltd.

Upon visiting the SARS branch, Mr Burns showed his resignation letter addressed to his other directors as proof that he was no longer a director and could not be held personally liable for the taxes of Tugela Internet (Pty) Ltd. As Mr Burns resignation had not been affected with SARS, they held that he remained personally liable for the taxes of Tugela Internet (Pty) Ltd as he was still the representative taxpayer as per the Tax Administration Act. Given the alternative of a civil and/or criminal investigation, Mr Burns felt he had no other option but to settle the account with SARS.

CONTACT DETAILS

National:
0861 BAN BAN
(0861 226 226)

Fax:
086 719 8307

Postal:
PO Box 30101, TOKAI, 7966
Cape Town, South Africa

Email:
info@ban.co.za

The Tax Administration act requires every company (that includes close corporations) to register a representative taxpayer who must reside in South Africa and who will act as an agent on behalf of the company for the company's tax matters, with SARS.

The representative taxpayer of a company is the public officer who is designated by the company when it registers as a taxpayer and is most likely a director or member, as it must be a *senior official of the company or close corporation* and be approved by SARS. A public officer therefore cannot be a company's auditor, accountant or attorney.

A representative taxpayer is personally liable for the company's tax debt if, while it remains unpaid, he or she:

(a) Alienates or charges or disposes of amounts in respect of which the tax is chargeable; or
(b) Parts with funds in his possession which could have been used to pay the tax.

Withholding agents, who must withhold an amount of tax and pay it to SARS are held personally liable for any company tax that:

(a) is withheld but not paid to SARS, or
(b) which *should have* been withheld but was not so withheld.

Don Munroe* had a plumbing business trading as a sole proprietor when he was blacklisted. He decided to register a new plumbing company, Water Tubes Plumbing (Pty) Ltd * with his wife and daughter registered as shareholders and directors of the new company. On registration of the company, Don's wife, Mary, was appointed the public officer with SARS.

Don employed an outsourced bookkeeper to prepare and submit the PAYE and VAT returns, which she duly did. However, Don never paid the taxes to SARS. Due to non-payment, the bookkeeper left and as a result, no IRP5 certificates were issued to employees.

Mary, Don's wife, has been issued with a summons by SARS for the outstanding taxes.

If a public officer is not appointed as required, the managing director, director or company secretary is deemed to be the public officer. It is a criminal offence if a person fails or neglects to appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer within 21 business days of the change taking affect and is, upon conviction, subject to a period not exceeding 2 years imprisonment or a fine.

** [not their real names]*

Monique Sharland
CEO of Business Accounting Network,
Monique is a professional accountant,
small business tax law expert and
franchising specialist