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## SMALL BUSINESS LAW

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|  |     |
|--|-----|
| <b>INTRODUCTION</b> .....  | 536 |
| Categories of SMMEs.....   | 536 |
| <b>TYPES OF BUSINESSES</b> .....   | 537 |
| Sole trader or sole proprietor (owner) .....                                   | 537 |
| Partnership .....  | 537 |
| Close corporation .....  | 538 |
| Signing surety .....   | 538 |
| Company .....  | 539 |
| CHART: The differences between the four types of businesses .....              | 540 |
| CHART: Advantages and disadvantages of the different types of businesses ..... | 541 |
| Co-operatives .....  | 541 |
| Financing a co-operative .....   | 541 |
| Profits in a co-operative .....  | 542 |
| Purpose of a co-operative .....  | 542 |
| Principles of a co-operative .....   | 542 |
| Starting and registering a co-operative .....                                  | 543 |
| Application for registration .....   | 543 |
| Registration .....   | 543 |
| Name of co-operative .....   | 544 |
| Constitution of a co-operative .....   | 544 |
| Keeping records .....  | 544 |
| Contact details for the Registrar of Co-operatives .....                       | 545 |
| <b>REGISTRATIONS AS A NEW EMPLOYER</b> .....                                   | 545 |
| Summary of the statutory registrations required for employers .....            | 545 |
| Employee's tax - SITE/PAYE .....   | 546 |
| How to register as an employer for SITE/PAYE .....                             | 546 |
| What must the employer do every month? .....                                   | 546 |
| What must the employer do every year? .....                                    | 547 |
| Special situation for members of CCs and directors of companies .....          | 547 |
| Casual employees and tax .....   | 547 |

|  |     |
|--|-----|
| <b>Unemployment Insurance Fund (UIF)</b> .....                           | 548 |
| Who must contribute to UIF? .....  | 548 |
| Who must register for UIF? .....   | 548 |
| How to register for UIF .....  | 549 |
| What must the employer do every month? .....                             | 550 |
| How to pay the UIF .....   | 550 |
| Declaring new employees .....  | 550 |
| <b>Skills Development Fund and Levy</b> .....                            | 551 |
| Who does the SDL apply to? .....   | 551 |
| Registering with SARS .....  | 551 |
| Paying the SDL .....   | 551 |
| Distributing the SDL funds .....   | 551 |
| <b>Compensation for Occupational Injuries and Diseases (COIDA)</b> ..... | 552 |
| How to register for Compensation .....                                   | 552 |
| Does the employer pay Compensation for all employees? .....              | 552 |
| What must the employer do when someone gets hurt at work? .....          | 553 |
| <b>Occupational health and safety</b> .....                              | 553 |
| Who does the Act apply to? .....   | 553 |
| Appointment of representatives .....                                     | 553 |
| <b>Formalising the employment relationship with employees</b> .....      | 553 |
| <b>INCOME TAX</b> .....  | 554 |
| <b>Provisional tax</b> .....   | 554 |
| Assessment .....   | 555 |
| <b>How to register as a taxpayer</b> .....                               | 555 |
| Sole traders and partnerships .....                                      | 556 |
| Close corporations and companies .....                                   | 556 |
| <b>What happens if you do not pay tax or pay late?</b> .....             | 556 |
| <b>SARS eFiling</b> .....  | 556 |
| What is the cost? .....  | 556 |
| What are the steps involved? .....                                       | 557 |
| <b>VALUE-ADDED TAX (VAT)</b> .....                                       | 557 |
| <b>VAT vendors</b> .....   | 557 |
| <b>Who should register as a vendor?</b> .....                            | 557 |
| The Small Retailers VAT Package .....                                    | 557 |
| <b>How do you register for VAT?</b> .....                                | 558 |
| <b>How does VAT work?</b> .....  | 558 |
| VAT invoices .....   | 558 |
| What records must be kept for VAT purposes? .....                        | 558 |
| Paying VAT to SARS .....   | 559 |
| Claiming input credits .....   | 559 |

|  |     |
|--|-----|
| <b>BUSINESS LICENCES</b> .....   | 560 |
| What types of business need a licence? .....                                     | 560 |
| How to get a business licence .....  | 560 |
| Does the business licence have to be renewed? .....                              | 561 |
| What happens if the person sells food and does not get a business licence? ..... | 561 |
| <b>EXPORTING AND IMPORTING</b> .....   | 561 |
| Permits for exporting and importing .....  | 561 |
| How can you get a permit? .....  | 561 |
| Goods that are subject to export and import controls .....                       | 561 |
| Registering as an exporter and importer .....                                    | 562 |
| <b>ADMINISTRATION SKILLS FOR SMALL BUSINESSES</b> .....                          | 562 |
| Bookkeeping .....  | 562 |
| Payroll and personnel records .....  | 562 |
| Other important records .....  | 563 |
| Customer service records .....   | 563 |
| Stock control records.....   | 563 |
| Business safety records.....   | 563 |
| Filing .....   | 563 |
| Filling in forms .....   | 563 |
| Writing out cheques .....  | 563 |
| <b>SUPPORT FOR SMMEs</b> .....   | 564 |
| Small Enterprise Development Agency (SEDA).....                                  | 564 |
| Khula Enterprise Finance Ltd (Khula) .....                                       | 565 |
| Thusong Service Centres .....  | 565 |
| Tender Advice Centres .....  | 565 |
| National Small Business Advisory Council .....                                   | 566 |
| <b>PROBLEMS</b>  |     |
| 1. What type of business to start .....  | 566 |
| 2. Starting a business which needs a business licence .....                      | 568 |
| 3. Is being a VAT vendor worth it? .....   | 568 |
| 4. Drawing up a business plan .....  | 569 |
| <b>MODEL LETTER</b>  |     |
| Letter of appointment .....  | 571 |
| <b>CHECKLISTS</b>  |     |
| When starting a business .....   | 572 |
| Business licence types .....   | 572 |
| <b>RESOURCES</b> .....   | 690 |

# Introduction

Small business means a separate business entity, including profit-making and non-profit making enterprises (such as a co-operative), which is managed by one or more owners and which can be classified as a micro, very small, small, or medium enterprises (also referred to as SMMEs). Micro is the smallest type of business and has no more than 5 people working for the business; a 'very small' business has no more than 20 people working for it, a 'small' business can employ up to 50 people, and a medium business can employ up to 200 people, depending on the industry.

## CATEGORIES OF SMMES

The National Small Business Act divides SMMEs into the following categories:

|   |   |
|---|---|
| <b>SURVIVALIST ENTERPRISE</b><br><i>Women represent approximately 56% of this category</i>  | Operates in the informal sector of the economy.<br>Mainly undertaken by unemployed persons.<br>Income generated below the poverty line, providing minimum means to keep the unemployed and their families alive.<br>Little capital invested, not much assets.<br>Not much training required to operate.<br>Opportunities for growing the business very small. |
| <b>MICRO ENTERPRISE</b><br><i>Women represent approximately 38% of this category with no employees, and 15% of this category with 1-4 employees</i> | Between one to five employees, usually the owner and family.<br>Informal - no license required, no formal business premises, no labour legislation necessary.<br>Turnover below the VAT registration level of R300 000 per year.<br>Basic business skills and training.<br>Potential to make the transition to a viable formal small business.                |
| <b>VERY SMALL ENTERPRISE</b>  | Part of the formal economy, use technology.<br>Less than 10 paid employees.<br>Includes self-employed artisans (electricians, plumbers etc) and professionals.  |
| <b>SMALL ENTERPRISE</b>   | Less than 10 paid employees.<br>More established than very small enterprises, formal and registered, fixed business premises.<br>Owner managed, but more complex management structure.  |
| <b>MEDIUM ENTERPRISE</b>  | Up to 200 employees.<br>Still mainly owner managed, but decentralised management structure with division of labour.<br>Operates from fixed premises and complies with all formal requirements.  |

The *National Small Business Amendment Act (No 29 of 2004)* provides for the establishment of the Small Enterprise Development Agency (SEDA) and the incorporation of organisations such as Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institutions into SEDA. This will be dealt with in more detail in the chapter.

## Types of businesses

If you want to start a business, you must decide whether you want your business to be:

- A sole trader or sole proprietor
- A partnership
- A close corporation (from 1 May 2011: no new closed corporations can be created, or conversions from company to closed corporation will be allowed, however existing entities can continue to operate)
- A company

### SOLE TRADER OR SOLE PROPRIETOR (OWNER)

A sole trader or a sole proprietorship means **one person** owns the business. A sole trader does not have to register the business, for example, Vusi starts a shoe repair business which he calls 'Cool Leather' and runs it from his home.

If you are a sole trader, the law does not see a difference between the things that you own and the things that belong to your business, which are called **assets**. This means that the tools which Vusi uses to repair shoes, the table on which he works and the cash register belong to him in the same way that his television set or his bed does.

There is also no difference between the money you owe people and the money your business owes people, which are called **debts**. For example, the money Vusi must pay for electricity is no different from the money he must pay the man who sells him leather to repair shoes. If Vusi doesn't pay his leather supplier for leather bought from him, the supplier can go to court to get his money. If Vusi does not have the money to pay the supplier, the court can take away his tools, his TV, his car, or anything that is a luxury, and sell it to pay the supplier.

As Vusi, a sole proprietor, has given the business a name, he must refer to it in any business dealings as 'Vusi Mahlangu t/a (trading as) Cool Leather'.

### PARTNERSHIP

A partnership is a business that has between **2 and 20 partners** who own the business together. If two or more people want to start a partnership, they should sign a written agreement. A lawyer should prepare this. The agreement must include these points:

- What happens to the assets of the business, for example, the tools and the furniture, if the partnership ends
- How the partners will share the profits, for example, one partner works every day and another partner only works three days a week; they would not want to share the profits equally because the one partner has worked more days than the other
- What happens if one of the partners wants to leave the partnership

*(See page 496 What are the requirements for a contract?)*

Every time a new partner joins, the partners must sign a new agreement. Like a sole trader, the law does not recognise a difference between the partnership's assets and debts and the assets and debts of the partners themselves. Not only that, but the law does not recognise a difference between different partners' assets and debts.

For example, Nomonde's business partner Vuyani builds a house and does not pay the builder. The builder takes him to court to get his money. The court can take the tools and furniture of the partnership and sell them to give the builder his money. The court can do this because there is no difference between Vuyani's assets and debts and the assets and debts of the partnership. So Vuyani's debts are also the debts of the partnership. If Vuyani cannot pay the builder, the builder can get his money from the partnership. Nomonde would be able to go to court to get the money back from Vuyani, but it is expensive to pay lawyers to take a case to court and it takes a long time before the court will hear her case.

If Vusi, decides to run Cool Leathers as a partnership, he must refer to the business in any business dealings as 'Vusi Mahlangu t/a Cool Leather'.

## CLOSE CORPORATION (CC)

A close corporation is like a company, only less expensive and less complicated to run. From 1 May 2011 no new CC's can be created and the conversion from company to CC is also not allowed.

A CC is more expensive to run than a partnership or sole trader because you need to pay an 'accounting officer' to do the books of the business. You also have to keep records for the CC and each member has to keep records for tax purposes.

The people who own and manage the close corporation are called members. There are no directors or shareholders or a chairperson of the board, like a company has. A close corporation cannot have more than 10 members.

The law sees a close corporation as separate from its members. This means that unlike a sole trader and a partnership, the assets and debts of the business belong to the close corporation, and the assets and debts of the members have nothing to do with the CC.

For example, Cool Leathers CC buys leather from a supplier to repair shoes. The CC does not pay the supplier for six months. The supplier decides to go to court to get his money from the CC. If Cool Leathers does not have the money to pay the supplier, the court can only take the things that belong to the business, Cool Leathers, to pay the debt. The court cannot take the private things that belong to Vusi and Linda, who are the members of Cool Leathers.

Financial reporting has now been made the same as that of a company. From 1 May 2011 a CC may be subject to an independent audit or accounting officer's report. The criteria will be the same as that of a company.

If the business is a CC and the CC has a letterhead, the registration number of the CC and all the names of the members must be printed at the bottom of the letterhead. The registered name and number must also appear on cheques.

### *SIGNING SURETY*

Suppliers may be scared that a CC has no money to pay. Suppliers therefore often make sure that somebody signs surety for the CC, which means that if the CC does not have the money to pay, the person who has signed the surety will have to pay (be liable for) the debt.

Members of a close corporation must always write CC behind the name of the close corporation, for example *Cool Leathers CC*. If members do not put CC behind the name whenever they write it, then the law does not see the CC as separate from its members and the debts and assets of the CC are not separate from the debts and assets of the members.

If the business is a CC and the business has a letterhead, the registration number of the CC and the full names of the members must be printed on the letterhead. The number will look something like this: CK2008/031666/23.

If the business has an office, then the owner must have a sign up showing the business is a CC. For example, if Anna has a dry cleaning business, then she must have a sign up saying *ANNA'S DRY-CLEANING SERVICES CC*.

## COMPANY

Companies have to obey all the rules of the *Companies Act*, which is a long and complicated set of laws. On 1 May 2011 *the Companies Act, 2008* became the new set of regulating laws. Up to that date the *Companies Act 1973* was enforced. Existing companies are subject to the transitional measures as defined in the new Act.

If **more than 10 people** want to start a business together, they will have to go to an attorney or an accountant to form a partnership or a company. The usual way to start a company is to buy a shelf company. These are companies that are already formed. A company has **shareholders and directors**. Shareholders can be people or other companies or Trusts or CC's. Shareholders put the money into the business and are the owners of the business. Directors are the managers of the business. Sometimes the owners and the managers are the same people and sometimes they are different people.

The law sees a company as separate from its shareholders and directors. This means that like a CC, the **assets and debts** of the business belong to the company and the assets and debts of the shareholders and directors have nothing to do with the Company.

Suppliers or banks, which lend money to companies will often ask the shareholders or the directors to **sign surety** for the company. If the company cannot pay its debts, then the people who have signed surety will have to pay the company's debts.

Directors and shareholders of a private company must always write Pty (Ltd) or Pty (new Act) behind the name of the company. If they write the name of the company without writing Pty (Ltd) or Pty behind it, the law does not see the company as separate from its shareholders, and the debts and assets of the company are not separate from the debts and assets of the shareholders.

If the business is a company and the company has a letterhead, the registration number of the company and all the names of the directors must be printed at the bottom of the letterhead. The registered name and number must also appear on cheques.

*(See next two pages CHARTS: The differences between the four types of business and Advantages and disadvantages of the different types of business)*

## THE DIFFERENCES BETWEEN THE FOUR TYPES OF BUSINESS

|   | SOLE TRADER   | PARTNERSHIP   | CC (CLOSE CORPORATION)   | PRIVATE COMPANY  |
|---|---|---|--|--|
| Number of people  | One   | Two to twenty   | One to ten   | One to fifty   |
| What people are called  | Sole trader or proprietor (owner)   | Partners  | Members  | Shareholders and directors (shareholders do not have to be the same people as the directors)   |
| How it is formed  | You do not have to do anything.   | The partners must sign a partnership agreement.   | An attorney or accountant drafts a document called a founding statement, which is registered with the Registrar of Companies. No new CCs could be set up after 2011. | A Memorandum of Incorporation (MOI) is registered at the CIPC thereby incorporating the entity.  |
| Liability: does the law limit the liability to the business or are owners of the business liable for the business's debts and the business for their debts? | The owner of the business is liable for the business's debts, and the business for his/her debts.   | The partners are liable for the business's debts and the business is liable for their debts.  | The CC is only liable for its debts, not those belonging to the members. The members are not liable for the CC's debts, unless they have signed surety.              | The company is only liable for its debts, not those belonging to its directors or shareholders. In certain circumstances, the directors may be held liable for the debts of the company if it is not complying with the Companies Act. |
| Existence   | The sole proprietorship stops existing when the trader or proprietor stops carrying on the business.  | If the partners change, they must sign a new partnership agreement, because the old partnership no longer exists.   | The CC continues to exist even when the members change. It does not have to be registered again.   | A company continues to exist even when the shareholders or directors change. It does not have to be registered again.  |
| How do you end the business legally?  | The sole trader ends when the trader stops doing business. If s/he sells the business, the person who buys it will start their own new sole proprietorship. | The partnership ends when: the partners agree that they will no longer do business together as partners, or the partners change, or a partner is declared insolvent by the court. | It is difficult to end a CC. An attorney's help is needed. A CC can end through voluntary deregistration or liquidation.   | It is difficult to end a company. An attorney's help is needed. A Company can end through voluntary deregistration or liquidation.   |
| Who owns the business's assets?   | The sole trader or proprietor owns the assets.  | The partners own the assets. One partner may not sell or lease or do anything with an asset without the permission of the other partners.   | The assets belong to the CC, not to the members. If the CC ends, the assets are shared out among the members in the way that was agreed in the founding agreement.   | The assets belong to the company, not to the shareholders. If the company ends, the assets are shared among the shareholders.  |
| Accounting requirements   | A sole trader does not have to keep records, except for VAT and income tax.   | A partnership does not have to keep records, except for VAT and income tax.   | Records must be kept according to the requirements in the Companies Act.   | Records must be kept according to the requirements in the Companies Act.   |



## ADVANTAGES AND DISADVANTAGES OF THE DIFFERENT TYPES OF BUSINESS

| TYPE OF BUSINESS   | ADVANTAGES   | DISADVANTAGES   | WHEN TO USE IT   |
|--|--|---|--|
| Sole trader  | It is the cheapest and easiest type of business to start and to run.   | The law does not separate the assets and debts of the sole proprietor from the assets and debts of the business.  | Use it for a business which is owned by one person and the business is small and not complicated.  |
| Partnership  | It is cheaper to run than a CC or a company because it does not have to keep special books and pay an accountant to check its books. | The law does not separate the assets and debts of the partners from the assets and debts of the business. If someone takes a partner to court for personal debts, the court can take the business's assets.   | Use it when the business is owned by more than one person (but not more than 20), and the owners do not want the expense of a CC. Be warned of the disadvantages though.   |
| Close corporation<br>(no new CCs could be set up after 2011) | The law sees the assets and debts of the members as separate from the assets and debts of the CC.                                    | The law says that the CC must give the Registrar of Companies statements showing how the money of the business works. A bookkeeper or accountant must be paid to do this. A CC may be subject to an independent review or audit and this can be costly. | Use it when one or more people own the business (but not more than 10), and owners want the protection of a CC. This means that if someone takes a member to court for personal debts, the court cannot take the things that belong to the business.       |
| Company  | The law sees the assets and debts of the shareholders as separate from the assets and debts of the company.                          | It is expensive to register a company. It is also expensive and complicated to run a company.   | If there are more than 20 owners, they have to form a company, because they cannot form a CC or a partnership. It is also used when the owners want protection from the debts of the business, but there are more than 10 owners so they cannot form a CC. |

(See page 566 Problem 1: What type of business to start)

**Note: Due to uncertainties regarding the new Companies Act, anyone wanting to buy a CC or a Company or form a new Company, should get professional advice from an accountant or an attorney.**

## CO-OPERATIVES

A co-operative is a business formed by a group of people who all own the co-operative and participate in its control. So, the business is owned and run by its members who buy shares to become members. All the members of the co-operative have one vote each so that even if a company buys many shares in a co-operative, it still only has one vote, like everyone else. Members elect three or more directors who manage and control the daily affairs of the co-operative and who are answerable to the members.

### FINANCING A CO-OPERATIVE

Members contribute to the *capital* of their co-operative and control the economic affairs of the co-operative in a democratic way. *Capital* is the money and equipment which the co-operative uses to carry out its goals. Co-operatives can get capital from money paid for shares issued to members, membership fees, grants,

donations, loans and surplus money left over from previous years of operation. Some (and possibly all) of the capital which the co-operative uses actually belongs to the members, usually in the form of shares and bonus shares. Each member invests some money and gets some shares in return. The shares show that the member owns some of the assets (the money and property) of the co-operative. Any other capital which the co-operative uses belongs to the co-operative as a whole.

### *PROFITS IN A CO-OPERATIVE*

Although a co-operative is not formed with the aim of making profits, most co-operatives do have a bit of profit to divide up after paying employees and meeting other expenses. In a co-operative all the members own the profits. If the co-operative has money left over after it has paid all its debts and taxes and provided the planned benefits to its members, this is called a "surplus". The surplus is normally used to develop the co-operative. For example, a co-operative can use its surplus to expand and develop the co-operative's business or the services it offers to its members. But if there is an extra unplanned surplus, this means that (in a worker co-operative) the wages could have been higher or (in a service co-operative) the prices or fees or commissions charged for the service were too high. In this case, the surplus can be returned to the members, or used to support other activities approved by the members. Any surplus that is returned to the members must be shared in proportion to the contribution each member made to the surplus. For example, a grocery co-operative might return a portion of its surplus to its members, in proportion to the value of the purchases made by each of them during the year.

Overall, members do not usually receive a big return on the amount they contribute to the capital of the co-operative when they become members. This makes a co-operative different from a company. A shareholder in a *company* buys shares in the hopes of making a profit. A member of a *co-operative* joins the co-operative and contributes to its capital because the co-operative will provide a benefit to its members.

### *THE PURPOSE OF A CO-OPERATIVE*

The primary aim of a co-operative is to provide services to its members. The goal of a co-operative is to provide services to its members at affordable prices, or to create employment for its members. The needs of the members come first. For example, the members of a service co-operative may want to market their products at a good price. They may want to purchase goods at bargain prices. They may want to be able to get a loan at a reasonable interest rate. Employees in worker co-operatives want to earn good wages. The aim of the co-operative is to provide the desired benefits as effectively as possible, in a sustainable way.

Any services provided by a co-operative must be provided mainly to its members. For example, a farmer's marketing co-operative should market mostly crops or livestock produced by its members, not by persons outside the co-operative. The sewing machines which belong to a sewing co-operative should be mainly for the use of its members, not for people outside the co-operative.

### *PRINCIPLES OF A CO-OPERATIVE*

- It is owned by all its members. The members each make a contribution to the co-operative (for example, part of a few month's wages)
- Management makes decisions together with the members
- Management is accountable to the members
- Members themselves decide how to organise the co-operative, for example what the wages and working hours will be
- Profit and loss is divided among the members

## STARTING AND REGISTERING A CO-OPERATIVE

The *Co-operatives Act (No 14 of 2005)* was implemented on 2 May 2007. This creates the foundation for a more active and supportive environment for co-operatives. The registration procedure is simpler, it re-defines government's role as a facilitator in promoting co-operatives, it provides for different types of co-operatives in all sectors of the economy, and ensures co-operative principles are observed.

Anyone starting a co-operative must first register it with the Registrar of Co-operatives at the Department of Trade and Industry. This is based in the Companies and Intellectual Property Registration Office (CIPRO) in Pretoria.

The Registrar responds to queries from the public, provides information about co-operatives and how to register them, and promotes the establishment of co-operatives in poor rural communities. The office of the Registrar is responsible for registering and deregistering co-operatives, as well as analyzing the financial statements of co-operatives. They will also provide a sample constitution for a new co-operative and, if necessary, provide assistance in drawing up a constitution. They will also provide all the documents that are needed for the various kinds of co-operatives. The following outline summarises the steps involved in starting and registering a co-operative.

### APPLICATION FOR REGISTRATION

Before a co-operative can apply for registration, there must be at least one meeting of people who are interested in forming the co-operative. The people present at this meeting must adopt the constitution of the co-operative and elect the first directors of the co-operative.

After this meeting, the group must submit an application for registration to the Registrar of Co-operatives. This application must be made on an official form which is available from the Registrar's office.

The group must submit the following documents to the Registrar along with the application:

- The constitution of the co-operative, signed by the members who are applying to register the co-operative (the 'founder members')
- A list of the names of the founder members
- A list of the names of the directors
- The registration fee, or proof that the registration fee has been paid.

The amount of the registration fee will be set by regulations made under the *Co-operatives Act*.

### REGISTRATION

The Registrar of Co-operatives must register the co-operative if the application meets the following conditions:

- The application satisfies all the requirements in the *Co-operatives Act*.
- The constitution of the co-operative meets all the requirements in the *Co-operatives Act*.
- The constitution of the co-operative is consistent with the co-operative principles.
- The proposed name of the co-operative follows the rules in the *Co-operatives Act* about co-operative names.

If the Registrar is satisfied that the application meets all of these conditions, then the Registrar will give the co-operative a registration certificate with a registration number. Once a co-operative is registered, it becomes a 'legal person'. This means that it has legal powers similar to those of companies and other such groups.

For example, it can continue to exist even if its membership changes over time. It can open bank accounts and own land and other property. It can enter into contracts and be a party to court cases. As a "legal person", the co-operative will have many of the same rights and powers as individuals. Before the group is registered as a co-operative, it does not have these powers.

Once the co-operative is registered, the Department of Trade and Industry will be able to give it necessary support if it –

- (a) follows the co-operative principles
- (b) consists of black people, women, youth, people who live in rural areas, women or people with disabilities

AND

- (c) promotes equity and greater participation by its members.

### NAME OF CO-OPERATIVE

Every registered co-operative must have a name that is different from the names of other co-operatives and it must not be misleading or prohibited in some way.

### THE CONSTITUTION OF A CO-OPERATIVE

The Registrar of Co-operatives at the Department of Trade and Industry (DTI) will provide a sample constitution for a new co-operative and, if necessary, provide assistance in drawing up a constitution. You can also look up the DTI website [www.dti.gov.za](http://www.dti.gov.za) (click on co-operatives) for information on the what to include in a constitution.

### KEEPING RECORDS

The *Co-operatives Act* has strict record-keeping rules. A co-operative must keep the following documents at its registered office:

- Its constitution and any rules made separately from the constitution
- A minute book containing the minutes of all general meetings
- A minute book containing the minutes of all meetings of the board of directors
- Proper accounting records, including a record of the transactions between the co-operative and each member of the co-operative
- A list of its members with the following information for each members:
  - name and address
  - the date the person became a member
  - the date that the person's membership came to an end (if this has happened)
  - the amount of membership fees paid
  - the number of membership shares held by the member
  - the number and amount of loans made to the member
- A register of its directors with the following information for each director, including both present and former directors:
  - name, address and ID number
  - the date the person became a director
  - the date that the person's stopped being a director (if this has happened)
  - the name and address of any other co-operative, company or close corporation where a director acted as a director or a member, now or in the past
  - a register of all directors' interests in contracts or other undertakings involving the co-operative

## CONTACT DETAILS FOR THE REGISTRAR OF CO-OPERATIVES

Telephone: DTI call centre on 0861 843 384 and choose the option for co-operatives

For more information on how to start and register a co-operative see the following websites:

- CIPRO website: [www.cipro.co.za](http://www.cipro.co.za) which provides on-line access to sample constitutions and other practical information;
- DTI website: [www.dti.gov.za](http://www.dti.gov.za)
- SEDA website: [www.seda.org.za](http://www.seda.org.za) for up-to-date information on co-operatives and the law

## Registrations as a new employer

An employer must be registered as an employer for the following:

- Employee's tax: registering for SITE/PAYE (SITE stands for Standard Income Tax on Employees, and PAYE stands for Pay As You Earn)
- Skills Development Levy
- Unemployment Insurance (UIF)
- Compensation for Occupational Injuries and Diseases (Compensation Commissioner – WCA)

### SUMMARY OF THE STATUTORY REGISTRATIONS REQUIRED FOR EMPLOYERS

| TYPE OF REGISTRATION             | EXPLANATION  | EXPLANATION  | PAGE IN THIS MANUAL |
|----------------------------------|--|--|---------------------|
| PAYE / SITE                      | SARS. Visit <a href="http://www.sars.gov.za">www.sars.gov.za</a> for details of your local SARS branch   | Every employer deducting PAYE needs to register using form EMP101.   | 546                 |
| Skills Development Fund and Levy | SARS. Visit <a href="http://www.sars.gov.za">www.sars.gov.za</a> for details of your local SARS branch   | Completion of form EMP101 triggers registration for SDL but entities with an annual payroll below R500 000 are exempt.   | 551                 |
| UIF                              | SARS. Visit <a href="http://www.sars.gov.za">www.sars.gov.za</a> for details of your local SARS branch<br><br>Local office of the Department of Labour. Visit <a href="http://www.labour.gov.za">www.labour.gov.za</a> or <a href="http://www.ufiling.gov.za">www.ufiling.gov.za</a> | Every business entity employing staff, regardless of its size, must register for UIF. If there are no staff members then it is not necessary to register.<br><br>When you complete form EMP101 (for employee's tax purposes), this triggers the registration for UIF.<br><br>If the business does not need to register for PAYE it needs to register for UIF with the UIF Commissioner at the Department of Labour by completing form UF8 and returning it to the UIF Commissioner at the Department of Labour. This requirement is additional to registering for UIF with SARS. | 548                 |
| COIDA                            | Local office of the Department of Labour. Visit <a href="http://www.labour.gov.za">www.labour.gov.za</a>   | Every business regardless of its size must register in terms of the Compensation for Occupational Injuries and Diseases Act. You must complete form WAs2 and return it to the Compensation Commissioner at the Department of Labour.   | 552                 |

## EMPLOYEE'S TAX - SITE/PAYE

Employee's tax is money that is deducted by an employer from an employee's wage or salary on a regular (usually monthly) basis. The amount of tax that should be deducted is written in tables that are issued by the South African Revenue Services (SARS). Every employer who pays wages or salaries which have to be taxed, has to register with the SARS as an employer for employees' tax purposes.

There are two types of tax an employer can deduct from an employee's wages: SITE and PAYE. An employer will deduct SITE tax from the wages of employees who earn less than R73 650 per year and have no other form of income. In this case employees do not need to complete a tax return. Employers must deduct PAYE from employee's wages where they earn over R73 650 per year. Employers must pay the tax that has been deducted to SARS. The employer must register with SARS as an employer and submit an EMP201 return with the payment every month. The amount of R73 650 is applicable for the financial year from 1 March 2015 to 29 February 2016. The amount will be increased after this period of time.

### *HOW TO REGISTER AS AN EMPLOYER FOR SITE/PAYE*

In order to register with SARS an employer must fill in a form called an EMP101 form and send it to SARS. This form can be collected from SARS or you can print the form from SARS's website: [www.sars.gov.za](http://www.sars.gov.za)

It is advisable to get professional help from an accountant or an attorney to help with the registration. SARS regularly changes the requirements for registration as well as the documentary evidence needed.

The SARS will let the owner of the business know that it has received the EMP101 form. SARS will ask for more information if necessary. When the employer has given the information that SARS asked for, SARS will issue a letter confirming registration.

Returns are issued monthly from SARS E-filing.

### *WHAT MUST THE EMPLOYER DO EVERY MONTH?*

When the employer pays the employees, she or he must deduct tax from their wages. At the end of every month, the employer pays the tax to the SARS. The employer must:

- Add up all the tax deducted from each employee's wages and write it on the form called an emp201 form
- Make payment of the tax to sars. Either by electronic payment or by writing out a cheque to sars (keep copies of all cheques or efts made to sars)
- Submit the form EMP201 electronically on SARS E-filing and make an electronic or manual payment.

Electronic payments can be made directly into the SARS banking accounts at First National Bank, Absa Bank, Nedbank or Standard Bank or via the Internet banking facilities. In all instances it is very important that the correct payment reference as indicated on the specific EMP201 Return is provided to ensure that tax payments can be identified and correctly allocated when SARS receives the payment:

- SARS beneficiary account ID; and
- A 19-digit bank payment reference number. This allows the allocation of such payment to a specific tax type and period.

The SARS website, [www.sars.gov.za](http://www.sars.gov.za) provides details and information relating to bank payment limits and bank payment reference number structuring.

SARS must receive the form and the cheque or electronic payment by the 7th of the next month. For example, the SITE/PAYE for January must reach SARS by 7 February. If it is late, SARS will fine the employer. If the seventh day falls on a weekend or public holiday the Return and payment must be submitted on the last

working day before the weekend or public holiday. SARS will send a receipt to the employer which must then be filed.

Manual payment can also be made at most commercial banks.

Income earned below the tax threshold must be declared on a document called an IT3. The reason for not deducting PAYE must be stated. The threshold is adjusted every year.

### *WHAT MUST THE EMPLOYER DO EVERY YEAR?*

Twice a year, SARS will ask the employer to add up all the SITE/PAYE tax paid for that period. The employer must add together all the amounts shown on the receipts and fill in a form, called an IRP501 form. At the end of February every year, the employer must give each employee a form called an IRP5 form, which says how much the employee has earned that year, what deductions have been made and how much tax the employee has paid that year. The employee must keep the form in a safe place.

At the end of February every year, the employer must give each employee a form called an IRP5 form, which says how much the employee has earned that year, what deductions have been made and how much tax the employee has paid that year. The employee must keep the form in a safe place.

In cases where the employer has, for valid reasons, not deducted employees' tax, the employer must provide the employee with an IT 3(a) certificate.

### *SPECIAL SITUATION FOR MEMBERS OF CCs AND DIRECTORS OF COMPANIES (NOT APPLICABLE TO SOLE TRADERS)*

If you are a director of a company or a member of a close corporation, you have to pay employees' (PAYE) tax every month.

Employees normally earn a salary, which means that an employee earns the same amount every month. The PAYE is therefore easy to work out. But the members of the CC or the Directors of the Company, who are often the owners of the business, often do not earn the same amount of money every month. The law around payment of tax for CC members and company directors is therefore complicated and difficult to work out. It is advisable to get an accountant or bookkeeper to help. It is also a good reason not to register a business as a CC unless it is a business that makes a lot of money and can afford to pay an accountant to help.

Look up the Small Enterprise Development Agency (SEDA) website: [www.seda.org.za](http://www.seda.org.za) for more information on these procedures.

### *CASUAL EMPLOYEES AND TAX*

An employer must deduct 25% from a casual employee's wages as PAYE tax. This will apply to employees who:

- Work for an employer for less than 5 hours per day (or 22 hours per week)  
OR
- work for an employer without reference to a specific period of time
- Work on a daily basis, who are paid daily and whose wages are more than R75 per day.

Examples include:

- Casual commissions paid, for example, spotters fees
- Casual payments to casual employees for irregular/occasional services
- Payments made to office bearers of organisations or clubs

Exemptions to this rule are as follows:

If an employee works regularly for less than 22 hours per week and provides the

employer with a written undertaking that they do not work for any other employer then they will be regarded as being in standard employment and tax must be deducted according to the standard weekly or monthly tax tables.

An employee who is in standard employment, in other words, he or she works for one employer for at least 22 hours per week.

## UNEMPLOYMENT INSURANCE FUND (UIF)

An employer must register all employees for UIF with SARS. Every month the employer must deduct UIF from the employee's wages which is 1% of the employee's wage. The employer must make an equal contribution of 1% of the employee's wages and send the money to the Department of Labour (*See page 238 Unemployment Insurance Fund*). For information on how to register or make a payment, or to download the relevant forms for registrations, declarations and payment, look at the following website which is linked to the Department of Labour: [www.ufiling.gov.za](http://www.ufiling.gov.za). The information that follows is based on information contained in this website. If the employer is registered for PAYE this will be done on the EMP201 submission to SARS.

### WHO MUST CONTRIBUTE TO UIF?

The *Unemployment Insurance Act (No 63 of 2001)* and *Unemployment Insurance Contributions Act* apply to all employers and employees, but not to -

- Employees working less than 24 hours a month for an employer
- Learners
- Public servants
- Foreigners working on contract
- Employees who get a monthly old age grant or
- Employees who only earn commission or do piece work

### EXAMPLE

*Zama cuts patterns for dresses. He pays Trevor to sew the pieces together. Trevor works from his house. Trevor is not employed by Zama and Zama cannot deduct tax or UIF from the money he pays Trevor.*

Domestic employers and their employees have been included under the Act since 1 April 2003.

A working member of a close corporation or working director of a company must now pay UIF. All employees who earn above an amount of R14 872 per month (or R178 464 per year) have to pay 1% of their earnings to UIF, but only up to this ceiling amount. For example, if Fred earns R16 000 per month, he will have to pay 1% of R14 872 and not 1% of R16 000. If Fred wants to claim UIF in the future he will only be paid a percentage of R14 872 and not a percentage of his salary.

The employer cannot claim money from the UIF if the business fails and has to close down.

### WHO MUST REGISTER FOR UIF?

All employers must register either with SARS or directly with the Unemployment Insurance Fund.

Employers must register directly with the UIF, unless they -

- Are required to register as employers under the *Income Tax Act*, or
- Pay the skills development levy under the *Skills Development Act*.



Employers who are required to register their employees with SARS for the payment of PAYE (Pay As You Earn) and/or SDL (Skills Development Levy) must register with SARS for their UIF.

### HOW TO REGISTER FOR UIF

There are various ways to register with the UIF (See chart below).

It is the employer's responsibility to fill in and send the forms to register themselves and their employees.

Every employee will be registered on an electronic database system and their details and contributions to the UIF will be recorded. Every time a new employee is employed the employer must register this person on the UIF database.

An unemployed person wanting to apply for UIF will only have to present their bar-coded ID document to receive unemployment payments.

| WAYS TO REGISTER FOR UIF |   |
|--------------------------|---|
| MANNER OF REGISTRATION   | STEPS   |
| Online                   | <p>Step 1: Get the necessary information ready. Get information like the ID numbers and addresses of employers and employees ready before registering.</p> <p>Step 2: Complete the online registration. Go to the website: <a href="http://www.ufiling.gov.za">www.ufiling.gov.za</a> (set up by the Department of Labour) and complete the online registration forms for commercial employees and for employers of domestic workers</p>  |
| Via e-mail               | <p>Step 1: Get the Form UI-8 and UI-19 (for business employers) or the UI-8D and UI-19D (for domestic employers) from the website: <a href="http://www.ufiling.gov.za">www.ufiling.gov.za</a></p> <p>Step 2: Fill in the forms for both yourself and your employees. The form for the registration of employees asks for an employer reference number. If you do not have a reference number yet, you can leave this part open. The UIF will create a reference number and send it to you. Also ignore the part asking for a signature.</p> <p>Step 3: e-Mail the forms to:<br/>           Commercial Employers: <a href="mailto:webmaster@uif.gov.za">webmaster@uif.gov.za</a>.<br/>           Domestic Employers: <a href="mailto:domestics@uif.gov.za">domestics@uif.gov.za</a>.</p> |
| By telephone             | <p>Step 1: Get the necessary information ready. Get information like the ID numbers and addresses of employers and employees ready before phoning the UIF.</p> <p>Step 2: Phone the UIF on (012) 337 1680 and follow the instructions of the UIF official.</p>  |
| By fax                   | <p>Step 1: Call the UIF fax line from your fax machine on 086 712 2000 and follow the voice prompts. Wait for the forms to be faxed to you.</p> <p>Step 2: Fill in the forms both of yourself and your employees. The form for the registration of employees asks for an employer reference number. If you do not have a reference number yet, you can leave this part open. The UIF will create a reference number and send it to you.</p> <p>Step 3: Fax the completed forms back to the UIF at 086 713 3000</p>  |
| By mail                  | <p>Step 1: Get the Form UI-8 and UI-19 (for business employers) or the UI-8D and UI-19D (for domestic employers) from the website or at any Employment Office.</p> <p>Step 2: Fill in the forms for both yourself and your employees. The form for the registration of employees asks for an employer reference number. If you do not have a reference number yet, you can leave this part open. The UIF will create a reference number and send it to you.</p> <p>Step 3: Mail the forms to: The UIF Pretoria 0052 (Postage is payable on all mail sent)</p>   |
| At an Employment Office  | <p>Step 1: Get the necessary information ready like the ID numbers and addresses of employers and employees ready before going to the Employment Office.</p> <p>Step 2: Get the Form UI-8 and UI-19 (for business employers) or the UI-8D and UI-19D (for domestic employers) from the Employment Office staff.</p> <p>Step 3: Fill in the forms both of yourself and your employees. The form for the registration of employees asks for an employer reference number. If you do not have a reference number yet, you can leave this part open. The UIF will create a reference number and send it to you.</p> <p>Step 4: Hand in the forms to the Employment Office staff.</p>  |

## WHAT MUST THE EMPLOYER DO EVERY MONTH?

Once you have registered yourself and your employees with the UIF, you must do the following:

- Deduct 1% of every employee's salary
- Add another 1% for every employee – this is paid by the employer
- Pay the 2% contribution every month to the sars or uif
- Declare any new employees or change in an employee's salary to the UIF

## HOW TO PAY THE UIF

There are various ways to pay the UIF (see chart below). It is your responsibility as an employer to deduct money from your employees and pay it and your own contributions to the UIF or SARS.

| WAYS TO PAY THE UIF |  |   |
|---------------------|--|---|
| METHOD OF PAYMENT   | STEPS  | BANKS THROUGH WHICH PAYMENT CAN BE MADE   |
| Stop Order          | <p>Step 1: Go to your bank and fill in the forms they give you to pay the money into the UIF account. Ask the bank to use your employer reference number as reference.</p> <p>Step 2: Send the payment advice. <i>The UIF sends employers the payment advice form every month. You can also get it on the website.</i> Complete this form when you pay and send it in one of the following ways:</p> <ul style="list-style-type: none"> <li>• Mail to: UIF Pretoria 0052</li> <li>• Fax to: (012) 337 1931</li> <li>• e-mail to: enquiries@uif.gov.za</li> </ul> | <p>FNB (employers of domestic employees only)<br/>Account number: 62052400547<br/>Branch code: 25-31-45</p> <p>FNB (commercial employers)<br/>Account number: 51420056941<br/>Branch code: 25-31-45</p>     |
| Cheque              | The UIF no longer accepts cheques as a form of payment. You will have to use one of the other payment methods.   | <p>ABSA (all employers)<br/>Account number: 4055481885<br/>Branch code: 32-31-45</p>  |
| Direct Bank Deposit | <p>Step 1: Go to your bank and fill in a deposit slip. Use your employer reference number as reference when you fill in the slip.</p> <p>Step 2: Send the payment advice. <i>The UIF sends employers the payment advice form every month. You can also get it on the website.</i> Complete this form when you pay and send it in one of the following ways:</p> <ul style="list-style-type: none"> <li>• Mail to: UIF Pretoria 0052</li> <li>• Fax to: (012) 337 1931</li> <li>• e-mail to: enquiries@uif.gov.za</li> </ul>                                      | <p>STANDARD BANK (all employers)<br/>Account number: 010032185<br/>Branch code: 00-45<br/>CDI No: 0068730083641</p> <p>NEDBANK (all employers)<br/>Account number: 1454041560<br/>Branch code: 14-54-05</p> |
| Internet Banking    | <p>Step 1: Set the UIF up as a beneficiary. Use your employer reference number as the recipient reference.</p> <p>Step 2: Send the payment advice. <i>The UIF sends employers the payment advice form every month. You can also get it on the website.</i> Complete this form when you pay and send it in one of the following ways:</p> <ul style="list-style-type: none"> <li>• Mail to: UIF Pretoria 0052</li> <li>• Fax to: (012) 337 1931</li> <li>• e-mail to: enquiries@uif.gov.za</li> </ul>   | <i>The name of the Account Holder is Unemployment Insurance Fund</i>  |

## DECLARING NEW EMPLOYEES

Employers must also inform the UIF of changes (for example, new employees appointed or changes in salary) before the 7th of every month. You can mail, fax or e-mail the UI-19 or UI-19D forms or do the declarations online. If employers want to send declarations they must use the following steps:

### Step 1: Fill in the form

Employers must fill in the UI-19 or UI-19D form (the same form you use to register employees) with the new details for employees. The forms are available at your nearest employment office or on the website. You can also do the declarations online.

### Step 2: Send in the form

Employers can send the form to the UIF by:

- Mailing it to: UIF, Pretoria 0052
- Faxing it to: (012) 337 1636
- E-mailing it to: *domestics@uif.gov.za* if you are an employer of a domestic worker or *enquiries@uif.gov.za* if you are a commercial employer.

Employers with electronic payroll systems must send their information to *declarations@uif.gov.za*

## SKILLS DEVELOPMENT FUND AND LEVY

The skills development levy (SDL) is an amount of money that employers have to pay to SARS for skills development of employees.

### *WHO DOES THE SDL APPLY TO?*

The *Skills Development Levies Act* applies to all employers except:

- The public service
- Religious or charity organisations
- Public entities that get more than 80% of their money from parliament
- Employers –
  - whose total pay to all its employees is less than R500 000 per year; and
  - who do not have to register the employees with SARS for tax purposes (PAYE)

### *REGISTERING WITH SARS*

Employers who are required to pay a skills development levy must register with SARS.

### *PAYING THE SDL*

Employers must pay a levy of 1% of the total amount paid in salaries to employees (including overtime, leave pay, bonuses, commissions and lump sum payments) every month. The levy may not be deducted from the employees' pay. The levy must be paid by the 7th day of each month.

### *DISTRIBUTING THE SDL FUNDS*

SARS pay 80% of the total levy money paid by employers over to the Sector Education and Training Authorities (SETAs). When employers register, they must tell SARS which (SETA) they belong to. Employers who fall under more than one SETA must consider the following when deciding which one is best for their workplace:

- Composition of their workforce
- Pay of the different employees
- Training needs of the different employees.

Employers can claim back from the SDL up to 70% of the levy, provided they can

prove that they have undertaken training for their staff. SARS will supply the correct forms to fill in (SDL201 return form).

The Skills Development Fund gets 20% of the money, which is used for special training.

Payments of employees' tax, SDL and UIF contributions must be paid together into the SARS account and must be reflected correctly and separately on the EMP 201 form in order to ensure that payments are correctly allocated.

For more information on the Skills Development Fund and Levy and how to register, view the following website: [www.labour.gov.za](http://www.labour.gov.za) and click on 'Skills Development Levy'. (See page 257 Skills Development Act)

## COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES (COIDA)

Employees who get hurt at work, or become sick from diseases caused by their work, can claim Compensation from the Compensation Fund. Employers pay into the Fund. If a worker gets hurt and can claim from the Fund, she or he can't take the employer to court. However, there is a legal duty on the part of employers to report any accident at work where a worker has been hurt or injured.

*(See page 245 Compensation Fund)*

The Fund does not pay the worker if the accident is the employer's fault. The employee will have to sue the employer in court.

### HOW TO REGISTER FOR COMPENSATION

As soon as a business employs someone, the owner of the business must register with the Department of Labour to pay compensation.

The owner must get a registration form from the Department of Labour (see the website: [www.wcomp.gov.za](http://www.wcomp.gov.za)) The owner of the business must fill in the form and send it to the Compensation Commissioner in Pretoria.

The Commissioner will send the owner a registration number in about 6 weeks. The Commissioner will also tell the owner of the business how much to pay to the Compensation Fund every year. The owner of the business only pays once a year. The amount depends on how dangerous the work is.

### DOES THE EMPLOYER PAY COMPENSATION FOR ALL EMPLOYEES?

COIDA applies to the following people:

- All employers
- Casual and full-time employees who, as a result of a workplace accident or work-related disease:
  - are injured, disabled, or killed; or
  - become ill.

This excludes -

- Employees who are totally or partially disabled for 3 days or less
- Domestic employees
- Anyone receiving military training
- Employees of:
  - the South African National Defence Force
  - the South African Police Service
- Any worker guilty of wilful misconduct, unless they are seriously disabled or they are killed and they have someone who depends on them for money

- Employees working mainly outside the RSA and only temporarily employed in the RSA.

### **WHAT MUST THE EMPLOYER DO WHEN SOMEONE GETS HURT AT WORK?**

Report the accident - The employer must report the accident to the Compensation office in Pretoria as soon as possible, but not later than 7 days after the employer finds out about the accident, or within 14 days of the employer finding out that the employee has an occupational disease. The employer reports the accident by filling in form WCL 2.

Submit a claim for compensation - A notice of an accident and claim for compensation must be completed by an employee or on their behalf on Form WCL 3. Claims for compensation must be submitted to the Commissioner or employer within 12 months of the date of an accident or death.

Employees may apply for more compensation if they have an accident due to the carelessness of:

- The employer
- An employee who acts for the employer
- Anyone in charge of machinery.

## **OCCUPATIONAL HEALTH AND SAFETY**

The *Occupational Health and Safety Act* provides measures to ensure the health and safety of all employees in the workplace.

### **WHO DOES THE ACT APPLY TO?**

The *Occupational Health and Safety Act* applies to all employers and employees, but not to:

- Mines, mining areas or any mining works (as defined in the *minerals act*)
- Load line ships, fishing boats, sealing boats, whaling boats (as defined in the *Merchant Shipping Act*) and floating cranes; whether in or out of the water
- People in or on these areas or vessels.

### **APPOINTMENT OF REPRESENTATIVES**

Employers who employ 20 or more employees must appoint representatives to monitor health and safety conditions.

Employers who have appointed 2 or more health and safety representatives must form health and safety committees. Employers and committees have certain duties and functions. (See page 214 *The Occupational Health and Safety Act*)

## **FORMALISING THE EMPLOYMENT RELATIONSHIP WITH EMPLOYEES**

When someone is newly employed, the employer must give the employee a letter of appointment and a contract of employment. This contract describes the terms and conditions of the employment relationship and should be agreed on by the employee before he or she signs it.

Conditions of employment are governed by either a sectoral or wage determination (including a Bargaining Council Agreement), the *Basic Conditions of Employment Act* and the *Labour Relations Act*. The conditions of employment should include the organisation's grievance and disciplinary procedures. The employer should also give the new employee a job description. By giving the employee a job description, the employee knows what is expected of her or him and the employer

cannot later hold the employee responsible where the employee acted in terms of her or his duties. (See page 273 for a model contract of employment; page 658 Guidelines to drawing up an employment contract; page 659 Drawing up a job description; page 184 Laws about terms and conditions of employment; page 229 Solving disputes under the Labour Relations Act)

## Income tax

Income tax is the government's main source of income and is levied in terms of the *Income Tax Act (No 58 of 1962)*.

Income tax is levied on taxpayer's income. Tax is levied on your taxable income that consists of your gross income after taking off deductions that are allowed by the Act.

Companies and CC's are taxed at a rate of 28%. Individual tax rates are between 18% and 40%. Trusts pay tax at 40%.

Small-business corporations (those with an annual turnover of less than R14-million) are taxed according to a sliding tax rate. This scale is adjusted every year.

The scale for taxing small-business corporations can be found at the following link: <http://www.sars.gov.za/ClientSegments/Businesses/SmallBusinesses/Pages/default.aspx>

## PROVISIONAL TAX

If you own a business the Income Tax Act says that you must register yourself as a provisional taxpayer. In other words, any person who operates as a sole trader, partner in a partnership, member of a CC and director of a company needs to register as a provisional taxpayer.

Sole trader and partnerships need only register in the name of the sole trader or of the partners, because the law does not make a distinction between the debts and assets of the people who own the business and the debts and assets of the business. Close corporations (CC) and companies must be registered in the name of the CC or company. (The members of a CC, and the shareholders and the directors of a company still have to pay their own personal tax, so they would also be individually registered as taxpayers.)

(See page 537 Types of businesses)

The CIPC (Companies and Intellectual Property Commission) controls the registration of companies. A Company will automatically be registered as a taxpayer when CIPC informs SARS of the registration of the company. A sole trader must register, but a Company will automatically be registered.

### EXAMPLE

Lena Jacobs and Susan Smith own a business called KwikSave. KwikSave is a partnership. When they register for income tax, they would each have to register as taxpayers in their own names. If KwikSave was a CC, then they would register the business as a taxpayer, in the name of KwikSave CC.

Individuals who are provisional taxpayers (the sole trader, partners, members and directors) must submit a provisional tax return twice a year. If a payment is due, the first provisional tax is paid before the 31st August and the second on or before 28/29th February of each year.

IRP 6 returns are done through SARS e-Filing. Taxpayers can pay through a bank by using the account details on the IRP6 Provisional Returns, or through the SARS e-Filing service. Go to [www.sarsefiling.co.za](http://www.sarsefiling.co.za) or [www.sars.co.za](http://www.sars.co.za) for more information. The reference and account details must reflect on the IRP6 and must be used when making the payment.

A sole trader or partner calculates the tax to pay by taking her or his income and subtracting all the money spent on the business. Business expenses are things like:

- Money spent on buying whatever you need to run the business
- Rent for the place where you run the business
- Water and electricity
- Transport costs
- Salaries and wages for employees and casuals
- Money paid for compensation for occupational injuries and diseases
- Money you pay someone to help you with the books for the business
- Bank charges, if you have opened a bank account for the business

CCs and companies pay tax on the income brought into the business, after the expenses of running the business have been deducted. One of the expenses which a CC or company can subtract is the salaries paid to members or directors. Members of CCs and directors of companies cannot subtract the business's expenses from their own salaries. The CC or company will subtract these expenses when it pays CC or company tax.

The Income Tax Act specifies that all expenses incurred in the production of income must be deducted. These are some of the things that can be deducted:

- If people buy on credit and they do not pay you, this is called a 'bad debt'. Bad debts can be subtracted from the amount of income on which you can be taxed
- If you repair your business premises, these costs can be subtracted. You cannot subtract the cost of improving your premises
- If the business is run from home, then you work out the percentage of floor space the business takes up and subtract that percentage from costs such as electricity and water; rates; repairs and so on.

#### EXAMPLE

*Sara runs a sewing business from her 3-roomed house. She uses about one third of one of the three rooms, which is 10% of the floor space of the house. Sara sold R50 000 worth of clothes and duvets during the year. From this amount she can deduct:*

- *All the costs of her materials and the repairs to her sewing machine which is an asset to her business*
- *The money she pays her sister to help her sell clothes*
- *Taxi fare to town to buy materials*
- *Cost of tea and milk she serves to her clients, plus cleaning materials for her work space*
- *10% of water, electricity and rates*
- *10% of the cost of repairing the roof and broken window*

Even if the directors or members are provisional taxpayers, PAYE must still be deducted on a monthly basis.

It is complicated to work out tax. The local SARS will help people to fill in their tax forms. A CC or company should ask an accountant to help with its tax.

### ASSESSMENT

Once a year all taxpayers have to submit an income tax return. On this return the taxpayer must indicate all income and deductions. SARS will then determine what the final income tax payable is. This is called an Assessment. On the assessment SARS will consolidate all provisional tax paid as well as tax credits and PAYE. The difference between what was paid through provisional tax etc, and the final amount will show as the result of the assessment, If not enough tax was paid the taxpayer must pay the difference to SARS. If there was an overpayment SARS must refund the taxpayer.

### HOW TO REGISTER AS A TAXPAYER

Contact the nearest SARS office in your area and ask for form IT77. Fill it in and send it back to the SARS. Instead of completing the form, you could send the

following information to the SARS and they will complete the form:

- Your full name
- Income tax reference number, if you have one
- The revenue office you have sent tax returns to before, if you have
- Your occupation or job
- Date when you first started working
- Marital status (married, divorced, separated, single, widowed)
- Number of children under the age of 18 (including step-children and adopted children)
- Type of income: do you earn a salary, a weekly wage, commissions, rental on something you rent out, interest on money in the bank or investments, etc.
- Immigrants should give the date of arrival in South Africa

The person, CC or company who registers like this is called a provisional tax payer.

### *SOLE TRADERS AND PARTNERSHIPS*

If you are a sole trader or a partner in a partnership, this is all you have to do to register.

### *CLOSE CORPORATIONS AND COMPANIES*

When a CC or a company is registered with the Registrar of Companies in Pretoria, the Registrar lets SARS in your area know about the registration. SARS will send the CC or company an IB68 form to fill in. SARS will tell the members or directors what information SARS needs, and what else the CC or company must do. The CC or company will then be registered as a taxpayer itself, besides its members or directors being registered as provisional taxpayers themselves.

## **WHAT HAPPENS IF YOU DO NOT PAY TAX OR PAY LATE?**

It is a criminal offence not to pay tax. If tax is paid late, SARS can fine the tax payer.

## **SARS EFILING**

Electronic filing (eFiling) through the SARS eFiling website is a way of submitting your tax returns electronically. This method of submitting your returns removes the risks and problems of manually sending in your tax returns.

Before submitting your tax returns, you first need to complete the registration process on [www.sarsefiling.co.za](http://www.sarsefiling.co.za).

The main benefits for taxpayers of eFiling are that it is simple, much faster and more convenient. The other benefits include:

- Being able to view all form-related correspondence with sars
- Being able to view history of payment and forms submitted online
- Help facilities and online guides
- Due-date reminders via sms and email
- Tax forms and payment tracking
- Electronic confirmation of all transactions
- Request for extensions
- Request for tax directives

### *WHAT IS THE COST?*

The eFiling service is offered at no charge. However, normal service charges for Internet Banking payments will apply.



## WHAT ARE THE STEPS INVOLVED?

1. To register for eFiling go to [www.sarsefiling.co.za](http://www.sarsefiling.co.za).
2. Print the registration form after registration. Sign the form and fax it through to (011) 361 4444, together with a copy of your ID.

For more information, contact the eFiling Call Centre on 0860 709 709 (07h00 to 17h30, excluding weekends and public holidays) or visit [www.sarsefiling.co.za](http://www.sarsefiling.co.za).

## Value-added tax (VAT)

VAT is paid by each producer or distributor who handles the goods before they reach the final consumer, who is usually a member of the public. It is called value-added tax, because tax is paid at every stage where value is added to the product.

### VAT VENDORS

When a business is registered as a vendor, it means two things:

- The vendor must collect VAT from customers and pay this VAT to SARS.
- The vendor can claim back any VAT that is paid on anything bought for the business.

### WHO SHOULD REGISTER AS A VENDOR?

If the valuable turnover (the total of all the sales, without subtracting the costs) of a business is more than R1 million per year, then the business must be registered as a vendor by completing VAT 101 and VAT127. A business will only be forced to register for VAT where the business has already had a turnover of more than R1 million, or where the business has entered into a contract which means that the business will have a turnover of more than R1 million.

If the turnover of the business is less than R1 million per year, the owner can choose to register or not. If you register, this is called voluntary registration. A business can choose to register for VAT where the business has already had a turnover of R50 000, or where the business has not yet had a turnover of more than R50 000, but expects to turnover at least R50 000 in the year after registration and this expectation is reasonable. It takes a lot of effort and work to pay VAT to SARS regularly and to keep all the records SARS wants a vendor to have. If you don't have to register, it is only a good idea to register if the business buys lots of things from suppliers and can claim back VAT to reduce the amount of VAT you owe SARS.

Foreign suppliers of electronic services must register for VAT if their business' turnover is more than R50 000. This has been the case from 1 April 2014.

If the business is a sole trader or a partnership, the owners must register in their own names. If the business is a CC or a company, the owners must register in the name of the business. (See page 568 Problem 3: *Is being a VAT vendor worth it?*)

### THE SMALL RETAILERS VAT PACKAGE

The Small Retailers VAT Package is a simpler VAT option for small retailers and has been created by SARS to assist small businesses. If you qualify for the Package it means that you can satisfy the VAT Act without keeping detailed records or having to buy expensive cash registers to keep track of sales on the various types of products you sell.

The Package also includes a free set of pre-printed books in which you keep track of the stock you buy and your daily sales.

### WHY WAS THE SMALL RETAILERS PACKAGE INTRODUCED?

The package was introduced for three reasons. Firstly, to make it simpler for small

retailers who **are registered** for VAT. Many small retailers find it difficult and time consuming to keep the detailed sales records required by the VAT Act. The Small Retailers VAT Package will make accounting for VAT much simpler for small retailers.

Secondly, to make it simpler for small retailers who **are not registered** for VAT to satisfy the law. All retailers who have a turnover of R1 000 000 or more per year must register for VAT. There are many small retailers who should register for VAT but do not because small retailers feel the process is too complicated and takes too much time. The Small Retailers VAT Package aims to encourage unregistered retailers to register for VAT.

Thirdly, to reduce VAT fraud.

### WHO QUALIFIES FOR THE SMALL RETAILERS VAT PACKAGE?

If you are not registered for VAT you will first have to register before you can apply for the Small Retailers VAT Package.

If you are already registered for VAT you qualify for the Small Retailers VAT Package only if you satisfy the requirements to become an **approved vendor**.

### HOW DO YOU REGISTER FOR VAT?

You can register for VAT by visiting a SARS branch or by calling the SARS Call Centre on 0860 121218 or visit the website at [www.sars.gov.za](http://www.sars.gov.za) (click on Value-added tax) for more details.

You must get the form VAT101 from SARS and complete it. You can download this from the SARS website. After you have completed it, deliver it to SARS. SARS will issue you a registration number. It is advisable to get professional help to register for VAT.

### HOW DOES VAT WORK?

SARS will issue the business with a registration number, which is called a VAT invoice number. This number requires the person or business to charge 14% VAT on goods or services the business sells.

#### EXAMPLE

*Nomawethu types letters for other people. She is registered as a vendor. She charges R50 to type one page. She must charge 14% VAT on top of that. In other words, 14% of R50 is R7. So she charges R50 + R7 = R57 altogether.*

### VAT INVOICES

Vendors must give their customers a VAT invoice, to charge them for the goods or services. The invoice must have the following written on it:

- The words 'tax invoice'
- The vat registration number of the business
- The amount of vat paid by the customer separately from the price of the goods or services.
- If over R5 000 the VAT number of the buyer

Remember to check that the VAT invoices you receive from other businesses have all these details on them if you are going to claim the VAT back from SARS. If an invoice does not have all these things on it, you cannot claim the VAT back.

### WHAT RECORDS MUST BE KEPT FOR VAT PURPOSES?

Businesses registered for VAT must keep records which show how much VAT they have collected. Even after the business has closed, the business must keep the records for 5 years. These are examples of records that must be kept:

- Invoices from your business to customers
- Invoices from your suppliers to you
- A list of debtors (people who owe money to the business) and creditors (people that the business owes money to)
- Bank statements, deposit slips, copies of cheques (the owner of the business must have a bank account)
- Books of account, where the owner of the business writes down how much money has come into the business every month, how much money has been spent and on what

### **PAYING VAT TO SARS**

If you are registered as a VAT vendor you will have to submit a return and pay the VAT over to the SARS every few months depending on the category that the business falls into.

The owner of the business must calculate how much VAT is owed to SARS. A standard VAT return must be submitted on e-Filing by the end of the month following the VAT period. The return form is VAT 201. SARS will impose penalties and interest for people who submit their returns late. Penalties are 10% of the amount that is owed and interest is charged at the standard interest rates.

Businesses have to pay VAT on goods or services if they have invoiced customers. This is called paying VAT on an invoice basis. It means that if the owner of the business invoices customers, the owner has to pay over the VAT to SARS even if the customer has not yet paid. This could cause cash flow problems for the business.

The owner of the business can do three things:

- Apply to SARS in writing to pay VAT on a payments basis. This means that you only pay VAT to SARS when your customers have paid.
- Ask customers to pay their account immediately when they buy the goods or when they receive the service.
- Charge customers interest if they do not pay your invoices within 30 days.

### **CLAIMING INPUT CREDITS**

The vendor can claim back any VAT that is paid on anything bought for the business which relates to providing a valuable service or supply. The VAT which the vendor can claim back is called an input credit.

You can only claim input credits for the amount of VAT shown on VAT invoices that you paid. Remember to file invoices to prove what you have spent money on. For example, you must keep salary slips, invoices from suppliers, slips to show how much petrol you have used if you use a car for business reasons, and so on.

#### **EXAMPLE**

*John is the only member of a printing CC called Better Copy. Better Copy is registered as a vendor and charges 14% VAT on all printing jobs.*

*John has to give a Better Copy VAT invoice to every customer. So, if Mary wants 20 copies made Better Copy charges her R5,00 to do this. John must add 14% VAT, which would be 70c. Mary pays R5,70 and John then sends the 70c to SARS of Revenue, with all the other VAT paid by other customers over 4 months (because the turnover of his business is less than R1,2 million per year).*

*Better Copy decides to buy a new photocopier machine from IBM for R10 000. They pay R1 400 VAT on the machine which means they pay IBM R11 400. IBM gave Better Copy an invoice with IBM's VAT registration number on it. Better Copy can now claim the R1 400 from SARS because Better Copy is registered as a vendor. This R1 400 is called an input credit.*

*At the end of January, John adds up all the VAT which he has collected from his customers. The total is R5 000, which he owes to SARS. But, he has an input credit of R1 400, which is VAT he can claim back from SARS. John subtracts the R1 400 input credit from the R5 000 collected from customers. John must pay SARS R3 600.*

# Business licences

## WHAT TYPES OF BUSINESS NEED A LICENCE?

A business must have a licence if it has anything to do with:

- Making or selling food which can go off
- Health or entertainment activities, such as a business involving sauna, massage, snooker, billiards, slot machines, a night club, disco or showing films
- Selling alcohol

For example, Lotando has a spaza shop, which sells only dry goods like tea, washing powder, coke and so on. He sells no fresh foods so he doesn't need a licence. Patrick sells fruit and vegetables. Joyce has a stand next to the road where she makes hotdogs and fishcakes. The things Patrick and Joyce sell can go off and so they need a licence. But no licence is necessary if:

- The person makes and sells the food from their home
- The trader has a hawker's licence

## HOW TO GET A BUSINESS LICENCE

Every province has its own Liquor Act and Liquor Board. You must apply to the provincial liquor board for a liquor licence if you want to sell alcohol. The procedure is complicated and it is best to get an attorney to help you.

Municipalities licence street traders and other businesses that deal with food and social events according to their own by-laws. If you are the owner of a business that sells food that can go off, a restaurant or a place of entertainment, you need a license from your municipality to certify that your premises are safe and meet all standards for hygiene and fires.

*(See page 568 Problem 2: Starting a business which needs a business licence)*

Different government departments will contact the owner, to make an appointment to visit the business. These inspectors may visit the business:

- Town planner, to see if the business is in an area that is zoned for business purposes
- Health inspector, to see that the business follows all the health rules
- Inspector from the fire department, to see that the business is not a fire hazard
- Mechanical engineer

The inspectors must visit the business within 35 days after you have handed in the form. Your local municipality can give you guidelines of the things inspectors look at. The inspectors will visit the business and tell the municipality what they have found out about the business.

If the inspectors want the owner to make some changes to the business premises, the owner must apply to the local municipality for another 14 days. If the owner does not apply for another 14 days and the work on the premises is not finished by 30 days after giving in the form, the owner will have to apply again and the inspectors will have to come again.

The local municipality will give the person the licence allowing them to do business. The council can give the licence with specific conditions.

In most municipalities, street traders also need a street traders license to trade in public places.

### EXAMPLE

*Nolita applied for a licence to sell fruit and vegetables as a hawker. The council gave her the licence, but on condition that she only trades between 8 a.m. and 6 p.m. If Nolita sells fruit and vegetables before 8 a.m. or after 6 p.m., the council can take away her licence.*

The council will not give a licence if:

- The place where the owner does business is unsafe or unhygienic
- The person is not considered to be a suitable person to open a business, because he or she has a criminal conviction, or has a reputation for cheating people in the community

## **DOES THE BUSINESS LICENCE HAVE TO BE RENEWED?**

Traders do not have to apply for a new licence every year, but they do have to apply for a new licence if they:

- Move their business to other premises
- Sell the business, the new owner will have to apply for a licence
- Change the activities on the premises, where a licence for the new activity is required.

## **WHAT HAPPENS IF THE PERSON SELLS FOOD AND DOES NOT GET A BUSINESS LICENCE?**

It is a criminal offence to operate without a licence when this is required by the nature of the business. (See page 572 *Business licence types*)

The owner can be fined or given a prison sentence of up to 3 years. It is also a criminal offence to sell alcohol without a liquor licence.

## **Exporting and importing**

The *International Trade Administration Act (No 71 of 2002)* makes provision for control, through a permit system, of the import and export of goods specified by regulation. The primary function of this directorate is the administration of the provisions of the *International Trade Administration Act* with regard to the issuing of import and export permits in terms of Section 6 of the Act and investigations and enforcement in terms of part E of the Act.

The International Trade Administration Commission of South Africa (ITAC) is part of the DTI group of institutions and is responsible for administering the provisions of the Act including issuing import and export permits.

### **PERMITS FOR EXPORTING AND IMPORTING**

If you want to either import or export goods you will need to complete the required application forms for importing and exporting and submit this to the ITAC. These forms are available on the ITAC website: [www.itac.org.za](http://www.itac.org.za) (click on Documents and then Application forms).

The policy relating to importing or exporting of goods differs from one industry sector to the next. Most new goods are exempt from import control measures. If you want information regarding the import or export of particular goods you must provide ITAC with specific details of these goods.

#### ***HOW CAN YOU GET A PERMIT?***

You must complete the required application forms and submit them to the ITAC office. These forms are available in hard copy and can be collected from the ITAC and then mailed, faxed, e-mailed or downloaded from the ITAC website. Permits are issued free of charge and should be issued in approximately 3 days.

### **GOODS THAT ARE SUBJECT TO EXPORT AND IMPORT CONTROLS**

Not all goods or products are subject to import and/or export control measures. All used goods, second-hand goods, waste and scrap are subject to import control

measures. For a list of schedules that contain details of the goods that are subject to import and export controls, view the ITAC website [www.itac.org.za](http://www.itac.org.za) (click on Services and then Imports)

The purpose of import controls are to:

1. Ensure that used and second hand goods do not erode the manufacturing SACU industry and the job opportunities in this industry
2. Ensure that industry sensitive goods are imported in a regulated manner
3. Ensure that there is compliance with environmental requirements
4. Assist agencies with the enforcement of other legislation such as safety
5. Ensure compliance with the provisions of International Agreements

## REGISTERING AS AN EXPORTER AND IMPORTER

All importers and exporters in South Africa are required to register with the South African Revenue Services (SARS). To download the import and export forms refer to the following SARS link: <http://www.sars.gov.za/ClientSegments/Customs-Excise/Processing/Pre-assessment/Registration/Pages/default.aspx>

For more information call SARS call centre on 0800 00 7277.

Applicants must submit the relevant completed forms to their nearest SARS Customs & Excise branch office.

## Administration skills for small businesses

Keeping accurate financial books and records is important from a legal and tax point of view, as well as for running an efficient business.

### BOOKKEEPING

Bookkeeping means keeping daily records of business financial transactions. These records include a daily cash sheet, accounts receivable and accounts payable. Bookkeeping should be done daily and these records are kept for three main reasons:

1. To keep track of your business' money, particularly if you are in a business where large amounts of cash are involved on a day-to-day basis
2. To keep track of your business' daily, weekly, and monthly financial performance, and to see whether this performance is meeting your expectations, projections, and goal.
3. To provide your accountant, if you plan to use one, with the necessary information to quickly and accurately prepare your income tax returns and to produce financial statements as required under tax laws

### PAYROLL AND PERSONNEL RECORDS

Most businesses will have employees besides the owners. As an employer you have to collect various levies, including, Unemployment Insurance deductions, personal income taxes and skills development levies.

To keep track of the employee payroll, you will need the following:

1. A log book to record the hours your employees worked, their gross pay, and the amount of deductions that you made. You can find these types of payroll books at most stationery stores.
2. The correct forms that you have to complete on a monthly basis as well as tax tables for deducting SITE/PAYE.

*(See page 545 Registrations as a new employer, page 554 Income tax)*

## OTHER IMPORTANT RECORDS

There are other important records that may be kept depending on the type of business you are running. These include customer service records, inventory records and business safety records.

### *CUSTOMER SERVICE RECORDS*

Customer service is an important part of your business. Customer service records will show you whether you are keeping your customers satisfied or not and where you can improve things. Customer service records could include the following:

- The number of customer complaints (or compliments) per week/month/year
- The nature of the complaints (were they product or service related?)
- The number of returns (and of which particular items)
- The number of repairs made under warranty

### *STOCK CONTROL RECORDS*

If you operate a small business, you need to keep control of your stock. This involves knowing how much and what kind of stock you have on hand.

### *BUSINESS SAFETY RECORDS*

It is important to keep a record of the number of accidents that take place on your business premises. This will help you to take the correct action and ensure that you are complying with all health and safety laws.

## FILING

After opening a bank account and getting a cheque book, keep all bank statements and used cheque books.

Also keep copies of invoices given to customers and invoices for things that are bought for the business, such as supplies, machinery, cars and petrol used for business trips.

Keep all salary slips and copies of papers sent to SARS, Department of Labour and so on.

## FILLING IN FORMS

Fill in all forms in block letters in pen, not in pencil. Fill in forms in the name of:

- The sole proprietor or partners, if the business is a sole proprietor or a partnership.
- If the business has a name, add t/a and the name of the business.
- The name of the cc with cc behind it, if the business is a cc
- The company, with (pty) ltd behind the name, if the business is a company
- Try to make a copy of all forms. If the original gets lost in the post, you can prove that it was sent. Keep a file for copies of forms filled in. Also keep separate files for papers for PAYE, VAT, RSC levies and so on.

When you write to a government department, always include the registration number that the department has given the business. For example, if you write to the Department of Labour about UIF, use the UIF registration number that the Department gave the business. This will help the department find the business's file.

## WRITING OUT CHEQUES

If you plan to pay PAYE, UIF, and other levies with a cheque it is important that the cheque is properly filled in. If the cheque is not properly filled in, then someone can

steal the cheque, take it to the bank and cash the cheque. These are rules for filling in cheques:

- Write on the cheque in blue or black pen. If you use pencil, the pencil can be rubbed out and the details changed
- *Date*: put the date in
- *Pay*: Always make the cheque out to the government department or to the supplier. Never write 'CASH' on a cheque because anybody can steal the cheque and cash it.
- Cross out the words 'or bearer' and/or 'or order'. This means no-one but the name you have written next to 'pay' can get the money.
- *Amount*: write the amount in word
- *R*: write the amount in numbers. The bank will not pay a cheque where the words and the numbers are not the same amount, in case someone has tried to change the amount.
- Make two parallel lines somewhere on the cheque. Write '*not transferable*' between the lines. This means the cheque must be deposited into the bank account of the person that the cheque is for and this person cannot sign the cheque over to anyone else. So, this is a safer way of paying than cash or a cheque without '*not transferrable*' on it. The bank will not accept any form of liability unless '*not transferrable*' is on the cheque (preferably in red).

## Support for SMMEs

Small businesses often need help with problems such as:

- How to write a business plan
- Where to find some money to start a business
- Where to sell their goods and services
- Training for staff (for example, in bookkeeping or computer skills)
- How to tender for a contract

The government department primarily responsible for helping SMMEs is the Department of Trade and Industry (DTI). The DTI has set up organisations to help SMMEs but there are also many non-profit organisations that provide assistance.

The *National Small Business Amendment Act (No 29 of 2004)* provides for the establishment of the Small Enterprise Development Agency (SEDA) and the incorporation of organisations such as Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institutions into SEDA. SEDA is part of the DTI group of institutions.

### THE SMALL ENTERPRISE DEVELOPMENT AGENCY (SEDA)

The Small Enterprise Development Agency (SEDA) was established in December 2004 in terms of the *National Small Business Amendment Act (No 29 of 2004)*. This law merged the previous small enterprise development agencies Ntsika Enterprise Promotion Agency, NAMAC Trust and the Community Public Private Partnerships (CPPP) into a single small enterprise support agency. SEDA is the DTI's agency for supporting small business in South Africa.

The mandate of SEDA is to design and implement a standard national delivery network that must apply throughout the country. Its role includes the support and promotion of co-operatives, particularly those found in rural areas.

The work of SEDA is carried out in line with the Department of Trade and Industry's Integrated Small Enterprise Development Strategy, which aims to:

- Strengthen support for SMMEs' access to finance



- Create an enabling regulatory environment
- Expand market opportunities for specific categories of small enterprises
- Localise small business support through a grid of SEDA co-ordinated information and advice access points
- Initiate a national entrepreneurship drive and expand education and training for small business
- Co-fund minimum business infrastructure facilities in local authority areas across the country

In terms of this strategy, SEDA's delivery network must reach all regions of the country and integrate government-funded small enterprise support across all tiers of government.

Regarding business infrastructure facilities, the integrated strategy also requires linking up closely with current local economic development (LED) initiatives in all municipalities.

For information on SEDA and the services and support it supplies, visit the website: [www.seda.org.za](http://www.seda.org.za)

## **KHULA ENTERPRISE FINANCE LTD (KHULA)**

Khula was established as an independent agency of the DTI to facilitate access to credit (loans) for SMMEs through various agencies. These agencies include commercial banks, Retail Financial Intermediaries and micro-credit outlets. In other words, Khula lends money to these agencies to enable them to lend to SMMEs. A list of Retail Financial Intermediaries can be found on the Khula website: [www.khula.org.za](http://www.khula.org.za). A summary of Khula products can also be viewed on this website. Contact details for Khula are as follows:

Website: [www.khula.org.za](http://www.khula.org.za)

Free helpline telephone number: 0800 11 88 15. You can also call them on 012 748 9600.

## **THUSONG SERVICE CENTRES**

A Thusong Service Centre is a one-stop service centre providing information and services to communities. These centres can provide a variety of services depending on the needs of the surrounding community. The services that would be relevant for small businesses are as follows:

- Local Economic Development (LED) services - Small business advice and development
- Business services and community opportunities - Small, medium and micro enterprises

For more information view their website: [www.thusong.gov.za](http://www.thusong.gov.za)

## **TENDER ADVICE CENTRES**

Tender Advice Centres (TACs) provide support to small businesses such as assisting with accessing tender opportunities and completing tender documents. The tender-related services they supply include:

- Explaining invitations to tender
- Assisting in completing tender documents (including advice on how to enter contracts and how to work out pricing)
- Counselling (pre- and post-tender)
- Providing information on procurement and tendering policies
- Holding tender awareness workshops, seminars and forums

Other business help they provide includes:

- Information on business opportunities
- Advice on regulations and legal requirements (for example, vat registration)
- Access to databases of small businesses and suppliers
- Referrals to specialist training programmes
- Project management assistance
- Training needs assessment
- Co-ordination of training programmes
- Evaluation of the capacity of small businesses to deliver on contracts
- Subsidised skills-development programmes.

#### EXAMPLE

*The Department of Public Works wants to build a community hall in Bonteheuwel, in the Western Cape. The Department advertises in newspapers and in the Government Gazette. In the advertisement the Department asks builders to tender for the job. This means that a builder must write down how he or she will go about building the community centre and how much it will cost.*

## NATIONAL SMALL BUSINESS ADVISORY COUNCIL

The National Small Business Advisory Council was established in 2006 in terms of the *National Small Business Act*. In terms of the Act, the council must perform various functions such as advising the minister of the DTI on issues affecting small businesses, promoting the interests of the sector and monitoring the effectiveness of government policies, programmes and institutions designed to develop the sector.

## PROBLEMS

### 1. What type of business to start

Connie, Elizabeth, Phumlani and Themba want advice on how to start their businesses.

Connie has two sewing machines. She wants to start sewing clothes for people in the community and perhaps some uniforms for a hotel in town. She will employ one person and work from her home. She will ask her clients for a deposit and buy material with the deposit. She wants to know how to register the business and what kind of business it should be.

Elizabeth, Phumlani and Themba want to start a business making furniture. They have borrowed money from the bank to buy materials to start. They will work from a shed which they will rent from a farmer. They want to know what type of business they must have.

#### WHAT CAN YOU TELL THEM?

##### CONNIE

Connie's business will not be very big and she does not have the money to start a company. Advise Connie to be a sole trader and explain as follows:

- What a sole trader or sole proprietor is. Explain that she can call the business something and she would write it on forms as, for example, Connie Ndube t/a Crazy Fashions.

- She should open a bank account and ask the bank for a cheque book
- She must register herself as a provisional income tax payer  
(See page 554 *Income tax*)
- If she employs someone, she will have to register for SITE/PAYE tax, UIF, Skills Development Levy and Compensation for Occupational Injuries and Diseases (See page 553 *Formalising the employment relationship with employees*, page 545 *Registrations as a new employer*)

If Connie's business becomes very big, for example, she sells clothes to shops in Cape Town and employs 30 people, she should think of registering her business as a close corporation. (See page 540 *Chart: The differences between the four types of business*)

### **ELISABETH, THEMBA AND PHUMLANI**

Three owners can choose to be a partnership or a company. Explain what a partnership is and what a company is. (See page 540 *Chart: The differences between the four types of business*)

Explain the advantages of a partnership (cheaper and easier to run) and the dangers of a partnership (the court can take away the things belonging to the business to pay a partner's debts, or take away partners' goods to pay the business's debts). (See page 541 *Advantages and disadvantages of the different types of businesses*)

Explain the advantages of a company - the court cannot take away the company's possessions (assets) to pay the debts of the members and it can only take away a member's assets to pay the business's debts if the member has signed surety. Also explain the disadvantages - it is more expensive and complicated to run a company than a partnership.

If your clients decide they want a *partnership*, tell them:

- To go to a lawyer to help them to write a simple partnership agreement
- They should open a bank account in the name of the partnership, and ask the bank for a cheque book
- They must register as provisional taxpayers (See page 554 *income tax*)
- All the things they have to do if they employ someone  
(See page 545 *Registrations as a new employer*)

If your clients decide they want a *company*, tell them:

- To go to a lawyer or accountant to register the company, and to find out what records they must keep
- They must always put 'pty' behind the name of the business and the registration number of the company must be on any letterhead
- They should open a bank account in the name of the company, and ask the bank for a cheque book
- They must register themselves and the company as provisional taxpayers
- The things they must do if they employ people  
(See page 545 *Registration as a new employer*)

## **RUNNING THEIR BUSINESSES**

Give Connie and Elizabeth, Phumlani and Themba contact numbers of organisations which help small businesses. (See page 564 *Support for SMMEs*)

You could explain to them about filling in forms, filing forms and writing out cheques. (See page 562 *Administration skills for small businesses*)

If they plan to employ people, they should also know what the duties of employers are under the labour laws. (See page 553 *Formalising the employment relationship with employees*, page 545 *Registrations as a new employer*)

## 2. Starting a business which needs a business licence

Xolile lives in Noupoot. He wants to start a fish and chip shop. He is not sure whether he will start the shop in the kitchen at home, or whether he can rent a little room from the church nearby. He will be employing his wife and his brother. His sister's child will work in the shop on a Friday afternoon after school. His wife's friend Nomonde said she will make meals in her kitchen every day. He will pay her for the number of plates of food he sells every day and give the rest of the food back to her. Xolile wants to know what he needs to do to start the business.

### WHAT YOU CAN TELL HIM

Tell Xolile that he should be a sole trader and explain what this means.

*(See page 537 Sole trader or sole proprietor [owner])*

If Xolile sells the food from his home, he does not need a licence for his business. But if he sells food from the church building, he must apply for a business licence from his municipality. *(See page 560 Business licences)*

Xolile should open a bank account and ask the bank for a cheque book. He must also register himself as a provisional income tax payer. *(See page 554 Income tax)*

To find out at which SARS Xolile must register, look at the list of SARS. Find the big towns nearest to Noupoot, and see whether Noupoot is one of the districts under the town. Noupoot falls under Port Elizabeth. Xolile must register with the SARS office in Port Elizabeth.

Xolile will be employing people and must register as an employer for SITE/PAYE tax, UIF, SDL and Compensation for Occupational Injuries and Diseases.

*(See page 545 Registrations as a new employer)*

His wife cannot claim UIF. Also his sister's child works for less than 8 hours a week and cannot claim UIF. He must therefore not deduct UIF from their wages.

Xolile must register with the Department of Labour in Port Elizabeth. He can get a Compensation form from the Department of Labour in Port Elizabeth, but he must send it to Pretoria.

Xolile will need to know:

- What the duties of employers are under the labour laws.  
*(See page 553 Formalising the employment relationship with employees)*
- How to fill in forms, filing forms and write out cheques.  
*(See page 562 Administration skills for small businesses)*
- Contact numbers of organisations which help small businesses.  
*(See page 564 Support for SMMEs)*

## 3. Is being a VAT vendor worth it?

Lothando comes to see you. She owns a printing and photocopy business called Thando's Copy Shop. Thando's Copy shop is a company. The company is registered for VAT. Lothando's problem is that she has to pay VAT to SARS before some of her clients have paid her. She also spends lots of time every month filling in the forms. She asks you to help her.

### WHAT YOU CAN TELL HER

Ask Lothando what her turnover is. Turnover means all the money which comes into the business before subtracting the money it costs to run the business. Remember to subtract 14% VAT from the turnover, because the VAT does not belong to the business. The company is collecting the VAT for SARS. If the turnover is less than R1 million per year, then the company does not have to charge its

customers VAT. Then she can tell SARS that she does not want the company to be a registered vendor anymore. But it may be a good idea to stay registered if the VAT which Lothando can claim back from SARS, which she has paid when buying things for the business, is more than the VAT the company has to pay SARS.

*(See page 557 Who should register as a vendor?)*

Ask Lothando whether she has been subtracting the VAT she pays (called an input credit) from the VAT she pays to SARS. *(See page 559 Claiming input credits)*

Help Lothando decide whether she should stay registered or not. Ask Lothando to show you the invoices for all the money she spends for the business, such as paper, ink for the machines, rental for the photocopy and printing machines, rental for the premises, electricity and water. See whether she pays VAT for these things. Add all the VAT together, to see how much VAT she can claim back from SARS.

For example, if the turnover of Thando's Copy Shop is R5 000 per month, the turnover for the year would be 12 x R5 000, which is R60 000. Thando's Copy Shop does not have to register for VAT, but Lothando can register for VAT if she wants to.

The VAT on R60 000 would be R8 400. Lothando would have to add 14% to her prices. If the VAT she pays on the things she buys for her business is less than R8 400 per year, then it is a waste of Lothando's time to collect VAT for SARS. Also, it could make her prices more expensive than her competitors! Lothando should tell SARS that she does not want Thando's Copy Shop to be registered anymore.

If the VAT she pays on the things she buys for the business is much more than R8 400 per year, then it could make sense for her to collect VAT for SARS. For example, if the VAT she pays is R12 000 per year, it means SARS will pay her the difference between the VAT she collects from her customers (R8 400) and the VAT she paid (R12 000). SARS will have to pay Thando's Copy Shop R3 600.

## 4. Drawing up a business plan

A business plan is a document that details the what, where, how and when of a business, and converts these details into a proper financial plan. Draw up a business plan by answering the following questions.

### **Business details**

- What is the name and physical address of the business?
- What is your legal structure: sole proprietor, partnership, close corporation, company?
- Who are the owners of the business?

### **Business description**

- What products will your business be selling?
- Are you a manufacturer or a retail business?

### **Business law**

- What licence or permit do you need to start your business?
- How long will it take you to get such a licence or permit and where do you get it from?
- Do you know what business laws apply, such as the *Labour Relations Act*, UIF, Workers Compensation, Occupational Safety, PAYE, VAT, income tax laws?

### **Business premises**

- Do you have suitable premises?
- If it is not close to your suppliers, how are you going to cut back on costs of transporting the goods?
- If it is not close to your customers, how are you going to make it easier for customers to buy from you?
- Do you own the premises?

- If you are leasing, what is the length of the lease?
- By how much does your rent increase every month or year?
- If you are taking over from old tenants, are their electricity, water and telephone fully paid up?

#### **Trading hours**

- When will your business be open to customers?
- Will it open on Saturdays and on public holidays?

#### **Business insurance**

How will you protect your business from the risk of:

- Fire
- Theft and robbery
- Vandalism
- Public liability
- Loss of profits

#### **Business operations**

- What product will you be selling?
- Is this new on the market?
- Can you compete with other products on the market that are the same as yours?
- Do you know how much you will sell your product for?
- Have you calculated your total costs for making the product ready to sell?
- Do you know how much you are going to mark the product up?
- Do you know how many products you will have to sell to prevent monthly losses?
- Does the demand from customers change with the different seasons? if so, how are you going to survive in the bad seasons?
- If you have to buy machines: what is the lifespan of the machine? Who will you buy it from? What are the maintenance requirements and how much will it cost?
- Have you got reliable suppliers for your raw materials or products?
- Will you pay cash on delivery or on credit?

#### **Human resources**

- How many people will you have to employ?
- Do you need people with special skills?
- How will you find staff?
- How much are you going to pay staff?

#### **Business records**

- Do you know which business records you have to maintain?
- Can you keep records of income, expenses, assets and liabilities?
- Do you know how to make out salary cheques, including deductions for tax, uif?
- Do you know which financial reports have to be prepared? Who will do this for you?

#### **Administration**

- How many people do you need to work in administration?
- What will the costs of administration equipment and supplies be - fax machines, photocopiers, cash registers, computers and printers, etc?

### Operational costs

Do you know how much you will have to pay for:

- Rent, or loan and rates
- Electricity, water, telephone and stationery
- Cleaning

### Financial plan

Say how much each item of your business will cost. You should work this out for every month of the year. Then you should work this out for the next three years.

- How much money you will need to start your business?
- How much money do you have?
- How much money will you have to borrow? how long will it take to repay the loan?

### *SUPPORT FOR DRAWING UP A BUSINESS PLAN*

View the SEDA website: [www.seda.org.za](http://www.seda.org.za) for more information

## Model letter of appointment

### EXAMPLE LETTER

Bongiswa's Bakery  
50, 4th Avenue  
Gugulethu  
7750  
23 January 2015

Mr C. Sonto  
99, 1st Avenue  
Gugulethu  
7750

Dear Colin  
LETTER OF APPOINTMENT

Congratulations on getting the job at Bongiswa's Bakery, as a baker. Your job starts on 1 March 2015.

As we discussed, the terms of your job will be as follows:

1. You will work from 8h30 to 16h00 Mondays to Friday, with a break for lunch.
2. I will pay you R1 000 per week.
3. You can take 18 days paid holiday every year. We must agree in advance on the time when you can go on holiday.

You will be on probation for three months. If you do not like the job, you can give me 24 hours notice. I can also give you 24 hours notice if I think you are not doing a good job.

I hope you will be happy here and stay with us for many years.

Yours sincerely  
Bongiswa Mtitshana

# CHECKLISTS

## When starting a business

1. What type of business should you start?
2. Do you have a bank account? Decide in what name the bank account for the business should be opened.
3. Are you registered as a provisional taxpayer?
4. Should you consider registering as a vendor for VAT?
5. Do you need to apply for a business licence?
6. Do you need to apply for a liquor licence to sell alcohol? You must go to the Liquor Board to apply for a liquor licence. The procedure is complicated and it is best to get an attorney to help you.
7. Will you employ people who work from their own homes, as casual workers or at your business?  
Are you registered with SARS for PAYE?  
Are you registered with the Department of Labour for UIF/SDL/Compensation?  
Are you registered with the Department of Labour for Compensation for Occupational Injuries and Diseases?
8. Do you need a loan to help start the business?
9. Do you need training in running a business?
10. Would you like to meet other small business owners?

## BUSINESS LICENCE TYPES: EXAMPLE

| Licence type | Type of business activity  |
|--------------|--|
| 7000         | SALE AND SUPPLY OF MEALS: Foodstuff that is prepared in the form of a meal                                   |
| 8001         | HEALTH AND ENTERTAINMENT: Baths or saunas<br>Gymnasiums or health centres that offer saunas or turkish baths |
| 8002         | HEALTH AND ENTERTAINMENT: Massage and infra-red treatment<br>Body massages or aromatherapy etc               |
| 8003         | HEALTH AND ENTERTAINMENT: Escort agency  |
| 8004         | HEALTH AND ENTERTAINMENT: Devices<br>Business premises with 3 or more electronic machines                    |
| 8005         | HEALTH AND ENTERTAINMENT: Pool, snooker or billiards tables<br>Business premises with 3 or more tables       |
| 8006         | HEALTH AND ENTERTAINMENT: Nightclub or discotheque (Dancing, raves, etc)                                     |
| 8007         | HEALTH AND ENTERTAINMENT: Cinema or theatre<br>Shows, dinner theatre, bands, live shows, etc                 |
| 9000         | HAWKING IN MEALS: Boerewors rolls, hamburgers, hot chips, etc  |

*NOTE: You will have to pay an application fee for each of these licences. The local council will tell you what the fee is in each case. The Liquor Board is responsible for issuing licences to sell alcohol.*