
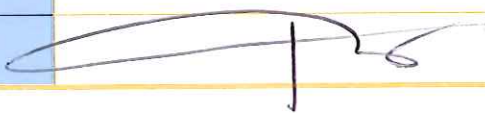




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▪ Name	Nompumelelo W. Dlamini	
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Name	Isheunesu V. Mazorodze	
Signature		26/05/2015

Guide on the Appointment and Liabilities of a Public Officer

Introduction

The Income Tax Order of 1975 as amended requires that a company carrying on business in Swaziland appoints a **Public Officer** to represent the company on their tax obligations.

In terms of Section 51(2) of the Order, a public officer shall:

- be appointed by the company through the board of directors or;
 - by an agent or;
 - an attorney.
- or any other body authorized to make such appointment .

Who qualifies to be appointed as Public Officer?

A natural person, holding a position of authority within the company who resides in Swaziland qualifies to be appointed as a Public Officer.

What is the purpose of appointing a Public officer?

To have a natural person managing the tax affairs of the company as a company is an artificial person and therefore cannot manage its own tax affairs.

Does an artificial person qualify to be appointed as Public Officer?

An artificial person cannot be appointed as public officer for the reasons stated below:

- Cannot be held personally liable for actions of another artificial person, company.
- Their appointment presents a challenge when it comes to accepting the liability of the actions of the company that they may be representing.

Exclusions

The following entities DO NOT qualify to be appointed as Public officer hence the Commissioner General will not approved such appointments:

- Auditing Firms
- Accounting firms
- Tax advisory firms
- Law firms.
- unauthorized persons

How to apply to be a Public officer?

An application for approval must be made in writing to the Commissioner General, accompanied by the following documents:

- A resolution of the company board of directors wherein the appointment was made.

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- An acceptance letter signed by the appointed person.
- A certified copy of an ID document of the person appointed public officer.
- A valid certified copy of the working permit where the person appointed is not a Swazi National.
- A completed form titled **Application to be Public Officer SRA-ITPO 01**.

- Represent the taxpayer in respect of the income of the company.
- Be personally liable to penalties in cases of default.

What are the duties of the Public Officer?

The public officer shall amongst other things ensure:

- Such records are made available as and when required by the Commissioner General.
- All information requested by the Commissioner General is submitted timeously.
- Withholding and remittance of taxes is complied with where applicable.

Liabilities of a Public Officer

In terms of Sections 44, 45, 46, 47 and 51(11) of the Income Tax Order, a public Officer shall upon approval of his appointment by the Commissioner General:

- Be answerable for all acts or matters as required to be performed by the company under the Income Tax Order.

- All communication of the company to the Commissioner General is signed by him or her.

- Company tax returns are submitted on time as required.
- Timeous payment of all taxes
- Proper business records are kept in the premises of the business.

- All obligations of the company as an employer are carried out.

- The company complies with any other provisions under the Income Tax Order.

What are the duties of a company?

- That the office of the public officer is filled at all times.

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- The Commissioner General is notified where there is a change of public officer.

Failure to appoint a Public Officer

Failure to appoint a public officer by a company shall:

- Result in the imposition of a penalty not exceeding sixty (60) Emalangeni for every day during which the default continues. (Subject to the Commissioner General's review of the penalty).
- Not exonerate any company from the obligation of complying with the Income Tax Order.
- The Commissioner General shall designate a managing director or other officer of the company as its public officer.

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