
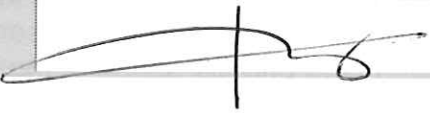




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23/03/2013

**LEGAL NOTICE NO.....OF 2012**

**PRACTICE NOTE NO DT-IT/000-12**

**REQUIREMENTS FOR THE APPOINTMENT OF PUBLIC OFFICERS AND  
NOMINATED PERSONS**

In exercise of the powers conferred by section 68*bis* of the Income Tax Order 1975, as amended, the Commissioner General hereby issues the following notice –

**CITATION**

This notice may be cited as Practice Note No DT- IT/007-12 on the requirements for the appointment of public officers.

**SECTION**

Section 51 (1) of the Income Tax Order 1975 as amended as well as Section 77 of the Value Added Tax Act 2011.

**PURPOSE:**

It has come to the Commissioner General's attention that the appointment of public officers and nominated persons are not strictly in accordance with the requirements of the law. There are instances of auditors or employees of audit firms acting as public officers/ nominated persons of the very companies they audit. As a general rule the appointment of an auditor or attorney who is not an employee of the company is not acceptable. This Practice note, thus clearly outlines how public officers as well as nominated persons are nominated, approved and state the duties and powers of this office. It further spells out persons that qualify to hold these positions.

**DEFINITION**

Any word or term used in this Practice Note shall, unless specified otherwise have the same meaning as defined in the Act.

For the purposes of this Practice Note, unless the context otherwise indicates –

**“artificial person”** a person only in terms of the law including a company with all the rights, duties and liabilities of a person (legal persona).

**“natural person”** a person in the primary sense of the word i.e. human being.

**“nominee”** means the individual appointed by the company through a resolution by the board before approval by the Commissioner General.

**“residing in Swaziland”** means having a permanent place of abode in Swaziland and staying thereat.

**PART A**

## THE LAW INCOME TAX

### 2. Requirements of the Law

- 2.1.1 In terms of Section 51 (1) of the Income Tax Order 1975 as amended, every company carrying on business or having an office in Swaziland is required to have public officer who shall be an individual residing in Swaziland. This person shall be the representative of the company in all its tax affairs and shall be responsible for all communications by and on behalf of the company with the Commissioner General.
- 2.1.2 In terms of Section 44, a public officer is a representative taxpayer in respect of the income of a company. The public officer is as such answerable for the doing of all such acts, matters or things as required to be done under the Order and in case of default shall be liable to the penalties provided in respect of default by a taxpayer. This means that in the case of any default by the taxpayer, the Commissioner General may proceed legally against the public officer in his (public officer's) personal capacity. It is important therefore that the appointee has knowledge of and expressly accepts such appointment before the Commissioner General may approve it, especially if such appointee is not in the company board of directors which made the appointment.
- 2.1.3 The primary purpose for the appointment of a public officer is that there must be a person (natural person) who can be responsible for communicating on behalf of the company and who can be held accountable for the acts of the company since it is a person only in terms of the law and cannot perform human actions. It therefore defeats the whole purpose where the public officer appointed by a company is another artificial person i.e. auditing firms, accountants, tax advisory firms and law firms. The appointment of such entities as public officers cannot be approved in terms of the law.
- 2.1.4 Approval of the appointment of a public officer may only be given in terms of Section 51 of the Income Tax Order 1975 as amended. The Commissioner General **must** be **satisfied** that the following requirements have been met before approval is granted:
- that the nominee holds a post of responsibility in the company, such as managing director, director, manager, or secretary or any other senior officer of the company;
  - that the nominated individual resides in Swaziland;
  - that the nominated individual has been appointed by the company or attorney who has authority to make such appointment; and
  - that the nominee has been appointed by a decision of the board of directors of that company and has accepted such appointment.
- 2.1.5 In complying with the above requirements the following documents must be attached to the application letter for approval of any public officer by the Commissioner General :

- Form SRA-ITPO 01 (completed in full with all the particulars of the nominee);
- Resolution of the company board of directors wherein the appointment was made;
- A copy of the nominee's PIN document (for verification purposes); and
- An acceptance letter by the nominee (documented proof of acceptance of liability).

2.1.6 In terms of Section 51(11) of the Order, upon approval of his appointment, every public officer shall be answerable for doing all such acts, matters or things as are required to be done under the Order by a taxpayer. The public officer shall therefore, inter alia ensure that:

- All communications by the company to the Commissioner General are through and by him;
- The timeous submission of company tax returns and any other returns required by law;
- Payment of provisional tax and any other taxes due;
- The proper keeping of business records and making such records available as and when required by the Commissioner General;
- The furnishing of information on request by the Commissioner General;
- The withholding and remittance of any withholding taxes, if applicable
- That the company's obligations as an employer are carried out;
- That the company complies with any other provisions under the Order;
- That the office of public officer shall be filled at all times, and the Commissioner General is notified of any change of public officer.

## PART B THE LAW VALUE ADDED TAX

3.1 Notwithstanding the repeal of the Sales Tax Act 1983, by the Value Added Tax Act, in respect of transactions that took place before the commencement of the Value Added Tax Act 2011, a person identified as representative of a partnership, trust, company, non-resident individual or resident individual shall be deemed to be a nominated person for the purposes of these transactions. Where these transactions have tax that is due and payable, such person shall take the character of a nominated person.

3.2 In terms of Section 77 of the VAT Act of 2011, every taxable person being a partnership, trust, company, non-resident individual shall have a nominated person for tax purposes who is a resident **individual**.

3.3 Note that an artificial person cannot be appointed as a nominated person.

- Where an artificial person has been appointed as a tax advisor or auditor for VAT purposes, this shall not be construed to give such artificial person the powers of a nominated person.

3.4 The **resident individual** shall,

- for the purposes of this Act, be a person holding a **senior** position within the company, partnership or trust;
- responsible for any obligations imposed on the taxable person; and
- become the authorised person to receive service of notice and other related documents.

3.5 The name of the nominated person shall be notified to the Commissioner General in connection with the first registration of the taxable person. Failure to notify the Commissioner General of such nomination shall result to the Commissioner General exercising his powers in specifying a “nominated person”.

3.6 Where the taxable person requires changing the nominated person, he shall give written notice to the Commissioner General.

3.7 A resident individual is prohibited from further appointing an artificial person as a nominated person as this would contradict the intention of the legislator.

**The Directive to all Taxpayers on the Requirements for appointment of Public Officers Legal Notice No. 71 of 2005 is hereby revoked.**

**DUMISANI E. MASILELA  
COMMISSIONER GENERAL  
MBABANE**

