

# PAYE REQUIREMENTS FOR EMPLOYERS

An employer is required to withhold PAYE if a person amongst other things satisfies the definition of an “employee” in terms of the Fourth Schedule of the Income Tax Act No. 58 of 1962 (“the Act”).

The Act states that a company, close corporation or trust is an employee if it meets the definition of a personal service provider (PSP). An employer is required to withhold PAYE if the provider meets the definition of a PSP. If the employer fails to withhold PAYE that employer may be liable for penalties and interest for PAYE not withheld.

In the case of an independent contractor that is natural person, an employer is required to withhold PAYE if that independent contractor satisfies certain conditions in terms of the definition of “remuneration” in terms of the Fourth Schedule of the Act. This test is commonly referred to as the statutory test. The statutory test must be applied first before applying the common law predominant test. If the employer fails to withhold PAYE that employer may be liable for penalties and interest for PAYE not withheld.

The employer is responsible to determine if it must withhold PAYE.

The information below describes the circumstances when an employer must withhold PAYE for a company, close corporation or trust and independent contractor.

## Personal Service Providers (PSP)

A company or trust is classified as a Personal Service Provider if:

(tick the appropriate blocks)

- |                          |   |   |
|--------------------------|---|---|
| <input type="checkbox"/> | [ | services are rendered personally to a client of the company or trust by a connected person to the company or trust,<br><b>AND</b>   |
|                          | [ | the person would be regarded as an employee had he rendered the services directly to the client (i.e. not through the company/trust),<br>OR   |
| <input type="checkbox"/> | [ | the service must be performed mainly at the premises of the client and the service provider is subject to control and supervision as to the manner in which the service is performed,<br>OR   |
|                          | [ | more than 80% of the income of the company or trust from services rendered consists, or is likely to consist of amounts received from any one client,<br><b>EXCEPT</b>  |
| <input type="checkbox"/> | [ | if the company or trust throughout the year of assessment employs 3 or more employees who are on a full time basis rendering the service on behalf of the company, other than a shareholder or member of the company or trust or a connected person to such person. |

If (1) and (2) are ticked, the company or trust is a PSP.

If only (1) or (2) is ticked, the company or trust is not a PSP.

If (3) is ticked, the company or trust is not a PSP, even if (1) and (2) are ticked.

If the only ground on which the entity is declared to be a PSP is the “80% of service income” rule, the entity may supply the client an annual affidavit stating that it does not receive 80% of its service income from any one client, and the client may rely on this affidavit in good faith. We recommend the person who is registered as the public officer of the company or trust with SARS provide the affidavit as representative of the entity. A client can request that the tax practitioner of the entity (where applicable) provide confirmation in addition to the affidavit.

A Personal Service Provider is taxed at a rate of:

- 28% for a Personal Service Provider company and
- 40% for a Personal Service Provider trust.

*A company that is **not** a personal service provider must not be loaded into the payroll, nor receive a tax certificate.*

## Independent Contractors and “Deemed Employees”

When dealing with natural persons only, an amount paid for services rendered is excluded from remuneration if the payment is made to:

- a resident of South Africa; and
- the payment is for services rendered in the course of carrying on any independent trade. In other words the person is considered an independent contractor.

However, a person will not be an independent contractor for purposes of PAYE (statutory test) if he:

- |                          |   |   |
|--------------------------|---|---|
| <input type="checkbox"/> | [ | <ul style="list-style-type: none"><li>• is not a resident of South Africa, or</li><li>• renders services to or on behalf of a labour broker, or</li><li>• is a labour broker, or</li><li>• is a personal service provider, or</li></ul>   |
| <input type="checkbox"/> | [ | <ul style="list-style-type: none"><li>• if services must be performed mainly at the premises of the person paying for or requesting the service and the service provider is subject to control and supervision as to the manner in which the duties are performed or to the hours of work.</li></ul> <p><b>EXCEPT</b></p> |
| <input type="checkbox"/> | [ | <ul style="list-style-type: none"><li>• if the person throughout the year of assessment employs 3 or more employees who are on a full time basis rendering the service on behalf of the person, other than connected person to such person.</li></ul>   |

If (1) is selected at any time, the person is not an independent contractor.

If only (2) is selected, the person is not an independent contractor.

If (2) and (3) are selected, the person is an independent contractor.

The amount paid for services rendered by an individual who is determined to not be an independent contractor for purposes of PAYE is deemed to be remuneration and is subject to PAYE.

Report all remuneration paid to an independent contractor on the tax certificate against code 3616.