CIPC and Financial Reporting

So much has already been written and said about compulsory CIPC annual returns. The purpose of annual returns was to ensure that company and close corporation details are correctly recorded at CIPC but also as a tool to identify dormant and inactive entities which are deregistered by CIPC if the annual returns are outstanding for 2 or more years. CIPC agrees that lodgement of annual returns are not enforceable in a Court of Law but it has severe consequences for a company or CC not in compliance. The consequence is deregistration which, in turn, has its own consequences. Own a property in the company / CC? Deregistered? The property now belongs to the State by default.

One also needs to think of the consequences should the entity be trading – your bank accounts can be frozen and, should you wish to apply for financing, same will not be approved due to the status of the entity. As SARS is linked with CIPC, the deregistration pulls through to the SARS system and creates an “account problem” which requires the taxpayer or representative taxpayer to personally go to SARS and re-activate the accounts. SARS will not do this unless the entity is reinstated …… take further note that you will be required to reactivate all these accounts (VAT/PAYE/Income Tax) by way of resubmitting complete FICA and documentary requirements as is required for a first-time tax/VAT/other registration.

Being deregistered does not automatically waive the responsibilities of the taxpayer or representatives of the company, in terms of the Companies Act the members and directors become personally liable!

Reinstatement is an expensive exercise and takes a minimum of 21 to 60 days to finalise the process. With annual returns it is definitely a case of “prevention is better than cure”.

To lodge annual returns used to be a quick and easy process. All you needed was the turnover as per last audited / compiled financial statements and the information of the company to compare with CIPC data. The Companies Act 2008 requires that companies who are subject to audit or elected to voluntary submit to audit, MUST lodge their last audited financial statements when lodging the CIPC Annual Return. CIPC issued a notice (Notice 4 of 2016) wherein it clearly states: *“CIPC has been empowered with investigative and enforcement powers to take action against companies who do not comply with the requirement to submit their annual financial statements for review and public disclosure in line with the principles of maintaining transparency and high standards of corporate governance. Therefore, if you are a director of a company; a member of a close corporation and continue to ignore the requirements to prepare and submit annual financial statements to CIPC, you are in contravention of the Act. Any continued non-compliance can trigger a formal investigation by the Commission which can lead to the issuance of a compliance notice and other actions which can be imposed in collaboration with other Regulators*”.

You are not subject to audit and have not elected to voluntary submit to audit – does this mean you are off the hook? Not at all. The Companies Act 2008 and Regulations 2011 requires that every company or CC who is not subject to audit (compulsory or voluntary), HAS TO SUBMIT A FINANCIAL ACCOUNTABILITY SUPPLEMENT (COR30.2) OR THEIR LAST FINANCIAL STATEMENTS. It is therefore a legal requirement to comply with submission of financial statements OR completion of the online CoR30.2 when submitting annual returns.

Feeling proud that you are complying by submitting your audited financial statements? Notice No. 20 issued by CIPC on 14 March 2016 states that, for all entities that are required to have their annual financial statements audited in terms of the Companies Act 71 of 2008 as amended, it is mandatory to disclose directors' or prescribed officers' remuneration and other benefits paid (see Section 30(4)(5)(6) of the Act). Directors' and prescribed officers' remuneration must be disclosed ***for each individual director***, not as an aggregate amount. Section 30(6) clearly lists what payments are defined as "remuneration" (please contact me for a copy of Notice 20).

In a nutshell, to submit your annual returns without submitting either financial statements or completing the Financial Accountability Supplement (whichever applies to your entity), does not render you compliant.

Do the right thing – submit your annual returns timeously together with either your financial statement or the prescribed supplement. Also ensure that your financial statements are compliant insofar as remuneration is concerned.

<u>Important notice:</u>

CIPC has identified the month of May 2016 for a global final deregistration exercise. Exact dates to be announced.

For more information or assistance, contact Maggie Zeelie