



**NATIONAL  
TREASURY**

**REPUBLIC OF SOUTH AFRICA**

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**EXPLANATORY MEMORANDUM**

**ON THE**

**SPECIAL VOLUNTARY DISCLOSURE PROGRAMME IN RESPECT OF OFFSHORE  
ASSETS AND INCOME CONTAINED IN PART II OF THE RATES AND MONETARY  
AMOUNTS AND AMENDMENT OF REVENUE LAWS BILL 19 of 2016**

**15 December 2016**

## **SPECIAL VOLUNTARY DISCLOSURE PROGRAMME IN RESPECT OF OFFSHORE ASSETS AND INCOME**

[Applicable provisions: Part II: Sections 13, 14, 15, 16, 17 and 18]

### **I. Background**

On 24 February 2016, the Minister of Finance in his Budget Speech announced the introduction of a Special Voluntary Disclosure Programme to provide a further opportunity for non-compliant taxpayers who still have undisclosed assets abroad to voluntarily disclose their offshore assets and income. With the new global standard for automatic exchange of financial account information in tax between tax authorities commonly known as the Common Reporting Standard (CRS) requiring governments to obtain detailed account information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis from September 2017, time for taxpayers who still have undisclosed assets abroad.

### **II. Reasons for change**

The CRS provides for annual automatic exchange between governments of financial account information, including balances, interest, dividends, and sales proceeds from financial assets, reported to governments by financial institutions and covering accounts held by individuals and entities including trusts and foundations. The CRS is intended to assist governments in reducing the possibility for tax evasion by providing for the exchange of non-resident information with the tax authorities in the taxpayer's country of residence. It is also aimed at enabling governments to discover formerly undetected tax evasion and to recover tax revenue lost to non-compliant taxpayers, and further strengthen international efforts to increase transparency, cooperation, and accountability among Multinational Entities and tax administrations.

In order to encourage compliance, government saw the need to give non-compliant taxpayers the last opportunity to come forward and disclose their offshore activities. This

will be open for individuals and companies in order to assist them to regularise their tax affairs before September 2017.

### III. Proposal

In order to encourage compliance and assist non-compliant taxpayers to regularise their affairs it is proposed that a Special Voluntary Disclosure Programme (SVDP) be introduced as follows:

#### A. *Window period of Special Voluntary Disclosure Programme*

- Applications for relief under the SVDP will apply for a limited window period of eleven months starting on 1 October 2016 and closing on -31 August 2017.

#### B. *Application process under the SVDP*

- The application process for the existing Voluntary Disclosure Programme will be extended to the SVDP.

#### C. *Persons that may apply for the SVDP*

- Individuals and companies may apply for the SVDP on the same basis as for the existing Voluntary Disclosure Programme contemplated in Part B of Chapter 16 of the Tax Administration Act, 2011. That is to say, an initial “no-name approach” may be made; applications may be made in a representative capacity, etc.
- Individuals and companies who did not impute the net income of the controlled foreign company as defined in section 9D(2) of the Income Tax Act may also apply for the SVDP on the same basis as for the existing Voluntary Disclosure Programme.
- Trusts will not qualify to apply for the SVDP.
- Settlers, donors, deceased estates and beneficiaries of foreign discretionary trusts may, however, participate in the SVDP if they elect to have the trust’s offshore assets and income deemed to be held by them for tax purposes.
- Persons may not apply for the SVDP if they are aware of a pending audit or investigation in respect of foreign assets or foreign taxes or an audit or investigation in respect of foreign assets or foreign taxes has commenced. However, if the scope of an audit or investigation is in respect of other assets (other than foreign assets of

foreign taxes, for example in respect of PAYE), persons may still qualify to apply for relief under the SVDP.

- Amounts in respect of which SARS obtained information under the terms of any international exchange of information procedure will not be eligible for the SVDP.

*D. Relief granted under the SVDP*

- 40 per cent of the highest value of the aggregate of all assets situated outside South Africa between 1 March 2010 and 28 February 2015 that were derived from undeclared income will be included in taxable income and subject to tax in South Africa.
- The undeclared income that originally gave rise to the assets above, will be exempted from income tax, donations tax and estate duty in the past. However, future income will be fully taxed and assets declared will remain liable for donations tax and estate duty in the future, should the applicant donate these assets or pass away while holding them.
- The value referred to above is the market value determined in the relevant foreign currency and translated to the South African Rand at the spot rate at the end of each year of assessment.
- For the purpose of determining any capital gains or losses, the asset referred to above that was held and not disposed of on the last day of the year ending on or before 28 February 2015, must be deemed to have been acquired on that day at a cost equal to market value. However such cost will be limited to the proceeds on the disposal of that asset less any expenditure allowable under paragraph 20 of the eighth schedule to Income Tax Act.
- Taxes and levies such as Value Added Tax, Skills Development Levy and Unemployment Insurance Fund Contributions are excluded from the SVDP.
- Where taxpayers do not have any assets situated abroad post 1 March 2010 but might still want to apply for the SVDP because they are concerned that they might be identified through one of the global leaks, such taxpayers may also apply for the SVDP. Where the value in this regard cannot be determined, the Commissioner may agree to accept a reasonable estimate of that value.

- **Example:**

Jane Roe and John Doe did not declare 10% of the income from their jointly operated long distance transport business from 1990 to 2001. Using a British Virgin Islands trust and a Panamanian company, they invested the proceeds in a similar business in South America. Unfortunately they did not fully understand the local market conditions, so the business went bankrupt in 2003 and they lost their entire investment. They have felt no pressing need to come forward up to now, since they no longer have illicit assets offshore.

With the leak of the Panama Papers they fear that SARS will unravel the structure they put together and detect their tax evasion. The provision above allows them to make use of the SVDP by determining (or if this is impossible, estimating) the highest value of their illicit offshore assets from 1990 to 2001. Assuming this value to be R14 million in total or R7 million each, this amount will be deemed to be the value for SVDP purposes. As a result 40% or R4.2million will be included in their each of their taxable incomes and taxed at their marginal rate.

*E. Waiver of penalties under the SVDP*

- No understatement penalties will be levied where an application under the SVDP is successful.

*F. Exemption from criminal prosecution under the SVDP*

- As is currently the case in the existing Voluntary Disclosure Programme, SARS will not pursue criminal prosecution for a tax offence where an application under the SVDP is successful.

*G. Reporting*

- The Minister of Finance will report to the National Assembly on the outcome of the SVDP for both Tax and Exchange control purposes.

IV. Effective date

The proposed SVDP will be deemed to have come into effect on 1 October 2016 and will apply for a limited window period of eleven months commencing on 1 October 2016 and ending on 31 August 2017.

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