

Media Releases 2010

Joint Media Release - The South African Revenue Service (SARS) and the South African Reserve Bank (SARB) Invite Applications for the Voluntary Disclosure Programme

Pretoria, 5 November 2010 – Individuals and corporate entities who took funds offshore illegally and those who defaulted on their tax affairs now have the opportunity in terms of the Voluntary Disclosure Programme, to regularise their affairs in instances where Exchange Control contraventions or tax defaults have occurred.

The Minister of Finance announced the VDP in his Budget Speech on 17 February 2010 and confirmed that it would begin this month in his Medium Term Budget Policy Speech (MTBPS) on 27 October 2010.

Tax VDP

Under the tax component of the VDP administered by SARS, successful applicants who meet the requirements will benefit from interest, penalty and additional tax relief (excluding administrative penalties for the late submission of returns and late payments of tax) and criminal prosecution will not be initiated against them by SARS regarding the disclosed defaults. However, the initial tax amount must still be paid in full.

In addition, the Tax VDP allows for prospective applicants to make an initial “no-name” disclosure in order to obtain a non-binding opinion from SARS as to whether the applicant would qualify for relief and the extent of any relief.

Excon VDP

In terms of the exchange control VDP (Excon VDP), which will be administered by the SARB’s Financial Surveillance Division (FinSurv), successful applicants who meet the requirements will benefit from administrative relief and no further action will be taken or initiated against them by FinSurv, in respect of the full disclosures made pertaining to any exchange control contraventions.

General

Any person who defaulted on their tax affairs before 17 February 2010 may apply to SARS for relief under the Tax VDP. Under the Excon VDP any person may apply to FinSurv (VDP Division) for contraventions before 28 February 2010.

A person who has only an exchange control contravention need only apply to FinSurv (VDP Division). A person who has only a tax default need only apply to SARS. A person who has an exchange control contravention and a tax default will need to apply to both SARS for relief regarding the tax default and to FinSurv (VDP Division) for relief regarding the exchange control contraventions.

Rationale for the VDP

A VDP is an internationally accepted practice adopted to improve compliance, broaden the tax base and increase revenue collection.

The Minister announced in his MTBPS Speech on 27 October 2010 that “our capacity to pursue those who seek to evade tax obligations continues to be reinforced”.

He added that authorities the world over were co-operating more than ever before to throw open the veil of tax manipulation. Information exchange agreements were being implemented and there was a growing use of third-party data from financial institutions, employers and other sources that left “very few places for the non-compliant to hide”.

Reporting obligations

According to the Financial Intelligence Centre (FIC), accountable institutions that assist their clients in making use of the VDP will incur obligations relating to the establishment and verification of clients’ identities, and recordkeeping in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (FICA).

However, the obligation to report suspicious or unusual transactions does not arise where clients are assisted in regularising their affairs by making use of the VDP in connection with income and/or foreign assets that were derived from legitimate sources. Details in this regard are available from the FIC’s website at www.fic.gov.za.

Minimum requirements

The minimum requirements for relief under the Tax VDP are as follows:

- The disclosure is complete in all material respects and made in the prescribed form and manner before 31 October 2011
- SARS was not aware of the default, which must have occurred prior to 17 February 2010
- A penalty or additional tax would have been imposed had SARS discovered the default in the normal course of business
- It would not result in a refund to be paid by the SARS Commissioner.

The minimum requirements for relief under the Excon VDP are as follows:

- The applicant must have contravened the Exchange Control Regulations prior to 28 February 2010
- The disclosure is complete
- The applicant must submit an application form in the prescribed format, depicting all foreign assets and/or structures (of whatever nature, excluding bearer instruments) in which the applicant has and/or had any direct and/or indirect interest, which application must be submitted before 31 October 2011
- The application must include full details of the description, location of the assets, the market value of the assets and proof of valuation.

Applicants who are under audit or investigation by SARS or FinSurv will only qualify for relief under specific circumstances.

While this window of opportunity is being offered to all persons with tax defaults and exchange control contraventions, those who choose not to apply remain at risk of detection by SARS and SARB. In such cases the law will take its course.

Contact details

For Tax VDP application forms, please call the SARS Contact Centre on 0800 00 7277 or visit any SARS branch or send an e-mail to vdp@sars.gov.za. Applications can also be submitted via eFiling . For more information about the tax VDP visit the SARS website www.sars.gov.za

Excon VDP application forms can be downloaded from the SARB's website, www.reservebank.co.za , by following the links: Home>SARB activities> Voluntary Disclosure Programme (VDP)>Application Forms. For any Excon VDP-related queries, please contact the FinSurv (VDP Division) on +27 12 313-3169 or send an e-mail to SARB-VDPFNS@resbank.co.za.

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