Special Voluntary Disclosure Programme in respect of offshore assets and income

March 2016
The South African Revenue Service (SARS) will introduce the special VDP to provide non-compliant taxpayers with undisclosed foreign assets and income a final opportunity to regularise their tax affairs. The timing of the special VDP is to enable taxpayers to be compliant before the new OECD global standard for the automatic exchange of financial information comes into effect in 2017.

A similar programme will be introduced by the Financial Surveillance (FinSurv) and Exchange Control (Excon) Department of the South African Reserve Bank (SARB) for the consequent exchange control contravention.

Due to the proposed short time frame within which applications can be made (6 months) and the documentary evidence requested, we have set up a specialised multidisciplinary team to assist with the special VDP.

The information set out in this brochure is based on the media statement by the National Treasury on 24 February 2016 as well as the draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, and the Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill, and may be subject to change when the Bills are enacted by Parliament.

**The duration of the special VDP**

The special VDP will be effective from 1 October 2016 until 31 March 2017.

**Who is eligible to participate?**

The following persons who are South African residents on 29 February 2016 are eligible to participate.

- Natural Persons (including the deceased estates of natural persons)
- Close Corporations
- Companies

Trusts are excluded unless the donor or beneficiary of an offshore discretionary trust elects that the offshore asset/s which are held by the trust is deemed to be held by them.

Taxpayers will not be eligible if they are aware of a pending audit or investigation or an audit or investigation has commenced in respect of their foreign assets or foreign taxes.

**What sanctions would ordinarily apply if your non-compliance is detected by SARS or SARB?**

**SARS:**

- 10% late payment penalty
- 10% to 200% understatement penalty
- Interest on outstanding tax and penalties
- Potential criminal prosecution

**SARB:**

- If you come forward outside of the special VDP – 10% to 40% penalty based on the current market value of the unauthorised asset
- If FinSurv uncovers the contravention - potential recovery by FinSurv of the full amount of the contravention, in other words you may lose the entire amount held offshore
The relief granted

SARS:
• 50% of the total amount used to fund the acquisition of the offshore asset will be subject to tax. The draft legislation is unclear as to the application of this, but we presume this only applies where the original capital should have been subject to tax and was not.
• SARS will only seek to tax investment returns on offshore assets with effect from 1 March 2010, thus income and gains generated before this date will be exempt from tax
• 100% of any investment income (dividends, interest etc.) generated on or after 1 March 2010 will be subject to tax
• No understatement penalty will be imposed (even in cases of intentional tax evasion and gross negligence)
• Interest will only run from 1 March 2010
• No criminal prosecution will be sought
• Late payment penalties will not be imposed

SARB:
• 5% penalty based on the current market value of the unauthorised asset as at 29 February 2016 if the assets/funds are repatriated to South Africa
• 10% penalty based on the current market value of the unauthorised asset as at 29 February 2016 if the assets/funds are kept offshore
• The penalty must be paid from foreign sourced funds, if the applicant is not able to remit the required funds, an additional 2% penalty will be added

How to apply

Taxes:
The application is made via SARS’s e-filing platform through the completion of the VDP01 form and by attaching:
• A cover letter in compliance with the VDP provisions of the Tax Administration Act, 28 of 2011
• Any relevant supporting documents.

Applicants will also be required to submit amended returns in respect of the disclosed tax periods.

Disclosure must however be full and complete in all material respects to prevent the VDP relief from being withdrawn.

Exchange Control:
An application is made in the prescribed manner to an authorised dealer of the FinSurv and Excon department of SARB.

When do I pay the tax?
You must be able to settle the outstanding taxes as soon as the amended returns are filed and application is made to the FinSurv and Excon department of SARB.

How long will it take for my application to be considered?
There are no set time frames within which your application must be considered. In relation to taxes it depends on the capacity of the SARS VDP unit. Currently, applications made in terms of the general VDP are considered within a period of 6 months.

How will I know if my application is successful?
Applicants will sign a formal VDP agreement with SARS setting out the relief granted and the taxes due in accordance with your disclosure. Thereafter, assessments will be issued giving effect to the agreement.

Similarly an agreement will be entered into with the FinSurv and Excon department of SARB.

What prevents SARS from looking further into my tax affairs?
In terms of the ordinary rules, the VDP agreement will remain confidential between you and the SARS VDP unit. The VDP unit is not entitled to share the information with other divisions of SARS. The SARS VDP unit is however, entitled to share the information with SARB. The special VDP Deloitte team:
Contact us at specialvdp@deloitte.co.za

The special VDP Deloitte team:

Luke Barlow  
Director Tax  
CA (SA)  
lbarlow@deloitte.co.za  
+27 (0)21 427 5480

Louise Vosloo  
Partner International Tax  
Advocate  
lvosloo@deloitte.co.za  
+27 (0) 11 806 5360

Daniel Flanagan  
Director Tax  
CA (SA)  
daflanagan@deloitte.co.za  
+27 (0)21 427 5487

Paul Verhoef  
Exchange Control Specialist  
pverhoef@deloitte.co.za  
+27 (0) 28 316 3212

Tammy Arendse  
Senior Manager, Tax Dispute Resolution  
and Controversy Management  
Admitted attorney  
tarendse@deloitte.co.za  
+27 (0)11 209 8016

Charmaine Aakifah Louw  
Assistant Manager, Tax Dispute Resolution and Controversy Management  
Admitted attorney  
aalouw@deloitte.co.za  
+27 (0)11 806 5817

Bradley Pearson  
Associate Director, International Tax  
CA (SA)  
brpearson@deloitte.co.za  
+27 (0) 31 560 7426

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (DTTL), its network of member firms and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte’s more than 225 000 professionals are committed to making an impact that matters.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2016. For information, contact Deloitte Touche Tohmatsu Limited (000000/ina)