Africa Tax Alert
Expert’s Corner

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Special Voluntary Disclosure Programme – penalties and forfeiture risk (South Africa)

It took almost 11 months from 24 February 2016 when the Special Voluntary Disclosure Programme (SVDP) was first announced by the then Minister of Finance, Mr Pravin Gordhan, to 19 January 2017 when the final tax provisions were gazetted, but it is now only a few weeks until the SVDP expires on 31 August 2017.

The Tax and Exchange Control SVDPs were introduced to give non-compliant persons with undisclosed foreign assets and income a final opportunity to regularize their affairs before the automatic exchange of information commences.

In terms of the OECD global standard for the automatic exchange of information between tax authorities (the so-called Common Reporting Standard – CRS), SARS will start receiving offshore third-party financial data of South African residents from other tax authorities from September 2017 on a regular basis.

South African financial institutions were obliged to report financial information of non-SA residents to SARS by 31 May 2017, and will continue to do so regularly. This financial information of non-SA residents will be shared by SARS with other tax authorities. As countries previously known to be tax havens have also signed up to exchange financial data, the probability of non-compliant persons being caught is high.

South African residents who have, as yet, not availed themselves of this final opportunity to come clean, are cautioned to reconsider their position. We mention "final" because this time around there is a global effort to root out the non-disclosure that has so far given rise to tax evasion.

The options facing a non-compliant person are as follows:

- Apply now for Tax and/or Exchange Control SVDP and pay income tax to SARS at an effective rate of 16% of the previously undisclosed capital, and if applicable, an exchange control levy payable to the South African Reserve Bank (SARB) of either 5%, 10% or 12% depending whether or not foreign or local funds are used to settle the levy, and whether or not the funds are repatriated to South Africa; or

- Do not apply for Tax and/or Exchange Control SVDP and risk paying to SARS tax penalties of up to 200%, as well as the previously avoided tax and interest thereon calculated from 1 October 2002. Criminal prosecution is also a possibility.

  In addition thereto, the Exchange Control Circular, which sets out details pertaining to the SVDP, provides as follows - *"South African residents who neither applied for exchange control relief in terms of this SVDP nor voluntarily approached the FinSurv for assistance may face the full force of the law. In this regard, the FinSurv is mandated to, where appropriate, recover the full amount of the contravention."*

South African residents still choosing not to avail themselves of this final opportunity to come clean by 31 August 2017 therefore risk having to fork out tax, penalties and interest to SARS. In addition, they may also end up having to forfeit the entire balance of the undisclosed foreign assets to SARB.

For assistance with the SVDP, please contact us at specialvdp@deloitte.co.za

Get in touch