
MEDIA STATEMENT

Special Voluntary Disclosure Programme in respect of offshore assets and income

In the 2016 Budget Speech, the Minister of Finance announced a Special Voluntary Disclosure Programme to give opportunity for non-compliant taxpayers to voluntarily disclose offshore assets and income. With a new global standard for the automatic exchange of information between tax authorities providing SARS with additional information from 2017, time is now running out for taxpayers who still have undisclosed assets abroad. To encourage compliance, Government proposes a Special Voluntary Disclosure Programme for individuals and companies to regularise both their tax and exchange control affairs for a limited window period described below.

The South African Revenue Service (SARS) and the South African Reserve Bank (SARB) are working jointly to ensure that applications for the Special Voluntary Disclosure Programme are assessed through one joint process for both tax non-compliance and exchange control contraventions.

TAX RELIEF

Window period of Special Voluntary Disclosure Programme

- Applications for relief under the Special Voluntary Disclosure Programme will apply for a limited window period of six months starting on 1 October 2016 and closing on 31 March 2017.

Persons that may apply for the Special Voluntary Disclosure Programme

- Individuals and companies may apply for the Special Voluntary Disclosure Programme 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.
- Trusts will not qualify to apply for the Special Voluntary Disclosure Programme.
- Settlers, donors, deceased estates or beneficiaries of foreign discretionary trusts may, however, participate in the Special Voluntary Disclosure Programme if they elect to have the trust’s offshore assets and income deemed to be held by them.
- Persons may not apply for the Special Voluntary Disclosure Programme 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 areas (other than foreign assets or foreign taxes, e.g. in respect of PAYE), persons may still qualify to apply for relief under the Special Voluntary Disclosure Programme.

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

Relief granted under the Special Voluntary Disclosure Programme

- Only 50 per cent of the total amount used to fund the acquisition of offshore assets (“seed money”) before 1 March 2015, if the applicant failed to comply with a tax Act administered by SARS, will be included in taxable income and subject to normal tax.
- Investment returns in respect of those offshore assets received or accrued only from 1 March 2010 onward will be included in taxable income in full and subject to normal tax.
- Investment returns prior to 1 March 2010 will be exempt.

Interest charged in terms of the Special Voluntary Disclosure Programme

- Interest on tax debts arising from the disclosure of amounts used to fund the acquisition of offshore assets or investment returns in respect of those offshore assets will commence only from 1 March 2010.

Waiver of penalties under the Special Voluntary Disclosure Programme

- No understatement penalties will be levied where an application under the Special Voluntary Disclosure Programme is successful.

Exemption from criminal prosecution under the Special Voluntary Disclosure Programme

- 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 Special Voluntary Disclosure Programme is successful.

Application process under the Special Voluntary Disclosure Programme

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

EXCHANGE CONTROL RELIEF

Disclosure of Exchange Control Contraventions under the Special Voluntary Disclosure Programme

- The Financial Surveillance Department of the South African Reserve Bank (FinSurv) will be offering an opportunity to South African residents to regularise their exchange control affairs by applying for relief under the Special Voluntary Disclosure Programme of contraventions of the provisions of the Exchange Control Regulations, 1961 and which contraventions include, *inter alia*, the ownership of an unauthorised foreign asset(s).
- Applications for relief for Exchange Control under the Special Voluntary Disclosure Programme are to be made pursuant to the provisions of Regulation 24 of the Exchange Control Regulations, 1961.
- South African residents (individuals and entities) will be allowed to disclose and regularise their exchange control contraventions that occurred prior to 29 February 2016.
- South African residents who are the subject of any current and/or pending investigation by FinSurv into their contraventions of the provisions of the Regulations will not qualify for Exchange Control relief under the Special Voluntary Disclosure Programme.

Window period of the Special Voluntary Disclosure Programme

- Applications for Exchange Control Relief under the Special Voluntary Disclosure Programme will commence on 1 October 2016 and will continue until 31 March 2017

Exchange Control Relief under the Special Voluntary Disclosure Programme

- Applicants who are granted administrative relief in respect of unauthorised foreign assets and/or structures (of whatever nature, excluding bearer instruments) may have to pay a levy based on the current market value thereof as at 29 February 2016.
- The following conditions will apply:
 - 5% of the leviable amount if the regularised assets or the sale proceeds thereof are repatriated to South Africa;
 - 10% of the leviable amount if the regularised assets are kept offshore;
- The levy must be paid from foreign-sourced funds. Where insufficient liquid foreign assets are available, an additional 2% will be added, to the extent that local assets are utilised to settle the levy; and
- Individuals will not be allowed to deduct their R10 million foreign capital allowance or any remaining portion thereof from any leviable amount and the levy may not be reduced by any fees or commissions.

Exchange Control Relief post the Special Voluntary Disclosure Programme

- South African residents who do not apply for Exchange Control Relief under the Special Voluntary Disclosure Programme and voluntarily make a full disclosure directly to FinSurv outside of the Special Voluntary Disclosure Programme shall, at the discretion of FinSurv, have to pay a settlement ranging from 10% to 40% on the current market value of their unauthorised foreign assets. The determination of the final settlement amount will, *inter alia*, depend on whether the applicant elects to retain the funds abroad or repatriate such funds.
- South African residents who neither applied for Exchange Control relief in terms of this Special Voluntary Disclosure Programme 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.

Treatment of disclosure and regularisation

- Further information on the treatment of disclosures and declarations in respect of specific transactions conducted by natural persons, corporates and donors of discretionary trusts will be made public in due course.

TAX LEGISLATION AND EXCHANGE CONTROL REGULATIONS

Provisions regarding tax relief under the Special Voluntary Disclosure Programme will be made available in the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016, the Rates and Monetary Amounts and Amendment of Revenue Laws (Administration Bill), 2016 and under the Exchange Control Regulation 24 of 1961.

Issued by National Treasury on 24 February 2016