

SARS MEDIA RELEASE: Specifications for the reporting of information under FATCA, AEOI and domestic law.

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On 8 February 2013, the National Treasury and the South African Revenue Service (SARS) announced the start of negotiations with the US Department of the Treasury to enter into an inter-governmental agreement (IGA) with respect to the USA's Foreign Account Tax Compliance Act (FATCA). The wording of a draft IGA has now been agreed upon and will be signed at Governmental level as soon as possible. When signed, the US Treasury will view South African financial institutions as being generally compliant with FATCA.

Once the IGA has taken effect, the relevant financial institutions in South Africa will report the required information to SARS, which will then exchange information with the US under the legal framework provided by the double taxation agreement that exists between South Africa and the US. South African financial institutions will be required to obtain information on United States citizens in accordance with the IGA from 1 July 2014 and report such information to SARS. The first reporting period is 1 July 2014 to 28 February 2015 and the required information will have to be submitted to SARS by June 2015. Information will thereafter be submitted annually for every tax year ending February.

SARS has proposed a business requirement specification (BRS) to cater for automatic periodical reporting of specified information by financial institutions. To give effect to the requirement to provide information for purposes of FATCA, SARS will issue a public notice under section 26 of the Tax Administration Act, 2011 (TAA) requiring a return as specified in the BRS and a public notice under section 29(1)(b) of the TAA requiring the record keeping of this information.

In addition, it was recognised that similar information would be valuable for domestic purposes. To administer the Income Tax Act, 1962, SARS may use its information gathering powers under the TAA to obtain the information through the proposed BRS.

There have, however, been further developments in the international arena to use automatic exchange of information (AEOI) to identify non-compliance by taxpayers using foreign accounts and to establish a global approach to combatting offshore tax evasion. The OECD has, together with the G20, developed a standardized, secure, and cost effective model for bilateral automatic exchange of information. This led to the unveiling on 13 February 2014 of a common reporting standard for the automatic exchange of information between tax authorities. The G20 has requested the Global Forum on Transparency and Exchange of Information for Tax Purposes to monitor the implementation of this standard.

The standard calls on jurisdictions to obtain information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis. For this reason, the scope of the proposed BRS has been extended to require affected financial institutions to

provide similar information regarding all non-residents. Although the FATCA IGA will cater for elective thresholds, these will not apply to the extended ambit of the BRS catering for AEOI with other treaty partners as well as domestic requirements. Once the information is available from financial institutions, SARS will be able to automatically share the relevant information with its treaty partners on a reciprocal basis, in terms of existing double taxation agreements.

Although South Africa has an existing network of bilateral double taxation agreements (DTAs), it has also become a Party to the Convention on Mutual Administrative Assistance in Tax Matters. This freestanding multilateral agreement covers a much wider range of taxes, and extends co-operation to some countries with whom South Africa does not have such agreements. South Africa may, therefore, exchange information with another Party under the Multilateral Convention in relation to all taxes even in the absence of a DTA, or if existing DTAs do not provide for that wider coverage of taxes.

The purpose of the information flow under the proposed BRS is threefold:

- To obtain information required by SARS for purposes of exchange of information under the IGA;
- To allow for automatic exchange of similar information on a reciprocal basis with South Africa's other treaty partners, based on the OECD common reporting standard on financial accounts; and
- To obtain information that will be used by SARS under domestic law to tax source based income from non-residents;

South Africa plays a leading role in the global movement towards greater transparency and exchange on information in tax matters to ensure greater trust and fairness in the international tax system. South African taxpayers who have not yet regularised their position with respect to their offshore holdings are reminded that SARS offers a voluntary disclosure programme. Details of the programme are available on the SARS web site or from SARS's VDP unit at 0800 864 613 during office hours.