

March 29, 2016
2016-044

**South Africa – Special
Voluntary Disclosure
Programme Announced in
Budget 2016**

by KPMG, South Africa (a
KPMG International member
firm)

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

In the 2016 Budget Speech¹ delivered on 24 February 2016, by South Africa's finance minister, a Special Voluntary Disclosure Programme ("SVDP") was announced relating to the regularisation of offshore assets. The SVDP will run from 1 October 2016 to 31 March 2017.

We highlight below some of the important considerations of the proposed regularisation procedures and terms, and compare against the existing procedures and terms.

Why This Matters

The OECD's Automatic Exchange of Information initiative accompanied by the Common Reporting Standards ("CRS"), sets the framework for sharing information between tax jurisdictions.

The reality is that detailed information about South Africans' unauthorised assets held abroad, as well as the undeclared income generated by such assets, will soon become available to the South African authorities.

The timing of the Budget announcement of the SVDP therefore gives individuals subject to South African taxation a once-off six month window to regularise their tax defaults and / or Excon contraventions, i.e., prior to the information exchange taking place.

Background

South African taxpayers presently have an opportunity to regularise their tax defaults with the South African Revenue Service ("SARS") by means of the Voluntary Disclosure Programme ("VDP"), which is applicable for all kinds of tax defaults (other than customs). South African Exchange Control ("Excon") residents also presently have an opportunity to regularise any exchange control contraventions with the South African Reserve Bank ("SARB"). The exchange control regularization process (as it currently operates) is a separate process to the tax VDP.

Proposed SVDP: Who Can Apply?

- Individuals and companies may apply for the SVDP 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 SVDP.
- Settlers, donors, deceased estates or beneficiaries of foreign discretionary trusts, however, may participate in the SVDP if they elect to have the trust's offshore assets and income deemed to be held by them.

- Persons aware of a pending audit or investigation in respect of foreign assets or foreign taxes or who have an audit or investigation in respect of foreign assets or foreign taxes that has commenced may not apply for the SVDP.

Requirements for a Valid Tax VDP Application

The requirements for a valid VDP have been expanded and the said disclosure must:

- a) be voluntary;
- b) involve a “default” which has not occurred within five years of the disclosure of a similar “default” by the applicant;
- c) be full and complete in all material aspects;
- d) involve a behaviour which gives rise to the SARS being able to levy an under-statement penalty charge;
- e) not result in a refund due by SARS; and
- f) be made in the prescribed form and manner.

A person cannot apply for VDP relief if the potential applicant is aware of a pending SARS audit or SARS investigation that is related to the default which the potential applicant wishes to disclose or where the SARS audit or SARS investigation (relating to the “default”) has commenced but has not been concluded by SARS.

Comparison of Benefits, Obstacles, and Challenges between the VDP and SVDP (1 October 2016 – 31 March 2017) as Relates to Tax Defaults

Like the VDP legislation which is already statutorily defined, the SVDP proposals will also be legislated. Provided the requirements for a valid VDP application have been met, the SARS has no discretion to disallow an applicant access to the VDP or SVDP. See the side-by-side comparisons on the next page.

VDP

- Investment income (interest, dividends, and capital gains) must be declared. Presently, applications need to make declarations from the 2002 tax year (1 March 2001).
- To the extent that capital tax is due, the capital tax is payable.
- Seed money is not taxable to the extent that the seed money (capital) was transferred offshore with after-tax monies.
- Interest remains payable from the first year of reported defaults.
- No under-statement penalties will be levied.
- Relief from administration penalties (excl. penalties on the late submission of returns).
- Relief from criminal prosecution.

SVDP (tax)

- Only investment income (interest, dividends, and capital gains) from 1 March 2010, need be declared. Any investment income prior to 1 March 2010 is exempt.
- SARS will seek to tax 50% of the total amount used to fund the acquisition of unauthorized offshore assets (acquired before 1 March 2015) in taxable income, which will be subject to normal tax.
- Interest remains payable on tax debts from 1 March 2010.
- No under-statement penalties will be levied,
- Relief from administration penalties (excl. penalties on the late submission of returns).
- Relief from criminal prosecution.

Comparison of Benefits, Obstacles, and Challenges between the VDP and SVDP (1 October 2016 – 31 March 2017) as Relates to Excon Contraventions

The tables on the following page apply where the person is not already under investigation by the South African Reserve Bank.

The Regularisation Process

- No time limitation to which contraventions apply.
- 20% levy should the funds / investments be repatriated to South Africa.
- 25% levy should the holder elect to retain the funds / investment offshore.
- Where there are mitigating factors, the levy could possibly be reduced.

SVDP (Excon)

- Applicable to contraventions which occurred prior to 29 February 2016.
- A 5% levy will apply where the regularised assets are repatriated to South Africa.
- A 10% levy will apply where the regularised assets remain offshore.
- An additional 2% levy will apply where local assets are utilised to settle the levy.
- The ZAR 10 million foreign investment allowance cannot be used to reduce the amount on which the levy is calculated.

KPMG Note

The KPMG International member firm in South Africa is liaising with SARS and the SARB regarding the final steps for approval/enactment of legislation, as well as how tax and exchange control VDP applications filed with SARS and SARB will be affected (if at all) given the announcement of the proposed SVDP.

Footnote:

- 1 See: <http://www.treasury.gov.za/documents/national%20budget/2016/default.aspx>.

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If you require additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in South Africa:

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The 2016 KPMG Global Mobility Forum is designed to provide insights, leading practices, and ideas to help turn these challenges and changes into opportunities. We have invited corporate professionals – with experiences ranging from international human resources and tax, to immigration and employment law – to join together to discuss new strategies for adapting to change and embracing disruption within global mobility and talent management.

Please save the date and join KPMG at the Eden Roc hotel in Miami Beach 17-19 October 2016 for the 2016 KPMG Global Mobility Forum.

For further information, please contact your local KPMG GMS or People Services professional.

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