South African Institute of Tax Professionals

16 September 2016

The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
0181

BY EMAIL: yanga.mputa@treasury.gov.za
ftomasek@sars.gov.za
cc: awicomb@parliament.gov.za

RE: RESPONSE DOCUMENT – SPECIAL VOLUNTARY DISCLOSURE PROGRAMME

This is a final submission in reply to the draft response document (dated 7 September 2016) involving the Special Voluntary Disclosure Programme (Special VDP). In making this submission, we appreciate the adjustments made / accepted to date. The revised version has a greater appeal. However, we must unfortunately reiterate member demand for two small (but key) items:

- *Resetting of base cost:* It is again requested that the base cost of foreign assets disclosed be equal to the market value included in the Special VDP. This request is made on two grounds. Firstly, there is no desire (or even capability) to trace the base cost of the disclosed assets to the initial acquisition date. The proposed five-year method for the Special VDP effectively recognizes this concern so no reason exists to merely push the problem elsewhere into the system. Secondly, the failure to provide a market value base cost creates an uneven playing field for relief applicants. Those with cash (or cash equivalents) can move

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T (012) 941 0400
F (086) 626 0650
E info@thesait.org.za
W www.thesait.org.za

Riverwalk Office Park, Building A
C/O Garsfontein & Matroosberg
Roads, Pretoria, South Africa, 0081
Reg no 2007/014730/08

PO Box 712
Menlyn Retail Park
0063

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forward free of tax in terms of prior appreciation; meanwhile, those with non-cash assets become subject to an additional (and often uncertain) tax surcharge. This differential is wholly unrelated to the underlying illegality.

- *Estate Duty:* The forced re-inclusion of trust assets otherwise outside the taxpayer's estate for future estate duty purposes is also a deal breaker for many. This future charge will be viewed as a significant cost given the expected future increases in value of the underlying offshore assets.

  Only assets that were **donated** or derived from a donation to a trust can be subject to the election (we are not sure whether this is an intended restriction on the application of the Special VDP). However, donated assets should not be included in the estate for estate duty. If a taxpayer donates an asset to another person, the asset can no longer be part of his dutiable estate. In sections 15 and 16 the donor is exempted from donations tax not paid (in return for the 40% inclusion of the market value in taxable income) and this exemption should not be recouped or reversed at death. It would not be correct to include the same donated asset back into a dutiable estate. Normally there is no estate duty claw back in respect of assets donated and therefore this deemed recoupment is not supported by current SA law.

  Of concern to many are expected future increases in value mainly stemming from expected future devaluations of the Rand.

  Example: The current trust assets have a R50 million value. South African person is age 60 and expects trust assets to grow to a value of R120 million by age 80. In these circumstances, the 20% estate duty on the market value at death (which would include the future growth) is perceived to be too high.

  - We note that the 2003 amnesty correctly excluded these amounts from future estate duty.

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- We also note that the deemed Estate Duty inclusion does not apply to trust assets acquired after the Special VDP date (so the future Estate Duty inclusion becomes a trap for the unwary).
- Query: If multiple trust donors / beneficiaries are involved, how does one allocate the amount back to the estate? Is the full asset allocated? Doesn't full allocation lead to potential double taxation? If only a portion, how?

We appreciate the continuing dialogue and believe that these closing suggestions should be viewed as reasonable given the circumstances.

Yours sincerely,

Erika de Villiers

Head of Tax Policy