

4 July 2018

The National Treasury

240 Madiba Street

PRETORIA

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The South African Revenue Service

Lehae La SARS, 299 Bronkhorst Street

PRETORIA

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BY EMAIL: Yanga Mputa

Franz Tomasek

**RE: VOLUNTARY DISCLOSURE PROGRAMME – FOLLOW-UP**

We refer to the meeting held on 9 January 2018 to discuss the Annexure C submissions on the Voluntary Disclosure Programme (VDP). During the meeting it was indicated that many of the issues raised could be addressed by way of SARS guidance. We are writing to enquire whether SARS is planning to issue formal guidance on its approach to the application of the VDP rules and the progress in that regard.

We would also like to follow up on one of our submissions concerning problems with the VDP rules, which related to the fact that no objection and appeal process is available for rejections of VDP applications. We believe that this matter would require legislative amendment to address.

This note highlights briefly why, in our view, the objection and appeal process should be available to taxpayers (rather than a High Court review process).

## 1. **Justice Prohibitively Costly**

- 1.1 For larger taxpayers, an appeal to Tax Court or review in the High Court may well be similarly affordable. However, the situation is dramatically different for “smaller” taxpayers.
- 1.2 In relation to smaller disputes, taxpayers following the objection and appeal process would have their matter heard by the tax board. This involves fewer formalities and lower cost, making justice more financially accessible for “smaller” taxpayers.
- 1.3 This is a real concern in relation to all potential disputes, where taxpayers are obliged to follow the High Court review process, regardless of their financial resources and the size of their dispute.

## 2. **ADR Process**

- 2.1 The Alternative Dispute Resolution process has been implemented as part of the normal objection and appeal process. This appears to be fulfilling an important function, in reducing the need for costly litigation, and helping the parties reach a mutually agreeable conclusion.
- 2.2 This process can be anticipated to have similar beneficial impact on disputes regarding the availability of VDP. However, ADR does not form part of the High Court review process and is therefore currently unavailable for taxpayers who dispute SARS’ rejection of their VDP application.
- 2.3 Whereas it is possible that similar positive resolution could be achieved in a less formal manner, when requesting SARS to review their decision, the ADR mechanism is already set up with skilled and experienced staff and known processes. In the circumstances, it appears most appropriate to utilise these existing channels, as part of the objection and appeal process.

### 3. **Taxpayer Secrecy**

- 3.1 In an objection and appeal process, the taxpayer maintains secrecy. In contrast, in a High Court review process, the taxpayer is exposed to commercial and reputational risks in relation to their private taxpayer information becoming public.
- 3.2 The risk of the VDP application being rejected (which would have the impact of penalties being imposed), combined with the commercial and reputational risks associated with challenging this rejection of the VDP application by means of a public court process, is a material disincentive to taxpayers. This can, in certain instances, result in taxpayers adopting a “find me first” attitude to past tax non-compliance.

Please do not hesitate to contact us should you need further information.

Sincerely,

**Patricia Williams**

**Chair of the Tax Administration Technical Work Group**