



## **THE VOLUNTARY DISCLOSURE PROGRAMME (VDP)**

In the wake of the global financial crisis, governments around the world have been seeking to raise their tax revenues to help fund budget deficits. Internationally there has been a move in the tax environment towards a more open exchange of information between tax authorities.

This international exchange of information together with the relaxation of banking secrecy laws, sophisticated audit initiatives and improving co-operation between tax authorities and banks will improve SARS' ability to trace the flow of funds around the world and identify South African resident taxpayers with income and assets hidden offshore.

The Minister of Finance announced in his budget speech that tougher action will be contemplated against those that do not pay their fair share of taxes. The Minister confirmed though, that SARS will continue with its policy of acting leniently towards those taxpayers who came forward voluntarily to disclose previous incidents of non-compliance. The Minister announced the Voluntary Disclosure Programme

(VDP) which would create a window of opportunity for taxpayers to come forward and disclose their indiscretions in return for a reduced interest charge and waiver of penalties.

The VDP offered is being run in conjunction with a VDP offered by the South African Reserve Bank which also creates an opportunity for applicants to regularise previous exchange control infringements. Tax authorities in Canada, USA, UK and Australia have previously offered similar VDP's. The VDP was enacted into legislation by virtue of the Voluntary Disclosure Programme and Taxation Laws Second Amendment Act (no 8 of 2010).

The VDP has been referred to in the media as yet another amnesty but differs somewhat in that the person successfully applying in terms of the VDP will still be expected to pay the tax arising from the voluntary disclosure but will receive relief in the form of the waiver of additional tax, penalties and interest. The applicant will also receive an undertaking from SARS that it will not pursue a criminal prosecution if the voluntary disclosure could constitute a statutory or common law offence. The VDP is only available in respect of defaults committed by the applicant prior to 17 February 2010. No relief will be granted by SARS in respect of events subsequent to this date.

In the event that the applicant makes a valid voluntary disclosure then SARS is obliged to grant the relief mentioned above.

The applicant will then be required to enter into a written agreement with SARS recording the details of the voluntary disclosure and the arrangements flowing from that disclosure such as the amount payable and the due date for these payments.

SARS may withdraw this relief if it establishes that the applicant did not make a full voluntary disclosure of all material facts relating to the transactions in question. Any amount paid by the applicant will be kept by SARS as part payment of any additional taxes due and

SARS may continue with a criminal prosecution for any offence which may have been committed.

Interestingly, an applicant can first obtain an indication of whether he will qualify for relief by submitting an anonymous application to SARS. SARS will respond with a non-binding opinion indicating whether the applicant will qualify for the relief and to what extent.

The applicant can then decide whether he wishes to come forward and make a full disclosure.

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