



DAVEY'S Locker



Davey's Locker

April 2016

The Panama Papers, CRS and the Special VDP

Taxpayers forced to regularize their offshore assets?

by Tony Davey

© 2016 A H Davey (tonyd@harding.co.za www.tonydavey.com)

Common reporting standards

Tax havens are in the spotlight, courtesy of the Panamanian leak of information about the clients of a prominent law firm situated there. The world is a global village when it comes to the exchange of information, whether tax or otherwise, thanks in part to Julian Assange of WikiLeaks and Edward Snowden of the US intelligence services.

The OECD-driven Common Reporting Standards (CRS) require participating countries to provide tax information pertaining to financial assets and trusts beneficially held by offshore tax residents. Financial institutions are thus required to report accounts held by foreign tax residents to their local tax authority, which will in turn exchange such information with the fiscal authority of the account-holder's country of tax residence.

The first wave of reporting countries (reporting in 2017) include South Africa, Jersey, Guernsey, Isle of Man, Mauritius, Malta and the UK, with the second wave (2018) including Australia, Israel, Switzerland and the UAE.

Special VDP

CRS will probably force the hand of RSA taxpayers to regularize their offshore assets, in terms of both tax and exchange control matters,

under the Special VDP (voluntary disclosure programme) commencing on 1 October 2016 (see 155 *TSH* 2016).

Post-special VDP

From a tax perspective, many taxpayers would prefer for their assets to continue to be administered or housed in a trust domiciled in a tax haven, since investment income attracts little or no tax in such jurisdictions.

This rationale is simplistic: SA taxes the worldwide income of its residents (including foreign trust income and, if the Special VDP is applicable, capital gains). Thus full tax is still payable in SA. (If tax is paid offshore, SA provides a credit against SA tax, under either a tax treaty or s 6quat of the Income Tax Act.)

There are also other factors to be considered, including asset protection, continuity, and estate duty savings on assets held in a foreign trust, which should be evaluated relative to the administrative costs of keeping a trust running.

[What these poor suckers fail to realize is that their hugely expensive offshore trusts are seldom valid under our common law.—Ed]

