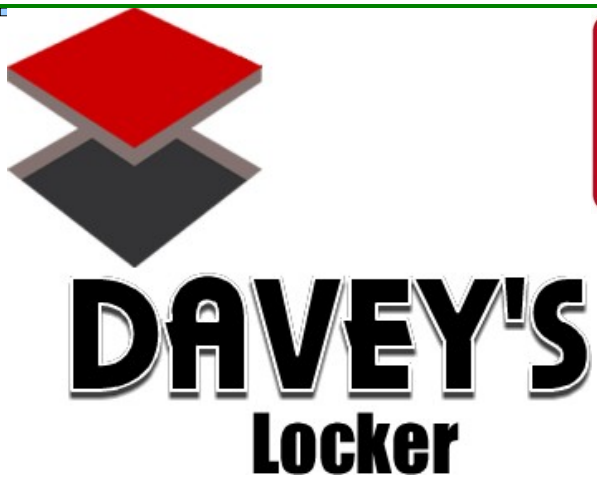

July 2016

Special voluntary disclosure programme

The third version

by Tony Davey

The draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016, published on 20 July 2016 (see the Monthly Listing), includes a proposed third version of the Special Voluntary Disclosure Programme (SVDP).

This version is to be welcomed by applicants with pre-tax (untaxed) monies abroad, in that it combines the tax relief on pre-tax (untaxed) capital with the taxable investment income earned on the capital, thus simplifying the process. Tax is imposed on one taxable income (being the highest asset value between 1 March 2010 and 28 February 2015) in one tax year.

Pre-tax v post-tax applicants

But this third version is patently unfair to applicants with post-tax (taxed) monies abroad.

Many applicants have already paid tax on their offshore assets before remitting the relevant funds offshore (usually by way of unspent travelling allowances provided through the RSA banking system, which enjoy *prima facie* proof of tax legitimacy). It is unfair to again subject to tax such post-tax capital under the SVDP:

- There is a presumption in our tax law against double taxation [technically, the taxation twice of the same amount under the same tax —Ed].
- The normal VDP currently offered in the Tax Administration Act does not require applicants to pay tax on post-tax (taxed) capital (as distinct from pre-tax, untaxed capital). The SVDP will fail in its objectives unless its penal aspect is addressed.

It follows that post-tax applicants (which in my experience comprise 95% of all applicants) are best advised to apply for the normal VDP, with its arduous administrative burden requiring an applicant to establish taxable income (if any) for each of the past ten years, as opposed to the simple remedy available under the SVDP to applicants with pre-tax monies abroad.

Equity

The equitable and administratively simple solution is that post-tax applicants should be required to disclose only taxable investment returns on monies abroad for each year of assessment as from 1 March 2010, as was envisaged in previous versions of the SVDP.

SARB relief

The SARB has issued Circular 6 of 2016 dated 13 July 2016 (see the Monthly Listing), confirming the available reliefs for exchange control breaches (115 *TSH* 2012).

In essence, applicants granted administrative relief on unauthorized foreign assets or structures (of whatever nature, excluding bearer instruments) will pay a levy based on the current market value concerned as at 29 February 2016.

The levy amount is 5% of the leviable amount if the regularized assets or the proceeds arising from their sale are repatriated to South Africa. It is 10% of the leviable amount if the regularized assets are kept offshore.

The levy must be paid from foreign-sourced funds. When insufficient liquid foreign assets are available, an additional 2% will be added, to the extent that local assets

are used to settle the levy.

Individuals will not be allowed to deduct their R10 million foreign capital allowance or any remaining portion of this allowance from the leviable amount, and the levy may not be reduced by fees or commissions.

A further concession is that those guilty of mere administrative breaches (with monies that were always abroad but not previously reported, such as pre-immigration foreign inheritances or foreign earnings) will pay no levy.

If an inheritance originated from an RSA source, there is no levy if the funds are repatriated, but the levy is 10% if the inheritance is retained abroad.