Davey's Locker

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Special voluntary disclosure programme

Fourth (and final?) version

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SARB relief

The South African Reserve Bank's relief for exchange control breaches, contained in Circular 6 of 2016, was canvassed in 160 *TSH* 2016, and remains unchanged.

In essence administrative breaches (moneys always abroad but not previously reported to SARB, such as pre-immigration funds, qualifying foreign inheritances from a foreign source, and foreign earnings) will incur no levy, but must be placed on record, unless exempted.

Broadly speaking, if an inheritance originated from an RSA source ('sins of the father' scenario) there is no levy, if the funds are repatriated, but the levy is 10% if the inheritance is retained abroad.

For other unauthorized foreign assets, the levy, based on the market value of the property concerned as at 29 February 2016, is 5% if repatriated, 10% if retained offshore, plus 2% if the levy is settled from local moneys.

SARS relief: Special VDP (SVDP)

The fourth and (it is to be hoped) final legislative version enacted, contained within the two Rates and Monetary Amounts and Amendment of Revenue Laws Bills, 2016 (see the Monthly Listing), is effectively a tax on the net offshore asset-value of an applicant taxpayer, this being the highest net asset value for the period between 1 March 2010 and 28 February 2015, in any one tax year, translated to rand at the spot rate at the tax year-end, being the last day of February 2011, 2012, 2013, 2014 and 2015.

Forty per cent of this highest value will be included in taxable income in the 2015 tax year, aggregated with other taxable income for that year, and taxed at the applicant's marginal rate.

In most instances the taxpayer's marginal rate will be the maximum of 40%; thus the effective rate is 16%, being 40% (marginal rate) of the 40% inclusion.

Normal VDP

The SVDP treats all taxpayers in the same way, no matter whether the applicant taxpayer's offshore assets comprise pre- or post-tax moneys.

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).

It follows that post-tax applicants should consider applying for the normal VDP instead of the SVDP, albeit with its arduous administrative burden, requiring an applicant to establish taxable income (if any) for each of the past tax years since 1 March 2001 (2002 tax year), as opposed to the simpler remedy available under the SVDP.

Such taxable income will be included in normal income, re-assessed, and taxed for each year of assessment.

There is no penalty, but a simple-interest late-payment levy is payable.

In summary, a post-tax applicant would need to compare this result with the simpler SVDP option of an effective 16% of capital.

Conclusion

Given global common reporting standards (CRS), being the automatic exchange of financial information between countries, commencing as from September 2017, this is taxpayers last opportunity to regularize their exchange control and tax affairs on or before 30 June 2017, the closing date for the SVDP.

As I read the act, both VDPS incur the late-submission penalty, although the method of its computation remains a mystery to me.—Ed