

EXTERNAL GUIDE

Special Voluntary Disclosure Programme

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1 PURPOSE

- The purpose of this guide is to assist individuals and companies with relevant information regarding the Special Voluntary Disclosure Programme (SVDP) as proposed by the Minister of Finance in the 2016 Budget.

2 BACKGROUND

- In terms of the new global Common Reporting Standard (CRS) for the automatic exchange of information between tax authorities, the South African Revenue Service (SARS) will start receiving offshore 3rd party financial data from other tax authorities from September 2017 on a regular basis.
- This created a window to propose an SVDP to give opportunity for non-compliant taxpayers to voluntarily disclose offshore assets, thereby regularising both their tax and exchange control affairs. The SVDP is open for applications from 1 October 2016 until 31 August 2017.
- The SVDP will run concurrent to the existing SARS permanent Voluntary Disclosure Programme (VDP).
- SARS and the South African Reserve Bank (SARB) are working together to ensure that SVDP applications are evaluated and processed through one joint process, i.e. for both tax non-compliance and exchange control contraventions.
- Historical exchange rates against selected foreign currencies are available here: <http://www.resbank.co.za/Research/Rates/Pages/SelectedHistoricalExchangeAndInterestRates.aspx>
- For information regarding the Exchange Control SVDP, please visit the following web page: <http://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Pages/Special-Voluntary-Disclosure-Programme.aspx>
- For SVDP guidance by the Independent Regulatory Board for Auditors please visit: http://www.irba.co.za/upload/report_files/20160905022438_39.-Reportable-Irregularities.docx
- For SVDP guidance by the Financial Intelligence Centre please visit: <http://www.fic.gov.za/Documents/160928%20Website%20Notice%20Final.pdf>

3 SVDP LEGISLATIVE DESIGN

3.1 WINDOW PERIOD

- Applications for relief under the SVDP will apply for a limited window period of eleven months starting on 1 October 2016 and closing on 31 August 2017;
- Applications prior to 1 October 2016 or after 31 August 2017 will be processed under the normal VDP rules, i.e. the rules contained under the SVDP cannot be applied.

3.2 PERSONS THAT MAY APPLY FOR SVDP

- Only individuals and companies may apply. Trusts are excluded from the application for SVDP.
- Settlers, donors and beneficiaries of foreign discretionary trusts (including deceased estates) may participate in the SVDP if they elect to have the trust's offshore assets and income deemed to be held by and accrued to them.
- Taxpayers who have disposed of foreign assets prior to 1 March 2010 may also apply, by electing to deem the asset to have been held during the period 1 March 2010 until 28 February 2015. See Example 2 below.

3.3 EXCLUSIONS

- Persons may not apply for the SVDP if they have been given notice of the commencement of an audit or criminal investigation in respect of foreign assets or foreign taxes. However, if the ambit of the audit or investigation is unlikely to detect the default, an application may under certain circumstances be permitted notwithstanding the audit or investigation.
- Amounts in respect of which SARS obtained information under the terms of any international exchange of information procedure will not be eligible for the SVDP.
- Disclosures where it is argued by the applicant that all or part of the seed money / subsequent deposits / funding of foreign assets are not taxable in South Africa or have already been taxed in South Africa, are excluded from the SVDP. The normal VDP channel remains open for disclosures of this nature.

3.4 SVDP RELIEF GRANTED

- The table below illustrates the extent of the relief granted under the SVDP:

	SARS	SARB
Capital that funded the asset ("seed money", capitalised returns and subsequent deposits)	<ul style="list-style-type: none"> □ The undeclared income that originally gave rise to the foreign asset will be exempt from income tax, donations tax and estate duty liabilities arising in the past. □ 40% of the highest value of the aggregate of all assets situated outside South Africa between (or deemed to be between) 1 March 2010 and 28 February 2015 that were derived from undeclared income will be included in taxable income and subject to tax in South Africa in the 2015 tax period. The value referred to above is the highest market value as at the end of each 	<ul style="list-style-type: none"> □ A levy of 5 per cent on the value of the unauthorised foreign assets or the sale proceeds thereof as at 29 February 2016, if such assets are repatriated to the Republic of South Africa. The 5 per cent levy must be paid from foreign sourced funds. □ A levy 10 per cent the value of the unauthorised foreign assets as at 29 February 2016, if such assets are retained abroad. The 10 per cent levy must be paid from foreign sourced funds. □ A levy of 12 per cent on the value of the unauthorised foreign assets as at

	tax period, in the relevant foreign currency translated to South African Rand at the spot rate at the end of the tax period in which the highest value fell.	29 February 2016 in circumstances where the 10 per cent levy is not paid from foreign sourced funds.
Investment returns & other taxable events	Investment earnings & other taxable events prior to 1 March 2015 will be exempt from tax	Not applicable
Interest on SARS debt	Interest on tax debts arising from the disclosure only commence from the 2015 year of assessment	Not applicable
Understatement penalties	No understatement penalties will be levied	Not applicable
Other SARS penalties	Same as current VDP	Not applicable
Criminal Prosecution	Same as current VDP	Not applicable

3.5 REQUIRED SUPPORTING DOCUMENTS

- To determine the amount of relief for tax purposes, information in the following format must be submitted together with the VDP01 application form, as follows:
 - **Part A** is used by SARS to determine the amount that must be exempt from tax in terms of section 15 of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2016; and
 - **Part B** is used by SARS to determine the amount that must be included in taxable income in terms of section 16 of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2016.

TABLE TO DETERMINE TAX RELIEF				
Tax period	PART A		PART B	
	Asset acquisition value and subsequent additional funding		Market value of aggregate of all foreign asset(s)	
	Per foreign currency	Per South African Rand	Per foreign currency	Per South African Rand
Pre-2011 * ** ***				
2011				
2012				
2013				
2014				
2015				
<p>* Sum of the highest value(s) per asset up to 28 Feb 2010, translated to South African Rand at the spot rate at the end of the tax period in which the highest value was held</p> <p>** Where accurate figures are not practically possible to determine, use a reasonable estimate and explain your workings</p> <p>*** It is not necessary to attach the calculations, however it should be retained in case SARS requests it</p>				

- A description of the source of the undeclared income that gave rise to the foreign asset;
- Documentation in evidence of the existence of the foreign asset (e.g. bank account details, property registration papers);
- Confirmation of the date on which the asset was acquired (e.g. letter from the bank in case of a bank account, shareholder certificates, property registration papers); nature of the applicant's connection to the asset (e.g. owner, director, shareholder, beneficiary);
- A description of the structure that was utilised to create the asset; and
- Power of attorney (where required).

4 SVDP APPLICATION AND PROCESSING

4.1 APPLICATION PROCESS

- A SVDP application must be made on the prescribed form. For tax purposes, the Voluntary Disclosure Application Form (VDP01) is applicable. For Exchange Control purposes, the Special Voluntary Disclosure Application Form (SVDP01) is applicable.
- Both these forms can be accessed and completed on-line via SARS eFiling (www.sarsefiling.co.za).

- The current VDP application form (VDP01) has been enhanced to accommodate the SVDP tax related disclosures, while the SVDP01 form is a new form to be used exclusively for exchange control disclosures.
- Refer to GEN-VDP-02-GO1 - Special Voluntary Disclosure Programme - Tax Relief - External Guide and VDP-ELEC-02-G01 - Special Voluntary Disclosure Programme - Exchange Control Relief - External Guide for more information on how to complete the application.

4.2 EVALUATION OF APPLICATIONS

- A complement of SARB staff will be seated at the SARS VDP office.
- SARS staff will evaluate tax-related disclosures and SARB staff will evaluate exchange control contravention disclosures.
- Tax-related disclosures will be approved or rejected on the same basis as the current VDP process. Refer to the Voluntary Disclosure guide for more information on the evaluation process.
- Exchange control contravention disclosures will be approved or rejected on the same basis as currently applied by SARB.

Example 1

- An SVDP applicant discloses an offshore interest-producing asset that was acquired in January 2011 at a cost price of US\$5m.
- In January 2013 the applicant disposed of US\$4m. Assuming investment returns at an average of 6% per year, the market value of the asset for SVDP purposes will be more or less as follows:

Transaction dates	Transactions	Tax periods	Investment returns	Market value	US\$ / Rand spot rate (per SARB published)	Rand Value
01 January 2011	\$5 000 000				\$6.62	R 33 100 000
		28 February 2011	\$50 000	\$5 050 000	\$6.98	R 35 249 000
		29 February 2012	\$303 000	\$5 353 000	\$7.47	R 39 986 910
01 January 2013	-\$4 000 000				\$8.44	-R 33 760 000
		28 February 2013	\$283 857	\$1 636 857	\$8.84	R 14 469 811
		28 February 2014	\$98 211	\$1 735 068	\$10.71	R 18 582 577
		28 February 2015	\$104 104	\$1 839 172	\$11.50	R 21 150 478

- In this example, the highest value is R39 986 910. For SVDP purposes, 40% of this amount (i.e. R15 994 764) must be included in the applicant's taxable income in the 2015 year of assessment.
- During the application process, the applicant must complete the table below as follows (using the example above), and upload it as an attachment to the VDP application:

TABLE TO DETERMINE TAX RELIEF				
Tax period	PART A		PART B	
	Asset acquisition value and subsequent additional funding		Market value of aggregate of all foreign asset(s)	
	Per foreign currency	Per South African Rand	Per foreign currency	Per South African Rand
Pre-2011 *				
**				

2011	\$5 000 000	R 33 100 000	\$5 050 000	R 35 249 000
2012			\$5 353 000	R 39 986 910
2013	-\$4 000 000	-R 33 760 000	\$1 636 857	R 14 469 811
2014			\$1 735 068	R 18 582 577
2015			\$1 839 172	R 21 150 478
<p>* Sum of the highest value(s) per asset up to 28 Feb 2010, translated to South African Rand at the spot rate at the end of the tax period in which the highest value was held</p> <p>** Where accurate figures are not practically possible to determine, use a reasonable estimate and explain your workings</p> <p>*** It is not necessary to attach the calculations, however it should be retained in case SARS requests it</p>				

Example 2

- An SVDP applicant discloses two offshore interest-producing assets that were acquired in January 2007 and January 2011, at a cost price of US\$4m and US\$5m respectively. The asset that was acquired in January 2007 was disposed of in full in January 2008. In January 2013 the applicant disposed of US\$4m worth of assets.
- Assuming investment returns at an average of 6% per year, the market values of the assets for SVDP purposes would be more or less as follows:

Transaction dates	Valuation date	Transactions	Tax periods	Investment returns	Market value	US\$ / Rand spot rate (per SARB published)	Rand Value
01 January 2007		\$4 000 000			\$4 000 000	\$6.94	R 27 760 000
	01 January 2008			\$30 000	\$4 030 000	\$6.85	R 27 645 800
01 January 2008		-\$4 030 000				\$6.86	R -27 645 800
01 January 2011		\$5 000 000				\$6.62	R 33 100 000
	28 February 2011		28 February 2011	\$50 000	\$5 050 000	\$6.98	R 35 249 000
	29 February 2012		29 February 2012	\$303 000	\$5 353 000	\$7.47	R 39 986 910
01 January 2013		-\$4 000 000				\$8.44	R -33 760 000
	28 February 2013		28 February 2013	\$283 857	\$1 636 857	\$8.84	R 14 469 811
	28 February 2014		28 February 2014	\$98 211	\$1 735 068	\$10.71	R 18 582 577
	28 February 2015		28 February 2015	\$104 104	\$1 839 172	\$11.50	R 21 150 478

- In this example there are two assets, namely Asset A (acquired and disposed of prior to 1 March 2010), and Asset B (acquired and partially disposed of during the five year period ending on 28 February 2015).
- For Asset A, the value as at 1 January 2007 must be included in the taxable income of the applicant in the 2015 tax period. Because of the exchange rate difference between the date of acquisition and the date of disposal, the highest value is R27 760 000, despite the fact that the market value in US\$ terms in January 2008 was higher than what it was in January 2007.
- For asset B, the taxable income is the same as in Example 1 above.
- In this example, 40% of the sum of the amounts (40% of (R27 760 000 + R39 986 910)) will be included as taxable income in the 2015 year of assessment.
- Below is an example of how the Table that must accompany the SVDP application will look like:

TABLE TO DETERMINE TAX RELIEF				
Tax period	PART A		PART B	
	Asset acquisition value and subsequent additional funding		Market value of aggregate of all foreign asset(s)	
	Per foreign currency	Per South African Rand	Per foreign currency	Per South African Rand
Pre-2011 * ** ***	\$4 000 000	R 27 760 000	\$4 000 000	R 27 760 000
2011	\$4 000 000	R 33 100 000	\$5 050 000	R 35 249 000
2012			\$5 353 000	R 39 986 910
2013	-\$4 000 000	-R 33 760 000	\$1 636 857	R 14 469 811
2014			\$1 735 068	R 18 582 577
2015			\$1 839 172	R 21 150 478
* Sum of the highest value(s) per asset up to 28 Feb 2010, translated to South African Rand at the spot rate at the end of the tax period in which the highest value was held				
** Where accurate figures are not practically possible to determine, use a reasonable estimate and explain your workings				
*** It is not necessary to attach the calculations, however it should be retained in case SARS requests it				

5 LEGISLATION

TYPE OF REFERENCE	DOCUMENT TITLE
Legislation administered by SARS	Tax Administration Act No. 28 of 2011
Other Legislation	- Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2016, - Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Act, 2016 - Exchange Control Regulation 24 of 1961
International Instruments	None

6 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
GEN-VDP-02-GO1	Voluntary Disclosure Programme – External Guide	All
VDP-ELEC-01-G01	Guide for completing Tax relief SVDP applications on eFiling - External Guide	All
VDP-ELEC-02-G01	Guide for completing Exchange control SVDP applications on eFiling - External Guide	All

7 DEFINITIONS AND ACRONYMS

SARB	South African Reserve Bank
SARS	South African Revenue Service
SVDP	Special Voluntary Disclosure Programme
VDP	Voluntary Disclosure Programme
VDU	Voluntary Disclosure Unit (Unit in SARS that administers the VDP)

8 ENQUIRIES

- More information regarding the tax relief SVDP is available via the following channels:
 - SARS website : www.sars.gov.za
 - By email : vdp@sars.gov.za
 - By phone : 0800 864 613
 - By Post : 281 Middle Street
Gramick Office Park
Brooklyn
0181,
Or
Private Bag X923
Pretoria
0001

- More information regarding the Exchange Control SVDP is available via the following channels:

- SARB website : www.reservebank.co.za
- By email : SARB-SVDP@resbank.co.za
- By phone : 012 647 2243
- By Post : Finsurv SVDP Unit
281 Middle Street
Gramick Office Park
Brooklyn
0181,
Or
Finsurv SVDP Unit,
P O Box 3125,
Pretoria,
0001

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For more information you may –

- Visit the SARS website www.sars.gov.za;
- Visit your nearest SARS branch;
- Contact your registered tax practitioner;
- Contact the SARS National Contact Centre –
 - If calling locally, on 0800 00 SARS (7277); or 0800 864 613
 - If calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time).