



## GUIDE: SPECIAL VOLUNTARY DISCLOSURE PROGRAMME

(v1.2)

- This is a preliminary guide, which is subject to Parliamentary legislative processes. This version is based on the proposals to Parliament following the latest round of public comments.
- The guide is meant to assist prospective applicants in preparing for the commencement of the Special Voluntary Disclosure Programme that was proposed by the Minister of Finance in his 2016 Budget.
- Depending on the final outcome of the Parliamentary legislative process, the guide will be updated if necessary. An updated guide may differ from this guide in form and content. Please regularly check the VDP page on the SARS website for updates, at:  
<http://www.sars.gov.za/Legal/VDP/Pages/default.aspx>
- The current draft tax-related SVDP legislation is available here:  
<http://www.treasury.gov.za/public%20comments/RMTAB2016/>
- 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 Financial Intelligence Centre please visit:  
<http://www.fic.gov.za/Documents/160928%20Website%20Notice%20Final.pdf>
- 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](http://www.irba.co.za/upload/report_files/20160905022438_39.-Reportable-Irregularities.docx)
- Enquiries regarding the Exchange Control SVDP may be directed to [SARB-SVDP@resbank.co.za](mailto:SARB-SVDP@resbank.co.za)
- Enquiries regarding the Tax SVDP may be directed to [vdp@sars.gov.za](mailto:vdp@sars.gov.za)

## 1. **Background**

In terms of the new global standard for the automatic exchange of information between tax authorities, it is expected that the South African Revenue Service (SARS) will start receiving offshore 3<sup>rd</sup> party financial data from other tax authorities from September 2017 on a regular basis. This created a window to propose a Special Voluntary Disclosure Programme (SVDP) to give opportunity for non-compliant taxpayers to voluntarily disclose offshore assets and income, thereby regularising both their tax and exchange control affairs. The SVDP will be open for applications from 1 October 2016 until 30 June 2017.

The SVDP will run concurrent to the permanent Voluntary Disclosure Programme (VDP) of SARS.

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.

## 2. SVDP Legislative Design

### a) Window

- Applications for relief under the SVDP will apply for a limited window period of nine months starting on 1 October 2016 and closing on 30 June 2017;
- Applications submitted prior to 1 October 2016 or after 30 June 2017 will be processed under the normal VDP rules, i.e. the SVDP rules cannot be applied.

### b) Eligibility

- Individuals and companies may apply.
- 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. These also include persons who, despite the form, are in substance settlers, donors or beneficiaries.
- 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. An applicant will be informed by SARS if this is the case.
- 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.

c) Relief Granted

	SARS	SARB
Capital that funded the asset ("seed money", capitalised returns and subsequent deposits)	<ul style="list-style-type: none"> <li><input type="checkbox"/> 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.</li> <li><input type="checkbox"/> 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 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.<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 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.</li> <li><input type="checkbox"/> 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.</li> <li><input type="checkbox"/> A levy of 12 per cent on the value of the unauthorised foreign assets as at 29 February 2016 in circumstances where the 10 per cent levy is not paid from foreign sourced funds.</li> </ul>
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

Where the disclosure is in respect of an asset that was both acquired and disposed of prior to the 2011 tax period, the asset must be treated as if it was held during the five year period ending 28 February 2015 for purposes of determining the value described above. Special valuation rules apply.<sup>2</sup>

<sup>1</sup> Example A below  
<sup>2</sup> Example B below

d) Required supporting documentation for SVDP applications

- Supporting documentation must be submitted as attachments to the SVDP application forms. The functionality to attach is available on the SARS eFiling VDP platform.
- For information relating to supporting documents required when submitting exchange control SVDP applications and a copy of the prescribed declaration to be completed by prospective applicants, please visit the SARB SVDP webpage at:  
<http://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Pages/Special-Voluntary-Disclosure-Programme.aspx>
- To determine the amount of relief for tax purposes, information in the table format below must be submitted together with the VDP01 application form. In this regard:
  - **Part A** is used by SARS to determine the amount that must be exempt from tax in terms of section 15 of the draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016;
  - **Part B** is used by SARS to determine the amount that must be included in taxable income terms of section 16 of the draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016.

<b>Table To Determine Tax Relief</b>				
Tax period	<b>PART A</b>		<b>PART B</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				

\* 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 & explain

\*\*\* It is not necessary to attach the calculations, but it should be kept in case SARS requests it

- 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). If it is practically impossible to obtain the date then a reasonable estimate of the date, together with an explanation of why it is impractical and how the date was estimated, can be submitted;
- Nature of the applicant's connection to the asset (e.g. owner, shareholder, beneficiary);
- A description of the structure that was utilised to create the asset;
- Power of attorney (where required).

### 3. **SVDP application and processing**

#### *a) Application process*

For SVDP purposes, SARS & SARB have agreed to a single point of entry for applications, which is the SARS [eFiling](#) VDP application process. The current VDP application form (VDP01) has been enhanced to accommodate the SVDP tax related disclosures, while a second form (SVDP01) form is available for exchange control disclosures. Both forms will be available on-line on the SARS eFiling platform.

Typically, an applicant will complete both forms, but if only tax relief is required, or if only exchange control relief is required, then only one form needs to be completed.

*b) Resources*

In addition to the SARS VDP staff, a complement of SARB staff will be seated at the SARS VDP office. Enquiries regarding the Exchange Control SVDP may be directed to 012 647 2243 or alternatively [SARB-SVDP@resbank.co.za](mailto:SARB-SVDP@resbank.co.za) .

*c) Evaluation of applications*

Tax-related disclosures will be routed to SARS staff and exchange control disclosures will be routed to SARB SVDP unit.

*d) Approval / Rejection of applications: Process*

- Tax-related disclosures will be approved or rejected by following normal VDP processes;
- SVDP Agreements and tax assessments arising from SVDP disclosures will be held over until the SVDP legislative framework is promulgated (expected towards the end of the 2016);
- Exchange control SVDP applications will be dealt with in terms of [Exchange Control Regulation 24](#), read in conjunction with exchange control [Circular No. 6/2016 dated 13 July 2016](#)

4. **Examples**

Example A:

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 is determined 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 in the 2015 year of assessment.

During the application process, the applicant must complete the Table below as follows (using this example), and upload it as an attachment to the VDP application:

<b>Table To Determine Tax Relief</b>				
Tax period	<b>PART A</b>		<b>PART B</b>	
	Asset acquisition value and subsequent additional funding / dispositions		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	R33 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



Example B:

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 January 2008 for a consideration of US\$4,5m. In January 2013 the applicant disposed of US\$4m. Assuming investment returns at an average of 6% per year, the market values of the assets for SVDP purposes are determined as follows:

Transaction dates	Transactions	Tax periods	Investment returns	Market value	US\$ / Rand spot rate (SARB published)	Rand Value
01 January 2007	\$4 000 000			\$4 000 000	\$6.94	R 27 760 000
01 January 2008	-\$4 030 000		\$30 000	\$4 030 000	\$6.86	R 27 645 800
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 there are two assets, which must be treated separately for SVDP purposes, namely Asset A (acquired and disposed of prior to the 2011 tax period), and Asset B (acquired and partially disposed 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 disposition, 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 A above.

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In this example, 40% of the sum of the amounts (40% of R67 746 910) will be included as taxable income in the 2015 year of assessment.

The Table that must accompany the SVDP application will look like this:

<b>Table To Determine Tax Relief</b>				
Tax period	<b><u>PART A</u></b>		<b><u>PART B</u></b>	
	Asset acquisition value and subsequent additional funding / dispositions		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	\$5 000 000	R33 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

