



Nortons Incorporated Update: The 2016 Budget Speech and the ‘*Special Voluntary Disclosure Programme*’

The 2016 Budget Speech has revealed the South African government’s plans in terms of the taxation and regularisation of offshore assets and income for non-compliant taxpayers. Finance Minister Pravin Gordhan, announced that due to the developments made in the new global standard for the exchange of information between tax authorities, the South African Revenue Services (SARS) in conjunction with the South African Reserve Bank (SARB) will be setting up a *Special Voluntary Disclosure Programme*, in order to encourage non-compliant taxpayers to regularise their offshore assets and earnings in return for exemption from prosecution.

The programme will be based on the existing Voluntary Disclosure Programme as per Part B of Chapter 16 of the Tax Administration Act of 2011, however, the new *Special Voluntary Disclosure Programme* will see SARS and the SARB acting in a joint effort to provide relief for individuals and companies in respect of tax non-compliance and exchange control contraventions relating to offshore assets and earnings.

Set out below are the parameters pertaining to the tax relief offered through the *Special Voluntary Disclosure Programme*:

- The *Special Voluntary Disclosure Programme* will be available to non-compliant tax payers for a window period commencing on 1 October 2016 and ending on 31 March 2017.
- As per the existing Voluntary Disclosure Programme, no persons may apply for the *Special Voluntary Disclosure Programme* if they are aware of any pending audits or investigations in respect of foreign assets or taxes.

- Individuals and companies will still be able to make an initial “anonymous” or “no-name approach” application, either in their personal capacities or through a representative.
- Whilst trusts do not qualify for relief under the *Special Voluntary Disclosure Programme*, settlors, donors, deceased estates and beneficiaries of foreign discretionary trusts will qualify for relief under the programme, should the trust’s offshore assets and income deemed to be held by them.
- Part of the tax relief offered by SARS through the *Special Voluntary Disclosure Programme* is that only 50 percent of the amount used to fund the acquisition of the offshore assets (before 1 March 2015), will be subject to normal tax through the application.
- Only earnings on offshore investments and assets after 1 March 2010 will be included in the individual or company’s taxable income and subject to normal tax. All returns on offshore investments prior to 1 March 2010 will be exempted from the individual or company’s taxable income.
- Interest on tax debts owing to SARS arising as a result of disclosures made through the *Special Voluntary Disclosure Programme* will only be levied on amounts owing from 1 March 2010.
- All penalties that would normally have been charged in respect of understatements on previous income tax returns will be waived where the application made through the *Special Voluntary Disclosure Programme* is successful.
- Aside from the waiving of all penalties, the Finance Ministry has highlighted as a key benefit of the *Special Voluntary Disclosure Programme*, the offer of exemption from prosecution in that SARS will not pursue criminal prosecution for tax offences where the application is successful. This exemption is however, based on full and material disclosure on the part of the applicant, where should SARS become aware of any material misstatement in the application, this exemption will be waived and criminal prosecution will be pursued.

In addition to the above, and as previously mentioned, the *Special Voluntary Disclosure Programme* will also allow for the regularisation of the exchange control affairs of South African residents:

- The SARB, through their Financial Surveillance Department, have offered South African residents the opportunity to regularise any previously undisclosed exchange control contraventions (prior to 29 February 2016), through the *Special Voluntary Disclosure Programme*. The programme will provide relief to successful applicants, pursuant to the provisions set out in Regulation 24 of the Exchange Control Regulations of 1961.

- Applications for exchange control relief will only be accepted if there are no current or pending investigations by the Financial Surveillance Department.
- The window period applicable for exchange control relief applications is identical to that of the tax relief applications, with the window commencing on 1 October 2016 and closing on 31 March 2017.
- Applications that are successful in being granted relief in respect of unauthorised foreign assets or structures may be liable to pay levies on the value of the assets/structures in terms of the market values as at 29 February 2016.
- Applicants will be charged levies based on the following criteria:
 - Should the regularised assets or the proceeds from the sale of such assets be repatriated to South Africa, a levy of 5 percent of the market value as at 29 February 2016 will be charged;
 - Should the regularised assets or the proceeds thereof be kept offshore, a levy of 10 percent will be charged.
- South African residents who fail to meet the window period of the *Special Voluntary Disclosure Programme*, yet do still come forward to make a full and material disclosure will be levied between 10 and 40 percent on the market value of their offshore assets and structures.
- Residents who fail to make any disclosure at all will face the full force of the law. In addition the Financial Surveillance Department is mandated to recover the full amount of the contravention in such circumstances.

Nortons Inc has a dedicated team of professionals, with a proven track record in relation to Voluntary Disclosure Programme applications.

The relationships formed and maintained with our clients is a factor which sets the Nortons Inc Tax Team apart from our competitors and is one of the reasons why individuals are referred to us when in need of tax-related assistance.

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