

What the SVDP offers

By [Louis Botha](#)

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The Minister of Finance announced the Special Voluntary Disclosure Programme (SVDP) in the 2016 Budget Speech. The legislation governing the SVDP finally came into effect on 19 January 2017 when the Rates and Monetary Amounts and Amendment of Revenue Laws Act (Revenue Laws Act) and the Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Act (Revenue Laws Administration Act) were published in the Government Gazette.



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The two pieces of legislation mentioned above set out the rules of the tax SVDP. The rules applicable to the exchange control (Excon) SVDP are governed by two circulars released by the South African Reserve Bank (SARB) in July and October 2016 as well as a third circular released on Friday, 27 January 2017. This article will focus mainly on the rules applicable to the tax SVDP, but we will also refer to the Excon SVDP where applicable. We reported on the previous draft versions of the SVDP legislation in our alerts of [15 April 2016](#) and [29 July 2016](#).

Circumstances under which the SVDP is available

The substantive provisions of the tax SVDP are contained in s14 to s18 of the Revenue Laws Act. In terms of s15(2) of the Revenue Laws Act, the amount payable in terms of the SVDP will be equal to the amount of the receipts and accruals not declared to the South African Revenue Service (SARS) as required by the Estate Duty Act or the Income Tax Act, from which an asset, situated outside the Republic and held by the person during the period 1 March 2010 to 28 February 2015, was wholly or partly derived. Section 15(3) allows taxpayers who disposed of an asset that was wholly or partly derived from receipts and accruals not declared to SARS as required by the Estate Duty Act or the Income Tax Act, before 1 March 2010, to also make use of the SVDP, unless the asset was disposed of by way of a donation or disposal on loan account to a trust.

Section 18 of the Revenue Laws Act states that if a person is a beneficiary or a donor in relation to a foreign discretionary trust, the person may also elect that any asset situated outside the Republic as contemplated in s18(2), which was held by the discretionary trust during the period 1 March 2010 to 28 February 2015 be deemed to have been held by that person for the purposes of all tax Acts.

Amounts payable in terms of the SVDP

Section 16 of the Revenue Laws Act states that the amount subject to tax in terms of the SVDP will be 40% of the highest value of the aggregate of all assets situated outside South Africa between 1 March 2010 and 28 February 2015 that were wholly or partly derived from receipts and accruals not declared to SARS as required by the Estate Duty Act or the Income Tax Act. In terms of s16(2), the value referred to in s16(1) is the market value of the asset in terms of the relevant foreign currency and translated to rand at the spot rate on the last business day in South Africa on or before the end of each year of assessment. In other words, if an asset was held from 1 March 2010 to 28 February 2015, one will look at the market value in rand on the last day of each year of assessment, being 28 or 29 February. In terms of s16 of the Revenue Laws Act, the highest of these market values will be multiplied by 40% and this amount will then be included in the first year of assessment ending on or after 1 March 2014, which in the case of individuals, will be the 2015 year of assessment.

If an asset was disposed of before 1 March 2010, the tax payable will be calculated in a similar manner with the only difference being that the asset will be deemed to have been held during the period 1 March 2010 to 28 February 2015 for purposes of s15 and s16. Where the value of such an asset cannot be determined, SARS can agree to accept a reasonable estimate of the value of the asset.

In terms of s17 of the Revenue Laws Act, an asset referred to in s15 that was held and not disposed of on the last day of the year of assessment on or before 28 February 2015 must be deemed to have been acquired on that day at a cost equal to the value of the asset under s16 in the relevant foreign currency. In other words, the asset declared in terms of the SVDP will have a new base cost which, for capital gains tax purposes, will apply when the asset is later disposed of. This provision does not appear in previous draft versions of the legislation.

Procedural aspects and consequences of successful application

The process for the SVDP is dealt with by the Revenue Laws Administration Act. It states in s2 that a SVDP application must be made under Part B of Chapter 16 of the Tax Administration Act (TAA), which means that the process will be the same one applicable to normal VDP applications. Section 2 further states that an application may not be made by or on behalf of a trust or in respect of receipts and accruals from which an asset that has been disclosed to SARS under an international tax agreement was wholly or partly derived. Persons may not apply for the SVDP if they are aware of a pending audit or investigation in respect of foreign assets or if such an audit or investigation has commenced unless the scope of the audit or investigation is in respect of other assets, ie other than foreign assets or foreign taxes, for example PAYE.

An important change is that SVDP applications can now be made until 31 August 2017, whereas the draft legislation stated that SVDP applications could only be submitted until 30 June 2017. If a SVDP application is successful, no understatement penalties will be levied and SARS will not pursue criminal prosecution for a tax offence. Taxpayers should be aware that future income, including income received in the 2016 year of assessment will be fully taxed and will not be subject to the SVDP. It is also possible that successful applicants will have to pay interest on the outstanding tax from the due date of their tax return for the 2015 year of assessment.

In terms of the media statement released by National Treasury on 30 September 2016, SARS and the SARB have

established a joint application process. The statement states that applications for tax relief under the SVDP may be made in the new SVDP section of the VDP01 form that has been available on SARS eFiling from 1 October 2016. According to the statement, applications for Excon relief may be made on the new SVDP01 form, also hosted on eFiling.

Comment

Taxpayers should be aware that the SVDP process does not affect the availability of the normal VDP process which applies in terms of the TAA. However, from 1 September 2017, taxpayers will no longer be able to receive tax relief under the SVDP. With regard to Excon relief, the SARB released exchange control circular 4/2017 on 27 January 2017, which states that the Excon SVDP will now also be available until 31 August 2016. The rules of the Excon SVDP are contained in exchange control circular 6/2016, which we reported on in our alert of [15 July 2016](#), and in exchange control circular of 8/2016.

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