Presentation to the Parliamentary Standing Committee on Finance at Public Hearings

Special Voluntary Disclosure Programme in Respect of Offshore Assets and Income

30 August 2016

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INTRODUCTION

- Proposal welcomed
- Building on trust from first amnesty
- Further opportunity
- Certainty to be provided by way of a simple and predictable process
- Cost should be palatable

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COST CONCERNS

- Taxpayers weighing up costs against benefits
- Inclusion rate of 50% of market value may be too high
- An individual who retains the assets offshore could have a cost of around 30% of market value
- Total cost (excon and tax) of around 20% - 25% would be more palatable resulting in a better uptake
- Could be achieved by reducing the inclusion rate to 40%

COMPLEXITY AND TRACING BURDEN

- Too much tracing of historic records required
- Need to determine market value of the tainted assets at 5 year-ends in the window period (or for entire period held in respect of prior disposals)
- Tracing all undeclared amounts to offshore assets derived from these amounts could be very difficult
- Legal and illegal amounts have been comingled
- Financial institutions take time and charge substantial amounts for gathering this information

COMPLEXITY AND TRACING BURDEN (CONTINUED)

- Factors that complicate and slow down obtaining information from the banks:
  - Moving accounts between banks over time
  - Banks have to answer to clients taking CRS amnesties all over the world
  - Banks charge huge fees to put all the necessary resources in place so urgently
  - In the USA and EU, clients have no access to the records as the smaller banks collapsed in 2007/2008 banking crisis

- Much simpler to use the market value of assets held on 29 February 2016 for the tax Special VDP in line with the exchange control VDP

USE OF SPECIAL VDP WHERE THE ASSET WAS DERIVED FROM MIXED SOURCES

- Assets held offshore can be derived from a combination of tainted and legitimate amounts
- Mixed source assets must either be included or excluded from the SVDP in total as no apportionment is provided for
- Taxpayers may have to weigh up applying for the SVDP against the ordinary VDP where SARS could go back as far as 2001
- This adds further complexity, costs and uncertainty

RECOMMENDED SIMPLIFIED APPROACH

- Give taxpayers an option:
  - If the taxpayer can prove that all undisclosed assets were derived from untainted funds then pay a levy of 10% (or inclusion rate of 25%)
  - If the taxpayer can't split the source of the funds then they pay a levy of 15% (or inclusion rate of 40%)
  - Levy calculated on the 29 February 2016 market value
  - On top of the exchange control levy under the Special VDP
  - If a taxpayer leaves the assets offshore the taxpayer will pay a total (excon and tax) levy of 20% - 25%
  - This charge is not insignificant given the recent devaluation of the Rand in vis-à-vis assets held offshore

RE-BASING OF OFFSHORE ASSETS

- The inclusion rate is applied to the highest market value of the offshore asset in the 5 year window period
- This effectively means that highest market value of the offshore asset will be taxed
- Need to re-base cost of asset for tax purposes to equal to the market value to prevent double taxation

TREATMENT OF TRUSTS

- Non-vested assets of non-resident trusts can benefit from the Special VDP if a donor or beneficiary elects to be deemed to have held that asset instead of the trust
- We suggest that there should be room for proportional deeming where a non-resident trust has more than one beneficiary
- Getting group consensus amongst trust beneficiaries is often very difficult
- It is not clear to us why resident discretionary trusts cannot apply for and benefit from the Special VDP

RELIEF FOR DONATIONS TAX AND ESTATE DUTY

- Intended that the Special VDP provides relief to the transferor (donor or estate)
- Technically the wording of the revised draft Special VDP does not seem to achieve this
- It is only the person who holds the offshore asset in the 5 year window period who is entitled to apply
- In addition, the transferee also needs the relief because these taxes carry a secondary liability

VALUE ADDED TAX EXCLUDED FROM SPECIAL VDP

- Real problem with VAT is where the taxpayer charges VAT and keeps the proceeds
- VAT relief sought is where no VAT was ever charged
- Potential cost of VAT VDP could dissuade taxpayer from Special VDP for other taxes

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SAFE HARBOUR FOR FACILITATORS

- Professional advisors have various reporting obligations
- They require a safe harbour
- Without this the offending taxpayer and advisors will be reluctant to enter into the discussion
- Accountants, lawyers and financial institutions should be covered
- This is a critical success factor

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WINDOW PERIOD FOR APPLICATIONS

- Six month period is very tight given the process involved
- Further delays as a number of countries currently have tax amnesties
- Propose that the application period should run for a year
- Extending the period is specially important if the 5-year calculation will still be required

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UNKNOWN DISCLOSURE

- The SVDP does not apply to amounts that have "been disclosed to SARS under an international agreement"
- Creates an unknown risk for applicants which will dissuade disclosure
- This is recognised in the regular VDP – the key point is taxpayer notification
- Taxpayers cannot be foreclosed for behind the scenes event unknown to the taxpayer

GOOD FAITH PROTECTION FOR ERRORS

- What will happen if taxpayers are found to have made errors in their applications?
- Concerns exist that SARS can review and challenge applications at a later date, thereby undermining all of the protection sought
- Good faith protection should be provided

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