

Voluntary disclosure relief announced

In light of the international erosion of bank secrecy, and in an effort to increase tax collections and attract taxpayers that have deliberately evaded or erroneously miscalculated tax, Finance Minister, Pravin Gordhan announced the South African Revenue Service's (SARS) intention to launch a voluntary disclosure programme in his Budget speech earlier this year. The recently announced voluntary disclosure mechanism would provide qualifying taxpayers with amnesty against additional taxes, penalties and interest arising from previous defaults. Further details may still be announced.

Briefly, a defaulting taxpayer will be granted relief under the programme, provided:

- SARS was not aware of the default
- a penalty or additional tax would have been levied had SARS discovered the default
- full disclosure is made.

The programme will allow SARS to increase tax collections without expending unnecessary resources, whilst providing taxpayers with amnesty against criminal sanctions, interest, penalties and additional taxes subject to full disclosure.

SARS has defined a default to be the submission of incorrect information; a failure to submit information; or the adoption of an incorrect tax position. These actions must result in either an incorrect assessment being levied against the taxpayer, the incorrect amount of tax being paid, or an unjustified refund being made by SARS.

A taxpayer may apply for relief provided that they are not aware of any pending or current investigations into their tax affairs. However, even in the case of a current audit or

investigation into their affairs, a taxpayer may still be eligible to apply. SARS is entitled to permit an application under the programme if it is convinced that the default would not have been detected during SARS's own investigations, or if it is in the interests of good management of the tax system.

An important feature of the programme is that there must be complete disclosure of a default, which would give rise to penalties or additional tax.

SARS has provided for a wide net of qualifying applicants as the programme will not only incentivise taxpayers to come forward but may also prevent the unnecessary allocation of personnel and resources to complicated audits, where the taxpayer is willing to voluntarily disclose and abandon any potential litigation against the assurance that penalties and interest will be waived.

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New VAT 201 returns

In April this year, the South African Revenue Service (SARS) sent out a newsletter to all VAT vendors that addressed the pending changes to the VAT 201 return. The final version of the new VAT 201 was made available by SARS on 28 June 2010.

If you are not an importer or exporter, then there appears to be very little to be concerned about. The only difference occurs in the way in which the form is laid out and it is advised that you be careful when completing the new document to ensure that the correct information is filled in as new lines have been added.

Importers and exporters should take careful note of the changes to the form, as accounting system modifications may be required in order to generate the necessary information.

The changes relating to imports and exports were introduced to better administer these types of transactions by linking the vendor's Customs registration number to the VAT number.

The new lines that have been introduced are as follows:

- line 2A – indicates zero-rated supplies of all goods exported
- line 14A – for the input tax claim relating to capital goods imported
- line 15A – relates to the input tax claim relating to non-capital goods imported.

As a clear distinction is made between the input tax claims for capital and non-capital goods, vendors **MUST ENSURE** that their accounting records correctly reflect these items for VAT purposes.

A new field for the inclusion of the Customs Code number has also been introduced. If any of the abovementioned new lines contain any figures/amounts, then the completion of the Customs Code number field is obligatory.

Further, for any amounts included in the new input tax lines, vendors must have the necessary customs release documents; whereas the export lines must be supported by the information required by SARS in terms of its Interpretation Note 30.

As a clear distinction is made between the input tax claims for capital and non-capital goods, vendors must ensure that their accounting records correctly reflect these items for VAT purposes. According to SARS, the VAT 201 forms posted to taxpayers will from now on be the updated forms. Where vendors are on e-filing, the e-filing forms will automatically be updated to reflect the additional lines and Customs Code number field.

In bringing about the abovementioned changes, SARS is creating a platform for better correlation and control relating to transactions that include both Customs and VAT aspects.

These changes are in addition to the new international tax amendments addressed by SARS and Treasury in the draft Taxation Laws Amendment Bills released in May 2010 as well as the newly released South African Reserve Bank voluntary disclosure programme.

SARS is clearly turning its attention to international tax and finance issues across all the tax lines and within different regulatory bodies, and taxpayers should be advised to ensure that their houses are in order.



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Important SARS deadline for employers

Last year, SARS announced that employers will need to submit bi-annual PAYE reconciliations from 2010 onwards, and the deadline for submissions is almost upon us. This serves as a reminder that the first bi-annual PAYE reconciliation for the period ending 31 August 2010 will soon be due. The date has yet to be announced by SARS but will be posted on www.mazars.co.za as soon as it is known.

Employers should take note of the new disclosure requirements. Failure to disclose the required information will result in the reconciliation not being accepted by SARS. It is imperative that the bi-annual return be submitted by the due date and that the disclosure requirements are met to avoid a penalty of 10% of the total annual deduction of employees tax deducted during the tax year.

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An important feature of the programme is that there must be complete disclosure of a default, which would give rise to penalties or additional tax. If it is later revealed that the taxpayer did not disclose a matter that was material to making a valid voluntary disclosure, the Commissioner has the discretion to withdraw any relief granted and pursue the full amount of outstanding tax, penalties and interest. However, such a withdrawal would be subject to objection and appeal or internal review.

The voluntary disclosure programme will be instituted from 1 November 2010 through to 31 October 2011. The disclosed default must have occurred at least 12 months prior to the commencement of the programme.

A valid disclosure will result in the following relief:

- amnesty from any criminal prosecution
- waiver of all penalties and additional taxes, excluding any administrative penalties
- 100% relief from interest in the case of the taxpayer not being aware of any pending audit or investigation
- 50% relief from interest in the case of a taxpayer who the Commissioner permitted to apply for the relief despite any pending or current audit into their affairs.

This relief will be evidenced by the conclusion of a written agreement between the Commissioner and the taxpayer. Thereafter SARS may issue an assessment, which is not subject to objection or appeal, giving effect to this agreement.

An interesting feature of the programme is that a taxpayer may apply on a "no-names" basis to SARS for a non-binding private opinion on whether or not they would be successful in application for relief under the programme. This generosity can be understood in an environment where Treasury is under increasing pressure to close the growing gap between spending and collections.

The Exchange Control department of the South African Reserve Bank (SARB) has also announced its intention to launch a Voluntary Disclosure Programme that will coincide with the one announced by SARS. The programme includes:

- disclosures that will not attract any levy, which include contraventions of specific regulations by a natural person (such as a failure to disclose foreign inheritance, income, loans and assets) and corporate entities (such as unapproved foreign investments or unauthorised foreign loans) in certain instances
- disclosures that will attract a 10% levy, which applies to persons (corporate and natural) that have entered into loop structures or are donors to a foreign discretionary trusts in breach of the regulations
- general administrative relief.

Where no offshore funds are available to pay the levy, a local payment will be permitted subject to an additional 2%. In most instances, applications will need to be made through an Authorised Dealer and must be submitted before 31 October 2011. Regardless of the motive behind either programme, qualifying taxpayers or residents should take the opportunity to disclose any default now and avoid the very real risk of facing the full brunt of SARS or SARB's punitive powers.



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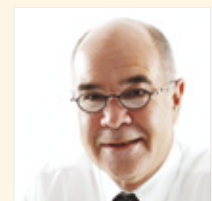
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MBOs for OMBs

As the founder of your Owner-Managed Business (OMB), it may represent all or the larger part of your retirement nest egg. However, in the current economic climate, it may be difficult to find external buyers for your business, or the shares in the business. In such circumstances, it may be that the senior employees of the business are the best potential buyers of your business.

Mazars has developed a tax-effective approach to Management Buy-Outs (MBOs) for OMBs. The approach in question is highly flexible. It allows for either a progressive payment of the purchase price out of future profits of the business (self-funding) or bank funding of the purchase price, or a combination of self-funding and bank funding.

It is a key feature of the Mazars approach to MBOs for OMBs that it will allow for continuing management participation by the owner until such time as the purchase price has been settled in full. The approach in question is also designed to secure deductibility of any interest paid to the bank.



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To be or not to be ... a farmer

It appears that like in the times of King Richard II in England when farmers were exempt from tax, they have remained somewhat unscathed by the tax legislation pen that has been wielded by National Treasury over the last number of years.

That is of course if you are a farmer. One must remember that many farmers today consult from doctors rooms, advocate chambers and even from the bank to name but a few. Farmers are no longer limited to people who get up at dawn to spend their days working the land and tending the flock.

The tax courts have held that farming does not mean simply indulging in a country pursuit and that pastoral activities consist of more than merely grazing animals and planting vegetables. The courts have also held that farming must have some sort of hope for profit on reasonable grounds.

Loss limitation

Herein lies the potential downfall for the farmer. Although it is generally accepted that income and net profit in the farming sector is at times dependent on the will of Mother Nature and that losses are fairly common, the South African Revenue Service (SARS) has clamped down on farming losses incurred by natural person taxpayers who also earn large taxable income from other sources, even if the farming operations are bona fide and on a large scale.

In terms of Section 20A of the Income Tax Act, farming is listed as a suspect trade and subject to certain conditions. Any recurrent losses incurred by a farmer will not be allowed against other taxable income, unless it can be successfully proved to SARS that such farming activities will generate a taxable income in the near future.

The effect is that losses incurred by these farmers will only be available for set-off against taxable income from farming operations.

SARS is applying the suspect trade limitation, with its electronic assessment system seemingly being programmed to limit the loss if the criteria are met.

The taxpayer may then be required to engage SARS to resolve the dispute, which will lead to the incurral of additional time and costs. This is of course not the case in respect of farmers who do not earn substantial income from other sources. These are regarded by the tax legislation as real farmers and their losses are not limited.

Favourable tax treatment

The calculation of taxable farming profit allows for many favourable deductions and allowances that have the potential of changing a positive accounting and economic profit into a useful tax loss.

This is encouraging news for full-time farmers but this is not necessarily the case for farmers who are subject to the loss limitation. In these cases, SARS is not interested in the economic or accounting profits and merely takes into account the tax losses.

What favourable deductions and allowances you may ask? Farmers can claim tax depreciation allowances over three years for all farming assets whereas other taxpayers have varying periods. For opening and closing livestock, farmers can assign tax values to the animals, up to a maximum of R50 for a bull and as low as R6 per ostrich, despite having acquired the animal for a whole lot more. Taking into account that dairy cows are regarded as livestock, the potential for the deduction of dairy cows purchased and on hand at year end is enormous.

In the case of plantations, the closing stock is only regarded as produce once harvested. Unharvested oranges or apples are not regarded as closing produce while all the costs of fertilisation, irrigation and pest control remain deductible regardless.

Farmers are also subject to the so-called average rate of tax and rating formula in years where taxable farming profit is generated. This has the potential of reducing the resultant tax bill below the level it would have been if the tax tables were applied normally.

Apart from the application of the loss limitation and average tax rate rules, the allowances and tax treatments remain the same regardless of the farmer being an individual or legal entity. It therefore appears that, at least from a tax treatment point of view, it is favourable to be regarded as a farmer.

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A follow up article on the abovementioned allowances and treatments will be published in the next issue of Let's Talk Tax with a third and final article pertaining to game farming.



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