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University of the Witwatersrand, Johannesburg

STANDARDS AND PROGRAMMES DESIGNED TO MITIGATE TAX EVASION: AN INTERNATIONAL APPRAISAL

MICHELLE DE SOUZA

A research report submitted to the Faculty of Commerce, Law and Management, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation)

Johannesburg, 2017

ABSTRACT

As a result of a weakening and slow global economy and rising debt, many foreign governments are finding it difficult to implement strategies to ensure continued inclusive and sustainable growth. It is based on this troubling perspective of global uncertainty that tax authorities worldwide have unanimously persisted in their fight against tax evasion through the under-declaration of income from foreign assets, the illegal movement of money abroad, the misapplication and / or manipulation of transfer pricing legislation and mistreatments of tax treaties. The G20 Leaders together with the Organisation for Economic Co-operation and Development ("OECD") have developed standards such as the Common Reporting Standard ("CRS") for the Automatic Exchange of Information ("AEOI") between tax authorities to enhance the sharing of information and transparency of information between tax authorities worldwide.

South Africa has pledged to implement the CRS and automatically share tax information with other jurisdictions on an annual basis in the fight against tax evasion and avoidance. Of significance, in terms of timing for South African tax residents, is that South Africa has undertaken to be one of the early adopters of the CRS and committed to commence the first exchange of information from 2017.

In light of the standards and actions coming into place, it has become clear that before long the likelihood of the South African Revenue Services ("SARS") and the South African Reserve Bank ("SARB") detecting tax evasion and avoidance is increasingly high. Based on this, non-compliant taxpayers have a limited timeframe to manoeuvre freely in and what may be their last opportunity to voluntarily disclose these assets and the income derived therefrom to SARS and SARB without facing heavier penalties and possible criminal prosecution.

Key Words:

Tax evasion, Tax avoidance, Automatic Exchange of Information, Common Reporting Standard, Voluntary Disclosure Programmes, Offshore Voluntary Disclosure Programmes

DECLARATION

I declare that this research report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce (specialising in Taxation) at the University of Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination at any other university.

Michelle De Souza

Michelle De Souza

September 2017

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First and foremost, to God who is a good, good Father and unwavering in the blessings bestowed on my life!

To my amazing husband, Eugene De Souza, who has been my rock, my greatest supporter, my cheerleader at every 1 000 words completed and greatest encourager. Thank you for the endless support, love, patience, and commitment to helping me further my studies. I could not have done this without you - thank you!

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To the staff at WITS University, especially Professor Alwyn De Koker and Roy Blumenthal, who provided me with guidance with the writing and submission of this report.

Finally, to my parents who taught me that knowledge is power and to always reach for my dreams! Without your sacrifice and love this wouldn't have been possible - thank you!

This work is proudly dedicated to my husband, Eugene De Souza.

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LIST OF ABBREVIATIONS AND ACRONYMS

The table below displays the abbreviations and / or acronyms used throughout this document:

Abbreviations and Acronyms	Full form of word
AEOI	Automatic Exchange of Information
Circular 6/2016	Exchange control Circular 6/2016
CRS	Common Reporting Standard
EOIR	Exchange of Information on Request
FATCA	Foreign Account Tax Compliance Act
FinSurv	Financial Surveillance Department of the South African Reserve Bank
OECD	Organisation for Economic Co-operation and Development
OVDP	Offshore Voluntary Disclosure Programme
OVDPs	Offshore Voluntary Disclosure Programmes
SARB	The South African Reserve Bank
SARS	The South African Revenue Services
SVDP	Special Voluntary Disclosure Programme
SVDPs	Special Voluntary Disclosure Programmes
TAA	Tax Administration Act 28 of 2011
VDP	Voluntary Disclosure Programme
VDPs	Voluntary Disclosure Programmes

1. INTRODUCTION

Taxation is the principal method in which governments fund their expenditure and support themselves. In the absence of the capability to fund this expenditure through taxation, it would be near impossible for any country to support and maintain itself and protect its people and territory from physical and economic dangers.[1] A proficient, competent and performing tax system allows for a country's inclusive growth and sustainable development. Taxation allows for governments to finance a country's infrastructure, education, health and supports their social protection systems.[2]

South Africa's stance on the importance of taxation is no different. In the 2016 Budget Speech, Pravin Gordhan outlined that the 2016 South African budget focused on inclusive growth and cultivating a sustainable and developed country. Further, he emphasised that the government's focus would be on education, infrastructure development and job creation. Despite the government's eagerness to improve South Africa's education and health systems, ensure the reliability of local services, expand and advance infrastructure development and create jobs, Gordhan expressed the government's increasing difficulty in doing so as a result of a weakening and slow global economy and rising debt. He further noted that regardless of the difficulties faced, governments all over the world are still expected to finance sustainable growth.[3]

It is based on this landscape of global uncertainty that tax authorities worldwide have unanimously persisted in their fight against tax evasion due to the under-declaration of income from foreign assets, the illegal movement of money abroad, the misapplication and manipulation of transfer pricing legislation and the mistreatment of tax treaties. In solidarity to combat tax evasion, Gordhan expressed that the government would take aggressive action against such behaviours.[4]

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[1] Najera, C.M. 2011. Combating offshore tax evasion: Why the United States should be able to prevent American tax evaders from using Swiss bank accounts to hide their assets. *Southwestern Journal of International Law,*17:101-130. [Online] Available from: http://www.swlaw.edu/pdfs/lawjournal/17_1najera.pdf [Downloaded: 2016-12-07].

[2] OECD. 2016a. *OECD Work on taxation 2016-17.* [Online] Available from: http://www.oecd.org/tax/centre-for-tax-policy-and-administration-brochure.pdf [Downloaded: 2016-12-12].

[3] Gordhan, P. 2016. *2016 Budget Speech, Pravin Gordhan on 24 February 2016.* [Online] Available from: http://www.treasury.gov.za/documents/national%20budget/2016/ [Accessed: 2016-08-22].

[4] Gordhan, P. 2016. *2016 Budget Speech, Pravin Gordhan on 24 February 2016.* [Online] Available from: http://www.treasury.gov.za/documents/national%20budget/2016/ [Accessed: 2016-08-22].

The world of finance and the ease of moving money cross-border continues to evolve and develop. Although this occurrence has enabled global trade, improved cross-border connectivity, linked businesses and people around the world; it has also aided the transfer of illicit money effortlessly. Criminals, tax evaders and immoral, crooked politicians are known to benefit from the globalisation of the world's finance system. It is estimated that as much as tens of trillions of US Dollars in assets are held offshore. As these assets are often held within a country considered to be a tax haven, an extensive amount of these assets and the related income therefrom goes unrecorded, unassessed and untaxed. The past decades' whistle-blowers, such as the SwissLeaks and the Panama Papers, have revealed that the world's wealthy elite have used tax havens and banking secrecy laws to conceal their true asset value and evade tax. Based on estimates of the value of assets held offshore, a high percentage of this occurrence is in fact in countries which would gain the most from increased revenue to fund improvements in health care, education and infrastructure.[5]

In an effort to curb this from continuing to the point where it may become threatening to a country's tax system and in response to the global economic crisis, the G20 Leaders of the world (comprising of 20 leaders from the world's largest, innovative and emerging economies[6]) together with the Organisation for Economic Co-operation and Development ("OECD") have ensured that global transparency of pertinent tax information, such as finance account balances, the revenues earned from these balances, the method that the account was funded and whether this money had been taxed, is high on the agenda for tax authorities around the world.

In the declaration on Automatic Exchange Of Information ("AEOI") on tax matters, the OECD expressed its concern that intercontinental tax fraud and tax evasion has become a severe problem for countries all over the world.[7] Other than the possible billions of tax money that is forgone on an annual basis,[8] tax fraud and tax evasion is a vicious cycle as it compromises compliant taxpayer's certainty of equality and reliability in the tax system. Thus, undermining

[5] Financial Transparency Coalition. Not dated. *Automatic exchange of information.* [Online] Available from: https://financialtransparency.org/issues/automatic-tax-information-exchange/ [Accessed: 2016-12-13].

[6] 2015 TurkeyG20. 2015. *G20 Members.* [Online] Available from: http://g20.org.tr/about-g20/g20-members/ [Accessed: 2017-01-15].

[7] OECD. 2014a. *Declaration on automatic exchange of information in tax matters: Meeting of the OECD Council at Ministerial Level, Paris, 6-7 May 2014*. [Online] Available from: http://www.oecd.org/mcm/MCM-2014-Declaration-Tax.pdf [Downloaded: 2016-12-29].

[8] Financial Transparency Coalition. Not dated. *Automatic exchange of information.* [Online] Available from: https://financialtransparency.org/issues/automatic-tax-information-exchange/ [Accessed: 2016-12-13].

these individuals' voluntary tax compliance as they feel cheated by a weak tax system. An attitude of voluntary tax compliance is vital for an effective and efficient operational tax administration system.[9]

To further strengthen the tax systems of countries around the world and foster transparency and voluntary disclosure, the OECD recently updated their guidebook on Voluntary Disclosure Programmes ("VDPs") in an effort to provide guidance to countries interested in developing successful VDPs. The OECD has provided this guidebook as it believes in the significance of providing taxpayers with the chance to voluntarily "come clean" and regularise their tax affairs by providing complete and relevant information of the income which had been hidden from tax authorities in the past. VDPs provide such taxpayers the opportunity to do so and for tax authorities to secure payment of previously foregone revenue in a cost-effective manner with less administrative costs and resources.[10]

The SARS External Guide for Voluntary Disclosure Programme states that the objective of SARS' Voluntary Disclosure Programme ("VDP") is to foster voluntary compliance in order to promote efficient management of the country's tax system and the best use of SARS' resources. The VDPs aim is to motivate taxpayers to inform SARS on a voluntary basis of any non-compliant behaviour and to regularise their tax affairs with SARS. In doing so, the taxpayer avoids the levying of understatement and administrative penalties.[11]

The sections which follow state the research problem as well as the chapter outline to address this research problem. Chapter 1 includes a discussion on the Automatic Exchange of Information and the Common Reporting Standard as well as lists the countries which have committed to be adopters of the standard. Subsequently, chapter 2 and 3 examine various voluntary disclosure programmes available in South Africa for taxpayers to come clean by voluntarily disclosing their tax evasion and avoidance. Thereafter, chapter 4 evaluates and

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[9] OECD. 2014a. *Declaration on automatic exchange of information in tax matters: Meeting of the OECD Council at Ministerial Level, Paris, 6-7 May 2014*. [Online] Available from: http://www.oecd.org/mcm/MCM-2014-Declaration-Tax.pdf [Downloaded: 2016-12-29].

[10] OECD. 2015. *OECD Update on Voluntary Disclosure Programmes: A pathway to tax compliance.* [Online] Available from: https://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf [Downloaded: 2016-10-08].

[11] SARS. 2012. *SARS External Guide for Voluntary Disclosure Programme.* [Online] Available from: http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G01%20-%20Application%20for%20Permanent%20Voluntary%20Disclosure%20-%20External%20Guide.pdf [Downloaded: 2016-03-10].

compares the two Voluntary Disclosure Programmes available in South Africa. Chapter 5 reviews the Offshore Voluntary Disclosure Programmes applied in Canada and the United States of America. It also compares the Voluntary Disclosure Programmes applied in these countries to that applied in South Africa. The conclusion and recommendations are discussed in closing.

2. GOALS OF THE RESEARCH AND RESEARCH QUESTIONS

2.1. Goal of the research

The main goal of the research is to describe the actions taken to combat tax evasion and tax avoidance. This will be done by describing the challenges tackled in taxpayers hiding assets offshore and shifting of profits to tax havens. The goal is to study the programmes and standards implemented to minimise tax evasion and avoidance both in South Africa and other countries.

2.2. Research questions

- What actions have been taken to fight tax evasion and avoidance?
- Have standards and programmes been developed to combat tax evasion and avoidance?
- Has South Africa implemented these standards and programmes?
- Are there still avenues available for taxpayers to voluntarily disclose their tax evasion and avoidance?
- How does South Africa's programmes compare to those implemented worldwide?

3. CHAPTER OUTLINE

3.1. Chapter 1: Transparency of information

3.1.1. Introduction

A considerable amount of money is held offshore and is untaxed as a result of tax resident taxpayers neglecting to comply with their home country's tax laws by not declaring income to their home country's tax authority.[12]

In 2009, the G20 Leaders sanctioned the end of banking secrecy and urged countries to enhance transparency by implementing the standard for the Exchange on Information on Request ("EOIR"). In 2013, with the ever-increasing globalisation of finance, the G20 Leaders prompted the next step by providing the OECD with the mandate to develop a Common Reporting Standard ("CRS") for the Automatic Exchange of Information ("AEOI") between tax authorities.[13] Together with 100 other jurisdictions (as at 26 July 2016), South Africa pledged to implement the CRS and automatically share tax information with other jurisdictions annually. Further to this and of significance in terms of timing for South African tax residents, South Africa agreed to be one of the early adopters of the CRS and committed to commence the first exchange of information from 2017.[14]

The structure of the following paragraphs to this chapter is a discussion on the current and well-established practice of the EOIR, an analysis of the AEOI and the CRS to be implemented and the countries which have committed to automatically exchange relevant finance information for the use by tax authorities and other related governmental departments.

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[12] OECD. 2016b. *OECD Automatic exchange of financial account information: Background information brief.* [Online] Available from: http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Brief.pdf [Downloaded: 2016-12-29].

[13] OECD. 2016a. *OECD Work on taxation 2016-17.* [Online] Available from: http://www.oecd.org/tax/centre-for-tax-policy-and-administration-brochure.pdf [Downloaded: 2016-12-12].

[14] OECD. 2016c. *OECD Global forum on transparency and exchange of information for tax purposes AEOI: status of commitments.* [Online] Available from: http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf [Downloaded: 2016-12-16].

3.1.2. EOIR

In today's ever-changing and fast paced world, finance has no borders. A person can move money instantaneously. In addition, it has never been easier to open an investment account and manage this account outside ones' country of residence. For majority of the 20th century, banking secrecy was the norm in offshore financial centres. Many governments declined to share information with other countries' tax authorities and explained that this was due to the fact that their laws did not allow them to do so. This resulted in many countries' tax authorities not having the information available to confirm if a taxpayer was being compliant by reporting their worldwide income (where appropriate) and paying the correct amount of tax.[15] As an example, if a tax resident of South Africa had an account in another jurisdiction which was considered a tax haven, there was little the South African Revenue Services ("SARS") and the Financial Surveillance Department of the South African Reserve Bank ("FinSurv") could do to find out about the existence of the account, the balance, where the funds originated from, transaction records or if taxes had been paid on these funds.

This all began changing in 2009 when the G20 Leaders put transparency at the centre of their extensive response to the global economic crisis and began applying pressure for countries to ensure that pertinent tax information was available on request. The EOIR standard required the preparation of a request for information to be drawn up by the tax authorities in jurisdiction A. This request needed to be sent to jurisdiction B, who in turn endeavoured to acquire the information. Once obtained, the information was to be sent back to jurisdiction A.[16]

The EOIR standard is outlined and established by Article 26 of the OECD's Model Tax Convention (OECD Model DTA).[17] Countries interested in allowing for the EOIR were required to include the article detailing the Exchange of Information and what this entailed in the agreed upon Double Taxation Agreements signed by the countries.

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[15] OECD. 2016a. *OECD Work on taxation 2016-17.* [Online] Available from: http://www.oecd.org/tax/centre-for-tax-policy-and-administration-brochure.pdf [Downloaded: 2016-12-12].

[16] OECD. Not dated. *Global Forum on Transparency and Exchange of Information for Tax Purposes: Automatic Exchange of Information.* [Online] Available from: http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm [Accessed: 2016-12-13].

[17] OECD. 2014b. *Model convention with respect to taxes on income and on capital.* [Online] Available from: http://www.oecd.org/tax/treaties/2014-model-tax-convention-articles.pdf [Downloaded: 2016-03-10].

3.1.3. AEOI

Following the exchange of information upon request method mentioned above, the OECD together with the G20 Leaders developed a Common Reporting Standard for the Automatic Exchange of Information between tax authorities.

The AEOI will be a powerful tool used to fight tax evasion. If governments no longer have to ask for information but receive it automatically annually, non-compliant taxpayers will no longer be able to hide their investments.[18] The AEOI reinforces the EOIR and resolves and addresses many of its shortcomings. This standard establishes a dedicated and concerted effort in the direction of enhanced transparency.[19] Thus, reinforcing the G20 Leaders and OECD's international mission to intensify transparency, collaboration, responsibility and partnerships between tax authorities worldwide in the fight to salvage lost tax revenue due to tax evasion. Moreover, the AEOI will enjoy additional benefits by strengthening governments call for individuals and organisations to voluntarily disclose their hidden assets by motivating such taxpayers to divulge all relevant information.[20]

The CRS is the tool required to be used by participating countries to ensure that these countries are ready to implement the AEOI by their agreed upon date of implementation and annually thereafter.

3.1.4. CRS

The CRS calls upon governments to obtain a wide-ranging collection of information from financial institutions and exchange it automatically on an annual basis.

The CRS allows for the exchange of a non-resident taxpayer's financial account information with the taxpayer's country of residence (home country) tax authority. The nature of information that must be reported includes information such as the account balance, the

[18] OECD. 2014c. *OECD releases full version of global standard for automatic exchange of information.* [Online] Available from: http://www.oecd.org/tax/oecd-releases-full-version-of-global-standard-for-automatic-exchange-of-information.htm [Accessed: 2016-12-09].

[19] Tax Justice Network. 2014. *Automatic Exchange of Information: An opportunity for developing countries to tackle tax evasion and corruption.* [Online] Available from: http://www.taxjustice.net/wp-content/uploads/2013/04/AIE-An-opportunity-for-developing-countries.pdf [Downloaded: 2016-12-16].

[20] OECD. 2016c. *OECD Global forum on transparency and exchange of information for tax purposes AEOI: status of commitments.* [Online] Available from: http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf [Downloaded: 2016-12-16].

interest, dividend and gain received during a specific period and the sale and redemption of proceeds. This information is expected to be shared annually on a prescribed date automatically in the absence of a specific request (method adopted under the EOIR rules).[21]

The OECD created a standard of the information required to be obtained by participating countries. The standard ensures that relevant, common and required information is obtained by all countries.

As an early adopter of the CRS (see table below), South Africa was required to commence implementing the CRS guidelines promptly to ensure its readiness for the AEOI in September 2017. An example of how South Africa commenced implementing the CRS has been displayed in Appendix A. South Africa's Financial Institutions required that their customer self-certify their tax residency status via the *Tax Self-certification and Declaration Form - Natural Persons*. The form collected information regarding whether the individual held "foreign tax residence" (that is whether he / she is liable to pay taxes outside of South Africa). Once collated, the information was then provided to SARS (where required).

3.1.5. Countries committed to and implementing AEOI and CRS

3.1.5.1. First phase of adopters / Earlier adopters (September 2017)

Below is a table listing the jurisdictions undertaking first exchanges of AEOI by September 2017:[22]

No.	Country name	No.	Country name	No.	Country name
1	Anguilla	19	Germany	37	Mexico
2	Argentina	20	Gibraltar	38	Montserrat
3	Barbados	21	Greece	39	Netherlands
4	Belgium	22	Greenland	40	Niue
5	Bermuda	23	Guernsey	41	Norway
6	British Virgin Islands	24	Hungary	42	Poland

[21] OECD. Not dated. *Global Forum on Transparency and Exchange of Information for Tax Purposes: Automatic Exchange of Information.* [Online] Available from: http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm [Accessed: 2016-12-13].

[22] OECD. 2016c. *OECD Global forum on transparency and exchange of information for tax purposes AEOI: status of commitments.* [Online] Available from: http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf [Downloaded: 2016-12-16].

No.	Country name	No.	Country name	No.	Country name
7	Bulgaria	25	Iceland	43	Portugal
8	Cayman Islands	26	India	44	Romania
9	Colombia	27	Ireland	45	San Marino
10	Croatia	28	Isle of Man	46	Seychelles
11	Curaçao	29	Italy	47	Slovak Republic
12	Cyprus	30	Jersey	48	Slovenia
13	Czech Republic	31	Korea	49	**South Africa**
14	Denmark	32	Latvia	50	Spain
15	Estonia	33	Liechtenstein	51	Sweden
16	Faroe Islands	34	Lithuania	52	Trinidad and Tobago
17	Finland	35	Luxembourg	53	Turks and Caicos Islands
18	France	36	Malta	54	United Kingdom

Table 1: List of jurisdictions undertaking exchanges by 2017
(Own emphasis added)

3.1.5.2. Second phase of adopters / Late adopters (September 2018)

Furthermore, below is a list depicting the adopters committed to the next phase of AEOI in September 2018:[23]

No.	Country name	No.	Country name	No.	Country name
1	Albania	17	Dominica	33	Panama
2	Andorra	18	Ghana	34	Qatar
3	Antigua and Barbuda	19	Grenada	35	Russia
4	Aruba	20	Hong Kong (China)	36	Saint Kitts and Nevis
5	Australia	21	Indonesia	37	Samoa
6	Austria	22	Israel	38	Saint Lucia
7	The Bahamas	23	Japan	39	Saint Vincent and the Grenadines
8	Bahrain	24	Kuwait	40	Saudi Arabia

[23] OECD. 2016c. *OECD Global forum on transparency and exchange of information for tax purposes AEOI: status of commitments.* [Online] Available from: http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf [Downloaded: 2016-12-16].

No.	Country name	No.	Country name	No.	Country name
9	Belize	25	Lebanon	41	Singapore
10	Brazil	26	Marshall Islands	42	Saint Maarten
11	Brunei Darussalam	27	Macao (China)	43	Switzerland
12	Canada	28	Malaysia	44	Turkey
13	Chile	29	Mauritius	45	United Arab Emirates
14	China	30	Monaco	46	Uruguay
15	Cook Islands	31	Nauru	47	Vanuatu
16	Costa Rica	32	New Zealand		

Table 2: List of jurisdictions undertaking exchanges by September 2018

3.1.6. Conclusion

The chapter commenced with a discussion on the well-established practice of the EOIR. Thereafter, an analysis of the AEOI and the CRS was provided highlighting the countries who committed to be early and late adopters of the AEOI. Of significance and highlighted was that South Africa committed to be an early adopter of the AEOI. As an early adopter, South Africa is required to implement the CRS and ensure that it is ready to commence automatically exchanging relevant finance information with foreign tax authorities and other related governmental departments.

As early adopters of the CRS, South Africa is required to automatically exchange information from September 2017. As such, by agreeing to be early adopters, South Africa marked the date that tax evasion, aggressive tax avoidance and tax fraud would come to an end and the last date in which taxpayers would be able to voluntarily disclose their defaults in order to obtain relief from and / or minimise non-compliance penalties, interest and possible criminal prosecution.

3.2. Chapter 2: Voluntary Disclosure programmes

3.2.1.1. Introduction to VDPs

VDPs are programmes designed by tax authorities to provide previously non-compliant taxpayers with the option of acknowledging their failure to comply with the country's tax laws and paying their delinquent taxes under prescribed rules and regulations. A VDP is designed so that non-compliant taxpayers, who voluntarily provide information of their non-compliance, pay more than had they correctly and timeously met their tax obligations but

with less repercussions than had they continued to conceal their misconduct and had been discovered by their tax authority. In addition, if implemented correctly, VDPs assist tax authorities to secure payment of previously foregone revenue in a cost-effective manner with less administrative costs and resources.

With the global drive towards transparency and improvements in technology, it has become increasingly difficult to hide any tax and exchange control transgressions. VDPs have consequently become a vital function in a government's compliance strategy to mitigate tax fraud, tax evasion and tax avoidance.[24]

The subsequent paragraphs will focus on the traits of a successful VDP, SARS' VDP and an evaluation of factors shared between the VDPs implemented around the world to that of South Africa's programme whilst highlighting any shortfalls.

3.2.2. The characteristics of a successful VDP

The OECD distinguishes the traits on which successful VDPs are founded upon based on their comparison of 47 VDPs enacted worldwide. A successful VDP has the following common qualities: [25]

3.2.2.1. A well-defined purpose and transparent regulations

The VDP must provide guidance on the aim of the programme and be transparent in the regulations of the programme. It must answer the following questions:

- its target audience (the who);
- the time period of availability (the when);
- the criteria of disclosures which may be made (open-ended or for a specific issue) (the what);
- the location where the disclosure is required to be made and the forms to be completed (the where);

[24] OECD. 2015. *OECD Update on Voluntary Disclosure Programmes: A pathway to tax compliance.* [Online] Available from: https://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf [Downloaded: 2016-10-08].

[25] OECD. 2015. *OECD Update on Voluntary Disclosure Programmes: A pathway to tax compliance.* [Online] Available from: https://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf [Downloaded: 2016-10-08].

- the incentive for coming forward (tax / interest / penalty / criminal prosecution waived) (the why); and
- the amount of tax / interest / penalty due after coming forward (the how much).

3.2.2.2. Conveys increases in tax revenue whilst remaining cost-efficient

The communication strategy of the VDP must express the opportunity given to taxpayers to regularise their tax affairs. It must also ensure that the programme illustrates the benefits received by increasing tax revenue in the short-term and decreasing the costs incurred on audits and investigations in the long-term.

3.2.2.3. Remains compatible with the over-all compliance and enforcement rules

The VDP must find an equilibrium between promoting and endorsing voluntary compliance whilst refuting non-compliant behaviour. The VDP rules must remain within the country's compliance strategy and laws.

3.2.2.4. Assists in discouraging non-compliance

The VDP must illustrate the incentive for a taxpayer to no longer want to take the risk of detection. In addition, the consequences of not revealing the information voluntarily must be explicitly known.

3.2.2.5. Cultivates levels of compliance within previously non-compliant individuals and organisations

The VDP must ensure that taxpayers who failed to be compliant in the past are aware of the progress made in the country to detect non-compliance and the programmes and standards implemented to combat tax avoidance and evasion. This must demonstrate the increased risk of detection and foster a stronger disposition to correct the non-compliance and remain compliant.

3.2.2.6. Recognises the need for the enhancement of compliance among individuals eligible for the programme in the long-term

The VDP must ensure the measures (for example, programmes and standards) implemented to detect future non-compliance are considered to be credible and are communicated.

The next paragraphs will detail the SARS permanent VDP and the chapter will be concluded with a comparison of the characteristics which result in successful VDPs around the world (detailed under this paragraph) and those presented in South Africa's VDP.

3.2.3. A VDP application to SARS

3.2.3.1. Introduction

The VDP in which taxpayers may willingly come forward to advise SARS of their failure to accurately disclose income and / or deductions or failure to pay the correct amount of tax was legislated along with the introduction of the Tax Administration Act 28 of 2011 ("the TAA") in South Africa in 2012.[26]

Generally, whenever a taxpayer has committed a "default", the person may apply for voluntary disclosure relief under certain circumstances. If such application is successful, SARS will not pursue criminal prosecution and will grant relief in respect of certain penalties imposed under the TAA.[27]

For purposes of voluntary disclosure relief, section 225 of the TAA, defines a "default" as:

- the submission of inaccurate or incomplete information to SARS; or
- the failure to submit information; or
- the adoption of a 'tax position' where such submission, non-submission, or adoption resulted in:
    - the taxpayer not being assessed for the correct amount of tax;
    - the correct amount of tax not being paid by the taxpayer; or
    - an incorrect refund being made by SARS.[28]

[26] KPMG. 2016. *Voluntary disclosure in South Africa.* Johannesburg: Tax and Legal Department. [Online] Available from: https://home.kpmg.com/content/dam/kpmg/pdf/2016/03/ch-tax-voluntary-disclosure-in-south-africa-en.pdf [Downloaded: 2016-11-04].

[27] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[28] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

3.2.3.2. Persons that qualify for VDP relief

According to section 226(1) of the TAA, a person may apply for voluntary disclosure relief (in a personal, representative, or other capacity), unless that person is aware of a pending audit or investigation into the affairs of the person seeking relief, or an audit or investigation that has commenced, but has not yet been concluded.[29]

However, section 226(2) of the TAA states that a senior SARS official may direct that a person may apply for voluntary disclosure relief despite the fact that an audit or investigation has commenced, or that the person is aware of a pending audit or investigation. This may be done if SARS' official is of the view that the default would not otherwise have been detected during the audit or investigation, and application would be in the interest of good management of the tax system and best use of SARS' resources.[30]

A person is deemed to be aware of a pending audit or investigation if:

- a representative of the person;
- an officer, shareholder or member of the person, if the person is a company;
- a partner in partnership with the person;
- a trustee or beneficiary of the person, if the person is a trust, or
- a person acting for or on behalf of, or as an agent, or fiduciary of the person,

has become aware of a pending audit or investigation, or that the audit or investigation has commenced (s 226(3) of the TAA).[31]

3.2.3.3. Requirements for VDP relief

According to section 227 of the TAA, the requirements for a voluntary disclosure relief are that the disclosure must:

- be made voluntarily;
- involve a default which has not previously been disclosed;

[29] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[30] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[31] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

- be full and complete in all material respects;
- involve the potential imposition of an understatement penalty in respect of the default;
- not result in a refund due by SARS; and
- be made in the prescribed form and manner.[32]

From the above requirements it is clear that the aim of such an application is to "come clean" with SARS in relation to a person's tax affairs. Therefore, it is imperative that in order for a person to be eligible for the VDP, full and complete disclosure of all tax transgressions must be made to SARS. As the disclosure to SARS is voluntary, the TAA requires that the taxpayer calculate the amount of the understated income and applicable tax to be charged, assesses the understatement penalty and administrative non-compliance penalty (discussed under paragraphs 3.2.3.6 and 3.2.3.7 respectively below) the person believes should apply to their facts and circumstances and determines the interest amount to be levied.[33]

Per the above, in order for a VDP application to be considered valid, the applicant is required to complete the VDP application in the prescribed form and manner. This is accomplished by completing the VDP01 form as well as the relevant tax years Income Tax Returns (ITR12) detailing the additional income to be considered by SARS per tax year. An example of the VDP01 form is included in Appendix B.

3.2.3.4. No-name VDP enquiry

According to section 228 of the TAA, to the extent that an applicant provides sufficient information regarding the tax default (apart from the identity of the person), a senior SARS official may provide an opinion on whether or not the applicant would qualify for VDP relief. This opinion, however, is not binding on SARS.[34]

Should this previously identified person decide to proceed with a VDP application, once the non-binding opinion is received, the applicant will need to submit an additional application

[32] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[33] KPMG. 2016. *Voluntary disclosure in South Africa.* Johannesburg: Tax and Legal Department. [Online] Available from: https://home.kpmg.com/content/dam/kpmg/pdf/2016/03/ch-tax-voluntary-disclosure-in-south-africa-en.pdf [Downloaded: 2016-11-04].

[34] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

providing SARS the person's identity and the facts and circumstances as if a section 228 query was not applied for.[35]

3.2.3.5. Relief offered under the VDP

Where a taxpayer qualifies for voluntary disclosure relief (as set out above) and has entered into a voluntary disclosure agreement, SARS will:

- not pursue criminal prosecution for a statutory offence under a tax Act arising from the default or a related common law offence;
- grant the relief in respect of the understatement penalty referred to in column 5 or 6 of the understatement penalty percentage table (see Understatement Penalty section below); and
- grant 100% relief in respect of an administrative non-compliance penalty, that may be imposed under the TAA or a penalty imposed under a tax Act (see administrative non-compliance penalty section below).

It is important to note that this relief excludes relief from a penalty imposed under the TAA or in terms of a tax Act, for the late submission of a return or a late payment of tax.[36]

3.2.3.6. Understatement penalty

Section 221(1) of the TAA states that in the case of an understatement of tax liability, a taxpayer has to pay, in addition to the tax payable, an understatement penalty determined in terms of an understatement penalty percentage table (below), unless the understatement results from a *bona fide* inadvertent error. An understatement means prejudice to SARS, or the fiscus, as a result of:

- a default in rendering a return;
- an omission from a return;
- an incorrect statement in a return; or
- if no return is required, the failure to pay the correct amount of 'tax'.[37]

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[35] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[36] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[37] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

An understatement penalty is calculated by applying the highest applicable understatement penalty percentage in accordance with the table below to each shortfall in relation to each understatement in a return.

Section 223(1) illustrates the understatement penalty percentage table as follows:

Item	Behaviour	Standard case	If obstructive, or if it is a repeat case	Voluntary disclosure after notification of audit or investigation	Voluntary disclosure before notification of audit or investigation
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	Impermissible avoidance arrangement	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

Table 3: Understatement Penalty Percentage table
Adapted from: Section 223 of the TAA[38]

Section 221 of the TAA defines a *'Substantial understatement'* as a case where the prejudice to SARS, or the fiscus, exceeds the greater of:

[38] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

- 5% of the amount of tax properly chargeable or refundable under a tax Act for the relevant tax period; or
- R1 million.

Therefore, a successful VDP application (before a taxpayer is audited by SARS), will substantially eliminate or reduce the understatement penalty which may potentially be applicable.[39]

3.2.3.7. Administrative non-compliance penalty

The administrative non-compliance penalties may be levied either as a "fixed amount penalty", "reportable arrangement penalty", or "percentage-based penalty". The type of non-compliance penalty will be based on the set of facts arising from the "default".

It is important to note that the VDP relief excludes relief from a penalty imposed under the TAA or in terms of a tax Act, for the late submission of a return or a late payment of tax.[40]

3.2.3.8. Voluntary disclosure agreement

Section 230 of the TAA states that where a senior SARS official approves a voluntary disclosure application and the relief is granted, the taxpayer and SARS must enter into a voluntary disclosure agreement. The agreement must include:

- the material facts of the "default" on which the voluntary disclosure relief is based;
- the amount payable by the person, which amount must separately reflect the understatement penalty payable;
- the arrangements and dates for payment; and
- relevant undertakings by the parties.[41]

[39] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[40] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[41] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

3.2.3.9. Withdrawal of voluntary disclosure relief

Section 231 of the TAA reveals the circumstances under which the voluntary disclosure agreement is withdrawn. In the event that, subsequent to the conclusion of a voluntary disclosure agreement, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure, a senior SARS official may:

- withdraw the voluntary disclosure relief granted;
- regard an amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax debt in respect of the relevant default; and
- pursue criminal prosecution for a statutory offence under a tax Act or a related common law offence.[42]

3.2.3.10. VDP supporting documents

Below is a list of documents requested by SARS when a VDP is submitted (note that the below list is not an exhaustive list):

- documentation and / or tax certificates to substantiate the foreign income received;
- bank statements to confirm the bank account balances at the end of each tax year;
- any evidence to prove that the original amounts invested were tax exempt in South Africa;
- date(s) the bank accounts were opened with supporting evidence;
- a declaration specifying which one of the six behaviours referred to in the understatement penalty percentage table, in Section 223(1) of the TAA, the taxpayer believes he committed as a "default" (refer to paragraph 3.2.3.1 above). In addition, the taxpayer must provide substantiating reasons to support his / her selection and / or any other information the applicant deems necessary to support the selection.
- confirmation that the taxpayer did not previously apply for VDP under the Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, Act 8 of 2010.
- schedules / calculations to substantiate the VDP default amount(s) with supporting documents thereto as from the 2002 year of assessment (where relevant). The information should be in respect of interest, dividends, capital gains and / or losses,

[42] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

rental income and any other foreign income including income from foreign structures; i.e. trusts and companies.

3.2.3.11. VDP conclusion

For a voluntary disclosure relief application to be successful, the applicant should meet the necessary requirements and is obliged to make “full and complete” disclosure in the VDP application. If this is the case, SARS may grant relief in respect of any understatement penalties, and may grant 100% relief in respect of an administrative non-compliance penalty (excluding relief from a penalty imposed under the TAA or in terms of a tax Act, for the late payment of tax). This reduction or elimination of penalties afforded by the VDP serves as a substantial benefit to a VDP applicant. The interest and certain penalties, as discussed above, however, are likely to remain payable.

To summarise the VDP process, below is a figure broadly representing the procedure followed by SARS when receiving a VDP application:

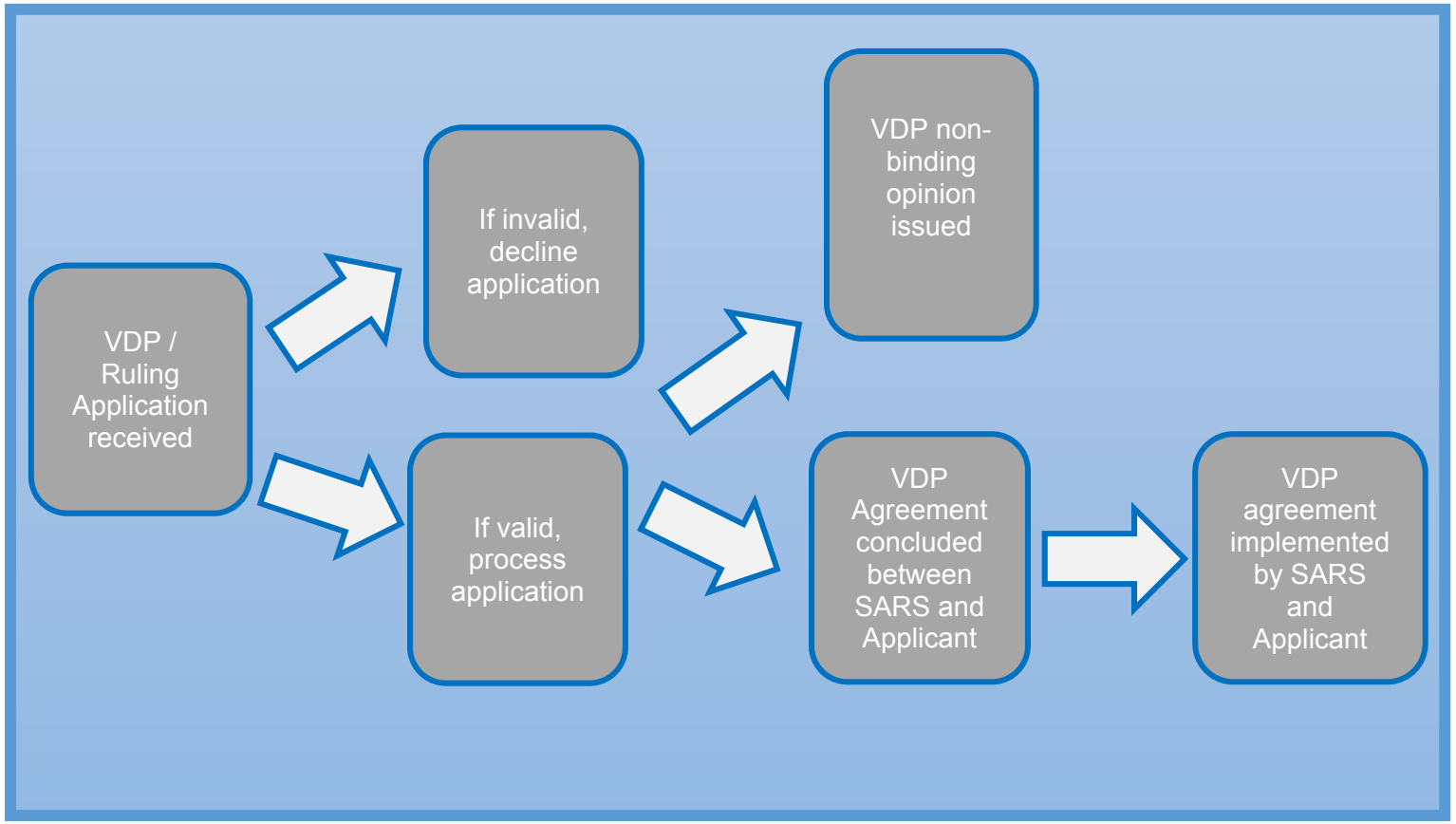


Figure 1: VDP Process

Adapted from: SARS External Guide for Voluntary Disclosure Programme[43]

[43] SARS. 2012. *SARS External Guide for Voluntary Disclosure Programme.* [Online] Available from: http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G01%20-%20Application%20for%20Permanent%20Voluntary%20Disclosure%20-%20External%20Guide.pdf [Downloaded: 2016-03-10].

3.2.4. An evaluation of the characteristics which result in successful VDPs around the world and those presented in South Africa's VDP

When comparing the features identified which result in successful VDPs (paragraph 3.2.2) and the regulations of the SARS VDP (paragraph 3.2.3), South Africa's VDP encompasses majority of the suggested features.

The SARS External Guide for the Voluntary Disclosure Programme, found on the SARS website, provides taxpayers with guidance on the intended meaning of the legislation of the VDP. This guide ensures that the purpose and regulations of the VDP are clear whilst remaining consistent with SARS' general message of fairness and transparency in the system. In addition, the SARS VDP provides guidance on all the pertinent questions described above under paragraph 3.2.2.1 (the who, when, what, where, why and how much). Interestingly to note however, is the fact that the SARS VDP does not argue the reason for eligible taxpayers to voluntarily comply. This may be as a result of the VDP being a general VDP for majority of tax defaults (only excluding the duties and levies charged in terms of the Customs and Excise Act), thus, failing to provide an all-encompassing rationale for voluntary disclosure.

3.2.5. Conclusion

The chapter commenced by highlighting the characteristics of a successful VDP. A thorough and extensive study of the SARS' VDP legislation followed with the intention of evaluating the traits shared between the VDPs implemented worldwide to that of South Africa's programme. The shortfall detected was highlighted.

In summary, South Africa's VDP is comprehensive and comprises of several of the qualities said to result in it being a successful programme. A recommendation is made for increased communication of the arguments for a taxpayer to voluntarily disclose their past defaults.

3.3. Chapter 3: Offshore Voluntary Disclosure programmes

3.3.1. Introduction to Offshore Voluntary Disclosure Programmes

As mentioned, the AEOI will enjoy additional benefits by strengthening governments call for individuals and organisations to voluntarily disclose their hidden offshore assets by motivating such taxpayers to divulge all relevant information. Offshore Voluntary Disclosure Programmes ("OVDPs") have subsequently become a fundamental but temporary function

in a government's compliance strategy to mitigate tax fraud, tax evasion and tax avoidance ahead of the new CRS and AEOI.

Many countries refer to this type of Voluntary Disclosure Programme as an Offshore Voluntary Disclosure Programme ("OVDP") as the programme has been designed to target taxpayers with undisclosed offshore accounts and / or assets. The terms of the programme usually provides a special dispensation for this specific group of taxpayers to declare offshore hidden accounts and / or assets and settle the resultant unpaid tax liability for previous tax periods. This dispensation is usually for a limited time period and grants the applicant reduced disciplinary and corrective actions such as forgoing civil and criminal penalties. In addition, OVDPs usually encourage applicants to repatriate the capital invested abroad. [44]

Based on the description of an OVDP above, it can be deduced that South Africa's Special Voluntary Disclosure Programme ("SVDP") is in fact what is commonly referred to as an OVDP. The SVDP is a special compliance programme founded upon South Africa's current VDP and targets taxpayers who have had their offshore accounts and / or assets concealed from SARS and the South African Reserve Bank ("SARB").

Mirroring the structure followed under Chapter 2 (Voluntary Disclosure programmes), the subsequent paragraphs will focus on the traits of a successful OVDP, SARS' SVDP and an evaluation of factors shared between OVDPs implemented around the world to that of South Africa's programme whilst highlighting any shortfalls.

3.3.2. The characteristics of a successful OVDP

As previously discussed, the OECD distinguishes the traits on which successful VDPs are founded upon based on their comparison of 47 VDPs enacted worldwide. The same qualities would need to be evident in an OVDP in order for it to be considered successful (refer to paragraph 3.2.2 above for a discussion of these qualities). In addition to these characteristics, the OECD has identified additional features which would further enhance a compliance programme, such as the OVDP, to secure and persuade even more taxpayers

[44] OECD. 2015. *OECD Update on Voluntary Disclosure Programmes: A pathway to tax compliance.* [Online] Available from: https://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf [Downloaded: 2016-10-08].

to willingly confess their previous non-compliant behaviour and benefit from such a programme.

To further enhance a compliance programme, such as an OVDP, the tax authorities must provide comprehensive guidance on the following matters:[45]

3.3.2.1. Guidelines are provided on the process to voluntarily disclosure information

The process for an OVDP must be well-defined and outlined. The OVDP legislation should be provided in an understandable comprehensive "how to guide" / information pack / handbook. This booklet must outline the OVDP process, the people to contact at the tax authority should queries arise, the legislation summarised in layman's terms and it must detail the documents required to make a valid disclosure. This booklet should be made available on the tax authority's website in an easy and accessible location. Finally, it is suggested that media alerts are publicised in order for the public to be made aware of the programme and where to access more information on the programme.

3.3.2.2. Record retention and the significance of incomplete documents

Considering that record retention periods vary from country to country and as VDPs usually require that a disclosure is full and complete, guidance should be provided on the consequence and process to follow should the applicant not have complete records (for example estimations to be made with detailed reasoning provided for the estimation).

Furthermore, guidance must be provided on the number of years which is required to be disclosed.

3.3.2.3. Confidentiality and the use of data collected

Communication must be issued that an applicant's identity and the data released to a tax authority is kept confidential and the applicant's privacy is maintained. To the extent that data and privacy protection is a concern, the tax authority should consider introducing a specialised unit responsible for processing applications.

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[45] OECD. 2015. *OECD Update on Voluntary Disclosure Programmes: A pathway to tax compliance.* [Online] Available from: https://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf [Downloaded: 2016-10-08].

Finally, there should be communication, wherever possible, as to whether the data collected via the VDP process will be used and shared between government authorities. In addition, where applicable, the process which will be followed to share the information in a secure manner and to which government authorities the data will be shared must be clearly publicised.

3.3.2.4. Future compliance monitoring

Applicants have advised that they have concerns that post their voluntary disclosure, their tax authority will increase the number of investigations and audits performed on their affairs. Guidance of the tax authority's compliance monitoring principles should be provided. To the extent that the voluntary disclosure applications are dealt with by a specialised unit, communication regarding this must be made as it is unlikely that future compliance monitoring will be affected.

3.3.2.5. Gathering of information from third parties

Guidance should be provided with regards to the circumstances the tax authority will be required to independently gather and contact third parties (for example banking institutions, business partners or employers). To the extent that this is not done when an applicant voluntarily discloses information, this must be conveyed during the campaign.

3.3.2.6. Costs to be incurred for penalties and interest

The voluntary disclosure guide must detail the penalties which will be charged and the interest levied and how this will be calculated. Wherever necessary, circumstances that could allow for a lower amount or no penalties charged and / or interest levied must be detailed. Tax authorities must be cognisant of the fact that high penalty and interest rates could prevent eligible taxpayers from coming forward due to high costs. The rationale for VDPs and OVDPs is that the applicant pays more than had they correctly and timeously met their tax obligations but with less repercussions than had they continued to conceal their misconduct and had been discovered by their tax authority. Therefore, relief of either penalties charged or interest levied should be considered.

3.3.2.7. Possibility of criminal action

The guide booklet should express whether criminal action will be sought. To the extent that criminal action could be taken, examples of the situations which would warrant such actions must be provided.

3.3.2.8. Anonymous queries

Tax authorities should consider adding an anonymous queries option where taxpayers can be provided with first-hand guidance on understanding the outcome of their disclosure and the consequences thereof.

3.3.2.9. Repatriation of assets

OVDPs should not make it a requirement that taxpayers repatriate their assets held offshore to their home country in order to be able to participate in the programme.

The next paragraphs will detail the SARS SVDP and the chapter will be concluded with a comparison of the characteristics which result in successful OVDPs around the world as well as the additional recommended features (per the discussions under paragraphs 3.2.2 and 3.3.2 respectively) and those presented in South Africa's SVDP.

3.3.3. An SVDP Application to SARS and SARB

3.3.3.1. Introduction

In light of the agreements signed for the AEOI, South Africa's Finance Minister, Pravin Gordhan, in the 2016 South African Budget Speech stated the following:

> *'With effect from 2017, international agreements on information sharing will enable tax authorities to act more effectively against illicit flows and abusive practices by multinational corporations and wealthy individuals'.* [46]

Subsequent to the statement above, the Department of National Treasury released a media statement publicising the details of the SVDP announced in the 2016 South African Budget

[46] Gordhan, P. 2016. *2016 Budget Speech, Pravin Gordhan on 24 February 2016.* [Online] Available from: http://www.treasury.gov.za/documents/national%20budget/2016/ [Accessed: 2016-08-22].

Speech. The media statement confirmed that the SVDP was an additional opportunity for non-compliant taxpayers, who may still have undisclosed offshore assets and income, to regularise their tax and exchange control affairs by voluntarily coming forward to disclose these defaults to SARS and SARB. Furthermore, it clarified that SARS and SARB would be working together to assess one combined application of the SVDP application for both tax non-compliance and exchange control contraventions. [47]

3.3.3.2. An overview of the SVDP (for both tax (SARS) and exchange control purposes (SARB))

As SARS and SARB are working together to assess one combined application of the SVDP application for both tax non-compliance and exchange control contraventions, the detail regarding the overview of the period of availability and persons who qualify is the same for both tax and exchange control purposes. However, the requirements for a valid SVDP, the calculations involved and relief offered differ. Therefore, the overview of the SVDP will be discussed first followed by a separation of requirements, calculations and relief offered for tax and exchange control purposes.

3.3.3.2.1. Period of availability to apply for SVDP

The SVDP application will be available for a limited time period. It was proposed at first to only be available for a period of six months,[48] and was later extended to be available for a period of nine months. [49] In a National Treasury media release, dated December 2016, titled the Explanatory Memorandum on the SVDP, the period was once again extended to be for eleven months with an end date indicated by National Treasury of 31 August 2017. As a

[47] Department of National Treasury. 2016a. *Special Voluntary Disclosure Programme in respect of offshore assets and income.* Media statement issued on Wednesday, 24 February 2016. [Online] Available from: http://www.treasury.gov.za/comm_media/press/2016/2016072001%20-%20Statement%20on%20Voluntary%20Disclosure%20Programme.pdf [Downloaded: 2016-05-25].

[48] Department of National Treasury. 2016a. *Special Voluntary Disclosure Programme in respect of offshore assets and income.* Media statement issued on Wednesday, 24 February 2016. [Online] Available from: http://www.treasury.gov.za/comm_media/press/2016/2016072001%20-%20Statement%20on%20Voluntary%20Disclosure%20Programme.pdf [Downloaded: 2016-05-25].

[49] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

result, SARS and SARB are in a position to receive SVDP applications during the period 1 October 2016 to 31 August 2017.[50] The SVDP application is running simultaneously with the permanent VDP application (discussed above in chapter 3.2). Any applications received before 1 October 2016 and after 31 August 2017 would be treated as VDP applications and any application during 1 October 2016 and 31 August 2017 would need to clearly indicate whether it was a VDP or SVDP application.[51]

3.3.3.2.2. Persons that qualify for SVDP relief

An individual and a company may apply for special voluntary disclosure relief (in a personal, representative, or other capacity). Trusts do not qualify for the SVDP, however, settlors, donors and beneficiaries of foreign discretionary trusts (including deceased estates) can take part in the SVDP. In order to be able to do so, these individuals would need to designate that the trust's offshore assets and income is deemed to be held by and accrued to them. This could also include persons who, regardless of the form, could be considered in substance the settlors, donors or beneficiaries.[52]

In line with the VDP legislation (discussed above in paragraph 3.2.3.2), a person and / or company (hereafter referred to as "a person") who may be aware of a pending or commenced audit or investigation may not apply for the SVDP. In addition, mirroring that of the VDP legislation, should the scope of the audit or investigation relate to other areas (other than foreign assets or foreign taxes), such persons may still qualify to apply for relief under

[50] Department of National Treasury. 2016b. *Explanatory memorandum on the Special Voluntary Disclosure Programme in respect of offshore assets and income contained in part ii of the rates and monetary amounts and amendment of revenue laws bill 19 of 2016.* Media statement issued on Thursday, 15 December 2016. [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/ExplMemo/LAPD-LPrep-EM-2016-03%20-%20EM%20on%20SVDP%20in%20respect%20of%20Offshore%20Assets%20and%20Income%20contained%20in%20Part%20II%2015%20December%202016.pdf [Downloaded: 2017-01-07].

[51] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

[52] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

the SVDP.[53] However, disclosures where SARS has obtained information in relation to the values of the foreign assets and foreign taxes, in terms of any international exchange of information process, will not qualify for the SVDP application. Should this be the case, SARS will inform the applicant thereof. Finally, disclosures in which the taxpayer disputes and contends that all or part of the seed money or subsequent deposits or funding of foreign assets are not taxable in South Africa or have already been taxed in South Africa, may not apply for the SVDP. The permanent VDP as set out in the TAA (discussed above in chapter 3.2.3), may be used for such disclosures. [54]

3.3.3.3. SVPD Tax requirements, calculation and relief

3.3.3.3.1. Requirements to qualify for SVDP Tax relief

According to the Department of National Treasury media statement released on 24 February 2016, a person may apply for SVDP relief from SARS under the same conditions as set out in Chapter 16 Part B of the TAA ("Voluntary Disclosure Programme").[55] As a result, a person applying for SVDP relief must meet the requirements contemplated in section 227 of the TAA. The requirements for a voluntary disclosure relief are that the disclosure must:

- be made voluntarily;
- involve a default which has not previously been disclosed in relation to foreign assets or foreign taxes;
- be full and complete in all material respects;
- involve the potential imposition of an understatement penalty in respect of the default;
- not result in a refund due by SARS; and

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[53] Department of National Treasury. 2016a. *Special Voluntary Disclosure Programme in respect of offshore assets and income.* Media statement issued on Wednesday, 24 February 2016. [Online] Available from: http://www.treasury.gov.za/comm_media/press/2016/2016072001%20-%20Statement%20on%20Voluntary%20Disclosure%20Programme.pdf [Downloaded: 2016-05-25].

[54] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

[55] Department of National Treasury. 2016a. *Special Voluntary Disclosure Programme in respect of offshore assets and income.* Media statement issued on Wednesday, 24 February 2016. [Online] Available from: http://www.treasury.gov.za/comm_media/press/2016/2016072001%20-%20Statement%20on%20Voluntary%20Disclosure%20Programme.pdf [Downloaded: 2016-05-25].

- be made in the prescribed form and manner. [56]

In addition to the above requirements, the applicant must also provide all documentation and information as specified in the SVDP application form for SVDP relief to be granted. This documentation must include (but is not limited to):

- a description of the source which gave rise to all of the unauthorised foreign assets;
- documented evidence of the asset (for example the bank account statements, equity shareholders agreements, property registration documents etc.);
- validation of the date on which the foreign assets were acquired. To the extent that the applicant is not able to determine the exact acquisition date, a reasonable approximation can be provided together with the appropriate explanation of how this date was determined and why exact dates cannot be provided;
- the link that ties the assets to the applicant (for example owner, shareholder, beneficiary of the foreign assets);
- an account of the structure that was employed to create the assets; and
- signed Power of Attorney form (where applicant is represented).[57]

Per the above, in order for a SVDP application to be considered valid, the applicant is required to complete the SVDP application in the prescribed form and manner. This is accomplished by completing the VDP01 form. An example of the VDP01 form is included in Appendix B. To the extent the taxpayer decides to proceed with the SVDP application, the taxpayer is required to mark clearly on the VDP01 form that he / she is applying for the SVDP by ticking the box on page 1 of the VDP01 form to the question 'Are you applying for SVDP Tax relief in terms of Off-shore assets and Investment income' – See Appendix B.

[56] South Africa. 2012. Tax Administration Act 28 of 2011. *Government Gazette*, 565(35491):1-193. [Online] Available from: http://www.gov.za/sites/www.gov.za/files/a28_2011.pdf [Downloaded: 2016-09-10].

[57] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

3.3.3.3.2. SVDP Tax calculation of tax due to SARS

From the above requirements, it is clear that the aim of such an application is to "come clean" with SARS in relation to a person's foreign asset holdings.

In order to calculate the tax due to SARS in terms of the SVDP relief requirements, a person is required to obtain the market value of all the undeclared foreign assets (that is the capital that funded the asset as well as the subsequent profits, gains and deposits) held outside of South Africa between 1 March 2010 and 28 February 2015. The SVDP requires that 40% of the highest value of the aggregated market value of these assets must be included in the taxable income and taxed during the person's 2015 tax year period. The highest market value is the amount translated from foreign currency to Rands at the spot rate at the end of the tax period.[58]

In addition to the above documents, following table must be completed and accompanying the SVDP application form in order to obtain the SVDP tax relief:

Table determining tax relief				
Tax period	PART A Asset acquisition value and subsequent additional funding		PART B 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				

[58] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

Table 4: Table required to be completed and submitted as supporting documents with SVDP application for tax defaults[59]

The guidance provided, in the SVDP draft guide, on the above table is as follows:

- Part A is the original undeclared income plus the investment returns, gains and / or other taxable events held outside of South Africa between 1 March 2010 and 28 February 2015. This income will be considered exempt from income tax, donations tax and estate duty liabilities (see paragraph below regarding the relief received);
- Part B is used to determine the highest aggregated market value of these assets between 1 March 2010 and 28 February 2015. The highest value must be multiplied by 40% and this must be included in the person's taxable income in the 2015 tax year period;
- With regards to the amounts to be completed for the period prior to 1 March 2010, to the extent that the applicant is not able to determine the precise amounts, a reasonable approximation can be used together with the appropriate explanation of how this was determined (calculations may be requested by SARS if required). [60]

3.3.3.3.3. Relief offered from SARS (for default/s in terms of tax declared and / or paid)

The following tax relief will be offered to a person who qualifies for SVDP relief and enters into a special voluntary disclosure agreement:

- the original undeclared income, which resulted in the purchase / investment into the foreign asset, will be exempt from income tax, donations tax and estate duty liabilities;
- investment returns and gains and / or other taxable events preceding 1 March 2015 will be considered exempt from tax (that is only 40% of the highest market value will

[59] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

[60] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

be taxed; the returns thereon from 1 March 2010 to 28 February 2016 will be considered exempt and not taxed as well);

- grant 100% relief in respect of understatement penalty (as such, the understatement penalty percentage table (see table 3) above will not apply);
- grant 100% relief in respect of an administrative non-compliance penalty, that may be imposed under the TAA or a penalty imposed under a tax Act;
- Interest on tax debts as a result of the disclosure will be levied from the 2015 tax year period; and
- SARS will not pursue criminal prosecution for a statutory offence under a tax Act arising from the default or a related common law offence.[61]

3.3.3.4. SVPD Exchange control requirements, calculation and relief

3.3.3.4.1. Requirements to qualify for SVDP Exchange control relief

An applicant who applies for relief from past tax defaults by declaring income and capital gains from assets held offshore typically has to complete a corresponding disclosure of funds and / or investments held offshore in contraventions of the Exchange Control Regulations.[62] Post the announcement of the SVDP by the Finance Minister, Pravin Gordhan, FinSurv released Exchange control Circular 6/2016 ("Circular 6/2016") on 13 July 2016 outlining and regulating the Exchange Control rules of the SVDP.[63]

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[61] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* . [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

[62] KPMG. 2016. *Voluntary disclosure in South Africa.* Johannesburg: Tax and Legal Department. [Online] Available from: https://home.kpmg.com/content/dam/kpmg/pdf/2016/03/ch-tax-voluntary-disclosure-in-south-africa-en.pdf [Downloaded: 2016-11-04].

[63] South African Reserve Bank Financial Surveillance Department. 2016. *Exchange control Circular 6/2016. Proposed joint tax and exchange control Special Voluntary Disclosure Programme.* [Online] Available from: https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Exchange%20control%20Circular%20No.%20%206-2016%20and%20Special%20Voluntary%20Disclosure%20Programme%20Attachment.pdf [Downloaded: 2016-10-20].

The disclosure of the assets held aboard in contravention of the Exchange Control Regulations must be disclosed to FinSurv and meet the following requirements to be considered for SVP relief:

- the applicant must be a South African resident or former resident – this includes individuals, sole proprietorships, partnerships, deceased estates, insolvent estates, South African trusts, close corporations and companies;
- the application must be made voluntarily;
- the application must be made within the eleven month window of 1 October 2016 and 31 August 2017;
- the application must disclose assets that were held offshore on or before 29 February 2016 and held in contravention of the Exchange Control Regulations (that is if an individual does not have a contravention as at 29 February 2016, that individual will not be able to apply for relief under the SVDP and will need to apply outside of the SVDP process);
- the application must be submitted via the SARS e-filing platform or at any branch nationwide on the Exchange Control application form (although a joint initiative and administered on SARS e-filing, the application forms differ for the purposes of disclosing offshore assets for tax and exchange control);
- the applicant must make a complete declaration of all unauthorised foreign assets held offshore stipulating the following:
    - the source of all unauthorised foreign assets; and
    - the details of the method in which such assets were transferred and kept outside of South Africa;
- the applicant must provide all documentation and information as specified in the SVDP application form. This documentation must include (but is not limited to):
    - the location of where the unauthorised asset is retained offshore;
    - the market value of the unauthorised foreign asset as at 29 February 2016 in the foreign currency of the country in which such asset is located;
    - an explanation of the unique characteristics of such foreign asset;
    - proof of the value of the asset, from the country where the unauthorised asset is held, in one of the following forms:
        - a valuation certificate by a valuator of that country; or
        - a valuation by a sphere of government of that country; or

        - an original or certified statement of account indicating the balance or market value; or
        - any other form of proof of value of that foreign asset as the Treasury may on good cause allow to be submitted.
    - a sworn affidavit or solemn declaration of the contravention; and
    - any other documentation requested as may be required for the SVDP application.[64]

Per the above, in order for a SVDP application to be considered valid, the applicant is required to complete the SVDP application in the prescribed form and manner on SARS e-filing. This is accomplished by completing the SVDP01 form. An example of the SVDP01 form is included in Appendix C.

3.3.3.4.2. SVDP calculation of Exchange control contravention levy due to SARB

Based on the requirements for a valid SVDP tax application, it is clear that in order to provide SARS with details regarding the default, the person will need to calculate the tax and exchange control contravention levy due to SARS and SARB respectively.

In order to calculate the exchange control contravention levy due to SARB, a person is required to obtain the market value of all the unauthorised foreign assets (that is the capital that funded the asset as well as the subsequent profits, gains and deposits) or the proceeds thereof held outside of South Africa on 29 February 2016. The following percentage levy applies on the value of the unauthorised asset in each of the scenarios below:

[64] South African Reserve Bank Financial Surveillance Department. 2016. *Exchange control Circular 6/2016. Proposed joint tax and exchange control Special Voluntary Disclosure Programme.* Online] Available from: https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Exchange%20control%20Circular%20No.%20%206-2016%20and%20Special%20Voluntary%20Disclosure%20Programme%20Attachment.pdf [Downloaded: 2016-10-20].

Scenario	Asset repatriated (Yes/No)	Levy paid from offshore funds (Yes/No)	Percentage Levy (%) calculated on unauthorised asset's market value
(i)	Yes	Yes	5%
(ii)	No	Yes	10%
(iii)	No	No	12%

Table 5: Percentage levy payable to SARB on the value of unauthorised assets held outside of South Africa on 29 February 2016[65]

The following conditions apply to receive the SVDP relief:

- applicants will not be allowed to deduct any exchange control allowance (or any remaining portion thereof) from the amount levied (that is the unauthorised asset's market value at 29 February 2016 at the applicable percentage levy per the above);
- any fees or commissions may not reduce the applicable levy;
- the applicant has a period of three months from the notice date received from FinSurv to pay the applicable levy;
- in instances where the 5% and 10% levy applies, the funds to pay the levy must be returned to South Africa and converted into South African Rands at that day's spot exchange rate;
- where the unauthorised foreign assets declared are denominated in multiple currencies, it is accepted that an applicant may convert the foreign currency amounts to US Dollars for the purposes of calculating the levy as at 29 February 2016;
- the levy is required to be paid into to an account held at the Corporation for Public Deposits. Thereafter, FinSurv will provide confirmation of administrative relief.[66]

[65] SARS. 2016. *SARS Guide: Special Voluntary Disclosure Programme (v1.2).* [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

[66] South African Reserve Bank Financial Surveillance Department. 2016. *Exchange control Circular 6/2016. Proposed joint tax and exchange control Special Voluntary Disclosure Programme.* Online] Available from: https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Exchange%20control%20Circular%20No.%20%206-

3.3.3.4.3. Relief offered from SARB (for exchange control contravention/s)

The percentage levy payable to SARB under the SVDP process can be considered a substantial relief. The penalty for voluntarily approaching FinSurv outside of the SVDP process or choosing to continue to avoid voluntary disclosure and being caught can have severe consequences. [67]

As mentioned below in paragraph 3.4.3.1, should a person decide not to declare their unauthorised foreign assets and / or structures to FinSurv via the SVDP process, but voluntarily make full disclosure to FinSurv, a 10% to 40% of the market value of the unauthorised assets will be charged as an exchange control contravention levy. This percentage levy is at the determination of FinSurv and will be influenced by whether the assets remain offshore and if foreign assets or local assets are used to pay this levy.

On the other hand, should a person decide to not disclose their unauthorised assets to FinSurv and this is discovered by SARB, FinSurv is authorised in terms of legislation, where applicable, to retrieve the full value that is in contravention of the Exchange Control Regulations.[68]

3.3.3.4.4. SVDP Exchange Control supporting documents

Below is a list of documents requested by FinSurv when an SVDP Exchange Control application is submitted (note that the below list is not an exhaustive list):

- ID or passport copy of the applicant (letter of executorship / death certificate in relation to deceased estates);

2016%20and%20Special%20Voluntary%20Disclosure%20Programme%20Attachment.pdf [Downloaded: 2016-10-20].

[67] Department of National Treasury. 2016a. *Special Voluntary Disclosure Programme in respect of offshore assets and income.* Media statement issued on Wednesday, 24 February 2016. [Online] Available from: http://www.treasury.gov.za/comm_media/press/2016/2016072001%20-%20Statement%20on%20Voluntary%20Disclosure%20Programme.pdf [Downloaded: 2016-05-25].

[68] Department of National Treasury. 2016a. *Special Voluntary Disclosure Programme in respect of offshore assets and income.* Media statement issued on Wednesday, 24 February 2016. [Online] Available from: http://www.treasury.gov.za/comm_media/press/2016/2016072001%20-%20Statement%20on%20Voluntary%20Disclosure%20Programme.pdf [Downloaded: 2016-05-25].

- the unauthorised foreign asset's market value as at 29 February 2016 in the foreign currency in which such asset is situated such as (where appropriate):
    - a fixed property valuation by a valuator;
    - bank statements as at 29 February 2016.
- a description of the identifying characteristics and location of such foreign asset/s;
- any additional information relating to the unauthorised foreign asset/s;
- a sworn affidavit or solemn declaration of the contravention;
- proof of authority to act by representatives;
- a Trust Deed and the latest audited financial statements in respect of a foreign trust; and
- an organisational diagram / family tree containing full details of the structure and the funding therefore (included any cash flows into and out of South Africa) in respect of loop structures.[69]

3.3.3.5. SVDP conclusion

The SVDP is designed as the last saving grace from SARS and SARB for taxpayers who still have undisclosed offshore assets and / or income to come forward and make "full and complete" disclosure of these assets. The time for bringing this information to SARS and SARB's attention is now prior to the first exchange of information via the AEOI and CRS coming into place in September 2017.

The relief provided from SARS is that 40% of the highest value of the aggregate of all assets located outside South Africa, between 1 March 2010 and 28 February 2015, will be included in taxable income and subject to tax in South Africa. The undeclared income that initially resulted in the investment of the assets above, will be exempted from income tax, donations tax and estate duty. In addition, SARS will grant 100% relief in respect of understatement penalties.

In terms of exchange control contraventions, FinSurv has reduced the levy to either 5%, 10% or 12% (depending on the circumstances and if the assets will be brought back to South Africa) of the market value of the assets held abroad on 29 February 2016.

[69] Duffy, M. 2017. *Regularisation for Individuals and Trusts.* South African Institute of Tax Webinar on 2017-03-15.

3.3.4. An evaluation of the characteristics which result in successful SVDPs around the world and those presented in South Africa's SVDP

When comparing the features identified as resulting in successful VDPs (paragraph 3.2.2 and 3.3.2 respectively) and the regulations of South Africa's SVDP (paragraph 3.3.3), South Africa's SVDP encompasses the majority of the suggested factors as well as the additional features suggested for OVDP.

SARS has developed a SARS Guide for the Special Voluntary Disclosure Programme which can be found on the SARS website under the SVDP category. In addition, SARS has included the SVDP Explanatory Memorandum published by National Treasury on their website. These booklets provide taxpayers with guidance on the intended meaning of the SVDP legislation and ensures the document requirements are clear (as well as what to do in instances where documents are no longer available). Furthermore, the procedure of how to calculate the tax and exchange control costs of voluntarily disclosing offshore assets via the SVDP is provided. The booklet advises that no criminal action will be taken as well as no understatement penalties charged. In addition, the booklet also explains that no-name queries may be submitted. With regards to the repatriation of assets, the SVDP does not make this mandatory but it does include a higher levy for exchange control purposes to the extent that assets are not brought back to South Africa.

In contrast to the VDP, the SVDP places emphasis on the reason for South African taxpayers to use the SVDP and highlights the fact that in just a few months the first exchange of information will take place making it highly unlikely to be able to continue hiding assets and investment income abroad from SARS. The timing of the SVDP therefore encourages taxpayers to regularise historic tax defaults and / or exchange control contraventions prior to the AEOI coming into effect which assists in discouraging non-compliance and cultivates levels of future compliance by widely publicising the benefits of AEOI to SARS.

A shortfall of the SVDP is that the guidebook, the explanatory memorandum and media statements are being released during the time period of availability for the SVDP. This could damage the campaign or result in majority of the applications being received very close to the end date of the programme due to applicants feeling a sense of uneasiness based on lack of information and / or information being amended or clarified at a later stage. Furthermore, the programme has not focused on the benefits to the fiscus or how the programme will benefit the country in the long run but rather has focused on the benefit to

non-compliant taxpayers. This could lead to disgruntled taxpayers, who have always been compliant by paying their fair share of tax, feeling that the tax system had been weak in the past and losing credibility in their view.

3.3.5. Conclusion

The chapter commenced by providing a description of an OVDP and the characteristics thereof. It was established that based on the analysis of attributes of an OVDP, South Africa's SVDP is in fact commonly called an OVDP worldwide. The chapter continued with the next paragraph highlighting the additional characteristics of a successful OVDP whilst emphasising that the features described in paragraph 3.2.2 are still vital for successful OVDPs. A thorough and extensive study of the SARS SVDP legislation followed with the intention of evaluating the traits shared between the VDPs and OVPs implemented worldwide to that of South Africa's SVDP. The shortfalls detected were highlighted and exposed.

In summary, South Africa's SVDP is comprehensive and comprises of several of the qualities said to result in it being a successful programme. Based on the upcoming exchange of information and the characteristics of the programme, it is believed that the programme will do well with many applications for both the permanent VDP and SVDP leading up to the first exchange of information in September 2017.

3.4. Chapter 4: Comparison of VDP and SVDP in South Africa

3.4.1. Introduction

Based on the foundation that the SVDP (discussed above in paragraph 3.3.3) is running simultaneously with the permanent VDP application (discussed above in paragraph 3.2.3), applicants with assets hidden abroad are given the opportunity to assess which programme provides greater relief based on the applicant's particular set of facts.[70] Any applications received before 1 October 2016 and after 31 August 2017 would be treated as VDP

[70] Integritax. 2016. *Special Voluntary Disclosure Programme: Tax and Exchange Control relief.* Online] Available from: https://www.saica.co.za/integritax/Archive/Integritax_Nov_2016_Issue_206.pdf [Downloaded: 2017-01-08].

applications and any application during 1 October 2016 and 31 August 2017 would need to clearly indicate whether it was a VDP or SVDP application.[71]

3.4.2. Comparison between VDP and SVDP Tax

In order for an applicant to assess which programme (VDP or SVDP Tax) provides greater relief, the applicant's particular set of facts and investments must be investigated. Based on these facts and investments, a calculation can be performed to assess which programme provides the greater relief. An applicant can then decide which programme he / she will be applying for and will need to clearly indicate whether it is a VDP or SVDP application. [72]

An example of a VDP and SVDP comparison calculation is illustrated in Appendix D. This calculation demonstrates the calculation required for a VDP and SVDP Tax application. In this example, the taxpayer will obtain greater relief by applying for the SVDP Tax (R1 282 307.61) as opposed to the VDP (R1 336 230.43). As mentioned, the applicant's particular set of facts and investments must be investigated and a comparison calculation performed to establish which application provides the taxpayer with the greatest relief. In this example, the taxpayer is required to mark clearly on the VDP01 form that he / she is applying for the SVDP by ticking the box on page 1 of the VDP01 form to the question 'Are you applying for SVDP Tax relief in terms of Off-shore assets and Investment income' – See Appendix B.

In addition to the tax calculation provided in Appendix D, below is a table which compares the parameters of the VDP versus the SVDP Tax:

[71] SARS. 2016. SARS Guide: Special Voluntary Disclosure Programme (v1.2). [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/Drafts/LAPD-LPrep-Draft-2016-90%20-%20SVDP%20Guide%20v1-2.pdf [Downloaded: 2016-10-20].

[72] Department of National Treasury. 2016b. Explanatory memorandum on the Special Voluntary Disclosure Programme in respect of offshore assets and income contained in part ii of the rates and monetary amounts and amendment of revenue laws bill 19 of 2016. Media statement issued on Thursday, 15 December 2016. [Online] Available from: http://www.sars.gov.za/AllDocs/LegalDoclib/ExplMemo/LAPD-LPrep-EM-2016-03%20-%20EM%20on%20SVDP%20in%20respect%20of%20Offshore%20Assets%20and%20Income%20contained%20in%20Part%20II%2015%20December%202016.pdf [Downloaded: 2017-01-07].

VDP	SVDP Tax
'Permanent' VDP in terms of TAA.	Applications to be submitted between 1 October 2016 and 31 August 2017.
Investment income (interest, dividends and capital gains) must be declared. Presently applications need to make declarations from the 2002 tax year (1 March 2001) (where applicable).	Receipts and accruals prior to 1 March 2015 are exempt.
To the extent that capital tax is due, the capital tax is payable. Seed money is not taxable to the extent that the seed money (capital) was transferred offshore with after-tax monies.	SARS will seek to tax 40% of the highest value of the South African Rand value of the aggregate of all assets situated outside South Africa between 1 March 2010 to 28 February 2015 that were derived from undeclared receipts and accruals.
Interest remains payable from the first year of reported defaults.	Interest is due and payable.
No understatement penalties will be levied.	No understatement penalties will be levied.
Relief from administration penalties (excluding penalties on the late submission of returns).	Relief from administration penalties (excluding penalties on the late submission of returns).
Relief from criminal prosecution.	Relief from criminal prosecution.
Years under review : tax years ended February 2001 – to current tax year	Years under review : tax years ended February 2011 – February 2015
SARS e-filing form VDP01 (see Appendix B).	SARS e-filing form VDP01 (see Appendix B).

Table 6: Table comparing the parameters of the VDP versus the SVDP Tax

3.4.3. Comparison between Exchange Control regularisation and SVDP Exchange Control

The permanent VDP (referred to in paragraph 3.3.3) relates only to taxes and not to Exchange Control non-compliance. Therefore, should a taxpayer have Exchange Control contraventions, he / she would need to regularise these contraventions outside of the SVDP process (at their Authorised Dealer) or through the SVDP (while this is still available). The paragraph below discusses the levy involved should an individual wish to regularise their contraventions outside of the SVDP process. Thereafter, a table comparing the parameters between the process and levies implemented outside of the SVDP process to those within the SVDP is illustrated. The chapter is then concluded.

3.4.3.1. Exchange Control regularisation outside of the SVDP

An individual has the opportunity to regularise his / her exchange control contraventions outside of the SDVP. This disclosure is made via an Authorised Dealer (a bank) and the SVDP form is not required to be completed. The disclosure must include a letter which is to be address to the Compliance and Enforcement division at FinSurv. The disclosure must include the following (but is not limited to):

- verification of the source of all unauthorised foreign assets;
- information regarding the method used to transfer and retain these unauthorised foreign assets offshore;
- documentary evidence of the market value of the unauthorised foreign assets as at 29 February 2016;[73]
- an affidavit confirming the above; and
- supporting documents including financial statements of trusts / companies, trust deed and bank statements. [74]

The contravention levy of between 10% and 40% can apply for regularisation requested for outside of the SVDP. The percentage levy varies but a broad outline is as follows:

- 10% to 20% if one repatriated the whole amount;
- 25% if the person retains the funds offshore; or
- 40% where it is held that there was intentional disregard for exchange control regulations.[75]

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[73] South African Reserve Bank Financial Surveillance Department. 2016. Exchange control Circular 6/2016. Proposed joint tax and exchange control Special Voluntary Disclosure Programme. [Online] Available from: https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Exchange%20control%20Circular%20No.%20%206-2016%20and%20Special%20Voluntary%20Disclosure%20Programme%20Attachment.pdf [Downloaded: 2016-10-20].

[74] Duffy, M. 2017. *Regularisation for Individuals and Trusts.* South African Institute of Tax Webinar on 2017-03-15.

[75] South African Reserve Bank Financial Surveillance Department. 2016. Exchange control Circular 6/2016. Proposed joint tax and exchange control Special Voluntary Disclosure Programme. [Online] Available from: https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Exchange%20control%20Circular%20No.%20%206-2016%20and%20Special%20Voluntary%20Disclosure%20Programme%20Attachment.pdf [Downloaded: 2016-10-20].

In addition to disclosures made which result in a contravention levy being administered, there are additional disclosures which are required to be made via an Authorised Dealer that will not attract any levy but require full disclosure to be made to FinSurv. A discussion regarding these disclosure for natural persons include:[76]

- Immigrants;
  Immigrants are required to declare that they will not place any of their foreign attests at the disposal of any South African resident third party. To the extent that this was not done, this must be declared via the Authorised Dealer.
- Foreign inheritance and legacies from non-resident estates;
  Prior to March 1998, residents who received a foreign inheritance from a non-resident estate were required to declare this to FinSurv. To the extent that this was not done, this must be declared via the Authorised Dealer.
- Foreign inheritance and legacies from resident estates with foreign assets; and
  Residents who receive a foreign inheritance from a resident estate are required to notify FinSurv of the offshore assets and request for exemption to retain the assets abroad. To the extent that this was not done, this must be declared via the Authorised Dealer.
  It is important to note that there are specific rules relating to loop structures which must be taken into account if necessary.
- Foreign earned income
  Prior to July 1997, residents who earned income in a foreign country were required to repatriate these funds to South Africa. To the extent that this was not done, this must be declared via the Authorised Dealer.

The above disclosures must be made via an Authorised Dealer by submitting an affidavit containing the details of the above contraventions.

To summarise and illustrate the parameters of Regularisation outside of the SVDP Exchange Control Application versus the SVDP Exchange Control, below is a table detailing the conditions of each method of disclosure respectively:

[76] South African Reserve Bank Financial Surveillance Department. 2016. Exchange control Circular 6/2016. Proposed joint tax and exchange control Special Voluntary Disclosure Programme. [Online] Available from: https://www.resbank.co.za/RegulationAndSupervision/FinancialSurveillanceAndExchangeControl/Documents/Exchange%20control%20Circular%20No.%20%206-2016%20and%20Special%20Voluntary%20Disclosure%20Programme%20Attachment.pdf [Downloaded: 2016-10-20].

Regularisation outside of the SVDP Exchange Control Application	SVDP Exchange Control
No time limitation in which contraventions were committed.	Applicable to contraventions which occurred on or prior to 29 February 2016.
Possible 20% levy should the funds / investments be repatriated to SA.	A 5% levy will apply where the regularised asset/s are repatriated to South Africa.
Possible 25% levy should the holder elect to retain the funds / investment offshore.	A 10% levy will apply where the regularised assets remain offshore.
Where there are mitigating factors the levy could possibly be reduced.	An additional 2% levy will apply where local assets are utilised to settle the levy. The R10 million foreign investment allowance cannot be used to reduce the amount on which the levy is calculated. Other administrative regularisation is possible in respect of foreign earnings, inheritance etc. (not exhaustive list).
Written (offline) application to FinSurv.	SARS e-filing form SVDP01 (see Appendix C).

Table 7: Table comparing the parameters of Regularisation outside of the SVDP Exchange Control Application versus the SVDP Exchange Control

3.4.4. Conclusion

The chapter commenced with a comparison of the VDP and SVDP Tax which included an illustration of an example calculation of the method of taxation for each application. Further, a table depicting the parameters of each application was provided. The chapter followed on with a comparison of disclosing contraventions outside of the SVDP (via an Authorised Dealer) versus those disclosed via the SVDP Exchange Control route.

Based on table 6 displayed above which compares the parameters of the VDP and SVDP – Tax as well as the calculation depicted in Appendix D, it is important for an applicant to evaluate whether the VDP or SVDP Tax will be more beneficial and provide the greatest relief. As mentioned, the outcome of which application is more beneficial to the applicant will depend on the applicant's particular set of facts and investments.

In contrast, it is recommended that to the extent possible, an applicant must consider disclosing his / her contraventions to SARB via the SVDP Exchange Control route while this is still available. The alternative of disclosing contraventions which carry a levy outside of the SVDP process can be considerably more expensive to the applicant. When preparing the SVDP application, the applicant must take Circular 6/2016 disclosures which do not attract a levy and can be done via an Authorised Dealer as a disclosure to FinSurv into account and disclose these via a written affidavit.

In summary, an applicant must be well informed of his / her options and the best avenues to disclose his / her non-compliance to SARS and SARB to benefit from the programmes available.

3.5. Chapter 5: An International Appraisal (Canada and the United States of America) of Voluntary Disclosure Programmes

3.5.1. Introduction

The previous chapters highlighted the Voluntary Disclosure Programme and Offshore Voluntary Disclosure Programme (specifically referred to as the Special Voluntary Disclosure Programme) implemented in South Africa. This chapter discusses how these programmes operate in different countries, specifically in Canada and the United States of America ("USA"). The chapter then compares the two types of programmes introduced in South Africa with those introduced in Canada and the USA and finally concluding on an appraisal of South Africa's programmes to those abroad.

3.5.2. Voluntary Disclosures Program and Offshore Tax Informant Program in Canada

The Canada Revenue Agency manages several programmes which tackle suspected cases of tax evasion, fraud, and other tax offences. The Canadian tax system requires taxpayers to self-assess and report their income tax liabilities in respect of each taxation year.[77]

[77] Canada Revenue Agency. 2016a. *Compliance.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/cmplnc/menu-eng.html [Accessed: 2017-02-20].

The Canada Revenue Agency has been working with the OECD since 2012 to uncover and share information with regards to non-compliance and tax evasion. In 2013, the Canadian Parliament further strengthen this cause by funding the “Stop International Tax Evasion Program”. This programme was aimed at identifying Canadian tax residents who failed to disclose foreign assets such as funds held in foreign bank accounts, immovable property, interests held in non-resident trusts and shares held in foreign non-resident companies. Thereafter in 2015, Canada joined 100 other jurisdictions in the agreement for financial institutions to collect and share non-resident’s information automatically on an annual basis in terms of the OECD’s AEOI.

3.5.2.1. Introduction to Voluntary Disclosures Program offered in Canada

Prior to the commencement of the AEOI, Canadian taxpayers have been encouraged to make use of the Voluntary Disclosures Program to maximise the relief which can be obtained via the programme and avoid civil gross-negligence penalties and criminal prosecution.[78]

Where a taxpayer previously provided incorrect or incomplete information, or failed to disclose required information previously to the Canada Revenue Agency, the taxpayer may under certain circumstances be permitted to come forward and voluntarily disclose past reporting errors or omissions in exchange for potential penalty relief or potential criminal prosecution by making an application to the Canada Revenue Agency under their Voluntary Disclosures Program.[79]

3.5.2.1.1. Persons that qualify for the Canadian Voluntary Disclosures Program

Canada’s Voluntary Disclosures Program is a well-known, permanent program that is open to individuals, employers, corporations, partnerships, trusts, goods and services tax /

[78] Counter. 2015. *How the CRA will uncover your offshore assets and what you should do about it.* [Online] Available from: https://www.countertax.ca/blog/how-the-cra-will-uncover-your-offshore-assets-and-what-you-should-do-about-it [Accessed: 2017-03-21].

[79] Canada Revenue Agency. 2017a. *Voluntary Disclosures Program - Overview.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/nvstgtns/vdp-eng.html [Accessed: 2017-02-20].

harmonized sales tax (GST / HST) registrant / claimant and registered exporter of softwood lumber products.[80]

3.5.2.1.2. Circumstances under which Canadian Voluntary Disclosures Program relief may be granted

The persons mentioned above, which may qualify for the Canadian Voluntary Disclosures Program, may only obtain relief from penalty and prosecution if he / she:

- failed to fulfil his / her tax obligation;
- failed to report taxable income received;
- claimed expenses which he / she was not entitled to on a tax return;
- failed to remit the company's employees payroll deductions;
- failed to report an amount of goods and services tax / harmonized sales tax (GST/HST);
- failed to file information returns timeously; and
- failed to report foreign sourced income that is taxable in Canada.[81]

3.5.2.1.3. Requirements to qualify for the Canadian Voluntary Disclosures Program

A disclosure must meet the following four requirements in order to qualify as a valid disclosure:

3.5.2.1.3.1. It must be voluntary

The taxpayer must willingly come forward and initiate the disclosure with the Canada Revenue Agency, he / she must not be aware of a:

- pending audit or investigation or other enforcement action into his / her affairs by the Canada Revenue Agency, or
- an audit or investigation that has commenced, but has not yet been concluded; and

[80] Canada Revenue Agency. 2017a. *Voluntary Disclosures Program - Overview.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/nvstgtns/vdp-eng.html [Accessed: 2017-02-20].

[81] Canada Revenue Agency. 2017b. *Voluntary Disclosures Program - Eligibility.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/nvstgtns/lgblty-eng.html [Accessed: 2017-02-20].

- the audit, investigation or enforcement action has a probability of exposing the information which is being disclosed.[82]

3.5.2.1.3.2. It must be complete

The application must include all relevant information which will enable the Canada Revenue Agency to review the application and issue a notice of assessment or notice of revised assessment. Therefore, the taxpayer will need to provide full and accurate facts supported by documentation for all the taxes and tax periods in relation to the disclosure.

During the review, the Voluntary Disclosures Program Officer may request additional detailed documents in order to ascertain details which will support the disclosure made. The taxpayer will need to provide this detail within 90 days from the date the application is submitted to the Canada Revenue Agency.

Further, whilst the disclosure is required to be complete and accurate, the Canada Revenue Agency may not disqualify an application based solely on this having minor errors and / omissions.[83]

3.5.2.1.3.3. It must involve a penalty

The disclosure must involve a penalty which will apply. Some examples of the possible penalties may be a late filing penalty, a failure to remit penalty, an instalment penalty, or a discretionary penalty, such as an omission penalty or a gross negligence penalty. If no penalties apply to the information being disclosed, there is no need to seek penalty relief through the programme.[84]

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[82] Canada Revenue Agency. 2017b. *Voluntary Disclosures Program - Eligibility.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/nvstgtns/lgblty-eng.html [Accessed: 2017-02-20].

[83] Canada Revenue Agency. 2017c. *Income Tax Information Circular Voluntary Disclosures Program.* [Online] Available from: http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r5/ic00-1r5-e.html#a1 [Accessed: 2017-02-20].

[84] Canada Revenue Agency. 2017b. *Voluntary Disclosures Program - Eligibility.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/nvstgtns/lgblty-eng.html [Accessed: 2017-02-20].

3.5.2.1.3.4. It must be one year past the due date or if less than one year, must be included with other returns or filings which qualify

The application must involve an incorrect or incomplete disclosure which was made to the Canada Revenue Agency and the return or filling is already a year or more past due. The application may also include a return or filing which is not a year or more past due but is included as part of the submission along with a number of other returns or filings which do qualify (that this the other returns or filing are a year or more past due).

This requirement has been added in order to ensure that a taxpayer cannot use the Voluntary Disclosures Program to disclose a current year's inaccurate, incomplete or late tax return or filing simply to avoid paying the late filing penalty.[85]

3.5.2.1.4. No-name Voluntary Disclosures Program enquiry

A taxpayer who is uncertain whether he / she would want to proceed with a Voluntary Disclosures Program application or is uncertain of how the Canada Revenue Agency would assess the application, may take part in initial discussions with a Voluntary Disclosures Program Officer on a no-name basis. These discussions are off the record, non-binding and general in nature. The purpose of this no-name disclosure method is to provide the applicant with insight into the process and the relief which could be obtained if the programme is utilised.

Should the application be considered a valid and complete disclosure, apart from the identity of the taxpayer, the Canada Revenue Authority is required to assess and advise, without prejudice, on the tax implication of the disclosure (the taxes and interest which may be due should the programme be utilised). The guidance provided through this no-name method is only valid should the facts and information be true and complete. If it is identified, once the identity of the taxpayer is revealed, that any of the facts submitted may be inconsistent or inaccurate, the advice provided may be invalidated.

The Canada Revenue Agency may only make a final decision and release a notice of assessment or notice of revised assessment once the identity of the taxpayer is revealed.

[85] Canada Revenue Agency. 2017c. *Income Tax Information Circular Voluntary Disclosures Program.* [Online] Available from: http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r5/ic00-1r5-e.html#a1 [Accessed: 2017-02-20].

The taxpayer has 90 days from the date the application is submitted to divulge his / her identity. To the extent that the taxpayer decides not to release his / her identity once guidance on a no-name basis is provided, the taxpayer would then remain at risk of the Canada Revenue Agency identifying the omission and assessing the applicable tax or charge, penalty and interest, in addition to possible criminal investigation and prosecution.[86]

3.5.2.1.5. Submission of the Voluntary Disclosures Program application and supporting documents required

The submission of the Canada Voluntary Disclosures Program application requires that Form RC199, Voluntary Disclosures Program Taxpayer Agreement or a letter which stipulates the same information as Form RC199 is completed and sent electronically via the Canadian My Account, My Business Account, or Represent a Client platform or mailed to the Voluntary Disclosures Program Shawinigan-Sud National Verification and Collections Centre.

The following information pertaining to the taxpayer's disclosure must be submitted:

- 'the name, address, telephone number, social insurance number, partnership number, trust account number, business number, license number, GST/HST registration number or any other identification tax number assigned by the Canada Revenue Agency to the taxpayer
    - if a no-name disclosure, this information would not be required;
- the taxpayer's postal code
    - if a no-name disclosure, only include the first three characters of the taxpayer's postal code;
- gender and age (if an individual and involves a no-name disclosure);
- the address of the taxpayer's authorised representative (if applicable);
- the tax year(s), reporting period(s) or fiscal period(s) involved in the disclosure;
- amount of the disclosure (where applicable);
- type of return(s) involved: personal T1, GST/HST, corporate T2, trust T3, etc.;

[86] Canada Revenue Agency. 2017c. *Income Tax Information Circular Voluntary Disclosures Program.* [Online] Available from: http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r5/ic00-1r5-e.html#a1 [Accessed: 2017-02-20].

- type of information return(s) and/or slip(s) involved (e.g.T3, T4, T1134, T1135) (if applicable);
- type of omission (business income, unremitted GST/HST, investment income, pension income, capital gain, etc.);
- reason for the omission;
- primary business activity, and
- an explanation of how the taxpayer considers that each of the four validity requirements have been met'.[87]

3.5.2.1.6. Relief offered under the Voluntary Disclosures Program

Where a taxpayer qualifies for voluntary disclosures relief (as set out above), the Canada Revenue Agency may:

- not pursue criminal prosecution;
- grant relief in respect of the penalties which would have otherwise be charged for any tax year or fiscal period that ended within the previous 10 years before the calendar year in which the submission is filed (note that the 10 year limitation period rolls forward at the start of each calendar year);
- grant partial relief in the terms of interest levied in respect of assessments for years or reporting periods preceding the three most recent years of returns required to be filed.

It is important to note that the Canada Revenue Agency is not obligated to grant the relief mentioned above and that each application is reviewed and decided upon its own merits. However, if relief is denied or only partly allowed, the Canada Revenue Agency is required to provide the applicant with explanation of the basis for the decision. Should the applicant believe that the application was not exercised in a fair and reasonable manner, the taxpayer may request, in writing, for a second review and the decision to be reconsidered.

On acceptance, the Canada Revenue Agency will issue an assessment, which specifies the penalty and interest relief. If the application results in a reassessment that the applicant

[87] Canada Revenue Agency. 2017c. *Income Tax Information Circular Voluntary Disclosures Program.* [Online] Available from: http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r5/ic00-1r5-e.html#a1 [Accessed: 2017-02-20].

disagrees with, he / she has an opportunity to submit an objection regarding the taxes, but not regarding the penalties and / or interest.[88]

3.5.2.1.7. Conclusion on the Canadian Voluntary Disclosures Program

Based on the number of cases processed and the unreported income declared via the Voluntary Disclosures Program, the Canadian programme has said to be successful. In the 2014-2015 CRA Annual Report to Parliament, it was reported that a total of over CDN$1.3 billion in unreported income was disclosed to the Canada Revenue Agency via all Voluntary Disclosures Programs. Of this total and as a result of the growing importance placed on offshore tax enforcement efforts, CDN$780 million of the CDN$1.3 billion was attributed from offshore voluntary disclosures. Furthermore, it was reported that 19 134 voluntary disclosures received in fiscal year 2014-2015 which is an increase of 21% over the prior year.[89]

3.5.2.2. Introduction to Offshore Tax Informant Program in Canada

The Offshore Tax Informant Program is part of Canada Revenue Agency's efforts to mitigate international tax evasion and aggressive tax avoidance. The Canada Revenue Agency is dedicated to safeguarding Canada's tax base and assuring taxpayers of the fairness and integrity of the tax system. Canada operates on a residency tax system and as a result tax residents are usually taxed on their worldwide income, whereas non-tax residents are taxed on a source basis. In this regard, holding investments offshore is not illegal, however, these residents must ensure that they are disclosing their international investments and the income received therefrom to the Canada Revenue Agency.

In an effort to further mitigate tax avoidance and evasion, the Canada Revenue Agency introduced the Offshore Tax Informant Program. This programme allows for the Canada Revenue Agency to provide monetary awards to whistle-blowers who provide information in

[88] Canada Revenue Agency. 2017c. *Income Tax Information Circular Voluntary Disclosures Program.* [Online] Available from: http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r5/ic00-1r5-e.html#a1 [Accessed: 2017-02-20].

[89] Canadian Tax Amnesty.ca. Not dated. Voluntary Disclosure CRA Latest Statistics – Toronto Tax Lawyer Commentary. [Online] Available from: https://www.canadiantaxamnesty.ca/article/voluntary-disclosure-cra-statistics/ [Accessed: 2017-03-24].

relation to significant international tax non-compliance which leads to the collection of taxes owing.[90]

3.5.2.2.1. Persons that qualify for the Offshore Tax Informant Program

An informant may qualify for the Offshore Tax Informant Program if:

- the non-compliance being reported is a foreign investment; and
- the potential federal tax, excluding interest and penalties, is greater than CDN$100 000.

The information provided must have significance and include satisfactory, precise, and credible facts that will allow the Canada Revenue Agency to validate the claim. The information must not already be known to the Canada Revenue Agency, or considered to be anticipated or expected and without supportive facts.[91]

Based on the above, the Informant is required to be reporting on international tax non-compliance. International tax non-compliance activities include the following (list is not exhaustive but for illustration purposes):

- undeclared Canadian taxable income that has been transferred outside of Canada;
- undeclared foreign taxable income which is retained offshore;
- undeclared foreign property and the receipts received from the property;
- undeclared trusts held offshore; and
- tax avoidance arrangements that consist of offshore transactions.[92]

3.5.2.2.2. Offshore Tax Informant Program Award process

To the extent that the Informant provides information which results in the collection of tax owing to the Canada Revenue Agency, the award for bringing this information forward will

[90] Canada Revenue Agency. 2016b. *Offshore Tax Informant Program*. [Online] Available from: http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/menu-eng.html [Accessed: 2017-03-24].

[91] Canada Revenue Agency. 2016b. *Offshore Tax Informant Program*. [Online] Available from: http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/menu-eng.html [Accessed: 2017-03-24].

[92] Canada Revenue Agency. 2016c. *What is international tax non-compliance?* [Online] Available from: http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/wht-eng.html [Accessed: 2017-03-24].

be between 5% and 15% of the tax collected in relation to the international tax non-compliance (not including interest and penalties).

The percentage award is calculated with a number of factors in mind such as timeliness of information provided, the Informant's role in the non-compliance and whether assets were discovered which assisted the Canada Revenue Agency in collecting taxes actually owed from undeclared assets. The award levels are 5%, 7.5%, 10%, 12.5%, and 15%.[93]

3.5.2.2.3. Conclusion of the Offshore Tax Informant Program in Canada

According to a Canadian blog written in March 2017, it was reported that as at 31 December 2016, the Offshore Tax Informant Program call centre had received in a range of 3 000 calls, examined more than 300 written submissions and signed more than 12 contracts for awards with Informants. Based on these numbers, the programme appears to be increasing in popularity. It is believed that once the first substantial award payment is made, the program will receive more awareness and grow accordingly.[94]

3.5.3. Offshore Voluntary Disclosure Program offered in the United States of America

The USA Inland Revenue Agency has been at the forefront in waging war against tax evasion, aggressive tax avoidance, fraud, and other tax offences for many years. To support this notion, the USA Inland Revenue Service put their best foot forward in tackling offshore tax evasion and avoidance in 2010 when their Foreign Account Tax Compliance Act (FATCA) was introduced. Since then, the USA have developed many programmes in allowing taxpayers to come forward to get their USA tax affairs in order.[95]

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[93] Canada Revenue Agency. 2014. *Payment criteria.* [Online] Available from: http://www.cra-arc.gc.ca/gncy/cmplnc/otip-pdife/pymntcrtr-eng.html [Accessed: 2017-03-24].

[94] The FCPA Blog. 2017. *Caylor and Sorensen: Report a Canadian tax evader and make money?* [Online] Available from: http://www.fcpablog.com/blog/2017/3/3/caylor-and-sorensen-report-a-canadian-tax-evader-and-make-mo.html [Accessed: 2017-04-02].

[95] U.S. Tax IQ. Not dated. *Offshore Voluntary Disclosure Procedures (OVDP) / Streamlined Filing Compliance Procedure (SFCP) – Explained!* [Online] Available from: https://www.irs.gov/uac/2012-offshore-voluntary-disclosure-program [Accessed: 2017-03-25].

3.5.3.1. Introduction to the Offshore Voluntary Disclosure Program offered in the United States

The USA has a long standing practice of providing opportunity for taxpayers to voluntarily disclose their non-compliance for protection from prosecution and for reduced penalties. The past eight years in particular, have seen many iterations of an OVDP with each programme becoming more stringent on the penalties imposed. The USA's Inland Revenue Service announced its 2009 OVDP, following this successful project, the 2011 OVDP Initiative was introduced. Thereafter, the open-ended 2012 OVDP was initiated with some amendments being implemented in July 2014 resulting in the latest programme being available, commonly referred to as the 2014 Offshore Voluntary Disclosure Program.[96]

3.5.3.1.1. Persons that qualify for the USA Offshore Voluntary Disclosure Program

Individuals and entities (such as companies, partnerships and trusts) who qualify for relief may submit a 2014 OVDP to the USA Inland Revenue Agency.[97]

3.5.3.1.2. Circumstances under which USA Offshore Voluntary Disclosure Program relief may be granted

The persons mentioned above, which may qualify for the USA Inland Revenue Service's OVDP, may only apply to obtain relief from penalty and prosecution if he / she:

- failed to fulfil his / her tax obligation;
- failed to file information returns timeously;
- failed to report foreign sourced income that is taxable in the USA;
- submits an application which is complete in all material respects; and
- the disclosure is made in the prescribed form and manner.

[96] IRS. 2017. *2012 Offshore Voluntary Disclosure Program.* [Online] Available from: https://www.irs.gov/uac/2012-offshore-voluntary-disclosure-program [2017-03-24].

[97] IRS. 2017b. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [2017-03-24].

It is important to note that despite the programme being referred to as an OVDP, the USA Inland Revenue Service allows for the voluntary disclosure of local assets as well. This is to ensure that all non-compliances are corrected via the application.[98]

3.5.3.1.3. Requirements to qualify for the USA Offshore Voluntary Disclosure Program

In order to qualify for OVDP relief, the applicant must:

- provide all documents requested in the letter from the Criminal Investigator with the application form within 90 days;
- work with the Criminal Investigator during the voluntary disclosure process, including furnishing information on foreign accounts and assets, institutions and facilitators, and signing agreements;
- pay 20% accuracy-related penalties on the underpayment amounts in relation to the offshore assets for all the tax years under review;
- pay the failure to file penalty (if applicable);
- pay failure to pay penalty (if applicable);
- pay, as a replacement for all other penalties that may apply to the undisclosed foreign accounts, assets and entities, a miscellaneous offshore penalty equal to 27.5% (or 50% in certain circumstances) of the highest aggregate value of OVDP assets;
- submit full payment of any tax liability for all tax years covered in the OVDP period, including the corresponding interest calculated, the offshore penalty, accuracy-related penalties for offshore-related underpayments, and, if applicable, the failure to file and failure to pay penalties or, if the taxpayer is unable to make full payment, proof that he / she has made payment arrangement with the USA Inland Revenue Service;
- complete the Offshore Voluntary Closing Agreement (Form 906); and
- agree to work together with the USA Inland Revenue Service and Department of Justice offshore enforcement efforts (if required) in advising on the institution or

[98] IRS. 2017b. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [2017-03-24].

person who may have assisted in creating and / or maintaining the offshore arrangement.[99]

3.5.3.1.4. No-name USA Offshore Voluntary Disclosure Program enquiry

The USA Inland Revenue Service accepts no-name enquiries but warn that hypothetical circumstances may raise the possibility for misunderstandings. The USA Inland Revenue Service has hypothesised that this takes place due to hypothetical situations rarely providing all the relevant facts. Therefore, a no-name enquiry via a representative is available, however, the option is not encouraged.[100]

3.5.3.1.5. Submission of the USA Offshore Voluntary Disclosure Program

Prior to submitting the OVDP application, the taxpayer is required to obtain "pre-clearance" from the Criminal Lead Development Centre, stating that the taxpayer is not already under investigation and he / she is clear to make use of the OVDP. Once this has been received, the applicant must submit a Voluntary Disclosure Letter together with all the required supporting information as well as the Voluntary Disclosures Application. On acceptance of the application the USA Inland Revenue Service will certify if the returns are complete and accurate and that immunity from prosecution has been received.[101]

[99] IRS. 2017b. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [2017-03-24].

[100] IRS. 2017b. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [2017-03-24].

[101] IRS. 2017b. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [2017-03-24].

3.5.3.1.6. Relief offered under the USA Offshore Voluntary Disclosure Program

The OVDP is an opportunity for the applicant to receive immunity from possible criminal prosecution and certain penalties (such as civil penalties).[102]

3.5.3.1.7. Conclusion on the USA Offshore Voluntary Disclosure Program

Based on the discussions above, it is noted that despite receiving some relief from penalties and interest, the USA OVDP is somewhat onerous. Regardless of this however, the risk potential for the USA to discover the offshore and hidden asset has increased dramatically. In this regard, it is recommended USA tax residents utilise the opportunity whilst it is still available.

3.5.3.2. Introduction to the Streamlined Filing Compliance Procedures offered in the United States

The USA Streamlined Filing Compliance Procedures initiative was created in order to assist taxpayers who are able to verify that he / she did not intentionally report inaccurate information in relation to their foreign assets in order to pay less taxes or hide their foreign assets from the USA Inland Revenue Service.

In order to make this initiative more accessible to taxpayers (who otherwise would have not qualified), the initial programme was modified to include USA residents who also reside in the United States as well as removing the tax threshold for applications.

It is important to note that applicants who may be apprehensive that their failure to report income, pay tax, and submit required information returns could be construed as intentional and / or may be searching for assurance that he / she will not be subject to criminal liability

[102] IRS. 2017b. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised [2017-03-24].

and / or substantial monetary penalties, will need to take part in the OVDP (discussed above in paragraph 3.5.3.1) instead.[103]

3.5.3.2.1. Persons that qualify for the USA Streamlined Filing Compliance Procedures

Taxpayers residing both inside and outside of the United States and have not been flagged by the USA Inland Revenue Service for civil examination of his / her returns for any tax year are eligible for the USA Streamlined Filing Compliance Procedures.[104]

These taxpayers will need to verify that their non-compliance was a result of 'non-wilful conduct'. Non-wilful conduct is defined by the USA Inland Revenue Service as an act which is as a result of an oversight, carelessness, an error, or an honest and sincere misinterpretation of the law.[105]

3.5.3.2.2. Circumstances under which USA Streamlined Filing Compliance Procedures relief may be granted

Taxpayers (residing abroad or within the USA) who can verify that their act of tax avoidance was not wilful (defined above), may use the USA Streamlined Filing Compliance Procedures to:

- submit amended or delinquent returns;
- resolve tax and penalty incurred for submitting amended or delinquent returns; and
- resolve tax and penalty obligations.[106]

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[103] IRS. 2017c. *Streamlined Filing Compliance Procedures.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures [Accessed: 2017-03-24].

[104] IRS. 2017c. Streamlined Filing Compliance Procedures. [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures [Accessed: 2017-03-24].

[105] IRS. 2017d. *U.S. Taxpayers Residing Outside the United States.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-outside-the-united-states [Accessed: 2017-03-24].

[106] IRS. 2017c. *Streamlined Filing Compliance Procedures.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures [Accessed: 2017-03-24].

3.5.3.2.3. Requirements to qualify for the USA Streamlined Filing Compliance Procedures

Taxpayers (residing abroad or within the USA) must be able to confirm that their act of tax avoidance, in the form of inaccurate information in relation to their foreign asset/s or non-submission of return/s, was not wilful in order to pay less taxes.[107]

3.5.3.2.4. No-name USA Streamlined Filing Compliance Procedures enquiry

A no-name USA Streamlined Filing Compliance Procedures enquiry is not available for this programme.

3.5.3.2.5. Submission of the USA Streamlined Filing Compliance Procedures

Tax returns submitted under either the USA Streamlined Foreign Offshore Procedures (for USA residents living abroad) or the USA Streamlined Domestic Offshore Procedures (for USA residents living in the United States) will be processed according to the usual and normal procedure followed when reviewing submitted returns. As a result, acknowledgement of the tax returns will not be provided by the USA Inland Revenue and will not result in having to enter into an agreement with the USA Inland Revenue Service.[108]

3.5.3.2.6. Relief offered under the USA Streamlined Filing Compliance Procedures

The relief offered to USA residents living aboard and those residing in the United States differ. The relief offered for those living abroad will be discussed here (as this programme was the first to be established and the original intention for the programme).

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[107] IRS. 2017c. *Streamlined Filing Compliance Procedures.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures [Accessed: 2017-03-24].

[108] IRS. 2017c. Streamlined Filing Compliance Procedures. [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures [Accessed: 2017-03-24].

Taxpayers living abroad who successfully submit USA Streamlined Foreign Offshore Procedures tax return will not be required to pay any failure to file and failure to pay penalties, accuracy-related penalties, information return penalties or Report of Foreign Bank and Financial Accounts penalties.[109]

3.5.3.2.7. Conclusion on the USA Streamlined Filing Compliance Procedures

Based on the substantial relief offered to taxpayers not residing in the USA, one would imagine that the USA Streamlined Filing Compliance Procedures has been sought-after programme for taxpayers to come clean and get their USA compliance affairs in order.

3.5.4. Three country comparison (South Africa, Canada and United States of America)

Below are two tables which compare the VDP implemented in South Africa to that implemented in Canada and thereafter the SVDP implemented in South Africa to that implemented in the United States of America. The tables highlight the information provided in this report by comparing features and parameters of each programme.

The first table reports the features which are in common and those that differ between South Africa's VDP and Canada's Voluntary Disclosures Program. Subsequently, the next table advises the features which are in common and those that differ between South Africa's SVDP and the United States of America's OVDP.

[109] IRS. 2017d. *U.S. Taxpayers Residing Outside the United States.* [Online] Available from: https://www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-outside-the-united-states [Accessed: 2017-03-24].

Item	South Africa – VDP	Canada – Voluntary Disclosures Program	USA - VDP
Permanent or time based legislation	Permanent legislation (no end date).	Permanent legislation (no end date).	Refer to the USA – OVDP in the table below. The USA's OVDP allows for local assets to be reported via the OVDP as well. The application does not require an offshore asset to be disclosed in order for the application to be considered relevant.
Years covered	From date non-compliance commenced and as early as the 2002 tax year (introduction of residency based taxation).	Unlimited number of years (that is from date non-compliance commenced).	
Local and offshore asset disclosures?	Both local and offshore assets may be disclosed.	Both local and offshore assets may be disclosed.	
Qualifying persons	Any person as defined in the Income Tax Act (unless that person is aware of a pending or commenced and not yet completed audit or investigation).	Individuals, employers, corporations, partnerships, trusts, goods and services tax / harmonized sales tax (GST / HST) registrant / claimant and registered exporter of softwood lumber products (unless that person is aware of a pending or commenced and not yet completed audit or investigation).	
No-name applications	To the extent that sufficient information regarding the tax default is provided, a non-binding private opinion is provided on the person's eligibility for relief. Should this person decide to proceed, a new application must be submitted with all the required information including the name of the applicant.	To the extent that sufficient information regarding the non-disclosure is provided, the Canada Revenue Agency will assess and advise, without prejudice, on the tax implications of the disclosure (the taxes and interest which may be due should the programme be utilised). Should this person decide to proceed, the name of the person must be provided within 90 days in order to proceed with the application.	
Eligibility to qualify	The VDP must be:	The Voluntary Disclosures Program must be:	

Item	South Africa – VDP	Canada – Voluntary Disclosures Program	USA - VDP
	▪ voluntary; ▪ involve a default; ▪ be full and complete in all material respects; ▪ involve the potential imposition of an understatement; ▪ not result in a refund due by SARS; and ▪ be made in the prescribed form and manner.	▪ voluntary; ▪ complete; ▪ involve a penalty; and ▪ at least one year past due.	
Relief offered: ▪ **Tax waived?** ▪ **Interest waived?** ▪ **Penalties waived?** ▪ **Possibility of criminal prosecution?**	▪ <u>Tax waived?</u> Required to pay any tax amounts owing. ▪ <u>Interest waived?</u> Interest remains payable. ▪ <u>Penalties waived?</u> ✓ understatement penalty waived or reduced (depending on default behaviour). ✓ 100% relief for administrative non-compliance penalty.	▪ <u>Tax waived?</u> Required to pay any tax amounts owing. ▪ <u>Interest waived?</u> Relief may be granted for three most recent years of returns required to be filed. ▪ <u>Penalties waived?</u> ✓ grant relief from penalties which would have otherwise be charged for any tax year or fiscal period that ended within the previous 10 years before the calendar year in which the submission is filed.	

Item	South Africa – VDP	Canada – Voluntary Disclosures Program	USA - VDP
	✓ Penalty for late submission of a return or a late payment of tax is not waived or reduced. ▪ Possibility of criminal prosecution? To the extent application is complete, criminal prosecution not pursued.	▪ Possibility of criminal prosecution? To the extent application is complete, criminal prosecution not pursued.	
Additional submission requirements	▪ VDP application to be submitted on SARS e-filing. ▪ Voluntary disclosure agreement to be entered into between SARS and applicant. ▪ All returns affected by VDP must be submitted or revised and resubmitted.	▪ Form RC199, Taxpayer Agreement Form, to be signed and submitted. ▪ All outstanding returns and / or forms to be submitted.	
Other comments	SVDP available for limited time to report offshore assets.	Whistle-blower Offshore Tax Informant Program available.	

Table 8: Table comparing South Africa and Canada's Voluntary Disclosure Programmes

Source: Table populated using information detailed in this report

Item	South Africa – SVDP - Tax	USA – OVDP	Canada – Voluntary Disclosures Program
Permanent or time based legislation	Applications to be submitted between 1 October 2016 and 31 August 2017.	Permanent legislation (no end date) however, terms of the program can change at any time.	Refer to Canada's Voluntary Disclosures Program in the table above. This programme allows for foreign assets to be reported via the programme as well. The application does not require for a local asset to be disclosed in order for the application to be
Years covered	Tax years ended: February 2011 – February 2015.	Eight year disclosure period.	
Local and offshore asset disclosures?	SVDP available for offshore assets only.	Both local and offshore assets may be disclosed.	
Qualifying persons	Individuals, Companies, Close Corporations, Deceased Estates, unless that person is aware of a pending or commenced and not yet completed audit or investigation. Settlors, donors and beneficiaries of offshore trusts can participate if they deem the trust's offshore assets and income to be deemed to be held by them. These persons must not be aware of a pending or commenced and not yet completed audit or investigation and the South African Revenue	Individuals and entities (such as companies, partnerships and trusts), unless that person is aware of a pending or commenced and not yet completed audit or investigation. These persons must not be aware of a pending or commenced and not yet completed audit or investigation and the USA Inland Revenue Service must not have learnt of the information from a third party.	

Item	South Africa – SVDP - Tax	USA – OVDP	Canada – Voluntary Disclosures Program
	Services must not already be aware of the foreign asset.		considered relevant.
No-name applications	Available (similar to VDP).	Available but not encouraged.	
Eligibility to qualify	The SVDP – Tax applicant must: ▪ describe the source of the unauthorised foreign asset/s; ▪ provide documented evidence of the asset/s; ▪ advise the date the foreign asset/s was acquired; ▪ define the type of ownership of the foreign asset/s; ▪ describe the structure used to create the foreign asset/s; and ▪ sign a Power of Attorney form (where applicant is represented).	The OVDP applicant must have: ▪ failed to fulfil his / her tax obligation; ▪ failed to file information returns timeously; ▪ failed to report foreign sourced income that is taxable in the USA; ▪ submit an application which is complete in all material respects; and ▪ submitted the disclosure in the prescribed form and manner.	
Relief offered: ▪ **Tax waived?** ▪ **Interest waived?**	▪ Tax waived? 40% of the highest value of the aggregated market value of the foreign asset/s held between 1 March 2010 and 28 February 2015 must be	▪ Tax waived? Required to pay any tax amounts owing. ▪ Interest waived?	

Item	South Africa – SVDP - Tax	USA – OVDP	Canada – Voluntary Disclosures Program
▪ **Penalties waived?** ▪ **Possibility of criminal prosecution?** ▪ **Other**	included as taxable income and taxed during the 2015 tax year period. ▪ <u>Interest waived?</u> Interest on tax debts as a result of the disclosure will be levied from the 2015 tax year period only. ▪ <u>Penalties waived?</u> ✓ 100% of understatement penalty waived. ✓ 100% relief for administrative non-compliance penalty. ▪ <u>Possibility of criminal prosecution?</u> To the extent application is complete, criminal prosecution not pursued. ▪ <u>Other</u> ✓ Original undeclared income is exempt from income tax, donations tax and estate duty liabilities; and ✓ investment returns and gains and / or other taxable events preceding 1 March 2015 will be considered exempt from tax.	Interest remains payable. ▪ <u>Penalties waived?</u> The following penalties remain payable: ✓ accuracy related penalties; ✓ failure to file penalties; ✓ failure to pay penalties; and ✓ offshore penalty equal to 27.5% (50% in certain circumstances) of the highest aggregate balance of offshore assets during the period covered in the OVDP is payable. ▪ <u>Possibility of criminal prosecution?</u> To the extent application is complete, criminal prosecution not recommended (this does not apply to disclosures relating to illegal sources of income).	

Item	South Africa – SVDP - Tax	USA – OVDP	Canada – Voluntary Disclosures Program
Additional submission requirements	▪ SVDP-Tax application to be submitted on SARS e-filing. ▪ Special Voluntary disclosure agreement to be entered into between SARS and applicant. ▪ 2015 tax return to be revised and resubmitted.	▪ All corrected and unfiled tax and information returns and documents to be provided; ▪ Work with the Criminal Investigator during the voluntary disclosure process; ▪ Submit full payment of any tax liability for all tax years covered in the OVDP period, or, if the taxpayer is unable to make full payment, proof that he / she has made payment arrangement with the USA Inland Revenue Service; ▪ Complete the Offshore Voluntary Closing Agreement (Form 906); and ▪ Agree to work together with the USA Inland Revenue Service and Department of Justice offshore enforcement efforts (if required) in advising on the institution or person who may have assisted in creating and / or maintaining the offshore arrangement.	

Table 9: Table comparing South Africa and USA's Offshore Voluntary Disclosure Programmes

Source: Table populated using information detailed in this report

3.5.5. Conclusion

The chapter highlighted the common features and those that differ between South Africa's VDP and Canada's Voluntary Disclosures Program. In addition, it advised the common features and those that differ between South Africa's SVDP and the United States of America's OVDP.

In addition to analysing and comparing South Africa's VDP and SVDP to those introduced in Canada and the USA, the chapter also included the additional programmes introduced in Canada and the USA. Canada introduced an award program, called the Offshore Tax Informant Program, which rewarded whistle-blowers. The USA implemented the Streamlined Filing Compliance Procedures which allowed for taxpayers who did not wilfully evade or avoid USA taxes to come forward. These programmes were evaluated in order to illustrate different actions and programmes made available in other countries. Interestingly, South Africa has not implemented or made the public aware of any other voluntary or whistle-blower programmes available, besides the VDP and SVDP, which will enable SARS to bring non-compliant taxpayers back into compliance.

Finally, based on both tables provided above, it can be concluded that South Africa's VDP and SVDP are established upon characteristics which both Canada and the USA believe to be factors which will result in successful programmes.

4. CONCLUSION AND RECOMMENDATION

4.1.1. Conclusion

As stated at the start of this research report, the main goal of the research was to describe the actions taken globally to combat tax evasion and tax avoidance. The following questions were required to be answered in this report:

- What actions have been taken globally to fight tax evasion and avoidance?
- Have standards and programmes been developed to combat tax evasion and avoidance?
- Has South Africa implemented these standards and programmes?
- Are there still avenues available for taxpayers to voluntarily disclose their tax evasion and avoidance?
- How does South Africa's programmes compare to those implemented worldwide?

This report will conclude by summarising each chapter and indicating how each chapter addressed the research questions listed above.

The chapter commenced with addressing three of the research questions presented above by describing the actions taken by the G20 Leaders and the OECD to combat tax evasion, aggressive tax avoidance and tax fraud. The fight against the non-declaration / under-declaration of offshore assets commenced in 2009 with the sanctioning of the end of banking secrecy and the implementation of the standard for the EOIR. In 2013, the next step was taken by the OECD in developing the CRS for the AEOI between tax authorities. As discussed, the AEOI allows for tax authorities to obtain financial information of its tax resident's offshore assets in order to establish if these assets have been correctly disclosed and taxed. A list of the early and late adopters of the AEOI was provided which illustrated that South Africa was one of the 101 countries who committed to implementing the CRS in order to automatically exchange information with other tax authorities annually.

The chapters which followed, analysed Voluntary Disclosure Programmes and Offshore Voluntary Disclosure Programmes. Chapter 2 commenced with an investigation into the characteristics of successful VDPs, followed by an in-depth discussion on South Africa's VDP and concluded with an evaluation of whether the characteristics which resulted in successful VDPs featured in South Africa's VDP. Subsequently, in order to establish if South Africa's SVDP was founded upon characteristics which would result in its success, Chapter 3 discussed the SVPD in detail as well as the additional characteristics required for a successful OVDP. The chapter concluded with an assessment of the additional characteristics suggested to be included in the writing of an OVDP to those presented in the South Africa's SVDP. Furthermore, as the time periods for the applications for both South Africa's VDP and SVDP overlapped, an applicant could assess which programme provided him / her with greater relief. Therefore, Chapter 4 provided a comparison of the VDP and SVDP in South Africa and the requirements, relief and taxes due under each programme. Consequently, Chapters 2 to 4 addressed the next research question by analysing South African taxpayer's avenues to voluntarily come clean and disclose any non-compliance to SARS.

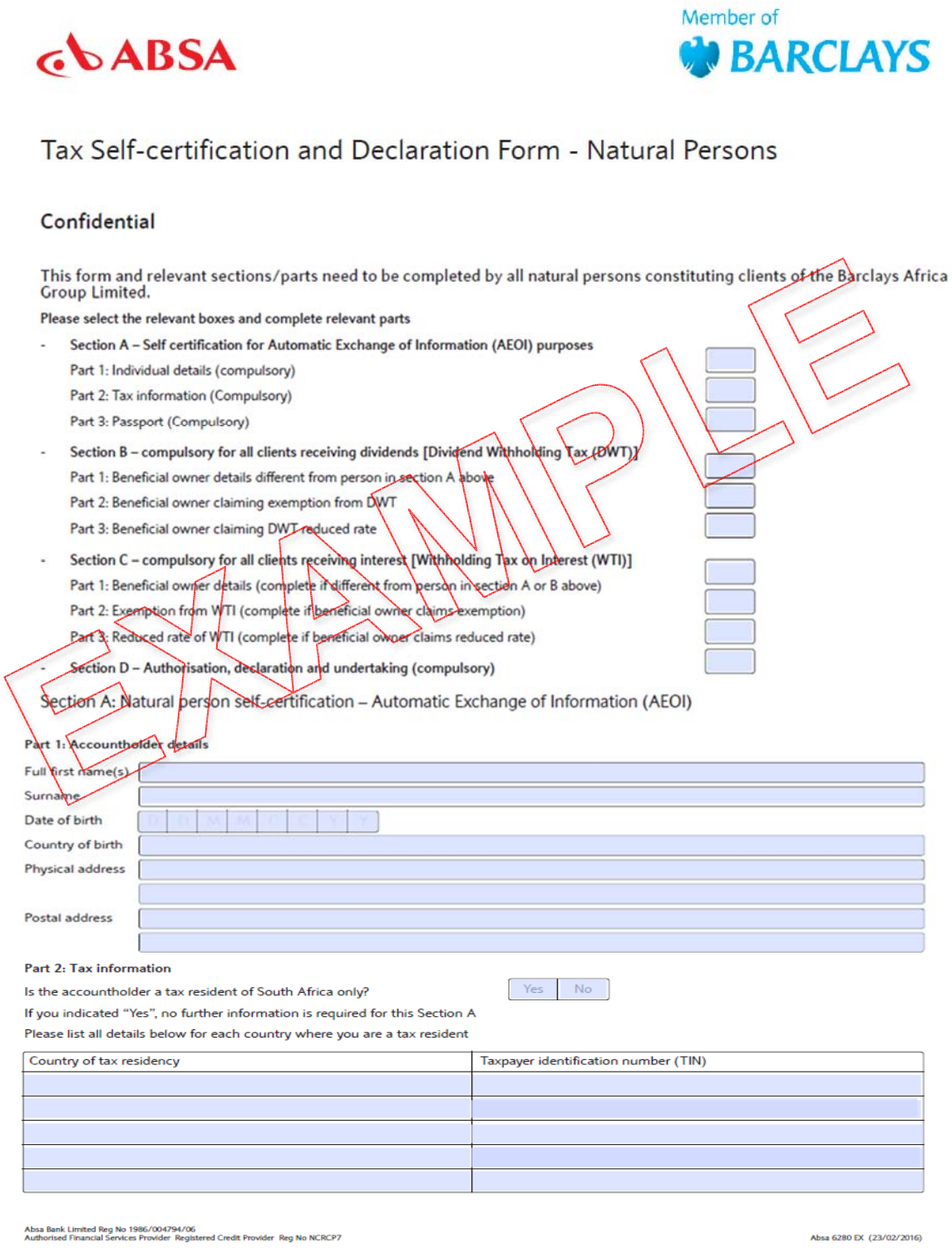
The final research question was addressed in Chapter 5 by describing the disclosure programmes made available in Canada and the United States of America and evaluating that against South Africa's programmes.

4.1.2. Recommendation for further research

The main goal of this research report was to investigate the actions taken globally to combat tax evasion and tax avoidance. In addition, the goal was to establish if South Africa had implemented any of these standards and programmes designed to mitigate tax evasion and tax avoidance. The research focused on the AEOI, CRS, VDP and SVDPs implemented by the South Africa government. Further research can be done on other standards and programmes implemented such as the OECD's Base erosion and profit shifting ("BEPS") Action Plans. BEPS can be defined as tax planning arrangements that abuse mismatches in the design of the international tax rules to artificially shift profits to places where there is little or no economic activity or taxation, in order to take advantage of the low or no-tax rules. Therefore, by describing the Action Plans taken by the OECD in addressing BEPS, the research can be further investigated.

APPENDICES

Appendix A



ABSA

Member of BARCLAYS

Tax Self-certification and Declaration Form - Natural Persons

Confidential

This form and relevant sections/parts need to be completed by all natural persons constituting clients of the Barclays Africa Group Limited.

Please select the relevant boxes and complete relevant parts

- **Section A – Self certification for Automatic Exchange of Information (AEOI) purposes**
  - Part 1: Individual details (compulsory)
  - Part 2: Tax information (Compulsory)
  - Part 3: Passport (Compulsory)
- **Section B – compulsory for all clients receiving dividends [Dividend Withholding Tax (DWT)]**
  - Part 1: Beneficial owner details different from person in section A above
  - Part 2: Beneficial owner claiming exemption from DWT
  - Part 3: Beneficial owner claiming DWT reduced rate
- **Section C – compulsory for all clients receiving interest [Withholding Tax on Interest (WTI)]**
  - Part 1: Beneficial owner details (complete if different from person in section A or B above)
  - Part 2: Exemption from WTI (complete if beneficial owner claims exemption)
  - Part 3: Reduced rate of WTI (complete if beneficial owner claims reduced rate)
- **Section D – Authorisation, declaration and undertaking (compulsory)**

EXAMPLE

Section A: Natural person self-certification – Automatic Exchange of Information (AEOI)

Part 1: Accountholder details

Full first name(s)

Surname

Date of birth D D M M C C Y Y

Country of birth

Physical address

Postal address

Part 2: Tax information

Is the accountholder a tax resident of South Africa only? Yes No

If you indicated "Yes", no further information is required for this Section A

Please list all details below for each country where you are a tax resident

Country of tax residency	Taxpayer identification number (TIN)

Absa Bank Limited Reg No 1986/004794/06
Authorised Financial Services Provider Registered Credit Provider Reg No NCRCP7

Absa 6280 EX (23/02/2016)

If no tax reference number is provided, please indicate the reason:

- ☐ A TIN is not issued by the relevant tax authority in the Country of Tax Residency
- ☐ The domestic law of the Country of Tax Residency does not require the collection of the TIN issued by such tax authority in the Country of Tax Residency.

Only one of these two reasons are acceptable for omitting to provide a tax reference number if the country of tax residency is a country other than South Africa.

Part 3: Passport information

Please list all details below for each country of which you are a passport holder:

Passport country	Passport number

Section B: Beneficial owner declaration for Dividend Withholding Tax (DWT)

Part 1: Beneficial owner details

Full name and surname or registered name

Country of tax residency

Tax reference number (if applicable)

Postal address

Physical address

Nature of person/entity (please select appropriate box):

- ☐ Individual
- ☐ Listed Company
- ☐ Unlisted Company
- ☐ Trust
- ☐ RSA Government (National, provincial or municipal)
- ☐ Retirement Fund (Pension, Provident, Benefit, Retirement Annuity, Preservation)
- ☐ Other (if selected please provide a description)

Part 2: Exemption from Dividend Withholding Tax (DWT)

- ☐ A South African tax resident company
- ☐ RSA Government (National, provincial or municipal)
- ☐ Public Benefit Organisation approved by SARS (PBO)
- ☐ Trust contemplated in section 37A (e.g. mining rehabilitation trust)
- ☐ Institution, board or body contemplated in section 10(1)(cA) (e.g. water board)
- ☐ Fund contemplated in section 10(1)(d)(i) or (ii) fund (e.g. pension fund)
- ☐ Person contemplated in section 10(1)(t) (e.g. CSIR, SAIDC, DBSA)
- ☐ Other (please specify):

Part 3: Reduced rate of Withholding Tax on Dividends

Beneficial owner is subject to a reduced rate of _____% on dividends in terms of the Double Taxation Agreement between South Africa and _____.

EXAMPLE

Section C: Beneficial Owner Declaration Withholding Tax on Interest (WTI)

Part 1: Beneficial Owner Details

Full name and surname or registered name

Country of tax residency

Tax reference number (if applicable)

Postal address

Physical address

Nature of person/entity (please select appropriate box):

Individual

Listed Company

Unlisted Company

Trust

RSA Government (National, provincial or municipal)

Retirement Fund (Pension, Provident, Benefit, Retirement Annuity, Preservation)

Other (if selected please provide a description)

Part 2: Exemption from Withholding Tax on Interest

Natural person physically present in South Africa for more than 50% of the time during the past 12 (twelve) months

Debt in respect of which interest is paid is effectively connected with a SA tax registered permanent establishment of that foreign person

Exempt in terms of Double Taxation Agreement between South Africa and foreign person's country of residence

Other

Please provide an explanation if Other is selected:

Part 3: Reduced rate of Withholding Tax on Interest

Beneficial owner is subject to a reduced rate of _____% on interest in terms of the Double Taxation Agreement between South Africa and _____.

Section D – Authorisation, declaration and undertaking

I hereby agree that the above information may be shared between Barclays Africa Group entities to the extent required for tax reporting purposes.

I declare that the information provided on this form is, to the best of my knowledge and belief, accurate and complete and that I am authorised to sign on behalf of the beneficial owner where applicable.

I agree to notify the relevant Barclays Africa Group entity immediately in the event that information on this Tax Self-Certification and Declaration Form changes.

Signed on D D M M C C Y Y

Place of signing

Signature _____

EXAMPLE

Definitions and detailed requirements

Section A: Natural person self-certification – Automatic Exchange of Information (AEOI)

Accountholder means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment adviser, or intermediary, is not treated as holding the account for purposes of this Annex and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Accountholder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Accountholder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Accountholder.

Section B: Beneficial Owner Declaration for Dividend Withholding Tax (DWT)

Beneficial owner means the person entitled to the benefit of the dividend attaching to a share

A South African tax resident means a company which is a resident (of South Africa);
RSA Government (National, provincial or municipal) means the government of the Republic (of South Africa) in the national, provincial or local sphere;

Public Benefit Organisation approved by SARS (PBO) means a public benefit organisation approved by the Commissioner in terms of section 30 (3) of the (South African) Income Tax Act 58 of 1962;

Trust contemplated in section 37A (e.g.mining rehabilitation trust) means a trust contemplated in section 37A of the (South African) Income Tax Act 58 of 1962;

Institution, board or body contemplated in section 10(1)(cA) (e.g. water board) means an institution, board or body contemplated in section 10 (1) (cA) of the (South African) Income Tax Act 58 of 1962;

Fund contemplated in section 10(1)(d)(i) or (ii) fund (e.g. pension fund) means a fund contemplated in section 10 (1) (d) (i) or (ii) of the (South African) Income Tax Act 58 of 1962;

Person contemplated in section 10(1)(t) (e.g. CSIR, SAIDC, DBSA) means a person contemplated in section 10 (1) (t) of the (South African) Income Tax Act 58 of 1962;

Other means any one of the following:

- a holder of shares in a registered micro business, as defined in the Sixth Schedule [to the (South African) Income Tax Act 58 of 1962], paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to all holders of shares in that registered micro business during the year of assessment in which that dividend is paid does not exceed the amount of R200 000;
- a small business funding entity as contemplated in section 10 (1) [cQ of the (South African) Income Tax Act 58 of 1962];
- a person that is not a resident (of South Africa) and the dividend is a dividend contemplated in paragraph (b) of the definition of "dividend" in section 64D of the (South African) Income Tax Act 58 of 1962;
- a portfolio of a collective investment scheme in securities;
- any person to the extent that the dividend constitutes income of that person; or
- any person to the extent that the dividend was subject to the secondary tax on companies;
- any fidelity or indemnity fund contemplated in section 10 (1) (d) (iii) of the (South African) Income Tax Act 58 of 1962; or
- a natural person or deceased estate or insolvent estate of that person in respect of a dividend paid in respect of a tax free investment as contemplated in section 12T (1) of the (South African) Income Tax Act 58 of 1962.

Section C: Beneficial Owner Declaration Withholding Tax on Interest (WTI)

Beneficial owner for purposes of WTI means any person to whom the payment of interest is made or for whose benefit the payment of interest was made.

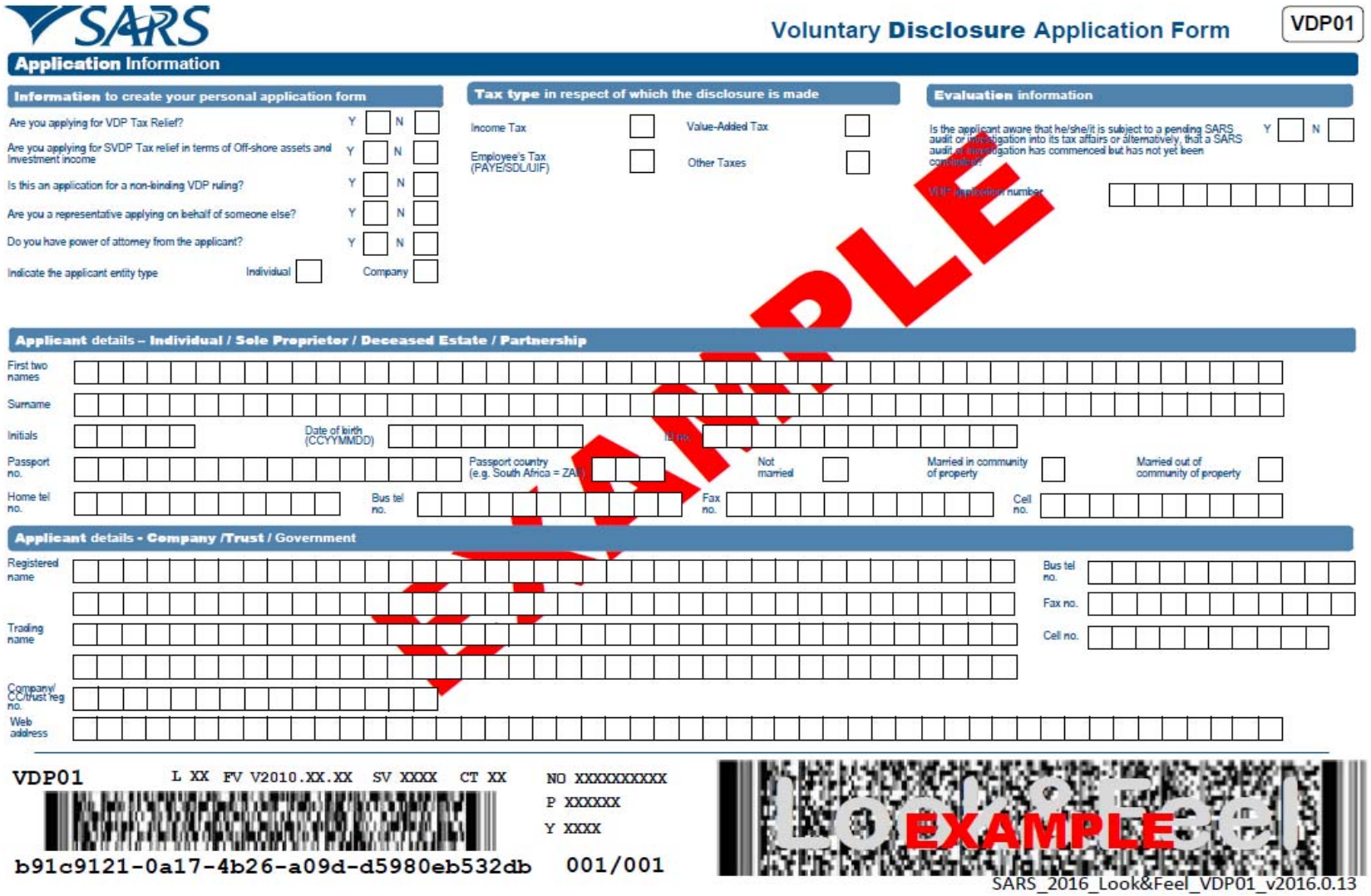
EXAMPLE

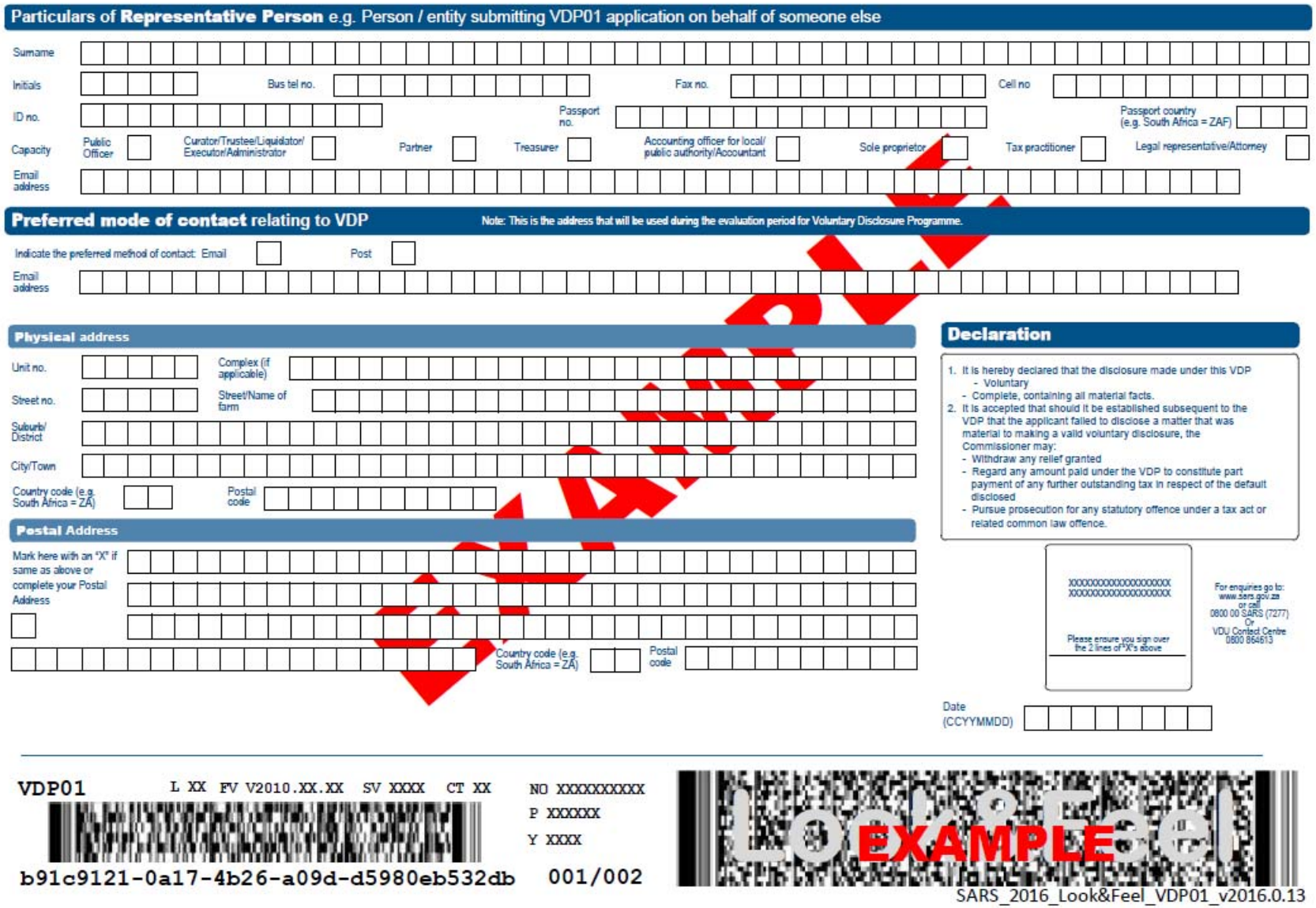
ABSA Self-Certification tax residency form

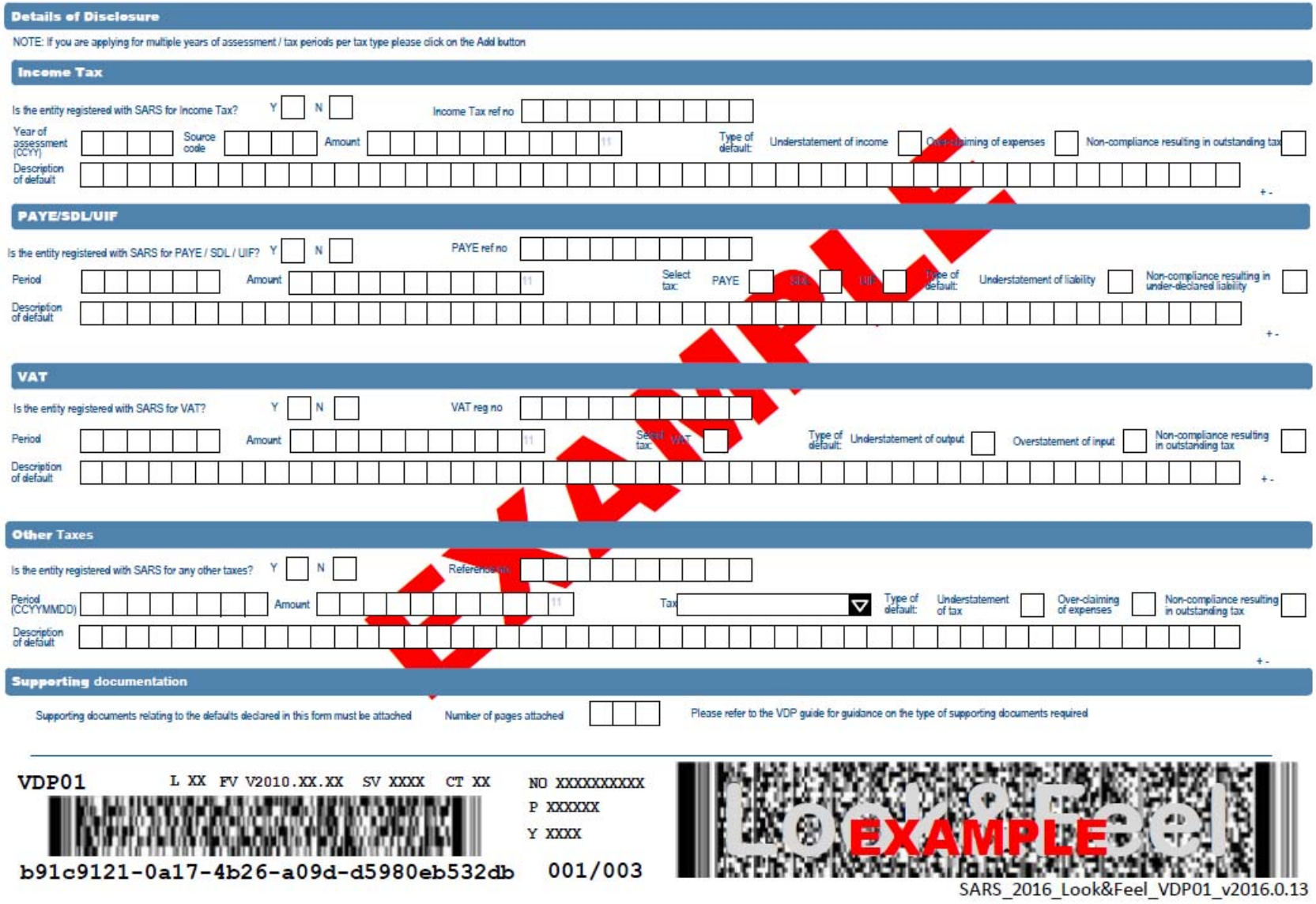
Source: ABSA. 2016. *Tax Self-certification and Declaration Form - Natural Persons.* [Online] Available from: https://www.absainvestments.co.za/wealth-and-investment-management/e-docs/unit-trust/prod-app-forms/Absa%206280%20EX%20FNTR.pdf [Downloaded: 2017-04-10].

Appendix B

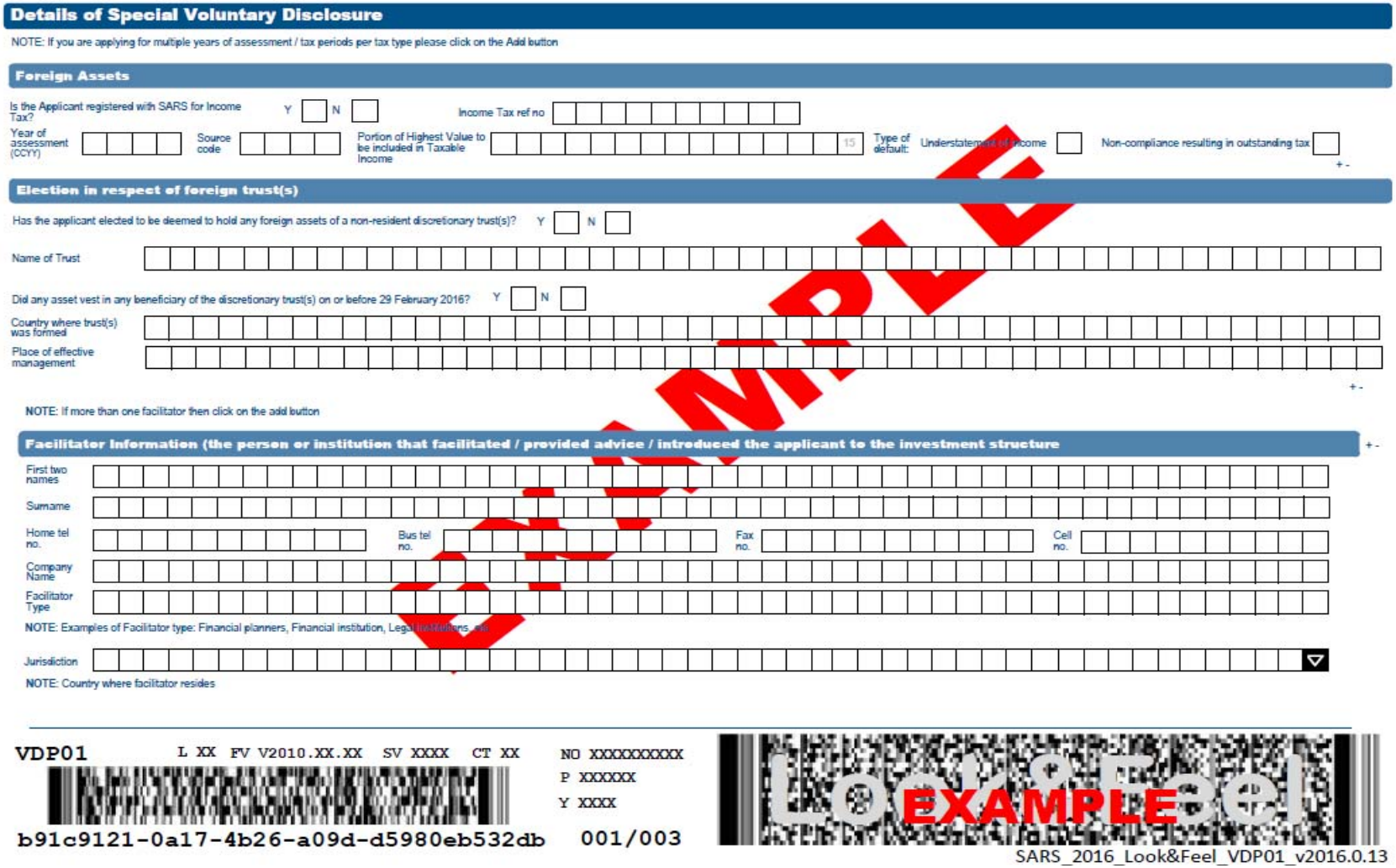
Below is an example of the VDP01 form which is required to be submitted to SARS to qualify for a VDP / SVDP Agreement:




Particulars of Representative Person e.g. Person / entity submitting VDP01 application on behalf of someone else
Surname
Initials
Bus tel no.
Fax no.
Cell no
ID no.
Passport no.
Passport country (e.g. South Africa = ZAF)
Capacity
Public Officer
Curator/Trustee/Liquidator/ Executor/Administrator
Partner
Treasurer
Accounting officer for local/ public authority/Accountant
Sole proprietor
Tax practitioner
Legal representative/Attorney
Email address
Preferred mode of contact relating to VDP
Note: This is the address that will be used during the evaluation period for Voluntary Disclosure Programme.
Indicate the preferred method of contact: Email
Post
Email address
Physical address
Unit no.
Complex (if applicable)
Street no.
Street/Name of farm
Suburb/ District
City/Town
Country code (e.g. South Africa = ZA)
Postal code
Postal Address
Mark here with an "X" if same as above or complete your Postal Address
Country code (e.g. South Africa = ZA)
Postal code
Declaration
1. It is hereby declared that the disclosure made under this VDP
- Voluntary
- Complete, containing all material facts.
2. It is accepted that should it be established subsequent to the VDP that the applicant failed to disclose a matter that was material to making a valid voluntary disclosure, the Commissioner may:
- Withdraw any relief granted
- Regard any amount paid under the VDP to constitute part payment of any further outstanding tax in respect of the default disclosed
- Pursue prosecution for any statutory offence under a tax act or related common law offence.
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
Please ensure you sign over the 2 lines of "X"s above
For enquiries go to: www.sars.gov.za or call 0800 00 SARS (7277) Or VDU Contact Centre 0800 864613
Date (CCYYMMDD)
EXAMPLE
VDP01
L XX FV V2010.XX.XX SV XXXX CT XX
NO XXXXXXXXXX
P XXXXXX
Y XXXX
b91c9121-0a17-4b26-a09d-d5980eb532db
001/002
EXAMPLE
SARS_2016_Look&Feel_VDP01_v2016.0.13



SARS_2016_Look&Feel_VDP01_v2016.0.13

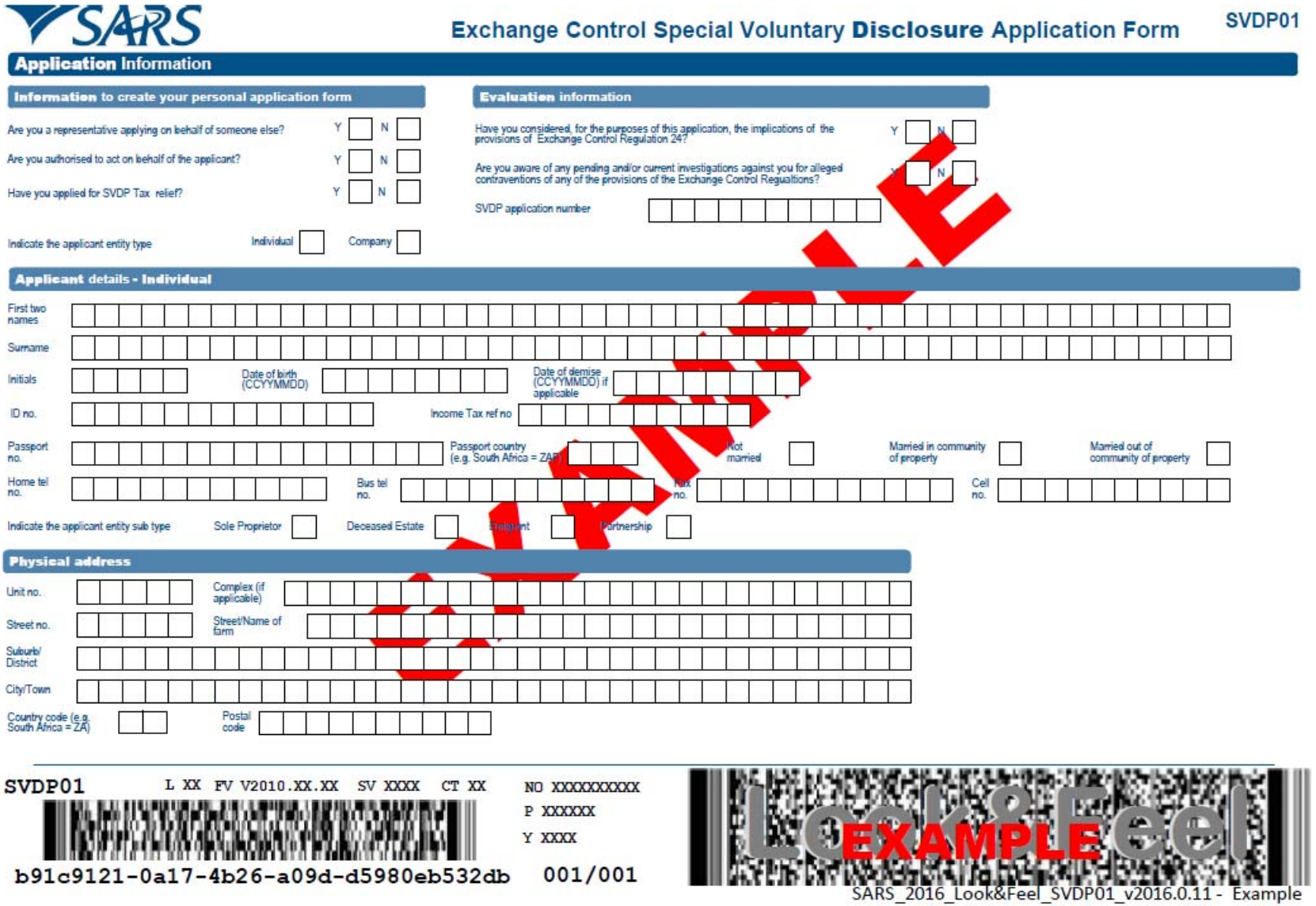


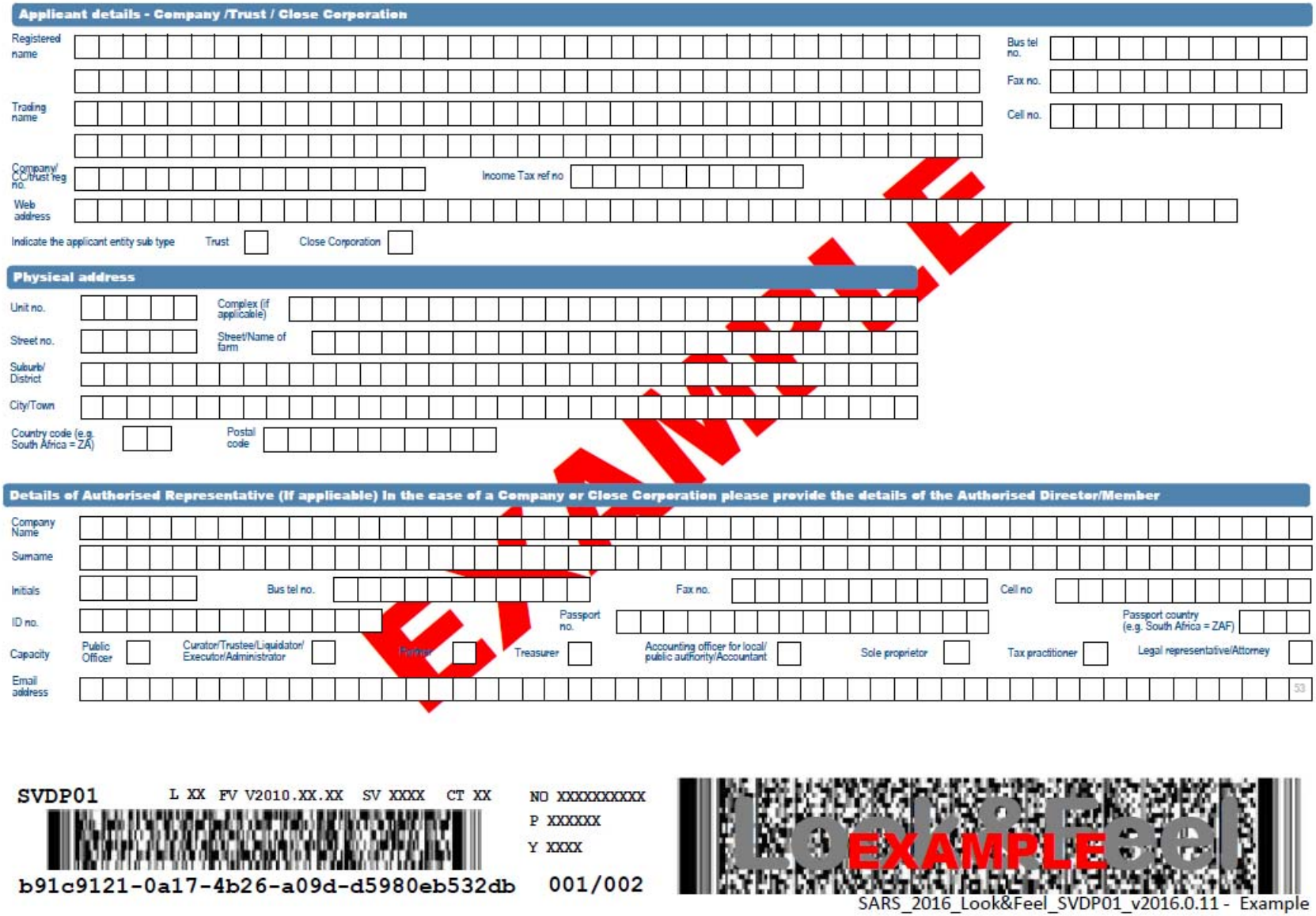
VDP01 form

Source: SARS. 2017. *VDP01 form.* [Online] Available from: http://www.sars.gov.za/AllDocs/Documents/Legal/SARS_2016_LookFeel_VDP01_v2016%200%2013%20EXAMPLE.pdf [Downloaded: 2017-04-10].

Appendix C

Below is an example of the SVDP01 form which is required to be submitted to SARS to qualify for a SVDP Exchange Control relief:





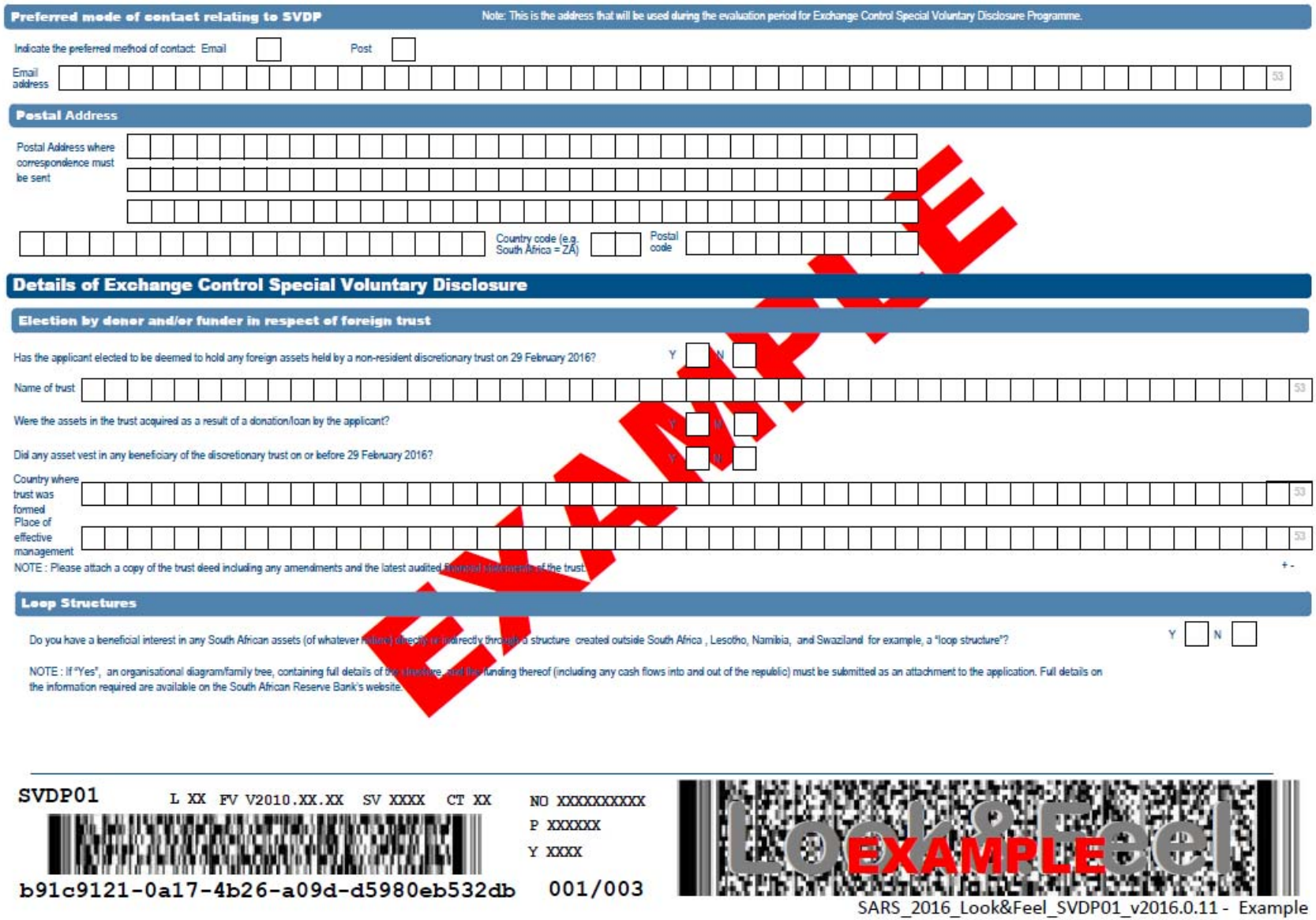
SVDP01 L XX FV V2010.XX.XX SV XXXX CT XX

b91c9121-0a17-4b26-a09d-d5980eb532db

NO XXXXXXXXXX
P XXXXXX
Y XXXX

001/002

SARS_2016_Look&Feel_SVDP01_v2016.0.11 - Example



SARS_2016_Look&Feel_SVDP01_v2016.0.11 - Example

Statement of unauthorised foreign assets and structures as at 29 February 2016

Current and Other short-term assets (i.e., bank accounts, call deposits and time deposits)

Location of Unauthorised foreign assets (50)

Currency (3) ▼ Market value in foreign currency (15)

Description (50)

Supporting documents indicating description and value — Copy of Statement of account — Appendix Ref. No. + -

Listed Financial instruments (i.e., shares, stocks, bonds and debentured listed on recognised exchanges)

Location of Unauthorised foreign assets (50)

Currency (3) ▼ Market value in foreign currency (15)

Description (50)

Supporting documents indicating description and value — Copy of Statement of account and price quoted on exchange — Appendix Ref. No. + -

Other financial instruments (i.e., instruments not listed on recognised exchanges and unlisted shares)

Location of Unauthorised foreign assets

Currency (3) ▼ Market value in foreign currency (15)

Description (50)

Supporting documents indicating description and value — Copy of Evaluation Certificate — Appendix Ref. No. + -

Fixed property

Location of Unauthorised foreign assets

Currency (3) ▼ Market value in foreign currency (15)

Description (50)

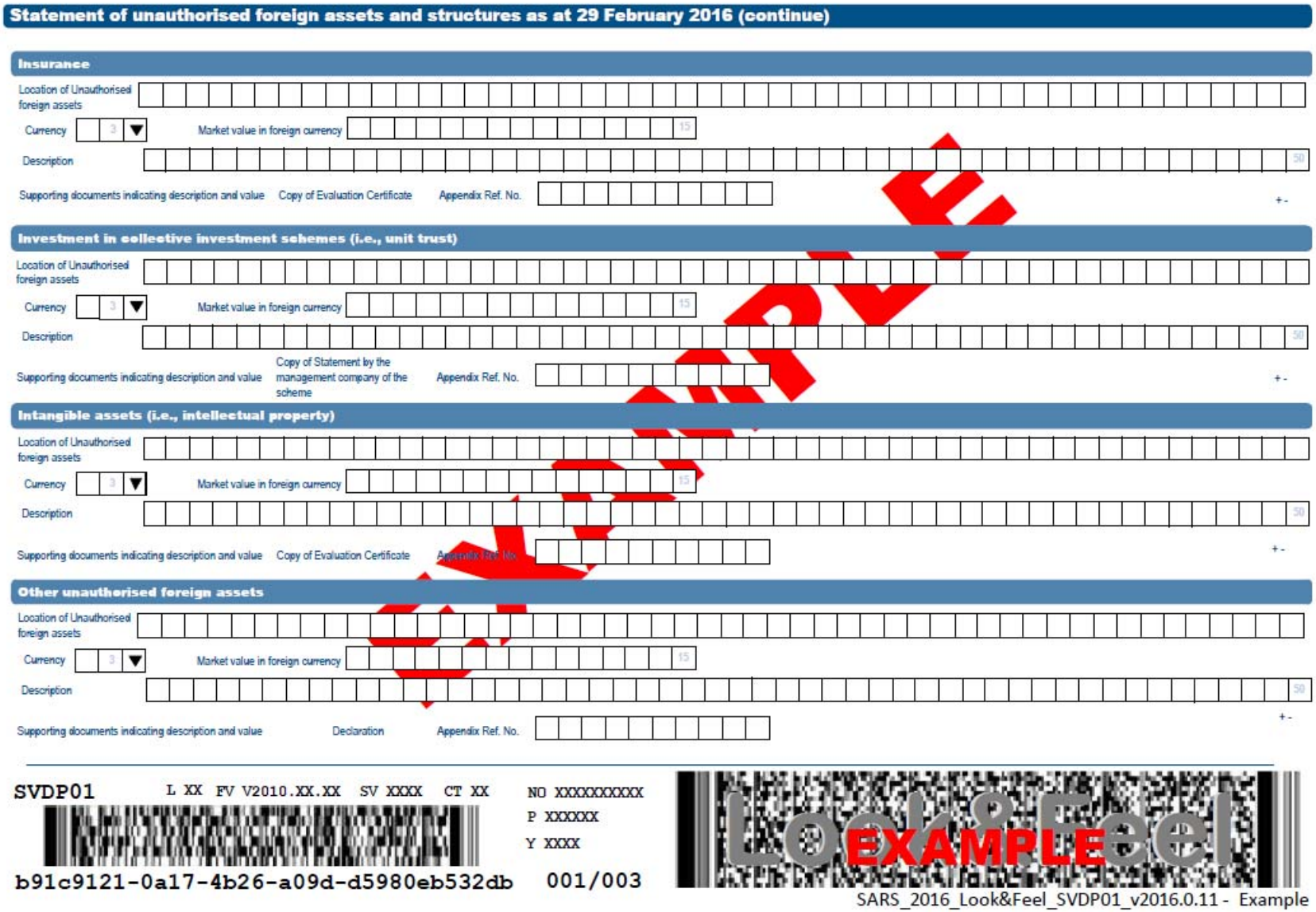
Supporting documents indicating description and value — Copy of Evaluation Certificate — Appendix Ref. No. + -

EXAMPLE

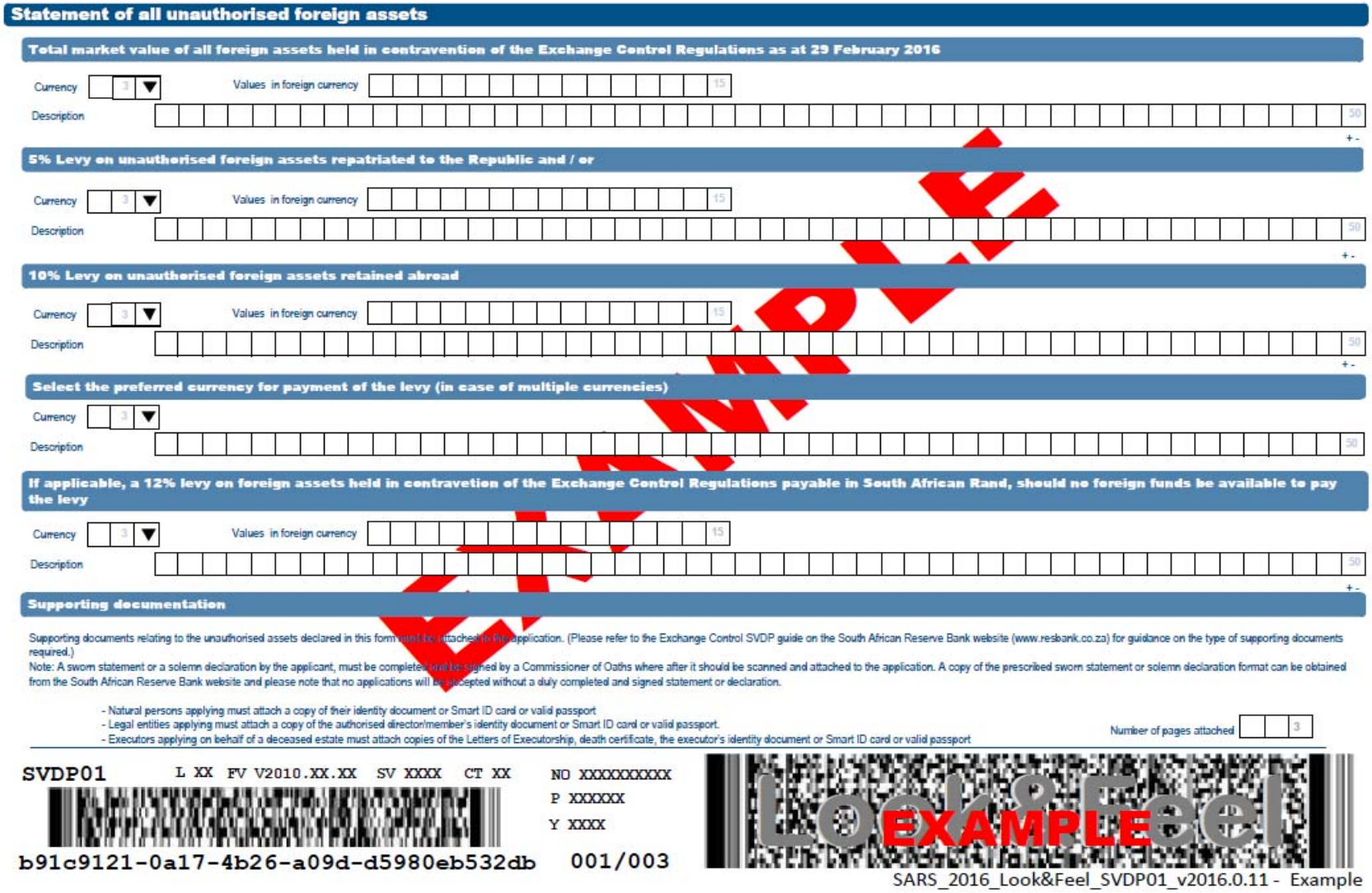
SVDP01 L XX FV V2010.XX.XX SV XXXX CT XX NO XXXXXXXXXX P XXXXXX Y XXXX

b91c9121-0a17-4b26-a09d-d5980eb532db 001/003

Look&Feel EXAMPLE



SARS_2016_Look&Feel_SVDP01_v2016.0.11 - Example



VDP01 form

Source: SARS. 2017. *VDP01 form.* [Online] Available from: http://www.sars.gov.za/AllDocs/Documents/Legal/SARS_2016_LookFeel_SVDP01_v2016%200%2011%20-%20%20Example.pdf [Downloaded: 2017-04-10].

Appendix D

Below is a calculation demonstrating the calculation required for a VDP and SVDP Tax application. In this example, the taxpayer will obtain greater relief by applying for the SVDP Tax (R1 282 307.61) as opposed to the VDP (R1 336 230.43).

As mentioned in the report, the applicant's particular set of facts and investments must be investigated and a comparison calculation performed to establish which application provides the taxpayer with the greatest relief. To the extent the taxpayer decides to proceed with the SVDP application, the taxpayer is required to mark clearly on the VDP01 form that he / she is applying for the SVDP by ticking the box on page 1 of the VDP01 form to the question 'Are you applying for SVDP Tax relief in terms of Off-shore assets and Investment income' – See Appendix B.

Kindly note that the tax calculations are for illustration purposes only and should not be used for any other purpose.

Mr A Example **VDP Tax calculatuion**							
Tax payable	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	
Taxable income to be disclosed	R 40 421.03	R 80 344.25	R 117 850.84	R 103 136.25	R 158 387.02	R 200 154.95	R
Tax rate based on income to be reported in tax year	42%	40%	40%	40%	40%	38%	
Income Tax	R 16 976.83	R 32 137.70	R 47 140.33	R 41 254.50	R 63 354.81	R 76 058.88	R
Interest levied	R 26 050.23	R 44 319.39	R 59 458.24	R 47 667.66	R 66 551.30	R 71 116.20	R
Penalties							
If no VDP applied for - max 150%	R 25 465.25	R 48 206.55	R 70 710.50	R 61 881.75	R 95 032.21	R 114 088.32	R
If VDP applied for and penalty levied at 10%	R 1 697.68	R 3 213.77	R 4 714.03	R 4 125.45	R 6 335.48	R 7 605.89	R
If VDP applied for and penalty levied at 0%	R -	R -	R -	R -	R -	R -	R
Scenario 1: no VDP applied for							
Total tax	R 788 068.79						
Total interest	R 548 161.64						
Total maximum penalty	R 1 182 103.19						
	R 2 518 333.62						
Scenario 2: VDP and penalty of 10% levied							
Total tax	R 788 068.79						
Total interest	R 548 161.64						
Total maximum penalty	R 78 806.88						
	R 1 415 037.31						
Scenario 3: VDP and penalty of 0% levied - MOST LIKELY SCENERIO							
Total tax	R 788 068.79						
Total interest	R 548 161.64						
Total maximum penalty	R -						
	R 1 336 230.43						

Mr A Example **SVDP Tax calculatuion**				
	Fx Rate	**Amount in foreign currency**	**Amount in ZAR**	
Estimated value of asset at 28 February 2011				
ZAR account		-	R -	
Euro account	10.0684	351 136.48	R 3 535 382.54	
GBP account	11.906	849.01	R 10 108.31	
USD account	7.4777	355.96	R 2 661.76	
Total			R 3 548 152.61	
Estimated value of asset at 28 February 2012				
ZAR account		-	R -	
Euro account	11.6192	267 000.00	R 3 102 326.40	
GBP account	13.4237	819.01	R 10 994.14	
USD account	8.841	477.95	R 4 225.56	
Total			R 3 117 546.10	
Estimated value of asset at 28 February 2013				
ZAR account			R 6 648 746.97	
Euro account	14.6937	-	R -	
GBP account	17.9287	11 428.08	R 204 890.62	
USD account	10.7175	-	R -	
Total			R 6 853 637.59	
Estimated value of asset at 28 February 2014				
ZAR account			R 6 856 267.28	
Euro account	12.8998	-	R -	
GBP account	17.7309	11 279.50	R 199 995.69	
USD account	11.5039	122.61	R 1 410.49	
Total			R 7 057 673.46	
Estimated value of asset at 28 February 2015				
ZAR account			R 7 106 372.55	
Euro account	17.6437	-	R -	
GBP account	22.3964	11 120.84	R 249 066.78	
USD account	16.141	-	R -	
Total			R 7 355 439.33	
Highest value is value as at 28 February 2015			R 7 355 439.33	
Amount to be included in 2015 Tax return (40% of value)			R 2 942 175.73	
Tax at 40%			R 1 176 870.29	
Interest for the 2015 tax year period			R 105 437.32	
Total due			R 1 282 307.61	

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