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BRENTHURST
THE HOME OF WEALTH

THE POWER OF INDEPENDENT ADVICE

DEADLINE LOOMS FOR UNDECLARED OFFSHORE ASSETS

By Brian Butchart - Managing Director, Brenthurst Wealth

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Time is running out for those who have not as yet considered the implications of what is required for disclosure or the possible implications of non-disclosure of offshore assets.

In the 2016 Budget, the now ex-finance minister Pravin Gordhan, announced the Special Voluntary Disclosure Programme (SVDP) for those individuals that did not previously utilise the opportunity to disclose undeclared offshore assets in the 2003/2004 amnesty.

It was estimated that approximately R65 billion was disclosed in the 2003 /2004 amnesty with an estimated R200 billion or more still undeclared.

Treasury has made it clear that the SVDP is the last opportunity for those who have not declared any historical offshore assets to the local tax authorities and the Reserve Bank if these assets were in contravention of any exchange controls or the Tax administration act.

As from 1 October 2016 to 31 August 2017 taxpayers have been given an opportunity to disclose these assets and pay certain penalties in order to legitimise these assets and bring them into the tax nett of SARS for any future tax liabilities.

Taxpayers who do not utilise this opportunity to come clean risk being taxed on the full amount that has not been taxed before, with no limitation on how far back SARS can raise assessments. So while properly disclosed applications under the SVDP will provide full immunity, those who do not come clean will be at the mercy of the revenue service with regards to the taxable period.

JHB (HQ)	+27 (0)11 799 8100
JHB (SANDTON)	+27 (0)10 035 1391
PTA	+27 (0)12 347 8240
CPT	+27 (0)21 418 1236
BELLVILLE	+27 (0)21 914 9646
STELLENBOSCH	+27 (0)21 882 8706

In addition, SARS could impose understatement penalties of 150% or 200% of the tax payable, together with interest. From an exchange control perspective the authorities are mandated to, where appropriate, recover the full amount of the contravention. A contravention of the exchange control regulations can lead to criminal prosecution.

As from September 2017 this year the first set of countries which include the G20, including South Africa and several others have agreed on the terms of the Common Reporting Standards (CRS) to disclose information of tax payers who hold financial instruments in their country to the tax authorities in which they are tax resident. This includes all financial instruments held by individuals and entities including trusts and foundations.

The SVDP is intended to encourage taxpayers to come forward on a voluntary basis to regularise their tax affairs with SARS and the Reserve Bank to avoid the imposition of under-statement or administrative penalties.

SARS has confirmed that any person may apply for SVDP. However, a person that is aware of a pending audit or investigation or is the subject of a not yet concluded audit investigation, may not use the scheme.

Individuals and companies may apply. Trusts may not. However, beneficiaries of trusts may apply provided they deem the assets and income of the trust as their own.

The SVDP consists of an application to the Reserve Bank for exchange control transgressions and an application to SARS for any tax transgressions.

The exchange control levy is 10% of the value of the assets as at 28 February 2016 if you opt to keep these funds offshore or 5% of you opt to bring them back to SA. If you pay for the penalty from SA sources rather than the offshore source an additional 2% is levied.

THERE ARE TWO DISCLOSURE OPTIONS FOR TAX TRANSGRESSIONS

VOLUNTARY DISCLOSURE PROGRAMME (VDP) AND SVDP

WHAT IS VDP?

The Voluntary Disclosure Programme has been in existence for several years already, affording all tax payers an opportunity to voluntarily disclose any tax contraventions to SARS on which the tax liability would be calculated and interest applied to that liability.

The one disadvantage is that if this route is selected SARS has the right to go back to the inception of the investment in order to calculate the exact tax liability since inception with interest applied to each respective tax period.

WHAT IS SVDP?

The SVDP is for a limited period until 31 August 2017 and is calculated using the capital value of all assets in contravention of the of the Tax Administration Act at the end of every tax year from 28 February 2011 to 28 February 2015.

40% of the Highest value of the aggregate of all assets over these 5 years will be included in the taxable income of the individual in the 2015 tax period and tax payable thereon. In addition SARS also charges interest on the outstanding tax due to them.

This ensures that all donations tax, dividends tax, capital gains tax and any income tax or estate duty liabilities will be exempt from the past. However, you need to clearly understand the implications of both the SVDP as well as the VDP in order to determine which route will be more beneficial.

I would suggest seeking professional advice and assistance in order to make an informed decision, but wouldn't wait too much longer as 31 August 2017 is fast approaching.

BRENTHURST FINANCIAL PLANNERS

MAGNUS HEYSTEK | **EMAIL:** magnus@heystek.co.za | **TEL:** +27 (0) 83 692 8635
MAGNUS is a director of Brenthurst and is in charge of investment strategies, research and client communication.

BRIAN BUTCHART CFP® | **EMAIL:** brian@brenthurstwealth.co.za | **TEL:** +27 (0) 82 335 5117
BRIAN BUTCHART is managing director of Brenthurst and head of financial planning at the CAPE TOWN OFFICE.
Brian is also responsible for compliance and operations throughout the six offices in JHB, PTA and CPT.

JOHAN BURGER CFP® | **EMAIL:** johan@brenthurstwealth.co.za | **TEL:** +27 (0) 82 732 8655
JOHAN BURGER is a director of Brenthurst and head of financial planning at the PRETORIA OFFICE.

RICHUS NEL CFP® ACCA | **EMAIL:** richus@brenthurstwealth.co.za | **TEL:** +27 (0) 78 260 4013
RICHUS NEL is the head of financial planning at the TYGERVALLEY WATERFRONT OFFICE in BELLVILLE.
Richus is a fully registered member of ACCA (Association of Chartered Certified Accountants).

RENEE EAGAR CFP®	**EMAIL:** renee@brenthurstwealth.co.za	**TEL:** +27 (0) 83 233 9373
SONIA DU PLESSIS CFP®	**EMAIL:** sonia@brenthurstwealth.co.za	**TEL:** +27 (0) 83 260 4055
MAGNUS L HEYSTEK CFP®	**EMAIL:** magnus1@brenthurstwealth.co.za	**TEL:** +27 (0) 72 071 5567
MARISE SMIT CFP®	**EMAIL:** marise@brenthurstwealth.co.za	**TEL:** +27 (0) 12 347 8240
ESMERIE PIENAAR CFP®	**EMAIL:** esmerie@brenthurstwealth.co.za	**TEL:** +27 (0) 12 347 8240
SUZEAN HAUMANN FSA™	**EMAIL:** suzean@brenthurstwealth.co.za	**TEL:** +27 (0) 21 914 9646
CHRISTOFF POTGIETER RFP™	**EMAIL:** christoff@brenthurstwealth.co.za	**TEL:** +27 (0) 82 358 3099
ARIN RUTTENBERG BCOM INV MAN	**EMAIL:** arin@brenthurstwealth.co.za	**TEL:** +27 (0) 10 035 1391
GAVIN BUTCHART ACC DIP	**EMAIL:** gavinb@brenthurstwealth.co.za	**TEL:** +27 (0) 11 799 8100

DIRECTOR & HEAD OF MARKETING:	SUE HEYSTEK	sue@brenthurstwealth.co.za
MEDIA LIAISON EXECUTIVE:	DALEEN VAN WYK	pr@brenthurstwealth.co.za
FOREIGN EXCHANGE CONSULTANTS:	ESMERIE PIENAAR	esmerie@brenthurstwealth.co.za
	SUZEAN HAUMANN	suzean@brenthurstwealth.co.za
WILLS & ESTATES:	ROZANNE HEYSTEK-POTGIETER	rozanne@brenthurstwealth.co.za
WILLS & ESTATES I LEGAL & COMPLIANCE:	MALISSA ANTHONY	malissa@brenthurstwealth.co.za
TAX & ACCOUNTS:	GAVIN BUTCHART	gavinb@brenthurstwealth.co.za

CLIENT SERVICES & EXECUTIVE ASSISTANTS

JHB: FOURWAYS
+27 (0) 11 799 8100

CELESTE PHAKHATI
celeste@brenthurstwealth.co.za

ERNA MARÉ
erna@brenthurstwealth.co.za

DANINE VAN SCHALKWYK
danine@brenthurstwealth.co.za

NICCI VAN HEERDEN
nicci@brenthurstwealth.co.za

JOSH MACRAE
josh@brenthurstwealth.co.za

PHONET NCUBE
phonet@brenthurstwealth.co.za

PTA: ERASMUSKLOOF
+27 (0) 12 347 8240

YOLANDI BURGER
yolandi@brenthurstwealth.co.za

MAGDA KAMFER
magda@brenthurstwealth.co.za

RENE DAVEL
rene@brenthurstwealth.co.za

JHB: SANDTON
+27 (0) 10 035 1391

KAREN MUNODAWAFA
karen@brenthurstwealth.co.za

CPT: DE WATERKANT
+27 (0) 21 418 1236

GREER BEKKER
greer@brenthurstwealth.co.za

DALEEN NORTJIE
daleen@brenthurstwealth.co.za

BELLVILLE: TYGERVALLEY
+27 (0) 21 914 9646

RONELLE STIPP
ronelle@brenthurstwealth.co.za

STELLENBOSCH: CENTRAL
+27 (0) 21 882 8706

KERRY-JANE LANDMAN
kerry@brenthurstwealth.co.za

JOHANNESBURG (FOURWAYS)
Tel: +27 (0)11 799 8100
Fax: +27 (0)11 799 8101
Unit 2B, Cedar Office Estate, Cedar Road, Fourways, SA

JOHANNESBURG (SANDTON)
Tel: +27 (0)10 035 1391
Fax: +27 (0)86 775 7089
The Business Exchange, 150 Rivonia Road, Sandton, SA

PRETORIA (ERASMUSKLOOF)
Tel: +27 (0)12 347 8240
Fax: +27 (0)12 347 0601
494A Lois Avenue, Erasmuskloof X3, Pretoria, SA

CAPE TOWN (DE WATERKANT)
Tel: +27 (0) 21 418 1236
Fax: +27 (0) 21 418 1304
29 Chiappini Street, De Waterkant, Cape Town, SA

BELLVILLE (TYGERVALLEY)
Tel: +27 (0)21 914 9646
Fax: +27 (0)21 914 6515
Tyger Waterfront Terraces 2, Carl Cronje Drive, Bellville, SA

STELLENBOSCH (CENTRAL)
Tel: +27 (0)21 882 8706
Fax: +27 (0)21 882 8799
97 Dorp Street, Unit 3, La Gratitude, Stellenbosch, SA