



South African Reserve Bank

Media statement: Proposed Exchange Control Voluntary Disclosure Programme and Amendment of the Exchange Control Regulations, 1961

The Exchange Control Department of the South African Reserve Bank ("Exchange Control") is releasing, for public comment, a draft Exchange Control Voluntary Disclosure Programme ("draft VDP"), as well as an amendment to the Exchange Control Regulations, 1961 ("Regulations"), to be included as Regulation 24 ("Regulation 24"). The draft VDP deals with the basis for, and procedures and processes applicable to, the regularisation of contraventions of the Regulations. Regulation 24 deals with procedures and processes relating to the granting of administrative relief under the Regulations and the draft VDP. The draft VDP and Regulation 24 give effect to the announcement by the Minister of Finance in the Budget Speech of 17 February 2010 regarding certain measures relating to exchange controls. The draft VDP and Regulation 24 may be found on the South African Reserve Bank's website (www.reservebank.co.za), by following the links: Home>SARB activities>Exchange controls>Exchange Control Voluntary Disclosure Programme.

The draft VDP and Regulation 24 are published for public comment prior to promulgation and adoption thereof. Comments will be considered by Exchange Control and National Treasury. The draft VDP and Regulation 24 will then be revised, if necessary, by Exchange Control and National Treasury to take account of these comments. Revised versions of Regulation 24 will then be considered by the President and the Minister of Finance, and the draft VDP will be amended where necessary.

Regulation 24

The proposed Regulation 24 constitutes administrative relief, and deals with the procedures, processes and requirements applicable to the authorisation of the regularisation, the subsequent application for relief and the regularisation of any

contravention of the Regulations. During the period prescribed, Regulation 24 authorises the Treasury, or a person authorised by the Treasury, to invite, on written notice, persons who have contravened the Regulations to apply to have such contraventions regularised (which shall include and be dealt with on the basis contemplated in Regulation 24) and by the making of a sworn affidavit or solemn declaration relating to the contravention.

Draft VDP

The draft VDP encourages persons, who are subject to the Regulations and who may have contravened the provisions of the Regulations, to come forward, disclose and regularise their contraventions of the Regulations. Certain disclosures contemplated in the draft VDP are to be made pursuant to the proposed Regulation 24, the provisions of which (including the payment of a levy) will apply thereto. Accordingly, the draft VDP will constitute the type of notice contemplated in Regulation 24, which allows for certain contraventions of the Regulations to be regularised on application.

The draft VDP comprises the following three categories:

- 1 *Disclosure and regularisation:* In terms of this category, persons (both natural persons and corporate entities) who have contravened certain specified provisions of the Regulations will be entitled, by declaring and disclosing this to Exchange Control through an Authorised Dealer, to regularise such contraventions. Disclosures and declaration made in terms of this category do not attract any levy and relate to,
 - 1.1 in respect of natural persons, declarations made by (i) immigrants to disclose their foreign assets; and failure by (ii) residents to disclose their (a) foreign inheritances and legacies received prior to 17 March 1998, (b) foreign income earned prior to 1 July 1997 and (c) foreign loans (with recourse to the Republic of South Africa (“the Republic”) raised by them to acquire a foreign asset prior to 28 February 2010, in contravention of the Regulations;

1.2 in respect of corporate entities, declarations by residents of (i) contraventions, prior to 28 February 2010, of the provisions of an approval relating to an approved foreign investment and which relate to the submission of financial statements and progress reports, the lodging of share certificates, the placing on record of the expansion of foreign investments, the declaration of dividends and remittance thereof to the Republic prior to 26 October 2004 and the disposal of all and/or part of a foreign investment; (ii) unauthorised foreign loans (with recourse to the Republic) raised by them prior to 28 February 2010, provided such foreign loans accord with the Exchange Control policy applicable to foreign loans; and of (iii) the acquisition of foreign investments prior to 28 February 2010, which are unauthorised and which foreign investments accord with Exchange Control policy applicable to foreign investments. Where declaration and regularisation are not permitted in terms of this section, nothing prevents an applicant from applying for the relief contemplated in the third category (general administrative relief) hereunder.

2 *Administrative relief for loop structures and donors to discretionary trusts:* In terms of this category, applications are to be made pursuant to the provisions of Regulation 24 of the Regulations. In this regard (i) qualifying residents (both natural persons and corporate entities) who had prior to 28 February 2010 entered into so-called loop structures may regularise the transactions relating thereto and will be required as part of such regularisation to dispose of the interest held via a non-resident entity to a resident (within 180 days of submitting such an application). This is to be disclosed to Exchange Control in an application through an Authorised Dealer and will attract a levy equal to 10 per cent of the applicable funds; and (ii) a resident who is a donor (or the deceased estate of a donor) of a discretionary trust, which is not a resident, may elect that the foreign asset(s) held by such discretionary trust prior to 28 February 2010 be deemed to be held by such resident. This is to be disclosed to Exchange Control in an application through an Authorised Dealer and will attract a levy equal to 10 per cent of the value of the foreign asset(s) disclosed.

3 *General administrative relief:* In terms of this category, applications are to be made pursuant to the provisions of Regulation 24 of the Regulations. Residents (both natural persons and corporate entities) who have contravened any of the provisions of the Regulations at any time prior to 28 February 2010 and which contraventions include, *inter alia*, the ownership of an unauthorised foreign asset(s) (but exclude assets that constitute bearer instruments) will be entitled, by providing the information required, to apply to have such contraventions regularised. Applications under this category may be made directly to Exchange Control or through an Authorised Dealer for onward submission to Exchange Control.

3.1 The levy payable by qualifying residents, which must be introduced from funds held abroad, is an amount equal to 10 per cent of the market value of the unauthorised foreign asset disclosed as at 28 February 2010. In cases where the qualifying resident has no offshore funds available to pay the levy, a local payment will be permitted subject to an additional levy of 2 per cent. Where a qualifying resident has exited funds in contravention of the Regulations and has no foreign assets, a levy of 12 per cent on the amount exited in contravention will be payable.

All disclosures and/or applications made in terms of the draft VDP are to be made before 31 October 2011.

Public comments

Comments may be e-mailed to SARB-VDPEXCON@resbank.co.za or be submitted via facsimile to +27 12 313-3133, by no later than 2 August 2010.

To assist with the processing of comments in regard to the draft VDP and Regulation 24, public comments must be given in the order as listed in the memorandum on the objects of Regulation 24 and the draft VDP.

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