



South Africa Regularisation

11th and 12th July 2016



With you
today



Johan van der Walt



Johan van der Walt

Johan joined KPMG SA in March 2014 as Head: Dispute Resolution and Tax Controversy. Tax dispute resolution and controversy management is a new focus area for KPMG SA. Johan's extensive experience with the SA Revenue Service ("SARS"), and later with a leading law firm, means that he is ideally placed to understand, and advise in, this space.

Johan joined SARS in 1998 as a tax lawyer (later senior tax lawyer), representing SARS in tax appeals before the Tax Court. In 2000 he was appointed AGM: Litigation, managing SARS's overall tax litigation division. He subsequently moved to a Senior Specialist role where he was closely involved in the analysis of tax planning arrangements, the application of the general anti-avoidance rules ("GAAR") and the subsequent settlement negotiations of complex, high-value tax disputes. During a sabbatical in 2008 he worked in the Aggressive Tax Planning unit of the Australian Tax Office in Canberra. Before leaving SARS, he was instrumental in initiating and launching the 2010 Voluntary Disclosure Program.

Having spent 13 years with SARS, Johan has extensive experience regarding: tax dispute resolution processes (both Alternative Dispute Resolution ("ADR") as well as tax litigation); SARS's application of the GAAR; the preparation and submission of VDP applications; the negotiation and resolution of complex tax disputes; the Tax Administration Act, 2011.

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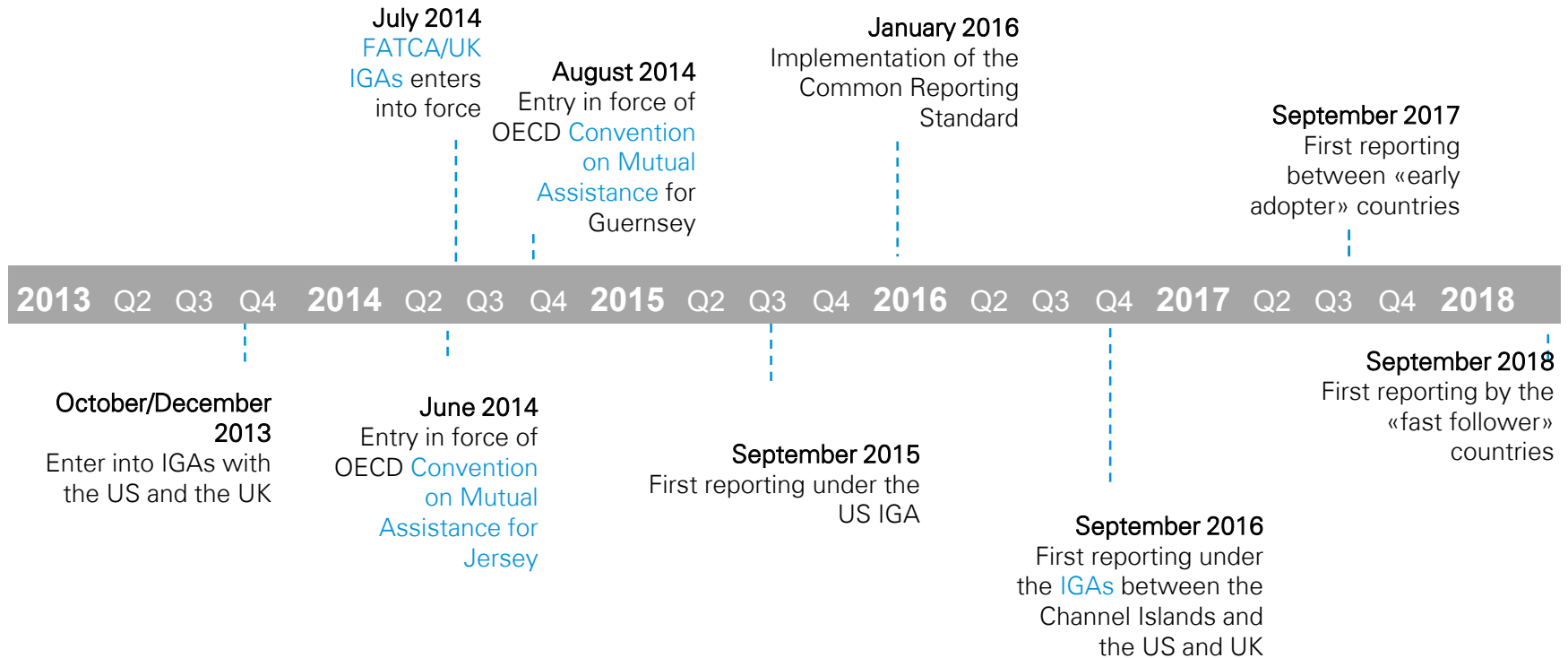
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The road to transparency - the Channel Islands' perspective



Channel Islands timeline



- Common Reporting Standard will replace the EU Savings Tax Agreements as of 1 January 2016 in preparation for the agreements to be terminated from 1 January 2017.

Common Reporting Standard

Status of commitments as at 9 May 2016 (101 jurisdictions)

Jurisdictions undertaking first exchanges by September 2017 (for 2016)

Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom

Jurisdictions undertaking first exchanges by September 2018 (for 2017)

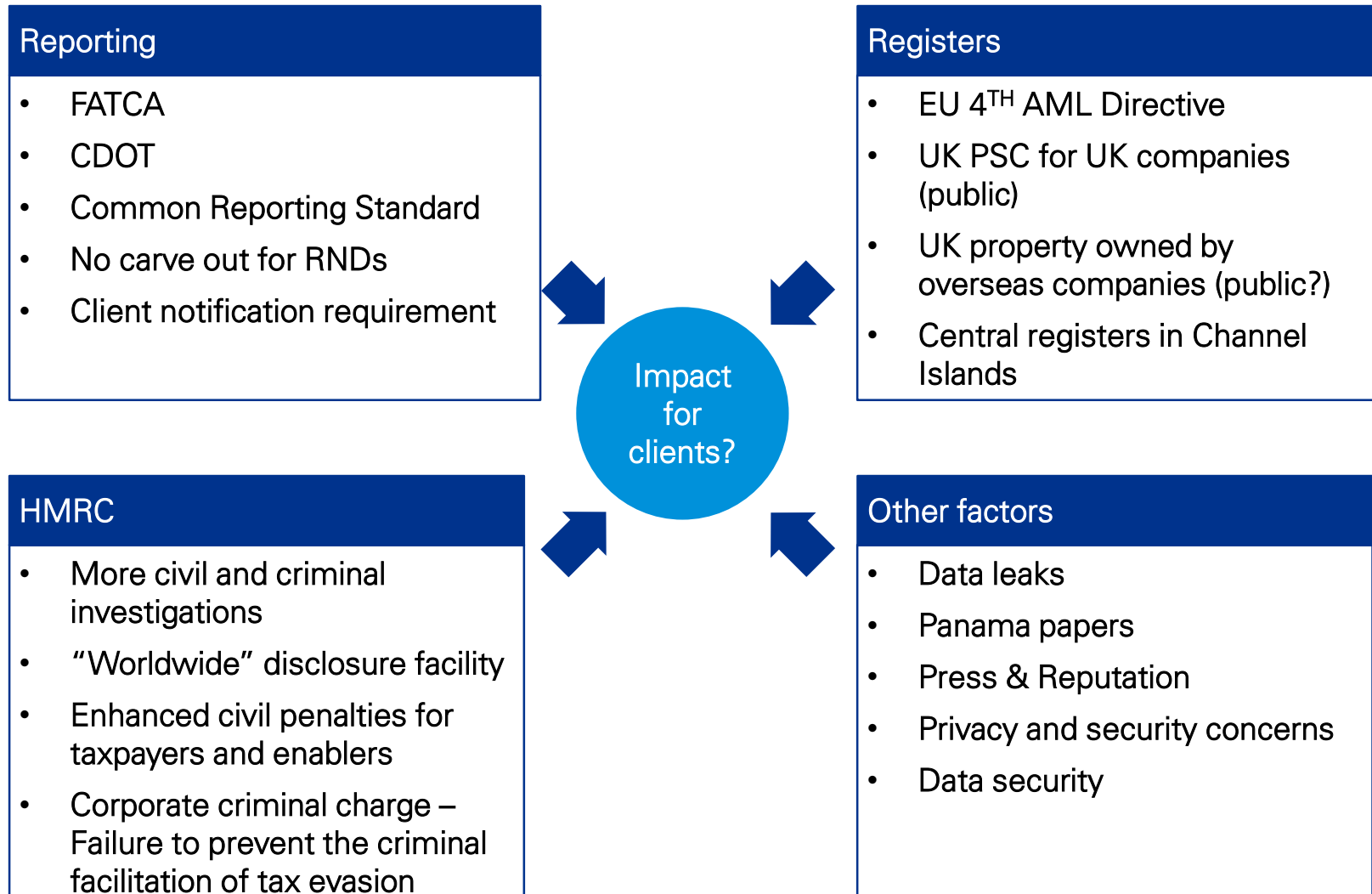
Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Bahrain, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Saint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay, Vanuatu

Regularisation of the past

- First reporting under CRS is 30th June 2017. Clients must be tax compliant by then.
 - The CRS does not cover the regularisation of the past
 - A reporting of a non-compliant client may lead to high financial and other consequences for the client
 - In general, a voluntary disclosure is only possible as long as it is initiated by the taxpayer itself
 - By 2015, 47 countries are offering voluntary disclosure programs

Non tax compliant clients should file a voluntary disclosure now

Developments in Transparency



What tax authorities want, in a word, is...

INFORMATION

What action should clients take now?



- Establish what information will be disclosed to tax authorities under CRS
- Establish data available publicly (e.g. Panama, property owned by overseas companies)
- Establish what information will be accessible on public registers
- What assets will tax authorities be aware of for the first time?
- Coordinate with tax return filings to ensure no inconsistencies

What action should clients take now?



- From a tax perspective is everything robust and would withstand scrutiny from tax authorities?
- If any uncertainty review the position in advance of tax authority doing so
- Not uncommon that errors are made within overseas structures that were set up correctly but subsequently run into implementation issues, e.g.
 - i. remittances from accidentally mixed funds
 - ii. benefits being provided by trusts
 - iii. investments in UK source assets
- If necessary, manage disclosures
- Take advice from specialists



South African VDP tax vs SDVP(t)



VDP tax vs SDVP(t)



Permanent VDP

Investment income (interest, dividends and capital gains) must be declared. Presently applications need to make declarations from the 2002 tax year (1 March 2001).

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.

Interest remains payable from the first year of reported defaults.



SVDP – tax

Only investment income (interest, dividends and capital gains) from 1 March 2010 need be declared. Any investment income prior to 1 March 2010 is exempt.

SARS will seek to tax 50% of the total amount used to fund the acquisition of unauthorized offshore assets (acquired before 1 March 2015) in taxable income which will be subject to normal tax.

Interest remains payable on tax debts from 1 March 2010.

VDP tax vs SDVP(t)



Permanent VDP

No understatement penalties will be levied

Relief from administration penalties (excl penalties on the late submission of returns)



SVDP – tax

No understatement penalties will be levied

Relief from administration penalties (excl penalties on the late submission of returns)



Exchange control: current vs SDVP (e)

The Regularisation process

No time limitation to which contraventions apply.

20% levy should the funds / investments be repatriated to SA.

25% levy should the holder elect to retain the funds / investment off-shore.

Where there are mitigating factors the levy could possibly be reduced.

SVDP – exchange control

Applicable to contraventions which occurred prior to 29 February 2016.

A 5% levy will apply where the regularised assets are repatriated to South Africa.

A 10% levy will apply where the regularised assets remain offshore.

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.

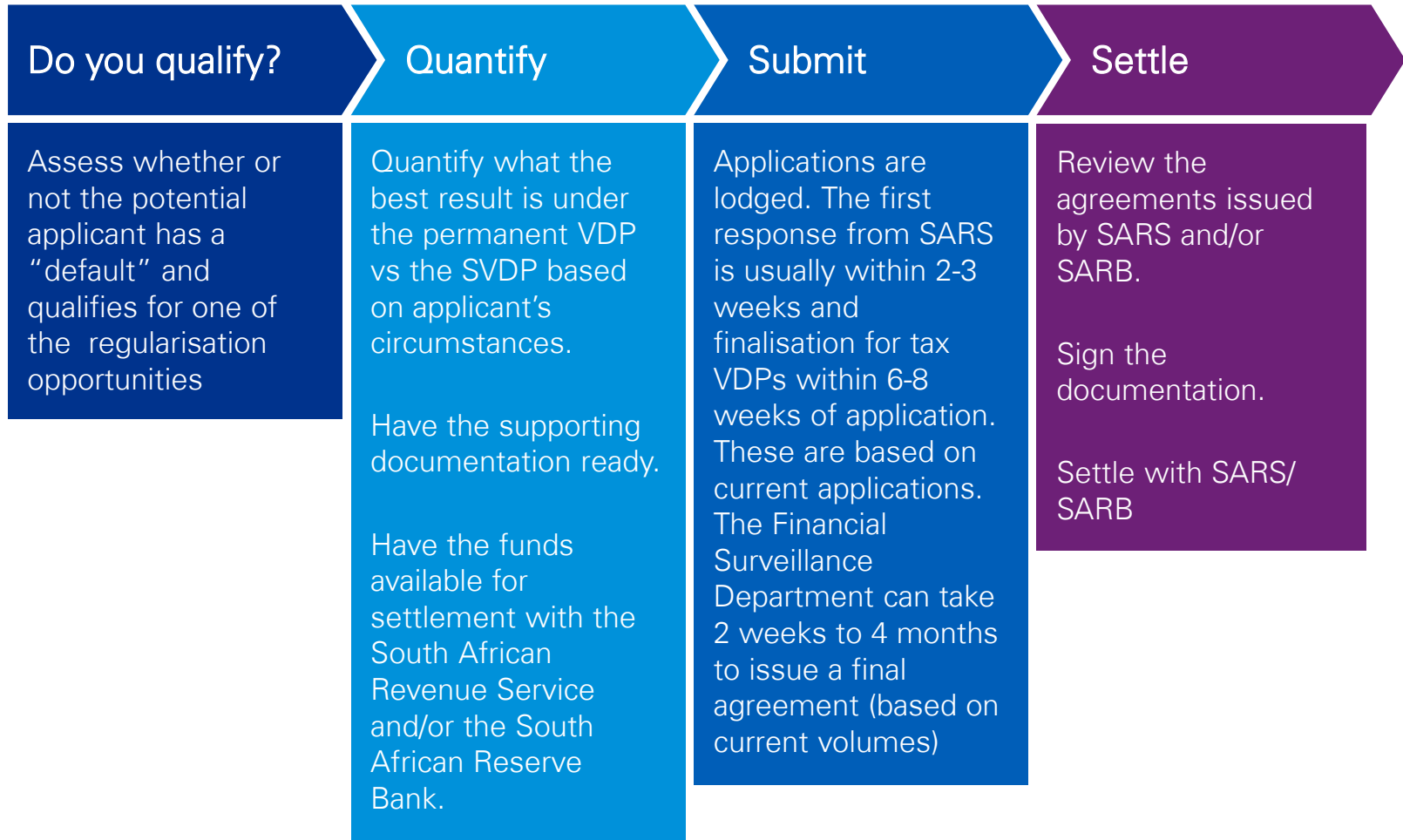


Documentation typically needed

- Copies of bank statement or tax summaries for the years affected by the defaults
 - Interest income
 - Dividend income
 - Capital gains
 - Business income
- Annual financial statements for companies / trusts where applicable
- Trust deed
- Copies of tax assessments as relates to prior years



Processes to follow

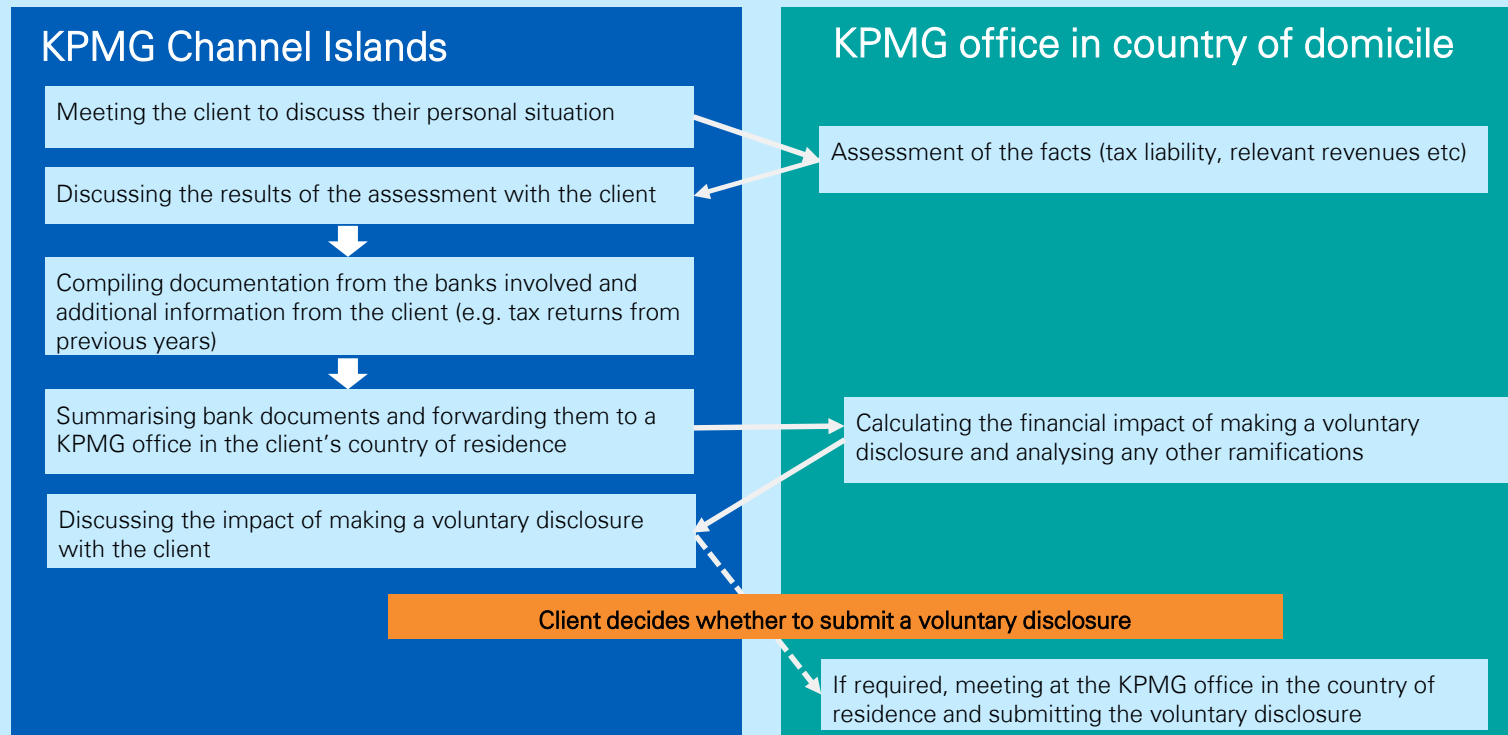


KPMG – with discretion and independence

Your benefits at a glance

- Cross-border solutions from KPMG’s international network
- Professionals with the knowledge of local tax law
- A single contact person
- Documents can be forwarded to the foreign specialists for processing

Typical process of an international voluntary disclosure



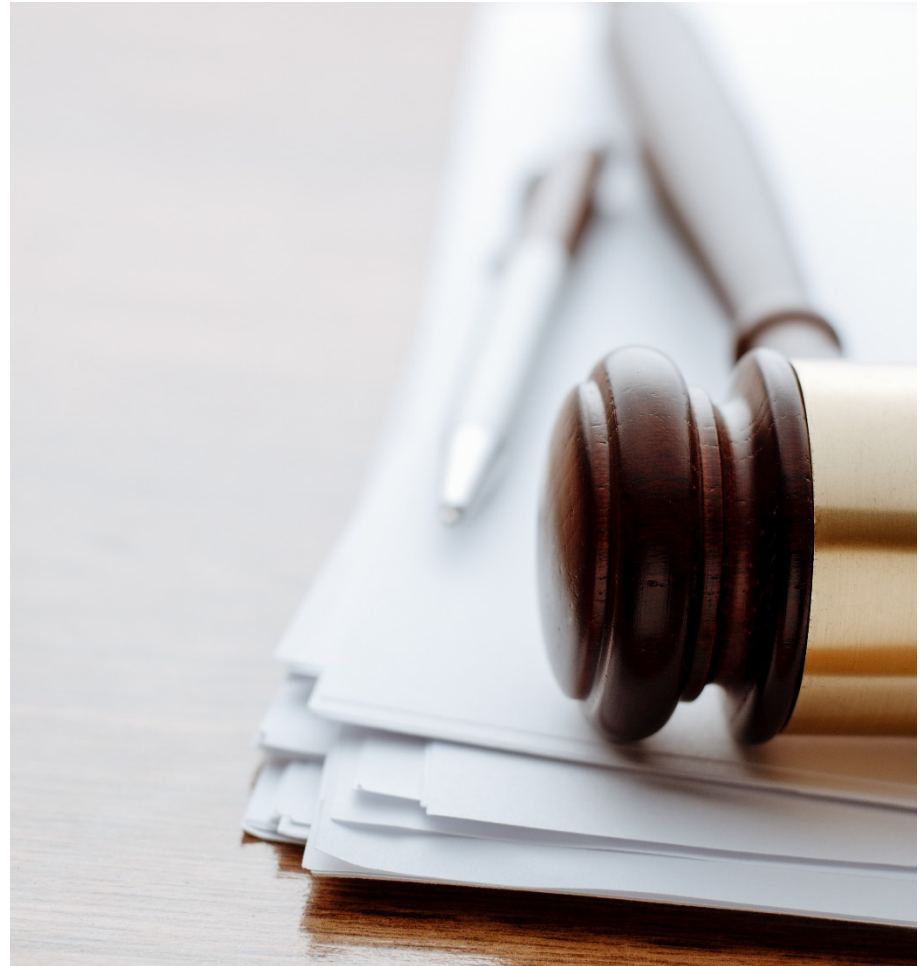


Frequently asked questions?



Frequently asked questions?

- When will the SVDP become law?
- Will the window be extended ?
- Can I apply for tax regularisation using the permanent VDP and use regularise the exchange control SVDP?
- If I have assets which were not regularised as part of the 2003/2004 amnesty nor the 2010/2011 VDP, can I still access the SVDP?



Frequently asked questions?

- Who can apply
- Inheritances?
- What if I do nothing right now?
- Loop structures – what is it?
- What if the exchange control contravention was the failure to place the details on record with the South African Reserve Bank? Do I still need to regularise?
- What if I have already paid taxes on the same income but to another tax jurisdiction?
- Sins of the Father – how do we deal with this?



Frequently asked questions?

- At the moment, do the South African Revenue Service and the South African Reserve Bank share information? When and how often?
- Will the South African Revenue Service and the South African Reserve Bank share information?
- What if I sell all my assets in South Africa now and leave the country?



Frequently asked questions?

- If loans were made by an exchange control resident to the a foreign company and/or foreign trust....what should the exchange control resident have done to ensure compliance with the South African Reserve Bank?
- If married persons are married in community of property (communal estate), can all the tax and exchange control defaults be made in one spouse's name? e.g. can all the defaults be submitted in the husband's name?
- The SVDP exchange control levy of 12%, can it come from local funds?



Frequently asked questions?

- Trusts – where the applicant (settlor, founder or beneficiaries of foreign discretionary trusts), regularises trusts assets, they have to elect that the trust's offshore assets and income be deemed to be held by them. How does this play out?
- One has to consider the place of effective management as relates to trusts and companies. If it is determined that foreign trust and/or foreign company is effectively managed in South Africa, it means that the foreign trust and/or company is a South African tax resident and SA tax residency rules apply.



Frequently asked questions?

- Impact of the Automatic Exchange of Information and the Common Reporting Standard?
- Can financial institutions lodge applications on behalf of South African tax and South African exchange control residents?





Thank you





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