Dear Mr Momoniat and Ms Mputa

ADDITIONAL SUBMISSION: SPECIAL VOLUNTARY DISCLOSURE (SVDP) PROGRAMME AS CONTAINED IN THE DRAFT RATES AND MONETARY AMOUNTS AND AMENDMENT OF REVENUE LAWS BILL 2016

1. We refer to the workshop with National Treasury (NT), the South African Reserve Bank (SARB) and SARS on Friday, 10 June 2016 in respect of the SVDP contained in the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill 2016.

2. You requested that interested parties make additional submissions regarding some of the unresolved concerns raised in that workshop.

3. Please find below our submissions made in this regard. Our prior submission, attached for ease of reference, remains relevant.

General - Compulsory reporting obligations APA & FICA

4. It was noted at the workshop that there was no intention to change the six month timeframe in respect of the SVDP period of application. The six months would commence when the legislation is promulgated and it is anticipated that this will be in October 2016.

5. Whilst we still believe a longer time period should be more practical given the relevant disclosure and document requirements, we respect this decision to retain the six month period. We propose that steps must be taken to ensure that taxpayers are able to get proper advice, timeously, until the legislation is promulgated.

6. In terms of both the Financial Intelligence Centre Act and the Audit Professions Act, advisors who are accountable institutions or registered auditors are obliged to disclose their clients' financial transgressions for tax and exchange control in respect of those compulsory disclosure regimes.

7. As noted both in our prior submission and by numerous parties at the workshop, this will discourage any person who is only enquiring as to his possible transgressions or wanting to enquire of the process and consequences of using the very persons who are most accessible to advise him or her.
8. This, in our view, would substantially detract from the possible success of the SVDP which was considered in both the 2006 and 2010 amnesty and VDP.

9. For the purpose of the 2010 VDP, communication was issued by FICA excluding compulsory disclosure where the affected person intended to use the VDP, in order to ensure the success of that VDP. Similarly, in 2006 (in respect of the SARS Small Business Amnesty) and 2010, concessions were made to exclude registered auditors from the obligation to disclose their clients' financial transgressions where that client was contemplating using the VDP.

10. It is our view that the broader more formal exclusion as was done in the 2006 amnesty should be considered which would provide the most incentive to use all available advisers in promoting compliance.

11. Submission: As was done in respect of the SARS Small Business Amnesty, the Auditing Profession Act should be amended to exempt registered auditors from disclosing their clients' financial transgressions where the client has approached the auditor for assistance in making an SVDP application. Similarly, compulsory disclosure exclusions should be issued under FICA. In our view, these amendments will aid the success of the SVDP and should be implemented before the provisions relating to the SVDP become effective.

Lockdown of SARB penalties for the duration of the SVDP period

12. In our initial submission, concerns were raised regarding the fact that those who invested post-tax funds would be at a disadvantage when making application under the SVDP, in relation to those who invested pre-tax funds.

13. The disadvantage is on the basis that the person who invested post-tax capital will be taxed on a portion of the capital, despite having already paid tax on that amount in the past. Such person is then treated the same as someone who used pre-tax monies to fund the capital amount.

14. The proposal made at the workshop was that these taxpayers should follow the ongoing SARB regularisation process in order to avoid the taxation which will be incurred via an SVDP application.

15. Whilst we accept that affected taxpayers may take this approach, they would still potentially be disadvantaged on the basis that there would be no certainty regarding the quantum of the penalty payable which ranges from 5% to 40%.

16. Certainty of the outcome is one of the most important features of the SVDP. We also cannot understand why in principle NT and SARB would want to subject those who are more compliant to a harsher or more uncertain process than those who were more non-compliant.
17. In our view, this approach will discourage affected taxpayers from making the application for regularisation under the normal rules.

18. **Submission:** It is submitted that SVDP should expressly cater for these two different degrees of non-compliance. Alternatively, to the extent that the abovementioned taxpayers do wish to use the standard regularisation process, we propose that there be a lockdown on the penalties imposed to those taxpayers who make an application during the SVDP period that is equal to the penalties and conditions which would have been imposed if they had applied for the SVDP.

**Transfer of VDP applications**

19. The implementation of the proposed VDP should ensure that all persons are treated equally under the law.

20. In such an instance those who volunteered their non-compliance under the more punitive TAA VDP should not be worse off for exactly the same transgressions, especially where those applications have not as yet been finalised.

21. **Submission:** It is submitted that the Bill should cater for VDP applications made under the TAA which have not been finalised by 24 February 2016 (i.e. when the draft bill was released) to be dealt with under the current proposed VDP regime.

**Persons disqualified from participating in the SVDP**

22. During the course of the discussions at the workshop, a query was raised regarding whether or not a person whose transgression was made known to SARS or SARB via an International Exchange of Information Agreement would qualify to participate in the SVDP.

23. SARS stated that to the extent that they have not notified the person of the transgression, the SVDP and VDP process were, in their view, available to such person/s.

24. However, SARB representatives indicated that regardless of whether they have notified such persons of the transgressions identified, those persons would not qualify for the SVDP and their applications will be rejected.

25. This contradictory position is quite concerning and, in our view, untenable as there may be many people who would ordinarily apply for the SVDP who will now reconsider due to the uncertainty as to whether their application will be accepted or not.

26. As noted, certainty of the process and grounds for relief is the basis for the success of any VDP process and the disparity in views between SARS and SARB on principle creates much uncertainty. The income tax and exchange control cannot, in our view,
be divorced from each other and relevant government agencies should be talking with one voice.

27. Submission: It is submitted that for the purpose of the SVDP, SARB should treat applicants in the same manner as SARS would – that is, until such time as SARB have notified transgressors of an investigation into their affairs, the SVDP should be available to these persons. This position creates certainty of fact and due process under law.

Yours faithfully

Somaya Khaki
PROJECT DIRECTOR: TAX

Pieter Faber
SENIOR EXECUTIVE: TAX

The South African Institute of Chartered Accountants