06 August 2010

The Exchange Control Department
South African Reserve Bank
P. O Box 427
PRETORIA
0001

BY E-MAIL: Charles.Nevhutanda@resbank.co.za

Dear Sir

COMMENTS ON PROPOSED EXCHANGE CONTROL VOLUNTARY DISCLOSURE PROGRAMME

In response to a request for feedback regarding the Exchange Control Voluntary Disclosure Programme released by the South African Reserve Bank (“SARB”) on 01 July 2010, we set out below the SAICA National Tax Committee’s submission.

1. Disclosures and administrative relief
   1.1. The introductory paragraph to the document indicates that the Exchange Control Department of the SARB offers an opportunity to South African residents to regularise their exchange control affairs by making a voluntary disclosure to SARB of contraventions of the Exchange Control Regulations. At the time of the Exchange Control Amnesty and Amendment of Taxation Laws Act No. 12 of 2003, and the Exchange Control Guidelines promulgated to facilitate the process whereby applicants could apply for Exchange Control Amnesty, it was made clear that residents of South Africa could not apply for amnesty.
   1.2. At the time of the amnesty, we received a large number of requests from former South African residents who had formerly emigrated from the country, to apply for Exchange Control Amnesty so that they could regularise their position in light of the fact that they had previously violated the Exchange Control Regulations. Unfortunately, the Exchange Control Amnesty did not cater for such persons as they were no longer residents of South Africa. It is, therefore, suggested that the authorities consider allowing emigrants who were previously resident in South Africa to apply for the Voluntary Disclosure Programme insofar as it relates to exchange control. This would allow such persons to regularise breaches of the Regulations, which took place prior to their emigration from South Africa.

2. Foreign inheritances and legacies
   2.1. It is suggested that the paragraph dealing with foreign inheritances and legacies be clarified to provide that the provisions pertaining to foreign inheritances and legacies
does not apply to gifts or donations received by a resident from a non-resident, while the non-resident is still alive.

2.2. We recall that at the time of the amnesty, many people wished to merely submit declarations to SARB relating to gifts received from non-residents, which had not been reported to SARB before. No doubt, the regularisation of such amounts would require the resident to pay the 10% or 12% levy, as the case may be.

3. Payment of the levy
3.1. It is indicated that a levy of 10% is payable in certain instances, which must be introduced from funds held abroad. Alternatively, where the person seeking administrative relief has no off-shore funds, local payment will be allowed subject to a total levy of 12%.
3.2. It is unclear whether the applicant for administrative relief has a choice to pay 10% from funds held abroad, or to pay the administrative levy of 12% from domestic funds, even though foreign funds may still be held by them. The documents and Regulations should be clarified in this regard, as many applicants may wish to retain all funds abroad, but pay the administrative levy from domestic funds.

4. Natural persons: unutilised foreign investment allowance
4.1. The documents published by SARB should clarify whether the levy payable by an applicant for administrative relief takes account of any unutilised balance of the foreign investment allowance or not.
4.2. In the case of the 2003 Amnesty, the unauthorised foreign funds were reduced by the unutilised foreign investment allowance with the exchange control amnesty levy payable on the remaining balance.
4.3. It is unclear whether the 10% or 12% levy, as the case may be, will be payable with regard being had to the unutilised foreign investment allowance or not.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

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The South African Institute of Chartered Accountants