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PRACTICE NOTE NO: DT- IT/016-16

THE REDUCTION OF ADDITIONAL TAX BY VOLUNTARY DISCLOSURE

In exercise of the powers conferred by section 68*bis* of the Income Tax Order 1975, as amended (hereinafter referred to as the Order), the Commissioner General issues the following notice:

Citation and commencement

This notice may be cited as Practice Note No: DT- IT/016-16 on the **Reduction of Additional Tax by Voluntary Disclosure** arising from the Imposition of penalties in terms of Section 40, and shall come into effect on 01 August 2016.

Purpose

This practice note aims to promote voluntary compliance of taxpayers by encouraging them to come forward on their own volition to adhere to their statutory obligations as required by the Income Tax Order.

Definitions

Voluntary disclosure - A program extended to eligible persons that waives penalties on unpaid tax liabilities or unfulfilled filing requirements in exchange for their voluntary disclosure.

Voluntary disclosure relief – incentive that reduces the amount of additional tax owed by individuals or business entities.

Understatement – the presentation of something to be smaller than it actually is.

Waive - to refrain from claiming or insisting on; give up; forgo: to waive one's right.

The Law

In terms of Section 40 of the Order a taxpayer who:

- a) Makes a default in rendering a return shall be required to pay in addition to the tax chargeable in respect of his income an amount equal to twice the tax chargeable in respect of his taxable income for such year of assessment;.
- b) Omits from his return any amount which ought to have been included shall be required to pay twice the difference between the tax calculated by him and the tax chargeable for such year of assessment; or
- c) Makes any incorrect statement in any return rendered by him which would result in less tax than properly chargeable shall be required to pay twice the difference between the tax assessed by him and the tax properly chargeable if the correct statement had been made by him.

In terms of section 40*bis* of the Order, every person:

- i. liable to withhold tax as required under any provisions contained in the Order who fails to withhold is liable for additional tax of 20% of the amount to be withheld.
- ii. who fails to remit any tax withheld shall be liable for an additional tax as follows:
 - A. Failure to pay within less than 30 days, the additional tax shall be 10% of the tax;
 - B. Failure to pay within 90 days but more than 30 days, the additional tax shall be 15% of the tax;
 - C. Failure to pay within 180 but more than 90 days, the additional tax shall be 20% of the tax; and

- D. Failure to pay the tax 180 days or more, the additional tax shall be 25% of the tax.
- iii. in terms of Section 40*bis* (3) liability for default levied under subsection (1) and (2) is borne personally by the person on whom it is levied (withholder) and no part thereof is recoverable from the person who received the payment from which tax should have been withheld.

Practice

1. Circumstances under which additional tax will be payable

The circumstances under which a penalty for concealment of income gets payable will vary depending on the personal circumstances of the taxpayer. The imposition of a penalty is usually as a result of:

- not submitting a return;
- omission of amounts which should have been included in the return; and
- making incorrect statements in a return.

The imposition of the penalty will depend on the personal circumstances of the taxpayer and could be different for each case.

2. Requirements for a valid voluntary disclosure

To ensure that a voluntary disclosure application is valid, the disclosure must:

- a) be voluntary;
- b) involve a default which has not previously been disclosed to the SRA by the applicant or representative of the person;
- c) be full and complete in all material respects;
- d) involve the potential imposition of an understatement penalty in respect of the default;
- e) not result in a refund due by the SRA; and
- f) be made in the prescribed form and manner.

3. Advantages of an accepted voluntary disclosure

- a) No prosecution
- b) A reduction or cancellation/ waiver of chargeable penal tax

4. Persons who may apply for voluntary disclosure relief

- a) Any person, whether in a personal, representative, withholding or other capacity, may apply for voluntary disclosure relief.
- b) Any person who would otherwise be excluded as a result of the audit, post audit or investigation may apply for voluntary disclosure relief where the Commissioner General believes that the default would not otherwise have been detected during the audit or investigation and the application would be in the interest of good management of the tax system.

5. Persons who may not apply for voluntary disclosure relief

- a) A person that is aware of a pending audit or investigation or of an audit or investigation that has commenced but has not yet been concluded **is excluded**.

6. The voluntary disclosure application process

- All voluntary disclosures application must be made in writing and addressed to the Commissioner General.
- Applications can be submitted at all SRA service centers in the country.
- All supporting and relevant documentation should be attached.
- The application should detail the following:
 - The nature of the default;
 - The reason that caused the default; and
 - The role of the applicant in causing / mitigating the default.
- Taxpayer will receive acknowledgement letter from SRA.
- Taxpayer should ensure that they have evidence of submitted application

7. Evaluation of the voluntary disclosure application

- The Commissioner General will evaluate the voluntary disclosure application and the supporting documentation, where attached to determine if the applicant meets the requirements for a valid voluntary disclosure.
- Where additional information is required, the Commissioner General will either request it or request a meeting with the applicant.
- The Commissioner General will issue the outcome (and the reasons for the decision if the outcome is not favorable)
- Where the outcome of the application is positive, the Commissioner General will present a voluntary disclosure directive to the applicant.

8. Voluntary Disclosure Directive

The directive shall detail:

- the relief and the rights of both parties;
- the material facts of the default;
- the amount payable by applicant/ taxpayer and the penalty applicable;
- the payment arrangement and dates; and
- any other undertakings made by the parties.

9. Voluntary disclosure relief

Voluntary disclosure relief is limited to defaults disclosed for which relief is granted as per the voluntary disclosure directive. The following relief is available:

- a) Not to pursue criminal prosecution for any statutory offence under a tax Act arising from the disclosure :
- b) relief in respect of an administrative non-compliance penalty that was or may be imposed under Section 40 of the Order,

N.B Commissioner General reserves the right to revoke voluntary disclosure directive if he finds that taxpayer didn't fully disclose information.

This Practice Note revokes practice note 108 of 2005 on “Basis for Reduction of Additional Tax on Voluntary Disclosure under Section 40”.



DUMISANI MASILELA
COMMISSIONER GENERAL