To:
National Treasury
South African Revenue Service

From:
The Society of Trust and Estate Practitioners (“STEP”)

8 August 2016

THE NEW SVDP BILL IS FUNDAMENTALLY FLAWED

1. Set out below are the submissions of STEP in relation to the Rates and Monetary Amounts and Amendment of Revenue Laws Bill published on 19 July 2016 (“**the New SVDP Bill**”).

2. Whilst Treasury has, laudably, attempted to simplify the SVDP process by, in effect, merging the original seed capital rule and 5-year rule contained in the first draft of the SVDP Bill, the new proposal has, in STEP’s view, a fundamental flaw.

3. The fundamental flaw is that the New SVDP Bill fails to take into account the fact that foreign assets may have been funded from amounts that were not subject to tax i.e. from capital e.g. foreign inheritances. Indeed, most of the cases that STEP members are dealing with fall into this category.

4. A further consequence of this fundamental flaw is that the New SVDP Bill fails to re-base the assets in respect of which the new 50% rule applies for CGT purposes. This means that if and when any asset in respect of which the new 50% rule applies is sold at a gain, the portion of the gain attributable to the period up to 28 February 2015 would be subject to tax again, even though the SVDP levy would, in effect, have been paid on that gain (at 20% rather than 13.3%).

5. The easiest solution to the problem referred to above would be to re-introduce the original 50% rule and the 5-year rule as contained in the first draft of the SVDP Bill and to provide that where the applicant cannot satisfy the Commissioner as to the non-taxability of the “seed capital”, the new 50% rule will apply.

6. Alternatively, the inclusion rate for the new rule could be reduced to 25% rather than 50% to recognise the likely capital component of the amount concerned.

7. In either case, there should also be a deemed disposal of the assets as at 28 February 2015 for the purposes of the new rule, so as to re-base the assets in respect of which the SVDP tax is paid.

8. It is notable that the Exchange Control SVDP is wide-reaching in its ambit and deals specifically (and generously) with foreign inheritances. It is a shame that the new SVDP Bill appears to have moved in the opposite direction.

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