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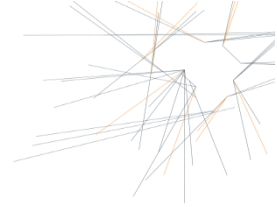
**STEP BRANCH MEETING**

**SPECIAL VDP – TAX & EXCHANGE CONTROL**

**Dan Foster**

## SPECIAL TAX VDP

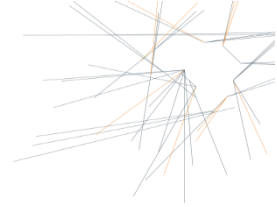
# THIRD DRAFT OF THE SPECIAL TAX VDP BILL



## *Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill*

- Applications to be made in terms of existing VDP (TAA Ch 16 Pt B) and will qualify for relief as set out in s 229
  - VDP under-statement penalty = 0% (not 5% or 10%)
  - This appears to apply to all VDPs (not just SVDP)
- Between 1 Oct 2016 and ~~31 March 2017~~ **30 June 2017** (even if the legislation passed after 1 Oct 2016)
- Application may not be made by a "trust"
  - as defined in s 1 of the ITA, "and includes a similar arrangement established outside the Republic"
  - but an election is available for assets held by foreign trusts
- Applications may not be made in respect of an asset that has been disclosed to SARS under an international agreement

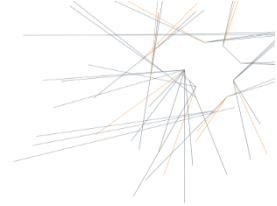
# SPECIAL TAX VDP CONT.



## *Rates and Monetary Amounts and Amendment of Revenue Laws Bill*

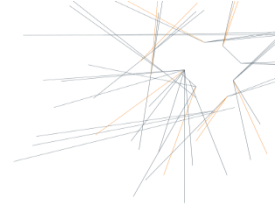
- Part II contains the substantive provisions of the Special Tax VDP
- Relief available:
  - Exemption from "any tax" imposed by the Income Tax Act (other than PAYE) and Estate Duty
  - Exempt amount is "equal to the amount of receipts and accruals not declared to the Commissioner as required by the Income Tax Act... or Estate Duty Act..., from which an [foreign] asset... was wholly or partly derived"

# SPECIAL TAX VDP CONT.



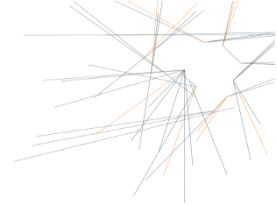
- Qualifying criteria
  - Said asset must have been "held by the person during the period 1 March 2010 to 28 February 2015"
  - If said asset was disposed of before 1 March 2010 (other than by way of donation or sale of loan account to a trust) then may elect that it was held for that period
    - if such election is made, the value for purposes of taxable inclusion is the highest value while actually held, i.e. historic value, or the Commissioner may agree a "reasonable estimate"
    - election can only be made in respect of assets disposed of before 1 March 2010
      - presumably therefore assets disposed of after 1 March 2010 still qualify

# SPECIAL TAX VDP CONT.



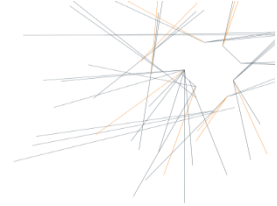
- Inclusion in taxable income
  - ~~50%~~ **40%** of the highest value (on 28 Feb, 2010 to 2015) of "aggregate value of all assets referred to in section 15", i.e. foreign assets "wholly or partly derived" from "undeclared" receipts and accruals
  - rand value calculated on 28/29 Feb using spot rate on that day (not average rate for the year)

# SPECIAL TAX VDP CONT.



- Election in respect of trusts
  - "trust" as defined in s 1 of the ITA "and includes any similar arrangement formed or established" under foreign laws
  - donor (or their estate) or a beneficiary may elect that foreign assets held by a discretionary trust during the period 1 Mar 2010 to 28 Feb 2015, "be deemed to have been held by that person for purposes of all tax Acts"
  - the asset must have been (a) acquired by the trust by way of donation, (b) been wholly or partly derived from amounts "not declared" as required by the ITA or Estate Duty Act, and (c) has not yet vested in a beneficiary

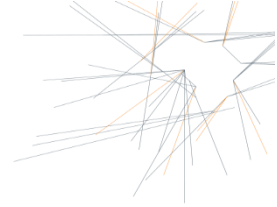
# SPECIAL VDP CONT.



- Implications of trust election
  - retrospectively step into shoes of the trust in respect of those assets
  - until the trust disposes of the asset (or is deemed to have disposed of the asset ito of the ITA) or that person ceases to exist (if juristic)
    - the assets continue to be held by a natural person's estate after they have died, so Estate Duty is payable, and cease to be held by the estate on the day before that estate is wound up
    - disposal (actual or deemed) is deemed to occur for market value consideration
  - attribution rules are turned off
  - Donations Tax not turned off



## SPECIAL TAX VDP CONT.

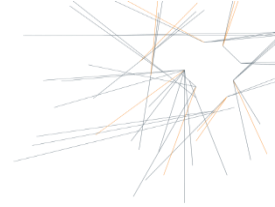


- Foreign earned income – not taxable, but not declared?
- Inheritance – not taxable, but not declared?
- Trust funded with loan not donation
  - trust assets will not qualify for election
  - the loan (asset) will qualify if derived from undeclared receipts
- "wholly or partly" derived means mixed assets are tainted and no apportionment is contemplated in the draft Bill
- no step up in CGT base cost of assets subject to the 50% inclusion
- 'normal' VDP remains open, e.g. for income and gains from foreign assets derived from "declared" receipts, but no extra exemption / time limit

# SPECIAL EXCHANGE CONTROL VDP



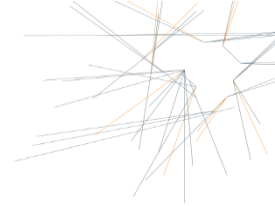
# SPECIAL EXCON VDP



## *Circular No. 6/2016: Proposed joint tax and exchange control Special Voluntary Disclosure Programme*

- Applications made pursuant to the provisions of Regulation 24
- Open to resident individuals, emigrants, sole traders, partnerships, deceased estates, insolvent estates, South African trusts, CCs and companies
- Disclose unauthorised foreign assets, excluding bearer instruments
- *Residents* subject to any current and/or *pending* investigation by FinSurv will not qualify
- Applications via SARS e-filing

# SPECIAL EXCON VDP CONT.



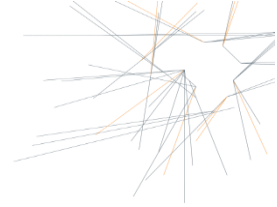
## *Qualification criteria*

- unauthorised foreign asset held by the applicant on or before 29 Feb 2016\*
- voluntary application between 1 Oct 2016 and 31 March 2017
- full disclosure of source, and manner of transfer and retention abroad
- sworn affidavit

## *Levy payable – on market value as at 29 Feb 2016*

- 5% if assets or sale proceeds repatriated
- 10% if assets retained abroad
- 12% if assets retained abroad and levy paid with SA funds
- No deduction of any allowance, fees, taxes or commissions
- To calculate levy for multiple currencies, may convert to USD at 29 Feb 2016 (SARB to publish rates)

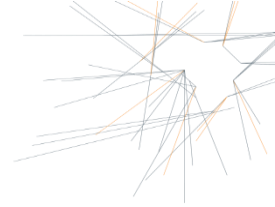
# SPECIAL EXCON VDP CONT.



## *Qualifying foreign assets*

- retention of funds abroad which should have been repatriated
  - including travel allowances, unauthorised share swaps, export proceeds, credit card spending, unauthorised foreign assets inherited from South African estates (see further below)
- loop structures
- assignment abroad of SA IP
- assets acquired with foreign debt with recourse to SA

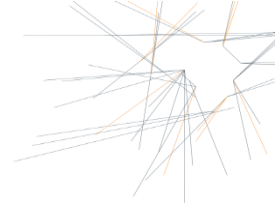
# SPECIAL EXCON VDP CONT.



## *Discretionary trusts*

- Donor (or their estate) may elect for foreign trust asset to be held by that donor (or their estate)
  - unlike Special Tax VDP, election not available to beneficiaries
- Applies to assets which
  - were acquired by the trust by way of donation by a SA resident
  - were wholly or partly derived from any unauthorised asset **OR** from any amount not declared to SARS by the donor as required to ITA or Estate Duty Act
  - has not yet vested in a beneficiary
- deemed to hold that foreign asset "for purposes of this administrative relief" (i.e. not for all purposes) but in other respects same as Special Tax VDP
- Therefore a 'normal' Tax VDP applicant can make this election on post-tax assets, and such assets will not fall into their dutiable estate

# RELIEF OUTSIDE THE SPECIAL EXCON VDP



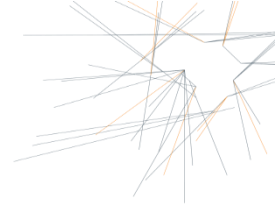
- Apply via an Auth Dealer (not SARS e-filing)
- "will in most instances not attract any levy in terms of Regulation 24"
  - immigrants who have not yet made the necessary undertaking
  - foreign inheritances from non-resident estates prior to 17 Mar 1998
    - may declare and retain abroad
  - foreign inheritances from SA estates
    - if held legally by deceased = no levy
    - if held in contravention by deceased = no levy if repatriated (10% if kept abroad)
    - if held in contravention by heir = Special VDP required (5-12% levy)
  - foreign earned income prior to 1 July 1997
    - may declare and retain abroad

# CONTACT

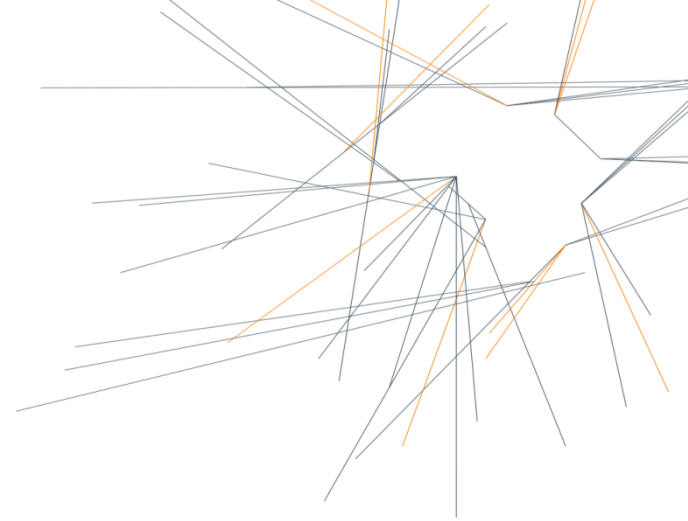
Dan Foster

+27 11 530 5652

[dan.foster@webberwentzel.com](mailto:dan.foster@webberwentzel.com)







[www.webberwentzel.com](http://www.webberwentzel.com)

**JOHANNESBURG**

90 Rivonia Road  
Sandton  
Johannesburg, 2196, South Africa  
T +27 11 530 5000

**CAPE TOWN**

15<sup>th</sup> Floor, Convention Tower  
Heerengracht, Foreshore  
Cape Town, 8001, South Africa  
T +27 21 431 7000