

## **The taxman cometh: nowhere to hide for high net worth individuals**

The South African Revenue Service's ("**SARS**") revised June 2020 estimate for tax collections for the 2020-2021 financial year was ZAR234-billion (or 17%) less than the previous financial year.

SARS Commissioner, Edward Kieswetter, said that, "Improved tax collection and administration continues to be an important element in achieving fiscal consolidation, as SARS continues to rebuild its capacity. As an organisation, our near-term objectives include...finalising the tax gap study in December 2020 to quantify the difference between how much tax should be collected and how much is collected."

When the SARS Large Business Centre was re-established in 2018, one of its objectives was to focus on high net worth individuals as a "target segment". To SARS, these are individuals whose gross income exceeds ZAR7-million a year and/or whose gross wealth exceeds ZAR75-million.

One of the historic difficulties for SARS has been to identify high net worth individuals and to ascertain all the relevant details of their assets and structures. However, in recent years the tax disclosure landscape has been radically altered.

One of the game changers has been the Common Reporting Standards. This is an OECD initiative which introduced a standardised model for the automatic exchange of information in order to allow participating jurisdictions to exchange information about their tax residents. South Africa agreed to exchange information in terms of this initiative in 2017. The US equivalent of the Common Reporting Standards is the Foreign Account Tax Compliance Act ("**FATCA**").

In addition, in terms of the Tax Administration Act, 2011, SARS may request or provide information to foreign governments under double tax agreements or other multilateral or bilateral information exchange agreements.

The Automatic Exchange Of Information ("**AEOI**") forms part of this information exchange. AEOI involves the systematic and periodic transmission of taxpayer information between countries for various categories of income. Information concerning the acquisition of significant assets may be used to evaluate the net worth of an individual. As a result, the tax authority of a taxpayer's country of residence can check its tax records to verify that taxpayers have accurately reported their foreign sourced income or assets. SARS receives information from 87 jurisdictions in terms of the AEOI regarding South African taxpayers.

As if this wasn't enough, the individual tax return also requires information from taxpayers regarding their foreign investments and structures, such as offshore trusts. For example, the tax return requires a taxpayer to provide information regarding capital contributions or loans used to fund offshore trusts as well as information regarding distributions from such trusts to South African resident taxpayers.

SARS has recently started issuing letters to high net worth individuals, typically based on information collected under the AEOI from various offshore jurisdictions. These letters typically cover a number of tax years.

Aspects which are of interest to SARS may include information from the taxpayer regarding confirmation of their offshore holdings, where the relevant funds are held, details of who facilitated the investments for the taxpayer, the source of funds used to acquire these assets and income derived from the assets. In addition SARS may be interested in information regarding compliance with the relevant tax obligations of the taxpayer in relation to such investments or structures.

While prescription means that SARS cannot issue additional assessments more than three years after the original assessment, this does not apply if there has been any fraud, misrepresentation or non-disclosure of material facts by the taxpayer. In those circumstances, SARS can go back beyond the three year period.

One of the most popular vehicles used by high net worth individuals are offshore trusts. Trusts have long formed part of South African law and are internationally recognised as legitimate vehicles for holding assets. However, tax authorities around the world have been irked by non-disclosure of offshore trusts. Previously if, for example, an offshore trust was funded by a third party, no South African trustees were appointed and no distributions were made to South African tax residents, SARS may not have been aware of the existence of the offshore trust. However, in the new world of tax disclosure outlined above, offshore trusts are very much on the radar of SARS.

Provided there has been compliance with all the relevant and complex tax rules regarding offshore trusts, no adverse tax consequences should arise. However, if there has been any level of non-compliance then the relevant taxpayer should expect a questionnaire from SARS followed by an audit process and ultimately resulting in an additional assessment which could include interest and potentially significant penalties.

The days of high net worth taxpayers' tax compliance status not being fully tested by SARS are well and truly over.



(Article written by *Peter Dachs*, head of ENSafrica's tax department)