

Offshore holdings - SARS issuing letters to affected taxpayers

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In February 2021, SARS issued a media release that SARS had received from 87 jurisdictions across the world, information detailing the offshore financial assets of South African taxpayers and that SARS intended to undertake a careful review of the information and audit it, where necessary.

In recent months, SARS has started issuing letters to taxpayers advising taxpayers that SARS has received information through the Automatic Exchange of Information regarding South Africans who have offshore assets. SARS is however willing to engage with the taxpayer and give the taxpayer an opportunity to disclose to SARS what offshore assets and dealings the taxpayer has. SARS is not disclosing to the taxpayer what SARS already knows or what information they have but only mentions that they are in possession of 'information'. Below is an example of some of the information that SARS is requesting the taxpayer to furnish:

- Confirmation that the taxpayer has offshore assets;
- Details of such offshore assets;
- The years of assessment during which the taxpayer held such assets;
- The nature of assets held and the jurisdictions where the assets are held;
- The nature of the investment and the source of the funds that were invested;
- The capital amount invested and the movements thereon;
- Income earned on the investments i.e., dividends and interest;

- What tax obligations have been discharged with regards to these assets e.g., declaration of foreign income; and
- Where taxpayers have not complied with disclosure of these assets in their tax returns, SARS requires an explanation of why this was not done.

Taxpayers should note that the above is just an example and each letter might be different depending on the specific circumstances of the taxpayer. SARS ordinarily requires the taxpayer to respond and submit the requested information within 21 working days. Failure to submit the requested information may constitute a criminal offence and penalties may apply.

The welcome part is that SARS is still allowing taxpayers to utilise the Voluntary Disclosure Programme ('VDP') to regularise their affairs. Under the VDP programme, SARS considers applications submitted voluntarily by taxpayers to disclose tax defaults. VDP offers more favourable terms in respect of understatement and other administrative penalties. Usually, when SARS has issued a letter of verification to a taxpayer, the taxpayer cannot apply for VDP as SARS has approached the taxpayer first. The disclosure ceases to be voluntary. However, with the recent letters that SARS is sending to taxpayers, SARS is indicating that should the taxpayer wish to utilise the VDP, it can still do so within 21 working days. In the VDP application SARS requires the taxpayer to still disclose or provide all the information they have requested in their letter.

SARS advised that the above-mentioned request for information is for risk assessment purposes and that it therefore does not constitute the commencement of an audit process (which would impact the ability to submit a VDP application). Affected taxpayers should ensure that they obtain professional advice on how to deal with these letters and responding to SARS. It is recommended that taxpayers who have offshore assets regularise their affairs even if they have not received such letters as the automatic exchange of information process and systems within SARS and between the various tax jurisdictions are likely to improve at a fast pace. Therefore, it may only be a matter of time before all taxpayers with unregularized assets will receive such letters.

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Should you have any queries on this matter, please feel free to contact your PKF relationship partner or firm.

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