

The welcome review of two very important SARS procedures: VDPs and ATRs

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A focal point of the 2021 Budget Review relates to the proposed strengthening of SARS. Numerous recommendations made by the Nugent Commission to address governance failures at SARS have, to date, been implemented, including the re-establishment of the Large Business Centre, as well as units within SARS focussing on litigation, compliance and integrity. In addition, the Minister announced in the 2021 Budget Review that a R3 billion additional spending allocation will be provided to SARS to modernise its technology infrastructure.

The 2021 Budget Review also mentions the proposed review of two very useful SARS procedures/systems to the benefit of taxpayers: the advance tax ruling (“ATR”) system and the voluntary disclosure programme (“VDP”).

The ATR division of SARS considers advance tax ruling applications submitted by taxpayers requiring certainty in respect of the tax implications of future transactions to be entered into. The ATR application process is a formal one with legislative requirements and costs involved for the consideration of the application by the ATR department. Although this is a useful tool for taxpayers wanting to obtain tax certainty in specific circumstances, the formalistic and lengthy ruling process may deter taxpayers from submitting an application in this regard. The 2021 Budget Review indicates as follows in relation to the proposed review of the ATR system:

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“SARS has invited public comment on the advance tax ruling process for binding rulings to assess whether it can be improved. Legislative amendments may be required to give effect to improvements identified during the consultation process”.

The VDP department of SARS considers applications submitted voluntarily by taxpayers to disclose tax defaults with a view to addressing understatement penalties, certain administrative non-compliance penalties and/or criminal prosecution liability. The VDP application process is also formalistic with numerous legislative requirements. The relief ensuing from a successful VDP application could be significant, however, the length of the VDP adjudication process can be frustrating for taxpayers wanting to resolve the issue imminently. The 2021 Budget Review provides as follows in relation to the proposed review of the VDP process:

“The voluntary disclosure provisions will be reviewed in 2021 to ensure that they align with SARS’ strategic objectives and the policy objectives of the programme”.

The proposals to improve the ATR and VDP processes to the benefit of the taxpayer are welcomed and we eagerly await further information in this regard. In the interim, taxpayers with historic tax defaults should ensure that they obtain professional advice in relation to the best manner in which to regularise this. In addition, taxpayers wishing to obtain certainty in relation to the tax implications of proposed transactions to be entered into may still find that that ATR process would be of great use in this regard.

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