

It'll become harder to use offshore trusts and bank accounts to evade tax, says Judge Davis

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High-net-worth, tax-evading South Africans will soon have nowhere to hide, because in future income tax returns will specifically ask them to declare if they have offshore trusts, or directly or indirectly control an offshore trust, Judge Dennis Davis, the convener of the Davis Tax Committee, says.

If the South African Revenue Service (SARS) proves that a taxpayer has provided false information on a tax return, he or she will be guilty of fraud and could be sent to jail for tax evasion.

Judge Davis was speaking at the fifth annual conference of the Fiduciary Institute of Southern Africa, which was held in Sandton last week.

Switzerland is considering draft legislation that provides for the end

of tax-related secrecy for foreign citizens with Swiss bank accounts. The legislation is expected to be in place in 2017, Judge Davis said. The proposed legislation will allow foreign tax authorities to access details of their citizens' accounts held in Switzerland, he says.

"The 2003 tax amnesty netted just over R68 billion, and we have reason to believe that there are large undisclosed amounts of money in offshore trusts," said Judge Davis, who addressed the conference on the tax committee's first interim report on estate duty, which was released in July.

"HSBC leaks [about the amounts allegedly held by South Africans in Swiss bank accounts] and other information suggest that there could be at least another R24 billion. We understand that in 2003 we only scratched the surface,

"We will encourage taxpayers to disclose their investments; they can either come clean or go to jail for tax evasion," he said.

Asked whether a more onerous tax regime would force wealthy people to emigrate, taking their entrepreneurial skills with them, he retorted that there was a global move to greater tax compliance.

"To that, I say: be my guest. The tax authorities in Australia, the United Kingdom and especially the United States are much fiercer than our South African Revenue Service (SARS)," Davis says.

Speaking off the cuff, he said SARS collects about R1 trillion annually, but National Treasury allocates R1.2 trillion to government spending.

"South Africa needs at least a further R15 billion in order to reduce its national debt. Interest rate

charges on borrowing by the government cost us 11 percent. An added concern is that we have fiscal drag; inflation and earnings growth have pushed some taxpayers into higher tax brackets."

He said that increasing the rates of the three main sources of tax – personal income tax, value-added tax (VAT) and corporate tax – all have limitations.

"If we simply increased the marginal rate of tax for those earning more than R1 million a year to 45 percent and the marginal tax rate of those earning more than R2 million a year to 50 percent, the gain would be R7 billion in tax revenues. If we increased our corporate tax rate, currently at 28 percent, we would be less competitive than many of our African neighbours as an investment destination. And some of

them have got electricity," Davis quipped.

He said that increasing the rate at which VAT is levied by one percentage point would raise the necessary revenue, but this is not under consideration, because VAT is a regressive form of taxation.

Davis conceded that the proposed changes to the way estate duty is levied would not significantly increase the amount of tax collected, but he said that increasing estate duty would be "legitimate", because it would not have a major impact on economic activity and South Africa is one of the most unequal countries in the world measured on almost all methods of reporting inequality.

The estate duty discussion document noted that, in real terms, the contribution of estate duty collections to the fiscus has declined over the past 20 years.

Estate duty is levied at a flat rate of 20 percent on the dutiable amount of an estate that exceeds R3.5 million.

The document noted that the abatement of R3.5 million has not been increased since March 2007 and recommended that the abatement should be increased to R6 million per taxpayer.

The committee proposed that the estate duty exemption on bequests in favour of surviving spouses should be either withdrawn completely or subject to a limit.

It also proposed that second-dying spouses should not be permitted to increase their estate duty abatement by any portion not used by the first-dying spouse. Instead, the surviving spouse should have the option of using some or all of his or her abatement to reduce the estate duty of the first-dying spouse.

In other words, the first-dying spouse could enjoy an abatement of up to R12 million, assuming that the committee's recommendation to increase the primary estate duty abatement to R6 million is accepted.

Regarding the feedback on the discussion document received to date, Judge Davis said that many people have commented that the proposed abatement of R12 million was "too low".

"I would probably agree with this feedback," he said.

He appealed to members of the public to comment on the proposed changes to the tax laws and participate in discussions.

◆ The public has until September 30 to comment on the committee's recommendations. The report can be downloaded from the committee's website, www.taxcom.org.za