

**VOLUNTARY DISCLOSURE PROGRAMMES AND TAX AMNESTIES:
AN INTERNATIONAL APPRAISAL**

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ABSTRACT

Tax amnesties are government programs that typically allow a short period of time for tax evaders to voluntarily repay previously evaded taxes without being subject to penalties and prosecution that discovery of such tax evasion normally brings. Tax amnesties differ widely in terms of coverage, tax types, and incentives offered. A state's Voluntary Disclosure Programme is another avenue available to taxpayers to assist them in resolving their state tax delinquencies. This programme is an on-going programme as compared to atax amnesty, which is there for a limited time period only. The main goal of the research was to describe the tax amnesty and the voluntary disclosure programmes in South Africa and to assess their advantages and disadvantages. This thesis also discussed another form of voluntary disclosure programme, referred to as an Offshore Voluntary Disclosure Programme, which allows taxpayers with unreported foreign bank accounts, and presumably unreported foreign income, to voluntarily disclose their affairs.

The study found that, due to tax amnesties, Government raises more tax revenue not only in the short run from collecting overdue taxes but also by bringing former non-filers back into the tax system for the long run. It was also found that, initially short-run revenue brought in from overdue taxes will be positive for the first amnesty and then decline each time the amnesty is offered repeatedly. The reason for the decline in revenue might be that tax amnesties provide incentives for otherwise honest taxpayers to start evading taxes because they will anticipate the offering of future amnesties, thereby weakening tax compliance. The costs associated with amnesty programmes include negative long run revenue impact and also that amnesty programmes reduce compliance by taxpayers in the long-run. In South Africa tax amnesties, especially the voluntary disclosure programme, are likely to be successful since they will increase the revenue yield and also bring non-filers back on the tax rolls.

Keywords: Voluntary Disclosure Programme, Tax Amnesty, Offshore Voluntary Disclosure Programme.

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CHAPTER 1

INTRODUCTION

1.1 CONTEXT OF RESEARCH

Voluntary disclosure programmes (referred to as a “VDP”) and various types of tax amnesties have been introduced in South Africa and many other countries in an attempt to encourage errant taxpayers to “come clean” and disclose their defaults. These programmes are introduced in order to increase tax collections and broaden the tax base. They are also a less costly way to achieve these aims, compared to investigations and prosecutions.

1.1.1 Voluntary disclosure programmes

Voluntary disclosure programmes were introduced in numerous countries, which include Canada, Australia and United States of America (USA). In Canada the voluntary disclosure programme was administered by the Investigations Division of the Canada Revenue Agency until 1999, when it was transferred to the Appeals Branch as part of the Agency's fairness initiative. An information circular published in 1973 indicated that taxpayers who made a complete and voluntary disclosure would not be prosecuted or assessed penalties for gross negligence¹. The VDP promotes compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct previous omissions in their dealings with the Canada Revenue Agency. Taxpayers who make a valid disclosure will have to pay the taxes or charges plus interest, without penalty or prosecution that the taxpayer would otherwise be subject to².

¹ Auditor General of Canada, 2004. Resolving disputes and encouraging voluntary disclosures. [Online]. Available: <http://www.oag-bvg.gc.ca/internet/docs/20041106ce.pdf>. [Accessed 14/08/2013].

² Canada Revenue Agency, 2013. Voluntary disclosure program. [Online]. Available: <http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r3/ic00-1r3-e.pdf>. [Accessed 14/08/2013].

Inland Revenue Australia introduced a voluntary disclosure programme in 2009 to encourage taxpayers to come forward voluntarily to disclose past errors made in tax declarations in exchange for no or reduced penalties. The VDP is applicable to income tax (including withholding tax) as well as the Goods and Services tax³. Taxpayers are subject to penalties for failing to disclose amounts in their tax returns, whether this omission is accidental or otherwise. In Australia the base penalty amount varies between 25 percent and 75 percent of the shortfall amount, depending on the conduct of the taxpayer. The base penalty amount can be further increased or reduced, depending on the taxpayer's conduct⁴.

In the United States of America (USA), a taxpayer's timely, voluntary disclosure of a significant unreported tax liability is an important factor to the Internal Revenue Service in considering whether the matter should be referred to the U.S. Department of Justice for criminal prosecution⁵. In addition to the federal tax considerations, US residents must also contend with the respective state, and in some instances local, tax consequences. State income tax, penalties and interest will be due to the taxpayer's state of residence in connection with the disclosure.

The USA has long had a voluntary disclosure programme, but in the last few years has announced new rules for individuals with offshore investments wishing to come clean. On January 9, 2012, the Internal Revenue Service announced a new "offshore" voluntary disclosure initiative aimed at non-compliant US taxpayers with unreported offshore bank accounts and assets. The initiative gives taxpayers with

³ Organisation for Economic Co-operation and Development, 2013, Tax Administration 2013; comparative information on OECD and other advanced and emerging economies. OECD publishing. P333

⁴ Walker, J. 2012. The voluntary disclosure handbook. [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Marketing%20Brochures/The%20Voluntary%20Disclosure%20Handbook%207th%20Edition%20Sample_Jan2012.pdf [accessed 14/08/2013].

⁵ Michaels, M. and Beck, Z., S, 2012. The voluntary disclosure handbook. [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Marketing%20Brochures/The%20Voluntary%20Disclosure%20Handbook%207th%20Edition%20Sample_Jan2012.pdf [Accessed 14/08/2013].

unreported accounts a chance to “come clean” while mitigating the risk of criminal prosecution⁶.

In South Africa, the Tax Administration Act 28 of 2011 (referred to as the “Tax Administration Act”), which took effect on 1 October 2012, introduced a permanent VDP into the South African tax legislation⁷. The relevant sections in the Tax Administration Act dealing with the VDP are sections 225 to 233. Under the VDP taxpayers are granted the opportunity to regularise prior violations of the fiscal laws of the country

The announcement of the proposed VDP on 17 February 2010, by Pravin Gordhan (Minister of Finance) as part of the 2010 Budget, became a topic of discussion not only amongst tax specialists and companies but also individuals⁸. The Minister of Finance announced in the 2010 Budget that legislation would be introduced to encourage taxpayers to regularise prior transgressions of the tax statutes in South Africa and the Exchange Control Regulations. Taxpayers are often unaware of their tax exposures but with the South African Revenue Services (referred to as “SARS”) becoming increasingly vigilant over time, their inadvertent transgressions may be detected by SARS with the additional cost of penalties and interest over and above the related tax⁹.

The VDP was introduced in the Voluntary Disclosure Programme and Taxation Laws Second Amendment Bill 29 of 2010, now Act 8 of 2010, to encourage taxpayers to disclose their default in tax compliance and regularise their tax affairs, without the imposition of penalties, interest and additional tax. This programme will enable

⁶ Michaels, M. and Beck, Z., S, 2012. The voluntary disclosure handbook. [Online]. Available:https://www.lawincontext.com/Gateway/uploads/Marketing%20Brochures/The%20Voluntary%20Disclosure%20Handbook%207th%20Edition%20Sample_Jan2012.pdf [Accessed 14/08/2013].

⁷ Maitland, 2012. Voluntary disclosure program in the tax administration act 28 of 2011. [Online] Available: <http://www.maitlandgroup.com/voluntary-disclosure-program-in-the-tax-administration-act-28-of-2011>. [Accessed 14/08/2013].

⁸ Pannell Kerr Forster Newsletter, 2011. Taxing matters: voluntary disclosure programme. PKF Chartered Accountants and Advisers. [Online]. Available: <http://www.pkf.co.za/media/111424/June2011Tax%20Matters.pdf> [Accessed 16/08/2013].

⁹ Watkin. K. 2010. Voluntary disclosure programme. Attorney Tax Risk Management Services

SARS to increase tax collections without expending unnecessary resources. Defaulting taxpayers will be granted relief subject to three provisions: that disclosure is complete; that SARS was not aware of the default; and that a penalty would have been imposed had SARS discovered the default in the normal way.¹⁰ According to section 225 of the Tax Administration Act, default refers to the submission of inaccurate or incomplete information to SARS, the failure to submit information or the adoption of a tax position, where such submission, non-submission, or adoption resulted in:

- the taxpayer not being assessed for the correct amount of tax;
- the correct amount of tax not being paid by the taxpayer; or
- an incorrect refund being made by SARS.

The aim of the VDP is to provide qualifying taxpayers (individuals and companies) with the opportunity, not only to regularise their tax affairs, but also to avoid criminal prosecution, receive 100 per cent relief in respect of additional taxes and penalties and obtain relief (100 per cent or 50 per cent depending on circumstances) from the interest that would have been payable to SARS. However, in all cases, the underlying taxes will still be payable¹¹. For SARS on the other hand, the programme will result in increased tax collections and the broadening of the tax base.

Any person, whether in a personal, representative, withholding or other capacity, may apply for voluntary disclosure relief. A prerequisite for applying for relief under the VDP is that the taxpayer is not aware of a pending audit or investigation into his or her affairs, or an audit or investigation that has commenced but has not yet been concluded. However, where an audit or investigation is in progress, SARS may direct that a taxpayer can apply for voluntary disclosure, based on certain circumstances noted in the legislation.

Section 227 of the Tax Administration Act also states that a disclosure will only be regarded as valid if all of the following requirements are met:

- the disclosure is being made voluntarily;

¹⁰Section 3 of the Voluntary Disclosure Programme and Taxation Laws Second Amendment Bill 2010

¹¹Section 229 of the Tax Administration Act No. 28 of 2011

- it involves a default,
- the disclosure is full and complete in all material aspects;
- a penalty or additional tax would under other circumstances be applicable in respect of the default;
- the disclosure will not result in a refund being due by the Commissioner;
- it is made in the prescribed form and manner;
- it is made within the prescribed period; and
- the disclosure is in respect of a default which occurred prior to 17 February 2010.

An interesting inclusion in the proposed legislation is a "no-name voluntary disclosure". If taxpayers are not certain whether they would qualify for voluntary disclosure in terms of these requirements, an application can be made to SARS for a non-binding private opinion¹². Sufficient information with regard to the proposed disclosure should be provided, excluding the identity of any party to the default.

The approval by a senior SARS official of a voluntary disclosure application and relief granted under section 229, must be evidenced by a written agreement between SARS and the qualifying person who is liable for the outstanding tax in the prescribed format and must include details of the material facts of the default on which the voluntary disclosure relief is based; the amount payable by the person, which amount must separately reflect the understatement penalty payable; the arrangements and dates for payment; and relevant undertakings by the parties¹³.

Where a person makes a valid voluntary disclosure and a voluntary disclosure agreement is entered into between that person and the Commissioner, the Commissioner is obliged:

¹² Section 228 of the Tax Administration Act No. 28 of 2011

¹³ Section 230 of the Tax Administration Act No. 28 of 2011

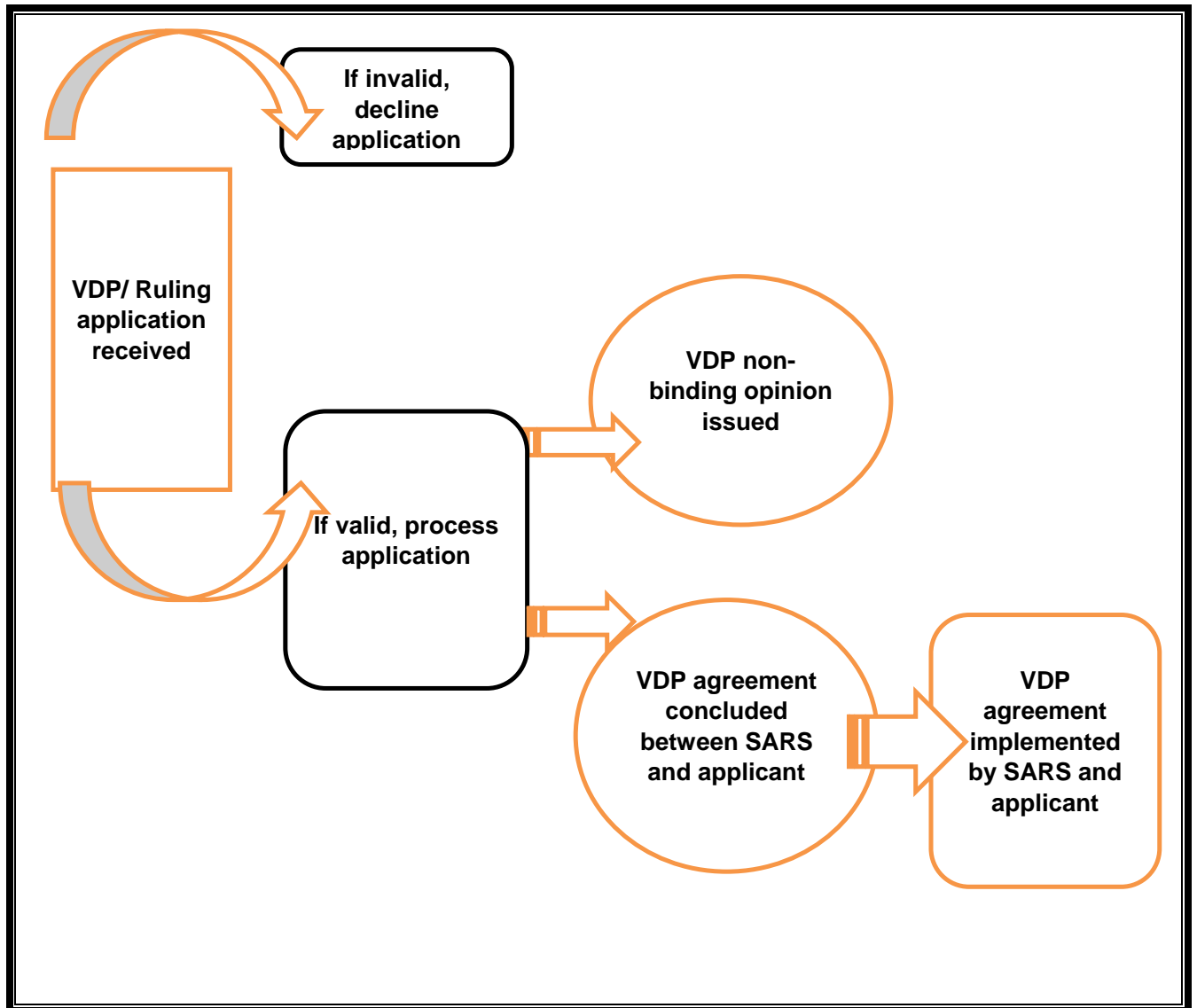
- not to pursue criminal prosecution for any statutory offence under a tax Act or a related common law offence;
- to grant 100% relief in respect of any penalty and additional tax. This relief does not extend to any fixed rate administrative non-compliance penalty imposed in terms of the understatement penalty percentage table in section 223 of the Tax Administration Act, or a penalty imposed in terms of a tax Act for the late submission of a return or for the late payment of tax, for example, the 10 per cent penalty for late payment of Value-Added Tax;
- grant relief from interest that would otherwise have been payable as follows:
 - where the person qualifies for applying for relief under the VDP – 100 per cent;
 - where the Commissioner directs that a person may apply for relief under the VDP – 50 per cent.

Therefore, where a person's application for relief is approved the person will still be required to pay the outstanding taxes due relating to the default. However, penalties (other than those raised for late submission of a return or late payment of any tax) and interest (100 per cent or 50 per cent) will be waived, in addition to the exemption from criminal prosecution¹⁴.

The diagram below provides an overview of how the VDP works. The diagram shows the end-to-end VDP process:

¹⁴Pannell Kerr Forster Newsletter, 2011. Taxing matters: voluntary disclosure programme. PKF Chartered Accountants and Advisers. [Online]. Available: <http://www.pkf.co.za/media/111424/June2011Tax%20Matters.pdf> [Accessed 16/08/2013].

Table 1



Source:External Guide Voluntary Disclosure programme¹⁵

¹⁵ South African Revenue Services. 2012. External Guide Voluntary Disclosure Programme. [Online]. Available: <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G01%20-%20Application%20for%20Permanent%20Voluntary%20Disclosure%20-%20External%20Reference%20Guide.pdf>. [Accessed 12/10/2013]

The VDP process has been set out by SARS¹⁶. In the event that, subsequent to the conclusion of the voluntary disclosure agreement under section 230 (of the Tax Administration Act), it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under section 227, the Commissioner may;

- withdraw any relief granted under section 229;
- regard any amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax in respect of the relevant default; and
- pursue prosecution for any statutory offence under a tax Act or a related common law offence¹⁷.

Any decision by the Commissioner under subsection (1) is subject to objection and appeal or internal review¹⁸.

1.1.2 Tax amnesties

Beleaguered by declining tax revenues and mounting expenditures, many state governments in recent years have sought alternative and novel revenue sources. One approach that has been used by 28 states since 1981 is the tax amnesty¹⁹.

In contrast to VDPs, a tax amnesty is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties) relating to a previous tax period or periods, as well

¹⁶ South African Revenue Services. 2012. **External Guide Voluntary Disclosure Programme**. [Online]. Available: <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G01%20-%20Application%20for%20Permanent%20Voluntary%20Disclosure%20-%20External%20Reference%20Guide.pdf>. [Accessed 12/10/2013]

¹⁷ Pannell Kerr Forster Newsletter, 2011. Taxing matters: voluntary disclosure programme. PKF Chartered Accountants and Advisers. [Online]. Available: <http://www.pkf.co.za/media/111424/June2011Tax%20Matters.pdf>. [Accessed 12/10/2013]

¹⁸ Section 231 of the Tax Administration Act No. 28 of 2011

¹⁹ Alm, J, McKee, M, AND Beck, W, 1990. Amazing grace: tax amnesties and compliance, volume 43, p23.

as freedom from local prosecution²⁰. It typically expires when an authority begins a tax investigation of the past-due tax. Tax amnesty programmes are similar to VDPs, except they often have a much shorter time frame. These programmes appear shortly after the tax "season", and provide a small window of time in which to report any errors on the taxpayer's tax return. Taxes must be paid in full, plus any remaining penalties, before the agency determined deadline in order to avoid additional fees and penalties²¹.

Amnesties generally fall into two categories: financial and legal. Legal amnesties will not be discussed as they fall outside the scope of this thesis. In the case of financial amnesties, a tax amnesty implies a reduction (in real terms) of taxpayers' declared or undeclared tax liabilities as established by law. Typically a taxpayer's declared (or assessed) but unpaid liabilities will be referred to as "tax arrears" and the taxpayer as a "delinquent" taxpayer, whereas undeclared liabilities would be referred to as "evaded taxes" and the taxpayer as the evader.

This reduction of a taxpayer's tax liability can be achieved through a variety of measures: for example, through a reduction or cancellation of (1) interest and penalties owed on the underreported or undeclared taxes or (2) tax liabilities (or some combination of these). The latter includes a waiving of civil and criminal penalties²².

Tax amnesties can be designed to cover all taxpayers, broad categories of taxpayers (e.g. low-income taxpayers), or tax types (e.g. corporate income tax, personal income tax). Policy makers often view tax amnesty programmes as an efficient policy tool that produces both short and medium term benefits. In the short term, amnesties become an additional source of revenue.

²⁰ Baer, K and Borgne, E.L. 2008. Tax Amnesties: Theory, Trends, and Some Alternatives. International Monetary Fund Publication Services.

²¹ Dion, S F. 2012. Comparing State Tax Amnesty to Voluntary Disclosure, Which Program is best for Resolving State Tax Delinquencies. [Online]. Available: <http://www.thestateandlocaltaxbuzz.com/2012/08/comparing-state-tax-amnesty-to.html> [Accessed 14/08/2013].

²²Baer, K and Borgne, E.L. 2008. Tax Amnesties: Theory, Trends, and Some Alternatives. International Monetary Fund Publication Services.

The gross revenue collected through an amnesty amounts to a few percentage points of the targeted tax collection, but in some cases can be significant. In the medium term, a successful tax amnesty programme is expected to increase the tax base and therefore future revenue collection, as tax evaders are brought into the tax net. In other words, the tax amnesty is expected to improve tax compliance²³.

Most studies in this field (for example Low, Bonheimer & Lorello, 2007, and Baer & Borgne, 2008) have only focused on the discussion of either the amnesty programme or the VDP. Many scholars have been interested in the long-term tax compliance effects after amnesty programmes. The present research differs from previous research in that it compares the two programmes (amnesties and VDPs) by assessing their merits and demerits.

1.2 GOALS OF THE RESEARCH

The main goal of the research is to describe the VDP in South Africa and to assess its advantages and disadvantages. By comparing VDPs with amnesties, flaws or weaknesses in one or both, as identified in the literature, will also determine whether the VDP is achieving its aims.

The goals of the research are as follows:

- to describe the two programmes (a VDP and tax amnesty) as introduced in South Africa;
- to compare the two programmes in South Africa with those introduced in Canada, Australia and United States of America and to discuss the successes and problems experienced in those countries; and
- to compare the advantages and disadvantages of the VDP and a tax amnesty.

1.3 METHODS, PROCEDURES AND TECHNIQUES

²³ Baer, K and Borgne, E.L. 2008. Tax Amnesties: Theory, Trends, and Some Alternatives. International Monetary Fund Publication Services.

In order to provide a comprehensive understanding of the VDP and a tax amnesty in South Africa, a detailed literature review was performed. A survey of both theoretical and empirical studies carried out elsewhere and in South Africa was undertaken as a background to the research. The countries included in the comparative analysis are Canada, Australia and the United States of America, as these countries have also adopted both VDPs and tax amnesties and their tax law is similar to the South African tax law.

This study adopts an interpretative research approach as it seeks to understand and describe the VDP and tax amnesty as introduced in South Africa. It also seeks to compare the two programmes in South Africa with those introduced in Canada, Australia and the USA. Walsham²⁴ argues that in the interpretive tradition there are no “correct” or “incorrect” theories. Instead, they should be judged according to how “interesting” they are to the researcher as well as those involved in the same areas.

The research methodology applied in this research can be described as a doctrinal research methodology. Doctrinal research is concerned with analysis of the legal doctrine and how it has been developed and applied. This type of research is also known as pure theoretical research. It consists of either a simple research approach directed at finding a specific statement of the law or a more complex and in-depth analysis of legal reasoning²⁵. This methodology provides a systematic exposition of the rules governing a particular legal category, analyses the relationships between the rules, explains areas of difficulty and is based purely on documentary data²⁶.

The documentary data used in this research consist of the relevant legislation, which includes the VDP and Taxation Laws Second Amendment act of 2010 (No 8 of 2010), Small Business Tax Amnesty and Bills amending taxation laws, articles in accredited journals which discussed the VDP and the tax amnesty in the countries mentioned above. The other data used are from textbooks and other writings that investigated the same area of study as the present research. This research also

²⁴ Walsham, G. 1993. *Interpreting Information Systems in Organizations*, Wiley, Chichester.

²⁵ McConville, M. and Wing, H. C. (2007) *Research Methods for Law*, Edinburgh University Press:

²⁶ McKerchar, M. *Philosophical Paradigms, Inquiry Strategies and Knowledge Claims: Applying the Principles of Research Design and Conduct to Taxation*. *eJournal of tax Research*. [Online] Available: <http://www.Austrlii.edu.au/au/journals/eJTR/2008/1.html> [accessed 15/08/2013].

relies on the information from the popular press of the selected countries in an attempt to track any given statistics on the compliance with and the amounts collected through these programmes.

This research is based only on documentary evidence. The validity and reliability of the research and the conclusions are ensured by discussing opposing viewpoints on the VDP and the tax amnesty and concluding, based on a dominance of credible evidence from previous studies and the rigour of the arguments.

As all the documentary data used in the research are in the public domain, no ethical considerations arise.

1.4 STRUCTURE OF THE THESIS

This study is organized as follows: the next chapter reviews empirical literature regarding Tax Amnesty and VDPs. Chapter 3 discusses the aims of both the Tax Amnesty and the VDPs. This chapter also discusses the types of tax amnesties, the requirements for a valid VDP and the relief under the VDP. Chapter 4 discusses how the Tax Amnesty and the VDPs are applied in Canada, Australia and United States of America (USA). It compares the two programmes in South Africa with those introduced in Canada, Australia and United States of America and also discusses the successes and problems experienced in those countries.

The advantages and disadvantages of the programmes are discussed in chapter 5, and finally chapter 6 provides the conclusion and recommendations to improve the effectiveness of the programmes.

CHAPTER 2

LITERATURE REVIEW: TAX AMNESTY AND VOLUNTARY DISCLOSURE PROGRAMMES

2.1 INTRODUCTION

This chapter considers empirical literature on the various issues regarding tax amnesties and VDPs. Various papers have discussed different aspects pertaining to tax amnesties (for example, some papers looked at the long run effects of tax amnesties on the tax revenue collected by the government and others have discussed the long run effects of tax amnesties on compliance). Few papers have looked at the VDP, especially in the case of South Africa, since the programme is still new. This chapter also analyses the discussions and conclusions made by different authors on tax amnesties and VDPs.

2.2 TAX AMNESTIES

Richardson and Sawyer²⁷ note that a tax amnesty generally involves providing previously noncompliant taxpayers with the opportunity to pay back-taxes on undisclosed income, without fear of penalties or prosecution. Many developed as well as developing countries introduce tax amnesties as part of their fiscal programmes. Some of these countries have made repeated use of amnesties within a short period of time²⁸.

²⁷Richardson M and Sawyer AJ, 2001. A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects'16(2). Australian Tax Forum 137-320. .

²⁸ Luitel, H, S & Sobel R, S. 2007. The revenue impact of repeated tax amnesties. Public Budgeting & Finance.

The Table 2 below provides summary information of modern tax amnesties around the world.

Table 2: International Comparison of Tax Amnesties

Country	Amnesty Year	Form/Main Taxes Covered
Argentina	1987	Previously unreported income for investment purpose
Argentina	1995	General tax amnesty
Australia	Twice during 80s	Participants in specific avoidance scheme, persons not lodging returns
Austria	1982	All tax claims prior to 1979
Austria	1993	Special programmes to encourage repatriation of untaxed assets
Belgium	1984/1985	Income exempted from tax if invested (e.g. government bonds)
Colombia	1987	Report previously unreported assets or over-reported liabilities
Finland	1982/1984	Surplus interest affairs
France	1982	General tax amnesty special programmes to encourage repatriation of untaxed assets
France	1986	Second special amnesty for assets held abroad
India	1981	Government bonds designed for untaxed income
India	1997	General tax amnesty
Ireland	1988	General tax amnesty
Ireland	1993	General tax amnesty
Italy	1982	General tax amnesty
Italy	1984	Entrepreneurs and self employed
Italy	2001/2002	Special programmes to encourage repatriation of untaxed assets
Netherlands	1934, 1940,1945, 1955	Exemption from penalties and interest
New Zealand	1988	General tax amnesty
Portugal	1981, 1982,1986, 1988	Limited to income taxation

Russia	1993	Enterprises, organizations, private entrepreneurs not liable for any sanctions on unpaid liabilities
Russia	1996, 1997	Enterprises and organizations were allowed to defer payments on the arrears
Spain	1977	Exemption from penalty for liabilities settled prior to 1976.

Source: Torgler and Schaltegger (2003) p. 30.

Many countries have introduced tax amnesties, both general amnesties and amnesties covering only specific taxes. The terms and conditions of tax amnesties differ in each country.

Alm and Beck²⁹ analysed the impact of tax amnesties from a different perspective. In their study, they concluded that amnesties can have a positive impact on compliance and tax collections, if the amnesty makes individuals see that paying taxes is the norm and if individuals anticipate a future amnesty that will have a tougher enforcement package than the current regime. They also concluded that amnesties can reduce compliance if the taxpayer anticipates another future amnesty with lax enforcement. Individuals may expect another amnesty to be given in the future, and again will decide to pay less tax voluntarily in anticipation that this evasion will be forgiven at some point in the future.

Andreoni³⁰ examines fully anticipated tax amnesties and finds that evasion increases as a result of the amnesty but tax revenue does not necessarily fall. This is because evasion increases only to the extent that people expect to participate in the amnesty and if they participate in the amnesty, then the government is able to recapture not only the new evasion but also the pre-existing evasion. If the initial evasion is large, then the amnesty may increase tax revenue even if there is an increase in evasion. In an attempt to examine the long run effects of a tax amnesty, Alm, McKee, and

²⁹ Alm, J and Beck, W, 1990. Tax Amnesties and Tax Revenues. Public Finance Quarterly, volume 18 No. 4 pp 433-453

³⁰ Andreoni, J, 1991. The Desirability of a Permanent Tax Amnesty. Journal of Public Economics 45 No. 2 pp 143-159.

Beck³¹ used laboratory experimental methods and found that compliance fell after an amnesty, but they also found that compliance rose if post-amnesty enforcement efforts are increased.

Fisher, Godderis and Young³² analysed the 1986 Michigan amnesty. They conducted research to establish whether tax amnesties generate revenue that the tax authorities would not otherwise collect. They also looked at whether tax amnesties provide continuing or long run revenue gains not available from enhanced enforcement alone and lastly, they discussed whether an amnesty is appropriate in the transition to the new regime, if a change in tax enforcement is to occur. They based their empirical analysis on detailed information gathered on a random sample of taxpayers participating in the Michigan amnesty. They found out that amnesty may not be a particularly effective way to identify tax evaders and turn them into tax compliers. They also found that the long-term addition to revenue coming from new taxpayers brought into (or back into) the system is likely to be small, and might easily be offset if the amnesty has any negative effects on the compliance behaviour of other taxpayers. They also found that, amnesties are appropriate in easing the transition to enhanced enforcement and seem to generate immediate revenue efficiently.

Similarly, using the 1983 Massachusetts amnesty data, Joulfaian³³ found that habitual evaders, or evaders who pay taxes but underreport them, generally did not participate in the amnesty programme. This conclusion is at odds with the claim that amnesties bring habitual evaders back into the system.

Christian, Gupta, and Young³⁴ found that a substantial portion of amnesty programme participants subsequently continued to file tax returns. In their study they concluded

³¹ Alm, J, McKee, M, AND Beck, W, 1990. Amazing grace: tax amnesties and compliance, volume 43, p23

³² Fisher, R, C., Godderis, J, H., and Young, J C, 1989. Participation in Tax Amnesties: The Individual Income Tax. National Tax Journal 42 No. 1 pp 15-27.

³³ David Joulfaian, "Participation in Tax Amnesties: Evidence from a State," in Proceedings of the Eighty-First Annual Conference on Taxation (Washington, DC: National Tax Association, 1988), 128–132.

³⁴ Christian, C W., Gupta, S and Young, J C., 2002. Evidence on Subsequent Filing from the State of Michigan's Income Tax Amnesty. National Tax Journal 55 No. 4

that the 1983 Michigan amnesty was successful in attracting many participants and in retaining many of them in the system.

A paper by Alm³⁵ discussed the basic design features of an amnesty, evaluated the benefits and costs of an amnesty, and examined the country experiences of several “typical” amnesties. He found that revenues from a tax amnesty are generally small and that revenues are often overstated because they are from known delinquents and would have been collected anyway. He also found that multiple amnesties are even less successful in generating additional revenues and they have perverse consequences on voluntary compliance as taxpayers incorporate the expectations that future grace periods will occur.

In his discussion, Alm later concluded that most revenue collected in an amnesty generally comes from those individuals with relatively small amounts of previously unreported taxes. Hard-core evaders or those with large amounts of evasion typically do not participate in an amnesty at very high rates. The ability of an amnesty to get these hard-core evaders on the tax rolls seems small, which is part of the reason that amnesties rarely generate significant amounts of additional revenue³⁶.

A study by Luitel and Sobel³⁷ investigated whether the revenue effects of offering a tax amnesty change as the amnesty is offered on a repeated basis. They distinguished between the effect the amnesty has on revenue in the period accompanying the amnesty programme (the short-run effect) and the effect the amnesty has on the permanent mean level of tax revenue (the long-run effect).

They found that when a state offers an amnesty for the first time, it produces a short-run revenue boost during the amnesty period but then leads to a reduction in revenue in the long run, which is consistent with the theory proposing that people respond to the amnesty by beginning to evade taxes in anticipation of additional future amnesties. Repeated broad-based amnesties produce little or no additional

pp 703-721.

³⁵ Alm, J. 1998. Tax Policy Analysis: The introduction of Russian Tax Amnesty. Working paper 98 - 6

³⁶ Alm, J. 1998. Tax Policy Analysis: The introduction of Russian Tax Amnesty. Working paper 98 - 6

³⁷ Luitel, H, S & Sobel R, S. 2007. The revenue impact of repeated tax amnesties. Public Budgeting & Finance. Volume 27, Issue 3, pages 19–38

short-run revenue, while creating increasing long-run revenue losses due to reduced compliance that grow as additional amnesties are offered.

A good overview of tax amnesties conducted internationally was undertaken by Hasseldine³⁸ in the mid-1990s. Hasseldine provides a summary of the advantages and disadvantages of tax amnesties, reviews prior research on tax amnesties, including empirical research, followed by an analysis of the success or otherwise of various US state and national tax amnesties in other countries. In his review, Hasseldine highlighted that amnesties are not a panacea but should be considered as an optional tool that can be used in association with changes to penalty provisions and policing procedures.

Based on previous studies on tax amnesties referred to in the present study, it appears that tax amnesties have a limited positive impact on compliance and also on the revenue collected by the Government.

2.3 VOLUNTARY DISCLOSURE PROGRAMMES

A VDP encourages taxpayers to come forward and correct deficiencies in complying with their legal obligations. It is a “fairness” programme that is aimed at providing taxpayers with an opportunity to correct past omissions, thus rendering themselves compliant. Clearly the programme is also designed to encourage taxpayers to become compliant in the future, while paying their fair share of taxes that might have been overlooked in the past.

A paper by Friedman and Palmer³⁹, gave an overview of the Canada Revenue Agency’s VDP. In their paper they highlighted the conditions which must be satisfied for a valid VDP. They stated that the Canada Revenue Agency considers the disclosure to have been made voluntarily where the taxpayer wholly initiated the disclosure in order to ensure that his or her tax records are complete before enforcement action has been initiated. It was also mentioned that a disclosure will not be considered to be voluntary where, prior to making the disclosure, a taxpayer

³⁸ Hasseldine, D John, “Tax Amnesties: An International Review”, (1998) Vol 52(7) Bulletin for International Fiscal Documentation, 303-310.

³⁹ Friedman M and Palmer A., 2010. An overview of the Canada Revenue Agency’s voluntary disclosures program. : Estates Trusts and pensions journal volume 30

was aware of, or had knowledge of, enforcement action about to be commenced by the Canadian Revenue Agency. The authors concluded that, in terms of payment, the Canadian Revenue Agency expects that the taxpayer will pay any amount of tax and interest owing at a time a voluntary disclosure is finalised. Where the taxpayer does not pay such amounts at the time of finalising the disclosure, interest will continue to accrue on the amount of tax owing.

An article by Michel⁴⁰, discusses methods of enforcement, incentives, and deterrence being used by the United States of America government to bring United States taxpayers into compliance, to prosecute alleged wrongdoers located both in and outside the United States, and to penetrate long-standing protections for bank information maintained in many countries outside the United States. This paper discussed the Offshore Voluntary Disclosure Programme, another form of VDP which is a settlement initiative aimed at encouraging Americans to come forward with voluntary disclosures about previously undeclared offshore accounts. Michel stated that, in 2009, close to 15,000 American taxpayers took advantage of this initiative. The Internal Revenue Service obtained information about a number of additional foreign financial institutions, as well as specific bankers, financial advisers, and other persons who have aided and assisted Americans in maintaining undeclared foreign accounts. He concluded that the initiative was a success since it returned thousands of US taxpayers to compliance.

Another article by Comiskey⁴¹ discussed how the VDP protects taxpayers in the USA. To protect the taxpayers, neither the taxpayers' identities nor the substance of their disclosures are shared outside the unit administering the programme. He stated that the information provided by the taxpayer will not be used for audit selection or any other purpose if the taxpayer is ultimately determined to be ineligible or decides not to participate. In addition to giving taxpayers relief from civil tax penalties, the programme also offers protection from state criminal prosecution. Comiskey also stated that, to protect the taxpayers from bankruptcy, taxpayers accepted into the

⁴⁰ Michel, S, D, 2011. Offshore Tax Enforcement, Voluntary Disclosure, and Undeclared Foreign Accounts. ALI-ABA Estate Planning Course Materials. USA

⁴¹Comiskey, JD. 2011. Protect Clients with the Voluntary Disclosure Program. [Online] Tax Stringer. Volume 2 No 1. Available: <http://www.nysscpa.org/taxstringer/2011/jan/comiskey.htm> [Assessed 20/11/2013]

programme who cannot pay their full tax debt immediately may be allowed to pay their debt over time under generous terms designed to ensure they stay in business. The primary goal of the programme is to bring taxpayers into future compliance and that goal would be undermined if entering the programme resulted in closing businesses or bankrupting taxpayers.

In South Africa, a VDP was introduced only in 2011. As a result, the information available on the VDP concentrates on how the programme is implemented, the requirements and the relief structure. There is no commentary on the effectiveness of the programme as yet, and also no studies have focused specifically on the VDP in South Africa, since the programme is still being introduced in South Africa.

2.4 CONCLUSION

From the literature discussed in this chapter it is clear that both tax amnesties and VDPs are very important as they increase tax collections by the government. It is also shown that these programmes have a positive impact on tax compliance. Other papers (e.g. Alm & Beck, 1990), concluded that these programmes can reduce compliance if the taxpayer anticipates another future tax amnesty or VDP with lax enforcement.

Considering revenue collection, tax amnesties are said to be very effective in raising short term revenue. On the other hand, it has been stated that the long term addition to revenue coming from new taxpayers brought into (or back into) the system is likely to be small, and might easily be offset if the amnesty has any negative effects on the compliance behaviour of other taxpayers.

As a result it can be conceded that tax amnesties and VDPs are significant since they can increase the tax revenue collected by the government at low costs. The extent of significance differs from country to country and also depending on the number of times these programmes are repeated.

CHAPTER 3

A DISCUSSION OF TAX AMNESTIES AND VOLUNTARY DISCLOSURE PROGRAMMES

3.1 INTRODUCTION

This chapter considers both tax amnesties and VDPs and in doing so the definitions of both a tax amnesty and a VDP are discussed. The chapter also discusses the purpose of a tax amnesty and how it operates. The types of amnesty are explained, followed by a discussion of the eligibility for tax amnesty. The chapter continues by discussing the coverage, incentives and duration of a tax amnesty respectively.

The purpose of and the manner in which VDPs work is then dealt with, together with the requirements for such a programme. The relief under a VDP is set out and the application procedure is discussed and it is demonstrated which persons may apply for voluntary disclosure relief.

In discussing the operation of a VDP, this thesis will also make use of relevant legislation, which includes the VDP and the Taxation Laws Second Amendment Act of 2010 (No 8 of 2010), the Small Business Tax Amnesty and Bills amending taxation laws.

A brief history of the tax amnesties and VDPs is presented, focussing on how the programmes were implemented in South Africa and the chapter then compares a tax amnesty with a VDP.

3.2 TAX AMNESTIES

Tax amnesties are government programmes that typically allow a short period of time for tax evaders to voluntarily pay previously evaded taxes without being subject to penalties and prosecution that discovery of such tax evasion normally brings⁴².

⁴² Mikesell, J. L. Amnesties for State Tax Evaders: The Nature of and Response to Recent Programs. *National Tax Journal* 39 (December. 1986). 507 - 25.

Tax amnesties differ widely in terms of coverage, tax types, and incentives offered. Tax amnesties have been designed to cover all taxpayers, broad categories of taxpayers (for example, small business taxpayers or identified delinquent taxpayers), or tax types (for example, corporate income tax or sales tax). Amnesties also differ with regard to what is forgiven (for example, interest, penalties, tax liabilities or criminal prosecution). In some cases, only the penalty or interest components of the liability, which often account for the bulk of the overall tax debt, may be forgiven, partially or fully. In other cases, the basic tax liability itself may be reduced⁴³.

The two primary reasons for introducing tax amnesties are (1) to raise revenue in the short term and (2) to increase compliance (for example, by encouraging taxpayers to declare and pay previously undeclared tax, file tax returns, or register to pay taxes, so as to increase revenue and horizontal equity in the medium term). The introduction of tax amnesties has also been strongly motivated by the desire of the tax authorities to quickly obtain windfall revenue gains⁴⁴.

A typical state tax amnesty has three general characteristics⁴⁵. First, a tax amnesty is short lived in nature, generally lasting from two to three months. Second, participation in an amnesty is voluntary. Individuals may decide not to participate; however, consequences of not participating could be such that if they are caught later, they could get a stiffer punishment than before. Finally, an amnesty, as the term implies, generally waives the fines and penalties associated with the evasion but not the principal amount of taxes that is due⁴⁶.

Prior to any final decision about the enactment of an amnesty, the authorities must assess the overall level of voluntary tax compliance, including the current quality of tax enforcement and any prospective changes in the enforcement. When considering

⁴³ Borgne, E, L, 2006. Economic and political determinants of tax amnesties in the U.S states. IMF working paper. Fiscal affairs department

⁴⁴ Borgne, E, L, 2006. Economic and political determinants of tax amnesties in the U.S states. IMF working paper. Fiscal affairs department

⁴⁵ For alternative definitions of tax amnesty, see United States Congress, Joint Committee on Taxation, Tax Amnesty JCT-2-98 (Washington, DC: United States Congress, Joint Committee on Taxation, 1998).

⁴⁶ Luitel, H, S & Sobel R, S. 2007. The revenue impact of repeated tax amnesties. Public Budgeting & Finance. Volume 27, Issue 3, pages 19–38

an amnesty, a Government should first determine precisely what problems brought the tax system to its current state. If these problems are not addressed, it is likely that an amnesty will do more harm than good⁴⁷.

Tax amnesties have raised hundreds of millions of dollars that revenue collectors would otherwise have found difficult or impossible to capture. Amnesties have swelled the rolls of paid-up taxpayers and increased the population of regular filers. State revenue department estimates suggest that a well-publicized amnesty combined with stricter future enforcement considerably increases the level of future voluntary compliance with tax laws⁴⁸.

Government raises more tax revenue not only in the short run from collecting overdue taxes, but also by bringing former non-filers back into the tax system for the long run. On the other hand, some writers question whether tax amnesties really produce additional revenue, given that they simply collect revenue that would (or could) have been raised by normal enforcement procedures anyway (recovered taxes and fines).

Amnesties may have had some less positive effects as well. They may have angered law-abiding taxpayers who dislike seeing tax breaks given to abusers of the system. Current amnesties may have encouraged some citizens to believe that there will be future amnesties as well, thereby weakening tax compliance and fostering a perception of inefficiency in the tax system and lowering revenue in the long run⁴⁹.

Unless a state legislature has introduced or agreed a bill approving a future amnesty, it's nearly impossible to predict when a state will offer an amnesty period as amnesties do not generally occur according to any specific schedule. Delinquent taxpayers need not wait for an amnesty to occur as there are other avenues available to taxpayers to assist them in resolving their tax delinquencies.

⁴⁷ Alm, J. 1998. Tax Policy Analysis: The introduction of Russian Tax Amnesty. Working paper 98 - 6

⁴⁸ Leonard, H, B and Zeckhauser R, J. 1987. 'Amnesty, Enforcement and Tax Policy, NBER Working Paper No 2096. Cambridge, MA: National Bureau of Economic Research

⁴⁹ Torgler B, 2007. Tax compliance and tax morale: A theoretical and empirical analysis. Cheltenham. Edward Elger publishing limited.

3.2.1 Types of amnesty

There are theoretically several types of tax amnesty programmes. The narrowest form of amnesty would require taxpayers to pay all taxes, interest, and civil penalties, but would forgive criminal penalties. The goal of this form of amnesty is both to collect taxes owing from prior years and to place on the tax rolls those who had previously escaped taxation⁵⁰.

A broader form of amnesty would require taxpayers to pay all taxes and interest due, but would forgive all civil and criminal penalties. Another form of amnesty would require taxpayers to pay all (or a portion of) past taxes, but would forgive all (or a portion of) the interest⁵¹ due on those taxes. In addition, all civil and criminal penalties would be forgiven⁵².

The broadest form of amnesty would forgive all past taxes, interest, and civil and criminal penalties. The goal of this type of amnesty is not to collect taxes owing from prior years, but to place on the tax rolls for the future those who previously had escaped taxation⁵³.

This type of amnesty has not been attempted in South Africa. Most of the amnesty programmes that have been operated by SARS forgive both civil and criminal penalties; these programmes have differed as to whether all or a portion of the interest due was forgiven.

⁵⁰ United States Congress, Joint Committee on Taxation, 1998. Tax Amnesty. Washington, DC

⁵¹ This form of amnesty highlights two differing views of the role of interest in the tax system.

Some view charging interest on past due taxes as a penalty. Others view interest provisions as reflecting the time value of money. Accordingly, absent the requirement to pay interest, a taxpayer would prefer to delay paying taxes for as long as possible so as to retain the use of the money for as long as possible.

⁵² United States Congress, Joint Committee on Taxation, 1998. Tax Amnesty. Washington, DC.

⁵³ United States Congress, Joint Committee on Taxation, 1998. Tax Amnesty JCT-2-98. Washington, DC.

3.2.2 Eligibility for amnesty

It is standard practice to allow any taxpayer with previously unpaid taxes to participate, as long as the taxpayer's unpaid tax liabilities are not known to the tax administration. Amnesty programmes can differ as to whether only non-filers may participate, or whether individuals and entities that filed returns, but also either underreported income or overstated deductions or credits, may participate. Individuals or entities under active criminal investigation or prosecution are generally not permitted to participate in an amnesty. Individuals and entities under audit or administrative investigation are also not permitted to participate in an amnesty⁵⁴.

3.2.3 Coverage: Tax Amnesty

The amnesty must specify which taxes are included in the amnesty. Many amnesties pertain to one specific tax source, such as the individual income tax, the corporate income tax, sales and use taxes, or property taxes. Limitations on the tax that is subject to the amnesty also necessarily limit the type of taxpayer who can participate. Other amnesties allow individuals and firms to pay the arrears of any tax for which they are liable, or any tax administered by the tax authority⁵⁵.

3.2.4 Incentives: Tax Amnesty

The amnesty must specify the amount of unpaid taxes, interest and penalties that the tax administration will forgive. It is almost universal among tax amnesties to waive or to reduce any civil or criminal penalties on unpaid taxes. Nearly all tax amnesties require the taxpayer to pay all back taxes. Some allow these back taxes to be calculated at tax rates that prevail at the time of the amnesty, rather than at the time of the original tax evasion.

⁵⁴ United States Congress, Joint Committee on Taxation, 1998. Tax Amnesty JCT-2-98. Washington, DC.

⁵⁵ Alm, J. 1998. Tax Policy Analysis: The introduction of Russian Tax Amnesty. Working paper 98 - 6

3.2.5 Duration: Tax Amnesty

An amnesty can be a one-time grace period of a predetermined length, typically from two months up to a year in duration. The publicity surrounding such temporary amnesties typically emphasizes that delinquent taxpayers have only this single opportunity to declare all unpaid back taxes. However, it has been a common practice in some countries to enact multiple amnesties, even though each one separately is advertised as a one-time-only grace period. For example, India has offered six amnesties since the late 1970s⁵⁶

3.3 VOLUNTARY DISCLOSURE PROGRAMMES

Under a VDP, eligible taxpayers report their delinquent taxes in return for reduced penalties, a reduced likelihood of criminal prosecution upon detection of the evasion, or both⁵⁷. The programme is designed to encourage taxpayers to become compliant going forward, while paying their fair share of taxes that might have been overlooked in the past⁵⁸.

A voluntary disclosure occurs when the communication is truthful, timely, complete, and when⁵⁹:

- a. a taxpayer shows a willingness to cooperate (and does in fact cooperate) with the Tax Authority in determining his/her correct tax liability; and
- b. the taxpayer makes good faith arrangements with the Tax Authority to pay in full the tax, interest, and any penalties determined by the Authorities to be applicable.

⁵⁶ Alm, J. 1998. Tax Policy Analysis: The introduction of Russian Tax Amnesty. Working paper 98 - 6

⁵⁷ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57 pp 499

⁵⁸ Rotenberg C M and Tataryn S, 2005. Voluntary Disclosure Programmes – Troubled times. Canadian taxpayer. Volume 27 No 18

⁵⁹ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57 pp 499

In order to be timely, a voluntary disclosure must occur before the taxpayer's noncompliance is on the Tax Authority's radar. The voluntary disclosure must be received before⁶⁰:

- the Tax Authority has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation;
- the Tax Authority has received information from a third party (e.g., informant, other governmental agency, or the media) alerting them to the specific taxpayer's noncompliance;
- the Tax Authority has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer; or
- the Tax Authority has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g. search warrant, or grand jury subpoena).

3.3.1 Requirements for a valid Voluntary Disclosure Programme

The requirements for a valid voluntary disclosure are that the disclosure must⁶¹:

- be voluntary;
- involve a default;
- be full and complete in all material respects;
- involve the potential application of a penalty or additional tax in respect of the default;
- not result in a refund due by the Commissioner;
- be made in the prescribed form and manner; and
- be made within the period prescribed by the Commissioner by notice in the Gazette.

⁶⁰ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57 pp 499

⁶¹ Voluntary Disclosure Programme and Taxation Laws Second Amendment Act No 4 of 2010

The requirements for a valid disclosure programme differ from country to country (for example, in Canada there are only four requirements for a valid disclosure (discussed in chapter 4) unlike in South Africa where there are more than four requirements for a valid disclosure).

3.3.2 Relief offered by a Tax Voluntary Disclosure Programme

Where a person makes a valid voluntary disclosure and a voluntary disclosure agreement is entered into between that person and the Commissioner, the Commissioner is obliged not to pursue criminal prosecution for any statutory offence under a tax Act or a related common law offence; to grant relief in respect of any penalty and additional tax and grant relief from interest that would otherwise have been payable⁶². In this case, the reduction in the administrative penalties differs from country to country depending on whether the disclosure is made before or after the audit.

3.4 TAX AMNESTIES IN SOUTH AFRICA: A BRIEF HISTORY

This section discusses the amnesties introduced in South Africa for the period up to the introduction of the VDP. Tax amnesties are government programmes that typically allow a short period of time for tax evaders to voluntarily pay previously evaded taxes without being subject to penalties and prosecution that discovery of such tax evasion normally brings⁶³. This section will discuss the tax amnesty programmes in South Africa with reference from the Amnesty Bills that have been introduced in South Africa since 1995. Prior to the introduction of VDP in 2011 a tax amnesty programme was the only means through which the government convinced taxpayers to come forward and confess their tax defaults.

⁶² Pannell Kerr Forster Newsletter, 2011. Taxing matters: voluntary disclosure programme. PKF Chartered Accountants and Advisers. [Online]. Available: <http://www.pkf.co.za/media/111424/June2011Tax%20Matters.pdf>

⁶³ Mikesell, J, L. Amnesties for State Tax Evaders: The Nature of and Response to Recent Programs. National Tax Journal 39 (December. 1986). 507 - 25.

3.4.1 Tax Amnesty Act, No 19 of 1995

In 1995, the Tax Amnesty Act, No 19 of 1995 was introduced in South Africa to provide for an amnesty in respect of certain taxes and duties; and to provide for matters connected therewith⁶⁴. The amnesty period was from July 1995 to October 1995.

3.4.1.1 Application for amnesty

According to section 2 of the Tax Amnesty Act, No 19 of 1995, for a valid tax amnesty application:

- 1) Any qualifying person may within the amnesty period apply for amnesty in terms of this Act.
- 2) An application for amnesty shall be made in writing to the Commissioner and shall be accompanied by an undertaking by the qualifying person concerned that such person will comply with such provisions of any law as relate to such person's liability for –
 - a) normal tax in respect of the last year of assessment ending before 1 March 1995; and
 - b) any other qualifying tax which became payable by such person before the date of such person's application for amnesty, other than any tax or duty contemplated in section 3(a).
- 3) Any qualifying person who after 27 April 1994, but before the commencement of the amnesty period, furnished the Commissioner with full information relating to such person's liability for the taxes contemplated in subsection (2), shall be deemed to have applied for amnesty in terms of this Act.

⁶⁴ Tax Amnesty Act, No 19 of 1995

3.4.1.2 Relief under the Tax Amnesty Act

Under section 3 of the Tax Amnesty Act, No 19 of 1995, any qualifying person who has made an application under section 2 shall⁶⁵:

- a) not be liable for the payment of;
 - any normal tax due in respect of any year of assessment ending before 1 March 1994;
 - any value-added tax in respect of the supply of goods or services or imported services or on the importation of goods before 1 March 1994;
 - any employees' tax which such person was required to deduct or withhold from remuneration paid by such person or which such person became liable to pay, before 1 March 1995, whether or not such employees' tax was in fact deducted or withheld by such person;
 - any stamp duty in respect of the execution of any instrument before 1 March 1994 or the registration of transfer of any marketable security, before that date;
 - any non-resident shareholders' tax in respect of any dividend declared before 1 March 1994;
 - any secondary tax on companies in respect of any dividend declared before 1 March 1994;
 - any donations tax in respect of any property disposed of by such qualifying person under a donation which took effect before 1 March 1994; and
 - any sales tax;
- b) not be liable for the payment of any interest due in respect of the late payment of any qualifying tax referred to in section 2, in so far as such interest is due in respect of a period ending not later than the last day of the amnesty period;
- c) not be liable for any penalties or additional tax in respect of the non-payment or late payment of any tax or duty referred to in paragraph (a) or (b); and
- d) not be subject to criminal prosecution for offences committed in relation to any tax or duty referred to in paragraph (a) or (b).

⁶⁵ section 3 of the Tax Amnesty Act, No 19 of 1995

This amnesty was clearly a comprehensive amnesty, covering all forms of taxation and providing extensive protection to participants in the amnesty.

Following the Tax Amnesty Act of 1995, in 2003 South Africa introduced an Exchange Control Amnesty and Amendment of Taxation Laws Act 12, of 2003.

3.4.2 Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003

The Exchange Control Amnesty and Amendment of Taxation Laws Act of 2003⁶⁶, allowed South African residents to disclose their foreign assets accumulated or transferred in contravention of exchange control without being exposed to any civil or criminal liability. Many South African individuals have a long history of shifting assets offshore in contravention of exchange control. These illegal shifts commenced well before the 1980s, having occurred in a variety of ways. The revenue from these illegal foreign assets typically goes unreported for income tax purposes. These foreign assets may even stem from unreported domestically derived amounts.

The introduction of this legislation increased the risk of holding undisclosed foreign assets by taxpayers. The exchange control amnesty was accompanied by supporting tax measures in order to ensure that fears of prosecution from related tax violations do not indirectly undermine the objectives of the Exchange Control Amnesty. The objectives of the Exchange Control Amnesty Act include⁶⁷:-

- to enable violators of exchange control and certain tax acts to regularise their affairs in respect of foreign assets derived from these violations;
- to ensure maximum disclosure of foreign assets and to facilitate repatriation thereof to the Republic; and
- to extend the tax base by disclosing previously unreported foreign assets.

The Exchange Control Amnesty Act is said to have increased the amount of revenue collected by the South African Revenue services since its introduction in 2003.

⁶⁶ Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003

⁶⁷ Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003

3.4.3 Small Business Tax Amnesty and Amendment of Taxation Laws Act No. 9 of 2006.

Small businesses play an important role in stimulating economic activity, job creation, poverty alleviation and the general improvement of living standards. SARS' tax-base broadening efforts and walkabouts in informal business areas have indicated that numerous small businesses are not on register or have not made full disclosure to SARS and would like the opportunity for regularisation without fear of tax liabilities arising out of past non-compliance⁶⁸.

The purpose and objective of the tax amnesty⁶⁹ is, therefore, to:-

- broaden the tax base;
- facilitate the normalisation of the tax affairs of small businesses;
- increase and improve the tax compliance culture; and
- facilitate participation in the taxi recapitalisation programme.

According to the Small Business Tax Amnesty and Amendment of Taxation Laws Act of 2006, any individual, unlisted company, close corporation, trust, co-operative or insolvent or deceased estate of an individual which meets certain requirements may apply for tax amnesty. The requirements are that:-

- the individual or entity must have carried on a business;
- the gross income (turnover) of the business (or businesses if the individual or entity carried on more than one business) during the 2006 year of assessment was not more than R10 million;
- in the case of a company or close corporation all the shares or members' interests were held directly by individuals throughout the 2006 year of assessment;
- in the case of a trust all the beneficiaries of that trust throughout the 2006 year of assessment must have been natural persons.

⁶⁸ Small Business Tax Amnesty and Amendment of Taxation Laws section 1, Act No. 9 of 2006.

⁶⁹ Small Business Tax Amnesty and Amendment of Taxation Laws section 1, Act No. 9 of 2006

After meeting the requirements listed above, the rates applied in the calculating of the tax amnesty levy range from 0 to 5 percent (0 percent if the taxable income does not exceed R35 000; and 5 percent if the taxable income exceeds R500 000).

The legislation discussed above was all introduced by SARS in an attempt to increase revenue collected and to increase compliance by defaulting taxpayers for both local income and income from abroad.

Following the tax amnesties discussed in this section, the Government found the need to introduce the VDP in 2011, as another avenue of encouraging defaulting taxpayers to “come clean”. The recent VDP was introduced in the Voluntary Disclosure Programme and Taxation Laws Second Amendment Bill 29 of 2010, now Act 8 of 2010, to encourage taxpayers to disclose their default in tax compliance, and regularise their tax affairs, without the imposition of penalties, interest and additional tax. The VDP introduced in South Africa is fully discussed in the section to follow.

3.5 THE VOLUNTARY DISCLOSURE PROGRAMME IN SOUTH AFRICA

The South African VDP was introduced in the VDP and Taxation Laws Second Amendment Bill 29 of 2010, now Act 8 of 2010, to encourage taxpayers to disclose their default in tax compliance, and regularise their tax affairs, without the imposition of penalties, interest and additional tax. Like tax amnesties, VDPs encourage defaulting taxpayers to come forward and file and pay their delinquent state taxes.

A tax default includes the submission of inaccurate or incomplete information to the tax authorities and failure to submit information or the adoption of a tax position where such submission, non-submission or adoption resulted in the taxpayer not being assessed for the correct amount of tax, or the correct amount of tax not being paid, or an incorrect refund being processed⁷⁰.

Participating in a VDP generally requires that a taxpayer meets certain eligibility requirements and enters into a Voluntary Disclosure Agreement with the state. In exchange for the taxpayer’s voluntary disclosure, the state agrees to grant the

⁷⁰Section 225 of the Tax Administration Act No. 28 of 2011

taxpayer certain benefits and protections. These benefits and protections vary from country to country, depending on the rules and regulations of each country⁷¹.

3.5.1 Requirements of a Voluntary Disclosure Programme

Participating in a VDP requires a taxpayer to meet certain requirements. Applications must be voluntary, disclosure must be complete in all material respects, must be made in the form, manner and period prescribed by the tax authority, and should not result in a refund to the applicant. Applications must include relevant personal and tax contact details, reasons for the omission or non-compliance and provide an explanation of how the requirements have been met⁷².

Taxpayers can apply for a non-binding no-name basis ruling to establish whether they will qualify. If the tax authority is conducting an audit or has advised the taxpayer that it will start an audit, the VDP does not apply to that taxpayer, unless the taxpayer satisfies the tax authority that the default would most likely not have been identified by the audit.

3.5.2 Relief provided by the programme

In South Africa, where the taxpayer applies for relief under the VDP, SARS will not pursue criminal prosecution for any statutory offence under a tax act. The taxpayer will receive relief in respect of the understatement penalty referred to in section 223 of the Tax Administration Act⁷³.

⁷¹Section 227 of the Tax Administration Act No. 28 of 2011

⁷² Schneider, F, 2011. Tax and Excon Voluntary Disclosure Programme (South Africa). KPMG Tax and Legal Publications

⁷³ Section 223 of the Tax Administration Act No. 28 of 2011

The table in section 223 of the Tax Administration Act summarises the relief for understatement penalties.

Table 3: The relief for understatement penalties

Item	Behaviour	Standard case	If obstructive, or if it is a 'repeat case'	Voluntary disclosure after notification of audit	Voluntary disclosure before notification of audit
(i)	'Substantial understatement'	25%	50%	5%	0%
(ii)	Reasonable care not taken in completing return	50%	75%	25%	0%
(iii)	No reasonable grounds for 'tax position' taken	75%	100%	35%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax evasion	150%	200%	75%	10%

Source: Section 223 of the Tax Administration Act No. 28 of 2011⁷⁴

Under the VDP relief, the taxpayer will be relieved from being liable for any understatement penalty, except in the case where the taxpayer is totally negligent or has intentionally evaded tax. No relief is granted on interest that would otherwise have been payable on the late payment of the tax concerned.

The VDP not only makes provision for relief in respect of income tax, but also provides relief to employers for employees' tax transgressions, to value-added tax (VAT) offenders and to persons who failed to withhold any withholding tax (for example, on royalties paid to non-residents). The VDP covers any tax, duty, levy, penalty and additional tax imposed in terms of an Act administered by the Commissioner for SARS⁷⁵.

⁷⁴ Section 223 of the Tax Administration Act No. 28 of 2011

⁷⁵ Watkin. K. 2010. Voluntary disclosure programme. Attorney Tax Risk Management Services.

3.5.3 Application procedure for the Voluntary Disclosure Programme

The approval of the voluntary disclosure application and the relief available under the Tax Administration Act must be contained in a written agreement between SARS and the taxpayer. Section 230 of the Tax Administration Act requires that the agreement must be prepared in the prescribed format and must contain details of: the material facts of the “default” on which the voluntary disclosure relief is based; the amount payable by the taxpayer, which amount must separately reflect the understatement penalty payable; the arrangements and dates for payment; and relevant undertakings by the parties.

SARS is entitled to withdraw the relief granted in terms of the VDP where it is established that the taxpayer failed to disclose a matter that was material for purposes of making a valid voluntary disclosure. Upon withdrawal of the relief, any amount paid in terms of the VDP constitutes part-payment of any further tax in respect of the relevant default. SARS may also pursue criminal prosecution for statutory offences under any tax act or related common law offences⁷⁶.

3.5.4 Persons that may apply for voluntary disclosure relief

Any person, whether in a personal, representative, withholding or other capacity, may apply for voluntary disclosure relief. A person that is aware of a pending audit or investigation, or of an audit or investigation that has commenced but has not yet been concluded by SARS, is excluded.

The Commissioner may also direct that a person may apply for voluntary disclosure relief where the default in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation and the application would be in the interest of good management of the tax system and the best use of the Commissioner’s resources⁷⁷.

⁷⁶ Maitland, 2012. Voluntary disclosure program in the tax administration act 28 of 2011. [Online] Available: <http://www.maitlandgroup.com/voluntary-disclosure-program-in-the-tax-administration-act-28-of-2011> [Accessed 14/08/2013].

⁷⁷ SARS. 2012. External Guide Voluntary Disclosure Programme. GEN-VDP-02-G01

A person is deemed to be aware of a pending audit or investigation, or that the audit or investigation has commenced, if a representative of the person (an officer, shareholder or member of the person, if the person is a company), a partner in partnership with the person, a trustee or beneficiary of the person (if the person is a trust), or a person acting for or on behalf of or as an agent or fiduciary of the person, has become aware of the pending audit or investigation, or that an audit or investigation has commenced⁷⁸.

3.6 Comparing State Tax Amnesties with Voluntary Disclosure Programmes

A state tax amnesty is a limited-time programme approved by the state legislature and administered by the state agency responsible for administering and enforcing the tax laws. These programmes give taxpayers an opportunity to come forward voluntarily and satisfy their delinquent tax obligations in exchange for certain benefits, such as an abatement of penalties and some or all of the interest owed.

Taxpayers filing under amnesty should not expect that they can “negotiate” for better terms⁷⁹. This is a major difference between an amnesty programme and a VDP (which may permit some level of negotiation). Due to the fact that the Tax Amnesty conditions are non-negotiable, taxpayers who have received tax assessments may be required, as a condition of participation, to pay the full amount of the tax owed to the state even if they do not agree with the assessment.

Although the state legislature approves an amnesty, the details of the programme, such as the eligibility requirements for participation and the specific procedures that must be followed, are generally left to the State taxing agency to determine and administer and thus, amnesty programmes can vary widely from state to state. One

⁷⁸ Watkin. K. 2010. Voluntary disclosure programme. Attorney Tax Risk Management Services.

⁷⁹ Dion, S,F. 2012. Comparing State Tax Amnesty to Voluntary Disclosure, Which Program is best for Resolving State Tax Delinquencies. [Online]. Available:

<http://www.thestateandlocaltaxbuzz.com/2012/08/comparing-state-tax-amnesty-to.html>[accessed 14/08/2013]

common requirement found in most amnesty programmes is that taxpayers under criminal investigation for tax law violations are not allowed to participate⁸⁰.

On the other hand, a state's VDP is another avenue available to taxpayers to assist them in resolving their tax delinquencies. This programme is on-going programme compared to the Tax Amnesty which is there for a limited time period. Like tax amnesty, voluntary disclosure encourages delinquent taxpayers to come forward and file and pay their delinquent state taxes. For taxpayers, the primary overall benefit to entering into a voluntary disclosure agreement is that it allows a taxpayer to resolve outstanding tax delinquencies fully and completely under beneficial terms and it also allows for negotiation, particularly when the delinquent taxpayer is represented by a tax expert⁸¹.

As a result, State tax amnesty and VDPs present two avenues for taxpayers to come forward voluntarily and resolve tax delinquencies. It is difficult to determine which the best programme is since they both have their advantages and disadvantages, depending on the country in which they are practised. Whichever avenue is chosen, it's particularly important to understand the eligibility requirements, including how quickly returns and tax payments must be remitted to the state and what the implications of failing to follow-through on these requirements could be.

In the case of taxpayer representatives, it might be beneficial to use the VDP since they can negotiate favourable terms for the taxpayer, unlike the tax amnesty which is non-negotiable.

⁸⁰ Dion, S,F. 2012. Comparing State Tax Amnesty to Voluntary Disclosure, Which Program is Best for Resolving State Tax Delinquencies. [Online]. Available: <http://www.thestateandlocaltaxbuzz.com/2012/08/comparing-state-tax-amnesty-to.html> [accessed 14/08/2013]

⁸¹ Dion, S, F. 2012. Comparing State Tax Amnesty to Voluntary Disclosure, Which Program is Best for Resolving State Tax Delinquencies. [Online]. Available: <http://www.thestateandlocaltaxbuzz.com/2012/08/comparing-state-tax-amnesty-to.html> [accessed 14/08/2013]

3.7 CONCLUSION

A tax amnesty is a government programme that typically allows a short period of time for tax evaders to voluntarily pay previously evaded taxes without being subject to penalties and prosecution that discovery of such tax evasion normally brings. Tax amnesties typically target specific taxes or classes of taxpayers. Unless a state legislature has already introduced or passed a bill approving a future amnesty, it's nearly impossible to predict when a state will offer an amnesty period as amnesties do not generally occur according to any specific schedule.

Like tax amnesties, VDPs encourage defaulting taxpayers to come forward and file and pay their delinquent state taxes. A VDP is usually a longer-term measure providing for relief that is similar to that of an amnesty, but often applying to a broader range of taxes. As a result, the main differences between a tax amnesty and a VDP are that the VDP is an ongoing programme as compared to the tax amnesty which is a limited time programme (for example for a three-month period) and amnesties have a narrower focus than VDPs.

These programmes both give taxpayers an opportunity to come forward voluntarily and satisfy their delinquent tax obligations in exchange for certain benefits, such as an abatement of penalties and some or all of the interest owed. These abatements can be substantial since the amount of penalty and interest that can accrue when a tax liability remains unpaid for many years can be significant, and could very possibly exceed the tax liability itself. Therefore, penalty and interest abatements also help taxpayers to retain cash they might otherwise have had to pay.

CHAPTER 4

TAX AMNESTY AND VOLUNTARY DISCLOSURE PROGRAMMES: AN INTERNATIONAL APPRAISAL

4.1 INTRODUCTION

The previous chapter has highlighted different aspects of tax amnesty and VDPs, including the purpose and how each programme operates. This chapter discusses how these programmes operate in different countries, specifically in Canada, Australia and United States of America (USA). The chapter compares the two types of programme introduced in South Africa with those introduced in Canada, Australia and United States of America and also discusses the successes and problems experienced in those countries.

4.2 CANADA

The Canadian tax system requires taxpayers to self-assess and report their income tax liabilities in respect of each taxation year. Where a taxpayer has previously provided incorrect or incomplete information, or has failed to disclose required information entirely, to the Canada Revenue Agency, the taxpayer, may under certain circumstances be permitted to come forward and voluntarily disclose past reporting errors or omissions in exchange for potential penalty relief by making an application to the Canada Revenue Agency under the federal VDP.

Subsection 220(3.1) of the Canadian Income Tax Act provides the statutory basis for the VDP in respect of Canadian Income Taxes. In order to be eligible for relief under subsection 220(3.1), the following pre-conditions must be satisfied: (i) the applicant must be a taxpayer, which includes individuals, corporations, trusts and for the purpose of subsection 220(3.1), partnerships, regardless of whether the taxpayer is liable or not for tax; and (ii) the application for relief must be made within 10 calendar years from the end of the year in respect of which the taxpayer is seeking relief⁸².

⁸²Friedman M and Palmer A., 2010. An overview of the Canada Revenue Agency's voluntary disclosures program. Canada: Estates Trusts and pensions journal vol 30

In Canada the VDP was administered by the Investigations Division of the Agency until 1999, when it was transferred to the Appeals Branch as part of the Agency's fairness initiative. An information circular published in 1973 indicated that taxpayers who made a complete and voluntary disclosure would not be prosecuted or assessed penalties for gross negligence⁸³ The VDP promotes compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct previous omissions in their dealings with the Canada Revenue Agency⁸⁴.

The Canada Revenue Agency's Voluntary Disclosure Programme is designed to encourage taxpayers to disclose deficiencies in complying with reporting, filing, payment and remittance obligations under the Income Tax Act as well as the Excise Tax Act and the Custom Act⁸⁵.

Taxpayers who make a valid disclosure will have to pay the taxes or charges plus interest, without a penalty or prosecution that the taxpayer would otherwise be subject to under the acts administered by the Canada Revenue Agency. For a voluntary disclosure to be valid, it must be voluntary, complete, involve a monetary penalty and involve information that is at least one year overdue.

Examples of deficiencies that can be disclosed under the VDP in Canada include failure to report income, failure to remit source deductions, failure to file tax returns and other reporting documents and claiming ineligible expenses.

⁸³ Auditor General of Canada, 2004. Resolving disputes and encouraging voluntary disclosures. [Online]. Available: <http://www.oag-bvg.gc.ca/internet/docs/20041106ce.pdf>. [Accessed 14/08/2013].

⁸⁴ Canada Revenue Agency, 2013. Voluntary disclosures program. Canada: Canada Revenue Agency.

⁸⁵Waterhouse TD, 2012. Voluntary Disclosure Programme. [Online]. Available: <http://advisors.tdwaterhouse.ca/public/projectfiles/354ff223-a91e-4b1e-9ef6-6e32d51570d0.pdf> [Accessed October 2013]

4.2.1 Conditions for a valid voluntary disclosure: Canada

In Canada there are four main conditions for a valid voluntary disclosure and these are⁸⁶:

- **The disclosure must be voluntary**

In this case the taxpayer has to initiate the disclosure. A disclosure may not qualify as voluntary if it is made at a time when the person might expect that the Canada Revenue Agency will, or may, discover the deficiency in any event, for example, if an audit has already commenced or the taxpayer has knowledge that an audit will commence and Canada Revenue Agency will discover the omission.

- **The disclosure must be complete**

The taxpayer must make a full and accurate reporting of all previously inaccurate, incomplete and unreported information. A taxpayer must not limit a disclosure to selected errors or omissions or to specific taxation years or reporting periods. All required forms must be prepared and properly filed. The taxpayer also must comply with all legitimate requests for documents to verify the disclosure. It is the Canada Revenue Agency's policy that a voluntary disclosure will not be denied solely because it contains minor errors or omissions, for example, where a taxpayer discloses income of \$100 000 and it is later established that the taxpayer's income was \$108 000 the Canada Revenue Agency considers the error to be minor⁸⁷.

⁸⁶ Waterhouse TD, 2012. Voluntary Disclosure Programme. [Online]. Available: <http://advisors.tdwaterhouse.ca/public/projectfiles/354ff223-a91e-4b1e-9ef6-6e32d51570d0.pdf> [Accessed October 2013]

⁸⁷ Friedman M and Palmer A., 2010. An overview of the Canada Revenue Agency's voluntary disclosures program. Canada: Estates Trusts and pensions journal vol 30

- **The disclosure must involve a penalty**

The disclosure must involve at least one penalty. If no penalties apply to the information being disclosed, there is no need to seek penalty relief through the programmes.

- **The disclosure must include information that is; (a) at least one year past due or, (b) if less than one year past due, is not being disclosed solely to avoid the late filing or instalment penalties.**

In this case, the intention is that a taxpayer cannot use the programmes to disclose a current year's income tax simply to avoid paying the late-filing penalty.

If the Canada Revenue Agency accepts a disclosure as having met the conditions set out above, it will be considered to be a valid disclosure and the taxpayer will not be charged penalties or prosecuted with respect to the disclosure.

In addition to penalty relief, interest relief is also provided under the VDP. If a disclosure is accepted as valid by the Canada Revenue Agency, the Minister may grant partial relief in the application of interest against a taxpayer in respect of assessments for years or reporting periods preceding the three most recent years of returns required to be filed.

4.2.2 Circumstances under which Voluntary Disclosure Programme relief may be granted

Relief from penalties and prosecution, as provided for under the VDP, may be considered if taxpayers:

- failed to fulfil their obligations under the applicable act;
- failed to report any taxable income they received;
- claimed ineligible expenses on a tax return;
- failed to remit source deductions of their employees;
- failed to report an amount of Goods and Services Tax/Harmonized Sales Tax, (which may include undisclosed liabilities or improperly claimed refunds or rebates, unpaid tax or net tax from a previous reporting period);
- failed to file information returns; and

- failed to report foreign sourced income that is taxable in Canada.

4.2.3 Circumstances under which Voluntary Disclosure Programme relief will not be considered

There are limited circumstances in which the Canada Revenue Agency will not grant relief under the VDP, regardless of whether the disclosure meets the four conditions for validity outlined above. These circumstances include disclosures in respect of:

- income tax returns where no taxes are owing or a refund is expected;
- provisions under the Tax Act that permit taxpayers to elect specific tax treatment;
- returns that must be filed under section 216 of the Tax Act;
- advance pricing arrangements;
- rollover provisions, which, as election provisions, allow a taxpayer to defer income that would otherwise arise on the transfer of property to a taxable Canadian Corporation;
- returns that must be filled in the year of bankruptcy;
- post-assessment requests for penalty or interest relief.

Where all the conditions for acceptance of a voluntary disclosure are not satisfied, it is the Canada Revenue Agency's policy to consider the disclosure to be invalid and to deny the disclosure. In such circumstances a taxpayer may be liable for any tax owing and may be subject to penalties, interest, and prosecution if applicable.

In Canada, tax amnesty is administered by the Canada Revenue Agency under the VDP, and as a result the requirements are the same as those discussed for a VDP.

4.2.4 Successes and problems of Voluntary Disclosure Programme (and Tax Amnesties): Canada

In the short term, one major problem reported was that a voluntary disclosure will not automatically guarantee immunity from prosecution, but a timely voluntary disclosure may result in prosecution not being recommended. It has been reported that the programmes were very successful in Canada. Due to the amnesty and VDPs, the

associated federal income tax and goods and service tax assessments increased from about \$140 million to an estimated \$459 million in 2003⁸⁸. It was also reported that compliance increased due to these two programmes in Canada, thereby increasing the tax revenue collected by the Canada Revenue Agency. One major problem was the decrease in the revenue collection in the long-run due to the fact that some taxpayers became reluctant to participate in the programmes, anticipating the repeated introduction of amnesties.

4.3 THE UNITED STATES OF AMERICA

In the USA, a taxpayer's timely, voluntary disclosure of a significant unreported tax liability is an important factor to the Internal Revenue Service in considering whether the matter should be referred to the U.S. Department of Justice for criminal prosecution⁸⁹. The Internal Revenue Services' ("IRS") VDP provides a way for taxpayers with previously undisclosed income to contact the IRS and resolve their tax matters. This programme does not apply to taxpayers whose income is derived from illegal activities. The voluntary disclosure practice is a longstanding practice of IRS. A voluntary disclosure will not automatically guarantee immunity from prosecution, but a timely voluntary disclosure may result in prosecution not being recommended.

4.3.1 A brief history of voluntary disclosure in the United States of America

The IRS has a long history of encouraging voluntary disclosures of tax evasion. In 1919, the IRS had a policy not to criminally prosecute taxpayers making a voluntary disclosure. Although the policy was quickly amended to remove the commitment to

⁸⁸ Auditor General of Canada, 2004. Resolving disputes and encouraging voluntary disclosures. [Online]. Available: <http://www.oagbvg.gc.ca/internet/docs/20041106ce.pdf>. [Accessed 14/08/2013].

⁸⁹ Michaels, M. and Beck, Z., S, 2012. The voluntary disclosure handbook. [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Marketing%20Brochures/The%20Voluntary%20Disclosure%20Handbook%207th%20Edition%20Sample_Jan2012.pdf [Accessed 14/08/2013].

forgo criminal prosecution, the IRS reinstated that policy from 1945 to 1952⁹⁰. In 1952, the IRS abandoned the policy again partly because it allowed taxpayers to claim immunity from prosecution, regardless of the context of their voluntary disclosure.

Once the non-prosecution policy was withdrawn in January 1952, the IRS's official position was that voluntary disclosure was merely a factor to be considered in whether to recommend a taxpayer for criminal prosecution. It was reported that, despite the admonition that a voluntary disclosure did not immunize a taxpayer from criminal liability, an internal [IRS] memorandum disclosed that, at least from 1969 until 1974, the position of the Chief Counsel's Office was that a timely, good faith disclosure was "dispositive" of the prosecution issue. In 1974, the IRS adopted a policy of considering the factors that triggered the taxpayer's disclosure⁹¹.

Currently, the Internal Revenue Manual provides general voluntary disclosure provisions under the section entitled Criminal Investigations - Other Investigations⁹². The Internal Revenue Manual states that a voluntary disclosure occurs when the communication is truthful, timely, complete, and when:

- a taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his/her correct tax liability, and
- the taxpayer makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.

The Internal Revenue Manual defines what constitutes a timely disclosure. According to the Manual a disclosure is timely if it is received before⁹³:

⁹⁰ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57

⁹¹ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57

⁹² Internal Revenue Manual 9.5.11.9 (2011), [Online]. Available: http://www.irs.gov/irm/part9/irm_09-005-011-cont01.html

⁹³ Internal Revenue Manual 9.5.11.9 (2011), [Online]. Available: http://www.irs.gov/irm/part9/irm_09-005-011-cont01.html

- the IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation;
- the IRS has received information from a third party (for example, an informant, another governmental agency, or the media) alerting the IRS to the specific taxpayer's noncompliance;
- the IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer; and
- the IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (for example, a search warrant, or a grand jury subpoena).

In addition to this general voluntary disclosure regime, the IRS also periodically offers targeted voluntary compliance initiatives. For example, it offered one in 1992 for non-filers⁹⁴.

The USA has therefore long had VDPs, but in the last few years has announced new rules for individuals with offshore investments wishing to “come clean” (Offshore Voluntary Disclosure Programme).

4.3.2 The offshore voluntary disclosure programme

The IRS created its Offshore Voluntary Disclosure Programme and then its follow-up Offshore Voluntary Disclosure Initiative, under which the United States taxpayers with unreported foreign bank accounts, and presumably unreported foreign income, could come clean by voluntarily coming forward and disclosing to the IRS the existence of these accounts for past years and thereby avoiding criminal penalties⁹⁵.

Beginning in 2003, the IRS has operated four offshore programmes which provided incentives for taxpayers to disclose their offshore accounts and pay delinquent taxes, interest and penalties. The first of the four initiatives was offered in 2003 and was related to an offshore credit card project the IRS pursued, starting in 2000. This

⁹⁴ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57

⁹⁵ Goldberg, D, S. 2013. The Death of the Income Tax: A Progressive Consumption Tax and the Path to Fiscal Reform. New York: Oxford University Press

programme was designed to allow taxpayers to step forward and clear up their tax liabilities. The programme waived the fraud penalty, the fraudulent failure-to-file penalty and certain information return penalties otherwise applicable to participating taxpayers. In addition, participating taxpayers would not be criminally prosecuted⁹⁶.

The next programmes took place in 2009 in conjunction with a crackdown on offshore tax evasion involving Swiss bank accounts, specifically those held at Union Bank of Switzerland⁹⁷. From March 23 through October 15, 2009, the IRS provided the Offshore Voluntary Disclosure Initiative for foreign financial accounts. The taxpayers could “come clean” with assurance of no criminal prosecution and only a 20 per cent income tax negligence penalty for years starting in 2003, plus a single “in lieu of” Foreign Bank Account Reporting penalty of 20 per cent of the highest amount in the foreign accounts for the highest year. Under this special initiative, the IRS would forego all other applicable penalties, such as for failure to file 5471s and 3520s⁹⁸.

After the close of the 2009 Offshore Voluntary Disclosure Programme, taxpayers continued to seek compliance in regard to their offshore accounts and as a result, on February 8, 2011, the IRS announced its 2011 Offshore Voluntary Disclosure Initiative. The agency reported that almost 12,000 disclosures were made under the 2011 Offshore Voluntary Disclosure Initiative⁹⁹.

The 2012 programme was formally announced by the IRS on January 9, 2012. Prior to issuance of specific guidance, the IRS announced that it will be almost similar to the 2011 programme. There are two key differences between the 2011 and 2012

⁹⁶ Lederman, L., 2012. The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion. Maurer School of Law: Indiana University. Volume 57

⁹⁷ Savoji F, 2013. The Offshore Voluntary Disclosure Program: A Brief History and Overview of the Complexities Involved in Disclosing Foreign Assets. [Online]. Available: <http://cmcplegalnews.wordpress.com/2013/05/21/the-offshore-voluntary-disclosure-program-a-brief-history-and-overview-of-the-complexities-involved-in-disclosing-foreign-assets/>

⁹⁸ Frumkes M, B. 2012. Divorce Taxation. Ninth edition. Costa Mesa: James Publishing Inc.

⁹⁹ Savoji F, 2013. The Offshore Voluntary Disclosure Program: A Brief History and Overview of the Complexities Involved in Disclosing Foreign Assets. [Online]. Available: <http://cmcplegalnews.wordpress.com/2013/05/21/the-offshore-voluntary-disclosure-program-a-brief-history-and-overview-of-the-complexities-involved-in-disclosing-foreign-assets/>

programmes. One is that the Offshore Penalty was increased to 27.5 per cent, versus 25 per cent in the 2011 programme and 20 per cent in the 2009 programme. The other key difference is that there is no specific end date for the 2012 Offshore Voluntary Disclosure Initiative programme. However, the IRS has announced that it reserves the right to change the terms of the programme on a prospective basis at any time, as well as the right to end the programme.

As under the previous offshore disclosure programmes, the 2012 Offshore Voluntary Disclosure Initiative provides an opportunity for taxpayers to disclose unreported foreign accounts, assets and income with fewer penalties than might be applied without the programme, while avoiding criminal prosecution.

The IRS Offshore Voluntary Disclosure Initiative further states that its VDP and success in offshore enforcement have increased awareness of U.S. tax filing obligations, including awareness by dual citizens and others “who may be delinquent in filing, but owe no U.S. tax”¹⁰⁰.

4.3.4 Requirements for a valid Offshore Voluntary Disclosure: United States of America

In applying for Offshore Voluntary Disclosure, taxpayers first seek “preclearance” to make a voluntary disclosure by transmitting certain identifying information to the IRS Criminal Investigation Lead Department Centre. Qualifying taxpayers thereafter receive a “Pre-clearance Notice” directing them to mail a “Voluntary Disclosure Letter” to the IRS Criminal Investigation Division within 30 days so that their voluntary disclosure can be processed.

¹⁰⁰Sullivan & Cromwell, 2012. IRS Offshore Voluntary Disclosure Program. [Online]. Available: http://www.sullcrom.com/files/Publication/31c857c7-857a-40ff-bb7e-f82b5438397c/Presentation/PublicationAttachment/95184e8a-ec0f-4588-a6ed-fd6b08d1a7f6/SC_Publication_IRS_Offshore_Voluntary_Disclosure_Program_1-10-12.pdf

The Voluntary Disclosure Letter requested by Criminal Investigation Division is a standard form letter, which requires that taxpayers applying for the VDP make comprehensive and self-incriminatory disclosures concerning, inter alia, the following¹⁰¹:

- the name and place of the financial institution holding their account;
- the source of funds in their account;
- the identities of all individuals and/or entities associated with their account;
- the purpose for which the account was opened; and
- all contacts and communications the taxpayer has had with representatives of the financial institution that held the account.

Next, taxpayers that qualify for the Offshore Voluntary Disclosure Programme typically receive a letter from the IRS Director of Global Financial Crimes informing them that they have been accepted into the programme.

4.3.5 Eligibility: Offshore Voluntary Disclosure Programme

Generally, the programme is open for U.S. citizens, as well as corporations, partnerships, and trusts, with U.S. income tax filing obligations and undisclosed foreign accounts or assets. Typically, this includes individuals who have either failed to file a U.S. tax return while living overseas or have filed timely returns but failed to include and report all of their income and foreign bank accounts on these returns.

Furthermore, the participant must indicate his or her willingness to cooperate with the IRS in its determination of the taxpayer's tax liability and the participant must be prepared to make a good faith arrangement with the IRS to pay the taxes, interest, and penalties owed¹⁰².

¹⁰¹Ketcham B. P. 2013. Can IRS Be Trusted? A Troubling New Development in the Offshore Voluntary Disclosure Program. [Online]. Available: <http://kflaw.com/siteFiles/News/7387E8FE10E5301DCB60185D9314C2C8.PDF>

¹⁰² Ashman J. 2013. Don't Qualify for the Streamlined Procedure? You Can Still Seek Relief with OVDP. [Online]. Available: <http://www.expattaxprofessionals.com/delinquent-tax-payers-part-2>

More importantly, the IRS has stated that it will not accept individuals for whom the IRS has already initiated a civil or criminal investigation or examination, as well as individuals for whom the IRS has already received information whether from the media, an informant or a government agency¹⁰³.

4.3.6 Successes and problems of Tax Amnesties and Voluntary Disclosure Programmes: United States of America

The Internal Revenue Service's VDP provides a way for taxpayers with previously undisclosed income to contact the IRS and resolve their tax matters. The IRS also introduced the offshore VDPs which provided incentives for taxpayers to disclose their offshore accounts. Tax amnesties, together with VDPs, were successful in most states in USA. These programmes increased the revenue collected by the IRS in different states in the USA, (for example \$32 million was collected in Arizona in 2009, \$303.7 million was collected in Louisiana in 2009, and \$32.6 million was collected through these programmes in Massachusetts)¹⁰⁴.

In USA, Tax amnesties and VDPs have raised hundreds of millions of dollars that revenue collectors would otherwise have found difficult or impossible to capture. These programmes have swelled the rolls of paid-up taxpayers and increased the population of regular filers.

Amnesties and VDPs may have had some less positive effects as well. They may have angered law-abiding taxpayers who dislike seeing tax breaks given to abusers of the system. Current amnesties may have encouraged some citizens to believe that there will be future amnesties as well, reducing their incentive to keep current on their payments, therefore reducing tax revenue in the long run¹⁰⁵.

¹⁰³ Ashman J. 2013. Don't Qualify for the Streamlined Procedure? You Can Still Seek Relief with OVDP. [Online]. Available: <http://www.expattaxprofessionals.com/delinquent-tax-payers-part-2>

¹⁰⁴ The Federation of Tax Administrators, 2013. State Tax Amnesty Programs. [Online]. Available: <http://www.taxadmin.org/fta/rate/amnesty1.pdf> [assessed 12/11/2013].

¹⁰⁵ Leonard, H, B and Zeckhauser R, J. 1987. Amnesty, Enforcement and Tax Policy, NBER Working Paper No 2096. Cambridge, MA: National Bureau of Economic Research

Some authors concluded that a tax amnesty has no effect on the revenue collected by the IRS. In the study by Alm and Beck¹⁰⁶, their time series results indicated that the Colorado amnesty had no impact on either the level or the trend of tax collections. One possible reason for this conclusion might be that the amnesty itself was so small that it had no effect on the compliance decisions of individuals.

4.4 AUSTRALIA

Australia launched tax amnesties in 2007 and 2009. As defined earlier, a tax amnesty is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties) relating to a previous tax period or periods and without fear of criminal prosecution. In 2007 The Australian Tax Office gave business owners a one-off opportunity to correct past mistakes regarding payments and loans from their private companies and avoid penalties under Division 7A of the Income Tax Assessment Act 1997¹⁰⁷.

The Income Tax Assessment Act 1997 is an Act of the Parliament of Australia and is a rewrite of the prior Income Tax Assessment Act 1936. Division 7A applies to debts forgiven on or after 4 December 1997, regardless of when the debt was created. However, it may also apply to loans in place before this date, where the amount of the loan is increased or its term extended on or after 4 December 1997.

The offer applied to mistakes made between 2001-02 and 2006-07 and a practice statement released in July 2007 set out how taxpayers can take corrective action to fix these mistakes. It stated that “people who follow the practice statement and include any outstanding interest or previously undeclared payments in their 2007-08

¹⁰⁶ Alm, J and Beck, W. 1993. Tax amnesties and compliance in the long run: a time series analysis. National Tax Journal Vol. 46, no. 1 pp. 53-60

¹⁰⁷Swire M, 2007. Australia Launches Business Tax Amnesty. [Online]. Available: http://www.tax-news.com/news/Australia_Launches_Business_Tax_Amnesty_28020.html

return can take advantage of the new changes to the law, without being concerned about further enquiries”.¹⁰⁸

4.4.1 Voluntary disclosure programme: Australia

In Australia, under the VDP, taxpayers are subject to penalties for failing to disclose amounts in their tax returns, whether this omission is accidental or otherwise. The base penalty amount varies between 25 per cent and 75 per cent of the shortfall amount, depending on the conduct of the taxpayer. The base penalty amount can be further increased or reduced, depending on the taxpayer’s conduct¹⁰⁹.

Taxpayers are also liable for interest for failing to disclose amounts in their tax returns. An interest charge (referred to as the Shortfall Interest Charge) is applied to the tax shortfall (*i.e.* broadly the difference between the Australian tax payable by the relevant entity based on the tax return lodged, versus the Australian tax payable pursuant to amended assessments made incorporating the inclusion of the previously undisclosed amount). The rate of the Shortfall Interest Charge varies over time and is applied on a daily compounding basis. It is deductible for Australian taxation purposes¹¹⁰.

According to The Australian Tax Office, where the taxpayer voluntarily discloses a shortfall amount to the Commissioner before notification of an audit, the base penalty amount may be reduced as follows:

- by 80 per cent, where the shortfall amount is AUD 1000 or more; or
- to nil, where the shortfall amount is less than AUD 1000.

¹⁰⁸ Swire M, 2007. Australia Launches Business Tax Amnesty. [Online]. Available: http://www.tax-news.com/news/Australia_Launches_Business_Tax_Amnesty_28020.html

¹⁰⁹ Walker, J. 2012. The Voluntary Disclosure Handbook. [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Other/The%20Voluntary%20Disclosure%20Handbook%208th%20Edition_SAMPLE%20ONLY_2013.pdf

¹¹⁰ Walker, J. 2012. The Voluntary Disclosure Handbook. [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Other/The%20Voluntary%20Disclosure%20Handbook%208th%20Edition_SAMPLE%20ONLY_2013.pdf

The Commissioner may, as a matter of policy, abate the penalty in full if the taxpayer made an honest mistake and makes the voluntary disclosure before notification of a tax audit.

Case law has also clarified the scope of the voluntary disclosure provisions in Australia. In the case of *British American Tobacco Australia Services Ltd v FCT*¹¹¹, the Court held that to be a voluntary disclosure the taxpayer must volunteer information on the taxpayer's own initiative without prompting or apprehended pressure from the Australian Tax Office and rejected the argument that a disclosure was voluntary unless the taxpayer was legally compelled to make the disclosure. In *Lawrence v FCT*¹¹² the Court held that a compulsory examination under section 264 of the Income Tax Assessment Act, 1936 did not constitute notice of an audit for the purposes of voluntary disclosure. In *DG Empire v FCT*¹¹³, the Tribunal held that the failure to offer the taxpayer an opportunity to make voluntary disclosure was a reason to exercise the discretion to reduce the penalty.

Australia has also followed in the footsteps of the USA tax authority by offering an amnesty to people who have failed to disclose income from offshore banks through Offshore Voluntary Disclosure Programmes. These programmes are discussed below.

4.4.2 Offshore Voluntary Disclosure Programmes: Australia

Amid a worldwide escalation of Government tax amnesties, Australia has joined the fray and offered its citizens an opportunity to volunteer information regarding any unpaid tax obligations in relation to their offshore bank accounts. The Australian Taxation Office announced on 18 July 2007 an initiative designed to encourage and assist individuals and entities that hold or benefit from banking relationships held offshore from Australia, to reconcile their tax affairs. This initiative is referred to as the Offshore Voluntary Disclosure Initiative. On the 30th of November 2009 the

¹¹¹ *British American Tobacco Australia Services Ltd v FCT* [2009] FCA 1550 at [107]

¹¹² *Lawrence v FCT* (2008) 70 ATR 376 at [111].

¹¹³ *DG Empire v FCT* (2007) 66 ATR 925 at [70].

Australian Tax Office went on to announce a revised Offshore Voluntary Disclosure Initiative. The revised initiative¹¹⁴:

- fully remits shortfall penalties where additional taxable income is AUD20,000 or less for a tax year;
- remits shortfall penalties up to 10 per cent where additional taxable income exceeds AUD20,000 for a tax year;
- fully remits the general interest charge for tax years up to and including the 2002 tax year; and
- imposes a shortfall interest charge for the 2005 and subsequent tax years.

The Australian Tax Office has increased its focus on Australian taxpayers who may have undisclosed offshore income (including capital gains) or who have over-claimed deductions involving international transactions. Under the Offshore Voluntary Disclosure Initiative, the Australian Tax Office has announced concessions or discounts for individuals and entities who voluntarily disclose any outstanding tax matters. In this case eligible taxpayers who voluntarily come forward before the Australian Tax Office notifies them of an audit will obtain a reduced shortfall penalty. The Australian Tax Office Commissioner Chris Jordan said that the Offshore Voluntary Disclosure Initiative may reduce tax avoidance, evasion or other serious offences by taxpayers¹¹⁵. A voluntary disclosure before or during audit may reduce administrative penalties by 80 per cent or 20 per cent respectively

In the Australian Offshore Voluntary Disclosure Initiative programme, only taxpayers with additional previously undeclared taxable incomes of greater than AUD 20 000 will be forced to pay a penalty of 10 per cent on the surplus income for that year.

¹¹⁴ Ftia, R, J. 2010. Tax controversies – voluntary disclosures. Taxation In Australia Volume 44 No. 9

¹¹⁵ Australian Tax Office, 2013. Targeting tax crime: a whole-of-government approach. [Online]. Available: <http://www.ato.gov.au/General/Tax-evasion-and-crime/In-detail/Targeting-Tax-Crime-magazine/2013/Targeting-tax-crime---a-whole-of-government-approach---September-2013/> [Accessed 14/08/2013]

Additionally, information volunteers are also offered general interest concessions through the Offshore Voluntary Disclosure Initiative programme¹¹⁶.

The Offshore Voluntary Disclosure Initiative can reduce penalties to 10 per cent, provide interest remissions and manage the risk of possible criminal prosecution arising from offshore income omission. According to the Australian Tax Office, a voluntary disclosure is, accordingly, a means to open up settlement negotiations or communications with the Australian Tax Office to manage a tax risk which does not have the restrictions and appeal limitation of a private ruling application.

The Australian Tax Office requires full disclosure of all foreign assets and foreign entities, not merely those entities directly or indirectly affected by the flow of funds, ownership or tax shortfall. A disclosure is made on the approved form. The approved form includes additional disclosure requirements not required under the usual voluntary disclosure rules such as¹¹⁷:

- the purpose of establishing structures overseas;
- the reason the foreign income was omitted or the deduction over-claimed;
- the identification of false documentation; and
- the name and address of any advisers involved in the arrangements and the nature of the advice.

The Offshore Voluntary Disclosure Initiative also requires the taxpayer to name the advisers that helped or provided advice about establishing, maintaining or changing overseas assets, structures or related entities.

The Offshore Voluntary Disclosure Initiative is limited to income tax from offshore activities. Accordingly, disclosures about domestic income tax and other taxes are subject to the usual voluntary disclosure rules. Where the offshore disclosure may have domestic tax consequences (such as deemed dividends or withholding tax

¹¹⁶ Taxation: News & Information, 2009. Australia Updates Offshore Voluntary Disclosure Initiative. [Online]. Available: <http://www.taxationinfo.com/2009/12/australia-updates-offshore-voluntary-disclosure-initiative/>[Accessed 10/09/2013]

¹¹⁷ Ftia, R, J. 2010. Tax controversies – voluntary disclosures. Taxation In Australia Volume 44 No. 9

obligations) a concurrent disclosure under the usual voluntary disclosure rules may also be made¹¹⁸.

4.4.3 Successes and problems of Tax Amnesties and Voluntary Disclosure Programmes: Australia

Australia launched tax amnesties in 2007 and 2009. According to the Australian Tax Office, voluntary disclosure by individuals had generated an additional AUD 301.7 million in revenues by June 2010. As a result tax amnesties and VDPs in Australia have played an important part by increasing the revenue collected by the government. These programmes have improved the tax systems in Australia since they yield some information about current loopholes in the tax system. Amnesties like the Offshore Voluntary Disclosure Programmes have increased compliance and therefore adding more taxpayers to the tax rolls¹¹⁹.

The long-run cost is that too many amnesties undermine the willingness of others to pay tax as it alerts the population to the existence of a sizeable minority who gets away with not paying taxes. Repeated amnesties have reduced the amount collected by the Australian Tax Office in 1988 to as little as AUD 20 million as compared to the previous years¹²⁰.

4.5 FOUR COUNTRY COMPARISON

The VDPs and tax amnesties in Canada, Australia and USA having been discussed above, the following section will compare the programmes in these countries with those introduced in South Africa. From the above discussion it is clear that relief in respect of additional taxes and penalties differs from country to country depending on the rules and regulations of the Tax Authorities for each country. The South African VDP was introduced in 2011, while it was introduced decades ago in countries like Canada, Australia and USA.

In terms of penalty relief, if a disclosure is accepted as valid in Canada, Australia or the USA, the agency may grant partial relief in the application of interest against a

¹¹⁸ Ftia, R, J. 2010. Tax controversies – voluntary disclosures. Taxation In Australia Volume 44 No. 9

¹¹⁹ Ftia, R, J. 2010. Tax controversies – voluntary disclosures. Taxation In Australia Volume 44 No. 9

¹²⁰ Ftia, R, J. 2010. Tax controversies – voluntary disclosures. Taxation In Australia Volume 44 No. 9

taxpayer in respect of assessments for years required to be filed. On the other hand the South African programme grants full interest relief where the person qualifies for a relief under the tax VDP. The common similarity is that for these programmes to be valid in these four countries certain requirements have to be met and a series of documents have to be submitted to the Tax Authorities before the application approval.

The analysis of the programmes of the countries that have been discussed earlier in this research, all reveal that the taxpayer does not qualify for voluntary disclosure after being notified of a tax audit. On the other hand, in the case of Australia, voluntary disclosure by the taxpayer after notification of a tax audit may reduce the base penalty amount by 20 percent.

The most common feature of amnesty programmes is the waiver of all penalties and a complete or partial waiver of interest. For example, in Australia, where the taxpayer voluntarily discloses a shortfall amount to the Commissioner before notification of an audit, the base penalty amount may be reduced by 80 per cent, where the shortfall amount is AUD 1000 or more; or to nil, where the shortfall amount is less than AUD 1000¹²¹. In the United States of America, under a Kansas amnesty programme offered from 1 October to 30 November, 2003, qualifying taxpayers received an abatement of all penalties and interest owed on outstanding liabilities remitted during the amnesty period. Under a North Dakota amnesty programme offered from 1 October, 2003 to 31 January, 2004, in the USA, taxpayers received a waiver of all penalties and 75 per cent of the interest that would have otherwise been assessed on overdue taxes¹²².

A detailed summary table comparing the VDPs in South Africa, Canada, Australia and USA is shown in the following section. With regard to the tax amnesties in countries like USA and Canada, no set requirements were listed in the table and also, because most countries have implemented quite a number of amnesties with different requirements for each amnesty, it was difficult to draft a table of comparison on tax amnesties for the countries in question.

¹²¹ Information from the Australian Tax Office (ATO)

¹²² Bird, R, M, 2003. Administrative Dimensions of Tax Reform. Asia-Pacific Tax Bulletin, Vol. 10, no. 3, 2004, pp. 3-21

4.6 CONCLUSION

Now that the tax amnesty and the VDPs in South Africa, Canada, Australia and the USA have been discussed, it can be concluded that based on the information gathered above, these programmes increase the revenue collected by the government in the short run and the revenue gradually decreases in the long run. As a result these programmes are very useful in generating revenue and increasing taxpayers' compliance.

Comparing the tax amnesty and the VDPs in the four countries discussed in the previous sections, it was observed that the requirements, the relief structure and the application process differ for each country. The table 4 below shows a table which compares the VDPs in South Africa, Canada, Australia and the USA.

CHAPTER 5

ADVANTAGES AND DISADVANTAGES OF TAX AMNESTIES AND VOLUNTARY DISCLOSURE PROGRAMMES

5.1 INTRODUCTION

Tax amnesties and VDPs offer qualified taxpayers an opportunity to clear outstanding tax liabilities in exchange for a complete or partial abatement of interest and penalties that might otherwise be imposed. The “carrot” encouraging participation is usually forgiveness of at least some penalties that could have been assessed on the overdue taxes. Typically there is also a “stick” – the promise of harsher penalties for evasion and stepped-up detection efforts to follow these programmes.

This chapter discusses the advantages and disadvantages of both the tax amnesty programmes and the VDPs. In general, these programmes are intended to improve overall compliance with tax laws by eliminating underreporting errors and adding

non-filers to the tax rolls¹²³. These programmes guarantee immunity from punishment for evasion declared during the amnesty

This chapter discusses the characteristics of tax amnesty and VDP participants, before looking at the advantages and disadvantages of the two programmes.

5.2 CHARACTERISTICS OF TAX AMNESTY AND VOLUNTARY DISCLOSURE PROGRAMME PARTICIPANTS

To begin with, those who intend to continue with tax evasion may be ruled out as likely participants. This group includes those people who are less convinced that they will ever get audited and those whose marginal benefit from evasion is higher than the marginal cost from participating in these programmes. On the other hand, participants seem likely to belong to one or more of the following categories¹²⁴:

- those who perceive a large increase in the likelihood that past evasion will be detected or in the penalties to be imposed;
- those who now feel increased guilt with respect to their past behaviour and participate to relieve it; or
- those who engaged in minor evasion of taxes not eligible for these programmes and therefore who are not concerned that participation will reveal such other evasion.

¹²³ Nakamura, K, 2004. State tax amnesty programs: the advantages and disadvantages. [Online]. Available: <http://www.highbeam.com/doc/1G1-118041729.html> [accessed 05/11/2013].

¹²⁴ Fisher, R, C., Goddeeris, J, H. and Young, J, C. participation in tax amnesties: the individual income tax. National Tax Journal, Vol. 42, no. 1, pp. 15-27

The characteristics above make it clear that taxpayers who are most committed to the practice of tax evasion, presumably because they perceive the largest benefits from it, are the least likely to participate. These evaders are called “marginal tax evaders”, those individuals who derived a substantial advantage from evasion or who came to that position reluctantly or by accident.

5.3 ADVANTAGES AND DISADVANTAGES OF A TAX AMNESTY AND VOLUNTARY DISCLOSURE PROGRAMME

5.3.1 Benefits of Tax Amnesty and Voluntary Disclosure Programmes

Tax amnesties and VDPs merit special treatment both because of their complex effects on taxpayer behaviour and because of their popularity. General amnesties can be given, for example, by specifying a period during which no penalty will be levied on delinquent taxes¹²⁵. Besides conferring immunity from sanctions, general amnesties and VDP programmes are a combination of three factors: an opportunity for tax deferral or a lowering of penalties; a government-provided opportunity to launder tax-evaded money; and a signal of future enforcement by the government (whether positive or negative)¹²⁶.

There are several benefits associated with both the Tax Amnesty and VDPs. First, an amnesty and a VDP may enable the tax authorities to collect some proportion of past debts that otherwise would be uncollectable. These programmes can identify tax evaders who would not easily have been identified even with enhanced enforcement and add them to the tax rolls. More important than immediate cash in the bank is the addition of taxpayers to the tax rolls who will continue to pay taxes, year after year¹²⁷. They also provide direct benefits in the form of voluntary back-tax payments.

¹²⁵ Bird, R, M, 2003. Administrative Dimensions of Tax Reform. Asia-Pacific Tax Bulletin, Vol. 10, no. 3, 2004, pp. 3-21

¹²⁶ Bird, R, M, 2003. Administrative Dimensions of Tax Reform. Asia-Pacific Tax Bulletin, Vol. 10, no. 3, 2004, pp. 3-21

¹²⁷ Fisher, R, C., Goddeeris, J, H. and Young, J, C. participation in tax amnesties: the individual income tax. National Tax Journal, Vol. 42, no. 1, pp. 15-27

Known taxpayers may also report additional sources of income that would otherwise have been difficult to detect. These disclosures would have implications for future revenue collections over and above that originally collected during the tax period. In this case tax amnesties and VDPs will encourage taxpayers to come forward and pay their previously unpaid taxes without any penalties.

Tax disclosures also generate an immediate increase in tax revenues. They give states and localities an easy way to generate a one-time revenue boost, with the possibility of continued revenue flow through improved compliance. Governments desperate for quick funds sometimes turn to amnesties. For this to be effective, governments should not offer tax amnesties repeatedly as this will lead to a decrease in compliance, since taxpayers will be anticipating more amnesties and as a result this lowers the tax revenue. If amnesties are granted regularly (for example India granted seven over a 35-year period, while Argentina has had 21) compliance decreases therefore negatively affecting the tax revenue¹²⁸.

These penalties associated with both Tax Amnesties and VDPs may be monetary, criminal, or social stigma associated with being identified as a tax evader. The forgiveness of penalties is intended to motivate participation. Forgiveness of penalties may, however, be an important consideration for a person who believes that the costs of evasion have increased. The individual may now wish to have been more compliant in the past and disclosure programmes provide an opportunity to do so without penalty. For those who also intend to reduce or discontinue evasion in the future and expect that doing so will increase the likelihood that past evasion will be detected (for example, non-filers who choose to begin filing), the opportunity to avoid penalty may be particularly be important¹²⁹.

In addition, tax amnesties reduce administrative costs. They provide states and localities much-needed revenue without the costs associated with audit and enforcement. In this way the government does not have to spend more money on conducting audits to identify tax evaders, since tax amnesty programmes encourage

¹²⁸ Sawyer, A, 2005. Targeting amnesties at ingrained evasion – a New Zealand initiative warranting wider consideration? Australasian Tax Teachers Association 2005 Vol. 1 No. 3

¹²⁹ Fisher, R, C., Goddeeris, J, H. and Young, J, C. participation in tax amnesties: the individual income tax. National Tax Journal, Vol. 42, no. 1, pp. 15-27

taxpayers to come forward voluntarily to pay their tax defaults. As a result tax amnesty programmes are associated with low administrative costs as compared to the ordinary process¹³⁰.

Tax amnesties also remove taxpayers' personal guilt. In this case the taxpayers are relieved of feeling guilty that they have broken the law and as a result this will lead them to come forward and confess. The removal of guilt is therefore only an inducement to participation for those who feel more guilt than they anticipated.

On the other hand, the potential costs of tax evasion are the penalties (monetary or criminal) that the taxpayer would suffer if the evasion is detected and successfully prosecuted, that are now forgone. Efforts surrounding disclosure programmes usually aim to convince tax evaders that the probability of detection has increased, that future penalties will be more stringent, and that tax evasion is normally wrong¹³¹. Such efforts reduce future evasion and therefore increase the amount of tax collected.

Other benefits of a tax amnesty and VDP include improving post-amnesty voluntary compliance through better record-keeping and monitoring of individuals who were previously non-filers or did not declare all of their income and improving post-amnesty voluntary compliance if the amnesty is part of a larger effort directed at reforming the tax system, such as through improved enforcement efforts, reasonable and equitable civil and criminal penalties, and more extensive and improved taxpayer services and education¹³².

5.3.2 Disadvantages of Tax Amnesties and Voluntary Disclosure Programmes

There are also some serious potential disadvantages of tax amnesties and VDPs. Critics argue that the long run revenue impact of disclosure programmes is likely to be negative. This negative impact may occur for several reasons. The following are

¹³⁰ Fisher, R, C., Goddeeris, J, H. and Young, J, C. participation in tax amnesties: the individual income tax. National Tax Journal, Vol. 42, no. 1, pp. 15-27

¹³¹ Fisher, R, C., Goddeeris, J, H. and Young, J, C. participation in tax amnesties: the individual income tax. National Tax Journal, Vol. 42, no. 1, pp. 15-27

¹³² Sawyer, A, 2005. Targeting amnesties at ingrained evasion – a New Zealand initiative warranting wider consideration? Australasian Tax Teachers Association 2005 Vol. 1 No. 3

the five main reasons which are likely to negatively affect the long run revenue from disclosure programmes¹³³:

- First, honest taxpayers may view the amnesty as an unfair tax break for tax cheats, and will reduce their voluntary compliance in response.
- Second, and related, some individuals may pay taxes largely out of a feeling of guilt. If these programmes lessen guilt as a motivating factor, post amnesty compliance will suffer.
- Third, the mere announcement of the amnesty and VDP may make taxpayers aware of the widespread presence of non-compliance, something that was previously unknown to them.
- Fourth, the announcement of the disclosure programmes may also make taxpayers aware of the ease of tax evasion; that is, taxpayers may have felt that tax evasion would be quickly detected and punished, but these programmes sends a signal that the tax authority is unable to enforce the tax laws.
- Fifth, individuals may expect another disclosure programme to be provided in the future and again will decide to pay less tax voluntarily in anticipation that this evasion will be forgiven at some point in the future. Expressions by the government that the amnesty will not be repeated may not be convincing if the government has little credibility.

The other disadvantage pertaining to tax amnesties and VDPs is that the probability that future or undisclosed past evasion will be detected is decreased. The individual may have evaded taxes not covered by the disclosure programme. These may be federal, local, or even other state taxes to which the amnesty does not apply. If the potential participant anticipates that information derived from amnesty will be shared with federal or local government, the expected increase in detection of these other types of evasion may override any perceived benefits from participation.

The very success of amnesties and VDPs in bringing forth large sums of new revenue may provide taxpayers with better information about the extent of

¹³³ Alm, J. 1998. Tax Policy Analysis: The introduction of Russian Tax Amnesty. Working paper 98 - 6

undetected tax evasion, inducing them to revise downwards their estimates of the probability of detection and become more likely to engage in evasion¹³⁴.

Another drawback is that since tax amnesties only run for a specified, limited time period (for example 3 months) taxpayers may find they don't have sufficient time to fully evaluate the pros and cons of participation, or to generate the funds needed to fully cover the taxes due.

Tax amnesties and VDPs can also reduce compliance by taxpayers. If compliance is reduced then the amount of revenue collected through these programmes will also decrease. Disclosure programmes could also damage compliance through the following channels¹³⁵:

- higher future audits: rational citizens understand that participating in a disclosure programme reveals one as a tax evader, which could lead to frequent audits; because audits are costly to taxpayers (financially and psychologically), even if a citizen decides to comply with the law going forward, higher future audit probabilities reduce the incentive to participate;
- reduced future opportunity of tax evasion: because participation provides the tax authority with better information about one's true income, an individual's future tax evasion possibilities are reduced and as a result, some individuals (for example fearing an unstable tax policy regime) would still prefer not to participate in a disclosure programme, even if the choice is coupled with increased costs of tax evasion;
- loss of reputation: if a citizen's tax evasion history becomes public, the ensuing loss of reputation could be very damaging;
- reduced overall compliance from currently tax abiding citizens who feel a disclosure programme is unfair to them¹³⁶; and
- individuals who anticipate that another amnesty may be given in the future.

¹³⁴ Fisher, R, C., Goddeeris, J, H. and Young, J, C. participation in tax amnesties: the individual income tax. *National Tax Journal*, Vol. 42, no. 1, pp. 15-27

¹³⁵ Baer, K and Borgne, E.L. 2008. *Tax Amnesties: Theory, Trends, and Some Alternatives*. International Monetary Fund Publication Services

¹³⁶ Alm, J, McKee, M, AND Beck, W, 1990. *Amazing grace: tax amnesties and compliance*, volume 43

The advantages and disadvantages of an offshore voluntary disclosure programme are discussed below.

5.4 BENEFITS AND COSTS OF OFFSHORE VOLUNTARY DISCLOSURE PROGRAMME

An Offshore Voluntary Disclosure Programme is offered to those taxpayers with undisclosed offshore accounts or assets. The terms of the programmes usually involve a limited-time offer by the government to a specified group of taxpayers to settle undisclosed or unpaid tax liabilities for a previous period in return for defined concessions over civil or criminal penalties¹³⁷. The following section will discuss the benefits of Offshore Voluntary Disclosure Programmes.

5.4.1 Benefits: Offshore voluntary disclosure programmes

Offshore voluntary disclosure programmes offer the opportunity to maximize the benefits of improvements in transparency and exchange of information for tax purposes, to increase short-term tax revenues and improve medium-term tax compliance. Offshore voluntary compliance programmes also aim to encourage repatriation of capital invested abroad.

Offshore voluntary compliance programmes improve levels of compliance among the population eligible for the programmes. A growing number of taxpayers who failed to report income and assets to their country of residence now recognize that the risk of detection has increased, which in turn is leading to a greater willingness to disclose and correct their situation so as to become fully compliant. These

¹³⁷ OECD, 2010. Offshore Voluntary Disclosure: comparative analysis, guidance and policy advice. OECD publishing.

programmes will encourage past tax evaders who wish to comply to come forward and participate in the programme¹³⁸.

Offshore Voluntary Disclosure Programmes avoid criminal penalties. Taxpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. When a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure practice, the Tax Authorities will not recommend criminal prosecution¹³⁹. Offshore voluntary compliance programmes also reduce civil penalties charged to taxpayers who evaded tax in the past.

5.4.2 Disadvantages: Offshore Voluntary Disclosure Programmes

Offshore voluntary compliance programmes also have numerous disadvantages. First, this is a very rigid programme with numerous requirements. The side-effect is that the offshore voluntary compliance programme process can be an expensive one for the taxpayers when it comes to legal and accounting fees¹⁴⁰.

The other disadvantage is that increased repetition of the programmes will decrease tax revenue collected by the government in the long run. In this case, when taxpayers anticipate another offshore voluntary compliance programme they will be

¹³⁸ Ashman, J. 2013. Don't Qualify for the Streamlined Procedure? You Can Still Seek Relief with OVDP. [Online]. Available: <http://www.expattaxprofessionals.com/delinquent-tax-payers-part-2> [assessed 08/11/2013].

¹³⁹ Ashman, J. 2013. Don't Qualify for the Streamlined Procedure? You Can Still Seek Relief with OVDP. [Online]. Available: <http://www.expattaxprofessionals.com/delinquent-tax-payers-part-2> [assessed 08/11/2013].

¹⁴⁰ International business & Tax Attorneys, 2012. Offshore Voluntary Disclosure Program: Advantages and Disadvantages. [Online]. Available: <http://sherayzenlaw.com/offshore-voluntary-disclosure-program-advantages-and-disadvantages/> [Assessed 08/11/2013]

reluctant to come forward to disclose their taxes hoping to be granted another chance to do so.

Considering the programme introduced by the Internal Revenue Service in the United States of America, its offshore voluntary compliance programme has no real appeal structure in place – in most cases, the IRS agent’s decision is final. If the taxpayer does not like it, the only real recourse is to opt-out with its murky consequences. The only exception is having a full examination of the tax return and possibly an appeal filed with respect to any tax and penalties imposed by the IRS on examination, but the IRS decisions on the terms of the offshore voluntary compliance programme closing agreement is almost never subject to an appeal. Such dependence on the goodwill of an IRS agent in charge of the case naturally produces certain anxiety among the offshore voluntary compliance programme applicants and constitutes a major drawback of entering into the programmes¹⁴¹.

Finally, an offshore voluntary compliance programme may take a fairly long time to complete. The IRS in the United States of America does try to process the cases as soon as possible, but it has few resources and its agents are overwhelmed with the number of cases pending on their desks. On the average, in the USA, a taxpayer should expect about a fifteen to eighteen-month process between the acceptance into the offshore voluntary compliance programme and the final resolution of the case.

5.5 CONCLUSION

In general, amnesties and VDPs are intended to improve revenue collected and overall compliance with tax laws by eliminating underreporting errors and adding non-filers to the tax rolls¹⁴². The discussion above shows that the disclosure programmes have their advantages and disadvantages. These advantages include

¹⁴¹ International business & Tax Attorneys, 2012. Offshore Voluntary Disclosure Program: Advantages and Disadvantages. [Online]. Available: <http://sherayzenlaw.com/offshore-voluntary-disclosure-program-advantages-and-disadvantages/> [Assessed 08/11/2013]

¹⁴² Nakamura, K, 2004. State tax amnesty programs: the advantages and disadvantages. [Online]. Available: <http://www.highbeam.com/doc/1G1-118041729.html> [accessed 05/11/2013].

reduced interest and penalties, reduction in administrative costs, and improving post-amnesty voluntary compliance through better record-keeping and monitoring of individuals who were previously non-filers or who did not declare all of their income.

In summary, the costs associated with amnesties and VDPs include a negative long run revenue impact due to a variety of reasons and also disclosure programmes reduce compliance by taxpayers for various reasons. Disclosure programmes are said to be successful in situations where the benefits to the taxpayers concerned derived from the programme outweigh the costs.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 CONTEXT

Tax amnesties and VDPs are designed to help state governments by allowing delinquent taxpayers to come forward and pay their taxes with reduced penalties. Amnesties and VDPs both encourage people to file and to pay their back taxes. In return, the state tax agency may reduce penalties, or even waive the penalties entirely. The main difference between the tax Amnesties and VDPs is that a tax amnesty has a very short window of opportunity (usually two or three months), while the VDP tends to be more open ended. Many states have recently turned to offering tax amnesties and VDPs as a way to generate additional tax revenue. It has been observed that Government raises more tax revenue not only in the short run from collecting overdue taxes but also by bringing former non-filers back into the tax system for the long run.

For Government to raise more taxes the individuals or taxpayers have to choose to comply with the disclosure programmes. The taxpayer's choice will depend on the various factors that affect the benefits and costs of tax evasion relative to complying with the tax laws.

Among the factors that will influence the taxpayers' decision between compliance to the disclosure programmes and evasion are the probability of the evasion being detected through an audit, the back taxes and civil and criminal penalties that will be imposed if evasion is detected, the taxpayer's ethics or degree of honesty, damage to the reputation of the taxpayer if the evasion is detected, the taxpayer's level of risk aversion, and the perceived benefits derived from a successful evasion of taxes¹⁴³.

Comparing the disclosure programmes introduced in South Africa with those introduced in the three countries discussed above, it is observed that the main aim is to boost the short run revenue and increase compliance by taxpayers. The main difference is the requirements and the implementation of the programme in different countries. Based on the information gathered, both the tax amnesty and VDPs have their advantages and disadvantages in each country depending on how the programmes were implemented and monitored. Overall, it can be concluded that despite the differences in implementation and monitoring the main objective of these amnesties is to raise revenue.

6.2 GOALS OF THE RESEARCH

As stated earlier in this thesis, the goals of this research include;

- to describe the two programmes (a VDP and tax amnesty) as introduced in South Africa;
- to compare the two programmes in South Africa with those introduced in Canada, Australia and United States of America and to discuss the successes and problems experienced in those countries;
- to compare the advantages and disadvantages of the VDP and a tax amnesty.

The following subsections will summarise each chapter, indicating how each chapter has addressed the goals listed above.

6.3 SUMMARY

¹⁴³ United States Congress, Joint Committee on Taxation, 1998. Tax Amnesty (JCT-2-98). Washington, D.C

Various papers have discussed different aspects pertaining to tax amnesties and VDPs (for example, some papers looked at the long run effects of tax amnesties on the tax revenue collected by the government and others have discussed the long run effects of tax amnesties and VDPs on compliance). Chapter two of this paper reviewed the literature pertaining tax amnesties and VDPs and it concluded that these programmes are very significant as they increase tax collections by the government. The extent of significance differs from country to country and also depending on the number of times these programmes are repeated.

The following chapter (chapter 3) discussed both tax amnesties and VDPs in detail. This chapter addressed the first goal of the thesis, which is to describe the two programmes (a VDP and tax amnesty) as introduced in South Africa. The chapter discussed the purpose of tax amnesties and VDPs and how they operate. A brief history of the tax amnesties and VDPs was presented, focussing on how the programmes were implemented in South Africa and the chapter then compared a tax amnesty with a VDP. Like tax amnesties, VDPs give taxpayers an opportunity to come forward voluntarily and satisfy their delinquent tax obligations in exchange for certain benefits, such as an abatement of penalties and some or all of the interest owed. The main differences between a tax amnesty and a VDP are that the VDP is an ongoing programme as compared to the tax amnesty which is a limited time programme.

Chapter four discussed how the two programmes (a tax amnesty and a VDP), operate in different countries, specifically in Canada, Australia and United States of America (USA). This chapter fulfils one of the goals of the research by comparing the two types of programmes introduced in South Africa with those introduced in Canada, Australia and United States of America. Comparing the tax amnesties and the VDPs in the four countries discussed, it was observed that the requirements, the relief structure and the application process differ for each country. The table 4 in chapter 4 provides the comparisons of VDPs in the given countries.

Chapter five addressed the goal of discussing the advantages and disadvantages of both the tax amnesty programmes and the VDPs. It was concluded that these programmes have numerous advantages which include: reduced interest and penalties, reduction in administrative costs, and improving post-amnesty voluntary

compliance through better record-keeping and monitoring of individuals who were previously non-filers or who did not declare all of their income. The disadvantages associated with amnesties and VDPs include a negative long run revenue impact and also disclosure programmes reduce compliance by taxpayers for various reasons.

In determining whether the VDP is achieving its aims in South Africa, it can be anticipated that the VDP will be successful in South Africa in short run since it will increase the revenue collected by the South African Revenue Services since the introduction in 2011, and it will increase the compliance of taxpayers in South Africa and add new taxpayers to the tax base.

6.4 Success of amnesties and Voluntary Disclosure Programmes

The success of an amnesty and a VDP is measured in terms of revenue yield and attracting participants and retaining them in the tax system in subsequent years. In Canada, the associated federal income tax and goods and service tax assessments increased from about \$140million to an estimated \$459million in 2003 due to tax amnesties and VDPs. These programmes increased the revenue collected by the Internal Revenue Services in different states in America (for example \$32million was collected in Arizona in 2009, \$303.7million was collected in Louisiana in 2009, and \$32.6million was collected through these programmes in Massachusetts)¹⁴⁴. In Australia, voluntary disclosure by individuals had generated an additional AUS\$301.7 million in revenues by June 2010. All these increments in revenue as shown above indicate that amnesty programmes in these countries were successful since they managed to fulfil the main objective of increasing revenue through increased compliance by taxpayers.

In some countries like the USA and Canada long run revenue from disclosure programmes decreased to the point that there was no revenue gain at all as a result of repeated amnesties. It should also be noted that, initial (short-run) revenue brought in from overdue taxes will be positive for the first amnesty, and then decline

¹⁴⁴ The Federation of Tax Administrators, 2013. State Tax Amnesty Programs. [Online]. Available: <http://www.taxadmin.org/fta/rate/amnesty1.pdf> [assessed 12/11/2013].

each time the amnesty is offered repeatedly¹⁴⁵. The main reason for the decline in revenue might be that tax amnesties provide incentives for otherwise honest taxpayers to start evading taxes because they will anticipate the offering of future amnesties, thereby weakening tax compliance and fostering a perception of inefficiency in the tax system and lowering revenue in the long run.

In order to examine the long-run effects of a tax amnesty, Alm, McKee, and Beck use Australian Tax Office experimental methods and find that compliance falls after an amnesty; however, they also find compliance to rise if post-amnesty enforcement efforts are increased¹⁴⁶. As a result of this experiment, it can also be concluded that that it is possible for revenue to keep increasing in the long-run through a tax amnesty if post-amnesty enforcement efforts are increased.

In deciding which programme is best, comparing tax amnesties and VDPs, this research concluded that it is rather difficult to say, but when using a taxpayer representative it might be beneficial to use the VDPs since they can negotiate to reach favourable terms for the taxpayer, unlike the tax amnesty which is non-negotiable.

6.5 RECOMMENDATIONS

Tax amnesties and VDPs are effective mostly in countries with strong institutions. For effective tax amnesties and VDPs, this paper would advise that, disclosure programmes should be once-off or infrequent introductions into the tax legislation. They should not be part of the daily routine or cyclical programmes of the administration. In other words disclosure programmes should not be repeated because it will encourage some taxpayers to evade paying taxes anticipating a future tax amnesty or VDP.

¹⁴⁵ Luitel, H, S & Sobel R, S. 2007. The revenue impact of repeated tax amnesties. Public Budgeting & Finance. Volume 27, Issue 3, pages 19–38

¹⁴⁶ James Alm, Michael McKee, and William Beck, “Amazing Grace: Tax Amnesties and Compliance,” National Tax Journal 43, no. 1 (1990): 23–37.

It is also necessary to address the negative incentives that these programmes generate. For example, penalties for those who do not use this opportunity should be very severe, in order to stimulate more regularization. Those who are in judicial process or under audit should not have the option to benefit from these programmes, to avoid the temptation to evade tax in the future. The penalties for those who evade should be higher to the point that the marginal benefit of evading taxes will always be lower than the marginal benefit gained from paying taxes.

Furthermore, the amnesty and VDPs should be part of a collection campaign and reorganization of the tax system, not a desperate attempt to increase short-term revenue. Taxpayers who regularly comply with their obligations must be aware that a disclosure programme is part of a process that will better distribute the tax burden, which will also favour them in the future.

LIST OF REFERENCES

BOOKS

- Baer, K and Borgne, E.L. 2008. **Tax Amnesties: Theory, Trends, and Some Alternatives**. International Monetary Fund Publication Services.
- Frumkes M, B. 2012. **Divorce Taxation**. Ninth edition. Costa Mesa: James Publishing Inc.
- Goldberg, D, S. 2013. **The Death of the Income Tax: A Progressive Consumption Tax and the Path to Fiscal Reform**. New York: Oxford University Press
- Malherbe, J., 2011. **Tax Amnesties**. Alphen aan den Rijn, The Netherlands. Kluwer Law International.
- Torgler B, 2007. **Tax compliance and tax morale: A theoretical and empirical analysis**. Cheltenham. Edward Elger publishing Limited

JOURNALS AND ARTICLES

- Alm, J. 1998. **Tax Policy Analysis: The introduction of Russian Tax Amnesty**. Working paper 98 – 6

- Alm, J and Beck, W. 1993. **Tax amnesties and compliance in the long run: a time series analysis**. National Tax Journal Vol. 46, no. 1 pp. 53-60
- Alm, J, McKee, M, AND Beck, W, 1990. **Amazing grace: tax amnesties and compliance**, volume 43, p23
- Andreoni, J, 1991. **The Desirability of a Permanent Tax Amnesty**. Journal of Public Economics 45 No. 2 pp. 143-159
- Bird, R, M, 2003. **Administrative Dimensions of Tax Reform**. Asia-Pacific Tax Bulletin, Vol. 10, no. 3, 2004, pp. 3-21
- Borgne, E, L, 2006. **Economic and political determinants of tax amnesties in the U.S states**. IMF working paper. Fiscal affairs department
- Canada Revenue Agency, 2013. **Voluntary disclosures program**. Canada: Canada Revenue Agency
- Christian, C W., Gupta, S and Young, J C., 2002. **Evidence on Subsequent Filing from the State of Michigan's Income Tax Amnesty**. National Tax Journal 55 No. 4 pp 703-721.
- Fisher, R, C., Goddeeris, J, H., and Young, J C, 1989. **Participation in Tax Amnesties: The Individual Income Tax**. National Tax Journal 42 No. 1 pp 15-27.
- Friedman M and Palmer A., 2010. **An overview of the Canada Revenue Agency's voluntary disclosures program**. : Estates Trusts and pensions journal volume 30
- Ftia, R, J. 2010. **Tax controversies – voluntary disclosures**. Taxation in Australia Volume 44 No. 9
- Hasseldine, D J, 1998. **Tax Amnesties: An International Review**. Bulletin for International Fiscal Documentation, Vol 52(7) pp303-310.

- Joulfaian, D, 1988. **Participation in Tax Amnesties**: Evidence from a State, in Proceedings of the Eighty-First Annual Conference on Taxation (Washington, DC: National Tax Association), 128–132
- Lederman, L., 2012. **The Use of Voluntary Disclosure Initiatives in the Battle against Offshore Tax Evasion**. Maurer School of Law: Indiana University. Volume 57 pp 499
- Leonard, H, B and Zeckhauser R, J. 1987. **Amnesty, Enforcement and Tax Policy**, NBER Working Paper No 2096. Cambridge, MA: National Bureau of Economic Research
- Luitel, H, S & Sobel R, S. 2007. **The revenue impact of repeated tax amnesties**. Public Budgeting & Finance. Volume 27, Issue 3, pages 19–38
- McConville, M. and Wing, H. C. (2007) **Research Methods for Law**, Edinburgh University Press:
- Michel, S, D, 2011. **Offshore Tax Enforcement, Voluntary Disclosure, and Undeclared Foreign Accounts**. ALI-ABA Estate Planning Course Materials. USA
- Mikesell, J, L. Amnesties for State Tax Evaders: The Nature of and Response to Recent Programs. National Tax journal 39 (December. 1986). 507 - 25.
- Organisation for Economic Co-operation and Development, 2010. **Offshore Voluntary Disclosure: comparative analysis, guidance and policy advice**. OECD publishing.
- Organisation for Economic Co-operation and Development, 2013, **Tax Administration 2013; comparative information on OECD and other advanced and emerging economies**. OECD publishing..

- Richardson M and Sawyer AJ, 2001. **A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects**. Australian Tax Forum 137-320.
- Rotenberg C M and Tataryn S, 2005. **Voluntary Disclosure Programmes – Troubled times**. Canadian taxpayer. Volume 27 No 18
- Sawyer, A, 2005. **Targeting amnesties at ingrained evasion – a New Zealand initiative warranting wider consideration?** Australasian Tax Teachers Association 2005 Vol. 1 No. 3
- Schneider, F, 2011. **Tax and Excon Voluntary Disclosure Programme (South Africa)**. KPMG Tax and Legal Publications
- Torgler, B and Schaltegger, C A. 2003. **Tax Amnesty and Political Participation**. University of Basel, WWZ.
- Torgler B and Young A, 2005. **Tax amnesty and political participation**. School of Policy Studies, Atlanta (USA)
- United States Congress, Joint Committee on Taxation, 1998. **Tax Amnesty (JCT-2-98)**. Washington, D.C.
- Walkers Attorneys 2009. **Voluntary Disclosure Programme**. [Online]. Available:
http://www.walkers.co.za/index.php?option=com_content&view=article&id=146:vdp-a&catid=42:archive&Itemid=207 [accessed 05/06/2013]
- Walsham, G. 1993. **Interpreting Information Systems in Organizations**, Wiley, Chichester.
- Watkin. K. 2010. **Voluntary disclosure programme**. Attorney Tax Risk Management Services.

INTERNET

- Ashman J. 2013. **Don't Qualify for the Streamlined Procedure? You Can Still Seek Relief with OVDP.** [Online]. Available: <http://www.expattaxprofessionals.com/delinquent-tax-payers-part-2>[Accessed 09/10/2013].
- Auditor General of Canada, 2004. **Resolving disputes and encouraging voluntary disclosures.** [Online]. Available: <http://www.oagbvg.gc.ca/internet/docs/20041106ce.pdf>. [Accessed 14/08/2013].
- Australian Tax Office, 2013. **Targeting tax crime: a whole-of-government approach.** [Online]. Available: <http://www.ato.gov.au/General/Tax-evasion-and-crime/In-detail/Targeting-Tax-Crime-magazine/2013/Targeting-tax-crime--a-whole-of-government-approach---September-2013/>[Accessed 14/08/2013].
- Comiskey, JD. 2011. **Protect Clients with the Voluntary Disclosure Program.** [Online] Tax Stringer. Volume 2 No 1. Available: <http://www.nysscpa.org/taxstringer/2011/jan/comiskey.htm>[Accessed 20/11/2013]
- Dion, S F. 2012. **Comparing State Tax Amnesty to Voluntary Disclosure, Which Program is best for Resolving State Tax Delinquencies.** [Online]. Available: <http://www.thestateandlocaltaxbuzz.com/2012/08/comparing-state-tax-amnesty-to.html> [Accessed 14/08/2013].

- International business & Tax Attorneys, 2012. **Offshore Voluntary Disclosure Program: Advantages and Disadvantages**. [Online]. Available: <http://sherayzenlaw.com/offshore-voluntary-disclosure-program-advantages-and-disadvantages/> [Accessed 08/11/2013]
- Ketcham B. P. 2013. Can IRS Be Trusted? A Troubling New Development in the Offshore Voluntary Disclosure Program. [Online]. Available: <http://kflaw.com/siteFiles/News/7387E8FE10E5301DCB60185D9314C2C8.PDF> [Accessed 10/11/2013]
- Maitland, 2012. **Voluntary disclosure program in the tax administration act 28 of 2011**. [Online] Available: <http://www.maitlandgroup.com/voluntary-disclosure-program-in-the-tax-administration-act-28-of-2011> [Accessed 14/08/2013].
- McKerchar, M. **Philosophical Paradigms, Inquiry Strategies and Knowledge Claims: Applying the Principles of Research Design and Conduct to Taxation**. eJournal of tax Research. [Online] Available: <http://www.Austrlii.edu.au/au/journals/eJTR/2008/1.html> [accessed 15/08/2013].
- Michaels, M. and Beck, Z., S, 2012. **The voluntary disclosure handbook**. [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Marketing%20Brochures/The%20Voluntary%20Disclosure%20Handbook%207th%20Edition%20Sample_Jan2012.pdf [Accessed 14/08/2013].
- Nakamura, K, 2004. **State tax amnesty programs: the advantages and disadvantages**. [Online]. Available: <http://www.highbeam.com/doc/1G1-118041729.html> [accessed 05/11/2013].

- Pannell Kerr Forster Newsletter, 2011. **Taxing matters: voluntary disclosure programme.** PKF Chartered Accountants and Advisers. [Online]. Available:
<http://www.pkf.co.za/media/111424/June2011Tax%20Matters.pdf>[Accessed 16/08/2013].
- South African Revenue Services. 2012. **External Guide Voluntary Disclosure Programme.** [Online]. Available:
<http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G01%20-%20Application%20for%20Permanent%20Voluntary%20Disclosure%20-%20External%20Reference%20Guide.pdf>. [Accessed 12/10/2013]
- Savoji F, 2013. **The Offshore Voluntary Disclosure Program: A Brief History and Overview of the Complexities Involved in Disclosing Foreign Assets.** [Online]. Available:
<http://cmcplegalnews.wordpress.com/2013/05/21/the-offshore-voluntary-disclosure-program-a-brief-history-and-overview-of-the-complexities-involved-in-disclosing-foreign-assets/>[Accessed 18/08/2013]
- Sullivan & Cromwell, 2012. **IRS Offshore Voluntary Disclosure Program.** [Online]. Available:[http://www.sullcrom.com/files/Publication/31c857c7-857a-40ff-bb7e-f82b5438397c/Presentation/PublicationAttachment/95184e8a-ec0f-4588-a6ed-fd6b08d1a7f6/SC Publication IRS Offshore Voluntary Disclosure Program 1-10-12.pdf](http://www.sullcrom.com/files/Publication/31c857c7-857a-40ff-bb7e-f82b5438397c/Presentation/PublicationAttachment/95184e8a-ec0f-4588-a6ed-fd6b08d1a7f6/SC%20Publication%20IRS%20Offshore%20Voluntary%20Disclosure%20Program%201-10-12.pdf)[Accessed 12/10/2013]
- Swire M, 2007. Australia Launches Business Tax Amnesty. [Online]. Available:

http://www.taxnews.com/news/Australia_Launches_Business_Tax_Amnesty_28020.html[Accessed 23/10/2013]

- Taxation: News & Information, 2009. **Australia Updates Offshore Voluntary Disclosure Initiative.** [Online]. Available: <http://www.taxationinfonews.com/2009/12/australia-updates-offshore-voluntary-disclosure-initiative/> [Accessed 10/09/2013]
- The Federation of Tax Administrators, 2013. **State Tax Amnesty Programs.** [Online]. Available: <http://www.taxadmin.org/fta/rate/amnesty1.pdf> [accessed 12/11/2013].
- Walker, J. 2012. **The voluntary disclosure handbook.** [Online]. Available: https://www.lawincontext.com/Gateway/uploads/Marketing%20Brochures/The%20Voluntary%20Disclosure%20Handbook%207th%20Edition%20Sample_Jan2012.pdf [accessed 14/08/2013].
- Waterhouse TD, 2012. **VDP.** [Online]. Available: <http://advisors.tdwaterhouse.ca/public/projectfiles/354ff223-a91e-4b1e-9ef6-6e32d51570d0.pdf> [Accessed October 2013]

STATUTES

- Australian Income Tax assessment Act No 38 of 1997
- Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003
- Final Relief on Tax, Interest, Penalty and Additional Tax Act No 101 of 1996
- Small Business Tax Amnesty and Amendment of Taxation Laws Act No. 9 of 2006.

- Tax Amnesty Act, No 19 of 1995
- Tax Administration Act No. 28 of 2011
- Taxation Laws Amendment Act No 22 of 2012
- Voluntary Disclosure Programme and Taxation Laws Second Amendment Act No. 8 of 2010.

CASES

- British American Tobacco Australia Services Ltd v FCT [2009] FCA 1550 at [107]
- DG Empire v FCT (2007) 66 ATR 925 at [70].
- Lawrence v FCT (2008) 70 ATR 376 at [111].

Table 4: Comparison of VDPs

COUNTRY	SOUTH AFRICA	AUSTRALIA	CANADA	UNITED STATES OF AMERICA
ITEM	VDP	VDP	VDP	VDP
Introduction	A VDP was introduced in 2011 in terms of the Tax Administration Act 28 of 2011	Inland Revenue Australia introduced a VDP in 2009 to encourage taxpayers to disclose past errors made in tax declarations.	In Canada a VDP was in practice as early as the 90s administered by the Investigations Division of the Agency.	In 1919, the IRS had a policy not to criminally prosecute taxpayers making a voluntary disclosure. The IRS has a long history of encouraging voluntary disclosures of tax evasion
Requirements	The requirements for a valid disclosure:- -the disclosure is being made voluntarily; -it involves a default, -the disclosure is full and complete in all material aspects -a penalty or additional tax would under other circumstances be applicable in respect of the default; -the disclosure will not result in a refund being due by the Commissioner; -it is made in the prescribed form and manner; -it is made within the prescribed period; and -the disclosure is in respect of a default which occurred prior to 17 February 2010.	The requirements for a valid disclosure:- --the disclosure is being made voluntarily -the disclosure is full and complete in all material aspects -it involves a default, -a penalty or additional tax would under other circumstances be applicable in respect of the default; -it is made within the prescribed period; and -it is made in the prescribed form and manner.	The requirements for a valid disclosure:- -The disclosure must be voluntary -The disclosure must be complete -The disclosure must involve a penalty -The disclosure must include information that is; (a) at least one year past due or, (b) if less than one year past due, is not being disclosed solely to avoid the late filing or instalment penalties.	The requirements for a valid disclosure:- --the disclosure is being made voluntarily -the disclosure is full and complete in all material aspects -it involves a default, -a penalty or additional tax would under other circumstances be applicable in respect of the default; -it is made within the prescribed period; and --it is made in the prescribed form and manner.
Eligibility	Any taxpayer (individuals, partnerships, trusts or companies) with previously unpaid taxes can participate, as long as the taxpayer's unpaid tax liabilities are not known to the tax administration	Any taxpayer with previously unpaid taxes can participate, as long as the taxpayer's unpaid tax liabilities are not known to the tax administration	Any taxpayer with previously unpaid taxes can participate, as long as the taxpayer's unpaid tax liabilities are not known to the tax administration	Any taxpayer with previously unpaid taxes can participate, as long as the taxpayer's unpaid tax liabilities are not known to the tax administration
Relief	-Avoid criminal prosecution -100 per cent relief in respect of additional taxes and penalties and obtain relief (100 per cent or 50 per cent depending on circumstances) from the interest that would have been payable to SARS.	In Australia the base penalty amount varies between 25 percent and 75 percent of the shortfall amount, depending on the conduct of the taxpayer. The base penalty amount can be further increased or reduced, depending on the taxpayer's conduct	-Canada Revenue Agency has the discretion to waive or cancel all or any portion of any penalty or interest otherwise payable under the Tax Act. -no criminal prosecution -partial relief in respect of additional taxes and penalties	-Protection from criminal prosecution -relief is granted on interest that would otherwise have been payable on the late payment of the tax concerned -Relief on penalties that could have paid
Application	Any person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief unless that person is aware of— (a) a pending audit or investigation into the person's affairs; or (b) an audit or investigation that has commenced, but has not yet been concluded	Any person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief. A taxpayer can apply for the VDP before or during an audit, but the relief is greater when the tax affairs are disclosed before the audit.	The taxpayer may apply for VDP by submitting a written, executed application to the assistant director, Enforcement division of the CRA Tax Services Office that serves the taxpayer. On application the taxpayer has a choice to make a named disclosure or a no name disclosure. Any taxpayer may apply as long as they are not notified of an audit.	All taxpayers can apply by filling in the required forms, unless that person is aware of— (a) a pending audit or investigation into the person's affairs; or (b) an audit or investigation that has commenced, but has not yet been concluded

Source: Author

