

# EXTERNAL GUIDE

## VOLUNTARY DISCLOSURE

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## 1 PURPOSE

The purpose of this document is to provide guidelines in respect of the South African Revenue Service (SARS) Voluntary Disclosure Programme (VDP) for tax defaults in terms of the Tax Administration Act No. 28 of 2011 (the Act).

## 2 INTRODUCTION

- The purpose of the Voluntary Disclosure Programme (VDP) is to enhance voluntary compliance in the interest of enhanced tax compliance, good management of the tax system and the best use of SARS resources.
- It aims to encourage taxpayers to come forward on a voluntary basis to regularise their tax affairs with SARS and avoid the imposition of understatement penalties and administrative penalties.
- VDP relief is available in respect of all taxes administered by SARS (but excluding duties and levies charged in terms of the Customs and Excise Act, 1964).

## 3 SCOPE

- This guide explains the legislative requirements applicable to the SARS Tax VDP, the application process and the outcomes thereof.

## 4 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation administered by SARS	Tax Administration Act No. 28 of 2011
Other Legislation	None
International Instruments	None

## 5 DEFINITIONS AND ACRONYMS

<b>Default</b>	The submission of inaccurate or incomplete information to SARS, or the failure to submit information or the adoption of a tax position, where such submission, non-submission or adoption resulted in an understatement.
<b>PAYE</b>	Pay-As-You-Earn or employees' tax
<b>Relevant Material</b>	Means any information, document or thing that is foreseeably relevant for tax risk assessment, assessing tax, collecting tax, showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed
<b>Return</b>	Means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS

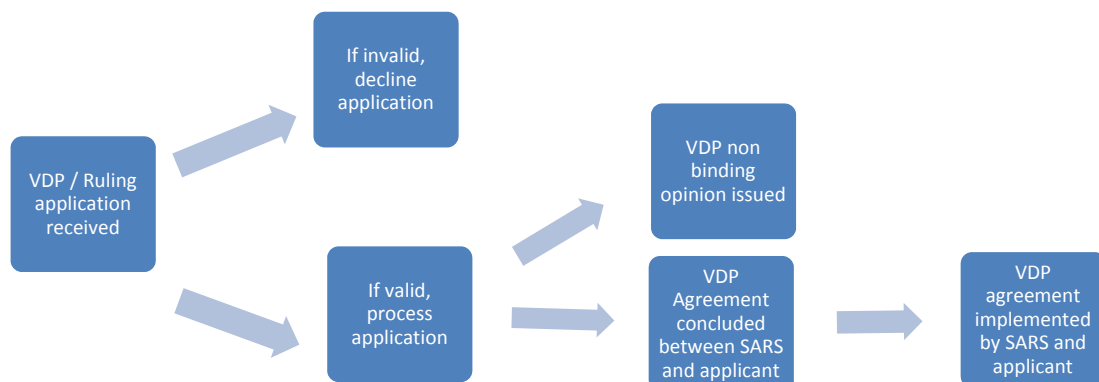
<b>SARS</b>	South African Revenue Service
<b>Tax</b>	Includes a tax, duty, levy, royalty, fee, contribution, penalty, interest and any other monies imposed under a tax Act.
<b>Tax Act</b>	Means the Tax Administration Act, 2011 (Act No. 28 of 2011) or an Act, or portion of an Act, referred to in section 4 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), but excluding the Customs and Excise Act of 1964
<b>Taxpayer</b>	For the purposes of this guide, a taxpayer refers to any person chargeable with any tax
<b>The Act</b>	Means the Tax Administration Act No. 28 of 2011
<b>VDP</b>	Voluntary Disclosure Programme
<b>VDU</b>	Voluntary Disclosure Unit (the unit in SARS that administers the VDP)

## 6 CONFIDENTIALITY OF INFORMATION

- The rules on confidentiality of information as prescribed in the Act also apply in respect of any information that is submitted through the VDP process.
- As added protection, information, including the VDP01 and supporting documents provided through the VDP process is not shared with any other division of SARS. Statistics to determine broad trends are drawn from the information database, but at no stage are the details of any applicant made available in this process or linked in any way to a particular trend or default.

## 7 AN OVERVIEW OF HOW THE VOLUNTARY DISCLOSURE PROGRAMME WORKS

- The end-to-end VDP process is broadly depicted on the diagram below:



## **8 PERSONS THAT MAY APPLY FOR VOLUNTARY DISCLOSURE RELIEF**

- A person, whether in a personal, representative, withholding or other capacity, may apply for voluntary disclosure relief.
- Where an applicant has been given notice of the commencement of an audit or criminal investigation which has not been concluded and is related to the disclosed default, such an application is regarded as not being voluntary, unless a senior SARS official is of the view that the default would not otherwise have been detected during the audit or investigation, and is also of the view that the application would be in the interest of good management of the tax system and the best use of SARS' resources.

## **9 REQUIREMENTS FOR A VALID VOLUNTARY DISCLOSURE**

- To ensure that a VDP application is valid, a disclosure must:
  - be voluntary
  - involve a default which has not occurred within five years of the disclosure of a similar "default" by the applicant or a person referred to in section 226(3)
  - be full and complete in all material respects
  - involve a behaviour referred to in column 2 of the understatement penalty percentage table in section 223
  - not result in a refund due by SARS
  - be made in the prescribed form and manner
  -

## **10 THE VDP APPLICATION PROCESS**

### **10.1 General**

All voluntary disclosures must be made on the prescribed Voluntary Disclosure Application Form (VDP01), which can be accessed via SARS eFiling ([www.sarsefiling.co.za](http://www.sarsefiling.co.za)). Refer to "Guide for Completing Tax Relief SVDP applications on eFiling" for more information on how to complete the VDP01 form.

### **10.2 Accessing the VDP Application Form (VDP01)**

- To access the form VDP01, the applicant must be registered on SARS eFiling, and be logged on via a username and password. More information on the eFiling registration process is available at [www.sarsefiling.co.za](http://www.sarsefiling.co.za).
- The VDP01 must be completed on-line and submitted via SARS eFiling. Applicants who do not have access to the internet and computer facilities can visit any SARS branch, where the VDP01 will be captured on their behalf by SARS staff and submitted on SARS system.
- The VDP01 is self-explanatory, and provides for information relating to the applicant, the disclosure of the default, the reasons for the default, and so on. The more detailed

the information is, the bigger the chance of a successful application. Provision is also made to attach supporting documentation where required.

## 11 EVALUATION OF THE VDP APPLICATION

- SARS will evaluate the VDP application and the supporting documentation to determine if the applicant meets the requirements for a valid voluntary disclosure.
- Where additional information is required, SARS will either request it or request a meeting with the applicant.
- At the end of the evaluation process the VDP unit will:
  - where a VDP non-binding private opinion was requested, issue the opinion;
  - where VDP relief was applied for, and the application is invalid, issue the outcome (with the reasons for the outcome);
  - where the outcome of a VDP relief application is positive, present a VDP agreement to the applicant for consideration and signature.

## 12 VOLUNTARY DISCLOSURE RELIEF

- Voluntary disclosure relief is limited to defaults disclosed for which relief is granted as per the VDP agreement. The following relief is available:
  - Not pursue criminal prosecution for a tax offence arising from the 'default'
  - Relief in respect of understatement penalties to the extent referred to in column 5 or 6 of the understatement penalty percentage table in terms of section 223 of the Act;
  - 100% relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15 of the Act, or a penalty imposed under a tax Act, but excluding penalty for the late submission of a return.

## 13 THE VOLUNTARY DISCLOSURE AGREEMENT

### 13.1 General

- The VDP relief and the rights and obligations of both SARS and the VDP applicant must be captured in a voluntary disclosure agreement (VDP agreement).
- The Act requires the VDP agreement to include details on the following aspects:
  - The material facts of the default on which the voluntary disclosure relief is based;
  - The amount payable by the applicant, which must separately reflect the understatement penalty;
  - The payment arrangements and dates;
  - The relevant undertakings by the parties.
- The VDP agreement must be signed by both SARS and the applicant, and constitutes a contract between the parties to the agreement.

## 13.2 Implementing the VDP Agreement

- The VDP agreement is a contract between SARS and the applicant.
- Both SARS and the applicant are obliged to give effect to the terms of the contract. As such, SARS will ensure that assessments are adjusted or raised where required and that full effect is given to the relief granted by the Act.
- The applicant on the other hand must ensure that payment is effected on the date(s) agreed in terms of the VDP agreement and that any other duty or obligation is given effect to on the agreed terms.

## 13.3 Cancellation of the VDP Agreement

- Breach of any material term of the VDP agreement by any of the parties to the VDP agreement can result in the cancellation of the VDP agreement. For example, if payment is not effected on the agreed terms, SARS can cancel the agreement under its common law contractual right to do so.

## 13.4 Withdrawal of VDP Relief

- It is important that the disclosure of a default is full and complete in all material respects.
- If, subsequent to the conclusion of a voluntary disclosure agreement it is established that the applicant failed to disclose a matter that was material for purposes of making a valid disclosure, the Act provides for a senior SARS official to:
  - Withdraw any relief that has been granted;
  - 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 a tax offence arising from the 'default'

## 14 ENQUIRIES

- More information regarding the Voluntary Disclosure Programme is available via the following channels:
  - SARS website : [www.sars.gov.za](http://www.sars.gov.za)
  - By email : [vdp@sars.gov.za](mailto:vdp@sars.gov.za)
  - By phone : 0800 86 46 13
  - Physical Address : 281 Middle Street  
Gramick Office Park  
Brooklyn  
0181, or
  - Postal Address : Private Bag X923  
Pretoria  
0001

**Please note:** The Voluntary Disclosure Unit can be visited by prior appointment.

## **DISCLAIMER**

The information contained in this leaflet is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the leaflet should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

### **For more information you may:**

- Visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za)
- Visit your nearest SARS branch
- Contact your registered tax practitioner
- Contact the SARS National Contact Centre –
  - If calling locally, on 0800 00 SARS (7277);
  - If calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time).