

Voluntary Disclosure Program

Focus on natural persons and employers



From time to time taxpayers fail to declare income in their tax returns either by a lack of sufficient guidance or knowledge of the South African tax legislation (negligence), confusion or what could be considered serious avoidance. Where a tax “default” as defined has occurred, the taxpayer may need to consider the options of either re-opening tax returns already submitted to the South African Revenue Service (“SARS”) or by the submission of a Voluntary Disclosure Programme (“VDP”) application as provided for in the Tax Administration Act No. 28 of 2011 (“the TAA”). The benefit of submitting a VDP application is that understatement penalties will be remitted.

Although the VDP is available to all taxpayers (excluding those with Customs-related defaults), the focus here is on natural persons and employers.

QUALIFY

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[The technical: Default, Understatements and Requirements for a Valid Submission](#)

A **default** is defined as:

“the submission of inaccurate or incomplete information to SARS, or the failure to submit information of the adoption of a ‘tax position’, where such submission, non-submission, or adoption resulted in an understatement”

An **understatement** is defined as:

“any prejudice to SARS or the fiscus as a result of –

- a) failure to submit a return required under a tax Act of by the Commissioner;*
- b) an omission from a return;*
- c) an incorrect statement in a return;*
- d) if no return is required, the failure to pay the correct amount of ‘tax’; or*
- e) an ‘impermissible avoidance arrangement’.”*

VDP applications can only be lodged where such application results in taxes being determined as due. The VDP is not an option to recoup taxes from SARS i.e. VDP applications are not a mechanism to recoup a tax refund from SARS.

The VDP application must be “full and complete” in all material respects. Moreover, the VDP application must involve a “default” which has not occurred within five (5) years of the disclosure of a similar “default” by the applicant. If the potential applicant has been given notice of the commencement of an audit and such audit has not been concluded and is related to the disclosed “default”, the disclosure of the default will not be regarded as voluntary unless a SARS senior official is of the view that the default would not have been detected during the audit or the application would be in the interest of good management of the tax system and the best use of SARS’ resources.

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QUANTIFY

Quantify the value of the tax(es) due, penalties and interest. SARS will likely request copies of documentation which are referenced to the calculations. As mentioned above, the application must be full and complete in all material respects. Therefore, for example, if an employer wishes to lodge a VDP application in respect of employees' tax due to defaults in relation to the taxation of company cars (a fringe benefit), that employer must be 100% certain that there are no other employees' tax defaults in their payroll. We highly recommend that the employer undertake a payroll review in relation to the five (5) preceding years so as to ascertain peace of mind. It is also very important to consider the implications of other taxes which relate to the transaction. E.g. is there a VAT default to be considered as well?



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We set out below the process as relates to personal income tax and employees' tax.

STEPS IN THE PROCESS	PERSONAL INCOME TAX	EMPLOYEES' TAX
Apply on SARS e-filing	Complete form VDP01	Complete form VDP01
Covering letter to accompany VDP01 form. What elements should the letter cover?	<ul style="list-style-type: none"> — Explain to SARS how and why the default occurred; — Set out what remedies (stopgaps) have been put in place to prevent the reoccurrence of the default; — A summary of the taxes due, penalties and interest calculated per tax year; — An explanation as to why the understatement penalty should be reduced from 200%. 	<ul style="list-style-type: none"> — Explain to SARS how and why the default occurred; — Set out what remedies (stopgaps) have been put in place to prevent the reoccurrence of the default; — A summary of the taxes due, penalties and interest calculated per tax year; — An explanation as to why the understatement penalty should be reduced from 200%.
The VDP application is acknowledged by SARS	A VDP application number is provided by SARS within 48 hours	A VDP application number is provided by SARS within 48 hours
The VDP application is allocated to a SARS VDP consultant and the consultant will raise queries	The allocation of a VDP application to the SARS consultant can take months (currently the waiting time is 201 days). Interest (due to SARS) continues to run during this time. Responses are required to be provided to any queries raised by the SARS Consultant.	The allocation of a VDP application to the SARS consultant can take months (currently the waiting time is 201 days). Interest (due to SARS) continues to run during this time. Responses are required to be provided to any queries raised by the SARS Consultant.

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STEPS IN THE PROCESS	PERSONAL INCOME TAX	EMPLOYEES' TAX
Submit returns	Revised annual income tax returns (Forms ITR12) are required to be submitted once the VDP consultant has reviewed the calculations and supporting documents and the taxpayer/applicant has answered all of the queries raised. Revised ITR12s can be done via e-filing or manual tax returns may be emailed to the VDP consultant. The taxpayer only declares the (additional) VDP income. It's important to review the revised assessments.	<p>Many years ago, SARS requested that a new monthly employer return (form EMP201) be submitted in relation to each month of the default period. This has changed. In some cases, SARS requires the resubmission :</p> <ul style="list-style-type: none"> — of one EMP201 return (as guided by SARS) to account for 12 months of EMP201 submissions (returns can be e-Filed or provided manually to SARS) or — the (annual) EMP501 with no resubmission of the EMP201s required. <p>SARS only requests a resubmission once they have reviewed all the information.</p> <p>The amended PAYE submissions must declare the TOTAL PAYE, SDL¹ and UIF² payable for the period (i.e. the original amount plus the VDP amounts).</p>

¹ Skills Development Levies

² Unemployment Insurance Fund



SETTLE

SARS will issue a VDP agreement which is binding on SARS and the taxpayer. The taxpayer applicant must review the VDP agreement and statements of account as issued by SARS – are these in alignment with the submission? If correct, the taxpayer and SARS must sign the VDP agreement. Note that the turnaround time as relates to this step is extremely tight (2-5 days). The taxpayer is then required to settle the tax liability with SARS (within a week of the date of issue of the VDP agreement). There will be significant movements on the taxpayer's income tax/PAYE statement of account.



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