EXTERNAL GUIDE

VOLUNTARY DISCLOSURE PROGRAMME
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 SCOPE

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

3 LEGISLATION

<table>
<thead>
<tr>
<th>TYPE OF REFERENCE</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Legislation administered by SARS</td>
<td>Tax Administration Act No. 28 of 2011</td>
</tr>
<tr>
<td>Other Legislation</td>
<td>None</td>
</tr>
<tr>
<td>International Instruments</td>
<td>None</td>
</tr>
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</table>

4 DEFINITIONS AND ACRONYMS

**Default**

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:

(a) the taxpayer not being assessed for the correct amount of tax;  
(b) the correct amount of tax not being paid by the taxpayer; or  
(c) an incorrect refund being made by SARS

**PAYE**

Pay-As-You-Earn or employees’ tax

**Relevant Material**

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

**Return**

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

**SARS**

South African Revenue Service

**Tax**

Includes a tax, duty, levy, royalty, fee, contribution and any other monies imposed under a tax Act, but excluding penalties and interest

**Tax Act**

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

**Taxpayer**

For the purposes of this guide, a taxpayer refers to any person chargeable with any tax

**The Act**

Means the Tax Administration Act No. 28 of 2011

**VDP**

Voluntary Disclosure Programme

**VDU**

Voluntary Disclosure Unit (the unit in SARS that administers the VDP)
5 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).

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

- 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. A “verification” or “inspection” procedure that was not preceded by the commencement of an audit or by a notice of an impending audit is not regarded as an “audit” for this purpose.

- SARS may permit a person who would otherwise be excluded as a result of the audit or pending audit rule, to apply for VDP relief where SARS believes that:
  - the default 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 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 previously been disclosed to SARS by the applicant or representative of the person
  - be full and complete in all material respects
  - involve the potential imposition of an understatement penalty in respect of the default
  - 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).

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.

- 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 completed on their behalf by SARS staff and submitted via eFiling.

- 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.
10.3 Generating the VDP01 on e-Filing

- The VDP01 is electronically customised in accordance with the response to certain questions, which are listed below:
  
  - **Question 1:** “Is this a no-name (anonymous) application?”
    Answering “Yes” means that the applicant is not applying for VDP relief, but that the applicant is applying for a non-binding private opinion as to the applicant’s eligibility for relief. A positive outcome of the opinion is directly influenced by whether the information supplied on the rest of the form and supporting documentation demonstrates that a future application for VDP relief will be valid for VDP purposes. This means the information must demonstrate that the requirements mentioned in paragraph 8 above will be met should the applicant in the future wish to make an application for VDP relief. The identity of any party to the default is not required when applying for an opinion (hence the reference to “no-name (anonymous)” in the heading. But the applicant is nevertheless free to provide any information in relation to the parties.

  - **Question 2:** “Are you a representative applying on behalf of someone else?”
    The applicant has the option to complete and submit the application personally or through a representative.
    
    **Note:** If ‘yes’ is selected, it is mandatory for the representative to provide his/her personal particulars.

  - **Question 3:** “Do you have power of attorney from the applicant?”
    This question must be completed if a representative is submitting the application on behalf of the taxpayer.
    
    **Note:** The representative must have the necessary written authorisation from the taxpayer to act on his/her behalf. SARS may request proof of this during the evaluation of the VDP application.

  - **Question 4:** “Indicate the applicant entity type”
    The applicant must indicate if the voluntary disclosure is for an individual or a company/CC or trust.

  - **Question 5:** “Tax type in respect of which the disclosure is made”
    Select the tax type(s) that are affected by the voluntary disclosure application.

- **Completing the Applicant Details**

  - If the application is for VDP relief the required details must be completed.
  - If the application is for a non-binding private opinion, this part of the form is not mandatory, but can be completed nevertheless.

- **Particulars of Representative Person**

  - Where an applicant makes use of a representative this part of the application form must be completed.

- **Preferred Mode of Contact for VDP purposes**

  - The preferred method of contact will be utilised for all correspondence regarding the VDP.
EFFECTIVE DATE
01.10.2012

- **Details of Disclosure**
  - All other fields relating to the disclosure must be completed in full for each tax type selected. A brief description of the default must be completed.

- **Supporting Documents (described legally as “Relevant Material”)**
  - Supporting documents are not mandatory, but where the disclosure of a default requires more explanation than a mere statement on the VDP01 it is advisable to attach supporting documents to the VDP application. This will assist the VDP unit to evaluate the validity of the application.
  - The VDP unit may also request additional supporting documents during the evaluation process.
  - As a minimum, it is advisable to attach a letter or statement that describes:
    - the nature of the default(s)
    - the reasons that caused the default(s)
    - the role of the applicant in causing / mitigating the defaults
  - The level of supporting document information must be sufficient to enable the VDP unit to determine the nature and extent of the default and the category of understatement penalties and/or admin penalties. These are the penalties that will be waived if the VDP application is successful.

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, issue the outcome (and the reasons for the decision if the outcome is not favourable);
  - 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 any statutory offence under a tax Act arising from the ‘default’ or a related common law offence;
  - Relief in respect of understatement penalties to the extend 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:
    - Penalties for the late submission of a return; and
    - Penalties for the late payment of tax.

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 any statutory offence under a tax Act or a related common law offence.

14 ENQUIRIES

• More information regarding the Voluntary Disclosure Programme is available via the following channels:
  - SARS website: www.sars.gov.za
  - By email: vdp@sars.gov.za
  - By phone: 0800 86 46 13
  - By Post: 281 Middle Street
    Gramick Office Park
    Brooklyn
    0181, or
Please note: The Voluntary Disclosure Unit can be visited by prior appointment.

15 QUALITY RECORDS

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<th>Title</th>
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<tr>
<td>VDP01</td>
<td>Voluntary Disclosure Application Form</td>
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16 DOCUMENT MANAGEMENT

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<tr>
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