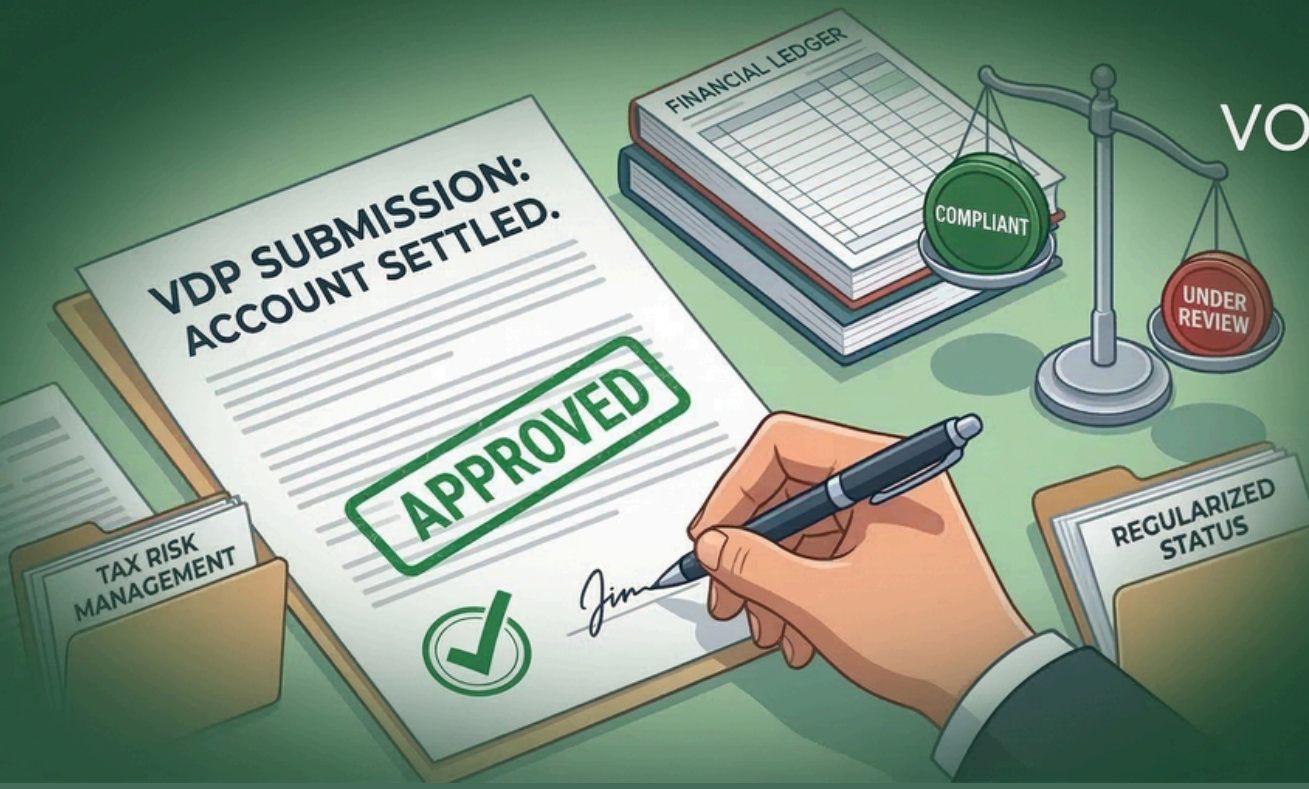


tax-X

ADVISORY

FLAVOUR OF MARCH 2026 : VDP

A PROACTIVE APPROACH TO
VOLUNTARY DISCLOSURE & COMPLIANCE



FY2026: “building an expert tax advisory firm”

Flavour of the year: Expanding expertise and service offerings

1. the Tax Administration Act

January Tax Risk Management

February Tax Debt Management

Voluntary Disclosure Program (VDP)

March Verifications, Audits, Disputes and Resolutions

April The balance of the Tax Administration Act

May

The logo consists of the word "tax-" in a white, lowercase, sans-serif font, followed by a stylized "X" symbol. The "X" is formed by two overlapping shapes: a dark grey triangle pointing down and a light grey triangle pointing up, both with a white outline. The entire logo is set against a dark green background.

March FOM: Voluntary Disclosure Program (VDP)

What is a VDP

The VDP was introduced as a permanent measure to increase voluntary compliance in the interest of enhanced tax compliance, good management of the tax system and the best use of the SARS resources.

The purpose of the VDP is to encourage voluntary compliance for good management of the tax system and the best use of SARS resources. It provides an opportunity for taxpayers to **disclose their tax defaults** in terms of the TAA and to **obtain some relief** in respect of these defaults.

The VDP is applicable to all taxes administered by SARS except for the customs and excise legislation.

VDP provisions are contained in chapter 16 part B of the TAA (s225-s233)



s229 VDP Relief

Where there is a valid voluntary disclosure by an applicant, and a conclusion of a voluntary disclosure agreement – _____

- No criminal prosecution for any statutory offence arising from the “default”;
- Relief in respect of understatement penalties as per the table (s223 table columns 5 and 6):
- 100% relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15 of the TAA, or a penalty imposed under a tax Act, but excluding penalties for the late submission of a return.

1 Item	2 Behaviour	5 Voluntary disclosure after notification of audit or investigation ¹⁰⁹	6 Voluntary disclosure before notification of audit or investigation
(i)	Substantial understatement	5%	0%
(ii)	Reasonable care not taken in completing return	15%	0%
(iii)	No reasonable grounds for tax position taken	25%	0%
(iv)	Impermissible avoidance arrangement	35%	0%
(v)	Gross negligence	50%	5%
(vi)	Intentional tax evasion	75%	10%

“default” means 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. [s225]

Who qualifies for a VDP?

s226 – Qualification of person

- A person may apply for voluntary disclosure relief, whether in a personal, representative, withholding or other capacity. As such no type of taxpayer is excluded from applying for VDP relief.
- The first question that taxpayers should ask themselves when deciding whether to make a VDP application is: *'Is SARS currently auditing or investigating me for what I am about to disclose?'*
- If the answer is yes to the above, then in most circumstances the affected taxpayer may not participate in the VDP. However, SARS may allow a person under audit/investigation to participate in the VDP if:
 - the audit/investigation is related to the “default” that the person wishes to disclose;
 - 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 best interest of good management of the tax system and the best use of SARS' resources.

s227 - Requirements for a valid voluntary disclosure

1. The application is voluntary
2. It involves a default which has not occurred within five years of disclosure of a similar default, by an applicant referred to in s226(3).
3. Disclosure will be full and complete in all material respects
4. There is a potential imposition of an understatement penalty in respect of the default
5. The result will not be a refund due to the taxpayer by SARS (must be an understatement of taxes)
6. The application will be made in the prescribed form and manner

Unpacking the requirements

Voluntary?

- Made willingly without being forced to do it (individual facts and circumstances taken into account) [Purveyors court case]
- There are instances where it may not be seen as voluntary, such as when a taxpayer submits this application due to a request for inspection or verification or where it is found that the taxpayer was aware that his affairs were being looked into [Reed court case]

Unpacking the requirements continued

Default?

- Failure to submit information in the definition of “default” is for things like failing to register for a certain tax-type (e.g. PAYE, VAT) - in this case, taxpayer needs to engage the VDP unit and then register for that tax type and complete the returns.
- A failure to submit tax returns by a taxpayer, for taxes that the taxpayer is already registered for will most likely not be considered a “voluntary” “default” as SARS would already be aware of the outstanding tax returns.

Potential imposition of understatement penalty?

- The default must be a behavior listed in column 2 of s223, to which an understatement penalty would be levied.

Must not result in a refund?

- Default needs to be an understatement of taxes
- A net capital loss in terms of the Eighth Schedule or a reportable arrangement in terms of the TAA, will not be regarded as a voluntary disclosure for a VDP application.
- SARS appears to accept that a default can include more than one tax period, and therefore will consider the net position of these tax periods for determining whether a refund is due by SARS or there are amounts owing to SARS. (some periods can be refunds but the net is not a refund)

s228 – No-name voluntary disclosure

A taxpayer may apply for a VDP without disclosing their identity to SARS, this is treated as a request for a non-binding private opinion as opposed to an application for relief in terms of the VDP. It is advisable for a tax practitioner to request this opinion on behalf of the applicant to ensure that the application is made on an anonymous basis. Supporting documentation may be 'attached' to the application form and the more detailed the application, the greater the chance of a successful application.

A senior SARS official may issue a non-binding private opinion as to a person's eligibility for relief under the VDP if the person provides sufficient information to do so, which information need not include the identity of any party to the default.

A non-binding private opinion provides informal guidance by SARS about the tax treatment of a particular set of facts and circumstances or transaction.

Administrative provisions

- The application needs to be made by completing the VDP01 form on e-filing
 - The VDP unit at SARS will consider the application and where VDP relief was applied for, the outcome
 - and the reasons for the decision (where required) will be issued;
- Where the outcome is positive, an agreement will be entered into with the taxpayer, in terms of s230.

s230 – Voluntary disclosure agreement

The voluntary disclosure agreement will set out:

1. The material facts of the default on which the VDP is based
2. The amount/s payable
3. Payment arrangements and dates
4. Any specific undertakings between SARS and the taxpayer

The voluntary disclosure agreement must be signed by both SARS and the qualifying applicant. Once the voluntary disclosure agreement has been signed by both parties (SARS and taxpayer), it will constitute a contract between the parties to the agreement.

s232 Assessment or determination to give effect to VDP agreement

SARS may issue an assessment or determination to give effect to a VDP agreement and such assessment is not subject to objection or appeal

s231 - Withdrawal of relief

SARS may withdraw voluntary disclosure relief if, subsequent to a voluntary disclosure agreement being entered into, it comes to light that the applicant failed to disclose a matter that was material for the purpose of making a valid voluntary disclosure. For example, relief for penalties previously granted will be withdrawn and such penalties will be reinstated.

In this instance, the relief will be withdrawn and any amount paid in terms of the voluntary disclosure agreement will be considered as part payment for the outstanding tax in respect of the default. SARS may also institute criminal proceedings for a statutory offence under a tax Act or a related common law offence.

Any decision taken by SARS in this regard will be subject to objection and appeal.

Practical example (hypothetical – not related to an actual taxpayer)

Set of facts:

Thato is a South African tax resident employed as an engineer in at a mining company. In 2021, he began providing consulting services as a side hustle. Between 2021 and 2024, Thato earned R2.6 million from this consulting work. Thato did not declare this income in his South African income tax returns (ITR12) because he believed that it's a side hustle and only his employment income should be included in his returns. When consulting a tax practitioner, he learns that all income from all trades need to be disclosed and taxed accordingly. He is concerned that SARS may identify the undeclared income.

Risks if SARS Detects the Non-Compliance: If SARS detects the non-compliance before Thato discloses it, he could face:

1. Additional income tax assessments
2. Interest on the outstanding tax
3. Understatement penalties of up to 200%
4. Potential criminal prosecution for tax evasion

Voluntary Disclosure Programme (VDP) To regularise his tax affairs, Thato applies for relief under the SARS VDP. The application includes:

1. Disclosure of all undeclared income from 2021–2024
2. Supporting documents such as: Bank statements, Invoices to clients, Consulting agreements, Proof of payments received and a calculation of the tax payable on the undeclared income.

Outcome of the VDP application:

SARS reviews the VDP application and accepts that:

- The disclosure is voluntary
- It is complete and accurate
- It relates to a default that has not yet been detected by SARS

Under the VDP relief provisions:

- Criminal prosecution is avoided
- Understatement penalties are waived
- Thato must still pay:
 - The tax owing; and
 - Interest on the late payment

Key Takeaways

This scenario highlights that:

- The VDP allows taxpayers to regularise past tax non-compliance.
- It is available only if SARS has not already detected the default.
- The relief generally includes:
 - Waiver of understatement penalties Relief from criminal prosecution
 - The taxpayer must still pay tax and interest

