



SARS Operations and eFiling

SAIT Webinar
10 August 2023

YOUR KEY TO THE TAX COMMUNITY

Anchors:

- **Yolisa Dyasi** – (Tax Technical Consultant at SAIT)
Yolisa is the Tax Technical Consultant at SAIT. She is responsible for management of the SAIT Tax Technical Helpline, SARS escalations and SARS operational submissions.
- **Cecile Bothe** – (Consultant at SAIT)
Cecile Bothe is Consulting to SAIT (ex SARS) with 44 years of experience at SARS. Specialises in Income Tax, Provisional tax, Deceased and insolvent estates, Donations Tax and Estate duty.

SARS Voluntary Disclosure Unit

Ipeleng Moswela

- Specialist: Voluntary Disclosure Division

Agenda:

This session will contain a brief overview of SARS Operations, reporting and eFiling including the following aspects:

- ❖ General SARS Ops updates
 - ✓ Important filing, payment and/or reporting dates
 - ✓ Challenges in the SARS Operational space
 - ✓ New procedures, systems and SARS implementations
 - ✓ Matters affecting the Tax Practitioner
 - ✓ Relevant legislative interpretation and new legislation and/or regulation
- ❖ Expert Corner; and
- ❖ Question and Answer Session



Important filing, payment and/or reporting dates



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Important filing, payment and/or reporting dates

Value-Added Tax	25/08/2023	Manual VAT201 submissions and payments
Value-Added Tax	31/08/2023	Electronic VAT201 submissions and payments
Income Tax	31/08/2023	1st provisional (2024) submissions and payments for individuals, trusts and companies with a February year-end
Turnover Tax	31/08/2023	1st (2024) payments for micro businesses registered for turnover tax
Employment Taxes	07/09/2023	EMP201 submissions and payments
Value-Added Tax	22/09/2023	Manual VAT201 submissions and payments
Value-Added Tax	29/09/2023	Electronic VAT201 submissions and payments
Income Tax	29/09/2023	3rd provisional (2023) payments for individuals, trusts and companies with a February year-end period
Employment Taxes	06/10/2023	EMP201 submissions and payments

Challenges in the SARS Operational space

Rejection of PAYE registrations on eFiling

- Historically, SARS has made the PAYE registration process simple in order to encourage employers to comply with their statutory requirements and ensure that all necessary employees' taxes are collected and paid over to SARS timeously.
- Unfortunately, there is currently a technical error being experienced on the SARS core system preventing the successful registration of PAYE. The SARS eFiling developers have been alerted to this problem and are working on the resolution thereof.

Pre-population of third-party data for deceased estates

- Since the commencement of Filing Season 2023, representative taxpayers and tax practitioners have been struggling to submit personal income tax returns for deceased estates. This is due to a technical problem, where the third-party data does not pre-populate on the ITR12 return.

“Please note that this tax return was not processed because SARS could not match pre-populated 3rd party data to the submitted data on the return. Refresh your data on the return and resubmit or visit the nearest branch for assistance.”

New procedures, systems and SARS implementations

SARS to outsource debt collections

- The outsourcing of tax debt collections will be implemented between the end of September and the beginning of October. This will be done in a staggered approach.
- SARS will issue a letter to the affected taxpayers by the end of this week and taxpayers are advised to regularise tax debt before the commencement of the outsourcing.
- Debt older than 5 years to be outsourced, however any debt that is under dispute and has been successfully suspended will not be outsourced.
- SARS will establish a dedicated engagement team, and a dedicated email channel to deal with any complaints which may arise from the outsourcing.
- All payments will still be made directly to SARS and no money should be paid to outsourced companies.
- Statutory interest will still accrue on all outstanding amounts.
- The cost for collection by the third-party will be carried by SARS.

Distribution of funds to non-resident Trusts by resident Trusts

- Historically, it *has been* the common practice of SARS not to approve the release of funds when a resident Trust makes distributions to a non-resident Trust.
- On 1 August 2023, SARS clarified its stance on the matter and confirmed that it will consider approval for the release of funds/amounts distributed to non-resident Trusts.
- The process required to obtain the necessary approval will be to apply for a manual letter of compliance at SARS by emailing MLCA@sars.gov.za.
- Trust involved must be a beneficiary of the resident Trust, and the distribution will only be considered by SARS if it complies with the terms and conditions in the Trust instrument of the resident Trust.
- SARS will only allow such distributions if the resident Trust demonstrates that all tax liabilities in respect of the distribution were or will be settled.
- For a detailed list of supporting documents required for the application, members are encouraged to access the [Supporting Documents for Approval of International Transfers \(AIT\)](#) webpage.

Tax return status dashboard

Check the status of a 2022 and 2023 return personal income tax return

Taxpayer	Tax Practitioner	Registered Representative
<ul style="list-style-type: none">• Taxpayer's name and surname;• Taxpayer's ID number; and• Tax reference number.	<ul style="list-style-type: none">• Taxpayer name and surname;• Taxpayer's ID number;• Tax reference number;• Taxpayer's mobile number and email address• Tax practitioner's name and surname• Tax practitioner's ID number; and• Tax practitioner's PR-number.	<ul style="list-style-type: none">• Taxpayer's name and surname;• Taxpayer's ID number;• Tax reference number;• Registered representative's name and surname; and• Registered representative's ID number.

Masters' offices vs region of registration for deceased estates

Master of the High Court Office	SARS region of registration
Bloemfontein, Free State	Free State and Northern Cape
Bisho, Eastern Cape	Eastern Cape
Cape Town, Western Cape	Western Cape
Durban, KwaZulu-Natal	KwaZulu-Natal
Grahamstown (Makhanda), Eastern Cape	Eastern Cape
Johannesburg, Gauteng	Gauteng South
Kimberley, Northern Cape	Free State and Northern Cape
Mafikeng (Mmabatho), North West	North West
Mthatha (Umtata), Eastern Cape	Eastern Cape
Nelspruit, Mpumalanga	Mpumalanga
Pietermaritzburg, KwaZulu-Natal	KwaZulu-Natal
Polokwane, Limpopo	Limpopo
Port Elizabeth (Gqeberha), Eastern Cape	Eastern Cape
Pretoria, Gauteng	Gauteng North
Thohoyando, Limpopo	Limpopo



Matters affecting the Tax Practitioner

Failure to de-register for tax types may lead to de-registering of tax practitioners

- In the June 2023 issue of the [Tax Practitioner Connect](#) newsletter, SARS stated that a tax practitioner who fails to deregister the inactive tax types could face deregistration as a tax practitioner.
- However, in the July 2023 edition of the Tax Practitioner Connect newsletter, SARS clarified that the purpose of the article was to highlight to tax practitioners, the importance of managing their registration across all tax types. Tax practitioners who are non-compliant in their **own** tax matters (across all tax types that they are registered for) may be deregistered as a tax practitioner in terms of section 240(3)(d) of the Tax Administration Act, No. 28 of 2011.
- That stated, SARS would like to remind all tax practitioners that, if they are registered for a tax type that is no longer required or active, they should take the steps to deregister that tax type immediately.

Relevant legislative interpretation and new legislation and/or regulation

2023 Budget Draft Tax Bills and Draft Regulations

- The rooftop solar tax incentive.
- The renewable energy tax incentive.
- Refining the definition of the research and development tax incentive.
- Reviewing principles contained in practice note 31 of 1994.
- Clarifying the foreign business establishment exemption for controlled foreign companies.
- Clarifying the VAT treatment of prepaid vouchers in the telecommunications industry.
- Extending the time period to submit a return where taxpayers disagree with an auto-assessment.
- The introduction of the enabling framework for the advance pricing agreement programme.



Expert Corner

SARS

Voluntary Disclosure Programme

South African Revenue Service

Voluntary Disclosure Programme

***SAIT National Webinar
August 2023***



Thank you for walking this journey with us

 **SARS**
At Your Service

Topic to be covered

1. Objectives of Voluntary Disclosure Programme
2. Principles of Voluntary Disclosure Programme
3. Benefits of the Voluntary Disclosure Programme
4. Who may apply
5. VDP application process
6. VDP Concepts
 - ▼ “default”
 - ▼ Disclosure
 - ▼ Voluntary
7. SARS Service Charter Requirements
8. Some Tips

Objectives of the VDP

- ✔ VDP is an internationally accepted mechanism introduced to provide relief.
- ✔ South African taxpayers with tax defaults in respect of any tax types administered under the Tax Administration Act are encouraged to make use of it.
- ✔ The objectives of the VDP is-
 - ✔ To broaden the culture of tax compliance;
 - ✔ Increase the taxpayer base;
 - ✔ Reduce the tax gap and revenue leakage;
 - ✔ Provide certainty to taxpayers in regard to their tax affairs.

Principles of the VDP

- ✔ Something that has already entered the SARS system / “mind” and which SARS has knowledge of, will not fall within VDP but should be dealt with i.t.o the normal SARS processes. Unless under strict circumstances contemplated in section 226(2)
- ✔ Disclosure must be **full and complete in material** respects and information withheld that is deemed material renders the application invalid
- ✔ Taxpayers are expected to remain compliant after using the VDP, hence the limitation of 5 years for disclosures with **similar defaults**
- ✔ Disclosure must be in the **interest of the fiscus** and any disclosure that is to the benefit of a taxpayer should be regularised through normal SARS process

Benefits of the VDP

- Section 229 of the Tax Administration Act; SARS must:
 - ✔ Not pursue ***criminal prosecution for a tax offence*** arising from the 'default',
 - ✔ Grant relief in respect of any **understatement penalty** referred to in column 5 or 6 of the understatement penalty percentage table in section 223 and
 - ✔ Grant 100 per cent relief in respect of an **administrative non-compliance penalty** imposed under Chapter 15 or a penalty imposed under a tax act, excluding a penalty imposed for the late submission of a return
- Information, including the VDP01 Form and supporting documents submitted via the VDP process is not shared with any other division within SARS.

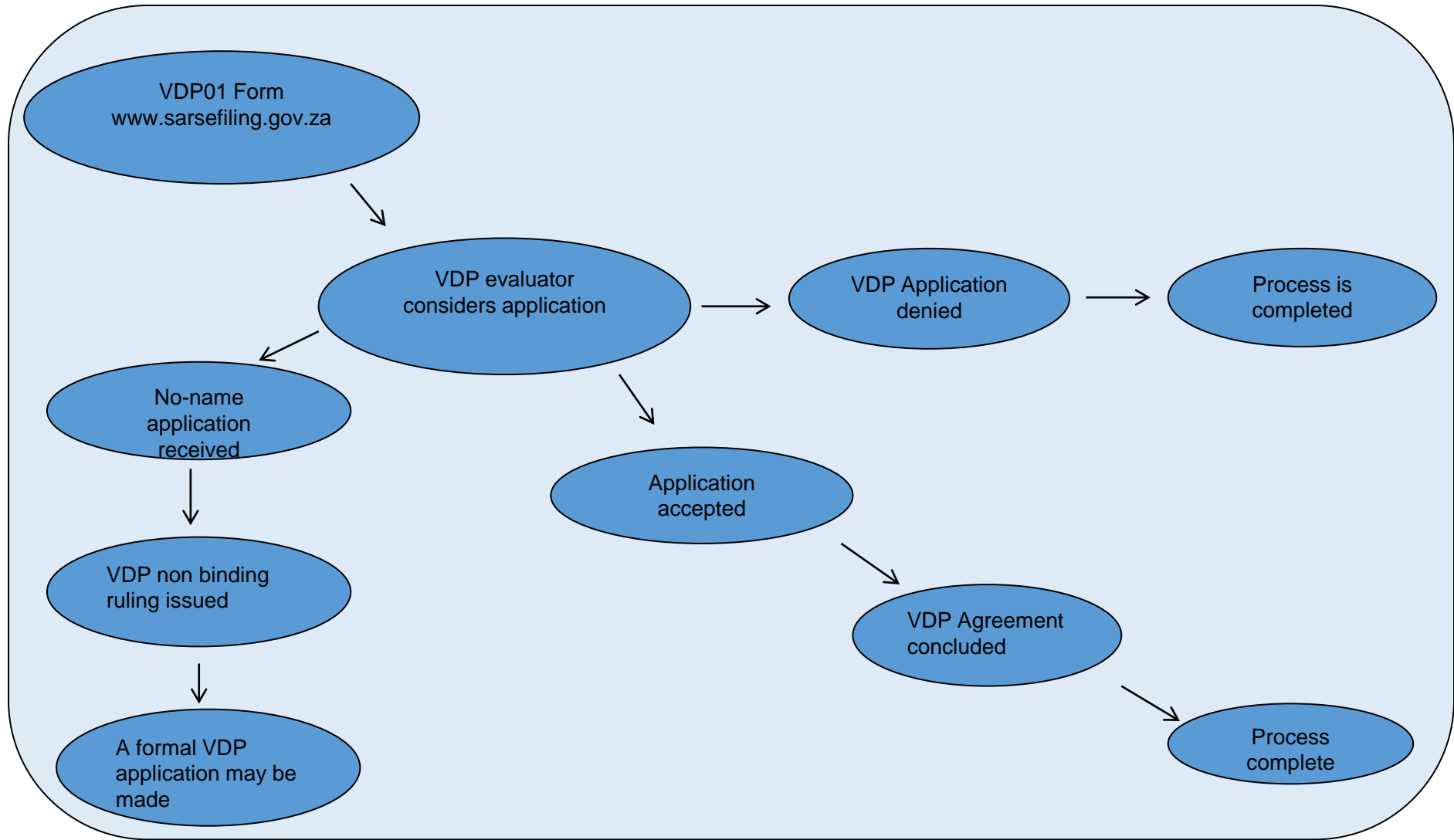
Who may apply

- ✔ Individuals
- ✔ Companies and/ or
- ✔ Representative of such individual or company
- ✔ A person who is not given notice of commencement of audit or criminal investigation

Exceptions

- ✔ A Senior SARS official may direct a person under audit /investigation may still apply, under certain circumstances

VDP Application Process



VDP Concepts – ‘Default’

- For purposes of the VDP, a default is the –
 - ✔ the submission of inaccurate or incomplete information to SARS,
 - ✔ the failure to submit information, or
 - ✔ adoption of a ‘tax position’,

For purposes of Chapter 16, the term “tax position” is defined in section 221 and means an assumption underlying one or more aspect of a tax return, including whether –

- an amount, transaction, event or item is taxable;
- an amount or item is deductible or may be set-off;
- a lower rate of tax than the maximum applicable to that class of taxpayer, transaction, event or item applies; or
- an amount qualifies as a reduction of tax payable.

If such default resulted in an understatement, *i.e.* a shortfall or a tax prejudice to SARS

VDP Concepts – ‘Default’ Cont

Examples of a default involves:

- ✓ the under declaration of gross income,
- ✓ reduction of assessed loss,
- ✓ overstating deductions
- ✓ over claiming of input VAT and under declaration of output VAT

VDP Concepts – ‘Disclosure’

The term “disclosure” is not defined in the TA Act. The *Cambridge English Dictionary* defines “disclosure” as –

- ✔ “to make something known publicly, or to show something that was hidden”.
- ✔ To disclose something involves the act of making something known that was hidden.

The word “disclosure” was considered in *Reed v Minister of Finance and Others* and the judge stated that: “it means to open up something closed or folded up...., If somebody knows something then it is difficult to see how, without straining language into incomprehensibility, another person can “disclose” the thing known to the first person. Determining whether something is (disclosable) is not a subjective matter but is purely objective – does the person have knowledge of the thing or not; if not, it can be disclosed, if yes it cannot be disclosed.”

In this case, the taxpayer was aware that SARS was looking into his tax affairs and made a VDP application subsequent to this fact becoming known. It was held that the taxpayer had not disclosed in the application to SARS anything that SARS was unaware of.

VDP Concepts – ‘Voluntary’

The entire programme is based on the voluntary disclosure of a default by an applicant, the meaning and understanding of “voluntary” is of utmost importance.

➤ The word “voluntary” is not defined in the TA Act. The *Cambridge English Dictionary* defines “voluntary” as –

“done, made, or given willingly, without being forced or paid to do it”.

Section 227(a).

In *Purveyors South Africa Mine Services (Pty) Ltd v C: SARS* the court considered whether the application made by the taxpayer was “voluntary” for purposes of section 227(a).

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VDP Concepts – ‘Voluntary’ Cont

Both the High Court and the Supreme Court of Appeals agreed with SARS’ argument that the taxpayer’s application was not “voluntary” based on the following reasons –

- ✓ If there is an element of compulsion underpinning a particular act, it is no longer done voluntarily.
- ✓ It was submitted that the application was brought in fear of being penalised and with a view to avert the consequences referred to.

The term “voluntary” under section 227 is not limited to the provisions relating to Audit/Investigation under section 226 (2).

VDP Concepts – ‘Voluntary’ Cont

Example – Other SARS Actions:

On 10 April 2022, SARS issued Company Z with a notification of verification of the 2021 year of assessment. The company had the option to submit a revised ITR14. Company Z has a year of assessment ending 31 March. .

Company Z submitted an application for voluntary disclosure relief under the VDP on 8 May 2023 for a default relating to the 2022 year of assessment. The default was the omission of income from the 2022 ITR14. The taxpayer became aware of the default as a result of an in-house audit and not as a result of the SARS verification being conducted.

Result:

The requirements under section 227 should be considered to determine if the application meets the requirement of a voluntary disclosure. As the 2022 year of assessment was not the year being verified and there is nothing that suggests that the default would have been detected during the verification of the 2021 year of assessment, the disclosure meets the requirement of it being “voluntary” in terms of section 227(a).

VDP Concepts – ‘Voluntary’ Cont

Example – New Registration vs Outstanding Returns:

If a liability for tax is triggered by the registration for the tax type, the taxpayer may approach the VDP Division (VDU) for guidance on the submission of a voluntary disclosure application as part of the registration process.

In order for the application to be regarded as valid, it must be submitted within a reasonable timeframe from the date after which the taxpayer has registered for the applicable tax type. In general, the VDP Unit allows a timeframe of 21 business days or a month from the date of registration for the tax type.

Outstanding returns do not meet the VDP requirements and must be regularised through SARS normal process.

SARS Service Charter Requirements

The VDU strives to ensure the following SARS Service Charter measures are complied with:

- ✓ Allocate 9 out of 10 applications within 30 business days of receipt thereof.
- ✓ Finalize 8 out of 10 applications within 90 business days where all requested documents have been received unless alternative arrangements are communicated.

Notes and Tips

- ✔ VDP applications are made via eFiling- Ensure that you have received an acknowledgement of your application 48hrs after application, if not contact the VDP Division
- ✔ The taxpayer and the representative taxpayer must both be registered on eFiling and the representative taxpayer must be linked to the tax types and profiles of the taxpayer
- ✔ If unsure whether your application will qualify for relief, you may request non-binding private opinion on a no name basis.
- ✔ Gather information or supporting documents relevant to the default disclosed.
- ✔ SARS may accept reasonable estimates where default goes beyond prescription period.
- ✔ VDP related queries may be directed to VDP mailbox: vdp@sars.gov.za or by VDP Division toll free line 0800 864 613
- ✔ Refer to the External Guide- Voluntary Disclosure Programme or visit VDP portal for more information and FAQs.
- ✔ Defaults not valid under the VDP should be addressed via the normal branch operations.

Conclusion



Questions



Thank you