New VDP Guide:
Not Merely a Cosmetic Update

Introduction

SARS' voluntary disclosure programme ('**VDP**') is, in our view, one of the most valuable remedial tools available in South African tax administration. Governed by Part B of Chapter 16 of the Tax Administration Act, No. 28 of 2011 (the '**TAA**'), it allows a taxpayer to come forward, disclose past non-compliance, and obtain relief from understatement penalties, certain administrative non-compliance penalties, and criminal prosecution. For taxpayers who value compliance, and for the advisers who counsel them, the VDP remains the standard mechanism for regularising historic exposures.

The purpose of the VDP

The purpose of the VDP is to encourage and enhance voluntary compliance. SARS does not have unlimited resources, and there is no SARS official assigned to monitor every taxpayer in South Africa. The programme is therefore designed to encourage non-compliant taxpayers to come forward of their own accord and regularise their affairs, in exchange for relief from the penalties and prosecution that would otherwise attach to the disclosed default.

The exchange is straightforward in principle. The taxpayer obtains certainty and significant penalty relief, while SARS obtains the disclosure, the assessment and the payment, without expending the resources of an audit.

What a VDP application entails

A VDP application is initiated by completing and submitting the prescribed VDP01 form via SARS eFiling. Supporting documentation is critical to a successful application.

For an application to be valid, the disclosure must meet all seven requirements set out in section 227 of the TAA. The disclosure must –

- be voluntary;
- involve a '*default*' (as defined) that has not occurred within five years of the disclosure of a similar default by the applicant;
- be full and complete in all material respects;
- involve a behaviour referred to in column 2 of the understatement penalty table in section 223;
- not result in a refund due by SARS;
- be made in the prescribed form and manner; and
- not constitute an '*underpayment*' as defined in section 77Z of the Customs and Excise Act, No. 91 of 1964.

Each of these requirements carries its own nuance and interpretive baggage, much of which is addressed for the first time in the May 2026 version of the VDP Guide (Issue 2, published on 21 May 2026) (the '**New Guide**'), discussed below.

One point is easy to miss: the seventh requirement — that the disclosure must not constitute an 'underpayment' as defined in section 77Z of the Customs and Excise Act — is new to Issue 2 and takes the list beyond the six requirements in section 227 itself. It codifies the exclusion of customs and excise from the VDP under Chapter 16, and should be read alongside the separate draft legislation proposing a dedicated voluntary disclosure dispensation for customs and excise.

The voluntary disclosure agreement

Where the application submitted by the taxpayer is valid and the SARS Voluntary Disclosure Unit ('**VDP Unit**') accepts it, the outcome is recorded in a voluntary disclosure agreement ('**VDA**'), concluded in terms of section 230 of the TAA, whereafter relief is granted in terms of section 229.

The VDA records the material facts of the default and the amounts payable, separately reflecting the understatement penalty, interest and any other administrative penalty, together with the payment arrangements and the relevant undertakings of the parties. It is signed by both SARS and the applicant, and it constitutes a contract between them. We note for completeness that, save for verifying the requirements for a valid application, SARS does not itself verify the details of the default or the default amounts disclosed. It is thus very important that the taxpayer and its advisors ensure the details of the default disclosed are complete and accurate.

Two consequences flow from the contractual characterisation of a VDA, and both warrant attention at the outset of any VDP engagement.

Finality

Once a VDA is signed by both parties and SARS issues an assessment to give effect to it, that assessment is not subject to objection, appeal, or any other remedy available in the TAA.

This was confirmed by the Constitutional Court in *Commissioner for the South African Revenue Service v Medtronic International Trading S.A.R.L.* [2024] ZACC 26; 2025 (2) SA 337 (CC); 87 SATC 390 ('**Medtronic**'). The court unanimously held that a taxpayer cannot reopen the terms of a concluded VDA by invoking the ordinary interest-remission provisions in the relevant tax Act, applying the principle of *pacta sunt servanda* to hold that remitting interest after conclusion of a VDA would undo the agreement itself. The interest position, in particular, should therefore be negotiated and resolved before signature, not afterwards.

Consequences of breach

Breach of a material term of a VDA does not render the agreement invalid, rather, it entitles SARS to cancel in terms of its common law contractual rights. Distinctly, where it is subsequently established that the applicant failed to disclose a matter that was material to the validity of the voluntary disclosure, the senior SARS official may withdraw the relief in terms of section 231 of the TAA.

Confidentiality of the VDP process

A further valuable feature of the VDP process is confidentiality. As a matter of stated SARS practice, information submitted under a VDP application is not shared with any other division of SARS. The policy rationale is to insulate applicants from being targeted by a SARS auditor on the strength of a disclosure made in good faith under the programme.

This is, however, the position as it is intended to operate. In practice, there is no guarantee that a '*default*' disclosed under a VDP application is not shared with SARS' audit division, and the confidentiality policy should accordingly not be treated as an absolute assurance. It is equally important to bear in mind that the conclusion of a VDA in respect of a default occurring during, or spanning, a number of years of assessment does not preclude SARS from auditing any of those years.

Key updates in the New Guide

Having covered the VDP process and its key principles, we turn to the most important updates introduced by the New Guide.

1. The section 225 definition of a 'default'

A dedicated section of the New Guide (section 2.1) reproduces the definition in section 225 of the TAA and unpacks each of its three limbs: the submission of inaccurate or incomplete information, the failure to submit information, and the adoption of a '*tax position*' (as defined in section 221).

The unpacking of '*tax position*' is the most significant addition. The New Guide confirms that this limb requires a conscious decision by the taxpayer and is not engaged by an inadvertent error. Practitioners should distinguish carefully between an inadvertent omission, caught by the first limb, and a deliberate position, caught by the third, because the characterisation adopted affects how the default must be described in the application.

2. The voluntary requirement and *Purveyors*

Voluntariness is, as the name of the programme suggests, probably the most important of the section 227 requirements.

In *Purveyors South Africa Mine Services (Pty) Ltd v Commissioner for the South African Revenue Service* [2021] ZASCA 170; 2022 (3) SA 139 (SCA); 84 SATC 215 ('**Purveyors**'), the taxpayer had imported an aircraft in 2015 and failed to account for the import VAT due on it. Having obtained a technical opinion on its exposure, the taxpayer approached SARS informally, in early 2017, with a view to regularising its VAT position, and disclosed a broad overview of the relevant facts. SARS advised that VAT was due and warned that penalties would apply. About a year later, the taxpayer applied for VDP relief, which SARS rejected on the basis that the disclosure was not voluntary. The Supreme Court of Appeal ('**SCA**') was called upon to decide whether that application met the requirement.

The SCA held that it did not. Although the taxpayer had given SARS only a broad overview of the facts, rather than a full disclosure, the fact that SARS was already aware of the liability and had warned of penalties meant that the subsequent VDP application was prompted by that prior engagement, and by a desire to avoid penalties, rather than being made of the taxpayer's own volition.

Three facts, in combination, defeated the application:

- The application was prompted by a compliance-related interaction, namely SARS' awareness of,

and engagement on, the default;
- The taxpayer already knew that it was liable for the tax, and that the resulting penalties would not be waived; and
- The application appeared to be motivated by a desire to avoid penalties, rather than a genuine desire to come clean.

Voluntariness remains a factual inquiry to be assessed on the specific facts of each case. There is no fixed formula, but prior contact with SARS, the taxpayer's actual knowledge of its liability, and the timing of the eventual application are all relevant considerations.

The practical implication of *Purveyors* is that a taxpayer who applies for VDP relief only after becoming aware of a possible default because SARS initiated an inspection, a verification, or an informal discussion, will generally struggle to satisfy the voluntariness requirement. But for the SARS engagement, such a taxpayer would in all likelihood not have applied at all, which is fatal to any claim of voluntariness.

The New Guide codifies this position. Advice on this point must be unambiguous: a client considering a VDP application must not approach SARS for an informal view on the underlying default before submitting that application.

There is, however, a sanctioned way to test the water. Section 228 allows a person to request a non-binding private opinion from a senior SARS official on their eligibility for VDP relief, and the New Guide confirms that the information provided 'need not include the identity of any party to the default'; an application may also be lodged anonymously. Used properly, this lets a taxpayer gauge eligibility without the kind of informal approach that proved fatal in Purveyors.

3. Finality and *Medtronic*

The New Guide also incorporates the outcome in *Medtronic*, discussed above under 'The voluntary disclosure agreement'.

The New Guide accordingly now states, in clear terms, that once a VDP agreement is signed, it is final and binding, and the applicant cannot seek further relief in respect of the disclosed default through any other channel.

The practical point for clients is that a VDP is not always the most advantageous route to correct historic non-compliance, and this should be tested before an application is made rather than after a VDA is signed. A taxpayer who instead declares historic non-compliance in the ordinary course remains liable for understatement penalties, administrative non-compliance penalties, and interest. Of these, the understatement penalty would arguably be the most difficult to dispute outside the VDP, which is usually the decisive factor in favour of the programme. The interest position, by contrast, is fixed once and for all on conclusion of the VDA, and should be scrutinised accordingly before signature.

A legislative correction may, however, be on the horizon. In the 2026 Budget (Budget Review, 25 February 2026, Annexure C, under the heading 'Interest relief on defaults disclosed during voluntary disclosure application'), and in direct response to Medtronic, National Treasury proposed that 'provision be made to specifically permit applicants for voluntary disclosure relief to simultaneously apply for the separate remission of interest, under the provisions of the relevant tax act, in respect of the defaults disclosed in the voluntary disclosure application'. The proposal was expressed to take effect on 1 March 2026, but it remains a proposal only and has not been enacted. Until it is carried into amending legislation, Medtronic continues to govern and the interest position should still be treated as fixed on conclusion of the VDA.

4. Finalisation of an audit

Issue 2 of the New Guide addresses, for the first time, precisely when an audit commences and when it is concluded for purposes of the section 226(2) bar on voluntary disclosure relief, discussed further at item 6 below.

An audit commences, on the New Guide's wording, once the Notification of Audit is issued in terms of section 42 of the TAA. An audit is treated as concluded only once the Letter of Findings has been issued, and SARS now expressly included the following *"once the taxpayer has been informed… of the assessment(s) that are to be issued"*. This addition is significant: it is not clear whether the Letter of Findings alone suffices, or whether SARS also requires the assessment giving effect to those findings to be issued before the audit is regarded as concluded.

The addition of the assessment leg matters in practice. It extends, potentially significantly, the period during which SARS regards an audit as unconcluded, and therefore the period during which the section 226(2) bar continues to operate. A taxpayer who wishes to apply for VDP relief after receiving a letter of findings, but before the corresponding assessment has been raised, should accordingly expect the timing of that application to be more contested than may previously have been assumed.

We suggest erring on the side of caution and waiting for the assessment before assuming that the audit is concluded.

Until this position is settled, practitioners should treat the interval between a letter of findings and the eventual assessment or finalisation letter as a period of live risk for VDP timing purposes, and should factor this into the advice given to a client who discovers a fresh, unrelated '*default*' while an audit is ongoing.

5. Reportable arrangements

While the previous guide was silent on reportable arrangements, the New Guide addresses the non-disclosure of these arrangements and their eligibility for VDP.

A reportable arrangement that was not disclosed in terms of sections 34 to 39 of the TAA attracts only a non-disclosure penalty in terms of section 212. That penalty is not an understatement penalty, and non-disclosure of a reportable arrangement does not, of itself, constitute a '*default*' for VDP purposes.

The position is different where the underlying amounts connected with the arrangement were not declared and that produces an understatement. In that event, the resulting understatement may itself qualify as a default capable of disclosure under the VDP, even though the separate failure to disclose the arrangement does not.

6. Audit or verification and disqualification

This is the most consequential analytical development in the New Guide, and it turns on a distinction between two separate statutory questions.

First, notification of a verification or an inspection is not, of itself, a bar to a valid application in terms of section 226(2) of the TAA. Second, that same verification or inspection may nonetheless defeat the voluntariness requirement in section 227(a) if the taxpayer became aware of the disclosed default through it, applying the same reasoning as in *Purveyors*.

Scoping conversations with clients who have received SARS correspondence must therefore distinguish carefully between the type of notice received and what the client actually knew, and when. The New Guide provides a defensible basis for proceeding with a VDP application even where the taxpayer is currently under verification, provided that the disclosed default is genuinely unconnected to that verification and was not surfaced by it.

7. Non-registration as a default: a safe harbour

The New Guide also introduces a useful safe harbour for a taxpayer who has failed to register for a tax type, such as VAT.

Practitioners advising on an unregistered VAT or other tax-type default can now point to a clear, sanctioned sequence: contact the VDP Unit, register for the relevant tax type, and then file the VDP01 within twenty-one business days of registration. Without this sequencing, the act of registering, taken on its own, could arguably have amounted to a prompted compliance action that would defeat voluntariness on the reasoning in *Purveyors*.

Conclusion

The picture that emerges from the New Guide is not one of a programme retreating from its purpose, but of one drawing its lines more tightly. SARS has clarified the boundaries around a '*tax position*' and around non-registration defaults, but on several other fronts it has quietly widened its own room to say 'not yet' or 'not you' to a would-be applicant, whether by treating an audit as unconcluded for longer than practitioners may have assumed, or by not being able to guarantee that a disclosure will never find its way to an auditor's desk. The VDP has not become a narrower door. It has become a more contested one. Increasingly, the question our clients should be asking is not simply whether to disclose, but whether now, precisely now, is the moment to do it, and what has already happened, procedurally, before that moment arrives.

Practical takeaways for clients

- Test eligibility first through a section 228 non-binding private opinion, which need not disclose the taxpayer's identity, rather than an informal approach to SARS that could defeat voluntariness on the reasoning in Purveyors.
- Map any prior contact with SARS — an inspection, verification, audit or informal query — before applying, since it may bear on both section 226(2) and the voluntariness requirement in section 227(a).
- Resolve the interest position before the VDA is signed: on Medtronic it cannot be reopened afterwards, and the proposed 2026 amendment permitting a concurrent interest-remission request is not yet law.
- Where an audit is under way, wait for the assessment — not merely the Letter of Findings — before treating it as concluded for section 226(2) purposes.
- Weigh the VDP against ordinary disclosure: the programme's decisive advantage is relief from the understatement penalty, while interest is fixed once the VDA is concluded.

Disclaimer

The above information is intended to provide general guidance with respect to the subject matter. This general guidance should not be relied on as a basis for undertaking any transaction or business decision, but rather the advice of a qualified tax consultant should be obtained based on a taxpayer's individual circumstances. Although our articles are carefully reviewed, we accept no responsibility in the event of any inaccuracy or omission. For further information please refer to the author.

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