

# WELCOME

ALLOWING 2 MINUTES FOR ATTENDEES TO JOIN





**JULY**  
**2023**

# **VOLUNTARY DISCLOSURE PROGRAMME (“VDP”)**

**PRESENTED BY:**

**ANDRÉ DANIELS  
COLLEEN KAUFMANN**

# AGENDA

- 1 Introduction
- 2 What is the VDP?
- 3 Who can apply for relief under the VDP?
- 4 The requirements of a VDP application
- 5 The importance of the VDP agreement
- 6 The Process of a VDP Application
- 7 Q&A

# GROUND RULES

- By default, all attendees' videos are off and mics muted.
- All questions must be submitted in the Q&A section on Zoom.
- Any technical difficulties must be communicated in the chat section.
- There will be a poll at the end of the webinar. Answers are strictly confidential.
- Keep webinar engaging – please submit your questions and we address at the end of the webinar.
- Presentation will be sent to attendees after event.

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Judge Dennis M Davis, Chairman Davis Tax Committee, is quoted saying:

*“In summary, the second edition of this carefully considered book (which not only deals with all the various tax implications of immigration/emigration but the taxation of residents working offshore) remains an invaluable guide to an increasingly complex set of tax challenges. Given these changes, it is an even more significant addition to our body of tax literature and will remain essential reading for anyone advising his or her client with regard to the tax consequences of migration and non-resident accruals.”*

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# 702 INTERVIEW

André Daniels (Head of Tax Controversy & Dispute Resolution) unpacked topics such as the Voluntary Disclosure Programme as well as general tax queries, including how tax morality affects the willingness of the general public to pay tax.





# MEET THE SPEAKERS

# THE SPEAKERS



**ANDRÉ DANIELS**

**Head of Tax Controversy and Dispute Resolution**

André Daniels is the Head of Tax Controversy and Dispute Resolution. He holds an LLB degree from the University of Johannesburg with 4 years of legal experience in various aspects of South African law. He is an admitted attorney of the High Court of South Africa with both practical litigation and consulting experience. André prides himself on being au fait with the intricacy and fluidity of the tax dispute resolution process, with a particular focus on legal strategy. On a daily basis, André deals mainly with tax law, specifically dealing with the elements of tax disputes, voluntary disclosures and all SARS engagements.



**COLLEEN KAUFMANN**

**Tax Attorney**

Colleen Kaufmann, LLB, is an admitted attorney of the High Court of South Africa, and part of the legal team at Tax Consulting, currently completing her Masters in Tax Law. As part of the tax legal team, Colleen assists her clients with commercial tax and related technical areas, and SARS engagements, specifically dealing with the elements of tax disputes, voluntary disclosures, and any technical matters thereto.



# POLL #1

**How many clients have you had that have undeclared/underdeclared income?**

- a) 0-2
- b) 3-4
- c) 5-7
- d) More than 7

**Have many of these clients have you proceeded with a VDP application?**

- a) A few cases
- b) Half of cases
- c) Most of my cases
- d) All cases

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# ANDRÉ DANIELS

Head of Tax Controversy and Dispute Resolution

# WHAT IS THE VOLUNTARY DISCLOSURE PROGRAMME (“VDP”)?

- The VDP gives **taxpayers an opportunity to come forward on a voluntary basis** and disclose their tax defaults to SARS.
- Taxpayers **have the opportunity to declare previously undeclared income** or the **understatement of tax liability** to SARS through the VDP, which is regulated by the Tax Administration Act.
- The avenue of **VDP promotes the regularisation of tax affairs without the payment of massive penalties**, but this only remains **available before SARS knocks on your door**.

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# WHAT IS THE VOLUNTARY DISCLOSURE PROGRAMME (“VDP”)?

- SARS allows taxpayers to **avoid criminal prosecution and regularise their tax affairs by making a disclosure under the VDP.**
- A **successful VDP application allows** for an applicant to **receive waiver of penalties** and **to settle outstanding tax liabilities** with SARS.
- The **purpose** of VDP is to **enhance voluntary compliance** in the interest of **enhanced tax compliance,**

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# WHO CAN APPLY FOR RELIEF UNDER VDP?

- All taxpayers **can apply for relief** under the VDP, as long as they are **registered for tax with SARS.**
- The **VDP is applicable to all taxes administered by SARS**, including;
  1. Income tax;
  2. Employees' tax (encompassing PAYE, SDL, UIF);
  3. VAT and
  4. but excluding Customs and Excise.

# THE REQUIREMENTS OF A VDP APPLICATION

- To ensure that a VDP application is valid, a disclosure must:
  - ✓ Be **voluntary**;
  - ✓ **Involve a default** which has **not occurred within five years of the disclosure** of a **similar “default”** by the applicant;
  - ✓ Be **full and complete in all material respects**;

# THE REQUIREMENTS OF A VDP APPLICATION

- ✓ **Involve a behaviour referred to in column 2 of the understatement penalty percentage table in section 223;**

**223. Understatement penalty percentage table.**—(1) The understatement penalty percentage table is as follows:

1	2	3	4	5	6
<i>Item</i>	<i>Behaviour</i>	<i>Standard case</i>	<i>If obstructive, or if it is a 'repeat case'</i>	<i>Voluntary disclosure after notification of audit or criminal investigation</i>	<i>Voluntary disclosure before notification of audit or criminal investigation</i>
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	'Impermissible avoidance arrangement'	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

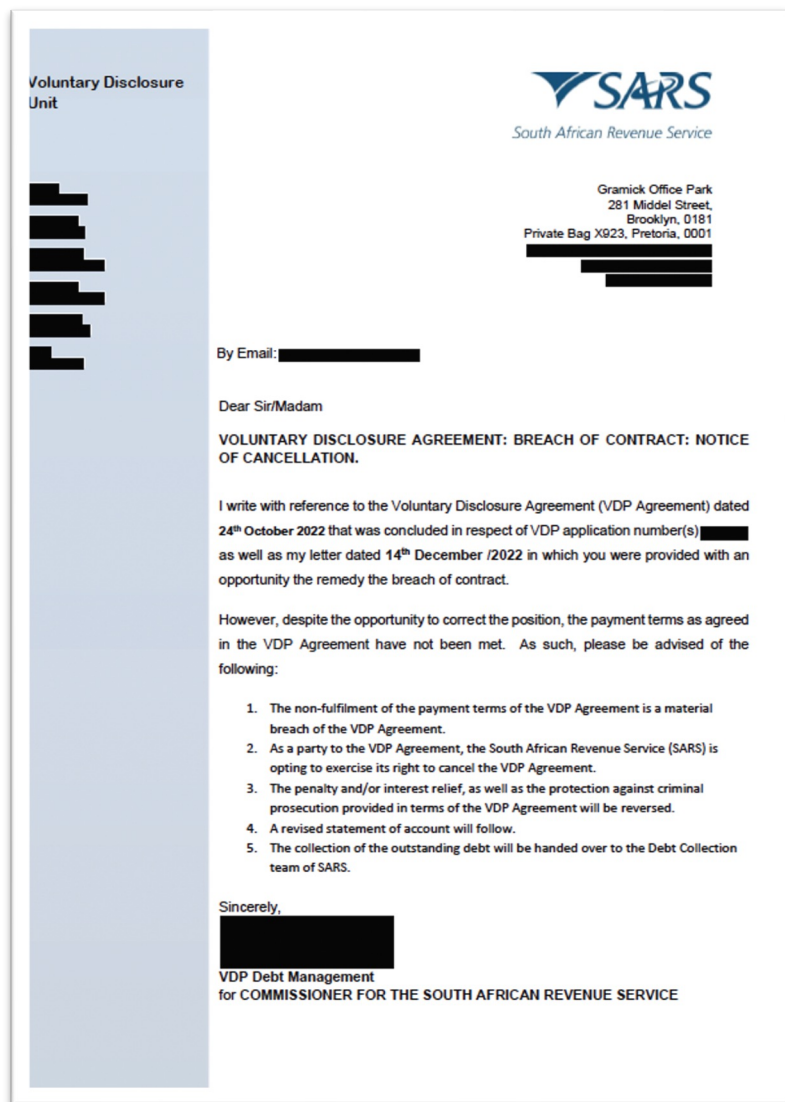
[Sub-s. (1) substituted by s. 76 (1) (a) of Act No. 39 of 2013 and by s. 62 of Act No. 16 of 2016.]

# THE REQUIREMENTS OF A VDP APPLICATION

- ✓ **Not result** in a **refund due by SARS**; and
- ✓ Be **made in the prescribed form and manner**.
- The taxpayer **must be up to date with their tax filing obligations when applying under the VDP**; or
- the **VDP application will be cancelled**. (A “tax diagnostic” is sometimes necessary to confirm this).



# POTENTIAL PITFALLS



Where a taxpayer fails to pay the VDP lump sum inclusive of interest, SARS will cancel the VDP agreement and reverse any relief already granted as **this is breach of contract.**

The collection of any outstanding debt will be handed over to the SARS Debt Collection Team.

# POTENTIAL PITFALLS

Dear [REDACTED]

Your submission was reviewed; however, the VDU's position remains unchanged.

Per previous correspondence, the net result for 2016 is as follows:

Assessments by VDU (tax excluding penalties)	
2016	
	R 5 327 390.32
	R -1 619 605.71
	-629846.56
	R -639 196.04
	R -3 889 717.44
	<b>= -R 1 450 975.43</b>

The net result of assessments raised by the VDU (tax only) relating to the 2015 and 2016 years of assessment, resulted in a net refund position of R 1 343 080.23 (2015: R107895.20 – 2016: -R1450975.43).

Accordingly, the application does not meet the requirements for a valid voluntary disclosure in terms of Section 227. The VDP agreement will be cancelled and relief granted reversed.

Sincerely



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Address: Gramick Office Park,  
281 Middel Street, Brooklyn, 0181

**Where the VDP results in a refund due by SARS to the taxpayer, SARS will cancel the VDP agreement, and any relief already granted will be reversed.**

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# COLLEEN KAUFMANN

Tax Attorney

# THE IMPORTANCE OF THE VDP AGREEMENT

- The VDP Agreement is **a contract between SARS and the Applicant;**
- **Both parties** are **obliged to give effect to the terms of the contract;**
- Grants taxpayer **full immunity from criminal prosecution** – this is **NOT** blanket immunity:

5.4 The Commissioner **will not pursue criminal prosecution for any statutory offence under a tax Act or a related common law offence in respect of the disclosed default.**

# THE IMPORTANCE OF THE VDP AGREEMENT

- The VDP agreement is of utmost importance due to the following factors:

✓ **Confirms the disclosure and what it relates to**, for instance:

- 9H exit tax;
- Cryptocurrency trading;
- Rental income; and/or
- Various other sources of income.

## 3 THE DEFAULT

- 3.1 The default as disclosed in the voluntary disclosure application form (VDP01) and detailed submission attached thereto, in respect of which relief is sought is the following:

### INCOME TAX

The non-disclosure of foreign capital gain as a result of emigration in respect of the 2017 tax year resulting in the underpayment of Income Tax.

## 3 THE DEFAULT

- 3.1 The default as disclosed in the voluntary disclosure application form (VDP01) and detailed submission attached thereto, in respect of which relief is sought is the following:

### INCOME TAX:

Cryptocurrency trading not declared, which resulted in the understatement of income in respect of the 2017 - 2019 tax periods.

## 3 THE DEFAULT

- 3.1 The default as disclosed in the voluntary disclosure application form (VDP01) and detailed submission attached thereto, in respect of which relief is sought is the following:

### INCOME TAX

The non-disclosure of foreign rental, interest and dividend income received in respect of the 2011 – 2020 tax years resulting in the underpayment of Income Tax.

# THE IMPORTANCE OF THE VDP AGREEMENT

- **Confirms the penalties waived**, R2,052,846.20 in the given extract;

## 5 RELIEF GRANTED TO THE APPLICANT

5.1 Penalties were reduced by the following amounts:

### INCOME TAX:

Tax Period	Underestimation of Provisional Tax – Par 20	Understatement Penalty (section 223(1) of TAACT)
2017	R 0.00	R 5 343.20
2018	R 22 866.38	R 108 179.12
2019	R 452 803.98	R 1 463 853.53
Total	R 475 470.36	R 1 577 375.84

- **Confirms amount to be paid and by when:**

## 8 PAYMENT

- 8.1 The full post relief amount of **R3 440 459.30** in respect of Income Tax as per clause 6 is due and payable. The Applicant undertakes to make full payment as per statement of account on or before **31/08/2020**, subject to further interest accruing after the due date of the assessment.
- 8.2 Any amount payable in terms of this Agreement that remains outstanding after the due date of payment will incur interest on the basis prescribed under the provisions of the relevant Tax Act.

## POLL #2

**Have you considered the potential implications of not applying for VDP where there are defaults, including penalties, and interest?**

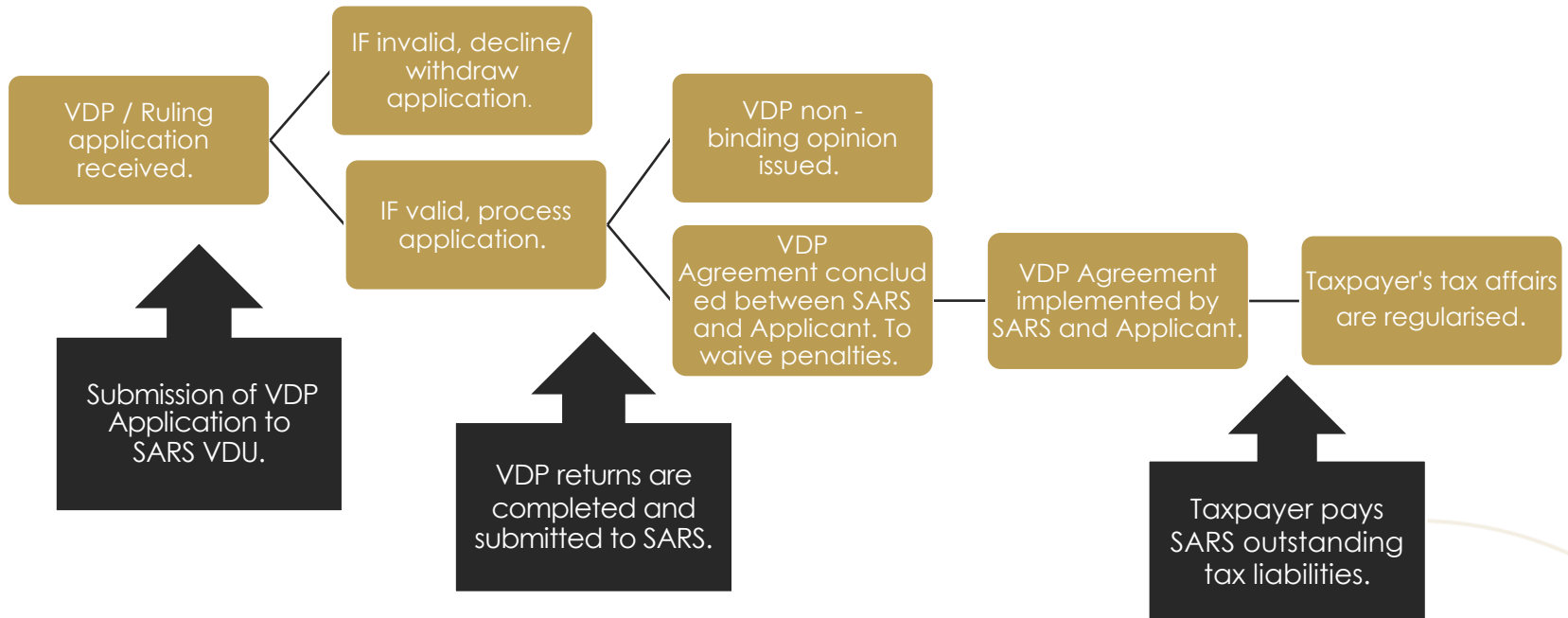
- a) Yes, I have carefully assessed the potential implications.
- b) No, I have not yet fully considered the aspects.
- c) I would like more information on the potential implications.

**Which aspect of the VDP process concerns you the most?**

- a) Gathering and organizing the necessary documentation for the application.
- b) Assessing and quantifying the potential tax liabilities involved.
- c) Understanding the potential penalties and consequences of non-compliance.
- d) Navigating the communication and interaction with SARS during the VDP process.

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# THE PROCESS OF A VDP APPLICATION: The end-to-end VDP Process





# THE PROCESS OF A VDP APPLICATION

Use attorneys for the VDP process and charge on time spent. In this way, **legal professional privilege is guaranteed**. There are **two (2) components to the process**:

## 1. Pre-submission

- Assess factual background to determine understatement behaviour, nature and extent of default for purposes of VDP. As any further discussions required to fully comprehend this.
- Drafting the factual background to the VDP application cover letter, providing draft to client for their review, consideration and amendment, (which includes engaging with client to narrow down the facts, extent of the disclosure required and making any amendments).
- Drafting legal portion of the VDP application cover letter, internal review of actual background and legal argument by manager, amendments to the cover letter and final senior partner review and sign-off.
- Completing VDP01 form and collating the cover letter and calculations, internal review and submission to SARS, includes receipt and review of SARS letter acknowledging receipt and correspondence with client to confirm status and submission.
- The estimated time frame to complete this is **3 – 4 weeks**.

# THE PROCESS OF A VDP APPLICATION (CONTINUED)

## 2. Post-submission:

- SARS will typically take 3 – 6 months before an evaluator is appointed.
- Thereafter, receipt and consideration of SARS evaluator's initial communication, comparison with VDP application to determine if any omitted items and preparing response, (includes communications with client to request any outstanding information and/or documentation and confirm status).
- Completing VDP tax returns for the years of non-compliance, meeting with accountant and/or client to confirm calculation and correct completion of return; and
- Thereafter, submitting returns to SARS, includes receipt of tax assessments and review for accuracy; and
- Further communications with client and accountant on this. Assist to sign off agreement and obtain SARS VDU counter-signature and further steps to finalise the VDP process.
- The estimated time frame to complete this is **2 – 4 weeks**.

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The image features a dark background with a glowing yellow grid pattern. The grid consists of concentric circles and radial lines, creating a perspective effect that draws the eye towards the center. The word "QUESTIONS" is written in a bold, white, sans-serif font, centered horizontally and vertically within the grid.

**QUESTIONS**



# READ MORE ON VDP

READ MORE

## TAXPAYERS REMAIN UNAWARE OF SARS' SAVING GRACE FOR NON-COMPLIANCE

The South African Revenue Service (SARS) has continually granted a lifeline to non-compliant taxpayers by keeping the Voluntary Disclosure Programme (VDP) open, which allows non-compliant taxpayers to come clean. The VDP came as a saving grace for many, especially as SARS began ramping up its efforts to eliminate non-compliance and massive collection drives.

READ MORE



André Daniels  
Head of Tax Controversy & Dispute Resolution

## SARS NAILS TAXPAYER BASED ON BANK INFORMATION

On 06 July 2023, the High Court handed SARS a big win in *CSARS v M (A5036/2023)* [2023] and where SARS challenged a taxpayer that what was on their tax return and bank account did not match. It is general knowledge that SARS knows everything in your bank account and this case is a perfect example of how SARS uses this information to arm themselves.

READ MORE



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READ MORE



# THANK YOU

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