



UNICUS **TAX UPDATE**

09 June 2026

Key Changes in SARS'
VDP Guide Issue 2



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HELLO & WELCOME!

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VDP GUIDE ISSUE 2: KEY CHANGES

- Purpose: highlight important changes and new SARS positions in the guide.
- Not a general VDP training session.
- Focus areas: eligibility, timing, voluntariness, penalties, agreements and practical risk points.

CUSTOMS AND EXCISE NOW TREATED SEPARATELY

- Issue 2 notes that the Customs and Excise Act now has its own voluntary disclosure programme.
- A TA Act VDP disclosure must not constitute an underpayment under section 77Z of the Customs and Excise Act.
- Issue 2 adds a dedicated section dealing with this new exclusion.
- Practical point: screen customs, excise, import VAT, levies and related issues before using the TA Act VDP route.

AUDIT CONCLUSION: NEW WORDING

- Issue 2 says an audit commences when the Notification of Audit is issued.
- It now says an audit is concluded once a Letter of Findings is issued, including the applicable assessment issued thereto.
- The added assessment wording may extend the period during which SARS says the audit remains unconcluded.

AUDIT CONCLUSION: NEW WORDING

- Practical point: timing of VDP applications after findings but before assessment may now be more contested.
 - SARS will apparently update the guide to remove the reference to section 42 in support of their conclusion and will double down on the fact that an audit is only finalised once finalisation letter is issued
 - This is because auditors often do more work after the audit findings letter has been issued.
 - They appear to treat section 42 letters as mere formalities and appears to ignore its actual purpose.

VERIFICATION AND INSPECTION REMAIN OUTSIDE SECTION 226(2)

- Issue 2 keeps the distinction between audit, verification and inspection.
- Verification or inspection is not itself an audit for section 226(2).
- But SARS says a disclosure may still fail if the taxpayer became aware of the default because of verification or inspection.
- Practical point: consider both section 226(2) disqualification and section 227(a) voluntariness.

VOLUNTARINESS: STRONGER RELIANCE ON PURVEYORS

- Issue 2 gives fuller treatment to Purveyors and the idea of being unprompted.
- SARS emphasises that a disclosure should be made freely, before SARS compliance action prompts it.
- Informal SARS engagement can create risk if the taxpayer later files a VDP application.
- Practical point: record when the taxpayer first became aware of the default and what prompted the disclosure.

SECTION 227(D): BEHAVIOUR VS UNDERSTATEMENT PENALTY

- Issue 2 says section 227(d) cannot be limited only to behaviour.
- SARS says the understatement must result in an understatement penalty and therefore a shortfall.
- This is a controversial SARS position.
- Counterpoint: section 227(d) refers to behaviour in column 2, and VDP relief also includes protection against criminal prosecution.
 - 2015 amendment and EM

EXEMPT INCOME AND NO-SHORTFALL DISCLOSURES

- Issue 2 repeats SARS's view that a disclosure with no shortfall may not qualify for VDP.
- Example: omitted foreign interest below the exemption threshold.
- SARS says such matters should be corrected through normal SARS channels, not VDP.
- Practical point: distinguish a harmless reporting defect from a default causing broader prejudice or other tax consequences.
- Still prejudice? Still understatement? Still criminal prosecution risk? No USP required

FULL AND COMPLETE DISCLOSURE: CROSS-TAX ISSUES

- Issue 2 adds that a default disclosed for one tax type may have implications for another tax type.
- Example: income tax default with possible VAT implications.
- SARS says the potential cross-tax issue must be disclosed for the application to be full and complete.
- Practical point: VDP applications should identify known, suspected and still-being-quantified implications across tax types.

SIMILAR DEFAULTS: MORE EXAMPLES AND BROADER RISK

- Issue 2 expands examples of similar defaults within the five-year rule.
- New examples include VAT apportionment-ratio defaults and PAYE fringe-benefit defaults.
- SARS focuses on the nature of the default, not only the exact period or transaction.
- Practical point: check prior VDP disclosures by the taxpayer and relevant related persons before filing.

FAILURE TO REGISTER: 21 BUSINESS DAYS IS NOT FIXED

- Issue 2 keeps SARS's general practice of allowing 21 business days after registration to submit the VDP application.
- But it clarifies that this is not a fixed timeframe.
- The VDP Unit may allow more time depending on the facts.
- Practical point: engage the VDP Unit early if registration and quantification will take longer.

VDP AGREEMENTS: MEDTRONIC AND FINALITY

- Issue 2 adds a substantial discussion of Medtronic.
- SARS says a signed voluntary disclosure agreement is final and binding.
- The applicant cannot later seek relief for the same disclosure outside the VDP parameters.
- Practical point: resolve interest, payment terms and remission strategy before signing the agreement.

REJECTION AND SECTION 9 RECONSIDERATION

- Issue 2 expands the discussion of section 9.
- A rejection decision is not subject to objection and appeal.
- A taxpayer may ask SARS to withdraw or amend the decision under section 9.
- Practical point: prepare reconsideration requests with the same care as a legal submission.

KEY TAKEAWAYS FOR ADVISERS

- Do not treat Issue 2 as a cosmetic update.
- Screen timing, SARS contact and audit status before filing.
- Identify cross-tax consequences upfront.
- Be cautious about no-shortfall cases and the SARS section 227(d) position.
- Resolve all agreement issues before signing.

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