

EXTERNAL REFERENCE GUIDE

TREATMENT OF PAYE FOR VDP PURPOSES

1 PURPOSE

- The purpose of this document is to provide guidelines for the treatment of the Pay As You Earn (PAYE) for Voluntary Disclosure Programme (VDP) purposes.

2 SCOPE

- This guide provides guidelines on how to treat Pay As You Earn (PAYE) for Voluntary Disclosure Programme (VDP) purposes.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act 28 of 2011
Other Legislation:	None
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
VDP-GN-02-G01	Application for Voluntary Disclosure: External Reference Guide	All
AS-PAYE-05	AS-PAYE-05 - Guide for Employers in respect of Employees Tax	All

4 DEFINITIONS AND ACRONYMS

Commissioner	Commissioner for the South African Revenue Service.
PAYE	Pay As You Earn
SARS	South African Revenue Services
Employer	Any person who pays or is liable to pay a person an amount by way of remuneration including a person responsible for the payment of an amount by way of remuneration to a person under the provisions of a law or out of public funds or out of funds voted by parliament or Provincial Council. This definition excludes any person not acting as a principle but includes any person acting in a fiduciary capacity or in his / her capacity as trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund.
VDP	Voluntary Disclosure Programme

5 INTRODUCTION

- The Tax VDP aims to encourage taxpayer compliance and broaden the taxpayer base. During the VDP period, taxpayers may voluntarily apply to SARS to disclose their defaults and regularise their tax affairs.
- The Tax VDP is applicable to all taxes administered by SARS.

6 TREATMENT OF PAYE FOR VDP PURPOSES

- Employers who wish to regularise their employees' tax (PAYE) affairs in terms of the Voluntary Disclosure Programme (VDP) must apply in the prescribed manner and follow guidelines *hereunder*.

- The following two circumstances need to be considered :
 - Where employer recovers employees tax from the employees concerned
 - Where employer does not recovers employee's tax from the employees concerned.

6.1 Where employer recovers employees tax from the employees concerned

- Determine total PAYE amount payable to SARS:
 - Please refer to - AS-PAYE-05- Guide for Employers in respect of Employees Tax for guidelines on how to determine the PAYE amount payable to SARS.
- Issue an **amended IRP5/IT3(a) tax certificate** for each employee **from whom the PAYE amount was recovered** to include:
 - additional remuneration;
 - additional PAYE recovered; and
 - VDP181356 must be completed in the "directive number" field.
- In respect of employees **from whom the PAYE amount was NOT recovered** (i.e. where the relevant employees have left the service of the employer), the following IRP5/IT3(a) tax certificates must be issued:
- An **amended tax certificate for each employee** to include:
 - additional remuneration;
 - VDP181356 must be completed in the "directive number" field; and
 - No additional PAYE must be reflected on this certificate
- **One global IRP5 certificate** must be issued for the total employees' tax **NOT recovered from employees** with:
 - nature of person must be completed as F;
 - no income tax reference number must be completed;
 - the Surname/Other name must be completed as "VDP EMPLOYER AGREEMENT";
 - remuneration must be completed under code 3601 as R 1;
 - total of PAYE not recovered must be completed under code 4102; and
 - VDP181356 must be completed in the "directive number" field on the certificate.
- Amend the relevant EMP501 reconciliation and submit together with the revised and new VDP tax certificates to SARS.
- Individual employees should submit revised ITR12 returns to declare the revised IRP5/IT3(a) certificates. In the case of provisional taxpayers with a potential section 89 *quat* interest implication, a VDP application can be considered.

6.2 Where employer does not recover employee's tax from the employees concerned.

- Determine total PAYE amount payable to SARS:
 - Please refer to - AS-PAYE-05- Guide for Employers in respect of Employees Tax for guidelines on how to determine the PAYE amount payable to SARS.
- Where an employer elects not to recover the PAYE payable from the relevant employees and pay the PAYE on behalf of the employees, a fringe benefit is granted to each employee, namely, "payment of

employee's debt". The benefit due to the payment of the employee's debt will result in another benefit on which tax again becomes payable – this tax-on-tax benefit is calculated in accordance with the following prescribed formula:

$$\frac{\text{"Taxable amount"} \times 100}{100 - \text{employee's marginal tax rate}} = \text{"Taxable amount plus tax on tax benefit"}$$

- The "taxable amount" represents the value of the remuneration in respect of which the employer wishes to regularize the PAYE.
 - The full "Taxable amount" plus tax on tax benefit" represents remuneration.
 - The difference between the full "Taxable amount plus tax on tax benefit" and the "Taxable amount" represent the tax attributable to the tax-on-tax ("payment of employee's debt").
- **NOTE:** Where the gross-up of the taxable remuneration results in an increase in the tax rate from one tax bracket to the next, the marginal tax rate in the above formula must be increased by 1%, for example, marginal rate equals 18%, increase by 1% to 19%.
- One **global IRP5 certificate** must be issued for the total employees' tax **NOT recovered from employees (including the value of the tax attributable to the tax-on-tax calculation above)** with:
 - nature of person must be completed as F;
 - no income tax reference number must be completed;
 - the Surname/Other name must be completed as "VDP EMPLOYER AGREEMENT";
 - total remuneration (total "Taxable amount plus tax on tax benefit") must be completed under code 3601;
 - total of PAYE not recovered must be completed under code 4102; and
 - VDP181356 must be completed in the "directive number" field on the certificate.
- Amend the relevant EMP501 reconciliation and submit together with the new VDP tax certificate to SARS.

7 ENQUIRIES

- More information regarding the Voluntary Disclosure Programme is available via the following channels:
 - SARS website : www.sars.gov.za
 - By email : vdp@sars.gov.za
 - By phone : 0800 86 46 13
 - By Post : 281 Middle Street
Gramick Office Park
Brooklyn
0181, or
Private Bag X923
Pretoria
0001

Please note: The Voluntary Disclosure Unit can be visited by prior appointment.

8 QUALITY RECORDS

Number	Title
IRP5/IT3(a)	Employee Income Tax Certificate
EMP501	Employer Reconciliation of tax deductions and certificates.

9 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Chief Officer: Legal and Policy
Policy Owner:	Executive: Enterprise Business Enablement (EBE)
Author:	Tebogo Mogosoana
Detail of change from previous revision:	Revision 1 – Changing governing legislation to Tax Administration Act.
Template number and revision	POL-TM-07 - Rev 3