

# Criminal prosecution: Just another reason to pay your tax

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The country's tax base have reason to be a tad nervous, now that South African Revenue Service (Sars) has embarked on an initiative to criminally prosecute taxpayers who fail to submit their returns.



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Whilst the threat of a criminal record and a fine ought to serve as sufficient incentive to submit one's return, it is perhaps worth pointing out that submission of returns also gives taxpayers access to the Voluntary Disclosure Programme (VDP), which affords acquittal from far more serious criminal sanctions.

## Criminal sanctions under the TAA

South African taxpayers are not unfamiliar with Sars' aggressive implementation of the authority afforded to it under the Tax Administration Act No. 28 of 2011 (TAA) insofar as the collection taxes and the imposition of penalties.

With Sars' new initiative, taxpayers have now seen that revenue service's powers go beyond imposing monetary penalties. Generally, failure to comply with the prescripts of the TAA amounts to a criminal offense, which is subject to a fine or to imprisonment for a period not exceeding two years. These offenses, as we have now seen, may result in a fine and a criminal record, but rarely ends with the taxpayer behind bars.

A criminal record is certainly not something to brush aside, but the TAA also makes provision for more serious sanctions where there is intent to evade tax, which can result in actual jail time for the taxpayer.

## Reprieve under the TAA - VDP

The TAA is, arguably, partisan to Sars' cause, but it does offer non-compliant taxpayers some solace if they wish to come clean.

This allows taxpayers to avoid criminal prosecution and regularise their tax affairs by making a disclosure under the VDP, of which the benefits include:

- Regularise tax affairs;
- Remittance of 100% of understatement penalties;
- Remittance of 100% of administrative non-compliance penalties;
- Transfer foreign funds back to South Africa “clean”; and
- Amnesty from criminal prosecution.

Taking into consideration the potential ramifications non-compliant taxpayers might face, the VDP represents an appealing olive branch.

The VDP, however, comes with an important caveat, which is that taxpayers only have access if they do not have any outstanding returns. VDP applications will be discarded without further notice if the taxpayer in question has outstanding returns.

## Take away

It is worth noting that the new initiative, to close more criminal cases, does not represent a widening of Sars’ powers, as it has always had the discretion to do so. What the initiative illustrates is the tax office’s no-tolerance policy on outstanding returns.

Taxpayers who are not deterred by the sanctions for not submitting returns must keep in mind that they cannot regularise other instances of non-compliance under the VDP, instances which carry far more severe sanctions.

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