

EXTERNAL POLICY

ADMINISTRATION OF AN INQUIRY

1 SCOPE

- This policy applicable to the following Divisions:
 - Tax and Customs Investigation Enforcement Division (TCEI)
 - Operations Audit Division
 - Legal and Policy Division and
 - Large Business Centre (LBC)

2 POLICY STATEMENT

2.1 Constitution of Inquiry

- A Senior SARS official may apply to court for an order to institute an Inquiry against a person where there are reasonable grounds to believe that a person has:
 - Failed to comply with an obligation imposed under a tax Act, or
 - Committed a tax offence.
- A Senior SARS official may also apply for an order to institute an Inquiry where there are reasonable grounds to believe that the relevant material that is likely to be revealed during the inquiry may provide proof of failure to comply with a tax Act or commission of an offence.
- Such an application to court must :
 - Designate a as a presiding officer before whom that Inquiry is to be held.
 - Identify the person alleged to have:
 - Failed to comply with an obligation under a tax Act or
 - Committed an offence.
 - Reference to the alleged non-compliance or offence to be inquired into and
 - The scope of the Inquiry.

2.2 Powers of the Presiding Officer

- The presiding officer may:
 - By notice in writing, require any person whether or not chargeable to tax to:
 - Appear before the Inquiry, at the time and place designated in the notice, for the purpose of being examined under oath or solemn declaration and
 - Produce any relevant material in the custody of that person.
 - On request, exclude a person from the inquiry if the person attendance is prejudicial to the inquiry, or
 - Direct that a person receive witness fees to attend an Inquiry in accordance with the tariffs prescribed in terms of the Magistrate Court Act 32 of 1994

2.3 Testimony at the Inquiry

- Although inquiry proceedings are private and confidential, SARS may use evidence given by a person under oath or solemn declaration at an inquiry in a subsequent proceeding involving that person or another person.
- Incriminating evidence obtained under section 57 of the Tax Administration Act is not admissible in criminal proceedings against the person giving the evidence, except if it relates to the following :
 - Administering or taking of an oath or the administering or taking of a solemn declaration
 - Giving of false evidence or the making of a false statement or
 - Failure to answer questions lawfully, put to that person, fully and satisfactory.
- Inquiry is not suspended by the fact that there is an pending or contemplated civil or criminal proceedings against:
 - A person that is subject of the inquiry,
 - A witness or potential witness to the inquiry or
 - Any other person whose affairs may be investigated in the course of the inquiry.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act 28 of 2011: Sections 50, 51, 52, 53, 54, 55, 56, 57 and 58
Other Legislation:	Magistrate Court Act 32 of 1994: Section 51 <i>bis</i>
International Instruments:	None.

3.2 CROSS REFERENCES

None.

4 DEFINITIONS AND ACRONYMS

LBC	Large Business Centre
SARS	South African Revenue Service
SOP	Standard Operating Procedures
TCEI	Any person or enterprise conducting business with SARS

5 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Chief Officer: Tax and Customs Investigation Enforcement Division Chief Officer: Legal and Policy Division Group Executive: Large Business Centre Group Executive: Operations Audit
Policy Owner:	Executive: Enterprise Business Enablement
Author:	Tebogo Mogosoana
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