



Criminal Tax Investigations

Conducting Financial Investigations (Foundation)- OECD

Presenter- Stephen Smith



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Criminal Tax Investigations

Definition

“Criminal Investigation can be defined as a systematic, organized, thinking, reasoning, examination and analytical process designed to search for the truth regarding an alleged crime as defined in law”- in this case tax legislation. ¹

The investigator must gather information and evidence using investigative techniques with the sole purpose of bringing the perpetrator(s) before a court of law.

These investigative methods can be prescribed and guided by procedural law and admissibility in terms of evidence law.

Criminal Tax Investigations

Types

- Different types of tax investigations
 - Value Added Tax Investigations
 - Income Tax Investigations (Individual/Company)
 - Customs and Excise Investigations

(The above can be investigated separately or jointly depending on the allegation)

 - Lately SARS has been doing a lot of investigations regarding government procurement because the South African Police Service and the Directorate for Priority Crimes do not have the necessary expertise to conduct complex financial investigations.
 - This is internally broken down into a standard case (non-filing of returns), integrated case (types of tax evasion across all tax types) or a specialised case (project management approach to complex investigations).

Criminal Tax Investigations

Objectives

There is an obligation on taxpayers to declare their taxable income truthfully and within the timeframe as promulgated by legislation.

Practices like tax avoidance are dealt with civilly. Minor transgression such as late filing can lead to a penalty, without any adverse effect on the taxpayer.

There are however certain taxpayers who have no regard for the legislative framework and engaged in serious willful acts of tax evasion. There are different types of serious acts of non-compliance.

Examples: The taxpayer grossly underdeclared his/her taxable income thus lessening his/her tax liability – IT; The taxpayer engaged in fraud by only trading on paper, submitting false invoices to substantiate fraudulent refund claims – VAT; The importer falsely declared a different commodity to pay little or no custom duties – Customs.

The objective of a criminal tax investigation is foremost to ensure compliance with the tax legislation and to ensure that revenues due are being paid to the fiscus.

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Evidence

- Company registration particulars to identify the directors of the company.
- Tax application form for the different types of taxes to identify the representative vendor (means the person who made the application for the tax reference number).
- Copies of the physical or electronic filing of the tax forms in dispute.
- Bank information of the company or individual (to prove who is the signatory on the account and a bank analysis to establish the flow of money)
- Verification through third parties (suppliers' invoices authenticity; tax practitioners who completed the tax forms on behalf of the company or individuals)
- Verification of purported business address and residential address.
- Verification of identity documents with our Home Affairs as well the movement control of the owner (where the latter might be a foreign national).

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Quality Assurance Process

This process ensures that the final product, the docket handed to external stakeholders such as the South African Police Service and National Prosecuting Authority is of a high standard, to ensure a speedy trial with due regard for the suspect/s constitutional rights.

Internally, before a case docket is registered with the South African Police Service it is reviewed by an independent quality inspector who: checks for adherence to the standard operating procedures; if the case docket comply with generally accepted ABC docket format used by enforcement agencies and if there is no ambiguity regarding the offences identified. If any rework was identified the docket is referred to the investigator to rectify.

The docket is then submitted to the Regional Review Committee who decides whether the matter can be referred to a National Committee for approval and referral to the South African Police Service and National Prosecuting Authority.

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External Enforcement Role Players

1) South African Police Service (Specialised Commercial Crime Unit)

- Register case with local SAPS office, who will refer it to the “SCCU”.
- Trace the suspect(s) and take the warning statement(s) on instruction of the National Prosecuting Authority.
- Arrest the suspect(s). SARS does not have any arresting powers.

2) National Prosecuting Authority (Specialist Tax Unit and Asset Forfeiture Unit)

- Draft the relevant chargesheet outlining the offences perpetrated by the suspect(s) and losses to the fiscus, after reviewing the docket and discussions with the IO. Rely on common law offences or statutory legislation.
- Use witness testimony to proof the state’s case beyond reasonable doubt to attain a conviction.
- Asset Forfeiture Unit gets involved when the court establish that assets were obtained through ill-gotten gains, and it can be seized by the state.

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Outcome

The outcome of a completed criminal tax investigation is that gross non-compliance are addressed in a court of law, where the suspect/s who intentionally and willfully committed acts of tax evasion are brought to book in accordance with the rights afforded to them in terms of relevant procedural law and the Constitution.

To ensure that the tax base comply with their tax obligation in order to ensure the revenue authority execute its mandate – which is the collection of revenue- which is then used by government in different government departments for the benefit of all citizens.

THANK YOU.

MERCI BEAUCOUP (French)

ASANTE SANA (Swahili)

DAALU (Igbo)/ EDUPE(Yoruba)