



Tax Alert



April 2019

Inquiries under the Tax Administration Act

With revenue collections under pressure, taxpayers should expect the revenue authorities to make greater use of the information gathering powers that Inquiries afford.

It is common knowledge that the South Africa Revenue Service (SARS) missed its collection targets for the financial year ended 31 March 2019 by R14.6 billion. Given that the Nugent Commission of Inquiry into SARS that found that the failure of integrity and governance at SARS compromised the performance of its core function of collecting tax coupled with tough economic conditions in South Africa, the shortfall is not surprising.

Recent plans to reconstitute the Large Business Centre, strengthen Information Technology systems and to re-establish the illicit economy unit should go some way to improving tax collections going forward. However, taxpayers across the board can expect more pressure from SARS to collect revenue. Recalcitrant taxpayers or taxpayers with complex tax planning structures in particular can expect intense scrutiny through greater use of provisions of the Tax Administration Act such as the Inquiry proceedings contained in section 50 of that Act.

Section 50 Inquiries are established by order of a judge of the High Court on application by SARS. The Tax Administration Act provides for such applications to be on an unopposed basis. An Inquiry can be established where there are reasonable grounds to believe that a person has failed to comply with an obligation under a tax act, committed a tax offence or disposed of, removed or concealed assets which may fully or partly satisfy an outstanding tax debt. In order to succeed in the request, SARS must also demonstrate that there are reasonable grounds to believe that relevant material is likely to be revealed during the course of the Inquiry which may provide proof of the action, omission or offence alleged. We have seen these orders increasingly been granted against corporate taxpayers especially where SARS is of the view that the activities of the entities concerned are in some way involved in what SARS considers tax avoidance schemes or where large scale VAT fraud and tax evasion is suspected.

Most taxpayers would be surprised to find themselves in such company. However, from a closer examination of the provisions of section 50, it is clear that the provisions are not only applicable where criminal investigation is likely.

In addition, persons called to account at an Inquiry need not be the person or taxpayer under scrutiny from SARS (for example, SARS could be seeking information on suppliers or customers of the person called to the Inquiry). A section 50 notice for a person to appear in the inquiry is stressful and time consuming both in the time that it takes to appear as well as collating the volumes of information often requested at very short notice.

Persons appearing before the Inquiry may be accompanied by a representative. Our dispute resolution team can assist throughout the process including acting as your representative at the Inquiry.

For more information, please contact:



Roula Hadjipaschalis
Partner, Corporate Tax and
Head of Dispute Resolution & Tax
Controversy
KPMG SA
M: +27 (0)83 289 6510
E: roula.hadjipaschalis@kpmg.co.za



Etienne Pretorius
Senior Tax Consultant, Indirect Tax: VAT
KPMG SA
M: +27 (0)60 976 0398
E: etienne.pretorius@kpmg.co.za

