

(4) The taxpayer may waive the right to receive the document.

(5) Subsections (1) and (2)(b) do not apply if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress or outcome of the audit.

(6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104(2) resulting from the audit and the grounds of the assessment must be provided to the taxpayer within 21 business days of the assessment or the decision referred to in section 104(2), or the further period that may be required based on the complexities of the audit. 5

Referral for criminal investigation 10

43. (1) If at any time before or during the course of an audit it appears that a person may have committed a serious tax offence, the investigation of the offence must be referred to a senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued.

(2) Relevant material gathered during an audit after the referral, must be kept separate from the criminal investigation and may not be used in criminal proceedings instituted in respect of the offence. 15

(3) If an investigation is referred under subsection (1) the relevant material and files relating to the case must be returned to the SARS official responsible for the audit if—

- (a) it is decided not to pursue a criminal investigation; 20
- (b) it is decided to terminate the investigation; or
- (c) after referral of the case for prosecution, a decision is made not to prosecute.

Conduct of criminal investigation

44. (1) During a criminal investigation, SARS must apply the information gathering powers in terms of this Chapter with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation. 25

(2) In the event that a decision is taken to pursue the criminal investigation of a serious tax offence, SARS may make use of relevant material obtained prior to the referral referred to in section 43.

(3) Relevant information obtained during a criminal investigation may be used for purposes of audit as well as in subsequent civil and criminal proceedings. 30

Part B

Inspection, request for relevant material, audit and criminal investigation

Inspection

45. (1) A SARS official may, for the purposes of the administration of a tax Act and without prior notice, arrive at a premises where the SARS official has a reasonable belief that a trade or enterprise is being carried on and conduct an inspection to determine only— 35

- (a) the identity of the person occupying the premises;
- (b) whether the person occupying the premises is registered for tax; or 40
- (c) whether the person is complying with sections 29 and 30.

(2) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for the purposes of trade, under this section without the consent of the occupant.

Request for relevant material 45

46. (1) SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.

- (4) Die belastingpligtige mag afstand doen van die reg om die dokument te ontvang.
- (5) Subartikels (1) en (2)(b) is nie van toepassing nie indien 'n senior SAID-amptenaar redelikerwys glo dat nakoming van daardie subartikels die doel, vordering of uitkoms van die oudit sal verhinder of benadeel.
- (6) SAID kan onder die omstandighede in subartikel (5) beskryf, die aanslag uitreik 5
of die beslissing bedoel in artikel 104(2) maak voortspruitend uit die oudit en die gronde
vir die aanslag moet aan die belastingpligtige verskaf word binne 21 besigheidsdag
vanaf die aanslag of beslissing bedoel in artikel 104(2) of die verdere tydperk wat vereis
word gebaseer op die ingewikkeldheid van die oudit.

Verwysiging vir strafregtelike ondersoek 10

43. (1) Indien dit op enige tyd voor of gedurende 'n oudit blyk dat 'n persoon moontlik 'n ernstige belastingmisdryf gepleeg het, moet die ondersoek van die misdryf na 'n senior SAID-amptenaar verantwoordelik vir strafregtelike ondersoek verwys word vir 'n besluit of 'n strafregtelike ondersoek onderneem moet word.
- (2) Tersaaklike materiaal gedurende 'n oudit maar ná die verwysing verkry moet apart 15
gehou word van die strafregtelike ondersoek en kan nie in strafregtelike gedinge met
betrekking tot die misdryf ingestel, gebruik word nie.
- (3) Indien 'n ondersoek kragtens subartikel (1) verwys word, moet die tersaaklike materiaal en lêers wat met die saak verband hou aan die SAID-amptenaar verantwoordelik vir die oudit terugbesorg word, indien— 20
- (a) daar besluit word om nie 'n strafregtelike ondersoek voort te sit nie;
 - (b) daar besluit word om die ondersoek te beëindig; of
 - (c) ná verwysing van die saak vir vervolging, 'n besluit geneem word om nie te vervolg nie.

Uitvoer van strafregtelike ondersoek 25

44. (1) Gedurende 'n strafregtelike ondersoek, moet SAID die bevoegdheids om inligting te verkry ingevolge hierdie Hoofstuk uitoefen, met behoorlike erkenning van die belastingpligtige se grondwetlike regte as 'n verdagte in 'n strafregtelike ondersoek.
- (2) Ingeval 'n besluit geneem word om die strafregtelike ondersoek van 'n ernstige belastingmisdryf voort te sit, kan SAID gebruik maak van die tersaaklike materiaal 30
verkry voor die verwysing bedoel in artikel 43.
- (3) Tersaaklike inligting verkry gedurende 'n strafregtelike ondersoek kan vir die doeleindes van oudit sowel as in daaropvolgende siviele of strafregtelike gedinge gebruik word.

Deel B 35

Inspeksie, aanvra van tersaaklike materiaal, oudit en strafregtelike ondersoek

Inspeksie

45. (1) 'n SAID-amptenaar kan, vir die doeleindes van die administrasie van 'n Belastingwet en sonder vooraf kennisgewing, by 'n perseel opdaag waar die SAID-amptenaar 'n redelike vermoede het 'n bedryf of onderneming beoefen word en 40
'n inspeksie uitvoer om slegs te bepaal—
- (a) wat die identiteit is van die persoon wat die perseel beset;
 - (b) of die persoon wat die perseel beset vir belasting geregistreer is; of
 - (c) of die persoon die bepalings van artikels 29 en 30 nakom.
- (2) 'n SAID-amptenaar mag nie kragtens hierdie artikel 'n woonhuis of woonperseel, 45
behalwe enige deel daarvan wat vir bedryfsdoeleindes gebruik word, sonder die
toestemming van die bewoner betree nie.

Aanvra van tersaaklike materiaal

46. (1) SAID kan, vir die doeleindes van die administrasie van 'n Belastingwet met betrekking tot 'n belastingpligtige, hetsy geïdentifiseer by name of andersins objektief 50
identifiseerbaar, van die belastingpligtige of 'n ander persoon vereis om binne 'n
redelike tyd tersaaklike materiaal (hetsy mondelings of skriftelik) deur SAID vereis, te
verskaf.

- (2) A senior SARS official may require relevant material in terms of subsection (1) in respect of taxpayers in an objectively identifiable class of taxpayers.
- (3) A request by SARS for relevant material from a person other than the taxpayer is limited to the records maintained or that should reasonably be maintained by the person in relation to the taxpayer. 5
- (4) A person receiving from SARS a request for relevant material under this section must submit the relevant material to SARS at the place and within the time specified in the request.
- (5) SARS may extend the period within which the relevant material must be submitted on good cause shown. 10
- (6) Relevant material required by SARS under this section must be referred to in the request with reasonable specificity.
- (7) A senior SARS official may direct that relevant material be provided under oath or solemn declaration.
- (8) A senior SARS official may request relevant material that a person has available for purposes of revenue estimation. 15

Production of relevant material in person

- 47.** (1) A senior SARS official may, by notice, require a person, whether or not chargeable to tax, to attend in person at the time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the person, if the interview— 20
- (a) is intended to clarify issues of concern to SARS to render further verification or audit unnecessary; and
 - (b) is not for purposes of a criminal investigation.
- (2) The senior SARS official issuing the notice may require the person interviewed to produce relevant material under the control of the person during the interview. 25
- (3) Relevant material required by SARS under subsection (2) must be referred to in the notice with reasonable specificity.
- (4) A person may decline to attend an interview, if the distance between the place designated in the notice and the usual place of business or residence of the person exceeds the distance prescribed by the Commissioner by public notice. 30

Field audit or criminal investigation

- 48.** (1) A SARS official named in an authorisation referred to in section 41 may require a person, with prior notice of at least 10 business days, to make available at the person's premises specified in the notice relevant material that the official may require to audit or criminally investigate in connection with the administration of a tax Act in relation to the person or another person. 35
- (2) The notice referred to in subsection (1) must—
- (a) state the place where and the date and time that the audit or investigation is due to start (which must be during normal business hours); and 40
 - (b) indicate the initial basis and scope of the audit or investigation.
- (3) SARS is not required to give the notice if the person waives the right to receive the notice.
- (4) If a person at least five business days before the date listed in the notice advances reasonable grounds for varying the notice, SARS may vary the notice accordingly, subject to conditions SARS may impose with regard to preparatory measures for the audit or investigation. 45
- (5) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for the purposes of trade, under this section without the consent of the occupant. 50

Assistance during field audit or criminal investigation

- 49.** (1) The person on whose premises an audit or criminal investigation is carried out, must provide such reasonable assistance as is required by SARS to conduct the audit or investigation, including—