

**NATIONAL COUNCIL OF PROVINCES  
QUESTION FOR WRITTEN REPLY  
QUESTION NUMBER: PQ 317 [CW416E]  
DATE OF PUBLICATION: 16 AUGUST 2013**

**317. Mr K A Sinclair (COPE-NC) to ask the Minister of Finance:**

- (1) Whether there was a meeting between the National Treasury and a certain person (name furnished) over the said person's tax affairs before they were published in the media; if not, what is the position in this regard; if so, what are the relevant details;
- (2) whether the publishing of tax affairs of persons who fall foul of the National Treasury (a) will be a practice applied to all other high profile cases, (b) was a once-off and/or (c) will become the new modus operandi to name and shame any offenders; if not, what is the position in this regard; if so, what are the relevant details in each case?

CW416E

**REPLY:**

- (1) Only SARS may act in matters related to the administration of tax law. National Treasury does not play any role in such matters.

Meeting a taxpayer with a view to finding solutions to tax issues happens every day to correct mistakes, to arrange payment of debts, to clarify audit queries, amongst others. It is, therefore, not an unusual situation for SARS and is not a privilege accorded to a specific taxpayer but one of the means by which SARS generally engages taxpayers whose compliance may have come into question, or to resolve issues outlined above.

SARS does not, as a principle, resort to its enforcement powers at the first instance of non-compliance with tax law unless the actions of the taxpayer require no less. SARS understands that non-compliance may arise from a range of causes – from ignorance, error or negligence to the deliberate flouting of the law.

SARS' response to a taxpayer is, thus, attuned to their behaviour and the reason for the non-compliance. SARS processes range from verification to auditing to debt collection to legal action in the courts.

At any stage in these processes it may be necessary to call the taxpayer in question for a meeting.

With respect to the taxpayer in question, it is a matter of public record that SARS met the taxpayer on several occasions since January 2010. In summary, the meetings were held with the following objectives in mind;

- To urge him to submit his tax returns where they were outstanding;
- To verify certain issues during the review of the returns he had submitted; and

- To afford him an opportunity to submit a proposal to settle the outstanding debt.

All of these meetings took place prior to the publication of the taxpayer's affairs on 2 August 2013.

- (2) Only SARS may act in matters related to the administration of tax law. National Treasury does not play any role in such matters.

The disclosure of a person's tax affairs is governed by the provisions of section 67 of the Tax Administration Act 28 of 2011. Disclosure of taxpayer information is generally prohibited unless it falls within the precepts of sub-section 67(5) which states that:

*“The Commissioner may, for purposes of protecting the integrity and reputation of SARS as an organisation and after giving the taxpayer at least 24 hours' notice, disclose taxpayer information to the extent necessary to counter or rebut false allegations or information disclosed by the taxpayer, the taxpayer's duly authorised representative or other person acting under the instructions of the taxpayer and published in the media or in any other manner.”*

The public prominence of a person (*“high profile”*) does not define the person's status under tax law. Secondly, s67(5) does not refer to a taxpayer's status but, rather, to their behaviour. As with any other provision of tax law, it will apply similarly to taxpayers who behave similarly.

A letter was addressed to the taxpayer in question on 27 June 2013 warning him to rectify the following false allegations within 48 hours:

- That there was an agreement in principle between him and SARS to repay outstanding tax liabilities and that the agreement was breached by SARS due to political interference
- That a request for a compromise was declined by SARS due to political interference
- That SARS was part of a “concerted effort” to discredit him and caused his farm to be sold to remove all means for him to generate an income.

In subsequent weeks, he repeated such allegations in various news interviews and refused to rectify the record.

SARS considered the allegations to have impugned its record of impartiality and the integrity with which it carries out its duties and acted accordingly. SARS' credibility should be beyond question if it is to fulfil its mandate and encourage voluntary compliance by taxpayers.

It is only in situations similar to the above paragraph that SARS will use the Section 67(5).