

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 27 [C984E]
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27. The Leader of the Opposition (DA) to ask the Minister of Finance:

- (1) (a) What are the terms of reference of the SA Revenue Service's tax inquiry into Bosasa and persons associated with Bosasa and (b) by what date is the inquiry expected to be completed;
- (2) whether the inquiry will investigate the R500 000 donation made by Bosasa to the CR17 African National Congress presidential campaign of the President of the Republic, Mr M C Ramaphosa; if not, why not; if so, what are the relevant details;
- (3) whether, in line with the provision of section 69(2)(d) of the Tax Administration Act, Act 28 of 2011, the specified R500 000 donation was declared for (a) income and/or (b) donations tax; if not, in each case, why not; if so, what are the relevant details?

NW984E

REPLY:

The questions relate to taxpayer information provided by a taxpayer and taxpayer information obtained by SARS in respect of a taxpayer. SARS is prohibited from disclosing such taxpayer information in terms of section 68 (1)(b) of the Tax Administration Act, Act 28 of 2011

SARS GOVERNANCE IN RESPECT OF OUR CASE SELECTION

The legislative provisions governing tax inquiries is contained in Chapter 5 of the Tax Administration Act, No. 28 of 2011 ("TAA"). A tax inquiry is a formal process with witnesses subpoenaed and evidence being led under oath or solemn declaration, but it remains an information gathering mechanism.

We think it would be helpful to share members of parliament what process we follow when a matter comes to our attention.

SARS has an independent case selection methodology to protect the governance of how matters are followed up to ensure that there is a verifiable trail that informs how cases are selected.

When a matter comes to SARS' attention, it is reviewed and evaluated to ensure the validity or merit of the case. Once we have applied our minds and possible grounds are established the case is then further investigated and should additional information be required, there are a number of instruments at SARS disposal that can be utilised to collect relevant information such as:

- a request for relevant material;
- production of relevant material in person during an interview at a SARS office;
- inspection,
- audit or criminal investigation;
- tax inquiry before a presiding officer;
- and search and seizure.

Based on the facts of the case the most appropriate investigative approach will be selected within the legal framework of legislation administered by the Commissioner for SARS.

The legislative provisions governing tax inquiries is contained in Chapter 5 of the Tax Administration Act, No. 28 of 2011 ("TAA"). A tax inquiry is a formal process with witnesses subpoenaed and evidence being led under oath or solemn declaration, but it remains an information gathering mechanism.

Before an inquiry into the tax affairs of a person may be held, SARS must apply through an *ex parte* application to a judge of the High Court for an order designating a person to act as a presiding officer, the order, will also be specific to the ambit of the inquiry. According to section 56 of the TAA, the tax inquiry is private and confidential. The secrecy provisions of the TAA apply to all the persons present at questioning, including the persons being questioned.

Information disclosed during an inquiry constitutes taxpayer information and is subject to the confidentiality provisions of the TAA, which regulate the disclosure of taxpayer information. The information obtained during the inquiry will be used by SARS to conduct investigations into the

taxpayer's affairs, to establish, whether the taxpayers complied with their obligation in terms of the relevant tax acts administered by the Commissioner for SARS.

Due to the confidentiality provisions contained in the TAA, SARS, is accordingly not in a position to provide any specific information pertaining to the ambit of the inquiry outside of the specified provisions.