



**UNIVERSITY OF
KWAZULU-NATAL**

**THE DEVELOPMENTS OF A PROSECUTORIAL APPROACH TO COMBAT
INCOME TAX FRAUD IN SOUTH AFRICA**

BY

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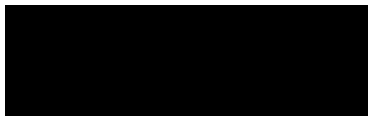
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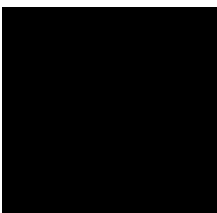
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DEDICATION

This thesis is dedicated to all compliant tax payers in South Africa. Your economic contribution has a significant impact on quality public service delivery.

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ABSTRACT

The South African Revenue Service (SARS) is South Africa's tax collecting authority. SARS was established under the SARS Act [No. 34 of 1997] as an autonomous agency, which is responsible for South Africa's tax system and customs service. Tax is a crucial aspect of life for all citizens. Tax compliance contributes to national fiscus, and has positive implications such as better schools, improved social amenities, well-resourced hospitals, and strong domestic infrastructure. A common form of fraud against government is tax fraud in which either individual taxpayers do not pay taxes or they try to find illegal ways to avoid paying taxes. There has been a noticeable increase in targeted attacks from cybercriminals taking advantage of the SARS' e-filing system. Government initiatives to combat crime have largely focused on visible and violent crime, while 'white-collar crimes' of fraud and corruption have not been high on the policy agenda. This study was conducted in Durban under KwaZulu-Natal province of South Africa. A qualitative research approach was adopted in this study to explore the development of a prosecutorial approach to combat income tax fraud in South Africa. Interpretive and constructivism qualitative paradigms were deemed suitable to allow participants to describe their understanding, interpretations, narratives, and personal experiences of efforts to combat tax fraud in South Africa. Phenomenological research design was adopted to explore the phenomenon under investigation. Thirty-one (n=31) key informant interviews (KIIs) were conducted with Ngubane National Accountants and Auditing Firm (NNAAF) experts who at a time were qualified Accountants, Internal Auditors, and Forensic Auditors. Twenty (n=20) in-depth individual interviews (IDIs) were conducted with the National Prosecuting Authority (NPA) experts who at a time were qualified Specialised tax unit prosecutors (NPA STU) and NPA Asset-Forfeiture Unit (NPA AFU) prosecutors. The participants were purposively selected to share their expert knowledge on taxation systems and tax fraud in South Africa.

Fifty-one (n=51) participants were interviewed individually in this study. Three interview guides containing lists of open-ended research questions were used to collect quality data. The researcher took field notes during interviews and the interviewed participants were informed of the study purpose. The participants signed an informed consent form as evidence of agreeing to participate voluntarily. Thematic analysis was adopted to analyse, code, and categorise themes that emerged from the interviews. Study findings revealed that there is a lack

of skills and knowledge on detection, investigation, and prosecution of income tax fraud amongst accountants, auditors, investigators, and prosecutors in South Africa.

The lack of technological investigative skills on tax crimes results in ineffective prosecution of tax crimes. Shortage of cybercrime and specialised tax unit prosecutors has a negative impact on quality investigation and prosecutions of tax fraud. Technological challenges on detection, investigation and prosecution processes have an impact in collecting digital evidence and in effective prosecution. Conflict of interests amongst stakeholders results in poor stakeholder co-operation. Findings also show that tax fraud perpetrators usually get fines rather than direct imprisonment. Findings reveals that the criminal justice system is not treating this crime the same way as violent crimes. There is lack of stakeholder co-operation and legislative challenges to investigate and prosecute tax crimes. The use of accounting and auditing firms has been categorised as poor. E-filing is an effective technological tool to detect, investigate, collect digital evidence, and prosecute tax fraud offenders. However, it has contributed to the current scourge of tax fraud. This study recommends that SARS as a primary tax administration stakeholder should engage with the public and private sector to develop a technological tool that will be used by taxpayers and stakeholders to report suspected tax fraud. SARS e-filing system needs to be re-implemented and improved to deter tax fraud. All tax crimes stakeholders (SARS, accounting and auditing firms, SAPS, and NPA) must sign a memorandum of understand (MoU) to enforce working relationship. All tax crimes stakeholders should conduct public workshops to promote tax compliance and deter tax crimes. Taxpayers must use the services of accounting and auditing firms to comply with tax legislation. Cybercrime investigators must be employed and trained to incapacitate them with skills and knowledge to collect digital evidence admissible in court. The NPA must employ additional tax unit prosecutors and provide cybercrime prosecution process training. All tax crimes stakeholders should implement and adopt tax fraud prevention strategies. Tax laws must be amended to allow the criminal justice processes to access all taxpayers' information and there should be separation of powers between SARS and NPA AFU.

Keywords: Development, Prosecutorial, Approach, Combat, Income Tax, Fraud, South Africa

LIST OF ACRONYMS

ACFE	Association of Certified Fraud Examiners
AFU	Asset-Forfeiture Unit
CBD	Central Business District
CARA	Criminal Assets Recovery Account
CEO	Chief Executive Officer
CCD	Charge- Coupled Device
CCTV	Closed Circuit Television
CPA	Certified Public Accountant
CPA	Criminal Procedure Act
CJS	Criminal Justice System
COVID-19	Corona Virus Disease -2019
CD	Compact Disc
CRSA	Constitution of the Republic of South Africa
DNA	Deoxyribonucleic Acid
DMA	Durban Metropolitan Area
DoJ	Department of Justice
DDTA	Drugs and Drug Trafficking Act
DPP	Director of Public Prosecutions
DPCI	Directorate for Priority Crimes Investigation
DVD	Digital Versatile Disc
EDD	Electronic Direct Deposit
EFCU	Economic and Financial Crime Unit
e-FILE	Electronic –Filing
ECMS	Enterprise Content Management System
EU	European Union
FAD	Fiscal Affairs Department
FPT	Fraud Pentagon Theory
FIU	Financial Intelligence Unit

FIFA	Federation Internationate de Football Association
IBM	International Business Machines Corporation
IDP	Integrated Development Plan
IDIs	In-depth Interviews
ID	Investigating Director
ICOCM	International Co-operation in Criminal Matters
IOL	Independent Online News
IP	Intellectual Property
ISA	International Standards on Auditing
IT	Information Technology
IQ	Intelligence Quotient
IRS	Internal Revenue Services
IRBA	Independent Regulatory Board for Auditors
IRP5	Employee Tax Certificate
JCPS	Justice Crime Prevention and Security
KPMG	Klynveld Peat Marwick Goerdeler
KZN	KwaZulu-Natal
KIIs	Key Informant Interviews
MoU	Memorandum of Understanding
MO	Modus Operandi
NEEC	National Efficiency Enhancement Committee
NNAAF	Ngubane National Accounting and Auditing Firm
ND	National Director
NCPS	National Crime Prevention Strategy
NPA	National Prosecuting Authority
NPPA	National Public Prosecution Policy
OECD	Organisation for Economic Co-operation and Development
OSEO	Office for Serious Economic Offences
PAYE	Pay-As-You-Earn
PCA	Proceeds of Crime Act

PT	Provisional Tax
PPP	Public Private Partnership
PEECs	Provincial Efficiency Enhancement Committee
POCA	Prevention of Organised Crime Act
RA	Revenue Authority
SAS	Statement of Auditing Standards
SAIPA	South African Institute of Professional Accountants
SAPS	South African Police Services
SALRC	South African Law Reform Commission
SAFLII	Southern African Legal Information Institute
SARS	South African Revenue Services
SCCU	Specialised Commercial Crime Unit
SCPT	Situational Crime Prevention Theory
SDL	Skills Development Levy
SDAT	Sutherland's Differential Association Theory
STU	Specialised Tax Unit
TAA	Tax Administration Act
TFA	Tax Fraud Acceptability
TR	Technology Readiness
UIF	Unemployment Insurance Fund
UCLA	University of California, Los Angeles
USB	Universal Serial Bus
US	United States
UKZN	University of KwaZulu-Natal
VAT	Value Added Tax
VSO	Video Spectral Compact

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CHAPTER ONE

GENERAL ORIENTATION

1.1 Introduction and background

The South African Revenue Service (SARS) is South Africa's tax collecting authority established under the SARS Act [No. 34 of 1997] as an autonomous agency, which is responsible for South Africa's tax system and customs service (SARS, 2021). The responsibilities of SARS include collection and administration of all national taxes, duties, and levies, collection of revenue that may be imposed under any other legislation as agreed between SARS and a state entity to the revenue, provide a customs service, which facilitates trade, maximisation of revenue collection and protection of South Africa's borders from illegal importation and exportation of goods, and advising the Minister of Finance on all revenue matters (SARS, 2020). Tax is a crucial aspect of life for all the citizens. Paying your tax honestly, ensuring that you use suppliers who pay their income tax or paying your fair share of customs when returning from an international holiday all contribute to the remarkable achievements that South Africa has and continues to make.

Tax means better schools, improved social amenities, well-resourced hospitals and strong domestic infrastructure. Indeed, tax is a vital ingredient in ensuring that South Africa remains healthy for generations to come. This is precisely why demystifying the topic is so vital for future taxpayers in South Africa (SARS, 2017). The dominant source of public finance is, in the researcher's view, the expenditure in taxation. Many people and organisations hold different views regarding taxation processes. Some people still perceive it as an unavoidable system that is necessary for society to function, while others refer to it as an infringement upon the rights and property of individuals or collectives. Many feel that income tax is far too high, particularly as they become aware of wasteful government expenditure and nebulous information on how their taxes are spent. Therefore, a "taxation system can only be successful if it is perceived as fair and equitable by those who are taxed" (Gilligan & Richardson, 2005:331).

Many countries use income tax as a source of government to render adequate services to the public and South Africa is no exception. Taxes are therefore defined as "the means whereby the state collects funds from persons to pay for its administration and for the benefit it provides

for its citizens and residents” (Arendse, Jordaan, Kolitz & Stein, 2004:121). Income tax is levied in terms of the Income Tax Act [No. 58 of 1962]. The term ‘income’ refers to the amount that remains after all amounts that are exempt from normal tax have been deducted from the gross income of an employee’s yearly assessment. It further refers to the amount remaining after deduction performance (Stiglingh, Koekemoer, Van zyl, Wilcocks & De swardt, 2016). In South Africa, the ‘income tax rate’ is imposed on different sources of income such as labour, pensions, interest and dividends, and the ‘top marginal tax rate’ is used for individuals’ benchmark.

Further, ‘Revenue’ is deemed an important source of income for the government of South Africa (Trading Economics, 2021). South Africa has a residence-based income system, which means that “a resident’s worldwide taxable income is subject to income tax in South Africa and a non-resident’s taxable income from sources within South Africa is subject to tax in South Africa” (SARS, 2016:6). In combating tax crimes, the Organisation for Economic Co-operation and Development [OECD] (2021) set essential principles covering the legal, institutional, administrative, and operational aspects necessary for developing an efficient and effective system for identifying, investigating and prosecuting tax crimes, while respecting the rights of accused taxpayers. This study addresses the prosecutorial approaches that can be improved or implemented to combat income tax fraud in South Africa considering legal, institutional, administrative and operational aspects of the National Prosecuting Authority (NPA) and Accounting and Auditing firms to identify, investigate, and prosecute with the goal of combating tax crimes in South Africa.

1.2 Problem statement

The research problem is described by Nachmias and Nachmias (1996:52) as a “researchable problem calling for a response in the form of a scientific inquiry in line with a research project to be undertaken”. Further, Neuman (1997) mentions that researchers need a narrowly focused question before a research project is designed. Against this background, Schneider and Enste (2000: 44) report that “a shadow economy portrays an economy in which people do not show the real and taxable income that they have earned through legal activities, including barter and monetary activities, in order to avoid paying tax. The latter authors also argue that “every patriotic citizen has a desire to strengthen society”.

The OECD (2017) revealed that some taxpayers persevere in being non-compliant and use any means to evade their tax obligations. It is in respect of those taxpayers, for whom support, and

monitoring does not improve compliance, and criminal law plays an important role. Citizens regard this practice as their public duty to make tax payments to the government as this act as major sources of income for the government who should use this money to provide services to the public for “defence, public utilities, transportation, education, roads, and other services” (Mughal, 2012:217). Fraud against a government is not new, and is believed to be as old as the government system itself. A common form of fraud against the government is tax fraud in which either individual taxpayers do not pay taxes or they try to find illegal ways to avoid paying taxes. Therefore, tax fraud and evasion are “deceitful means or acts that are used to cheat a person, corporation or government agency” (Miller, 2009:30). Tax evasion and fraud are illegal and intentional misrepresentation of tax obligations. They can involve deliberate omission or falsification of income or revenue, as well as efforts to be invisible to tax authorities altogether.

Tax evasion and fraud result in the reduction of income that lawfully belongs to the government, and to the people. The loss of income can be substantial. For example, a study conducted by Skulesch, Stoll and Simmons (2011) reported that tax evasion and tax fraudsters do not only cheat the public of revenue that is to be used for public goods, but also put compliant taxpayers that obey the law at a disadvantage. It makes it harder for those compliant businesses to be profitable when they are competing with businesses that do not bear the expense of paying their fair share of taxes (SARS, 2018). With over 3.3 million taxpayers submitting their returns on the SARS e-filing system, there has been a noticeable increase in targeted attacks from cybercriminals looking to take advantage. As their methods evolve to keep up with digital trends, it is important for taxpayers to be aware of tax season-specific phishing tactics (SARS, 2018). Tax fraud, a crime that costs society billions of United States (US) dollars in lost revenue. The literature on Tax Fraud Acceptability (TFA) has neglected religiosity as a social bond that may deter this type of behaviour (Stack & Kposowa, 2006). The significance of tax fraud can be assessed in terms of its economic impact on government. It has become increasingly clear that the capacity of governments to raise revenue is substantially affected by tax evasion and fraud (Hessing, Effers, Robben & Webley 1999).

In the United States, “the amount of tax revenue lost to tax cheating is approximately 20 percent” (Grasmick, Bursik & Cochran 1991:255). A review of 18 studies found that on average, 20% of the population of taxpayers acknowledged cheating on their income taxes. This may be an underestimate because Internal Revenue Services (IRS) data sometimes report

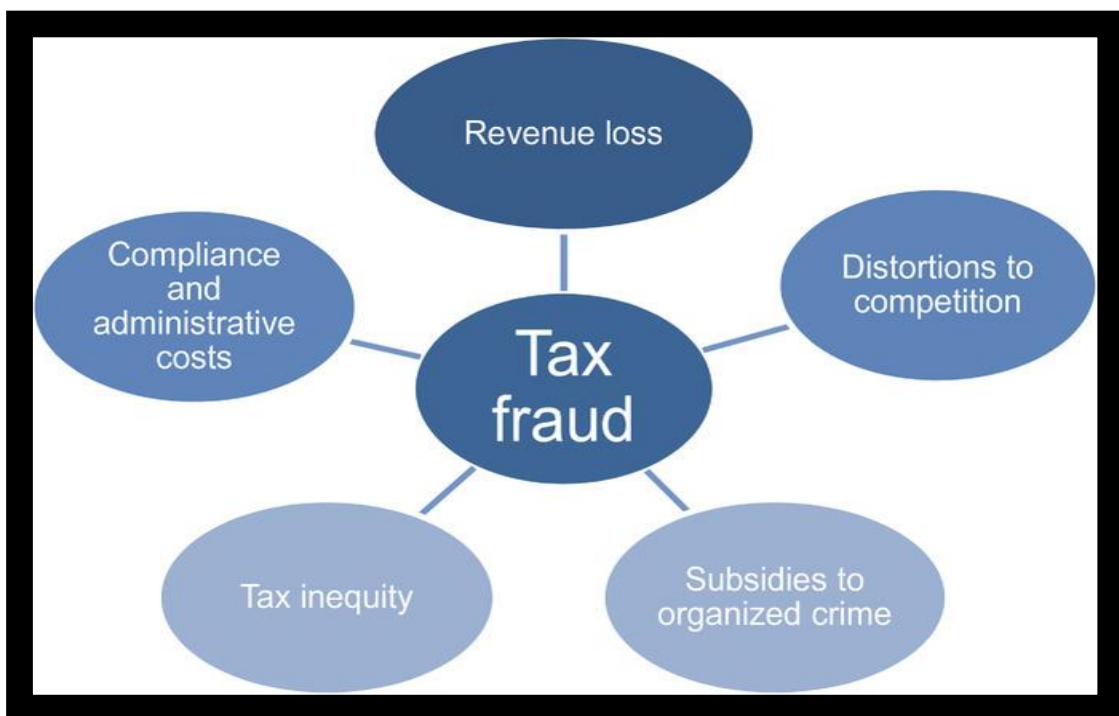
that 35 percent of the returns that they audit are marked by cheating (Hessing, Effers & Weigel, 1999). Hence, tax fraud is a crime with substantial economic consequences involving billions of US dollars in lost revenue. This amount dwarfs the profits made in all robberies, larcenies, burglaries, and a host of other street crimes against property. How SARS can be defrauded, misinformed, misled, deceived, contrived, with the intention to evade tax or obtain an undue refund are too numerous to mention, and it is not possible to offer even the briefest of discussions on every possible such action that may be directed against SARS. Many of these types of conduct are no more but variations of the theme (OECD, 2018).

The examples offered are an attempt to better understand the application of legislation and criminal law in dealing with instances of tax evasion and fraud and obtaining of an undue refund. Many fraud cases involve the making of false representations in the trader's books of account. In many instances, the offender will go an extra mile to ensure the entries in his books of account correspond with his or her false representations to SARS. The making of a false statement or the causation or allowing of a false statement to be made on a tax return have long been one of the most common methods employed by taxpayers in evading their tax liabilities and obtaining refunds they were not legally entitled to taxes (SARS, 2018). A declaration in a return not only covers the information as indicated in the return itself but also covers the information reflected in the accompanying documentation. Making such a declaration with knowledge or foresight of the information therein reflected to be incorrect, will not only amount to a false declaration but will also be a misrepresentation of the truth. A tax-liability can be misrepresented through the submission of a fraudulent tax return. Defrauding SARS or a SARS official during the administration of the Tax Administration Act (No. 28 of 2011) through the submission of a fraudulent tax return may be achieved by inflating or exaggerating the deductions or input taxes a taxpayer is entitled to; and/or under-declaring income or output (SARS, 2020).

The study conducted by Shandu, Maluleke, and Lekgau (2019) highlighted that the e-filing income tax submission system should be revisited as a matter of urgency. Further, there is need for ongoing training and information sharing among all stakeholders. This study was able to reveal that investigations and prosecutions related to personal income tax fraud are rendered difficult and complicated due to the e-filing system.

The researcher considers that the effects of tax fraud in South Africa result in revenue loss causing poor service delivery to the public and threatening the economic capacity of the country. Tax fraud reduces the effectiveness of government and increases budget deficits (Brown Tax Practice Group, 2021). The illustration below shows that tax fraud results in revenue loss, distortions to competition, subsidies to organised crime, tax inequity, compliance, and administrative costs.

Figure 1.1: The effect of tax fraud in South Africa



Source: De La Feria (2020)

To avoid paying taxes, many taxpayers underreport their income and submit falsified documents to SARS. To prove this crime, the government must find that the taxpayer either underreported his or her income or did not report taxable income. No minimum amount is stated before fraud exists, but the government can take legal actions when there is a “substantial underpayment of tax” (Siegel, 2011:326). On the one hand, if an offender is guilty of ‘passive neglect’, the offence is a petty crime. This means simply not paying taxes, not reporting income and not paying taxes when due. On the other hand, ‘affirmative tax evasion’ such as keeping double books, making false entries, destroying books or records, concealing assets and covering up sources of income, among others, constitutes a crime (Siegel, 2011:326). Tax authority can verify the validity of each invoice by comparing it to the records of the

counterparty to the transaction, it is time consuming and resource intensive to do so (OECD, 2020). Two types of tax evasion and fraud appear to be widespread in their use: underreporting of income through sales suppression and over-reporting of deductions through false invoicing. These are simple for criminals to achieve and can affect countries of all sizes. These types of tax evasion and fraud can be further facilitated by the cash economy and sharing economy. The impact of this tax crime is huge, with anecdotal evidence alone indicating that it amounts to many billions of US dollars in lost tax revenue.

In the past, underreporting of income and over-reporting of deductions were difficult and time consuming for tax authorities to detect. This is changing. Many tax authorities are now using technology solutions to detect these tax crimes (OECD, 2017). The incidences of tax fraud have a direct impact on South Africa's economy, compromising its potential to render adequate services to the public. Tax fraud and evasion deprive government of the money needed to carry out laws and initiatives, reduce the effectiveness of government, and result in an increase in budget deficits (Gleeson, 2021). The South African Police Services [SAPS] Crime statistics 2020/2021 reveals that there is high rate of financial crimes in South Africa (SAPS, 2021). Below are some of the recent notable incidences of income tax fraud publicly available online in South Africa.

Sowetan Live (2016: np) shows that,

Point Police Station in Durban KwaZulu-Natal is experiencing a number of fraud cases involving income tax returns, Kwazulu-Natal police say. Police Spokesman Lieutenant Colonel Thulani Zwane said several cases had been opened at the station since the beginning of this month. "It is alleged that victims received their IRP5's and went to SARS offices to submit their tax returns. Upon their arrival, they were told that their tax returns were already submitted through e-filing and they cannot submit again. "The victims were shocked and were not aware that their tax returns were submitted through e-filing."

The South African Police Service [SAPS] (2020: np) reports that,

"Two men, Harisi Bukari (45) and Kudzaishe Jamescai Magura (41), and a female Christel Pillay (44) appeared before the Palm Ridge Specialised Commercial Crimes Court on charges of tax fraud amounting to R8.2 million on Thursday. It is alleged that the trio submitted false and fraudulent tax return claims to the South African Revenue Service (SARS) on behalf of their companies".

Montsho (2021: np) on The Independent Online News [IOL] reveals that,

"A 38-year-old man was sentenced to four years imprisonment for contravening the Tax Administration Act, 2011 the Hawks in the Free State. SAPS Spokesperson Captain

Christopher Singo said Mayisewa Alpheus Makhubo and his company, Thembiselwa Trading CC, appeared in the Frankfort Regional Court on Thursday, where he was convicted and sentenced. “A preliminary probe by the SARS) uncovered Makhubo’s fraudulent activities that costed the receiver of revenue in access of more than R1 million”. In a separate case, Jeanette Jordan, 63, appeared in the Welkom Magistrate’s Court on Thursday facing charges of fraud. Captain Singo said Jordan had been arrested on the same day by the Hawks’ Serious Commercial Crime Investigation team based in Welkom. “It is all alleged that in the course of April 2017, Jordan used false tender documents from the department of health to borrow money from a well-off person and could not pay it back. “As a result, the victim suffered a total loss of R510 000. The matter was then reported to the Hawks for further investigation which resulted in the arrest of the accused (Montsho, 2021:np).

Table 1.1: South African Police Services Annual Crime Statistics 2020/2021****

The national SAPS Crime Statistics show that in the 2018/2019 financial year, reported commercial crimes including tax fraud amounted to 83 823 cases. There has been an increase of 46 reported cases in the 2019/2020 financial year resulting in a total of 83 869 was reported cases . This shows that commercial criminals are on the rise. There was a slight decrease in the 2020/2021 financial years with 979 (1.2%) cases compared to the 2019/2020 financial year (SAPS Crime Statistics, 2021). The decrease in 2020/2021 might have been caused by strict policing during the COVID-19 lockdown in South Africa. Cybercrime criminals might not have resources outside their homes to commit tax fraud. Fraudsters might have not also had people available to meet in public spaces to commit fraud. According to the SAPS Crime Statistics, in the 2020/2021 financial year, the top three provinces were Cape Town, followed by Gauteng, and KwaZulu-Natal. These provinces have been the top three from 2018 (SAPS Crime Statistics, 2021).

Table 1.2 Other serious crimes : National Commercial crime reported cases

2018/2019	2019/2020	2020/2021	Count Difference	% Change
83 823	83 869	82 890	-979	-1.2%

Source: SAPS Crime Statistics (2021)

1.3 Research questions

The research questions that arise when a study is proposed (i.e. from the problem statement) should be addressed in the project. Therefore, the responses that are sought and provided by selected participants should answer the research questions, which gave impetus to the study. Leedy and Ormrod (2005:54) state that the research questions “provide guidance in terms of the kind of data to be collected and how these data should be collected and analysed for clear and unambiguous interpretation”. Denscombe (2002) contends that the research questions indicate exactly what is to be investigated. For example, research questions relate to the relationships among a small number of variables (Neuman, 1997). Derese (2016) argues that research questions establish the broad goals of the research, the elements that are directly investigated by the researcher, the specific aspects that are to be observed, and the measures that must be interrogated in order to shed light on the broader topic. Research questions further identify the specific questions (on the interview schedule) need to be posed so that the participants’ answers will guide the solution to the identified research problem.

In light of the mentioned *Supra*, the following key research question guided this study:

- **How can a prosecutorial approach combat income tax fraud effective in South Africa?**

The researcher is of the view that if the prosecution procedures of income tax fraud in South Africa can be managed, used, shared, transferred and retained effectively; this type of crime can be combated across the province, and perhaps even beyond. Furthermore, the value of the prosecution procedures can be further used as a key mechanism for addressing income tax fraud and evasion in South Africa in general. This should be accomplished by making South Africa with the aid of the National Prosecuting Authority, Director of Public Prosecution Specialised Tax Unit (NPA DPP STU), NPA Asset-Forfeiture Unit (NPA AFU), and Ngubane National Accounting and Auditing Firm (NNAAF) . Learning grounds where shortfalls and outcomes

of previous methods used to combat this scourge can be used to inform present and improve future work of prosecution procedures in combating income tax fraud. It is significant to make prosecution procedures easily accessible through effective Criminal Justice System (CJS).

The following key research questions guided this study:

1. What are the methods and techniques used by the NPA and NNAAF to combat income tax fraud in South Africa?
2. What are the factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa?
3. How relevant is the centralised e-filing system for the effective prosecutorial approach of income tax fraud accused persons and organisations in South Africa?
4. What is the relevance of developing a conceptual and theoretical framework for an effective prosecutorial approach to combating income tax fraud in South Africa?

1.4 Study objectives

According to Leedy (1993:11), study objectives are established by researchers to “discover new facts and their correct interpretations to arrive at an acceptable conclusion”. Mouton (1996:103) concurs, stating that the aim of this procedure is to “establish facts, gather new data, determine whether there are new data, and determine whether there are interesting patterns in the data”. Therefore, the reasons for this study are to cover the prosecutorial approach to combating income tax fraud in South Africa. These are informed by the desire to optimise this procedure by:

1. Exploring methods and techniques used by NPA and NNAAF to combat income tax fraud in South Africa.
2. Identifying factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa.
3. Exploring the relevance of centralised e-filing system for effective prosecutorial of income tax fraud in South Africa.
4. Developing conceptual and theoretical frameworks on effective prosecutorial approaches to combat income tax fraud in South Africa.

1.5 Conceptual demarcations

The consulted literature provided the researcher with various definitions that relate to the topic under investigation. This section of the study report provides a general overview of the selected key concepts. These help to understand the concepts on the development of a prosecutorial approach to combat income tax fraud. Key words are important for doing literature searches and for the indexing of the study (Leedy, 1993). These key concepts are discussed as follows:

1.5.1 The development of a prosecutorial approach to combat income tax fraud

According to Bak (2019), development encompasses continuous change in several aspects of human society. The dimensions of development are extremely diverse, including economic, social, political, legal and institutional structures, and technology in various forms. For Solaja and Obatunde (2017:44), development is basically a process of ‘historic change.’ This study focuses on economic development for the government to improve service delivery using taxes from taxpayers in South Africa. Without tax, it is difficult for the government to improve quality of health care, infrastructure, roads, and education. Taxes assist in driving economic growth which in turn has a ripple effect on the country’s economy, cuminating in an improvement in the standard of living, job creation etc. Economic development assists in enriching lives and bringing material gains to the people.

Prosecutors are central to the public enforcement of law. They play a key role in the criminal justice system and have the primary responsibility to prepare and present cases against persons accused of breaking the criminal law, although they do not themselves have powers to arrest or imprison. Over the past forty years, economics literature on prosecution has made explicit some of the key trade-offs that prosecution lawyers must resolve, including some of the challenges faced by policymakers in this field (Bowles, 2017). The prosecutor has the choice of whether to initiate prosecution. This is a fundamental gatekeeping task. If the decision is made to enter a case into the court, the prosecutor determines the specific charge or charges that will be lodged against the defendant. The prosecutor then guides cases through the various steps of the judicial process.

Further, the prosecutor is responsible for establishing a *prima facie* level case to have a defendant bound over for trial. Once this happens, the prosecutor is responsible for presenting the state's case at trial (Clark, 2018). This study describes prosecutorial approach as legal action, trial, process, pursuit and litigation approaches by NPA on tax crimes in South Africa

to better understand the implementation, challenges and improvement strategies on tax crime prosecutions in South Africa. Bruhn and Rebach (2007) state that a systems approach examines the structure surrounding the problem or issue. This approach requires macro, meso, and micro levels of analysis to help understand the structure of the problem and the arrangement of individuals and social groups involved. Analysis requires comprehension of the entire issue and associated parts, components, and protocols of the structure that are independent or dependent of each other. Application of this approach requires one to grasp the complete problem including the hierarchy, order, patterns, and boundaries of individuals and social groups including their interactions, relationships, and processes as a body or structure surrounding the issue.

According to Maxwell (2012), the organic approach provides an alternative perspective on the nature of a problem. It assumes that many problems are too intricate to fix by following a set of linear, generic steps. The organic approach calls for users to identify their visions and values, as well as identifying actions they can take to realise them. In this way, the organic approach places importance on the problem-solving process rather than its results. For this study, an approach refers to strategies, which can be adopted to effectively prosecute income tax fraud perpetrators in South Africa. Income tax fraud has been identified as a central problem, which requires problem-solving strategies and a holistic approach to combat it and develop optimal solutions. Fraud can also be curbed or combated through targeted information to the public, given that more transparency leads to less fraud (Federal Affairs Department, 2018). Tax fraud prevention is complex because both corporations and individuals use loopholes to reduce the amount they pay in taxes or increase the amount they get back in refunds.

However, data science and big data analytics remove these complexities – making it easier to prevent fraud and protect the tax system (Dixon, 2019). This study provides valuable information on income tax fraud identification, investigation, and prosecution for the purpose of combating it from further occurrences. This study refers to combating as methods that can be used to improve current tax fraud prevention strategies with the focus on improving prosecution methods to deter tax crimes. An income tax is a tax imposed on individuals or entities in respect of the income or profits they earned. Generally, income tax is computed as the product of a tax rate times the taxable income. Taxation rates may vary by type or characteristics of the taxpayer and the type of income (Juhandi & Fahlevi, 2019). Income tax is a type of tax that governments impose on income generated by businesses and individuals

within their jurisdiction. Income tax is used to fund public services, pay government obligations, and provide goods for citizens (Jahnsen & Pomerlean, 2017). Income tax is described in this study as tax that should be paid to SARS by individuals, companies, trusts and natural persons when they receive their monthly income. Any taxable income should be declared to SARS according to the Tax Administration Act [No.28 of 2011].

According to Goss (2016:20), fraud “involves an offender committing a misleading, dishonest, deceitful irregular act to gain some sort of benefit or to enable another person to obtain that benefit”. For a legal definition, fraud “involves the elements of unlawfulness, intent and misinterpretation, resulting in a fourth element, namely actual or potential prejudice. This prejudice can be “monetary or non-monetary in nature” (Berg, 2010:22). Government of the Netherlands (2021) indicated that people who deliberately provide false information to gain unlawful advantage are committing tax fraud. The government takes measures against people who abuse and misuse regulations to commit fraud. This study describes tax fraud as intentional wrongdoing on the part of the taxpayer with the goal of receiving undue illegal funds. The taxpayers submit fraudulent tax return documents through the SARS e-filing system or manually at SARS. The said illegal act benefits the taxpayer and SARS loses millions of Rand, which results in plethora challenges in developing the South African economy.

1.6 The significance of this study to combating income tax fraud in South Africa

The significance of the study refers to the justification, importance, or contribution of the study (De Vos, Strydom, Fouche & Delpont, 2011). The researcher is given an opportunity to convince the reader of the value and relevance of the study on other people’s settings (Moen, 2006). The significance of this study is discussed in details below:

1.6.1 South Africa’s public and private sector research interest in combating tax fraud

It is envisaged that this study will increase awareness of the negative impacts of income tax fraud on economic development and stability in South Africa. The researcher intends to disseminate the findings in academic publications and reports that may be used as an imperative by institutions such as SARS, SAPS DPCI, NNAAF, NPA DPP STU, NPA AFU and the general government departments and corporate sector. In essence, this study might serve as an intervention tool to combat income tax fraud. It is also believed that this study could provide management teams of these stakeholders a platform on which to initiate, develop and

implement intervention measures to curb income tax fraud. The findings and recommendations may be incorporated in preventative measures to police income tax fraud in South Africa.

1.6.2 Researcher's personal interest in combating tax fraud

The researcher is a full-time student who resides in a country under investigation. The topic was of a specific interest to her due to her daily exposure to multiple scenes and financial crimes including fraud. The researcher therefore viewed the study as a tool towards establishing deterrent measures that would combat the prevalence of this scourge and reduce the number of individuals who fall victim to this phenomenon. Many taxpayers cheat in their tax returns in an attempt to avoid paying their full tax obligation (Hofmeyr, 2013). The researcher was thus motivated to conduct the study by an observable increase in income tax fraud as taxpayers increasingly submit falsified documents such as incorrect salary statements. This practice of necessity affects economic development and stability in South Africa. Income tax fraud negatively affects service delivery and the welfare of the public, particularly education and health care services (Tanzi & Zee, 2001). The results of this study further contribute to a higher competence level during the formulation of strategies to combating crime in South Africa.

It is thus argued that, despite the small scale of the study, the research findings will be transferable. It is also speculated that this study will help to increase the level of trust and confidence to all relevant stakeholders if they look closely at the mistakes that were previously made and then develop new training materials to overcome the challenges of the past. If the findings and recommendations of this study are taken seriously, and implemented, then the NPA DPP STU, NPA AFU, and NNAAF will benefit, because policy makers will be equipped with a better understanding of the challenges that are experienced in policing and investigating this type of crime. They will therefore be assisted in the development of new and efficient methods and techniques to effectively respond to curbing this crime.

1.6.3 General public interest on this study

This study will add value to society as it will generate new ideas on better and more effective strategies to respond to income tax fraud in South Africa. This will be crucial for the general livelihoods of South African residents and visitors as they will live in a safer and more secure environment where this crime, and its resultant spin-offs, will be curbed. If the findings are selectively published in community publications such as local newspapers and the Metro magazine, the information will capacitate the public with best practices that could help them to

respond to this crime appropriately and thus avoid victimisation. It is therefore envisaged that the law-abiding residents of South Africa will gain confidence in local SAPS, SARS investigators, accounting firms and the NPA that their attitude towards and relationship with SARS will improve.

1.6.4 Higher education institutions and their interests in the current study

By publishing the results of this study, both local and international scholarly communities will have a point of reference for future studies that may seek to close the gap in research data pertaining to the field of tax fraud and evasion. Once the results of this study have been made available, students in the Social Sciences, Law, Auditing and Accounting disciplines will be sensitised to the impact of income tax fraud in South Africa. The challenges that are faced in developing strategies to respond to this crime will be identified, which in turn will contribute to more effective preventative measures that future strategic plans and research studies may build on.

1.6.5 The development of a conceptual framework for combating income tax fraud

The envisaged development of a conceptual and theoretical frameworks on effective prosecution of income tax fraud in South Africa (What could be developed as good practice to help solving the problem relating to the combating of income tax fraud in South Africa during the process of prosecution?). The conceptual frameworks for this study include improving strategies to prosecute income tax fraud in South Africa. The strategies are developed for a prosecutorial approach to combating income tax fraud in South Africa. The components of this study are as follows: Development, Prosecutorial, Approach, Combat, Income tax, and Fraud. It is envisaged that the contextualisation of the developed conceptual framework (Conceptual contribution) will be disseminated to the relevant stakeholders and other parties interested in the combating of this crime and its impact on policymaking.

1.6.6 Empirical and theoretical contribution to combat income tax fraud in South Africa

Contributing to the current limited empirical nature of this study subject to the body of knowledge (Do national and international literature on combating income fraud to discover new information regarding the prosecution of this crime available?). The researcher is of the view that understanding human behaviour and why people disobey the law helps explain some of the reasons people commit fraud. However, there have been a number of theorists who have

attempted to explain why people commit crimes , for example, fraud pentagon theory states that fraudsters commit crimes for monetary benefits (Godbole, 2004). In Criminology, theories compete with one another for acceptance, with none of them adequately satisfying either practitioners or scholars in the field. This researcher is of the view that the reasons for this jumble of interpretations of criminal activity largely rely on the fact that human beings, unlike inanimate objects, think for themselves to be wealthy through illegal activities including commission of income tax fraud.

The researcher is of the view that the findings of this study would prompt readers to think of other contexts and settings across South Africa facing the problem of income tax fraud and to recognise the existing similarities. This study does not involve broad claims, but invites study readers to make connections between the elements associated with the study participants in line with their own experiences of combating this crime. Thus, the research explore and give a rich description of this topic so that the study findings can be applied (i.e. transferred) to other settings in order to contribute to the building to the developments of a prosecutorial approach to combat income tax fraud in South Africa and in the academic arena. The collected data contextualised a rich and descriptive manner, focusing on developing a prosecutorial approach to combating income tax fraud in South Africa while soliciting the views of the NPA, DPP STU, NPA AFU, and NNAAF in KwaZulu-Natal. The researcher focused on current strategies for combating income tax fraud through the development of a conceptual framework in this regard.

1.7 Study limitations

According to Babbie and Mouton (2011), no scientific study goes without some shortcomings and failures regarding the interpretation of findings. Denscombe (2002) is of the view that hiding limitations discredits the author because every seasoned researcher knows that every study has some shortcomings. This study like any other studies has some shortcomings and these are discussed below:

1.7.1 Conceptual limitations

Tax fraud is a wide and complex field, and therefore this study was limited to income tax fraud only. The concepts that guided this study stemmed from the selected theme namely ‘The development of a prosecutorial approach to combat income tax fraud’. The researcher limited these concepts within a Criminological and Forensic Studies framework and did not deviate

from these parameters throughout the investigation. This helped the researcher to collect relevant and quality data inline with the research goals and objectives.

1.7.2 Location confinement

This study field was confined to South Africa as a country with KwaZulu–Natal as a representative province. The study was limited to the NPA DPP STU, AFU prosecutors and NNAAF. Although participants represented the entire population that deals with tax fraud cases, this means that the voices of other significant populations who might have contributed valuable information were excluded because of time, financial constraints, and relevant stakeholder’s turning down the invitation to participate in the study. The researcher was aware from the beginning of this study proposal phase that some stakeholders might not be interested to participate in this study. Therefore, the awareness helped the researcher to send as many invitations to relevant stakeholders as possible and interview participants who agreed to participate.

1.7.3 The lack of access to participants

There were delays in accessing NPA participants due to Corona Virus Disease-2019 (COVID-19) regulations in South Africa. This was a challenging time for data collection as COVID-19 regulations did not allow close contact with participants. The researcher has to strategise by communicating with the KwaZulu-Natal NPA DPP STU and AFU management employees to introduce this study and making sure that COVID-19 regulations are not breached.

1.7.4 Refusal by South African Revenue Service and Department of Justice and Constitutional Development to participate in the study

The researcher invited SARS employees to participate in this study. The researcher did not receive any response after numerous emails, and calls were made. SARS had also rejected an invite by the researcher for the master’s study. This is a clear indication that the organisation is reluctant to participating in academic research as stated in their response from a master’s invitation which reads as follows,

“The organisation is reviewing its stance on the access to information for research purposes and will not be able to accommodate your request at this stage. I apologise

for the prolonged process that you have had to endure but this new communication was received a few weeks ago”.

The researcher sent invitations to the Department of Justice and Constitutional Development (DoJ & CD) management in the KwaZulu-Natal province requesting participation. DoJ management employees assisted the researcher with email addresses of two potential participants who are magistrates or judges under the Commercial Crimes Court. Participants were invited. However, they referred the researcher to the NPA. One participant responded as follows:

“I have your questions but unfortunately, I do not do many tax matters. The information that you require will be best obtained from the tax unit at the DPP office”.

The second participant did not respond to emails.

1.8 Study layout

This study has separate but connected chapters. The chapters contain main headings and subheadings for the readers to understand the discussions per chapter. A comprehensive research layout should comprise preliminary pages, the main text and the end matter (Moen, 2006). Below is the brief description of what is contained in each chapter.

1.8.1 Chapter One: General Orientation

This chapter introduces the reader to the development of a prosecutorial approach to combating income tax fraud in South Africa. The researcher provides a brief description and background of this study, the research problem, research goals, objectives, and questions are presented in this chapter. This chapter highlights that tax is a crucial aspect of life for all citizens to receive adequate services in healthcare, education, etc. The government has been a victim of tax fraud for many years, which compromised the rendering of quality services to the public. This chapter lays the foundation to providing readers with sufficient information to understand and appreciate the importance of the developing a prosecutorial approach to combating income tax fraud in South Africa. The key concepts are described for the readers to understand this study. Limitations enabled the reader to understand shortcomings encountered by the researcher during the course of the study.

1.8.2 Chapter Two: Literature Review

This chapter reflects on the scope of income tax fraud, this study's objectives, and the rationale. Previous studies on income tax fraud are presented in this section to address the connection with this study for knowledge creation and the developments of a prosecutorial approach to combating income tax fraud in South Africa. The literature reveals that government initiatives to crime prevention have largely focused on violent crimes and neglect financial crimes prevention. This chapter discusses literature review on the methods and techniques to combating income tax fraud in South Africa, factors that hinder effective prosecutorial procedure to combating income tax fraud, the relevance of centralised SARS e-filing system for effective prosecution of income tax fraud and the conceptual and theoretical frameworks for effective prosecutorial approach are presented in this chapter.

1.8.3 Chapter Three: Legislation and Policies to Combat Income Tax Fraud in South Africa

This chapter presents the legislation, policies, and theoretical frameworks adopted in this study. Criminal Procedure Act (No. 51 of 1977) and Tax Administration Act (No. 28 of 2011) guided this study on the criminalisation and criminal proceedings on of tax crimes including tax fraud. The National Prosecuting Authority Act (No.32 of 1998) and the Prosecution Policy are discussed as the foundation to the powers of the NPA powers to institute and conduct criminal proceedings on behalf of the state. The Auditing and Accounting Standards in South Africa outline the roles and responsibilities of auditors and accountants on criminal proceedings. The Prevention of Organised Crime Act (No.121 of 1998) introduces the measures to combat organised criminal activities and provides for the establishment of criminal assets recovery account. The National Crime Prevention Strategy (1996) guided this study by outlining best approaches that can be adopted for crime prevention in South Africa.

1.8.4 Chapter Four : Theoretical Frameworks to Combat Income Tax Fraud in South Africa

This chapter presents theoretical frameworks to combat income tax fraud in South Africa. The adopted theories in this study are Sutherland's Differential Association Theory (1883-1950), Situational Crime Prevention Theory (1980) and Fraud Pentagon Theory (1953). These theories were adopted to understand criminality, criminal behaviour and its impact on the

current scourge of income tax fraud in South Africa. These theories were also significant to suggest tax fraud preventative measures to combat income tax fraud in South Africa.

1.8.5 Chapter Five : Methodology

This chapter provides a detailed discussion on the research methodology adopted in this study. Qualitative research approach was adopted to explore and describe the development of a prosecutorial approach to combating income tax fraud in South Africa. Interpretivism and constructivism qualitative paradigms were deemed suitable to allow participants to explore and describe their meanings, interpretations, narratives, and personal experiences on combating tax fraud in South Africa. Phenomenological research design was adopted to explore and describe the phenomenon under investigation.

This study was conducted in Durban, KwaZulu-Natal province. NNAAF, NPA STU, and AFU (accountants, internal auditors, forensic auditors, tax fraud prosecutors, and asset-forfeiture prosecutors) were purposively selected to share their expert knowledge on taxation systems and tax fraud in South Africa. Fifty -one (n=51) participants were interviewed individually in this study. Interview guides containing lists of open-ended research questions were used to collect quality data to answer the study's key research questions. Field notes were taken by the researcher during fieldwork. Participants were informed about the focus, and purpose of the study. Informed consent forms were signed by the participants as evidence of agreeing to participating voluntarily. This study adhered to all ethical considerations to ensure that participants were not harmed or forced to participate in this study.

1.8.6 Chapter Six: Data Presentation and Interpretation

In this chapter, the researcher provides a detailed presentation, and interpretation the data collected from participants. Thematic analysis was adopted to analyse, code and categorise themes that emerged from the interviews. The researcher provided verbatim quotes to ensure the credibility of responses from the participants. These were analysed and supported by extant literature presented in Chapter Two of this study. The verbatim participants' responses are provided to assist the reader to understand participants' exploration and description on the developments of a prosecutorial approach to combating income tax fraud in South Africa.

1.8.7 Chapter Seven: Discussions, Conclusion and Recommendations

In this chapter, the findings are discussed. Further, the researcher provides a conclusion and recommendations pertaining to this study findings. Based on the findings elicited in this study, the researcher recommends stakeholder engagements, employment of cybercrime expert investigators to present admissible evidence on tax crimes in court. This study's objectives are verified together with findings. A detailed summary of this study content is provided in this chapter to enable the reader to understand the key points under discussion. The researcher also provided the reader with detailed recommendations based on each theme and study findings. The researcher recommends that future studies should close gaps on the stakeholder collaboration to combat tax crimes in South Africa.

1.9 Summary of the chapter

The study was introduced in this chapter. Tax is a dominant source of public finance. Some taxpayers persevere in being non-compliant and use any means to evade or fraud their tax obligations. This study revealed that a common form of fraud against the government is tax fraud. The two types of tax fraud and evasion appear to be widespread in underreporting of income and over-deductions through submission of false information to SARS. This study was guided by research objectives to explore and describe the development of a prosecutorial approach to combating income tax fraud in South Africa. This study's objectives were to determine the methods and techniques used by the NPA and NNAAF to combat income tax fraud in South Africa, identifying factors that hinder effective prosecutorial procedures to combat income tax fraud in South Africa, determining the relevance of the centralised e-filing system for the effective prosecution of income tax fraud in South Africa, developing conceptual and theoretical frameworks for an effective prosecutorial approach to combating income tax fraud in South Africa. Discussion of this study key's concepts was significant in conceptualising this study. The current scourge of tax crimes renders it difficult for South Africa to develop economically. This stelicit awareness of the negative impact on income tax fraud in South Africa.

CHAPTER TWO

LITERATURE REVIEW: THE GLOBAL AND LOCAL PERSPECTIVES IN COMBATING INCOME TAX FRAUD

2.1 Introduction

This chapter reviews literature on combating income tax fraud in South Africa. The discussed methods and techniques of combating income tax fraud include fraud prevention techniques, which is achieved through fraud detection. The involvement of multiple agencies in civil, criminal investigations and prosecution of tax crime necessitates effective co-ordination in combating tax fraud (OECD, 2019). The chapter discusses factors that hinder effective prosecutorial procedures followed in combating income tax fraud. These factors include lack of basis of co-operation amongst tax crime stakeholders, lack of training, inadequate resources, and lack of written memorandum of understandings (MoUs) amongst tax crime stakeholders in South Africa (Lancaster & Roberts, 2020). The centralisation of SARS e-filing system forms a significant part of budget administration and needs to be carefully monitored (SARS, 2020). The chapter further discusses the conceptual and theoretical frameworks underpinning this study. The frameworks adopted to combat income tax fraud in South Africa include problem identification (tax fraud), taxpayer's involvement and participation, the multidisciplinary approach, trial-run, preventative measures and technology adoption.

2.2 Understanding income tax fraud prevention strategies in South Africa

Government initiatives designed to combat crime have largely focused on visible and violent crime, and the 'white-collar crimes' involving fraud and corruption have not been high on the policy agenda, yet they are costing South Africa billions of Rands a year and undermine the country's national integrity. There is also growing public outrage over corrupt officials and opportunistic fraudsters who appear to be 'getting away with it'. The National Crime Prevention Strategy (NCPS) adopted in May 1996 commits itself to addressing commercial crime as a question of national priority; however, as yet there has generally been little movement around this programme. As regards corruption, initiatives under the NCPS have largely concentrated on interdepartmental efforts meant to address corruption in South Africa's criminal justice system (Rauch, 1996).

Thus, while the public is increasingly becoming interested in commercial crime and corruption, very little local research has focused on how government and other role players should tackle these issues. This monograph presents two documents that highlight key policy considerations surrounding fraud and corruption and suggests concrete steps towards addressing them effectively in the South African context. It is hoped that this policy intervention will stimulate public awareness and debate around commercial crime and corruption – crimes that can no longer be sidelined as low-level priorities within the crime prevention debate (Brookes, 2021). Commercial criminals are seldom successfully convicted, largely because overloaded investigators and prosecutors do not have the time, expertise and resources to effectively pursue these cases. Part one of commercial crime is a product of a continuous process of consultation between stakeholders burdened with the onerous task of combating commercial crime in South Africa. Commercial crime has been increasing globally, and South Africa is no exception. The phenomenon is so well-documented that the financial costs of commercial crime far exceed the value of all street crime.

According to official statistics of reported cases, more than 29 000 cases, with an estimated cost of more than R7 billion, were under investigation by the South African Police Services' (SAPS) commercial branch in 2018 had about 80 per cent of these cases involve fraud, and the other 20 per cent theft (from employers) as well as transgressions of more than 50 statutes which the commercial branch investigates (Glesson, 2021). In addition, the Office for Serious Economic Offences (OSEO) was investigating 33 cases involving approximately R8.5 billion. It is recognized that as soon as a reasonable level of effectiveness has been achieved within South Africa's criminal justice system (CJS), resource allocation should favour prevention. The international experience indicates that a further improvement in crime reduction will be achieved by investing in other complementary strategies. Crime prevention is an area characterized by the least investment in many countries, and yet it holds the greatest prospect of success in crime reduction (Hale, 2006). The criminals that commission this crime are not always severely sentenced. Some officials, including judges, believe that these offenders have suffered enough. They are also especially sensitive to imprisonment because of their lack of experience within the CJS. For example, "The sentencing of white-collar criminals however appears to be affected by bias" (Gennaro, Vito & Maahs, 2012:39).

2.3 Methods and techniques of combating income tax fraud in South Africa

The South African government and other international governments are taking action to prevent fraud involving public funds with the aim of tackling it more effectively (Government of Netherlands, 2021). It has introduced measures relating to social services: law enforcement, crime prevention and stakeholder cooperation have been stepped up; benefits and tax allowances: the time limit to decide on benefit applications has been extended; student finance: measures have been introduced to prevent the misuse of grants intended to benefit students living away from home and of the single-parent tax credit; healthcare: supervision and investigation in the healthcare sector have been strengthened; grants: more effective verification visits are being carried out. Fraud prevention techniques may not stop all potential perpetrators from committing (Brown Practice Group, 2022). A fraud detection strategy should involve use of analytical and other procedures to highlight anomalies, and introduction of reporting mechanisms that provide communication of suspected fraudulent acts. Key elements of a fraud detection system include exception reporting, data mining, trend analysis and ongoing risk assessment (The Association of Certified Fraud Examiners, 2012). Identification of risk areas is important to ensure that the risk is carefully defined and explained to facilitate further analysis which includes workshop and interviews, brainstorming, questionnaires, process mapping, comparisons with other organisations and discussion with peers. Risks such as false accounting or theft of assets needs to be considered for each part of the organisation's business; frequently, businesses focus on a limited number of risks, most commonly on third-party thefts. To avoid this shortcoming, risks should be classified by making reference to the possible type of offence and the potential perpetrator(s).

Information Technology (IT) governance ensures that the organisation's IT systems supports and enables achievement of the organisation's strategies and objectives. It encompasses leadership, organisational structures, business processes, standards and compliance. Regulatory requirements, increasing intellectual capital value where the organisation has a risk, alignment of technology with strategic organisational goals, complexity of threats to information security and increase in the compliance requirements of information and privacy-related regulation are key drivers of organisations' adoption of IT governance strategies. An adoptable risk management cycle requires the establishment of a risk management group and set goals, identification of risk areas, understanding and assessing the scale of risk, developing a risk-response strategy, implementing the strategy and allocating responsibilities,

implementing and monitoring the suggested controls and reviewing and refining the process and doing it again (Chartered Institute of Management Accountants, 2010).

The NPA study survey conducted by Lancaster and Roberts (2020) reveals the following priorities in terms of enhancing NPA performance and accomplishing its mission was addressed: constant training or re-skilling of prosecutors, improved budget or resources for the NPA, achievable targets and indicators, zero-tolerance of unethical conduct by NPA personnel, improved development opportunities for staff, more effective collaboration with other stakeholders like SAPS, rewarding or acknowledging dedicated staff or excellence, increasing salaries and adopting a victim-centric approach. Independent decisions, zero interference, training, management styles and independence of the Department of Justice were top-five suggestions in strengthening NPA independence. Mutual respect, ethical conduct, training, accountability, dress code and regular communication were top-six suggestions in strengthening professionalism. Holding staff accountable, accounting for decisions, taking ownership of work, reporting and giving feedback and strict management were top-five strategies suggested for strengthening accountability. Sound decisions, ethics and integrity, holding staff accountable, training and a culture of trust were also five top-five suggestions made in strengthening credibility within the NPA.

Expertise in financial and accounting crimes is necessary to fully understand the issues and the potential criminal or civil charges that the government brings against a company or an individual. To properly defend a particular case, it is necessary to have a forensic accountant involved in evaluating the data and the issues the government would have raised. Without a forensic accountant or fraud investigator, the defendant is left at the mercy of the government's investigators, who can hardly be trusted to do a fair and accurate analysis of the numbers. Simply put, the government has a vested interest in making the numbers related to the crime or civil infraction as large as possible so as to encourage guilty pleas or settlements (Anton, 2020). When the Internal Revenue Service suspects a taxpayer, either a business or individual, of substantially underreporting income for tax purposes, bank documentation is one of the key enablers of their investigation. The investigator will have to subpoena bank statements, check copies, and deposit details, and scrutinise these documents to ultimately calculate unreported income (Anton, 2020).

2.3.1 Tax fraud warning signs

According to the Association of Certified Fraud Examiners (2016), the following are the warning signs of fraud that employers should be aware of when performing their daily fraud detection and prevention duties: Financial red flags; structural red flags, personnel red flags, operational red flags, accounting system red flags, financial performance red flags and professional service red flags: Behavioural red flags; living beyond their means, financial difficulties, control issues, unwillingness to share duties, wheeler-dealer attitude, divorce or family problems, irritability, being suspicious, defensiveness, addiction problems, complaining about inadequate pay, past employment-related problems, and past legal problems: Instability in life circumstances; excessive family or peer pressure for success, complaining about lack of authority, excessive pressure within the organisation. There are many reasons why organisations choose to conduct fraud examination. A properly executed fraud examination can foster the attainment of a number of organisational objectives, namely, identifying improper conduct, identifying the person responsible for improper conduct, stopping fraud, sending a message throughout the organisation that fraud will not be tolerated, determining the extent of potential liabilities or losses that might exist, helping to facilitate the recovery of losses, stopping future losses, mitigating other potential consequences and strengthening weaknesses in the internal control system. Thus, fraud examination refers to a process of resolving allegations of fraud from inception to disposition, and it is the primary function of anti-fraud professionals.

2.3.2 Tax fraud examination process

The fraud examination process encompasses a variety of tasks that might include the following: obtaining evidence, value of fraud examination rests on the credibility of the obtained evidence. Evidence of fraud usually takes the form of documents or statements by witnesses. For instance, *reporting*: once evidence has been obtained and analysed, and findings have been drawn from it, investigator must report the results to the designated individuals. A fraud examination report is a narration of the fraud examiner's specific activities, findings and recommendations; *testifying*, often, investigators are called upon to provide testimony and report their findings at a deposition, trial or other legal proceedings. When providing a testimony, investigators must be truthful. They should also communicate in a clear and succinct manner. *Assisting* in fraud detection and prevention; investigators are not responsible for the prevention of fraud; such responsibilities belong to management or other appropriate authority.

Investigators are expected to actively pursue and recommend appropriate policies and procedures to prevent fraud (The Association for Certified Fraud Examiners, 2016).

2.3.3 Tax fraud risk management approaches

In combating tax fraud, it is essential for organisations to implement the risk management approach which includes pursuing a risk management approach. The benefit of this approach includes a structured basis for strategic planning, a focus on the underlying drivers of non-compliance and promotion of diversity in the treatment of major tax compliance risks, better outcomes in terms of programme efficiency and effectiveness, a defensible approach that can withstand external scrutiny and a stronger foundation for evidence-based evaluation. A model of the compliance risk management process may be applied by a revenue authority to respond quickly to changing circumstances. This process involves identifying, assessing and mitigating potential losses that may arise from an organisation's noncompliance with laws, regulations, standards, and both internal and external policies and procedures. The model ensures that treatment strategies are applied to activities of the highest priority, and that those strategies have a high probability of success, leveraging the impact of interventions and meeting their business intent. Strategy results from a detailed strategic planning process. A clear set of plans, actions and goals that outlines how tax fraud will be prevented should be implemented. A number of key internal capabilities impact upon risks associated with the administration of the taxation system. These include organisational culture, organisational structure, information technology and business systems, staff and business capabilities (OECD, 2004).

The purpose of tax risk management, as part of the overall business strategy, is to avoid unnecessary tax-related costs, whilst ensuring sound compliance with legislative requirements. Risks can be identified using either top-down techniques such as macro-economic analysis or bottom-up processes such as case-base risk assessment systems. Risk identification involves identifying and classifying sources of a risk to realise what must be managed in the organisation. Risk identification is the first step in the risk management process, as potential problems must be identified before assessment of, response to and control of the risk can take place. An appropriate client segmentation process is fundamental to achieving a thorough identification of risks. Grouping taxpayers based on common characteristics assists in building an overview of taxpayers. Taxpayer segments can be demographic, geographic, psychographic, benefit and volume. A more complete understanding of risk occurs through taking a multi-level approach to risk identification and assessment. Risk identification processes that offer

linkages to understanding the drivers of compliance behaviour offer the most effective leverage of intelligence (OECD, 2004).

A study conducted by OECD (2017) reveals that in thirty-six (36) countries, criminal investigations are conducted by law enforcement agencies under the direction and supervision of a public prosecutor or, in some cases, an examining judge. Further, in thirteen (13) countries, including South Africa, the prosecutor and judges are not directly involved in criminal investigations, though the former may advise other agencies on judicial processes and the law of evidence. Investigations are conducted by the police; tax administration and other agencies and cases are forwarded to a central public prosecution authority for review. A prosecutor may then submit the case for prosecution before the court, refer it back to the investigating agency with a request for further evidence, or decide not to prosecute (OECD, 2017). A study conducted by the World Bank (2018) reveals that countries around the globe are facing a threat posed by increasingly complex and innovative forms of financial crime. By exploiting technology and weaknesses in local legislation, criminals can now overtly move substantial sums of money between multiple jurisdictions with relative ease and great speed. Tax crime and corruption are often intrinsically linked as criminals fail to report income derived from corrupt activities for tax purposes or over-report to launder the proceeds of corruption.

Several agencies are typically involved in the administration of taxes as well as the prevention, detection, investigation and prosecution of tax crime and corruption and the recovery of proceeds from crime. This includes tax administration, general law enforcement bodies such as the police and public prosecution authority and agencies with specific mandate to combat tax crime and corruption. A whole-of-government approach requires a well-functioning institutional framework. The involvement of multiple agencies in civil inquiries, criminal investigations, and the prosecution of tax crime and corruption increase transaction costs and necessitate effective co-ordination. This study further reveals that forty six (46) countries, including South Africa, have a central prosecution authority that is also responsible for criminal investigations conducted by a public prosecutor. Each prosecution model offers different advantages and disadvantages. In jurisdictions where law enforcement authorities can directly prosecute crimes, agencies may develop a degree of specialist skill with respect to offences. In Denmark, France, Sweden and the United Kingdom, low-level matters are handled by general prosecutors, whereas more serious or complex tax crimes and corruption are handled by prosecutors specialising in tax crime, corruption or economic crime in general. In Uganda, the Revenue Authority (RA) has specialised tax crime prosecutors, whereas financial crimes,

including corruption, are handled by general prosecutors. Rwanda's National Public Prosecution Authority (NPPA) has an Economic and Financial Crime Unit (EFCU) that is responsible for the prosecution of financial crimes (The World Bank, 2018).

A key consideration in any crime investigation is the ability to secure or preserve sufficient evidence to prove a case of fraud. Controls of physical evidence occur before the opportunity arises for it to be removed or destroyed by the suspect(s). Physical evidence may therefore need to be seized at an early stage in the investigation process before any witness statements are collected or interviews conducted. If a criminal act is suspected, the police should also be consulted early during the process, before any overt action is taken and the suspect is alerted (Fraud Advisory Panel, 2006). In South Africa in general and KwaZulu-Natal Province in particular, "complex tax prosecutors deal with cases involving tax crimes which requires specialised prosecution due to their intricate nature, or have a high impact on the community, particularly but not exclusively, those matters linked to the commission of organised crime" (Lancaster & Roberts, 2020:55).

The purpose and mandate of the Specialised Commercial Crime Unit (SCCU) of the NPA is to effectively prosecute complex commercial crime cases emanating from the SAPS commercial crime branches. The key element of the SCCU's operations is embedded in its methodology of having a prosecutor involved in the case from the commencement of the investigation to trial (NPA, 2010). Documents exhibiting evidence of expenditures, asset ownership, and movement of money ought to be scrutinised as well. When there is a question about whether or not funds represent taxable income, there will be no coincidence that a government investigator tends to decide the issue in the government's favour. If the taxpayer cannot prove that an item is not taxable, then the government would then assume that it is taxable. In lieu of direct evidence suggestive of income and deductions, the taxing authorities would turn to alternative methods of proving income (The World Bank, 2018).

Indirect methods of establishing proof include the Net Worth Method and the Expenditures Method, both of which can also be referred to as a lifestyle analysis. Essentially, the government is examining known assets and expenditures to back into the amount of income needed to pay for those items (Ramos & Van de Gaer, 2012). The Organisation for Economic Co-operation and Development (2018) provides that tax examiners and auditors must be aware of the need to distinguish between appearance and reality. It is useful to remember the distinctions on facts, assertion, assumption and conclusion. Sorting the available information

in this manner can assist tax examiners and tax auditors in avoiding conclusions based on assertions or assumptions instead of verifiable facts. The most important tool for tax examiners and tax auditors is to bring critical thinking into focus by evaluating the assertions made, to question and investigate their own assumptions as hypotheses and to draw conclusions based on their knowledge of the techniques used by tax fraudsters, money launders, terrorists and terrorists' financiers. Fraud indicators includes unusual income, unusual rise in net worth, unusual possession of assets, unusual debts and unusual transactions. Tax return and pre-audit indicators include unusual off-balance sheet items, unusual profit and loss items and business indicators include unusual transactions and parties, unusual money flows, unusual turnover or sales (OECD, 2018). It is not the external auditor's responsibility to prevent and detect fraud, although they should be providing reasonable assurance that organisations' financial statements are free from material fraud and error. Methods of fraud detection include whistleblowing hotlines, internal tip-offs, external tip-offs, by accident, law enforcement investigation, change of personnel or duties, internal audit, external audit, corporate security and risk management (Ministry of Justice, 2017). The Chartered Institute of Management Accountants (2010) explains that a questioning mind and search for additional knowledge and support obligate accountants to look at all aspects of economic activity, and interpersonal understanding helps accountants to recognise that people's perceptions and motivations for a particular conclusion can be biased, integrity and conviction to decide for oneself, combined with self-confidence, enables accountants to decide on and investigate issues themselves rather than immediately accepting the claims of others, a robust communication system among participants in the financial reporting process is an important aspect of fraud deterrence and detection. Many fraud cases are discovered accidentally or because of information received, either via email or a tip-off or through a whistle-blower hotline.

It is everyone's responsibility to find and report fraud and irregularity within an organisation, and it is therefore essential that an organisation has an appropriate reporting mechanism in place to facilitate this process (Fraud Advisory Panel, 2006). Accountants are experienced, trained, and knowledgeable in different processes of fraud investigation and an accountant is a person who mastered accounting skills and is able to assist lawyers and the courts to understand and apply accounting issues to the law and to disputed matters and an audit as an examination of and in accordance with auditing standards (Slot, 2012). In one criminal tax fraud case, Brown Tax Practice Group (2021) alleged that a small business had several hundreds of thousands of dollars as unreported income. Their analysis has several major flaws, but it took a forensic

accountant to pick apart the numbers and find the fallacies in the government's assumptions. A lifestyle analysis performed by the forensic accountant further showed that the government's numbers could not be true based on the assets and expenditures of the owners. The actual unreported income constituted a small fraction of that alleged by the government, and the results of the detailed financial analysis were presented to the government and aided in a substantially smaller settlement paid by the taxpayers.

Properly defending a tax fraud case of this nature requires a forensic accountant who has the ability to capture and analyse data, complete a proper independent analysis of the "lifestyle" of the business or individual, and poke holes in the government's analysis, calculations, and conclusions. The documentation is often voluminous, which is why it is imperative to engage an investigator who has a track record of successfully completing such cases. Technological innovations can help manage and analyse reams of data, but it is equally important to have an expert who is well-versed in this type of complex analysis. The SARS has implemented new fraud prevention procedures and processes regarding the way in which changes in the taxpayers' banking details will be implemented (SARS, 2014).

Ngubane National Accounting and Auditing Firm based in Durban, KwaZulu-Natal, is a professional services firm with distinct capabilities in a number of specialised fields including auditing, finance, tax and information technology. Their clientele includes government, State-owned entities, municipalities and private companies. The firm's specialised services include fraud prevention, accounting and taxation, forensic investigations, fixed asset management, business consulting, external, internal and IT audit. The firm helps businesses meet the challenges of compliance, reporting and risk management. With the intention of transforming their processes, technology and resource models, they assist on tax matters. Their multidisciplinary-team approach helps organisations understand their exposure to the risk of financial crimes by focusing on detection, investigation and prevention of fraud (Ngubane Assurance, Tax & Advisory, 2021).

The firm assists with fraud prevention planning and implementation, fraud risk assessment and management, fraud investigations, forensic accounting and litigation support services, professional and employment claims investigations, compliance investigations, corporate governance and integrity investigations, special investigations, money laundering and asset tracing investigations (Ngubane Assurance, Tax & Advisory, 2021). The NNAAF audits are in accordance with International Standards on Auditing (ISA). Those standards require that they

comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatements. An audit involves performing procedures to obtain audit evidence about the amount and disclosures in the financial statement. The NNAAF audit also includes evaluating the appropriateness of the accounting policies, examining on a test basis, evidence supporting the amount and disclosures in the financial statements, assessing accounting principles used and significant estimates made by management and evaluating the overall financial statement presentations (Ngubane Assurance, Tax & Advisory, 2018).

The responsibilities of auditors at NNAAF include reporting to the management if the financial statements do not comply with tax compliance legislation. They determine whether or not the departure is justifiable, whether the departure is required in order for the financial statements to achieve fair presentation in all material aspects and whether adequate disclosure has been made concerning the departure (Ngubane Assurance, Tax & Advisory, 2018). “Performance auditing seeks to evaluate the economy, efficiency and effectiveness of the organisation’s operations so as to assure management that its strategic objectives are being carried out and whether or not they can be improved on” (Ngubane Assurance, Tax & Advisory, 2021:np).

2.3.4 Tax fraud prevention and management programmes

The Association of Certified Fraud Examiners (2016) explains that many fraud examinations might lead to legal action, fraud examiners must be familiar with basic rights and freedoms of those involved in the investigations, especially of those suspected of having committed tax fraud. The gathering of evidence, for instance, in the violation of the law, may result in the expulsion of that evidence later at a criminal trial. The opportunity to commit fraud becomes more attractive when employees believe that tax fraud normally goes undetected and unprosecuted. The following fraud prevention programmes have been suggested by The Association of Certified Fraud Examiners (2016): Reporting programmes: an anonymous reporting channel, such as an ethics hotline, is an integral part of an anti-fraud control system. Employees must be aware of the reporting mechanism, taught how to use the reporting system, and be able to trust that they can report suspicious activities anonymously and confidentially. Third party: an outside company that specialises in services of this type most often staffs a third-party hotline, tone at the top. A key part of fraud prevention programme is the express commitment of the board and senior management. This commitment forms the basis of the organisation’s anti-fraud culture and organisational structure. A well-designed organisational

structure with key areas of authority and clear and proper lines of reporting can be an effective fraud prevention measure. Background checks: one of the most basic steps in preventing fraud is not to hire employees who have previous fraud records Before hiring anyone, management should conduct a background check to find out as much as possible about the employee's previous experience with employers and law enforcement. Fraud prevention policy: the fraud prevention policy specifically spells out who in an organisation handles varying fraud matters under differing circumstances.

2.3.5 Stakeholder co-operation in combating tax crimes

In September 2019, the NPA, NDPP and SARS Commissioner signed a memorandum of understanding (MoU) involving the two parties. This MoU embodies an understanding between the parties to establish a working methodology in connection with the investigation and prosecution of tax-related criminal cases reported to the SAPS to ensure that the matters are effectively dealt with. The parties agreed that an NPA and SARS National Coordinating Committee and STU committees be established. Various task teams are currently working on the MoU between these parties (Lancer & Roberts, 2020). The collaboration between NPA and SARS has always been understood to seek to prosecute tax offences where a taxpayer has deliberately and knowingly committed an offence. The amendment of Section 234 of the Tax Administration Act [TAA] (No. 28 of 2011) classified tax offences into two categories, namely, conduct that constitutes an offence and is willfully committed, and conduct that can be criminally prosecuted if it is negligently committed (Choate, Williams & Bower, 2021). The Electronic Filing System (EFS) is the Judiciary's electronic platform for filing and servicing of documents within the litigation process. In addition, it provides the registries of the Supreme Court and the subordinate courts with an electronic registry and workflow system, including an electronic case file. Recent enhancements have added a module which facilitates the conduct of hearing "using documents that have been electronically filed" (Azmi & Kamarulzaman, 2010:602).

In South Africa, law enforcement agencies frequently co-operate in investigating financial crimes through joint investigation teams comprising specialists from each agency. In cases where the tax administration does not assign tax officials to joint investigation teams, the official is unable to use any special legislative powers held by virtue of their position as a tax administration employee. Where suspected criminal activities include both tax-related and non-tax offences, the administration does not co-operate with other agencies; they run parallel

investigation systems, sharing information with the joint investigation teams (OECD, 2017). Effective co-operation with the police and other investigating agencies is essential to the efficacy of the prosecution process. If the case is not prepared efficiently, it can initially lead to unsuccessful prosecution and conviction. The police investigate all crimes and NPA is usually not involved in such decisions, although it may be called upon to provide legal advice and policy guidance. Prosecutors sometimes refer complaints related to criminal conduct to the police for investigation (Van Kaam, 2007). In such instances, prosecutors will supervise, direct and co-ordinate criminal investigations.

Under the NPA Act (No. 32 of 1998), prosecutors have the responsibility to determine whether a prosecution, once started, should proceed. Such decisions are made independently, but prosecutors must consult with the police and other interest groups where required. It is therefore desirable that the police refer matters to prosecutors before a prosecution is instituted. Prosecutors should cooperate with other departments and agencies, such as Department of Correctional Services, Department of Welfare, lawyers' organizations, non-governmental organisations and other public institutions to enhance quality of service provided to the CJS (Van Kaam, 2007). According to OECD (2017), there are four different types of co-operation with respect to information sharing among different stakeholders on tax crimes in South Africa. These are: direct access to information contained in agency records or database; this can include direct access to mass or bulk data or bulk for risk assessment as well as specific access rights to a particular case record or file: an obligation to automatically provide automatically; (that is, at regular intervals) or spontaneously (that is, on occasions when relevant information is identified), normally where the categories of such information are pre-defined (sometimes expressed as a 'reporting obligation'): an ability, but not an obligation, to spontaneously provide information; this includes regular stakeholder meetings held to discuss tax-related matters, including prevention of tax fraud. An obligation or ability to provide information, but only in response to a specific request made on a case-by-case basis; this includes regular communication amongst stakeholders as requested on particular cases.

According to OECD (2017), all countries have legal gateways to enable the tax administration to share information obtained for the purpose of a civil tax audit or assessment, with agencies conducting tax crime investigations with custom administration. There appear to be barriers to the ability of tax administrators to share information with the police or public prosecutors in a non-tax investigation. In fifteen (15) countries such as Australia, Belgium, Brazil, Burkina Faso, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, El Salvador, Estonia,

Finland, France, Georgia, Germany, Greece, Hungary, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, Norway, Peru, Portugal, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland and Turkey. These countries have no legal obligation on tax officials or tax administration to report suspicions of serious non-tax offences to the appropriate law enforcement authority. There is an explicit prohibition on tax administration from sharing information with the Financial Intelligence Unit (FIU). European Union (EU) prohibit tax information being shared with the authority responsible for conducting corruption investigations. Several countries have developed models for enhanced co-operation in combating financial crimes, which enables agencies to work together for their mutual benefit. Countries should consider joint investigation teams in combating tax fraud.

This model enables agencies with a common interest to work together in investigation and to draw on a wider range of skills and experience from investigations with different backgrounds and training. Countries that have adopted this model are Australia, Austria, Azerbaijan, Brazil, Burkina Faso, Canada, the Czech Republic, Denmark, El Salvador, Finland, Germany, Ghana, Greece, Hungary, Portugal, India, Israel, Japan, Luxembourg, Malaysia, the Netherlands, Singapore, Slovenia, South Africa, Spain, Turkey and the United States of America. The whole-of-government approach to combating financial crime involves recognising that the activities of separate agencies do not operate in isolation. Officials in agencies, including tax administration, the customs administration, the FIU, the police and specialised criminal law enforcement agencies are responsible for corruption investigations and financial regulators recognise that the knowledge and skills required to combat financial crime are often spread across each of these agencies. Barriers to effective inter-agency co-operation prevent agencies responsible for combating financial crimes from obtaining the benefit of this knowledge and skills. These barriers fall into broad groups, mainly legal, operational and political (OECD, 2017).

2.4 Factors that hinder effective prosecutorial procedure to combat income tax fraud

A study conducted by the OECD (2018) discusses key legal challenges that hinder effective investigation and prosecution of tax crimes globally, including South Africa. These challenges include the lack of a legal basis for co-operation, or legal restrictions on co-operation, and present a fundamental challenge. The law prohibits information sharing from one authority to another, law provides a legal basis for sharing information but is insufficient, the legal basis for information sharing is difficult to apply in practice, the law only allows information sharing

on request or provides no legal obligation to sharing. An effective framework facilitates co-operation by reducing friction and smoothing interaction. Complex or lengthy procedures can make information stale and less useful. Co-operation assumes awareness of available information and mechanisms for collaboration, lack of training on using channels for co-operation hinders their adoption, inadequate resources will hamper co-operation, a lack of written co-operation agreement such as a memorandum of understanding (MoU) between tax authorities (OECD, 2018).

The study conducted by Klynveld Peat Marwick Goerdeler [KPMG] (2021) in South Africa, Europe, the Middle East and India reveals that fraudsters are typically college educated White males, who are mostly aged between 36 and 55. Precisely, the majority of the fraud cases are committed by men, and median losses caused by men are twice as great as those caused by women, a high percentage of these frauds are committed by senior management; losses caused by managers are generally more than double those caused by employees; average losses caused by owners and executives are nearly twelve (12) times those of employees, longer-term employees tend to commit much larger frauds; fraudsters most often work in the finance and operations departments. The Association of Certified Fraud Examiners (2011) also found a relationship between the person committing the offence and the nature of fraud being committed. Employees are most likely to be involved in asset misappropriation, whereas owners and executives are responsible for fraud involving financial statements. According to Alleyne and Harris (2017), several factors may lead taxpayers to engage in tax fraud and evasion. Among the factors are; tax knowledge, tax morale, tax system, tax fairness, compliance, cost, attitudes towards the behaviour, subjective norms, perceived behavioural control and moral obligation.

A study conducted by Rantelangi and Majid (2018) found that a significant effect on tax payers to engage in tax evasion and fraud practices includes capital intensity, leverage, fiscal loss, compensation, profitability, contextual tax awareness, interest rate, inflation, average tax rate, gender, and ethical tax awareness on tax fraud and evasion. The illegal activity done by taxpayers has many determinants that leads to them committing tax evasion and fraud. These factors include economic, legal, social, mental and moral factors (Saxunova & Szarkova, 2018). Tax administration and investigation are done by SARS. The SARS is a statutory entity tasked to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic of South Africa and their property and uphold and enforce the law.

Other key law enforcement agencies like AFU of the NPA are statutorily empowered to seize criminal assets, particularly the proceeds or instruments of organised crime. The NPA is statutorily mandated to institute and conduct criminal proceedings on behalf of the State, carry out any necessary functions incidental to instituting, conducting and discontinuing such criminal proceedings (OECD, 2017).

The fraud-resistant organisations suggest conditions that allow financial or tax-reporting fraud to exist, which includes lack of a strong ethical culture throughout the organisation and that is encouraged through word and deed by a strong tone at the top. Secondly, there is insufficient skepticism or over-optimism in the oversight provided by members in the financial reporting supply chain. Thirdly, there is insufficient communication among members in the supply chain. Whistle-blowing is still not a protected activity in many situations and may result in retribution (Chartered Institute of Management Accountants, 2010). The NPA Specialised Commercial Crime Unit (SCCU) in South Africa, including KwaZulu-Natal, plays a leading role in developing the prosecution-guided methodology, which is designed to improve the quality of investigations by ensuring earlier and closer cooperation between prosecutors and investigators (NPA, 2020).

Lancaster and Roberts (2020) conducted a study with all NPA prosecutors, including tax unit on staff survey which reveals that NPA should prioritise budget constraints to enhance NPA performance and accomplish its mission and that staff should report unethical behaviour and practices without fear of retaliation. About fifty-seven per cent (57%) of participants felt that the NPA and its senior leadership treated allegations of fraud and corruption committed by NPA staff with necessary seriousness compared to a third (33%) in 2019, signifying an increase of nineteen per cent (19%). However, forty-three per cent (43%) or two in five participants hardly believed that the NPA and its senior management treated allegations of corruption and fraud with the seriousness it deserved. Modules dealing with decision dockets, child justice matters, non-police matters, electronic investigations and case plans for complex cases are being developed. The focus in the lower courts includes the training of prosecutors and addressing the operational challenges that impact the use of the electronic system; this is done together with SAPS and the DoJ & CD, on which the NPA depends for integration (NPA, 2010).

When the forensic accountant writes a report for the purpose of criminal court, the report may be used as evidence when the forensic accountant acts as an expert witness. Therefore, it is important for accountants to understand and identify the relevant legislative framework. One

of the challenges is poor report writing submitted by experts, including accountants and auditors for criminal proceedings (Slot, 2012). The Association of Certified Fraud Examiners [ACFE] (2012) indicates that preparation is a standard that fraud examiners must adhere to when writing an expert report. It states that adequate preparation must be done by the fraud examiner before any interview or information gathering is conducted. This includes analysing what is to be expected as an end-product.

The Auditor General of South Africa (2008) has also noted that as a standard for investigations, investigations should be adequately planned, and that planning should consist of establishing detailed objectives, determination of investigation steps that are going to be taken and the work has to be defined so that the investigation can be properly executed. Against the backdrop of the guidelines imposed by the COVID-2019 between 2020 and 2021, many forensic accountants working with attorneys and prosecutors in South Africa and globally raised concerns on social-distancing as a guideline that negatively affected the quality of work as they had been instructed to work in the confinements of their homes. These experts are working with experts in the criminal justice system to investigate or defend individuals accused of involvement in tax fraud, embezzlement, or other forms of white-collar crime.

These accountants and auditors have found that, while court systems have either been closed or have limited operations, the supply of these types of engagements dwindled. Financial investigations require a high level of coordination. Forensic accounting necessitates frequent collaboration with internal groups, attorneys, law enforcement agencies, subjects and witnesses. The COVID-19-induced lockdowns have relegated white-collar professionals to embrace the work-from-home status, which has proved to be disruptive to the forensic process (Wiesenfeld, 2020). The OECD (2019) outlines the objectives of fraud investigation as inclusive of: identifying improper conduct, identifying the persons responsible for improper conduct, determining the extent of potential liabilities or losses that might exist, preventing fraud and possible future frauds or losses, helping to facilitate the recovery of losses, mitigating other potential consequences, strengthening internal control systems, sending a message throughout the organisation that fraud will not be tolerated, and emphasising regulatory or legal requirements. A fraud-response plan can assist in reporting protocols, the response team responsible for conducting an initial assessment, factors used to decide on the course of action, litigation hold procedures, principles of documenting the response plan and template or form to report fraud incidents.

Forensic accounting involves the use of professional accounting skills in matters involving potential or actual civil and criminal litigation. Forensic accountants proactively investigate the control environment to identify weaknesses and areas susceptible to fraud or loss, investigate a specific situation to ascertain an entity's true financial position, where a transaction may have happened but the cause would be unknown or the transaction would have been deliberately recorded to misstate financial statements. The forensic accounting process involving electronic evidence staff interviews, report preparation, identification of opportunities for recovery of loss, control and improvements to reduce future loss (Godbole, 2004).

The key to building a professional working relationship with legal practitioners is to provide them with a comprehensive and well-written investigation report. This report should be detailing the incident under investigation and the evidence that has been obtained. An investigation report helps to prepare and inform legal practitioners, providing them with a logical framework for them to work with (Zinn & Dintwe, 2015). The key points to be considered in South Africa include implementation of a more vigorous attitude towards prosecuting tax fraudsters and evaders. This may necessitate the appointment of additional investigators and prosecutors (in the SARS and NPA) with the necessary knowledge and skills to achieve a successful conviction in terms of tax evasion and fraud. The use of independent accounting and auditing firms needs to be maximised to assist in criminal proceedings. Employees working in the investigation department are required to undergo special training in forensic accountancy and forensic techniques to increase their ability to detect and deter tax fraud and evasion (Storm & Coetzee, 2018).

2.4.1 The National Prosecuting Authority's technological challenges

According to Lancaster and Roberts (2020), NPA has noted the challenges on the prosecution of tax crimes in South Africa. These challenges includes the organisation's non-registration as electronic case management system (ECMS), lack of time due to workload, lack of training, inadequate and unreliable network connection, as well as hardware and software issues. Implementation of the ECMS is an integral project of the justice system, but has largely failed to address the needs of the CJS and requires proper governance structures to be put in place to ensure its successful development and implementation across the CJS (NPA, 2020). A study conducted by Lancaster and Roberts (2020) in which all the prosecutors from all NPA units including STU in South Africa participated reveals that training and development seems to be a top priority, with two in five participants having indicated a great need for the NPA to provide

constant training and re-skilling opportunities for all prosecutors in different units. The participants further noted the need to set achievable targets and performance indicators highlighting the need for a zero-tolerance approach to unethical conduct. Another topic under discussion was the challenges posed by a constrained budget or inadequate resources that impacted the operational effectiveness of prosecutors and support staff. Lack of leadership and support from managers, dissatisfaction with career growth, inadequate human resources, work-related stress, lack of psychological support and low staff morale were other burning issues mentioned by participating prosecutors.

Work overload, administrative work, low salaries and unreasonably huge workloads contributes to ineffective prosecution within NPA and the management needs to consider developing effective strategies to resolve this matter. The participants further illustrated on issues of internal organisational, culture which was described as poor, chaotic and disorganised (Lancaster & Roberts, 2020). Furthermore, 44% of the participants were concerned about lack of interdepartmental collaboration, which undermined their effectiveness; 47% mentioned unattainable and unrealistic performance targets; 36% raised issues on inadequate budget; 25% mentioned inadequately skilled staff; 24% expressed poor and unreliable IT connectivity; 19% were concerned with lack of trust in senior managers; 13% mentioned unfair labour practices; 13% raised lack of direction or guidance from supervisor or manager; 12% mentioned poor communication from the NPA's leadership; 11% mentioned corrupt staff; 10% highlighted lack of collaboration within the NPA; 8% mentioned racial discrimination; 7% raised concerns about lack of vision by the NPA leadership and 3% mentioned gender discrimination (Lancaster & Roberts, 2020).

The 2019/2020 financial year of NPA AFU was a challenging year with a high vacancy rate for advocates at 30% and for financial investigators and analysts in excess of 50%. The primary function of these investigators was to identify and trace assets, a central function enabling the AFU to confiscate or forfeit assets. This situation had major impact on the AFU's ability to meet its targets. During this financial year, AFU completed 417 forfeiture cases against an ambitious target of 510 and obtained confiscation orders to the value of R455 million against a target of R2.5 billion (Lancaster & Roberts, 2020). The issue regarding negative public perceptions and reputation of the NPA was confounded by lack of leadership credibility, lack of public confidence in the NPA, lack of accountability in respect of prosecutorial decisions, interference with the independence of the NPA, negative media coverage, lack of effective

decision making or prosecutions in certain high-profile cases, perceptions of fraud and corruption as well as dishonest and unethical conduct in the NPA.

Inadequate stakeholder management and co-operation contributes to lack of alignment of common targets within the Justice Crime Prevention and Security (JCPS) cluster, particularly with the SAPS, lack of joint planning in the JCPS, lack of accountability in the JCPS, inefficiencies in the structure and functioning of various national and provincial joint structures, Provincial Efficiency Enhancement Committees (PEECs), and the National Efficiency Enhancement Committee (NEEC). Lack of required skills and people to attend to complex matters contributes to long recruitment processes in specialised areas, prolonged periods of non-filling of vacant posts due to budget constraints, discontinuation of aspirant prosecutor programme, and experienced and skilled prosecutors lost to judiciary. Insufficient use of technology to enhance efficiency and effectiveness in the NPA has contributed to a lack of integrated electronic case management, challenges within the integrated justice system processes, reluctance to move from a paper-based to an electronically driven organisation, lack of an organisation-wide knowledge management system and capacity, lack of laptops and network connectivity, particularly in lower courts, ECMS developed but not fully implemented training of prosecutors and lack of data capturers at lower courts (Makeke, 2014).

2.5 The relevance of centralised SARS electronic-filing system in combating income tax fraud

IT is central to the effective administration of taxation systems. An administration structure ought to be able to deal with increasing numbers of taxpayers and increasing amount of information required to manage the complexity of their interactions. Investment in IT now forms a significant part of the budget of administrations and needs to be carefully managed. Several stages in a typical tax administration technology reform programme can be identified. Firstly, the informational stage, which involves education to provide all tax-related information including laws, regulations, ruling, forms, guides, annual reports and traceability thus allowing taxpayers to follow the status of interactions with tax administrations. Secondly, the transactional stage includes submission of information, interaction with third parties and service compliance. The last stage is interoperability, which includes tax determination from accounting systems, e-tax audit and e-crosscheck, e-invoicing and single window across government entities (Fiscal Affairs Department, 2018).

2.5.1 The global history of e-filing tax system as a technological tool in South Africa

The e-filing method of filing one's taxes has been operational for 25 years. The history of e-filing began in 1986 as a small test programme in which only five tax preparers from Cincinnati, Raleigh Durham, and Phoenix agreed to participate. Since then, e-filing has become commonplace, serving millions of taxpayers every year. In the 1980s, processing taxes became increasingly difficult and tax preparers started to use special computers and software to simplify their job, though they still had to print all the forms and mail them to the Internal Revenue Service (IRS). All the high storage costs were solely incurred by the IRS. In addition, with the emergence of new technology in the decades preceding the 1980s, the IRS began to use machines and computers to process the returns (Eboibi & Richards, 2019). With both the IRS and tax preparers using computers to prepare and process tax returns, it made no sense having paper forms because they in fact just increased the chances of making errors. The early e-file process consisted of the tax preparer using a machine called Mitron, which was a tape reader with a modem.

The tax preparer would insert the tape with the tax data and then transfer it to the IRS. At the IRS, an agent would transfer the tape into a machine called Zilog (Or Zylog). The Zilog S8000, which cost R121 902, 00 in South Africa, was a small supercomputer, which would read the data and organise it in a way that would be convenient for the IRS's system. In 1986 the five (5) tax preparers filed around 25 000 returns using the e-file method. The success of the programme prompted the IRS to move it past the test stage and expand it to more cities. In 1987, 66 tax preparers agreed to participate, filing 78 000 tax returns (Eboibi & Richards, 2019). To improve the system, the IRS added an Electronic Direct Deposit (EDD) option, so the refund money could be wired to a bank account of the recipient's choice.

In 1988 the IRS discontinued the use of Zilog S8000 (which cost R121 902, 00 then) and instead used Internal Business Machines Corporation (IBM) Series in the processing system. This meant that the employee did not have to plug the phone into the modem anymore, making the process a little simpler. In 2002, the IRS added an option involving the use of a personal identification number (PIN) instead of a signature for preparing taxes, thus completely eliminating the need to use paper during the process. By 2005, 68.4 tax returns were filed through the e-file system. Half of all the tax returns were filed with the system. In 2003, the e-file system added forms 941 and 944, allowing companies to file employment as well as annual tax returns (Eboibi & Richards, 2019).

2.5.2 The adoption of the e-filing system in South Africa

The concept of submitting tax returns and making online tax payments was first considered as part of the *Siyakha* Project in year 2000. It was aimed at creating an additional means of interfacing with the SARS using current technology and aimed at improving service efficiency. Siyakha or “We are Building” is an organisation-wide project deployed in SARS to transform the face of the taxation system in South Africa. Its primary thrust is to standardise processes and improve efficiency by leveraging on economies of scale where possible. By removing *ad hoc* thinking through standardisation, the advice, for instance, given at one branch will be consistent with that given at another (Eboibi & Richards, 2019). The programme was vast, stretching over the customs and excise duties of SARS. Deployment of the online tax administration service was initially undertaken on a public-private partnership (PPP) basis. Five service providers were invited to develop their own technology and publish secure e-commerce websites (SARS, 2018).

This was to be done at their own cost, but they would enjoy the benefits of interfacing directly with the back-end of the SARS systems and reaping revenue gleaned per transaction. Project workload at SARS and the cost of developing their own website led to this PPP approach. A pay-by-transaction business model was adopted, with the price being set at around R46 per transaction. The outlay for development and support would theoretically have been easily recouped through this additional levy. However, tax-based transactions are a grudge payment, and users could not justify paying an additional amount per transactions, especially for frequently made payments, such as Value-Added Tax (VAT). The model soon failed, with one of the service providers liquidating and another closing shop. Thus, great technology did not ensure business success (SARS, 2004). In terms of scoping the resultant e-filing system, a number of criteria had to be borne in mind. The system had to be one that would emulate the experience of users in their normal dealings with SARS; it should, as far as possible, provide a predictable and familiar interface. Essentially, the system ought to be a front-end interface that would need to seamlessly integrate with SARS’ back-end operations. In addition, service levels were set very high and were to be consistently implemented throughout the system – what was happening in the SARS offices was to be reflected in the e-filing system. Practically, any business solution can be implemented using technology; however, the problem had shifted to one of integrating the soft aspects of user adoption rather than focusing on the hard-technical dimensions.

Throughout the revision of the e-filing system, it was emphasised that the service should be regarded as part of the organisation-wide *Siyakha* Project, and not a stand-alone offering. It would be an alternative channel for interfacing with the revenue services in line with the needs of users using contemporary technology (SARS, 2018). Despite the failure of the business model, the technology had proven itself. For this reason, SARS decided to purchase the Intellectual Property (IP) from the remaining developers. The main focus, however, shifted from developing the technology for the service to ensuring service uptake or utilisation by the target market. SARS invited highly skilled individuals from the remaining business partners to refine the service and create a support infrastructure. This ultimately led to the formation of a consortium named ‘Internet Filing (Pty) Ltd,’ who have been trading as Interfile, but operating as SARS e-Filing. Refining the service offering was now based not only on sifting out the best technology from the pool of the IP-generated, but on selecting services that could be well-supported and would be well-utilised by a huge client base. In addition, the service would be free to users and all development and support funded by SARS (SARS, 2021).

Essentially, the ‘low-lying fruit’ ought to be plucked first. Those transactions most frequently undertaken were short-listed and the range of services to be implemented was limited to the online payment of VAT , Pay as You Earn (PAYE), Unemployment Insurance Fund (UIF), Skills Development Levy (SDL) and Provisional Tax (PT). High net-worth individuals who often have access to the Internet as well as businesses were envisaged to be the initial users of the system. Tax practitioners were also expected to make extensive use of the services (SARS, 2004). Currently, the e-file system is wildly popular, with one billion returns having been filed throughout its history, and more than 122 million tax returns had been e-filed in 2013 (Eboibi & Richards, 2019). The experience of tax administrations in introducing a technology solution shows that there are best practices that can assist in making the implementation swift and effective. First, as there is a variety of solutions available for any given problem, it is critical that the tax administration has its objectives clearly defined.

This includes a careful identification of the problem being addressed, comparing the options available to it, investigating the technology solutions and preparing an implementation plan that is transparent to the taxpayers. It may also be helpful to seek the input of a range of government stakeholders, including policy, budgetary, tax, technical and legislative functions. Engagement and consultation with the affected taxpayers is an important aspect of the implementation of a new solution. This can equip the tax administration with insights into the most cost-effective solutions, the solutions that would be suitable for different types, maturity

and sizes of businesses, provide an opportunity to resolve questions, provide guidance and identify if other supporting measures (such as incentives or enforcement measures) may be needed to bring about swift change (SARS, 2021). Framing this dialogue in a positive manner can be particularly effective and, although there may be costs for taxpayers, there is an opportunity to present the benefits for taxpayers (SARS, 2020). This includes the importance of ensuring a level playing field for all competitors, the ability to streamline other tax-reporting obligations, and the ability to guard against reputational damage that arises from tax crimes.

Collaboration with the private sector providers of the solutions from an early stage can be helpful if the market supplies the relevant technological solution, and market competition in this field can reduce the costs for taxpayers. Early engagement with the private sector can also assist the tax administration in learning the technical terminology and equipping it to accurately describe the required specifications (OECD, 2018). This eventually ensures that the private sector understands how to meet the requirements. Engagement with the private sector can also assist in designing a future-proofed solution; for example, to ensure that any updates in software or improvements in the design are able to be implemented in a cost-effective manner over time rather than requiring substantial and repeated investments (SARS, 2020).

2.5.3 The relevance of data technology on effective tax crime investigations and prosecutions

Infrastructural resources are required in conducting tax crime investigations, such as forensic tools, administrative equipment, including for enforcement actions, the ability to securely handle evidence, and an effective communication platform. Data and technology resources mean having access to relevant data and intelligence, as well as the hardware and software needed in analysing it. The required data and intelligence should include access to tax and other revenue-related information, bank account information, real estate information and commercial and company information. In terms of the technological resources, this includes computers, IT systems, smart-phones, and data storage systems as well as the analytical tools needed to establish links, patterns and risks amongst different sources of data (both structured and unstructured). Law enforcement agencies need to increasingly have the skills and tools to conduct investigations in response to the increasing digitalisation and globalisation of criminal activities and it is likely that information and data analytics will become even more important,

and access to a wider range of digital information and analytical tools has become imperative (OECD, 2017).

In India, there is a level of associated risk for companies investing in tax technology. Given the specialised skill required to deploy tax technology coupled with the occasional discomfort around making investments in technology, companies are increasingly looking to professional firms for the provision of managed services. Technology needs to be adopted to improve the integration of tax with finance and other functions to have seamless data extraction, using tax-specific tools and solutions for automation and analytics. Every tax professional needs to have analytical capabilities at all levels. Traditional tax department challenges in India included difficulties in managing and locating final versions of critical documents, inadequate information-sharing across tax functions and geographical locations, redundant and email-intensive data-collection methods, excess time and effort spent on administration and manual tracking, dealing with multiple data sources and spending valuable time translating them to a common structure or data definition and lack of visibility and oversight of deadlines, deliverable status and resource allocation (Fiscal Affairs Department, 2018).

The benefits of tax technology are that it allows tax professionals to better focus their resources on analysing data, enables the tax function to evaluate current tax processes, helps organisations to spread out costs associated with investments in licensing and implantation of technology and reduces risks, thereby protecting the reputation of the firm (Pande & Patni, 2017) more effectively. A new electronic tax filing system in Afghanistan has made it easier and faster for taxpayers to file their taxes while ensuring transparency in the process. The e-filing system is among several reforms implemented by Afghanistan Revenue Department to improve taxpayer compliance and curb corruption (Anton,2020). The reforms are part of a government programme designed to address corruption, improve management of public resources, and manage current economic and political risks. The entire process of filing tax returns then often took several days, with taxes of only forty (40) to fifty (50) people being processed daily. The SARS e-filing system has streamlined the tax filing process by reducing the number of required supporting documents from twenty-one (21) to just five (5).

Not only has the e-filing system shortened the process and reduced paperwork, but it has also decreased the opportunities for corruption and promoted transparency in tax filing. E-filing has also reduced human errors and lowered instances of corruption because of the lack of personal contact as everything is processed electronically. The e-filing system, together with other

reforms that are underway, helps improve performance at tax offices and enhances taxpayers' compliance throughout the country (The World Bank, 2018). Tax administrations are exposed to rapid change through the digitalisation of the economy and the emergence of new business models and ways of working. Increasing e-administration, which means a significant shift towards e-administration with increasing options for online filing of tax returns as well as online payments, is inevitable. Overall, the e-filing rates for income tax are now above seventy per cent (70%) and those for corporate income tax are around eighty - five per cent (85%). Digital contact channels continue to increase while traditional methods continue to decrease. The growing use of behavioural insights as a compliance tool reports the use of behavioural insight and analytics to better understand why and how taxpayers act. Smarter compliance with risk management entails that tax administrations are adopting an increasingly proactive approach to compliance risk management, and where possible, seeking to intervene at earlier stages rather than after tax returns have been filed. There is introduction of compliance by design with increasing availability and design approaches to cover a variety of sources of income and ageing tax administration workforce (OECD, 2019).

KPMG (2021) in South Africa indicates that many organisations maintain data in multiple systems. The adoption of technology as part of tax function transformation process may not necessarily yield the immediate results one expects, nor should one expect to fully automate a tax function at the outset. Technology helps with tax compliance, insights and process management. The world is increasingly becoming digital both at homes and at workplaces. The SARS e-filing system is basically an online transmission of required tax information. Instead of navigating software or handling amounts of paperwork, online filers follow a few easy prompts from desktops. Moreover, no more trips to the SARS branches to submit manual document. Online tax reporting is much more affordable than purchasing software and bundles needed to download forms. In addition, e-file ensures compliance with tax rules, there are no complicated calculations, data entry errors are detected and mistakes are prevented. Regular communication, including SARS email notifications, assist taxpayers as it is cost saving, time saving and minimises security risks (Certified Public Accountant [CPA] Practice Advisor, 2016). The SARS e-filing system is the official online tax returns submission portal launched originally in 2001 via third-party companies, then expanded and taken in-house by SARS in 2006.

In the 2015/2016 tax year, SARS E-filing processed 36.80 million electronic submissions and payments which equates to 98.7% of all submissions and payments made to SARS. SAR Se-

filing provides free services to individual taxpayers, trusts, companies and tax practitioners to submit tax returns, submit declarations and make relevant payments in an online environment (SARS, 2016). When taxpayers electronically submit their income or tax return, it saves the IRS and the State taxing agencies time and money. It is also a ‘green’ (environmentally friendly) alternative to printing and mailing. It costs considerably more to process paper returns into a format that is machine-readable. In fact, due in part to increased e-filing, the IRS budget actually decreased (inflation-adjusted figures) between 2010 and 2015. From extremely few taxpayers using the system in 1986 to becoming today’s norm, the history of e-filing demonstrates that the trend towards electronic transmission continues to grow. The implementation of the e-filing service by SARS has contributed to the South Africa government’s remarkable improvement in service delivery and revenue collection performance of the last few years. The highly successful service has been in operation since July 2003 and has managed to capture 10% of the transactions it offers, with an estimated growth of between 10% and 15% month-on-month growth being currently realised (SARS, 2016). The e-filing system, however, is not a straight-forward success story.

As service providers exploiting new technologies have learnt, clients do not always wholeheartedly adopt outstanding technological solutions. The initial implementation model, although technologically impressive and financially sound for SARS, failed because of low adoption rates. The SARS e-filing case illustrates the necessity of innovation in the public service to be dictated by service delivery imperatives (Eboibi & Richards, 2019). The rescuing of a worthy technological solution and its transformation into a client-centred service offering are the outstanding aspects of this instance of innovation (SARS, 2021).

2.5.4 Taxpayer’s engagement and tax education programmes to combat income tax fraud

Testing prototypes of technology test or practical proof of concept evaluations can further support the development of relevant technology requirements and specifications, which ultimately facilitates efficient implementation. Once any implementation problems have been resolved, the solution can be implemented more widely in industry or other locations which are the next priority in terms of risk. Campaigns can be continued over time to publicise the results of technology solutions in recovering public revenue, as these boost taxpayer morale, reinforce the deterrent effect of these solutions and lend support to further expansion of the use of technology tools in preventing and detecting tax fraud (OECD, 2019).

The public can also be encouraged to act as an enforcement mechanism where there is a whistle-blowing mechanism, allowing employees or customers to inform the tax authority of suspected violations of tax obligations, and possibly offering a reward for doing so. In order to enforce the requirements, the tax authority will need a mechanism of detecting and measuring non-compliance issues, including an ability to measure the correct functioning of a technology solution such as through certification. Tax administrations should continue to engage with taxpayers, the private sector and with each other to stay abreast of new risks and share the gains made in implementing new solutions. Technology is a fast-changing area, and criminals will continue to find new approaches that demand new response from tax authorities (OECD, 2019).

Tax authorities should continue to share their experiences and insights into utilising technology to combat and deter tax evasion and tax fraud, as well as providing feedback into the broader reform efforts across the tax administration to improve tax compliance (OECD, 2020). SARS offers free tax education workshops which are presented at most SARS branches across the country by the Branch Operations Engagement teams. The aim is to provide taxpayers with information that would create a basic understanding of the various tax types, how these taxes work and what is expected of taxpayers to be tax-compliant (SARS, 2020).

2.5.5 Electronic-filing adoption and taxpayer's compliance to combat income tax fraud

The study conducted by OECD (2017) shows that the results that can be achieved by utilising technology to detect and prevent tax fraud and tax evasion speak for themselves. These solutions can offer a win-win scenario: better detection of crime, higher revenue recovery, and synergies that can make tax compliance easier for business and tax administrations. This short report shows that in many cases, working solutions are already in place, and that a number of countries are already able to share their experience in the implementation process. It is hoped that this brief report serves as an encouragement for all countries to consider the risks in their taxpayer segments and to take advantage of the experience of others included in this report to leverage on the lessons already learned. Technology tools are not a single fix to the problem of tax fraud and tax evasion, but if implemented effectively, substantial progress can be made in high-risk areas. These solutions should always be accompanied by the other necessary tools available to tax authorities, including legislative measures, effective enforcement, taxpayer consultation and international co-operation. This report has focused on just a few areas where technology solutions are having a significant impact. As technology and taxpayer behaviours continue to evolve, further areas of work will become relevant. This could include further work

on the sharing economy; carousel fraud; customs fraud. Any further work in this area could also build on the ongoing work in the field of data analytics undertaken by both the Task Force on Tax Crimes and Other Crimes and the Forum on Tax Administration (OECD, 2017).

Tax specialist, Ntwampe (2018), is of the view that SARS is doing well to educate the public around why they pay taxes and how to go about it, while creating awareness of the consequences of tax evasion. Tax accountants determine tax strategies that deter, minimise, or eliminate tax payments and arrange audits with taxation authority. This assists the courts in identification of financial transactions in relation to tax crimes. The SARS e-filing system is an online platform for the submission of returns and declarations and other related services. This service allows taxpayers, tax practitioners, traders and businesses to register and submit returns and declarations, make payments and perform a number of other interactions with SARS in a secure online environment. Taxpayers registered for e-filing can engage with SARS online for the submission of returns and declarations and payments in respect of taxes, duties, levies and contributions (SARS, 2021). SARS e-filing software assists NPA with admissible evidence to identify if tax crime is committed deliberately or due to negligence. The information available on the system assists in criminal proceedings (Lancaster & Roberts, 2020). The NPA's crime prevention role flows directly from the preamble of the NPA Act [No. 32 of 1998] vision to ensure justice in our society and its mission to provide prompt, vigorous and fearless prosecution services on behalf of the State. The criminal tax offences range from serious offences, such as the deliberate (Fraudulent) falsification of documents and the dissipation of assets to frustrate SARS in carrying out its duties, to relatively minor offences, such as failing to notify SARS of a change in taxpayer's public officer's details. South African criminal law recognises different degrees of intentional conduct, including *dolus eventualis* or mere foreseeable possibility that certain conduct might lead to prohibited consequences (NPA, 2010).

2.5.6 Taxpayer's technological readiness to combat income tax fraud

According to Lai (2017), the rate at which payment systems develop depends largely on a struggle between rapid technological change and natural barriers to new product or service acceptance. Technology Readiness (TR) refers to people's propensity to embrace and use of new technologies for accomplishing goals in home life and at work (Parasuraman & Colby, 2015). Based on individual's technology readiness score and the technology readiness, further classified technology consumers into five technology readiness segments of explorers,

pioneers, skeptics, paranoids, and laggards. The diffusion of innovation or technology readiness is vital for the success of implementation processes in organisation because it is market-focused and emphasises individual impact.

Individual impact refers to improved efficiency, effectiveness, and/or higher quality, which assumes a good fit between task and technology; it seeks to increase the likelihood of utilisation and the performance impact since the technology more closely meets users' task needs and wants (Goodhue & Thompson, 1995). "The ultimate reason these taxpayers use the e-filing system is that they find the system useful to their tax return preparation and submission and believe that it results in significantly less effort and time in completing the tax return task" (Jankeeparsad, Jankeeparsad & Nienaber, 2016:128). Using the Internet more frequently, these taxpayers find using the e-filing system more convenient than filing data manually and anticipate faster processing times from SARS. These taxpayers found the e-filing system relatively easy to use and also demonstrated a higher computer self-efficacy. This is due to their high computer literacy levels and their regular Internet use. Therefore, consistent with the findings by Hung, Chang and Yu (2006), both perceived ease of use and computer self-efficacy have a positive impact on the behavioural intention to use the e-filing system.

2.5.7 The relevance of digital evidence on tax fraud criminal proceedings

Computers, information systems, communication devices and other digital devices are now used as a tool to commit crimes. Investigators must be comfortable with obtaining and collecting digital evidence, must understand how to make use of digital forensics and be able to identify and investigate cybercrime (Zinn & Dintwe, 2015). The South African Law Reform Commission [SALRC] (2015) on discussion paper indicates that advances in technology have resulted in the frequent production of electronic evidence. The evidence in the criminal and civil proceedings can present challenges to the conventional meaning established concepts in the law of evidence, of importance the best evidence rules. Electronic evidence refers to data messages including voice and a stores record. The production of electronic evidence in court proceedings challenges the conventional categories of evidence and the rules that govern them. The disadvantage of the rapid changes in information technology is that criminals too are given tools which they can use to gain access to data or private information of a person or company, which they can use to commit an offence. The use of computers by criminals aromatically creates a computerised data base that investigators can develop into to collecting information and evidence (Zinn& Dintwe, 2015).

Digital evidence can exist in any electronic device or storage media capable of processing or storing digital information. For the evidence to be usable in court proceedings, it must be both relevant and admissible. Relevant evidence is the evidence that can prove or disapprove any of the facts in issue in the case (Bibas, 2009). Data mining tools search databases for unclear patterns, finding predictive information that even experts might not recognise. Using data mining technologies, companies can evaluate vast amounts of information, spotting patterns, detecting, investigating and monitoring fraud. The process of data mining includes identification of data sources, identification of how information is stored, check that the data is complete and appropriate for analysis. Data analysis includes planning phase, preparation phase, testing and interpretation phase and post-analysis phase. Digital investigations are investigations that involve relevant digital data processed or stored by digital device (Godbole, 2004). Digital forensics involves preservation, identification, extraction and documentation of digital evidence stored as data or magnetically encoded information (Beckett & Slay, 2007).

Digital forensics encompasses the recovery and investigation of material found in digital devices. Digital evidence (computer) can be a target of a criminal act or an instrument of crime, or a repository of evidence associated with crime. It is more volatile than tangible information because data can be altered or destroyed more easily than tangible information. Computer forensics specialists can recover different types of information from computer systems (Mckemmish, 1999).

The scientific process of digital forensics consists of search authority, chain of custody, imaging, validated tools, analysis, repeatability, reporting and possible expert presentation. Scientific analysis method in digital forensic science includes gathering information and making observations about the evidence, forming a hypothesis to explain the observations, evaluating the hypothesis and drawing conclusions and recommendations on findings (Casey & Rose, 2010). Essentially, digital evidence is any data stored or transmitted in some digital format that can be used in criminal prosecution, civil litigation or disciplinary hearing either to prove or disapprove any aspect of the case. Examples of digital evidence includes digital photographs, digital videos including Closed- Circuit Television (CCTV) footage, emails, text messages, websites and web pages, documents and spreadsheets. This evidence can be used to answer certain fundamental questions relating to a case under investigation, including what happened, when, who interacted with whom, where the evidence originated and who was responsible for creating the evidence. The common devices and media include desktop computers, portable computers, external and portable hard drives, cell phones and smart

phones, portable media players, Universal Serial Bus (USB) thumb drives, digital cameras, flash memory cards and Compact Disc (CD) or Digital Versatile Disc (DVD) disks (Zinn & Dintwe, 2015).

The accessing of data is the fundamental part of the practice of digital forensics that is performed intentionally by the digital forensics' practitioner. Data is processed for the purpose of imaging it for later forensic examination and analysis, performing a live forensic examination or incident response process, examining and analysing the contents of a forensic image made of the original data (Jones, Valli & Dabibi, 2009). United Kingdom (UK) developed four basic principles for computer-based digital evidence to aid in the acceptance of digital evidence in the forensic examination in a court of law; namely, no action taken by an investigator or examiner should change data held on a computer or on a stored media which is relied on in a court of law. In circumstances where an investigator or examiner must access original data held on computer or storage media, that person must be competent to do so and be able to give evidence explaining the relevance and the implications of their actions. An audit trail or other records of all processes applied to computer-based digital evidence must be created and preserved, and it must be detailed enough to allow another independent digital forensic examiner to use documents and achieve the same results by following the same process (Williams, 2012).

2.5.8 Digital forensic process on tax fraud criminal proceedings

The person in charge of an investigation has overall responsibility for ensuring that these principles are adhered to. During digital forensic process, the pre-examination phase allows the investigator or examiner to obtain the legal authority or mandate to acquire and examine the digital evidence, identify all the elements of all allegations to be investigated in terms of the legal authority, identify all possible devices or media that may contain potentially relevant digital evidence, in terms of legal authority, seizing and transporting the evidence, forensic acquisition of the digital evidence from the identified devices or media, forensic authentication of the digital evidence acquired. In the examination phase, the investigator or examiner confirms the legal parameters of the examination as established by the legal authority that was used to acquire the digital evidence, authenticating the forensic images that were received for examination, processing the forensic images using standardised digital forensic processes and methods, examining and identifying the individual digital artefacts, analysing and

individualising the digital artefacts that were identified as relevant , and interpreting this evidence.

Lastly, the post–examination phase allows peer review of the results of the digital forensics examination process to ensure accuracy and the quality of the process followed and the interpretations made, documenting the entire examination in detail in an affidavit or report, reviewing the digital forensic examiner’s affidavit or report for quality assurance purposes, providing the finalised affidavit or report to the investigator who requested the digital forensic examination, presenting the digital forensic examiner’s evidence in court (Zinn & Dintwe, 2015). The common methods used to forge documents is that a forger attempts to imitate the signature or writing, the signature or writing is traced, the forger makes a simulation of the signature or writing from a specimen, the document and the purported signer are fictitious, a “cut-and-paste” job is done where a genuine signature or copy thereof, is transferred from some authentic source to a fraudulent document, the signature or writing is genuine , but is obtained in such a manner that the author later denies that he or she could have signed or written that document. The document examiner needs to establish who is the author of the document content, establish the validity of the signature, observe and decipher any alterations, erasures, deletions, additions and substitutions by using instruments such as Video Spectral Comparator (VSO) to examine the document through infrared illumination using an infrared-sensitive Charge–Couple Device (CCD) camera detector (Zinn & Dintwe, 2015).

2.5.9 The use of Deoxyribonucleic Acid (DNA) databases on tax fraud criminal proceeding

The use of forensic Deoxyribonucleic Acid (DNA) databases is a powerful tool to provide investigative leads to identify suspects in cases where genetic material has been left at the scene of incidence. DNA forensic profiles are kept in data bases for later comparison with DNA that may be discovered at a future scene of incident or obtained from a suspect who is arrested after a number of years (Zinn, 2010). It is advisable that investigators should ensure that DNA reference samples are taken from person charged from crimes (Gilbert, 2010). A high number of awaiting trial detainees, backlog in cases, lack of integrated information management, capacity constraints, fragmentation across CJS, demand on CJS far outstrips current supply and not managing existing resources efficiently has been identified as justice challenges and constraints in the NPA. There is a need to increase capacity of NPA and courts significantly as SAPS grows, become more effective, more proactive in solving crime problems, prosecutor

or investigator's cooperation essential in complex crime and a proven recipe for success, play role with partners in prevention initiatives, explore other forms of disputes resolutions, enhance and develop NPA governance, service delivery and strategic resourcing capability an capacity. The stakeholders of NPA include governors, customers, partners, employees, the accused, suppliers and civil society (Van Kaam, 2007).

2.7 Summary

The quality of tax fraud investigations is significant to gather admissible evidence for effective and successful prosecution for alleged criminal act. It has been noted that SARS relies on TAA which provides powers to search and seize assets of alleged perpetrators. Government initiatives on tax fraud prosecutions focus largely on violent crimes, neglecting economic crimes. SARS sought to increase the number of fraud cases brought under effective prosecution. Tax fraud prevention should include use of analytical procedures and introduction of mechanisms that provide communication of suspected fraudulent acts. Accounting and auditing firms need to be maximised to assist in criminal proceedings. Increased appointments in the criminal justice system are needed. Special training in forensic accountancy and forensic techniques for employees working in the investigation's department is required to increase their ability to detect and deter tax fraud and evasion. Digital evidence (computer) can be a target of a criminal act or an instrument of crime, or a repository of evidence associated with crime. Companies using data technologies can evaluate vast amounts of information in detecting, investigating and monitoring tax fraud. The NPA has noted challenges related to the uptake of technology as a factor. The reason for this challenge includes non-registration as Electronic Case Management System (ECMS), lack of time due to workload, lack of training, inadequate, unreliable network connection, hardware and software issues. The next chapter (Chapter Three) discusses legislation and policies adopted in this study.

CHAPTER THREE

LEGISLATION AND POLICIES TO COMBAT INCOME TAX FRAUD

3.1 Introduction

In this chapter, the researcher discusses legislation, policies and theoretical frameworks to combat income tax fraud in South Africa. The aforementioned Criminal Procedure Act [CPA] (No. 51 of 1977) governs procedures and related criminal proceedings. Tax Administration Act [TAA] (No. 28 of 2011) gives SARS the powers to administer tax. The Act states that tax offences involve fraud on SARS or SARS officials. Further, the Act also gives SARS the powers to search and seize according to Section 59. The National Prosecuting Authority Act [NPA] (No. 32 of 1998) gives NPA powers to conduct criminal proceedings on behalf of the state and gives the Asset-forfeiture unit of the NPA the powers to search and seize assets obtained on proceedings of any crime (Van Kaam, 2007). The discussed Prevention of Organised Crime Act [POCA] (No. 121 of 1998) introduces measures to combat income tax fraud and to provide the recovery of proceedings of crime. The policies adopted in this study includes the Auditing and Accounting Standards in South Africa which provides that accountants and auditors should assist the courts with their expert knowledge during criminal proceedings. The Prosecution Policy provides that the prosecutor has a discretion to make decisions, which affects criminal process (Makeke, 2014). National Crime Prevention Strategy of 1996 suggests on tax fraud prevention measures that can be adopted to combat income tax fraud in South Africa (Rauch, 1996).

3.2 Criminal Procedure Act (No. 51 of 1977) in combating income tax fraud

The Criminal Procedure Act [CPA] (No. 51 of 1977) known as CPA governs procedures and related matters in criminal proceedings. Section 18 of the CPA provides the right to prosecute any offence will lapse after the expiry period of 20 years from the time when the offence was committed except for offences such as murder, rape or treason (Smith, Evans, Harrison & Noriega, 2019). Chapter 1 of this Act establishes the rules which guarantee that an innocent person shall not be convicted, and that a punishment or other criminal sanctions shall be imposed on the person who commits a criminal offence, subject to the provisions of the criminal law and in lawful proceedings before the competent court and that criminal proceedings shall be instituted and conducted only upon the request of the authorized prosecutor (Siegel, 2011). Criminal law prescribes conduct perceived as threatening, harmful,

or otherwise endangering to the property, health, safety, and moral welfare of people inclusive of oneself. The CPA alerts taxpayer's possible exposure to allegations of tax fraud or other misconduct. Crimes are classified by their severity as infractions, felonies, and misdemeanors. The principles of criminal law essential for a crime to have been committed includes legality, actus reus, mens rea, fusion of *Actus reus* and *Mens rea*, harm, causation, and stipulation of punishment (Duff, 2018). Section 35 of the Constitution of the Republic of South Africa (1996) explains the rights of arrested, detained and accused person in that (a) they have a right to remain silent , (b) to be informed promptly of their rights to remain silent and of the consequences of not remaining silent , (c) not to be compelled to make any confession or admission that could be used in evidence against that person, (d) to be brought before the court as soon as reasonably possible , (e) to be charged or to be informed of the reason for the detention to continue, or to be released, and (f) to be released from detention if the interest of justice permit, subject to reasonable conditions (van de Linde, 2021). The consequences to the taxpayer from conviction are generally imprisonment and substantial monetary penalties (Sprack, 2011). Keegan (2016) describes eight (8) steps of criminal proceedings as follows; Firstly, arrest which is the initial stage in the criminal process in which an individual accused of crime is taken into custody by the police officer. In most other cases, a warrant of arrest can be issued by an appropriate party such as judge or a grand jury. Secondly, charges where law enforcement officers compile a written report detailing the alleged offense which contains general information about the circumstance that led to the alleged crime, detailed information about the crime itself and statements provided by corroborating witnesses.

Third, arraignment when a person accused of crime is brought before court or judicial officer. This is the defendant's first court appearance. Fourth, pretrial proceedings in which the prosecution and the defendant, through counsel, file various motions, discovery requests and witness summons. Fifth, trial is a phase in which criminal guilt is determined. The prosecutor gives a relatively brief overview of the crime, a general view of the evidence that should convince the jury that the defendant is guilty. The defense then offers its opposing view of the case. Sixth, verdict which is the sixth step in where the jury must deliberate and reach a unanimous verdict. It must determine whether the defendant is guilty or not guilty. The seventh step is sentencing, if the jury finds defendant guilty, the judge must impose some sort of appropriate punishment. The final step is appeal, a convicted defendant has a constitutional right to an appeal to determine if there were legal errors or violations of rights that inappropriately affected the outcome of the case (Keegan, 2016).

3.3 Tax Administration Act (No. 28 of 2011) in combating income tax fraud

In the 2005 budget, the Minister of Finance announced that a project to incorporate generic administrative procedures, which were duplicated in the different Tax Acts, into a single Act, had been started. This project resulted later in 2011 in the tabling in parliament of what was to become TAA, 2011 (Croome & Olivier, 2015). According to this Act, ‘tax offence’ means an offence in terms of a Tax Act or any other offence involving fraud on SARS or on a SARS official relating to the administration of the Tax Act (Croome & Olivier, 2015:27). TAA, 2011 was introduced on the 1st of October 2012. SARS is responsible for the administration of a tax act. Administration of a tax act means to efficiently, effectively and to the widest extent possible— (a) obtain full information in relation to anything that may affect the liability of a person for tax in respect of a previous, current, or future tax period, or taxable event or the obligation of a person (whether personally or on behalf of another person) to comply with a tax act; (b) ascertain, by inspection, examination, audit or investigation or otherwise,

Whether a person has filed or submitted correct returns, information, or documents in compliance with the provisions of a tax act; (c) establish the identity of a person for purposes of determining liability for tax; (d) determine of the liability of any person for tax; (e) collect tax; (f) investigate whether an offence has been committed in terms of a tax act, and, if so— (i) to lay criminal charges; (ii) to liaise with law enforcement agencies and the prosecuting authority; and (iii) to do all that is reasonably required for the investigation and prosecution of tax offences or related common law offences; (g) enforce SARS’ remedies under a tax act to ensure that an obligation imposed by or under a tax act is complied with; and (h) perform any other administrative function necessary to carry out the provisions of a tax act (SARS, 2009). The powers and duties of SARS under this Act may be exercised for purposes of the administration of a tax act. Unless otherwise provided, the powers conferred and the duties imposed upon the Commissioner or SARS by or under a tax act may be exercised or performed by a SARS official. Powers which are assigned to the Commissioner personally by this Act must be exercised by the Commissioner personally unless he delegates such power in accordance with the power to do so. Powers required by this Act to be exercised by a senior SARS official must be - (a) exercised by the Commissioner; (b) by a SARS official who has specific authority from the Commissioner to exercise the power; or (c) by any person occupying a post designated by the Commissioner for this purpose (SARS, 2009). According to Croome and Olivier (2015), a senior SARS official described in this act is not prevented

from allowing the execution of the power or duty to be done by - (a) an official under the senior SARS official's control; or (b) the incumbent of a specific post under the senior SARS official's control above (SARS, 2009).

A taxpayer required under a tax act to submit a return must do so - (a) in the form and manner prescribed by the Commissioner; and (b) by the due date specified by law or, in its absence, by the due date indicated by the Commissioner in the notice requiring the submission. A return must contain the information prescribed by the Commissioner. A return must be signed by the taxpayer or by the taxpayer's legal representative. If the return or part of the return was prepared for reward by some other person, that other person must also sign the return. Non-receipt by a taxpayer of a return form does not affect the obligation to submit a return. If a taxpayer becomes aware of an error in a return, or if requested to do so by SARS to correct an error in a return, the taxpayer must file an amended return. SARS may in its discretion extend the time period for filing a return in a particular case, in accordance with procedures and criteria in policies published by the Commission (SARS, 2009). No person other than the Commissioner or a person authorised by the Commissioner may institute or defend legal proceedings in a matter in which the Commissioner or SARS is a party. For purposes of Subsection (1), a person who, on behalf of the Commissioner, institutes litigation, or performs acts which are relied upon by the Commissioner in litigation, is presumed to be duly authorised. A senior SARS official may lay a criminal charge relating to a tax offence described in Section 219 (SARS, 2009).

3.3.1 Section 234: Criminal offences relating to non-compliance with the Tax Administration Act (No. 28 of 2011)

The Act makes provision "for various criminal offences apart from the imposition of administrative non-compliance penalties and understatement penalties" as contained in Section 234 to 237 Chapter 17 (Croome & Olivier, 2015). According to Hofmeyr (2013:144), criminal offences relating to taxation are instances where the taxpayer:

"... wilfully and without just cause fails or neglects to register in terms of this Act; notify SARS on change of particulars; submits any return or another document; appoints a representative taxpayer and notify SARS of such appointment or change in appointment; retain records as required; issue a document to a person as required under the Tax Act."

Other administrative interactions, which amount to a criminal offence, are:

“not supplying SARS within formation, documents or information as required; [not] answering fully or truthfully to any questions posed by a SARS official; [falsely] taking an oath or making a solemn declaration as required, such as at an official enquiry; [not] attending and giving evidence [if required]; [not] complying with a directive or instruction issued by this department; or [not] giving assistance to conduct an audit or criminal investigation at the taxpayer’s premises” (Hofmeyr, 2013: 144).

Hofmeyr (2013) also states that, to eradicate these practices, many qualified and registered tax practitioners often offer important services to taxpayers by “assisting them with tax affairs and with submitting tax returns to SARS. Unfortunately, a minor few might be dishonest at times, leading to personal income tax fraud.” In some instances, unqualified individuals pretend to be tax practitioners with the intention of defrauding SARS. These people use unwitting taxpayers for the commission of this crime. According to Hopwood, Leiner and Young (2012:470), conceptual tax fraud connotes:

“bad faith, which refers to a deliberate and calculated intention at the time the tax returns are prepared and filed to defraud the government (i.e. SARS) of taxes legally due to them. This involves personal intent of the taxpayer as intention or state of mind; in rare cases one isolated act or omission brings about evidence of fraudulent intent. This intent can be found by viewing a taxpayer’s entire course of conduct.”

Non-compliance penalties are described by De Hart, Klue and Smulders (2011:35) as penalties that are issued for the failure or neglect to “register as a taxpayer; inform the Commissioner of a change of address or other details; failing to notify the Commissioner of any change of public documents or information to SARS; failing to submit a return or other related documents or information to SARS; failing to attend or give evidence when required by SARS; employers failing to notify SARS of a change of address or the fact of having ceased to be an employer; employer failing to submit a monthly declaration of employees tax; employer failing to provide details of an employee to SARS; failing to deliver an employee’s tax certificate to them or to former employees; delivering an employee’s tax certificate in contravention with the requirements that the employer must first render an employee’s tax return; failure by a provisional taxpayer to submit an estimate of taxable income; any other non-compliance with an obligation imposed under the act”. Croome and Olivier (2015:517) further highlighted that the Adjustment Fine Act (No. 101 of 1991) makes provision that:

“if any law provides that on conviction of an offence a person may be sentenced to undergo a prescribed maximum period of imprisonment or, in the alternative, to pay a fine and the maximum amount of the fine is not prescribed, the maximum fine which may be imposed must be determined as a ratio set out in that Act, by taking into account the maximum period of imprisonment prescribed by such law”.

3.3.2 Section 235 of Tax Administration Act (No. 28 of 2011) evasion of tax and obtaining undue refunds by fraud or theft

A criminal charge may be laid when a person attempts to evade or to assist another person to evade tax or to obtain a fraudulent refund under the Tax Act. For instance, when a taxpayer attempts to claim an income tax refund on the basis of fraudulent tax certificates (i.e. The Employee Tax Certificate - IRP 5 / IT3) or attempts to secure a Value Added Tax (VAT) refund by relying on fraudulent tax invoices which reflect input tax credits that were never actually paid over to SARS (Phillips & Tatum, 2001:26). In support of this submission, Section 235 of the TAA (No. 28 of 2011) (Hofmeyr, 2013:144) provides that it is a criminal offence to do the following in line of tax fraud:

- *A person who with the intent to evade or assist another person to evade tax or to obtain an undue funds under the Tax Administration Act [28 of 2011]*
- *“Makes or causes or allows to be made any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true;*
- *Gives a false answer, whether orally or in writing, to request for information made under this Act;*
- *Prepares, maintains or authorises the preparation or maintenance of false books of account or other falsifies or authorises the falsification of books of account or other records;*
- *Makes use of, or authorises the use of, fraud or contrivance; and*
- *Makes any false statement for the purposes of obtaining any refund of or exemption from tax.”*

The penalty in respect of such a crime is a fine or imprisonment of up to five years. Section 235(2) of the TAA (No.28 of 2011) contains a so-called ‘reverse onus’ (the same as Section 104(2) of this Act). It essentially provides that

“where a person is accused of making a false statement, that person will be regarded as guilty unless that person can prove that there is a reasonable possibility that he or she was ignorant of the falseness of the statement and that the ignorance was not due to negligence on his or her part” (Hofmeyr, 2013: 147).

The punishment for tax evasion under Section 235 is greater than that imposed for committing one of the offences listed in Section 234.

3.3.3 Section 237 of Tax Administration Act (No. 28 of 2011): Criminal offences relating to filing returns without authority

This category of offences is addressed under Section 237 of Tax Administration Act (No.28 of 2011). The following transgressions fall into this category:

- (a) Submission of a return or other document under a forged signature.*
- (b) Use of an electronic or digital signature of another person in an electronic submission to*
- (c) SARS without the person’s consent and authority; and*
- (d) A person who submits to SARS a communication on behalf of another person without the person’s consent and authority”* (Croome & Olivier, 2015:178).

3.3.4 Section 238 of Tax Administration Act (No. 28 of 2011): Jurisdiction of courts in criminal matters

A taxpayer charged with a tax offence under Tax Administration Act (No.28 of 2011), or another tax Act may be tried by a specific court having jurisdiction within any area where that person resides or conducts a business. In a criminal case, the ‘onus of proof’ exists on the state to prove beyond reasonable doubt that the crime was committed. For example, “In a civil matter, the onus is on the person alleging a certain state of affairs that on a balance of probabilities, his or her version is more likely than the other party’s version” (Croome & Olivier, 2015:521). Moreover, Joubert (2015: 236) acknowledges that, in primitive societies, “all wrongs were private wrongs, and private vengeance could lawfully be taken by the wrongdoer.” The latter was gradually displaced by the necessity of an enforced system of criminal justice system (CJS) in terms of which the guilt of an alleged perpetrator may be

established, and in terms of which punishment may be meted out without the direct involvement of the individual victim concerned, which today is called ‘legality’ or ‘due process of law’. This development was influenced by civilisation, the formulation of organised forms of government, and the development of political units, enforcement of colonial law, proper administration of CJS and the commission of victimless crimes (Joubert, 2015).

3.3.5 Section 43: Referral and conduct of criminal investigation

The TAA [No 28 of 2011] entitles SARS to request information for the purposes of adherence to this Act. The information supplied by the taxpayer is not admissible in subsequent criminal proceedings on the basis that such conduct violates the taxpayer’s right against self-incrimination. An exception arises where the taxpayer is prosecuted for submitting false information or fails or neglects to furnish information required under TAA [No. 28 of 2011 and is prosecuted under Chapter 18 of TAA [No.28 of 2011] (Croome & Olivier, 2015).

3.3.6 Section 44 of Tax Administration Act (No. 28 of 2011): Conducting a criminal investigation

This section requires that SARS must utilise its information-gathering powers as stipulated in Chapter 5 of this Act, taking account of the constitutional rights of a taxpayer as a suspect in a criminal investigation as enshrined in Section 35 of the Constitution, 1996. SARS is entitled to rely on any relevant material it procured before the case was referred for criminal investigation in the manner set out in Section 43 in case SARS takes a decision to proceed with the criminal investigation of a serious tax offense (Croome & Olivier, 2015).

3.3.7 Section 59 of Tax Administration Act (No. 28 of 2011): South African Revenue Services Powers to search and seize

South African Revenue Services (SARS) relies on the provision of TAA (No. 28 of 2011, Section 59 which provides that SARS has powers to search and seize. In this provision, a senior SARS official can apply to a court to issue a warrant to enter premises where relevant material is being kept, search the premises and any person in the premises and remove any person in the premises, and seize any relevant material (SARS, 2021). SARS would seek such a warrant in cases where it suspects that a taxpayer has committed a tax offence. However, the limitation of SARS search and seizure is, where a warrant has been issued, a SARS official may not enter

the relevant premises before producing it and SARS may not enter taxpayer's private residence without producing the warrant (Lovells, 2019).

Freezing or seizing, and confiscation of assets are necessary in order to prevent the proceeds of a crime from being disposed of or being enjoyed by a suspect, or to preserve physical evidence of a crime. In some jurisdictions, the confiscation or forfeiture may be a sanction on its own, or also a way to ensure pecuniary fines are paid. Freezing, seizing, and confiscation disrupts criminal activity by inhibiting access to assets that would have been beneficial to the individual or organisation committing the crime or can prevent the criminal assets from being employed to commit further crimes. The freezing or seizing and confiscating of criminal assets is also a deterrent measure as it can reduce the profitability of committing tax crimes (OECD, 2017).

3.4 The National Prosecuting Authority Act [NPA] (No. 32 of 1998) on the prosecution of income tax fraud

This is a single NPA Act (No. 32 of 1998) established in terms of section 179 of the Constitution of the Republic of South Africa [CRSA], 1996. The structure of prosecuting Authority consists of the office of the National Director and the Offices of the prosecuting authority at the High Courts, established by section 6(1) (Makeke, 2014). Chapter four of this Act stipulates powers to institute and conduct criminal proceedings on behalf of the state, carry out any necessary functions incidental to instituting and conducting such criminal proceedings and discontinue criminal proceedings. Section 179 of the CRSA (which should be read with Schedule 6 item 18(1) of the Constitution and Section 108 of the interim Constitution) provides constitutional provisions as provided for in the NPA Act (Bekker et al., 2005). Section 28 of this Act allows inquiries by Investigating Director (ID) 1 (a) if the ID has reason to suspect that a specified offence has been committed or that an attempt has been or is being made to commit such an offence, he or she may investigation on the matter in question, whether or not it has been reported to him or her in terms of Section 27.

In Section 29, the NPA empowers the investigating director to (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary, (b) examine any object found on or in the premise which has a bearing or might have a bearing on the investigation in question, and request from the owner or person in charge of the premise or from any person in whose possession or charge that object is, information regarding that object, (c) make copies of or take extracts from any book or document found on or in the

premises which has a bearing or might have a bearing on the investigation in question and request from any other person suspected of having necessary information, an explanation of any entry therein and (d) seize against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the investigation in question, or if he or she wishes to retain it for further examination or for safe custody. Section 29 (4) indicates that the premises may only be entered, and may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which premises is situated provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deemed justified by the NPA Act (Lancaster & Roberts, 2020).

3.4.1 Law of evidence on tax fraud prosecution process

According to Buckwalter (1984) there are different types of evidence which can be used to prove a crime, namely testimonial evidence, which is presented orally or in a statement or affidavit form by the witness. Second, there is documentary evidence, as determined by the contents of and signatories to many types of documents. Lastly, there is physical or real evidence, which includes all tangible objects, substances, prints and impressions that have a relevant bearing on a case.

When evaluating the evidence, prosecutors must consider all relevant factors, including determining if the evidence is strong and sufficient to prove all the elements of crime and to meet other issues in dispute. Second, there is need to determine the admissibility of the evidence. Third, there is need to determine the credibility of the witnesses. Fourth, there is need to determine the reliability of the evidence. Fifth, there is need to determine the availability of the evidence. Lastly, there is need to determine if the case is strong for the defence (Makeke, 2014). Between direct and indirect evidence, each of the evidence supports the other, making it all more convincing. The direct evidence may provide a certain degree of probability. In a criminal case, or any legal action, evidence should contribute to deciding the case. This requires the judge and practitioner to understand what needs to be proven, which is identified as the final objectives and the intermediate inferences. The evidence can be directly relevant if it makes the defendant's guilty more or less likely and can be indirect relevant if it is less credible, and thus could affect probability of the defendant's guilty (Anderson et al., 2005).

3.5 Prevention of Organized Crime Act [POCA] (No. 121 of 1998)

According to van der Linde (2021), the objectives of Prevention of Organized Crime Act (No.121 of 1998) is to introduce measures to combat organised crime, money laundering and criminal gang activities, to prohibit certain activities relating to racketeering activities, to provide for the prohibition of money laundering and for an obligation to report certain information, to criminalise certain activities associated with gangs, to provide for the recovery of the proceeds of unlawful activity, for the civil forfeiture of criminal property that has been used to commit an offence, property that is the proceeds of unlawful activity or property that is owned or controlled by, or on behalf of, an entity involved in terrorist and related activities, to provide for the establishment of Criminal Assets Recovery Account (CARA), to amend the Drugs and Drug Trafficking Act (DDTA), 1992, to amend the International Co-operation in Criminal Matters Act (ICOCM), 1996, to repeal the Proceeds of Crime Act (PCA), 1996, to incorporate the provisions contained in the PCA, and to provide for matters connected therewith, POCA (Duff, 2018).

Section 19 of this Act indicates that in determining the value of a defendant's proceeds of unlawful activities the court shall where it has made a declaration of forfeiture or where a declaration of forfeiture has previously been made in respect of property which is proved to the satisfaction in court. Proceedings are civil not criminal, so the requirements are simply to prove allegation upon the balance of probability rather than to the criminal standard. Criminal money is usually funneled back into the relevant police force to aid in future crime prevention reinvestment in police force to combat crime. Chapter 7 of POCA, 1998 indicates that the establishment of criminal assets recovery account shall consist of all money derived from the fulfilment of confiscation and forfeiture orders contemplated in Chapter 5 and Chapter 6. Section 22, of POCA, 1998 describes that evidence relating to proceeds of unlawful activities forms part of the defendant's benefit, in determining whether he or she has derived it from an offence.

3.6 Accounting and auditing standards in South Africa

Accountants are experienced, trained, and knowledgeable in different processes of fraud investigation and an accountant is a person who mastered the piece of accounting and is able to provide assistance to lawyers and the courts to understand and apply accounting issues to the law and to disputed matters and an audit as an examination of, in accordance with auditing standards (Slot, 2012). The Statement of Auditing Standards (SAS) No. 99 on new standard

aims to have the auditor's consideration of fraud seamlessly blended into the audit process and continually updated until the audit's completion. SAS No. 99 describes a process in which the auditor (1) gathers information needed to identify risks of material misstatement due to fraud, (2) assesses these risks after considering an evaluation of the entity's programmes and controls and (3) responds to the results. SAS no. 99 states that it is important to gather and consider much more information to assess fraud risks than you have in the past. SAS No. 99 reminds auditors that they need to overcome some natural tendencies—such as overreliance on client representations—and biases and approach the audit with a skeptical attitude and questioning mind. Also, it is essential that the auditor must set aside past relationships and not assume that all clients are honest.

The new standard provides suggestions on how auditors can learn how to adopt a more critical, skeptical mind-set on their engagements, particularly during audit planning and the evaluation of audit evidence (Berg, 2010). The SAS No 99 requires the audit team to discuss the potential for a material misstatement in the financial statements due to fraud before and during the information-gathering process. This required “brainstorming” is a new concept in auditing literature, and early in the adoption process firms would need to decide how best to implement this requirement in practice. It is important to keep in mind that brainstorming is a *required* procedure and should be applied with the same degree of due care as any other audit procedure (Berg, 2010).

Accountants can help prevent tax fraud from taking place and help uncover those that has already taken place. Government investigations of white-collar crimes usually have one thing in common: they rely heavily on the analysis of financial information. Often, this includes combing through bank statements and credit card statements, as well as scrutinising accounting records (Schaltegger & Wagner, 2006). The organisation's policy may include any or all of the following preferred outcomes in dealing with tax fraud: internal disciplinary action, which is a civil response whereby action is taken through civil courts to recover losses; criminal prosecution whereby action is taken against the individual(s) concerned in police managed enquiry; and parallel response where civil action to recover misappropriated assets is taken in parallel with the police investigation (Fisher & Lovell, 2000). A well-designed organisational structure with key areas of authority and clear and proper lines of reporting can be an effective fraud prevention measure. Background checks are important.

One of the most basic steps in preventing fraud is not to hire employees who have previous stolen record. Before hiring anyone, management should conduct a background check to find out as much as possible about the employee's previous experience with employers and law enforcement. Fraud prevention policy specifically spells out who in an organization handles varying fraud matters under differing circumstances. A key consideration in any investigation is the ability to secure or preserve sufficient evidence to prove a case of fraud. Controls of physical evidence before the opportunity arises for it to be removed or destroyed by the suspect(s). Physical evidence may therefore need to be seized at an early stage in the investigation before any witness statements are collected or interviews conducted. If a criminal act is suspected, the police should also be consulted early in the process, before any overt action is taken and the suspect is alerted (Fraud Advisory Panel, 2006).

3.7 The prosecution Policy (2013) in combating income tax fraud in South Africa

According to Makeke (2014), the prosecutor's primary function is to assist the court in arriving at a just verdict and, in the event of a conviction, fair sentence based upon the evidence presented. The NPA indicates that prosecutors are expected to present facts of a case to a court fairly. They must disclose information favourable to the defence and, where necessary, assist in putting the version of an unrepresented accused person in court. Prosecutors should aim to ensure that persons accused of serious crimes are kept in custody in order to protect the community and uphold the interest of justice. On the other hand, prosecutors should not oppose the release from custody of an accused person if the interest of justice permits. Prosecutors must show sensitivity and understanding to victims and witnesses and assist in providing them with protection where necessary.

Prosecutors must consult with victims and witnesses before trial begins. They must assist them by giving them appropriate and useful information on the trial process and reasons for postponement and findings of the court. Prosecutors are not allowed to participate in public discussions of cases pending before the court, because this may infringe the rule against comment or pending cases and may violate the privacy of those involved. During sentencing phase of a criminal case, prosecutors must assist the court by ensuring that the relevant facts are fully and accurately brought to its attention. Prosecutors must also make appropriate recommendations with a view to realising the general purpose of sentence. These includes the need for retribution, the deterrence of further criminal act, the protection of the public from dangerous criminals and the rehabilitation of offenders. The NPA must give special attention

to the effective and speedy disposal of cases identified as priority matters and prosecutors should specialise in the prosecution of certain offences where desirable and practicable and senior trial prosecutors must be available to conduct the most difficult cases (Makeke, 2014).

Section 38 of the NPA Act (No. 32 of 1998) stipulates the powers of the NPA to conduct a prosecution on fraud charges. Such prosecution further requires commercial expertise of the Southern African Legal Information Institute [SAFLII]. The NPA ensures justice for the victims of crime “by prosecuting without fear, favour or prejudice and by working with its partners and the public to solve and prevent crime” (NPA, 2010:53). The NPA values includes accountability, credibility, integrity, professionalism and service excellence. The organisational responsibility includes respect the dignity of every employee and other stakeholders; respect the traditions and cultures of all employees; respect employees’ right to freedom of social, religious and political associations; consistency; act justly, fairly and impartially; honour the confidentiality of employees records; recruit and promote fairly and in accordance with established labour laws and practices; develop employees skills and competencies in accordance with organisational needs; create a learning environment that would build the capacity of our employees to deliver excellent service; communicate in an open, transparent, honest and timely manner; prohibit any form of unfair discrimination, intimidation, harassment or victimisation based on race, religion, gender, political conviction, sexual orientation or disabilities; create a climate and opportunity to report irregularities and misconduct without fear of victimisation or retribution; maintain sound an fair labour practices; provide a safe and healthy working environment and observe the letter and spirit of the principles enshrined in the CRSA (van de Linde, 2021).

The prosecutor has a discretion to make decisions, which affect the criminal process. For example, the decision whether or not to institute criminal proceedings against an accused person; the decision whether or not to withdraw charges or stop the prosecution; the decision whether or not to oppose an application for bail or release by an accused person who is in custody following arrest; the decision about which crimes to charge an accused person with an offence in which court the prosecution should be instituted; the decision whether or not to enter into plea or sentence agreement; the decision whether or not the case should be diverted; the decision whether or not to accept a plea of guilty tendered by an accused person; the decision about which evidence to present during trial; the decision about which evidence to present during sentence proceedings, in the event of a conviction; and the decision whether or not to appeal to a higher court in connection with a question of law, an inappropriate sentence, or the

improper granting of bail, or to seek review of proceedings. The prosecutor must consider whether to request the police to investigate the case further, institute a prosecution, enter into plea or sentence agreement, decline to prosecute and to opt for pre-trial diversion or other non-criminal resolution or decline to prosecute without taking any other action (Makeke, 2014).

3.8 The National Crime Prevention Strategy [NCPS] (1996) on combating income tax fraud

The National Crime Prevention Strategy (NCPS) was adopted in May 1996 by the Cabinet with an emphasis to prevent crime. This strategy argues that dealing with crime requires a wide array of developmental and preventative measures, as opposed to the traditional law and order approach for the criminal justice system (Rauch, 1996). The NCPS suggests on the adoption of four key areas to combat crime including income tax fraud in South Africa. These key areas focus on re-engineering the criminal justice system which is aimed at providing an efficient and legitimate criminal justice system as the foundation for crime prevention, law enforcement, and the protection of human rights. The criminal justice system also reduces crime through environmental design which is aimed at limiting environmental or situational opportunities for crime and maximising constraints by primarily ensuring that safety and crime prevention considerations were applied in new development programmes. and in the re-design and upgrading of existing programmes, community values and education aimed at harnessing community participation and involvement in crime prevention to ensure a positive impact on the way society engages with and responds to crime and conflict, as well as transnational crime which is aimed at addressing the enormous influence of international and regional criminal syndicates and involves improved border control, addressing cross border crime and regional co-operation.

The prioritised attention of NCPS, 1996 includes crimes involving firearms, organised crime, white-collar crimes, violence against women and children, violence associated with inter-group conflict, vehicle theft and hijacking, and corruption in the criminal justice system (Pelser & Rauch, 2001). The key aims of programmes is to increase efficiency and effectiveness of the criminal justice system as a deterrent to crime and as a source of relief and support to victims; to improve the access of dis-empowered groups to criminal justice process; to focus the resources of the criminal justice on priority crimes; to forge inter-departmental integration of policy and management in the interests of co-ordinated planning, coherent action and the

effective use of resources; and to improve the service delivered by the criminal justice process to victims and sensitivity to their needs (Amtaika, 2010).

The strategy focuses on a number of challenges. For instance, existing crime data is very unreliable and can be misleading, and media representations of crime are very influential in shaping public perceptions. Crime levels in South Africa are affected by many universal factors which manifest themselves in other countries. Some of these factors include comparative research, the inherited Government of National Unity, political transition, South Africa's violent history has left the "culture of violence", historically shaped poverty and underdevelopment, the historical marginalisation of the youth, and poorly managed development which contributes to crime rates. Also, rising crime levels have become something of a "political football", and the absence of services to victims of crimes means that the negative impact of crime on individual, family and community is largely ignored, whilst the number and easy accessibility of fire-arms is a major contributor to violent crime, and gender inequality (Amtaika, 2010).

3.9 Summary

In this chapter, the researcher discussed relevant legislation and policies adopted in this study. Criminal Procedure Act (No.51 of 1997) explains procedures and related criminal proceedings on the prosecution of income tax fraud in South Africa. Tax Administration Act (No. 28 of 2011) gives SARS powers to administer all tax matters in South Africa. The National Prosecuting Authority Act (No. 32 of 1998) gives NPA powers to conduct criminal proceedings on behalf of the state. The adopted Prevention of Organised Crime Act (No. 121 of 1998) guided this study on measures to combat income tax fraud in South Africa. This Act also states that proceedings are civil not criminal, so the requirements are simply to prove allegation upon the balance of probability rather than to the criminal standard. The adopted policies in this study includes Accounting and Auditing Standards in South Africa. This policy gives accountants and auditors powers to identify, detect, investigate and report fraud. It also gives powers to write reports useful in criminal proceedings. The prosecution policy (2013) explains the primary functions of prosecutors to assist the courts in arriving at the verdict and in the event of a conviction. The adopted National Crime Prevention Strategy (1996) argues that dealing with crime requires a wide range of developmental and preventative measures, as opposed to the traditional law and order approach for the criminal justice system. The NCPS suggests the adoption of four key areas to combat crime including income tax fraud in South

Africa. These key areas focus on re-engineering the criminal justice system which is aimed at providing an efficient and legitimate criminal justice system as the foundation for crime prevention, law enforcement, and the protection of human rights. The next chapter (Chapter Four) discusses theoretical frameworks adopted in this study.

CHAPTER FOUR

THEORETICAL FRAMEWORKS TO COMBAT INCOME TAX FRAUD

4.1 Introduction

Criminology can be defined as the study of crime, the causes of crime, crime typology, the meaning of crime in terms of law, rates or incidences of crime, and community reaction to crime (Gregory, 2004). Economy is a science which studies human behaviour as a relationship between ends and scarce means which have alternative uses (Kirman, 2017). This study has adopted three criminological theories which are Sutherland's Differential Association Theory (SDAT), Situational Crime Prevention Theory (SCPT) and Economic theory (Fraud Pentagon Theory - FPT). These theories were adopted to understand tax fraud criminality, criminal behaviour, tax fraud impact on the country's economic development and preventative measures that can be adopted to effectively combat income tax fraud in South Africa.

The relevance, criticism and analysis of the adopted theories are discussed in this chapter. These theories explain learning tax fraud criminal behaviour, presence of pressure, opportunity, rationalisation, competence and arrogance to commit tax fraud. Offenders choose to commit crime based on their perceptions of available opportunities. Consequently, situational factors can stimulate crime and addressing these factors to reduce crime. This section briefly discussed the theories adopted in this study.

4.2 Sutherland's Differential Association Theory [SDAT] (1883-1950)

People develop motivation to commit crime and the skills to commit crime through the people they associate with. Edwin H. Sutherland (1883-1950) developed this theory believing that "crime is a function of [an] inherent inadequacy of people in the lower classes" (Siegel, 2011:141). He further posits that crime is a function of a learning process that can affect any individual in any culture. Skills and motives that are conducive to crime are learned because of contact with pro-crime values, attitudes, and definitions and other patterns of criminal behaviour. This theory lies on the core proposition that "criminal behaviour is learned": Sutherland implies that "criminality is learned in the same manner as any other learned behaviour" (Siegel, 2011:111).

4.2.1 Principles of the Sutherland's Differential Association Theory in combating income tax fraud

According to Sutherland (1883-1950), principles of differential association theory explains that people learn to become offenders through interactions with others. Individuals learn the values, attitudes, methods and motives for criminal behaviour. Sutherland's principles are as follows:.

- *Criminal behavior is learned:* Sutherland implies that “criminality is learned in the same manner as any other learned behavior”. Through interactions with others, individuals learn the values, attitudes, methods and motives for criminal behaviour (Siegel, 2011:174). This implies that people learn criminal skills through interaction with others. In this study, the principle implies that tax fraudsters learn to fraud SARS by claiming undue funds using the SARS e-filing system.
- *Criminal behavior is learned as a by-product of interacting with others:* Sutherland states that “an individual does not start violating the law simply by living in a criminogenic environment or by manifesting personal characteristics associated with criminality such as a low Intelligence Quotient (IQ) or family problems. People learn as they actively socialize and interact with other individuals who serve as teachers and guides to crime” (Siegel, 2011:113). This implies that tax offenders learn to commit tax fraud through interactions with others. Thus, individuals are not born criminals, but they learn criminal behaviour through interaction with other people who have knowledge and experience of tax fraud to train “junior” or “inexperienced” fraudsters the tactics for successful income tax fraud. This study reveals that tax crimes offenders are experts who are knowledgeable on the use of technology and they recruit others to commit similar offences with an intention to be wealthy through illegal means.
- *Learning criminal behavior occurs within intimate personal groups:* Sutherland is of the view that “people’s contacts with their most intimate social companions – family, friends, and peers – have the greatest influence on their development of deviant behavior and an antisocial attitude” (Siegel, 2011). The researcher is of the view that tax offenders might have grown up in families where there are family members who commit or have committed commercial crimes for monetary benefits, where children view it as a way of being wealthy. Their families, friends and peers could be role models to them. This study reveals that tax fraudsters have families and their motive is financial gain.

- *Learning criminal behaviour involves assimilating the technique of committing crime, including motives, drives, rationalisation, and attitudes:* “Criminals learn the proper terminology for their acts and acquire approved reactions to law violations. Criminals must learn to react properly to their illegal acts, such as when to defend them, when to rationalize them, and when to show remorse for them” [Sutherland, 1883-1950] (in Siegel, 2011). This study reveals that tax crime offenders learn to fraud tax by falsifying documents with the intention of defrauding SARS and receive undue funds. The motive behind this method of operation is personal gain and wealth through illegal means. The risks and benefits are known to tax fraudsters before committing crime.
- *The specific direction of motives and drives is learned from perception of various aspects of the legal code as favorable or unfavorable:* Sutherland states that “because the reaction to social rules and laws is not uniform across society, people constantly meet others who hold different views on the utility of obeying the legal code,” (Gilligan & Richardson, 2005:121). This implies that tax offenders react to favourable perceptions that tax is unavoidable to allow them to function and that they pay too much tax and have insufficient influence over how their monies are spent (Gilligan & Richardson, 2005). This study reveals that tax offenders are motivated by greediness. They perceive that government is robbing them of their monthly income taxes.
- *Differential associations may vary in frequency, duration, priority, and intensity:* Sutherland is of the view “that whether a person learns to obey the law or to disregard it is influenced by the quality of that person’s social interactions” (Andreoni et al., 1998:191). Tax fraudsters are adults who might be unemployed, employed or self-employed. According to Andreoni et al. (1998:213), “married filers and taxpayers younger than 65 have significantly higher average levels of non-compliance than others”. This study reveals that tax fraud is committed by any person regardless of the environment and social status.
- *The process of learning criminal behaviour by associations with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning process:* “Learning criminal behavior patterns is similar to learning nearly all other patterns and is not a manner of mere imitation,” Sutherland ([sa]) (cited in Mughal, 2012). This implies that tax fraudsters can be experts in commission of tax crimes and other commercial crimes. The pattern of crimes for monetary gains contributes to high levels of economic crimes globally including South Africa.

- *Although criminal behaviour expresses general needs and values, it is not excused by those general needs and values, because non-criminal behaviour expresses the same needs and values:* This principle suggests that “the motives for criminal behavior cannot logically be the same as those for conventional behavior” as the desire to accumulate money or social status, personal frustration, and low self-control can be causes of crime. In this case, tax fraudsters are driven by financial motives to commit tax fraud. Motives for tax fraud according to the researcher’s findings includes monetary gains or benefits which have negative impact on South African economy.

4.2.3 Criticism of Sutherland’s Differential Association Theory in combating income tax fraud

This theory suggests the mere interaction with criminals would lead an individual to criminal behaviour. According to this theory, a person is more likely to engage in unlawful conduct if the individual is friends with people that are deviant (Bernard, 2010). The assumption is that if the individual were to interact with criminals s/he would eventually become a criminal. However, Sutherland’s theory fails to explain acts of deviance that are not learned or spontaneous. The SDAT theory is based on criminal behaviour being learned in social interactions, that is learned in groups and that the differential associations vary widely (Hale, 2006). This theory is socially sensitive as it could lead to the stereotyping of individuals who come from criminal backgrounds as likely to commit crimes themselves and, with this assumption, opportunities could be denied to them, leading to self-fulfilling prophecy (Brookes, 2021).

Lastly, this theory does not consider instinctive crimes, and fails to consider the fact that the cognitive abilities of different individuals can also be varying since it assumes a pure behaviouristic view in which human beings reacts automatically and reflexively to stimuli in the environment (Wickert & Risi, 2019). A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law (Lokanan, 2018). The researcher agrees with the above criticism since the theory views criminal behaviour as being learnt from other people and fails to explain individual personal choices in life with calculated risks and benefits on offending. The emphasis of this theory is that an individual cannot just make criminal decisions but they learn skills from their significant others. According to current research findings and literature review, perpetrators of income tax fraud decide to commit income tax fraud with calculated risks and benefits. According to

Shandu et al. (2019), most tax fraudsters revealed that tax fraudsters are motivated by greediness and they calculate benefits rather than punishment.

4.2.4 The Lasting value of Sutherland's Differential Association Theory on this study

The SDAT proposes that the values, attitudes, techniques, and motives for criminal behaviour are learned through one's interaction with others. This theory emphasises the frequency and intensity of interaction. The amount of time that a person is exposed to a particular situation and at what point the interaction began are both crucial for explaining criminal activity. This theory explains that contact with criminals leads to one's own criminal behaviour by learning the corresponding behaviour in a model manner. The SDAT theory stands for a rehabilitative ideal. This means that since criminal attitudes and activities can be learnt, these can be logically deduced and re-learned, or compliant behaviour, attitudes and rationalisation can be achieved in the first place. Sutherland drew attention to the different needs and preferences of learning individuals, who significantly contribute to deciding whether deviant actions and attitudes are accepted or not (Wickert & Risi, 2019).

This theory is relevant in that it explains the negative impact of associating oneself with deviant individuals in the society. It explains that a law-abiding citizens can change and become deviant because they are surrounded by criminals. Criminals have skills and abilities to teach others how to commit income tax fraud, robbery and cash-in-transit for example. Income tax fraud is a good example of interaction and learning skills from others. The interaction is with other tax fraudsters who are technologically and economically knowledgeable on submitting fraudulent SARS tax returns documents to receive undue funds through fraud.

4.3 Fraud Pentagon Theory [FPT] (1953)

The Fraud Pentagon Theory (FPT) was originally developed by Cressey (1953). This economic theory is a framework that is used to explain the reason behind an individual's decision to commit fraud. This theory explains that fraud can be detected through five elements, namely, pressure, opportunity, rationalisation, competence and arrogance (Cressey, 1953). This theory was adopted in this study to explain how income tax fraud can be detected by tax fraud experts in the auditing and accounting firms and the criminal justice system. The elements of fraud pentagon theory are discussed in subsequent sections.

4.3.1 The presence of pressure could lead to committing fraud

This pressure can be in the form of internal and external factors that influence individuals to commit fraud. Previous research studies explain that individuals, in pursuing their interests, individuals would commit fraud to get out of these pressures (Akbar, 2017). This study reveals that tax fraud is committed for financial gains to generate wealth. Tax fraudsters are under pressure to be wealthy through illegal means.

4.3.2 The second element of opportunity explains that opportunity could lead to fraud

Previous research study conducted by Setiawati and Baningrum (2018) found that there was a positive opportunity influence on fraudulent financial reporting and that people commit fraud if they have the opportunity to do so or when there is weak supervision in an organisation or company. This study has revealed that the opportunity is available for fraudsters to claim undue funds by using the SARS e-filing system. The study has also revealed that the system is weak and has created more opportunities for fraud. It needs to be re-implemented with strict monitoring controls in place to reduce opportunity for tax fraud.

4.3.3 The third element of rationalisation is a justification that appears in the mind of the perpetrator when he commits fraud

The empirical evidence found by Saputra and Kesumaningrum (2017) indicates that rationalisation proxied by auditor turnover and measured by dummy variables has a positive effect on financial statement fraud. These authors explain that the use of auditors could be considerate to eliminate traces of fraud that previous auditors have found. This study reveals that tax fraudsters calculate the benefits rather than risks and that their justification relies on that they are not aware they are actually committing fraud and they feel SARS is unfairly taxing them.

4.3.4 The fourth element of competence is a person's ability to commit fraud

Competence includes skills, knowledge, basic attitudes, and values that a person has, reflected in their ability to think and act consistently (Wolfe & Hermanson, 2004). Previous studies found that competence proxied by a change of directors and measured by dummy variables has a positive effect on financial statement fraud (Puspita & Yasa, 2018). This study reveals that

tax fraudsters are normally highly skilled individuals with technological knowledge and who are aware of possible benefits and risks after commission of tax fraud.

4.3.5 The fifth element of arrogance is how a person thinks he is capable of cheating

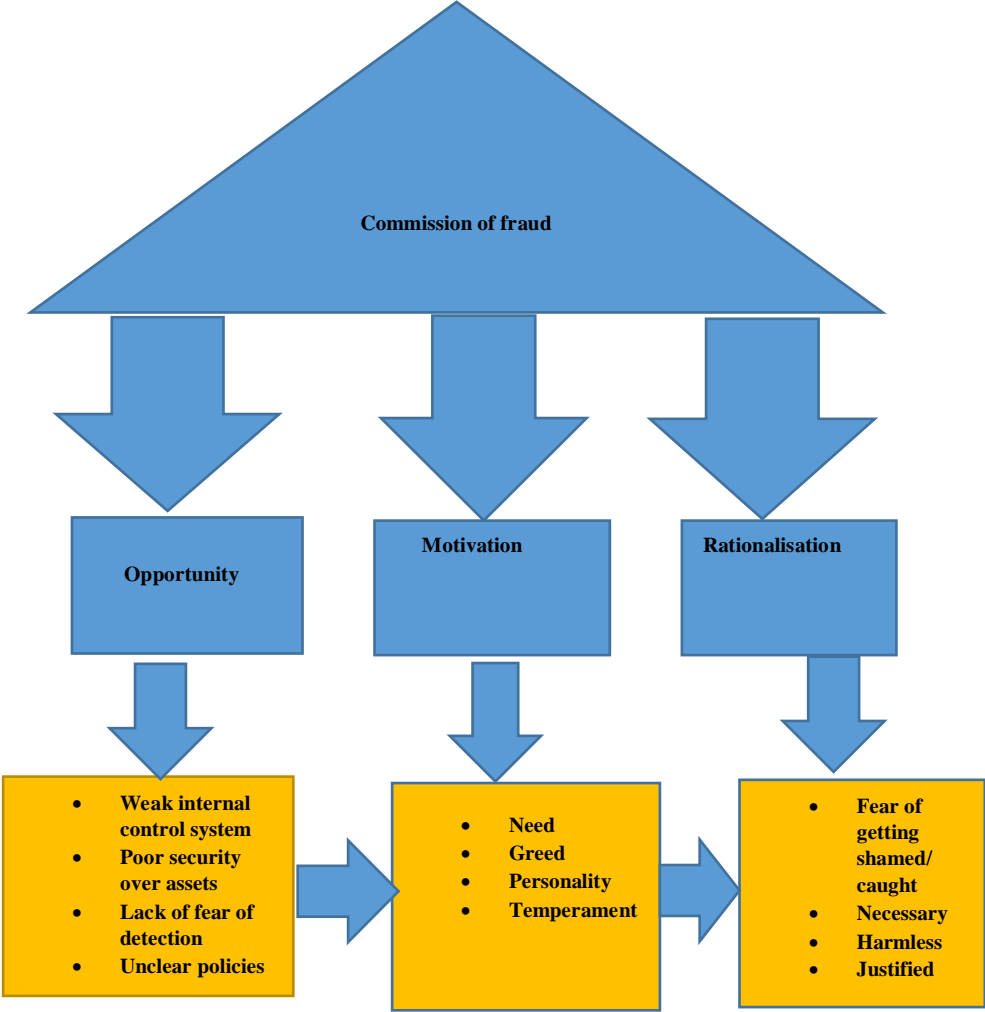
The study conducted by Tessa and Harto (2016) found that arrogance has a positive effect on financial statement fraud. Arrogance is measured by assessing the presence of Chief Executive Officers (CEOs) who have multiple positions both inside and outside the company. Tax fraudsters are self-centred individuals who prioritise their wealth not economic losses of the country resulting in poor service delivery.

4.3.6 The explanation of fraud triangle in combating income tax fraud

The initial prediction on fraud theory approach is at the centre in understanding commission of fraud. It is followed by accounting review than initial investigation commencement. It is important to review financial relationship, accounting information and review internal controls and exceptions. In developing fraud theory, it is essential to determine who, when, what, where and how, determine what evidence is required and determine where likely evidence would be available (Godbole, 2004). This study suggests that in order to develop good practices in combating tax fraud, organisations must first have a clear profile of fraudsters, an analysis of why people commit fraud, what is the motivation for fraud, what are the opportunities available to fraudsters, and the rationalisation on fraud. This needs to be understood by all stakeholders dealing with tax matters in South Africa and amendment of legislation on criminalisation of tax crimes. This can assist in possible formulating proper risk management and crime prevention strategies.

The researcher is of the view that when criminal behaviour is learned, this learning includes techniques of committing crime, which are sometimes complicated or simple, and the specific direction of motives, drives, rationalisation and attitudes. Crime prevention saves lives and money and investing in crime prevention is better than investing in punishment. Crime prevention must look at social vulnerabilities that influence crime, such as inequality, poverty, lack of opportunities, and disregard for human rights. Figure 3 is a fraud triangle that illustrates the commission of income tax fraud.

FIGURE 3.1:FRAUD PENTAGON TRIANGLE



Source: Godbole (2004)

4.3.7 Criticism of Fraud Pentagon Theory in combating income tax fraud

Competence is known to have no significant effect on fraudulent financial reporting (Nanda et al., 2019). This theory perceives pressure in an inaccurate descriptor of fraud since it does not address collusive behaviour on opportunity, and rationalisation is non-observable (Lokanan, 2018). This theory confuses greed and financial benefits for status and lifestyle. It fails to address the learning of criminality from others. It states that individuals have abilities to commit fraud and does not address how they have learnt those abilities and skills.

4.3.8 The lasting value of Fraud Pentagon Theory in combating income tax fraud

FPT has a positive effect on the financial statement fraud and the result on each element of fraud cannot be generalised to have an effect on financial statement fraud. This is one of the theories that explains the condition that cause fraud (Yuniarti et al., 2018). This theory suggests that human factors such as pressure, arrogance and rationalisation encourage fraudsters to produce fraudulent documents. This implies that human factors such as pressure, arrogance and rationalisation are important to be considered in designing any anti-fraud prevention strategy (Nanda et al., 2019). External factors explained in this theory on tax fraud indicates the motive by debt, greed, lifestyle needs, life pressures and illicit activities. This theory explains that for fraud to occur, all five elements must be present. The researcher is of the view that this theory impressively explains human factors in committing fraud, which includes economic demand, available opportunity, justifications, abilities and arrogance as motives to commit income tax fraud. These elements can assist in designing effective anti-fraud prevention strategies in South Africa.

4.4 Situational Crime Prevention Theory [SCPT] (1980)

Offence-based perspectives on crime as opposed to offender-based approaches have steadily gained importance in criminology since 1980s. This theory was developed by Ronald Clarke in 1980 as a new, proactive crime prevention and control strategy to law enforcement (Clarke, 1980). Situational Crime Prevention Theory (SCPT) comprises measures directed at highly specific forms of crime that involve the management, design, or manipulation of the immediate environment in a systematic and permanent way to reduce the opportunities for crime and increase risks as perceived by a wide range of offenders (Clarke, 1983).

SCPT focuses on the settings for criminal acts rather than on the characteristics of offenders. According to this theory, crime is the result of an interaction between disposition and situation. Offenders choose to commit crime based on their perceptions of available opportunities. Consequently, situational factors can stimulate crime and addressing these factors can reduce crime. Understanding how crimes are committed is critically important to situational crime prevention (Armitage & Smithson, 2007). Study findings on profit driven crimes conducted by Kireenko et al. (2019) reveals that tax crimes can have a sector-specific characteristic which can become more pronounced due to the development of new technologies.

These differences are linked to the conditions which are either conducive to tax evasion or prevent it in various sectors. These researchers further state that criminological theories pay much attention to crime opportunities as a causative factor in the production of crime.

Greater opportunity to fraud and tax evasion would lead to increased tax fraud and evasion. Tax fraud can largely be defined as behaviour aimed at obtaining an unlawful tax advantage and/or causing unlawful tax loss (Webley et al., 1991). Although the means of obtaining such advantage vary greatly, as do the potential costs resulting from fraud, there is often a failure to grasp the complexity of the phenomenon, which is then reflected in the inadequacy of the measures to combat it (Ashworth & Zedner, 2008). The approach to tackling tax fraud has traditionally been relatively unsophisticated, relying primarily on penalties and other administrative and criminal sanctions. Despite attracting significant academic attention, there has been a perception that, further investment in tackling fraud is ineffective, in view of the difficulties and human resources costs involved in adopting a stricter approach, with increased attention being paid to anti-fraud policy. While there are various factors at play, this shift has undoubtedly been due in part to better understanding of how to combat tax fraud, and the availability of new tools to do so, in particular promising developments in behavioural science (Baker, 2003).

4.4.1 The opportunity Structure and techniques of Situational Crime Prevention Theory

Examining situations in which crimes occur enables one to look for the opportunities that situations provide for the offender or intending offender to commit crimes of specific kinds. This approach is commonly referred to as analysing the opportunity structure of crimes. Analysts begin with the situation or situations in which the crime occurs, and they usually find that general settings can be broken down into increasingly small component parts (Clarke, 2012). This study adopted the situational crime prevention opportunity structures. The opportunity structure of the SCPT framework includes five general strategies encompassing Twenty-five (25) techniques to reduce crime (Clarke, 2013). They include both “hard” and ‘soft’ interventions. Hard interventions include either deterring offenders from committing the offense or making it impossible for the offender to commit crime regardless of his or her intent or level of motivation.

An important part of the SCPT focuses on decreasing the benefits crime offers. Offenders are constantly seeking benefits from their acts, whether material for thieves, sexual for sexual offenders, intoxication, excitement, revenge or peer's approval, financial gains from tax crimes (Birkbeck & LaFree, 1993). The key findings of this study reveal that in combating income tax fraud, close working relationship among stakeholders must be intensified, on-going training of tax crimes experts must be implemented, public tax education is significant and employment of cyber-crime investigators to conduct technological crime investigations. This study further reveals that in deterring income tax fraud, SARS and the NPA must work together in seizing assets illegally obtained from proceeds of crime, and there should be harsh punishment for tax fraudsters like any other crimes.

4.4.2 Criticism of Situational Crime Prevention Theory

According to Clarke (1997), one of SCPT's strengths relies on its scope. The core principles are deliberately general and the prevention techniques can be applied to the different categories of crime. Whether crimes are emotionally driven, opportunistic, and sexual or planned-out (for example, tax fraud). The SCPT has been scrutinised and criticised over the years. Displacement has been evoked repeatedly, as it has been argued that "situational variables might determine the timing and location of offending, but reducing opportunities at a particular times, places, or crimes, with no net reduction in crime" (Clarke & Felson, 1993: 4).

A relative criticism is that situational prevention may succeed in displacing crime but would not prevent it because situational prevention does not address offender's criminal dispositions. The SCPT ignores the root causes of crime in that it focuses on the performance of criminal behaviour, and attacks symptoms and not underlying, systemic causes. Situational approaches are not appropriate for "irrational" crimes. "An exacerbation of attitudes may occur when a criminal changes the location of crime because the current location no longer provides opportunities for crime" (Yuniarti et al., 2019). The researcher's criticism on this theory is that it only explains the use of available opportunities for criminals to commit tax fraud and fails to address the rational decisions, thought process, interaction with others and actions to commit crimes. The researcher believes that this theory should have covered the rationalisation of criminality in order to conclude on addressing available opportunities.

4.4.3 The lasting value of Situational Crime Prevention Theory

An important part of SCPT focuses on decreasing the benefits crime offers. This theory aims to reduce the incidence of crime by increasing the risks for offenders and reducing the opportunities for crime (Fuller, 2012). This theory removes excuses that offenders may rationalise or justify their actions, reducing or avoiding provocations that may tempt or incite offenders into criminal actions and increasing the risks offenders must face in completing the crime (Centre for Problem-Oriented Policing, 2022). This theory is able to address ways of combating crime in identified criminogenic areas with available opportunities used by offenders. It explains that offenders must be punished for crimes committed to reduce crime rates and that the opportunities for potential criminality must be addressed in order to caution potential criminals of risks after being caught. This theory effectively addresses the availability of opportunities that has been created to commit crime and suggest that in order to prevent crime, the said opportunities must be reduced. For example, in order to reduce or prevent income tax fraud, that the SARS e-filing must be highly re-visited and monitored, all submitted tax returns must be audited before refunding taxpayers and there must be on-going open public tax education in South Africa.

4.5 The analysis of criminological and economic theories to combat income tax fraud

The researcher's analysis on the criminological theories is that Fraud Pentagon Theory effectively explains human factors in that pressure to be wealthy is a root cause for tax fraud commission in South Africa. The availability of opportunities to commit fraud contributes to the current scourge of income tax fraud. Pressure to obtain financially wealth is also a contributory factor to high rate of tax fraud (Situational Crime prevention theory). Tax fraudsters' rationalisation is that they feel SARS is overtaxing them and they believe they should get tax returns refunds.

However, the FPT and SCPT fails to explains how tax fraudsters learns skills to commit tax fraud particularly on the SARS e-filing system. They fail to explain learning criminality. However, they jointly explain the availability of opportunity to commit fraud as the contributory factor to the high rate of income tax fraud in South Africa. Sutherland's differential association theory explains learning criminality and skills for successful execution of crime through associations. This theory also explains the calculation of benefits rather than risks. This theory fails to explain availability of opportunities to commit income tax fraud. It

explains the motivational factors to tax fraud. All adopted theories in this study fails to explain cognitive or thinking process (psychological) of fraudsters before and after-tax fraud commission. It is significant to understand whether tax fraudsters think carefully before they take actions. This can assist the courts during criminal proceedings.

3.4 Summary

Criminological and economic theories adopted in this study explains that criminal behaviour is learnt (Sutherland's differential association theory). The availability of opportunities to commit crime contributes to the current scourge of income tax fraud in South Africa (Situational crime prevention theory). Tax fraudsters are motivated by greed and they are under pressure to be wealthy with calculated benefits rather than risks (Fraud pentagon Theory).

Surtherland's theory suggests that the mere interaction with criminals would lead an individual to criminal behaviour. This theory does not consider instinctive crimes, and fails to consider the fact that the cognitive abilities of different individuals can also be varying since it assumes a pure behaviouristic view in which human beings react automatically and reflexively to stimuli in the environment. Fraud pentagon theory explains that fraud can be detected through five elements, namely pressure, opportunity, rationalisation, competence and arrogance. Situational crime prevention theory states that greater opportunity to fraud and tax evasion would lead to increased tax fraud and evasion. Tax fraud can largely be defined as behaviour aimed at obtaining an unlawful tax advantage and/or causing unlawful tax loss. In the next chapter (Chapter Five), the researcher describes research methodology adopted in this study.

CHAPTER FIVE

METHODOLOGY

5.1 Introduction

In this chapter, the researcher provides a detailed discussion on the research methodology adopted in this study. A qualitative research approach was adopted to collect on the development of a prosecutorial approach to combat income tax fraud in South Africa. Interpretive and constructivism qualitative paradigms were adopted in this study to allow participants to share meanings, interpretations, narratives and personal experiences. Phenomenological research design was adopted to explore and describe the developments of a prosecutorial approach to combat income tax fraud in South Africa. Fifty-one (n=51) participants were purposively selected in KwaZulu-Natal province to share their expert knowledge and experience in this study. The researcher prepared interview guides with open-ended questions to conduct in-depth individual interviews and key informant interviews with the participants.

Use of the interview method enabled the researcher to collect data from each participant. Thematic analysis was adopted as a qualitative data analysis method in this study. This analysis method was deemed suitable to analyse, code and categorise themes that emerged from the data . The grouping of themes is significant to provide relevant data by identifying central themes. Ethical research for qualitative studies was adopted to ensure voluntary participation, informed consent, anonymity and data management. This was done to ensure that the study was conducted in an ethical manner without violating participant's rights to deny or agree to participate, and the participants had a clear understanding that the study was conducted for research purposes only. Data were collected after ethical clearance was received from the University of KwaZulu-Natal's Humanities and Social Sciences Ethics Committee (University of KwaZulu-Natal, 2014).

5.2 Research paradigm

A different methodology is required to reach an interpretative understanding and explanation that will enable the researcher to appreciate the subjective meaning of social action (Creswell & Plano Clark, 2007). The data in this study were gathered by means of interviewing participants and the data was systematically analysed to interpret meanings. Thus, a "Paradigm

associated with interpretivism include symbolic interactionism analytic induction and grounded theory” (De Vos et al., 2011:310).

Together with interpretivism paradigm, constructivism paradigm was also adopted in this study to understand constructed realities shared by the participants. Constructivists believe that there is no truth “out there”, only a narrative reality change continuously (Esterberg, 2002: 144). Data in this study were collected by means of in-depth individual interviews and participants were able to share their personal and professional narratives and experiences on this phenomenon.

5.3 Research approach

This study adopted a qualitative research approach in which the aim was to explore and describe the developments of a prosecutorial approach to combat income tax fraud in South Africa. This approach was important because the researcher wanted to obtain detailed information on tax fraud prosecution in South Africa. According to Leedy and Ormrod (2010:143), “qualitative research is, by its very nature, flexible and open-ended, and so it continues to evolve over the course of the project”. For Esterberg (2002:207), “qualitative research reports traditionally have been more flexible than quantitative research reports”. Qualitative research starts with assumptions, a worldview, the possible use of a theoretical lens, and the study of research problems enquiring into the meaning that individuals or groups ascribe to a social or human problem (Maluleke, 2016). This is in tandem with Creswell (2008:37) who posited that “to study a research problem, a qualitative research approach is used to inquire the natural setting comprising human subjects and places that inform the collection of data, and inductive data analysis establishes the study themes”.

5.4 Research design

The general principles of research design are described according to four dimensions, namely: “(i) the purpose of the research; (ii) the theoretical paradigm informing the research; (iii) the context or situation within which the research is conducted; and (iv) the research techniques that are employed to collect and analyse the data” (Terre Blanche, Durkheim & Painter, 2006:37). Lichtman (2014:112) argues that a phenomenological study is a suitable way of exploring research questions in qualitative research; as such a study reflects on different ways to elicit information. This study therefore employed a phenomenological design, because it focused on the lived experiences of people in terms of a specific problem (Creswell, 2008).

The phenomenological design was appropriate because it supported the researcher's quest to understand the participants' perceptions, experiences, perspectives and understanding of the development of a prosecutorial approach to combat income tax fraud in South Africa (Mills & Birks, 2014). In this context, the study evaluated the information that was elicited from the participants. The research data is provided evaluated findings in this study.

A research design provides a plan that specifies how the research is going to be executed in such a way that it answers the research questions. For example, "Designing a study involves multiple decisions about the way in which the data will be collected and analysed to ensure that the final report answers the initial research question" (Terre Blanche et al., 2006:35). It was therefore important that the design of this study would enable the selected participants to share their experiences, perceptions and understanding on the development of a prosecutorial approach to combat income tax fraud in South Africa. The solicited information was thus clearly and thickly described, analysed and interpreted to illuminate the complex phenomenon of income tax fraud, detection procedures, prevention options and the challenges experienced by the criminal justice system in an effort to curb and outright combat income tax fraud in South Africa

5.5 Study location and entry into the site

Study location in research refers to the geographic location specified according to boundaries current at the time of data collection (Pasaribu, 2017). According to Leedy and Ormrod (2014), once the research problem has been identified, the researcher is compelled to identify a site that maximizes the opportunity to engage the problem. The data collection location of this study was Durban, KwaZulu-Natal province. KwaZulu-Natal is one of the nine provinces in South Africa. KwaZulu-Natal province was selected because it is one of the top three provinces with high commercial crime rates in South Africa (SAPS National Crime Statistics, 2021). The selection of this location was also because the NNAAF, NPA DPP STU, and AFU offices in KwaZulu-Natal province are in Durban. In gaining entry, the researcher submitted a data collection request letter to the NPA and NNAAF. Appointment was granted to the researcher to visit NPA and NNAAF offices with the purpose of making data collection arrangements and to recruit potential participants. Permission to recruit and interview participants was granted.

Gaining entry to the field is important because it lets people on the ground know what the project seeks to achieve (Kvale, 1996). Durban's economic contribution to the region indicates that the Durban Metropolitan Area (DMA) is the main economic driver in KwaZulu-Natal

(KZN), contributing over half of the province's output, employment, and income. Durban has the highest number of taxpayers in KwaZulu-Natal province. In national terms, KZN is the second most important economic complex after Gauteng province, accounting for 15% of national output, 14% of household income and 11% of national employment. Durban is a rapidly growing urban area and is by most measures the busiest port in Africa. A good railway network links the city to other areas of Southern Africa. Sugar refining is Durban's main industry. Regional development corridors link Durban to Richards Bay and Maputo, and westwards to Pietermaritzburg and Johannesburg (eThekweni Municipality, 2008).

5.5.1 Study population and sampling techniques

According to Bless, Higson-Smith and Sithole (2013:164-166), and Ritchie, Lewis, Nicholls and Ormston (2014:120), "a population, sometimes referred to as a target population, is the set of elements with the appropriate information that the research focuses upon". In the case of qualitative research, the results obtained from a sample of the population should be exhaustive to all researched aspects found in the population. The population in this study were all chartered accountants, internal and forensic auditors who, at the time of the study, investigated, analysed, inspected, examined, and evaluated income tax fraud in KZN and all the prosecutors who prosecuted and seized criminal assets in combating income tax fraud in KZN at the time. A target population is defined as "the population to which the researcher ideally would like to generalise or transfer his or her results" (Welman, Kruger & Mitchell, 2006:122). White (2005:113) defined a population as "all possible elements that can be included in the research. The population can be people or television programmes, or curricula or anything that is investigated as the focus of the research project". Thus, the ideal population of this study would have comprised all officials working closely with income tax and who possessed relevant experience or knowledge on the subject.

5.5.2 Sample size and sample selection procedures

Sampling is the selection of research participants from an entire population. It involves decisions about which people, settings, events, behaviours, and social processes to observe. For example,

"The main concern in sampling is representativeness. The aim is to select a sample that will be representative of the population about which the researcher aims to draw

conclusions. The second concern is the sample size, a very small random sample be [sic] quite unrepresentative, and is true for a large non-random sample” (Terre Blanche et al., 2006:49).

In this study, the researcher adopted purposive sampling. Sampling refers to a process where the researcher “select[s] those individuals that will yield the most information about the topic under investigation” (Leedy & Ormrod, 2010:147). Income tax fraud is a special field of study. Therefore, this sampling technique was deemed suitable as a few individuals with rich information on combating income tax fraud had to be selected to provide data on their unique experiences, perceptions and solutions that would give direction to this study. Du Plooy-Cilliers, Davis and Bezuidenhout (2014) asserted that non-probability sampling is a method that can be used specifically in qualitative studies. As this was a qualitative study, the researcher utilised a non-probability sampling method and adhered to the guidelines for a purposive sampling method, as proposed by Babbie and Mouton (2011:166).

The researcher purposefully selected the sample of this study based on her own knowledge of the population, its elements, and the nature of the study objectives and research questions. For this reason, a total of 51 participants were selected. In qualitative research, the researcher is entitled to select larger sample who can shed the best light on a specific subject to provide more accurate meaning of the phenomenon of interest (Johnson & Christensen, 2019). Eleven (n=11) chartered accountants, ten (n=10) internal auditors, and ten (n=10) forensic auditors who were attached to Ngubane National Accounting and Auditing Firm (NNAAF) [Ngubane &Co.] were selected. Further, there were eight (n=8) specialised tax unit prosecutors, and twelve (n=12) asset-forfeiture unit prosecutors from the National Prosecuting Authority in KwaZulu-Natal. Participants who were deemed experienced in the analysis, examination, detection, investigation, seizing of tax fraud assets and prosecution of income tax fraud were selected based on their daily taxation and tax fraud duties in South Africa and KwaZulu-Natal. The participants are employed as tax fraud accountants, internal auditors, forensic auditors and prosecutors. The selected sample had encountered the problem of tax fraud on numerous occasions, therefore all, well aware of the latest trends, various modus operandi (*MO*) and preventative measures that should be adopted to combat income tax fraud in South Africa. Below is a representation of this study participants who voluntarily participated in this study:

TABLE 4.1: SAMPLE SIZE AND BREAKDOWN

Study stakeholders	Participants units	Number of participants	Total
Ngubane National Auditing and Accounting Firm	chartered accountants	11	32
	internal auditors	11	
	forensic auditors	10	
National Prosecuting Authority, Director of Public Prosecutions	specialised tax unit prosecutors	08	20
	asset-forfeiture Unit prosecutors	12	
			52

Source: Researcher’s illustration (2022)

5.5.3 Sample recruitment strategy

Identifying, approaching and obtaining consent from potential participants to join a study are the three stages of recruiting potential participants to research studies (Leedy & Omrod, 2010). In this study, the researcher firstly had a direct telephonic and email communication with the KwaZulu-Natal NNAAF and NPA DPP management in preparation for participants recruitment to participate in this study. The meeting arrangements were on separate occasions because these are two different stakeholders. The communication was about meeting arrangements with the management to introduce this study and to consider their suggestions and concerns in recruiting their employees to participate in this study.

The managements agreed to meeting the researcher. KZN NPA DPP suggested that the researcher works with their Administration officer in recruiting participants. The

administration officer provided the researcher with the list of contact details and emails of potential participants. NNAAF suggested that the researcher should work with the CEO's personal assistant (PA) in recruiting participants and for future communication. The researcher had a direct email communication with each participant and the Personal assistant was helpful in informing participants on participating in this study. Participants who agreed telephonically to participation were required to sign informed consent forms, and they were interviewed on a pre-arranged date and time at their workplace offices at NNAAF and NPA DPP in KwaZulu-Natal.

5.5.4 Sample inclusion criteria

Inclusion criteria in research are a set of predefined characteristics used to identify subjects that are included in a study (Babbie & Mouton, 2011). According to Flick (2011), exclusion criteria include factors or characteristics that make the recruited population ineligible for the study. The sample inclusion for this study was as follows:

- Expert knowledge in the field of taxation systems and tax fraud in South Africa.
- Working experience in analysis, examination, detection, investigation, seizing and prosecution of tax crimes in South Africa.
- Employed by accounting and auditing firms in South Africa as an accountant, internal, or forensic auditor.
- Employed by the National Prosecuting Authority in South Africa as a tax unit prosecutor or asset-forfeiture unit prosecutor.
- Willingness to voluntarily participate in this study.
- Residing in Durban, KwaZulu-Natal Province.

5.6 Data collection instrument

Data collection instruments refers to assessments, questionnaires, inventories, interview schedules or guides, rating scales, survey plans, or any other forms that are used to gather data on nearly identical items from ten or more participants (Creswell, 2008). Various data collection techniques can be used, for instance open-ended narratives, checklists, field guides and interviewing. Thus, "it is also desirable to use more standardised procedures in participant observation as these may maximise observational efficacy, minimise investigator bias and allow for verification of the data" (Denzin & Lincoln, 2000:676). The researcher used the below data collection instrument to collect data in this study:

5.6.1 Interview guide

An interview guide provides the researcher with a set of predetermined questions that might be used as an appropriate instrument to engage the participant and designate the narrative (De Vos et al. 2011). In this study, the interview guide contained open-ended questions with the aim to allow participants to explore and describe the development of a prosecutorial approach to combating income tax fraud in South Africa. Open-ended questions should be asked to allow the participants to express themselves freely and the questions should give the specific information required for the purpose of the study (Flick, 2011). The open-ended questions ensured that the selected participants were at ease as they were allowed to express themselves in their own words regarding combating income tax fraud in South Africa. This guide was designed with particular themes in mind that guided the interviews in order to address the research questions (Babbie & Mouton, 2011).

5.7 Data collection methods

It is essential that researchers have sound data that can be analysed and interpreted when conducting a study. There is widespread scholarly agreement that data should be valid and there is consensus that data stem from observations and can take the form of numbers or language. To this purpose, qualitative researchers “want to make sense of feelings, experiences, social situations, or phenomena as they occur in the real world, and therefore they want to study them in their natural settings” (Terre Blanche et al., 2006:287). The purpose of data collection in a study is to elicit answers that will address the research questions (Creswell & Plano Clark, 2007). This study used the following data collection methods to obtain quality data:

5.7.1 In-depth interviews

Interviews are conducted in qualitative research to address the research questions. Therefore, specific interview questions are compiled in a research schedule and posed to the participants to elicit their responses. The meanings that participants attach to central themes that are related to their natural settings are then evaluated. The main focus of an interview is to understand the true meaning of what the interviewees say in response to the questions. An interview therefore seeks to cover both the ‘factual’ and ‘meaning’ level, although it is usually more difficult to interview on the meaning level (Kvale, 1996). This study adopted semi-structured interview method with the application of in-depth interviews (IDIs) with the National Prosecuting

Authority's Tax Unit and Asset-Forfeiture Unit prosecutors. These are specialists in tax fraud prosecution and seizing of criminally obtained assets through tax fraud. Each participant was individually interviewed for 45-60 minutes to collect an exploration and descriptive information on the development of a prosecutorial approach to combating income tax fraud in South Africa. In-depth interviews were conducted at the KwaZulu-Natal NPA DPP offices located in Durban central.

During in-depth individual interviews, the researcher uses a list of questions or specific themes to be covered, often referred to as an 'interview schedule' or an 'interview guide'. Thus, the interviewee has a great deal of the way in which to reply. Furthermore, questions may not follow the exact sequence or pattern as outlined on the interview schedule. Questions that are not included in the guide may be asked as the interviewer may notice that comments by interviewees may require further elucidation (Babbie & Mouton, 2011). However, all the questions are generally asked and similar wording is used with all the interviewees. Essentially, the process is flexible as the emphasis was placed on how the interviewee frames answers and understands issues and events. It is important that the interviewer records what the interviewee views as important and how he/she understands events, patterns and specific behaviours when talking about the topic under investigation (Creswell, 2008). The researcher further adhered to the guidelines of Guthrie (2010) by following a standard interview schedule guide and asking participant-tailored questions to obtain clarification or to probe a participant's reasoning. Using the interview schedule, the same questions were asked all participants.

5.7.2 Key Informant interviews

According to De Vos et al. (2011:467), key informant interviews refer to the "process of asking the opinions, perceptions and views of a small number of people known to be involved with the issue under investigation". The selection of participants is very important as only a few are used while their responses to the questions have an important effect on the evaluation of the data. This selection should be based on their expertise in the relevant subject area. Key informant interview participants in this study were employees of Ngubane National Accounting and Auditing firm, and these were accountants, internal auditors, and forensic auditors. These experts are highly skilled and knowledgeable on fraud identification, risk assessments, fraud detection and analysis. They work closely with taxpayers and the criminal justice system to promote tax compliance and to prosecute and deter tax fraud.

5.7.3 Field notes

During interviewing, it is vital to make full and accurate notes of what goes on (Creswell, 2008). These notes help the researcher to remember and explore the process of the interview (Baker, 2003). The researcher took notes during the interviews as agreed with the participants. Participants' responses to question were written down by the researcher. Due to COVID-19 regulations in South Africa, which did not allow close contact with the participants, the participants requested to also email to written responses. The researcher received batched of responses from participants. This exercise was beneficial to the researcher in making comparisons in terms of notes taken data and the emailed data. The email interview enables both the interviewer and the participant to reflect on what has been said both in the short or longer terms (Babbie & Mouton, 2011).

5.8 Data collection process

The researcher built a good relationship with the participants by firstly introducing the study and its purpose on combating tax fraud in South Africa. The participants were ethically informed about voluntary participation and that they will not be compensated or rewarded for participation. However, this study is of national interest to combat financial crimes for the betterment of South Africa's economy.

The participants were comfortable with interviewing and note taking during interviews rather than recordings. The email interview enables both the researcher and the participant to reflect on what has been said both on a short or long term (Dentzeker & Hunter, 2012). The researcher and participants agreed to respond to the same research questions on their free time after interviews and email them to the researcher as they were uncomfortable with audio recordings. Participants may not feel happy being recorded, and some may even withdraw (Babbie & Mouton, 2011). The researcher was an interviewer and all research questions were asked by the researcher. Participants were interviewees and they responded individually to each research question. Researchers obtain information through direct interchange with individuals or a group that is known to possess expert knowledge (De Vos et al., 2011).

5.9 Data analysis methods

Qualitative data analysis is "a process of inductive reasoning, thinking and theorising which is far removed from structured, mechanical and technical procedures to make inferences from

empirical data of social life” (De Vos et al., 2011:359). At this stage of study, the researcher will do data reduction, presentation, and interpretation (Sarantokos, 2000:210). The aim of data analysis is to “transform data into an answer to the original research questions” and to carefully “consider data analysis strategies that will ensure that the design is coherent, as the researcher matches the analysis to a particular type of data, to the purposes of the research, and to the research paradigm” (Terre Blanche et al., 2006:52). Themes should ideally arise naturally from the data, but at the same time they should also have a bearing on the research questions. During the activity of developing themes, the data should be coded. This entails “marking different sections of the data as being instances of, or relevant to, one or more of the themes” (Lichtman, 2014:152) Thematic analysis was adopted in this study to analyse and interpret emerging themes from the data. The IDIs and KIIs were analysed, interpreted and transcribed by categorising themes and coding them chronologically. Coding was used per theme to easily classify and categorise emergent themes. The results were analysed and interpreted to give meaning to the reader. The researcher further identified salient themes, recurring ideas or language and patterns of belief that linked the participants’ views on the development of a prosecutorial approach to combating income tax fraud in South Africa.

5.10 Methods to ensure trustworthiness

According to Babbie and Mouton (2011:276-277), “the basic issue of trustworthiness is that a study cannot be transferable unless it is credible, and it cannot be deemed credible unless it is dependable”. The following four elements to ensure the trustworthiness were adopted in this study.

5.10.1 Credibility

According to Marshall and Rossman (2016:46), credibility “refers to the accuracy with which a researcher interprets the data that were provided by the participants”. The researcher therefore enhanced the credibility of this study by spending long periods with the participants in their natural settings to understand them better and gain insight into their lives, experiences and perceptions on the developments of a prosecutorial approach to combat income tax fraud in South Africa. To enhance the credibility of this study, the researcher tentatively analysed the data and the relevant literature and documents were drawn from her own research experiences to separate relevant from irrelevant data. To further strengthen the credibility of

this study, the researcher adhered to the following strategies as outlined by Babbie and Mouton (2011)

5.10.1.1 Triangulation

The researcher examined multiple data sources and used different data collection methods such as IDI and KIIs and supported findings with the provided literature review for triangulation purposes as proposed by Babbie and Mouton (2011). Multiple data sources of information were consulted by the researcher to give meaning to the study under investigation. This criterion was significant in increasing the quality data, creating meanings and understanding of the topic under investigation, revealing of unique findings in line with the study objectives and problem. Multiple theories, legislation and policies were adopted to develop understanding and knowledge of this study.

5.10.1.2 Referral adequacy

The researcher documented the interviews by means of note-taking in verbatim and kept notes in a secured place at the researcher's office. The notes were also typed verbatim and saved in the researcher's computer and USB. Participants' post face-to-face interview written responses were sent by participants to the researcher's email and these were downloaded and saved in the computer. These can also be accessed on email at any time. The researcher kept all word-to-word data and analysed data that answered the research questions. Referral adequacy means collecting and holding only a minimum amount of data needed to fulfil the research purpose (Gordon, 2015).

5.10.1.3 Peer debriefing

The researcher requested her academic mentor of similar academic status who was not involved in this study but who had a general understanding of the field of investigation, fraud detection, analysis and prosecution to review the data analysis process and to check the findings. Peer debriefing is the process of working together with one or more peers, an unbiased and independent person has no interest in the project, to enhance the validity of findings (Maluleke, 2016). The researcher's study supervisor was able to read and identify areas of importance to be added in this study.

5.10.2 Transferability

According to Babbie and Mouton (2011:277), transferability is “the ability of the findings of a research study to be applied to a similar situation and delivering similar results”. In a qualitative study, the obligation for demonstrating transferability rests on those who wish to apply it to the receiving context, meaning the reader of the research study. The researcher is of the view that the findings of this study can be applied to similar situations, as the information that was obtained from the participants constituted their expert views as they were all trained and qualified accountants, internal, forensic auditors and prosecutors who had considerable experience in examining, detection and investigation, and they were qualified prosecutors who had prosecuted and seized income tax fraud criminal assets over a number of years. Transferability in a qualitative study depends on similarities between the ‘sending’ and ‘receiving’ contexts.

The researcher thus collected sufficiently detailed and descriptive data that contained detail and precision to allow the reader or audience to make judgements regarding the transferability and validity of the findings. To achieve this goal, the researcher utilised a purposive sampling method to maximise the range of specific information that could be obtained from the participants about the problem under investigation (Babbie & Mouton, 2011). The expert accounts that the participants provided were based on the same foundations as those that any other expert within the accounting, internal and forensic auditing and prosecution community would have provided. In this context, the researcher is satisfied that thick and relevant explorative and descriptive data were collected for this study.

5.10.3 Dependability

According to Du Plooy-Cilliers et al. (2014:259), dependability refers to “the quality of the process of integration that takes place between the data collection method, data analysis and the theory generated from the data”. Babbie and Mouton (2011:278) hold the view that dependability in an inquiry means that “it must provide its audience with evidence that, if this study was [sic] to be repeated with the same or similar participants in the same or a similar context, the findings would be the same”. The researcher attained dependability in this study in that she conformed to the following procedures:

- Conducted semi-structured interviews with the participants and posed mostly open-ended questions that could be answered openly;
- Asked the participants the same interview questions to address the study objectives and research questions under investigation;
- Ensured that the confidentiality of the participants was guaranteed and that their interviews were conducted in privacy;
- Utilised the services of the study her supervisor to review and assess the findings on a regular basis. The supervisor provided guidance and identified important areas that the researcher had to attend to;
- Used relevant sources from the literature that enriched this study; and adhered to ethical considerations by citing and referencing other authors' work in the prescribed manner.

5.10.4 Confirmability

According to Lichtman (2014:387), confirmability refers to “how well the data collected support the findings and interpretation of the researcher”. This implies that it indicates how well the findings flow from the data. Therefore, when other scholars look at the data, they must come to the same conclusions as the researcher. This confirms and corroborates what the researcher did. The researcher’s findings could be confirmed by other researchers who conduct studies on tax crimes. This study findings are based on the participants’ narratives and words and not those of the researcher. This process eliminated any inaccuracies and maintained the objectivity of this study. This study was also subjected to the supervisor’s review to have it assessed for relevance and compliance with sound research principles. This process ensured an objective assessment and addressed the confirmability standards of the study.

5.11 Ethical considerations

Ethics is defined as “a set of widely accepted moral principles that offer rules for, and behavioural expectations of, the most correct conduct towards experimental subjects and respondents, employers, sponsors, other researchers, assistants and students” (De Vos et al., 2011:420). Relationships should be built on mutual trust, cooperation and the knowledge that the relationship will be terminated at some stage or other inquiry has been completed (Creswell, 2008). This study adhered to the following ethical considerations from data preparation to collection.

5.11.1 Harm avoidance

Research must bring no harm to participants (Creswell, 2008). The responsibility of protecting participants against harm reaches further than mere efforts to repair, or attempt to minimise such harm afterwards (Creswell & Plano Clarke, 2007). The researcher created a conducive space for participants to feel free to participate in this study. Participants' right to participate or withdraw from this study was explained. This granted participants the liberty to share information they considered to be important to the study. The researcher should avoid any harm that may affect the participants individually or collectively during the data collection process (Flick, 2011). Hence, the participants were not required to engage in any discussions that might have caused discomfort.

5.11.2 Voluntary participation

Participation should always be voluntary and no one should be forced to participate in a project (Rubin & Babbie, 2005). Even if participants are told that their participation is voluntary, they might still think that they are somehow obliged to participate (Leedy & Omrod, 2014). Participants were requested to voluntarily participate in this study. The researcher explained to them that this study is for research purposes only and that they will not be remunerated for participation. They were also requested to sign the informed consent form prior to the interviews being conducted. The researcher adhered to the principle that "Participation is voluntary and that it takes place on the basis of the fullest possible information about the goals and methods of the particular piece of research" (Flick, 2011: 96).

5.11.3 Informed consent

Respect for persons requires that subjects be given the opportunity to choose what shall or shall not happen to them (Punch, 2014). Neuman (2014) suggests that before the interviews or during the opening of the discussion, it should be communicated to participants that the information is important, and the reasons for that importance must be explained. The researcher explained the purpose of the study to the participants at the beginning of interviews and requested them to ask questions for purposes of clarification. The researcher further clarified the objectives of this study and the research questions to avoid misunderstandings. Firstly, a short summary of what the interview was about was presented. This was followed by a non-threatening open-ended question that got the interviewees talking and helped to put them at ease (Terre Blanche et al., 2006). The researcher further explained to participants that they had

options whether the interviews be recorded, or notes be taken. The participants were also informed of their rights to either participate or withdraw during interviews and that they were free to explore if they were within the content of this study. The researcher also informed the participants that there was no form of reward for their participation in the study.

5.11.4 Anonymity or confidentiality

This means that no one should be able to identify who responded (Babbie & Mouton, 2011). Privacy implies the elements of personal privacy, while confidentiality implies the handling of information in a confidential manner (Creswell, 2008). Confidentiality of the participants' information was ensured and their personal information, including their real names, was not disclosed to other people and in this report. Readers and other authors will not be able to know and identify personal details of participants who participated in this study. Participants are coded based on their work occupation. For example, accountants are coded as "CA" while internal auditors are "IA".

5.11.5 Deception of subject and participants

Deception refers to misleading participants, deliberately misrepresenting facts or withholding information from participants (Struwig & Stead, 2001). The researcher explained to participants that there was no reward or remuneration for participating in this study. Participants were not misled with false hopes and empty promises by participating in this study.

5.11.6 Ethics committee and gatekeeper letters

Universities, research institutions, and major welfare organisations have ethics committees that review researchers' proposals and research reports (Barker, 2003). This study was conducted under the supervision of the researcher's supervisor and the University of KwaZulu-Natal's Humanities and Social Sciences Research Ethics Committee (HSSREC Protocol number: 00001099/2020) to ensure adherence to all ethical standards.

The Humanities and Social Sciences Research Ethics Committee examined the research design and methods before the study could be commenced. Sound ethical practice in research is based on two conditions: "(i) that the researcher will conduct the research in accordance with ethical codes, and (ii) that the research proposal has been reviewed by an ethics committee for ethical soundness" (Flick, 2011: 101). Full approval from the UKZN Ethics Committee to conduct the

study was granted in 2020 (Annexure E). Authority approval letters were also obtained from NNAAF (See Annexure F and the NPA DPP Management (Annexure G).

An important ethical consideration before entering a research field is to gain “permission to enter the field that has been decided on” (Creswell, 2008:142). Permission by the relevant authority or gatekeeper is as important as letting the participants know what the project seeks to accomplish. Flick (2011) argues that all the people who are directly involved in a research project should be consulted. The researcher therefore had direct telephonic contact and email correspondence with the NNAAF and NPA DPP Management in KwaZulu-Natal to make arrangements to collect data. It is important that “Relationships should be built on mutual trust, cooperation and the knowledge that the relationship will be terminated at some stage or other when the enquiry has been completed” (Neuman, 2014:360).

5.12 Summary of the chapter

In this chapter, the researcher discussed the research methodology that was adopted in this study. A qualitative research approach was adopted to explore and describe the development of a prosecutorial approach to combating income tax fraud in South Africa. Interpretivism and constructivism qualitative paradigms were deemed suitable to allow participants to explore and describe meanings, interpretations, narratives and personal experiences on combating tax fraud in South Africa. Phenomenological research design was adopted to explore and describe the phenomenon under investigation. NNAAF, NPA STU and AFU (accountants, internal auditors, forensic auditors, tax fraud prosecutors, and asset-forfeiture prosecutors) were purposively selected to share their expert knowledge on taxation systems and tax fraud in South Africa. Fifty-two (n=52) participants were interviewed in this study. Interview guides containing lists of open-ended research questions were used to collect data to achieve the goal of this study. Field notes were taken by the researcher during interviews and participants also sent post-interview responses to the researcher’s email address.

The participants were informed of the purpose of the study. They signed the informed consent form as evidence of agreeing to participating voluntarily. Thematic analysis was adopted to analyse, code, and categorise themes that emerged from interviews. The researcher ensured that verbatim quotes were provided to ensure the credibility of data. This study adhered to ethical considerations to ensure that participants were not harmed or coerced to participate in this study. In the next chapter (Chapter Six), the researcher presents and interprets findings that emerged from interviews.

CHAPTER SIX

DATA PRESENTATION AND INTERPRETATION

6.1 Introduction

In this chapter, the researcher presents, and interprets the findings. Thematic analysis was adopted in this study to transcribe, code, and categorise themes. According to Creswell (2008:125), “themes become the categories for analysis”. Thematic analysis is performed through the process of coding in six phases to create established, meaningful patterns. Data were collected from a total of 51 participants who were accountants, internal auditors, forensic auditors, specialised tax unit prosecutors, and asset-forfeiture unit prosecutors. The key informants interviews were conducted with all accountants, internal auditors, and forensic auditors. Specialised tax unit and asset-forfeiture unit prosecutors served as in-depth interview participants. The researcher has read and re-read the verbatim and written responses, to get an understanding of the interviews and to familiarise herself with the data. The study findings are discussed to interpret the development of a prosecutorial approach to combating income tax fraud in South Africa. For the purpose of this study and adherence to research ethical considerations adopted, participants’ real names are not revealed in this study. Participants are referred to using their designation and number. Accountants are referred to as “AC 01-11” while internal auditors are referred to as “IA 01-10”. Further, forensic auditors are referred to as “FA 01-10”. National Prosecuting Authority Specialised Tax Unit Prosecutors are referred to as “NPA STU 01-08” and National Prosecuting Authority Asset-Forfeiture Unit Prosecutors are referred to as “NPA AFU 01-12”.

6.2 Findings of this study

Below is the presentation of findings. The descriptive findings collected from interviews explore ideas and meanings that participants ascribed to the phenomenon in question. The open-ended questions contained in this study interview schedule are presented in line with the study objectives.

6.2.1 Key informant interviews (KIIs)

Key informant interviews are qualitative in-depth interviews with people who know what is going on in the community. The purpose of key informant interviews is to collect information from a wide range of people (De Vos et al., 2011). The key informant interviews were conducted with accountants, internal auditors, and forensic auditors employed at NNAAF in KwaZulu-Natal. They are experts on tax fraud identification, risk assessments, detection, and forensic investigations.

6.2.1.1 Participant's views on the association between advisory, accounting, investigation and auditing of financial criminal activities and prevalence of income tax fraud in South Africa

This theme shows that accountants, and internal and forensic auditors play a significant role in preventing income tax fraud. It should be considered that tax fraud is a financial criminal activity committed by taxpayers with an intention to claim undue funds. In detecting and preventing income tax fraud, the researcher is of the view that criminal investigators must have skills and knowledge to conduct investigations. Participants revealed that SARS has the capacity to detect and prevent financial crimes including income tax fraud. The detection and prevention of tax fraud includes quality investigations from investigators who are given a mandate to conduct tax fraud investigations at SARS and the SAPS. The below excerpt from participants attests to this:

“The ability of the South African Revenue Service (SARS) to detect financial crimes and to combat tax evasion may have a meaningful impact on reducing flows of financial crimes. The investigation of the two requires a thorough understanding of the key skills required for conducting such investigation by either SARS or the police, including the ability to follow the money through complex financial arrangement and how to effectively use sophisticated techniques to identify links between suspects and their illicit activities” (AC 01).

“Accountants have investigative skills in financial crimes detections with application of knowledge in economic transactions to assist in legal matters” (AC 06).

“In my view, financial criminal activities and income tax fraud are both criminal conducts, which involve individuals or businesses cheating the public revenue” (AC 09).

The Association of Certified Fraud Examiners (2012) attests to the above findings in that fraud detection should involve use of analytical and other procedures to detect and prevent fraud. Expertise in financial and accounting crimes is necessary to fully understand the issues and the potential criminal or civil charges that the government brings against a company or individual (Chartered Institute of Management Accountants, 2010). According to the Association of Certified Fraud Examiners (2016), the key elements of fraud detection include ongoing risk assessment to detect income tax fraud.

Some participants shared that income tax fraud contributes to economic loss in South Africa. The low prosecution rates on tax crimes shows that this crime is not dealt with accordingly. The excerpts below attest to this:

“The association between the two is that they are both key threats to the economic stability of developing South Africa even though they are operationally quite distinct processes, depending on the ability to hide the financial trail of the income” (AC 08).

“In my research, I have discovered that South Africa has a low prosecution rate under financial criminal activities, which is a clear indication that such cases are not effectively dealt with. Under South African law, tax evasion and financial criminal activities are possible to deal with effectively by means of tax audits” (AC 10).

The study conducted by The World Bank (2018) supports the above participants’ views in that countries around the globe are facing the threat posed by increasingly complex and innovative forms of financial crimes. Several agencies are typically involved in the administration of taxes, the prevention, detection, investigation and prosecution of tax crime and corruption, and the recovery of the proceeds of crime. The study conducted by OECD (2017) reveals that tax fraud any country’s economic development relies on the collection of taxes from individual taxpayers and businesses.

Other participants' views show that tax advisory and auditing services should be provided by highly skilled and professionally registered advisors and auditors to ensure tax compliance and prevent income tax fraud. Internal auditors revealed that tax advisory can lead to income tax fraud if the services are provided by advisors who are not registered with a professional organisation. The participants' excerpts attest to this:

“Tax advisory can lead to income tax fraud if the services are provided by advisers who are not registered with a professional organisation. Organisations or institutions tend to have a specific code of conduct, which has serious repercussions if the members do not abide by that code” (IA 01).

“It is advisable that taxpayers use the services of registered tax practitioners who are required by SARS to register with a controlling body as contemplated in Section 239 of the Tax Administration Act 28 of 2011” (IA 02).

“Section 45 of the Auditing Professions Act 26 of 2005 requires that the auditor who finds income tax fraud, which he or she regards as a material irregularity, to report to the Independent Regulatory Board of Auditors (IRBA) which can in turn report to SARS if the irregularity is not reported. Therefore, auditing contributes to reducing income tax fraud” (IA 03).

“Forensic audits relate directly to financial statements frauds whereas forensic accounting requires investigative techniques and technology. The auditor must meet the standards for presentation in court” (FA 02).

“Investigations can reduce the incidences of income tax fraud because it would be reported to management or authorities whenever it is found” (IA 06).

“The investigation team should therefore be composed of people with different knowledge and qualifications including income tax” (IA 07).

“The investigation of the two requires a thorough understanding of the key skills required for conducting such investigation, including the ability to follow the money through complex financial arrangements and how to effectively use sophisticated techniques to identify links between suspects and their illicit activities” (IA 08).

Ngubane Assurance, Tax & Advisory (2018) shared similar views with the above participants in that the audits conducted by auditors are in accordance with International Standards on Auditing (ISA). Those standards require auditors to comply with ethical requirements, plan, and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatements. Tax fraud auditing includes evaluating the appropriateness of the accounting policies, examining on a test basis, evidence supporting the amount and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management and evaluating the overall financial statement presentations (Ngubane Assurance, Tax & Advisory, 2018). The OECD (2017) shared that officials in agencies including tax administration, the customs administration, the financial intelligence unit, the police and specialised criminal law enforcement agencies, the public protector's office, authorities responsible for corruption investigations, and financial regulators recognise that the knowledge and skills required to combat financial crime are often spread across each of these agencies. The accounting and auditing firms have a multidisciplinary team approach which helps organisations to understand their exposure to the risk of financial crimes by focusing on detection, investigation, and prevention of fraud (Ngubane Assurance, Tax & Advisory, 2021).

Other participants stated that forensic auditors examine or inspect various books of accounts by an auditor followed by physical checking of the inventory to ensure that all the departments are following documented system of recording transactions. Forensic auditors identify fraud, determine the time period during which fraud has occurred, discover how fraud was concealed, identify perpetrators of fraud, and quantify losses due to fraud. The excerpt below attest to this:

“At Ngubane & Co, we review the financial records of any company or individuals to extract facts which can be used in the court of law. We have our accounting experts who assist us with financial activities” (FA 09).

“Due to the complex nature of tax calculations and the existence of a thin line between tax avoidance and tax evasion, most corporations and individuals, majority of tax experts do not offer tax services rather they offer other services that includes advisory,

accounting, investigation, and auditing. Therefore, experts get to wear different caps for different services” (FA 08).

The participants’ views are supported by Slot (2012) who shared that the SAS No. 99 on new standards aims to have the auditor’s consideration of fraud seamlessly blended into the audit process and continually updated until the audit is completed. SAS No. 99 describes a process in which the auditor (1) gathers information needed to identify risks of material misstatement due to fraud, (2) assesses these risks after considering an evaluation of the entity’s programmes and controls and (3) responds to the results. For employees working in the investigations department, special training in forensic accountancy and forensic techniques are required to increase their ability to detect and deter income tax fraud (Storm & Coetzee, 2018).

6.2.1.2 Participants’ views on whether chartered accountants and auditors are used widely on income tax fraud advisory financial services in South Africa

The researcher noted that accounting and auditing firms are used widely by individuals and businesses on their tax compliance matters. These firms assist with tax advisory and audits to prevent tax fraud and evasion. Participants shared that Ngubane &Co. is well known to the public for offering auditing, finance and tax services across South Africa. The excerpts below attests to this:

“Ngubane &Co. is well known to the public in offering auditing, finance and tax services with over 200 professionals across South Africa” (AC 02).

“Ngubane & Co was established in 1995 and has climbed the ladder in the accounting and auditing industry. We haven’t reached the publicity we require, but we are used widely by individuals and businesses including government departments, and municipalities to assist with tax compliance, reporting, and advisory services” (AC 03).

“Ngubane & Co. has a tax department that provides tax advisory services in South Africa. In all Ngubane & Co audit services and other engagements, we are required to identify the risk of noncompliance with laws and regulations” (AC 04).

“I cannot say that the accounting firms are used widely on income tax [fraud] advisory financial roles in South Africa Ngubane & Co. has delivered high services in the accounting and auditing profession” (AC 06).

“Ngubane & Co. frequently provide advice to its clients regarding tax- advisory matters and design of tax policies” (AC 08).

The firms play an advisory role in educating companies in both public and private sectors, on the importance of statutory compliance and the development of stringent internal controls” (AC 11).

“We assist government departments and other entities with audits, forensics and accounting services to combat fraud” (IA 02).

“These companies are used adequately by relevant government departments, companies and other entities and their use, either for audit or forensic investigation purposes, which contributes directly or indirectly to overall detection of income tax fraud in South Africa” (IA 03).

“Well, we assist many individuals and entities with auditing and forensic services to detect and prevent tax fraud. They come to us for assistance” (IA 05).

“Our main clients are individuals, businesses like municipalities, government departments and general private companies who needs assistance with tax services” (FA 02).

“Ngubane & Co is one of the old and well-known firms in South Africa specialising in tax advisory, accounting, and auditing services” (FA 03).

“ Our accounting and auditing services are widely used by individuals and businesses. We are used widely by individuals and businesses in offering accounting and auditing services including forensic auditing” (FA 05).

“We have assisted many individuals and businesses in examination and fraud detection including tax fraud in South Africa” (FA 06).

The above views are supported by Ngubane Assurance, Tax & Advisory (2021) stating that accounting and auditing firms render professional services with distinct capabilities in a number of specialised fields including auditing, finance, tax, and information technology. Ngubane & Co. clientele include government departments, state owned entities, municipalities, and private companies. Specialised services include fraud prevention, accounting and taxation, forensic investigations, fixed asset management, business consulting, external, internal, and IT audit. It is important for accountants to understand and identify relevant legislative frameworks (Slot, 2012).

Other participants shared that accounting and auditing firms are appointed to investigate and report to Independent regulatory board of editors and the police complex financial crimes including tax fraud and evasion. The excerpt below attests to this:

“In the event of suspected fraud or any unlawful act, Ngubane and Co. highly emphasize the obligation to report fraudulent activities or any unlawful act to IRBA and the police” (AC 09).

“These firms are appointed to investigate complex financial crimes including the invasion of income tax” (AC 10).

“We conduct investigations on behalf of clients. In most investigations income tax fraud become a secondary issue to the main fraud” (IA 04).

“The firm has a forensic investigation division that is used by clients to perform forensic investigation including tax fraud, corruption, etc. The division has highly skilled personnel that have knowledge of different fraud schemes and can perform financial analysis and IT related forensic investigations” (IA 01).

“Ngubane & Co. performs an auditing service which has a duty to report an income tax fraud as a material irregularity” (IA 07).

“Ngubane & Co. performs tax services to a variety of clients and it has expertise in the investigation of income tax fraud. The firm renders income tax services to clients” (AF 07).

“The firm has a forensics investigation unit that performs a variety of forensics services including tax fraud investigation” (AF 09).

Participants’ views are supported by Godbole (2004) who shared that accounting processes involve a wide scope that includes walking through of the business cycle and observing controls, focus on red flags and cultural factors, review and collection of documents or electronic evidence, staff interviews, report preparation, identification of opportunities for recovery of loss, control and improvements to reduce future loss. Methods for fraud detection include whistleblowing hotlines, internal tip-off, external tip-off, by accident, law enforcement investigation, change of personnel or duties, internal audit, external audit, corporate security and risk management (Ministry of Justice, 2017). Employees must be aware of the reporting mechanism, taught how to use, and be able to trust that they can report suspicious activities anonymously and confidentially (The Association of Certified Fraud Examiners, 2016). Tax administration and investigation is done by SARS while the SAPS is mandated to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the republic and their property and uphold and enforce the law (OECD, 2017).

The other participant shared that accounting and auditing firms do not conduct full scale criminal investigations. They only do forensic auditing services and refer all tax criminal cases to SAPS to conduct criminal investigations. The excerpt below excerpt attests to this:

“No, our company does not specialize in full tax criminal investigations. We do forensic audit to detect tax fraud and report to SAPS for criminal charge” (AF 10).

The above participant’s excerpt is supported by Makeke (2014) who shared that SAPS is the only criminal justice component with a mandate to investigate criminal offences in South Africa.

6.2.1.3 Participants' views on whether there are key partners working effectively with Ngubane chartered accountants and auditors to provide financial information in combating income tax fraud in South Africa

The researcher has noted that accounting and auditing firms in South Africa have stakeholders working closely with them on tax matters to combat income tax fraud. The participants shared that Ngubane & Co. key partners on tax services includes taxpayers, SARS, SAPS and the NPA. The below participant's excerpt attests to this:

"We provide independent advice to clients from state-owned, national, provincial and at municipal levels. Ngubane & Co. assists businesses including mining sector with critical financial consultations" (AC 05).

"We work closely with SARS, SAPS, the NPA and the generality of taxpayers in assisting with compliance and investigation of suspected fraud or non-compliance, and legal matters brought before us" (AC 06).

"I think the appointment of Ngubane & Co. by the government departments and municipalities is the effective way of providing financial information in combating not just income tax fraud but other financial crimes as well" (AC 09).

"We work closely with government departments, private companies, and municipalities to detect and prevent fraud. SARS, SAPS and NPA are our stakeholders" (IA 01).

"In carrying out our mandate, we work closely with the SAPS and SARS. The challenge is that each stakeholder works in isolation, which makes it difficult for us to work effectively" (FA 01).

"Our individual clients, government departments, municipalities, SAPS, SARS, and the NPA are our key stakeholders on tax services, tax fraud and evasion matters" (FA 02).

“SARS is our key stakeholder, together with SAPS on matters related to the investigation of tax fraud. There is no Ngubane & Co. without our clients and stakeholders like municipalities, SARS, and SAPS” (FA 03).

“Individuals and businesses are our key stakeholders. But our main partners are municipalities, SARS, SAPS, and the NPA. We work closely with these in tax advisory, examination, detection and prevention” (FA 04).

“SAPS and SARS are our key partners in any tax services firm where tax fraud can be detected” (FA 07).

“If you offer tax advisory services, accounting, and auditing, you need to build close partnerships with SARS, SAPS and the NPA. Ngubane services is doing exactly that” (FA 08).

“We as Ngubane & Co. have successfully built a professional relationship with our clients, government departments and municipalities” (FA 09).

“Our clients and SARS are our key stakeholders in all tax matters” (FA 10).

The above excerpts are supported by the NPA (2010) stating that the collaboration between the NPA and SARS has always been understood to seek to prosecute tax offences where a taxpayer has deliberately and knowingly committed an offence. Effective co-operation with the police and other investigating agencies is essential to the efficacy of the prosecution process. If the case is not initially prepared sufficiently, it can lead to unsuccessful prosecution and conviction (Makeke, 2014). Joint investigation teams enable agencies with a common interest to work together in investigation and to draw on a wider range of skills and experience from investigations with different background and training (The World Bank, 2018).

Other participants shared that there were poor working relationship amongst tax crimes stakeholders. They stated that stakeholders work in isolation and there is a conflict of interest amongst stakeholders particularly SARS and the NPA. The excerpts below attest to this:

“SARS as a primary stakeholder is not working closely with auditing firms in general. They are more concerned about recovering their lost funds due to tax fraud or evasion. Thus, we can do better in terms of partnership” (IA 08).

“In my experience I always find that these stakeholders are working in silos not unless if there was a specific request to work together” (IA 06).

“SARS investigators should be working regularly with the SAPS especially the Commercial Crime Unit, unfortunately their relationship is not as strong as it should be” (IA 07).

“My experience with our partners like SARS is that they are not cooperating enough with us, and with other stakeholders in general. Everyone is complaining with SARS” (IA 09).

“No, I would say not effectively as the receiver of revenue does not normally engage in a meaningful partnership with the two companies to specifically address the issues of income tax fraud. This happens indirectly where at times these companies come across incidents where a service provider charges government department for VAT whilst they are not registered for VAT” (IA 10).

“SARS is our primary stakeholder. Unfortunately, are primarily concerned with recovering funds lost due to tax fraud” (FA 05).

“In some cases, it is very difficult to work with SARS due to the nature of clients information protection” (FA 06).

The above excerpt are supported by OECD (2017), stating that barriers for effective inter-agency co-operation prevent agencies responsible for combating financial crimes from obtaining the benefit of this knowledge and skills. These barriers fall into broad categories mainly, legal, operational, and political. A study conducted by the OECD (2019) revealed that lack of a legal basis for co-operation, or legal restrictions on co-operation, presents a fundamental challenge in combating tax fraud in South Africa. A government approach

requires a well –functioning institutional framework and should involve multiple agencies working together in combating tax crimes (The World Bank, 2018).

6.2.1.4 Participants’ views on whether adequate institution of criminal proceedings contribute to the successes of combating income tax fraud in South Africa

The researcher noted that a multidisciplinary approach during criminal proceedings is significant to combating income tax fraud. Participants shared that the court of law must ensure harsher punishment in combating income tax fraud. The excerpts below attest to this:

“In my opinion, adequate institution of criminal proceedings could lead to successfully convicting those guilty of tax fraud and therefore sending a message of the severity of these crimes. This translate to a decrease in tax fraud” (AC 02).

“The court of law must ensure that harsh punishments are meted to combat income tax fraud. The court must also play an important role when dividing lines between non-compliant behaviour and criminal behaviour” (AC 06).

“The courts must provide serious reputational and punitive consequences of criminal activity to send a message about the integrity and fairness of the law so that people will know that nobody is above the law and even those people that could be tempted to evade their tax obligations will fear to be convicted and they might be discouraged from doing so” (AC 07).

“The courts must impose harsh punishments for all tax crimes in order for the public to be fully aware of fraud consequences in South Africa” (AC 08).

“Punishing those guilty of tax fraud can assist South Africa in eliminating tax fraud syndicates across all provinces” (AC 09).

“The courts must strictly institute harsh punishments. Currently, the law enforcement structures have, in many cases, not evolved at the same speed and the country has struggled to keep up with the threat of income tax fraud” (AC 10).

“Yes, it will act as deterrence to would be offenders that such crimes are punishable and will be investigated and prosecuted by the law” (IA 08).

“Strict punitive measures assist in raising awareness in terms of the seriousness of the offence. Successful prosecutions serve as a wakeup call to those who might commit similar offence” (IA 09).

“Tax fraud is a world-wide problem, which thrives on deliberate deception and the use of tricks to minimise tax payment. Therefore, prosecuting perpetrators of tax fraud can serve as a deterrence strategy to others who might think of committing the similar offence” (FA 03).

The above excerpts are supported by Brookes (2021) by stating that crime prevention is an area of least investment in many countries, and yet it holds the greatest prospect of success in reducing crime. Gennaro, Vito and Maahs (2012) stated that punishing criminals for their criminal acts serves as a deterrent, preventing others from committing similar offences.

Other participants shared the view that all stakeholders including taxpayers involved during the investigation of tax crimes should co-operate with the goal to prosecute tax criminals. The excerpts below attest to this:

“The judicial system and SARS must cooperate with accounting and auditing firms for successful prosecution. The general public must be voluntarily encouraged to cooperate during investigation of tax crimes including tax fraud” (AC 01).

“It is imperative that a close working relationship between the SAPS’ Organised Crime Unit and The Commercial Crime Unit to work closely with SARS must be sustained. That working relationship will ensure prosecution, and discourage potential income tax fraudsters” (IA 02).

“All tax crimes stakeholders must be in close partnership to assist the NPA with effective tax fraud prosecution” (IA 07).

“Prosecution and sentencing of tax fraud perpetrators can possibly assist in reducing tax fraud. SARS needs to work closely with the NPA for prosecution purposes” (IA 10).

“The NPA has a tax unit division, which assists in the prosecution of tax crimes. They need to be assisted by the SAPS, and proper investigations by auditing firms to prosecute tax fraud perpetrators to combat the scourge of this crime” (FA 07).

The participants’ views are supported by Akbar (2017) who stated that consultation between stakeholders has a great impact on combating tax crimes in South Africa. Forensic accounting necessitates frequent collaboration with internal groups, attorneys, law enforcement agencies, subjects, and witnesses (Weisenfeld, 2020).

Other participants shared their views that public tax awareness campaigns play a significant role in educating tax payers to be tax compliant and to report suspected income tax fraud to successfully prosecute tax criminals. The below participant’s excerpt attests to this:

“I do not believe that punitive measures alone can address this problem. Thus, education and public awareness may also contribute positively” (IA 04).

“Taxpayers and the general public need to be aware of tax fraud consequences” (IA 09)

“Criminal proceedings are more of reactionary rather than preventative. In my view, I think education and awareness are more effective tools to help reduce fraud” (FA 02).

“We need more educational awareness on the dangers of committing tax fraud and evasion so that the public will be fully aware of the consequences of committing tax fraud and evasion” (FA 09).

The above participants’ excerpts are reflective of previous findings. According to SARS (2020), the revenue collector offers free tax education workshops, which are presented at most

SARS branches across the country by the Branch Operations Engagement teams to assist with tax compliance and tax fraud reporting.

6.2.1.5 Participants' views on the relevance of a centralised SARS e-filing system for effective prosecution of income tax fraud offenders

The participants' views show that the SARS e-filing system is a good technological tool to successfully investigate and prosecute tax fraudsters. Digital evidence is collected on the system and presented in court during criminal proceedings. The excerpts below attest to this:

“Centralised e-filing can assist in eliminating the risk on submission of false claims. It can possibly assist in combating tax fraud because at this current state, taxpayers even use their phones to submit claims and cheat on submission (AC 08).

“SARS can verify the data faster using computerised methods of verification, this improves the detection of fraudulent income tax returns” (IA 03).

“Suspicious trends may be traced through the system and a SARS audit may take place, which will require the taxpayer to submit all supporting documentations from previous years and current year. The latter is one of the ways in which e-filing assists in combating income tax fraud in South Africa” (AC 02).

The above excerpts are supported by Pande and Patni (2017) who stated that the SARS e-filing system significantly assists investigators in obtaining electronic evidence admissible in court. The SARS e-filing case illustrates the necessity for innovation in the public service to be dictated by service delivery imperatives (Eboibi & Richards, 2019). The e-filing system together with other reforms will help to improve performance at tax offices and enhance taxpayers' compliance throughout the country (The World Bank, 2018). Investment in IT now forms a significant part of the budget of administrations and needs to be carefully managed. Several stages in a typical tax administration technology reform programme can be identified (Fiscal Affairs Department, 2018). KPMG (2021) shared that technology helps with compliance, insights, process management and accessories, and components or infrastructure.

Other participants shared the challenges with e-filing system in that the user decides which information to load into the system and it relies on the taxpayer's honesty. The excerpts below attest to this:

“The e-filing relies heavily on the taxpayer to be honest, should the tax payer not be honest not be honest, the system is not effective” (AC 04).

“This system requires honesty and truth on the side of taxpayers. Taxpayers have been given more freedom by SARS, hence we see such increases in tax crimes” (AC 11).

“Taxpayers use this system. The system needs honesty from taxpayers and tax practitioners. They easily cheat on it and claim undue funds from SARS” (FA 08).

The study by Hung, Chang and Yu (2006) on the adoption of SARS e-filing revealed that taxpayers found the e-filing system relatively easy to use and also demonstrated a higher computer self-efficacy. Compliant taxpayers can report any financial activity on their tax matters (OECD, 2017). Other participants revealed that the SARS e-filing system contributes to the current scourge of income tax fraud. The excerpts below attest to this:

“It is easy to cheat and difficult to trace the system used. You cannot tell if the taxpayer was assisted by registered tax practitioner or not” (IA 07).

“ The e-filing system gives taxpayers more freedom to cheat and forge documents” (IA 08).

“It is unfortunate that taxpayers and practitioners misuse e-filling for cheating purposes to claim undue funds” (FA 06).

“The problem with technology is that it is hacked easily. Taxpayers’ information is not safe with this system. There are many cases where taxpayers receive scam messages and emails unknown to SARS” (FA 07).

“The intention is to claim more funds from SARS. It can be hacked easily and compromises taxpayer’s information” (FA 10).

The above excerpts are supported by Alleyne and Harris (2017) who stated that stating that SARS e-filing system is not a straight forward success story given that as service providers exploit new technologies, clients do not always adopt outstanding technological solutions wholeheartedly. Technology tools are not a single fix to the problem of tax fraud and tax

evasion, but if implemented effectively, substantial progress can be made in high-risk areas (OECD, 2017). The disadvantages of the rapid changes in information technology are that criminals are given tools, which they can use to gain access to data or private information of a person or company to commit crime (Zinn & Dintwe, 2015).

Other participants shared that the SARS e-filing system should be improved to make it user friendly and to effectively detected income tax fraud. The excerpt below attest to this:

“This system needs to be revisited. SARS must audit all returns and not select the few for auditing” (IA 09).

The above participant’s view is supported by previous research. OECD (2017) states that as technology and taxpayer behaviour continues to evolve, further areas of work will become relevant. This could include further work on the sharing economy, carousel fraud, and customs fraud. The initial implementation model, although technologically impressive and financially sound for SARS, failed because of low adoption rates. The rescuing of a worthy technological solution and its transformation into a client centred service offering are the outstanding aspects of this instance of innovation (OECD, 2019).

6.2.2 In-depth individual interviews (IDIs)

In-depth individual interviews (IDIs) allow for the collection of a large amount of information about the behaviour, attitude and perception of the interviewees (De Vos et al., 2011). In this study, in-depth individual interviews were conducted with NPA, DPP STU, and AFU prosecutors in KwaZulu-Natal. Due to the unique nature of work between NPA STU and NPA AFU, the research questions were specific and relevant to each unit of the NPA. The NPA STU prosecutes tax crime offenders while NPA AFU seize criminally obtained assets from fraud and other related commercial offences. IDI questions are slightly different from those of KIIs interviews due to differences in expertise, roles, and responsibilities.

6.2.2.1 Participants' views on the awareness of income tax fraud to be effectively inducted in South Africa

The participants' views show that taxpayers' awareness on income tax fraud should be a priority for all tax crime stakeholders. Income tax fraud awareness should include proactive tax fraud prevention measures for example, public face-to-face and online tax fraud education. Findings reveal that SARS as a tax administration state institute conduct roadshows as part of crime prevention programmes to promote tax compliance. The excerpts below attest to this:

“As far as I am aware, SARS has had some programmes geared towards making taxpayers aware of what constitutes tax evasion vis-à-vis tax avoidance. They issue pamphlets and posters on the consequences of committing fraud” (NPA STU 01).

“SARS does roadshows in particular areas where case statistics show that a particular crime/ offence is rife , to educate and or to make taxpayers aware of a particular issue” (NPA STU 02).

“SARS holds tax education workshops in all branches. It is up to the individuals and businesses to make use of such services” (NPA STU 05).

The above excerpts are supported by SARS (2021), stating that SARS conducts annual free tax education workshops in South Africa. These workshops are aimed at educating the public including taxpayers on complying with their taxes and to report any fraudulent or illegal activity on their tax profiles. Learning about taxes is beneficial to taxpayers in terms of understanding their tax matters (SARS, 2018).

Other participants suggested that SARS should collaborate with other tax crime stakeholders to plan and implement effective tax fraud awareness programmes in South Africa. The excerpt below attest to this:

“All stakeholders dealing with tax matters should conduct awareness campaigns aiming at educating the public on tax compliance, non-compliance, and what constitutes fraud, and the consequences thereof” (NPA STU 04).

“SARS needs to be actively involved with the public in providing tax information in order to effectively promote compliance” (NPA STU 06).

“Tax awareness should be done by all companies who render tax services, and not only SARS. SARS should target areas with an increase on tax fraud and evasion for tax education” (NPA STU 07).

The above views are supported by literature. According to the World Bank (2018), early engagement with the both the private and public sector can also assist in implementing tax compliance prevention measures. Engagement with the private sector can also assist in designing a solution that will be future proofed (SARS, 2020). One of the effective ways to combat tax fraud and evasion is to raise awareness amongst taxpayers through seminars, conferences, and the media (Amtaika, 2010).

6.2.2.2 Participants’ views on how the current prosecution processes to combat income tax fraud can be improved in South Africa

Participants’ views showed that stakeholder engagements, on-going training and close collaboration particularly amongst SARS, accounting and auditing firms, SAPS, and the NPA can assist in effective prosecution of tax fraudsters in South Africa. Participants shared that training of all tax stakeholders to bring them abreast of latest trends, especially in cyber investigations and prosecution of cybercrime is significant. The excerpts below are reflective of this:

“The state –SARS, SAPS and, the NPA work together to prosecute tax fraud. Dedicated individuals from each department ensure that this crime receives the attention and expertise it deserves” (NPA STU 02).

“What is needed is training of the staff in each department for them to be abreast with latest trends, especially in cyber investigations and prosecution of cybercrime. The NPA relies on investigation conducted by the SAPS for effective prosecution” (NPA STU 03).

“SARS, SAPS and the NPA must work closely in this case to effectively combat and prosecute perpetrators” (NPA STU 06).

“As NPA, we cannot be able to improve our prosecution processes without the cooperation of these stakeholders. SARS needs to assist officers from the SAPS during investigation in order for us to receive quality docket from SAPS” (NPA STU 07).

The stakeholder engagement objective is to ensure that communication is transparent and that all necessary stakeholders are sufficiently informed about any decisions or proposals (Amtaika, 2010). SARS has signed MoUs with various government agencies. The MoU between the NPA and SARS is aimed at increasing SARS’ collaborative efforts to ensure that tax crimes offenders are prosecuted (SARS, 2021). According to the World Bank (2018), the involvement of multiple agencies in the administration of taxes, the prevention, detection, investigation and prosecution of tax crime and corruption, and the recovery of proceeds of crime can result in successful prosecution. The ultimate goal is to deter crime activities.

Other participants were of the view that the quality and admissibility of evidence collected during tax fraud investigations can assist in the improvement of tax fraud prosecutions. The excerpts below attest to this:

“The quality in admissibility of evidence collected assist in the improvement of prosecution. Employees on tax matters in the criminal justice system must attend trainings in cases where there are new developments on tax fraud and evasion” (NPA STU 04).

“ Prosecution of tax crimes can assist in convictions. The investigators need to be more knowledgeable on commercial crimes in order to submit quality dockets to the NPA for prosecution. The NPA needs reliable evidence for successful prosecution” (NPA STU 05).

“Insitution of criminal proceedings begins with investigation; the quality of investigations and investigative reports needs to be improved” (NPA STU 08).

The above excerpts are supported by previous research. According to Lancaster and Roberts (2020), the NPA's SCCU plays a leading role in developing the prosecution-guided methodology in South Africa, which is designed to improve the quality of investigations by ensuring earlier and closer cooperation between prosecutors and investigators. Makeke (2014) added that when evaluating the evidence, prosecutors must consider all the relevant factors, including determining if the evidence is admissible and sufficient enough to prove all the elements of crime and to meet issues of disputes in court.

6.2.2.3 Participants' views on working with other partners and the public aiding positively on prosecution of income tax fraud in South Africa

Participants's views showed that stakeholder collaboration and co-operation during criminal justice processes helps in the prosecution process for tax crimes. Participants revealed that cases received by the NPA STU are investigated in terms of the prosecutor being guided by investigations policies of the NPA, which encourage that they must work closely with their partners, guide investigations to ensure successful prosecution of all tax cases received. The excerpts below attest to this:

"The cases received by the NPA STU are investigated in terms of the prosecutor guided investigations policy of the NPA, which dictates that we work closely with our partners, guide investigations to ensure successful prosecution of all tax cases received, and not only income tax fraud cases" (NPA STU 02).

"The partners we work closely with as the STU are SAPS and SARS, and working together does lead to successful case outcomes" (NPA STU 03).

"We need SARS and SAPS on effective prosecutions. SAPS have a mandate to investigate thoroughly" (NPA STU 04).

"Investigations assists us to present quality evidence in court. As the NPA, we are not able to work in isolation. We rely more on the SAPS and SARS for their investigation audits. Our partners like the SAPS play a very good role in tax fraud convictions" (NPA STU 05).

The above excerpts are supported by previous research. For example, Van Kaam (2007) stated that the prosecutor and investigator's cooperation is essential in complex tax crime and a proven recipe for success plays an important role in crime prevention initiatives. Chapter 4 of the NPA Act (No. 32 of 1998) gives the NPA powers to institute and conduct criminal proceedings on behalf of the state, carry out any necessary functions incidental to instituting and conducting such criminal proceedings and discontinue criminal proceedings (Bekker, Geldenhuys, Joubert, Swanepoel, Terblanche & Van der Merwe, 2005). Zinn and Dintwe (2015) state that the key to building a professional working relationship with legal practitioners is to provide a comprehensive and well-written investigative report. This report should detail the incidence under investigation and evidence that has been obtained from the crime scene.

6.2.2.4 Participants' views on whether perpetrators are usually prosecuted for income tax fraud in South Africa

Participants' views shows that prosecution of tax crimes relies on the admissibility and quality of evidence in court. Once the evidence is not sufficient and is inadmissible, the criminal process cannot be instituted. Participants revealed that the NPA STU prosecutes all cases received from the SAPS that relate to tax fraud and the evidence must be convincing enough to prosecute and convict to imprisonment. The excerpt below attests to this:

“All cases received from SARS' criminal investigations division are prosecuted, whether they are income tax fraud or VAT fraud or Customs and Excise” (NPA STU 01).

“The STU prosecutes all cases received from the police that relate to fraud vis-à-vis SARS and any contravention of the statuses administered by the Commissioner and contraventions of any other laws of the Republic of South Africa” (NPA STU 02).

“We have many successful tax fraud cases that we prosecuted. South Africa has a good record of tax cases prosecutions” (NPA STU 05).

The above excerpts are consistent with previous research. According to Brookes (2021), the process of prosecution starts with the police investigating crime reported by complainants. Once the investigation is completed, the investigator sends the case docket to the prosecutor who then analyses the evidence and information contained in the case docket. The prosecutor decides whether the evidence contained in the case docket is sufficient to provide reasonable prospects for conviction (Azmi & Kamarulzaman, 2010).

6.2.2.5 Participants' views on whether centralised e-filing system assists in effective prosecution of income tax fraud in South Africa

Participants' views showed that the system contributes to the current tax fraud scourge in South Africa. The findings indicated that tax fraudsters use SARS e-filing system for their own financial benefit through commission of tax fraud. The excerpts below attest to this:

“The challenge of e-filing of tax returns to SARS has led to a rise in fraud. More often than not, the individuals behind the fraud are untraceable” (NPA STU 02).

“Introduction of e-filing system has contributed to the scourge of tax fraud. It is easy for perpetrators to manipulate the system, and it is difficult to trace them” (NPA STU 03).

The increase in illegal activities done by taxpayers through the e-filing system has many determinants that lead to them committing tax evasion and fraud. These factors include economic, legal, social, mental, and moral factors (Saxunova & Szarkova, 2018). SARS (2021) noted an increase on income tax fraud returns committed through the e-filing system.

Other participants shared that the SARS e-filing system is the effective technological tool to obtain evidence for successful tax fraud prosecution. The experts dealing with tax crimes must have expert skills and knowledge to investigate and prosecute tax fraud. The excerpt below attests to this:

“The system is relevant and useful for prosecution. Evidence on this system assist the court in prosecuting perpetrators” (NPA STU 07).

Technological crimes are not easily detected. It needs expert knowledge to collect evidence to prosecute perpetrators” (NPA STU 04).

“It needs thorough investigation and admissible evidence for prosecution” (NPA STU 06).

“E-filing is a useful tool for tax submissions and returns. It assists during investigation and prosecution because it contains valuable evidence such as the login details of perpetrators” (NPA STU 08).

Zinn and Dintwe (2015) stated that for the digital evidence to be usable in court proceedings, it must be both relevant and admissible. The most common mistake leading to digital evidence being ruled inadmissible in court is that it can be obtained without correct legal authorisation. E-filing software greatly reduces the number of errors. The software allows checking tax and accounting reporting automatically, processing data more accurately and reporting in compliance with the standard (Ashworth & Zedner, 2008).

6.2.2.6 Participants’ views on the association between the seizing of criminal assets and prevalence of income tax fraud in South Africa

The NPA AFU prosecutors in KwaZulu-Natal were the second unit of the NPA that participated in this study. NPA AFU seizes criminal assets obtained through the proceeds of crime. This is inclusive of income tax fraud criminally obtained assets. Participants’ views showed that seizing criminally obtained assets serves as a deterrent strategy to combat tax fraud. Participants revealed that AFU have seized criminal assets obtained through contravening with the Tax Administration Act (No. 28 of 2011) including tax fraud. Once AFU obtains a court order to seize assets, they investigate, seize and allow the court to decide whether to prosecute. The excerpts below attest to this:

“We have seized many assets obtained through contravening the Tax Administration Act including tax fraud. The suspects normally make under-declarations and non-declarations when completing the company’s income tax and VAT returns” (NPA AFU 05).

“Once we obtain a court order to seize assets, we investigate, seize and allow the court to decide to prosecute or not. AFU proceedings are civil proceedings and our standard of proof is based on the balance of probabilities” (NPA AFU 06).

“We do the tracing of proceeds of crime. It is not an easy task but we do manage to identify offenders and seize their assets obtained from criminal activities. We seize any assets with evidence of proceeds from crime. This is a wake-up call to all potential offenders who think that they can be rich from criminal activities such as tax fraud” (NPA AFU 07).

The above excerpts concur with previous research. According to Van de Linde (2021) the seizure of criminal assets may impact the mind of an offender by deterring them from the commission of criminal offences. Freezing, seizing, and confiscating criminal assets are constitute a deterrent measure as it can reduce the profitability of committing tax crimes (OECD, 2017).

Other participant shared that AFU proceedings are civil proceedings and their standard of proof is based on the balance of probabilities. AFU basically takes profit out of crime. The excerpt attests to this:

“AFU basically takes profit out of crime, meaning that we seize all illegally obtained assets through proceeds of crime including tax fraud. AFU proceedings are civil and they rely on balance of probabilities to seize criminal assets unlike criminal proceedings” (NPA AFU 09).

The above excerpt is supported by the Prevention of Organised Crime Act (No. 121 of 1998), which stipulates that AFU proceedings are civil not criminal, hence the requirement is simply to prove allegation upon the balance of probability rather than to the criminal standard (Casey & Rose, 2010).

Other participants shared that there are challenges emanating the conflict of interest between SARS and the NPA AFU to search and seize tax fraudsters’ assets. SARS and the NPA AFU share the same mandate to search and seize criminal assets. The excerpt below attests to this:

“SARS also has powers to conduct search and to seize criminal assets. It depends who received a court order first” (NPA AFU 02).

“We are competing with SARS to recover criminal assets. We both have powers to search and seize criminally obtained assets through financial crimes” (NPA AFU 05).

The excerpts above are supported by the Tax Administration Act (No. 28 of 2011), which stipulates that SARS has powers to search and seize criminally obtained assets from taxpayers (Webley et al., 1991). The Prevention of Organised Crime Act (No.121 of 1998) allows the NPA AFU to confiscate and forfeit unlawful assets. NPA AFU investigates, institutes, and conducts criminal forfeits on behalf of the state (Bibas, 2009).

Other participants shared their disagreements on the association between the seizing of criminal assets and prevalence of income tax fraud in South Africa. They revealed that there is no association between the two. They further stated that AFU does not keep any statistics on income tax fraud. The excerpts below attests to this:

“There is no association between the two. My experience as the Head of AFU is that offenders do not try to avoid tax by buying of assets with proceeds of criminal activity. They try to hide the proceeds rather than buy assets, which will be seized if they are caught” (NPA AFU 11).

“I do not know the association between the seizing of assets and the prevalence of tax fraud” (NPA AFU 12).

The OECD (2019) states that objectives of fraud investigation include preventing fraud and possible future fraud cases or losses, helping to facilitate the recovery of losses, and mitigating other potential consequences. The forfeiture of proceeds does not help law enforcement agents, especially the police to solve more tax fraud cases but police do appear to ramp up forfeiture activity when local economies suffer (Bibas, 2009).

6.2.2.7 Participants' views whether NPA AFU is used widely on income tax fraud cases in South Africa

Participants' views showed that the NPA AFU is not used widely to seize criminal assets in South Africa. This might be due to asset seizing competition between the NPA AFU and SARS. Participants shared that on the one hand, SARS has its own debt and asset recovery laws. On the other hand, AFU seizes assets, sell them and deposit the money into the Criminal Asset Recovery Account (CARA). It does not help to have two different enforcement agencies who ultimately have the same objective, namely putting money into state coffers. The excerpts below attest to this:

“The NPA AFU is not used widely in income tax cases in South Africa. This is because SARS has its own debt and asset recovery laws. They do not need NPA AFU to seize assets” (NPA AFU 01).

“The NPA AFU seizes assets, sell them and deposit the money into the Criminal Asset Recovery Account (CARA)” (NPA AFU 02).

“SARS have own statute and resources to recover any loss that it suffers” (NPA AFU 03)”.

“Our Criminal Assets Recovery Account receives millions of Rands from proceeds of crime. We are not used widely but there can be improvements” (NPA AFU 09).

“SARS uses their internal debt recovery unit. Their concern is to recover funds lost in any form” (NPA AFU 11).

“SARS has powers to search and seize according to the Tax Administration Act. In that regard, they have the same objective as us. Therefore, they might not need us in certain cases hence we have very few cases on tax fraud seizures” (NPA AFU 12).

The above excerpts are supported by Section 29 of the NPA Act (No. 32 of 1998), which gives the NPA powers to enter premises to inspect and search those premises and make such enquiries when deemed necessary (Lancaster & Roberts, 2020). SARS has powers to search

and seize according to the Tax Administration Act 28 of 2011, they have the same objective as the NPA AFU (Van de Linde, 2021).

Other participants shared that there is a lack of co-operation between SARS and the NPA AFU, which has a negative impact on seizing criminal assets at NPA. The excerpt below attests to this:

“At regional office level, the co-operation between the NPA AFU and SARS must be improved. I am unaware of the relationship between these two at the national level” (NPA AFU 04).

“SARS needs to work closely with us. The NPA AFU has various cases from proceeds of crime like profits made from fraud, money laundering, and corruption for example. We are popular with seizing assets but I do not think we are widely used” (NPA AFU 10).

The above excerpts are supported by SARS (2021), stating that SARS and the NPA have agreed to further enhance collaboration and deal with key challenges of tax crime and non-compliance that are eroding the tax revenue base and the integrity of the tax system. The challenges with competing stakeholders are that everyone comes to the table with a unique set of objectives, expecting that most of them will be met (Amtaika, 2010).

6.2.2.8 Participants’ views on whether there are key partners working effectively with NPA AFU to combat income tax fraud in South Africa

Participants’ views showed that the NPA AFU’s key partners on tax crimes are SAPS, NPA STU and the courts. The excerpts below attest to this:

“There are two key partners in any fight against crime: the South African Police Services who investigate and collect evidence of tax fraud and the National Prosecuting Authority who guide investigations and prosecute such matters in the criminal court including tax crimes” (NPA AFU 02).

“Our key partners are SAPS, all the NPA units or colleagues, and the courts. We work closely with the SAPS and the courts” (NPA AFU 06).

“SAPS, SARS and the courts are our key partners” (NPA AFU 08).

“Without the courts, we cannot be able to effectively execute our duties. We get court orders to seize assets” (NPA AFU 07).

“SAPS is our key stakeholder. We work closely with the criminal justice system and the general public for information” (NPA AFU 11).

“We rely on SAPS and the courts to assist us in executing our duties” (NPA AFU 12).

The SAPS have a very important role to play in asset forfeiture. Investigators must refer cases to the AFU as much as possible, and as often as possible (Beckett & Slay, 2007). The AFU and the financial investigators undertake investigations. Investigating officers may be required to supply an affidavit to be used to obtain the order. This is drafted by the AFU advocates after consultations with the relevant police official (Gillbert, 2010).

Poor stakeholder co-operation between SARS and the NPA AFU is a central issue under discussion in the current study findings. The excerpts below attest to this:

“The NPA AFU and SARS are competing to recover proceeds of unlawful activities from offenders. In fact, as the KZN AFU Head, I do not have any meetings with SARS concerning fraud” (NPA AFU 01).

“Ideally, the working relationship to serve this purpose should be between the NPA AFU and SARS. Based on my experience, I think that there isn’t enough collaboration between the two at present” (NPA AFU 03).

“We do not have a close relationship with SARS. I believe we should have that close working relationship as our goal is to recover profits from proceeds of crime” (NPA AFU 04).

“We do not have that close relationship with them. NPA is promoting problem-solving and cooperation with partners” (NPA AFU 09).

A study conducted by the World Bank (2018) discusses key legal challenges that hinder effective investigation and prosecution of tax crimes globally, including South Africa. They include the lack of a legal basis for co-operation, or legal restrictions on co-operation, which presents a fundamental challenge. NPA (2010) revealed that both SARS and the NPA have powers to seize criminally obtained assets and that is a challenge between these stakeholders with similar interests. Inadequate stakeholder management and cooperation contributes to lack of aligned or common targets within the Justice Crime Prevention and Security (JCPS) cluster (Smith et al., 2019).

6.2.2.9 Participants’ views on whether adequate institution of criminal proceedings contributes to the successes on combating income tax fraud in South Africa

Participants’ views showed that tax fraudsters usually get plea bargaining rather than direct imprisonments. Participants stated that the plea bargain tax offenders get has no custodial sentence. The excerpts below attests to this:

“They usually get plea bargains with no custodial sentence so that the offender may pay back the money into SARS account” (NPA AFU 02).

“I have seen many plea bargains more than direct imprisonments. Any specialised fraud prosecution sends a message to would be offenders that these crimes will not be taken lightly and can therefore have a deterrent effect” (NPA AFU 07).

Chapter 1 of the Criminal Procedure Act (No. 51 of 1997) supports the above excerpts in that it establishes the rules which guarantee that an innocent person shall not be convicted, and that a punishment or other criminal sanctions shall be imposed on the person who commits a criminal offence, subject to the provisions of the criminal law and in lawful proceedings before the competent court and that criminal proceedings shall be instituted and conducted only upon the request of the authorized prosecutor (Joubert, 2015). Sprack (2011) stated that the

consequences to the taxpayer from conviction are generally imprisonment and substantial monetary penalties.

Other participants shared that there is an urgent need for improvement on tax fraud conviction rates to direct imprisonment like any other crimes. The excerpts below attest to this:

“Any successful conviction will certainly make fraudsters aware that their activities have consequences” (NPA AFU 04).

“When a court sentences a person, one of the factors that it will consider is the deterrent effect of such a sentence” (NPA AFU 05).

We need more tax fraud convictions in South Africa. At the current state, we still have a long way to go” (NPA AFU 06).

“Yes, the more we have conviction rates on fraud cases that will serve as a deterrent to others” (NPA AFU 08).

“The challenges with SARS are that they are concerned with money being paid back to them. Convictions can assist in combating future tax frauds” (NPA AFU 12).

Other participants shared that there is a need for consultations with taxpayers to promote tax compliance and to educate them on tax matters. The excerpts below attest to this:

“Tax fraud matters are less broadcasted on media platforms for the public to see the seriousness of the offence” (NPA AFU 09).

“The public needs to be aware of the consequences of defrauding SARS. We need effective educational platforms on this matter” (NPA AFU 10).

Engagement and consultation with the taxpayers that will be affected is an important aspect of implementing a new solution (Eboibi & Richards, 2019). SARS encourages taxpayers to book online to be telephonically contacted by SARS tax practitioners or to visit the branch when they need information or to report any criminal activity on their tax profiles (SARS, 2021).

6.2.2.10 Participants' views on whether the knowledge of a centralised e-filing system can assist in effective seizing of criminal assets in South Africa

Participant's views shows that NPA AFU employees lacks knowledge on the use of SARS e-filing system. This is because the system according to participant does not assist AFU in seizing criminal assets. The below excerpt attest to this:

"No, it cannot. There is no link between the two. AFU does not know that e-filing exists. It is not my experience that such knowledge assists in seizing criminal assets" (NPA AFU 01).

The study conducted by Lancaster and Roberts (2020) shows that there is a lack of skills development training at the NPA units in South Africa. As a result, prosecutors and advocate have challenges when there are new developments on tax matters.

Other participants shared that SARS e-filing system assists in criminal proceedings. The below excerpts attest to this:

"Yes. AFU often makes requests to SARS to verify what an accused has placed on record as their income. It would certainly be helpful in determining the value of proceeds of unlawful activity" (NPA AFU 02).

"E-filing system assist in investigation of suspected criminal offence. The documents submitted are being verified by SARS" (NPA AFU 03).

"The e-filing system is an effective tool for criminal investigation purposes. AFU usually do not have many cases of tax fraud seizure. At National level they do have tax fraud cases" (NPA AFU 05).

"In criminal investigation purposes its useful and reliable but for the commission of the offence it contributes to the current rate of tax fraud" (NPA AFU 08).

"he investigation starts with auditing submitted documents to determine if there is possible fraud or not. That is done by SARS" (NPA AFU 12).

According to NPA (2010), the SARS e-filing software assists NPA with admissible evidence to identify whether tax crime is committed deliberately or due to negligence. The information available on the system assist in criminal proceedings. Freezing or seizing, and confiscation of assets are necessary in order to prevent the proceeds of a crime from being disposed of or being enjoyed by a suspect, or to preserve physical evidence of a crime (Lovells, 2019). The Tax Administration Act (No. 28 of 2011) stipulates that SARS would seek such a warrant in cases where it suspects that a taxpayer has committed a tax offence (Saxunova et al., 2018).

6.3 Discussion of findings

In this section, the researcher discusses central themes that emerged from interviews in line with this study's objectives. The relevance of key findings are discussed to answer the research objectives and key research questions.

6.3.1 Objective 1: Methods and techniques to combat income tax fraud in South Africa

This study showed that there is an urgent need for improvements on tax fraud detection, investigation, and prosecution approach to combat income tax fraud in South Africa. The suggested methods and techniques to combat income tax fraud include: training of accountants and auditors to effectively detect tax crimes, and training of cybercrime investigators when there are technological advancements. Training is essential for all investigators to effectively collect digital evidence. The NPA STU and AFU should be provided with well-written investigative report containing evidence that is admissible in court to prosecute and convict tax fraud offenders. Prosecutors needs be provided with training on any developments prosecution of tax crimes. This study shows that lack of stakeholder co-operation affects the criminal justice processes to prosecute tax crimes offenders.

Findings revealed that SARS works in isolation on tax matters with an intention to claim back undue funds from taxpayers. SARS and the NPA AFU have conflict of interests on forfeiting illegally obtained assets from taxpayers. It is highly dependent on who received the warrant to seize assets first. In deterring tax fraud, findings shows that stakeholders need to closely work together in combating tax crimes. The SARS e-filing should be well developed to detect early the commission of tax crimes on all submitted tax returns. Successful conviction of tax crimes can deter tax fraud. Findings shows that tax education is significant to educate taxpayers on compliance and to alert them on the risks and consequences of tax fraud. Findings showed that

SARS is the only stakeholder that conduct educational campaigns on tax crimes and those campaign are not visible as expected to the public as a result some taxpayers might not be aware of such programmes.

6.3.2 Objective 2: Factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa

Findings showed that there is a lack of technological investigative skills on tax crimes investigators, shortage of cybercrime and specialised tax unit prosecutors, technological challenges on detection, investigation and prosecution processes, conflict of interests amongst stakeholders. Lack of stakeholder co-operation, conflict of interests amongst stakeholders and legislative challenges to investigate and prosecute tax crimes were all identified as factors that hinder an effective prosecutorial approach on this study. Findings show that SARS and the NPA share similar roles on search and seizure. These stakeholders should not have similar roles. Perpetrators usually get plea bargaining rather than direct imprisonment and this does not deter tax crimes. Shortage of NPA STU prosecutors has been under discussion in this study.

6.3.4 Objective 3: Relevance of a centralised SARS e-filing system for effective prosecutorial procedure on income tax fraud in South Africa

This study's findings showed that the e-filing system is an effective technological tool to detect, investigate and prosecute tax fraud offenders. This tool contains digital evidence, which makes it easier for investigators to obtain admissible evidence to prosecute and convict tax perpetrators to direct imprisonment. This tool makes it easier for taxpayers to submit their returns in their comfort at home using their smart phones and laptops. However, findings also show that the e-filing system needs improvements. It must be able to automatically identify and detect fraud. Findings further revealed that tax fraudsters constantly use the e-filing system to receive undue funds because they are not being caught.

6.3.4 Objective 4: Theoretical and conceptual framework on an effective prosecutorial approach to combating income tax fraud in South Africa

Findings show that all stakeholders who are appointed by taxpayers to do accounting and auditing work on their income tax should be highly skilled and trained to identify tax fraud. Fraud identification skills should be the priority of all accountants and auditors. Taxpayers should be consulted and involved on any taxation developments that might affect their income

tax and compliance. SARS and accounting firms should be at the forefront in engaging taxpayers to understand their challenges and suggestions on tax matters. The engagement should be face-to-face and online to accommodate technologically literate and illiterate taxpayers. During tax fraud investigation, taxpayers are encouraged to cooperate with the law enforcement for successful arrest and prosecution of tax fraud. The adoption of open tax workshops in all areas of KwaZulu-Natal is significant in promoting tax compliance. Taxpayers' participation can reduce tax fraud rates and they will be aware on tax fraud consequences. Multidisciplinary stakeholder approach is significant in developing a technological system, which accommodate millions of people.

Further, the researcher suggests that close stakeholder co-operation should be accompanied by a signed MoU to enforce stakeholder participation and co-operation. Tax stakeholders suggested by this study should include SARS, accounting and auditing firms appointed by individuals and companies on tax matters, SAPS Commercial Crime Unit, the NPA STU, and NPA AFU. When developments on SARS e-filing system are introduced, the project should be tested. All tax crime stakeholders and taxpayers should be aware and educated on the developments. Tax fraud prevention can be done by efforts to raise public awareness on the extent of tax fraud. The public is an important advocate of change. All relevant stakeholders dealing with tax crimes have a duty to actively engage with the public, educate them on the extent of tax fraud and its legal implications.

The emphasis should be to create awareness that there is punishment to direct imprisonment. The public must be encouraged to comply with the Tax Administration Act, visit SARS offices, and consult their registered private tax practitioners for assistance. The public should be encouraged to report suspected fraud to SARS and the SAPS to initiate investigation and make arrests. Developments and technological adoption should come with benefits for all stakeholders including taxpayers. Stakeholders and taxpayers' technological adoption are significant to combating income tax fraud. Early fraud detection with the use of technology assists on effective criminal proceedings. Stakeholders should be able to communicate using technological tools of communication. They should be able to attend online recorded meetings and engage with taxpayers. There is a need for a technological reporting tool that will be accessible by all taxpayers and tax crime stakeholders. This can be an effective tool to reduce fraud risks and to deter crime.

6.4 Summary

This chapter presented and interpreted the findings of this study. Thematic analysis was adopted to establish meanings from the interviews. A total of 51 participants shared valuable information on the development of a prosecutorial approach to combating income tax fraud in South Africa. Accountants, internal auditors and forensic auditors employed by NNAAF were key informants' participants in this study. They are experts in tax fraud identification, risk assessment, detection, and investigation. The NPA's Specialised Tax Unit and Asset Forfeiture Unit prosecutors in KwaZulu-Natal were in-depth participants in this study. All the interviews were conducted in English using an interview schedule comprising a list of open-ended questions. Open-ended questions enabled participants to explore and describe the development of a prosecutorial approach to combating income tax fraud in South Africa. They are experts in tax fraud prosecution, and searching and seizure of tax fraud criminally obtained assets. Data were guided by this study's objectives and supported by the literature review presented in Chapter Two of this study. Key verbatim and written participants' responses were presented for the reader to understand participants' exploration and description of this phenomenon. Central themes that emerged in this study were broadly discussed to answer this study's objectives. The theoretical and conceptual contributions of this study were discussed. This study's findings emphasise on close stakeholder working relationship, skills development for all tax crimes stakeholders to successfully prosecute tax fraud, tax laws legislation amendments, and public tax education to ensure tax compliance. The next chapter (chapter seven) presents discussions, conclusion, and recommendations of this study.

CHAPTER SEVEN

DISCUSSION, CONCLUSION AND RECOMMENDATIONS

7.1 Introduction

In this chapter, discussions, conclusions and recommendations are provided in line with the study's objectives and findings. Study objectives are verified to establish the accuracy and validity of data. Recommendations provided in this study are based on the findings. The objectives of this study include identifying the methods and techniques used by NPA and NNAAF to combat income tax fraud in South Africa, identifying factors that hinder effective prosecutorial procedure to combat income tax fraud, determining the relevance of centralized e-filing system for effective prosecutorial procedure of income tax fraud in South Africa and developing conceptual and theoretical frameworks on effective prosecutorial approach to combating income tax fraud in South Africa. Based on the findings from this study, the researcher suggests that all the stakeholders dealing with tax matters including tax fraud should implement these recommendations.

7.2 Verification of study objectives

This study's objectives are verified to provide the purpose of each objective and whether the study findings illuminate the objective in question. The purpose of verification of objectives is to establish the accuracy and validity of data in line with the intended goals. This study verifies the following objectives: (i) determining methods and techniques used by NPA and NNAAF to combat income tax fraud in South Africa, (ii) identifying factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa, (iii) determining the relevance of a centralised e-filing system for effective prosecutorial procedure of income tax fraud in South Africa, and (iv) developing conceptual and theoretical frameworks on effective prosecutorial approach to combat income tax fraud in South Africa.

7.2.1 Methods and techniques to combat income tax fraud

The purpose of this objective was to determine the methods and techniques used by the NNAAF and the NPA to combat income tax fraud in South Africa. This objective evaluated the effectiveness of the current methods and techniques, and to establish whether there is a

need for improvement. Findings showed that fraud is a form of financial criminal activity and that investigation and prosecution of this crime requires expert knowledge and skills for successful conviction of tax crimes. Lack of skills and knowledge from tax crime stakeholders has a negative impact on the prosecution of tax offenders.

The findings revealed that cybercrime expert investigative reports play a significant role in criminal proceedings. In combating tax fraud, this study suggests that the use of accounting and auditing firms must be intensified, the SAPS do conduct tax fraud investigations and send the docket to the NPA for criminal proceedings, while the AFU seizes criminally obtained assets due to tax fraud as a way to deter crime activities. This study revealed that all stakeholders dealing with tax crimes work in isolation. The close working relationship must be enforced with the signing of MoUs. Participants revealed that the current methods and techniques to combat tax crimes are not effective. It was revealed that SARS is concerned with the recovery of funds from taxpayers, taxpayers usually get fines for their criminal act and the SAPS' investigators lack the expertise to obtain admissible digital evidence to prosecute tax perpetrators. Harsher punishment to deter tax fraud was under discussion. Tax education is only conducted by SARS, hence, the participants suggested that all tax crimes stakeholders must be actively involved in promoting tax compliance.

7.2.2 Factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa

The purpose of this objective was to determine whether there are factors that are an obstacle or hinderance to effectively prosecute tax fraud in South Africa. This objective allowed participants to share their experiences on what they have encountered as a challenge when dealing with tax crimes and what they thought needs to be done to overcome those challenges. The lack of technological investigative skills by tax crimes investigators, shortage of cybercrime and specialised tax unit prosecutors, technological challenges on detection, investigation, and prosecution processes, and conflict of interests amongst stakeholders. The findings also revealed that there is a shortage of SAPS cybercrime investigators and NPA STU prosecutors. NPA STU and AFU prosecutors are inadequately knowledgeable of the SARS e-filing system, and that they rely on SARS and SAPS to conduct quality investigations on records obtained in the system. The findings revealed that there is poor stakeholder co-operation amongst tax crimes stakeholders. Based on the findings, the

researcher suggests that investigators and prosecutors should be provided with technological investigation and prosecution training. The employment of investigators and prosecutors is essential to allocate each investigator or prosecutor with reasonable cases to investigate or prosecute. Close stakeholder co-operation enforced by an MoU is significant to effectively prosecute and deter tax crimes.

7.2.3 The relevance of a centralised SARS e-filing system on effective prosecutorial approach of income tax fraud in South Africa

The purpose of this objective was to determine whether the SARS e-filing system is relevant to effectively prosecute tax perpetrators in South Africa. This objective aimed to evaluate whether there is a need for improvement on the system, and whether it is relevant during criminal justice processes. Findings shows that the e-filing system relies on taxpayers to be honest when filing their tax returns. The system is an effective technological tool during criminal proceedings where digital evidence is collected on the system to prosecute offenders. Findings further showed that the system has contributed to the current scourge of tax crimes. The system has been used by criminals to submit fraudulent claims to the revenue authority, SARS and receive undue funds. It is easy to cheat on the system with difficulties in tracing the perpetrators as others use internet cafés to commit income tax fraud. This study suggests that the system must be improved to automatically detect tax fraud.

7.2.4 Theoretical and conceptual framework on effective prosecutorial approach to combat income tax fraud in South Africa

The purpose of this objective was to develop theoretical and conceptual frameworks on effective prosecutorial approach to combating income tax fraud. The conceptual frameworks for this study include improving strategies to prosecute income tax fraud in South Africa. The strategies are developed for a prosecutorial approach to combat income tax fraud using the South Africa context. In this study, the participants explained use of the e-filing system to commit tax fraud. The findings suggested that all taxation experts assisting taxpayers must be highly skilled in the identification and detection of tax fraud. The current prosecutorial strategies must include amendments to tax legislation to allow separation of powers between SARS and NPA AFU. The two entities, SARS and NPA AFU have a conflict of interest and competition on search and seizure of assets obtained from the commission of tax fraud in South Africa. This study further provides that all stakeholders involved in tax crimes should sign

MoUs that enforce their co-operation. A multidisciplinary approach to combating tax fraud should include close working relationship between SARS, accounting and auditing firms, SAPS and the NPA.

Taxpayers must be consulted and participate when there are new developments related to tax matters. The public must be educated and be aware of the consequences of tax fraud. All the stakeholders have a duty to educate taxpayers. Stakeholders and taxpayers' technological adoption is significant to combating income tax fraud. Early fraud detection with the use of technology assists in effective criminal proceedings. Stakeholders should be able to communicate with each other using smart phones and laptops. They should be able to attend online recorded meeting and engage with taxpayers.

7.2.4.1 Improving tax compliance to deter tax fraud

Based on the findings, the researcher suggests that tax practitioners should verify the credibility and quality of information submitted by taxpayers. Tax administration is conducted by the tax practitioner in respect of the taxpayers to control the taxpayer's compliance with the requirements prescribed by TAA (No. 28 of 2011) in the field of calculation, declaration and payment of taxes. Reasonable assurance on combating income tax fraud is done by producing reliable financial information, promotion of effectiveness and efficiency of operations, and ensuring compliance with applicable regulations (Financial statements). In evaluating risks, investigating control activities, examining information and communication systems and understanding which controls are relevant to the audit can be adopted in combating tax fraud. Audit findings help to determine whether the tax payer submitted legal documents and is legible or not for due funds Tax specialists must follow and implement tax laws when assessing and auditing tax payers. It is the tax practitioner's duty to protect taxpayer's information and privacy .The South African taxation system must be stable enough to render adequate services to the public. This means that tax fraud should be prevented, tax returns should be thoroughly audited and encouraging taxpayers' compliance through tax education awareness campaigns and media publications must be prioritised.The revisiting of tax laws is significant in tackling stakeholders' challenges during their investigations and prosecutions due to the complexity of tax laws in South Africa (Ntwape, 2018).

7.3 Recommendations of this study

The recommendations provided in this study animated from the study's key findings. The suggestions and strategies are provided to combat income tax fraud in South Africa. The researcher suggests that all taxation and tax fraud stakeholders should adopt these strategies to improve tax crimes prosecutions in South Africa.

7.3.1 Technological implementation and adoption to deter tax fraud

To increase efficiency and productivity, new technological tools must be implemented and adopted by both the public and private sector. This study's findings revealed that there is no central reporting tool accessible by all tax crime stakeholders to report tax fraud. The researcher recommends that the SARS as a primary tax administration stakeholder should engage with the public and private sector to develop a technological tool that will be used by taxpayers and stakeholders to report suspected tax fraud. This tool should be easily accessible. Telephonic reporting is no longer an efficient reporting tool due to the huge number of taxpayers in South Africa.

7.3.2 South African Revenue Services: proposed improvements to the e-filing system

The use of technology improves information access, service delivery, cost savings, and increased public participation. South Africa has adopted the use of technology in the public and private sector. This study findings showed that the system cannot automatically identify and detect tax fraud on submitted tax return claims. SARS do not audit all claims submitted to them by taxpayers. Criminals misuse this system to claim undue funds. Based on the findings, the researcher recommends that the SARS e-filing system must be re-implemented and improved to detect tax fraud. The system must be able to automatically identify and detect tax fraud on submitted claims and SARS must audit all tax returns submitted to them.

7.3.3 Multidisciplinary stakeholder engagements to deter tax fraud

Stakeholder engagement helps organisations to proactively consider the needs and desires to combat income tax fraud. The findings show that there is poor stakeholder co-operation amongst tax crime stakeholders in South Africa. The lack of stakeholder co-operation has a negative impact on the investigation and prosecution of tax crimes. The researcher recommends that all tax crimes stakeholders (SARS, accounting and auditing firms, SAPS,

and the NPA) must sign MoUs to enforce working relationships, and they should closely work as a team with one goal, which is to detect and prevent tax crimes.

7.3.4 Public tax education programmes

Educating taxpayers is not just the business of tax administrations. Many of the initiatives presented in this study demonstrated the value of effective partnership with other stakeholders such as schools, businesses and non-governmental organisations. The findings indicate that tax crime stakeholders fail to publicly educate taxpayers on tax matters including tax fraud. The researcher suggests that all tax crime stakeholders should conduct public free workshops to promote tax compliance and deter tax crimes. Tax education programmes must be visible in both rural and urban communities.

7.3.5 Training and employment of SAPS cybercrime investigators and NPA prosecutors

The findings showed that there is a shortage of SAPS cybercrime investigators and NPA STU prosecutors in South Africa. This shortage has a negative impact on the investigation and prosecution of tax crimes. The use of accounting and auditing firms has been categorised as poor. The researcher suggests that taxpayers must be encouraged to use the services of accounting and auditing firms, especially among businesses. The auditing and accounting firms assist with tax compliance services and reduce tax fraud risks. Cybercrime investigators must be employed and trained to incapacitate them with the skills and knowledge to collect digital evidence admissible in court. The NPA must employ additional tax unit prosecutors and provide cybercrime prosecution process training.

7.3.6 Implementation of tax fraud prevention strategies

The findings revealed that there is an urgent need to improve white collar crimes prevention strategies. The researcher recommends that all tax crime stakeholders should implement and adopt tax fraud prevention strategies. These strategies include face-to-face public tax education awareness campaigns, open tax workshops, online tax education, promoting a tax fraud reporting tool accessible by all tax crime stakeholders, stakeholder engagements, and SARS must audit all submitted claims, and not only a certain percentage as is currently the case.

7.3.7 Tax laws amendments

The current findings also showed that tax fraud perpetrators usually get plea bargaining rather than direct imprisonment. Harsh punishments must be imposed to deter crime, of course guided by legislation. The competition between SARS and the NPA AFU on powers to search and seize must be resolved. The researcher recommends that tax laws must be amended to allow the criminal justice processes to access all taxpayers' information and there should be separation of powers between SARS and the NPA AFU. Ideally, South Africa must not have two stakeholders sharing similar roles.

7.4 Recommendations for future research studies on tax fraud

The researcher recommends that future studies should focus the model to impose harsher sentences to tax fraud perpetrators and review tax laws in relation to the Criminal Procedure Act No. (51 of 1977). Future studies should dwell on tax compliance among both urban and rural taxpayers, reflecting on the taxpayer's behaviour on use of the e-filing system. Further, studies should verify whether tax education reduces tax fraud. There is also need to focus on factors contributing to poor stakeholder co-operation. The impact of poor stakeholder engagements in combating tax fraud should be investigated by other commercial crimes researchers.

7.5 Conclusion

In this study, the researcher assessed the impact of tax fraud economic impact in South Africa. It has become increasingly clear that the capacity of governments to raise revenue is substantially affected by tax fraud and evasion. Many taxpayers underreport their income and submit fraudulent documents to SARS with an intention to claim undue funds. The SARS e-filing income tax submission system should be improved to automatically identify and detect fraud. There is a need for ongoing training and information sharing among all stakeholders. Investigations and prosecutions on income tax fraud are rendered difficult and complicated due to the loopholes in the e-filing system. The aim of this study was to cover the prosecutorial approach to combat income tax fraud in South Africa.

The key study findings indicated that there are poor tax fraud prosecution rates due to lack of investigative and analytical skills, shortage of investigators and prosecutors, lack of skills and knowledge among accountants and auditors to detect and identify tax fraud, poor stakeholder engagements and conflict of interests amongst stakeholders. The researcher discussed study findings in line with the objectives to determine whether this study met its envisaged goal. Objectives were verified and the researcher provided the reader with recommendations based on the key findings. The recommendations emanated from the study findings. These include the SARS e-filing improvements, multidisciplinary stakeholder engagements, stakeholders' technological implementation and adoption, public tax education, training and employment of SAPS cybercrime investigators and NPA prosecutors, implementation of tax fraud prevention strategies, and tax law amendments. Future studies should focus on taxpayers' compliance, factors causing poor tax crime stakeholder engagements, and the impact of tax laws in combating tax fraud.

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ANNEXURES

ANNEXURE A: INTERVIEW SCHEDULE GUIDE: TO THE NGUBANE NATIONAL ACCOUNTING AND AUDITING FIRM

INTERVIEW SCHEDULE GUIDE

NATIONAL NGUBANE ACCOUNTING AND AUDITING FIRM: ACCOUNTANTS

1. In your view, what is the association between the investigation of financial criminal activities and prevalence of income tax fraud in South Africa (KZN Province)? (Elaborate on your answer)
2. Based on your experience, is Ngubane Chartered Accountants used widely on income tax [fraud] advisory financial roles in South Africa? (Elaborate your answer).
3. In your experience, are there key partners working effectively with Ngubane & Co. to provide financial information in combating income tax fraud in South Africa? (Elaborate on your answer)
4. In your opinion, can adequate institution of criminal proceedings contribute to the successes of combating income tax fraud in South Africa? (Elaborate on your answer)
5. In your opinion, can the knowledge of centralised Electronic-filing (e-filing) assist in effective combating of income tax fraud in South Africa? (Elaborate on your answer)
6. Do you have any other general comments you would like to make on commission of income tax fraud in South Africa?

THANK YOU FOR YOUR PARTICIPATION

ANNEXURE B: INTERVIEW SCHEDULE GUIDE: TO THE NGUBANE NATIONAL ACCOUNTING AND AUDITING FIRM

INTERVIEW SCHEDULE GUIDE

**NGUBANE NATIONAL ACCOUNTING AND AUDITING FIRM:
INTERNAL AND FORENSIC AUDITORS**

1. In your view, what is the association between advisory, accounting, investigation and auditing for the prevalence of income tax fraud in South Africa? (Elaborate on your answer)
2. Based on your experience, is Ngubane Chartered Accountants used widely to detect income tax fraud in South Africa? (Elaborate your answer).
3. In your experience, are there key partners working effectively with Ngubane Chartered Accountants to detect and combat income tax fraud in South Africa? (Elaborate on your answer)
4. In your opinion, can adequate institution of criminal proceedings contribute to the successes of combating income tax fraud in South Africa? (Elaborate on your answer)
5. In your opinion, can the knowledge of centralised Electronic-filing (e-filing) assist in effective detection of income tax fraud in South Africa? (Elaborate on your answer)
6. Do you have any other general comments you would like to make on fraud detection and investigation on income tax fraud?

THANK YOU FOR YOUR PARTICIPATION

ANNEXURE C: INTERVIEW SCHEDULE GUIDE: TO THE NATIONAL PROSECUTING AUTHORITY, DIRECTOR OF PUBLIC PROSECUTIONS, SPECIALISED TAX UNIT PROSECUTORS

INTERVIEW SCHEDULE GUIDE

TO THE NATIONAL PROSECUTING AUTHORITY SPECIALISED TAX UNIT PROSECUTORS

1. In your view, how can awareness on income tax fraud can be effectively inducted in South Africa? **(Elaborate on your answer)**
2. In your opinion, how can current prosecution processes to combat income tax fraud can be improved in South Africa?**(Elaborate on your answer)**
3. Based on your experience, is working with other partners and public is aiding positively on prosecution of income tax fraud in South Africa? **(Elaborate on your answer)**
4. Based on your experience, are potential perpetrators usually prosecuted for income tax fraud in South Africa? **(Elaborate on your answer)**
5. In your opinion, can centralised Electronic-filing (e-filing) assist in effective prosecution of income tax fraud in South Africa? **(Elaborate on your answer)**
6. Do you have any other comments you would like to make on prosecution of income tax fraud in South Africa?

THANK YOU FOR YOUR PARTICIPATION

ANNEXURE D: INTERVIEW SCHEDULE GUIDE: TO THE NATIONAL PROSECUTING AUTHORITY, DIRECTOR OF PUBLIC PROSECUTIONS ASSET-FORFEITURE UNIT

**INTERVIEW SCHEDULE GUIDE
TO THE NATIONAL PROSECUTING AUTHORITY ASSET-FORFEIT UNIT
PROSECUTORS**

1. In your view, what is the association between the seizing of criminal assets and prevalence of income tax fraud in South Africa? **(Elaborate on your answer)**
2. Based on your experience, is AFU used widely on income tax fraud cases in South Africa? **(Elaborate your answer).**
3. Based on your experience, are there key partners working effectively with AFU to combat income tax fraud in South Africa? **(Elaborate on your answer)**
4. In your opinion, can adequate institution of criminal proceedings contribute to the successes of income tax fraud in South Africa? **(Elaborate on your answer)**
5. In your opinion, can the knowledge of Centralised Electronic-filing (e-filing) assist in effective seizing of criminal assets in South Africa? **(Elaborate on your answer)**
6. Do you have any other comments you would like to make on seizing assets obtained from commission of income tax fraud?

THANK YOU FOR YOUR PARTICIPATION

ANNEXURE E: UNIVERSITY OF KWAZULU-NATAL FULL APPROVAL LETTER



30 March 2020

Miss Smangele Nkosingiphile Shandu (216066769)
School Of Applied Human Sc
Howard College Campus

Dear Miss Shandu,

Protocol reference number: HSSREC/00001099/2020

Project title: The development of a Prosecutorial approach to combat income tax fraud in South Africa

Degree: PhD

Approval Notification – Expedited Application

This letter serves to notify you that your application received on 04 March 2020 in connection with the above, was reviewed by the Humanities and Social Sciences Research Ethics Committee (HSSREC) and the protocol has been granted **FULL APPROVAL**

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

This approval is valid until 30 March 2021.

To ensure uninterrupted approval of this study beyond the approval expiry date, a progress report must be submitted to the Research Office on the appropriate form 2 - 3 months before the expiry date. A close-out report to be submitted when study is finished.

All research conducted during the COVID-19 period must adhere to the national and UKZN guidelines.

HSSREC is registered with the South African National Research Ethics Council (REC-040414-040).

Yours sincerely,



Professor Dipane Hlalele (Chair)

/dd

Humanities & Social Sciences Research Ethics Committee
UKZN Research Ethics Office Westville Campus, Govan Mbeki Building
Postal Address: Private Bag X54001, Durban 4000
Tel: +27 31 260 8350 / 4557 / 3587
Website: <http://research.ukzn.ac.za/Research-Ethics/>

Founding Campuses: ■ Edgewood ■ Howard College ■ Medical School ■ Pietermaritzburg ■ Westville

INSPIRING GREATNESS

**ANNEXURE F: NGUBANE NATIONAL ACCOUNTING AND AUDITING FIRM
FULL APPROVAL LETTER**



NGUBANE & CO.
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Kingsmead Office Park
DURBAN | 4001

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BISHOPSGATE | 4008

Tel: +27 31 307 4794 |
Fax: +27 31 307 4796
E-mail: dbn@ngubane.co.za
www.ngubane.co.za

16 August 2019

Ms Smangele Shandu

Flat No.23 Laager Centre
Pietermaritzburg
3200

Dear Ms Shandu

**Formal Research Application: The Development of Prosecution Approach to
Combat Income Tax Fraud in South Africa**

Your application dated July 2019 refers:

Approval has been granted for you to conduct a Doctoral research study in Ngubane & Co. Chartered Accountants and Auditors.

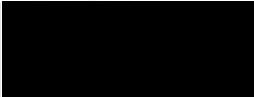
Your participants will be as follows:

1. Experts in taxation and tax fraud;
2. Chartered Accountants;
3. Internal Auditors; and
4. Forensic Auditors.

Your research will be limited to the following conditions:

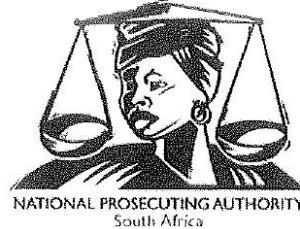
- (a) Information will be for research purposes only;
- (b) Responses will be limited to your research study;
- (c) Information shared with you is strictly confidential;
- (d) A final copy of your research document should be submitted to this office for record purposes.

Please do not hesitate to contact Mr Desmond Msomi should you require additional information.


Desmond Msomi
Partner

ANNEXURE G: NATIONAL PROSECUTING AUTHORITY, DIRECTOR OF PUBLIC PROSECUTIONS FULL APPROVAL LETTER

Administration



Tel: +27 12 845 6000

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Pretoria

P/Bag X752
Pretoria
0001

Enquiry: Ms. Nozipho Manqele
Email: manqelen@npa.gov.za
Phone: 012 845 6936
Date: 25/05/2020

Ms. S Shandu
Per email: smangelemphile@gmail.com

Re: Approval of a request to conduct research in the National Prosecuting Authority

Dear Ms. S Shandu

Thank you for showing interest in conducting research in the National Prosecuting Authority (NPA). The purpose of this letter is to inform you that your request to conduct research within the NPA's Asset Forfeiture Unit (AFU) and the National Prosecutions Service (NPS): Tax Unit, has been approved.

The NPA appreciates that the topic has been approved by the University of KwaZulu-Natal Research Ethics Committee. Please consider and/or adhere to (whichever is applicable) the following provisions in support of your research:

1. The research request focuses on *"The development of a prosecutorial approach to combat income tax fraud in South Africa"*.
2. The permission to conduct research is only limited to conducting interviews with officials within the AFU and NPS Tax Unit in the KwaZulu-Natal Province.
3. Interviews with NPA officials should adhere to COVID-19 related Regulations.
4. Upon completion of the research project, it is requested that a copy of the report be sent to the NPA for perusal.

Corporate Service Centres

- Finance & Procurement
- Human Resources
- Development & Management
- Information Management
- Research & Policy Information
- Risk & Security

5. It is also requested that in the event of the author publishing an article on research which contains NPA information, such article should be shared with the NPA.
6. Please inform the Regional Head of the AFU as well as the Director of Public Prosecutions: NPS in KwaZulu-Natal of your intent to conduct research before approaching interviewees.

In your case, there will be no need to complete FORM A, which is the request for access to records of a Public Body, in terms of section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), since your research study only involves interviews with participants.

Kindly keep the NPA informed about further developments on this research and please send your response to the Acting Director: Research Management on the following details:

Name: Mr. Thomas Tshilowa
Telephone number: 012 845 6273
E-mail address: ttshilowa@npa.gov.za



Ms. Karen Van Rensburg
Acting Head of Administration
Date: 8/7/2020

Re: Approval of a request to conduct research study: Ms S Shandu

Page 2 of 2

ANNEXURE H: INFORMED CONSENT FORM FOR NGUBANE NATIONAL ACCOUNTING AND AUDITING FIRM PARTICIPANTS

INFORMATION AND CONSENT FORM

Project Title: The development of a prosecutorial approach to combat income tax fraud in South Africa

Correspondence with interviewees: Letter of invitation to participate in this study

I am Miss Smangele Nkosingiphile Shandu. I am in a research phase of collecting data for the completion of a study entitled: *“The development of prosecution approach to combat income tax fraud in South Africa”*. This process is necessary for a completion of a Doctoral Degree in Philosophy: Criminology and Forensic Studies. The study is under the supervision of University of KwaZulu-Natal (UKZN), School of Applied Human Sciences in Criminology and Forensic Studies Discipline (CFSD), Howard Campus. My supervisor is a principal and Academic Leader Professor. Shanta Singh. I am writing this consent form to request your participation in this study.

The probable reasons for this study is to [un]cover the development of prosecution approach to combat income tax fraud in South Africa by optimising this procedure within South Africa, to achieve these study objectives, the following information should be obtained:

- Determining methods and techniques used by Ngubane National Accounting and Auditing Firm to combat income tax fraud in South Africa
- Identifying factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa
- Determining the relevance of centralized e-filing system for effective prosecutorial of income tax fraud in South Africa
- Developing conceptual and theoretical frameworks on effective prosecutorial approach to combat income tax fraud in South Africa.

Research design and methodology

The explorative and descriptive research objectives will be used to guide the phenomenological research design to be adopted in this study. The qualitative research approach will also be used in this study. Data will be collected using documentary studies, In-Depth Interviews and literature review with the participants to be selected.

Study sample and procedures

The researcher request to interview experts in taxation systems and tax fraud. The researcher requests a minimum of Five (7) Chartered Accountants, Five (7) Internal Auditors, Five (7) Forensic Auditors. **Total minimum of participants requested: twenty-one (21).**

Please note the following regarding your participation:

- Participation in this study is voluntary;
- The participants will not paid in money for their participation;
- The participant may withdraw from the research at any time without negative consequences;
- There are no wrong or right answers
- Shared information will be confidential information(**No access to files**)
- The participant will be treated with respect and dignity;
- In general, responses will be treated in confidential manner;
- The limits of confidentiality include information or data collected from experts in the subject under discussion.
- The data will be kept secured for five years for purposes of verification by UKZN.

Should you request an electronic copy of the final thesis, it can be sent to you on completion.

Your willingness to participate in this study will greatly be appreciated.

Researcher and the institution affiliation details

Researcher	Address	Phone number	Email Address
Smangele Nkosingiphile Shandu	Flat No.23 Laager Centre Pietermaritzburg central, 3201	033 260 5566 0748079044	smangelemphile@gmail.com/ ShanduS1@ukzn.ac.za

PhD Candidate in Criminology and Forensic Studies and Criminology and Forensic Studies Lecturer (& A Lecturer in the Discipline of Criminology and Forensic Studies, Pietermaritzburg Campus.			
Department	School of Applied Human Sciences, Criminology and Forensic Studies		
Institution	UKZN Howard Collage Campus, Masizi Kunene Avenue, Glenwood, Durban, KZN	+27 31 260 1813	www.ukzn.ac.za
Supervisor	Prof. Shanta Singh	031 260 4219	Singhsb@ukzn.ac.za

.....

Participants Signature

.....

Date

**ANNEXURE I: INFORMED CONSENT FORM FOR NATIONAL PROSECUTING
AUTHORITY, DIRECTOR OF PUBLIC PROSECUTIONS SPECIALISED TAX UNIT
INFORMATION AND CONSENT FORM**

Project Title: The development of a prosecutorial approach to combat income tax fraud in South Africa

Correspondence with interviewees: Letter of invitation to participate in this study

I am Miss Smangele Nkosingiphile Shandu. I am in a research phase of collecting data for the completion of a study entitled: *“The development of a prosecutorial approach to combat income tax fraud in South Africa”*. This process is necessary for a completion of a Doctoral Degree in Philosophy: Criminology and Forensic Studies. The study is under the supervision of University of KwaZulu-Natal (UKZN), School of Applied Human Sciences in Criminology and Forensic Studies Discipline (CFSD), Howard Campus. My supervisor is a principal and Academic Leader Professor. Shanta Singh. I am writing this consent form to request your participation in this study.

The probable reasons for this study is to [un]cover the development of a prosecutorial approach to combat income tax fraud in South Africa by optimizing this procedure within South Africa , to achieve these study objectives, the following information should be obtained:

- Determining methods and techniques used by National Prosecuting Tax Unit to combat income tax fraud in South Africa
- Identifying factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa
- Determining the relevance of centralized e-filing system for effective prosecutorial of income tax fraud in South Africa
- Developing conceptual and theoretical frameworks on effective prosecutorial approach to combat income tax fraud in South Africa.

Research design and methodology

The explorative and descriptive research objectives will be used to guide the phenomenological research design to be adopted in this study.

The qualitative research approach will also be used in this study. Data will be collected using documentary studies, In-Depth Interviews and literature review with the participants to be selected.

Study sample and procedures

The researcher request to interview the following experts in tax fraud:

- NPA Tax Unit Prosecutors,
- **Total Minimum number of participants requested: Twelve (12)**

Please note the following regarding your participation:

- Participation in this study is voluntary;
- The participants will not be paid in money for their participation;
- The participant may withdraw from the research at any time without negative consequences;
- There are no wrong or right answers
- Shared information will be confidential information (**No access to files**)
- The participant will be treated with respect and dignity;
- In general, responses will be treated in confidential manner;
- The limits of confidentiality include information or data collected from experts in the subject under discussion.
- The data will be kept secured for five years for purposes of verification by UKZN.

Should you request an electronic copy of the final thesis, it can be sent to you on completion.

Your willingness to participate in this study will greatly be appreciated.

Researcher and the institution affiliation details

Researcher	Address	Phone number	Email Address
Smangele Nkosingiphile Shandu PhD Candidate in Criminology and	Flat No.23 Laager Centre Pietermaritzburg central, 3201	033 260 5566 0748079044	smangelemphile@gmail.com/ ShanduS1@ukzn.ac.za

Forensic Studies and Criminology and Forensic Studies Lecturer (& A Lecturer in the Discipline of Criminology and Forensic Studies, Pietermaritzburg Campus.			
Department	School of Applied Human Sciences, Criminology and Forensic Studies		
Institution	UKZN Howard Collage Campus, Masizi Kunene Avenue, Glenwood, Durban, KZN	+27 31 260 1813	www.ukzn.ac.za
Supervisor	Prof. Shanta Singh	031 260 4219	Singhsb@ukzn.ac.za

.....
Participants Signature:

.....
Date:

ANNEXURE J: INFORMED CONSENT FORM FOR NATIONAL PROSECUTING AUTHORITY, DIRECTOR OF PUBLIC PROSECUTIONS ASSET-FORFEITURE UNIT

INFORMATION AND CONSENT FORM

Project Title: The development of a prosecutorial approach to combat income tax fraud in South Africa

Correspondence with interviewees: Letter of invitation to participate in this study

I am Miss Smangele Nkosingiphile Shandu. I am in a research phase of collecting data for the completion of a study entitled: *“The development of a prosecutorial approach to combat income tax fraud in South Africa”*. This process is necessary for a completion of a Doctoral Degree in Philosophy: Criminology and Forensic Studies. The study is under the supervision of University of KwaZulu-Natal (UKZN), School of Applied Human Sciences in Criminology and Forensic Studies Discipline (CFSD), Howard Campus. My supervisor is a principal and Academic Leader Professor. Shanta Singh. I am writing this consent form to request your participation in this study.

The probable reasons for this study is to [un]cover the development of a prosecutorial approach to combat income tax fraud in South Africa by optimizing this procedure within South Africa, to achieve these study objectives, the following information should be obtained:

- Determining methods and techniques used by National Prosecuting Authority Asset Forfeiture Unit to combat income tax fraud in South Africa
- Identifying factors that hinder effective prosecutorial procedure to combat income tax fraud in South Africa
- Determining the relevance of centralized e-filing system for effective prosecutorial of income tax fraud in South Africa
- Developing conceptual and theoretical frameworks on effective prosecutorial approach to combat income tax fraud in South Africa.

Research design and methodology

The explorative and descriptive research objectives will be used to guide the phenomenological research design to be adopted in this study. The qualitative research approach will also be used

in this study. Data will be collected using documentary studies, In-Depth Interviews and literature review with the participants to be selected.

Study sample and procedures

The researcher request to interview the following experts in tax fraud:

- NPA AFU Prosecutors,
- **Total minimum number of participants: Ten (10)**

Please note the following regarding your participation:

- Participation in this study is voluntary;
- The participants will not be paid in money for their participation;
- The participant may withdraw from the research at any time without negative consequences;
- There are no wrong or right answers
- Shared information will be confidential information(**No access to files**)
- The participant will be treated with respect and dignity;
- In general, responses will be treated in confidential manner;
- The limits of confidentiality include information or data collected from experts in the subject under discussion.
- The data will be kept secured for five years for purposes of verification by UKZN.

Should you request an electronic copy of the final thesis, it can be sent to you on completion.

Your willingness to participate in this study will greatly be appreciated.

Researcher and the institution affiliation details

Researcher	Address	Phone number	Email Address
Smangele Nkosingiphile Shandu PhD Candidate in Criminology and Forensic Studies	Flat No.23 Laager Centre Pietermaritzburg central, 3201	033 260 5566 0748079044	smangelemphile@gmail.com/ ShanduS1@ukzn.ac.za

and Criminology and Forensic Studies Lecturer (& A Lecturer in the Discipline of Criminology and Forensic Studies, Pietermaritzburg Campus.			
Department	School of Applied Human Sciences, Criminology and Forensic Studies		
Institution	UKZN Howard Collage Campus, Masizi Kunene Avenue, Glenwood, Durban, KZN	+27 31 260 1813	www.ukzn.ac.za
Supervisor	Prof. Shanta Singh	031 260 4219	Singhsb@ukzn.ac.za

.....

.....

Participants Signature:

Date:

**ANNEXURE K: LETTER TO REQUEST PERMISSION TO CONDUCT RESEARCH
TO NGUBANE NATIONAL ACCOUNTING AND AUDITING FIRM**



Flat 23 Laager Centre
Long market Street
Pietermaritzburg
3201
24 February 2020

5 Arundel Close
Kingsmead
Durban
4001

Letter of invitation to participate in a Doctoral Research Study

I am Miss Smangele Nkosingiphile Shandu. I am in a research phase of collecting data for the completion of a study entitled: *“The development of a prosecutorial approach to combat income tax fraud in South Africa”*. This process is necessary for a completion of a Doctoral Degree in Philosophy: Criminology and Forensic Studies. The study is under the supervision of University of KwaZulu-Natal (UKZN), School of Applied Human Sciences in Criminology and Forensic Studies Discipline (CFSD), Howard Campus. My supervisor is a principal and Academic Leader Professor. Shanta Singh. I am writing this letter to request your participation in this study.

The researcher requests to interview at least thirty-seven (37) Accountants, Internal and Forensic Auditors knowledgeable on income taxation and tax fraud in South Africa. This is a qualitative study which requires face-to-face individual interviews.

Please note the following regarding your participation:

- Participation in this study is voluntary;
- The participants will not be paid in money for their participation;
- The participant may withdraw from the research at any time without negative consequences;
- There are no wrong or right answers
- Shared information will be confidential information(**No access to files**)
- The participant will be treated with respect and dignity;
- In general, responses will be treated in confidential manner;
- The limits of confidentiality include information or data collected from experts in the subject under discussion.
- The data will be kept secured for five years for purposes of verification by UKZN.

Should you request an electronic copy of the final thesis, it can be sent to you on completion.

Your willingness to participate in this study will greatly be appreciated.

Researcher and the institution affiliation details

Researcher	Address	Phone number	Email Address
Smangele Nkosingiphile Shandu PhD Candidate in Criminology and Forensic Studies and Criminology and Forensic Studies Lecturer (& A Lecturer in the Discipline of Criminology and	Flat No.23 Laager Centre Pietermaritzburg central, 3201	033 260 5566 0748079044	smangelemphile@gmail.com/ ShanduS1@ukzn.ac.za

Forensic Studies, Pietermaritzburg Campus.			
Department	School of Applied Human Sciences, Criminology and Forensic Studies		
Institution	UKZN Howard Collage Campus, Masizi Kunene Avenue, Glenwood, Durban, KZN	+27 31 260 1813	www.ukzn.ac.za
Supervisor	Prof. Shanta Singh	031 260 4219	Singhsb@ukzn.ac.za

.....
Participants Signature:

.....
Date:

ANNEXURE L: LETTER TO REQUEST PERMISSION TO CONDUCT RESEARCH TO NATIONAL PROSECUTING AUTHORITY, DIRECTOR OF PUBLIC PROSECUTIONS



Flat 23 Laager Centre
Long market Street
Pietermaritzburg
3201
06 April 2020

Attention to: The Acting Head of Administration
National Prosecuting Authority
Adv. Karen Van Rensburg

Letter of invitation to participate in the research study

I am Miss Smangele Nkosingiphile Shandu. I am in a research phase of collecting data for the completion of the study with the title *“The development of a prosecutorial approach to combat income tax fraud in South Africa”*. This process is necessary for completion of a Doctoral Degree in Philosophy: Criminology and Forensic Studies at the University of KwaZulu-Natal (UKZN), School of Applied Human Sciences in Criminology and Forensic Studies Discipline (CFSD), Howard Campus. My supervisor is a principal and Academic Leader Professor. Shanta Singh. I am writing this letter to request your participation in this study.

The probable reasons for this study is to [un]cover the development of a prosecutorial approach to combat income tax fraud in South Africa. National Prosecuting Authority (Tax Unit and Asset Forfeiture Unit) has been selected as the primary stakeholder for this study. Secondary stakeholders include Auditing firm and Department of Justice in KwaZulu-Natal to represent all nine provinces in South Africa.

To achieve this goal, researcher requests to interview the following experts in KwaZulu-Natal

- **Minimum of Twelve (12) Tax Unit Prosecutors , and**
- **Minimum of Ten (10) Asset Forfeiture Unit experts**

Researcher request Tax unit Prosecutors to respond to the following questions:

- In your view, how can awareness on income tax fraud can be effectively inducted in South Africa? **(Elaborate on your answer)**
- In your opinion, how can current prosecution processes to combat income tax fraud be improved in South Africa?**(Elaborate on your answer)**
- Based on your experience, is working with other partners and public is aiding positively on prosecution of income tax fraud in South Africa? **(Elaborate on your answer)**
- Based on your experience, are potential perpetrators usually prosecuted for income tax fraud in South Africa? **(Elaborate on your answer)**
- In your opinion, can Centralized Electronic-filing (e-filing) assist in effective prosecution of income tax fraud in South Africa? **(Elaborate on your answer)**
- Do you have any other comments you would like to make on prosecution of income tax fraud in South Africa?

Researcher request Asset- Forfeiture Unit experts to respond to the following questions:

- In your view, what is the association between the seizing of criminal assets and prevalence of income tax fraud in South Africa? **(Elaborate on your answer)**
- Based on your experience, is AFU used widely on income tax fraud cases in South Africa? **(Elaborate your answer).**
- Based on your experience, are there key partners working effectively with AFU to combat income tax fraud in South Africa? **(Elaborate on your answer)**
- In your opinion, can adequate institution of criminal proceedings contribute to the successes of income tax fraud in South Africa? **(Elaborate on your answer)**
- In your opinion, can the knowledge of Centralized Electronic-filing (e-filing) assist in effective seizing of criminal assets in South Africa? **(Elaborate on your answer)**

- Do you have any other comments you would like to make on seizing assets obtained from commission of income tax fraud?

The study is limited to the following conditions:

- Participation is voluntary
- Responses will be limited to research study
- Information shared is for study purposes only and is strictly confidential
- A final copy of research document will be submitted to your office for record purposes.

Your cooperation will be highly appreciated. Please do not hesitate to contact me on 061 483 75 13 / 033 260 5566 / email: smangelemphile@gmail.com & ShanduS1@ukzn.ac.za / my supervisor : 083 6925817/ 031 260 7895 , Email: singhb@ukzn.ac.za should you require additional information.

Yours Faithfully

Ms Smangele Shandu



**ANNEXURE M: LETTER TO REQUEST PERMISSION TO CONDUCT RESEARCH
TO THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**



Flat 23 Laager Centre
Longmarket Street
Pietermaritzburg
3201
17 March 2020

Department Of Justice
Cnr Stanger and Somtseu Road
Durban

Dear Acting Regional President: Ms. Marks

Letter of invitation to participate in the research study

I am Miss Smangele Nkosingiphile Shandu. I am in a research phase of collecting data for the completion of the study entitled: *“The development of the prosecutorial approach to combat income tax fraud in South Africa”*. This process is necessary for a completion of a Doctoral Degree in Philosophy: Criminology and Forensic Studies at the University of KwaZulu-Natal (UKZN), School of Applied Human Sciences in Criminology and Forensic Studies Discipline (CFSD), Howard Campus. My supervisor is a principal and Academic Leader Professor. Shanta Singh. I am writing this letter to request your participation in this study.

The probable reasons for this study is to [un]cover the development of the prosecutorial approach to combat income tax fraud in South Africa. The stakeholders that will be participating in this study is the National Prosecuting Authority, Auditing Firms and Department of Justice in KwaZulu-Natal Province representing all Nine (9) provinces in South Africa. To achieve this goal, researcher requests to interview a minimum of **four (4) Judges**

who deal with Commercial Crimes cases in KwaZulu-Natal (*with special focus on tax fraud cases*).

Researcher request judges to respond to the following questions:

- In your view, is current accord of justice for combating income tax fraud effective in South Africa? (**Elaborate on your answer**)
- In your opinion, is collaborative Criminal justice System (CJS) processes can effectively combat income tax fraud in South Africa? (**Elaborate on your answer**)
- In your view, is effective punishment of income tax fraud perpetrators can serve as a good deterrence in South Africa? (**Elaborate on your answer**)
- Based on your experience, is the recent sense of justice adequate to satisfy society on prosecution and punishment of income tax fraud perpetrators in South Africa? (**Elaborate on your answer**)
- In your opinion, is induction of centralized Electronic-filing(e-filing) system can contribute effectively to sentencing of income tax fraud in South Africa?(**Elaborate on your answer**)
- Do you have any other comments you would like to make regarding sentencing the perpetrators of income tax fraud in South Africa?

The study is limited to the following conditions:

- Participation is voluntary
- Responses will be limited to research study
- Information to be shared is for study purposes only
- Information provided is strictly confidential with anonymity
- A final copy of research document will be submitted to your office for record purposes.

Your cooperation will be highly appreciated. Please do not hesitate to contact me on 061 483 75 13 / 033 260 5566 / email: smangelemphile@gmail.com & ShanduS1@ukzn.ac.za / my supervisor : 083 6925817/ 031 260 7895 , Email: singhb@ukzn.ac.za should you require additional information.

Yours Faithfully

Ms Smangele Shandu



Email response to research study request

Date: 08 May 2020

Subject: Research request

“Good morning

I have read your questions but unfortunately I do not do that many tax matters . The information that you require will be best obtained from the tax unit at the office of the DPP . Those matters are handled by a specialist unit and it will be the Prosecutors who can say whether or not the sentences are making a difference or not. It has however been my experience that in most cases the matter is resolved through ADR. I have about 3 cases on my roll which are still not trial ready.

Warm Regards

Ms Soomaroo”

**ANNEXURE N: LETTER TO REQUEST PERMISSION TO CONDUCT RESEARCH
AT THE SOUTH AFRICAN REVENUE SERVICES**

Date: 18 July 2018

Subject: Application to Conduct Doctoral Research Study

Dear Deepa

I hope this email finds you well;

I am writing this email requesting permission to conduct Doctoral research study in the field of Criminology and Forensic Studies at the South African Revenue Services in KwaZulu-Natal.

Please receive the attached detailed documents for application to conduct a research study.

1. Proof of registration from the University of KwaZulu-Natal
2. Application letter, Informed consent forms and interview guide for the participants.

Thank you

Kind Regards

Miss Smangele Shandu

Automatic E-mail Response and telephonic call:

Date: 18 July 2018

Subject: Re-Application to Conduct Doctoral Study

“Thank you for mailing me.

I am unable to attend to your mail immediately, i will expedite the content on my return

*Alternatively, Kindly contact Sandy Moodley on 082 858****”*

A telephonic call with Sandy concluded that SARS is currently unavailable to participate in research studies. She was quoted in verbatim ***“Good day Ms Shandu, Please be advised that at the moment we are not available to participate in any research study”***

**ANNEXURE O: LETTER TO REQUEST PERMISSION TO CONDUCT RESEARCH
AT KLYNVELD PEAT MARWICK GOERDELER (KPMG)**



Flat No. 23 Laager Centre
Pietermaritzburg
3200
06 May 2019

Dear Sandi

Permission to conduct the study on Project Title: “The development of prosecution approach to combat income tax fraud in South Africa”

My name is Smangele Shandu. I am writing to request your permission to conduct the study on the above project title.

I am currently under the supervision of the University of KwaZulu Natal, Howard Collage, Centre for Applied Human Sciences in the Discipline of Criminology and Forensics studies for Doctoral Degree. My academic supervisor is Prof Jean Steyn.

The aim of this study is to explore the value of National Prosecuting Authority Business Unit (Specialised Commercial Crime Unit and Asset-Forfeiture Unit) and KPMG in the prosecution of income tax fraud in South Africa (GP and KZN Provinces). In order for me to be able to collect data with your employees, I request your permission to conduct the study which will be on face-to-face individual interviews with KPMG forensic Investigators and Auditors in Durban, KwaZulu-Natal. The study targets only KPMG firm and National Prosecuting Authority prosecutors. *The participants will not be required to retrieve sensitive cases on their case files due to confidentiality of information, however the study require general knowledge on this phenomenon. Arrangements with the direct management of the participants prior the interviews will be made.*

Please note the following regarding your participation:

- Participation in this study is voluntary;
- The participants will not be paid in money for their participation;
- The participant may withdraw from the research at any time without negative consequences; will not be forced to participate in this study.
- There are no wrong or right answers
- Shared information will be confidential information (**No access to files**). Their names will not be written in any document including the report. Coding will be applied.
- The participant will be treated with respect and dignity;
- In general, responses will be treated in confidential manner;
- The limits of confidentiality include information or data collected from experts in the subject under discussion.
- The data will be kept secured for five years for purposes of verification by Professor Jean Steyn of UKZN.
- The study only target KPMG (investigators & auditors) and NPA prosecutors as relevant and suitable participants and expert for this study.
- Researcher will make arrangements for the formal meeting with the KPMG & NPA management prior to conducting research with participants for briefing and to sign declaration form from KPMG & NPA if available.
- Interviews with participants will not be recorded. Only notes will be taken. Participants will have an opportunity to read notes taken by the researcher to verify information shared.

Should you request an electronic copy of the final thesis, it can be sent to you on completion.

Researcher and the institution affiliation details

Researcher	Address	Phone number	Email Address
Smangele Nkosingiphile Shandu PhD Candidate in Criminology and	Flat No.23 Laager Centre Pietermaritzburg central, 3200	033 260 5566 0748079044	smangelemphile@gmail.com/ ShanduS1@ukzn.ac.za

Forensic Studies and Criminology and Forensic Studies Lecturer (University of KwaZulu-Natal, Pietermaritzburg Campus)			
Department	School of Applied Human Sciences, Criminology and Forensic Studies		
Institution	UKZN Howard Collage Campus, Masizi Kunene Avenue, Glenwood, Durban, KZN	+27 31 260 1813	www.ukzn.ac.za

For more information, Please do not hesitate to contact me on the below details.

Yours Sincerely

Smangele Shandu

Contact: [0748079044](tel:0748079044)/ [033 260 5566](tel:0332605566) /smangelemphile@gmail.com

Alt: ShanduS1@ukzn.ac.za

Signature of the Researcher :

Email Response to study request

Date : 11 June 2019

Subject: Re- Letter of request to conduct a Doctoral research study

“Dear Smangele

I’m well thank you and you? My apologies for the late response to your email. I have chatted to our Risk and Legal department and unfortunately we will not be able to accommodate the research project at the moment. We are sorry for inconvenience. Kind Regards, Sandi”.

ANNEXURE P: NATIONAL PROSCUTING AUTHORITY POLICY STANDARD ON REQUEST TO CONDUCT A RESEARCH STUDY

3

- m) Research conducted in the NPA must be administered in accordance with the research guidelines, and the relevant Ethical Committees submitted to the NPA.
- n) Approval to conduct research in the NPA is valid for 2 years from the date of approval.
- o) The NPA may withdraw its approval of a research request at any time if the research diverges from the approved methodology, or is conducted in a manner that is not consistent with the NPA’s requirements for the conduct of research in its facilities.

Declaration

I hereby agree to comply with the NPA requirements and relevant ethical conduct. I will ensure that participants' privacy and their confidentiality and that of records and other critical information are secured.



I _____ declare that the above information is true and correct.

ANNEXTURE D: DECLARATION FOR PERMISSION TO CONDUCT RESEARCH IN THE NATIONAL PROSECUTING AUTHORITY

Version	V0.1
Signature of Applicant	01 Date
Author	Kefentse Mojaki-Moremogolo
Contributors	
Editor	Marthi Alberts
Policy Owner	Deputy National Director of Public Prosecutions: Administration and OWP
Date Approved	
Effective Date	Date of approval
Reference Number	
Classification	Not applicable
Supersedes (previous policy)	Not applicable
Superseded by (if no longer in effect)	

Notice

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CONDITIONS TO BE AGREED TO BY THE RESEARCHER

All applicants requesting to conduct research in the NPA are required to sign a declaration agreeing to the following conditions:

- a) Research activities must be scheduled in consultation with the NPA staff.
- b) NPA programmes should not be interrupted.
- c) Involvement by participants in research activities is voluntary, and participants have a right to decline participation.
- d) Signed consent forms from participants before any engagement with them will be required.
- e) The use of recording devices such as tape recorders and cameras must be made explicit prior to engagement with participants, and participants should be free to reject them if they wish.
- f) NPA Resources (such as stationery, photocopies, faxes, and telephones) may not be used for the research activities.
- g) The right of participants to privacy, anonymity, confidentiality and respect for human dignity must be honoured at all times.
- h) Participants should not be identifiable in any way from the results of the research unless written consent is obtained.
- i) The names of the said participants must not appear in the research report without written consent of each participant.
- j) The draft research report must be sent to the NPA before finalisation and publication, to allow the opportunity to validate the accuracy of the information in the report.
- k) The research report (including all presentations and publications arising from the research) must include a disclaimer indicating that the findings and recommendations stemming from the investigation do not represent the views of the Business Unit concerned or the NPA.
- l) Applicants have the ethical and legal responsibilities towards

ANNEXURE Q: DECLARATION OF LETTER FOR DATA RECORDING

I..... (Full names are optional: You can use Codes) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

I give consent to the following:

Audio-record my interview/ Focus Group Discussion (FGD)

Yes	No

Video-record my interview / FGD

Yes	No

Use of my photographs for the purpose of this study

Yes	No

Participant's Signature: Date: