

What's New at SARS - Aug 30, 2022

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Media Release – New legislative tool targeting unexplained wealth to be piloted
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An initiative, being piloted by a number of government departments and agencies in law enforcement and prosecution, will make it more cost effective, faster and easier to investigate and recover assets acquired through suspected unlawful activities such as corruption, fraud, tax evasion and money laundering.

The National Prosecuting Authority (NPA), Directorate of Priority Crime Investigation (DPCI), Department of Justice (DOJ) and the South African Revenue Service (SARS), led by the Financial Intelligence Centre (FIC) and operating under the auspices of the Anti-Corruption Task Team (ACTT), are collaborating on the joint project to deprive those who support their lifestyles with ill-gotten gains from their unexplained wealth.

This will better enable South Africa to confiscate criminal proceeds in line with the Financial Action Task Force (FATF) recommendation in this regard.

The law enforcement agencies will use existing asset recovery legislation to secure appropriate orders issued by our courts to confiscate unexplained wealth, thereby enabling the South African authorities to recover suspected ill-gotten gains.

The provision in our existing asset recovery legislation that targets unexplained wealth is a legislative tool that requires the State to prove that a defendant's legitimate sources of income are not sufficient to justify assets that the defendant owns.

This puts the onus on the defendant to prove that the source of the funds for the assets owned is legitimate and that the assets were not acquired from the proceeds of criminal activities. A court can therefore make an order to confiscate unexplained wealth on the basis that the wealth of a person or entity is disproportionate to the lawful income derived or declared by the person or entity and that the defendant is unable to justify or explain how the wealth was lawfully acquired.

This approach will enable law enforcement agencies and SARS to act even in cases where such unlawful activity cannot be proven beyond reasonable doubt.

Internationally, the UK, Australia, Ireland, Mauritius and Kenya are examples of countries that have adopted the concept of UWOs as legislative tools and have successfully recovered such assets.

South Africa's inter-agency initiative aims to strengthen and supplement the use of existing legal frameworks to preserve and forfeit assets by targeting unexplained

wealth. The initiative seeks to determine whether existing legislation can be effectively used or if it should be augmented further with a standalone UWO legislative framework.

It also aims to practically test how inter-agency cooperation can be operationally achieved to expand the limits of the current legislation by creating case law through court proceedings.

The initiative was started in November 2020 to test the feasibility of a UWO asset recovery regime in South Africa under Chapter 6 of the Prevention of Organised Crime Act and through inter-agency collaboration. A project steering committee has been established and a task team was set up to conduct research and benchmarking and make recommendations on a way forward.

The participating agencies have entered into an inter-agency memorandum of agreement to formalise their collaboration and the practical implementation of the initiative in the cases to be selected; and to regulate the confidentiality of information to be shared amongst the agencies.

Preparatory activities for the next phase are currently in progress in order to select an appropriate case to test the existing provisions that target unexplained wealth in the courts.

The Organisation for Economic Cooperation and Development has expressed keen interest and supports the outcomes of the project as a means of deepening inter-agency collaboration and combating unlawful activities such as corruption, fraud, tax evasion, money laundering and illicit financial flows.

MEDIA STATEMENT ISSUED ON BEHALF OF:

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