



**EXPLORING PERCEPTIONS OF SOUTH AFRICAN POLICE SERVICE
INVESTIGATORS AND NATIONAL PROSECUTING AUTHORITY PROSECUTORS
ON PERSONAL INCOME TAX FRAUD IN DURBAN, KWAZULU-NATAL**

by

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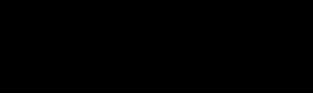
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DECLARATION OF PLAGIARISM

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DEDICATION

This dissertation is dedicated to the following special people in my life:

- My parents (Mrs Agnes Sholiphi Shandu and Samuel Shandu) for all the care and protection shown over the years;
- My sisters (Bonisiwe, Sindisiwe, Fikile, Phindile and Ayanda) for the unconditional love and undying support they have always shown me;
- My late brother (Sphamandla Simon Shandu). May your soul rest in peace. Your good deeds will always be remembered.

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BIOGRAPHY OF THE RESEARCHER

The researcher was born in 1988 in Ulundi. She completed the foundation phase programme at Ulundi Primary school in 2000 and matriculated in 2005 at the Mgitshwa High School in Empangeni on the north coast of KwaZulu-Natal (KZN). She completed her Bachelor Degree in Social Work (Criminology) at the University of South Africa (UNISA) in December 2014 and became a qualified and registered Social Worker with the South African Council for Social Service Professions (SACSSP) in March 2015 to date. She worked as a Student Social Worker at Umgeni Community Empowerment Centre (UCEC) in Durban from February 2014 to October 2014. The researcher has worked at the UKZN from March 2016 to October 2017 as a Criminology and Forensic Studies undergraduate tutor.

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In May 2016, the researcher completed a certificate in Employee Wellness Program (EWP) at UNISA and became a qualified Social Worker with EWP. In 2016, the researcher registered for the Master of Social Science in Criminology and Forensic Studies at UKZN in the College of Humanities. The researcher is not married and does not have children. She is a member of the Faith in God Ministry at V-section, Umlazi, Durban.

ABSTRACT

It is common knowledge that many people in South Africa perceive income tax as being unavoidable, as all natural and artificial persons in South Africa are liable to pay taxes. One of the biggest sources of revenue for the South African government to render adequate services to the public is income tax. However, tax fraud is detrimental and results in poor service delivery to the public. A shadow economy becomes noticeable when individuals defraud the South African Revenue Service (SARS), which has a negative impact on South Africa's economic development and sustainability. The most common form of fraud against the government is tax fraud, which mainly occurs when taxpayers do not pay their taxes or find illegal ways to avoid paying outstanding taxes. The commission of this crime involves underreporting income and submitting falsified documents to SARS with the intention of not paying tax. Moreover, people who pretend to be tax practitioners that are attached to SARS defraud this department by using unwitting taxpayers as a shield. In some cases, employed SARS tax practitioners conspire with taxpayers to defraud SARS.

This qualitative study applied an exploratory, descriptive research design with the aim of exploring and describing the perceptions of selected members of the Durban SAPS DPCI and the NPA DPP STU on personal income tax fraud in Durban. The targeted sample that was used in this study comprised five SAPS investigators who were engaged in in-depth interviews. These participants were generally employed to investigate personal income tax fraud. Moreover, eight NPA DPP STU officials (Senior State Advocates and State Prosecutors) from Durban were engaged in key informant interviews (KIIs). Overall, thirteen participants were sampled purposively by selecting individuals who would possess rich information on the topic under investigation. Participants with vast experience in investigating the scourge of tax evasion were therefore selected. The data collection methods involved in-depth individual semi-structured interviews, and a review of related documents and literature. The interviews were transcribed and the data were interpreted by using codes or categories of themes that followed chronologically.

This study suggests that syndicates that defraud SARS use E-filing as a predominant method of tax avoidance. This system seems to allow defrauders to falsify the information that is provided by the applicant, and it appears that such taxpayers collude with tax consultants, personnel attached to SARS, and other knowledgeable private individuals.

Poor individuals are also prone to committing this crime, or are unwittingly manipulated to do so, particularly because their lack of knowledge regarding tax associated processes exposes them to dangerous syndicates who take advantage of their ignorance. This study found that the relationship between the SAPS DPCI, NPA DPP STU and SARS in Durban was in its infancy. It is suggested this relationship be healed and extended as a matter of urgency. Moreover, the justice system does not appear to help to bring tax criminals to heel as it does not give sentences that deter tax fraud crime. A recommendation that is offered is that the SAPS DPCI in Durban should call for the improvement of SARS E-filing system to detect falsified information by tracing the history of, applicants. Investigators should closely look at current trends to improve present investigation techniques. SARS in Durban should also stage internal investigations to monitor the claims made before tax returns are paid out.

Keywords: Durban; income tax; perceptions, personal income tax; SAPS DPCI; NPA DPP STU, SARS; tax fraud

ACRONYMS LIST

ACRONYM	DESCRIPTION
ADR	Alternative Dispute Resolution
CAS	Case Administration System
CBD	Central Business District
CC	Closed Corporation
CCU	Commercial Crime Unit
CFO	Chief Financial Officer
CGT	Capital Gains Tax
DPCI	Directorate for Priority Crime Investigation
DPP	Director of Public Prosecutions
CJS	Criminal Justice System
E-mail	Electronic Mail
EU	European Union
EWP	Employee Wellness Program
FAIS	Financial Advisory and Intermediary Services
FIFA	Federation Internationale of Football Association
IDP	Integrated Development Plan
IDI	In-depth individual interviews
IRC	Internet Relay Chat
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ITDF	International Tax Director's Forum
IQ	Intelligence Quotient
KZN	KwaZulu-Natal
<i>MO</i>	<i>Modus Operandi</i>
NPA	National Prosecuting Authority
NZ	New Zealand
PAYE	Pay As You Earn

PR	Practitioner Registration
RAT	Routine Activities Theory
RCT	Rational Choice Theory
RFT	Retirement Fund Tax
RSA	Republic of South Africa
SACSSP	South African Council for Social Service Professions
SAICA	South African Institute of Chartered Accountants
SAITP	South African Institute for Tax Professionals
SAPS	South African Police Service
SALS	South African Law Society
SAQA	South African Qualifications Authority
SARS	South African Revenue Service
SDAT	Sutherland's Differential Association Theory
SDL	Skills Development Levy
SMS	Short Message Service
STU	Specialised Tax Unit
IRP 5 / IT3	The Employee Tax Certificate
TAA	Tax Administration Act
TCMP	Taxpayer Compliance Measurement Program
UCEC	Umgenti Community Empowerment Centre
UIF	Unemployment Insurance Fund
UNISA	University of South Africa
US	United States
USD	United States Dollars
UK	United Kingdom
UKZN	University of KwaZulu-Natal
VAT	Value Added Tax

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CHAPTER ONE

GENERAL ORIENTATION AND PROBLEM FORMULATION

1.1. STUDY BACKGROUND

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 funds, 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:n.p.).

Income tax is levied in terms of the Income Tax Act (No. 58 of 1962). The term 'income' is 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 (Silke, 2016:n.p.). In South Africa, the 'personal 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. 'Revenue' is further deemed an important source of income for the government of South Africa (Trading Economics, 2016:n.p.). 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 Legal and Policy Division, 2015/2016:6).

In this context, 'Resident Gross Income' means "the total amount, in cash, that is among others received by or accrued in his favour; this excludes receipts and accruals of a capital nature in a yearly period of assessment. For a non-resident, 'Gross Income' refers to "the total amount, in cash or otherwise, received by or accrued in his favour from a source within the Republic, excluding receipts and accruals of a capital in nature."

Residents are therefore subject to normal tax on their worldwide income, whereas non-residents are subject to normal tax. This is only subjected on their income from sources within the Republic of South Africa (Silke, 2016:n.p.). This means that on-residents are taxed on their income from any South African source. Tax is levied on taxable income consisting of gross income less exceptions and allowable deductions as per the Act. A number of different forms of taxes are levied such as the following: Air passenger tax, Capital Gains tax (CGT), Customs duty, Donation tax, Environmental levy, Estate duty, Excise duty, Fuel levy, Income tax, Pay As You Earn (PAYE), Provisional tax, Retirement Fund tax (RFT), Skills Development Levy (SDL), Stamp Duty, Transfer Duty, Uncertificated Securities tax, Unemployment Insurance Fund (UIF), Value Added Tax (VAT), and other taxes (Van Rensburg, McConnell & Brue, 2011:462).

In the South African context, any natural person is liable to pay tax. Individuals, companies, Closed Corporations (CC), Estates of insolvent persons, Estates of deceased persons, clubs, associations, trusts and any other legal entity with taxable income will pay tax, either because they are legal 'persons' or are defined as such for tax purposes. Income tax is referred to as normal tax. Normal tax is levied on an annual basis and the normal tax rates are fixed by Parliament in the same period using a table format in respect of any year of assessment of a specific financial year. Such rates shall be deemed to continue in force until the next such determination and this collection is facilitated by a system of employees' tax and provisional tax payments (Silke, 2016:3). Regarding this process, Benjamin Franklin wrote the following in 1789: "In this world, nothing can be said to be certain except death and taxes" (Black, Calitz & Steenkamp, 2008:117). Taxes are transfers of resources from persons or economic units to government and are legally compulsory.

They are compulsory owing to the ‘free rider problem’. This means that no person will pay taxes voluntarily, and therefore people have to be compelled to do so. The government is legally granted powers to confiscate resources through taxation from other involuntary transfers of resources (i.e., by illegal means). It is also asserted that the adopted classifications of taxes across South Africa are in line with the International Monetary Fund’s Government Finance Statistics Manual which was published in 2001. It is stated that taxes can be imposed on three tax bases, namely income, wealth, and consumption. Taxing of individuals can be added to these three bases. An individual poll tax is an example of a tax on people. In addition, a tax rate structure can be set. This refers to the amount of tax levied per unit of the tax base.

Selective taxes are referred to as narrow-base taxes. These taxes are imposed on one or a few products and any income excluding leisure. This implies that the entire tax base is not taxed (Black, *et al.* 2008:117-118). This was in collation with the consulted literature, which reveals that ‘personal income tax’ is progressive in nature with marginal tax rates, ranging from 10 to 35 per cent, starting from the year 2006. Rules that allow individuals to deduct the tax payable from (for example) their income, certain medical expenses, and contributions to long term insurance allow for the tax to be less progressive than the marginal tax rates suggest (Van Rensburg, *et al.* 2011:457).

1.2. PROBLEM STATEMENT

Nachmias and Nachmias (1996:52) argue that a ‘research problem’ is a researchable problem calling for a response in the form of a scientific inquiry in line with a research project to be undertaken. Neuman (1997:118) further mentions that researchers need a narrowly focused question before a research project is designed.

Against this background, Schneider and Enste (2000:n.p.) 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”.

Such citizens therefore regard it as their public duty to make tax payments to the government as this act as a major sources of income for the government who should use this money to provide services to the general public for defence, public utilities, transportation, education, roads, and other services (Murghal, 2012:217).

Fraud against a government is not new, and is believed to be as old as a government system itself. A common form of fraud against the government is tax fraud in which individual taxpayers either do not pay taxes or they try to find illegal ways to avoid paying taxes. Tax fraud or evasion is therefore the deceitful means or acts that are used to cheat a person, corporation or government agency (Miller, 2009:30).

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). 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).

A number of notable incidences of personal tax fraud occurred in Durban in recent times. For instance, Broughton (2017:n.p.) reports that a Durban bookkeeper faced trial for three separate incidences involving tax fraud of about R250 million after a judge threw out his high court bid for a stay of prosecution. The accused (Vishan Mohan) allegedly splashed almost R3million of his ill-gotten gains on a luxury apartment in Umhlanga. An interim interdict was obtained in the Durban High Court in 2016, which temporarily halted his prosecution. This was after the accused had argued that the police were ignoring the ‘kingpin’ in the operation and that SARS investigators were protecting their own. This interdict was overturned when Judge Mahendra Chetty ruled it was “inappropriate for this court to prevent the prosecution from bringing charges against an accused, particularly where a significant amount of public money is involved”.¹

In another incident that was reported by Haripersad (2017:n.p.), Terrence Govender (34) was sentenced to 12 years imprisonment for 78 counts of fraud amounting to approximately R15million (taken as one for the purpose of sentencing) in the Durban Commercial Crimes Court. The accused also pleaded guilty to one count of contravening the Banks Act (No. 94 of 1990) after conducting a banking business without being registered and one count of contravening the Financial Advisory and Intermediary Services (FAIS) Act by acting as a financial service provider whilst not being in possession of a license. This sentence was suspended for a period of 5 years each on condition that he would not be convicted of the same offence during the period of suspension.¹

On 21 July 2016, following an investigation conducted by the Hawks (Directorate for Priority Crime Investigation - DPCI) for a lengthy period of time, the Commercial Wing arrested a 42-year-old tax practitioner for fraud in Durban. It was alleged that between 2009 and 2012 the suspect had approached unsuspecting SARS clients, undertook to assist them in submitting their returns, and then submitted fictitious business financial statements as well as false business expenses/losses as supporting documents. When the refund materialised, the accused pocketed large sums of money. He was subsequently expected to appear at the Bellville Commercial Crimes Court (Durban) (News24, 2016:n.p.)

On 13 May 2015, members of the Durban SAPS DPCI arrested two suspects aged 24 and 34 in the Durban Central Business District (CBD) for fraud to the value of R8.1million. A 24-year-old female accused had approached a bank seeking a business loan of R15 million. This female had claimed that she had secured a contract from a major cellular phone network provider to open and operate a call centre.

¹This accused ran two schemes. The first was a trucking scheme where he promised to purchase trucks on behalf of the complainants and to register these onto their names. He assured them that he had work for these trucks and promised to pay them large monthly returns for a period of 5 years. He assured them that their capital was guaranteed. The second scheme was an investment scheme where the accused promised to invest complainants' money with monthly returns, again guaranteeing their capital. Advanced Regional Court Prosecutor Gonas agree (Hazel) Siraramen told the court that the accused used this business as a front to induce more investors to finance his schemes. Payments made to these investors were paid from new investor funds and not from operating activities as he had led the complainants to believe.

She had been informed by the bank that she would be eligible for only R 8.1million. Both accused had been called in to sign their contract, and as soon as they had signed the documents, members of the Hawks pounced on them and placed them under arrest. They were charged for fraud and appeared in the Durban DPCI. They were granted R3000 bail each and the case was postponed to 5 June 2015. The outcome was unknown at the time of completing this study² (SAPS, 2014a:n.p.).

In similar incident that occurred on Wednesday, 25 February 2015, (SAPS, 2014b:n.p.) the Durban DPCI arrested three suspects aged between 24 and 56 in Newcastle and Hillcrest for fraud. It was alleged that on 1 March 2013, Mr Umesh Rabilal was at his brother-in-law's place in Sydenham with five of his acquaintances when two unknown males attacked them and robbed them of their personal belongings. The assailants took Mr Rabilal to the bedroom where he was shot and killed. Three days later, the deceased's boss, who resided in Newcastle, lodged a R4 million claim with an insurance company and further informed them that he was the sole beneficiary.³

² However, when the accused submitted the contract to the bank for perusal, a few concerns were raised. The bank approached the Durban SAPS DPCI who began with their investigation. During this investigation, it was found that this suspect had supplied the bank with false documents and one of her suppliers was in fact her brother who did not have any experience in setting up call centres. The investigators then verified the authenticity of the contract and it was confirmed by the service provider that they had not issued any call centre contract to this suspect.

³ This claim raised suspicions and when it was investigated, it was discovered that on 9 September 2012 a man calling himself Mr Umesh Rabilal had made a call to the insurance company wanting to take out a life cover to the value of R4 million. He had requested that his boss be made the beneficiary. On 1 November 2012, the first premiums were paid. A voice comparison was done and it revealed that the voice, which had taken out the life cover in 2012, matched the voice which had lodged the claim after Mr Rabilal had been killed. It was discovered that the 56-year-old who owned a security company and driving school in Newcastle had had impersonated Mr Rabilal when calling the insurance company to take out the life cover. The 56-year-old was arrested at his business premises in Newcastle and charged with fraud.

In another case, police proceeded to Hillcrest where they arrested a 55-year-old teacher with her 24-year-old son. On 5 May 2014, the body of Sifiso Hlongwane was discovered in the Tongaat sugarcane fields with stab wounds. A few days later, on 14 May 2014, the 55-year-old teacher lodged a claim with an insurance company to the total value of R11 million. The cover was taken and two premiums were paid before Mr Hlongwane had been found dead⁴ (SAPS, 2014:n.p.).

The cases cited above did not all pertain to personal income tax fraud, but they all demonstrate that the problem of fraudulent crimes is widespread and often involves serious financial losses. The *Modus Operandi (MO)* in each case was different, but financial gain was the motive in each case where a callous disregard for human life was also displayed. This callousness poses a challenge in terms of combating, investigating and policing the crime of personal income tax fraud, which further limits the effectiveness of available preventative methods that can be deployed by the Durban SAPS DPCI and NPA DPP STU.

This study complied with established criteria for the investigation of the chosen problem area and utilised appropriate techniques to conduct the research.

- The research was timely, as the prevalence of personal income tax fraud has increased in Durban. This area of research is under-researched in the Criminology and Forensic Studies Discipline (CFSD), as the literature review demonstrated that crime investigators and criminologists in the academic arena have not yet comprehended the nature and extent of this crime. Therefore relevant recommendations stemming from this study will attempt to address this gap in scholarly discourse.
- This study attempted to add to knowledge of this topic in terms of combating, investigating and policing this crime in collaboration with other relevant stakeholders. As a point of departure, local (Durban) SAPS DPCI and NPA DPP STU members were selected as participants in order to hear their voices and to elicit their views based on their experiences.

⁴ During the investigation, it was discovered that the voice of the 24-year-old teacher's son was the one which had taken out the life cover as Sifiso Hlongwane and make his mom the sole beneficiary. Both the mother and son were arrested and charged with fraud. All three suspects appeared in the Durban DPCI on Friday, 27 February 2015.

- The study sought to find answers to questions that surround the scourge of tax fraud from within the criminology and forensic research arena. This was facilitated through an exploration of the perceptions of Durban-based SAPS DPCI investigators and NPA DPP STU prosecutors on personal income tax fraud in Durban.
- Regardless of the relatively small scope of the study, it is envisaged that the findings will contribute to filling the knowledge gap that exists in the Applied Human Sciences field nationally and internationally. This may be achieved through the application of the proposed strategies for combating, investigating and policing personal income tax fraud holistically and effectively.

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 give impetus to a conducted 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 (2002:3) contends that the research questions indicate exactly what is to be investigated; for example, they refer to the relationships among a small number of variables (Neuman, 1997:121). Derese (s.a:n.p.) argues that they 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 need to be interrogated in order to shed light on the broader topic. Research questions further identify which specific questions (in 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 research questions guided this study:

- What is the nature of personal income tax fraud in Durban?
- Has personal income tax fraud in Durban increased in the last three years?
- What is the MO of committing personal income tax fraud in Durban?
- What are the obstacles/challenges that hamper the effective and efficient investigation of personal income tax fraud in Durban?
- Can personal income tax fraud be prevented in Durban and, if so, how can this be accomplished?

1.4. STUDY OBJECTIVES

Leedy (1993:11) asserts that 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.

This process further refers to declarative statements that focus on the identification and the description of concepts and sometimes on a determination of relationships of the said concepts (Session Four: Objectives, Questions, and Hypotheses, sa:n.p.) or identifying and mapping the goals associated with each of the identified research questions (Derese, s.a:n.p.). In consideration of these indications, this study explored and developed an understanding of personal income tax fraud from the Durban SAPS DPCI and NPA DPP STU. The following study objectives were therefore to:

- Explore the nature of personal income tax fraud in Durban;
- Analyse the extent of personal income tax fraud in Durban;
- Determine the *MO* of committing personal income tax fraud in Durban;
- Evaluate the obstacles/challenges that hamper the effective and efficient investigation of personal income tax fraud in Durban;
- Determine if and how personal income tax fraud can be prevented in Durban.

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 of this study. These are designed to highlight the key concepts that underpinned this study. These concepts are defined as follows:

1.5.1 Income tax

This refers to the government's main source of income that is levied in terms of the Act "that governs the taxable income of persons, companies, trusts and natural persons" (SARS Legal & Policy Divisions, 2015/2016:6). This concept is also defined by Loganathan and Nandhakumar (2010:101) as the "tax on individuals' income (both earned and unearned), [and] a tax levied on individuals and corporate incomes". It is the single most important tax and plays an important role in the fiscal regimes of all countries.

1.5.2 Personal income tax

This relates to the tax that is levied on personal income and is different from tax paid on a company's earnings. In an incorporated firm, the owners (shareholders) pay taxes on both their income and the firm's income, whereas in partnerships and sole-ownerships, tax is paid only once on the firm's profits (Business Dictionary, 2017).

1.5.3 Perceptions

A perception is the "process by which people translate sensory impressions into a coherent and unified view of the world around them. Though necessarily based on incomplete and unverified (or unreliable) information, perception is equated with reality for most practical purposes and guides human behaviour in general" (Grobler & Du Toit, 2005:121).

1.5.4 Tax fraud

This concept refers to an “intentional wrongdoing on the part of a taxpayer with the specific purpose of evading a tax known or believed to be owing. Tax fraud requires both a tax due and owing and fraudulent intent,” Internal Revenue Manual [IRM] (2014). Fraud is “a corporate crime that does not have a direct effect. Fraud which involves intentional deception might not kill, but it can fundamentally damage the economy” (Fuller, 2012:256). Goss (2016:20) Eicher (2009) and Snyman (2014) asserts that that, for the sake of the layperson, 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” (Goss (2016:20).

1.6. JUSTIFICATION FOR CONDUCTING THE STUDY

1.6.1 Institutional interest

It is envisaged that this study will elicit awareness of the negative impacts of personal income tax fraud on economic development and stability in Durban which is located in the KZN Province of South Africa. The researcher intends to reveal the findings in academic publications and reports that may be used as an imperative by institutions such as Durban SARS, SAPS DPCI, the NPA DPP STU, as well as the EThekweni Municipality. In essence, this study might serve as an intervention tool to identify potential offenders of personal income tax fraud. It is also believed that this study could provide management teams of these stakeholders a platform from which to initiate, develop and implement intervention measures to curb, if not eradicate, income tax fraud, as the findings and recommendations may be incorporated in preventative measures to police personal income tax fraud across the Durban policing area.

1.6.2 Personal interest

The researcher is a full-time student who resides in the area under investigation, namely Durban Central. The topic was of a specific interest to her due to her daily exposure to multiple scenes of personal income tax fraud. The researcher therefore viewed the study as a tool towards establishing deterrent measures that would combat the prevalence of this scourge and curb the high 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:n.p.). The researcher was thus motivated to conduct the study by an observable increase in personal income tax fraud as taxpayers increasingly submit falsified documents such as incorrect salary statements. This practice of necessity affects economic development and stability in KZN. Income tax fraud negatively impacts service delivery and the welfare of the public, particularly in terms of education and health (Tanzi & Zee, 2001:n.p.). The results of this study will further contribute to a higher competence level during the formulation of strategies to police this crime effectively in Durban and other provinces that may face a similar problem (i.e., personal income tax fraud. 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 in SARS, SAPS DPCI and NPA DPP STU if they look closely at the mistakes that were previously made and then develop new training materials to overcome the challenges of the past. The study suggests various guidelines that may be incorporated in future training manuals for the SAPS and SARS to address the crime of personal tax fraud effectively.

If the findings and recommendations of this study are taken seriously and implemented, then SARS, the SAPS DPCI and the NPA DPP STU in Durban will benefit, because their policy makers will be equipped with a better understanding of the challenges they experience in policing and investigating this crime. They will therefore be assisted in the development of new and efficient methods and techniques to effectively respond to and curb this crime.

1.6.3 Public members (residents)

This study will add value to society as it will establish new ideas with regards to better and more effective strategies to respond to personal income tax fraud in Durban. This will in turn promote more effective policing and investigative strategies as the public will be able to provide detailed information to the responsible SAPS DPCI unit in Durban. This will be crucial for the general livelihoods of Durban 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 Durban will gain confidence in local SAPS and SARS investigators and NPA that their attitude towards and relationship with SARS will improve.

1.6.4 Scholarly community

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 evasion. Once the results of this study have been made available, students in the Social Sciences discipline will be sensitised to the impact of personal income tax fraud in Durban. 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 well as research studies may build on.

1.7. STUDY LIMITATIONS

1.7.1 Conceptual limitations

Tax fraud is a wide and complex field, and therefore this study was limited to personal income tax fraud only. The concepts that guided this study stemmed from the selected theme of the investigation, namely ‘perceptions on personal 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.

1.7.2 Location confinement

This study field was confined to Durban and was limited to SAPS DPCI investigators and NPA DPP STU prosecutors, although they 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 and financial constraints.

1.7.3 The accessibility of the participants

The purposively selected participants were not easily accessible due to their long working hours and the nature of their work. However, to address validity and reliability issues, the cooperation of all the participants and the gatekeepers were obtained through proper arrangements. All the necessary procedures were followed with the encouragement, assistance and motivation of Colonels Singh and Moloi of SAPS DPCI and Deputy Director Advocate Mama Fatima Khawula of NPA DPP STU in Durban.

1.7.4 Refusal by South African Revenue Service as a stakeholder to participate in the study

After numerous e-mails and phone calls to SARS National Head Office to no avail, an e-mail was dispatched to SARS Provincial Branch, inviting their participation in this study. Unfortunately, they declined to participate in an e-mail that was received on 10 February 2017 (see Appendix I and J respectively).

1.7.5 Specifications within the legislative framework and policies

The policies and legislation that were explored in this study were limited to income tax issues only. Other legislative tax frameworks that were not related to this subject were not included, in the interest of brevity and focus. The study was therefore delimited to specific legislations that focus on personal income tax fraud only.

1.7.6 Revisiting general challenges and limitations

1.7.6.1 Permission to conduct this study

A frustrating challenges that was experienced was the delay that was caused by the SAPS DPCI and the NPA National Head Office to grant approval to conduct this study. However, the fact that SARS declined to participate in the study was a serious limitation that affected the richness and comprehensiveness of the data. These latter officials are intimately knowledgeable about this subject as they normally deal with complex tax fraud cases internally. This assertion is supported by the literature and corroborated by the selected participants from the SAPS DPCI and the NPA DPP STU. The fact that SARS declined to participate limited the researcher from collecting valuable data regarding organisational investigations (see section. 1.8.4 of this chapter *Supra*).

1.7.6.2 The study findings

A regulatory framework that governs E-filing could not be traced, as this system is based on trust rather than set principles, rules and regulations. However, this study was able to reveal that investigations and prosecutions related to personal tax fraud are rendered difficult and complicated due to the E-filing system.

1.7.6.3 The study participants

The selected participants from the SAPS DPCI and the NPA DPP STU shared valuable information; however, they became reluctant to share more detailed information on some questions due to the sensitive and confidential nature of their work.

1.7.6.4 The researcher

The researcher focused on posing questions in the interview schedule and endeavoured not to overlap into sensitive territories, although some probing occurred due to the open-ended nature of the interview questions. The questions that were administered to the two participating groups were not similar because their daily functions differed; i.e., one group was comprised of investigators (the SAPS DPCI) whereas the other group was comprised of prosecutors (the NPA DPP STU).

1.8. LAYOUT OF THE CHAPTERS

- **Chapter One: General Orientation and Problem Formulation**

This chapter introduces the study subject and provides insight into the nature of taxation systems, with specific focus on South Africa. The presentation of the problem statement highlights the nature and extent of personal income tax fraud in Durban, KwaZulu-Natal (KZN).

The research questions, aim and objectives of this study and the limitations were also discussed in this chapter.

- **Chapter Two: Literature Review and Theoretical Framework**

This chapter presents an overview of personal income tax fraud and elucidates salient legislations that govern the process of personal taxation. Literature on income tax is reviewed in conjunction with relevant legislations and policies on the taxation system in relation to tax fraud in South Africa. The concept of income tax fraud is analysed within the framework of relevant theories and approaches to enhance understanding of this subject.

- **Chapter Three: Research Design Methodology**

The research design and the methodology that was employed in this study are discussed. The research approach, the location of the study, the sampling and data collection methods, the data analysis procedures, and the ethical considerations that underpinned the study are elucidated.

- **Chapter Four: Data Presentation and Analysis**

This chapter presents an analysis of the qualitative findings on income tax fraud that emerged from the data. The data were extracted from the interview transcriptions that had been processed by the researcher.

- **Chapter Five: Conclusion and Recommendations**

The conclusions and recommendations based on this study are outlined in this chapter.

1.9. SUMMARY

This chapter presented a general introduction to the study. It was revealed that income tax is a government's biggest source of income. Most governments need to levy taxes in order to render public services and to create and maintain the infrastructure of a country. In South Africa, tax rates are imposed on the sources of tax revenue. For example, residents' taxable income is subjected to income tax whereas non-residents' taxable income from different sources is subjected to tax; the latter is levied in terms of the Income Tax Act (No. 58 of 1962). Therefore, to place this study within a specific frame of reference, the problem statement, the research questions, the study objectives, the conceptual demarcations and the limitations that impacted the study were illuminated in this chapter.

CHAPTER TWO

LITERATURE REVIEW, LEGISLATION, POLICIES AND

THE THEORETICAL FRAMEWORK

2.1. INTRODUCTION

Chapter one provided a general orientation to this study in relation to the problem under investigation. This chapter presents a discussion on the reviewed literature and also looks at various income tax related legislations and policies. To enhance understanding of the topic under investigation, the theoretical framework within which the study was located is examined. South African income tax legislation is briefly compared to that of a few other countries.

2.2. UNDERSTANDING PERSONAL INCOME TAX FRAUD: THE NATURE AND EXTENT OF THE PROBLEM

In April 2013, The Tax Administration Act [TAA] (No. 28 of 2011) was introduced on the 1 October 2012. This 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 of Chapter 17. According to Hofmeyr (2013:n.p.), 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 or turn 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 with information, 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:n.p.).

Hofmeyr (2013:n.p.) also states that, in an attempt 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 (Hofmeyr, 2013:n.p.). 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.”

The causes and reasons of ‘tax evasion’ are described by Murghal (2012:220) as some of the following:

“...the absence of tax morality, high tax rates, illiteracy of tax calculation, lack of adequate enforcement for default, lack of adequate tax incentives, non-existence of an equitable and efficient tax system, no public enlightenment campaign, poor relationship with tax payers, authority, poverty, and a proliferation of taxes.”

Against the above background, white-collar criminals are making their fortunes in South Africa and globally with many of them evading taxes or discovering new avenues of tax fraud and continuing to drain the lifeblood of companies and governments. Practically any form of dishonest behaviour can be classified as fraud or a deliberate omission that is intended to induce someone to commit tax evasion or fraud. However, many auditors still confuse fraud and theft. To distinguish between the two concepts, fraudulent acts are always planned, whereas theft may be planned or unplanned (Cascarino, 2015:325).

Tax evasion and fraud has a negative impact on economic development, which is viewed as an essential factor in any country. South Africa and Durban in particular, is no exception. Sound government services and public infrastructure are vital requirements for economic development. A lack of public service provisions defeat efforts to increase citizens' standard of living, especially in developing countries where economic growth is slowed down. As a result, "governments in many developing countries fail to provide adequate public services due to many reasons, the most notable being a lack of tax revenue" (Murghal, 2012:217). Operationally, a taxpayer can commit various tax frauds. These include "wilfully evading tax or failing to pay a tax; making false statements on any return that is to be filed with the federal government; or aiding in the preparation of fraudulent tax returns" (Hopwood, *et al.* 2012:475).

One type of tax fraud, namely tax evasion, costs governments sizable amounts of lost revenue annually and is a major concern across the globe. For example, the US Internal Revenue Service (IRS) revealed that in 1998 only, the amount of unpaid income taxes from individuals and corporate sources totalled approximately \$280 billion, or well over half of the federal budget deficit for that year (Wright & Miller, 2005:1635). This problem grew. The latter authors state that five years later (1999-2003) the US estimated that the loss due to tax evasion stood at approximately US\$21 billion. Adams (2013:n.p.) reveals a loss of \$30 billion a year in Russia, whereas the United Kingdom (UK) stood at \$21 billion a year (Wright, 2013:n.p.). Greece reported a loss of about \$30 billion a year (Daley, 2010:33). These estimations were based on "estimated tax saves of tax evaders and the opposing loss or benefit of tax evasion between government and tax evader. Thus, a key aspect in combating tax evasion and fraud is the ability of tax collectors to detect evasion and fraud" (Fukofuka, 2013:n.p.).

The 1913 ratification of the Sixteenth Amendment to the US Constitution paved the way for the collection of federal income taxes in the US. Soon after that, the costs incurred by World War II made the implementation of a federal income tax an immediate economic necessity. Since then, income taxes collected by the federal government have continued as a prominent way of paying for building and maintaining the US democracy. A Taxpayer Compliance Measurement Program (TCMP) was established in 1973, and this programme discovered an average of US\$99 of income underreported per tax return audit. Three years later, the average underreported amount per TCMP audit rose to US\$142, suggesting that taxpayer non-compliance among 100 million individual taxpayers added up to a significant amount of tax revenue lost each year in the US. Relatively low incidences of tax fraud were further illustrated by the fact that, in 1979, the TCMP conducted 50 000 individual audits, and of those only 200 were referred to the Internal Revenue Service's (IRS's) Criminal Investigations Divisions for in-depth investigation and potential legal sanctions. In 1982, the IRS's TCMP found that 48% of tax returns had been perfectly reported, and that 70% of all tax returns was nearly perfect (Wright & Miller, 2005:1636).

2.2.1 Tax crime as a white collar crime: civil and criminal remedies

The evolution of 'white collar crime' rests on the principle of identifying criminal behaviour in the upper class milieu. Presently (2017), there is no single definition for this term; however, it is generally defined as any illegal act "committed by non-physical means and by concealment or guile to obtain money or property or to obtain business or personal advantage" (Moohr, 2009:n.p.). According to this definition, deliberately cheating on tax activities that are grouped under the term 'evasion' constitutes the commission of this crime. Moreover, "evading taxes does not involve violence or a threat of violence, and its goal involves a transfer of property. The purpose of punishing criminal tax fraud is similar to that of other white-collar crimes, as the emphasis is placed on punishment and deterring socially undesirable conduct," Moohr (2009:n.p.). In support of this statement, the theory of criminal law posits two justifications for this punishment. The first is "to extract retribution for undesirable, immoral financial acts" and the second is "harmful conduct of a specific offender and to deter future crimes by potential offenders" (Moohr, 2009:n.p.).

Like many other white-collar crimes, the balance in tax fraud tilts towards the goal of deterrence. “This is not to suggest that tax fraud is without an amoral component, or to forget that all criminal laws serve a public interest, such as protecting physical autonomy or the security of property” (Moohr, 2009:n.p.).

In this context, the investigation of tax fraud is “calculated to induce prompt and forthright fulfilment of every duty under the income tax law”, and to safeguard a more specific public interest (Moohr, 2009:n.p.). Thus the purpose of the criminal tax enforcement program is “to protect the public interest in preserving the integrity of this [a] nation’s self-assessment tax system by punishing the wrongdoer and deterring other potential tax violators” (Moohr, 2009:n.p.). An important question that needs to be answered in the South African context is whether SARS can impose both an understatement penalty and lay a criminal charge with the NPA DPP STU under Sections 234 and 237 which impose a criminal penalty. The practical difficulty is “that if a taxpayer has been criminally charged and bail has been set, the bail conditions inherently always provide that the defendant cannot communicate with the state witness” (Moohr, 2009:n.p.). As SARS is in this case in all likelihood the most important state witness, the bail conditions in effect prohibit a taxpayer from co-operating with SARS in finalising his/her tax liability. It should be made clear that the taxpayer is in no way prohibited from co-operating with SARS in finalising the outstanding tax assessment (Croome & Olivier, 2015:522).

2.2.1.1 Civil and criminal fraud

Associated tax fraud investigations are approached as civil tax liability to determine whether or not the case is prosecuted for criminal tax violations. In terms of non-fraudulent errors and behaviour, taxpayers can make innocent errors that do not render them liable for a civil fraud penalty. Behaviours such as conducting large transactions in cash, failing to file a tax return, and failing to pay estimated taxes will not by themselves be considered innocent errors (Hopwood, Leiner & Young, 2012:486). Against this submission, “civil fraud results in a remedial action taken by the government like assessing the correct tax and imposing civil penalties as an addition to tax, as well as retrieving transferred assets and civil penalties that are assessed and collected

administratively as part of the unpaid balance of the conducted binding assessment” (IRM, 2014:n.p.). Thus, a ‘civil fraud’ penalty issued by the IRC provides the following principle: “If any part of an underpayment of tax is due to fraud, a penalty of 75 percent of the part of the underpayment attributable to fraud will be assessed” (Hopwood, *et al.* 2012:486).

The latter authors also argue that “criminal fraud results in a punitive action with penalties consisting of fines and/or imprisonment. Criminal penalties are enforced only by prosecution and are provided to punish the taxpayer for wrongdoings. They and serve as a deterrent to other taxpayers” (Hopwood, *et al.* 2012:486). The statute of limitations for criminal tax prosecutions that applies is found in the IRC, which states that, generally, “a person cannot be tried or punished unless indicated within three years of offense”. However, the period of limitations is six years for certain offenses such as defrauding or attempting to defraud the state (Hopwood, *et al.* 2012:486). Therefore, tax fraud as an offense may result in both civil and criminal penalties (IRM, 2014:n.p.). The Commission for Contribution to the European Council (2013:n.p.) mentions that combating tax fraud and tax evasion collectively requires action “at national, European Union (EU) and global level. The European integration process has led to closer integration of the economies of all Member States, with high volumes of cross-border transactions and the rolling back of cross-border transaction costs and risks”. This process has generated huge benefits for European citizens and businesses while creating additional challenges for national tax administrations in terms of co-operation and exchange of information. In response to these challenges, the Member States should work together through a framework agreed at EU level. The following warning is expressed to highlight this collation:

“The unilateral solutions alone will not work at this phase and in a single market. Within a globalised economy, those that seek to escape taxation too easily exploit national mismatches and loopholes.... The EU has a long-standing and well-established policy on good governance in tax matters. The principles underpinning this system are transparency, automatic exchange of information and fair tax competition. This practice is drawn on several years of experience: [i.e.,] automatic exchange of information that has been the EU standard since 2005 for saving income (Commission for Contribution to the European Council, 2013:n.p.).

The Commission for Contribution to the European Council (2013:n.p.) further reveals that the EU

“...has developed a comprehensive toolbox to improve the ability of Member States to fight tax fraud and tax evasion. This comprises EU laws (on improved transparency, exchange of information and administrative cooperation), coordinated actions recommended to Member States (for example on aggressive tax planning and tax havens) and country specific recommendations on strengthening the fight against tax fraud as part of the European Semester of economic governance. In addition to this, the ‘Commission’ in question further presented a specific Action Plan ... setting out key actions that will help Member States with their fight against tax fraud and tax evasion in the field of direct and indirect taxation.”

A number of important steps have already been taken and Member States make use of the available tools. A current priority is for Member States to make the necessary improvements to their national systems as well as to make full use of the European toolbox and to implement what has been agreed upon in a thorough and coordinated way. Thus, it is important to “take effective steps to fight tax evasion and tax fraud, particularly in the current context of fiscal consolidation, in order to protect revenues and ensure public confidence in the fairness and effectiveness of tax systems” (Commission for Contribution to the European Council, 2013:n.p.).

2.3. TAX FRAUD AS A WHITE-COLLAR CRIME

The concept ‘fraud’ is viewed as a civil or criminal offence in order to protect careless and gullible persons from the illegal (unlawful) behaviour of people who obtain some benefit, whether financial or otherwise. Therefore, if a person obtains a benefit by distorting the truth or lying, and that lie or misrepresentation was intended to get the prejudiced person to act to his/her own detriment, then the perpetrator will be guilty of fraud. Fraud is therefore defined as “the unlawful and intentional making of a misrepresentation, with fraudulent intent, which causes prejudice, or which is potentially prejudicial to another” (Joubert, 2010:158). On the other hand, ‘tax fraud’ as a white-collar crime represents a “wide spectrum of behaviours involving individuals acting alone and within the context of a business structure.

The victims of white-collar crime can be the public, the organisation that employs the offender, or a competing organisation. Losses due to white-collar crime are in the hundreds of billion each year and growing, Siegel (2011:317).”

‘White-collar crime’ is defined as “any business-related act that uses deceit, deception, or dishonesty to carry out criminal enterprise. Included within the scope of white-collar crime are such diverse acts as income tax evasion, employee theft, soliciting bribes, accepting kickbacks, and embezzlement”(Siegel, 2011:317). White collar-crime may also be defined as “a crime committed by a person of respectability and high social status in the course of his occupation. This crime have [sic] two essential elements: (i) The offender has to be of high status; and (ii) the offense has to be occupationally based” (Lilly, Cullen & Ball, 2011:272). Gennaro, Vito and Maahs (2012:378) state that “crimes of the powerful” also describe white-collar crimes. The make the following comments in this regard:

“The potential criminals that commission this crime have power; they also share other common characteristics; firstly, they strive for economic control of financial markets, both legally and illegally. Secondly, they work to circumvent not only criminal laws but also governmental regulations that are aimed at governing the market and protecting consumers. Thirdly, the crimes that they commit are costly to society in both human and financial terms. Finally, their goals are to accumulate wealth and exercise power for their benefits. Well-respected members of society who enjoy high social status commit white-collar crimes. In fact, precisely the offender’s prominent status provides opportunity for the crime. The desire for profit drives white-collar crime” (Gennaro, et al. 2012:388).

In this context, Siegel (2011:332) argues that some of these offenders “are motivated by greed; others offend in response to personal problems”.

For many, criminal acts are exciting, risky or thrilling. They involve stealth, danger, speed, agility, deception and power. “Crimes provides [sic] few or meagre long- term benefits. Crimes require little skill or planning. The cognitive requirements for most crimes are minimal. It follows that people lacking self-control need not possess or value cognitive or academic skills” (Siegel, 2011:332).

However, crimes often result in pain or discomfort for victims. Property is lost, bodies are injured, privacy is violated and trust is broken. It follows that people with low self-control tend to be self-centred, indifferent, or insensitive to the suffering and need of others (Renzetti, Curran & Carr, 2003:135).

White-collar offenses are as harmful to the public as street crimes and represent severe threats to the community. The approximate annual cost of white-collar crime is between US\$300 and US\$660 billion. This crime differs from the street-level variety in that it is more complex in method and impact. The nature, degree, and volume of victimisation are also more substantial. Victims of white-collar crimes suffer greatly at the hands of their ‘assailants’, even though the results of the crime may take years to become evident (Gennaro, *et al.* 2012:390). These criminals often begin their criminal careers later and at a lower rate of offending than street criminals. More than a quarter of tax offenders had two or more prior arrests, and more than 10% of bank embezzlers and bribery offenders had multiple prior arrests. Many repeat offenders of this crime range from 19% bribery offenders to 46% credit card offenders, and most had prior convictions.

White-collar criminals are often repeat offenders and as such are not much different from persistent street criminals (Gennaro, *et al.* 2012:397). For law enforcement purposes, general federal fraud statutes in the US that apply in the prosecution of this crime rest on “criminal tax provisions” that apply to a wide and divergent range of offenders, providing a valuable enforcement instrument to the government. Federal refers to US, and not SA. So make this clear in the discourse.

This scope and flexibility produce several issues that can be illustrated through well-known tax cases. These cases fall into one of two categories, namely: (i) tax evasion on lawfully-earned income or (ii) unlawfully gained proceeds (Moohr, 2009:n.p.). The detection of this type of crime is primarily in the hands of administrative departments and agencies. Therefore, “the decision whether to pursue these activities as criminal or civil violations is usually based on the seriousness of the case and the perpetrator’s intent, on any action taken to conceal the violation, and on the individual’s prior record”(Siegel, 2011:330).

The criminals that commission this crime are not always sentenced severely. Some officials, including judges, believe that these offenders have suffered enough. Thus, “the process of arrest and conviction causes them to lose their high place in society and fall from grace. They are also especially sensitive to imprisonment because of their lack of experience within the CJS. The sentencing of white-collar criminals however appears to be affected by bias (Gennaro, *et al.* 2012:39).

2.3.1 Individual taxpayers versus corporate taxpayers

According to the US IRS, individual taxpayers accounted for US\$94 billion unpaid taxes in 1992 compared to US\$33 billion unpaid taxes by corporations. A reason for this may be that the latter group of taxpayers is more effectively deterred by substantial higher IRS audit rates than the average American taxpayer. The common characteristics of non-compliance include being self-employed, high nonwage earners, highly educated, young, and wealthy. Studies found that males are less compliant than females (Wright & Miller, 2005:163).

In the South African context, Section 179 of the Constitution of the Republic of South Act No. 108 of 1996 provides for a single prosecuting authority. This is followed by the NPA Act (No. 32 of 1998) which outlines the legal basis for the establishment of the NPA (Matthews, s.a:n.p.).

In principle, the Office of the National Director of Public Prosecutions (NDPP) (DPP STU in the context of this study) heads the NPA. Four Deputy National Directors and several Special Directors report to the NDPP. The NPA is divided into seven core business units, all supported by a Corporate Services unit. The business unit that was applicable to this study was the SAPS DPCI and NPA DPP STU in the Durban inner city.

2.3.2 Tax liability and payment

In terms of tax liability and payment, the IRM (2014:n.p.) highlights the following important submission regarding taxpayers:

“Taxpayers who knowingly understate their tax liability often leave evidence in the form of identifying earmarks (or indicators). [This] serves as a sign or symptom or signifies that actions may have been done for the purpose of deceit, concealment or to make things seem other than what they are. Indications, in and of themselves, do not establish that a particular action was done. Examples include substantial unexplained increases in net worth, substantial excess of personal expenditures over available resources, bank deposits from unexplained sources substantially exceeding reported income, and documents that appear to be altered or false. Those actions that establish that a particular action was deliberately done for the purpose of deceit, subterfuge, camouflage, concealment, some attempt to colour or obscure events, or make things seem other than what they are. Fraud cannot be established without affirmative acts of fraud. Examples include omissions of specific items where similar items are included; concealment of bank accounts or other assets; failure to deposit receipts to business accounts; and covering up sources of receipts.”

2.3.3 Registering as a taxpayer and tax practitioner

2.3.3.1 Taxpayer

The term ‘taxpayer’ is defined by Croome and Olivier (2015:28) as “a person chargeable to tax, a representative taxpayer, a withholding agent, a responsible third party or a person who is the subject of a request to provide assistance under an international tax agreement”.

2.3.3.2 Registering as a tax practitioner

Croome and Olivier (2015:19) describe a registered tax practitioner as “a person registered with SARS under Section 240 of the TAA. Chapter 18 of this Act regulates the registration of tax practitioners and the reporting of unprofessional conduct of such persons will be dealt with”.

2.3.3.2 The E-filing process in South Africa

The South African Institute for Tax Professionals [SAIT] (2017a:n.p.) provides that it is the recognised controlling body as defined in the TAA of 2011. Section 240(a) of this Act makes the following provision in this regard:

“All tax practitioners register with a recognised controlling body. It is a criminal offence not to register with both a recognised controlling body and SARS. This Institute was established as a need was identified in South Africa to constitute a professional body that focus [sic] on the needs of the tax profession and the public in line with international best practices. This Institute also forms part of the International Tax Director’s Forum (ITDF).”

Its member bodies include the following: The Taxation Institute of Australia, the Irish Taxation Institute, the Chartered Institute of Taxation UK, the Chartered Institute of Taxation of Nigeria, the American Bar Association, the Netherlands Association of Tax Advisers, the US Taxation Executive Institute, and the Chamber of Tax Advisers of the Czech Republic.

2.3.3.3 Work classifications of the South African Institute for Tax Professionals

The SAIT (2017b:n.p.) website as consulted under the title “membership overview: designations and work classifications” highlights that the South African tax profession is divided into various work categories, each with its unique needs and functions. For example, ‘tax practitioners’ provide consulting advice and compliance support to external parties, and ‘in-house corporate employees’ are involved in submitting returns on their employers’ behalf. In support of these functions, government officials create and enforce tax laws in South Africa.

Relevant academics teach tax laws and associated policy concepts in the educational system. The list below presents the work classifications for membership (each of which is available at Master's, general and technician levels). It should be noted that these classifications have no bearing on entry eligibility but that adherence to the annual requirements for maintaining membership is required.

- **Tax practitioner membership (direct and affiliate status):** This form of membership is available for members who are in possession of a 'Practitioner Registration' (PR) number with SARS. These members provide external advice to independent external parties. These members typically include leading tax members of accounting and legal consulting firms. Members in this category seek entry into SAIT with SAIT being listed under the SARS system for obtaining their PR numbers. This form of membership carries the highest level of maintenance requirements because it is directly subject to regulation by both SARS and the South African Qualifications Authority (SAQA). Alternatively, SARS recognition may come from another membership association that qualifies as a recognised controlling body under the TAA, Section 240(a). This alternate 'affiliate' membership classification has reduced maintenance requirements because these members are already subject to annual maintenance requirements from another recognised controlling body.
- **Tax lawyer members:** This form of membership is for tax lawyers who are already members of a South African Law Society (SALS). These members are effectively viewed as automatically registered with SARS due to their law professional membership and this form of SAIT membership is subject to the same annual maintenance requirements as tax practitioner affiliates.
- **Tax advisor members:** This form of membership is for members who provide tax compliance support and tax advice to independent third parties at a fee but have no need for a PR number. These members are typically employees of accounting and law firms.
- **Tax executives and in-house staff:** This form of membership is for members who are employees of listed and unlisted companies that do not provide tax advice to external third parties for consideration. Normally, banks, insurance companies, telecommunication companies, mining companies, manufacturing companies, agricultural companies and

consumer product companies employ these members. These members will often be involved in payroll, corporate tax compliance and tax strategic work for the benefit of their company employer. They do not require a PR number with SARS and are essentially subject to the same annual maintenance requirements as tax advisors who are not in possession of a PR number. The specific role of a tax executive is reserved for the Chief Financial Officer (CFO) engaged in tax, and Tax Directors. Other company employees engaged in tax matters are referred to as in-house staff. It should be noted that some in-house CFOs, Tax Directors and in-house employees may require practitioner registration numbers (often providing some limited form of external advice). This latter group of in-house members with PR numbers will fall fully within the tax practitioner class (and be subject to the same annual tax practitioner membership requirements).

- **Corporate entity members:** This form of membership is for listed and unlisted entities not engaged in the business of providing tax advice to external third parties for a fee. These members will typically include banks, insurance companies, telecommunication companies, mining companies, manufacturing companies, agricultural companies and consumer product companies. This form of membership is the only form of membership provided to an entity as opposed to an individual and is accordingly the only non-voting category of members. In this form of membership, the entities involved are seeking access to SAIT services for the benefit of employees. This form of membership comes without SARS and SAQA regulation and therefore carries no annual maintenance requirements.
- **Government tax professionals:** This form of membership is for government employees engaged in tax. This form of membership is mainly intended for SARS, National Treasury and tax Ombud employees, but other government employees are permitted to apply.
- **Academic tax professionals:** This form of membership is mainly for university professors and lecturers who teach one or more tax courses.
- **Tax professionals (non-practicing):** This form of membership is for tax professionals who have previously engaged in tax but have since ceased active tax practice as an external advisor or as an employee. To fall within this classification, these persons must be 55 years of age or older and may not be engaged as a tax advisors.

- **Foreign Tax Professionals:** This form of membership is available for persons of foreign origin (mainly working abroad or temporarily within South Africa). The annual maintenance requirements associated with this form of membership depends on the intended activity of the foreign applicant. SAIT will only offer PR number status to foreign persons currently holding a South African work permit or a foreign person who previously had the status of a South African citizen or was a permanent South African resident.

2.3.3.4 Tax practitioner registration in South Africa

For the purpose of collecting information for tax practitioner registration with SARS, the first pivotal point is that the information is collected in terms of a provision of the income TAA and is, therefore, subject to the secrecy provisions contained in Section 4 of the Act. This information is required “to make better-informed decisions regarding the system for the regulation of tax practitioners. To the extent that it is used in the process of consultation with other parties, it will be used in a format that will not disclose the identity of the person who provided the information” (SARS, 2017a:n.p.). If after consultation with stakeholders “it is decided to proceed with the creation of a board and it is the view that the information will facilitate the operation of the process, then the legislative authority will be requested to provide the information to the board” (SAIT, 2017a:n.p.). In support of this statement, this professional body (i.e., proposed board) is not required to treat this information as confidential and it is emphasised that SARS cannot refuse to register a person as there is no provision made in the legislation for the refusal of registration of a person who is providing advice in respect of tax matters or who is completing or assisting with the completion of tax documents, and is not excluded from registration by a provision in Sub-Section (2) of Section 67A of this Act. A person’s educational qualifications, experience, type of tax advice or services provided or the volume of services provided, do not affect registration in terms of these provisions (SAIT, 2017a:n.p.).

Furthermore, the minimum qualification and experience criteria to register as a tax practitioner state that “all registered tax practitioners are required to register with a recognised controlling body such as SAIT. All recognised controlling bodies require a minimum academic qualification. All registered tax practitioners are required to register with a recognised controlling body, such as SAIT” (SAIT, 2017a:n.p. and SARS, 2017:n.p.). It is also required that all recognised controlling bodies have “practical experience in basic taxation law and accounting”. For registration where the tax services are rendered via a CC, a company or an accounting or legal firm, the individual members (natural persons) of the CC must register as tax practitioners and not as a CC.

The natural persons working for the company who have sign-off powers must register as tax practitioners with SARS. The directors or partners of the firm as well as anyone whose work is not supervised by any partner or director must register (SAIT, 2017b:n.p.).

2.3.3.5 The South African Revenue Service disputes resolution systems on E-filing

Discussing dispute resolutions systems via E-filing, Boshoff (2017) refers to a dispute process whereby vital documents cannot be accessed. For example, a request to SARS to explain an assessment (Request for Reasons) is lodged but it is either lost or stuck in the SARS system. By the time it is located and SARS has responded to the taxpayer, the SARS system will have timed out an objection. Thus, if an objection is then received, SARS will disallow it. Similarly, SARS may email a taxpayer who may be slow to respond due to circumstances such as travelling abroad.

Therefore, the listed three new E-filing system upgrades by SARS as commenced from 17 May 2017 include the following:

- The first upgrade is an automated ‘Request for Reasons’ which will automatically give you thirty business days to lodge an objection once SARS has responded to the ‘Request for Reasons’. This facility can be used for income tax (personal and corporate) and for VAT.

- The second change is to allow VAT taxpayers to request a suspension of payment via E-filing pending the resolution of the dispute process. Current law uses the ‘pay now, argue later’ rule unless taxpayers can defer the payment. This is similar in principle to the ‘Request for Reasons’ principle and has also been welcomed by taxpayers and tax practitioners.
- Finally, SARS introduced a facility on E-filing to apply for late submission of a dispute. This system allows an applicant to ask for a ‘Request for Reasons’, ‘Notice to Appeal’ or ‘Notice of Objection’ after the period to complete these steps has lapsed. The applicant has to submit reasons for the lateness of the submissions. SARS will then consider the reasons for the late application before considering ‘Reason for Request’, among others. Tax experts have questioned how this will work, as clearly the substance of an individual objection is crucial in deciding whether to be allowed to enter into a dispute with SARS.

These are sensible improvements and should reduce communication failures. SARS E-filing is a central point of reference for both the taxpayer and SARS, and having one channel of information will assist and benefit both parties.

This view is contradicted by Pena (2000:398), who states that, with over 3.3 million taxpayers submitting their returns via the SARS E-filing system, a noticeable increase in targeted attacks from cyber-criminals looking to take advantage has been witnessed over the past years. As hackers’ methods are ever evolving to keep up with digital trends, it is important for taxpayers to be aware of tax season-specific phishing tactics. In collaboration of this statement, cybercrime is maturing so quickly that it is difficult, if not impossible, to define it. Quite recently there was no cybercrime, but today (2017), owing to ‘democratic rights’ advertising and 21st century emphasis on knowledge, skills and technology, many individuals experience a myriad of sophisticated technological attacks on a daily. Most of these attacks are targeted against governmental sites and large cyber-based businesses, SARS included. Most computer crimes are easy to commit and it has become increasingly difficult to detect and apprehend the culprit. Moreover, most of these crimes are committed by ‘insiders’ and are never prosecuted.

The ‘tips following tips’ program are geared towards avoid E-filing scams (Tips to avoid E-filing scams, 2015:n.p). *“Exercising some basic email security tips can go a long way towards avoiding online tax scams. Be protective of your main email address – share it only with trusted sources to ensure it does not end up on spam mailing lists. Never open an email from an unknown sender and be careful of strange attachments as these can be malicious. It is not always easy to tell a real email from a phishing attempt. Beware of any emails that ask for personal, tax, banking and E-filing details such as login credentials, passwords and Pins, as SARS will never request such information over email.*

- *Do not just assume that a cyber-scam will never happen to you. Phishing attacks are very much seasonal, so keep a sharper eye out than normal for suspicious emails claiming to be from SARS during tax season. An excellent resource to keep abreast of these seasonal frauds is SARS itself. Its website has a section devoted to phishing prevention that is always being updated with information on the latest frauds. If you do get an email or phone call that starts ringing the alarm bell, report it to the relevant authorities. Send an email to phishing@sars.gov.za or call the Fraud and Anti-Corruption Hotline on 0800 00 2870.*
- *Today’s cyber attackers are more sophisticated than ever and are using multiple channels to target taxpayers. Short Message Service (SMS) attacks, known as ‘smishing’, are widespread in South Africa. Never give out personal details through an SMS. Similarly, be careful of unsolicited phone calls from individuals claiming to be SARS employees. If in doubt, phone the SARS contact centre at 0800 00 7277 or visit your nearest branch to verify.*
- *The SARS website uses password complexity on its E-filing site to ensure that users do not utilise easily cracked passwords. However, there is even more you can do to ensure your password is never compromised. Create a unique password for E-filing that is not the same as the one that you use for any other sites on the web. Not every site utilises strong encryption practices so being hacked on one site can lead to disaster on another. As an additional safety measure, change your E-filing password every tax season.*

2.4. TAX FRAUD AND EVASION: INTERNATIONAL PERCEPTIONS

2.4.1 Europe

The Commission Contribution to the European Council (2013:n.p.) states that in European countries tax fraud and tax evasion “are limiting the capacity of Member States in European countries, [and that] this perpetuates the raising of revenue to carry out economic policies to address these crimes effectively”. An estimate shows that billions of Euros remain offshore, often unreported and untaxed, which reduces national tax revenues. Decisive action to minimise tax fraud and tax evasion could generate billions in extra revenue for public budgets across Europe. Tax fraud and tax evasion are also a challenge for fairness (an essential condition to make the necessary economic reforms socially and politically acceptable) and equity in Europe. Collectively, fairness and equity also mean creating better and fairer taxation systems.

From the above, it may be deduced that the problems associated with taxation should be spread evenly by simply ensuring that everyone, whether blue-collar employees, multi-national companies that benefit from the single market or wealthy individuals with offshore savings, contribute to public finances by paying their fair share (Commission for Contribution to the European Council, 2013:n.p.).

2.4.2 United States

Tax evasion and fraud are particularly challenging areas of criminological study in the US because many US citizens regularly under-report their income fraud acts, with the excuse that it is often difficult to separate honest error from deliberate tax evasion. As a result, the US government always becomes a victim cheated by citizens who are supposed to be law abiding. One example is the errant taxpayer to whom credit is extended by being allowed to delay paying taxes on money he or she already earned. This remains an important aspect of client fraud. Tax evasion is both personally sensitive and potentially incriminating in the US, and self-reports suggest that this vulnerability relates to substantial under-reporting as well.

Moreover, the dividing line between illegal tax evasion and legal tax avoidance is blurred. Under US law, tax evasion refers to a situation where a person, through the commission of fraud, unlawfully pays less tax than the law mandates (Siegel, 2011:326).

In the US, tax evasion is deemed a criminal offense under federal and state statutes and a person who is found guilty of this crime is subjected to a prison sentence or a fine, or both. An overt act is necessary to give rise to the crime of income tax evasion; therefore, the government must prove wilfulness and an affirmative act that was intended to mislead. Some tax understatement is, however, an inadvertent error that may be due to ignorance of or confusion about the tax law (as is some overpayment of taxes). According to Siegel (2011:326), the theoretical models on this crime generally refer to wilful understatement of tax liability, and empirical analyses cannot precisely identify the taxpayers' intent and therefore cannot precisely separate the wilful from the inadvertent; neither can they, in complicated areas of the tax law, precisely distinguish the illegal from the legal.

In what follows when discussing empirical estimates, the author uses the term that generated the estimates employed. The term 'evasion' is used in a discussion of the theoretical treatments of wilful non-compliance (Slemrod, 2007:n.p.).

One intriguing question is: *How does the level of noncompliance, and its proportion to income, vary by income class?* Somewhat surprisingly, little could be discerned about this from the IRS tax gap studies. Christian (1994:n.p.) wrote a report based on the 1988 TCMP study in which he stated the following:

“Higher-income people evade less than those with lower incomes, relative to the size of their true income; indeed, according to this study those with adjusted gross income above \$500,000 on average reported 97.1 percent of their true incomes to the IRS, compared to just 78.7 percent for those with adjusted gross income between \$5,000 and \$10,000. This pattern appears consistent with the old saying among tax professionals that “the poor evade and the rich avoid, simply translated to the fact that that “the rich tend to reduce their taxes through legal - avoidance - measures such as tax shelters, while those with lower incomes attempt more outright evasion”(Slemrod, 2007:n.p.).

2.4.3 South Africa

In the South African context, tax evasion and tax fraud are two of the most sinister forms of crime, as millions of Rands are side-tracked by tax criminals. The studies that were consulted indicate that it is not unusual for about half of possible tax revenues to remain uncollected (Venter, 2011:2). Tax fraud thus negatively impacts both public finances and the long-term sustainability of economic, social and environmental projects. The cost of tax fraud on the community “has sparked a growing awareness of not only the origins of current debt crises, but also of the scale of corruption in states which fail to effectively challenge the privileged (Hofmeyr, 2013:33).

Determining the nature and extent of tax fraud is fraught with challenges due to the dominating power of fraudsters and tax evaders who are motivated solely by the rationale of wealth and acquisition in which capital ownership confers power over capital (Compin, 2015:n.p.). Tax fraud inevitably relies on the existence of non-cooperative territories or tax havens.

The fight against tax havens is not straightforward because the issuer of the norm often embraces the aspirations of the norm transgressor. Therefore, tax fraud is categorically condemned as a deliberate, often criminal violation of the tax laws and threatens social cohesion.

The extent of unpaid taxes resulting from a blatant flouting of the law represents a serious loss of revenue for the state and local authorities (Gilligan & Richardson, 2005:134). Orewa (1957:n.p.) investigated the characteristics of tax evasion. This study found that “a high degree of inter-district mobility is the main reason of tax evasion on the part of taxpayers”. They also argue that the mobility of wage earners, salaried persons and self-employed persons with permanent and known addresses is a factor that facilitates tax evasion because these people keep moving from one place to another in order to earn legal money. The latter authors also found forms of partial evasion, such as when illiterate persons present only their salaries and wages as taxable income, and traders maintain inadequate records. Dlamini (2011:10) highlights that, in practice, this includes “falsifying of financial statement, not disclosing or misrepresenting relevant information in a tax return, or deliberate failure by a cash business to report the full amount of revenue received”. Tax evasion constitutes fraud, which is a criminal offence.

Balter (1993) in Wright and Miller (2005:1635) suggests that three factors must be present in order for tax fraud to occur, namely:

- The end to be achieved- the payment of less tax than is legally due;
- A state of mind that is variously described as ‘evil’, operating ‘in bad faith’, deliberate and not accidental, or ‘wilful’; and
- An overt act aimed to achieve the non-payment of taxes known to be due.

Tax evasion is regarded as the most serious form of tax fraud in South Africa and is demarcated to a practice involving intentionally paying less of one’s own tax bill than is legally required through the understatement of tax liability. This can occur by either knowingly claiming underserved tax deduction or by underreporting taxable income. Tax avoidance is at the other end of the tax fraud continuum and infers behaviour that may or may not be legal but ultimately lacks the intent to fraudulently misrepresent tax liability. Tax evasion may represent a strategy for deferring the payment of taxes until some later point in time when taxes owed are detected or when the taxpayer has the means and motivation to pay his or her taxes due (Wright & Miller, 2005:1635).

2.5. TAX ADMINISTRATION PRIVILEGES: THE PRINCIPLES OF NON-COMPLIANCE AND PENALTIES

2.5.1 Canada

Revenue Canada (now known as the Canada Revenue Agency) released a declaration of taxpayers’ rights in 1985 and was the first tax administration to do so. Canadian taxpayers are subject to the self-assessment system; that is, taxpayers complete and submit their tax returns and effect payment at the same time the return is submitted to the authorities. Taxpayers do not need to wait for an assessment from Revenue Canada but will in all likelihood be subjected to a tax audit at some stage (Croome & Olivier, 2015:48). Income tax laws in Canada recognise the rights of tax payers to privacy and to confidentiality, which are underpinned by the Charter of Rights and Freedoms. Taxpayers are also assured of the rights to privacy under the Privacy Act.

A taxpayer can object to an assessment if he or she does not agree with it. Revenue Canada's appeal branch will conduct an independent review of the assessment and the objection. If the taxpayer remains dissatisfied with the results, he or she can appeal to the court. Taxpayers have a simplified appeal system because of the fairness provisions. The time available for taxpayers to lodge an objection has been extended under the rules. The fairness provisions grant relief to taxpayers that meet certain criteria but do not assist taxpayers who are treated unfairly by Revenue Canada (Croome & Olivier, 2015:50).

2.5.2 New Zealand

Croome and Olivier (2015:178) state that in 2002, the New Zealand (NZ) Revenue Authority published a discussion paper in which it was proposed that the current legal privilege contained in Section 20 of the Tax Administration Act of 1994 be replaced by General Tax Privileges which is intended to reduce a taxpayer's burden while typically supporting certain types of commercial activity. A tax privilege allows some type of adjustment that will benefit a taxpayer's tax liability.

2.5.3 United States

A taxpayer's privileges in the US are extremely limited. These privileges protect only communications between the taxpayer and the practitioner if they amount to tax advice. Moreover, a court will only protect such communications if the tax preparer was an attorney (Croome & Olivier, 2015:182). The most careful and comprehensive estimates of the extent and nature of tax non-compliance anywhere in the world occur in terms of the federal taxes in the US. The IRS began in 1979 to periodically estimate the 'tax gap'. This means that they determine "how much tax should be paid, but is not paid voluntarily in a timely way" (US Department of the Treasury, Internal Revenue Service, 2005b:n.p.; 2005d:n.p., 2005e:n.p.; 2006:n.p.; as cited in Croome & Olivier, 2015:182; Slemrod, 2007:21).

The cited studies provide separate estimates of the failure to pay the proper amounts of tax due to non-filing, underreporting of tax due on tax returns, and non-payment or late payment of taxes owed. The IRS determines these estimates by combining information from a program of random intensive audits, originally known as the TCMP, with information obtained from ongoing enforcement activities and special studies about particular sources of income (Slemrod, 2007:21).

2.5.4 United Kingdom

It is common knowledge that a taxpayer in the UK needs not supply documents covered by legal professional privilege to Inland Revenue. In this country, the Inland Revenue is awarded powers to call for documents against the taxpayer's right to claim that the documents were subject to a specific privilege. Also, with specific reference to 'statutes', a court should uphold human rights rather than deciding that the statute overrides human rights (Croome & Olivier, 2015:178).

2.5.5 South Africa

The South African law on legal professional privilege is far from clear as to its application to tax advice. "A person other than a lawyer cannot currently claim legal professional privilege, as the privilege is only available to legal advisors acting in their professional capacity" (Croome & Olivier, 2015:183). The Tax Committee of the South African Institute of Chartered Accountants (SAICA) has previously requested that SARS recommends to parliament that, as part of the regulation of tax practitioners, accountants be awarded the same privilege as lawyers (Croome & Olivier, 2015:183).

2.6. THE INTERNATIONAL AND LOCAL LEGISLATIVE FRAMEWORK AND POLICIES ON THE TAXATION SYSTEM

Tax systems around the world have become more complex because of increased globalisation and because financial markets have become more sophisticated. Many tax authorities are seeking to improve their relationship with taxpayers. Research has shown that compliance improves if taxpayers believe that they are being treated fairly (Croome & Olivier, 2015:40).

This implies that administrative efficiency remains important, as this process entails minimising both administrative costs and compliance costs. Two phenomena that are related to costs are tax avoidance and tax evasion. Tax avoidance is defined as legal as it includes actions by taxpayers who take advantage of special provisions (tax loopholes) in the tax code so that their tax liability is reduced. Although tax avoidance is legal, it is wasteful in the sense that taxpayers make choices based on tax considerations rather than economic considerations; i.e., it entails high opportunity costs.

Tax evasion is illegal and consists of actions that contravene tax laws. The most common form of tax evasion is under-reporting of income and claiming more deductions than warranted. Tax evasion is highly prevalent in the informal sector and is characterised by cash transactions that are difficult to trace. Good tax administration requires that tax evasion and tax avoidance be kept to a minimum. For this purpose, the golden rule in tax design is simplification. “Simple tax laws are easy to understand and comply with and provide incentives [and] tax delinquency should also be minimised” (Black, *et al.* 2008:143).

Burg (2004:4) points out that tax evasion has been ongoing since antiquity, when its principal mode was simply taking flight. Evasions, exemptions and corruption (tax officials’ skimming off receipts for themselves) deprived empires of the revenue needed to contribute to roads, armaments, fortifications, and other military needs. Today, those who hold political power of course have the greatest opportunity to provide themselves with the means of evading taxes.

Common methods of evading income taxes in more recent eras include underreporting wages or salaries, not declaring fringe benefits as taxable, claiming greater expenses of doing business than actually occurred, and not reporting income from self-employment or a second job. For small businesses this tactic may involve generating two sets of account books, claiming fictitious expenses, providing fake invoices, and concealing assets through shell companies or ownership by relatives. Black, *et al.* (2008:144) emphasise that the full extent of such tax evasion is immeasurable because each evasion remains unknown until or unless the perpetrator is caught. Excise taxes are frequently avoided through smuggling or ‘black market’ activities. When taxes are evaluated according to the criterion of administrative efficiency, a number of other issues

should also be considered, for example the community's level of literacy. Income tax returns require levels of skills, whereas a head tax is easy to understand.

A further consideration is the efficiency and expertise of the tax administration and the tax morality of the community. Taxpayers' willingness to part with their hard-earned money is linked to perceptions about vertical and horizontal equity of taxes as well as the way in which the tax revenue is spent (Black, *et al.* 2008:144).

If taxpayers feel that the tax system is inequitable and that the government is spending their money wastefully, the willingness to pay tax is undermined. Tax efficiency is also affected by the political will to enforce tax laws. Therefore, for taxes to be administratively efficient, they should be transparent. This means that the tax to be paid by an individual should be unambiguous (predictable) to ensure rational decision-making on the part of both the taxpayer and the government. Transparency means that the government should not take advantage of people's ignorance. Transparency also means that the government has a responsibility to its citizens (Black, *et al.* 2008:144).

To avoid tax incidents and efficiency loss, determining whether a particular tax is progressive, proportional or regressive is complicated, because those on whom taxes are levied do not always pay taxes. The most important goal is to minimise efficiency loss, which means that the government may wish to impose progressive taxes as a way of redistributing income and reducing negative externalities. The onus of paying personal income tax is generally on the individual, because there is little chance of shifting it. However, there might be exceptions. Doctors, lawyers and other professional people who can readily increase their fees may do so to avoid tax. Moreover, trade unions might regard personal income tax as part of the cost of living and, as a result, strengthen their bargaining resolve for higher wages when personal income tax rates rise (Van Rensburg, *et al.* 2011:457).

2.6.1 The South African Tax Administration Act No. 28 of 2011

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 No.28 of 2011 (Croome & Olivier, 2015:3).

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).

2.6.2 Section 234: Criminal offences relating to non-compliance with the Tax Act

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) highlight 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”.

Conviction for a tax offense crime usually results in the assessment of a sentence and penalties. For example, imprisonment of up to five years, a fine of up to \$250000, a civil fraud penalty of 75 percent on the portion of the underpayment due to fraud, and the cost of prosecution (Hopwood, *et al.* 2012:475). Tax non-compliance seems to be related to some other observable characteristics of taxpayers. According to Andreoni, Erard and Feinstein (1998:821–22), “married filers and taxpayers younger than 65 have significantly higher average levels of non-compliance than others”.

Econometric studies by Clotfelter (1983:n.p.) and Feinstein (1991:n.p.) came to a similar conclusion. There also seems to be a variety of methods of tax evasion. TCMP studies conclude that, within any group defined by income, age, or other demographic categories, there are individuals who evade tax and others who do not do so, and some individuals overstate tax liability. For example, for taxpayers with a reported income between \$50000 and \$100000 in 1988, 60 percent understated tax, 26 percent reported correctly, and 14 percent overstated tax (Christian, 1994:39). However, this study do not explore to what extent this heterogeneity is explained by different ‘tastes’ for evasion as opposed to different opportunities to evade (Slemrod, 2007:n.p.).

The sources on legislative frameworks on governing tax in US and South Africa on taxing systems reveal that the US government is not allowed to announce a tax system and then rely on taxpayers’ sense of duty to remit what is owed. This can be also used as an effective method in South Africa. Some dutiful people will undoubtedly pay what they owe, but many others will not. According to Slemrod (2007:n.p.), “the ranks of the dutiful will shrink [over time] as they see how the others are taking advantage of them”. Thus, paying taxes must be made a legal responsibility of citizens, with penalties for non-compliance Fraud should be unearthed and “*the courts [should] look for objective manifestations of fraudulent intent called badges or indicia. Indicia are found in case law and are encapsulated in the IRM*” (Slemrod, 2007:n.p.).

Fraud indicators are divided into two categories, namely affirmative indications and affirmative acts. Affirmative indicators “represent signs or symptoms of actions that could have been performed for the purpose of deceiving or concealing. Affirmative acts are actions that provide evidence that a process was deliberately done to deceive, undermine, or conceal the true nature of events. Therefore, a taxpayer who is to be charged with committing tax fraud must have committed an affirmative act and have violated the law willingly” (Hopwood *et al.*, 2012:470). In this context, the former South African Minister of Finance, Trevor Manuel (1999), remarked that “non- compliance with tax legislation and [the commission of] tax fraud are ranked up there with some of the most sinister criminal activities in the Republic of South Africa (RSA). These criminal activities cost the RSA a considerable amount of rand each and every day.”

Compin (2015:n.p.) is of the view that “it is not politically expedient to compare tax havens to tax-free zones that encourage tax avoidance and fraud. It is therefore easier to treat an audited taxpayer as a fraudster because statistically, the amount of tax recovered can be considerably reduced through appeal and review proceedings”. Therefore, Phillips and Tatum (2001:26) argue that “fraud penalties do not apply if the taxpayer is merely negligent or ignorant of the tax law. The IRS must prove by clear evidence that the taxpayer engaged in intentional wrongdoing and with specified intent to avoid the tax owed. The burden of proof is higher for criminal fraud than for civil fraud.”

In an attempt to understand tax returns in South Africa, an understatement is defined in section 221 of the Act as any prejudice to SARS because of:

- A default in rendering a return;
- An omission from a return;
- An incorrect statement in a return; and
- If no return is required, the failure to pay the correct amount of tax.

For an understatement penalty regarding tax fraud in South Africa, taxpayers who are guilty of understatement must pay the stipulated understatement penalty which is calculated as set out in Section 221(2) of the Act.

The section requires that the understatement penalty must be determined by applying the highest applicable understatement penalty percentage (Croome & Olivier, 2015:476). It should be further noted that the Criminal Law Amendment Act (No. 105 of 1997), more especially Section 51 and schedule 2, prescribes minimum sentences for certain serious criminal offences. For example, in the South African High Court, if a group of persons/law enforcement officers deal in or are involve offences relating to exchange control, corruption, extortion, fraud (i.e., tax fraud), theft or forgery and the amount involved is more than R500 000 (R100 000 if convicted by a group of persons or syndicate and R100 000 if committed by a law enforcement officer), the court must impose imprisonment of at least 15 years for a first offence, 20 years for the second offence, and 25 years for the third offence. However, in the Magistrates' courts, the period of imprisonment ranges from 15 to 25 years, depending on whether the person is a first or subsequent offender (Chetty, 2007a:18, 20).

2.6.3 Section 235: 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:n.p.) 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 Act -*
 - *“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 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:n.p.). The punishment for tax evasion under Section 235 is greater than that imposed for committing one of the offences listed in Section 234. In terms of Section 235, a taxpayer can face a period of imprisonment of up to 5 years and the fine that could be levied by a court could amount to R200 000.

Therefore, Section 235(2) provides that “any taxpayer who makes false statements in the manner stated in Section 235(1) must be treated as guilty of the offence referred to Sub-S section (1) unless that person can prove that there is a reasonable prospect that they were ignorant that the statement in question was false and such ignorance was not a result of the person’s negligence” (Croome & Olivier, 2015:518). In comparison, the basic Law on Tax Evasion and Fraud in the

US is contained in the US Internal Revenue Code, Section 7201, which states the following:

“Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by the law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100 000 or imprisoned not more than five years, or both, together with the cost of prosecution” (Siegel, 2011:326).

2.6.4 Section 237: Criminal offences relating to filing returns without authority

This category of offences is addressed under Section 237 of TAA. The following transgressions fall into this category:

- “(a) Submission of a return or other documents under a forged signature;*
- (b) Use of an electronic or digital signature of another person in an electronic submission to SARS without the person’s consent and authority; and*
- (c) A person who submits to SARS a communication on behalf of another person without the person’s consent and authority.”*

2.6.5 Section 238: Jurisdiction of courts in criminal matters

A taxpayer charged with a tax offence under TAA 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 (Croome & Olivier, 2015:521).

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 (2015:48 & 49) 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 (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.

2.6.6 Section 43: Referral and conduct of criminal investigation

The TAA 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 and is prosecuted under Chapter 18 of TAA (Croome & Olivier, 2015:113).

2.6.7 Section 44: Conducting a criminal investigation

Section 44 requires that SARS must utilise its information-gathering powers as stipulated in Chapter 5, taking account of the constitutional rights of a taxpayer as a suspect in a criminal investigation as enshrined in Section 35 of the Constitution. 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, 2015:115). Furthermore, Section 38 of the National Prosecuting Authority Act No. 32 of 1998 stipulates the powers of the NPA to conduct a prosecution on fraud charges. Such prosecution further requires commercial expertise (Southern African Legal Information Institute [SAFLII] (2014:n.p.). 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, 2008:53). Furthermore, Section 179 of the Constitution (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 [No. 32 of 1998] (Bekker, Geldenhuys, Joubert, Swanepoel, Terblanche & Van der Merwe, 2005:43).

2.7. THE SOUTH AFRICAN JUDICIARY

The Constitution of the Republic of South Africa Act (No. 108 of 1996) is the supreme law of the country and binds all legislative, executive and judicial organs of the state at all levels of government (Gopal, 2008:171). Thus, the principal organs to ensure the application of the law in South Africa are vested on the country's courts. In terms of Section 165(1) of the Constitution, "the judicial authority of the Republic shall vest in the courts established by this Constitution and other law. In terms of Section 165 (2) of the Constitution the courts are independent and only subject to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice". The judiciary is thus required to be independent and impartial and subject only to the Constitution and the law. In this context, Section 34 of the Constitution provides that "every person shall have the right to have justifiable disputes settled by a court of law or, where appropriate, another independent, impartial forum. It is, therefore, the constitutional right of a person to seek relief in the courts" (Chetty & Fouché, 2007b:15-16).

In light of the above, the Durban NPA DPP STU normally has to make a finding concerning the gathered evidence by the Durban SAPS DPCI. This finding determines the presence of evidence or non-existence of certain facts before pronouncing on the rights, duties and liabilities of the parties engaged in a dispute. In this process of litigation and adjudication, the proof of facts is regulated by the law of evidence, which is a branch of the law of procedure (Schwikkard & Van der Merwe, 2017:3).

2.7.1 Types of courts

Bekker, *et al.* (2005:4) state that criminal procedure regulates, among other things, the duties and powers of the criminal courts and prosecutorial authorities; the duties and powers of the police, especially in the course of the investigation of a crime; and the rights of suspects and arrested and accused persons. This process must accommodate and protect the rights and interests of victims. In terms of Section 165 of the Constitution, "the judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law. No person or organ of State may interfere with the functioning of the courts, and an order or decision of a court binds all organs of State and persons to whom it applies."

The courts are responsible for the administration of prosecutions and constitutional development. Section 166 of the Constitution lists the different courts that operate in South Africa. These courts are the:

- Constitution Court;
- Supreme Court of Appeal;
- High Courts, including any high court of appeal that may be established by an Act of Parliament to hear an appeal from a High Court;
- Magistrates' Courts; and
- Any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either a High Court or a Magistrates' Court (Fouché, 2002:16).

Stevens and Cloete (2002:4) reveal that although a distinction can be made between different types of courts in South Africa, "the functions of all these courts remain the same, namely to accord justice to everybody, to punish the guilty, to safeguard the innocent against further prosecution by acquitting them, and to satisfy society's sense of justice by impartial action." While regarding the evolution of private vengeance to public prosecution, most modern states perceive the commission of crime as a violation of the public interest. Punishment is in principle sought by the courts on behalf of society, and only in an incidental way in respect of an individual who has suffered some personal harm or damages as a consequence of a crime. Thus, states should perform the necessary prosecutorial functions in those circumstances where an identifiable victim clearly suffered some personal harm to his/her legitimate interests.

Any criminal court must prove the case of the prosecution 'beyond reasonable doubt'. The prosecution will be unsuccessful if it fails to meet this standard of proof. However, in a civil case the plaintiff will only achieve success if the lesser standard of proof is met upon a 'balance of probabilities' (Joubert, 2015:50 & 51). In contrast, the decision to lay a charge (for example by NPA DPP STU officials who act independently in bringing specialisation to the investigation, prosecution and adjudication of commercial crimes such as personal income tax fraud), unlike the decision to arrest, is not a unitary decision made at a readily identifiable time by a specified individual; rather, it comprises a process consisting of a series of interrelated decisions.

The steps in this process do not always occur in the same sequence. Most often the decision is made after a suspect has already been taken into custody *or is under investigation* (researcher's emphasis). In some instances, the effective decision is made when the police, For example; *Durban SAPS DPCI officials* (researcher's emphasis) decide not to ask the prosecutor to charge, but release a suspect instead. Of greater significance are the decisions made by prosecutors, acting through their assistants, whether to charge suspects already in custody or under investigation in response to requests made by the police that they do so (Miller, 1970:11). To this purpose, "the police remain firmly the central figures in the prosecution process and if weak cases limp forward to court, this can primarily be attributed to a decision that has been taken by police officers, not by their legal advisers. The police are responsible for gathering evidence, interviewing suspects and witnesses and collecting forensic evidence in assembling the prosecution's case" (McConville & Baldwin, 1981:95).

In placing the topic under investigation in context, the work of the NPA DPP STU in Durban mainly focuses on giving practical meaning and effect to the presented evidence by responsible investigators of the SAPS DPCI. This evidence is governed by 'the law of evidence' which provides proof of facts in a court of law and forms part of the machinery that makes substantive law effective. Its main function is to determine what facts are legally receivable (i.e., admissible) to prove the facts in issue and also to determine in "what manner evidence should or may be adduced; what evidence may lawfully be withheld from a court of law; what rules should be taken into account in assessing the weight or cogency of evidence; and what standard of proof should, in a given situation, be satisfied before a party bearing the burden of proof can be successful" (Schwikkard & Van der Merwe, 2017:4).

2.8. THEORETICAL FRAMEWORK

Two criminological theories, namely the Rational Choice Theory (RCT) by Cornish and Clarke (1985) and the Sutherland Differential Association Theory (SDAT) by Edwin Sutherland (1883-1950), were used to underpin this study.

2.8.1 The rational choice theory

The RCT was developed by Cornish and Clarke (1985). This theory views criminal behaviour as the outcome of decisions and choices made by an offender. The theory has its roots in classical criminology. RCT is of the view that “crime is a function of a decision-making process in which the potential offender weighs the potential costs and benefits of an illegal act”. RCT is thus the “concept that offenders calculate advantages and disadvantages not only of breaking the law, but also of what type of offense to commit” and it has practical implications for criminal justice policies (Fuller, 2012:84). Additionally, the theory posits that criminal behaviour is a matter of personal choice that is made after the individual has considered its costs and benefits (Siegel, 2011:84).

2.8.1.1 Conceptualising the rational choice theory

This theory contends that law-abiding behaviour is the product of careful thought and planning. “Offenders choose crime after considering both personal factors such as money and situational factors such as target availability and security measures. Before deciding to commit a crime, the reasoning criminal evaluates the risk of apprehension, the seriousness of expected punishment, the potential value or benefit of the criminal enterprise, his or her ability to succeed, and the need for criminal gain” (Siegel, 2011:84).

2.8.1.2 Offense and offender-specific crime

According to this theory, crime is viewed as being ‘offense and offender-specific’. In terms of the offense, offenders “react selectively to the characteristics of an individual criminal act”. Criminals are therefore not simply robots who engage in unthinking and unplanned acts of

antisocial behaviour. A distinction between crime and criminality is that crime is an event whereas criminality is a personal trait” (Siegel, 2011:86). The researcher initiated a linkage to the commission of personal income tax fraud with the RCT, as this kind of fraud may be committed for the benefit of an individual or organisation. The benefits or gains derived from fraud that is committed by an individual may be direct, such as the receipt of property or money, or indirect in the form of bonuses, promotion, power or influence. A conspiracy follows with the intent of committing a crime, and there is an agreement with another person to engage in that crime where one of the conspirators commits an overt act to further the conspiracy. As previously stated, tax fraud offenders are motivated by a desire for pecuniary gain in order to inflate their wealth by avoiding payment, in one way or another, of taxes.

It is also noted that tax evasion inflates perpetrators’ wealth and it also imposes “a pecuniary loss on others and the government that is directly harmed by losing revenue, and fellow citizens are indirectly harmed as they absorb a higher tax burden” (Cascarino, 2015:329). The application of the RCT may inform policy and practice to curb or even eradicate reoffending because it proposes that punishment should be imposed for any crime that has been committed, as the offender has weighed the advantages and disadvantages before committing that crime, (i.e. tax fraud).

Therefore, the RCT supported the hypothesis that perpetrators of income tax fraud know before they commit this crime that it is an offence. Therefore, either civil or criminal penalties should be imposed for all fraud cases that are committed with proven intent. In the context of the RCT, conspiracy is linked to cases where the taxpayer or tax practitioner arranges to commit tax fraud with a registered tax practitioner for the benefit of both the taxpayer and the tax practitioner (i.e. a rational choice). This implies that the taxpayer and the tax practitioner weighed the benefits of committing such a crime, and decided wilfully that they would gain financially regardless of losses to the state and the community through a heavier tax burden. The benefits in this case can be a refund from SARS. The potential offenders normally weigh the advantages of committing personal income tax fraud against the possibility of arrest and imprisonment to decide whether to commit this crime or not. Their criminal behaviour in this instance affords them with immediate benefit with a slight risk of being caught and a lesser risk of punishment.

2.8.1.3 Analysis of the rational choice theory

According to the researcher, the RCT is in line with the functions of the CJS, which propose that offenders should be punished for committing crimes because they have weighed the benefits and calculated the advantages prior to committing crime. This means that they knew what the consequences of their criminal act might be. The RCT also assumes that criminal behaviour is a personal choice. However, in some cases tax fraudsters negligently commit tax fraud as they do not believe that they are 'killing anyone' but are merely solving their personal financial problems. They are not aware of how their actions will affect the economy. RCT proposes that people are encouraged to maximise their preferences by acquiring wealth and power through fraud. However, not all such choices are economically driven, and preferences can be maximised based on the determination of other values.

2.8.1.4 Criminals by necessity or choice?

The following question was posed by Samenow (s.a.) (in Awake, 2008:4): "Is crime the only choice that some people have in order to survive?" This author views crime as "being almost a normal, if not excusable, reaction to the grinding poverty, instability, and despair that pervade criminals' lives". However, after extensive research, this researcher posits that criminals "choose to commit crimes [and that crimes are] caused by the way [the person] thinks, not by his environment". Samenow (s.a.) (in Awake, 2008:4) further adds that behaviour "is largely a product of thinking. Everything we do is preceded, accompanied, and followed by thinking". So, rather than regarding criminals as victims, this researcher concluded that they are "victimisers who had freely chosen [sic] their way of life."

The key word in this researcher's argument is 'chosen'. In fact, an article in a British newspaper stated the following: "Crime is a career of choice for young urban men aspiring to better things. Humans have free will and can choose the course they want to take, even under difficult circumstances. To be sure, millions struggle daily against social injustice and poverty, or they may live in dysfunctional families, but they do not become criminals" (Samenow, s.a.) (in Awake, 2008:4). In support of this article entitled 'Criminals cause crime', Samenow (s.a.) (in Awake, 2008:4) states that it is not "bad neighbourhoods, inadequate parents ... or

unemployment [that] contribute to the causation of crime. Crime resides within the minds of human beings and is not caused by social conditions.”

In light of the above arguments, the researcher of this study is of the view that the cause of personal income tax fraud has its roots in the belief that the perpetrators of this crime make rational choices prior to engaging in fraudulent activities and that they calculate their actions to avoid being caught. To this end, they weigh the choice to engage in the commission of this crime or not. They normally choose to commit this crime because the gains are estimated to be greater than the chances of being caught, and the penalties might be bearable times.

In summation, this theory is rooted in the view that the commission of personal income tax fraud is the product of rational choice. This can further be linked to the RAT, motivation (monetary value), and learned values that are all incorporated into a perpetrator’s behaviour and personal conscience and desires and the potential for being caught. This implies that motivated perpetrators are driven by greed, lust for power other forces that are drivers of the commission of personal income tax fraud. In the context of this study, any resident in Durban may potentially become a victim of different types of personal income tax fraud.

The accessibility to and availability of various resources on the part of perpetrator also need to be taken into account. However, no literature could be traced to determine why certain individuals are more inclined to become perpetrators of this crime and why they become repeat offenders. One reason may be the availability of a suitable target, such as a vulnerable company. In this context, it is argued that the penalties that apply for personal income tax fraud should be highly publicised to render the anticipated results of this criminal behaviour less appealing. The prospect of a long jail term to deter potential perpetrators should be coupled with placing more emphasis on prevention of this crime and the introduction of new legislative frameworks to combat this practice. The absence of capable guardians such as auditors and security personnel should be addressed. The financial gains that may be reaped by committing this crime and the limited possibility of being imprisoned influence the commission of this crime.

2.8.2 Sutherland's Differential Association Theory

SDAT provides that social learning theories are attached to a fact that “crime is a product of learning the norms, values, and behaviours associated with criminal activity” (Siegel, 2011:174).

Social learning can involve the actual techniques of crime (learning how to commit tax fraud) as well as the psychological aspect of criminality (how to deal with being guilty of tax fraud). Edwin H. Sutherland developed this theory believing that “crime is a function of [an] inherent inadequacy of people in the lower classes” (Siegel, 2011:174). 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” (Siegel, 2011:174).

2.8.2.1 *Principles of the differential association theory*

The following principles that govern the SDAT, and how they impacted this study, are discussed below:

- **Criminal behaviour is learned:** Sutherland implies that “criminality is learned in the same manner as any other learned behaviour” (Siegel, 2011:174). For the purpose of this study, this implies that tax offenders learn to commit tax fraud in different ways, which results in the commission of tax crimes.
- **Criminal behaviour 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 socialise and interact with other individuals who serve as teachers and guides to crime” (Siegel, 2011:174). This implies that tax offenders learn to commit tax fraud from other tax offenders who are regarded as tax fraud ‘veterans’ or specialists. Thus individuals are not born criminals but they learn criminal behaviour through interaction with other people who have knowledge and experience of tax fraud.

- **Learning criminal behaviour 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 behaviour and an antisocial attitude” (Siegel, 2011:174). In the case of tax fraud, the offenders might have grown up in families where there are family members who commit commercial crimes for monetary benefits where children viewed it as a way of living and gaining easy wealth.
- **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 rationalise them, and when to show remorse for them” (Sutherland, 1883-1950) (in Siegel, 2011:174). For instance, criminals learn to fraud tax by falsifying documents with the intention of defrauding SARS for their personal gain by not paying their income tax.
- **The specific direction of motives and drives is learned from perception of various aspects of the legal code as favourable or unfavourable:** 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,” Gillian and Richardson (2005:331). 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, 2005:331).
- **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, Erard & Feinstein, 1998:21). Tax fraudsters are adults who might be employed or self-employed. Although they might have learnt criminal behaviour in their early years, tax fraud or any other commercial crime is, in most cases, committed by people aged 18 and upwards. According to Andreoni, *et al.* (1998:21–22), “married filers and taxpayers younger than 65 have significantly higher average levels of non-compliance than others”.

- **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 behaviour patterns is similar to learning nearly all other patterns and is not a manner of mere imitation” (Sutherland, s.a) (in Murghal, 2012:220).
- **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 behaviour cannot logically be the same as those for conventional behaviour” 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 certain motives to commit tax fraud as is the case in the commission of any other crime, but this is not an excuse to commit a crime.

The absence of tax morality, high tax rates, illiteracy of tax calculation, lack of adequate enforcement for default, lack of adequate tax incentives, non-existence of an equitable and efficient tax system, no public enlightenment campaigns, poor relationship between tax payers and the authority, poverty, and the proliferation of taxes may be some motives for tax fraud (Murghal, 2012:220). “Some offenders are motivated by greed; others offend in response to personal problems” (Siegel, 2011:332).

In light of this theory, the researcher adopted the opinion that personal income tax fraud is a learned social behaviour by operant conditioning. This refers to a specific behaviour that is controlled by stimuli that result in criminal behaviour. This implies that the commission of this crime is reinforced by instances associated with positive monetary rewards, limited chances of being caught, and punishment avoidance, which are forms of negative reinforcement. This is simply disturbed by negative punishment and loss of reward influenced by negative punishment, thus, whether commission of personal income tax fraud is depends on the degree reward or punishment and associated punishments attached to its alternatives. This refers to the theory of differential reinforcement.

The essence of this theory and how it relates to this study suggest that potential perpetrators of this crime encounter their criminal attitudes in their working environments (i.e., tax consultants who are attached to both public and private organisations). These environments can cause them to learn criminal attitudes from others, yet they normally do not regard their actions as criminal. However, personal factors also play a role in the commission of this crime, for example the value persons attach to money as a status symbol.

2.8.3 Analysis of Sutherland's differential association theory

The SDAT is important because it does not specify that criminals come from a disorganised context or are necessarily members of the lower class. However, Sutherland's work fails to account for the origin of criminal definitions. For instance, it fails to explain how expert criminals teach potential offenders. This poses the question: *“Do tax fraud criminals teach their students verbally or practically how to commit tax fraud?”* The other criticism is that this theory is only based on rationality and ignores the fact that some offenders may be motivated by poverty and their ‘teachers’ for the benefit of both the ‘teacher’ and the offender.

In summation, two theories that were relevant to this study were discussed. The RCT has its roots in classical criminology and the SDAT is rooted in social learning theories. Cornish and Clarke (1985) see criminal behaviour as the outcomes of decisions and choices made by the offender. Crime is viewed by RCT as offense-and offender-specific.

In terms offense-specific crimes, the theory posits that offenders react selectively according to the characteristics of an individual criminal act. The benefits or gains of for example tax fraud may be direct, such as the receipt of property or money, or indirect in the form of bonuses, promotion, power or influence.

Edwin H. Sutherland developed SDAT which is based on Sutherland's belief that crime is a function of the inherent inadequacy of people in the lower classes. According to the principles of the differential association theory, crime occurs as the result of a learning process. This implies that no individual is born a criminal but that people learn criminal behaviour at a young age; for instance, a 14-year-old child might start by stealing money at home and, as he grows up, he

easily learns to commit other types of crime, including tax fraud. It is also evident that people learn criminal behaviour through interaction and socialisation with others who have knowledge about and skills in terms of a particular crime. Moreover, there are motives or drivers for any criminal act. The application of SDAT was pivotal in this study as it does not specify that criminals come from a disorganised area or are members of the lower class. This is particularly applicable in terms of white-collar crimes such as income tax fraud. However, Sutherland's work fails to account for the origin of criminal definitions.

2.9. SUMMARY

The literature that was reviewed revealed that non-compliance with tax Acts affects the economy worldwide and has an impact on public service delivery, particularly due to tax fraud and evasion. It became evident that the governments of some developing countries have failed to provide adequate public services for various reasons, of which tax fraud is one. The phenomenon of tax fraud and evasion in Europe and the US was discussed to give insight on how other countries are affected by this particular form of crime. In South Africa, tax fraud is viewed as one of the most sinister forms of crime as millions of Rands are taken out of the country's coffers by tax fraudsters. In Europe, tens of billions of Euros remain offshore, and these amounts are usually unreported and untaxed which severely reduces national tax revenues. The US also experiences high levels of non-compliance with tax laws by taxpayers.

The characteristics of tax evasion were discussed to provide information on the main reasons for tax fraud. Earlier studies revealed the scope of non-compliance with tax laws. It was then evident that taxpayers who knowingly understate their tax liability often leave evidence in the form of identifiable earmarks. A careful and comprehensive estimate of the nature and extent of tax non-compliance nationally and internationally was made. Studies have revealed that compliance improves if taxpayers believe that they are being treated fairly.

The 'administrative efficiency' entailing the process of minimising both administrative costs and compliance costs was also brought under the lens. The most common form of tax evasion appears to be under-reporting of income and claiming more deductions than warranted. Incidents of personal income tax fraud generally occur at individual level, because there is little chance of

shifting it. The discussion also presented the key provisions of TAA (No.28 of 2011) and the administrative non-compliance penalties were illuminated with details on tax administration privileges in Canada, NZ, the US and South Africa. Section 234 of TAA, which outlines the criminal offences relating to non-compliance with the Act, was briefly discussed to list the penalties understatement of tax responsibilities. Section 235, which covers tax evasion and the procurement of undue funds by fraud or theft and the punishment for such crimes, was visited by the researcher. Section 237 specifically relates to criminal offences concerning the filing of tax returns without authority, whereas Section 238 of the Act addresses court jurisdiction in criminal matters. Section 43 pertains to referral and conduct for criminal investigations and Section 44 addresses the conduct of criminal investigations. In light of this Act, every crime has consequences which may result in imprisonment or fines, or both.

The difference between civil and criminal crimes is that tax fraud does not involve violence or a threat of violence, as its goal involves transfer of property. The purpose of the criminal tax enforcement program is therefore to protect public interest and to preserve the integrity of the nation's self-assessment tax system. Civil fraud results in remedial action by the government, while criminal fraud results in punitive action with penalties consisting of fines and imprisonment. Taxpayers who are guilty of understatement must pay the deficit because, if they don't, a criminal charge can be laid against them.

Fraud prevention and internal controls are not the same thing. Every organisation has internal controls, yet most, if not all of these, are susceptible to fraud, so obviously current controls do not seem to be the solution to tax fraud. The theoretical framework that was used to guide to this study was analysed. These theories were the RCT and SDAT respectively. Overall, Chapter two was located in the context of the general body of scientific knowledge that was elicited by this study. The literature review thus conveyed related information that formed the foundation on which the study was based in terms of the scope of the problem under investigation, the research questions, the study objectives and the justification for this study.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1. INTRODUCTION

Chapter two presented the literature review and elucidated the legislative framework comprising two theories (RCT and SDAT) that were used to guide this study. Chapter three will highlight the research approach and the methodology that were employed in this study.

3.2. STUDY DESIGN

The general principles of research design are described according to four dimensions, namely: (a) The purpose of the research; (b) 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). For the purpose of this study, an explorative and a descriptive research designs were deemed suitable to gather the data in order to develop an in-depth understanding of personal income tax fraud. In support of this process, study objectives were formulated in relation to the research questions which were further used in the drafting of the interview schedule.

A combined explorative and descriptive research design was employed to explore and describe the topic under investigation, which was personal income tax fraud in Durban, KZN). Lichtman (2014:112) argues that a phenomenological study is a suitable way of exploring research questions in qualitative research, as such a study looks at different ways to construct information. This research study therefore employed a phenomenological approach, because it looked at the lived experiences of people in terms of a specific problem (Creswell, 2009:13). The phenomenological approach was appropriate because it supported the researcher's quest to understand the respondents' perceptions, perspectives and understandings of the problem under investigation (Leedy & Ormrod, 2010:141).

In this context, the study evaluated the information that had been elicited from the respondents (Mills & Birks, 2014:181; Creswell, 2009:13). The research data were recorded and evaluated and the findings are reported in this dissertation.

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. 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 and perceptions on personal income tax fraud. The solicited information was thus clearly and thickly described, analysed and interpreted to illuminate the income tax fraud phenomenon, detection procedures, prevention options and the challenges experienced by policing this scourge in an effort to curb and outright stop income tax fraud in Durban.

Exploratory studies are utilised to conduct preliminary investigations into relatively unknown areas of research. “They employ an open, flexible, and inductive approach to research as they attempt to look for new insights into phenomena” whereas descriptive studies “aim to describe a specific phenomenon under investigation” (Terre Blanche, *et al.* 2006:35). A combination of these two research designs provided deep explorative and descriptive information on personal income tax fraud in Durban.

3.3. METHODOLOGY

This study used a qualitative research approach in which the main aim was to explore and describe perceptions on personal income tax fraud. 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”. Esterberg (2002:207) adds that “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, 2016:14).

Creswell (2007:37) concurs, adding 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”.

3.3.1 Area demarcation of the SAPS Commercial Crime Unit in Durban

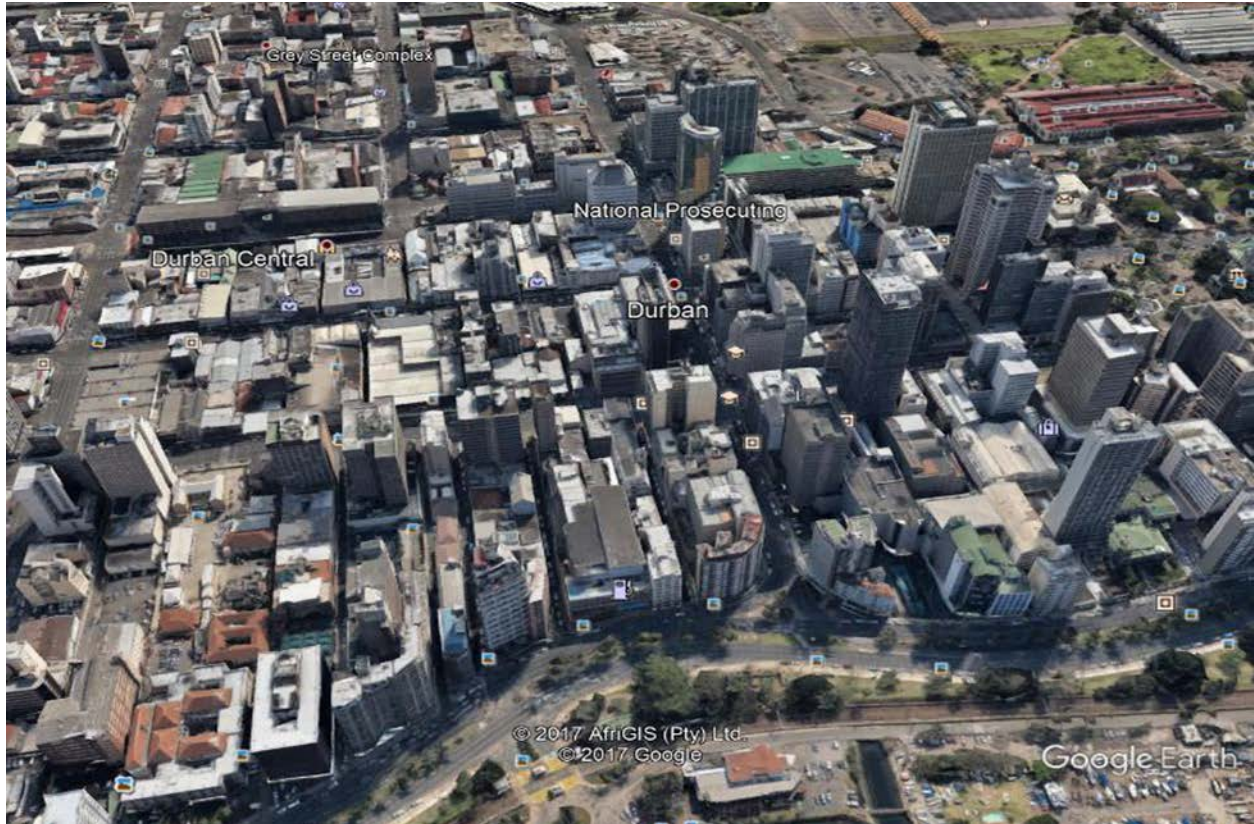
Figure 1: South African Police Service, Durban Commercial Crime Unit location



Source: Google Earth (2017a:n.p.)

Address: 10th Floor John Ross House, Johnson Lane, Victoria Embankment, 4001, Durban

Figure 2: Location of Durban Directorate of Public Prosecutions, National Prosecuting Authority Specialised Tax Unit



Source: Google Earth (2017b:n.p.)

Address: 6th Floor, 88 Field Street, Joe Slovo Street, 4001, Durban

Durban (Zulu: *eThekwini*, from *Itheke* meaning bay/lagoon) is the largest city in the South African province of KZN. Durban's metropolitan municipality ranks third among the most populous urban areas in South Africa after Johannesburg and Cape Town. It is also the second most important manufacturing hub in South Africa after Johannesburg. It forms part of the *eThekwini* Metropolitan Municipality.

Durban is famous for being the busiest port in South Africa. It is also one of the major tourism centres because of the city's warm sub-tropical climate and extensive beaches. The Durban Metro, which includes neighbouring towns, has a population of almost 3.5 million people (Statistics South Africa, Community Survey, 2007 in Wikipedia Search, 2017:n.p.), making the combined municipality one of the biggest cities on the Indian Ocean coast of the African continent. It is the largest city in KZN, which is the 2nd most populous province in South Africa. It has the highest number of dollar millionaires added per year of any South African city with the number rising at a rate of 200% between 2000 and 2014 (Skade, 2015) (in Wikipedia Search, 2017:n.p.).

Today (i.e. 2017), Durban is the busiest container port in Africa (South African Transport Network, 2011 in Wikipedia Search, 2017:n.p.). The Golden Mile, developed as a welcoming tourist attraction in the 1970s, as well as Durban at large, provides ample tourist attractions, particularly for people on holiday from Gauteng. The Golden Mile was redeveloped in late 2009 in time for the *Fédération Internationale de Football Association* (FIFA) World Cup finals. It was resurfaced and widened between Ushaka Marine World and Moses Mabhida Stadium. Durban's most popular beaches are also located along the Golden Mile. This city is also a gateway to the national parks and historic sites of the Zulu Kingdom, and houses the old British Gentlemen's Club, the City Hall, the Natal Sugar Mills, the Botanical Gardens, Mitchell's Park (a park lined with flowers where in the Victorian era inhabitants came to relax in their best outfits) and is *en route* to the Drakensberg (Wikipedia Search, 2017:n.p.). In relation to crime causations, Durban is more dangerous than Johannesburg but much safer than Cape Town (Biblioteca, 2015; Factsheet, 2015) (in Wikipedia Search, 2017:n.p.).

The eThekweni Municipality Integrated Development Plan [IDP] (2013/15:54 & 57) provides that the Metro is committed to making all the necessary contributions to ensure a safe environment for all residents. It also committed itself to continue its involvement in reducing crime rates in the city. However, the key issues relating to crime in Durban include three areas: (i) unacceptably high levels of crime, (ii) an urban design that is not conducive to ensuring a safe environment; and (iii) limited funding to address high crime levels. The demographics of this city suggest that it is ethnically diverse, with a cultural richness of mixed beliefs and traditions.

IsiZulu speaking people comprise the largest ethnic group. It has a large number of people of British descent and has the most Indians of any city outside India. The influence of Indians in Durban has been significant, bringing with them a variety of cuisine, culture and religion. Social cohesion in South Africa's third largest city is strong despite a negative outlook from a few individuals (Wikipedia Search, 2017:n.p.) citing (Anahita, 2011).

The population of the city of Durban and the central suburbs such as Durban North, Durban South and the Berea increased by 10.9% between 2001 and 2011 from 536644 to 595061. The number of Black Africans increased while the number of people in all the other racial groups decreased. Black Africans increased from 34.9% to 51.1% while Indian or Asians decreased from 27.3% to 24.0%. Whites decreased from 25.5% to 15.3% as their neighbourhoods have been increasingly overrun by crime. Coloureds decreased from 10.26% to 8.59%. A new racial group, termed as other, was included in the 2011 census at 0.93%. The city's demographics indicate that 68% of the population are of working age, and 38% of the people in Durban are under the age of 19 years (Durban.gov.za, 2011, cited by Wikipedia, 2017:n.p.).

Economically, the Durban Metropolitan Area (DMA) has a large and diversified economy with strong manufacturing, tourism, transportation, finance and government sectors. Its coastal location and large port gives it comparative advantage over many other centres in South Africa for export-related industries. Durban's subtropical climate, warm marine current and culturally diverse population have drawn in tourists. Durban remains the third richest city in South Africa. In 2015, a report by AfrAsia Bank and the research company New World Wealth listed Durban among the top cities in Africa with the most millionaires. Durban was placed 7th with 2700 millionaires (Mdhuli, s.a) (in Wikipedia Search, 2017:n.p.).

The city has revitalised its inner areas with the new Durban Point Waterfront development located south-east of downtown sporting Ushaka Marine World and many new residential and leisure developments. Efforts by the city to clean up the business district, new developments in Point and the 2010 FIFA World Cup stadium north of the CBD (Moses Mabhida Stadium) have aided in the economic turnaround. In 2010, Durban was rated as a Gamma-level global city. Durban's economic contribution to the region indicates that the DMA is the main economic driver in KZN, contributing over half of the province's output, employment and income.

In national terms, Durban is the second most important economic complex after Gauteng, accounting for 15% of national output, 14% of household income and 11% of national employment. Regional development corridors link Durban to Richards Bay and Maputo, and Westward to Pietermaritzburg and Johannesburg (Wikipedia Search, 2017:n.p.).

3.4. TARGETED STUDY POPULATION

Bless, Higson-Smith and Sithole (2013:164-166) and Ritchie, Lewis, Nicholls and Ormston (2014:120) advocate that 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 comprised all the investigators who, at the time of the study, investigated personal income tax fraud in Durban, KZN and all the prosecutors who prosecuted personal 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, *et al.* 2005:122). White (2005:113) defines 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.

3.5. SAMPLE SIZE AND SAMPLE SELECTION PROCEDURES

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

Purposive sampling is when a researcher “select[s] those individuals that will yield the most information about the topic under investigation” (Leedy & Ormrod, 2010:147). Personal income tax fraud is a special field of study. Therefore, purposive sampling was deemed suitable as a few individuals with rich information on personal income tax fraud had to be selected to provide data on their unique experiences that would give direction to this study.

Du Plooy-Cilliers, *et al.* (2014: 142) assert 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 (2011:166-167) and Du Plooy-Cilliers, *et al.* (2014:142-143). The researcher purposefully selected the sample for 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 13 participants at a ratio 5:8 were selected: Five (05) officials who were attached to Durban SAPS DPCI (investigators), and eight (08) officials who were extracted from Durban NPA DPP STU (prosecutors). Participants who were deemed to be experienced in the investigation of income tax fraud were selected based in the number of years they had been employed as investigators and prosecutor of personal income tax fraud. The selected sample had encountered the problem of tax fraud on numerous occasions, and they were therefore all well aware of the latest trends and the various *MOs* of personal income tax fraud in Durban. The sample selected provided rich, thick and robust information that answered the objectives and research questions of this study.

The Durban SAPS DPCI (investigators) and NPA DPP STU (prosecutors) who participated in this study were experts (i.e., knowledgeable about the topic under investigation). They possessed rich information as they dealt with personal income tax fraud in Durban as investigations and prosecutors respectively. The 13 participants from the two relevant groups provided a balanced and stable sample. Johnson and Christensen (2014:291) and Leedy and Ormrod (2012:97) are of the opinion that, in qualitative research, the researcher is entitled to select only a few participants who can shed the best light on a specific subject, and for this reason relatively small sample sizes are quite ample, as was the case in this investigation.

3.6. INTERVIEW PROCESSES

3.6.1 The Durban South African Police Service Directorate for Priority Crime Investigation (HAWKS)

After full approval had been granted by the principal institution (UKZN) to conduct this study (refer to Annexure C and Annexure D), application was made to the relevant gatekeeper to conduct the interviews with officials attached to the Durban SAPS DPCI (HAWKS). This application was forwarded to the SAPS (research) Head Office in Pretoria in March 2017. Final approval was received in July 2017 (Annexure F). To set up appointments for the interviews, the researcher made a telephonic call and emailed the said SAPS approval letter to the Durban DPCI Unit Commander. The date to discuss how these interviews would set up was set for 20 July 2017 at 10h00.

On arrival for this appointment, the researcher was introduced to the Section Commander for DPCI investigators responsible for tax fraud investigations. This officer continued to engage with the researcher. Five experienced investigators that had worked in investigating this crime were identified. A sixth investigator had recently joined this Unit and he was investigating Road Accident Fund (RAF) complaints. This novice official confirmed that he was still under training and had limited knowledge on the subject. It was therefore decided to exclude him from the interviews. The researcher was then introduced to all five the investigators and they gave their informed consent to be interviewed on the same day, as they were not scheduled for any operational duties.

Unfortunately, the Section Commander was not available to be interviewed on this day and another date was set for her interview. When she did not meet this deadline, she was called multiple times but to no avail. The Interview Schedule was also emailed to this official in the hope that she would respond to the questions in writing, but again without any luck. After further numerous attempts to contact her, she responded by SMS that she had taken sick leave and would not be available. The researcher then tried to reach her three or four times after this, but she was not available to be interviewed.

Five participants from the SAPS DPCI in Durban were thus interviewed on a one-on-one basis. The Interview Schedule was used to guide the interviews. All the participants signed an informed consent form before the interviews were commenced. Each interview lasted approximately one hour. The researcher thus spent an entire day during office hours (i.e. from 11h00 to 16h30) to conduct the interviews.

3.6.2 The Durban National Prosecuting Authority Director of Public Prosecutions Specialised Tax Unit

After receiving final approval from the UKZN Human and Social Sciences Research Ethics Committee to conduct this study, (Annexures C and D), the researcher applied for permission for the gatekeeper to conduct interviews with NPA officials in the Durban NPA DPP STU.

Consequently, the researcher received a final approval letter from the NPA Head Office in Pretoria on 8 June 2017 to conduct interviews with identified experienced prosecutors attached to the Durban NPA DPP STU who were responsible for the prosecution of tax fraud cases (Annexure H). In August 2017, an appointment was made with the gatekeeper of the DPP for the STU in Durban which was scheduled for 13 September 2017 at 8h30.

Upon her arrival for this appointment, the researcher discussed the relevant details regarding this study with the designated advocate. Thereafter, the researcher was allowed to use a boardroom on the same day to conduct the interviews. The gatekeeper, a (Senior Advocate), further informed the researcher that there were eight experienced prosecutors working with tax fraud cases. Five of these prosecutors were experienced juniors and three were referred to as senior prosecutors. The gatekeeper was among the latter group. These prosecutors only dealt with high profile tax fraud cases in the KZN province. Five selected participants were interviewed on that day and the other three were interviewed the following day. All the prosecutors attached to the NPA DPP STU in Durban were interviewed to reach data saturation. During these interviews, the researcher used the prepared Interview Schedule to guide these one-on-one interviews. All the selected participants signed an informed consent forms before the interviews began.

The Durban offices of the SAPS DPCI and the NPA DDP STU are the only offices of these units in the province, as there are no regional offices. Therefore they deal with the entire KZN Province and all matters related to tax fraud are referred to them for investigation (i.e., SAPS) and prosecution (i.e. NPA). The researcher conducted interviews with SAPS DPCI officers to understand personal income tax fraud investigations and with the NPA DPP STU to understand the procedures related to the prosecution of perpetrators of this crime.

3.7. METHODS OF DATA COLLECTION

According to the researcher, it is essential that researchers have sound data that can be analysed and interpreted when conducting a research 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). Various data collection techniques can be used, for instance open-ended narratives, checklists, field guides and interviewing. “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 purpose of data collection in a study is to develop answers that will address the research questions (Creswell & Plano Clark, 2007:178). For this study, the researcher used the following data collection methods:

3.7.1 Documentation

According to Marshall and Rossman (2016:164-166), various documents are often perused in a qualitative study. As this was a qualitative research study, the researcher therefore relied on a perusal of documents that were relevant to the study topic. Flick (2011:124) explains that documents are “standardised artefacts, as far as they typically occur in particular formats such as notes, case reports, contracts, drafts, death certificates, remarks, diaries, statistics, annual reports, certificates, judgements and letters or expert opinions”.

The researcher therefore utilised the following secondary documentation as suggested by De Vos, *et al.* (2011: 379):

- Newspaper articles pertaining to fraudulent death claims;
- Monthly investigative feedback statistics from the investigators' management meetings;
- Quarterly statistics pertaining to personal income tax fraud in Durban;
- Information from personal income tax fraud investigation case files of forensic investigators; and
- Personal income tax fraud documents used during the perpetration of this crime.

Various documents from the above categories were made available under a strict ethical code. The contents were analysed to supplement the data that were obtained from the interviews and the literature review. This environment in which these documents were perused and the interviews were conducted was quiet and secured that no interruptions occurred. It is suggested that interviews can be conducted "at the participant's home or in a more professional environment (De Vos, *et al.* 2011:350). The interviews were conducted in a secure room in the SAPS DPCI and NPA DPP STU offices during working hours.

3.7.2 In-depth one-on-one interviews

Interviews in qualitative research seek 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 they 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 a 'factual' and a 'meaning' level, although it is usually more difficult to interview on a meaning level (Kvale, 1996:n.p.). McNamara (1999:n.p.) points out that "an interview is particularly useful for getting the story behind a participant's experiences when posing open-ended questions, the interviewer can pursue in-depth information around the topic by probing deeper".

Interviews may also be useful as a follow-up to investigate certain participants' responses to the posed questions. This study adopted a semi-structured interview method through IDIs and KIIs. Gordon (2015:314) indicates that with this method, the researcher usually has a list of questions or specific topics to be covered, often referred to as an 'interview schedule' or and 'interview guide'. Thus the interviewee has a great deal of leeway in how to reply. Furthermore, questions may not follow the exact sequence or pattern as outlined in 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, Gordon (2015:314). However, all the questions are generally asked and similar wording is used with all the interviewees. Essentially, the process is flexible as emphasis is 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 (Gordon, 2015:314).

This guide thus allows the interviewer to follow a script to a certain extent (Gordon, 2015:314). In this context, Dentzeker and Hunter (2012:59) argue that while using this guide during an interview, the researcher can go beyond the responses for a broader understanding of the answers that are provided to the posed questions. This guide is viewed by many qualitative researchers as "probing for more detail/seeking more detailed information on the subject matter under investigation" (Maluleke, 2016:26) citing (Dentzeker & Hunter, 2012). 'Probing 'occurs when further explanation is required, or when following up with an additional question or questions, depending on the answers given. This study used this interviewing method in the search for true understanding of the participants' points of view on the research topic. The researcher had the opportunity to obtain clarification of the participants' responses for a broader understanding of the meanings they attached to their experiences as investigators and prosecutors of tax fraud perpetrators. On the disadvantage side, this guide required a lot of time to gather the available data, and it was quite challenging to analyse the data that had been solicited. It was also not easy to quantify and make sense of the huge body of data that had been gathered (Dantzker & Hunter, 2012:59 & 127).

For the purpose of this study, the researcher utilised IDIs and KIIs. Du Plooy-Cilliers, *et al.* (2014:188) point out that an IDI is a qualitative data collection method which allows the researcher to pose questions to selected participants with the aim of learning more about their views, opinions and beliefs about a specific phenomenon. Punch (2014:144) and Wagner *et al.* (2012:133) emphasise that IDI is the most prominent data collection tool in qualitative research. According to Warren and Karner (2015:120), the IDIs in a qualitative study centre on the meanings that life experiences hold for the individuals being interviewed.

The researcher conducted semi-structured interviews with the participants who were selected for this study. This was done to initiate a dialogue between the interviewer and the interviewee in each interview. IDIs open-ended questions were asked because they allowed the interviewee to reply and share information as freely and as extensively as he or she wished (De Vos, *et al.* 2011:352; Flick, 2011:112). These open-ended questions ensured that the selected participants were at ease as they were allowed to express themselves in their own words regarding personal income tax fraud in Durban (Hofstee, 2006:133). The researcher further adhered to the guidelines of Guthrie (2010:129) and Leedy and Ormrod (2010:188) 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 to all the participants. This guide had been designed with particular themes in mind that guiding the interviews in order to address the research questions. This meant that, in order to record the data in a systematic manner that would facilitate analysis, a voice recorder was used. This allowed for a fuller record than if only notes had been taken during the interviews (De Vos, *et al.* 2011:359). The accuracy of the recorded and transcribed interviews was verified by the participants in a post-interview phase. All thirteen the participants were audio recorded from the beginning to the end of the interviews for accurate data collection in preparation for the presentation of findings.

Before the interviews commenced, the researcher gave informed the participants fully of what this study was about and she further clarified the study objectives and the research questions to avoid misunderstandings.

First, 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.* 2006:299). The researcher also took notes during this process to supplement the voice recordings. Each individual interview with SAPS DPCI officials lasted for about one hour, whereas those that were conducted with NPA DDP STU officials lasted between 20 minutes to one hour thirty minutes. The researcher adhered to the interviewing techniques and handy hints suggested by De Vos, *et al.* (2011:343). The questions were asked clearly and briefly and one question was asked at a time. The researcher avoided posing leading and sensitive questions and asked the participants to reconstruct their experiences without any interruption on her part. Furthermore, the researcher adhered to the guidelines by Leedy and Ormrod (2014:156-159) for conducting a productive interview by adhering to the following suggestions:

- Ensure that the interview questions pertain to the research questions.
- Make sure that the interviewees are representative of the group. For the purposes of this study, five highly experienced Durban SAPS DPCI investigators and eight experienced NPA DDP STU prosecutors were interviewed.
- Find a suitable and quiet location to conduct the interviews where the interviewees will be willing to talk, and obtain their written consent by explaining to them what the study is about and how the results of the study will be used.
- Establish and maintain rapport with the participants and do not put words in their mouths during the interview.
- Record the responses of the interviewees verbatim. Accept their answers and keep your reactions to yourself during the interviews.
- Ensure the participants' confidentiality by assigning an individual code or number to each participant.

Conducting an interview is a more natural form of interaction with people than making them fill out a questionnaire, do a test, or perform some experimental task (Terre Blanche, *et al.* 2006:297), and therefore it fitted well with the interpretive approach selected for this research.

3.7.3 Literature and document review

According to Babbie and Mouton (2011:549), the main sources of information available that one will need for research purposes are books, monographs, conference proceedings, reference materials, journal articles, newspapers, magazines, reports, theses and dissertations.

The researcher obtained the literature relevant to the research topic by way of textbooks obtained from the UKZN and public libraries and conducted searches on the internet. The researcher made use of search-engines such as Firefox and Google to conduct searches on the internet, and searched for literature by author name, title, keywords, advance keywords and subject headings that were relevant to the research topic and research questions under investigation. The literature obtained for this study consisted of textbooks, newspaper articles, dissertations and monthly magazines of the Association of Fraud Examiners. The researcher made use of newly published literature to address the study topic and to answer the study objectives and research questions, and to ascertain what the current situation was concerning personal income tax fraud.

3.7.4 Key informant interviews

According to De Vos, *et al.* (2011:467), KIIs 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 collected data. This selection should be based on their expertise in the relevant subject area. For this study, the researcher sat in 30 to 60minute KIIs with NPA DPP STU high-ranking officers to elicit their perceptions on the topic under investigation. This was done by conducting KIIs with these participants, as they knew what was going on in their Unit in terms of responding to this crime and its related management challenges.

Rossi, *et al.* (2004, in De Vos, *et al.* 2011:467) confirm that the easiest, though by no means the most reliable approach to estimating the extent of a social problem is to involve key informants whose position and experience should provide informative knowledge about the magnitude and distribution of the problem.

The general purpose of KIIs is to collect information from a wide range of people including community leaders, professionals, or residents who have first-hand knowledge about the issue. Thirteen (13) Durban NPA DPP STU officials were interviewed as KIIs in this study as they had particular knowledge and understanding that could provide insight into the nature of the problem and they could offer recommendations for solutions, University of California, Los Angeles [UCLA], Centre for Health Policy Research, 2015:n.p.). Thus three Senior State Advocates and five State Prosecutors of the Durban NPA DPP STU were selected as KII participants.

3.8. DATA ANALYSIS METHODS

Qualitative data analysis is, first and foremost, “ a process of inductive reasoning, thinking and theorizing 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 a 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” (Terre Blanche, *et al.* 2006:324). The recorded IDIs and KIIs were interpreted and transcribed by categorising themes and coding them chronologically. Colour coding was used per theme to easily classify and categorise them. The results were analysed. The researcher further identified salient themes, recurring ideas or language and patterns of belief that linked the participants’ views with the subject under investigation.

Babbie and Mouton (2011:490) hold the view that there is no one neat and tidy approach to qualitative data analysis. However, De Vos, *et al.* (2011:249) point out that data analysis is a process to reduce the data to an intelligible and interpretable form, so that the relations of research problems can be studied and tested and conclusions drawn. Leedy and Ormrod (2014:148) and Marshall and Rossman (2006:154) concur that the central task during data analysis is “to identify common themes in people’s descriptions of their experiences”. Hofstee (2006:117) asserts that data must be turned into information through analysis. The researcher adhered to the process of qualitative data analysis as outlined by De Vos, *et al.* (2011:403-404), together with the data analysis guidelines as explained by Babbie and Mouton (2011:490-493), Leedy and Ormrod (2014:146-151), Marshall and Rossman (2016:207-219), and Warren and Karner (2015:209-215).

The researcher therefore adhered to the following suggested processes:

- Critically read the data collected to ensure that the researcher understands the meaning of the data and get a sense of the whole.
- Categorise the collected data and sort and organise them into a logical structure by breaking them into smaller text using keywords. In doing so, the researcher was able to lodge relevant data together.
- Code the qualitative data. Neuman (2014:344-348) and Saldana (2013:3-37) refer to this as a process to organise the raw data into conceptual categories such as concepts and themes which bring order to data.
- Code keywords that emerge from the data in alphabetical order.
- Integrate, summarise and computerise the data. Thereafter, the researcher should write summaries on the data that emerge from the literature that correlate with the primary data.
- Check the data collected for credibility, validity and reliability by comparing the data to previous research. In doing so, the researcher was able to separate the data that were relevant to this research from the data could be excluded.
- Present and discuss the findings of the data in an unambiguous and understandable way.

3.9. METHODS TO ENSURE TRUSTWORTHINESS

Babbie and Mouton (2011:276-278), du Plooy-Cilliers, *et al.* (2014:253-260) and Marshall and Rossman (2016:44-48) are in agreement that the traditional terms reliability, validity, objectivity and generalisability are no longer applicable in a qualitative research approach. They argue that the modernisation of these terms for a qualitative study are credibility, dependability, confirmability and transferability. The overarching term for reliability and validity in a qualitative study such as this one is 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 of the adopted research approach were therefore adhered to:

3.9.1 Credibility

Du Plooy-Cilliers, *et al.* (2014:258) and Marshall and Rossman (2016:46) assert that 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 (Durban SAPS DPCI and NPA DPP STU offices in Durban) in order to understand them better and gain insight into their lives. The researcher remained in their field until data saturation had occurred and constantly pursued different interpretations of the data to share these data interpretations with the participants. To enhance the credibility of this study, the researcher tentatively analysed the data and the relevant literature and documents, and also drew 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 (2011:277) and Du Plooy-Cilliers, *et al.* (2014:258):

3.9.1.1 Triangulation

The researcher examined multiple data sources and used different data collection methods such as documentary study, IDIs and KIIs and an extensive literature review for triangulation purposes as proposed by Babbie and Mouton (2011:277).

3.9.1.2 Referral adequacy

The researcher documented the interviews by means of a voice recorder and recorded them in audio and electronic forms as illustrated in the charts on her computer.

3.9.1.3 Peer debriefing

The researcher requested a colleague of similar academic status who was not involved in this study but who had a general understanding of the field of investigation to review the analysis process of the data and to check the findings.

3.9.1.4 Member checks

After the data had been analysed, the researcher went back to the participants to check whether her descriptions of their lives reflected their authentic views and perceptions. This process is strongly advised by Du Plooy-Cilliers, *et al.* (2014:259) as previously stated *Supra*.

3.9.2 Dependability

Du Plooy-Cilliers, *et al.* (2014:259) assert that 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 for this research in that she:

- Conducted semi-structured interviews with the participants and posed mostly open-ended questions that could be answered openly and frankly;
- 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;
- Recorded the participants' answers on a voice recorder and in writing and transcribed these responses verbatim. This would ensure that, should future researchers conduct similar studies using a similar interview schedule, the same findings or results will be obtained in different settings with the same people at different times, or with a separate groups of similar people at the same time;
- Utilised the services of her UKZN Supervisor to review and assess this study results on a regular basis. The Supervisor provided guidance and identified various shortfalls 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.

3.9.3 Transferability

Babbie and Mouton (2011:277) and Du Plooy-Cilliers, *et al.* (2014:258-259) assert that 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 research 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 investigators who had considerable experience in investigating personal income tax fraud or they were qualified prosecutors who had prosecuted personal income tax fraud 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 in order to maximise the range of specific information that could be obtained from the respondents about the problem under investigation (Babbie & Mouton, 2011:277).

The expert accounts that the respondents provided were based on the same foundations as those that any other expert within the forensic investigation 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.

3.9.4 Confirmability

Du Plooy-Cilliers, *et al.* (2014:259) and Lichtman (2014:387) assert that 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 will confirmed and corroborate what the researcher did. The researcher referred the findings back to the participants and discussed their interview transcripts and her analysis of the data in the final research draft. This process eliminated any inaccuracies and maintained the objectivity of this study. This study was also subjected to an internal and external review process 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.

3.10. 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).

This study was conducted under the supervision of the researcher's Supervisor and the UKZN Ethics Committee in order to ensure adherence to all ethical standards. The 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, 2006b:48).

Full approval from the UKZN Ethics Committee to conduct the study was granted. Approval was also obtained from the Durban SAPS DPCI and the NPA DPP STU (Annexures E and G respectively). Informed consent forms with detailed information about the study as well as verbal clarification were presented to the participants before the interviews commenced. This was done to avoid any misunderstandings. An important ethical consideration before entering a research field is to gain "permission to enter the field that has been decided on". Permission by the relevant authority or gatekeeper is as important as letting the participants know what the project seeks to accomplish. These considerations were strictly adhered to.

Kirk (1999:307) argues that all the people who are directly involved in a research project should be consulted. The researcher therefore had direct telephonic contact with each participant to make arrangements to meet on a suitable date and at a convenient time as the interviews were conducted during their working hours. "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, 2000:360). Therefore, the participants were ensured of their voluntary participation. They were also requested to sign the informed consent form prior the interviews. 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, 2006a:46). No participant was forced to participate in the study and all the participants agreed to participate and signed the consent form (Babbie & Mouton, 2001:n.p.).

A researchers should avoid any harm that may affect the respondents individually or collectively in the data collection process (Flick, 2006a:50). The participants were therefore not required to engage in any discussions that might cause discomfort to them. Moreover, the confidentiality of the participants' information was ensured and their personal information, including their real names, was not disclosed to anyone and will not be revealed in the research report. Their biographical details are included without disclosing their names. The researcher therefore ensured that the "anonymity and confidentiality" of the respondents were ensured (Flick, 2006a:50). The respondents were also not deceived in any way (Struwing & Stead, 2001:69), as the researcher informed them that there would be no remuneration or any form of reward for their participation in the study.

The data will be safely and securely stored in a facility at UKZN and destroyed after five years. "It is very important that you store your data (i.e. recordings and transcripts) in a safe, completely secure container, so that no one will be able to access these data who is not meant to see" (Flick, 2006a:50).

3.11. SUMMARY

This study aimed to explore and describe personal income tax fraud. A qualitative approach was suitable to achieve this aim and explorative and descriptive research designs were utilised. A purposive sampling method was used which was in line with the purpose of the study. Semi-structured one-on-one interviews were deemed appropriate for exploration and description purposes. It was explained that the face-to-face interviews were conducted in the participants' work settings. Audio-tape recordings were made to ensure accurate data collection. The data were analysed by means of a category and theme and coding process. The recorded interviews were transcribed for analysis purposes. The requirements for credibility, transferability, dependability and conformity were adhered to.

All ethical considerations were taken into account. In this context, the study was guided by the UKZN Research Ethics Committee, SAPS National Instructions (2006), and the responsible Supervisor. Permission to conduct this study was granted by the relevant gatekeepers and proper arrangements were made with them as well as with the participants prior to conducting the

interviews. The participants signed informed consent forms, and they were assured that their participation would be anonymous and confidential. Deception of the participants was avoided, and they received no payment or rewards for participating in this study.

Overall, the chapter provided a description of the research design and methodology. The focus was on the research designs and data collection procedures, as well as the population and the sample compilation and the sampling techniques. The next chapter will present the findings that emerged from the data.

CHAPTER FOUR

DATA PRESENTATION AND ANALYSIS

4.1.INTRODUCTION

This Chapter presents the primary findings of the study. The data are presented and analysed using thematic analysis and coding. Each theme that emerged is discussed in terms of was supporting findings that were traced in the literature and that were discussed in detail in Chapter two of this study report. Thirteen participants' responses were analysed to explore the perceptions of SAPS DPCI investigators and NPA DPP STU prosecutors on personal income tax fraud in Durban. This was done in consideration of the problem statement, the research questions, and the objectives of this study. The findings are consequently categorised under the questions that were posed to the selected participants.

The interviewees and their responses are referred to numerically; for example, the five SAPS interviewees are referred to as IDIP 1-5, whereas the eight NPA interviewees are referred to as KII1, KII 2, until KII 8.

4.2. THEMATIC ANALYSIS

According to Creswell (2007:125), "themes become the categories for analysis". Thematic analysis is performed through the process of coding in six phases to create established, meaningful patterns (see section 3.8 of Chapter three of this study). The findings that are presented and discussed below are related to the questions in the Interview Schedule (refer to Annexure A).

4.3. DISCUSSION OF THE FINDINGS

Questions (presented in italics and in inverted commas in this section) were posed during the IDIs and KIIs and the responses are presented for example as 'IDI P 1' (in-depth interview Participant 1) please explain the complicated code you used instead?? Or 'KIIP 8' (key

informant interview Participant 1), as was previously stated. The researcher took notes and a voice recorder was used during the interviews.

The interviews were all conducted in English. The participants' responses were transcribed in English and are reported verbatim here in the interest of authenticity. The reader should note that the language was not edited. Also note that, for brevity and ease of reading, the two interview groups will be referred to as SAPS DPCI and NPA DPP STU participants in some instances.

4.3.1 Question 1: *In your view, what is the nature of personal income tax in Durban? (Elaborate on your answer)*

The responses to the “*nature of personal income tax in Durban*” generally reflected the same view among all the SAPS DPCI and NPA DPP STU participants. Clearly, the participants were experienced and knowledgeable and all perceived personal income tax as a potential fraud risk. Below are some of their responses:

“In Durban, income tax fraud is high. Many syndicates claim via E-filing. We receive more than 10 cases per month” (IDI - P 1).

“Income tax fraud is a huge problem in Durban. If you have a little bit of background of how SARS operates and you are an accountant or have some knowledge of it, it is easy to manipulate the E-filing system of SARS” (IDI- P 2).

“We have a problem with tax fraud in Durban. The syndicates [commit] fraud via the E-filing system of SARS” (IDI P - 3).

“We have received many cases of income tax fraud. The use of the E-filing system which came as a breakthrough to make our lives easy so as not to stand in long queues is the one that contributes to income tax fraud in Durban” (IDI - P 4).

“The SARS E-filing system came with a major problem of tax fraud. Lots of cases we have dealt with are claimed via the E-filing system and in most cases the tax consultants are involved” (IDI - P 5).

The selected NPA DPP STU officials shared the following in terms of the nature of this crime in Durban:

“SARS is involved as a complainant. Taxpayers work together with tax practitioners to defraud SARS by not declaring the income they earn. They submit fraudulent documents via E-filing or by hand submission” (KII - P8).

Select ONE participant reference system and stick to it. This was very confusing

“It is perpetuated through the E-filing system. These people have a skill. They submit falsified documents in order to receive undue funds from their claims” (KII- P 2).

“Government collects tax from taxpayers. Individuals go directly to SARS or use E-filing system to declare and submit fraudulent documents to SARS with the assistance of tax practitioners” (KII - P 3).

“People fail to disclose the income they earn. They evade or send false information to SARS with an aim to receive undue funds” (KII - P 4).

“It is a crime, it is an offence. It is a worldwide problem. People underreport their income or send false information in order to claim a lot of money from SARS” (KII- P 5).

“Ordinary people sit down and plan to submit returns on behalf of taxpayers via the E-filing system which is accessible to everyone. Those criminals take advantage of this system and file false claims. They manipulate the system. They usually agree with some taxpayers that when the money is due, they get commission depending on the amount they received” (KII - P 6).

“Deals with a taxpayer who submits false information via E-filing system or through handing over, also called personal filing. It is done by either inflating expenses to claim deductions or by providing false information to SARS” (KII- P 7).

“Tax practitioners normally submits false claims on behalf of taxpayers. They do this upon agreement to receive a certain percentage or commission depending on the amount claimed. In some cases, taxpayers themselves are defrauded by tax practitioners by using their personal information like bank accounts without their knowledge and taking all the money. Then, a taxpayer will later receive a letter from SARS stating that they have paid them a certain amount which they haven’t received” (KII - P 8).

The participants’ perceptions that income tax fraud is a common and growing phenomenon are echoed by the findings of Hofmeyr (2013) and Hopwood, Leiner and Young (2012) (see section 2.2). Venter (2011) and Hofmeyr (2013) (see section 2.4.3) also report a similar findings.

4.3.2 Question 2: *Based on your experience, what is the extent of personal income tax fraud in Durban? (Elaborate on your answer.)*

When asked about *“the extent of personal income tax fraud in Durban”*, several participants (both SAPS DPCI and NPA DPP STU officials) described the extent as substantive. The following are some of their comments:

“It is serious because large amounts are claimed so that their tax consultants can receive 10% commission” (IDI - P 1).

“E-filing might have made the life of the SARS employees easier, but in the end it opened doors for fraud on a bigger scale” (IDI- P 2).

“Huge cases have been reported by SARS to us and in most cases the taxpayers agree on a certain amount with the tax consultants after they have received their claims for their own benefits” (IDI- P 3).

“There is a very strong case that I investigated where the employee was exploited by the employer where he used him to open bank accounts and defrauded SARS using his personal details” (IDI- P 4).

“I blame the introduction of the E-filing system because this has contributed to the rise of income tax fraud cases. I had a case of an educator who was reported and she claimed large amounts from SARS” (IDI - P 5).

In support of the sentiments shared by the Durban SAPS DPCI officials, the NPA DPP STU officials highlighted the following:

“It is very high. We have dealt with so many cases as we are working for the whole province. We have one Specialised Tax Unit office per province. As for KZN, we are really in crisis for now” (KII - P 1).

“It is very bad. We have dealt with a number of cases. It is widespread worldwide. It is not only a problem for us but in all countries like Australia where they are in a serious crisis” (KII - P 2).

“Before the E-filing system was introduced, it was not that bad. We hardly had cases of income tax fraud because all taxpayers were submitting documents to SARS on personal filing. Now we are in the world of technology and cybercrime. That is why we have so many cases of fraud like tax fraud” (KII P 3).

“It is very bad in this province, not Durban only. Actually, worldwide” (KII- P 4).

“I do not have statistics with me. However, we receive a large number of cases in this office. We are eight of us, both seniors and juniors, but we try our best to work very hard on each case and prosecute” (KII - P 5).

“It is quite rife in South Africa and in other countries. People manipulate this system because there are loopholes in it” (KII - P 6).

“In my personal experience, there is a very high percentage of income tax fraud I have dealt with, including high profile members of the public” (KII - P 7).

“It is a worldwide problem. As for KZN Province, we have received many cases of tax fraud. There are so many cases that we are still working on in order to be brought to court and prosecute” (KII - P 8).

Wright and Miller (2005) (see section 2.3.1) also refer to the large frequency of personal income tax fraud. The US Department of Treasury, as cited by Slemrod (2007) (see section 2.5.3) and Black, *et al.* (2008) (see section 2.6) also reported a similar finding. Clearly, the extent of personal income tax fraud is severe, and it is a world-wide phenomenon that impacts states’ access to tax revenue significantly.

4.3.3 Questions 3 & 4: *In your experience, what is the role of the National Prosecution Authority (NPA) in prosecuting personal income tax fraudsters in Durban?*

And

“What is the role of SAPS in policing occurrences of personal income tax fraud in Durban?”

The latter question received partial coverage, as the responses differed significantly. The responses are presented below:

“Taxpayers are aware of the implications of their claims and they know it is illegal” (IDI- P 1).

“The community is not aware of the schemes that are going on and that the SAPS or SARS is interested in any information that can assist them” (IDI- P 2).

“They know it is illegal and that they can be caught and arrested. However, the community seems like they believe that to defraud an organisation is unlike murdering someone. They are just ignorant” (IDI- P 3).

“Everyone knows that it is illegal. However, the community members, more especially the poor and uneducated people, are the main targets of tax consultants when filing claims. The tax consultants normally promise them huge amounts and tell them that they need a certain amount as their commission when they receive claims” (IDI – P 4).

“They are aware that once they are caught they will be arrested. But because of greediness and personal gain they do not think about jail” (IDI – P 5).

The literature that was consulted and the responses *supra* revealed that the SAPS plays a vital role in policing the occurrence of personal income tax fraud. However, the participants felt that certain factors should be evident to confirm that tax fraud has occurred. The points that they mentioned echoed the views of Matthews (s.a.n.p.) (see section 2.3.1), Balter (1993, in Wright & Miller, 2005) (see section 2.4.3), and Burg (2004) (see section 2.6).

The role of the NPA in prosecuting personal income tax fraud was viewed as vital by the participants, who made the following comments:

“As the NPA, we represent the complainant which is SARS. Our role is to prosecute the suspect. Most taxpayers who were exploited normally become state witnesses as they point out the person who pretended to be working for SARS. Criminal procedure and civil procedure is being followed. In the case of civil procedure, the exploited taxpayer is asked to pay back SARS and the fraudster faces criminal charges. Penalties are 100%. The losers are taxpayers who are exploited” (KII - P 1).

“We receive dockets from the SAPS, decide if it is ready to be brought to court based on the evidence that has been brought to us. If there is enough evidence, we summon the suspect and prosecute” (KII - P 2).

“Once a crime has been committed, the NPA has to prosecute that crime. Our role is to ensure that the perpetrators of crime are found guilty. But basically we represent the complainant which is SARS in this case” (KII - P 3).

“Is to ensure that perpetrators are convicted and punished accordingly and to ensure that [lost] revenue is reimbursed” (KII - P 4).

“We prosecute all tax cases. There is a memorandum of understanding between SARS, the SAPS and the NPA. The SAPS sends dockets to us with all information and evidence obtained from SARS’s internal investigators together with a SAPS investigation report in one docket. Then we look at it and decide to prosecute the perpetrator” (KII - P 5).

“SARS has a specialised unit that investigates tax fraud cases. They then open a case with SAPS specialized unit called DPCI because by law it is only the SAPS that has a mandate to open cases and provide a case number for each docket. Then all these cases are sent to our unit called the Specialised Tax Unit, because tax fraud is a specialized crime so it needs special attention. This Unit receives all opened cases from the SAPS; we evaluate the evidence and decide on prosecution” (KII - P 6).

“Over the past three years our role has been minimised due to the Tax Administration Act that has come into effect. Prior to that, when we were working under the Income Tax Act, we used to have a high percentage of prosecutions. We represent SARS and prosecute the perpetrators of crime because fraud is a criminal offence” (KII - P 7).

The importance of the process where evidence is gathered by the SAPS DPCI and then submitted to NPA DPP STU in Durban was confirmed by this study (see section 2.7.1). The finding thus highlights that NPA DPP STU officials should interpret the evidence they receive for effective prosecution and conviction rates. This is confirmed by the following comment:

“Our role is to ensure that the suspect is found guilty and sentenced” (KII - P 8).

4.3.4 Various questions related to obstacles and challenges

In this section, the themes that the questions addressed are presented in bold in the questions. The group that the question was posed to is presented in brackets at the end of the question.

- **Question 3:** *In your experience, what are the **obstacles/challenges** that hamper the effectiveness and efficiency of investigating personal income tax fraud in Durban? (Elaborate on your answer (SAPS)).*

- **Question 3.1:** *In your opinion, what are the **challenges of minimising personal income tax fraud** in Durban? Please elaborate on your answer (SAPS).*
- **Question 4:** *In your experience, what are the **challenges that hamper** the effectiveness and efficiency of prosecuting personal income tax fraud in Durban? [Elaborate on your answer] (NPA DPP STU)*
- **Question 4.1:** *In your opinion, what are the **challenges of prosecuting** personal income tax fraud in Durban? [Please elaborate on your answer] (NPA DPP STU)*

These questions attempted to highlight the obstacles and challenges that may hamper the effectiveness and efficiency in investigating personal income tax fraud in Durban. The SAPS participants vented different challenges that hindered them in responding effectively to this crime:

“Our challenge is that SARS does not give us all the relevant information that can assist in the investigation process. They will tell you that according to Section 4 of SARS they are not allowed to do so” (IDI – P 1).

“E-filing is done from different Internet Portal (IP) addresses. The whereabouts of the main person cannot be established, and all the ‘innocent’ people are caught and have to repay SARS even though they never received a quarter of the refunds paid” (IDI – P 2).

“We do not get all the relevant information from SARS on reported cases. Not because they do not have it, it is just because it is not in their powers to do so which becomes problematic for investigation” (IDI – P 3).

“The challenge is that the taxpayers normally do not even update their particulars with SARS. You can find out that you are investigating a case whereby a taxpayer is not easily traceable” (IDI – P 4).

“SARS does not provide us with all the information and sometimes the taxpayers can tell you that they do not know anything, they were assisted by the tax consultants and sometimes you find out that such a tax consultant is not known to SARS” (IDI-07-07-05).

The NPA DPP STU officials verbalised the challenges that they experienced as follows:

“Ninety five percent of the investigations is done by SARS. We get complex matters that involve various taxpayers. SARS struggles to get people to testify because many cases are done via the E-filing system” (KII - P 1).

“We have difficulty in finding the suspects, [as we] do not have a designated court. We queue for space and wait for the availability of a court” (KII - P 2).

“SARS realizes late that a crime has been committed. Not all taxpayers are audited. You can find out that the perpetrators have been doing this crime from 2005 and then are caught in 2017. The other challenge is that it is not easy to locate a suspect” (KII - P 3).

“We do not have dedicated courts to deal with this crime and legal degrees do not provide enough training on tax law” (KII - P 4).

“It is the nature of the relationship between SARS and the taxpayer. SARS is interested in getting their money back. SARS entertains taxpayers. Sometimes you find out that they have private discussions although the case has been opened. This affects us as the NPA because once the case is opened, there must be no private discussions between SARS and the taxpayer” (KII - P 5).

“Most of the time, these cases are more sophisticated than others because it is the use of the computer that is involved. It is not easy to establish who has really committed this crime. People can fraudulently use your details without you knowing. They use people to register, use internet cafes to file false returns, which is not easy to establish which username or computer was used. SARS only audits if fraud is suspected” (KII - P 6).

“The new Tax Administration Act allows SARS to negotiate with a taxpayer. Whereas before this new Act, the offender was punished. The new Act gives taxpayers more options and tax discretion. They are offered the option of an Alternative Dispute Resolution (ADR)” (KII - P 7).

“SARS has a loophole in the auditing part. The E-filing system is the biggest challenge because you can sit at home and file false claims for yourself and other people to get commission, as they do. You do not even need to verify your filed claim in the SARS branch; instead, SARS just sends back the money as claimed to be due while its fraud. Even banking details are not verified, so this is the biggest challenge” (KII - P 8).

In light of the provided responses, the obstacles/challenges hampering the effectiveness and efficiency of investigating personal income tax fraud was varied. The challenges ranged from people refusing to testify in court, lack of sufficient evidence, the lack of a designated court, to insufficient auditing processes. The most predominant problem seemed to be the E-filing system, which is fraught with loopholes and opportunities for income tax fraud. These cited obstacles/challenges echo with the findings by Croome and Olivier (2015) (see section 2.2.1) and Hopwood, Leiner and Young (2012) (see section 2.2.1.1).

In terms of SAPS DPCI investigators’ challenges in minimising personal income tax fraud in Durban, the responses were as follows:

“The cases that are investigated are handed to courts but the biggest problem is that in most cases the taxpayer receives a fine as punishment and not a sentence” (IDI – P 1).

“SARS issues an IRP5, and we start by making sure that it is a legal document. We look at what the person does and what he is claiming for on his return. For me personally, E-filing is the problem. The criminals out there see loopholes and are using them to their advantage” (IDI – P 2).

“One of the biggest challenges is that you can investigate the case and then the courts give fines. I do not believe this serves as a deterrent because people are not scared of paying fines compared to being jailed” (IDI – P 3).

“As long as there is still this E-filing system where taxpayers do as they please, it will be a problem. The sad part is that they are caught but they are mostly granted fines [rather] than serving years in jail” (IDI – P 4).

“The courts are not doing justice. They should treat tax fraud as a serious crime like murder. Yes, some syndicates get imprisonment, but in most cases they receive fines which is not a problem for someone who is rich and defrauding SARS” (IDI – P 5).

A golden thread that was evident among the listed challenges was, once again, the E-filing system. Another challenge highlighted the fact that fraudsters are not deterred by fines. This implies that the legal framework for income tax fraud should look at sterner and more severe sanctioning as a matter of urgency. The challenges in minimising personal income tax fraud that were mentioned by the selected participants were in line with those described by Siegel (2011) (see section 2.4.2), Gilligan and Richardson (2005) (see section 2.4.3 paragraph 3), and Gennaro, *et al.* (2012) (see section 2.6.2 and section 2.3).

4.3.5 Question: The modus operandi of income tax fraudsters

- **Question 4 and 5:** *In your view, what is the Modus Operandi of committing personal income tax fraud in Durban? (Elaborate on your answer.)*

The issue of “*understanding the MO in committing personal income tax fraud*” was also investigated. The SAPS officials’ responses were as follows:

“They do not warrant their claims” (IDI - P 1).

“False claims are done via the E-filing system” (IDI - P 2).

“The taxpayers submit false claims via the E-filing system and in most cases tax consultants are involved and take their commission from taxpayers. However, some are fake tax consultants not known to SARS” (IDI - P 3).

“Income tax fraud is done through E-filing. The E-filing system gives them a chance to do as they please. That is how they submit false information to SARS” (IDI - P 4).

“Poor people are targeted and in the end they have to face the consequences and they really do not know what is happening, while the main person is collecting lots of money. These [poor] people are just happy with the scraps they receive” (IDI – P 5).

The NPA DPP STU officials revealed the following in relation to the *MO* of this crime in Durban:

“In most cases these criminals approach taxpayers, act as if they are working for SARS and tell them that SARS owes them large amount of money. Then the taxpayer will give them all their details and agree on paying commission depending on the amount claimed. In most cases, these criminals change banking details for the money to report to them. They normally take 10-30% commission but sometimes the taxpayers do not get even a cent although they were promised that money” (KII - P 1).

“The taxpayers submit falsified documents via the E-filing system. We rarely receive cases where a taxpayer submitted false claims alone. They are normally approached by criminals pretending to be tax practitioners, or sometimes they are registered and employed by SARS practitioners who are part of the syndicate claiming on behalf of the taxpayers” (KII - P 2).

“There are organised syndicates. They pretend to work for SARS with the aim of defrauding SARS and the taxpayer. We hardly get cases where a taxpayer worked alone in filing false claims. These criminals take commission from received funds. However, there are many cases where employed SARS tax practitioners themselves defraud taxpayers and they get caught and sentenced” (KII - P 3).

“Tax practitioners recruit taxpayers by using their details. They do this by obtaining a refund. They are given a commission. Loophole is on the E-filing system. This system was not ready to be introduced in South Africa because it is based on trust. We have trust issues in this country and people see a loophole in it and it is working for their benefit” (KII - P 4).

“It depends. In my list of cases I have a lot of VAT cases. There are over 50 taxpayers, someone will approach them to file tax returns and promise them a lot of money. Some open companies with innocent people’s names. The taxpayers point out the people who approached them to send false claims” (KII - P 5).

“They take advantage of the E-filing system. They send falsified information to SARS in order for them to receive undue refunds. You feed the computer with false information and declare that, for example, you donated, and you have many dependants on your medical aid, among others and receive undue funds for all of that” (KII - P 6).

“People submit false information regarding your deductions; for example, car allowance, medical aid and they submit false information” (KII - P 7).

“They are a syndicate that is out there defrauding SARS and unknowing taxpayers. Yes, in some cases you find out that the taxpayer did it for him- or herself, but it is very rare. However, for the fact that their details were used they get involved. These people go to schools and firms, among others, to look for taxpayers to exploit so that they get money” (KII - P 8).

The *MO* for committing personal income tax fraud that were described by the participants were in line with the findings by Wright and Miller (2005) (see section 2.2), Black, *et al.* (2008) (see section 2.6) and Miller (2009) (see section 1.2).

4.3.6 Question 4.1 and 5.1: *In your opinion, what are the factors that contribute to the **current** **spate** of personal income tax fraud in Durban? (Elaborate on your answer)*

This question related to the reported escalation of the income tax fraud phenomenon and a related question attempted to elicit experiences in terms of *factors that contribute to personal income tax fraud in Durban*. These questions received sufficient coverage. It was quite revealing to note that various disturbing factors impacted the commission of this crime, as was revealed by the SAPS participants.

“Self-gain is the main factor” (IDI – P 1).

“I think greediness and personal gain are the contributing factors to the rise of income tax fraud cases in Durban” (IDI – P 2).

“People are hungry. So the main factor is financial gain, obviously” (IDI – P 3).

“They are benefiting from SARS so they even recruit their friends to submit false claims as well” (IDI – P 4).

“People are rich from defrauding SARS. So they are benefiting from false claims and some tax consultants assist taxpayers in doing such illegal acts as they receive commissions from this” (IDI – P 5).

In support of the responses by the SAPS DPCI Durban officials, the NPA DPP STU officials expressed their views as follows:

“It is greed, poverty and desperation for money” (KII - P 1).

“Personal enrichment. They want money and they do it over and over again because they do it for money without getting caught” (KII - P 2).

“Greed and they see the opportunity. These taxpayers are working but greedy. As SARS does not audit everyone, they do not get caught and that encourages them to continue” (KII - P 3).

“Greed of fraudsters, unemployment rate and poverty” (KII - P 4).

“They make lots of money. They are just greedy and selfish” (KII - P 5).

“They see the opportunity on the E-filing system and use it. They receive lots of money and they then get encouraged to continue with this criminal activity” (KII - P 6).

“They know that it is easy to manipulate and exploit the system so people find easy ways of getting money and to be wealthy. So they take advantage of desperate people and of the SARS system” (KII - P 7).

“They are greedy and want to be rich with government’s funds that must be utilised for the public’s needs” (KII P 8).

Various factors contribute to income tax fraud in Durban, as was verbalised by the participants. Murghal (2012) (see section 2.2) discusses some of these contributory factors as well. These factors are further clarified by Compin (2015) (see section 2.4.3). These factors echo with the findings obtained from these participants.

4.3.7 Question 4.2 and 5.2: *In your view, is the public aware of the role of the South African Police Service (SAPS) and the National Prosecuting Authority: Director of Public Prosecutions Specialised Tax Unit in policing/prosecuting fraudsters of personal income tax in Durban? (Elaborate on your answer.)*

This question looked at officials’ perceptions of public awareness regarding personal income tax fraud in Durban. The SAPS and NPA DPP STU officials shared the following views:

“They are not aware enough. They think they are only robbing government whereas they are robbing themselves, their communities” (IDI – P 1).

“Taxpayers are now aware that there are people who are out there hungry and exploiting them. The syndicates themselves know very well that it is a crime and once caught they will be arrested and sentenced. At least if the taxpayer receives a letter from SARS stating that they have received funds without them knowing those funds, they go there and report the matter” (KII - P 2).

“I think they are aware because once a docket is opened, the case is ‘on’ for investigation and sent to us for prosecution” (KII - P 3).

“They believe that money is government’s not individuals’. They hate paying tax. They do not understand why they should pay so much tax” (IDI – P 3).

“They know it is a scheme. When they suspect something, they now report it to SARS or to the SAPS. But in most cases they report it to SARS” (KII - P 5).

“Communities report only if they were not part of the syndicate. Nevertheless, if they received money they do not bother themselves reporting suspected criminal activity. Instead, they send referrals and this becomes a chain that once you bring two people for example you will get commission” (KII - P 6).

“They are aware that it is a crime but because SARS system has loopholes. They keep on doing it because they gain [from it]” (KII - P 7).

The participants were generally in agreement that the public is aware that income tax fraud is a crime and this fact highlights the need for stricter and more severe penalties if it is ever to be curbed or eradicated. The fact that the crime is exacerbated once a fairly law-abiding citizen gets away with tax fraud implies that the problem will spiral out of hand and will become very difficult, if not impossible, to curb if not urgently addressed. Strategies to create public awareness in order to curb the problem are addressed by Fukofuka (2013) (see section 2.2), Moohr (2009) (section 2.2.1) and the Commission Contribution to the European Council (2013) (see section 2.2.1.1).

4.3.8 Question 4.3 and 5.3: *What processes have been followed to respond to/prosecute perpetrators of personal income tax fraud in Durban?*

This research question elicited sufficient coverage by both the SAPS DPCI and NPA DPP STU participants who generally agreed that this crime was rife in Durban at the time of the study and that awareness campaigns were required to address it.

Some key responses by the SAPS officials are presented below:

“We conduct awareness talks with the institutions where taxpayers claim. For example, we recently visited schools and big companies” (IDI – P 1).

“We visited schools and companies where we had educational talks and the taxpayers were given a chance to claim in our presence” (IDI – P 2).

“We send a message to the community to be careful of scammers and people who pretend to be SARS officials while they are out there with the intention to rob them” (IDI – P 3).

“We visited various companies with the aim of educating the community on the E-filing system and the implications of illegal false claims” (IDI – P 4).

“We do awareness campaigns in companies using SARS officials” (IDI – P 5).

In terms of the processes that were followed to prosecute income tax fraudsters in Durban by NPA officials, they offered the following:

“Receive a docket from SAPS, query the docket further, decide on prosecution and get accused in court to be found guilty and sentenced”(KII - P 1).

“Receive docket from SAPS and decide on prosecution based on evidence provided” (KII - P 2).

“SARS conducts internal investigations, opens a case with SAPS and then we receive a completed docket with all evidence from SAPS. We then look at it and decide to prosecute and the suspect is tried. If there is no evidence, it means there is no case” (KII -P 3).

“SARS opens a case, the SAPS locates the suspect and arrests him or her. We receive a docket and prosecute the suspect” (KII - P 4).

“We prosecute cases that come before us. We rely on evidence” (KII - P 5).

“We receive a docket from the SAPS with detailed information from the SARS investigation and theirs. The SAPS traces the suspect and makes arrests. We then decide to prosecute based on criminal and civil procedure” (KII - P 6).

“When SARS picks up the fraudulent activity, they investigate and lay a complaint with the SAPS. The SAPS then sends a docket to us. The Act only allows SARS to complain if they pickup fraud. They send a docket to us. We look at it and we decide to prosecute. The SAPS does an internal investigation and confirms suspicion and hands the case to the SAPS” (KII - P 7)

“We prosecute the cases that have open case numbers. The SAPS submits dockets to us for prosecution” (KII - P 8).

4.3.9 Question5 and 6: *In your view, how can personal income tax fraud be prevented in Durban? (Elaborate on your answer.) (SAPS)*

And

In your view, how can personal income tax fraud be prosecuted effectively in Durban? [Elaborate on your answer] (NPA)

The SAPS DPCI and NPA DPP STU officials provided the following responses on how to effectively prosecute personal income tax fraudsters in Durban:

“Training is required with regards to current tax legislation. Collaboration and support between SARS, the SAPS, the NPA and members of the public are required for effective prosecution. We need members of the public to report cases and come forward as witnesses” (KII - P 1).

“People must be educated on the importance of being a witness. SARS must review their E-filing system. Back in the days when people used to submit manually it was better” (IDI -P 2).

“All legal practitioners must receive more training, even police investigators. Proper sentences must be brought to serve as deterrent to others” (KII - P 3).

“I think we are already doing it effectively. We are all experienced. However, it is good to attend training [session] every year. Like myself, I am doing a Masters in Taxation right now” (KII - P 4).

“People must report to the SAPS as early as possible and come forward as state witnesses so that our prosecution can be more effective” (IDI- P 5).

“We are effective. We can only prosecute what we get. We secure a finalization of the matter” (IDI - P 6).

“Prosecution is based on evidence. A docket should have all the evidence that will be used in court. Investigations must be 100% done and regular training of prosecutors, SAPS and SARS investigators is highly recommended for effective prosecution. We cannot work alone; we need to work as a team” (KII - P 7).

“Proper investigation and evidence must be sufficient for effective prosecution” (KII - P 8).

The participants agreed that collaboration among all role players is essential for the successful prosecution of tax fraudsters. The various processes that should be followed by Durban SAPS DPCI and NPA DPP STU in response to personal income tax fraud should be based on sound and continuous training in order to ensure effective, efficient and impartial prosecution processes. The literature that was consulted was thus corroborated, as Croome and Olivier (2015) (see Section 43 and 44 of the TAA in section 2.6.6 and 2.6.7) and the NPA urge collaboration and training as well (SAFLII, 2014:n.p.).

4.3.10 Question 5.1 and 6.1: *Do you consider the current strategies used to **respond** to personal income tax fraud adequate or ineffective in Durban? (Motivate your answer.) (SAPS)*

And

*Do you consider the current strategies used to **prosecute** personal income tax fraud adequate or ineffective in Durban? [Motivate your answer] (NPA)*

The question pertaining to personal income tax fraud prevention strategies in Durban was posed with a view to addressing this problem more effectively in the future. The participants offered the following suggestions:

“There should be the implementation or some developments on the E-filing system. It must be highly monitored in such a way that criminals do not get a chance to submit false claims” (IDI – P 1).

“I feel that SARS should have a better system in place. For example, a 65-year-old woman who never registered for income tax but now all of a sudden registers and submits returns should be questioned” (IDI – P 2).

“SARS should not refund a person easily but rather have an enquiry into the matter to get to the bottom of it before paying any refund” (IDI – P 3).

“They should pick up the trends of the schemes that are going on and do something about it before losing any money” (IDI – P 4.)

“Any claim received by SARS must be investigated first before refunding taxpayers. Their system must be accurate in such a way that taxpayers find it difficult to send false information” (IDI – P 5).

The participants were in agreement that fraudulent activities should be curbed through a review of the existing E-filing system and the improvement of investigative strategies. This implies an extension of current manpower allocations as all such investigations are manpower intensive. Investigators should be sensitised to picking up trends and patterns in fraudulent activities, as fraudsters share their successful strategies with others, which exacerbates the issue.

4.3.11 Question 5.1 and 6.1: *Are current prevention strategies that are used to respond to personal income tax fraud in Durban adequate and effective?*

The themes that were explored through this question were *adequate* and *effective preventative strategies* in the fight against tax fraud. The SAPS participants responded as follows:

“They are adequate because we managed to arrest a large number of syndicates for tax fraud cases that we investigated” (IDI – P 1).

“Although I think there is lot to be done, I think we have done so much in minimising tax fraud as we conduct awareness talks among the public and now they are aware of the implications of tax fraud” (IDI – P 2).

“They are helpful in investigating cases of tax fraud although there is still a lot that needs to be done. Revising the use of the E-filing system is the main problem” (IDI – P 3).

“Yes, they are adequate because we do manage to have strong cases in court leading to sentences and huge amounts of fines to the perpetrators” (IDI – P 4).

“Well, they are effective just that SARS really needs to cooperate with us at all times by providing us with all the information we need in the investigation process” (IDI – P 5).

Current strategies utilised by NPA DPP STU officials in the prosecution of personal income tax fraudsters were also put under the spotlight. The responses in this regard were the following:

“They are adequate at this stage, although we can do more” (KII - P 1).

“They are adequate but regular training is recommended” (KII - P 2).

“We are in the period of cybercrime; we are at the stage where everyone manipulates computers, so our strategy must also be computer-based. E-filing must be authorised with fingerprints so that the suspect can be caught easily and be held liable for the crime” (KII - P 3).

“It is adequate. We have a dedicated Unit and peer training. We are on the right track; however, constant training is required as tax [provisions] change” (KII - P 4).

“They are very effective. But more workshops and training can be helpful” (KII - P 5).

“They are adequate although training can help us to grow and contribute to more effective prosecution as tax [requirements] change over and over again. We must be one step ahead” (KII - P 6).

“Yes, they are adequate as they have been proven in the past. The Tax Unit has been successful in prosecuting tax fraud cases” (KII - P 7).

“People should be made aware of people pretending to be working for SARS. They must report them and be willing to be witnesses in order to build a strong case for the suspect to be found guilty and sentenced” (KII - P 8).

In broad terms, the participants felt that the strategies were adequate, yet they felt that ongoing training is an urgent requirement. The suggestion for finger-printed E-filing is sensible, as electronic devices to monitor fingerprints are readily available.

The suggestion by the participants for additional and ongoing training is in line with adequateness and effectiveness of current prevention strategies by Durban SAPS DPCI and NPA DPP STU during officials during the conducted interviews collate with IRM (2014) submissions. This discussion can found on section 2.2.1.1 of chapter two of this study and further in section 2.6 as well.

4.3.12 Question 5.2 and 6.2: *What is your experience with regard to the success of current strategies used to respond to personal income tax fraud in Durban? (Elaborate on your answer.)* (SAPS)

And

What is your experience with regard to the success of current strategies used to prosecute personal income tax fraud in Durban? (Elaborate on your answer.) (NPA)

Various successes that had been achieved in responding to personal income tax fraud in Durban were highlighted by the participants. The SAPS officials referred mainly to the following successes without citing specific strategies:

“On the South Coast there were fake SARS officials that were assisting taxpayers to file claims via E-filing for their own benefit. We followed the lead and we caught and arrested them” (IDI – P 1).

“A company owner was exploiting his employees and made false claims to SARS for his own benefit. We caught him and he is serving his sentence now” (IDI – P 2).

“We have dealt with many cases of income tax fraud and for us it is a success that we have arrested many. We are working very hard in investigating tax fraud cases” (IDI – P 3).

“We investigated lots of cases, more especially VAT and income tax fraud. We have arrested so many people including well-known members of the public” (IDI-11-11-04).

“We have arrested lots of syndicates including tax consultants. This is a success for us” (IDI – P 5).

The NPA DPP STU officials commented as follows on the successes that had been achieved:

“We linked the suspects and prosecuted a number of case” (KII - P 1).

“We have won many cases” (KII - P 2).

“We have successes; we have prosecuted many cases” (KII - P 3).

“We have lots of successes. Quite a number of offenders have been sent to prison, lots of money has been recovered and paid back to SARS. I have been dealing with these cases from 2003” (KII - P 4).

“We have successes. We always meet our targets” (KII - P 5).

“We have won many cases; we deal with criminal prosecution. Once a person is found guilty, he or she must be sent to prison. Our duty is to make sure that people are deterred and have reformatory effect” (KII - P 6).

“I have secured convictions of many cases, including high profile offenders” (KII - P 7).

“We have prosecuted many cases and SARS has recovered a lot of money” (KII - P 8).

Although specific strategies to achieve success in the prosecution of income tax fraud were not provided here, the participants (SAPS DPCI and NPA DPP STU) were in agreement that numerous successes had been achieved.

A few salient points are the following: Many high profile public figures engage in tax fraud activities; many fraudsters have been prosecuted and sentenced; lost revenue is often restored through the actions of investigators and prosecutors; VAT and income tax fraudulent practices are highly prevalent in Durban; and fraudulent tax practices continue unabated, but experienced officials are prepared and ready to take on the battle against this scourge.

These findings generally corroborate the findings by Croome and Olivier (2015) (see section 221). Section 235 of the TAA requires strong and proactive action by investigation and prosecuting authorities, and the participants confirmed that every effort was made to apply themselves within this legal framework. These assertions were provided in section 2.6.2 and 2.6.3 of chapter two in this study.

4.3.13 Question 6 and 7: *Any other comments you would like to make regarding responding to personal income tax fraud in Durban? (SAPS)*

And

Any other comments you would like to make regarding the prosecution of personal income tax fraud in Durban? (NPA)

The participants were afforded the opportunity to offer responses outside the frame of the interview schedule. This open-ended question was included to ensure that the data would be enriched as the responses might point to themes or a direction in the investigation that the researcher had not foreseen. The SAPS participants offered the following responses:

“SARS needs to improve its system to stop taxpayers from submitting any false claim”(IDI-P 1).

“SARS should automatically prepare the taxpayers for returns by firstly investigating all claims received” (IDI – P 2).

“At this stage I do not think that there is a different way of investigating income tax fraud. SARS needs to not easily refund taxpayers without thorough internal investigation” (IDI –P 3).

“SARS should highly monitor all claims” (IDI – P 4).

“This E-filing system needs to be well developed because it causes all this tax fraud cases. Government loses lots of money because of this E-filing system. Sometimes technology is a problem in our society” (IDI – P 5).

The responses brought no new information to light, but served to strengthen the urge for and improve E-filing system and tax return monitoring processes. The researcher was intrigued by the finding that the E-filing system which had been introduced as a ‘state-of-art’ technological facility to capture all previous tax return issues, actually proved to achieve the opposite.

Upon further probing during an interview with an SAPS DPCI participant, the researcher was informed of a case that would illustrate the seriousness of this problem. The participant narrated Point Case Administration System - CAS 14/11/2016 in-depth to illustrate the nature and seriousness of tax fraud in Durban. A summation as provided by the participant is presented below. However, the case number and the personal details remain fictitious, with only the background information being factual:

“In 2006 a complainant, who was a former truck assistant, was employed by Mr Lwande Smith at Taso Logistics which was in the yard of Anderson trucking in the Seaview area. The complainant worked until 2011 and was paid R1500 for his services. Whilst he was employed by Razak, he was approached around 2008/2009 by the son of Lwande Smith who was identified as Thami Smith. The latter stated that the complainant would no longer be paid in cash but via the bank and he needed to open a bank account.

Thami Smith then informed the complainant that he should dress very neatly and bring his identity document (ID book), as he would be taken to the bank to open an account. On the day, the complainant dressed up neatly as requested and went to work as usual. Thami Smith drove the complainant to a bank on the Bluff, and asked the complainant to hand his ID book to him, which the complainant did. Thami Smith informed the complainant that he should smile while he was in the bank.

On their arrival at the Bluff shopping complex, Thami Smith parked the car, made a phone call, and the complainant heard him saying, ‘I am here’. Thami Smith then told the complainant to get out of the car and come with him. They walked to FNB bank. When Thami Smith opened the bank door, the complainant saw a Coloured male who was unknown to him. It appeared as if he had been waiting for them. Then Thami Smith spoke to the said Coloured male and said, pointing at the complainant, ‘Here’s the man’. The Coloured male approached the complainant and asked him to sit in the waiting area of the bank and he would attend to him shortly. A few minutes later, the Coloured male approached Thami Smith and the complainant and he took out documents for the complainant to sign.

The complainant saw that the Coloured male had his ID book, which he had given to Thami Smith. The complainant was then asked by the Coloured male to sign opening bank documents, which he did. The Coloured male then gave the complainant his ID book and gave Thami Smith an envelope with the complainant's bankcard inside.

Thami Smith and the complainant then drove back to the company. At the company, the complainant asked Thami Smith to hand him his bankcard. Thami Smith stated that he would not give him his bank card then but that he would do so later on. However, Thami Smith still did not deposit the complainant's wage in the bank account, but he paid him in cash. Only a year later, Thami Smith gave the complainant his First National (FNB) card with details on the card and a pin code to access the card. He stated that his pay would be in the bank and that the complainant had to withdraw his money using his bankcard.

The complainant received his pay of R1 500 for one month on the card. When he checked the next month's pay, he noticed on his bank printout from the automated machine (ATM) that extra amounts had been taken out of his bank account. The complainant then informed Thami Smith about the extra amounts taken out of his bank and that his balance was short. Thami Smith informed the complainant that he should cancel that bank account. Thami Smith then drove the complainant to the FNB branch on the Blaffi. On their way, Thami Smith asked the complainant to hand the bankcard to him, which he did. At the bank, Thami Smith and the complainant approached the same Coloured male that had opened the bank account. The Coloured male made the complainant sign a few documents and Thami Smith and the complainant left.

In 2011, the complainant left Mr Lwande's Smith company and he was disappointed because he was not paid for his services. In 2013, the complainant was phoned by Mr. Lwande Smith who begged him to come back and work for him and the complainant accepted the job. The complainant was employed to take care of Mr Lwande Smith as he was disabled. One day, Mr Lwande Smith and his son, Thami Smith got into an argument. The complainant overheard Mr Lwande Smith saying to his son that he (Thami Smith) was a crook and that he was robbing the complainant.

A few days later, Mr Lwande Smith's daughter, Thami Smith drove them to Clairewood. Mr Lwande Smith urged the complainant to report Thami Smith to SARS, as he had robbed the complainant. He pointed to a building in the Durban area. The complainant then did so and reported Thami Smith to SARS.

When at the SARS offices, the complainant discovered that two companies were registered in his name and that he owed SARS huge amounts of money, of which he was completely unaware. The complainant did not defraud SARS in any way and did not own any companies at the time.”(IDI-01-01-01).

On providing additional comments regarding the prosecution of personal income tax fraud in Durban, the NPA DPP STU officials made the following points:

“SARS must review its E-filing system and audit processes” (KII -P 1).

“Everyone working on tax fraud cases must be well trained” (KII - P 2).

“E-filing must be reviewed. They rushed to introduce it in South Africa whereas we were not ready for it and it's a challenge to link and prosecute the suspects of tax fraud” (KII - P 3).

“I think society needs to be educated regarding tax fraud. We have lot of syndicates. It is very easy to defraud SARS and syndicates have learnt that. SAPS, SARS, NPA and the public must work together” (KII - P 4).

“E-filing system must be reviewed” (KII - P 5).

“SARS Treasury must seriously consider revising E-filing as it has loopholes. I have been prosecuting for 12 years and E-filing was introduced in 2009. Years back it was not as bad as this” (KII - P 6).

“There should be a more concerted drive to bring tax fraud awareness to the public. SARS has been too quiet in this aspect. Early detection is very important” (KII - P 7).

“SARS must review and audit all submitted claims and verify these with the taxpayers” (KII - P 8).

Although no new insights were offered in response to this open-ended question, the participants strongly reiterated the following points:

- The need to review the E-filing system;
- Ongoing training of all SARS and other related staff (SAPS DPCI and NPA DPP STU included) to monitor and spot cases of income tax fraud timeously;
- Education of the general public in terms of their rights and the processes of income tax submissions.

4.4. IDENTIFIED SIMILARITIES IN THE PARTICIPANTS’ RESPONSES

The data that were obtained in the IDIs and KIIs (SAPS DPCI investigators and NPA DPP STU officials respectively) revealed that large (unspecified) numbers of taxpayers submitted falsified documents and information to SARS through the E-filing system with the aim of claiming undue tax returns. Sadly, people who live in abject poverty (i.e., poor local or foreign residents) are ruthlessly targeted by individuals who claim or front as SARS officials with the aim of defrauding SARS and the unknowing taxpayer while using their personal information for fraudulent activities. This practice results in high rates of tax fraud cases being reposted by SARS to the Durban SAPS DPCI. All the participants of this study were quick to blame the introduction of the E-filing system in South Africa. Clearly, these practitioners felt that South Africa was not ready for this system as it is based on trust, which is a component that is seriously lacking in the nature of many callous individuals in this country. Therefore, the high rate of reported cases of tax fraud stems predominantly from greed and the desire for personal gain. Tax fraud syndicates, large and small, defraud SARS multiple times. One strategy is to manipulate uninformed taxpayers to send referrals so that they can claim commission for their fraudulent activities.

The participants recommended, almost in unison, that SARS has to review the E-filing system because ever since it was introduced, there has been a rise in tax fraud cases. They also indicated that SARS is unable to audit all the information provided by taxpayers either via E-filing or by hand submission. Instead, SARS simply refunds many taxpayers without verifying their information. This has become a serious loophole which syndicates exploit ruthlessly. Those who get caught may already have made a fortune from defrauding SARS, and it was suggested that the penalties are not harsh enough to curb this problem. The suggestion was that 'once a tax defrauder, always a tax defrauder'.

It was also indicated that the investigations that need to be conducted by the Durban SAPS DPCI are highly dependent on the information that SARS provides with regards to the taxpayer. Unfortunately, based on the confidentiality of information in accordance to SARS rules and regulations, they do not provide SAPS investigators with all the required information. However, against all odds, the Durban SAPS DPCI has managed to follow leads and arrest many tax fraud syndicates in Durban. The NPA DPP STU has also managed to prosecute numerous cases successfully, based on evidence from a completed and combined docket from the SAPS DPCI.

4.5. CHALLENGES EXPERIENCED BY THE PUBLIC IN TERMS OF TAX FRAUD

It was acknowledged by all the participants that SARS has internal investigators who are tasked to investigate suspected tax fraud activities. Once the diagnosis of an investigation reveals that tax fraud has been committed, they normally open a case docket with the Durban SAPS DPCI (i.e., the study area). The latter officials conduct their investigations, locate the suspects and make arrests, and hand the case over to the NPA DPP STU for possible prosecution. In most cases, unwitting taxpayers report tax fraud activity only when they find out that they have been used or that their information has been used to commit fraudulent information without their consent.

However, if they did consent, most were unaware that the repercussions of their actions might constitute the commission of tax fraud. It was also revealed that, in rare cases, taxpayers may choose to report a fraudulent case directly to the SAPS without reporting to their suspicions to SARS. It was also suggested that the public is often not informed of the existence of SAPS DPCI in Durban. This implies that Durban SARS and SAPS DPCI play a vital role in assisting

prosecutors (the NPA DPP STU) to apprehend and bring alleged perpetrators to boot. This should be done by providing detailed information to the latter unit. This collaborative effort is important because, if there is a lack of evidence in an open/reported case, it becomes very hard to prosecute and sentence an offender.

In support of the above arguments, it must be reiterated that the Durban NPA DPP STU is dependent on all stakeholders (SAPS DPCI and SARS) to conduct and bring their investigations to fruition. Therefore ALL stakeholders (SAPS DPCI, SARS, the NPA DPP STU and the public) need ongoing training or updated information (in the case of the public) on an annual basis so that tax fraud cases can be efficiently reported, investigated and prosecuted. The public should therefore also know how to initiate possible charges. All the official stakeholders are highly dependent on one another as they share one goal: to sentence offenders which will serve as a deterrent to others. This inter-dependence should be strengthened as a matter of urgency in the quest to move forward and to enhance correct investigation processes and prosecution procedures in order to ensure high conviction rates for income tax fraud.

4.6 SUMMARY

The data were analysed and the findings were categorised in relation to the study objectives. Rich data were elicited through the open-ended interview schedule questions that were posed to the participants. Based on the findings, the most important lesson learnt regarding investigative and prosecutorial responses to personal income tax fraud is that all relevant stakeholders should work collaboratively in the policing and prosecution of this crime, and that the role of the public is as important as that of officials who are mandated to curb this phenomenon. Two other findings that should be highlighted are the urgency to revisit the E-filing income tax submission system and the need for ongoing training and information sharing among all stakeholders. The next chapter will present the conclusion to and the recommendations based on this study.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. INTRODUCTION

This chapter will present the conclusion to and recommendations based on this study by focusing on the categorisation and verification of the study the objectives. A summary of the findings is presented, followed by some suggestions for future research. These suggestions stemmed from the findings of this study. Recommendations pertaining to the study objectives are offered. To this end, the founding objectives that gave impetus to the study are briefly revisited below. It is suggested that cognisance be taken of these findings by the SAPS DPCI, the NPA DPP STU, SARS officials and the taxpayer community in Durban and elsewhere.

5.2. VERIFICATION OF THE STUDY OBJECTIVES

5.2.1 To explore the nature of personal income tax fraud in Durban

This objective was comprehensively addressed in an attempt to understand the nature of income tax fraud as a predominantly white-collar crime in Durban. In essence, the SAPS DPCI in Durban should be equipped to respond effectively and efficiently to personal income tax fraud. To this end, a comprehensive response plan to respond effectively and speedily to fraudulent E-filing procedures in Durban should be developed as a matter of urgency. Moreover, all relevant stakeholders namely SARS personnel, relevant SAPS DPCI and NPA DPP STU officials and the taxpayer community should work together in the fight against income tax crimes, which seem to be in their infancy phase and might spiral out of control if not curbed as soon as possible. It was shown that current actions in relation to the commission of this crime are underreported. For this reason, the mandate of SAPS DPCI officials who investigate these cases remains invaluable, and they should be fully supported by an effective legal framework, sufficient personnel provisioning, and a sound information base to render their efforts successful.

The investigators attached to SAPS DPCI in Durban should take note that each fraud case is different and requires unique methods of investigation to manage their response plans, minimise the associated risks, and maximise their potential for the successful investigation of this crime. This simply covers the reporting channels, a quick response team, and action plans, among others.

5.2.2 To analyse the extent of personal income tax fraud in Durban

In evaluating the extent of personal income tax fraud in Durban, it was found that this crime is more widespread than was anticipated and that it is reaching increasingly higher levels across South Africa, with specific reference to Durban. The factor that was predominantly blamed for this spiralling phenomenon was technological advancement, with specific reference to the recently introduced E-filing system for income tax returns. Therefore internet usage and accessibility, coupled with the work of ruthless ‘tax consultants’ and taxpayers, remains problematic at this point.

This problem reinforces the need for the SAPS DPCI in Durban to be better equipped in order to gather evidence of the commission of this crime in digital format. They should be able to prepare and address a myriad of issues related to the examination of both physical and digital evidence. This requires specialised forensic experts’ efforts and computer forensic investigations of financial records to maintain a proper chain of custody. Initial assessments should be conducted to determine sources of information, and key evidence should be reviewed as a matter of course to timeously expose physical and digital evidence of fraud.

5.2.3 To determine the modus operandi of perpetrators who commit personal income tax fraud in Durban

To achieve this objective, the participants were asked to share their experiences of the *MO* in the commission of this crime. The fraudulent completion of E-filing data led the list. It was also revealed that poor, unwitting individuals are targeted and exploited as they have limited knowledge of how SARS operates. The participants mentioned other diverse actions that lead to this crime, such as false claims.

Poverty among the general population was also highlighted as a driver to commit income tax fraud, not necessarily because the public has criminal tendencies, but as many people need extra cash flow to survive and they see SARS as depriving them of their vital financial resources. This perception is exacerbated when the public perceives that the government fails to apply their hard-earned money in a transparent and fair manner.

It was suggested that the SAPS DPCI in Durban should clearly understand that this crime can be committed in several ways, as was mentioned *supra*. Therefore auditing and monitoring procedures, which simply relate to management reviews by this Unit in collaboration with other relevant stakeholders (i.e., SARS, the NPA DPP STU and taxpayers), should stage more regular internal audits. This should be done by obtaining physical and digital evidence, reports, and testimonies of investigation findings that will assist in personal income tax fraud detection and prevention. In this context, it is vital that an effective and in-depth understanding of the *MO* of tax fraud perpetrators is imparted through ongoing training and information sessions. The digital world is advancing at an unprecedented pace, and it is vital that tax fraud investigators and prosecutors keep abreast with these developments and *MO*.

5.2.4 To evaluate the obstacles/challenges that hamper the effective investigation of personal income tax fraud in Durban

This study objective received insufficient coverage. It was revealed that the challenges experienced by the Durban SAPS DPCI and the NPA DPP STU in Durban were more severe than had been anticipated by the researcher. This seemed to be exacerbated by an ineffective relationship between the SAPS DPCI and SARS. The SARS officials were blamed for not providing detailed information to SAPS officials to respond effectively to this crime. The main problem was ascribed to the E-filing tax return system, which is a barrier in detecting IP addressed and the traceability of other taxpayers. It was also strongly suggested that the Department of Justice and Constitutional Development (DoJ & CD) contributes to the problem by issuing fines to income tax fraud perpetrators instead of stiffer sentences that will land them in jail. It was surmised that the perpetrators of this crime are generally affluent white-collar citizens who have access to huge financial resources, whether legally or illegally obtained.

Therefore, a mere fine will not deter these people from committing income tax fraud in the future – in fact, they may devise more effective and devious methods to defraud SARS and law-abiding citizens.

To address these challenges associated with the investigation of personal income tax fraud in Durban, the SAPS DPCI should conduct fragment fraud examinations in collaboration with relevant stakeholders (i.e., SARS officials and taxpayers). This should help in identifying improper conduct by taxpayers to stop the commission of this crime in Durban, help in the facilitation of recovering losses, mitigate other potential consequences, and strengthen internal control weaknesses in other relevant organisations, among others.

5.2.5 To determine how personal income tax fraud can be prevented in Durban

This study found that personal income tax fraud in Durban can be curbed mainly by focusing on revisiting the E-filing system to prevent the submission of false claims and the detection thereof should this occur. The system, which can easily trace tax return histories, will obviously help in determining current criminal tax evasion trends, which in turn will inform investigators of *MO* that can be detected and exposed. The SAPS DPCI and NPA DPP STU in Durban should therefore work closely and collaboratively with SARS officials and relevant taxpayers to achieve this.

To this end, income tax fraud investigations in Durban should be integrated with forensic accounting strategies that should be implemented by the SAPS DPCI, the NPA DPP STU and SARS. These functions should be applied in this province holistically as most investigations generally fall under this category, including fraud examinations, investigations and reporting for both civil and criminal cases.

It was noteworthy that some respondents mentioned that they had already visited institutions such as schools where they launched information and awareness programmes to sensitise the public in terms of income tax and other related issues. These initiatives should be extended. The mass media such as newspapers, magazines, flyers, and television programmes should be harnessed creatively to bring their message across.

5.3. SUMMARY

The composition of the participants in this study did not significantly influence the responses in terms of fluctuations and discrepancies. All these participants were in a good position to share their experiences in terms of personal income tax fraud in Durban, and because they were representative of a relatively coherent group who fought the problem of income tax fraud ‘on the same side of the fence’, the findings were very similar between the two groups (SAPS DPCI and NPA DPP STU officials).

The evidence confirmed an initial assumption that stemmed from personal observation and the literature review that personal income tax fraud in Durban was on an upward spiral at the time that the study was conducted. A factor that proved to be of primary concern in terms of the commission of this crime was the abuse of the E-filing system for tax returns by both practicing and potential syndicates and individual taxpayers. The data revealed that taxpayers are either colluding with or manipulated by tax consultants in the completion of E-filing forms for self-enrichment, greed, large profits and low risks. A driver of income tax fraud is high financial gains with limited chances of being caught. Also, prompted by extreme poverty and the many loopholes in the current SARS operational E-filing system, opportunities for fraudulent behaviour are beckoning. More specifically, the findings of this study suggest that many taxpayers, particularly white-collar employers and employees, are aware of the fact that income tax evasion is illegal, yet they collaborate with tax consultants to defraud SARS as they know that the chances of being caught are slim. There are many ruthless people who do not care less, as the sanctions that they can expect can easily be paid while they remain free to continue their nefarious activities. This implies that the current legislation that governs this crime is questionable, as perpetrators consider personal income tax fraud a petty crime that should be freely committed as long as they do not get caught.

As was referred to above, the SAPS DPCI in Durban managed to conduct awareness sessions with relevant institutions such as SARS, selected taxpayers, and in schools and among communities to address the problem of income tax fraud, among others. This finding contributes

to the mounting body of research that seriously challenges the notion that the SAPS and relevant stakeholders cannot work hand in hand with the public to address serious societal issues.

However, these praiseworthy initiatives seemed to occur only peripherally, and the relationship between the SAPS DPCI and SARS remains a challenge that needs to be addressed. Clearly, the sharing of information is still highly compromised and contributes to the rendering of poor tracing and prevention strategies.

The completion of E-filing forms for tax returns is done Online through computer and Internet technology. One problem that was highlighted was that the detection of the IP address relating to the payment received by taxpayers seemed a difficult task to undertake. Some taxpayers were untraceable at times because they were uninformed of submissions in their names and their particulars were used without their consent. Moreover, the functioning and response of the CJS was also questioned as the respondents felt that the sentences most perpetrators received were too light and therefore not a deterrent.

Although the participants felt that they did their jobs well in investigating and prosecuting instances of income tax fraud, the majority was critical of the prevention strategies as they argued that current fraud detection strategies were not well implemented and managed. This failure can be attributed to poor implementation and development of the E-filing system by SARS. For example, submitted claims are not efficiently monitored, which enhances the submission of false claims. Currently, there is no system used either by the SAPS DPCI or SARS to trace the history of tax returns. Therefore readily available fraudulent trends should be detected in the early development phase. Thus, regardless of the fact that SAPS DPCI members maintained that current strategies to respond to this crime were effective, the E-filing system poses severe problems. Thus the Durban SAPS DPCI, the NPA DPP STU, SARS and taxpayers should work in collaboration to effectively address this crime.

The RAT, RCT and SDAT theories pertaining to the reasons for the commission of income tax fraud were adopted and applied to this study. The knowledge that these theories brought underpinned and augmented the findings as they were applied and interpreted in accordance with the topic under investigation.

However, during the IDI that were conducted with selected participants, it was revealed that the Learning Theory also contributed to the commission of this crime as it refers to the adoption of working techniques to commit personal income tax fraud.

This theory was also highlighted by the participants' responses, as it links individuals with the inability to achieve their set goals, which in turn gives rise to the commission of a crime. The latter theory in particular relates to poor and less affluent citizens who increasingly commit tax fraud in order to 'hang on' to their financial cash resources for survival. On a positive note, it was evident that current strategies used by the SAPS DPCI and the NPA DPP STU in Durban to investigate and prosecute personal income tax fraud were successful to a large degree. The selected participants referred to successful outcomes of cases regarding this crime in Durban. For example, bogus SARS officials specialising in E-filing fraud were arrested and prosecuted, and a company owner who had exploited an employee by using his details to make false claims to SARS was brought to book. What was interesting and heartening in the latter case was that he had been exposed by his own father, who was an honest and law-abiding citizen of the Duran community. They further revealed that various bogus tax consultants had been arrested in Durban and that many similar arrests had been made across the city.

5.4. CONCLUSION

Holistically, the purpose of this study was to explore perceptions of Durban SAPS DPCI investigators and NPA DPP STU prosecutors on personal income tax fraud. It was thus important to identify the challenges that face these two stakeholders, given their different mandates and approaches in dealing with this crime in Durban. SARS remains a target for illicit false claims for tax returns in Durban and across the country. However, the capacity of all official stakeholders and taxpayers to respond to this scourge effectively had to be explored.

A limitation of this study was that it did not intend to contribute to the body of scholarly knowledge by developing a new model on the policing or prosecution of personal income tax fraud in Durban; instead, it attempted to provide a scholarly contribution to the extent and nature of and trends in this crime.

To achieve these objectives, the researcher had to gain in-depth understanding of the preventative measures taken by the SAPS DPCI and the prosecution procedures of the NPA DPP STU in Durban in dealing with this crime.

This was done in conjunction with an exploration and application of a theoretical framework and empirical contributions. As was previously stated, the theoretical framework that was used in the exploration of the perceptions of the selected participants assisted the researcher in closely looking at fraudulent tax activities and the reasons for the commission of this crime. In this process, tax fraud was explored and analysed holistically. The SAPS DPCI and the NPA DPP STU operating in Durban were targeted to provide rich primary data in this investigation that assessed current strategies in policing and prosecuting this crime.

It must be acknowledged that the relatively one-sided sample was a limitation that impacted a more balanced view of tax fraud. In this context, the two participating groups (the SAPS and the NPA) held relatively similar views on the commission of tax fraud as both groups are engaged in combating this crime. This limited scope should be addressed in future studies by involving representative views of ‘opposing’ voices as well.

Although this study revealed good practices in combating tax fraud, it was clear that some serious challenges still need to be addressed. The most dire challenges area lack of collaboration between the SAPS DPCI, the NPA DPP STU and SARS in Durban; the need for extended public education; the negligence of taxpayers who are easily exploited; and strategies to secure evidence of fraud, both physical and digital.

Based on an extensive review of both primary and secondary sources, the researcher attempted to make possible linkages to assist the SAPS DPCI and the NPA DPP STU in Durban to take cognisance of certain findings as possible best practices for optimising the work of these units. This study hopefully highlighted various theoretical contexts by reviewing related literature on personal income tax fraud across South Africa, which may have applicability in many countries that experience similar challenges. However, due to the limited scope of the study in terms area of study (Durban) and sample population and size, it is acknowledge that the findings are not generalizable to South Africa as a whole.

In conclusion, it must be reiterated that personal income tax fraud seemed to be predominantly impacted by the E-filing system as it facilitated various methods of committing income tax fraud. For example, false claims and submissions were difficult to trace, and instances where unwitting individuals' particulars were used to defraud SARS were highlighted. Untraceable taxpayers left investigators in the dark regarding how this crime was committed, and the illegal relationship between taxpayers and consultants added to the commission of this crime. Lesser fines and sentences associated with this crime also do not help to curb it. Furthermore, it was found that the relationship between the SAPS DPCI investigating team and SARS was not healthy, as they did not share detailed information.

In conclusion, the E-filing system should be reviewed and SARS investigators should conduct adequate monitoring and evaluations of all submitted tax returns. On-going research into the tax fraud phenomenon is essential to keep abreast of new MOs and trends and to respond effectively to this crime. Continued investigations into other areas of policing will also be advantageous, as safety is key to the welfare and economic development of any nation.

5.5. RECOMMENDATIONS

Although a quantitative investigation was not conducted, the qualitative findings of this study suggest that personal income tax fraud is highly prevalent in Durban and that current investigative strategies and prosecution processes are not effective. These problems are mainly due to the fact that the SAPS DPCI and NPA DPP STU officials are not in a good position to police E-filing online activities, which was viewed as one of the most notable contributors to this crime, coupled with ineffective relations between SAPS DPCI, NPA DPP STU and SARS in Durban. Therefore, the researcher strongly suggests that these problematic areas be corrected. The following strategies that could be employed by the relevant stakeholders are suggested:

The following are quite repetitive and should be stated briefly and to the point. Note that each aspect has already been addressed repetitively earlier, so expanded discussion is tedious and superfluous. Keep the points clear and concise.

5.5.1 General processing to detect illicit application procedures and transactions

SARS should be the first line of battle against income tax fraud. A proper channel (i.e., an improved E-filing system) should be developed as a matter of urgency to collect information on tax submissions and transactions. ALL applicants should be profiled and monitored, and this should include all relevant details relating to taxpayers' financial and behavioural profiles and their financial situation.

The review of the collected information should follow possible leads based on identified fraudulent trends. This should be done to expose individuals, organisations, companies and their existing relationships by analysing their assets, entities and financial flows with ease. These leads should be prioritised by all stakeholders in Durban, and tax fraud investigators and prosecutors in Durban should obtain information on taxpayers' accounts, verify their applications and claims, and red-flag situations for in-depth investigation.

Technology should also be used to detect illicit transactions associated with personal income tax. This information should be gathered through proper intelligence and collaboration between the SAPS DPCI, the NPA DPP STU and SARS in Durban to provide adequate understanding directed at exposing this crime, as it is understood that the operations of criminals can be linked to organised crime involving SARS employees. Thus internal investigations, the appointment of a commission of inquiry, and possible prosecution can be used as effective tools to reinstate control and order to improve the image of employees attached to SARS as the responsible organisation. This will eventually help in understanding the causes and consequences of this crime among Durban's law-abiding citizens. The introduction of intelligence-led investigations should be taken seriously by syndicates who persist in the commission of this crime across the KZN Province.

5.5.2. Understanding the modus operandi of personal income tax fraud

The modus operandi of this crime vary; however, the most prevailing one is the abuse of E-filing. False details are provided to get a larger amount on tax return and, in some instances, the personal details of the poor or non-existing projects are used as bogus submissions to SARS offices across Durban.

To eradicate these practices, direct methods of tracing the listed financial transactions in the submitted form are necessary. This should be timeously referred to the SAPS DPCI to locate evidence that will prove or disprove facts in issue that can in turn be referred to the NPA DPP STU for prosecution.

Detectives/investigators should also be equipped with knowledge on the indirect tracing of financial transactions whereby an indirect method of proof might be required by the SAPS DPCI investigators, NPA DPP STU and SARS officials to collaborate evidence of illicit transactions as the application made confirms. This should be demarcated as circumstantial proof of evidence for the collected evidence to prove or disapprove facts in issue indirectly or by inference.

To achieve this milestone, SAPS DPCI members should be exposed to training that will develop their knowledge of investigating personal income tax fraud through the application of direct and indirect methods while responding to personal income tax fraud. The State should effect the necessary changes in the organisational structure and deter illegal behaviour at all costs.

The SAPS DPCI, the NPA DPP STU and SARS in Durban should be encouraged to share and co-ordinate available information regarding income tax fraud. Experienced detectives/investigators should work closely with newly recruited officials to accelerate the processes of investigation and prosecution. SARS employees must be accountable for the received applications and should be held responsible for any transaction made in order for the auditors to receive detailed reports during the verification process.

5.5.3 Locating hidden illicit activities

Income tax fraud investigators and prosecutors in Durban need to rise to the challenge of exposing personal income tax fraud. This can be achieved by investigating fraudsters' hidden illicit activities. They should also develop effective partnerships with SARS and tax paying community members. They should seek to disseminate good practices on the policing of this crime to the public arena. It is acknowledged that the KZN policing areas is vast, but more manpower should address this problem.

The SAPS DPCI and the NPA DPP STU officials in Durban should be equipped with the necessary resources and personnel to work against this crime in order to improve their response times, as this crime is mostly committed Online by experienced syndicates or individual tax advisors. Training to this effect should also be staged at all costs with more emphasis on effective Online reporting mechanisms. Physical reporting at this Unit or at local police stations should be strongly encouraged, and this should be combined with improved preservation, protection and handling of evidence for proper prosecution to increase conviction rates. The investigators should be introduced to advance skills training and forensic report writing skills to effectively analyse documents, interview witnesses and alleged perpetrators, and conduct covert examinations, among others.

Furthermore, empowering the community regarding the policing of this crime is as important as empowering the SAPS DPCI in Durban. The community should but pressured to bring about change and improvement in the policing and prosecuting of personal income tax fraud. The SAPS DPCI and the NPA DPP STU in Durban could further facilitate the organisation of community meetings and forums, and should educate community members on how they can be actively involved in problem-solving process to curb this crime.

The recent shift in policing strategies that is geared towards intelligence gathering by means of different tactics and proactive strategies should place greater emphasis on proactive crime prevention and problem solving than on reactive measures to address crime. This would include the formulation of priorities and the allocation of resources to facilitate a proactive problem-solving process.

Other government agencies must also be made aware of their role and encouraged to take part in this problem-solving approach, and formal structures should be established for smooth cooperation in the interest of avoiding duplication, dividing the labour, assisting each other and developing synergies in the usage of public resources in the fight against income tax fraud.

5.5.4 Aligning investigations and prosecutions with technological advancements and improvements

Investigators and prosecutors in Durban should introduce the use of technological advances as an essential means of detecting personal income tax fraud. Thus state-of-the-art computer and database systems should be used to proactively expose crime trends in order to eradicate escalating cases of tax fraud. This will provide sources of information to trace illicit and falsified information and will require a computerised checklist during the monitoring process.

Moreover, a system should be installed that gives various departments access to shared information, irrespective of their physical locations across Durban. The policing of this crime should be modernised as the fraudsters are getting wiser daily. This is strongly advised as it is necessary to keep up with current trends and operations. The daily operations of the SAPS DPCI and the NPA DPP STU in Durban should incorporate technologically advanced instruments and improvements, as the best defence to this type of crime is prevention through better security that focuses on advanced software.

The central premise of technological advancement and improvement is that the level of technological usage by income tax fraudsters is high, and the use of technology in responding to ‘their game’ can enhance current strategies in solving this crime. It should be reiterated that these stakeholders in Durban cannot carry out this task on their own. In order to encourage the public to share responsibility for policing this crime, the SAPS DPCI and the NPA DPP STU in Durban must build trust and develop a partnership among themselves, SARS and the public.

This partnership needs to be characterised by mutual responsiveness and an equal footing for both partners. The finding that the SAPS DPCI and the NPA DPP STU in Durban are working in isolation from SARS is a matter of concern. Surely SARS should provide every necessary piece

of information to the SAPS. To achieve such a partnership, these departments in Durban must be better integrated into the community and strengthen their legitimacy through policing by consent and improving their services to the public.

Thus, the police should be visible and accessible to the public. They should be known by and in turn known the public; respond to communities' needs; listen to these communities' concerns; engage and mobilise communities for whatever cause; and be accountable for their activities and the outcome of these activities. Visibility and accessibility require that the Durban SAPS DPCI investigators and the NPA DPP STU be easily approachable by members of the community through the creation of a visible and non-threatening presence within the neighbourhood. Daily personal contacts will also familiarise communities with the operational duties of the SAPS.

5.6. FUTURE RESEARCH STUDIES

The need for the development of a technological system to detect illegal and falsified information that is provided by taxpayers or applicants should be prioritised to respond to the current activities of E-filing. This will serve as a policing and investigation tool for addressing personal income tax fraud in Durban and elsewhere. This tool should view the SAPS DPCI, the NPA DPP STU and SARS as a nexus around which the taxpayers and the community revolve. For the sake of continuity, this tool should argue for comprehensive policing and prevention measures rooted across Durban communities and spearheaded by these departments.

Currently, policing structures and preventative measures that are in place are inadequate for the effective investigation and prosecution of all income tax fraud incidences. Therefore, future research should focus on the effectiveness of intelligence-led operations that are currently employed by these stakeholders. New and radical approaches that involve closer collaboration and information exchange of all role-players within KZN Province should strengthen the relationship between these departments.

Future research should focus on the viability of communal meetings. The need for closer co-operation among all relevant stakeholders was highlighted by this study, and further research should be conducted to illuminate how this may be achieved effectively. Because the use of informants did not fall within the scope of this study, the extended role of the public in exposing income tax fraud may need to be explored in investigations into the role of both incidental and trained informants. The use of informants and community policing to curb this crime should also be a focus of future research projects.

In summation, closer collaboration among role-players, formal and informal information exchange, community policing, and training requirements should be pivotal research topics in future research projects that will endeavour to contribute to the discourse on income tax fraud locally and internationally.

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ANNEXURE A: INTERVIEW SCHEDULE GUIDE: TO THE SOUTH AFRICAN POLICE SERVICE (DIRECTORATE FOR PRIORITY CRIME INVESTIGATION)

1. In your view, what is the nature of personal income tax fraud in Durban? (Elaborate on your answer)

2. Based on your experience, how is the extent of personal income tax fraud in Durban? (Elaborate your answer).

3. In your experience, what are the obstacles / challenges that hamper the effectiveness and efficiency of investigating personal income tax fraud in Durban? (Elaborate on your answer)

3.1 In your opinion, what are the challenges of minimising personal income tax fraud in Durban? Please elaborate on your answer

4. In your view, what is the *Modus Operandi (MO)* of committing personal income tax fraud in Durban? (Elaborate on your answer)

4.1 In your opinion, what are the factors that contribute to the current spate of personal income tax fraud in Durban? (Elaborate on your answer)

4.2 In your view, is the community aware of the role of the South African Police Service (SAPS) in policing occurrence of personal income tax fraud in Durban? (Elaborate on your answer)

4.3 What processes have been followed to respond to the occurrence of personal income tax fraud in Durban?

5. In your view, how can personal income tax fraud be prevented in Durban? (Elaborate on your answer)

5.1 Do you consider the current strategies used to respond to personal income tax fraud adequate or ineffective in Durban? (Motivate your answer)

5.2 What is your experience with regard to the success of current strategies used to respond to personal income tax fraud in Durban? (Elaborate your answer)

6. Any other comments you would like to make, regarding responding to personal income tax fraud in Durban?

THANK YOU FOR YOUR PARTICIPATION

**ANNEXURE B: INTERVIEW SCHEDULE GUIDE: TO THE NATIONAL PROSECUTING
AUTHORITY DIRECTOR OF PUBLIC PROSECUTIONS SPECIALISED TAX
UNIT OFFICIALS**

1. In your view, what is the nature of personal income tax fraud in Durban? (Elaborate on your answer)
2. Based on your experience, how is the extent of personal income tax fraud in Durban? (Elaborate your answer).
3. In your experience, what is the role of National Prosecution Authority (NPA) in prosecuting personal income tax fraud in Durban?
4. In your experience, what are the challenges that hamper the effectiveness and efficiency of prosecuting personal income tax fraud in Durban? (Elaborate on your answer)
- 4.1 In your opinion, what are the challenges of prosecuting personal income tax fraud in Durban? Please elaborate on your answer,
5. In your view, what is the *Modus Operandi (MO)* of committing personal income tax fraud in Durban? (Elaborate on your answer)
- 5.1 In your opinion, what are the factors that contribute to the current state of personal income tax fraud in Durban? (Elaborate on your answer)
- 5.2 In your view, is the community aware of the role of the National Prosecuting Authority (NPA) and other relevant stakeholders in prosecuting occurrence of personal income tax fraud in Durban? (Elaborate on your answer)
- 5.3 What processes have been followed to prosecute to the occurrence of personal income tax fraud in Durban?

6. In your view, how can personal income tax fraud be prosecuted effectively in Durban?
(Elaborate on your answer)

6.1 Do you consider the current strategies used to prosecute personal income tax fraud adequate or ineffective in Durban? (Motivate your answer)

6.2 What is your experience with regard to the success of current strategies used to prosecute to personal income tax fraud in Durban? (Elaborate your answer)

7. Any other comments you would like to make, regarding prosecuting of personal income tax fraud in Durban?

THANK YOU FOR YOUR PARTICIPATION

ANNEXURE C: UNIVERSITY OF KWAZULU-NATAL PROVISIONAL APPROVAL LETTER



12 September 2016

Ms SN Shandu 216066769
School of Applied Human Sciences
Howard College Campus

Dear Ms Shandu

Protocol reference number: HSS/1425/016M

Project title: Exploring perceptions on Personal Income Tax fraud in Durban, KwaZulu-Natal

Provisional Approval – Expedited Application

This letter serves to notify you that your application received 1 September 2016 in connection with the above, has been provisionally approved, subject to the following:

1. Gatekeeper permission letter required

This approval is granted provisionally and the final approval for this project will be given once the above condition has been met. In case you have further queries/correspondence, please quote the above reference number.

Please note that the research study cannot start until Full Approval has been granted.

Kindly submit your response to the Chair: Dr Shenuka Singh, Research Office as soon as possible

Yours faithfully

Dr Shamila Naidoo
Humanities & Social Sciences Research Ethics Committee

/pm

cc Supervisor: Dr Jean Steyn
cc. Academic Leader Research: Dr M Mkhize
cc. School Administrator: Ms Ayanda Ntuli

Humanities & Social Sciences Research Ethics Committee

Dr Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4609 Email: ximbap@ukzn.ac.za / snymnm@ukzn.ac.za / mohunp@ukzn.ac.za

Website: www.ukzn.ac.za



Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville

ANNEXURE D: UNIVERSITY OF KWAZULU-NATAL FULL APPROVAL LETTER



07 June 2017

Ms Smangele Nkosingiphile Shandu (216066769)
School of Applied Human Sciences – Criminology
Howard College Campus

Dear Ms Shandu,

Protocol reference number: HSS/1425/016M

Project title: Exploring perceptions on Personal Income Tax fraud in Durban, KwaZulu-Natal

Full Approval – Expedited Application
With regards to your response received on 19 May 2017 to our letter of 12 September 2016, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL** with the following amendment:

AMENDMENT:

- Research Site
- Population

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.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

Dr Shenuka Singh (Chair)

/ms

cc Supervisor: Dr Jean Steyn
cc. Dean & HoS: Professor J Buitendach

cc. School Administrator: Ms Ayanda Ntuli

Humanities & Social Sciences Research Ethics Committee

Dr Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4609 Email: ximbap@ukzn.ac.za / snymanm@ukzn.ac.za / mohunip@ukzn.ac.za

Website: www.ukzn.ac.za



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100 YEARS OF ACADEMIC EXCELLENCE

Founding Campuses

Edgewood

Howard College

Medical School

Pietermaritzburg

Westville

ANNEXURE E: SOUTH AFRICAN POLICE SERVICE PROVISIONAL AND FULL APPROVAL LETTERS



Privaatsak/Private Bag X 94

Verwysing/Reference: 3/34/2

Navrae/Enquiries: Lt Col Joubert
Intern Thenga

Telefoon/Telephone: (012) 393 3118

**DIVISION: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001**

The National Head
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

PERMISSION TO CONDUCT RESEARCH IN SAPS: EXPLORING PERCEPTIONS OF SOUTH AFRICAN COMMERCIAL CRIME UNIT INVESTIGATORS ON PERSONAL INCOME TAX FRAUD IN DURBAN: MASTERS DEGREE: UNIVERSITY OF KWAZULU-NATAL: RESEARCHER: SN SHANDU

1. The above subject matter refers.
2. The researcher, Ms SN Shandu, is conducting a study with the aim *to explore and develop and in-depth understanding of personal income tax fraud.*
3. The researcher is requesting permission to interview 12 specialist Investigators from South Africa Police Service under Commercial Crime Unity in Durban.
4. The proposal was perused according to National Instruction 1 of 2006. This office recommends that permission be granted for the research study, subject to the final approval and further arrangements by the office of the National Head: Directorate for Priority Crime Investigation.
5. We hereby request the final approval by your office if you concur with our recommendation. Your office is also at liberty to set terms and conditions to the researcher to ensure that compliance standards are adhered to during the research process and that research has impact to the organisation.
6. If approval granted by your office, this office will obtain a signed undertaking from researcher prior to the commencement of the research which will include your terms and conditions if there are any and the following:
 - 6.1. The research will be conducted at his/her exclusive cost.

PERMISSION TO CONDUCT RESEARCH IN SAPS: EXPLORING PERCEPTIONS OF SOUTH AFRICAN COMMERCIAL CRIME UNIT INVESTIGATORS ON PERSONAL INCOME TAX FRAUD IN DURBAN: MASTERS DEGREE: UNIVERSITY OF KWAZULU-NATAL: RESEARCHER: SN SHANDU

- 6.2 The researcher will conduct the research without the disruption of the duties of members of the Service and where it is necessary for the research goals, research procedures or research instruments to disrupt the duties of a member, prior arrangements must be made with the commander of such member.
- 6.3 The researcher should bear in mind that participation in the interviews must be on a voluntary basis.
- 6.4 The information will at all times be treated as strictly confidential.
- 6.5 The researcher will provide an annotated copy of the research work to the Service.
7. If approval granted by your office, for smooth coordination of research process between your office and the researcher, the following information is kindly requested to be forwarded to our office:
 - **Contact person:** Rank, Initials and Surname.
 - **Contact details:** Office telephone number and email address.
8. A copy of the approval (if granted) and signed undertaking as per paragraph 6 supra to be provided to this office within 21 days after receipt of this letter.
9. Your cooperation will be highly appreciated.



**DEPUTY COMMANDANT GENERAL
DIVISIONAL COMMISSIONER: RESEARCH
DR BM ZULU**

DATE: 2017/05/04

South African Police Service



Siid Afrikaanse Polisie

Private Sak Private Bag X94	Pretoria 0001	Fax No. Fax No.	(012) 393 2128
--------------------------------	------------------	--------------------	----------------

Your reference/My verwysing:
My reference/My verwysing: 3/34/2
Enquiries/Navrae: **Lt Col Joubert
Intern Thenga
(012) 393 3118**
Tel:
Email: **JoubertG@saps.gov.za**

THE DIVISIONAL COMMISSIONER: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001

Ms S Shandu
UNIVERSITY OF KWAZULU-NATAL

**PERMISSION TO CONDUCT RESEARCH IN SAPS: EXPLORING PERCEPTIONS OF
SOUTH AFRICAN COMMERCIAL CRIME UNIT INVESTIGATORS ON PERSONAL INCOME
TAX FRAUD IN DURBAN: MASTERS DEGREE: UNIVERSITY OF KWAZULU-NATAL:
RESEARCHER: SN SHANDU**

The above subject matter refers.

You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.

Further arrangements regarding the research study may be made with the following office:

The National Head: Directorate for Priority Crime Investigation:

- **Contact Person:** Maj Gen Kgamanyane
- **Contact Details:** (012) 393 5480

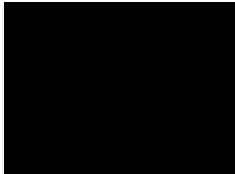
The Office of the National Head: Directorate for Priority Crime Investigation, has set the following conditions for the study:

-The research will be limited to the questionnaire provided by the researcher unless otherwise agreed with the Senior Contact Officer Maj Gen Kgamanyane;

-The final draft will be tested with Acting National Head: DPCI Lt Gen Matakata to confirm that the research conditions have been adhered to.

PERMISSION TO CONDUCT RESEARCH IN SAPS: EXPLORING PERCEPTIONS OF
SOUTH AFRICAN COMMERCIAL CRIME UNIT INVESTIGATORS ON PERSONAL
INCOME TAX FRAUD IN DURBAN: MASTERS DEGREE: UNIVERSITY OF KWAZULU-
NATAL: RESEARCHER: SN SHANDU

Kindly adhere to paragraph 6 of our letter signed on the 2017-05-04 with the same above
reference number.



LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: RESEARCH
DR BM ZULU

DATE: 2017/09/11

**ANNEXURE F: SOUTH AFRICAN POLICE SERVICE DIRECTORATE FOR PRIORITY
CRIME INVESTIGATION (HAWKS) FINAL APPROVAL LETTER**



1 CRESSWELL ROAD, SILVERTON, 0127
PRIVATE BAG X1500, SILVERTON, 0127
TEL: (012) 846-4315/4331
FAX: (012) 846-4442
E-MAIL: matthewsr@saps.gov.za
letlapetabea@saps.gov.za

Ms S Shandu
No 901 John Ross House
Victoria Embarkment
Durban
4001

Dear Ms S Shandu

**RE: FORMAL RESEARCH APPLICATION: EXPLORING PERCEPTIONS OF SOUTH AFRICAN
COMMERCIAL CRIME UNIT INVESTIGATORS ON PERSONAL INCOME TAX FRAUD IN DURBAN:
S SHANDU**

1. Your application dated 06 JUNE 2017 refers
2. Approval has been granted for you to conduct research in the Directorate for
Priority Crime Investigation with the following conditions:
 - a. The research will be limited to the questionnaire provided by yourself
unless otherwise agreed with Major General Kgamanyane who will be your
contact Senior Officer.
 - Email address: Kgamanyanel@saps.gov.za
 - Telephone Number: 012 393 5480
 - b. The final draft will be tested with the Acting National Head: DPCI Lt
General Matakata to confirm that the research conditions have been
adhered to.
3. A copy of your final research document should be submitted to this office for
record purposes.

COLONEL

**SECTION COMMANDER: MANAGEMENT INFORMATION AND STRATEGIC PLANNING:
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

RM MATTHEWS

Date: 2017-07-12

ANNEXURE G: NATIONAL PROSECUTING AUTHORITY FINAL APPROVAL LETTER

Administration



Tel: +27 12 845 6000

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Pretoria

P/Bag X752
Pretoria
0001

Enquiry: Mr. Chris Griffiths
Email: cgriffiths@npa.gov.za
Phone: 0128456896
Date: 16/05/2017

Ms. Smangele Nkosingiphile Shandu
901 John Ross House
Victoria Embankment
Durban
4001

RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH IN THE NATIONAL PROSECUTING AUTHORITY (NPA) (DURBAN AREA)

Dear Ms. Shandu

Thank you for showing interest in conducting research in the NPA. The purpose of this letter is to inform you that your request to conduct research within the NPA (Durban Area) has been approved.

The NPA appreciates that the topic has been approved by the University of KwaZulu-Natal (UKZN) School of Applied Human Sciences Humanities & Social Sciences Research Ethics Committee. Please consider and/or adhere to (whichever is applicable) the below-mentioned in support of your research:

1. The request is supported by the Specialised Tax Unit (STU) of the NPA in KZN and it should be noted and understood that information about the work can only be utilised with the NPA's explicit written approval and permission.

Corporate Service Centres:

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

2. The research request focuses on "Exploring Perceptions on Personal Income Tax fraud in Durban, KwaZulu Natal" and therefore the policies and Acts that govern it.
3. Permission to conduct research is only limited to interviewing Prosecutors at the STU in KZN.
4. This research intends to address the research problems of the:
 - 4.1. Occurrence of Personal Income Tax fraud.
 - 4.2. Detection of Personal Income Tax fraud.
 - 4.3. Prevention of Personal Income Tax fraud.
 - 4.4. Obstacles that must be removed to minimise or stop Personal Income Tax fraud.
5. Upon completion of the research project, it is suggested that a copy of the report be sent to the NPA for perusal and approval. This is specifically to prevent the inappropriate interpretation and publication of the latter mentioned information.
6. It is also suggested that in the event of the author publishing an article on research which contains NPA information, it be approved by the NPA.
7. Please inform the Director of Public Prosecutions: KwaZulu Natal (DPP: KZN) of your intent to conduct research with the Prosecutors before approaching them.
8. This research approval letter is valid for 2 years from the date of approval by the Deputy National Director of Public Prosecutions: Administration and OWP. You will need to re-apply for approval in case your research exceeds the above-mentioned timeframe.

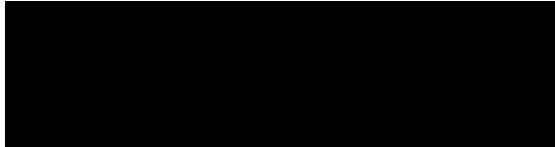
In your case there will be no need to complete FORM A, which is the request for access to records of a Public Body, Section 18(1) of the Promotion of Access to Information Act, 2000, since your research study involves interviews with participants.

**RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH STUDY: MS.
S.N. SHANDU 2017/05/16**

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

Name: Ms. Marthi Alberts

Telephone number: 012 845 6275



Dr. Silas Ramaite SC

Deputy National Director of Public Prosecutions: Administration and OWP

Date:

07/06/2017

RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH STUDY: MS. S.N. SHANDU 2017/05/16

ANNEXURE H: INFORMED CONSENT FORM FOR SOUTH AFRICAN POLICE SERVICE OFFICIALS (DIRECTORATE FOR PRIORITY CRIME INVESTIGATION; THE NATIONAL PROSECUTING AUTHORITY; DIRECTOR OF PUBLIC PROSECUTIONS SPECIALISED TAX UNIT)

PROJECT TITLE: Exploring Perceptions of South African Police Service (SAPS) investigators and National Prosecuting Authority (NPA) prosecutors on Personal Income Tax Fraud in Durban, KwaZulu-Natal (KZN).

My name is Smangele Shandu. I am currently conducting my fieldwork to complete a Masters' Degree study entitled "*Exploring perceptions of South African Police Service investigators and National Prosecuting Authority prosecutors on personal income tax fraud in Durban, KwaZulu-Natal.*" This study is conducted under the supervision of University of KwaZulu-Natal (UKZN), School Applied Human Sciences in the discipline of Criminology and Forensic studies. My supervisor is Dr Jean Steyn. This form request your participation in this study.

This study seeks to clarify and explore the participant's understanding on personal income tax fraud in Durban, KZN.

This study aims to contribute significantly on the corpus of knowledge on the nature and extent of personal income tax fraud. In doing so, the study may further clarify the impact of personal income tax fraud and how personal income tax fraud can be prevented.

- Participation in this study is voluntary;
- The interview or focus group will not paid in money;
- The participant may withdraw from the research at any time without negative consequences;
- You will not use confidential information without permission;
- The participant will be treated with respect and dignity;
- Will not be deceived or tricked into reality information unwillingly;
- Interview or focus group discussion will be one hour long;

- The in-depth interviews (IDIs) and key informant interview (KIIs) will be audio recorded to collect data accurately with your permission. However, your identifying particulars will not be recorded;
- In general, responses will be treated with confidential manner;
- The limits of confidentiality include information or data collected from experts in the subject under discussion. There is a great value in the information that you will be providing hence revealing the source of such crucial information will give credibility to the contents of the interview;
- As a participant you have the option to choose a pseudonym or the participants will be referred by a coded number / notation system; and
- The data will be kept secured for five years for purposes of verification by Dr. Jean Steyn at the UKZN.

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

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

Researcher and institution particulars:

	Address	Phone number	Email Address
Researcher	901 John Ross House, Victoria Embankment, Durban, 4001	0744205446/ 0748079044	smangelemphile@gmail.com
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	Dr. Jean Steyn	+27 31 260 7345	steyn@ukzn.ac.za

ANNEXURE I: LETTER TO REQUEST PERMISSION TO CONDUCT RESEARCH TO THE SOUTH AFRICAN REVENUE SERVICE

901 John Ross House

Victoria Embarkment

Durban

4001

10 October 2016

Dear Sir / Madam

Permission to conduct the study on Project Title: Exploring perceptions on Personal Income Tax Fraud in Durban, KwaZulu Natal

My name is Smangele Shandu. I am writing request your permission to conduct the study on "Exploring perceptions on Personal Income Tax Fraud in Durban, KwaZulu Natal".

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 on Research Masters Degree. My academic supervisor is Dr. Jean Steyn.

The study aims to contribute significantly on the corpus of knowledge on the nature and extent of Personal Income tax fraud. In doing so, the study will further clarify the impact of income tax fraud and how it can be prevented. In order for me to be able to collect data with the Criminal Investigators located at SARS Durban Albany building, I request your permission to conduct the study which will be on face-to-face individual interviews. Arrangements with the participants will be made before data collection commences and the informed consent letters will also be provided.

For more information on the study, please find the attached provisional approval letter from the University Ethics Committee and ethical clearance with details of the study.

Yours Sincerely

Smangele Shandu

0744205446/smangelemphile@gmail.com

**ANNEXURE J: SOUTH AFRICAN REVENUE SERVICE ELECTRONIC MAIL (E-MAIL):
REFUSAL TO PARTICIPATE IN THIS STUDY**

Date: Monday, November 28, 2016

Subject: Permission to conduct a study: Exploring perceptions on Personal Income Tax Fraud in
Durban, KwaZulu-Natal

“Dear Ms Mphile

I am awaiting approval from our national office.

I further follow up was already done this morning

Apologies for the delay”

Date: Monday, February 6, 2017

Subject: Follow-up on study request

“Dear Ms Mphile

*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*

Regards”

ANNEXURE K: DECLARATION LETTER FOR DATA RECORDING

I..... (**Full names of the participant**) 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 stud

Yes	No

Signature of Participant

Date

.....

.....