

## PROCLAMATIONS • PROKLAMASIES

## PROCLAMATION NO. R. 18 OF 2018

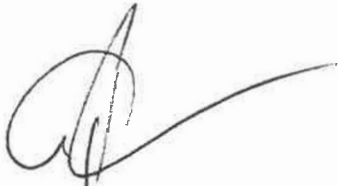
by the  
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

**COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE  
BY THE SOUTH AFRICAN REVENUE SERVICE**

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947) (the Act), I hereby –

- (a) declare that the provisions of the said Act shall be applicable to the Commission of Inquiry into tax administration and governance by the South African Revenue Service; and
- (b) make the regulations in the Schedule with reference to the said Commission.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria  
on this 13 day of June Two Thousand and Eighteen.



**PRESIDENT**

By Order of the President-in-Cabinet:



**MINISTER OF THE CABINET**

**SCHEDULE**  
**REGULATIONS**

1. In these regulations, unless the context otherwise indicates -

“**Assistants to the Commission**” means those persons appointed by the President under the Proclamation constituting the Commission, or any subsequent Proclamation, to assist the Commissioner;

“**Commission**” means the Commission of Inquiry into tax administration and governance by the South African Revenue Service appointed by the President in terms of Proclamation No.17 published in the Government Gazette No. 41652 of 24 May 2018 (Proclamation);

“**Commissioner**” means the person appointed by the President as Commissioner under the Proclamation constituting the Commission or any substitute for such Commissioner appointed by the President under a subsequent Proclamation;

“**Document**” includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture, data, disc, hard drive or recording;

“**Department**” means the Department of Justice and Constitutional Development;

“**Inquiry**” means the inquiry conducted by the Commission;

“**Minister**” Means the Minister of Justice and Correctional Services;

“**Officer**” means any person in the service of the State who has been designated or seconded to the Commission to provide administrative support to the Commission;  
and

“**Secretary**” means a person who is responsible for the administrative support to the Commission.

2. The proceedings of the Commission may be recorded in the manner determined by the Commissioner.
3. The Commissioner may, with the approval of the Minister, designate one or more knowledgeable or experienced persons to assist the Commission in any capacity he may deem necessary.
4. The Minister shall, after consultation with the Commissioner, appoint or designate any suitably qualified person as Secretary of the Commission.
5. (1) The Commission shall be assisted by officers of the Department or any other department of State designated or seconded to its service or any person in the service of any public or other body who, by arrangement with the body concerned, is seconded to the service of the Commission.  
  
(2) Officers in the service of the Commission shall be appointed additional to the establishment of the Department for the period of such appointment or the duration of the Commission as the case may be.
6. The National Treasury must ensure that adequate funds are made available to the Commission to realise its mandate.
7. Any person appearing before the Commission may be assisted by an advocate or an attorney.
8. The Commissioner, an Assistant to the Commission or an officer generally or specifically authorised thereto by the Chairperson may, where necessary, administer an oath to or accept an affirmation from any person appearing before the Commission.

9. (1) No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947).

(2) Any witness appearing before the Commission may be cross-examined by a person only if the Commissioner permits such cross-examination should he deem it necessary and in the best interest of the function of the Commission.

(3) Any witness may be re-examined by his or her legal representative for the purpose of explaining the evidence given by the witnesses during his or her examination.

10. The Commissioner may, at the request of any person appearing during or at any aspect or stage of the inquiry, or furnishing any information to the Commission, direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

11. (1) The Commissioner, an Assistant to the Commission or an officer, may, with a warrant, for the purposes of the inquiry, at all reasonable times and without prior notice or with such notice as he or she may deem appropriate, enter and inspect any premises and demand and seize any document or article which is on such premises.

(2) Any entry upon or search of any premises or person thereon in terms of this regulation, shall be conducted with strict regard to decency and order including-

- (a) a person's right to, respect for and the protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(3) Subject to sub-regulation (4), the premises referred to in sub-regulation (1) may be entered only by virtue of a warrant issued in chambers by a judge of the Division of

the High Court of South Africa having jurisdiction in respect of the area where such premises are situated.

(4) A warrant referred to in sub-regulation (3) may be issued by a judge in respect of premises situated in an area outside the jurisdiction of the Division of the High Court concerned if he or she deems it justified;

(5) A warrant referred to in sub-regulation (1) may be issued only if it appears to the judge from information revealed under oath or affirmation, stating the need, in regard to the inquiry, for a search and seizure in terms of this regulation that there are reasonable grounds to believe that any document or article referred to in sub-regulation (1) is on or at such premises or suspected to be on or at such premises;

(6) The Commissioner may direct any person to submit an affidavit or affirmed declaration, or to produce any document in his or her possession or under his or her control, or to appear before the Commission to give evidence, and may examine such person, and may receive into evidence any such affidavit, affirmed declaration or document.

12. (1) Any Assistant to the Commission, officer or any person assisting the Commission in any capacity, shall preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties relating to the functions of the Commission, except in so far as the publication of such matter or information is necessary for the purposes of the report of the Commission, and every such person, except the Commissioner, or any officer, or any person assisting the Commission in any other capacity, shall, before performing any duty in connection with the Commission, take and subscribe before the Commissioner an oath of fidelity or secrecy in the following form:

I, A.B., declare under oath/affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission or by order of a competent court, I shall not communicate to any person any matter or information which comes to my knowledge in connection with the inquiry, or allow or permit any person to have access to

any records of the Commission, including any notes, record or transcription of the proceedings of the said Commission in my possession or custody of the said Commission or any officer.

(2) No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry, or allow or permit any other person to have access to any records of the Commission, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

(3) No person shall without the written permission of the Commissioner –

(a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or

(b) peruse any document, including any statement, which is destined to be submitted to the Commissioner or intercept such document while it is being taken or forwarded to the Chairperson.

(4) No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission.

13. (1) Any person who insults, disparages or belittles the Commissioner or any Assistant to the Commission or prejudices the inquiry or proceedings or findings of the Commission, is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding six months;

(2) Any person who –

(a) contravenes regulation 12 or who fails to comply with a direction of the Commissioner given under these regulations; or

- (b) wilfully hinders, resists or obstructs the Commissioner or any of the Assistants to the Commission or any officer in the exercise of any power contemplated in these regulations

is guilty of an offence and liable on conviction –

- (i) in the case of an offence referred to in paragraph (a) to a fine, or to imprisonment for a period not exceeding six months;
- (ii) in the case of an offence referred to in paragraph (b), to a fine or imprisonment for a period not exceeding twelve months.

**14.** The Commission may, for purposes of facilitating access to the Commission, conduct hearings at any other place as may be determined by the Commissioner where he considers it appropriate to do so.

**15.** The Commission is authorised, as contemplated by section 70(2)(c) of the Tax Administration Act 28 of 2011, to have access to any taxpayer information, as that term is defined in the Act, as it considers necessary for the performance of its functions.

**16.** The Commissioner may perform any acts he considers necessary for the proper performance of the functions of the Commission.

**17** These regulations may be added to, varied or amended from time to time.

**18.** The Commission may, by means of rules, determine its own procedures.

**19.** These shall be called the regulations of the Commission of Inquiry into tax administration and governance by the South African Revenue Service and shall come into effect on publication in the Gazette.

**BYLAE**  
**REGULASIES**

1. In hierdie regulasies, tensy uit die samehang anders blyk, beteken-

**“Assistente van die Kommissie”** daardie persone deur die President aangestel kragtens die Proklamasie wat die Kommissie aanstel, of enige daaropvolgende Proklamasie, om die Kommissaris by te staan;

**“Beampte”** ‘n persoon in diens van die Staat wat aangewys of tot, of gesekeundeer is na, die Kommissie om administratiewe ondersteuning aan die Kommissie te bied;

**“Departement”** die Departement van Justisie en Staatkundige Ontwikkeling;

**“Dokument”** insluitend, ‘n boek, pamflet, notule, lys, omsendskrywe, plan, plakaat, publikasie, skets, foto, prent, data, skyf, hardeskyf of opname, hetsy in elektroniese formaat of andersins;

**“Kommissaris”** die persoon deur die President as Kommissaris aangestel ingevolge die Proklamasie wat die Kommissie aanstel of enige plaasvervanger van sodanige Kommissaris aangestel deur die President kragtens ‘n daaropvolgende Proklamasie;

**“Kommissie”** die Kommissie van Ondersoek na belasting administrasie en bestuur deur die Suid-Afrikaanse Inkomstediens, aangestel deur die President ingevolge Proklamasie No. 17 gepubliseer in die Staatskoerant No. 41652 van 24 Mei 2018 (Proklamasie);

**“Minister”** die Minister van Justisie en Korrektiewe Dienste;

**“Ondersoek”** die ondersoek deur die Kommissie gedoen; en

**“Sekretaris”** ‘n persoon wat vir die administratiewe ondersteuning van die Kommissie verantwoordelik is.



2. Die verrigtinge van die Kommissie kan genotuleer word op die wyse deur die Kommissaris bepaal.
3. Die Kommissaris kan, met die goedkeuring van die Minister, een of meer kundige of ervare persone aanwys om die Kommissie by te staan in enige hoedanigheid wat hy mag nodig ag.
4. Die Minister moet, na oorlegpleging met die Kommissaris, 'n toepaslik gekwalifiseerde persoon as Sekretaris van die Kommissie aanstel of aanwys.
5. (1) Die Kommissie moet bygestaan word deur beamptes van die Department of enige ander Staatsdepartement, aangewys of gesekeundeer tot die se diens, of enige persoon in diens van 'n openbare of ander liggaam wat, deur reëling met die betrokke liggaam, tot diens van die Kommissie gesekeundeer is.  
(2) Beamptes in diens van die Kommissie moet aangestel word addisioneel tot die diensstaat van die Departement vir die tydperk van sodanige aanstelling of die duur van die Kommissie, na gelang van die geval.
6. Die Nasionale Tessourie moet toesien dat voldoende fondse aan die Kommissie beskikbaar gestel word om sy mandaat uit te voer.
7. 'n Persoon wat voor die Kommissie verskyn kan deur 'n advokaat of 'n prokureur bygestaan word.
8. Die Kommissaris, 'n Assistent van die Kommissie of 'n beampte wat in die algemeen of spesifiek daartoe deur die Voorsitter gemagtig is kan, indien nodig, 'n eed laat aflê of 'n bevestiging afneem van 'n persoon wat voor die Kommissie verskyn.
9. (1) Geen persoon wat voor die Kommissie verskyn mag weier om enige vraag te beantwoord op enige gronde anders as die bedoel in artikel 3(4) van die Kommissiewet, 1947 (Wet No. 8 van 1947) nie.

(2) Enige getuie wat voor die Kommissie verskyn mag slegs deur 'n persoon kruisondervra word indien die Kommissaris sodanige kruisondervraging toelaat, indien hy dit nodig en in die beste belang van die werksaamhede van die Kommissie ag.

(3) Enige getuie mag herondervra word deur sy of haar regsverteenvoerder vir doeleindes van verduideliking van die getuienis gelewer deur die getuie tydens sy of haar ondervraging.

10. Die Kommissaris kan, op versoek van enige persoon wat verskyn, of wat enige inligting aan die Kommissie verskaf, tydens of te enige aspek of stadium van die ondersoek, beveel dat geen persoon op enige wyse hoegenaamd die naam of adres van sodanige persoon of enige inligting wat waarskynlik sy of haar identiteit sal openbaar, mag bekendmaak nie.

11. (1) Die Kommissaris, 'n Assistent van die Kommissie of 'n beampte kan met 'n lasbrief, vir doeleindes van die ondersoek, te enige redelike tye en sonder vooraf kennisgewing of met sodanige kennisgewing as wat hy of sy gepas mag vind, enige perseel betree en inspekteer en enige dokument of voorwerp wat op sodanige perseel is eis en op beslaglê.

(2) 'n Betreding of deursoeking van 'n perseel of persoon ingevolge hierdie regulasie moet gedoen word met streng inagneming van fatsoenlikheid en orde insluitend-

- (a) 'n persoon se reg tot, respek vir en die beskerming van sy of haar waardigheid;
- (b) die reg van 'n persoon tot vryheid en veiligheid; en
- (c) die reg van 'n persoon tot sy of haar persoonlike privaatheid.

(3) Onderhewig aan subregulation (4), mag die perseel bedoel in subregulasie (1) slegs betree word by magte van 'n lasbrief in kamers uitgevaardig deur 'n regter van 'n Afdeling van die Hoë Hof van Suid-Afrika wat jurisdisie het ten opsigte van die gebied waar daardie perseel geleë is.

(4) 'n Lasbrief na verwys in subregulasie (3) kan deur 'n regter uitgevaardig word ten opsigte van 'n perseel wat in 'n gebied buite die jurisdiksie van die betrokke Afdeling van die Hoë Hof geleë is indien hy of sy die geregverdig ag.

(5) 'n Lasbrief na verwys in subregulasie (1) kan slegs uitgevaardig word indien dit vir die regter, uit inligting bekendgemaak onder eed of bevestiging wat die nodigheid stel ten opsigte van die ondersoek vir 'n deursoeking en beslaglegging ingevolge hierdie regulasie, voorkom asof daar redelike gronde is om te glo dat 'n dokument of voorwerp in subregulasie (1) na verwys op of by sodanige perseel is of vermoedelik op of by sodanige perseel is.

(6) Die Kommissaris kan enige persoon beveel om 'n eedsverklaring of bevestigende verklaring af te lê, of om 'n dokument in sy of haar besit of onder sy of haar beheer te toon, of om voor die Kommissie te verskyn om getuienis te lewer en kan daardie persoon ondervra en mag enige sodanige eedsverklaring, bevestigende verklaring of dokument bevestigende verklaring as getuienis toelaat.

**12.** (1) 'n Assistent van die Kommissie, beampte of 'n persoon wat die Kommissie in enige hoedanigheid bystaan, moet geheimhouding handhaaf ten opsigte van enige aangeleentheid of inligting wat tot sy of haar kennis mag kom in die uitvoering van sy of haar pligte ten opsigte van die werksaamhede van die Kommissie, buiten in soverre as wat die bekendmaking van sodanige aangeleentheid of inligting nodig is vir doeleindes van die verslag van die Kommissie en elke sodanige persoon, buiten die Kommissaris, of enige beampte, of enige persoon wat die Kommissie in enige ander hoedanigheid bystaan, moet, voor die verrigting van enige plig met betrekking tot die Kommissie, voor die Kommissaris 'n eed van getrouheid of geheimhouding aflê en onderskryf in die volgende formaat:

Ek, A.B., verklaar onder eed/bevestig en verklaar dat, buiten in soverre as wat dit nodig is in die uitvoering van my pligte ten opsigte van die werksaamhede van die Kommissie of op die bevel van 'n bevoegde hof, ek nie aan enige persoon enige aangeleentheid of inligting wat tot my kennis kom met betrekking tot die ondersoek sal oordra nie, of enige persoon sal toelaat of vergun om toegang tot die notules van die Kommissie te kry nie, insluitend

enige notas, opname of transkripsie van die verrigtinge van die gemelde Kommissie in my besit of beheer, van die gemelde Kommissie of 'n beampte.

(2) Geen persoon mag aan enige ander persoon enige aangeleentheid of inligting wat ten opsigte van die ondersoek tot sy of haar kennis kon gekom het oordra nie, of enige ander persoon toelaat of vergun om toegang tot enige notules van die Kommissie te kry nie, buiten in soverre as wat dit nodig is in die uitvoering van sy of haar pligte ten opsigte van die werksaamhede van die Kommissie of op bevel van 'n bevoegde hof.

(3) Geen persoon mag sonder skriftelike toestemming van die Kommissaris –

(a) 'n dokument wat aan die Kommissie voorgelê is deur 'n persoon ten opsigte van die ondersoek versprei nie of die inhoud daarvan of die inhoud van enige gedeelte van die inhoud van sodanige dokument bekendmaak nie; of

(b) 'n dokument, insluitend 'n verklaring, wat bedoel is om aan die Kommissaris voorgelê te word, lees nie of sodanige dokument onderskep terwyl dit na die Voorsitter geneem word of onderweg is nie.

(4) Geen persoon mag, buiten in soverre dit vir die uitvoering van die opdrag van die Kommissie nodig is, die verslag of 'n tussentydse verslag van die Kommissie of 'n afskrif of 'n gedeelte daarvan of inligting rakende die oorweging van getuienis deur die Kommissie bekendmaak of aan enige ander persoon verskaf nie.

13. (1) 'n Persoon wat die Kommissaris of die Assistent van die Kommissie beledig, slegmaak of verkleineer of die ondersoek, verrigtinge of bevindinge van die Kommissie benadeel, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete, of tot gevangenisstraf vir 'n tydperk van hoogstens ses maande.

(2) 'n Persoon wat –

(a) regulasie 12 oortree of wat versuim om aan 'n instruksie van die Kommissaris gegee ingevolge die regulasies te voldoen;

(b) doelbewus die Kommissaris of enige van die Assistenten van die Kommissie of enige beampte in die uitvoering van enige bevoegdheid ingevolge hierdie regulasies hinder, teengaan of dwarsboom,

is skuldig aan 'n misdryf en by skuldigbevinding strafbaar–

- (i) in die geval van 'n misdryf in paragraaf (a) bedoel met 'n boete, of tot gevangenisstraf vir 'n tydperk van hoogstens ses maande;
- (ii) in die geval van 'n misdryf in paragraaf (b) bedoel met 'n boete, of tot gevangenisstraf vir 'n tydperk van hoogstens twaalf maande.

14. Die Kommissie kan, vir doeleindes van die fasilitering van toegang tot die Kommissie, verhoor op enige ander plek hou soos deur die Kommissaris bepaal waar hy dit toepaslik ag om so te doen.

15. Die Kommissie is gemagtig, soos beoog in artikel 70(2)(c) van die Wet op Belastingadministrasie 28 van 2011, om toegang te hê tot enige belastingpligtige se inligting, soos daardie uitdrukking in die Wet omskryf is, soos dit nodig geag word vir die uitvoering van sy funksies.

16. Die Kommissaris mag enige handeling uitvoer wat hy nodig ag vir die behoorlike uitvoering van die funksies van die Kommissie.

17. Daar mag tot hierdie regulasies bygevoeg word en dit mag van tyd tot tyd gewysig of aangepas word.

18. Die Kommissie kan by wyse reëls sy eie prosedure bepaal.

19. Hierdie regulasies heet die regulasies betreffende die Kommissie van Ondersoek na belasting administrasie en bestuur deur die Suid-Afrikaanse Inkomstediens en tree in werking by publikasie in die Staatskoerant.