THE NET WORTH METHOD AS TECHNIQUE TO QUANTIFY INCOME DURING INVESTIGATION OF FINANCIAL CRIME

by

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Submitted in part fulfilment of the requirements

for the degree of

MAGISTER TECHNOLOGIAE

in the subject

FORENSIC INVESTIGATION

at the

UNIVERSITY OF SOUTH AFRICA

SUPERVISOR: DR NJC OLIVIER

NOVEMBER 2009

PREFACE

This research examines the Net Worth method as a technique used during the investigation of financial crime to prove income from unknown sources.

In recent years the legislator has introduced a range of statutes to fulfil the Republic's international obligations to combat and prevent organised crime, money laundering and financing of terrorism. It has also introduced new legislation to combat and prevent corruption and insider trading. These statutes create a whole new range of offences, which needs to be investigated by the investigative authorities when required.

This research explains the concept 'financial crime' and identifies the offences where the receipt of 'income' from unknown sources is likely to be relevant to the criminal conduct. During the investigation of financial crime, investigators may be confronted with the question of whether and how much income was received in order to clarify a potential fact in dispute. This research shows investigators how to prove the receipt of income and the amount in the absence of direct evidence by applying the Net Worth method.

The research further introduces investigators to an indirect method they may find useful in determining income in order to prove the commissioning of a financial crime in those instances where they find that they do not have the required evidence to prove the original offence from which an income or benefit was derived in the first instance.

This research shows what sets the indirect method of proving income apart from direct methods and how to apply it in practice. The provision of indirect evidence in court implies that the court, in the absence of direct evidence, will have to draw an inference, circumstantially, from the findings of the Net Worth method and come to the only reasonable conclusion that 'income' was received.

VOORWOORD

Hierdie navorsing ondersoek die 'Net Worth' metode, as tegniek tydens die ondersoek van finansiële misdaad om die ontvangs van inkomste vanaf onbekende bronne te bewys.

Gedurende die afgelope paar jaar het die wetgewer verskeie statute in werking gestel ter nakoming van die Republiek se internasionale verpligtinge om georganiseerde misdaad, geldwassery en finansiering van terrorisme te beveg en te voorkom. Die wetgewer het ook nuwe wette in werking gestel om korrupsie en binnekennishandel te beveg en voorkom. Hierdie statute skep 'n reeks nuwe misdrywe wat ondersoek moet word deur die ondersoek owerhede wanneer sodanig versoek.

Hierdie navorsing verduidelik die konsep 'finansiële misdaad' en identifiseer die misdrywe waar die ontvangs van 'inkomste' vanaf onbekende bronne relevant mag wees tot die strafregtelike handeling. Tydends die ondersoek van finansiële misdaad mag ondersoekers gekonfronteer word met vraag, of inkomste verdien en hoeveel inkomste verdien is ten einde 'n potensiële feit in geskil op te klaar. Hierdie navorsing demonstreer aan ondersoekers hoe om inkomste ontvang te bewys deur gebruik te maak van die 'Net Worth' metode waar daar nie direkte getuienis is om die ontvangs en omvang van inkomste te bewys nie.

Hierdie navorsing stel ondersoekers verder voor aan 'n indirekte metode wat hulle moontlik wil gebruik om inkomste te bewys ten einde die pleging van 'n finansiële misdaad te bewys waar daar dalk geen getuienis bestaan om die misdaad waaruit die inkomste in die eerste instansie verdien is te bewys nie.

Hierdie navorsing toon aan wat indirekte metodes om inkomste te bewys onderskei van direkte metodes en hoe om dit in die praktyk toe te pas. Dit impliseer dat die howe, in die afwesigheid van direkte getuienis, 'n afleiding moet maak van die bevinding van die 'Net Worth' metode, synde dat die enigste redelike afleiding wat gemaak kan word. is dat dit inkomste wat ontvang is.

ACKNOWLEDGEMENTS

STATEMENT BY CANDIDATE

I declare that "**THE NET WORTH METHOD AS TECHNIQUE TO QUANTIFY INCOME DURING INVESTIGATION OF FINANCIAL CRIME**" is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Signed: …………………………

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11 March 2010

SUMMARY

It is a well-known fact that criminals derive an income from their illegal activities, live lavish lifestyles, flaunt their wealth for all to see and acquire luxury goods. It is also a well known fact that criminals living from the proceeds of crime do not want to not want to keep financial records of their transactions or illegitimate business for fear of being detected by the authorities and to escape being taxed. It is also a known fact that criminals do not declare income from criminal activities for income tax purposes to the revenue authorities for fear of the illegal origin of the income being made known to the investigating authorities and law enforcement.

During the investigation of financial crimes, such as tax evasion and money laundering, it may be required that the amount or value of money, income or assets accrued by a subject is determined in order to determine for instance their liability to pay tax.

This research project examines the Net Worth method as an indirect method to circumstantially quantify income during the investigation of financial crime.

Key Terms:
Net Worth Analysis; Net Worth Method; Indirect Methods of Proving Income Circumstantially; Investigation of Crime; Forensic Investigation; Financial Crime; Financial Investigation; Forensic Technique; Quantify Income; Prove Income.

CONFIRMATION OF LANGUAGE EDITING

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10 March 2010

To whom it may concern

Certification of Language Editing of André Botha's Dissertation
I am a language editing consultant. I certify that I edited André Botha's dissertation, entitled "The Net Worth Method as Technique to Quantify Income during Investigation of Financial Crime", written in partial fulfilment of the requirements for an MTech in Forensic Investigation. I edited the dissertation in October 2009 and was duly paid for my services by Mr Botha.

Kind regards

Susan van Tonder

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CHAPTER 1
GENERAL ORIENTATION

1.1   INTRODUCTION

It is a well-known fact that criminals do not want to keep financial records of their transactions or illegitimate business for fear of being detected by the authorities and to escape being taxed. It is also a known fact that criminals do not declare income from criminal activities for income tax purposes to the revenue authorities for fear of the illegal origin of the income being made known to the investigating authorities and law enforcement. On the other hand, criminals sometimes flaunt their wealth and live beyond their known means of income for all to see and law enforcement agencies appear to be unable to do anything about the situation.

During the investigation of financial crimes, such as tax evasion and money laundering, it may be required that the amount or value of money, income or assets accrued by a subject is determined. Sometimes it is possible to determine this amount through direct methods owing to the availability of records of transactions, financial records or accounting records. In other instances few of these records may exist or no records may exist at all, although the subject under investigation exhibits a lifestyle or net worth beyond their known means of income. In some instances the subject may not have any known or legitimate source of income at all.

It may be possible to use financial investigation methods used by revenue authorities to detect and quantify under-declared income from unknown sources to discover this income for purposes of proving income relevant to other crimes.

It may also be possible to prosecute criminals for financial crimes other than the crimes from which they have derived illicit income or accrued assets, or to subject such accruals in illicit income and assets to forfeiture by the state. In the abovementioned instances it might be necessary to determine what the

amount or value of money, income or assets accrued to the subject under investigation is.

In the researcher's experience as a financial investigator, investigators, when having to prove an offence or a fact in dispute where the amount of money derived or wealth accumulated is in question or being disputed, rely on direct evidence in the form of financial and accounting records, and the findings of an examination of these records. The researcher's experience has also shown that a relatively intelligent and experienced investigator, with the support of such direct evidence at his disposal, can fairly accurately quantify income or value of wealth accumulated using simple direct financial investigation techniques.

The problem arises where no or very few direct accounting or financial records (evidence) are available to examine and use in support of the findings of the investigator, although it is obvious that the subject is living beyond the means of his known sources of income. In these instances investigators tend to give up pursuing an investigation into the more serious offence and settle for a charge on an offence where it is not necessary to prove the amount in income or wealth accrued.

During informal discussions the researcher conducted with several investigators who conduct financial investigations the researcher learned that many investigators believe that in the absence of such direct evidence no technique is available that will allow them indirectly to estimate the amount in income or wealth accrued that would provide sufficient circumstantial evidence in a court of that fact. During these informal discussions it became clear that, because investigators are unaware of such an indirect method, they rely on direct methods, which they generally refer to as a 'financial profile' of the subject. The inference one can draw from such methods is that the subject is receiving funds from other sources. However, these methods do not provide proof of such income and the amount received. These methods rely on a view of financial transactions through an examination of books, records and bank accounts of the subject and payee of the funds.

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1.2   AIM OF THE RESEARCH

According to Mouton (1996:103), the aim of a study is to establish the 'facts', to gather new data and to determine whether there are interesting patterns in the data.

The aim of this research is to explore and evaluate the Net Worth method as a technique for quantifying income from unknown sources circumstantially during the investigation of financial crimes. In this research the Net Worth method is also referred to as the Net Worth Analysis method.

1.3   PURPOSE OF THE RESEARCH

According to Denscombe (2002:26-27) and Welman and Kruger (2001:18), there could be different possible reasons for doing research. This study focused on the following:

- The researcher evaluated techniques investigators use to quantify income circumstantially or indirectly during financial investigations especially, with the intention of determining their strengths and weaknesses and of considering how these techniques could be improved.

- The research explored how locally and internationally investigators quantify income circumstantially. To accomplish this, the researcher explored this field extensively.

- The researcher applied the new knowledge of international practice to make recommendations for developing effective practice in South Africa to enhance performance and improve the conviction rate in court cases.

- Owing to the lack of knowledge amongst investigators, the researcher empowered himself and others with the latest knowledge in the technique of quantifying income circumstantially during financial investigations.

1.4 RESEARCH QUESTIONS UNDER INVESTIGATION

Research questions specify exactly what is to be investigated. They are not the broad goals of the research that are directly investigated by the research. Research questions deal with specific things that are to be observed, measured and interrogated in order to shed light on the broader topic (Denscombe, 2002:31). The research questions under investigation are:

- What is financial crime?

- What does the Net Worth method imply?

- How should the Net Worth method be applied as an investigation technique during the investigation of financial crime?

1.5 KEY THEORETICAL CONCEPTS

A number of key definitions which apply to this research are provided below.

1.5.1 Financial crime: According to the background paper prepared for the International Monetary Fund (IMF) '*Financial Systems Abuse, Financial Crime and Money Laundering'* (2001:3), financial crime is that category of non–violent economic crime (crimes with an economic proceed) which primarily targets and abuses financial systems and institutions. Such crimes include money laundering, insider trading, investor fraud and tax evasion. (See Appendix 1.)

1.5.2 Financial investigation: 'Financial investigation is the gathering, selection, enrichment, verification, processing and analysis of financial or finance related data on behalf of law enforcement' (Van Duyne, Pheijffer, Kuijl, Van Dyk & Bakker, 2003:77).

1.5.3 Net Worth method: According to Daysh and Exley (2000:27), the Net Worth method (or Comparative Net Worth Analysis) is used to prove illicit income circumstantially, by showing that a person's assets or expenditure for a given period exceed that which can be accounted for from known or admitted sources of income, and is a reliable method for estimating a person's ill-gotten gains.

1.6 RESEARCH DESIGN AND APPROACH

Verwey and Rossouw (2003:164) state that a research design is a plan for the collection and analysis of data with the aim of answering the research

questions. A research design is a clarification or plan of the manner in which the researcher plans to examine the research problem that has been formulated (Mouton, 1996:175). This is confirmed by Singleton and Straits (1999:91), according to whom a research design is a complete strategy or outline that is worked out before the data is collected and consists of a clear statement of what the research problem is, as well as plans for gathering, processing, and interpreting the observations intended to provide some resolution to the problem.

1.6.1 Empirical Design

A researcher uses an empirical design to answer research questions, because answering the research questions requires fieldwork where the researcher can focus on the personal and real life experiences of the participants (Mouton, 2001:149). The reason that the researcher undertook this research is that in the process of constructing the problem statement and undertaking an initial literature review it became clear that there is no literature from a South African perspective on the topic. This and the need outlined in the problem statement for an indirect technique for quantifying income from unknown sources circumstantially during the investigation of financial crimes makes this a worthwhile topic to explore. Maxfield and Babbie (2005:6) describe empirical research as the production of knowledge based on experience or observation. Empirical data, writes Denscombe (1998:27), is data based on real-world observations and is associated with getting information 'straight from the horse's mouth'.

The current research is thus a contribution which involves an element of 'originality' and the researcher submits that the research is 'timely' in relation to contemporary events, an element of research that is proposed by Denscombe (2002:52) as being necessary.

1.6.2 Qualitative Approach

To support the empirical design, the researcher used a qualitative approach because, according to Creswell (1998:15), qualitative researchers study things in their natural setting. A further reason for the researcher using a

qualitative approach is that the researcher needed to interview and listen to participants in order to obtain new information to establish an understanding of their ideas and personal experience (Creswell, 1994:21; Taylor, 1994:208). Pope, Lovell and Brandl (2001:369) suggest that qualitative research is essential when previous research and theory reveal insufficient information about the topic and issues and researchers want to enhance the validity of their interpretations by drawing on the experiences of those most involved in the research setting itself. In this case the researcher knew little about the indirect financial investigation methods used by the investigation authorities to determine income circumstantially, the extent to which these methods are used and how they are applied during investigation of financial crime.

1.7   POPULATION

A population or universe consists of the sum total of all the units of analysis (Bailey, 1987:81). According to Taylor (1994:158), the population of a research study refers to all individuals or cases of a certain type. The ideal population for this research consists of all criminal investigators in South Africa connected to the official investigative authorities concerned with the investigation of financial crimes. This includes criminal investigators from the South African Police Commercial Branch and Serious Economic Offences Unit, South African Revenue Service (SARS), Criminal Investigation Division and Directorate of Special Operations (Scorpions).

The researcher determined that it would be impractical to interview the whole population because of the large numbers and wide distribution. It would also be very expensive. Because of these practical issues the researcher decided to make use of a study population. According to Maxfield and Babbie (1995:186), a study population is an aggregation of elements from which the sample is actually selected. Because the above investigative authorities have units distributed across the country and the population is so large, it had to be distilled further to include only the units based in the geographical area of Pretoria. The investigative authorities identified are all represented in the Pretoria geographical region. Inquiries directed at the heads of the respective units revealed that the investigative complement of each unit is as follows:

- The Directorate of Special Operations (DSO or Scorpions) – 57 investigators
- The SARS Criminal Investigation Division (CI) – 37
- The South African Police Service (SAPS) Commercial Branch, including the Serious Economic Offences Unit – 85

The researcher was not able to interview all investigators because of the large total number of investigators, i.e. 179. The researcher therefore decided to use of a sample of 30 investigators.

A sample is a selection of elements from a population and is used to make statements about the whole population (Blaickie, 2003:161).

1.8   SAMPLING

According to Blaickie (2003:161), the ideal sample is one that provides a perfect representation of a population, with all the relevant features of the population included in the sample in the same proportions. This ideal is difficult to achieve fully in practice. Studying a whole population may be slow, tedious and expensive, or it may sometimes be impossible. Sampling can reduce the cost of a study and increase the breadth of coverage.

According to Leedy and Ormrod (2005:199), random sampling means choosing a sample in such a manner that each member of the population has an equal chance of being selected. According to Denscombe (1998:12), systematic sampling is a variant of random sampling which operates on the same principles but introduces some system in the selection of people.

According to Maxfield and Babbie (2005:230), researchers usually use systematic random sampling when a list of the study population is available rather than simple random sampling. In systematic random sampling the researcher chooses all the names from the study population for inclusion in the sample and allocates each name a consecutive number.

The researcher used a systematic random sample to select a sample, in the manner proposed by Maxfield and Babbie above (2005:230).

The researcher obtained a separate list from each of the investigative authorities, listing the names of investigators attached to that authority. Using all the names from the separate lists, the researcher then compiled a single list containing all the names of the population and then sorted them in alphabetical order according to surname and allocated each a number starting at '1' at the top of the list and ending at '179' at the bottom of the list.

In this research the researcher decided to use a sample of 30 investigators. Thus, to systematically select 30 names (numbers) from the list of 179, the researcher divided the number of names appearing on the list (179 by 30 which equals 5.96 (6)), in the manner proposed by Maxfield and Babbie above (2005:230).

To ensure against possible human bias, as referred to by Maxfield and Babbie (2005:230), the first number between '1' and '6' was randomly selected using the 'Random Number Calculator' application of the computer software program, MoonStats ©, to select a number between '1' and '6' randomly. In this case that number turned out to be the 5th name on the list. The name having that number plus every 5th number (name) following it was therefore included in the sample.

Using the method described above, the different investigative authorities were represented in the sample as shown below.

Authority	Number of investigators	Number in the sample	Number interviewed
Scorpions	57	12	12
SARS CI	37	9	7
SAPS	85	9	6
Total:	**179**	**30**	**25**

Although the researcher had decided to interview a sample of 30 investigators, only 25 eventually honoured their commitment to be interviewed. The five investigators identified in the sample that failed to honour their commitment cited various reasons for not honouring their commitment to participate. Trying to obtain participation from further investigators would have resulted in a delay in the conclusion of the research project.

The researcher believes that his sample is representative of the population because of his use of a random sampling method. The usual procedure in random sampling is to assign a number to each person or sampling unit in the sampling frame, so that one cannot be biased by labels, names, or other identifying material. After this, it would be possible in theory for the investigator simply to pick numbers 'at random' as they pop into his head without any pattern. If this could be achieved, selection would be random.

Random sampling has the advantage of cancelling bias and providing a statistical means of estimating sampling errors (Bailey, 1987:87). The resulting sample is also likely to provide a representative cross-section of the whole. The researcher might use a random set of digits to choose the page and the line on the page to select a person for inclusion in the sample. The list of random digits ensures the choice is genuinely 'random' (Denscombe, 1998:12).

1.9   DATA COLLECTION

The researcher used primary data during the research to answer the research questions. Primary data is used by a researcher who is responsible for the design of the study, collection analysis and reporting of the data. Primary data is characterised by the distinguishing quality that it was obtained as the result of direct contact between the researcher and the source, and that it is generated by the application of particular methods by the researcher, such as interviews (Blaickie, 2003:18). To Leedy and Ormrod (2005:89) the layer of data closest to the truth is the primary data, which is more often the most valid, the most illuminating and the most truth–manifesting.

In Leedy and Ormrod (2005:143), the authors state that qualitative researchers often use multiple forms of data in a single study and that they may use the following methods:

- Observations
- Interviews
- Anything else that can help them answer the research question

During this qualitative research study, the researcher decided on the following methods for collecting primary data because under the circumstances these methods are regarded as the best practical methods to collect the primary data needed to address the research questions (Creswell, 1994:148; Leedy & Ormrod, 2005:135):

- Literature
- Interviews
- Case studies to observe

The researcher used more than one method to collect data and compare multiple data sources. Use of more than one data-collection method is known as 'triangulation' and this is used to search for common themes (Denscombe, 1998:86).

1.9.1 Literature

The researcher collected the information required to cover the research questions from relevant publications, journal articles and literature.

According to Denscombe (2002:50), the literature review puts the research in context, meaning that: 'it locates the research within the context of the published knowledge that already exists about the area that is being investigated.' Denscombe further states that the literature review: 'demonstrates the relevance of research by showing how it addresses questions that arise from careful and considered evaluation of what has

already been done so far, and how the current research aims to "fill the gaps" or "take things further" or "do a better job than has been done so far".'

The researcher could not find any literature or publication with the same title as his research study. To determine whether there was such literature or publication with the same title the researcher conducted a search of the UNISA Library Catalogue and several sites on the Internet with information on publications and journal articles hosted on the Internet.

These sites included:

www.sabinet.co.za

www.google.com

www.cch.com.nz

www.cch.com.au

www.cch.com

www.cch.com.ca

www.wits.ac.za/library

oasis.unisa.ac.zaconnextion.ocloc.org

www.jux2.com

www.yahoo.com

www.msn.com

explore.up.ac.za

eb.ebscohost.com

www.emeraldinsight.com

www.internationaltaxreview.com

www.etaxes.co.za

 www.ibfd.org

www.datamonitor.com and

www.gartner.com

The topic was divided into three concepts:

- Net Worth method
- Financial investigation
- Financial crime

The literature found to be relevant to the research was evaluated to find answers to the research questions.

1.9.2 Interviews

In this research the researcher made use of the semi-structured interview format. Robson (2000:90) states that a semi-structured interview is a type of interview where the researcher has determined in advance the main areas that he wishes to cover.

The researcher is free to vary the exact wording of questions as well as the order. Should it happen that a participant starts to cover a new area in response to a question the researcher will keep the flow going by asking relevant questions from his list of topics. If any topics have been missed they will be returned to at the end of the interview. Miller and Brewer (2003:167) state that questions are generally open ended in order for the researcher to gain richer information about attitudes and behaviour.

The researcher used the semi-structured interview because he wished to obtain further information that would address the research questions. To conduct a productive interview, Leedy and Ormrod (2005:147), referring to Creswell (1998), Eisner (1998), Shank (2002) and Silverman (1993), propose a set of guidelines, which were applied during the research as follows:

- The researcher prepared questions in advance on an interview schedule and addressed them during the interview. The questions were related to the research questions and overall research problem, encouraging people to talk whilst avoiding leading questions.
- The researcher made sure the participants were representative of the group of investigators of financial crime by using the random sampling technique (Leedy & Ormrod, 2005:211).
- The researcher found a suitable location where there was little chance of being distracted or interrupted.
- Prior to engaging the participants, the researcher received written permission from the SAPS, SARS and the DSO to conduct the

research amongst their respective employees and conduct interviews with the participants of the study.

- The researcher obtained written permission from participants in the form of a signed consent form.

- The researcher established and maintained rapport with the participants.

- The researcher focused on the actual rather than on the abstract or hypothetical.

- The researcher did not put words in people's mouths and allowed them choose their own way of expressing their thoughts.

- The researcher recorded the responses verbatim.

- The researcher kept his reactions to himself.

- The researcher remembered that he was not necessarily getting facts but that the responses of participants might constitute perceptions.

- Following advice from Leedy and Ormrod (2005:192), the researcher conducted a pilot test to establish the kind of responses the researcher was likely to get and to ensure that the 'real' responses would be of a sufficient quality to help the researcher answer the research questions.

After compilation of the interview schedule, the researcher sent the interview schedule to his academic supervisor for scrutiny and comments, and the schedule was adapted in response to these before he started with the interviews. Following the advice of Leedy and Ormrod (2005:192), the researcher conducted the first six interviews as a pilot test to see whether the participants had difficulty in understanding the questions and to identify ambiguities and misunderstood and unclear questions. One change was effected to the questionnaire to improve the logical flow of the questions. The remaining interviews were then conducted after the change to the interview schedule and the six pilot interviews revisited to clarify that issue.

The interview schedule used for the semi-structured interviews is attached as Appendix 2.

1.9.3 Case Studies

According to Leedy and Ormrod (2005:108), a case study is a type of qualitative research method which may be especially suitable for learning more about a little known or poorly understood situation. According to Yin (1989:23) in Miller and Brewer (2003:22), a case study may be defined as 'an empirical inquiry that investigates a contemporary phenomenon within its real-life context when boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used'. To Miller and Brewer (2003:23), a 'case' may involve the study of one individual or several, or a particular event, and researchers tend to use multiple sources of evidence such as archival records, interviews, direct observation, participant-observation and/or physical artefacts. Cases continue to provide some of the most interesting and inspiring research in the social sciences (Miller & Brewer, 2003:24). The case studies undertaken in this research study used as sources case files, case dossiers or court records identified by the participants that shed light on the method used to determine income (Leedy & Ormrod, 2005:143).

The researcher asked the participants to identify cases where indirect methods had been applied in order to observe those cases to determine how the method had been applied and whether the result had been accepted as proof of income. For the case study a snowball sample was used. The starting point for a snowball sample is the initial sample of population members, each of whom is asked to name all the other population members he or she knows who may have used investigation methods to determine income in the absence of direct evidence (Hoyle, Harris & Judd, 2002:188).

During the case analysis the researcher used the following questions about each identified case as a guide to determine how the investigative technique was applied:

- What technique was used to determine income?
- How was the technique applied during the investigation?
- Was the technique visually presented to the court?

- Did the investigator apply the technique him/herself or was he/she assisted by an expert?
- Was evidence regarding the technique presented to court?
- Did the court accept the evidence?
- Were any guidelines for the use of the technique observed from the dockets?

Unfortunately during the interviews the participants were unable to identify cases where investigation methods were applied to determine income in the absence of direct evidence. The researcher then decided to approach investigators concerned with the investigation of financial crime in other geographical areas to establish whether they were aware of cases where indirect methods had been applied to determine income. The researcher was referred to two cases. These cases are identified in Table 18 of this dissertation. The researcher obtained documentation of the cases he was referred to and analysed it to determine what method was used to determine income.

The researcher obtained the cases to determine whether the crimes were of a category relevant to this research. The researcher established that it concerned investigations into tax evasion which is relevant to this research. The researcher analysed the evidence to determine if the question of 'income' received was an element of the crime investigated. The researcher confirmed that determining the amount of income was relevant to proving a case of tax evasion. The researcher analysed the evidence to determine how the income was quantified. (See appendices 8, 9 and table 18).

1.9.4 Personal Experience

The researcher has 14 years of experience as an investigator of commercial crime with the Commercial Crime Unit of the SAPS. The crimes investigated during his tenure were commercial crimes, which typically included crimes such as fraud, theft of trust funds, bribery, and several statutory crimes related to commerce.

The researcher has 12 years of experience in the investigation of tax crimes with the Criminal Investigation Division of the SARS. Tax crimes would include offences such as tax evasion and serious non-compliance with the South African tax laws.

The researcher was seconded by the SARS as an investigator to the Office for Serious Economic Offences and the DSO for three years on a full-time basis, where he investigated serious economic offences such as corruption, fraud, and theft of company funds by corporate controllers.

1.10   DATA ANALYSIS

According to Leedy and Ormrod (2005:150), the data analysis and interpretation in most qualitative research are closely interwoven and often enmeshed with data collection as well.

Following the data-analysis approach suggested by Leedy and Ormrod (2005), the researcher reviewed the data several times, taking the following steps:

- Organisation – The researcher organised the data by making use of a computer database. Large bodies of text were broken down into stories, sentences or individual words referred to as 'themes' in the analysis.

- Perusal – The researcher perused the data several times to get a sense of what it contained as a whole, in the process making notes suggesting possible categories or interpretations.

- Classification – The researcher grouped the data into categories and themes and where necessary into sub-categories and -themes. This allowed the researcher to gain a sense of what the data meant.

- Synthesis and generalisations – The researcher integrated and summarised the data. This included the offering of propositions or hypotheses that described the relationships among the categories and also involved packaging the data in an organised scheme involving tables, graphs, matrixes and/or diagrams.

The responses to the open-ended questions from the interviews provide the qualitative data. The analysis is undertaken on the content of the transcription of the interviews in order to make qualitative analyses of the essence of such interviews.

To conduct a systematic and objective content analysis the researcher adhered to the typical steps proposed by Leedy and Ormrod (2005:142) as follows:

- The researcher identified the body of material that was studied.
- The researcher defined the characteristics of or qualities to be examined in precise, concrete terms.
- The researcher broke down complex and lengthy items into small manageable segments that he analysed separately.
- The researcher scrutinised the material for instances of each characteristic or defined quality.

Leedy and Ormrod (2005:143) write that one of the crucial steps in a content analysis is to tabulate the frequency of each characteristic found in the material being studied. Appropriate statistical analyses are performed on the frequencies or percentages obtained to determine whether significant differences exist relevant to the research question.

Content analysis may be used to analyse data from qualitative research (Welman & Kruger, 2001:194). A content analysis can be conducted on the responses to open-ended questions and unstructured aspects of the interviews in order to report the content of the interviews in a quantitative way in addition to making a qualitative analysis of the essence of the content of such an interview (Welman & Kruger, 2001:195). This involves the contents of the participants' responses to the open-ended questions being examined systematically to record the relative frequencies of themes and the ways in which these themes are portrayed (Welman & Kruger, 2001:195).

The researcher coded the data (themes) into numerical format and created code sheets to analyse the data statistically and present the results in

frequency tables as suggested by Welman and Kruger (2001:316). The researcher then used such content analysis to highlight and interpret the participants' opinions (data) as they reflected on the problem under investigation, as proposed by Welman and Kruger (2001:219).

1.11   METHODS TAKEN TO ENSURE VALIDITY (CREDIBILITY)

'Validity concerns the accuracy of the questions asked, the data collected and the explanations offered' (Denscombe, 2002:100). According to Denscombe (2002:100), validity generally relates to the data and the analysis used in the research.

The researcher ensured that the interview schedule was valid because it was based on the research questions.

In each of the following instances the researcher ensured that the data collected was valid because it was based on the research questions and adhered to the measures described hereunder:
- The literature reviewed
- The case analysis
- The interviews

According to Bouma and Atkinson (1995:103), the problem of validity is most acute in the construction of interview schedules to 'measure' a person's attitude, beliefs or values. Methods available to ensure validity include being careful in the construction of the measuring instrument (interview schedule), record sheets, and checklists, which for this study was achieved by:
- Recording the interviews;
- Performing real-time data entry and editing;
- Transcribing the recording and entering the data;
- Correcting incomplete data; and
- Avoiding using vague, double-barrelled and leading questions.

To further ensure validity during the interviews the researcher adhered to the measures proposed by Bouma and Atkinson (1995:103) and the measures proposed by Leedy and Ormrod (2005:147) for conducting productive interviews.

According to Creswell (2003:195), validity is seen as strength in qualitative research and it is used to suggest determining whether the findings are accurate from the standpoint of the researcher, the participant, or the readers of an account. According to Creswell (2003:196) and Leedy and Ormrod (2005:100), terms such as 'dependability', 'conformability', 'verification', 'transferability', 'trustworthiness', 'authenticity', and 'credibility' are used to describe the idea of validity. 'Credibility' in qualitative research is the concept equivalent to internal 'validity' in quantitative research (Botes, 2003:180). These are some of the strategies that were used by the researcher in this qualitative study to support the validity of his findings:

- Member Checking or Respondent Validation
  The researcher took the final report, specific descriptions and conclusions back to the participants and simply asked if they agreed with the conclusions of the researcher and if the conclusions made sense based on their own experiences.

- Rich, Thick Description
  The researcher described the situation in sufficiently rich 'thick' detail for the readers to draw their own conclusions from the data presented and in doing so the researcher attempted to draw the reader into the setting.

- Extensive or Prolonged Time in the Field
  The researcher developed an in-depth understanding of the phenomenon under investigation by visiting and interviewing the participants at their places of work.

- Feedback from Others
  The researcher sought the opinion of colleagues in the field to determine whether they agreed or disagreed that the researcher had

made appropriate interpretations and drawn valid conclusions from the data.

Lincoln and Guba (1985:301) in Botes (2003:180-181) recommend the methods mentioned above for ensuring credibility in relation to internal validity.

In summary, to support the validity of his findings the researcher gave attention to the strategies mentioned above.

1.12 METHODS TAKEN TO ENSURE RELIABILITY (DEPENDABILITY)

According to Singleton and Straits (1999:114), reliability is concerned with questions of stability and consistency. It has to do with the question of whether repeated applications of the operational definition under similar conditions yield the same results. 'Dependability' is the concept used in qualitative research in relation to reliability (Botes, 2003:183).

An indirect way of ensuring reliability (dependability) in qualitative research is by applying the measures of validity (credibility). The researcher applied the indirect way of ensuring reliability by the steps taken as described in the previous section.

According to Botes (2003:183), the direct means with which to ensure reliability (dependability) of research findings are:

- Step-by-step Repetition
  The researcher provided a thick description of the research methods to create opportunity for repeating the research.

- Investigative Audit
  This attempts to determine how reliably the data is presented. The answers obtained during the interviews were audio recorded and the verbatim responses written down. The researcher reviewed the answers obtained during the interviews and ensured that the themes identified and the number of times each theme was identified were correctly recorded on the data sheets and frequency tabulation sheets.

- Triangulation

   Triangulation serves as confirmation of the data by using more than one method of data collection and more than one source of data, more than one method of data analysis and more than one perspective of the data. The researcher used different techniques to collect data and more than one source of data, as follows:

   o   Literature

   o   Interviews

   o   Case analysis

   Different viewpoints were obtained from the literature and the answers from the participants.

1.13 ETHICAL CONSIDERATIONS

The researcher adhered to the '*Code of Ethics for Research at the Technicon SA',* (See Appendix 3) which states that research should always be governed by principles of ethical behaviour (*Policies and Procedures …, 2002*). Appendix 3 was forwarded to the researcher by the Research Directorate at UNISA on 8 January 2008.

Social research often involves an intrusion into people's lives and therefore largely depends on a successful relationship between the researcher and the participants. Central to this relationship is ethical responsibility, which is integral to the research topic and to research design and planning (Miller & Brewer, 2003:96). The motivation for researchers to act ethically is partly a matter of professional integrity (Denscombe, 2002:175).

According to Leedy and Ormrod (2005:101), whenever human beings are the focus of research the researcher needs to look at the implications of that which he or she is proposing to do. Most of the ethical issues that relate to research fall into one of the following four categories:

- Protection from Harm

   The researcher took steps to ensure that participants were not exposed to more undue physical or psychological harm than that which they would be exposed to during normal day-to-day living.

- Informed Consent

  The researcher informed the participants of the nature of the research, gave them the choice of participating in the research or not, and informed them that they had the choice of withdrawing from the research at any time. Participation in a research study should be voluntary. To achieve this, the researcher made use of an informed consent form.

- Right to Privacy

  As in any research study, each participant's right to privacy was respected and under no circumstances does the research report reveal the responses of the individual participant. In order to achieve this each participant was allocated a code.

- Honesty with Professional Colleagues

  Findings are reported in a complete and honest fashion. Under no circumstances was data fabricated to support a particular conclusion. Credit is given where credit is due. Appropriate reference to the contributions made by all participants in the research is given and the researcher has acknowledged his sources (Mouton, 2001:241).

1.14   RESEARCH STRUCTURE

The research is set out in a research report in which the research design and research questions are presented and discussed in the following chapter layout.

Chapter 2: Financial Crime

In this chapter the concept of financial crime, which statutory offences and common law crimes constitute financial crime and who is responsible for the investigation of these crimes are examined and explained. The financial crimes are further examined to determine in which types of crime the question of 'income' or amount of income from unknown sources is likely to present a question during the investigation or fact in issue during the trial.

Chapter 3: The Net Worth Method as Investigation Technique

In this chapter the need to determine income using indirect methods of proof during the investigation of financial crime is investigated. The Net Worth method as an investigation technique to determine income from unknown sources, and provide proof of this income during investigation of financial crime, is investigated, explained and discussed.

Chapter 4: The Application of the Net Worth Method as Investigation Technique

In this chapter the application of the Net Worth method as a technique used during the investigation of financial crime is examined, explained and discussed.

Chapter 5: Findings and Recommendations

In this chapter the findings of the research and conclusions based on the findings are presented. Recommendations are made taking the research questions and purpose of the research into account.

CHAPTER 2
FINANCIAL CRIME

2.1   INTRODUCTION

Financial crime is complex, and the investigation of financial crime requires highly trained investigators with special skills. New legislation to prevent and combat financial crimes such as money laundering, financing of terrorism, insider trading and corruption has recently been introduced in South Africa. Investigators need to familiarise themselves with the technical skills, methods, techniques, knowledge and competencies needed to investigate the array of offences that have been created by the new legislation and other financial crimes.

What the expectations of the community and authorities are asking from investigators in the field of preventing and combating financial crime make up a kind of knowledge which no existing discipline provides ready-made (Massimo, 2006:294). The fight against financial crime is fraught with difficulties. It takes place in the global sphere, in an extremely complex, sophisticated, and worldwide distribution, in a highly technological environment (Massimo, 2006:294).

When a criminal has a large amount of income from illegal activity they have to do something with it in order to hide its existence from the revenue authorities. They attempt to launder it so that it appears to have its origin in a legitimate source, allowing them to invest it in assets without having to worry about the revenue authorities or tax consequences (*Overview – Money Laundering …,* 2008*).*

Payments received from legal sources are sometimes labelled as 'known sources' and payments determined as being received from illegal sources are sometimes labelled as 'unknown sources' (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:197).

2.2 THE CONCEPT 'CRIME'

Snyman (2002:6) defines 'crime' as follows: Crime is 'unlawful, blameworthy conduct which in principle can only be prosecuted by the state and which is punishable by the state'.

Tappen (1960:10) describes 'crime' as an intentional act or omission in violation of criminal law whether statutory or common law committed without defence or justification and sanctioned by the state as a felony or misdemeanour.

In its broader sense what constitutes a crime can vary. Criminal offences or crimes are described in criminal codes or statutes or possibly less frequently as a result of custom or common law. In relation to crime investigation these descriptions are only important because they provide the points for each offence that need to be proved in order to secure a conviction (United Nations. Office on Drugs and Crime, 2006:5).

Using a content analysis for interpreting the response to the question 'How would you define crime?', certain themes emerged from the participants' answers and are presented in the frequency table below. As can be seen from the themes quoted in Table 1, more than one participant could have provided the same answer or more than one answer in their response to the question.

Table 1 – Frequency table for definition of crime

'How would you define crime?' Answer	Frequency (%) with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Crime is conduct or an act which is unlawful or illegal	76%	19
Crime causes unspecified prejudice/potential prejudice	24%	6
Crime is punishable by the state	16%	4
Crime is an action by somebody	8%	2
Crime is an act performed with the intention to harm	8%	2
Crime is an intentional act	8%	2
Crime is prosecutable by the state	4%	1
Crime causes financial prejudice	4%	1
A crime can be an intentional or negligent act	4%	1
Crime is blameworthy conduct	4%	1
Crime is a violation of human rights	4%	1
Crime causes injury or death	4%	1
Crime is conduct which is unacceptable to the community	4%	1
Crime is an everyday occurrence	4%	1

Source: Feedback from sample

The following answers provided by the participants are consistent with the literature researched:

- Crime is unlawful conduct (76% frequency or 19 times)

- Crime is blameworthy conduct (4% frequency or one time)

- Crime is punishable by the state (16% frequency or four times)

- Crime is prosecutable by the state (4% frequency or one time)

The remainder of the answers provided by the participants did not disagree outright with the definition offered by the literature but suggested that crime included conduct which led to 'prejudice' or 'potential prejudice', which was not found in the literature. This answer was provided with a frequency of 24% or six times. It is submitted by the researcher that the inclusion of the concepts 'prejudice' or 'potential prejudice' is consistent with the elements of the crime of fraud, which probably explains why they were included by the participants.

The low frequency with which the answers correspond to the literature is possibly an indication that crime investigators do not fully understand the judicial concept of 'crime' but rather attach their own general meaning to it.

2.3   THE CONCEPT 'FINANCIAL CRIME'

Traditionally criminologists have classified crime into two large groupings (*Financial Investigation – A Financial Approach to Detecting and Resolving Crimes,* 2004:1):

- Crimes against people; and
- Crimes against property.

Today criminal activities have evolved beyond merely crime against people or property (*Financial Investigation – A Financial Approach to Detecting and Resolving Crimes,* 2004:1).

Criminal activity can now be classified by motivational factors *(Financial Investigation – A Financial Approach to Detecting and Resolving Crimes,* 2004:1), such as:

- Passion; or
- Greed.

In the background paper prepared for the IMF, '*Financial Systems Abuse, Financial Crime and Money Laundering'* (2001:3), the authors state that financial crime is that category of non–violent economic crime (crimes with an economic proceed), such as money laundering, insider trading, investor fraud and tax evasion, which primarily targets and abuses financial systems and institutions.

According to the paper '*Financial Systems Abuse, Financial Crime and Money Laundering'* (2001:20), there is no single, broadly accepted understanding of the meaning of the term 'financial crime'. The term is used to describe a number of different concepts of varying levels. At its broadest, the term has occasionally been used to refer to any type of illegal activity that results in a fiscal loss. At its next broadest, the term is often used to refer only

to *non-violent* crimes that result in a fiscal loss. The term is occasionally used slightly more narrowly to refer only to instances where the perpetrator intends to benefit from the crime. Either way, criminal fraud (i.e. the act of illegally deceiving or misrepresenting information so as to gain something of value) for personal benefit is undoubtedly the most common. The term has been used in a more narrow sense to refer only to those instances where a non-violent crime resulting in a pecuniary loss also involves a financial institution. Financial institutions can play one of three roles:

- Perpetrator;
- Victim; or
- Knowing or unknowing instrumentality of crime.

Of these roles, the most common are probably when the financial institution is a victim of fraud and when it is used as an instrument for money laundering.

Financial crime also includes a range of activities such as money laundering and tax evasion.

The term 'financial crime' expresses different concepts, depending on the jurisdiction and the context. Other financial crimes can be associated with, or exist in parallel with, money laundering. These crimes include corruption, fraud and tax evasion (*Financial System Abuse, Financial Crime and Money Laundering,* 2001:8*).*

The above definition appears to be broadly in line with a definition provided by De Koker (2006) in his email message to the researcher (see Appendix 5) in which he states that 'financial crime' is a vague term but that in his assessment financial crime can be defined as:

> those economic crimes which target and abuse financial systems
> and institutions which include offences such as insider trading,
> money laundering, tax evasion and investor fraud.

Pickett and Pickett (2002:1) assert that there is no precise legal definition of financial crime. Pickett and Pickett (2002:2) provide the following features of financial crime:

- Financial crime is based on attempting to secure an illegal gain or advantage, and for this to happen there must be a victim.
- There must be a degree of loss or disadvantage.
- The crime may be hidden indefinitely.
- Financial crime involves the use of deception for illegal gain, normally involving breach of trust and some concealment of the true nature of activities.

The specific financial crimes provided for in South African law and in particular those which provide for an element of 'income' or where the question of income is likely to be presented as a fact in issue during criminal proceedings are discussed in more detail in Chapter 2.4.

Using a content analysis for interpreting the response to the question 'How would you define the term "financial crime"?', the main themes occurring in participants' answers were identified. These themes are presented in the frequency table below. As can be seen from the themes presented in Table 2, more than one participant could have provided the same answer or more than one answer in their response to the question.

Table 2 – Frequency table for definition of financial crime

'How would you define the term "financial crime"?' Answer	Frequency (%) with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Financial crime is an illegal and unlawful act	28%	7
Financial crimes are crimes which are committed for financial benefit or gain or with that motive in mind	24%	6
Financial crimes are committed by making use of, manipulating or attacking financial instruments, processes or systems	24%	6
Financial crime is non-violent in nature	20%	5
Financial crime relates to crime where money and assets are involved	16%	4
Financial crime is crime which results in a pecuniary, money or monetary loss	16%	4
Financial crimes are prejudicial or potentially prejudicial	16%	4
Financial crimes involve financial institutions	16%	4
Financial crime occurs when financial institutions are used as an instrument to launder money	12%	3
Financial crimes are committed by clever and/or well-educated people	12%	3
Financial crime is white collar crime	12%	3
Financial crime involves the use of documents to commit crime	8%	2
Financial crimes are committed with criminal intent	8%	2
Financial crime is a soft crime	8%	2
Financial crimes involve finances	8%	2
Financial crimes are crimes with a financial impact	8%	2
Financial crime targets financial institutions	4%	1
Financial crime concerns the misappropriation of funds	4%	1
Financial crimes involve hiding money from the authorities	4%	1
Financial crimes enable the beneficiary to live beyond his or her means	4%	1
Financial crimes are crimes which are committed to disguise the proceeds of crime	4%	1
Financial crimes contain elements of misrepresentation	4%	1
Financial crimes concern false financial reporting	4%	1
Financial crimes are limited to the financial sector	4%	1
Financial crime can be described as a 'soft crime'	4%	1
Financial crimes are crimes driven by greed and/or self-enrichment	4%	1
Financial crimes are crimes committed by people in managerial positions or high public office	4%	1

Source: Feedback from sample

The diverse nature of answers from the participants and the frequency with which some of the themes were repeated confirm the point made by De Koker (2006) that the term 'financial crime' is a vague concept. Using a content analysis for interpreting the response to the direction 'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime', the main themes occurring in the participants' answers were extracted and these are presented in the frequency table below. As can be seen from the themes quoted in Table 3, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 3 – Frequency table for types of crimes that constitute financial crime

'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime' Answer	Frequency (%) with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Fraud in general – All types	84%	21
Corruption and bribery	60%	15
Money laundering	56%	14
Tax evasion/Obtaining of an undue tax benefit	44%	11
Theft in general	40%	10
Racketeering	24%	6
Forgery & uttering	20%	5
Credit card fraud	16%	4
Terrorist financing	12%	3
Pyramid investment schemes	12%	3
Contraventions of POCA	8%	2
'419' scams/advance fee fraud	8%	2
Cheque fraud	8%	2
Finance fraud	8%	2
Theft of money	4%	1
Cyber fraud	4%	1
Contraventions of the Bank Act	4%	1
Contraventions of the Reserve Bank Act	4%	1
Extortion	4%	1
Drug trafficking	4%	1
All the offences in the mandate of the CCU	4%	1
Theft of trust money	4%	1
Theft of company (corporate) funds by corporate controllers	4%	1
Insider trading	4%	1
Mismanagement of investment funds	4%	1
Investment fraud	4%	1
Theft – General deficiency	4%	1
Theft of trust funds	4%	1

Source: Feedback from sample

The large variety of offences and the frequency with which some of the answers were repeated by the participants confirm the opinion held by De Koker (2006) that the term 'financial crime' is a vague concept.

The following answers provided by the participants as to the type of crimes or offences that constitute financial crime is consistent with the literature:

- Fraud in general – All types (84% frequency or 21 times)

- Corruption and bribery (60% frequency or 15 times)

- Money laundering (56% frequency or 14 times)

- Tax evasion (44% frequency or 11 times)

The relatively high frequency with which the types of crimes that constitute financial crime were correctly identified by the participants suggests that they are aware of these offences and classify them according to the literature.

Using a content analysis for interpreting the response to the question 'What is the difference between crime and financial crime?', the main themes occurring in the participants' answers were identified and these are presented in the frequency table below. As can be seen from the themes quoted in Table 4, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 4 – Frequency table for difference between crime and financial crime

'What is the difference between crime and financial crime?' Answer	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Financial crimes are crimes committed with financial gain/a financial incentive/financial motive/self-enrichment or greed in mind	40%	10
There is a difference between financial crime and crime	20%	3
Financial crimes are crimes that involve the use of documents to perpetuate the crime	12%	3
Financial crimes are crimes that result in a pecuniary/money benefit or advantage	12%	3
The manner in which the crime is perpetuated differentiates it from normal crime	8%	2
There is no difference between crime and financial crime – it is the same thing	8%	2
Financial crime always involves money	8%	2
Financial crime is non-violent	8%	2
It is just another manifestation of crime in general	8%	2
Financial crime has a bigger impact on the economy than other crime	8%	2
Financial crime always results in a financial loss/ impact	8%	2
Offenders of financial crime rely more on using their intellectual capacity	8%	2
There is a thin line between financial crime and crime	4%	1
Financial crimes are crimes committed using financial instruments	4%	1
The loss resulting from financial crime can always be measured in monetary terms	4%	1
Financial crime affects the community	4%	1
Financial crimes are limited to the financial sector	4%	1
Financial crimes are crimes directed at financial institutions, i.e. the victim	4%	1
Financial crime is not as widely published in the media as general crime	4%	1

Source: Feedback from sample

The following answers provided by the participants to the question 'What is the difference between crime and financial crime?' are consistent with the literature as to the nature and characteristics of offences that constitute financial crime:

- Financial crime is non-violent (8% frequency or two times)
- Financial crimes are crimes directed at financial institutions, i.e. the victim (4% frequency or one time)

- The loss resulting from financial crime can always be measured in monetary terms (4% frequency or one time)

- Financial crimes are crimes that result in a monetary/money benefit or advantage (12% or three times)

- Financial crimes are crimes committed with financial gain/a financial incentive/financial motive/self-enrichment or greed in mind (40% frequency or ten times)

What is clear from the literature and answers provided by the participants is that:

- Financial crimes, irrespective of how they are perceived otherwise, have one common denominator, which is that they are perpetrated in pursuance of a financial, monetary, economic or pecuniary benefit or advantage which is driven by greed.

- There is not one single broad definition for the concept accepted as financial crime.

2.4   SPECIFIC FINANCIAL CRIMES

The crimes most commonly referred to in the literature and identified by the participants as those crimes which fall within the category of financial crimes will now be examined. The focus will be on the general characteristics and the type of conduct which in broad terms constitute these crimes. The crimes considered are:

- Money laundering

- Tax evasion

- Corruption and bribery

- Insider trading

- Fraud

During the investigation and prosecution of these crimes there is a great likelihood that at some point the question will be raised as to what financial benefit or income was obtained by the accused in pursuance of the crimes he is accused of.

2.4.1 Money Laundering

There are several definitions of money laundering according to Smit (2001:10), each designed to fit a specific set of circumstances where money laundering takes place. Smit provides the following definition, amongst others, of money laundering:

> In its simplest and broadest form, money-laundering can be described as the manipulation of money or property in order to misrepresent its true source or nature.

Smit (2001:11) adds that 'If the focus is on the criminal aspects of money laundering, it can be described as all activities aimed at disguising or concealing the nature or source of, or entitlement to money derived from criminal activities.'

According to De Koker (2002:27), the term 'money laundering' in South African Criminal Law refers to a number of different offences that can be committed in terms of the Prevention of Organised Crime Act, No. 121 of 1998 (POCA). De Koker (2002:27) asserts that the concept overlaps with certain common law and statutory offences such as fraud and corruption, respectively.

The Financial Intelligence Centre Act, No. 38 of 2001, Section 1, definitions, defines money laundering as follows:

> 'money laundering' or 'money laundering activity' means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds and includes any activity which constitutes an offence in terms of section 64 of this act and section 4, 5 or 6 of the Prevention of Organised Crime Act, No. 121 of 1998.

Section 4 of the Prevention of Organised Crime Act, No. 121 of 1998 provides for the offence of money laundering and states as follows:

'4.   Money laundering.—Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and—

(*a*) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

(*b*) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect—

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or

(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere—

(*aa*) to avoid prosecution; or

(*bb*) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.'

Section 64 of the Financial Intelligence Centre Act, No. 38 of 2001 creates an additional offence; namely, to conduct transactions to avoid being reported.

According to Smit (2001:11), 'money laundering' refers to two basic processes. The first is simply an act of hiding or concealing the existence of money or property. The second is the more sophisticated process that is used to 'clean' money by disguising its source. In this instance, the existence of the money or profit is not denied but the illegal source is misrepresented through acts to conceal the source.

Money laundering schemes vary from basic to extremely complex series of transactions. There are three basic stages to be distinguished in most money laundering schemes, which are (Smit, 2001:11):

- Placement – the aim of the money launder during the placement stage is to remove the proceeds of criminal activities from the place where

they originated and to infuse these proceeds into the legitimate financial system;

- <u>Layering</u> – during the layering stage, the money that is laundered becomes virtually indistinct from 'legitimate' money in the commercial sphere;

- <u>Integration</u> – the integration stage is the culmination of a successful money laundering scheme. It allows the criminal to regain control over the proceeds of the underlying criminal activities without fear of detection.

The result of a successful money-laundering scheme is that proceeds from an underlying criminal activity are no longer associated with the activity; hence, the illegally acquired proceeds appear to be from a legitimate source of income (Smit, 2001:11).

In the answers provided by the participants to the direction 'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime', the participants referred to money laundering 14 times, which constitutes a frequency with which this answer was given of 56%.

2.4.2 Tax Evasion

According to Bridges (1996b:161), taxation has been a curse of the human race since at least Roman times. It would be fairly safe to assume that tax avoidance and evasion were invented within hours of the first tax being introduced. Most people given the choice would prefer to avoid payment in whole or in part. It is human nature to avoid or evade taxation whenever the opportunity arises.

Huxham and Haupt (2003:339) provide the following definition of tax evasion:
    the use of illegal means to reduce tax liability, e.g. falsification of books, suppression of income and fraudulent non disclosure of income.

According to Krause (2001:5), tax evasion was explained as follows in the Katz report with reference to Silke on South African Income Tax:

> Tax evasion refers to all those activities deliberately undertaken by a taxpayer to free himself from the tax that the law charges upon his income, for example the falsification of returns, books and accounts and the conclusion of sham transactions.

Bridges (1996a:278) states that tax fraud takes on many different guises. The author argues that it is probably more accurate to consider it as commercial fraud in which the Exchequer (fiscus) is the loser.

Krause (2001:5) states that it could possibly be argued that tax evasion and tax fraud are two distinct phenomena and that they exist independently from each other. This, according to Krause, is actually not the case. According to Krause (2001:5), authorities from the United States, the United Kingdom, New Zealand and South Africa clearly indicate that the terms 'tax evasion' and 'tax fraud' may be regarded as one and the same offence…."

Krause (2001:6) argues that the phenomenon of tax evasion or tax fraud is nothing but one of the forms of the common law offence of fraud. The author states that the only thing that distinguishes this form of fraud is the fact that tax evasion always involves the evasion by the subject of a legal duty to pay tax, which duty is imposed by the state, or otherwise the fraudulent acquisition of tax money from the state.

Broadly speaking, tax fraud may be said to comprise the following basic elements (Krause, 2001:18):

- A statutory legal duty;
- A misrepresentation, whether by *commissio* or *omissio*;
- The intention to evade tax to which the state is entitled or to obtain an undue refund by means of such misrepresentation; and
- Prejudice.

The general definitions of fraud as appear from the common law and as quoted by, for example, Snyman and Burchell & Milton, as well as the generally accepted elements of fraud, are wide enough to be fully applicable to tax fraud (Krause, 2001:18).

Bridges (1996a:278) states that many techniques similar to those used to commit commercial fraud are used by perpetrators of tax evasion. For the sole purpose of taxation it is immaterial whether the undeclared portion of income is from a known (legal) source or an unknown (illicit) source.

In the answers provided by the participants to the direction 'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime', the participants referred to tax evasion 11 times, which constitutes a frequency with which this answer was given of 44%. The cases analysed by the researcher concerned investigations into tax evasion. (See table 18)

2.4.2.1   The concept 'income'

'Income', according to the Oxford Advanced Learner's Dictionary (1989:630), is the most general word for money we receive from work, investments etc.

The starting point in the income tax calculation is 'gross income'. It thus follows that if a person does not have a gross income he will not have to pay tax. There must be an amount received before there can be any question of a gross amount arising (Huxham & Haupt, 2003:9). In *CIR v People* (Walvis) Bay (Pty) (1990 AD), Judge Hefer accepted as being correct the statement made by Judge Watermeyer in *Lategan v CIR* (1926 CPD).

> In my opinion, the word 'amount' must be given a wider meaning and must include not only money, but the value of every form of property earned by the taxpayer, whether corporeal or incorporeal, which has a money value…. (Huxham & Haupt, 2003:9)

The Supreme Court of Appeal of South Africa in the case of *MP Finance Group CC (in liquidation) v Commissioner for the South African Revenue*

Service (2007) SCA 71 (RSA) held that income illegally received by entities which were conducting an illegal pyramid scheme constituted income 'received' within the meaning of 'gross income' as defined in the Income Tax Act, No. 58 of 1962. This judgement is significant because it puts to rest the debate as to whether illegally earned income is taxable. Illegally obtained income is a 'receipt' and therefore income subject to tax. In the case studies analysed by the researcher it was determined that the investigator had to prove the amount of income received in an investigation concerning tax evasion.

2.4.2.2 The relationship between Money Laundering and Tax Evasion

According to Spreutels and Grijseels (2000:2), tax evasion has for many years been excluded from the legal provisions specifically dealing with money laundering. However, taking into consideration the entanglement of the criminal activities and the use of sophisticated techniques to hide and launder proceeds, international bodies and national governments have changed their position on this matter.

Spreutels and Grijseels (2000:2) are of the opinion that, although money laundering and tax evasion are different crimes, there is a link between them. The success of each crime is dependent on the ability to hide the financial trial of the income. Money launderers seek to transform illegally earned income into legal income while tax evaders seek to conceal income, either legally or illegally earned, from detection and collection by the tax authorities (Spreutels & Grijseels, 2000:2).

Money laundering is the means by which criminals evade paying taxes on illegal income by concealing the source and amount of profit. According to the Internal Revenue Service of the United States of America (IRS), money laundering is in effect tax evasion in progress. Money laundering creates an underground, untaxed economy that harms a country's overall economic strength (*Overview – Money Laundering*………., 2008).

Money laundering is associated with all types of crime, tax evasion included. Given the fact that criminals often commit tax crimes in connection with their other illegal activities, drawing a line between these crimes would be quite artificial. There is no moral differentiation between tax evasion and other serious crimes as the risks associated with tax evasion are just as serious. Losses to governments from tax evasion far exceed losses from all other forms of economic crime. This is a logical consequence of the fact that few criminals believe in paying tax on the proceeds of their illegal activities. Indeed, it would be impossible for them to do so without disclosing the nature and extent of their illegal activities to a tax authority, which they are unlikely to do for fear of that tax authority disclosing that information to other authorities (Bridges, 1996b:161). In South Africa, fraudulent claims for the refund of value-added tax for fictitious exports have been known to be a source of funds for laundering since the early 1990s (Goredema, 2003:196).

2.4.3 Corruption

The common law crime of bribery was repealed by the Corruption Act, No. 94 of 1992 and created the new offence of corruption. The situation is now dealt with by the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

In terms of the provisions of section 3 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the general offence of corruption occurs where:
'Any person directly or indirectly:
- Accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of him or herself or for the benefit of another person; or
- Gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner:
  - That amounts to the: illegal, dishonest, unauthorised, incomplete, or biased; or misuse or selling of information or

material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

o   That amounts to: the abuse of a position of authority; a breach of trust; or the violation of a legal duty or a set of rules;

o   Designed to achieve an unjustified result; or

o   That amounts to any other unauthorised or improper inducement to do or not to do anything.'

The Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 further defines corrupt activities in relation to (Van Rooyen, 2008:26):

- Public officials
- A foreign public official
- Agents
- Judicial officers
- Members of the prosecuting authority
- Unauthorised gratification received or offered by or to a party to an employment relationship
- Witnesses and evidential material during certain proceedings
- Contracts
- Procuring and withdrawal of tenders
- Auctions
- Sporting events and
- Gambling games or games of chance

The Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 further refers to 'conflict of interest' and 'other unacceptable conduct' in relation to:

- Acquisition of private interest in contract, agreement or investment in a public body;
- Unacceptable conduct relating to witnesses; and

- Intentional interference with, hindering or obstruction of the investigation of an offence.

Other offences which relate to corrupt activities (Van Rooyen, 2008:25):

- Accessory to or after an offence; and
- Attempt, conspiracy, and including seducing another person, to commit an offence; and
- Failure to report corrupt activities.

In the answers provided by the participants to the direction 'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime', the participants referred to corruption and bribery 15 times, which constitutes a frequency with which this answer was given of 60%.

2.4.4 Insider Trading

According to Blackman (1995:307), the term 'insider trading' refers to the purchase or sale of a company's shares by its directors and officers and other persons similarly connected or associated with it (the 'insiders') when in possession of confidential information gained as a result of that connection or association and not available to others ('inside information') which, if generally known, would affect the price of those shares ('price-sensitive information').

It is now generally accepted that the reason for prohibiting insider trading is the inherent unfairness of the practice, with the consequent corrosive effect that it has on confidence in the market in shares. Thus, the perceived harm is not so much harm to particular persons, but harm to the integrity of the market itself. This rationale calls for all trading on inside information (not only trading by insiders) to be made a criminal offence.

The Securities Services Act, No. 36 of 2004 creates five insider trader offences that may be committed by an insider who knows that he or she has inside information and who cannot prove any of the prescribed defences on a balance of probabilities. These offences are as follows:

- Dealing in the relevant securities for his or her own account;
- Dealing in the relevant securities for any other person;
- Disclosing inside information to another person;
- Encouraging or causing another person to deal in the relevant securities; and
- Discouraging or stopping another person from dealing in the relevant securities.

In addition to the insider trading offences outlined above, the Securities Services Act, No. 36 of 2004 prohibits trading practices which *inter alia*:

- Will have the effect of creating a false or deceptive appearance of active public trading in connection with, or an artificial price for, securities;
- Will unduly or improperly influence the market price of securities;
- Will have the purpose of creating or inducing a false or deceptive appearance of demand for or supply of securities;
- Will maintain a level of artificial prices;
- Will effect or assist in effecting a market corner;
- Are aimed at defrauding any person; or
- Are deceptive or likely to have that effect.

The Securities Services Act. No. 36 of 2004 also prohibits the making of false, misleading or deceptive statements, promises and forecasts (Denenga, Paige, Scholtz & Van Zyl, 2008:44).

In the answers provided by the participants to the direction 'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime', one participant referred to insider trading, which constitutes a frequency with which this answer was given of 4%. The inference drawn by the researcher from this response is that insider trading is not widely regarded by the sample as a financial crime, which it should be according to the literature.

2.4.5 Fraud

According to Van Rooyen (2008:128), fraud in its broadest term is defined as:

> obtaining something of value or avoiding an obligation by means of deception.

Legally fraud can be defined as:

> the unlawful and intentional making of a misrepresentation with intent to deceive and to defraud by causing actual or potential prejudice to another (Van Rooyen, 2008:130).

These definitions embrace many and varied forms of conduct from the less intricate fraudulent misrepresentations to the meticulously planned, complex and intricately executed sophisticated fraud schemes.

According to Van Rooyen (2008:128), the variety and complexity of fraud necessitates that the concept of fraud is broken down into manageable categories as follows:

- Fraud perpetrated against an organisation by a principal or senior official of that organisation. Examples of this include offences perpetuated against the shareholders and/or creditors of a corporate entity or corrupt practices by senior public officials. This category of fraud is commensurate with the description of financial crime perpetrated against an organisation by a client or supplier or an employee. This category of fraud includes embezzlement, insurance fraud, procurement fraud, tax evasion and other fraud against government. This category of fraud is commensurate with the description of financial crime.

- Fraud perpetrated by one individual against another in the context of face-to-face interaction. This will include so-called con artists, fraud by retail clients, and the so-called shady deals.

- Fraud aimed at and committed against a number of individuals through the print media or mass electronic communication or by other indirect means. This category of fraud will include fraudulent schemes such as Nigerian advance fee fraud, deceptive advertising and investment

schemes soliciting investments from a large number of prospective victims (Van Rooyen, 2008:128-129).

The following answers provided by the participants to the direction 'Give examples of the type of crime or offences that you would classify to fall within the category of financial crime' relate to fraud in general and its different manifestations:

- Fraud in general (84% frequency or 21 times)

- Forgery and uttering (20% frequency or five times)

- Credit card fraud (16% frequency or four times)

- Cheque fraud (8% frequency or two times)

- Nigerian '419' letter scams or advance fee fraud (8% frequency or two times)

- Finance fraud as an offence which falls within the category of offences known as 'financial crime' (8% frequency or two times)

- Cyber fraud (4% frequency or one time)

2.5   SUMMARY

With the introduction of anti-money laundering-, anti-corruption and anti-terrorist financing legislation, the focus is very much on the financial aspects of crime. These are still relatively new concepts, which present to crime investigators and prosecutors new challenges in terms of the methods and techniques for investigating the new category of crimes created by the new legislation. These crimes, known as 'financial crimes', are driven by greed and their result is the accumulation of wealth and money; in other words, income.

Organised crime syndicates generate huge amounts of money with which they finance their criminal enterprises and lavish lifestyles. These activities attract the attention of the public, law enforcement and prosecutors.

Investigators and prosecutors can no longer just focus their investigation on the predicate offences. It is obvious that investigators also have to switch their

attention to the financial aspects or implications of the crimes being investigated. On the one hand, the income from unknown sources is taxable. On the other hand, the accumulation of wealth and income from unknown sources may be indicative of or provide circumstantial evidence as to the criminal activities undertaken by the subject under investigation.

Where criminals hide the origin of their income or take measures to conceal the transactions relating to what they receive, accumulate and spend, financial investigation methods need to be applied that can provide an answer to the question: what amount of income was received by the subject from unknown sources? During crime investigation, the trial and thereafter the question as to the amount of income received from unknown sources are likely to become all the more prominent.

The Net Worth method as a technique to determine income, circumstantially, is examined in the next chapter.

CHAPTER 3
THE NET WORTH METHOD AS INVESTIGATION TECHNIQUE

3.1   INTRODUCTION

From the researcher's own experience and observations as a financial crime investigator with 26 years of experience in the investigation of crime, the researcher knows that investigators often receive information regarding the ostensible, exorbitant and lavish lifestyle of individuals suspected of involvement in crime and organised crime activity. Alternatively, investigators may observe this phenomenon themselves during their investigations.

The above statement is supported in the following article which appeared in the *Sunday Times, Metro* dated 19 November 2006 under the heading 'Gauteng is "mafia" turf'. In the article Geldenhuys (2006:1) quotes Jenni Irish-Qhobosheane, a researcher from the South African Institute of International Affairs, who states that 'Foreign criminal syndicates have entrenched themselves in Gauteng' and 'they live extravagant lives, wear designer label clothes and drink expensive whiskey and 20-year-old brandy'.

Investigators are often not in a position to obtain direct evidence regarding the unknown source (usually of criminal origin) from which suspected illegitimate income is derived or received, making it almost impossible for them to ascertain the amount of income from unknown sources. Likewise, there may be no or little evidence to link the individual under suspicion directly to the criminal activity from which the unknown income is derived (predicate offence), the source of the income or the amount received. This may present a problem where the investigator or prosecutor during the investigation of crime or prosecution contemplates charging the suspect for other crimes where the amount of income received must be proven.

On the other hand, the opportunity to prove a crime might be presented if the investigator can find a way to prove illicit income circumstantially through indirect methods; for example, where an investigator is investigating a

suspected case of corruption but cannot prove the receipt of the money through direct evidence.

In order to prove certain crimes it must be proved:

- That an amount of money was received; and
- What the amount is that was received.

During the investigation of the crime or the prosecution thereof, the following questions may arise:

- Did the accused receive income from unknown sources?
- What is the amount of income from unknown sources received by the accused?
- Is there a discrepancy between the assets owned by and expenditure made by the accused and his/her income from known sources?
- What is the size of the discrepancy?

The methods used by revenue authorities worldwide to determine undisclosed income may provide the answers to these questions in the absence of direct evidence. This chapter examines the Net Worth Method as a forensic technique during crime investigation to determine income from unknown sources and to provide proof, circumstantially, of such income in the absence of direct evidence as to the accrual of such income.

3.2 THE CONCEPT 'FORENSIC INVESTIGATION'

There is widespread confusion within the investigation industry regarding the true meaning of forensic investigation (Van Rooyen, 2008:14). The *Oxford English Dictionary* (2004:118) describes 'forensic' as follows: 'relating to the application of scientific methods and techniques to the investigation of crime, relating to courts of law'. Van Rooyen (2008:14) states that the true meaning of the term 'forensic' is two-fold:

- It refers to 'courts of law, juristic or court directed' and relating to the 'application of science' to decide questions arising from crime or litigation; and

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- It includes the function of 'examination or analysing'.

The investigation of white collar crime and corruption by forensic investigators is often perceived as something extra-ordinary from other kinds of investigations. This, according to Van Rooyen, is a myth because the South African Law is based on the Roman Dutch Law, which implies that the legal principles which apply to the one also apply to the other (Van Rooyen, 2008:77).

In practice this means that the forensic investigator is visible in the following guises (Van Rooyen, 2008:78):
- A law enforcement official, e.g. a police investigator
- Investigators employed by the revenue service
- Investigators employed by the prosecuting authority
- Customs officials
- Private sector investigators

Using a content analysis for interpreting the response to the question 'How would you describe forensic investigation?', certain themes were identified in the participants' answers and are presented in the frequency table below. As can be seen from the themes quoted in Table 5, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 5 – Frequency table for describing forensic investigation

'How would you describe forensic investigation?' Answer	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Forensic investigation involves investigation into finances or financial matters	16%	4
Forensic investigation requires specialised/ expert skills/knowledge	16%	4
Forensic investigation involves scientific methods to investigate crime scenes	16%	4
Forensic investigation concerns determining motive and intention	16%	4
Forensic investigation is the gathering/collection of information and evidence	16%	4
Forensic investigation is the same as criminal investigation	16%	4
Forensic investigation is undertaken for court purposes or law (juristic)	12%	3
Forensic investigation concerns the investigation of flow of funds	12%	3
Forensic investigation concerns the examination of financial statements/records	12%	3
Forensic investigation is undertaken to identify accomplices	8%	2
Forensic investigation concerns the analysis of documents	8%	2
Forensic investigation is undertaken to confirm an allegation	8%	2
Forensic investigation concerns the analysis of exhibits	8%	2
Forensic investigation is an analytical investigation of evidence	8%	2
Forensic investigation is an analysis of financial profiles	8%	2
Forensic investigation is an in-depth, more detailed investigation	8%	2
Forensic investigation is undertaken to find proof of money transactions	8%	2
Forensic investigation involves audit techniques	4%	1
Forensic investigation concerns the following of the money trail	4%	1
Forensic investigators have limited powers	4%	1
Forensic investigation involves the services of accountants/auditors	4%	1
Forensic investigation is a systematic investigation process	4%	1
'Forensic investigation' is a broad term	4%	1
Forensic investigation includes all forms of investigation	4%	1
Forensic investigation is undertaken to determine the extent of a crime	4%	1
Forensic investigation is used to investigate the elements of a crime	4%	1
Forensic investigation concerns profiling	4%	1
Forensic investigation determines the extent of financial gains/proceeds	4%	1
Forensic investigation analyses and examines paper trails	4%	1
Forensic investigation is undertaken to identify the suspect	4%	1
Forensic investigation determines why the crime was committed	4%	1

Forensic investigation tests the validity of financial records/supporting documents	4%	1
Forensic investigation is the process of interpreting evidence	4%	1
Forensic investigation is investigation undertaken from an accounting perspective	4%	1
Forensic investigation involves the application of a specific science to solve crime	4%	1

Source: Feedback from sample

An inference the researcher draws from the large number of themes identified (35) is that there is indeed 'widespread confusion' within the investigation industry regarding the true meaning of forensic investigation.

The following common themes identified in the answers provided by the participants are consistent with the literature:

- Forensic investigation is undertaken for court purposes or for purposes of law (juristic) (12% frequency or three times)

- Forensic investigation involves the application of scientific methods (16% frequency or four times)

- The investigation activity 'examination' or 'analysing' appears in five of the themes presented in the answers provided by the participants

- Forensic investigation is similar to a criminal investigation (16% frequency or four times)

According to the researcher's inference, this indicates that there is at least some common understanding amongst the participants regarding the meaning of forensic investigation.

A reference to investigation activities associated with 'financial crime' and 'financial investigations' appears in 10 of the themes identified in the answers provided by the participants. The inference that the researcher draws from this analysis is that there is a trend which shows that for the sample 'forensic investigation' is associated with the investigation of financial crime or financial investigations. In the minds of the participants 'financial crime' and 'financial investigation' are what possibly distinguish 'forensic investigation' from 'criminal investigation'.

This corresponds with the literature reviewed, where Van Rooyen (2008:77) states that 'the investigation of white collar crime and corruption by forensic investigators is often perceived as something extra-ordinary from other kinds of investigations.' This, according to Van Rooyen (2008:77), is a myth.

Using the themes most frequently identified in the answers of the participants during the interviews, the following possible working definition of 'forensic investigation' could be offered:

> *Forensic investigation is an in-depth, more detailed investigation into finances and financial matters undertaken for court or law purposes and is similar in character to criminal investigation. It utilises specialised skills, expert knowledge, and scientific methods during:*
>
> * *Examination of financial statements and records;*
> * *Investigation of crime scenes;*
> * *Analysis of documents;*
> * *Gathering and collection of evidence and information; and*
> * *Analytical examination of evidence for, amongst others, the purpose of:*
>   * *Identifying accomplices*
>   * *Determining flow of funds*
>   * *Determining motive and intent*
>   * *Confirming an allegation*
>   * *Finding proof of financial transactions*
>   * *Formulating a financial profile*

3.3   THE CONCEPT 'CRIMINAL INVESTIGATION'

Criminal investigation can be defined as the discovery of relevant facts, the making of inferences from these facts, the reconstruction of the crime scene, the identification and apprehension of the offender, and the preparation of the case for prosecution and trial of the suspect (s) (Van der Westhuizen, 1996:354).

The investigation of crime can be described as a systematic, organised search for the truth, which entails observation and enquiry for the purpose of

gathering objective and subjective evidence about an alleged crime or incident (Van Rooyen, 2008:13).

Using a content analysis for interpreting the response to the question 'How would you describe criminal investigation?', certain themes emerged from the participants' answers and these themes are presented in the frequency table below. As can be seen from the themes quoted in Table 6, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 6 – Frequency table for describing criminal investigation

'How would you describe criminal investigation?' Answer	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Criminal investigation is the same as forensic investigation	28%	7
Criminal investigation concerns the gathering of information and evidence	28%	7
Criminal investigation concerns the investigation of all crimes	20%	5
Criminal investigation is undertaken to ensure/secure a successful prosecution	16%	4
Criminal investigation is undertaken to identify the perpetrator	16%	4
Criminal investigation is the methods used to determine or search for the truth	12%	3
The aim of criminal investigation is to prove all the elements of a crime	12%	3
Criminal investigations are undertaken to prove an alleged crime was committed	12%	3
Criminal investigation is undertaken to establish if a criminal offence/crime has been committed	12%	3
Criminal investigation aims to prove a case in a court of law	8%	2
Criminal investigations are guided by the Criminal Procedure Act	8%	2
Criminal investigation is the traditional way in which crime is investigated	4%	1
Criminal investigation focuses on the commissioning of an offence	4%	1
Criminal investigations concern the investigation of unlawful acts	4%	1

Source: Feedback from sample

In their response to the question 'How would you describe criminal investigation?', the participants replied with a frequency of 28% or seven times that they were of the opinion that a 'criminal investigation' is the same as a 'forensic investigation'. In the researcher's view, this is significant in that it implies that the investigation activities that make up a forensic investigation also apply to a criminal investigation.

In their response to the question 'How would you describe criminal investigation?', the participants replied with a frequency of 20% or five times that they were of the opinion that 'criminal investigation' concerns 'the investigation of "all" crimes'. This, according to the researcher, supports the inference made by the researcher that investigators draw a distinction between forensic investigation and criminal investigation on the basis of the nature of the crime being investigated, viz. financial investigations.

In their response to the above question, the participants answered with a frequency of 28% or seven times that they were of the opinion that criminal investigation concerns the gathering of information and evidence.

Using the most frequently identified themes to emerge from the participants' answers during the interviews, the following possible working definition for 'criminal investigation', as compiled from the sample's ideas, could possibly be offered:

Criminal investigation can be defined as a forensic investigation concerning the investigation of all types of crimes or unlawful acts, the gathering of information and evidence, and the search for the truth, involving traditional methods guided by the Criminal Procedure Act to:

- *Identify the perpetrator;*
- *Establish whether a criminal offence or crime has been committed;*
- *Bring a case before a court of law; and*
- *Ensure a successful prosecution.*

The researcher established from the case analysis that the SARS criminal Investigator conducted a criminal investigation to prove a case of tax evasion. (See table 18)

3.4 THE OBJECTIVES OF INVESTIGATION

The objectives of investigation are now examined. Becker (2009:12) provides the following objectives of 'police' investigations:

- Detecting crime;
- Locating and identifying suspects;
- Locating, recording and processing evidence while observing all constitutional considerations;
- Arresting the perpetrator while observing all constitutional considerations;
- Recovering property;
- Preparing for trial, including completing accurate documentation; and
- Convicting the accused by testifying and assisting in the presentation of legally obtained evidence and documents.

Van Rooyen (2008:13) provides the following objectives of investigation:

- A systematic, organised search for the truth;
- The gathering of objective and subjective evidence about an alleged crime or incident; and
- The discovery of certain facts, or the ascertaining of the existence of such facts.

Newburn (2008:438) states that investigative practice has two basic objectives:

- The generation of knowledge in relation to the investigator; and
- The production of evidence.

In terms of the first objective, 'knowledge' refers to the conclusions and understandings reached by the investigator regarding the crime, and attaining knowledge normally involves the following tasks (Newburn, 2008:438):

- Determining that one or more criminal offences have been committed;
- Producing a narrative of the circumstances surrounding the offences;
- Determining the most promising line of inquiry;
- Identifying and/or eliminating one or more suspects;
- Exploring the backgrounds, motivations, lifestyles and activities of suspects or known offenders and their associates; and
- Gathering intelligence about planned offences.

According to Van der Westhuizen (1996:4), the objectives of investigation are:

- Identification of crime;
- Gathering of objective and subjective evidence about an alleged crime or incident;
- Individualisation of the crime;
- Arrest of the criminal;
- Recovery of stolen property; and
- Evaluation of and involvement in the prosecution process.

De Villiers (1999:3, 5) asserts that investigators:

- Search for verbal and written information, and for the existence of relevant material objects;
- Are assigned the task of searching out those facts of evidence as a basis on which clients or courts will render their decisions.

Using a content analysis for interpreting the response to the question 'What are the objectives of investigation?', certain themes were identified in the participants' answers and these themes are presented in the frequency table below. As can be seen from the themes quoted in Table 7, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 7 – Frequency table for describing the objectives of investigation

'What are the objectives of investigation?' Answers	Frequency with which this theme occurs in the answers by the participants	Number of times this answer was provided in response to the question
The objective of investigation is to prove or disprove an allegation	32%	8
The objective of investigation is to determine the truth	32%	8
The objective of investigation is the gathering of legal/admissible evidence	24%	6
Prosecution of the perpetrator/accused	20%	5
The objective of investigation is to identify the perpetrator	16%	4
The objective of investigation is a successful prosecution, conviction, sentencing	16%	4
The objective of investigation is to prove disputed facts beyond reasonable doubt	12%	3
The objective of investigation is to identify witnesses	12%	3
The objective of investigation is to compensate/provide restitution for the victim	8%	2
The objective of investigation is to ensure justice is done	8%	2
Place evidence before court	8%	2
The objective of investigation is to prove all the elements of a crime	8%	2
The objective of investigation is to identify the offence	8%	2
The objective of investigation is to determine when, how, why and where the crime was committed and who committed it (discover facts about the crime)	4%	1

Source: Feedback from sample

The following answers provided by the participants are consistent with the literature as to the objectives of investigation:

- To determine the truth (32% frequency or eight times)
- To gather legal/admissible evidence (24% frequency or six times)
- To identify witnesses (12% frequency or three times)
- To identify the perpetrator or suspect (16% frequency or four times)
- To prove disputed facts beyond reasonable doubt (12% frequency or three times)
- To place evidence before court (8% frequency or two times)
- To identify the offence (8% frequency or two times)

- To determine when, how, why and where the crime was committed and who committed it (discover facts about the crime) (4% frequency or one time)
- To prove all the (juristic) elements of a crime (8% frequency or two times)
- To provide compensation (recovery) or restitution for the victim (8% frequency or two times)

The inference the researcher draws from Table 7 is that there is a reasonable degree of common understanding amongst the sample as to the objectives of investigation.

The participants offered the following <u>additional</u> themes identified as objectives of investigation to those found in the literature.
- To prove or disprove an allegation (32% frequency or eight times)
- To prosecute the perpetrator or accused (20% frequency or five times)
- To bring about successful prosecution, conviction and sentencing (16% frequency or four times)
- To ensure that justice is done (8% frequency or two times)

During the analysis of the theme content provided by the participants in their responses to the question 'How would you describe criminal investigation?', the researcher found that the participants also alluded to the 'objectives of investigation' and provided the following answers in relation to these objectives:
- Gathering of information and evidence (28% frequency or seven times)
- Identification of the perpetrator (16% frequency or four times)
- Search for the truth (12% frequency or three times)

This further confirms that the participants have a reasonable common understanding of the objectives of investigation.

To the researcher it appears from the literature and from his analysis of the answers provided by the participants that 'forensic investigation' also implies 'criminal investigation' as both have as their aim the investigation of crime and the tendering of the facts before a court of law. If one examines the processes or activities involved in forensic investigation and criminal investigation as identified in the literature and from the themes presented by the sample, the processes or activities for both types of investigations appear to be the same. For the purpose of this research, the researcher will therefore refer to both 'forensic investigation' and 'criminal investigation' as entailing the same concept.

3.5   FINANCIAL INVESTIGATION OF CRIME

In the field of financial crime investigation, the contribution that theory and proper methodology can offer to effective action is essential (Massimo, 2006:293). The investigation of financial crime often requires that some form of financial investigation activity is undertaken to provide answers to facts in dispute that arise from the crime under investigation.

A 'financial investigation' is defined as:

> The gathering, selection, enrichment, verification, processing and analysis of financial or finance related data on behalf of law enforcement (Van Duyne et al., 2003:77).

Greed implies money. Money-motivated crime requires a new investigative approach to dealing with criminal activity; namely, financial investigations. The financial investigation of crimes that are motivated by greed requires the use of traditional investigation techniques in combination with a new set of techniques which focus on financial dealings (*Financial Investigation – A Financial Approach to Detecting and Resolving Crimes,* 1994:3-4).

Tax evasion, corruption, fraud, and terrorist financing are just a few types of crime that revolve around money. In cases such as these, a financial investigation often becomes the key to a conviction (*Financial Investigations – Criminal Investigation,* 2008*).*

Many of the crimes featured in today's news headlines cannot be solved using traditional techniques. Traditional approaches to the investigation of crime work best when a crime has been committed and the criminal that committed the crime needs to be identified. The question is: will these techniques work if the criminal is known and the authorities begin an investigation to prove the crime? (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:3).

The major goal in a financial investigation is to identify and document the movement of money; the link between where the money comes from, who receives it, when it is received and where it is stored or deposited can provide proof of criminal activity (*Financial Investigations – Criminal Investigation,* 2008*).*

In the last decade more attention has been given to the financial aspects of crime (Van Duyne et al., 2003:77). According to Chaikin (1990:467), financial investigations address the financial dealings of individuals or organisations under suspicion and those investigations have two aims:

- 'The first is to trace money that has been used in, or derived from, criminal activity. This involves identifying both the criminal activity and the money it is generating and showing the link between the crime and the money.'

- 'The second aim is to assess the net worth of the individual and/or organization being investigated and to identify the sources and applications of their wealth. This involves showing the existence of any unexplained income or other assets.'

Any recipient of funds, whether he is an honest citizen or a suspected criminal, has only four ways in which he can dispose of that income:

- Investing in a financial institution or on his behalf by a financial institution or financial service provider;

- Buying assets, such as moveable, fixed or luxury goods;

- Reducing liabilities by paying off debt; and

- Making personal or business expenditures.

The financial investigative approach can be used to resolve several questions (Madinger, 2006:111):

- Where did the subject get the money?
- How much money did the subject get?
- Where is the money going?
- How is the money moving?
- Does the subject keep the money, or is the subject a conduit?

Financial crimes by their very nature are record intensive, specifically records that point to the movement of money. Any record that pertains to or shows the so-called paper trail of events is important to a financial investigation (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:4).

The financial investigative approach is applicable to the following types of crimes (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:3):

- Fraud
- Tax evasion
- Bribery (corruption)
- Embezzlement
- Larceny (theft)
- Forgery
- Counterfeiting
- Blackmailing
- Extortion
- Kickback
- Racketeering
- Insider trading
- Money laundering

According to Chaikin (1990:467), there are two methods of estimating illegal income:

- There is the direct financial investigation method which relies on specific transactions to determine income; and

- There is the indirect financial investigation method that relies on the Net Worth method to provide circumstantial proof of income.

This research deals with the indirect method of assessing income.

To put the indirect financial investigation method into perspective, a short explanation of the salient features of direct financial investigation methods is given in the next section.

3.6 DIRECT METHODS TO QUANTIFY INCOME

According to Chaikin (1990:467), the direct method of estimating income from illicit sources relies on specific transactions, such as sales and expense to determine income. This method of direct proof is the simplest method of proving that a subject under investigation has paid for something using illicit funds or has received funds through illegal means. The direct method documents the movement of money from either side of a transaction (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:179).

The direct method relies on a microscopic view of financial transactions through the review of books, records, and bank accounts of the recipient and payer of illegal funds (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:195).

The direct method relies on the subject's books and records, or those of third parties, documenting sales' expenses and other financial transactions. It relies on proof of specific transactions to show income (Madinger & Zalopany, 1999:144). As the name 'direct' indicates, this method relies on direct evidence to provide proof of income and the origin of that income.

The focus of this research, however, is on the investigation of those subjects that receive more income than they legitimately earn where there are no or very few records available to provide direct evidence to determine the income received or wealth accrued from illicit sources.

3.7   INDIRECT METHODS TO QUANTIFY INCOME

The indirect methods of proving funds are based on a simple and almost invariably true principle:

> Money, in any significant amount will eventually show up, directly or indirectly, in the accounts, assets, or expenditures of the recipient (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:194).

As an investigative tool, the indirect methods can corroborate testimony (provide proof) alleging hidden illicit payments (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:195).

The indirect approach shows the relationship between a subject's receipt and subsequent disbursement of income. The result of the indirect method does not identify specific financial transactions entered into by the subject. For instance, this approach cannot provide proof that illicit funds, *per se,* were used to pay off a bond. It will, however, show that the subject was able to participate in a financial transaction above and beyond his or her known income, which in some instances amounts to zero (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:197).

Over the years several indirect methods of proving income from unknown (criminal) sources have been developed, of which the most common ones are (Madinger, 2006:146):

- Net worth
- Source and application of funds
- Bank deposits
- Unit and volume

According to Madinger (2006:146), the Net Worth Method is the most widely known approach and one that adapts readily to non-tax investigations of illegal source income.

According to Daysh and Exley (2000:27), the Net Worth Method (or 'Comparative Net Worth Analysis' as it is also known) is used to prove illicit income circumstantially, by showing that a person's assets or expenditure for a given period exceed that which can be accounted for from known or admitted sources of income, and is a reliable method for estimating a person's illegal source income.

Using a content analysis for interpreting the response to the question 'Which analysis technique do you use to determine income or the accrual of wealth and assets (if any)?', certain themes were identified in the participants' answers and are presented in the frequency table below.

It is important to note that the question does not specify 'direct' or 'indirect' methods nor does it refer to the absence of direct evidence such as accounting, financial and transactional records.

As can be seen from the themes quoted in Table 8, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 8 – Frequency table for techniques used to determine income

'Which analysis technique do you use to determine income or the accrual of wealth and assets (if any)?' **Answer**	**Frequency with which this theme occurs in the answers provided by the participants**	**Number of times this answer was provided in response to the question**
A comparison of the actual lifestyle and expenses of the subject with his known or legal sources of income	20%	5
Money trail method/Following the movement of money or determining the flow of funds	16%	4
Financial profiling/profile	16%	4
Reviewing bank statements	8%	2
Reviewing of financial records	8%	2
Drawing up a statement of income and expenditure	8%	2
Capital reconciliation	8%	2
Paper trail method (of a financial transaction)	4%	1
Financial analysis using financial statements	4%	1
Listing of income and expenditure	4%	1
Reviewing of accounting records and books	4%	1
Listing of assets and liabilities	4%	1
Net Worth Analysis method	4%	1

Source: Feedback from sample

The answers given by the participants refer to both direct methods and indirect methods of determining income. The answers also refer to techniques which may form part of the steps in the process of financial investigations. The answers are further analysed below.

In relation to direct methods the themes are:

- Reviewing accounting records, books (4% frequency or one time)
- Reviewing bank statements of the recipient and provider of funds (8% frequency or two times)
- Reviewing financial records of the recipient and provider of funds (8% frequency or two times)
- Following the movement (flow) of money from either the point of payment or the point of receipt (16% frequency or four times)
- Following the paper trail (documentary evidence) of a financial transaction (4% frequency or one time)

- Analysing financial statements (4% frequency or one time)

- Listing assets and liabilities (4% frequency or one time)

In relation to indirect methods the themes are:

- Determining the financial profile (16% frequency or four times)

- Analysing lifestyle, which is a determination of the subject's lifestyle, i.e. purchasing of luxury goods and expensive spending habits (20% frequency or five times)

- Listing income from known sources and expenditure (4% frequency or one time)

- Reconciling capital (8% frequency or two times)

- Listing assets and liabilities (4% frequency or one time)

The 'financial profile' is one of the methods available for gathering information to use in the application of the Net Worth method to prove that the subject is receiving more income than he or she legitimately earns. It is the first step in performing the Net Worth method. This entails that investigators prepare an overview of the subject's financial position by investigating what the subject owns, earns and spends (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:195).

Two participants said that they use the Capital Reconciliation Method to determine income during financial crime investigation. The Capital Reconciliation (method) is a different name for the Net Worth method (Van Deventer, 2008:18). The Capital Reconciliation (method) uses the same financial information and applies the same computations as the Net Worth method (Madinger, 2006:112). The case analysis confirmed that the SARS investigator refers to the Net Worth Method as a 'capital reconciliation' although the computations are the same as that the Net Worth Method.

By virtue of the employment of the researcher in the SARS he is well aware that the Capital Reconciliation method is in general use by SARS officials when income has to be quantified circumstantially using indirect methods for

determining undisclosed income for the purpose of assessing taxable income. Owing to an undertaking by the researcher to the SARS not to disclose methods used by SARS as a pre-condition for permission to conduct research, a simulated example of the Capital Reconciliation method cannot be attached to this research report.

One participant said that he would use the Net Worth Analysis method to determine income or the accrual of wealth and assets.

3.8   THE NET WORTH METHOD

'Net Worth' can be defined as the difference between a person's assets and liabilities at a particular point in time (*Financial Investigations and the Tracing of Funds,* 1990:44), also known as 'equity' or 'capital' (Madinger, 2006:112).

The Net Worth method can be described as:

> ...a frequently used indirect method of circumstantially proving income from an unknown or illegal source. It is based on the theory that increases or decreases in a person's net worth during a period, adjusted for living expenses, result in a determination of income. By comparing the subject's net worth at the beginning and end of a period, usually a calendar year, the financial investigator can determine the subject's increase or decrease in net worth for the period. Adjustments are then made for the living expenses to arrive at income. By subtracting income (funds, money) from known sources, such as salary, interest, dividends and commission, the income (funds, money) from unknown or illegal sources can be determined (*Financial Investigations and the Tracing of Funds,* 1990:43-44).

The Net Worth method is used during financial crime investigations when several of the subject's assets and/or liabilities have changed during the period under investigation and one of the following conditions exists *(Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:215):

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- The subject maintains no books or records;
- The subject's books and records are not available;
- The subject's books and records are inadequate; or
- The subject is withholding books or records.

The departure point for a Net Worth Analysis is to complete a financial profile of the subject. A financial profile is an overview of the subject's financial condition. This is accomplished by uncovering what the subject owes, owns, earns and spends at a given point in time or over a given period of time. It also entails determining the sources and applications of funds used to make purchases or pay for expenses (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:195). Through identification of the subject's assets, liabilities, income and expenses, a Net Worth Statement can be determined.

Using a content analysis for interpreting the response to the question 'What is the Net Worth Analysis?', certain themes emerged from the participants' answers. These themes are presented in the frequency table below. As can be seen from the themes quoted in Table 9, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 9 – Frequency table for the definition of Net Worth Analysis

'What is the Net Worth Analysis?' Answer	Frequency with which this theme occurs in the responses by the participants	Number of times this answer was provided in response to the question
Have no idea what the 'Net Worth Analysis' is	28%	7
A Net Worth Analysis is an analysis/method which is performed to determine whether your income from known sources is commensurate with your lifestyle	16%	4
Net worth is the disposable income that you are left with after deducting your expenses from your income	8%	2
It is an analysis of an individual or entity's worth	8%	2
It is the difference in what you earn compared to what you actually own	8%	2

It is the net value after deducting all liabilities from all assets	8%	2
Have read about the Net Worth Analysis	4%	1
The Net Worth Analysis is a calculation of money	4%	1
The Net Worth Analysis is a calculation made to determine the value of income received from crime	4%	1
A Net Worth Analysis is the amount by which the proceeds of crime have been diminished over a certain period	4%	1
The Net Worth Analysis is a technique used to quantify income circumstantially during the investigation of financial crime	4%	1
The Net Worth Analysis will include the growth in net worth from one year to the next	4%	1
The Net Worth Analysis is a technique for determining the origin of money to fund a certain lifestyle and assets	4%	1
The Net Worth Analysis is a financial investigation	4%	1
The Net Worth Analysis is a technique used to determine the value of a person's estate	4%	1
The Net Worth Analysis forms the basis of all crime investigations	4%	1
The Net Worth Analysis is a technique whereby the difference between what a person actually earns from all known sources of income and monthly expenses is used to prove that such a person receives income from proceeds of crime/illicit sources	4%	1
The Net Worth Analysis is a method used to determine the net value of a person's wealth	4%	1
The Net Worth Analysis is a method that is used to determine the liquidity of a person or company	4%	1
It is the value of a person's assets in monetary terms	4%	1
Net worth is a statement of a person's assets and liabilities/balance sheet	4%	1
It is a method used to determine a person's income minus liabilities	4%	1
It is method to determine what assets have been accrued by a person	4%	1
A Net Worth Analysis is an analysis of a person's financial status	4%	1
It is a forensic method used during the investigation of financial crime	4%	1
It is an investigation method used to determine the monetary value of the loss suffered which is the result of a financial crime	4%	1
It is a method used to determine if a person receives income from other sources than known sources of income	4%	1
A Net Worth Analysis is a statement of a person's income and expenditure	4%	1

It is a method whereby a person's balance sheet and statement of income and expenditure are compared with his known sources of income	4%	1

Source: Feedback from sample

An analysis of the answers provided by the participants to the question 'What is the Net Worth Analysis?' shows that:

- The participants acknowledged that they had not encountered the term 'Net Worth Analysis' before the interview (28% frequency or seven times)

- Participants had read about it before (4% frequency or one time)

- The Net Worth Analysis is a method used to determine whether a person's income from known sources is commensurate with his lifestyle. This statement by the sample can be construed as corresponding with the literature in that by conducting a Net Worth Analysis the financial investigator is able to determine if the income from known sources can support the lifestyle exhibited by the subject under investigation (16% frequency or four times)

- The Net Worth Analysis Method is a calculation made to determine the value of income received from crime, which corresponds with the literature (4% frequency or one time)

- The Net Worth Analysis method is a technique used to quantify income circumstantially during the investigation of financial crime, which corresponds with the literature (4% frequency or one time)

- The Net Worth Analysis method is a method whereby a person's balance sheet and statement of income and expenditure are compared with his known sources of income. This corresponds with the literature except that Net Worth should be calculated from the beginning to the end of a fixed period of time (4% frequency or one time)

- It is a forensic method used during the investigation of financial crime, which corresponds with the literature (4% frequency or one time)

- It is a method used to determine if a person receives income from other sources than known sources of income, which corresponds with the literature (4% frequency or one time)

Although the sample interviewed represents a group of experienced financial crime investigators, the wide range of themes identified in the answers provided to the question 'What is the Net Worth Analysis?', in the researcher's assessment, indicates that the participants did not know what the Net Worth method of estimating income is and that they were speculating as to its meaning. This suggests that the sample, although experienced financial investigators in terms of their years of involvement in the field, had limited experience in the use of the application of the Net Worth method.

Using a content analysis for interpreting the response to the question 'Are you aware of the Net Worth Analysis method to determine income during the investigation of financial crime?', certain themes were identified in the participants' answers. These are presented in Frequency Table 10.

Table 10 – Frequency table for awareness of the Net Worth Analysis method

'Are you aware of the Net Worth Analysis method to determine income during the investigation of financial crime?' Answer	Frequency with which this theme occurs in the response by the participants	Number of times this answer was provided in response to the question
No, I am not aware of it	52%	13
Yes, I am aware of it	48%	12

Source: Feedback from sample

An analysis of the answers provided by the participants to the question 'Are you aware of the Net Worth Analysis method to determine income during the investigation of financial crime?' shows that participants:

- Were not aware of the Net Worth Analysis as a method used to determine income during the investigation of financial crime (52% frequency or 13 times)

- Were aware of the Net Worth Analysis as a method used to determine income during the investigation of financial crime (48% frequency or 12 times)

A possible reason for the high frequency of responses indicating a lack of knowledge of the topic is that investigators are not trained in financial investigation methods or required to determine income using indirect methods when there is no direct evidence available. In other words, they do not pursue the criminal investigation further, believing that if there is no direct evidence they will not be able to prove income using indirect methods.

3.9   SUMMARY

Whether a crime investigation or a forensic investigation is undertaken or whether the investigation concerns 'ordinary' crime or crimes which can be classified as financial crime, economic crime or white collar crime:

- A forensic investigation and a criminal investigation essentially involve the same processes, and the same legal principles apply to both processes (Van Rooyen, 2008:77).
- The objectives of investigation, whether it is a forensic investigation or a crime investigation, are the same.
- The investigation of financial crime, economic crime or white collar crime is not something extra-ordinary from other kinds of investigations.

Traditionally, criminologists have categorised crime into two large groupings (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:1):

- Crimes against people; and
- Crimes against property.

Criminal activity can now be classified by motivational factors (*Financial Investigation – A Financial Approach to Detecting and Resolving Crimes,* 1994:1):

- Passion; or
- Greed.

Greed implies money. Money-motivated crime requires a new investigative approach to deal with criminal activity; namely, financial investigation. The financial investigation of crimes motivated by greed requires the use of traditional investigation techniques in combination with a new set of methods and techniques which focus on financial dealings (*Financial Investigation – A Financial Approach to Detecting and Resolving Crimes,* 1994:3-4).

It would appear from the literature that financial crimes are crimes which revolve around money and that financial investigations can be used to solve these crimes.

From the researcher's own experience and observation it is clear that criminals will almost invariably try to hide the true origin of their ill-gotten gains, for fear of being implicated in the involvement in criminal activities and of being taxed on their proceeds. To this extent they will attempt to destroy or hide any direct evidence that can link them to the criminal activities that link them to a crime.

It is in this regard that indirect methods of assessing income, such as the Net Worth method, come into effect.

The next chapter examines the application of the Net Worth method as an investigation technique during the investigation of financial crime.

CHAPTER 4
THE APPLICATION OF THE NET WORTH METHOD AS INVESTIGATION TECHNIQUE

4.1 INTRODUCTION

The researcher's own experience and observations as a financial crime investigator have made him aware that some allegations of suspect criminal conduct are so vague and unspecific that the exact crime that the subject may be guilty of perpetrating is not identifiable. As a starting point for initiating an investigation, investigators conduct an investigation into the lifestyle, financial position and financial transactions of the subject under investigation in the hope of finding proof of criminal conduct for which the subject can be held criminally liable.

In some instances, investigators can determine from surveillance that a subject suspected of involvement in crime exhibits an exorbitant and lavish lifestyle, yet they are unable to find any direct evidence of income obtained through illegal sources.

There appear to be similarities between the conduct and methods used by criminals to disguise the proceeds of crime and the methods and conduct used by criminals and tax evaders alike to conceal taxable income from detection by the tax authorities.

The challenge facing investigators is that, once they have determined that the subject under investigation, for whatever crime, does exhibit a lifestyle beyond their known sources of income, the investigators need to find evidence that will support their assumption that the funds which support that lifestyle are from unknown (illicit) sources. How do they determine what the amount of income is from unknown (illicit) sources in the absence of direct evidence? Will a lifestyle beyond their known sources of income be sufficient evidence to prove that question in a court?

The investigators will have to find some way of determining circumstantially or indirectly what the amount of income is from unknown sources.

This chapter examines the application of the Net Worth Method as a technique for quantifying income from unknown sources circumstantially and discusses whether this method is able to provide sufficient proof of income and its quantity in a court.

4.2   THE CONCEPT 'EVIDENCE'

The existence of direct and indirect evidence (circumstantial evidence) in any investigation will determine whether the investigation and ultimately the prosecution are successful or not (Clark, 1998:3). (See appendix 6)

In *Rex v Swartz* 1946 GWLD 57, Judge Krause concluded that evidence is usually divided into two classes, being:

- Direct or best evidence; and
- Circumstantial evidence or indirect evidence.

There is a distinction between direct and circumstantial evidence (Schmidt and Rademeyer, 2003:1-5).

Van Rooyen (2008:17) states that evidence may be given verbally by a witness or in writing by means of such documents that are admissible. It may be complemented further with presumptions, judicial notice and admissions (Van Rooyen, 2008:17). Van Rooyen (2008:17) asserts that all this evidence forms the proof from which the court must reach a conclusion.

In the broader sense, evidence is anything perceptible by the five senses and any form of species of proof, such as testimony of witnesses, records, documents, facts, data or concrete objects, legally presented at a trial to prove a contention (dispute), and includes a belief in the minds of the court (Van Rooyen, 2008:17).

De Villiers (1999:3) asserts that evidence is simply that which enables an investigator to get to the truth of a matter under investigation.

Schmidt and Rademeyer (2003:1-5) define evidence as:

> the most important means of proof. The term is not always used in the same sense. Its common meaning is that of all the information given in a court to enable it to decide a factual issue, so that it not only includes the testimony given by witnesses but also documents and objects brought forth to be viewed by the court.

Using a content analysis for interpreting the response to the question 'What is evidence?', certain themes emerged from the participants' answers. These themes are presented in the frequency table below. As can be seen from the themes quoted in Table 11, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 11 – Frequency table for evidence

'What is evidence?' Answer	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Evidence can be something tangible, corporeal, physical	36%	9
Evidence can be a document	28%	7
Evidence is presented in court to prove beyond a reasonable doubt that a crime was committed	20%	5
Evidence is that testimony or objects which are admissible in court	12%	3
Evidence is something used to prove a fact in court	12%	3
Evidence can be statements or testimonials	12%	3
Evidence is used to prove or disprove an allegation	8%	2
Evidence is information which is substantiated by a witness in a court of law	8%	2
Evidence can be verbal evidence in court	8%	2
Evidence is an exhibit	8%	2
Evidence provides proof of a fact in dispute	8%	2
Evidence can be used to disprove a fact in dispute	8%	2
Evidence is facts	4%	1
Evidence is used to corroborate the allegation	4%	1
Evidence is those facts which point to the perpetrator	4%	1
Exhibits which can prove guilt or innocence in a court of law	4%	1

Evidence is the true facts about a crime or criminal incident	4%	1
Evidence provides proof beyond a reasonable doubt in a court of law	4%	1
Can be anything that contributes to a finding regarding a fact or a crime	4%	1
Evidence is that which can be considered in a court of law	4%	1
Evidence is relevant facts	4%	1
Evidence helps the investigator solve the crime	4%	1
Evidence must be legally obtained	4%	1
Evidence is obtained during an investigation	4%	1
Evidence is something that links the suspect to the crime	4%	1

Source: Feedback from sample

An analysis of the answers provided by the participants shows that they related to the meaning of evidence in the broad sense (36% frequency or nine times) and referred to its nature (28% frequency or seven times).

The sample stated that evidence consists of verbal evidence, testimony, statements or objects which are admissible in court (12% frequency or three times). This response accords with the general meaning of evidence provided in the literature.

In this regard the participants are aware that evidence relates to proof.

The following responses obtained from the sample correspond with the literature, with specific reference to the common meaning of evidence as provided by Schmidt and Rademeyer (2003:1-5):

- Evidence is relevant facts (4% frequency or one time)
- Evidence is the true facts about a crime or incident (4% frequency or one time)
- Evidence can provide proof of or disprove a fact in dispute (4% frequency or one time)
- Evidence is that which can be considered in a court of law (4% frequency or one time)
- Evidence is something used to prove a fact in court (12% frequency or three times)

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- Evidence is something used to prove or disprove an allegation (8% frequency or two times)

- Evidence can be anything that contributes to a finding (by a court) regarding a fact or a crime (4% frequency or one time)

- Evidence is that which can be considered by a court of law (4% frequency or one time)

In the literature, reference is made to the concept 'proof' to describe evidence. In the response from the sample a similar feature is evident, which shows that evidence in the minds of practitioners and theorists alike relates to proof.

4.3   THE CONCEPT 'DIRECT EVIDENCE'

Cross (1958:8), regarding the meaning of 'direct evidence', states that in the first sense it is testimony in contrast with hearsay and may therefore be defined as an assertion made by a witness in court offered as proof of the truth of any fact asserted by him. In its second sense 'direct evidence' means a statement by a witness that he perceived a fact in dispute (issue) with one of his five senses.

In *Rex v Swartz* 1946 GWLD 57, Judge Krause concluded that direct, or best, evidence means evidence of witnesses who come before the court and testify to what they themselves have seen or what they have heard.

Schwikkard and Van der Merwe (2002:210) assert that evidence is direct when a fact in dispute is proved directly by such evidence; for example, where a witness testifies that he saw the accused stab the deceased.

Using a content analysis for interpreting the response to the question 'What is direct evidence?', certain themes were identified in the participants' answers and are presented in the frequency table below. As can be seen from the themes quoted in the Table 12, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 12 – Frequency table for meaning of evidence

'What is direct evidence?' Answer	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Evidence that makes a direct connection between the suspect and the crime	16%	4
Evidence that makes a direct connection (direct link) between the suspect and the crime	4%	1
Direct evidence is evidence about a fact (in issue)	4%	1
Direct evidence is something tangible about which someone can give evidence	4%	1
Evidence about which someone has personal knowledge or has personally experienced	4%	1
Evidence which points to the existence or non-existence of a fact in dispute	4%	1
Direct evidence is documentary evidence provided by a fraud victim/used to commit fraud	28%	7
Direct evidence is a cheque in a cheque fraud case	20%	5
Direct evidence is the object that was used to commit a crime or during the commissioning of a crime	16%	4
Direct evidence is a fingerprint of the suspect	12%	3
Direct evidence is the murder weapon in a murder case	8%	2
Direct evidence is objects found at the scene of the crime	8%	2
Direct evidence is eye witness accounts	4%	1
Direct evidence can be DNA	4%	1
Direct evidence can be oral evidence	4%	1
Direct evidence can be a bank statement in the name of the suspect that proves a fact in dispute	4%	1
Shoeprint, hair, fibre, blood, semen found on crime scene or suspect	4%	1
Instruments or apparatus used to manufacture false documents	4%	1
Direct evidence can be a witness statement	4%	1

Source: Feedback from sample

As can be seen from the frequency table, the participants responded to the question by providing answers which offer an explanation of the concept 'direct evidence' and in some cases providing examples of what form/s (state) direct evidence may take.

The following explanations which provide the participants' understanding of the concept 'direct evidence' were given:

- Direct evidence is evidence that makes a direct connection between the suspect and the crime (16% frequency or four times)
- Direct evidence is evidence that makes a direct connection (link) between the suspect and the crime(4% or one time)
- Direct evidence is evidence about a fact in issue (4% frequency or one time)
- Direct evidence is something tangible about which someone can give evidence (4% frequency or one time)
- Direct evidence is evidence about which someone has personal knowledge or which someone has personally experienced (4% frequency or one time)
- Direct evidence is evidence which points to the existence or non-existence of a fact in dispute (4% frequency or one time)
- Direct evidence is eye witness accounts (4% frequency or one time)
- Direct evidence can be a witness statement (4% frequency or one time)
- Direct evidence can be oral evidence (4% frequency or one time)

The examples of direct evidence provided in the above answers cited by the participants will constitute direct evidence, in accordance with the literature, if presented in court as direct or immediate proof of a fact in issue and if they are presented by a witness who testifies as to what they themselves have personally experienced or observed using one or more of their senses.

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The following examples of what forms of real or corporeal evidence may constitute direct evidence were given by the participants to explain their understanding of the concept 'direct evidence':

- Direct evidence is documentary evidence provided by a fraud victim used to commit fraud (28% frequency or seven times)

- Direct evidence is a cheque in a cheque fraud case (20% frequency or five times)

- Direct evidence is the object that was used to commit a crime or during the commissioning of a crime (16% frequency or four times)

- Direct evidence is a fingerprint of the suspect (12% frequency or three times)

- Direct evidence is the murder weapon in a murder case (8% frequency or two times)

- Direct evidence consists of objects found at the scene of the crime (8% frequency or two times)

- Direct evidence can be DNA (4% frequency or one time)

- Direct evidence can be oral evidence (4% frequency or one time)

- Direct evidence can be a bank statement in the name of the suspect that proves a fact in dispute (4% frequency or one time)

- Direct evidence can be a shoeprint, hair, fibre, blood, or semen found on a crime scene or suspect (4% frequency or one time)

- Direct evidence can be instruments or apparatus used to manufacture false documents (4% frequency or one time)

The above examples cited by the participants will constitute direct evidence if presented in court as direct or immediate proof of a fact in issue and if they are presented by a witness who testifies as to what they themselves have personally experienced regarding the object or have observed about it using one or more of their senses. The answers provided by the participants suggest that they demonstrate knowledge of the type of evidence which would typically constitute direct evidence to prove or disprove a fact in dispute by citing examples. They did however not provide a definition or explanation of their understanding of the legal meaning of 'direct evidence'.

4.4   THE CONCEPT 'INDIRECT EVIDENCE'

Cross (1958:8) asserts that 'circumstantial evidence' (indirect evidence) is a fact from which the presiding officer may infer the existence of a fact in issue (dispute).

In *Rex v Swartz* 1946 GWLD 57, Judge Krause concluded that circumstantial evidence or indirect evidence is really the inference which a reasonable man is entitled to draw from certain established facts.

Schwikkard and Van der Merwe (2002:210) state that in the instance of circumstantial evidence (indirect evidence) the court is required to draw inferences because the witness has made no direct assertions with regard to the fact in issue (in dispute). These inferences must comply with certain rules of logic.

Schwikkard and Van der Merwe (2002:210) state that circumstantial evidence furnishes 'indirect' proof, and to demonstrate this they provide the following example from a murder trial: 'Evidence may be given that A had a motive to kill B and was seen running from B's home with a bloodstained knife.' The evidence would have been direct if the witness had testified that he had seen A stabbing B with a knife in his home (Schwikkard & Van der Merwe, 2002:210).

According to Schmidt and Rademeyer (2003:1-5), circumstantial evidence is evidence of a fact from which an inference may be drawn about a fact in issue and therefore furnishes indirect or mediated proof. According to Schmidt and Zeffertt (2005:439), in order for circumstantial evidence to be admissible it must be more than merely logically relevant. Its evidential force must be sufficient to afford a reasonable inference as to a fact in issue and to warrant its reception despite the disadvantages that might be caused by its reception.

In *Rex v Swartz* 1946 GWLD 57, which concerned a case of theft, Judge Krause concluded:

In my opinion, circumstantial or indirect evidence can be used not only for the purpose of establishing theft, but also to establish any other class of offence.

In *S v Xaba* [1975] 4 All SA 478 (O) the court ruled that proof of a fact in dispute can be provided by indirect evidence. According to Schmidt and Zeffertt (2005:440), it is sterile to compare the intrinsic value of direct and circumstantial evidence. According to the authors, there is no principle that states that direct evidence is inherently more reliable than circumstantial evidence or vice versa. The coherence of both direct and circumstantial evidence depends on the nature of the evidence in the circumstances of each particular case and the evidence may vary from being of the highest to the lowest value.

In the unreported Supreme Court of Appeal case, *Dlepu v The State* [2007] SCA 81 (RSA), the court asserted that circumstantial evidence can be relied on with, or in the absence of, direct evidence to prove the guilt of an accused person.

Using a content analysis for interpreting the response to the question 'What is indirect evidence?', certain themes occurred in the participants' answers and these themes are presented in the frequency table below. As can be seen from the themes quoted in Table 13, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 13 – Frequency table for meaning of indirect evidence

'What is indirect evidence?' Answer	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
Indirect evidence is known as 'circumstantial evidence'	36%	9
Logical conclusions or inferences can be drawn from indirect evidence	20%	5
Indirect evidence assists in resolving a fact in dispute	4%	1
Indirect evidence supports direct evidence (if there is any)	8%	2
Indirect evidence on its own may not be sufficient to resolve a fact in dispute	4%	1
Indirect evidence leads to other evidence	4%	1
Indirect evidence is an eye witness account, or evidence by the complainant, or by the perpetrator	4%	1
Indirect evidence is where there is no other physical evidence that links the person to the crime	4%	1
Indirect evidence is hearsay evidence	8%	2
Indirect evidence is the documentary proof of how proceeds of crime were distributed	4%	1
Indirect evidence is evidence about the origin of direct evidence	4%	1
Indirect evidence is for example the conclusion in a Net Worth Analysis	4%	1

Source: Feedback from sample

As can be seen from the frequency table, the participants responded to the question by providing answers which offer an explanation of the concept 'indirect evidence' and in some cases by providing examples of what form/s (state) indirect evidence may take on. The participants did however not provide a definition or explanation of the legal meaning of 'direct evidence'.

The following explanations, which correspond with the literature, explain the participants' understanding of the concept 'indirect evidence':

- Indirect evidence is known as 'circumstantial evidence' (36% frequency or nine times)

- Logical conclusions or inferences can be drawn from indirect evidence (20% frequency or five times)

- Indirect evidence (may) assists in resolving a fact in dispute (4% frequency or one time)

- Indirect evidence supports direct evidence (if there is) (8% frequency or two times)

- Indirect evidence on its own may not be sufficient to resolve a fact in dispute (4% frequency or one time)

- Indirect evidence (may) leads to other evidence (4% frequency or one time)

- Indirect evidence is used where there is no other direct evidence that links the person to the crime (4% frequency or one time)

- Indirect evidence is for example the conclusion in a Net Worth Analysis (4% frequency or one time)

A Net Worth Statement presents the difference between a person's assets and liabilities at a given point in time. Once the Net Worth Statement is completed, changes in the subject's net worth can be compared to his or her own income (if any), and differences, if any, may be inferred as coming from unknown sources (*Financial Investigations and the Tracing of Funds,* 1990:44).

The Net Worth Method cannot prove where the extra income originates from; that is why it is referred to as an indirect method of proof. As in the case of circumstantial evidence, an inference is needed to establish the fact in issue. That fact in issue is that somehow the subject under investigation is earning more income and/or accruing more wealth than that which he legitimately earns (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:193).

According to the literature, therefore, the outcome of the net worth computation provides circumstantial or indirect evidence of the income received from unknown sources.

4.5   APPLICATION OF THE NET WORTH METHOD TO PROVE INCOME CIRCUMSTANTIALLY

The result of the Net Worth Analysis as an indirect method for quantifying income is an inference: an inference that funds from an unknown origin are present and available to the subject under investigation (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:194). According to Daysh and Exley (2000:27), the Net Worth Method is a reliable method for estimating a person's ill-gotten gains (illicit income).

With the Net Worth Method of proof the investigator gathers all sorts of financial information and then plugs the information into mathematical computations (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes* 1994:193).

According to Daysh and Exley (2000:44), the 'Asset Method' of net worth computation should be used when the subject has invested illicit funds to accumulate wealth and acquire assets, causing net worth to increase from year to year, and one of the following conditions exists:

- The subject maintains no books and records.
- The subject's books and records are not available.
- The subject's books and records are inadequate.
- The subject withholds his or her books and records. (*Financial Investigations– A Financial Approach to Detecting and Resolving Crimes* 1994:215)

The sources and applications of funds or expenditures method is similar to the Net Worth Method from which it is derived and the two are merely accounting variations of the same basic method (Madinger, 2006:151).

The sources and applications of funds or expenditures method of proof should be used when the subject exhibits an exorbitant and lavish lifestyle but does not acquire many assets or when the subject has assets and liabilities but these do not change much during the period under investigation (Madinger, 2006:151).

It is conceivable that the circumstances that dictate which method (of computation) to use can exist separately or in a combination. Whether the investigator uses the assets or expenditures method or net worth computation, the first step is to prepare the financial profile of the subject (Daysh & Exley, 2000:44).

In determining from the sample what <u>indirect</u> methods are used to determine income <u>circumstantially</u> during financial crime investigations, the answers to the question 'How will you determine the amount of money received by or wealth accrued by a person in the absence of direct evidence such as accounting, financial and transactional records to prove the receipt of money or accrual of wealth?' were analysed. The themes identified from these answers are presented in the frequency table below. As can be seen from the themes quoted in Table 14, more than one respondent could have provided the same answer or more than one answer in their response to the question.

Table 14 – Frequency table for indirect methods

'How will you determine the amount of money received by or wealth accrued by a person in the prior question in the absence of direct evidence such as accounting, financial and transactional records to prove the receipt of money or accrual of wealth?' <u>Answer</u>	Frequency with which this theme occurs in the answers provided by the participants	Number of times this answer was provided in response to the question
A comparison of the actual lifestyle and expenses of the subject with his known or legal sources of income	20%	5
Surveillance on the suspect: which cars are owned, property, lifestyle	20%	5
Income and expenditure analysis/statement of	16%	4
Financial profile	16%	4
List purchase/growth/accumulation of assets which cannot be explained	16%	4
Rely on witnesses to provide direct evidence of the receipt or disposition of money	12%	3
Third party information searches, NATIS, deeds office, Public Domain Information	12%	3
Net Worth Method	8%	2
Interviews with known associates regarding source of income	4%	1
Searches, i.e. search and seize, to find direct evidence of financial transactions	4%	1
Money trail method/Following the movement of money or determining the flow of funds	4%	1

An analysis of the frequency table (Table 14) indicates that there is a variety of themes presented in the answers obtained from the sample in response to the question 'How will you determine the amount of money received by or wealth accrued by a person in the prior question in the absence of direct evidence such as accounting, financial and transactional records to prove the receipt of money or accrual of wealth?' A variety of procedures and techniques for determining money received or wealth accrued were referred to.

Some of the procedures referred to in Table 14 involve indirect methods or are activities which are not associated with direct methods of determining income from illicit or unknown sources because these methods involve sources of direct evidence. Those activities which are not applicable to the Net Worth Method, which is an indirect method, are listed below:

- Rely on (interview) witnesses to provide direct evidence on the receipt of or disposition of money (12% frequency or three times)
- Searches, i.e. search and seize, to find direct evidence of financial transactions (4% frequency or one time)
- Interviews with known associates to gather evidence regarding source of income (4% frequency or one time)

In some instances the methods listed above describe the activities that should or would be performed as part of establishing the financial profile of the subject, which is the first step in performing the Net Worth Method, as can be seen in the discussion of the application of the Net Worth Method below (Daysh & Exley, 2000:44). The activities referred to here were obtained from the answers given by the participants:

- A comparison of the actual lifestyle and expenses of the subject with his known or legal sources of income (20% frequency or five times)

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- Surveillance on the suspect: which cars are owned, property and lifestyle (20% frequency or five times)

- Income and expenditure analysis/statement of (16% frequency or four times)

- Financial profile (16% frequency or four times)

- List of purchase/growth/accumulation of assets which cannot be explained (16% frequency or four times)

- Public domain and subscription information searches, NATIS, deeds office, Public Domain Information (12% frequency or three times)

Two participants (8% frequency) quoted the Net Worth Method as the method that they would use to determine the amount of money received by or wealth accrued by a person in the absence of direct evidence such as accounting, financial and transactional records to prove the receipt of money from illicit or unknown sources. These two participants are SARS officials who are knowledgeable about the Capital Reconciliation Method.

The data collected from the participants indicates the use of financial profiling and associated activities as the preferred method/s used by investigators to determine income from unknown sources.

It is worth considering that the literature states that the financial profile is <u>only the first step</u> in performing the Net Worth Method. The financial profile may uncover proof of (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:195-197):

- Illegal income (Is there proof that the subject received income from an unknown source?)

- Hidden assets (Does the subject have or has he or she obtained assets?)

- The suspect's expenditure circumstantially exceeding his or her known sources of income (Does the subject spend more than he or she earns from known, legal sources of income?)

The financial profile on its own will, however, not provide indirect or circumstantial proof or the answer as to the amount (quantity) of income received from illicit or unknown sources, the reason being that with indirect methods of proof the investigator gathers all sorts of financial information (the financial profile) and then plugs the information (financial profile) into mathematical formulas or computations such as the Net Worth Formula to obtain the answer to the question (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:193).

4.5.1 Preparing a Financial Profile

Indirect methods rely on a macroscopic view of the financial situation under investigation. Because indirect methods of proof do not allow the investigator to trace transactions directly, he or she needs to get an overview of the subject's financial situation. This is called a 'financial profile' (Daysh & Exley, 2000:44).

The financial profile is essentially a financial statement with certain modifications and additions, which shows what the subject owns, owes, earns and spends at any given point, or over a period of time (Daysh & Exley, 2000:44).

The profile might provide direct evidence of illicit income or hidden assets, or circumstantial (indirect) evidence, by showing that the subject's expenditures exceed known sources of income (Daysh & Exley, 2000:44).

The financial profile will identify the existence of most illicit funds which are deposited into accounts or expended (spent) in significant amounts. It will not identify relatively small currency (cash) transactions, particularly if these transactions were for concealed activities, consumables or for unusual one-off expenses such as a medical bill (Daysh & Exley, 2000:44).

According to Daysh and Exley (2000:44), an individual's assets, liabilities, and income expenses can be determined from a variety of sources, such as:

- The subject

- Informants or sources

- Deeds Office

- Civil judgements and papers lodged in civil proceedings

- Insolvency proceedings

- Official vehicle register

- Credit applications

- Working papers of accountants or auditors

- Lawsuits and legal proceedings

- Bail proceedings

- Surveillance

- Credit card applications and statements

- Income tax returns

- Insurance claims

- Divorce proceedings and child maintenance claims

- Employment applications and salary checks

- Friends and associates

- Deposited items

Possible sources for finding out about assets, liabilities and expenses of the subject are (Madinger & Zalopany, 1999:145):

- The subject, and his/her records

- Informants and other co-operating individuals

- Deeds Office records

- Court records and civil judgements

- Insolvency records

- Vehicle registration authority

- Loan applications

- Financial statements

- Tax returns

- Credit card account records

- Divorce records

- Employment records

- Bank account records

- Physical surveillance

- Formal bail applications

There are five steps to preparing a financial profile as detailed below.

4.5.1.1 <u>Step 1</u> of preparing a financial profile

Identify all assets held by the subject.

An asset is (Daysh & Exley, 2000:44):

- Cash-on-hand

- Anything else of value that can be converted into cash

When developing a financial profile probably the most important asset to establish is cash-on-hand. Cash-on-hand includes coins and notes (currency) in the subject's possession; in the subject's residence; in the subject's vehicle, holiday house or other place; in the hands of a nominee; or in a safe deposit box. <u>It does not</u> include money in an account with a financial institution or that is tied up in an investment or other assets (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:215).

4.5.1.2 <u>Step 2</u> of preparing a financial profile

Identify all significant liabilities. A liability is an obligation from a written or oral promise to pay or settle debt (Daysh & Exley, 2000:45).

4.5.1.3 <u>Step 3</u> of preparing a financial profile

Identify all sources of income during the relevant period under examination. Income includes money or other things of value that have been received in exchange for the supply of services or goods. Income is never included as an asset. Loan proceeds are not included as income but are treated as an asset, which is offset by the corresponding liability (Daysh & Exley, 2000:45).

4.5.1.4 <u>Step 4</u> of preparing a financial profile

Identify all significant expenses incurred during the period under examination. An expense is any payment for consumables, whether for personal or business reasons over the period under examination. Expenses are not included as liabilities (Daysh & Exley, 2000:45).

4.5.1.5 <u>Step 5</u> of preparing a financial profile

Analyse the information obtained during steps 1 to 4 described above by using the information in Table 15 shown below to develop a financial profile. The left side of the table lists assets, liabilities, sources of funds, and expenditures the subject under investigation may own or have. The right side of the table lists the questions the investigator will want to pursue to complete a detailed financial profile (*Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:195).

Table 15 – Questions for determining a financial profile

A FINANCIAL PROFILE		
<u>Typical Assets</u>		**<u>For each significant asset determine:</u>**
Residence	Jewellery	When was it required and from whom?
Fixed property	Clothing	How much did it cost?
Bank accounts	Collectables	How was it paid for? E.g. cash, cheque etc.
Shares and securities	Pension fund contributions	What source of funds was used to acquire it?
Motor vehicles	Furniture	What documentation exists for the purchase and where is it?
Insurance policies	Pleasure craft	
Cash-on-hand	Electronic equipment	
<u>Typical Liabilities</u>		**<u>For each significant liability determine:</u>**
Bond		What is the original amount of the liability?
Loans		What is the present value due?
Credit facilities		When was the liability incurred?
Credit cards		What is the purpose of the loan or the debt?
Instalment sales agreements		How were the proceeds used and where were they deposited?
Leases		What security if any was given for the

		debt?
Accounts payable		What documentation exists for the transaction and where is it?
Tax liabilities		Was the debt written off as a bad loan for tax purposes?
		Who is the creditor or lender?
Typical Sources of Funds (Income)		**For each source of funds determine:**
Salary	Insurance proceeds	What was the total amount during a given period?
Gifts	Commission and fees	What was the source?
Rental income	Awards	How was it paid (cheque, currency, EFT)?
Dividends	Inheritances	When were the funds received?
Interest	Disability payments	Where was it deposited?
Sales of assets		How was it spent?
		What documentation exists and where is it?
		When was the payment made?
Typical Expenditures		**For each expenditure item determine:**
Rent and bond repayment	Travel	What was the total amount spent?
Medical costs	Clothes	How was it paid for?
Interest on credit	Utilities	Where were the funds obtained to pay the expense?
Vehicle instalments	Food	What documentation exists and where is it?
School fees	Transport costs	When was the payment made?

Source: *Financial Investigations – A Financial Approach to Detecting and Resolving Crimes* (1994:196)

4.5.2 The Net Worth Formula

The basic component in computing a net worth is establishing a starting point, which is called the 'base year'. For investigative purposes, the base year is the year prior to the year in which the alleged illegal activity began. For example, if the investigator believes that the subject's corrupt relationship with a known gangster began in 2001, the base year will be the year 2000. This will be the point of reference for comparison to subsequent years' net worth changes. The base year will be the year in which the investigator believes the subject would have maintained a 'normal' lifestyle without the added illicit

income *(Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:198).

Once the investigator has developed a financial profile for the base year and each of the consecutive years during which the subject gained from illicit income, the Net Worth Analysis formula can be applied *(Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* 1994:198).

The formula for computing funds from unknown sources using the Net Worth method is shown in Table 16 below.

Table 16 – Net Worth Formula

Net Worth Formula	
	Assets
Minus:	Liabilities
Equals:	**Net worth**
Minus:	Prior year's net worth
Equals:	**Increase in net worth from previous year**
Plus:	Known expenses*
Equals:	**Total net worth increase**
Minus:	Income (funds) from known sources
Equals:	**Funds from unknown sources**
	* For net worth purposes, the payment of an expense represents the reduction of an asset. Therefore, these reductions must be accounted for and added back into the calculation.

Source: *Financial Investigations – A Financial Approach to Detecting and Resolving Crimes* (1994:198)

4.5.3 Example of the Asset Method of net worth computation

An example of the application of the asset method is set out below:

Mr Bob Dodger is being investigated for an alleged illegal activity which occurred in 2001 and 2002. This means that the investigator must develop financial profiles for the years 2000 (base year) and 2001 and 2002. The results of the profiles are described below in table 17 and then calculated

according to the net worth analysis formula calculation shown in Table 16 above:

(a)   It was determined that as of 2000/12/31 Mr Dodger had R1000.00 cash-on-hand.

(b)   On 2000/12/31 Mr Dodger's bank account reflected a balance of R1500.00.

- On 2001/12/31 it contained R4750.00.
- On 2002/12/31 it contained R5225.00.
- In 2001 the account earned interest of R250.00.
- In 2002 the account earned interest of R475.00.
- In 2001 total deposits were R22,160.00 and redeposits R660.00.
- In 2002 total deposits were R19,585.00 and redeposits R100.00.

(c)   As of 2000, Mr Dodger owned R1000.00 worth of jewellery.

- In 2001 he purchased jewellery worth R5000.00.
- In 2002 he purchased jewellery worth R6000.00.

(d)   Sometime during 2000, Mr Dodger purchased a boat costing R17,500.00

- He still owned the boat as on 2002/12/31.

(e)   During 2002, Mr Dodger purchased a car for R18,250.00 for which he paid cash.

(f)   On 2001/01/01 Mr Dodger purchased a residential property for R150,000.00.

- He paid a deposit of R50,000.00 towards the purchase and financed the balance free of interest.

(g)   As of 2000/12/31 Mr Dodger was in debt with a financial service provider by an amount of R275.00 interest free.

- No payments were made during 2001 or 2002 towards settling this debt.

(h)   On 2001/06/30 Mr Dodger borrowed R3000.00, free of interest, from a microlender.

- As from 2001/07/01 he made monthly payments of R100.00.

(i)   As from 2001/01/01, Mr Dodger started to make payments of R500.00 per month on his new residence.

- He made 11 similar payments during 2001 and 12 similar payments in 2002.

(j)   During 2001 Mr Dodger paid R1460.00 on his credit cards and in 2002 he paid R3000.00 on his credit cards.

(k)   Mr Dodger's living expenses in addition to those listed above from (a) through to (j) were determined to be as follows:

- In 2001 his expenses totalled R11,000.00.
- In 2002 his expenses totalled R10,000.00.

(l)   Mr Dodger earned R25,200.00 from his job in 2001 and R22,200.00 in 2002.

Table 17 – Example of the Asset Method of net worth computation

Net Worth Analysis			
Subject – Bob Dodger			
Assets	**Base year (2000)**	**Year One (2001)**	**Year Two (2002)**
Cash on hand (a)	R 1,000.00	R -	R -
Bank account balance (b)	R 1,500.00	R 4,750.00	R 5,225.00
Jewellery (c)	R 1,000.00	R 6,000.00	R 12,000.00
Boat (d)	R 1,000.00	R 6,000.00	R 17,500.00
Vehicle (e)	R -	R -	R 18,250.00
Fixed property (f)	R -	R 150,000.00	R 150,000.00
Total assets	R 21,000.00	R 178,250.00	R 202,975.00
Liabilities			
Loan payable to finance company (g)	R 275.00	R 275.00	R 275.00
Loan – Micro lender (h)	R -	R 2,400.00	R 1,200.00
Bond on fixed property (f, i)	R -	R 94,000.00	R 88,000.00
Total liabilities	R 275.00	R 96,675.00	R 89,475.00
Net Worth (assets minus liabilities)	R 20,725.00	R 81,575.00	R 113,500.00
Minus: Previous year's net worth		R 20,725.00	R 81,575.00
Equals: Increase in net worth		**R 60,850.00**	**R 31,925.00**
Plus: Known expenses			
Credit card payments (j)		R 1,460.00	R 3,000.00
Other personal living expenses (k)		R 11,000.00	R 10,000.00
Equals: Total net worth increase		R 73,310.00	R 44,925.00
Minus: Funds from known sources			
Interest on bank account (b)		R 250.00	R 475.00
Salary from job (l)		R 25,200.00	R 22,200.00
Equals funds from unknown or suspect illicit sources (surplus)		**R 47,860.00**	**R 22,250.00**
(As per the example in Table 16)			

Source: Adapted by the researcher from an example given in *Financial Investigations – A Financial Approach to Detecting and Resolving Crimes,* (1994:198-200).

From the above computation it is possible to present circumstantial evidence that Mr Dodger received an income from an unknown source which may well be a suspected illicit source. In practice, if this is compared to Mr Dodger's tax return for the 2002 and 2003 years of assessment and there appears to be a discrepancy, he can technically be prosecuted for tax evasion and/or be held liable for the non-declared income.

In practice, should Mr Dodger be investigated for corruption, for instance, and direct proof of corrupt payments cannot be found, the computation may afford circumstantial evidence that he has received funds from an unknown source, which may well be from the corruptor.

In all other instances where the receipt of an amount or accrual of income is a fact in dispute, the computation may afford circumstantial evidence of that fact.

4.6 LEGAL ACCEPTANCE OF THE NET WORTH METHOD TO PROVE INCOME

Because the Net Worth Method of analysis provides circumstantial evidence, its reliability as a method of proving criminality (tax evasion) has had to be approved by the courts. According to *Financial Investigations – A Financial Approach to Detecting and Resolving Crimes* (1994:197), an overall description of the Net Worth Method of analysis was set forth in *United States v. Sorrentino*, 726 F.2d, 876,879, 880 (1st Cir. 1984) and stated as follows:

> The government makes out a prima facia case under the net worth method of proof if it establishes the defendant's opening net worth (computed as assets at cost basis less liabilities) with reasonable certainty and then shows increases in his net worth for each year in question which, added to his non-deductible expenditures and excluding his known non-taxable receipts for the year, exceeded

his reported taxable income by a substantial amount. The jury may infer that the defendant's excess increases represent unreported taxable income if the government either shows a likely source or negates all possible non-taxable sources; the jury may further infer wilfulness from the fact of underreporting coupled with the evidence of conduct by the defendant tending to mislead or conceal.

The above citation shows that the amount of taxable income determined through the Net Worth Method of analysis was considered proof of that income for a criminal prosecution on a charge of tax evasion in the United States.

The net worth theory was upheld in the USA case of *Holland v United States, 348 U.S. 121, 75 S.St. 127.* The judge also discussed 'dangers and weaknesses' in the technique, such as the correct determination of the opening capital balance, but stated that pitfalls could be avoided through the exercise of great care and restraint.

The question which comes to mind is whether the Net Worth Method has, in cases where the fact in issue is the amount of income accrued, provided proof of that fact in issue in South African courts.

The literature review conducted by the researcher regarding indirect or circumstantial evidence shows that circumstantial evidence is admissible evidence in a court of law. The result of a Net Worth Analysis can provide circumstantial proof of income received from unknown sources if an inference can be drawn from it about a fact in issue. The fact in issue in this case being:
- The income received from unknown sources; and
- The amount received from unknown sources.

The article 'Japie Jas kom sy moses teë in Jan Taks', (2004:10) reported that a known drug dealer was convicted in the Regional Court in George on criminal charges of tax evasion to the amount of R334,210.00, committed

over a period of four years, and that he was sentenced to three years' imprisonment. In this specific instance, the Capital Reconciliation cum Net Worth Analysis method was performed by the SARS criminal investigator to determine the income which had not been declared for income tax purposes.

During the case study the researcher became aware of the use of the 'Capital Reconciliation' method by SARS Criminal Investigations, Durban. The researcher consulted with the relevant SARS Criminal Investigators by e-mail (See Appendix 10) and Engelbrecht (2009) confirmed that the use the 'Capital Reconciliation' method to determine and prove income circumstantially. The researcher obtained copies of the computations (See appendices 8 and 9) used in the cases mentioned in Table 18 below.

Table 18 –Court Cases where the 'Capital Reconciliation' method was used to prove income

Case	Court	Court case number	Appendix
S v Singh	Durban Regional	41/3456/05	8
S v Noorgat	PMB Regional	RC1068/2005	9

Source: Engelbrecht (2009)

An analysis of the computations showed that there is an additional component which is a tax calculation. This is basically the difference between any income declared for taxation and the result of the net worth computation, which is shown in the cases as 'income required'. 'Income required' refers to the amount of income one would have had to earn to sustain either the lifestyle or to explain the growth in assets over a period, in simple terms.

The technique used to quantify income in the cases mentioned in table 18 was performed by the investigator himself. The case of S v Singh involved an asset method of computation, and the case of S v Noorgat used a combination of the asset method and expenditures method of computing the Net Worth Statement.

Both cases concerned investigations of tax evasion. It was suspected that there was an under declaration of income to that which was previously

declared. In order for the accused to be successfully prosecuted for tax evasion the amount of income had to be quantified. The investigator did not have direct evidence at his disposal to prove the amounts under declared and therefore had to determine the amount using the techniques described above. This was successfully achieved using the method described above. The finding by the investigator was not disputed in court.

The researcher has therefore concluded that the Net Worth method can provide proof of the amount of income during financial investigations.

4.7   SUMMARY

Evidence can be classified as direct or circumstantial evidence.

The Net Worth method of proving income relates to circumstantial or indirect evidence because the result from the net worth computation is an inference, an inference that money which originated from somewhere came into the possession of the accused and was used by the accused. The Net Worth method as applied by the SARS investigators is also known as 'Capital Reconciliation'.

The asset method and the expenditures method of computing the net worth can be used separately or in combination.

The results of a net worth computation have been accepted in South African courts as a means of estimating and proving income. Financial investigations will probably become more relevant as a result of the application of the multi–disciplinary or integrated methodology approach to investigating crime as contemplated in the pre-amble to the South African Police Service Amendment Act, No. 57 of 2008.

The next chapter covers the findings of this research.

CHAPTER 5
FINDINGS AND RECOMMENDATIONS

5.1   INTRODUCTION

This research was initiated on the realisation by the researcher that criminals involved in organised crime ostensibly amass huge amounts of money from illicit activities. These criminals use methods to hide the origin of the illicit source of income. In doing so they prevent the investigative authorities from finding direct proof of the transactions from which the illicit income was obtained. In this way, they aspire to prevent the authorities from taxing the proceeds. Their other aim is to avoid forfeiting the proceeds.

During the investigation of crimes, investigative authorities appear to be powerless to act on the knowledge that these criminals exhibit lavish and exorbitant lifestyles. Investigators appear to be ignorant of the fact that if the amount of income from unknown sources can be quantified criminals can be prosecuted for tax evasion, by relying on the proof of income using indirect financial investigation methods.

From experience the researcher knows that during the investigation of financial crimes such as, for instance, tax evasion and corruption the question regarding income and the amount of income received will almost invariably present a fact in issue during the investigation and subsequent criminal proceedings.

To the researcher, the Net Worth Analysis method presents an opportunity to estimate and quantify income circumstantially during financial investigations to answer the facts in issue regarding income. To this end, and to investigate the possibilities of using the Net Worth Analysis method during the investigation of financial crime, three research questions were asked:

- What is financial crime?
- What does the Net Worth Analysis method imply?
- How should the Net Worth Analysis be applied as an investigation technique during the investigation of financial crime?

5.2   FINDINGS

In order to determine exactly what was to be investigated, the researcher developed research questions to investigate and research. In pursuit of answering the research questions, the researcher obtained information from local and international literature sources. The researcher also involved the experience of investigators attached to investigative authorities responsible for the investigation of financial crime. The researcher approached these investigators to obtain information from them and draw from their own experience in practice. In addition, the researcher analysed cases where the Net Worth Analysis method was applied as a technique during the investigation of financial crime. The researcher's findings are presented in the sections below.

5.2.1 Primary Findings

The findings by the researcher regarding the research questions are addressed as primary findings. The primary findings are outlined below.

5.2.1.1   Research question one: 'What is financial crime?'

In this research the researcher established that there is not a single, broadly accepted understanding of the meaning of 'financial crime' and that it is a vague concept. The variety of responses from the sample confirmed that 'financial crime" is a vague term. The researcher established that 'financial crime' has the following characteristics:

- It is motivated by greed in the pursuance of money or a financial or economic benefit.
- It refers to non-violent economic crime.
- It primarily targets and abuses financial institutions and systems.
- It involves the use of deception.
- It results in a pecuniary loss for the victim.

The sample provided similar responses as to the characteristics of 'financial crime'.

The researcher established that the following crimes can be regarded as types of 'financial crime':

- Money laundering

- Tax evasion

- Theft

- Corruption and bribery

- Insider trading

- Fraud

The sample confirmed that the above crimes constitute financial crimes. Some participants, however, provided other examples of crimes which in their opinion constitute financial crime. This confirmed that the concept of 'financial crime' is a vague term.

5.2.1.2 Research question two: 'What does the Net Worth method imply?'

In this research the researcher established that the Net Worth method is used to prove illicit income circumstantially. In theory the Net Worth Analysis method implies that increases or decreases in a person's net worth during a period, adjusted for living expenses, result in a determination of income by showing that a person's assets or expenditure for a given period exceed that which can be accounted for from known or admitted sources of income and is a reliable method for estimating a person's illegal source income.

In relation to the Net Worth method, the researcher established the following:

- There are two methods of estimating illegal income.

- There are direct methods and there are indirect methods of estimating a person's illegal source income.

- Direct methods rely on specific sources such as sales and expense to determine income.

- Indirect methods show the relationship between the subject's receipt and subsequent disbursement of income.

- The Net Worth method is an indirect method.

- The Net Worth method will show that the subject was able to participate in a financial transaction above and beyond his or her known source of income.
- Net worth is the difference between a person's assets and liabilities at a particular point in time.

During the interviews, the sample indicated with a frequency of 28% or seven times that they had not encountered the term 'Net Worth Analysis' before. At the same time, the sample indicated with a frequency of 52% or 13 times that they were not aware that the Net Worth Analysis method was used as a technique to determine income during investigation of financial crime.

The sample also gave a mixed response to the question 'What is the Net Worth Analysis?'

This to a large degree indicates that the Net Worth method is unknown as a forensic method amongst investigators of financial crime and that they are ignorant of the fact that it can be used as an indirect method to determine income from illicit sources.

The sample, although experienced financial investigators in terms of their years of involvement in the field, had limited experience in the use of the application of the Net Worth method. A possible reason for the lack of knowledge regarding the use of Net Worth method as investigation technique is that investigators are not sufficiently trained in financial investigation methods or required to determine income using indirect methods when there is no direct evidence available. In other words, investigators do not pursue the criminal investigation further, believing that if there is no direct evidence they will not be able to prove income using indirect methods.

5.2.1.3 Research question three: 'How should the Net Worth method be applied as an investigation technique during the investigation of financial crime?'

In this research the researcher established that:

- The Net Worth method is also referred to as a 'capital reconciliation' by some participants, specifically those attached to the SARS.

- The result of the Net Worth Analysis (Net Worth Statement) is an inference, an inference that funds from an unknown origin are available and present to the subject under investigation.

The response by the sample in answering the question 'How will you determine the amount of money received by or wealth accrued by a person <u>in the absence of direct evidence such as accounting, financial and transactional records</u> to prove the receipt of money or accrual of wealth?', some participants referred to preparing a financial profile (16% frequency or four times). Several activities associated with preparing a 'financial profile' were presented by the sample, for example:

- Surveillance on the suspect: which cars are owned, property, and lifestyle (20% frequency or five times)

- Third party information searches, NATIS, deeds and other public domains (12% frequency or three times)

The researcher established that preparing a financial profile is only the <u>first step</u> in the process of preparing a Net Worth Statement and that it does not complete the process. At most a financial profile will only present a picture of the lifestyle of the subject under investigation. The profile might provide direct evidence of illicit income or hidden assets, or circumstantial (indirect) evidence, by showing that the subject's expenditures exceed known sources of income (Daysh & Exley, 2000:44).

The researcher established that in relation to the 'financial profile' the sample referred to a lifestyle or lifestyle audit (20% frequency or five times). On its own the financial profile or lifestyle audit will not suffice in proving

circumstantially the income received by the subject in the absence of direct evidence such as accounting, financial and transactional records.

In answering the question, the participants only responded twice, or with a frequency of 8%, that they will apply the Net Worth method under the circumstances presented in the question to determine income.

The researcher established that the sample was largely ignorant of the Net Worth Analysis as a method to determine income circumstantially and its application. The researcher also established that the sample was uninformed of the purpose of a financial profile and a 'lifestyle audit' in relation to the Net Worth method.

The case analysis undertaken by the researcher reveals that the Capital Reconciliation Method which is the same type of investigative technique as the Net Worth Method has found application by SARS officials during financial investigations and that the capital statement or Net Worth Statement has been accepted as evidence of proof of income during criminal trials.

The finding by the researcher is that this method, whether it is called the Capital Reconciliation or Net Worth Method, can be applied in South Africa to provide circumstantial proof of income.

5.2.2 Secondary Findings

Findings by the researcher on secondary aspects emanating from the research are addressed by the researcher as secondary findings.

5.2.2.1   The concept 'crime'

In this research the researcher established that legally the concept 'crime' can be described as:

> Unlawful, blameworthy conduct which in principle can only be prosecuted by the state and which is punishable by the state.
>
> (Snyman, 2002:6)

In more generalist terms the concept 'crime' refers to crimes that are described in:

> criminal codes or statutes or possibly less frequently as a result of custom or common law. In relation to crime investigation these descriptions are only important because they provide the points for each offence that need to be proved in order to secure a conviction. (United Nations. Office on Drugs and Crime, 2006:5)

The sample demonstrated that they were in agreement with this description in the literature. Some of the participants also referred to conduct which led to 'prejudice' or 'potential prejudice' (with a frequency of 24% or six times). These references did not occur in the literature. It is submitted by the researcher that the inclusion of the elements of 'prejudice' or 'potential prejudice' is consistent with the elements for the crime of fraud, which probably explains their inclusion by the participants.

5.2.2.2   The concept 'forensic investigation'

In this research the researcher established that there is confusion regarding the meaning of 'forensic investigation'.

A reference to investigation activities associated with 'financial crime' and 'financial investigations' appears in 10 of the themes identified in the answers provided by the participants in response to the question 'How would you describe forensic investigation?'. The inference the researcher draws from this analysis is that there is a trend amongst the sample which shows that in the minds of the sample 'forensic investigation' is associated with the investigation of financial crime or financial investigations.

The researcher established that the concept 'forensic investigation' involves the following:

- Forensic investigation is undertaken for court purposes or for the purposes of law (juristic purposes).
- Forensic investigation involves the application of scientific methods

- The investigation activity of 'examination' or 'analysing' appears in five of the themes presented in the answers provided by the participants.
- Forensic investigation is similar to a criminal investigation.

5.2.2.3 The concept 'criminal investigation'

In this research the researcher established that 'criminal investigation' can be defined as:

> The discovery of relevant facts, the making of inferences from these facts, the reconstruction of the crime scene, the identification and apprehension of the offender, and the preparation of the case for prosecution and trial of the suspect (s). (Van der Westhuizen, 1996:354)

The researcher established that there are several similarities between 'criminal investigation' and 'forensic investigation' found in the literature and the response from the sample. In response to the question 'How would you describe criminal investigation?', the participants responded with a frequency of 28% or seven times that criminal investigation is the same as forensic investigation. This leads the researcher to believe that 'forensic investigation' and 'criminal investigation' are similar concepts.

5.2.2.4 Objectives of investigation

In the research the researcher established that the objectives of investigation are:

- Detecting crime/Identifying crime;
- Locating and identifying suspects;
- Locating, recording and processing evidence while observing all constitutional considerations;
- Arresting the perpetrator while observing all constitutional considerations;
- Recovering property;
- Preparing for trial, including completing accurate documentation;

- Convicting the accused by testifying and assisting in the presentation of legally obtained evidence and documents;

- Conducting a systematic, organised search for the truth;

- Gathering objective and subjective evidence about an alleged crime or incident;

- Discovering certain facts, or ascertaining the existence of such facts;

- Generating knowledge in relation to the investigator;

- Producing evidence;

- Determining that one or more criminal offences have been committed;

- Producing a narrative of the circumstances surrounding the offences;

- Determining the most promising line of inquiry;

- Identifying and/or eliminating one or more suspects;

- Exploring the backgrounds, motivations, lifestyles and activities of suspects or known offenders and their associates;

- Gathering intelligence about planned offences;

- Individualising the crime;

- Arresting the criminal;

- Recovering stolen property;

- Evaluating the evidence presented and being involved in the prosecution process;

- Searching for verbal and written information, and for the existence of relevant material objects; and

- Searching out those facts of evidence as the basis on which clients or courts will render their decisions.

- The objectives of investigation, whether it is a forensic investigation or a crime investigation, are the same.

The sample had a similar understanding as to the objectives of investigation, and in addition to the above objectives some participants provided the following further additional objectives, which they provided in their response to the question 'What are the objectives of investigation?':

- Proving or disproving an allegation (32% frequency or eight times)

- The prosecution of the perpetrator or accused (20% frequency or five times)

- Successful prosecution, conviction and sentencing (16% frequency or four times)

- Ensuring that justice is done (8% frequency or two times)

5.2.2.5 The concept 'evidence'

In this part of the research the researcher established that the meaning of evidence is: 'All the information given in a court to enable it to decide a factual issue, so that it not only includes the testimony given by witnesses but also documents and objects brought forth to be viewed by the court' (Schmidt & Rademeyer, 2003:1-5).

The researcher established that 'evidence is the most important means of proof' (Schmidt & Rademeyer, 2003:1-5). The sample agreed with this definition, and some participants used the terms 'proof' or 'prove' in following context:

- Evidence can provide proof of or disprove a fact in dispute (4% frequency or one time)

- Evidence is something used to prove a fact in court (12% frequency or three times)

- Evidence is something used to prove or disprove an allegation (8% frequency or two times)

5.2.2.6 The concept 'direct evidence'

In this research the researcher established that evidence is direct when a fact in dispute is proved directly by a statement from a witness that he perceived a fact in dispute (issue) with one of his five senses, such as, for example, where a witness testifies that he saw the accused stab the deceased.

The sample held a similar view.

5.2.2.7   The concept 'indirect evidence'

In this research the researcher established that 'indirect evidence' refers to circumstantial evidence and *vice versa.* 'Circumstantial evidence' (indirect evidence) is a fact from which the presiding officer may infer the existence of a fact in issue because the witness has made no direct assertions with regard to the fact in issue (in dispute) (Schwikkard & Van der Merwe, 2002:210). These inferences must comply with certain rules of logic. Circumstantial evidence furnishes 'indirect' proof*.*

The researcher established that in order for circumstantial evidence to be admissible, it must be more than merely logically relevant. Its evidential force must be sufficient to afford a reasonable inference as to a fact in issue and to warrant its reception despite the disadvantages that might be caused by its reception.

Circumstantial or indirect evidence can be used to establish any other class of offence. It is sterile to compare the intrinsic value of direct and circumstantial evidence. There is no principle that states that direct evidence is inherently more reliable than circumstantial evidence or vice versa (Schmidt & Zeffertt, 2005:440).

Some of the participants were aware that indirect evidence is also known as 'circumstantial evidence' (36% frequency or nine times). The sample did not provide a legal definition or explanation of the meaning of 'indirect evidence' and provided numerous practical examples to explain the concept. The sample did not demonstrate knowledge of the fundamental difference between direct and indirect evidence and its different applications from a legal perspective.

5.3   Recommendations

At the onset the researcher stated that he wished to explore how local and international investigators quantify income circumstantially and that the purpose of this study was to apply the knowledge of international practice to develop effective practice in South Africa to enhance performance and

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improve the conviction rate in court cases during investigation of financial crime.

Owing to the lack of knowledge amongst investigators involved in the investigation of financial crime, the researcher wants to empower himself and others with the latest knowledge in the technique of quantifying income circumstantially during financial investigations.

The researcher established that investigators of financial crime have a perfunctory knowledge or lack of knowledge regarding the concepts:

- Financial investigation methods;
- Indirect methods for quantifying income during financial investigations;
- The Net Worth Analysis as a method used to detect and quantify income during financial investigations;
- The application of the Net Worth Analysis method;
- The legal distinction and application of indirect or circumstantial evidence; and
- The application, role and evidentiary value of the 'financial profile' and 'lifestyle audit' during financial investigations.

The researcher thus recommends that investigators, especially those involved in the investigation of financial crime, receive specialised training in the theory and application of the following fields:

- Financial investigation methods;
- Indirect methods for quantifying income during financial investigations;
- The Net Worth Analysis as a method used to detect and quantify income during financial investigations;
- The application of the Net Worth Analysis method;
- The legal distinction and application of indirect or circumstantial evidence; and
- The application, role and evidentiary value of the 'financial profile' and 'lifestyle audit' during financial investigations.

These findings are based on the findings in the paragraph above.

5.3.1 New working definitions

During the analysis of the responses provided by the participants the researcher developed new working definitions according to the understanding of the participants and their experience in the field of some of the concepts under investigation in this research.

5.3.1.1 New working definition for 'forensic investigation'

The researcher recommends the following working definition for 'forensic investigation' as established by the researcher, using the themes most frequently identified in the answers of the participants to the question 'How would you describe forensic investigation?':

Forensic investigation is an in-depth, more detailed investigation into finances and financial matters undertaken for court or law purposes and it is similar in character to criminal investigation. It utilises specialised skills, expert knowledge, and scientific methods during:

- *Examination of financial statements and records;*

- *Investigation of crime scenes;*

- *Analysis of documents;*

- *Gathering and collection of evidence and information;*

- *Analytical examination of evidence for, amongst others, the purpose of:*
  - o *Identifying accomplices*
  - o *Determining flow of funds*
  - o *Determining motive and intent*
  - o *Confirming an allegation*
  - o *Finding proof of financial transactions*
  - o *Formulating a financial profile*

5.3.1.2 New working definition for 'criminal investigation'

The researcher recommends the following working definition for 'criminal investigation' as established by the researcher, using the themes most frequently identified in the answers of the participants to the question 'How would you describe criminal investigation?':

Criminal investigation can be defined as a forensic investigation concerning the investigation of all types of crimes or unlawful acts, the gathering of information and evidence, search for the truth, involving traditional methods guided by the Criminal Procedure Act to:

- *Identify the perpetrator;*
- *Establish whether a criminal offence or crime has been committed;*
- *Bring a case before a court of law; and*
- *Ensure a successful prosecution.*

5.3.2 Recommendations for Further Research

The researcher recommends that further research and exploration be carried out on the following aspects of investigation methods to improve and enhance the criminal investigation process:

- Financial investigation methods;
- Forensic methods of detecting, quantifying and tracing income from unknown sources during the investigation of crime;
- Indirect methods or methods that will provide evidence circumstantially of the receipt of income from unknown sources; and
- The taxation of criminals on income from unknown sources.

5.4   CONCLUSION

The aim of this research was to explore and evaluate the Net Worth method as a technique for quantifying income from unknown sources circumstantially during the investigation of financial crimes.

At the onset of this research the researcher stated that this research involves an element of 'originality' and that the research is 'timely' in relation to contemporary events. The researcher submits that this statement has been proven to be accurate.

Since the completion of this research, the South African Police Amendment Act, No. 57 of 2008 has been implemented The South African Police Amendment Act, No. 57 of 2008 provides for the establishment of a

Directorate of Priority Crime Investigation (DPCI). In the preamble to the South African Police Amendment Act it is stated *inter alia* that this Act provides for a multi disciplinary and integrated methodology in the investigation of national priority crimes (organised crime, serious commercial crime and corruption). The Act further in peremptory terms provides for secondment of personnel of the SARS to the DCPI whilst retaining their SARS powers.

It is therefore clear that the authorities have realised that the investigation of organised and other priority crimes needs a new approach. The fact that SARS officials are specifically mentioned as to be seconded to the new unit is indicative that 'integrated methodology' refers to a financial approach to the investigation of crime as proposed in this research. The South African Police Amendment Act, No. 57 of 2008 formalises this new approach.

In this research the researcher has examined and proposed the use of indirect methods to detect and quantify income from illicit sources. The researcher does not wish to limit his proposal to indirect methods of financial investigations only but submits that indirect methods are also relevant within the ambit of financial investigations. It is the submission of the researcher that this research is timely and in step with current developments in the investigation of crime.

The researcher trusts that the findings of this research will empower investigators of financial crime and other crimes to determine income, as the Net Worth method as an indirect method to estimate income circumstantially appears to have empowered some investigators familiar with this technique. The researcher hopes that investigators will use the findings of this research to enhance their technical skills and competencies to detect, combat and investigate financial and other crimes.

The researcher wishes to conclude that financial investigations and specifically indirect methods of financial investigation are likely to become a

favourite investigation tool of investigation authorities once the basic concepts are understood and their applicability proven.

To this extent the researcher wishes to promote the expansion of knowledge about and the use of financial investigation methods as a method to investigate and combat crime.

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- *Dlepu v The State* [2007] SCA 81 (RSA)
- *United States v Sorrentino*, 726 F.2d, 876, 879, 880 (1st Cir.1984)
- *Holland v United States*, 348 U.S. 121, 75 S.St. 127.
- *MP Finance Group CC (in liquidation) v Commissioner for the South African Revenue Service* (2007) SCA 71 (RSA)

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SUMMARY

Title: The Net Worth Method as Technique to Quantify Income During Investigation of Financial Crime

by: A E Botha

Degree: Magister Technologiae

Subject: Forensic Investigation

Supervisor: Dr. NJC Olivier

Summary:

It is a well-known fact that criminals derive an income from their illegal activities, live lavish lifestyles, flaunt their wealth for all to see and acquire luxury goods. It is also a well known fact that criminals living from the proceeds of crime do not want to not want to keep financial records of their transactions or illegitimate business for fear of being detected by the authorities and to escape being taxed. It is also a known fact that criminals do not declare income from criminal activities for income tax purposes to the revenue authorities for fear of the illegal origin of the income being made known to the investigating authorities and law enforcement.

During the investigation of financial crimes, such as tax evasion and money laundering, it may be required that the amount or value of money, income or assets accrued by a subject is determined in order to determine for instance their liability to pay tax.

This research project examines the Net Worth method as an indirect method to circumstantially quantify income during the investigation of financial crime.

Key Terms:

Net Worth Analysis; Net Worth Method; Indirect Methods of Proving Income Circumstantially; Investigation of Crime; Forensic Investigation; Financial Crime; Financial Investigation; Forensic Technique; Quantify Income; Prove Income.

STATEMENT BY CANDIDATE

I declare that "**THE NET WORTH METHOD AS TECHNIQUE TO QUANTIFY INCOME DURING INVESTIGATION OF FINANCIAL CRIME**" is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Signed: …………………………
André Eduan Botha
Student No 04847474

11 March 2010

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Board Discusses
Money
Laundering
April 29, 2001

Financial System Abuse, Financial Crime and Money Laundering—Background Paper

Prepared by the Monetary and Exchange Affairs and
Policy Development and Review Departments
In Consultation with Legal and other Departments

February 12, 2001

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INTERNATIONAL MONETARY FUND

**Financial System Abuse, Financial Crime and Money Laundering—
Background Paper**

Prepared by the Monetary and Exchange Affairs and Policy Development and Review
Departments

In Consultation with Legal and other Departments

Approved by Jack Boorman and Stefan Ingves

February 12, 2001

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II. WHAT IS FINANCIAL ABUSE AND FINANCIAL CRIME

4.   While there seems to be broad agreement on the meaning of such concepts as money laundering, corruption, and tax evasion, the terms financial abuse and financial crime are far less precise, and in fact are sometimes used interchangeably. To assure clarity, including for the operational implications for the Fund and the Bank, definitions are provided below.

5.   Usage of these terms (see Annex I) suggests that, among them, financial abuse has the broadest meaning, encompassing not only illegal activities that may harm financial systems, but also other activities that exploit the tax and regulatory frameworks with undesirable results (see Figure 1). When financial abuse involves financial institutions (or financial markets), it is sometimes referred to as financial sector abuse. Financial crime, which is a subset of financial abuse, can refer to any non-violent crime that generally results in a financial loss, including financial fraud. It also includes a range of illegal activities such as money laundering and tax evasion. Money laundering refers to activities involving the processing of criminal proceeds to disguise their association with criminal activities.

6.   More precise definitions of financial abuse, financial crime, money laundering, and related concepts are presented below.

WHAT IS FINANCIAL CRIME—A SURVEY OF CONCEPTS

There is no single, broadly accepted understanding of the meaning of the term 'financial crime.' Rather, the term has been used to describe a number of different concepts of varying levels of specificity.

At its absolute broadest, the term has occasionally been used to refer to any type of illegal activity that result in a pecuniary loss. This would include violent crimes against the person or property such as armed robbery or vandalism.

At its next broadest, the term has often been used to refer only to *non-violent* crimes that result in a pecuniary loss. This would include crimes where a financial loss was an unintended consequence of the perpetrator's actions, or where there was no intent by the perpetrator to realize a financial gain for himself or a related party (e.g. when a perpetrator hacks into a bank's computer and either accidentally or intentionally deletes an unrelated depositor's account records.) Also, the term has occasionally been used slightly more narrowly to refer only to instances where the perpetrator intends to benefit from the crime. Either way, criminal fraud (i.e. the act of illegally deceiving or misrepresenting information so as to gain something of value) for personal benefit is undoubtedly the most common.

The term has been used in a more narrow sense to refer only to those instances where a non-violent crime resulting in a pecuniary loss crime also involves a financial institution. Financial institutions can play one of three roles: (i) perpetrator, (ii) victim, or (iii) knowing or unknowing instrumentality of crime. Of these, the most common are probably when the financial institution is a victim of fraud and when it is used as an instrumentality for money laundering.[36] Some of the more common examples of the former include credit card fraud, check fraud, mortgage fraud, insurance fraud, pension fund fraud, and securities and investment fraud.[37]

With the ongoing development and increasing sophistication of commercial and financial enterprises, coupled with the consequences of globalization, the range and diversity of financial crime is likely to increase.

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[36] The question has been raised as to whether money laundering itself necessarily results in a financial loss. However, it has been argued that money laundering involves an attempt to evade confiscation of the proceeds (as well as any monetary fines that might also be levied), and also frequently involves tax evasion as well, either of which would result in a loss to the public budget.

[37] Some of the more common examples of financial crimes that may not necessarily involve a financial institution as include bankruptcy fraud, health care fraud, cellular phone fraud, antitrust fraud, telemarketing fraud, and certain advance fee schemes.

increasing, including not only illegitimate institutions such as shell companies created as laundering instrumentalities, but legitimate companies where illicit funds are intermingled with legitimate funds. Money laundering methods are diverse and are constantly evolving. They range from trade-related operations to on-line banking. Money launderers may also operate outside financial systems, for example, through alternative remittance systems.[14]

14.   Other financial crimes can be associated with, or exist in parallel with, money laundering, for example, corruption, fraud, or the control of a financial institution by organized crime. Upon the receipt of criminal proceeds, criminals may seek to launder them through the financial system. This, in turn, may also require a series of fraudulent activities such as counterfeiting invoices and the corrupting of bank employees. Thus, a whole chain of criminal or illegal activities may culminate in the flow of criminal money through the financial system.[15] Tax evasion, a form of financial crime, is facilitated by the existence of jurisdictions that have low tax rates, maintain relatively lax financial regulations and practices and that do not share information on client accounts with the tax authorities of relevant jurisdictions.

III. THE ECONOMIC EFFECTS OF FINANCIAL ABUSE, FINANCIAL CRIME, AND MONEY LAUNDERING

15.   Financial system abuse has potentially negative consequences for a country's macroeconomic performance, impose welfare losses, and may also have negative cross-border negative externalities. Globalization and financial market integration in particular facilitates financial abuse. This section briefly reviews the very limited empirical and indirect evidence on the magnitude of financial system abuse, financial crime, and money laundering.[16]

16.   Trust underpins the existence and development of financial markets. The effective functioning of financial markets relies heavily on the expectation that high professional, legal, and ethical standards are observed and enforced. A reputation for integrity—soundness, honesty, adherence to standards and codes—is one of the most valued assets by investors,

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[14] For example, black market peso exchange system, the so-called hawala or hundi system of informal banking found in South Asia, and East Asian system originally based on chits or tokens (see FATF, *Report on Money Laundering Typologies*, 1999-2000, February 3, 2000).

[15] For example, a U.S. State Department's Report viewed bribery and corruption as "important factors in criminal exploitation of financial systems and institutions" (see The U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, Money Laundering and Financial Crimes, March 1999).

[16] Tax competition, or harmful tax practices and their impact, will be addressed in a future staff paper.

M TECH RESEARCH PROJECT

INTERVIEW SCHEDULE FORM:

THE NET WORTH ANALYSIS AS TECHNIQUE TO QUANTIFY INCOME DURING INVESTIGATION OF FINANCIAL CRIME

UNISA

SUMMARY OF THE PROJECT

This interview forms part of a research project to explore the Net Worth Analysis Technique and to evaluate it as a technique to quantify income circumstantially during the investigation of financial crime.

METHODOLOGY TO OBTAIN INFORMATION

This interview schedule forms part of the data collection techniques used by the researcher to obtain answers to address the research questions. These questions were prepared in advance and relate to the research questions. During the interview the researcher will:

- Record your answers on paper.

- Record this interview on an audio recording device.

- Afterwards your interview with the researcher will be transcribed verbatim and the transcription analysed to interpret the results.

RESEARCH QUESTIONS

The research questions this research aims to address are:

- What is financial crime?

- What is the Net Worth Analysis used for during financial crime investigations?

- *How should the Net worth Analysis be applied as an investigation technique during the investigation of financial crime?*

CONFIDENTIALITY AND ANONIMITY

Your identity will be kept strictly confidential. The information you provide will be used to answer the research questions. Only the results will be made available to the University of South Africa (UNISA). Your identity will in no way be detectable from the research results.

UNDERTAKING BY PARTICIPANT

I the undersigned ……………………………………………………… voluntary agree to participate in this interview. I understand that my identity will be kept strictly confidential.

Signature of Interviewee ……………………………………………..

Signed on this …………….. Day of June 2008 at Pretoria at ……..:…..

Respondent Research Code:

Biographical information

1. What is your Surname?

2. What are your first names?

3. What is your contact telephone number?

4. What is your fax number?

5.   What is your e-mail address?

| |
| |

Historical Information

6.   What is your job title?

| |
| |

7.   What do your duties entail?

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| |

8.   To which investigation authority are you attached?

| |
| |

9.   How many years criminal investigation experience do you have?

| |
| |

10.   How long have you been attached to the current investigation unit?

| |
| |

11.   In what type of crime investigation do you specialize?

| |
| |

12.   Did you receive training or tuition in crime investigation?

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| |

Financial Crime

13.   How would you define crime?

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14. How would you define the term Financial Crime?

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15. Give examples of the type of crime or offences that you would classify to fall within the category of financial crime.

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16. What, according to your opinion is the difference between crime and financial crime (if there is a difference in your opinion)?

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Investigation

17. How would you describe "forensic investigation"?

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18. How would you describe "criminal investigation"?

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19. What are the objectives of investigation? (criminal and forensic or both together if in your opinion it is the same concept.)

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The Net Worth Analysis

20. In your opinion what is the Net Worth Analysis?

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21. Have you during the course of your career come across a case or made an observation that a person with no obvious source of income exhibits a lifestyle well beyond their means or exhibits a lifestyle not commensurate with their known source of income?

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22. If investigated, how did you approach this case?

23. Do you think it is possible to prosecute criminals for offences other than the offence from which they derive/have derived their ill gotten gains?

24. Identify the crimes or offences where it would be necessary / required to prove an amount of income received or wealth accrued by the accused as part of the particular requirements (element of the unlawful conduct) for proving that offence.

25. How will you go about determining the amount of money received by or wealth accrued by a person?

26. What do you call the method that you have described in the prior question?

27. How will you determine the amount of money received by or wealth accrued by a person referred to in the prior question in the absence of direct evidence such as accounting, financial and transactional records to prove the receipt of the money or accrual of wealth?

28. Are you aware of a forensic technique called the Net Worth Analysis Method to determine income during the investigation of financial crime?

29. Do you know what the difference is between direct methods and indirect methods to determine income during financial investigations?

30. Do you think proof of income determined by means of circumstantial evidence is admissible as evidence and sufficient to prove the amount of income and the accrual thereof?

31. Which analysis technique do you use to determine income or the accrual of wealth and assets (if any)?

Evidence

32. What is evidence?

33. What is direct evidence and what is indirect evidence?

34. To which requirements should the Net Worth Analysis adhere to, to be admissible as evidence in criminal proceedings?

Application of the Net Worth Analysis method

35. Describe how you apply the method to determine income during a financial investigation to determine the amount of income received or wealth accrued in the absence of direct evidence regarding the transaction.

36. Are you aware of any financial crime investigation where the Net Worth method was applied to determine the income?

37. Is the case available for me to examine (only cases which are already in the public domain i.e. in court)?

38. Can you explain to me how the method was applied?

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POLICIES AND PROCEDURES FOR POSTGRADUATE STUDIES

2002

1.0 INTRODUCTION

Research should always be governed by principles of ethical behaviour. In conducting research, researchers have a dual responsibility. On the one hand they have to uphold the integrity of the discipline. On the other hand, they have to maintain ethical principles governing humans and animals, and the impact their research may have on the environment. Researchers associated with Technikon SA are expected to adhere to ethical principles at all times when conducting research and have to be aware that sometimes the need to adhere to ethical principles can lead to research being slow, laborious and perhaps frustrating.

This section gives regulations that all TSA researchers, both candidates and staff, should adhere to at all times when conducting research. It is the responsibility of the supervisor to ensure that the postgraduate learners she/he is to supervise understand the Code of Ethics of TSA and that research ethics will be adhered to throughout the research process the learner undertakes.

2.0 DEFINITION OF TERMS

2.1 Research and development

Research and development refers to a systematic/disciplined process involving the seeking of knowledge, validation and refining of existing knowledge, or the generating of new knowledge or insights regarding the subject discipline, teaching, learning and assessment in the subject field or interdisciplinary aspects aimed at solving a particular problem.

Research can be conducted through literature studies, experimentation, interviews, questionnaires or surveys or any other methods suitable for the particular discipline.

Research and development also includes the scientific documentation of the outcomes or design of a technological device or other artefacts.

2.2 Basic research

Basic research is the creative, systematic and scientific investigation of a subject aimed at broadening scientific and/or technological knowledge in a particular subject field.

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- Frequently Asked Questions
- Newsroom
- Taxpayer Advocate Service
- Where To File

What is Money Laundering?

The term "money laundering" refers to the activities and financial transactions that are undertaken specifically to hide the true source of the money. In most cases, the money involved is earned from an illegal enterprise and the goal is to give that money the appearance of coming from a legitimate source.

Why is IRS Involved in Money Laundering Investigations?

One look at the daily news is proof that the crimes dealing with or motivated by money make up the majority of criminal activity in the nation. Tax evasion, public corruption, health care fraud, money laundering and drug trafficking are all examples of the types of crimes that revolve around money. In these cases, a financial investigation often becomes the key to a conviction. For this reason, IRS is one of the key agencies involved in money laundering investigations.

Money laundering is a very complex crime involving intricate details, often involving numerous financial transactions and financial outlets throughout the world. Criminal Investigation has the financial investigators and expertise that is critical to "follow the money trail."

Criminal Investigation focuses on money laundering where the underlying conduct is a violation of the income tax laws or violations of the Bank Secrecy Act. According to the IRS, money laundering is the means by which criminals evade paying taxes on illegal income by concealing the source and the amount of profit. Money laundering is in effect tax evasion in progress.

When no other crimes could be pinned to Al Capone, the Internal Revenue Service obtained a conviction for tax evasion. As the astonished Capone left the courthouse he said, "This is preposterous. You can't tax illegal income!" But the fact is income from whatever source derived (legal or illegal) is taxable income.

Had the money laundering statutes been on the books in the 1930's, Capone would also have been charged with money laundering. However, since October 1986, with the passage of the Money Laundering Control Act, organized crime members and many others have been charged and convicted of both tax evasion and money laundering.

When a criminal has a large amount of illegal income, they have to do something with it in order to hide it from the IRS. They attempt to launder it to make it appear as if it was from a legitimate source, allowing them to spend it or invest it in assets without having to worry about the IRS and tax consequences.

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Overview - Money Laundering

What is Money Laundering?

The term "money laundering" refers to the activities and financial transactions that are undertaken specifically to hide the true source of the money. In most cases, the money involved is earned from an illegal enterprise and the goal is to give that money the appearance of coming from a legitimate source.

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One of the ways to launder illegal proceeds is to move the money out of the United States and then bring it back in a clean form, often disguised as loan proceeds. Another method is to channel or co-mingle the money through various business activities to give the appearance that the money was derived from a legal source.

Why a Financial Investigation?

Financial investigations are by their nature very document intensive. They involve records, such as bank account information or real estate files, which point to the movement of money. Any record that pertains to or shows the sequence of events involving money movement is important. The major goal in a financial investigation is to identify and document the movement of money during the course of a crime. The link between where the money comes from, who gets it, when it is received and where it is stored or deposited, can provide proof of criminal activity.

IRS investigations of illegal income cases involving money laundering are critical components of the nations National Money Laundering Strategy. The long hours of tracking and documenting financial leads allows an investigation to go right to the door of the money launderers and eventually to the leader of the illegal enterprise. A complete financial analysis and reconstruction of the illegal activity (i.e. a drug organization or an abusive trust scheme) will document the financial activities related to unreported income on tax returns and money laundering which is usually key to securing a conviction.

Money laundering creates an underground, untaxed economy that harms our country's overall

economic strength. It is a global threat that erodes our financial systems.

<u>Where do you report suspicious tax fraud Activity?</u>

Page Last Reviewed or Updated: July 17, 2008

Andre E Botha

From: De Koker, Louis [ldekoker@uj.ac.za]
Sent: 19 September 2006 11:39 AM
To: Andre E Botha
Subject: RE: versoek om hulp

Absoluut.

Prof Louis de Koker
Director: Centre for the Study of Economic Crime
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From: Andre E Botha [mailto:aebotha@sars.gov.za]
Sent: 19 September 2006 11:37 AM
To: De Koker, Louis
Subject: RE: versoek om hulp

NB: This email and its contents are subject to our email legal notice
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----

Geagte Prof Louis

Baie dankie vir die inligting. Ek lei af dat u definisie ook belastingontduiking of die ontvangs van 'n onvesrskuldigde belasting voordeel op bedrieglike wyse sal insluit? (finansiele sisteem= belastingraamwerk en SARS)

Dit is 'n riem onder die hart om te weet dat 'n mens (student) by u kan aanklop om hulp.

Groete

Andre Botha
aebotha@sars.gov.za
SARS Head Office
Operations Inspections and Quality - CI

From: De Koker, Louis [mailto:ldekoker@uj.ac.za]
Sent: 19 September 2006 09:42 AM
To: Andre E Botha
Subject: RE: versoek om hulp

Beste André

Dit is lekker om van jou te hoor.

Dit.is 'n vae term. Sien die bespreking oor die definisie in
http://www.imf.org/external/np/ml/2001/eng/021201.pdf#search=%22%22financial%20crime%22%20definition%22

Sien ook http://72.14.221.104/search?q=cache:FMGjQ8Cuj7MJ:www.liechtenstein.li/en/eliechtenstein_main_sites/portal_fuerstentum_liechtenstein/-wuf-wirtschaft_finanzen/fl-wuf-finanzdienstleistungen/fl-wuf-finanzdienstleistungen-finanzkriminalitaet/fl-wuf-finanzdienstleistungen-finanzkriminalitaet-was.htm+%22financial+crime%22+definition&hl=en&gl=za&ct=clnk&cd=4

Jy kan dus jou eie definisie kies, solank dit binnehandel, geldwassery en beleggingsbedrog insluit. My definisie is dat dit daardie ekonomiese misdaad is (dws misdade met 'n ekonomiese opbrengs) wat primer finansiële sisteme en instellings teiken of misbruik.

Groete

Louis

Kim M. J. Clark - Microsoft Internet Explorer provided by SARS

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Kim M. J. Clark

Evidence of the Financial Crime - A Police Perspective: October 1998
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EVIDENCE OF THE FINANCIAL CRIME:

A POLICE PERSPECTIVE

**International Symposium on the Prevention and
Control of Financial Fraud**

**Beijing, People's Republic of China
October 19 -22 , 1998**

By

Inspector Kim M. J. Clark
Officer in Charge
Integrated Proceeds of Crime Section
Royal Canadian Mounted Police
Vancouver, B.C.

I.   Introduction

This discussion paper will provide insight into financial investigations as they are conducted in Canada. Its purpose is to provide interested persons involved with development of laws, procedures or policies pertaining to financially motivated crimes some insight and assistance when developing their systems. It is intended that this paper be used as an instructional tool.   It should also be noted the content is representative of experiences which I have encountered during my twenty-five years as an investigator and senior manager of the Royal Canadian Mounted Police. Practices as described or techniques portrayed represent personal experiences and any opinions expressed are those of the writer and do not necessarily represent policies of the RCMP.

Financial or economic crimes are founded in one human trait: greed. Whether the investigation originates from a white collar, drug or customs offences, the basic elements and characteristics of the successful investigation are all the same. This paper will discuss various pertinent aspects of

1.	types of evidence;
2.	methods of investigation;
3.	protection of the evidence;
4.	presentation of the evidence.

Finally it will provide an overview of some emerging trends.

BASIC RULE OF EVIDENCE:

Best Evidence:

> ... The crown or the state is obligated to provide to the court original documentation or bring to it, the witness who has direct knowledge of the event. If the "best evidence" is not available, the crown must explain what efforts have been made to produce the original form and why it is not available. The court will then decide whether to accept the lesser of the sources of evidence.

1. TYPES OF EVIDENCE

During any criminal investigation the existence of direct and circumstantial evidence will determine whether the investigation and ultimately the criminal prosecution will be successful. Canadian criminal law under our adversarial system places the burden upon the Crown to prove "beyond a reasonable doubt" that the subject person intentionally committed the alleged crime.
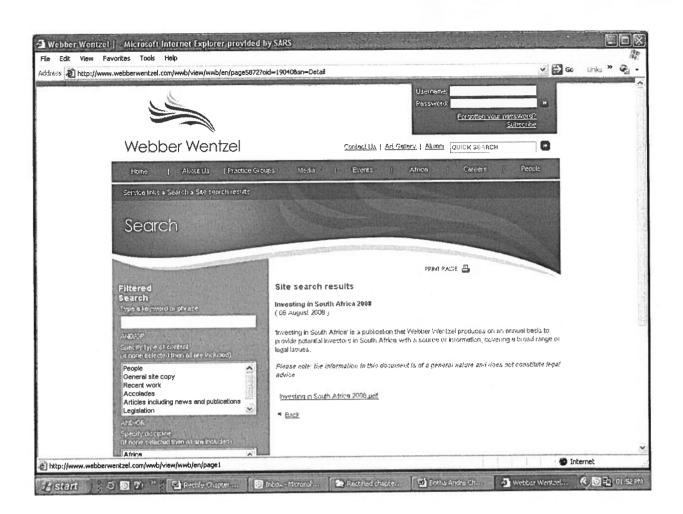
The judicial process, including the investigation, must be conducted within the requirements of the Canadian Charter of Rights and Freedoms (Charter)[1] and the common law that has evolved during the years since it's repatriation in 1982. One basic right articulated in the Charter has had a dramatic effect on Canadian policing.

> (S. 8) "...that everyone has the right to be secure against unreasonable search or seizure."

Should there be deemed an abuse of one's rights by an investigating officer or the crown, the evidence obtained shall be excluded from the trial process. One only exception to their right exists, that is, where it is deemed that exclusion of this evidence would not bring the administration of justice into disrepute.[2] This determination, however, is in the hands of the court and it is only

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[1] Canadian Charter of Rights and Freedoms is part of the Constitution Act, 1982.

[2] Section 24(2), Canadian Charter of Rights and Freedoms

Section

Financial markets, market abuse, collective investment schemes and hedge funds, credit law and money laundering

by Johann Scholtz, Nicole Paige,
Michael Denenga and Eunice van Zyl

SECTION 4: FINANCIAL MARKETS, MARKET ABUSE, COLLECTIVE INVESTMENT SCHEMES AND HEDGE FUNDS, CREDIT LAW AND MONEY LAUNDERING

44

loss avoided, together with all commission or consideration for disclosing, encouraging, discouraging or dealing.

In addition to the insider trading offences outlined above, the SS Act prohibits trading practices which, *inter alia*:

- will have the effect of creating a false or deceptive appearance of active public trading in connection with, or an artificial price for, securities;
- will unduly or improperly influence the market price of securities;
- will have the purpose of creating or inducing a false or deceptive appearance of demand for or supply of securities;
- will maintain a level of artificial prices;
- will effect or assist in effecting a market corner;
- are aimed at defrauding any person; or
- are deceptive or likely to have that effect.

The SS Act also prohibits the making of false, misleading or deceptive statements, promises and forecasts.

Allowance is made in the SS Act for the introduction of price stabilising mechanisms, regulated by the rules or listing requirements of an exchange. The purpose of such mechanisms is to promote an orderly secondary market following a new issue of shares, but only for a limited period of 30 days. Price stabilisation does not constitute a manipulative practice or insider trading.

The SS Act introduces the establishment of an Enforcement Committee with the power to impose an administrative penalty on a person who contravenes or fails to comply with the provisions of the SS Act, or (in the case of insider trading) to require such a person to pay compensation. It is expected that this will allow the FSB to act more effectively and expeditiously.

Collective investment schemes

The promotion of local and foreign collective investment schemes in South Africa is regulated by the Collective Investment Schemes Control Act 45 of 2002 (the 'CISC Act') and by the Conditions in Respect of a Collective Investment Scheme Carried on Outside but Promoted in the Republic.

Section 65(3) of the CISC Act provides that a person who solicits investments in a foreign collective investment scheme which is not approved in terms of the CISC Act, is guilty of an offence with the penalty being a fine and/or a term of imprisonment for up to five years. The term 'solicit' is defined to mean any act to promote investment by members of the public in a collective investment scheme.

The CISC Act defines a 'collective investment scheme' as a scheme, in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and which scheme has the following characteristics:

- two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and
- the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed.

An 'open-ended investment company' is defined to mean a company with an authorised share capital, which is structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of share representing a separate portfolio with a distinct investment policy. The definition is not restricted to companies incorporated in South Africa and includes foreign open-ended investment companies.

It is significant to note in the definitions of 'collective investment scheme' and 'solicit' a reference to 'members of the public'. The effect of the inclusion of these words is that any collective investment schemes which are not offered to 'members of the public' will not fall within the ambit of the CISC Act and will thus not require the prior approval of the Registrar.

ASSETS & LIABILITIES	1998	1999	2000	2001	2002	2003
ASSETS						
FIXED PROPERTY -	100,000	100,000	100,000	100,000	100,000	100,000
	395,000	395,000	395,000	395,000		
Improvements to above property				110,000	110,000	110,000
King Harkon					822,870	2,148,671
				145,000	145,000	145,000
FURNITURE & PERSONAL EFFECTS	115,000	140,000	145,000	145,000	55,000	55,000
CAPITAL ACCOUNTS - Dr	-27,412	-66,640	-76,319	19,507	-69,060	-160,484
LOAN ACCOUNTS - Talat Properties			22,367	29,230	131,128	174,467
Talat Properties - Mrs				20,568	22,630	22,647
VEHICLES - MRS.						
BMW 3				180,000	270,000	270,000
CASH RESOURCES	10,212	8,718	5,860	3,250	2,500	4,500
SUNDRY ASSETS - Time share	21,000	21,000				
Unit trusts				22,138	22,294	22,294
TOTAL	**613,800**	**598,078**	**591,908**	**1,169,693**	**1,612,362**	**2,892,095**
LIABILITIES						
BONDS - Section	350,000	63,195	53,456	55,795	54,669	53,566
		255,145	305,190	274,393		596,042
				79,315	67,636	71,553
HP LIABILITIES - MLS Bank -				125,437	224,002	144,413
Credit card			11,863	25,548	16,703	30,731
Creditors	40,000	25,000	23,000	23,000	18,000	168,000
TOTAL	**390,000**	**343,340**	**393,509**	**583,488**	**381,010**	**1,064,305**
NETT ASSET VALUE	**223,800**	**254,738**	**198,399**	**586,205**	**1,231,352**	**1,827,790**

	1999	2000	2001	2002	2003
GROCERIES & PROVISIONS	30,000	31,500	41,729	34,728	36,665
TELEPHONE & POSTAGE	11,976	10,200	11,760	12,600	13,230
SERVANTS WAGES	5,400	3,800	4,200	5,700	6,000
ELECTRICITY & WATER	15,600	16,380	17,199	18,058	18,960
PROPERTY RATES & TAXES	4,500	4,500	4,575	4,800	5,000
RENT					
LIQUOR & TOBACCO					
GIFTS, PRESENTS, BOOKS & STATIONERY	1,200	1,980	10,169	7,084	18,310
DONATIONS	1,785	389	1,307		700
CLOTHING	24,630	9,850	68,869	86,513	116,378
JEWELLERY	3,000	5,000	10,699	10,504	6,000
DRY CLEANING & LAUNDRY	800			920	
COSMETICS, BEAUTY & HAIR	972	1,020	1,071	1,124	1,410
NEWSPAPER, MAGAZINES & PERIODICALS	1,186	1,220	1,260	1,280	1,300
ABNORMAL EXPENSES (WEDDINGS ETC)	2,177				1,000
PETS	150	360	396	438	479
SCHOOL & UNIVERSITY FEES	23,080	27,000	40,012	36,900	52,035
MEDICAL & CHEMISTS			1,677	481	2,500
MEDICAL AID					
HOLIDAYS - LOCAL	8,000	11,000	24,544	58,674	25,835
HOLIDAYS - OVERSEAS / PAYMENTS OVERSEAS	20,000				
BUSFARES & TRAINFARES	6,000				
AIRFARES	30,000		1,236		
HOLIDAYHOME EXPENSES	21,000				
GAMBLING : CASINO	22,897	11,000	29,901	23,766	17,934
RESTAURANTS & ENTERTAINMENT	3,194	3,353	12,208	15,294	18,267
POCKET MONEY	7,200	7,920	7,560	8,694	9,563
LICENCES ETC					
MOTOR VEHICLE EXPENSES	4,765	4,579	5,205	6,205	7,801
FUEL & OIL					
INSURANCE - VEHICLES					
PROPERTY	1,300	1,400	1,500	1,600	1,700
R.A.F. CONTRIBUTION -	23,280	19,596	31,812	34,584	40,301
PENSION CONTRIBUTION -	9,903	9,903	9,903	9,903	9,903
INSURANCES					
INSURANCE - LIFE	47,143	63,623	96,220	102,232	110,048
INCOME TAX PAYMENTS	56,860	57,042	52,905	45,877	75,306
SITE & PAYE PAYMENTS -		13,867	3,271		
SITE & PAYE PAYMENTS -		12,353	10,546	14,868	16,274
LEASE PAYMENTS					
INTEREST : MORTGAGE BOND	56,284	47,438	57,831	14,901	71,827
BANK OVERDRAFT	0	0	0	0	0
VEHICLE AGREEMENTS -				11,186	16,724
BANK CHARGES	2,000	2,500	3,200	3,100	4,700
HOUSEHOLD & FURNITURE					
CARPETS					
CURTAINING					
GARDEN EXPENSES	1,370				
REPAIRS & MAINTENANCE -PROPERTY					
SPORT & HOBBIES			4,550	443	1,736
FINES	600		2,000	450	
OWN STOCK WITHDRAWALS	1,000	3,000	3,150	3,307	3,472
	449,251	**381,772**	**572,463**	**576,214**	**711,359**

CAPITAL RECONCILIATION AS AT 28 FEBRUARY

	1999	2000	2001	2002	2003	
NETT CLOSING ASSETS	254,738	198,399	586,205	1,231,352	1,827,790	
NETT OPENING ASSETS	223,800	254,738	198,399	586,205	1,231,352	
INCREASE IN NETT ASSETS	30,938	-56,339	387,805	645,148	596,437	
LIVING EXPENCES	449,251	381,772	572,463	576,214	711,359	
Add Travel Costs -					30,000	
Add: Private use of motor vehicles	71,056	71,056	71,056	48,297	48,297	
INCOME REQUIRED	551,245	396,490	1,031,324	1,269,658	1,386,093	
LESS: CAPITAL PROFIT/RECEIPTS						
PROFIT/LOSS ON SALE OF ASSETS - Business asset	0	0	200,900	189,718	578,627	
Private Dwelling				104,718		
Private Furniture				205,000		
				-40,000		
BMW 318				-80,000		
INSURANCE POLICY SURRENDERED -			135,268		464,651	
INSURANCE POLICY SURRENDERED -			65,632		113,976	
INCOME PREVIOUSLY TAXED:	165,833	235,429	299,019	206,273	440,931	1,347,485
INCOME - Dr	94,777	101,520	161,432	119,933	275,278	
Interest Received -			2,917	4,058	5,339	
Private use of motor vehicle	71,056	71,056	71,056		48,297	
INCOME - MRS A Singh		62,853	61,746	79,200	78,000	
Travel Allowance - MRS					30,000	
Interest Received - Mrs			1,868	3082	4,017	
ADDITIONAL INCOME	385,412	161,061	531,405	873,667	366,535	2,318,080

ASSETS & LIABILITIES	1995	1996	1997	1998	1999	2000	2001	2002
ASSETS								
FIXED PROPERTY - LAND - Cost			25,000					
FURNITURE & APPLIANCES			25,000	25,000	31,500	31,500	31,500	31,500
PERSONAL EFFECTS			29,000	29,000	18,000	18,000	23,000	23,000
JEWELLERY			7,000	7,000	7,000	7,000	7,000	7,000
MOTOR VEHICLES			30,000	30,000	30,000	30,000		
CASH ON HAND								
CASH AT BANK								
ISLAMIC BANK			74,253					
FIRST NATIONAL BANK			3,110	7,000	90,025	12,700	12,700	4,188
MEMBER'S LOAN								
CASH & CARRY	299,204	320,246	310,376	222,249	141,396	112,577	84,592	54,926
CASH & CARRY						232,006	128,026	59,942
LY TRUST				63,482	472,584	490,706	586,668	554,176
SHARES IN CLOSE CORPORATIONS	100	100	100	100	100	200	200	200
OTHER - TIMESHARE			22,000	22,000	22,000	22,000	22,000	22,000
TOTAL	299,304	320,346	525,839	405,831	812,605	956,689	895,686	756,932
LIABILITIES								
SUNDRY ACCOUNTS			3,500	2,000	2,000	2,000	2,500	
LOANS - MN						80,000	80,000	80,000
TOTAL			3,500	2,000	2,000	82,000	82,500	80,000
NETT ASSET VALUE	299,304	320,346	522,339	403,831	810,605	874,689	813,186	676,932

	1998	1999	2000	2001	2002	
GROCERIES & PROVISIONS	26,400	28,800	30,000	33,600	36,000	
TELEPHONE & POSTAGE	4,800	6,000	12,670	8,112	6,000	
SERVANTS WAGES	5,000	5,500	6,000	6,500	7,000	
ELECTRICITY & WATER						
PROPERTY RATES & TAXES						
LIQUOR & TOBACCO						
GIFTS, PRESENTS	500	500	700	1,000	1,000	
CHURCH/MOSQUE/TEMPLE CONTRIBUTIONS	500	500	750	1,000	1,250	
DONATIONS	500	800	1,000	1,000	1,500	
CLOTHING	8,000	12,000	15,000	15,000	20,000	
BEAUTY & HAIR	500	600	600	600	600	
NEWSPAPER, MAGAZINES & PERIODICALS						
PETS						
STATIONERY						
SCHOOL FEES	7,000	7,500	8,000	8,000	9,800	'
MEDICAL	5,000	1,000	1,200	1,200	2,000	
CHEMISTS	800	500	750	750	1,000	
HOLIDAYS - LOCAL			1,500	5,144	5,392	time share levi
HOLIDAYS - OVERSEAS			54,073	37,000	25,000	breakdown of f
AIRFARES			10,000	38,000	17,000	where were tic
RESTAURANT & ENTERTAINMENT	1,000	1,500	1,800	2,000	2,000	
POCKET MONEY	5,000	6,000	7,000	7,500	8,000	
SPORTS EQUIP & SUBS				10,000		
CLUB MEMBERSHIP FEES	2,000	2,000	2,000	2,000	2,000	
REPAIRS & MAINTENANCE -VEHICLES						
FUEL & OIL	4,800	5,400	6,000	6,600	7,200	
LICENCES & 3rd PARTY	300	350	350	400	450	
INSURANCE - PERSONAL	9,820	6,845	17,803	5,260		
SUBSCRIPTIONS ETC		2,430	2,960	3,164	700	'
R.A.F. CONTRIBUTION				14,850	17,685	
INSURANCE - short term						house insuran
INSURANCE - LIFE	7,627	8,771	29,088	25,196	32,940	
INCOME TAX PAYMENTS	29,315	32,493	36,705	63,306	44,888	
SITE & PAYE PAYMENTS						
LEASE PAYMENTS						
INTEREST : MORTGAGE BOND						
BANK OVERDRAFT/ CREDIT CARD				1,750	2,300	
VEHICLE AGREEMENTS						
BANK CHARGES	600	600	600	600	600	
HOUSEHOLD & FURNITURE	18,000	1,000				
SWIMMING POOL EXPENSES	150	150	200	300	300	
GARDEN EXPENSES	2,000	200	200	200	200	
REPAIRS & MAINTENANCE -PROPERTY & GENERAL				6,200		
RENT, ELECTRICITY & WATER		60,000	60,000	60,000	60,000	'
SUNDRY EXPENSES	12,000	12,000	9,600	9,600	7,200	
	151,612	203,439	316,548	375,832	320,005	

CAPITAL RECONCILIATION AS AT 28 FEBRUARY	1998	1999	2000	2001	2002
NETT CLOSING ASSETS	403,831	810,605	874,689	813,186	676,932
NETT OPENING ASSETS	522,339	403,831	810,605	874,689	813,186
INCREASE IN NETT ASSETS	-118,508	406,774	64,084	-61,503	-136,254
LIVING EXPENCES	151,612	203,439	316,548	375,832	320,005
INCOME REQUIRED	33,104	610,213	380,632	314,329	183,751
add: FRINGE BENEFITS					
use of motor vehicle:	46,777	46,777	46,777	46,777	46,777
use of motor vehicle:			34,105	34,105	34,105
LESS: CAPITAL PROFIT/RECEIPTS	0	0	75,165	0	0
PROFIT/LOSS ON THE SALE OF MOTOR VEHICLE					
Proceeds of insurance policy			75,165		
INCOME REQUIRED AFTER CAPITAL RECEIPTS	79,881	656,990	386,350	395,212	264,633
INCOME PREVIOUSLY TAXED:	116,500	120,000	149,000	229,350	199,400
SALARY	84,000	84,000	96,000	135,250	99,400
TAXABLE INTEREST/ INCOME	1,500				
,RY	31,000	36,000	53,000	94,100	100,000
ADDITIONAL INCOME	-36,619	536,990	237,350	165,862	65,233

Total column value: 1,783,067

Total column value: 814,250

Total column value: 968,817

Andre E Botha

From:	Engelbrecht
Sent:	27 May 2009 08:58 AM
To:	Andre E Botha
Subject:	RE: Capital Reconciliation
Attachments:	...pital recon.xls; capital recon.xls

Hi André,

I am rushing off for an appointment. However, I will send you as much information as possible as soon as I can. However, herewith the computations used in a number of my cases.

Regards

Engelbrecht
Investigations: Pietermaritzburg
Tel
Mobile
Fax

From: Andre E Botha [mailto:aebotha@sars.gov.za]
Sent: 27 May 2009 08:38 AM
To: ⁻ ⁻ ˙ Engelbrecht
Cc ⁻⁻⁻⁻ ˙˙ ˙˙
**Su ˛˛˛˛. ˙ ˙: Capital Reconciliation

Hallo Riaan

I refer to your response hereunder.

Is it possible you can forward me the following details of the cases you have referred to:

- Court Case name; i.e. S v ....
- Court Case number:
- Verdict
- sentence
- Court

I will also appreciate it if you can present me with the Cap Recon computations as presented in court.

Thanking you in advance

Regards
Andre E Botha
South African Revenue Service
Business Compliance
Tel
Fax: _
Mobile

Fro
Sent: 27 May 2009 08:16 AM

2009-10-09

To: Andre E Botha
            Engelbrecht
Subject: FW: Capital Reconciliation

Goeie more Andre

̄ ˙   het sulke sake gehad. Voel gerus vry om met hom in verbinding te tree.

Groete

‾˙

Business **Area Manager:** Criminal Investigations
South African Revenue S

From   Engelbrecht [mailto engelbrecht@sars.gov.za]
Sent: 27 May 2009 07:17 AM
To: F   Muller
Subject: RE: Capital Reconciliation

Hi Ricus,

Ja, ek het heelwat van sulke sake gedoen soos, YJ ι   T   AC N

Groete

Engelbrecht
Investigations: Pietermaritzburg

Mobile
 Fax

From   [mailto   @sars.gov.za]
Sent: 27 May 2009 06:58 AM
To   Engelbrecht
Subject: FW: Capital Reconciliation

Hi Riaan

Weet jy dalk van so iets?

Groete

Business Area Manager: Criminal Investigations
South African Revenue Service

2009-10-09

From: Andre E Botha [mailto:aebotha@sars.gov.za]
Sent: 26 May 2009 04:23 PM
To: ~~~~~~~~~~~~ : Danie Brits: ~~~~~~~~~~~~~~~~~~~~~~ Enos Sathekge: Casper Visser: ~~~
Terreb ~~~~~~~~~~~~~~~~~~~~~~ venter, Georg Buys, Ronel van Wyk, ~~~~~~~~~~~~~~~~~~~~
Subject: Capital Reconciliation

Dear Colleagues

I really need your assistance with this one:

I will appreciate it if you or any of your team members know of a case SARS have investigated AND finalised in court where a capital reconciliation was performed as the method to determine (compute) the amount of income not declared or under declared for the purpose of taxation.

I will appreciate it if you could let me know of such cases which you know of or which has come to your attention.

I appreciate your assistance in this regard.

Regards

Andre E Botha
South African Revenue Service
Business Compliance
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Fax:
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