



GRA

Prosecution Policy

TABLE OF CONTENTS

1. Background
2. Purpose
3. Aim
4. Principles and factors underlying the prosecution policy of GRA
5. Legal powers of the GRA to conduct prosecutions
6. Legal Affairs & Treaties Department
7. The role of Legal Affairs & Treaties Department in instituting prosecutions
8. The role of the referring officer.
9. The role of the Investigation Department.
10. Implementation
11. General remarks.
12. Note to accompany guidance.
13. Flow chart to assist in decision to refer for prosecution.
14. Evasion Referral Document.
15. How to refer the case for prosecution.

1. Background

The Ghana Revenue Authority was established in 2009 to administer the various taxes and tax related laws and to assess, collect, administer, and account for Fiscal and Customs revenue collected by the Government of Ghana through the Ministry of Finance in accordance with established laws and procedures.

Through the law establishing GRA, the Authority was also given powers to institute the prosecution of tax offenders. The GRA is mandated to enforce compliance with the laws that it administers to ensure that taxpayers fully comply with their obligations under the tax laws and that revenue is correctly assessed and collected.

The 'Mission Statement' of Ghana Revenue Authority is:

"To mobilise revenue for national development in a transparent, fair, effective and efficient manner"

All activities undertaken by GRA should contribute either directly or indirectly to achieving this mission.

2. Purpose

This policy and procedure is intended to be used by all GRA officers expressly mandated to enforce the laws governing taxes and duties in Ghana.

3. Aim

The aim of this policy is to define clearly the circumstances where prosecution against tax and customs offenders will be considered and to provide a common understanding of the rules by the staff of the Ghana Revenue Authority. A broad outline of this policy should also be made available to taxpayers and their representatives or advisers.

In making its intent clear in the area of prosecutions the GRA is giving recalcitrant taxpayers an opportunity to amend their non-compliant behaviour and also making it clear that if they choose not to do so that the GRA will instigate prosecutions.

4. Principles and factors underlying the Prosecution Policy of GRA

Taxpayers are required to meet their tax obligations as prescribed by Law. Where they fail to do so, the tax administration has the powers to address that failure using a range of compliance improvement measures including prosecution.

In order to decide whether prosecution action is the most appropriate remedy for dealing with non-compliance, GRA will consider the following principles:

- (i) An offence may not proceed to prosecution where an administrative response, is more appropriate.
- (ii) A prosecution case will not commence where there is insufficient evidence.
- (iii) The cost of pursuing prosecution for the GRA should not be disproportionate to the possible benefit to be obtained, excepting cases where the establishment and prosecution of the offence will create legal precedents that may be of long term revenue benefit to GRA.

The GRA will maintain professional standards in conducting prosecutions through:

- adhering to the intent and spirit of integrity and fairness enshrined in the core values of GRA;
 - giving taxpayers reasonable notice and opportunity to amend non-compliant behaviours before proceeding to prosecution;
 - Complying with relevant provisions of both criminal and civil procedure codes.
- (iv) Any prosecution action should have a deterrent effect on both the offender and the wider tax paying community.
 - (v) The decision to prosecute shall not bar the use of other civil recovery measures.
 - (vi) If deemed necessary, GRA may withdraw charges against a taxpayer.
 - (vii) GRA shall closely monitor all cases forwarded for prosecution.

5. Legal powers of the GRA to conduct prosecutions

The law establishing the GRA and other tax laws of Ghana provide grounds for conducting prosecutions. The principal laws for the purpose of this document are:

2 Excise Tax Stamp Act, 2013 (Act 873)

3 Excise Duty Act, 2014 (Act 878)

4 Customs Act, 2015 (Act 891)

5 Income Tax Act, 2015 (Act 896)

6 Revenue Administration Act (Act 915)

Source of Power to Prosecute Tax Offences

Executive Instrument E.I.5 (Appointment of Public Prosecutors Instrument, 2004)

6. Legal Affairs & Treaties Department

GRA intends to adopt tougher sanctions against customs and tax fraud and evasion. This will be achieved not only through tax audits and investigations but also through the prosecution of offenders.

In order to ensure that the prosecution of non-compliant taxpayers is effectively and efficiently instituted the GRA Legal Affairs & Treaties Department shall act as the controlling office for all matters related to the prosecution of tax offences within GRA. Its primary duty and responsibility will be to ensure that issues of tax prosecution are harmonised and coordinated.

The Legal Affairs & Treaties Department shall be the only department within GRA that may take legal action against taxpayers although it is the responsibility of all Officers of GRA, at all levels, to identify and report fraud.

7. The role of Legal Affairs & Treaties Department in instituting prosecutions.

In broad terms, every member of staff of GRA is required to identify and report attempts of tax evasion and tax related offences. However, it is the role of Legal Affairs to:

- Determine if there is sufficient evidence in support of a particular case.
- Assess legal issues and related merits of a case.
- Keep, record and register case dockets.
- Issue summons and provide all necessary documents to the court.
- Act as prosecutor for GRA in court.
- Provide guidance and advice on prosecution issues.
- Follow up and report on the progress of cases under prosecution.

- Provide feedback to the relevant Directorates on the outcome of cases.
- Maintain a register of legal decisions relating to GRA cases.
- Maintain a register to record the number of cases referred to Legal Affairs & Treaties Department by other GRA business streams, and the number of prosecution cases put before the courts by GRA.

8. The role of the referring officer.

Where an officer of GRA identifies a case which fits the prosecution criteria as outlined in this policy document, the following must be carried out:

- In cases where no further investigation is required and where the referring officer has obtained all the necessary evidence and documentation, he/she must make a full referral to Legal Affairs & Treaties Dept. via Head of Office or Head of Unit. The Head of Office or Head of Unit will forward the case direct to Legal Affairs & Treaties Dept. There is no longer a requirement to refer the case via a higher authority within the referring office management chain.
- A full referral to Legal Affairs & Treaties Dept. will require the submission of the prosecution docket. This will include - record of interview with suspect (if taken); detecting and referring officers' statements; 3rd party statements; documentary and other exhibits; and a case summary/ evasion referral document which will include reference to relevant sections of the law and a list of documents and contents.
- In cases where further investigation is required, the referring officer should make a request for investigation assistance to Head of Investigation Department, via Head of Office or Head of Unit. This request will consist of the evasion referral document (including a case summary, relevant sections of the law, and a list of contents); evidence in the form of documents and statements already obtained; and a clear indication of the further investigation or evidence required.
- In cases where intelligence indicates the likelihood of fraud, but where an intervention has not yet taken place, (e.g. informant led intelligence) or where a quick response is required to avoid the loss of valuable evidence, the referring office must consider a quick referral for assistance to the Investigation Department. This will allow GRA to consider the use of pro-active methods to maximise evidential gathering opportunities.

9. The role of the Investigation Department.

The Investigation Department will receive cases referred from Legal Affairs & Treaties Department and from other GRA business streams. The role of Investigation Department is:

- In cases referred from Legal Affairs and Treaties Department, Investigation Department will conduct the additional inquiries as directed, update the prosecution docket and evasion referral document, and return the case to Legal Affairs and Treaties Department for prosecution.
- In cases referred to Investigation Department from other GRA business streams for investigation assistance or advice, Investigation must first assess the case to confirm its suitability for potential prosecution. They must then conduct all other activity necessary to develop the case, including arrests and interviews, third party statements or premises searches. Case planning will also allow Investigation Department to consider whether a longer term pro-active investigation will be more appropriate to maximise evidence gathering opportunities.

10. Implementation

The prosecution policy contained within this document shall be implemented with immediate effect across all of GRA's business streams and work areas.

11. General Remarks

The words used in the document are intended to have their ordinary meaning unless otherwise stated.

Single sentences should not be read in isolation but in context of the entire policy.

GRA Staff involved in instituting prosecution shall act on behalf of GRA and not in an individual capacity.

Each prosecution instituted shall be made on the merits of the individual case, having regard to legislation and other related documents and factors. Final authority for the purposes of interpreting this Policy rests with the Deputy Commissioner, Legal and Board Secretariat.

12. Notes to accompany guidance on the course of action to be taken in cases of suspected tax fraud.

Save in exceptional circumstances, cases should only be reported to/for prosecution or investigation if -

(a) the estimated amount of tax involved in any one single offence or tax period exceeds Cedi under review.

AND

(b) either -

(i) there is clear evidence of the offence in question, for example the existence of false documents, or admissions of the offence by the suspect,

or

(ii) there are strong grounds for believing that further investigation would clearly identify evidence of the offence in question and the fraud is one of the following types:-

- involves a registration of one or more businesses whose activities are solely or primarily bogus; or
- is reliant upon a series of fictitious or altered documents; or
- is targeted upon fraudulent input tax claims; or
- is systematic; or
- is executed together with other fraudulent activities (such as Customs undervaluation or misdeclaration); or
- involves lawyers, accountants or others who advise businesses in respect of tax matters, current or former tax officials, or a person who occupies a prominent position in the field of law or government; or
- where there has been a previous Tax or Customs offence which was concluded by the imposition of a penalty, the compounding of proceedings or a criminal conviction

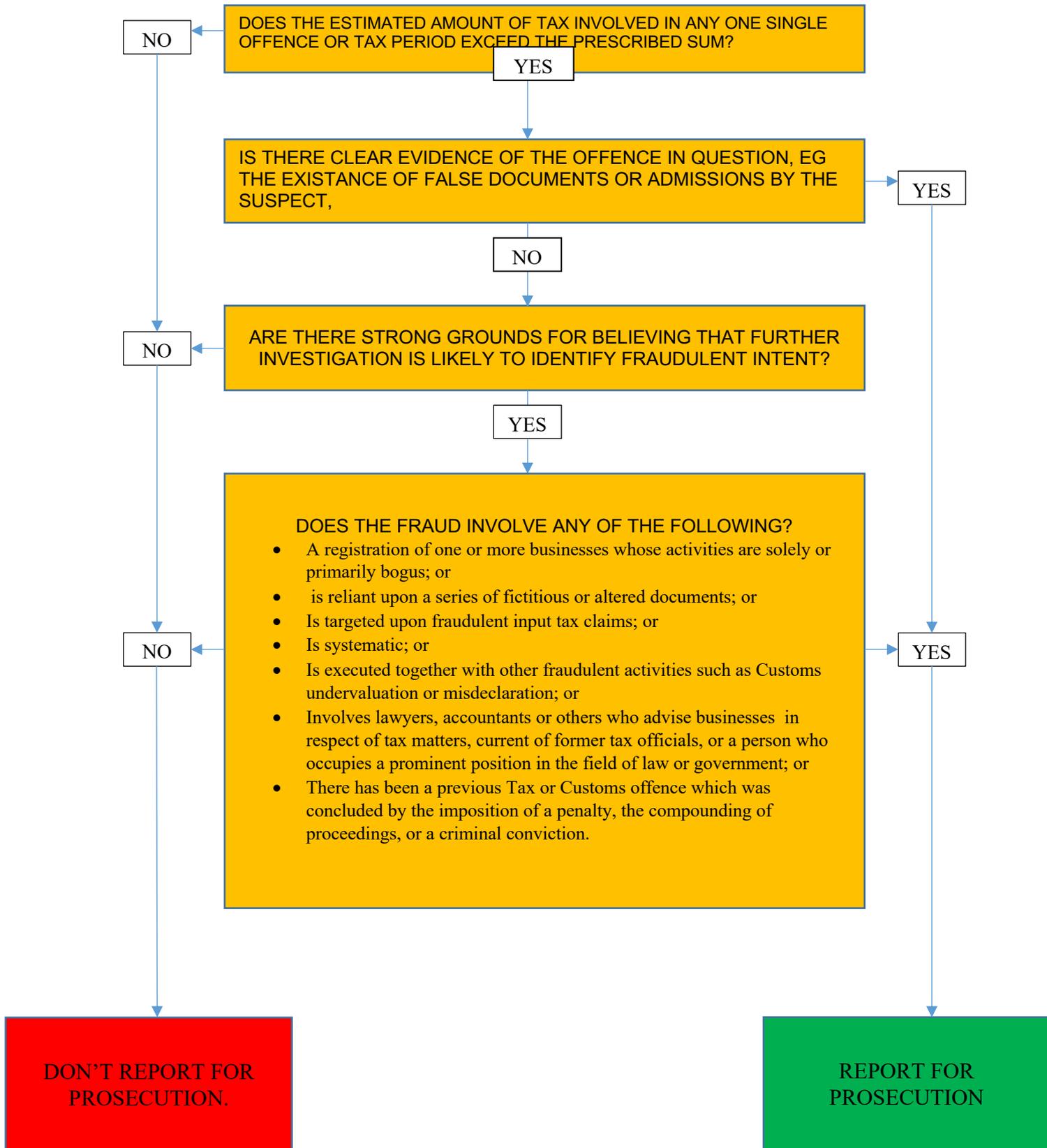
Only cases which fall within the fraud criteria will be dealt with by prosecution. In all other cases, Customs, LTO, MTO, or STO should not report but assess and, wherever appropriate, apply a statutory penalty and interest and ensure that vigorous Compliance Debt Management & Enforcement action is undertaken.

Once a case has been referred to Legal Affairs & Treaties Department with a view to prosecution the decision to accept, reject or refer a case for further investigation must be made within 10 working days of referral. If a case is not going to be progressed by Prosecution, it should be referred back to Customs, LTO, MTO or STO within the 10 day period in order that assessment, statutory penalty and interest action can be taken.

Vigorous debt management action (through Debt Management Compliance & Enforcement) should be taken in all cases of fraud where the case is not progressed to prosecution.

In other cases where referral to Prosecution is not taken Customs, LTO, MTO or STO should conclude the case (where appropriate) by assessment, interest, statutory penalties and debt management action.

**13. FLOW CHART.
I HAVE IDENTIFIED FRAUD. SHOULD MY CASE BE CONSIDERED
FOR PROSECUTION?**



GHANA REVENUE AUTHORITY
EVASION REFERRAL DOCUMENT

To be submitted for all cases which meet the prosecution criteria.

1. SUBJECT OF REFERRAL.¹

NAME/S	
COMPANY	
TAXPAYER NUMBER	

2. SUSPECTED OFFENCES.

MAIN TAX REGIME	
ESTIMATED TAX LOSS	
METHOD OF FRAUD ²	
ENFORCEMENT ACTION ALREADY TAKEN. ³	
NARATIVE. ⁴	

3. REFERRING OFFICE DETAILS.

REFERRING OFFICE LOCATION	
CASE OFFICER NAME/PHONE/ E-MAIL.	
MANAGER'S COMMENTS	
DATE OF SUBMISSION	

¹ Please provide any known details of the suspect/s of the offence.

² Please provide detail of how the suspected fraud is committed – ie inward diversion of transit goods/ falsification of documents/ suppression of sales etc.

³ Please provide detail of any enforcement action already taken. ie arrest and interview of suspect; debt recovery completed.

⁴ Please expand on the details already provided by describing how the offence was identified; evidence already secured; additional evidence required; other potential lines of enquiry; urgency of investigation.

15. HOW TO REFER THE CASE FOR PROSECUTION.

1. GRA's intention is to increase the use of prosecutions as one of our weapons in the fight against tax and customs fraud. The prosecution of selected cases will act as an effective deterrent to the fraudster.
2. Where cases of fraud have been detected, and those cases fulfil the prosecution criteria outlined in this document, it is the duty of GRA officers to report these cases for prosecution. However, only a proportion of these cases will ultimately be taken to prosecution. The decision whether to prosecute will be taken by the Commissioner General in conjunction with Legal Affairs & Treaties Department. .
3. A case which fulfils the prosecution criteria should be reported for prosecution even in instances where civil penalties have already been, or are in the process of being applied.
4. It is not only GRA officers detecting the fraud who are able to report the case for prosecution. Any GRA officer with an involvement in the case at any stage can submit the report. This means, for example, that a suitable case which has reached Debt Management staff for debt recovery, can be reported for prosecution by Debt Management staff.
5. Where fraud is suspected or prior intelligence indicates the likelihood of fraud, GRA staff are encouraged to make an early request for investigation assistance to the Investigation Department, even where an intervention has not yet taken place. An example would be where an informant identifies future fraudulent activity such as transit diversions. This will allow GRA staff to plan for a 'pro-active' investigation in order to maximise evidential opportunities.
6. Cases which fulfil the prosecution criteria as outlined in this document should be identified at an early stage. GRA staff should refer to part 8 'the role of the referring officer' and part 9 'the role of the Investigation Department' when considering how to progress the case to prosecution. In brief, where the case requires no further investigation or other evidence gathering, the referring officer will make a **full referral** to Legal Affairs & Treaties Department via his Head of Office or Head of Unit. All relevant documents and evidence will form the prosecution docket. The evasion referral document will serve to provide a summary of the case; identify relevant sections of the law; and provide a list of contents of the docket.
7. Cases which require further investigation should be referred to the Head of Investigation as a request for investigation assistance.