

Corruption Watch (RF) NPC
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25 October 2016

Mr Tom Moyane
Commissioner
South African Revenue Services
Per email: Tmoyane@sars.gov.za

And to: Mr Pravin Gordhan
Minister of Finance

C/o. Ms Blessing Sokhulu
Personal Assistant to the Minister of Finance
Per email: minreg@treasury.gov.za / blessing.sokhulu@treasury.gov.za

Dear Commissioner Moyane

Corruption Watch Enquiry: Financial Intelligence Centre Findings on Mr Makwakwa

1. We refer to the above matter.
2. Corruption Watch (CW) is a civil society organisation that opened its doors to the public in January 2012. We are registered as a non-profit company in terms of the Companies Act.
3. Corruption Watch seeks to expose corruption and the abuse of public funds. We aim to expose those who engage in corrupt activities, nepotism and abuse of public funds in both the public and private sector.
4. As part of our mandate, we are committed to strengthening the criminal justice system, including efforts to address financial crime; to the refinement of our planning and procurement systems; and to supporting and strengthening the ability of private and public bodies to better detect and address corruption in their spheres of operation.

5. In compiling our enquiry, we have had regard for the following:
 - 5.1. Minutes from a meeting in Parliament before the Standing Committee on Public Accounts dated 14 September 2016;
 - 5.2. Minutes from a meeting in Parliament before the Standing Committee on Finance dated 12 October 2016;
 - 5.3. Official Questions put to the Minister of Finance by Member of Parliament, Mr David Maynier and replies by the Minister of Finance, SARS and the FIC all dated 12 October 2016; and
 - 5.4. Media reports.

Summary of matter

6. We note the following:
 - 6.1. That you, as the Commissioner and CEO of the South African Revenue Services (“SARS”) received a report from the Financial Intelligence Centre (“FIC”) on 17 May 2016 detailing fraud and corruption on the part of Mr Makwakwa and Ms Elskie, both SARS employees, matters which were never reported to the Directorate of Priority Crime Investigation (“DPCI”) in order to enable further investigation;
 - 6.2. We understand that there were a total of 75 suspicious transactions done between 1 March 2010 and the 31 January 2016 by Mr Makwakwa and Ms Elskie, R785 130.00 linked to Mr Makwakwa and R450 200.00 linked to Ms Elskie;
 - 6.3. It is our understanding that in terms of the FIC report, Mr Makwakwa and Ms Elskie were alleged to have committed crimes in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, (“PRECCA”), FICA and the Prevention of Organised Crime Act, 121 of 1998 (“POCA”).
 - 6.4. In due regard for the SARS collective agreement on the code of conduct, you first contacted your head of Human Resources about the matter;

- 6.5. Then, during June 2016, and as part of an internal investigative process, you wrote a letter to Mr Makwakwa and his partner, Ms Elskie informing them about the FIC report and affording them an opportunity to respond in writing to the allegations against them.
- 6.6. Also, during June 2016, you sought technical guidance, co-operation and assistance from the FIC in relation to the matter in terms of section 4 of the Financial Intelligence Centre Act, 38 of 2001 (“FICA”);
- 6.7. On 15 September 2016, you briefed a law firm in order for the matter to be investigated and in order for the firm to conduct disciplinary proceedings against the two employees on behalf of SARS;
- 6.8. Mr Makwakwa was suspended on 15 September 2016 pending the outcome of the internal investigative process as well as disciplinary proceedings against him;
- 6.9. Ms Elskie has not been suspended due to the fact that she is on maternity leave and SARS is seeking legal advice on whether an employer has the lawful authority to suspend and/or institute disciplinary proceedings against an employee who is on maternity leave.
- 6.10. There is no investigation being conducted by the Directorate of Priority Crime Investigation (“DPCI”) into this matter. In this regard, the DPCI has denied the existence of an investigation into this matter and your office has also repeatedly denied the existence of such an investigation. Curiously, and in SARS’ reply to MP Maynier’s question to the Minister of Finance, it is stated that “according to correspondence received from the dated 15 September 2016, this matter has been reported to the DPCI”.

Investigation and Sanctions against Mr Makwakwa and Ms Elskie

7. We confirm that internal disciplinary proceedings and investigations by a private law firm do not replace the requirement for this matter to be investigated by DPCI and neither will any findings of innocence by the internal investigation negate such requirement.

8. In the circumstances, we confirm our intention to lodge criminal complaints against Mr Makwakwa and Ms Elskie.
9. We also confirm that recent media reports have reflected what appear to be copies of authentic internal SARS documents, suggesting that Mr Makwakwa advanced the career of Ms Elskie by way of a promotion to another department. These reports question the legality and procedural validity of the promotion, as well as the academic qualifications Ms Elskie presented at the time. Kindly indicate what steps have been taken against Mr Makwakwa and Ms Elskie in regard to these allegations.

Other Legislative Breaches and Offences

10. As indicated above, it is public knowledge that you informed Mr Makwakwa and Ms Elskie of the content of the FIC report and sought their comment and response to the report. We wish to draw your attention to section 29(4) of FICA which prohibits the disclosure of suspicious and unusual transaction to certain persons, specifically those implicated in such reports. Section 53 of FICA renders the unauthorized disclosure of such information an offence and one which carries a fine of R10 000 000 and imprisonment for a period not exceeding 15 years.
11. Secondly, as CEO and Commissioner of SARS, you are well aware of the duty to report knowledge or suspicious of corrupt transactions over R100 000 to the DPCI for investigation in terms of section 34 of PRECCA. You will also be aware of the fact that it is an offence to not report such transactions, which offence may carry a fine or imprisonment not exceeding 10 years. In the circumstances, our view is that you are in breach of Section 34 of PRECCA for failing in your duty to report this matter to the DPCI.
12. We regard your stance on this issue, which is that it is an internal one which does not require reporting to the DPCI as being unlawful and we intend lodging a criminal complaint against you for the stated offences.
13. In order to afford you a fair opportunity to respond to or explain any of the issues we have raised in this letter, we afford you the opportunity to respond by no later than close of business on 1 November 2016.

14. Finally, please note that in the interests of transparency, we may publish this correspondence and any response thereto.

Yours faithfully,

David Lewis
Executive Director
Corruption Watch
[Unsigned due to electronic transmission]