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31 October 2016

Mr Murray Michell
Director
Financial Intelligence Centre

C/o Panna Kassan
Spokesperson
Financial Intelligence Centre
Per email: panna.kassan@fic.gov.za

And to: 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 Panna

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.

Enquiry

5. On Tuesday, 25 October 2016, we wrote to SARS Commissioner, Tom Moyane to inform him of our intention to lodge criminal complaints against him in respect of breaches of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 (“PRECCA”) and the Financial Intelligence Centre Act, 38 of 2001 (“FICA”). We afforded him an opportunity to respond to our intended action and he responded on 28 October 2016. We would like to raise aspects of our letter and his response with the Financial Intelligence Centre (“FIC”). For ease of reference, a copy of our letter and his response are attached.
6. In respect of Mr Moyane’s alleged legislative breaches and/or offences, we understand that in May 2017, the FIC provided SARS with a copy of a report detailing alleged tax evasion, money-laundering, fraud and corruption by two SARS employees, Mr Makwakwa and Ms Elskie, involving a total amount of over R1,2 million.
7. According to Mr Moyane, he proceeded to disclose the report to Mr Makwakwa and Ms Elskie in order to seek comment from them. It is our view is that such disclosure may well amount to a breach of section 29(4) of FICA. However, Mr Moyane in his response to our letter, indicates that he did not breach FICA because according to him, he was acting in terms of section 29(4)(a) of the Act and within the scope of his powers and duties in terms of section 9(2) of the South African Revenue Services Act, 34 of 1997 (“SARS Act”) and section 84 of the Public Finance Management Act, 1 of 1999 (the “PFMA”).

8. It is our view that the disclosure of the FIC report and its contents to Mr Makwakwa and Ms Elskie has had the effect of undermining the purport and objects of section 29(4) of FICA and such disclosure could potentially undermine any investigation being conducted by the Hawks, the FIC or any other state law enforcement agencies as well as any future FIC initiated cases
9. Therefore, please indicate whether the FIC regards the disclosure of the report as an authorised disclosure in terms of section 29(4) of the FICA.
10. Secondly, Mr Moyane has made a number of statements about the FIC's failure to provide him with advice and guidance. Given the constitutional imperative of cooperative governance between state departments, combined with the seriousness of the allegations and the impact of any alleged failure on institutions which face difficulties in complying with FICA, we would like to give the FIC an opportunity to respond to these allegations. The allegations are set out in paragraphs 4.8 – 4.15 of Mr Moyane's letter however in summary he alleges that:
 - 10.1. He met with the Director of the FIC ("the Director") on 15 June 2016, and indicated to the Director that he takes the FIC report very seriously and that he would be highly indebted to the FIC for guidance in conducting the required investigation;
 - 10.2. On 21 June 2016, in accordance with section 4(b) of FICA he formally requested co-operation and guidance on how the investigation should proceed and also requested further information on the two employees' transgressions. He urgently requested a follow-up meeting with the Director of the FIC;
 - 10.3. On 13 July 2016, he received a letter from the Director of the FIC which ignored his request for a meeting but which stated that the Director is unaware of any steps taken by SARS to further the investigation into Mr Makwakwa and Ms Elskie. In this letter, the Director requested a detailed reply in order to determine or define the nature of support which the FIC could render to SARS;
 - 10.4. On 21 July, he responded to the Director providing information on the steps taken by SARS but the Director failed to respond with advice on the nature of support which the FIC could provide to SARS;

- 10.5. On 22 August, he informed the Director about a request for information by the employees' legal representative and received no response despite follow ups on 7 and 13 September respectively;
- 10.6. On 14 September 2016, he received a letter from the Director of the FIC who made "spurious" allegations about the handling of the FIC report to which he responded by denying such allegations as baseless and lacking any legal foundation and reminding the Director of his obligation in terms of section 4 of FICA to advise and co-operate with SARS;
- 10.7. Finally, that the FIC's lack of co-operation is disturbing since it has been investigating this matter since 2010 and has provided no evidence to show that it submitted a report to previous SARS Commissioners or Ministers of Finance.
11. We reiterate the need for the FIC to respond to the above and to indicate the nature and extent of support it provides to institutions such as SARS in dealing with reports by the FIC. In this regard, please elaborate on all the steps which the FIC required SARS to take in response to its report.
12. Please provide us with a response by no later than close of business on Wednesday, 2 November 2016. Kindly 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]