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2 November 2017

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

And to: Mr Malusi Gigaba,
Minister of Finance

C/o. Ms Vuyiswa Monye
Personal Assistant to the Minister of Finance
Per email: Vuyiswa.Monye@treasury.gov.za

Dear Commissioner Moyane

Corruption Watch Enquiry: Mr Makwakwa and Ms Elskie

1. We refer to the above matter and to our letter dated 30 October 2017, a copy of which is attached for ease of reference.
2. In this letter, we requested information on whether Mr Makwakwa and Ms Elskie had returned to work, the basis for the decision to allow them to return to work as well as any documentation to support such decision. We have not received a response to our letter but have noted recent developments, as reported in the media, which we address below.

Ms Elskie

3. There has, as far as we know, been no official statement by SARS on the outcome of any investigation or disciplinary inquiry in respect of Ms Elskie. We understand that

she has returned to work but have had no official confirmation from SARS on whether she has in fact, returned to work

4. We understand from media reports on the Financial Intelligence Centre (“FIC”) report, which was sent to you on 17 May 2016, that the FIC recommended, in relation to Ms Elskie, that certain unusual and suspicious payments and transactions be investigated to determine whether the funds received constituted payments of proceeds of crime arising from corrupt activities, particularly whether the concealment and disguising of the true source of such funds amounted to money laundering in terms of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”).
5. It is abundantly clear that any investigation into corruption and fraud, including money laundering is within the specific mandate of our investigative and prosecutorial authorities and that SARS cannot merely oust the need for such criminal investigation and conduct its own internal investigations and inquiries.
6. In respect of Ms Elskie, we require a response to the following questions:
 - 6.1. Was Hogan Lovell’s requested to investigate the conduct of Ms Elskie? If so, what was their finding? Please provide us with a copy of the terms of reference of their investigation as well a copy of their investigative report;
 - 6.2. Was a disciplinary inquiry held in respect of Ms Elskie? If so, what was the finding? Please provide us with a copy of the terms of reference for the inquiry as well as a copy of the ruling for the disciplinary inquiry;
 - 6.3. Has Ms Elskie been cleared of all wrong doing in respect of the allegations raised in the FIC report and if so, has she been allowed to return to work?
 - 6.4. Please explain, in detail, the reasons for pursuing an internal investigation and disciplinary process in light of the allegations of criminal conduct which has been levelled against Elskie.

Mr Makwakwa

7. We understand, in relation to Mr Makwakwa, that he has returned to work. Recent media reports cite the official statement from SARS as follows:¹

¹ http://www.huffingtonpost.co.za/2017/10/30/full-statement-makwakwa-back-at-sars_a_23260773/

“SARS wishes to announce that after approximately a year in suspension, Chief Officer: Business & Individual Tax (BAIT), Mr Jonas Makwakwa, will return to the organisation with effect from 1 November 2017.

In September 2016, the Financial Intelligence Centre (FIC) submitted a report to SARS containing some serious allegations against Mr Makwakwa.

SARS sought an outside legal opinion on the matter. The Commissioner, Mr Tom Moyane took the decision to suspend Mr Makwakwa pending an independent investigation into the allegations.

To ensure transparency, independence and integrity of the process, a renowned international law firm, Hogan Lovells was appointed to investigate the matter.

Hogan Lovells submitted an investigation report which recommended that disciplinary action be taken against Mr Makwakwa. The law firm, Hogan Lovells then appointed a highly esteemed and renowned senior counsel, Advocate Terry Motau, to chair the hearing.

SARS wishes to confirm that, Advocate Motau, SC has submitted the final report which found that Mr Makwakwa was not guilty of any of the charges levelled against him.

This concludes the disciplinary action against Mr Makwakwa. As result SARS will immediately implement the outcome of the hearing as is. He will return to SARS to resume his position as CO: BAIT with effect from 1 November 2017.”

8. As was the case with Ms Elskie, the FIC recommended that certain unusual and suspicious payments and transactions be investigated to determine whether the funds received constituted payments of proceeds of crime arising from corrupt activities, involving Mr Makwakwa as well as other individuals and entities implicated in the transactions. The FIC also recommended that an investigation be conducted into whether the concealment and disguising of the true source of such funds amounted to money laundering in terms of the Prevention of Organised Crime Act, 121 of 1998.
9. Once again, in relation to Mr Makwakwa, it is abundantly clear that any investigation into corruption and fraud, including money laundering is within the specific mandate of our investigative and prosecutorial authorities and that SARS cannot merely oust the need for such criminal investigation and conduct its own internal investigations and inquiries. The fact that the suspicious transactions involve other entities and individuals and relate to a senior executive at SARS, was even more reason for the matters to be referred to the criminal justice authorities and for the outcomes of those investigations to be paramount in the consideration of his continued employment at SARS.

10. In the circumstances and given the public interest in a matter relating to a senior executive occupying a significant position of trust and authority at SARS, we request the following:
 - 10.1. A copy of the terms of reference of the Hogan Lovell's investigation as well a copy of their investigative report;
 - 10.2. A copy of the terms of reference for the internal disciplinary inquiry as well as a copy of the ruling for the disciplinary inquiry;
 - 10.3. Please explain, in detail, the reasons for pursuing an internal investigation and disciplinary process in light of the allegations of criminal conduct which has been levelled against Makwakwa and whether this was a valid course of action given the serious allegations of criminal conducted levelled against him.
11. We confirm that we have written to the Finance Standing Committee to request that they inquire into the internal processes which you have followed and which have resulted in Mr Makwakwa being cleared of all wrong doing and allowed to return to work as well as any action you may have taken in relation to Ms Elskie. We have also requested the Committee to engage with other relevant Parliamentary committees on the delay by the Hawks and the NPA to investigate the charges laid against you, Mr Makwakwa and Ms Elskie.
12. 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]