

**Office of the
Commissioner**

Enquiries
Mr Teboho Mokoena

E-mail
Tmokoena4@sars.gov.za

Telephone
(012) 422 7461

Fascimile
(012) 452 9676



South African Revenue Service

Mr David Lewis
Executive Director For Corruption Watch
(RF) NPC
8th Floor Heerengracht Building
87 De Korte Street
Braamfontein
Johannesburg
2001

Pretoria Head Office
299 Bronkhorst Street,
Nieuw Muckleneuk, 0181
Private Bag X923, Pretoria, 0001
SARS online: www.sars.gov.za
Telephone (012) 422 4000

Dear Mr Lewis

**CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE
FINDINGS ON MR. MAKWAKWA**

1. I refer to the above matter and acknowledge receipt of your letter dated 25 October 2016. Firstly, I highly appreciate the mandate and work being done by Corruption Watch, particularly in exposing corruption and abuse of public funds. It is in the context of being appreciative of your organisation's mandate that I intend to fully respond to all issues raised in your letter. In doing so, I intend to structure my response in the chronological order set out hereunder:
 - 1.1. The criminal investigation against Mr. Mashudu Jonas Makwakwa ("Jonas") and Ms. Kelly-Ann Elskie ("Kelly");
 - 1.2. Allegations surrounding Kelly's promotion and academic qualifications;
 - 1.3. A chronological summary of my version of events since 17 May 2016; and
 - 1.4. The disciplinary investigation against Jonas and Kelly.
2. **The criminal investigation against Jonas and Kelly**
 - 2.1. I am aware of my legal obligation to refer this matter to the South African Police Service ("SAPS") for criminal investigation, as required by Section 34 of the Prevention and Combating of Corrupt Activities

Act 12 of 2004 ("PRECCA"). However, upon an enquiry and before I could report this matter to the SAPS, I was advised by the Directorate for Priority Crimes Investigation ("the Hawks") that the matter had already been referred to the SAPS for investigation during early June 2016.

- 2.2. Further, I was advised that the Hawks have commenced with a criminal investigation into corruption, racketeering and money laundering against the two SARS employees. The criminal investigation is being administered by the Hawks' Anti-Corruption Investigation Unit under DPCI enquiry: 03/06/2016. The SARS is fully co-operating with the SAPS in respect of the criminal investigation against the two employees. I was specifically advised by the Hawks that all issues relating to the criminal investigation must be addressed directly to their offices and that the SARS is expected to co-operate fully with the criminal investigation.
- 2.3. To date, my office has received a request for information from the Hawks and my office is taking all measures to provide the requested information.
- 2.4. In light of the above, I deny your allegation contained at paragraph 11 of your letter that I am in breach of Section 34 of PRECCA. I was advised by the Hawks through a written correspondence that there is no need to open a criminal case on a matter that is already under investigation by the Hawks. I have accepted the advice and continue to co-operate with the Hawks in respect of the criminal investigation against the two SARS employees.
- 2.5. Lastly and although not part of your letter, I wish to inform you that I have duly taken note of the newspaper article: "Tax Money Diversion", which appeared in the New Age newspaper dated 24 October 2016, alleging fraudulent tax settlement of approximately R60 million. Consequently and on the 25th of October 2016, I dispatched a letter to

the Hawks requesting that this matter be included in their current criminal investigation against Mr. Makwakwa.

3. Allegations surrounding Kelly's promotion and academic qualifications

3.1. I have instructed the SARS Human Resource to investigate allegations surrounding Kelly's promotion and academic qualifications. I am currently awaiting a report from the Human Resource. Upon receipt of same, I will duly respond.

4. A chronological summary of my version of events since 17 May 2016

4.1. In my letter dated 20 May 2016, I acknowledged receipt of the Report from the Financial Intelligence Centre ("FIC") and unequivocally stated the seriousness and sensitivity of this matter. I further confirmed SARS' commitment to conduct an investigation.

4.2. On 23 May 2016, I informed the two employees about the allegations contained in the Report. I further informed the said employees of my intention to conduct an investigation as directed by the FIC. I instituted a misconduct investigation into allegations of impropriety, tax evasion, corruption, contravention of the Public Finance Management Act 1 of 1999 ("PFMA") and money laundering against the two SARS' employees.

4.3. I adopted a two- pronged approach in dealing with this matter. Firstly, I afforded Jonas and Kelly an opportunity to respond to the allegations in writing. This was part of the SARS internal investigation into the allegations contained in the Report. Secondly, and as fully explored hereunder, I engaged the FIC for the purposes of seeking guidance, co- operation and assistance in accordance with Section 4 of the FIC Act.



- 4.4. In instituting the misconduct investigation against the said employees, I was executing my responsibility to maintain discipline in terms of Section 9 (2) of the SARS Act 34 of 1997 ("SARS Act"), as the Chief Executive Officer for the SARS. Furthermore, as an Accounting Authority for the SARS, I am responsible to ensure the proper and diligent implementation of the PFMA. I am particularly obligated by Section 84 of the PFMA to investigate allegations of financial misconduct.
- 4.5. In disclosing the Report to the aforesaid employees, I acted in accordance with the provisions of Section 29(4)(a) of the Financial Intelligence Centre Act, 38 of 2001 ("FIC Act"). In so doing, I acted within the scope of my powers and duties in terms of the aforementioned provisions of the SARS Act and the PFMA.
- 4.6. My decision to release the Report to the aforementioned employees does not amount to breach of Section 53 of the FIC Act. It is glaring that Section 53(2) of the FIC Act does not attach any criminal liability to information disclosed in accordance with Section 29(4) (a) of the FIC Act. As a result, your allegation with regard to act of criminality against my office under section 53 of the FIC Act is unfounded.
- 4.7. On 30 May 2016, I received a letter from the employees' legal representative who denied the allegations contained in the Report and further requested information from the SARS.
- 4.8. On 15 June 2016, I had a meeting with the Director of the FIC ("Director"), wherein I strongly indicated that I take the allegations against the employees seriously and that any allegation of impropriety and criminal conduct, real or perceived, needs to be dealt with in a speedy manner to protect the reputation of SARS. I also indicated that the SARS will be highly indebted to the FIC's guidance in conducting the required investigation.

- 4.9. In my letter dated 21 June 2016 and in accordance with Section 4(b) of the FIC Act, I formally requested the FIC's co-operation and guidance on how the investigation should take shape. Further, I requested the FIC to furnish the SARS' investigative team with details of the transgressions. In the said letter, I requested a further meeting with the Director. I made it clear that this matter be accorded the urgency it deserves because I could not have a member of my executive team with a cloud of criminality, tax evasion, corrupt activities or non-compliance with the PFMA, hanging over his head.
- 4.10. In a letter dated 13 July 2016, the Director stated that he is unaware of steps the SARS may have taken since the above matter was handed over for investigation and that a detailed reply will assist him in defining the nature of support by the FIC. However, the Director ignored my request for a meeting.
- 4.11. In my letter dated 21 July 2016, I duly informed the Director of the steps and/or progress undertaken by the SARS. In this regard, the Director failed to respond, particularly in defining the nature of support by the FIC.
- 4.12. In my letter dated 22 August 2016, I informed the Director about the request for information by the employees' legal representative. As a result of the Director's failure to respond, I made a follow up with his office on 7 September 2016 and 13 September 2016.
- 4.13. In my letter dated 7 September 2016, I duly informed the Director about the progress, particularly the employees' request for an extension to submit their responses to the allegations. To this date, the Director has failed to define the nature of support by the FIC.
- 4.14. On 14 September 2016, I received the Director's letter making spurious allegations against the SARS with regard to the handling of the Report. On 16 September 2016, I responded to the Director's letter

wherein I denied his allegations as baseless and lacking any legal foundation. Further, and in light of real and/or perceived lack of guidance and co-operation by the FIC, I reminded the Director that Section 4 of the FIC Act imposes a mandatory obligation on the FIC to advise and co-operate with the SARS.

4.15. The FIC's lack of co-operation is disturbing taking into account that it has been investigating this matter since 2010 and there is no iota of evidence to suggest that at any point ever since 2010, it either submitted a report to any of the previous SARS Commissioners and/or any of the previous Ministers of Finance.

5. The disciplinary investigation against the two SARS employees

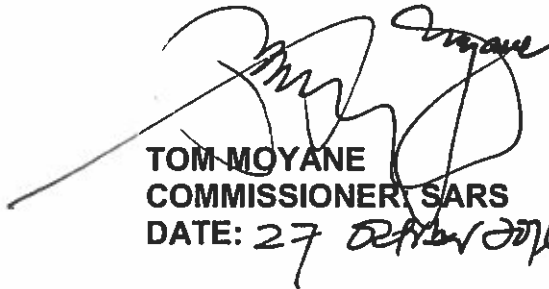
5.1. Jonas was suspended on 15 September 2016. Upon receipt of a legal opinion dated 09 October 2016 advising me to suspend Kelly regardless of her maternity leave, I proceeded to effect Kelly's suspension on 10 October 2016.

5.2. I confirm that Hogan Lovells (South Africa) Inc ("the firm") has been appointed to conduct an investigation into allegations of impropriety, tax evasion and other contraventions of the Tax Administration Act 28 of 2011, breach of the PFMA and SARS internal policies. Further, the firm is instructed to investigate allegations of impropriety on the part of Jonas in relation to settlements concluded from the time he was appointed as an acting Chief Operating Officer (COO) and subsequently as Chief Officer for Business and Individual Taxes ("BAIT"); until the date of his suspension on 15 September 2016.

5.3. After the investigation, the firm is instructed to initiate disciplinary proceedings against the aforementioned two employees.

5.4. I will be in a position to make a public statement and/or announcement once both the investigation and disciplinary proceedings have been completed.

Yours faithfully



TOM MOYANE
COMMISSIONER, SARS
DATE: 27 *Oct* 2016