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Ref: 14/8/1 – Corruption Watch

16 November 2016



Financial
Intelligence Centre

Mr. David Lewis
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Corruption Watch
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Dear Mr. Lewis

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

The above matter and your letter dated 31 October 2016 bears reference. We have carefully studied all the points raised in the correspondence and the accompanying documents.

The Financial Intelligence Centre (the FIC) acknowledges the important efforts of Corruption Watch ("CW") to seek and expose corruption in our society. Indeed, we believe that CW is an important mechanism in holding both the private and public sectors accountable for their actions.

In your letter to the FIC you inquired about the actions of Commissioner Tomas Moyane of the South African Revenue Service (SARS) and whether his conduct is in breach of the Financial Intelligence Centre Act (the FIC Act). As a matter of principle the FIC does not give legal advice or opinion on the interpretation of the FIC Act in instances where the FIC may be a party to the merits of the matter.

Thus while the FIC may hold a view on the interpretation and application of the FIC Act arising therefrom, we therefore choose to reserve our legal opinion and rights in this regard.

The FIC suggests that CW apply its mind to additional sections of the FIC Act other than sections 29(4) and include section 60(1) and (2) when evaluating how FIC information can or cannot be used.

With regards to your question on co-operation and support to SARS, the FIC has provided an extensive reply to the Minister of Finance and Parliament. Our reply is now a matter of public and parliamentary record and the FIC has nothing new or additional to tender in this regard.

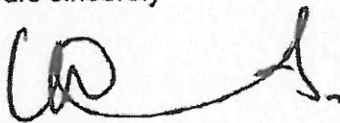
On the matter relating to the steps that the FIC required SARS to undertake in response to the report mentioned in your letter of 31 October 2016, any referral of financial intelligence to a law enforcement agency or any other entity prescribed in the FIC Act, places a responsibility on the agency to conduct an investigation in line with that agency's national investigative mandate. While the FIC indicates the nature of matters that may be investigated, it does not instruct agencies to investigate any particular matter.

Consequently, SARS is required to investigate in terms of the South African Revenue Service Act No. 34 of 1997 ("SARS" Act), the Public Finance Management Act No. 1 of 1999 ("PFMA") and the Tax Administration Act No. 28 of 2011 ("TAA") and in doing so also take into account other national legislation that may have a bearing on its investigation such as Prevention of Organised Crime Act No. 121 of 1998 (POCA), the Financial Intelligence Centre Act No. 38 of 2001 (the FIC Act) and Prevention and Combating of Corrupt Activities Act No. 12 of 2004 (RECCA).

The issues relating to corruption and money laundering transcend the mandate of SARS. Moreover, it is expected that any person and/or entity dealing with such information should be cognisant of how to handle such information, as this may fall under the primary legislative mandate of another agency.

We trust you find the above in order.

Yours sincerely



MURRAY MICHELL
DIRECTOR