

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 1976 [NW2287E]

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1976. Mr D J Maynier (DA) to ask the Minister of Finance:

- (1) Whether the South African Revenue Service (SARS) followed all reasonable steps in suspending a certain person (name and details furnished); if not, why not; if so, (a) what steps were followed and (b) what was the sequence of events:
- (2) Whether SARS informed the National Treasury about the specified suspension; if not, why not; if so, what are the relevant details:
- (3) Whether the specified suspension is being investigated by an international law firm; if so, (a) why is the matter being investigated by the international law firm, (b) what is the (i) purpose and (ii) scope of the specified investigation and (c) why is the specified investigation not being conducted by the SA Police Service?

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REPLY:

This information was provided by the South African Revenue Service (SARS). The Ministry of Finance cannot verify its accuracy.

- (1) SARS holds a view that it followed all reasonable steps in suspending Mr. Jonas Makwakwa.

(a) The steps that SARS took in handling this matter involved:

- Mr. Jonas Makwakwa was duly informed of the allegations contained in the report from the Financial Intelligence Centre ("FIC"). Furthermore, Mr. Makwakwa was instructed to respond, in writing, to these allegations.
- SARS had a meeting with the Director of "FIC" to solicit their technical guidance, co-operation and assistance in this regard.

- (b) On 18 May 2016, SARS received a hand-delivered copy of the "FIC" report containing allegations against Mr. Makwakwa and Ms. Kelly-Ann Elskie. On

20 May 2016, Mr. Makwakwa was duly informed of the allegations contained in the report. On 23 May 2016, Mr. Makwakwa was informed of SARS' intention to investigate the matter. To this end, Mr. Makwakwa was instructed to respond, in writing, to the allegations contained in the report. Mr. Makwakwa was further informed of SARS' intention to work closely with the "FIC" with regard to the pending investigation.

On 30 May 2016, SARS received a response from Mr. Makwakwa's legal representatives, denying the allegations contained in the report. On 15 June 2016, SARS had a meeting with the Director of "FIC" for purposes of soliciting their technical guidance, co-operation and assistance in this regard. On 21 June 2016, SARS formally reiterated its request to the "FIC". On 13 July 2016, SARS received a letter from FIC. Amongst others, the letter stated that FIC was unaware of the steps that SARS had taken since the report was handed over to SARS. In a response dated 21 July 2016, the "FIC" was duly informed of the steps that SARS had undertaken by then. In a letter dated 22 August 2016, SARS sent a letter to the "FIC", informing the "FIC" of the request for information and / or documentation. On 7 and 13 September 2016, SARS dispatched follow up letters to the "FIC" in this regard. In a letter dated 14 September 2016, SARS received a letter from the FIC, making spurious allegations against SARS with regard to the handling of the report. On 16 September 2016, SARS responded to the "FIC", denying these allegations. This letter went on to remind the "FIC" of its mandatory obligation to advise, guide and co-operate with SARS. On 12 September 2016, Mr. Makwakwa was served with a "Notice of Intention to Suspend" letter subsequently, on 15 September 2016, Mr. Makwakwa was suspended. On 15 September 2016, SARS appointed a law firm; Hogan Lovells to investigate and conduct disciplinary proceedings against Mr. Makwakwa on behalf of SARS.

- (2) On 12 September 2016, SARS informed the Minister that it served Mr. Makwakwa with a "Notice of Intention to Suspend".
- (3) SARS has appointed a law firm; Hogan Lovells to investigate and conduct disciplinary proceedings against Mr. Makwakwa on behalf of SARS.
 - (a) Hogan Lovells is an independent, reputable law firm that also has operations in South Africa.
 - (b)
 - (i) As stated above, Hogan Lovells has been appointed to investigate the allegations contained in the report, as well as to conduct disciplinary proceedings against Mr. Makwakwa on behalf of SARS.
 - (c) The scope of the disciplinary investigation pertains to the following:
 - i. To determine whether the alleged deposits and payments made and received by Mr. Makwakwa have resulted in contravention of tax legislation or constitute a tax offence. In this regard, it should be noted

that contravention of tax legislation by a SARS' employee constitutes a misconduct in the employment context;

- ii. To determine whether ad- hoc payments made to Mr. Makwakwa by SARS were done in contravention of the SARS' internal policies and the PFMA. In this regard, identify and discipline the culprits including Mr. Makwakwa. Further, recover any amount that was paid to Mr. Makwakwa in contravention of the PFMA;
 - iii. Assist the on-going criminal investigation by the SAPS and in particular the Directorate for Priority Crime Investigation ("DPCI") with regard to information pertaining to the following:
 - Whether the funds allegedly received by Mr. Makwakwa constitute payment of proceeds of crime arising from corrupt activities as defined in the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA);
 - Whether Mr. Makwakwa has committed acts of tax evasion and other contraventions of the Tax Administration Act of 2011 (Tax Administration Act);
 - Whether Mr. Makwakwa effected payment in contravention of internal policies and/or the Public Finance Management Act 1 of 1999 (PFMA); and
 - Whether the aforementioned conduct of concealment and disguising of the true source of these funds constitute acts of money laundering as defined in section 1 of the Prevention of Organised Crime Act, 121 of 1998. (POCA).
- (d) On 15 September 2016, SARS received correspondence from the Directorate for Priority Crime Investigation ("DPCI"), titled "REQUEST FOR ASSISTANCE: DPCI ENQUIRY" 03/06/2016". Amongst others, this correspondence stated that the "DPCI" were also in the process of conducting a similar investigation. Pursuant to this email, SARS has met with representatives of the "DPCI" who confirmed that the "DPCI" was indeed also in the process of investigating this matter. To that extent, the SARS and the "DPCI" have already established a solid and harmonious working relationship in respect of the criminal investigations against the two employees.