

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 2223 [NW2553E]
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2223. Mr D J Maynier (DA) to ask the Minister of Finance:

- (1) Whether, with reference to his replies to questions 1894 on 12 October 2016 and 1975 on 12 October 2016, the SA Revenue Service (SARS) had any (a) meetings and/or (b) communication with (i) him, (ii) the Financial Intelligence Centre (FIC) and/or (iii) any other (aa) organ of state and/or (bb) entity; if not, in each case, why not; if so, in each case, what was the (aaa) date and (bbb) purpose of each meeting and/or communication;
- (2) whether SARS experienced a lack of cooperation from the FIC while dealing with the specified matter; if so, what are the relevant details? NW2553E

REPLY:

In a previous parliamentary question 2139 [NW2456E], I indicated that there is a lack of accountability and cooperation from the South African Revenue Services top management. I therefore cannot place great reliance on the information that I have received from SARS, particularly in terms of this matter; however, I am able to provide the following in response:

- (1) (a) (i) Mr Moyane responded on the 27 October 2016 after a written request from me. Apart from this, SARS has not communicated with me further on the Makwakwa matter beyond what was reported in questions 1894 and 1975, both dated 12 October 2016.

As previously stated, Mr Moyane did not inform me about this matter prior to it appearing in the Sunday Times on 11 September 2016. A meeting was convened at my request on the 12 September 2016 regarding the Makwakwa matter, and thereafter correspondence was exchanged on the 14th and 16th of September 2016, to confirm and follow-up on the meeting. To date, apart from the letter dated 27 October 2016 from Mr Moyane, where he provided his Terms of Reference for the law firm Hogan Lovells (South Africa) Inc, to investigate and conduct disciplinary proceedings related to Mr Makwakwa and Ms Elskie, Mr Moyane has not provided any substantive report on this matter. However, Mr Moyane indicated in his letter that the law firm would conclude the first part of the investigation by 20 December 2016. By 22 December, I have not yet received any such report.

The Terms of Reference do not include the role of Mr Moyane in the Makwakwa matter. Mr Moyane stated in his letter dated 27 October 2016 that he does not accept responsibility for failing to timeously report the Makwakwa matter to the Minister of Finance (as the executive authority of SARS) prior to the 12 September 2016 meeting, as he expected the Financial Intelligence Centre (FIC) to do so. According to Mr Moyane "...the FIC is under a clear legislative mandate to report to..." the Minister of Finance "..... an investigation into Makwakwa's affairs, taking into consideration the public importance of the matter and Makwakwa's position within the SARS". Mr Moyane holds to this view, despite the fact that section 40 of the FIC Act prohibits the FIC from reporting such transactions or referrals, to the Minister of Finance or to any other person other than those permitted to receive such reports.

I will not say more on Mr Moyane's failure to act in terms of the FIC Act and other anti-corruption legislation at this stage. This matter is also subject to legal action as reported in the media (e.g. charges by Corruption Watch).

- (ii) I will not comment on any further communication between SARS and FIC but want to point out the following. I wrote to Mr Moyane on 23 September expressing my serious concern on a media statement issued by SARS stating that there was a lack of co-operation by the FIC on the Makwakwa matter (refer to SARS media release titled "SARS APPOINTS SENIOR EXECUTIVES TO ACT IN MAKWAKWA'S POSITION" dated 16 September 2016). I pointed out that as the executive authority for both the FIC and SARS, I would have expected that before launching a public attack on the FIC, that he would have first requested my intervention if indeed there were any problems of non-cooperation between SARS and FIC. I requested his explanation for the statement, including what impact such statement will have for their future working relationship, and the steps he intends to take to address such breakdown. On the 27th October 2016, more than a month later, Mr Moyane responded, denying "that there is a breakdown of the relationship between the SARS and the FIC" and states that he does not need any intervention from my office, and that his media statement is not a public attack on the FIC and "....does not constitute a drastic step".
- (iii) Mr Moyane has indicated to my office that SARS had a meeting with representatives from the Directorate for Priority Crimes Investigations (DPCI) on 27 September 2016. This meeting was convened subsequent to an email that had been sent to SARS by DPCI on 15 September 2016 regarding the DPCI investigation into the Makwakwa and Elskie matter. On 30 September 2016, SARS received a written confirmation from DPCI of the meeting that had taken place on 27 September 2016.

I have not had any explanation from Mr Moyane why he did not contact the DPCI or any other law enforcement agency immediately after Mr Moyane first became aware of the Makwakwa matter after receiving the FIC letter 17 May 2016. Instead, Mr Moyane did not do so for four months and only did so after he was contacted by the DPCI on 12 or 15 September after the media exposure. (I refer the Honourable Member to the SARS response on this matter in PQ 1976 [NW2287E])

- (2) It is my view that the key issue currently is not any problem related to a lack of co-operation between SARS and the FIC but how best to protect the reputation and integrity of SARS as a critical fiscal institution. The focus must remain on the investigation against Mr Makwakwa, by both SARS and the law enforcement authorities. The issue of co-operation between SARS and FIC is important but must be understood in terms of the role and function of the FIC in terms of the law. As Mr Moyane himself confirms in his letter dated 27th October 2016, there is no breakdown in relationship between SARS and the FIC. This is also the view of the Director of the FIC.

To protect the reputation and integrity of SARS, we need to know why Mr Moyane took more than four months to act effectively after he was first alerted to the Makwakwa matter by the FIC through a letter dated 17 May 2016 and to only act after this matter was exposed in the media. Further, why Mr Moyane takes no responsibility for failing to report timeously to his responsible Minister. Mr Moyane also needs to explain why he continued to allow Mr Makwakwa to remain in his position as part of his top management team, dealing with individual and corporate taxpayers and allowing him to represent SARS at hearings of the Standing Committee of Finance on 23 August 2016 and the Davis Tax Committee on 8 September 2016. These and other matters like that involving Mr Vlok Symington raise serious concerns about the stewardship of a vital fiscal institution. Further consideration will be given to substantially increase the accountability of the top SARS management for their actions and decisions.