****

**Comment on the Border Management Authority Bill**

The Durban Chamber of Commerce and Industry welcomes the opportunity to comment on the Border Management Bill. The Chamber acknowledges the need to have such a bill implemented given the many undesignated boarders leading to many illegal immigrants. However, such a bill needs further consideration in establishing the entity.

Research indicates that Canada is perhaps the only country with a single border agency. The Canada Border Services Agency was established in terms of the Canada Border Services Act to integrate the functions of customs, immigration and food inspection/biosecurity similar to what is proposed in the South African BMA Bill. The United Kingdom also established an integrated border agency in 2008 but it was abolished in 2013 and split into smaller and more focused structures due to the performance of the border agency “not being good enough” and it had developed into a “closed, secretive, and defensive culture”. From such findings, it is evident, an integrated border agency has proven internationally to be unsuccessful; it is therefore important that South Africa learns from these lessons and reconsider its proposal.

Consolidating all border management issues directly under one Ministry, in this case Department of Home Affairs, would be a mistake and detrimental to business. Combining the complexities of customs cargo control with that of immigration will if anything negatively impact on freight supply chains. SARS revenue collection responsibilities through Customs are critical to the financial well-being of the country. Furthermore, the collection of Duty and VAT on imported goods is a complex process that SARS have managed with a wide range of electronic interventions ranging from manifest control, declaration submission and risk management therefore tampering with the control or management of these systems would have serious consequences.

The Chamber supports the need for integrated and coordinated border management that facilitates secure travel and legitimate trade. This is critical to the functioning of the economy and for economic growth. However, it is important not to fragment that existing tax system. It is inappropriate to assign the collection of revenue of SARS to BMA. Tax authorities are established for a particular reason. SARS function extends beyond revenue collection and covers other functions such as control of goods at ports of entry, regulation and rulings, record keeping and returns, audits and investigation, dispute settlements, internal investigations and functions performed by the tax ombud. Therefore, BMA should not recreate a revenue collection infrastructure.

The fragmentation of the tax system will lead to the following, lack of clarity between SARS and BMA as to which entity should collect what taxes, this would compromise the certainty that taxpayers require as to the tax collection entity in respect to various or all taxes. The fragmentation of the tax collection may result in some tax not being collected or some tax payments by tax payers being duplicated. This will result to the integrity of the South African tax system being questioned. During the last week of August 2015, SARS prevented R 78 million of foreign currency from illegally exiting the country via the Oliver Tambo Airport. It is evident that the SARS collection functions and activities with regard to the control of goods at the ports of entry into South Africa have improved. These functions may be compromised, if the functions were to be transferred from SARS to BMA.

SARS has over time developed credible mechanisms of revenue collection, including employment and training of personnel to manage revenue collection. The integration of BMA in the tax collection may interfere with the fundamental mechanics of revenue collection, such mechanisms in which tax payers are already familiar with, as well as introduce personnel that are not equipped on revenue collection matters. At present some 2498 employees of SARS are involved in the implementation of SARS customs policies. It stands to reason that BMA will seek to absorb this staff when the Bill is implemented. In the event employees prefer to remain with SARS, BMA will be deprived of key skills to execute revenue collection. Therefore such a Bill indeed raises a concern in terms of skills and employment being compromised.

The Bill reveals that the assignment of the functions of SARS to the BMA is not strictly necessary to deliver on the key objectives of the Bill such as provide for the establishment, organisation, regulation, and control of the BMA, to provide for the transfer, assignment, and designation of law enforcement border related functions to the BMA and to provide for matters connected thereto. Furthermore, assignment of the functions of SARS to the BMA is not necessary to further the following purposes of the Agency, to perform border law enforcement functions within the borderline and at ports of entry, coordination of the implementation of its border law enforcement functions with the principal organs of state and may enter into protocols with those organs of state to do so and the provision of an enabling environment to facilitate legitimate trade.

Should SARS not have the capacity to serve the points of entry it would be more feasible to improve their infrastructure as opposed to fragmenting the tax collection system. It is important that the powers of tax administration remain with the Commissioner of SARS, if transferred it may be in conflict with Constitution of South Africa and contrary to TAA (Tax Administration Act).

According to the 2014 tax statistics by SARS the total of customs duties, import VAT and ad valorem import duties collection amounted to R 176.9 billion for the 2013- 14 fiscal year, approximately 19% of total revenue collected. Therefore, it is important to consider the timing of the Bill, especially at this critical time in South Africa’s economy.

The focus on the fundamentals of the economy namely employment and creation and maintenance of an environment conducive to successfully conducting business are imperative. Distorting the tax system may be costly and uncomfortable for business as many of their operations are already in line with specifications of SARS. It is important that the South African Tax system does not lose credibility as this will primarily impact the business environment resulting in uncertainty and doubt among businesses.

It is imperative that the mandate of the South African Police Services is not ignored. The current Bill has the potential to impact the performance and duties of the SAPS. The preamble does not mention the constitutional mandate of the SAPS in the border environment and fails to mention the fact that the SAPS is a single service and law enforcement is a SAPS primary function. Legitimate movement may be interrupted an illegal movement if not undertaken by experienced authority. Furthermore, the Bill mentions cooperation and coordination with other state organs in border law enforcement but once again does not mention the SAPS. The Bill indicates after an arrest has been made the person should be handed over to SAPS, however a procedure is not outlined. The Chamber acknowledges that the primary responsibility in the prevention and prosecution lies with the SAPS together with the Metropolitan Police. It is important to note that SAPS and Metropolitan Police are mandated and have the necessary expertise to carry out “zero tolerance policing strategies”. It is law enforcement authorities that ensure a safe and liveable City. Furthermore, law enforcement agencies ensure full coverage for South Africa’s geographical space through visibility, timely responses and decisiveness. Therefore they should be given a fair opportunity in participating in the enforcement of such a Bill.

The Chamber recommends the physical control of both export and import freight alone with revenue collection should remain with an independent Customs Authority (SARS) as is the case now but with legislated requirements for inter co-operation which would include both Department of Home Affairs and Border Police and other agencies. Similarly, SAPS who currently have security responsibilities at borders should be left in the hands of police management (SAPS) but with much improved inter agency communication and co-operation.

Furthermore, the Chamber feels that the co-operation between the public and private sector is non- negotiable and both parties will do more to facilitate meaningful discussion between Business and government particularly on issues on such a Bill. A sound strategy cannot separate one from the other and their interdependence is the very reason that any strategy needs to reflect strong co-operation and collaboration throughout the process of formulation.