



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

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Ref. M3/15/14 (1590/16)

Mr Malusi Gigaba, MP
Minister of Home Affairs
Private Bag X114
PRETORIA
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Dear Minister Gigaba

THE BORDER MANAGEMENT AUTHORITY BILL

I am writing on a way forward for the Border Management Authority Bill.

I am in full support on the need for an integrated and co-ordinated approach with regard to border management, where we seek to integrate operations and systems.

As you are aware, following the efforts of our two Directors-General, the Commissioner of SARS, as well as that of the Director-General of the Presidency, we do not have agreement on why the customs function must be moved out of SARS. The deliberations between the DHA, National Treasury and SARS thus far have emphasised the importance of ensuring that the integrated revenue and customs value chain is kept intact and that the legislation for the BMA provides certainty for the functions and operations of SARS. However, our officials are not able to deal with differences of principle on whether the customs function is to be moved or not, and whether Cabinet was made aware of the consequences of fragmenting the tax collection system and SARS.

The key concern that I have is that neither Cabinet nor the Treasury has been provided with any assessment on why customs has to be shifted away from SARS, and neither on what problems we are trying to solve related to the customs function at our ports of entry. More fundamentally, the movement of goods through our borders is critical for economic growth and trade, and it would be extremely risky at any time to do so. Further to do so without even consulting Member States of the Southern African Customs Union (SACU), who are dependent up to an estimated 97% of regional contributions to the Common Revenue Pool, is concerning. The absence of a public policy framework for the establishment of the BMA that could have addressed such matters, such as the white paper committed to by the former Minister of Home Affairs in December 2012, further hampers such a proper consideration.

The merging of customs and excise with inland revenue was one of the foundations for the establishment of SARS, following the first report of the Katz Commission appointed in 1994 by President Mandela. The Bill must in no way reverse the gains we have made since 1994, and also not generate uncertainty on the future functioning of SARS. Further, it must be noted that SARS is currently in the midst of a major customs modernisation project, following the enactment of new legislation on customs and excise in 2014.

It would seem imprudent to embark on, or continue with, a course of action with respect to customs in the absence of such assessment or policy framework as a guide.

Despite my request to delay the tabling of the Bill until a number of issues are resolved, as stated in my letter to you dated 13 June 2016, the Bill has been tabled and is currently before the Portfolio Committee on Home Affairs. We have been requested to provide a way forward in terms of the Bill, and resolve our differences. I have noted the changes pertaining to revenue collection proposed by your Director-General in his letter of 10 October 2016 and presented to the Portfolio Committee on Home Affairs on 12 October 2016. I am not in agreement with these proposals. It is my considered view that the only response that we need to agree on is that this matter should not be dealt with at all in the Bill, and that this matter be resolved in a way that directly provides for the certainty required for the credible and efficient functioning of SARS, *inter alia* through the insertion of the following provision in clause 2(3) in the Bill:

This Act does not apply to—

“the functions performed under customs and excise legislation and any tax Act, as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011)”.

The above proposed amendment may require consequential amendments to the Bill. Our respective legal advisers and the State Law Advisers should consult to make proposals for consideration by the Portfolio Committee.

It will then be left to ourselves as Ministers to assess progress made as the BMA develops, subject to budgetary and cost-savings measures that guide Government. I propose that one year after the BMA has been in operation we assess whether any changes relating to the BMA's role with respect to the custom function is appropriate. Then, any agreed changes that may need to be legislated in this regard should then be proposed in the annual tax administration legislation, through the Tax Administration Laws Amendment Bill.

I request that this letter be made available to the Chairperson of the Portfolio Committee on Home Affairs before its meeting on 18 October 2016.

Kind regards



PRAVIN J GORDHAN, MP
MINISTER

Date: 17 - 10 - 2016 -