[SARS Media Release](http://www.sars.gov.za/Media/MediaReleases/Pages/default.aspx) > 27 November 2017 - Moyane breaks silence on Makwakwa

 **PRETORIA, MONDAY 27 NOVEMBER 2017** - SARS notes with deep concern media reports spreading the allegation that there has been impropriety on the part of Commissioner Tom Moyane in dealing with the disciplinary investigation into Chief Officer: Business & Individual Taxes, Mr Jonas Makwakwa.

SARS finds it necessary to address the unsubstantiated tone and the blatant misrepresentation of facts. In fact, this is a predictable and monotonous media narrative that is aimed at casting aspersions on the integrity of the organization.

It will be appreciated for reportage and analysis to be balanced, fair and accurate. While SARS supports media freedom, we cannot allow such low standards of journalism to go unchallenged and wish to set the record straight.

Firstly, it is not true that Hogan Lovells did not investigate the Financial Intelligence Centre (FIC) suspicious transactions. Neither is it true that Hogan Lovells issued a media statement to that effect.

All transactions as per the FIC suspicious report were put to Mr Makwakwa to respond and he did. It was those responses which lead to Hogan Lovells concluding that an act of misconduct could not be found from the transactions and their sources.

SARS wishes to assist with a factual and chronological account of events. Mr Moyane received the Financial Intelligence Centre (FIC) Report in May 2016.

After seeking advice, he placed Mr Makwakwa on precautionary suspension on 15 September 2016 so as to investigate whether or not any possible misconduct may have been committed by Mr Makwakwa relating to the FIC report.

The firm Hogan Lovells, an international and renowned law firm, was appointed to conduct this investigation.

In essence, their mandate which clearly reflects in their terms of reference was to determine whether any misconduct had been committed by Mr Makwakwa and/or Ms Kelly-Anne Elskie in their capacity as SARS employees.

Whilst on suspension, Mr Makwakwa committed what SARS believed to be a breach of his suspension conditions. This arose from a telephone call he made on 13 January 2017 to a SARS employee regarding an active tax matter.

On 20 January 2017, whilst the main investigation was still ongoing and whilst on suspension, disciplinary charges were served on Makwakwa relating solely to this breach of his suspension conditions.

Hogan Lovells concluded its investigation based on the mandate stated above and delivered an investigation report to Mr Moyane in June 2017. The Hogan Lovells report concluded that there was no *prima facie* evidence that Mr Makwakwa had committed any misconduct in relation to the financial transactions emanating from the FIC report.

However, the recommendation was that Mr Makwakwa be charged for violating the SARS Conflict of Interest disclosure provisions as well as the SARS Code of Conduct.

A decision was then taken to expand the existing charges already served on Mr Makwakwa in January 2017 to include charges relating to the allegation of non-disclosure.

Mr Moyane appointed Advocate Terry Motau, SC, a senior counsel from the Johannesburg Bar, to chair the disciplinary enquiry with the guidance and assistance of Hogan Lovells.

The expanded enquiry concluded on 15 August 2017 and the outcome was received from the chairperson on 13 October 2017.

Accordingly, Mr Makwakwa was found not guilty of all charges. Contrary to media reports spreading the allegation that the processes were tainted and that Mr Moyane had a hand in allegedly tainting the processes, the above clearly demonstrates a patently fair, unbiased and independent process.

SARS is concerned that wide spread media reports seem to suggest that SARS erred by allowing Mr Makwakwa back into his employ given that there is a criminal matter pending. This assertion displays a lack of understanding of the difference between a misconduct investigation by an employer and a criminal investigation.

It is common knowledge that FIC – not SARS – referred the matter to the South African Police Service for an investigation on possible criminal acts.

Thus in September 2016, upon enquiry, Mr Moyane was advised by the Directorate for Priority Crime Investigation (DPCI) that an enquiry into Mr Makwakwa and Ms Elskie, arising from the FIC report, was on-going under enquiry number 03/06/2016.

In law, disciplinary proceedings and criminal proceedings are distinct and are governed by different legislation.

As an employer, Mr Moyane’s jurisdiction only goes as far as determining whether or not there is any misconduct related to the employment relationship. The responsibility to pursue criminal charges in a court of law lies with the National Prosecuting Authority based on investigations by the SAPS or DPCI.

Given the outcome of the SARS disciplinary process and the fact that no decision had been taken by DPCI on whether or not Mr Makwakwa should be criminally prosecuted at that time, Mr Moyane was advised that there was no legal justification for SARS not to lift Mr Makwakwa's suspension.

As a result, he was allowed to resume his duties with effect from 1 November 2017. Any other action would have amounted to a violation of Mr Makwakwa’s legal rights as an employee.

It is important to be aware that SARS’s rights have been reserved to initiate possible new internal disciplinary proceedings should the outcome of the criminal process dictate so.

SARS notes that the media reports seem to insinuate incorrectly that SARS has refused to release the report by Hogan Lovells.

Mr Moyane has sought legal guidance regarding the release of the FIC and Hogan Lovells investigation reports. The advice he has received suggests that a crime would be committed should these reports be made public.

Similar observations were made by the chairperson of Standing Committee of Finance (SCOF), Mr Yunus Carrim in his letter addressed to the Commissioner Moyane dated 6 November 2017, in which he noted the possibility that legal reasons may exist for the non-release of the reports.

To reach consensus and ensure closure on this matter, Mr Moyane has written to SCOF chairman Mr Carrim, making the following proposal:

\* That a team consisting of legal representatives from SARS, the National Assembly, Treasury and FIC meet urgently to collectively engage and agree on a seasoned Senior Counsel to deliver an opinion on the legal permissibility of disclosing the reports

\* That the National Assembly facilitate the process bearing in mind the urgency to get clarity on this matter.

The above detailed background and the process we are requesting of SCOF demonstrate our willing to always be transparent to the public so that we are forever beyond reproach.

As stated before, SARS has no objection to making these reports public, but as an organ of state would not want to violate the rights of an employee in doing so.

SARS is deeply concerned about apparent bias, irresponsible and mischievous attitude to cast aspersions on the character of the organization to perpetuate a negative narrative of an organization that is undermining the rule of law.

SARS finds it regrettable that some media reportage and analysis continues to promote the perception that an outstanding revenue collection agency is falling apart.