

## DRAFT STATEMENT OF MINISTER PRAVIN GORDHAN

### INTRODUCTION

1. I make this statement in response to the request for a “*warning statement*” made by Major General Ledwaba of the Directorate for Priority Crime Investigation in her letter of 21 August 2016. As I understand the letter, I am required to deal with two issues. The first is my role as the Commissioner of SARS in the establishment of an investigation unit in 2007. The second is my approval, as Minister of Finance, of Mr Ivan Pillay’s early retirement and re-appointment to SARS in early 2010.
2. I shall deal with both these matters. I am advised that my conduct was at all times entirely lawful. I will however not address matters of law because I have requested my attorneys to do so.

### THE SARS INVESTIGATION UNIT

3. I was the Commissioner of SARS from November 1999 until May 2009. I was Minister of Finance from May 2009 to May 2014, Minister of Co-operative Governance and Traditional Affairs from May 2014 to December 2015 and again Minister of Finance from December 2015.
4. Your questions relate to an investigation unit in SARS. This unit was part of the broader enforcement division of SARS – similar to the enforcement capabilities required in any tax and customs administration in the world. In the South African societal and economic context, SARS had developed a compliance approach which consisted of good service to the compliant taxpayers, increased education about the importance of paying tax to those entering the economy, and different types of



enforcement being utilised on the non-compliant taxpayers depending on the level of non-compliance. Non-compliance could include non-submission of a tax return, incorrect information on a tax return, different types of debt collection, aggressive tax avoidance, abuse of trusts, tax evasion, smuggling across borders, cigarette and other forms of illicit trade, trafficking of drugs, round-tripping to avoid excise duties and VAT etc.

5. A few thousand staff could be engaged in these forms of enforcement activity. Enforcement actions are more effective when they are guided by good risk assessments and information from various stakeholders. Relatively few staff are engaged with risk assessments – some twenty-odd in the instance of the unit in question.
6. The unit did not initially have a name but was later successively known as the Special Projects Unit, the National Research Group and the High-Risk Investigations Unit. I participated in the decision to establish the Unit in February 2007. The manager of the Unit reported to Mr Ivan Pillay in his capacity as General Manager: Enforcement and Risk. Mr Pillay in turn reported to me for as long as I was Commissioner of SARS until May 2009.
7. I believed that the Unit was lawfully established to perform very important functions for and on behalf of SARS. As far as I was aware, the Unit lawfully performed its functions. If it or any of its members engaged in unlawful activities then they did so without my knowledge or consent.



8. SARS was established by the South African Revenue Service Act 34 of 1997. Section 3 provides that its objectives are *"the efficient and effective (a) collection of revenue; and (b) control over the import, export, manufacture, movement, storage or use of certain goods"* including those subject to customs and excise duty.
9. Section 4(1)(a) of the SARS Act provides that SARS must *"secure the efficient and effective, and widest possible, enforcement"* of the tax laws listed in Schedule 1. Those tax laws have always vested SARS with wide powers for the investigation of tax matters including the investigation of crimes with tax implications. The wide scope of these powers is apparent from:
- sections 4 and 4A to 4D of the Customs and Excise Act 91 of 1964;
  - sections 74 and 74A to 74D of the Income Tax Act 58 of 1962 (before its amendment by the Tax Administration Act);
  - sections 57 and 57A to 57D of the Value-Added Tax Act 89 of 1991 (before its amendment by the Tax Administration Act); and
  - sections 40 to 66 of the Tax Administration Act 89 of 1991.
10. SARS has thus always had its own investigation and enforcement units engaged in a wide range of investigations including criminal investigations with tax implications.
11. The Unit was established against the background of government's commitment to crack down on crime generally and organised crime in particular. President Mbeki mentioned this commitment in his state of the nation address on 9 February 2007 when he said that government would, amongst other things,
- "• *start the process of further modernising the systems of the South African Revenue Services, especially in respect of border control, and*



*improve the work of the inter-departmental co-ordinating structures in this regard;*

- *intensify intelligence work with regard to organised crime, building on the successes that have been achieved in the last few months in dealing with cash-in-transit heists, drug trafficking and poaching of game and abalone”.*

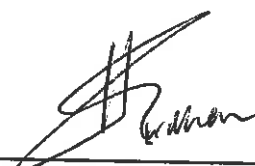
12. It became apparent to SARS that it had to enhance its capacity to gather intelligence of and investigate organised crime. It decided in about February 2007 to set up the Unit to penetrate and intercept the activities of tax and customs related crime syndicates. Its initial intention was to employ and train the members of the Unit and then to transfer them to the NIA where they would continue to function as a unit dedicated to SARS. The NIA, however, lost appetite for the project as a result of which SARS decided to retain the Unit within its Enforcement Division.
13. I was, in my capacity as Commissioner, the chief executive officer of SARS. Its staff complement at the time was about 15 000. The Unit with a staff complement of only 26 odd, was a miniscule part of SARS. My knowledge of its establishment, functions and operations was consequently very limited. Your questions moreover enquire about events of many years ago. My recollection of the detail of those events is inevitably patchy.
14. I firmly believed at all times that the establishment of the Unit was an entirely lawful extension of SARS's long-standing capacity to investigate tax-related crime. I still hold that belief and am advised that those who contend otherwise are mistaken.

## MR PILLAY'S EARLY RETIREMENT AND RE-APPOINTMENT

15. Mr Pillay took early retirement and was re-appointed when I was Minister of Finance. I seem to recall that it happened in early 2010.
  
16. The then Commissioner of SARS, Mr Oupa Magashula, addressed a memorandum to me on 12 August 2010, seeking my approval for Mr Pillay's early retirement and re-employment on a fixed term contract. I was told that Mr Pillay sought in this way to gain access to his pension fund to finance the education of his children. I understood that Mr Magashula had established from enquiries made with the Department of Public Service and Administration that the terms of Mr Pillay's early retirement and re-employment were lawful and not unusual. I approved Mr Magashula's proposal because I believed it to be entirely above board and because I thought it appropriate to recognise the invaluable work Mr Pillay had done in the transformation of SARS since 1995.

## CONCLUSION

17. I have nothing further to say in relation to these matters. If the Hawks however require any further assistance in good faith, I would be happy to assist.



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Pravin J Gordhan  
Minister of Finance  
23 August 2016