

Office of the Commissioner

**Legislative Policy Tax,
Customs and Excise**

Office
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Date
9 September 2020

Mr Bontshitswe P Mothopeng Msieleng
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South African Revenue Service

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Dear Mr Bontshitswe P Mothopeng Msieleng

**URGENT LETTER OF DEMAND: REQUEST FOR SARS TO REFUND
WITHIN 72 HOURS ALL VICTIMS THAT EXPERIENCE THE UNLAWFUL
FORCEFUL SARS DEBITS DURING LOCK-DOWN**

I write in initial response to your letter dated 7 September 2020, received by email on 8 September 2020.

I draw your attention to section 11(4) of the Tax Administration Act, 2011, which provides that; "Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner, unless the applicant has given the Commissioner written notice of at least 10 business day of the applicant's intention to institute the legal proceedings." The intent of this provision is clear. It enables the parties to ventilate the issues in an attempt to resolve them prior to the commitment of scarce resources on both sides to litigation.

The amount of R70 billion mentioned in paragraph 7 of your letter does not relate to funds that have been received by SARS. It relates to the estimated liquidity impact and revenue cost of certain COVID-19 relief measures administered by SARS. Further details on how the amount is made up are

available in National Treasury's media statement of 23 April 2020.¹ The specific relief measures are to be found the Disaster Management Tax Relief Bill, 2020,² the Disaster Management Tax Relief Administration Bill, 2020,³ rules issued by the Commissioner⁴ and sections 167 and 168 of the Tax Administration Act, 2011.⁵

As set out in the media statement, section 8 of the Employment Tax Incentive Act, 2013, the definitions of qualifying business and qualifying taxpayer in the Disaster Management Tax Relief Administration Bill, 2020, and the definitions of excise compliant and tax compliant in rules 19A.11(d) and 105.02(b), being tax compliant at the time relief is sought is essential to qualifying for many aspects of the relief.

Tax compliance includes the payment of outstanding tax debts or having made arrangements to pay outstanding tax debts. The importance of tax compliance is underscored by the issuance of a direction, by the Minister of Finance on 4 May 2020, that "essential financial services include services required to comply with an obligation imposed by or to exercise a right afforded in terms of a tax Act, as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) or the Customs and Excise Act, 1964 (Act No. 91 of 1964), whether provided by an external service provider or directly by a taxpayer, trader or an employee of a taxpayer or trader in respect of the taxpayer or trader's affairs."⁶ (Emphasis added.)

¹ Available at http://www.treasury.gov.za/comm_media/press/2020/20200423%20Media%20statement%20-%20Further%20tax%20measures%20to%20combat%20COVID-19.pdf

² Available at <https://www.sars.gov.za/AllDocs/LegalDoclib/Bills/LAPD-LPrep-Bill-2020-01a%20-%20Disaster%20Management%20Tax%20Relief%20Bill%20B11B%20of%202020%20introduced%2025%20August%202020.pdf>

³ Available at <https://www.sars.gov.za/AllDocs/LegalDoclib/Bills/LAPD-LPrep-Bill-2020-02a%20-%20Disaster%20Management%20Tax%20Relief%20Administration%20Bill%20B12B%20of%202020%20introduce d%2025%20August%202020.pdf>

⁴ Available at <https://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-CE-RA-2020-08%20-%20Notice%20R670%20GG%2043435%20for%20relief%20measures%20under%20the%20Customs%20and%20Excise%20Act%201964%20-%202012%20June%202020.pdf> and <https://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LSec-RA-2020-13%20-%20Notice%20R876%20GG43608%20Rule%2019A.11%20deferral%20period%20iro%20payments%20of%20Excise%20duties%20-%202011%20August%202020.pdf>

⁵ Available at <https://www.sars.gov.za/Legal/Primary-Legislation/Pages/default.aspx>

⁶ Available at [https://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-COVID19-GN-2020-03%20-%20Notice%20487%20GG%2043266%20Section%2027\(2\)%20of%20the%20Disaster%20Management%20Act%20-%20204%20May%202020.pdf](https://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-COVID19-GN-2020-03%20-%20Notice%20487%20GG%2043266%20Section%2027(2)%20of%20the%20Disaster%20Management%20Act%20-%20204%20May%202020.pdf)

The above contextualises the relief referred to in your letter, emphasises that tax compliance is a continuous process and demonstrates that the Tax Administration Act, 2011, contains provisions that may be applied on an individual basis.

You are, therefore, requested to amplify what actions of SARS you find objectionable, what regulations you believe have been contravened and what aspects of which judgments you believe have not been taken into account. You are also requested to indicate if you are acting for any specific taxpayers and, if so, you are requested to provide details of the taxpayers and their authority for you to act on their behalf, which should include written consent to disclose taxpayer information to you in terms of the provisions of section 69(6) of the Tax Administration Act, 2011, should this become necessary.

Correspondence in this regard should be directed to Mr Mahomed Latiff at MLatiff@sars.gov.za.

Yours sincerely

FRANZ TOMASEK

HEAD: LEGISLATIVE POLICY TAX, CUSTOMS AND EXCISE