

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

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1 [PROCEEDINGS ON 29 AUGUST 2018]
 2 [09:07] COMMISSIONER: Are we ready, Ms
 3 Steinberg? Thank you.
 4 MS STEINBERG: Morning Judge and panel.
 5 This morning we have a group from the National Treasury
 6 here headed by the DG and the Deputy DG and their team.
 7 Perhaps they can introduce themselves and their positions.
 8 We've asked the Treasury to come to talk on a range of
 9 topics. We've heard quite a bit about the committee called
 10 RAWC that sets the revenue targets and they're going to be
 11 telling us about that but also the philosophy behind that.
 12 They're going to be talking about tax policy and their
 13 approach to it generally. They're also going to be looking
 14 at the figures over the last few years in order to identify
 15 what is causing the shortfall in collection and they're
 16 also going to make some comments about the new Customs Bill
 17 that's currently before Parliament and the NCOP. So it's a
 18 range of topics. We'll take them one by one but perhaps we
 19 can start with the Treasury introducing themselves.
 20 COMMISSIONER: Thank you, ja. Thank you.
 21 Could you do so?
 22 MR MAGAJANE: Thank you Judge. Good
 23 morning Judge and panel. Good morning colleagues. My name
 24 is Dondo Magajane. I'm the Director General National
 25 Treasury.

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1 MR MOMONIAT: Ismail Momoniat. I'm the
 2 Deputy Director General responsible for tax and financial
 3 sector policy. And morning to Judge and panel here.
 4 MS MPUA: Yanga Mputa. Chief Director
 5 Legal Tax, National Treasury.
 6 MR AXELSON: Chris Axelson. I'm the
 7 acting Chief Director for economic tax analysis at National
 8 Treasury.
 9 COMMISSIONER: Do they need to be put
 10 under -
 11 MS STEINBERG: Doesn't harm.
 12 COMMISSIONER: It never does harm. I
 13 wonder if you could just state your name for the record.
 14 MR MAGAJANE: Dondo Magajane.
 15 COMMISSIONER: Now do you affirm that
 16 what you will tell us will be the truth, the whole truth
 17 and nothing but the truth? If so will you say I do?
 18 EVIDENCE OF MR MAGAJANE, MR MOMONIAT, MR AXELSON,
 19 MS MPUA
 20 DONDO MAGAJANE: I do.
 21 MS STEINBERG: DG, I believe you're going
 22 to make a couple of opening remarks.
 23 MR MAGAJANE: Yes thank you very much.
 24 Maybe Advocate Steinberg, let me just correct right at the
 25 beginning. You said the RAWC, the revenue analysis working

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1 committee sets targets. It does not set targets. We
 2 basically do estimates and forecasts, so I just thought let
 3 me clear that right at the beginning. Thank you very much
 4 for firstly giving us the opportunity to present to you
 5 what we do. So I will start generally by just making some
 6 opening remarks around our relationship, National
 7 Treasury's relationship with SARS and how we connect and
 8 also make just a few remarks around broad issues around how
 9 we set up the budget process and finally agreeing on
 10 numbers that finally we can put in the budget meaning in
 11 the MTBPS in October or in the budget in February. Maybe
 12 let me start by saying that we are generally not privy to
 13 internal SARS information in terms of its operations, day
 14 to day operations, we may not necessarily be privy to that
 15 information unless provided so by SARS or through the
 16 Ministry in terms of the monthly reports that they would
 17 have issued to the Ministry only insofar as our work is
 18 concerned and nothing else.
 19 Secondly, taxpayer information is confidential
 20 and neither the Minister nor ourselves, staff, National
 21 Treasury officials have sight of any such info because it's
 22 therefore regarded as confidential. Thirdly we only
 23 discuss categories of taxpayers in general approach or
 24 enforcement with them in our various engagements at various
 25 levels. Treasury can only be of such info as supplied by

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1 them as I said, SARS, including the management meetings
 2 with the Minister, revenue collection processes,
 3 interactions around budget and post-budget process related
 4 to legislation and consultations around the raised bills,
 5 tax loss amendment bill and such bills, etcetera that would
 6 form part of the budget process.
 7 Taxpayer media may approach Treasury over various
 8 concerns which we pass onto SARS. We, if you ask us about
 9 any specific information related to taxpayer information or
 10 whatever, we would not know, including any other query
 11 other than tax policy issues, we would pass them onto SARS.
 12 It is only therefore the Commission as it's sitting now
 13 that you can verify whether SARS acted on such concerns or
 14 stories as you may pick up in the media in relation to
 15 their operations and in relation to the internal dealings
 16 at SARS, so we may not necessarily be in a position to
 17 spell that out.
 18 Now I thought I must put this slide up right at
 19 the beginning. This is a slide that normally would, we
 20 publish the slide during the budget. These are the
 21 estimates that you put in budget 2018 and the reason I'm
 22 putting this is to show the relationship between revenues
 23 and what the macro picture can look like, if revenue
 24 targets are not met, if revenues are not, in terms of what
 25 our wishes are, we may find ourselves in a situation where

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1 we have to look at such scenarios. One, if you look at the
 2 top line, Judge and panel, the top line is what we
 3 presented last year at the medium term budget policy
 4 statement where we said our gross debt to GDP ratio can
 5 easily reach up to 63.3%. At that time it was largely
 6 informed by the under collection that we were projecting at
 7 the time. I think at the time we were talking 50 billion
 8 under collection tax revenues. So at the time we went to
 9 Parliament, we said Parliament, we are in trouble. We're
 10 projecting that if things stand as the way they were in
 11 October of last year our debt to GDP ratio in 2021/21/22
 12 will reach 60.8%. At the time the rating agencies, at the
 13 time investor community, South Africans at large had a lot
 14 to actually say about an unsustainable framework as we
 15 presented it. We revised that after some work that we put
 16 around on the expenditure side, cutting expenditures, re-
 17 adjusting budgets, we came up with a very reasonable
 18 estimates in the 2018 budget, then there's the middle line
 19 where our debt to GDP ratio was going to peak at around 55,
 20 56% of debt to GDP. Acceptable it bought us some space.
 21 Thirdly, the last, the 2017 budget that was last
 22 year, we were showing a trajectory where we were making
 23 certain assumptions around our revenue targets. Now if you
 24 look at all these three scenarios revenue collection and
 25 revenue targets are an important factor, sorry estimates –

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1 are an important –
 2 MS STEINBERG: DG it's not targets, it's
 3 estimates.
 4 MR MAGAJANE: Thank you, thank you very
 5 much. So these estimates and forecasts are critical.
 6 What's critical an underlying factor there is the revenue
 7 numbers. So I thought I must put this up and show you that
 8 if revenue points in a particular direction it has got a
 9 huge impact in terms of our standing and our macro standing
 10 in terms of what we're projecting. The third slide –
 11 MS STEINBERG: I'm sorry, can I interrupt
 12 you for a moment?
 13 MR MAGAJANE: Yes.
 14 MS STEINBERG: I have your submission
 15 which, and I thank you for that but I don't have a copy of
 16 the slides. It makes it a bit difficult for me to lead the
 17 evidence.
 18 MR MAGAJANE: I'm sorry for that.
 19 MS STEINBERG: Please carry on.
 20 MR MAGAJANE: Thank you. Slide 3 again
 21 it's information again talking about expenditures and
 22 revenues, non-interest spending. We're putting estimates
 23 from 2005. Now in 2005 the black line depicts revenue
 24 estimates and actuals in the previous financial years.
 25 Revenue as a percentage of GDP was around 25 or so percent

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1 and non-interest was at 22. Now you can imagine if that's
 2 the case, if you are collecting more than what you're
 3 spending, what effectively it means, and government then
 4 beefed up or government accelerated its spending meaning in
 5 those years, the years of plenty I call them most of the
 6 time, we embarked on a very, very expansive expenditure
 7 drive meaning increasing more services, the child support
 8 grant estimates and changes were introduced, different
 9 categories, we ramped up spending in various, various
 10 areas. But the 2008/2009 financial crisis hit us. Now we
 11 were already accelerating revenue at different levels.
 12 Now when the financial crisis hit us that year I
 13 think it must have been R66 billion that we got hit all
 14 because of the global financial crisis in that financial
 15 2008/2009 dropping to just a little bit above 22% of GDP.
 16 Now to maintain the interest, I mean to maintain non-
 17 interest spending to high levels, because you cannot say
 18 all of a sudden because of a dip in revenue we are reducing
 19 salaries, we are cutting school building programmes, we are
 20 cutting hospital building programmes, we have to, or we had
 21 to as government sustain spending at high levels as you can
 22 see there. Now what it meant, it means for us to, for the
 23 gap to close the gap between the red and the black line it,
 24 effectively it means then you must borrow more or you must
 25 collect more. If you don't collect more, then obviously

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1 the first slide that I showed is a factor. It comes in
 2 because it means your debt to GDP increases so again I'm
 3 putting this slide to show you how interested is, how
 4 interested is Treasury in the revenue, on the revenue side?
 5 How interested are we that that revenue side, which is not
 6 only, in this case it's a combination of both debt and tax
 7 collections, but the point I'm making to the Commission
 8 this morning is that we are very much interested in that
 9 revenue number increasing so that we are able to (1) reduce
 10 the debt to GDP or even maintain our tax to GDP at
 11 acceptable levels.
 12 Now this slide is, any economics 101 student
 13 would know what this slide is, what is the definition of
 14 GDP. Again I'm explaining the same point in a different
 15 way. GDP is because you're spending plus government plus
 16 interest, exports minus imports. Now your tax to GDP, your
 17 revenue collections, if you don't have enough your G part
 18 it cannot be increased. If your G is your grey area. The
 19 idea is that government can ignite the economy in a
 20 particular way, in many ways. And the equation as it is,
 21 is that if you collect more your GDP then increases or tax
 22 revenue increases, you are able to spend more. So again a
 23 very functioning economy, a very functioning SARS, a very
 24 functioning collection agency make it easy for the G part
 25 to actually increase in ways that can easily make our life

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1 much, much easy as the Treasury and as government as a
 2 whole.
 3 So those are just general points, Judge I thought
 4 I should make just so that we put the context of the
 5 importance of revenue collection and importance of an
 6 efficient revenue administration that we're not found
 7 wanting when we have to deal with issues around spending,
 8 issues around revenues, etcetera.
 9 The next slide, I'm explaining here that SARS and
 10 Treasury has got very, we relate with Treasury, I mean with
 11 SARS in various ways. Minister of Finance as we all know
 12 is the executive authority. SARS does not – and I must
 13 emphasise this – SARS does not report to the Department of
 14 Treasury or to myself as DG as is in the case with other
 15 entities relevant to the Minister. So the relationship
 16 with the Commissioner of SARS and the DG of the Treasury,
 17 these are colleagues, these are, Commissioner is the same
 18 as a DG, there's no difference but in terms of our mandate
 19 obviously there's a difference that their status in the
 20 Ministry of Finance family, the DG of the Treasury and the
 21 SARS Commissioner would be at equal levels in terms of
 22 standing insofar as the relationship with the Ministry is
 23 concerned.
 24 For instance as an example, on a monthly basis,
 25 first Monday of every month I will have, my team and I will

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1 have a meeting with the Minister of Finance in our capacity
 2 as National Treasury. If it's scheduled the same day, it
 3 used to be like that, in the morning it will be SARS or
 4 Treasury, in the afternoon it will be SARS again or
 5 Treasury and I would not as DG of the National Treasury sit
 6 in the management meeting of SARS with the Minister
 7 including in SARS management. So these are two different
 8 entities and they only relate and engage in matters that I
 9 will explain in the next bullet. So as I say we relate in
 10 many ways and various divisions, most of which are
 11 delegated by the DG, by the Minister to various DDGs in
 12 this case insofar as tax policy matters, some delegations
 13 goes to Mr Momoniat on my right. So 1, is that tax and
 14 financial sector policy division on tax and revenue issues
 15 and elaborate engagement with SARS on various, including on
 16 the RAWC that Advocate Steinberg you referred to earlier,
 17 the revenue analysis working committee which Mr Momoniat
 18 chairs and we'll talk about that more later.
 19 There's also a division in Treasury called public
 20 finance and corporate affairs. This is now on the SARS
 21 budget. SARS gets a transfer from the National Treasury.
 22 The budget of SARS as an institution for their own
 23 operations and capital requirements would be voted in SARS
 24 and would pass it onto them as a transfer and that
 25 engagement is between the corporate services, the CFO and

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1 the DDG corporate services insofar as their budget
 2 estimates for the following financial year, things that
 3 they want to do, whether they want to employ more people,
 4 they want to buy computers, whatever, they will engage with
 5 corporate affairs or corporate division, and public
 6 finance. Public finance is responsible for the whole of
 7 government in terms of how it's clustered. There's a
 8 division in public finance there that looks after the
 9 centre of government departments. National Treasury,
 10 Presidency, COPTA, the DPSA, DPME, so the budgets of these
 11 departments that I've listed will be managed or will be
 12 engaged with by the public finance division, so de facto it
 13 therefore means if SARS is in Treasury and Treasury is in
 14 the central government department, then public finance
 15 division, and we've got Gillian Wilson in the audience
 16 who's the Chief Director who is responsible for all these
 17 five different centre of government departments.
 18 So in her case and with the corporate services
 19 they would have engagements with SARS on the budget. For
 20 instance last year we went to SARS as Treasury, as part of
 21 the budget estimates that you are putting and saying we are
 22 cutting your budget by a billion. So the engagements would
 23 be between SARS and public finance and corporate division
 24 in the Treasury. Those of Accountant General for national
 25 revenue because you know Financial Revenue fund and

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1 accounting services, they would obviously engage with SARS
 2 very minimally on matters like those. The assets and
 3 liability management division of the Treasury will also
 4 engage with SARS on cash flow management. There's a cash
 5 management department there that Johan Redelinghuys runs on
 6 our behalf. He will have continuous engagements in terms
 7 of collections, SARS collect, because remember SARS
 8 collects, we spend. So Johan's cash flow that he puts out
 9 on an annual basis should be informed by how SARS collects
 10 and when SARS collects.
 11 Now you can imagine if – and Johan has been doing
 12 this thing for more than 30 years or so in the Treasury.
 13 He would have an idea that in June or November so much
 14 should be coming from SARS. Now if there's any impact that
 15 impacts on what the expectations are from a cash flow
 16 management point of view then we'll have a problem in
 17 funding government expenditure because how we fund it is
 18 that there's a schedule of payments that provinces,
 19 equitable share, transfers to municipalities, transfers to
 20 departments, all of that is scheduled and all of that is
 21 agreed upfront before the financial year starts. So it is
 22 therefore in our interests that every small little thing
 23 that happens in SARS from a tax administration point of
 24 view that that is not impacted.
 25 How much you are going to borrow for the year we

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1 put it up front, like this year maximum of I think 200
 2 billion, 180, R200 billion that you're going, that will go
 3 into the market to pay for debt interest payments. Now you
 4 can imagine if we are not able to collect that enough. It
 5 means therefore the estimates that we set for this year we
 6 are going to collect, say, we can get the details later in
 7 the actual numbers. If your budget for South Africa as it
 8 is now is 1.4 trillion SARS is going to collect 1.1
 9 trillion and 300 billion is going to be sourced from the
 10 debt market and SARS collect less than that.
 11 [09:27] You can imagine what, if SARS collects a trillion
 12 and we are expected to collect R100 billion more
 13 effectively it means you will pay far more than what you
 14 budgeted for in interest and a whole lot of things. So
 15 again I'm just amplifying the point that it is important
 16 that a functioning SARS, part of the functioning tax
 17 administration is in line with what we've estimated in our
 18 budget document.
 19 The chief procurement office will also engage
 20 with SARS on various procurement issues. Whether SARS
 21 wants to deviate from a procurement, you know PFMA, whether
 22 SARS wants to be exempted in certain provisions there will
 23 be that onward engagement. There's also a GTAC which is
 24 Government Technical Advisory Centre which is a government
 25 component within the National Treasury. It will obviously

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1 engage with SARS on various issues around technical advice
 2 and if there's need for SARS to embark on any PPE
 3 arrangements if need be.
 4 SARS will meet with the DG or myself or Minister
 5 for key policy issues. For instance the upcoming budgets,
 6 we will engage SARS and top management a few days before
 7 the final budget speech is put together or the final MTF
 8 speech is put together and we'll have those engagements but
 9 your general day to day administration will be from the,
 10 from the tax and financial sector policies headed by Mr
 11 Momoniat and you can talk about that later.
 12 Now the contents slide is what again we are going
 13 to focus on from now. Why do we do tax? I think this
 14 question is very important and I've explained in many ways.
 15 Tax system provides underlying resources for development
 16 and nation building. I cannot overemphasise that and the
 17 key principles as we all know is around equity, efficiency,
 18 tax buoyancy, transparency and certainty, simplicity and
 19 expenditure efficiency and effectiveness on agreed policies
 20 broadly but the major objectives is to raise revenue,
 21 redistribution of you know, correct market failures if
 22 there are any. Support economic policy objectives and also
 23 encourage some behavioural changes where possible.
 24 Discourage consumption of products with negative social
 25 impacts. People talk about sin tax every year, we do that

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1 for various reasons and etcetera.
 2 So that would be why and broadly and indeed you
 3 know it depending as to where you're standing from where
 4 you're coming from, one can explain that further in terms
 5 of why is it necessary for taxes to be collected. Now
 6 again we thought it's important for the Commission just to
 7 briefly have a brief understanding of our budget process
 8 and the key deadlines that are crucial as we embark on any
 9 budget process for any given financial year. The budget
 10 process for any, for any budget the following year starts
 11 around ten months before the February budget around May.
 12 Around May June we will issue what we call budget
 13 guidelines. These guidelines will be to all government
 14 entities and public entities outlining various, you know
 15 issues that we want, as they prepare the budget for the
 16 following year that they must take, it will give certain
 17 precepts around what exchange rate assumptions to be
 18 putting in place. We'll put certain new formats if you're
 19 introducing new formats in terms of programme strategy,
 20 etcetera. All of that will be outlined around May, right
 21 at the beginning of the year.
 22 Now of late we also, in the last two years we've
 23 been engaging with presidency on the budget mandate paper.
 24 This is more on the priority side as to what will be the
 25 priorities of government in the following year. There will

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1 be various Minister committee on the budget, MINCOM
 2 meetings involving ministers. These committees have
 3 subcommittee of cabinet chaired by the Minister of Finance
 4 and various ministers from various departments about
 5 eight or so ministers will be part of the MINCOM BAT
 6 meetings and their essential task is to make
 7 recommendations to cabinet. Now MINCOM BAT has got a
 8 support behind it which is the Treasury processes around
 9 the budget. We are in, medium term expenditure, there's
 10 some committee called the Medium Term Expenditure Committee
 11 chaired by the DG of the National Treasury. The main
 12 members of the Medium Term Expenditure Committee would be
 13 the presidency, DPME, COCTA, DPSA and a few other DDGs in
 14 the Treasury who obviously form part of this Medium Term
 15 Expenditure Committee. Which is also a subcommittee of the
 16 Ministers Committee on the budget and that committee
 17 essential is to engage with departments, it's to engage
 18 with proposals coming from department finally leading into
 19 the budget and into a recommendations that finally we'll
 20 get onto be announced by eh Minister of Finance in any
 21 given year in February.
 22 So there are various sets and these are all
 23 upfront sets. The meetings are set in advance. These
 24 budget guidelines for instance that we issue in May will
 25 set up various fora that actually all of the budget

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1 proposal must go through before a budget can be passed.
 2 There's also extended cabinet with premiers, extended
 3 cabinet committee essentially sits around September. In
 4 this case it's cabinet including nine MECs for finance and
 5 nine premiers. Whereby the final recommendations that
 6 should go into the medium term budget policy statement in
 7 October and finally into the budget will obviously, it's
 8 basically it's a consultative forum on various division of
 9 revenues.

10 Now all of these things is, this will be based on
 11 estimates that the revenue analysis working committee, at
 12 least on the revenue side and Mr Momoniat will talk about
 13 that later. The medium term budget policy statement it's
 14 been traditional in the last 20 past years that it will be
 15 around the third week in October. The markets and everyone
 16 expect that and again around that time we would have almost
 17 firmed up estimates and forecasts that we can present, that
 18 can lay the basis for the budgets in February and then
 19 obviously the financial year starts and after that, after
 20 the budget is presented. There's always three processes
 21 running at the same time in looking at past year budgets,
 22 preparation of audit financial statements, looking at the
 23 current budgets and the implementations therefore and next
 24 year's budget. So all of these things run at the same time
 25 and that's where you know the exciting part is that you

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1 know in our space as finance, public finance specialists
 2 and officials is that we're able to do all of these things
 3 at the same time, you know it's looking at past year, your
 4 closing books by 31st of August all of this must be closed
 5 and you are in the current year, you're looking at the
 6 expenditure, you are questioning expenditure. And at the
 7 same time you are also looking at next year's budget and
 8 all of these happens around the same time and various other
 9 processes and that's why the delegations are spread through
 10 the system because alone one would not be able to do all of
 11 these and that's where now even when we, no one is watching
 12 that they will quietly there will be discussions on the
 13 revenue side with SARS on issues for next year when all
 14 other things are happening. So all of these things happen
 15 at the same time.

16 The tax process obviously is different to
 17 expenditure and all I've explained to date, to up to now is
 18 on the expenditure side. With the tax it's a bit different
 19 because imagine if, you know there's 20 people in a room
 20 and you are deciding as to which tax category, what are you
 21 going to increase. So we normally keep tax revenue issues
 22 very confined to certain individuals in the Treasury
 23 confined to very, not even cabinet would be aware, right
 24 towards the end what exactly tax proposals are being put in
 25 place so we keep this very tight and it's actually a very,

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1 very informed process and Mr Momoniat will explain that
 2 process later. The tax process commence much later in the
 3 year, just before, around now, later and that's where
 4 various other engagements happen and we look at the revenue
 5 gaps and what's needed to be filled into, into the next
 6 budget. Again this slide is again explained the budget
 7 process. We publish the fiscal framework in the budget in
 8 February and in the medium term budget policy statement in
 9 October of each year. An example of such is consolidated
 10 framework that we will published is there for you to see.
 11 In there we show again the, you know the budget balances,
 12 whether we are budgeting for a deficit or a surplus and
 13 what kind of revenue estimates and expenditure estimates
 14 are we talking about and those are in italics in the table
 15 there.

16 The fiscal framework sets out fiscal position of
 17 government with projections over the next three years for
 18 revenues and for expenditure where the projections are
 19 known and these projections are known as medium term
 20 expenditure framework. The revenue and expenditure
 21 estimates are critical to determine the sustainability of
 22 the country's finances through the budget balance and the
 23 debt to GDP ratio as I explained earlier on. Revenue
 24 estimates are on the main in, are one of the main inputs in
 25 helping to determine the level of government expenditure

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1 over the medium term, the focus that's vital for the
 2 functioning of government and this is, this is a statement
 3 that I've been making right from the beginning that the
 4 forecast, revenue forecasts are very critical in the
 5 functioning of government because you are either, you can
 6 either make or break government if you don't meet your
 7 targets, if you don't meet your revenue estimates because
 8 all your matrixes would be thrown out of the window if we
 9 are not able to actually be almost correct in terms of your
 10 forecasts. There are various meetings between us and the
 11 SARS leadership over budget proposals as I said, and I'm
 12 saying there in normal times many meetings on tax will take
 13 place from December to February at the final stage for
 14 preparing the budget for the next financial year. Meetings
 15 called by the Minister to discuss tax proposals would
 16 involve both MT and SARS leadership and various DDGs from
 17 Treasury and myself and the Commission and key tax
 18 officials will necessarily and even those that are not
 19 necessarily from Exco will obviously engage in trying to
 20 look at what, what broad proposals should be looking at.
 21 We'll also call for various discussions to sign off on
 22 budget review chapters. Chapter 4 basically is a chapter
 23 that looks at tax issues, annexure B and C involving the
 24 Treasury and various tables that are part of the, now I
 25 have you know Judge, budget review we have, this budget

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1 review we produce every year at the time of the budget and
 2 we, lots of information is here including the medium term
 3 budget policy statement. We produce a smaller version of
 4 the budget review against estimates, revenue estimates and
 5 updated fiscal framework. SARS will produce jointly with
 6 ourselves some tax statistics again around the budget and
 7 obviously our consolidated financial statements whereby we
 8 just show actuals for the previous financial year. So
 9 these documents are quite critical in that, in the way they
 10 are put together, the correctness of the information that
 11 there is and by the way our legitimacy as a country is
 12 determined by what is in those documents. I mean for the
 13 past ten years, in fact even more than that, you know we
 14 have been either number 1 or number 2 in the open budget
 15 index in the world, not only in Africa but in the whole
 16 world. Last year we were second to Australia in terms of
 17 our -

18 MR AXELSON: New Zealand.
 19 MR MAGAJANE: New Zealand, sorry in terms
 20 of how we put our budget information together, the
 21 transparency of our budget -

22 MR AXELSON: This year we're number 1.
 23 MR MAGAJANE: Oh yes, actually there's a
 24 function, ja, ja. So we are doing well all because, and we
 25 are really and this is another tool as a Treasury that we

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1 use to engage with the public in a way that we are
 2 transparent in the way we manage our public finances
 3 including the kind of revenue estimates that we put in
 4 there and which are critical for this Commission.
 5 In recent years preparations for 16, 17 and 18
 6 budgets involved less or no participation than normal from
 7 the Commissioner in the way that we are accustomed to. It
 8 is again, you know Mr Momoniat will explain in detail what
 9 that bullet means and why in particular in 16, 17 and 18
 10 because it is in these years that clearly the, you know the
 11 challenges we began to see challenges in the way we engage
 12 as a Treasury insofar as our relationship was and works.
 13 But at lower levels between tax policy division and SARS
 14 it's meeting still took place, the RAWC discussions, RAWC
 15 by the way is not between ourselves and SARS, revenue
 16 analysis working committee comprises of officials from
 17 Treasury and various divisions in the Treasury. There will
 18 be colleagues from the economic policy, the economics from
 19 public finance, colleagues from budget office. Some people
 20 normally say Judge that the Treasury, you've got many
 21 treasuries in the Treasury. So these three divisions you
 22 know obviously have got a separate mandate in law in terms
 23 of what they do all under the banner of the National
 24 Treasury. So they'll form part of the revenue analysis
 25 working committee including SARS and including the Reserve

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1 Bank, South African Reserve Bank. Now I think at this
 2 point I'm going to ask Mr Momoniat to, with your permission
 3 Judge and Advocates, for Mr Momoniat to take us through
 4 from what I mentioned, the interaction that I was
 5 mentioning in one of the bullets before this slide whereby
 6 I said preparations during 16, 17 and 18 budget were less
 7 than desirable in the way we engaged and Mr Momoniat will
 8 take us through. Axelson and Ms Mputa will come in later
 9 also in terms of various sections and that's who we thought
 10 we'll go through our presentation. Thank you very much.

11 MR KAHLA: Just a clarity question on my
 12 side to you, Mr Magajane. On that last slide that you took
 13 us through where you deal with lesser, no participation
 14 than normal from Commissioner and Exco, is that, is Exco
 15 there in reference to SARS Exco?

16 MR MAGAJANE: Yes, yes, yes, yes, Sir.
 17 MR MOMONIAT: So I can elaborate on some
 18 of those, DG also came in last year so we are going to a
 19 period even before.

20 PROF KATZ: Sorry can I just ask one
 21 question. All of this process you've mentioned, is that
 22 legislated, is there regulations pursuant to what does this
 23 whole process take place?

24 MR MAGAJANE: This whole process takes
 25 place because there are various, we issue practice notes

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1 and PFMA allows us to do that. The PFMA allows us to issue
 2 instruction notes, Treasury instructions and also
 3 guidelines. So all of this is finding expression in the
 4 PFMA in terms of how we have to regulate the process that
 5 I've outlined.

6 PROF KATZ: So the whole process you
 7 outlined, DG would find its place in guidelines?

8 MR MAGAJANE: Yes.
 9 MR MOMONIAT: So Judge I don't know -
 10 COMMISSIONER: I suspect -
 11 MR MOMONIAT: Do you want me to also -
 12 COMMISSIONER: You know looking at this I
 13 don't think it's a, I think this is all guesswork. So you
 14 don't have to take an oath.

15 MR MOMONIAT: I don't mind taking the
 16 oath.
 17 COMMISSIONER: It's not guesswork, I'm
 18 saying it's not hard fact.
 19 MR MOMONIAT: That's fine, okay and maybe
 20 just to elaborate on the question, just to start off that
 21 Professor Katz has raised. I mean you've got the PFMA
 22 which outline broadly, you know by when we have to budget,
 23 submit the annual budget and so on. But like the DG says
 24 there's a lot of practice notes, guidelines. Not
 25 everything is written up So if you take the revenue side of

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1 the budget these are practices that have developed over 20
 2 years from the, especially 1997 when Minister Manuel came
 3 in as Minister of Finance. It became the practice of how
 4 we work and how we prepare for the budget and it's so, so
 5 it's quite established as a practice certainly and we could
 6 certainly, we always say we need to write it up a bit more
 7 but if you test Treasury officials it's like part of their
 8 DNA. They know exactly how it works.
 9 COMMISSIONER: I suppose a lot of it is
 10 really just conventions that get built up over the years.
 11 MR MOMONIAT: Yes.
 12 COMMISSIONER: That are practical and it
 13 requires co-operation between Treasury and SARS, both
 14 seeking the same goal.
 15 MR MOMONIAT: Yes.
 16 COMMISSIONER: But you can't write all
 17 this down, I mean this is how one goes about one's work and
 18 it changes from time to time I'm sure and you build up
 19 practices that work.
 20 MR MOMONIAT: Yes, and that's why even in
 21 making our submissions it's like where do we stop.
 22 COMMISSIONER: Yes.
 23 MR MOMONIAT: It's just a lot, too much
 24 to write and I think sometimes it's easier just to take
 25 questions.

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1 COMMISSIONER: And it's a, ja, and you
 2 know we were told we had a short meeting with Mr Gigaba
 3 recently and asked him about this relationship between SARS
 4 and Treasury and I think quite frankly he hit the nail on
 5 the head and he'll come and tell us, later this week. He
 6 said that this requires mature leadership from the two
 7 organisations. You can't write it down, you can't say that
 8 you must do this, you must do that, the law must, you
 9 require mature leadership to try and cooperate in achieving
 10 these joint goals. I would have thought that that's really
 11 the point of it all, isn't it?
 12 MR MOMONIAT: And it needs to be, not
 13 just mature and very co-operative where all players come in
 14 and there's also, I would say healthy tension in these
 15 relationships so, but the DG can come in but like certainly
 16 when you are allocating funds to departments, they want
 17 more, we will hardly ever say we'll double the amount they
 18 want. So you know they don't always, they're not happy and
 19 there's got to be a maturity in understanding the broad
 20 objectives and going back to what the DG said.
 21 [09:47] You have got your debt to GDP, there is only so
 22 much revenue you raise. Demands always exceed resources so
 23 on the one hand you have that. With regard to the tax side
 24 certainly you know it's a much smaller collection of people
 25 involved. It's basically Treasury, SARS, the Reserve Bank

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1 comes in just from macro forecast. So it's rare that we
 2 have to go to other departments because they're not
 3 involved in revenue collection. In fact most departments
 4 don't care where the money comes from. As long as the
 5 money is there they're happy okay. And this year when we
 6 had to have a way to increase because the gap, the revenue
 7 gap was large. We needed one of the major taxes to be
 8 raised. In this case VAT and certainly the last three or
 9 four years that's been the pattern that we've had
 10 significantly less revenue than what we needed on the
 11 spending side. And so we had to take measures either to
 12 increase most of your personal income tax bands by 1%
 13 except for the lowest, we increased the highest marginal
 14 income tax bracket to 45%. We stepped up our capital
 15 gains. So you know – and I'll describe that later. In a
 16 period, for most of '94 right up to 2015 or 16 we were
 17 actually delivering good news on the tax side which is
 18 always raising – sorry bringing down the personal income
 19 tax, expanding the tax brackets to deal with fiscal drag.
 20 The corporate tax rate came down significantly over time.
 21 So we were in a very nice phase where we would shock the
 22 market by giving them a positive surprise. Nobody minds,
 23 by the way, uncertainty when it's going to be positive
 24 okay. They mind when it's negative, when you're increasing
 25 the rate.

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1 COMMISSIONER: May I just ask you one
 2 question? Sorry if I'm interrupting you. The recent
 3 increase of one percentage point in VAT, what do you
 4 estimate that will bring in in a financial year?
 5 MR MOMONIAT: 23 to 25 billion, that's if
 6 there's no more zero rating, if we just keep the zero
 7 rating at current –
 8 COMMISSIONER: So if there hadn't been
 9 this shortfall of 50 billion one wouldn't have had to raise
 10 VAT, would that be correct?
 11 MR MOMONIAT: Yes. I mean if there
 12 wasn't a shortfall we wouldn't have raised –
 13 COMMISSIONER: No because the shortfall
 14 you were saying is 50 billion.
 15 MR MOMONIAT: Yes but look the shortfall,
 16 it's not a shortfall, so I think it's important to
 17 understand this is as we get into the budget process and
 18 I've got slides which maybe we can just get to those later
 19 just on the budget process. Because I think the DG said
 20 the tax process starts 10 months before. The first part of
 21 that is setting budget priorities, okay. By the time we
 22 come to the October medium term budget policy statement
 23 we've got to determine what the expenditure level is, how
 24 it's divided between the three spheres of government
 25 because in terms of the Constitution you've got to provide

1 the equitable share to provinces, to local government and
 2 their conditional grants. We then figure out hold on this
 3 is going to be – if you take our revenue projections then
 4 for the next year we may be short of 50 billion. Now in
 5 this instance for example there are new priorities that
 6 come in and the DG will know this much better than I
 7 because on the expenditure side you have the higher
 8 education which is a new expenditure. So it's not at the
 9 point that SARS is collecting less, it's more that your
 10 expenditure line gets determined. We can then project that
 11 if SARS collects efficiently this is where it will get to.
 12 And so how do you meet this difference and that starts a
 13 process from December to a week before the budget where
 14 we're then saying should we increase VAT, should we
 15 increase personal income tax. Those decisions get made
 16 during December, January, February before the budget. So
 17 that, in other words then SARS's capacity to collect is
 18 increased because we are increasing taxes or introducing a
 19 new tax or whatever we do.

20 COMMISSIONER: Obviously you want to
 21 maximise the revenue that can come in on the existing tax
 22 structure.

23 MR MOMONIAT: Yes.

24 COMMISSIONER: But I just – you know if
 25 you had collected another R23 billion you wouldn't have to

1 put the VAT rate up. That's essentially what you're
 2 saying.

3 MR MOMONIAT: Yes. And last year as we
 4 were coming to the budget in 2018 it was very clear we
 5 needed a significant increase and Minister Gigaba was a
 6 Minister, he had to have lots of meetings because taxation
 7 becomes very political. People don't care much if you're
 8 not going to increase rates, but increasing VAT by 1% I
 9 mean –

10 PROF KATZ: Obviously.

11 MR MOMONIAT: And the budget is always –
 12 you know people think it's Treasury deciding, it's not
 13 Treasury deciding. Ultimately it goes through the
 14 committees of ministers and it ultimately is adopted by
 15 Cabinet. Now on the tax side for the VAT increase we
 16 certainly went to Cabinet a few times because it was
 17 obviously a hard decision for government to make, but it
 18 was a necessary decision not only to fund the higher
 19 spending level, but to make sure that your budget deficit
 20 is sustainable. And the rating agencies were obviously
 21 also looking are we going to now and it gets back to that
 22 very first graph the DG had, let's just maybe go right back
 23 there, which if you look at it where MTBPS the market was a
 24 bit spooked out because you can see that black line is not
 25 stabilising, it's increasing, it's going upwards. So when

1 is it going to stop, at 65 at 70%? And it gets back to
 2 almost where we were in 1994 where your interest
 3 expenditure item was the biggest item on the budget. And
 4 if you don't watch it here too it's going to become the
 5 biggest item. So it squeezes out the capacity of
 6 government to deliver. And if the rating agencies say that
 7 our ability to pay is going to be diminished it means that
 8 – and if we had gone to – lost our investment grade with
 9 what's it, Moodies, that the cost of funding will increase
 10 for government. So even for the same amount of money that
 11 we borrowed we would actually have to pay much more in
 12 interest. I don't know if you want to –

13 PROF KATZ: In the ordinary course if the
 14 process is working as it ought to, how soon would you
 15 become aware of material, of likelihoods of material
 16 shortfalls in estimated tax collection, revenue collection?
 17 If everything was working as it ought to how quickly would
 18 you become aware?

19 MR MOMONIAT: So quite quickly because we
 20 get information every month, within a few days from SARS as
 21 a Treasury okay, what they collect. I think we shouldn't
 22 get too excited for the first three months because your
 23 corporate income tax comes in chunks at the end of every
 24 quarter and not every month. So your personal income tax
 25 and VAT come in steadily. You can pick up very quickly

1 because some are more linked to the economic cycle than
 2 others that you know there's a problem coming, okay.
 3 Certainly by six months we know quite well what we're now
 4 going to – how much we're going to – what the under
 5 collection will be for whatever reason. And that's why we
 6 then adjust it because month seven is October for the
 7 medium term budget policy. We then make the first revision
 8 on what we – the estimates and projections we had in
 9 February, in the February budget okay. And of course as
 10 you get to more months, by end December it's now nine
 11 months and we've got the corporate taxes also coming in for
 12 the third quarter of the fiscal year and it's enough for us
 13 then to use for – we start projecting for the budget that's
 14 going to come next year. So we have nine to ten months of
 15 information.

16 So we then say oh okay it's even worse than we
 17 thought and although there's only one and a half months
 18 left of this current year we might bring it down by two,
 19 three billion more or we might increase it slightly. But
 20 more importantly we use that forecast to say what will we
 21 collect next year because now we might have a lower base or
 22 a higher base. I don't know if Chris wants to come in. So
 23 ja you know as every month goes by we get more and more
 24 information. And I must tell you one of the big reforms we
 25 introduced after 1994 was what we call the early warning

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1 system. So both on the expenditure side we can see how
 2 much spending there is or under spending and on the revenue
 3 side we can see from the monthly information which, by the
 4 way, we get immediately as I said after month end, within a
 5 few days. But within 30 days we publish it in the
 6 Government Gazette so that it's, you know we are extremely
 7 transparent and hence the number one budget transparency
 8 rating that we get because we put all of this out in the
 9 public domain. Analysts are all watching these numbers and
 10 when they see that the numbers aren't coming right the
 11 market already starts reacting to this information.

12 PROF KATZ: Sorry just one more question.
 13 MR MOMONIAT: Sorry, can I just say, if I
 14 may, on that? So when you had the problem of VAT refunds
 15 the numbers, was it 20, about two, three years ago, 2016
 16 where analysts – and I think at that stage maybe we weren't
 17 publishing monthly the VAT refunds, but it caused shocks
 18 and analysts already started acting. You just reminded me
 19 by posing the question. So I remember and therefore they
 20 were forecasting, it was towards the end, so they were
 21 forecasting revenue numbers that were based then on these
 22 shocks, but they didn't know the info we had on the refunds
 23 that there was a problem at SARS here. But maybe you
 24 should just – my memory is –
 25 MR AXELSON: I mean just on that point

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1 because the –
 2 COMMISSIONER: Sorry, would you just
 3 state your name so that it's on the record?
 4 MR AXELSON: Chris Axelson.
 5 COMMISSIONER: Thank you.
 6 MR AXELSON: On that point, I think it
 7 was December 2016 and there was a big drop in the number of
 8 VAT refunds that were paid out. And because this
 9 information is made public there was a lot of concern then
 10 by the private sector and others about what is happening.
 11 And then that was – I think there were some meetings
 12 between the Minister at the time SARS to say what's
 13 happening and we've got a chart on that later in the
 14 presentation. But then you could see the next month then a
 15 lot of those refunds were then paid out again. So it was
 16 quite a big variation, but it just caused quite a bit of
 17 uncertainty in the market about what was happening.

18 PROF KATZ: So when you get the early
 19 warning you start looking at adjustments etcetera, but do
 20 you then say we're now seeing that there's going to be a
 21 revenue shortfall, what's the problem with revenue? What
 22 does Treasury do about that?
 23 MR MOMONIAT: So that's why we have
 24 regular – we would then increase the number of meetings
 25 with SARS. We would discuss this at various levels, what

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1 the problem is and obviously I think even in the Minister's
 2 management meeting with SARS which as the DG settled –
 3 MR MAGAJANE: Chair, let me talk to you
 4 because I would have sat in those meetings. As Chief of
 5 Staff, when I was Chief of Staff to Minister Pravin Gordhan
 6 so I used to, before I became –
 7 MR MOMONIAT: Before you became DG.
 8 MR MAGAJANE: Before I became DG.
 9 MR MOMONIAT: Ja.
 10 MR MAGAJANE: Before I became DG when
 11 Minister Gordhan was Minister of Finance between 2010 and
 12 2014 I was with him, from 2009 to 2014, I was with him from
 13 2010 to 2014. For the four years I would have sat in
 14 almost all management meetings on a monthly basis with
 15 SARS. So I would know the kind of information that comes
 16 through as SARS reports to the Minister and there would be
 17 dedicated, standard agenda items on revenues and issues.
 18 And at the time because then the numbers would show in
 19 terms of targets, no, no targets as per the estimate, you
 20 know from an early warning point of view. Are you able to
 21 reach the target or not?
 22 MS STEINBERG: DG, It's not a target.
 23 MR MAGAJANE: Target in a sense.
 24 COMMISSIONER: Estimated targets.
 25 MR MAGAJANE: Estimated targets.

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1 MR MOMONIAT: SARS would regard it as a
 2 target for the meeting. That's what –
 3 MR MAGAJANE: Yes, yes, so in the meeting
 4 they would have said for this quarter our estimate – we
 5 want to collect, maybe let me say it this way. We want to
 6 collect so many billions for this quarter and then there's
 7 a quarterly report that would have come through the
 8 management meetings where the Minister of Finance sits with
 9 them. And then it's at a point that there would be
 10 questions, the Minister would push and they would
 11 demonstrate what they were going to be doing in the next
 12 period to collect more, what areas they would not have
 13 collected, why it didn't collect. You know all the
 14 material things that are in place for SARS, the phone calls
 15 including the statistics, by the way, that they should show
 16 that we made so many telephone calls to so many people or
 17 so many companies. So that's the kind of innovation that
 18 was there in those years. I don't know what happened or
 19 what's happening now because I don't see it as I say. But
 20 those years you had a Ministry which was making sure that
 21 SARS is accountable in terms of meeting the estimates or
 22 targets that they have set for themselves. So it's very
 23 important that we understand that if they were not made
 24 that they should or they are, should be pushed by the
 25 Ministry in this case. And that information as National

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1 Treasury now we'll only see it later in terms of when these
 2 estimates are now public and we are getting early warning
 3 signals that says things are bad. Like we already knew at
 4 that December that 30 billion was maybe – and then the only
 5 time, by the way, we can as Treasury put that number out is
 6 only on two occasions formally. In the medium term budget
 7 policy is in the framework in MTBPS and in the framework as
 8 we presented in the budget.

9 MS STEINBERG: May I read something into
 10 the record please? I have an affidavit from Mr Oupa
 11 Magashula concerning his tenure as Commissioner here and
 12 it's something that verifies what the DG has just said. He
 13 says, "revenue administration is governed by SARS and the
 14 fiscal framework and stability is governed by the Minister
 15 of Finance. It therefore stands to reason that the two
 16 must work very closely together. I would meet with the
 17 Minister of Finance twice every second Monday which is
 18 approximately twice a month. Minutes of the meeting would
 19 be taken. These meetings also entailed reports being drawn
 20 for the benefit of a Minister of Finance. The issues
 21 covered at these meetings generally included the following.
 22 Appointment of Chief Operating Officers, changes in the
 23 operating model, revenue performance within the various tax
 24 types. Governance issues, security and economic cluster,
 25 SARS participation in international tax forums, SARS

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1 financial reports, SARS strategy. The Minister of Finance
 2 would give input and opine on SARS related issues, in
 3 particular on ensuring that as much revenue was collected.
 4 I would engage with the Minister of Finance organically.
 5 In my view one cannot become a successful SARS Commissioner
 6 without an intensive relationship with the Minister of
 7 Finance. It is nonsensical to refuse to work with the
 8 Minister of Finance."

9 COMMISSIONER: Mr Momoniat, I've gone
 10 through your slides here, but I think there are few
 11 fundamentals that we don't need to be persuaded on. Number
 12 1, you need tax in order to have government, that the first
 13 thing. Number 2, you want to collect, maximise the tax you
 14 can collect, if you don't raise enough tax for your
 15 expenditure you've got to borrow money and it's very
 16 expensive if you can borrow at all. So I think we know
 17 those basic principles. As for the detail, there are a few
 18 things that – well thirdly, there must be co-operation
 19 between Treasury and SARS if we want to be effective. So
 20 all of those I think you can take as given.

21 MR MOMONIAT: Yes.

22 COMMISSIONER: There are two things
 23 arising from that that I'm interested in. What has been
 24 your experience in the last two years of co-operation
 25 between Treasury and SARS? Can we deal with that first of

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1 all?

2 MR MOMONIAT: Yes okay. So we'll just
 3 jump to those slides directly then. I think – so let me
 4 just for the record give my name, Ismail Momoniat. So I
 5 think we've said a lot of – so the Treasury advises
 6 Minister of Finance on the tax policy design and SARS
 7 implements tax legislation to collect revenue. So
 8 therefore regular collaboration and frequent interaction is
 9 necessary. I think we began to see then a high turnover of
 10 senior managers which was the first kind of sign. It
 11 happened slowly, a slow bleed.

12 [10:07] Let's take the loss of staff from key units like
 13 the LBC and Customs. You could see that, you know, people
 14 were leaving or mysteriously it stopped, it just got
 15 dismantled, okay. There was not discussion between
 16 Treasury and SARS on what's happening there. You got a
 17 sense that the leadership at SARS, and I mean the
 18 Commissioner, okay, and some of the Exco members were
 19 really unaware the extent to which all these changes, what
 20 it actually meant on the ground, okay. The one indicator
 21 they have is revenue but declining revenue comes with a bit
 22 of a lag, okay. So if the LBC is dismantled or the way it
 23 was put that they are now in almost every office firstly it
 24 doesn't make sense. You're only dealing with, you know,
 25 what's it, 100 or two will, I mean, it will be in the tax

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1 stats. We'll give you most of your corporate income tax.
 2 200.

3 MR AXELSON: 300 companies.

4 MR MOMONIAT: Ja, 300.

5 COMMISSIONER: Well, we've been told
 6 about 30% of revenue went through the -

7 MR MOMONIAT: But even of that you'll
 8 take the top 20/30 will give you maybe half of it or, I
 9 mean, we can get the exact figures. Okay. But it's - and
 10 when you don't have an intensive relationship with those
 11 entities clearly there's going to be a problem. Now, we
 12 wouldn't know that they don't have a relationship but the
 13 fact that the LBC goes down and you see the debt book going
 14 up now we don't know amongst who but those are the kind of
 15 early signals you have.

16 When you talk to the SARS leadership it's almost
 17 like they deny the problem and I remember a meeting that
 18 Minister Gigaba had even in October before the MTBPS. They
 19 say no, actually we're more capacitated because we've got
 20 more CAs. We've got more lawyers. Now, I take an example,
 21 Kosie Louw. Okay. He's there for 40 years. He's not just
 22 a lawyer. He's a tax expert. He chairs a global tax
 23 forum. If you replace him surely you need to replace him -
 24 you'll never get, be able to clone him, okay, but you've
 25 got to get someone who understands tax law. So when you

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1 look at the Exco they, you know, they did not know -
 2 COMMISSIONER: Sorry, just a minute. Can
 3 you move that microphone a bit?
 4 MR MOMONIAT: So what happens is you got
 5 a sense that the Exco was really as a body quite unaware of
 6 the issues and later on what I say is on the one hand the
 7 leadership, and I'm going to come to the VAT refund story
 8 because I think that illustrates concretely how things were
 9 breaking down, but when these issues are raised even in a
 10 revenue analysis working committee initially it kind of -
 11 SARS staff, I don't know, I mean I saw the evidence by Dr
 12 Carolissen. I saw his affidavit which I thought was a very
 13 good affidavit because it really described the problem.
 14 My only question is, were the Exco so afraid to
 15 talk about that even a year ago? Okay. When you have an
 16 Exco that everyone could see there was a problem but yet,
 17 you know, what is said now is I think very accurate but,
 18 and I'm not, don't want to point to him. I'm saying Exco
 19 members, they may have whispered to us, you know, how bad
 20 things are but nobody was willing to come out openly and I
 21 suspect even to the ministers and tell them just how things
 22 were falling apart and how unaware the Commissioner himself
 23 was of these problems.
 24 In fact there was an increasingly intolerant of
 25 public criticism and just go to the next slide, and the

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1 shock of it all was suddenly they attacked Judge Davis in
 2 March 2017, okay, and absolutely refused to cooperate when
 3 he's doing the report on tax administration. He can't even
 4 get meetings. And when he tries to set up meetings and he
 5 even comes to the Treasury and I - by that stage his
 6 relationship, there's no relationship with Minister
 7 Gordhan.
 8 Okay, and so that's, so 10th March is when Mr
 9 Gordhan is still Minister. It's 21 days before he gets
 10 fired. But Minister Gordhan's not able to say can you at
 11 least meet with Judge Davis. I sort of thought lower down
 12 because being in a public service we know that sometimes
 13 there's always fights between our bosses but as officials
 14 it's still important - you know, two ministers can be
 15 having their own issues for example but as officials the DG
 16 will still meet with his counterpart.
 17 So similarly at SARS we would still continue to
 18 meet lower down but it's inexplicable. He doesn't want to
 19 meet with Judge Davis. And when I talk to the people below
 20 and say, and send emails and say please can you meet with
 21 the judge and they're still too scared to actually meet
 22 with him and they don't meet him. Okay. I'll give you
 23 another example. Once the Makwakwa issue came up the
 24 Commissioner mysteriously launches an attack on the FIC,
 25 blames everyone. For four months he kept quiet. Even

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1 members of his Exco didn't know about the report from the
 2 FIC. Of course we learn about it when it appears in the
 3 Sunday Times. I think it was the 11th of September. And
 4 then suddenly there's all action. But the Commissioner
 5 then launches an attack on the FIC. I mean, there's a
 6 press statement which we can make available dated on that
 7 date where SARS attacks the FIC.
 8 These are two institutions reporting to the same
 9 Minister. He's not even been to the Minister to say I have
 10 a problem with the FIC. Okay. Indeed I don't think there
 11 was a problem with the FIC. The FIC did its work. I mean,
 12 in my job I also deal with the FIC. We deal with anti-
 13 money laundering legislation. We had done the FICA
 14 amendment Act where there was great resistance to clauses
 15 related to politically exposed persons.
 16 And I mean, it's like I looked at this and I say
 17 but the Commissioner, does he even read the FIC Act? It
 18 also appears he doesn't consult with his internal legal
 19 people who deal with FIC but everything is now dealt with
 20 by external lawyers to advise the Commissioner. So already
 21 you just - and you're getting really weird advice and an
 22 open attack on the FIC. Okay. Similarly, so on a VAT
 23 refund the Minister Gordhan when in 2016 they could, they
 24 failed to pay their refunds.
 25 I remember I came and they said there were two

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1 reasons. I don't know if you can find those slides. They
 2 said there were two reasons. One was that people took
 3 leave in December and so therefore the payments were not
 4 made and secondly that there was fraud related to bank
 5 accounts and they had to get VAT vendors to confirm their
 6 bank accounts. Okay. Now, here I was very impressed with
 7 Minister Gordhan. Obviously he was the previous
 8 Commissioner.
 9 So we had this meeting around January 30th to ask
 10 them. They produced his reasons. Mr Gordhan said, doesn't
 11 accept the explanation. So he has about three meetings, I
 12 think I can get the dates, end of January and in February,
 13 where he basically asked so how does the VAT refund process
 14 work. And he says when I was there I remember there's six
 15 buckets and he went on to describe each bucket, each
 16 process. It was very clear the Exco there didn't have a
 17 clue.
 18 Okay. Then Minister Gordhan insisted on two or
 19 three further meetings to see in which bucket is there a
 20 problem. Okay. The Commissioner didn't even come to those
 21 meetings. It looked to me like he's not even interested.
 22 Okay. They give, you know, this weak explanation but once
 23 you interrogate they're unable to explain and, yes, then
 24 you have what, Fabian Murray and so on, the officials who
 25 really know, who are much lower down below the Exco who can

1 actually explain and say this is the problem, this is it.
 2 Of course that process doesn't get completed and
 3 we'd be able to dig up all the presentations they made at
 4 various stages from the Ministry. Then Minister Gordhan
 5 obviously gets fired and indeed even the rumour mill
 6 amongst Exco is we've been told that the Minister will get
 7 fired by April. You must just limp along till April. I
 8 don't know where that came from. Okay. But it did happen.
 9 Okay. And when he gets fired obviously you had Minister
 10 Gigaba coming and, you know, every Minister has a different
 11 way they relate to these entities.
 12 And you know, then there wasn't a focus on this.
 13 This sort of fell away. Then it was left up to Judge Ngupe
 14 as the tax ombud to go into the matters and there too, I
 15 mean, if you look at what happened was the issue they
 16 report and SARS immediately I think that day or the day
 17 after came out with a press release to say, you know, they
 18 don't agree etcetera.
 19 Now, as public servants I always say we've got to
 20 have thick skins. It's in the public interest to be able
 21 to take criticism. And if somebody says this is not
 22 working and you're so thin-skinned that you issue a press
 23 statement you're actually saying you're not even
 24 considering the tax ombud's report to see whether there's a
 25 problem. You just deny that there's a problem. And it was

1 indeed that's why I feel so strongly about it because here
 2 you have a functioning SARS and when you look at these
 3 incidents and we've just quoted a few. If you want gaudy
 4 detail just go through quickly. We can do this very
 5 quickly. So you want to just talk about the 72? Say who
 6 you are.
 7 MS MPUA: My name is Yanga Mputa, chief
 8 director, legal tax design, responsible for drafting the
 9 tax legislation. The problems we have is that SARS has to
 10 implement this Tax Act in order to do audits and he has to
 11 implement, SARS has to implement the discretionary powers
 12 also in that Tax Act. And then now with regard to the
 13 specific incident of a VAT ruling using section 72
 14 currently section 44 of the VAT Act makes provision for
 15 SARS to pay VAT refunds specifically in the enterprise bank
 16 account.
 17 So there's that specific section. However
 18 section 72 of the VAT Act gives SARS discretionary powers
 19 as to the manner in which the provisions of the VAT Act may
 20 be applied provided that there are cases of difficulties
 21 and anomalies. So give SARS discretionary powers. So
 22 SARS' decision of using discretionary powers provided in
 23 section 72 of the VAT Act to pay the VAT refund to a third
 24 party bank account other than the enterprise bank account
 25 as mentioned in section 44 and SARS also issued a media

1 clear that there was a problem. Okay. So and then of
 2 course the VAT saga continues. You then have the section
 3 72 VAT Act ruling which then sets a precedent, okay, that
 4 if you give, if it's true, I mean, we just, this is press
 5 reports that you then override officials within SARS lower
 6 down to say don't do this then it's done. So that raises
 7 all kinds of questions for us as the Treasury.
 8 I think if the DG - the DG is not a post office.
 9 Okay. In the Treasury you get memos. Chris will write up
 10 something. Then it comes to me. I look at it. I might
 11 change it. But I approve it. It then goes to my boss, the
 12 DG. And the DG may well reverse that decision but he will
 13 write down why he reverses it. He's not just going to do
 14 it because he doesn't agree.
 15 But here you have a case where it's not done.
 16 Now that sets a precedent and other taxpayers then say -
 17 and this is in a climate where refunds are not being paid.
 18 So others are coming to say not only are there delays on
 19 theirs but some taxpayers clearly get preferential
 20 treatment and, you know, it's all fast-tracked and it goes
 21 right to the top. Now that undermines the reputation of
 22 SARS. SARS has to be seen to be fair to all taxpayers and
 23 the moment there's any perception that it's favouring any
 24 taxpayer or going against certain taxpayers that will, you
 25 know, sets us on a disastrous road for tax morality. And

1 statement on Friday, 16 March regarding this decision that
 2 the chief legal officer, Ms Refilwe Mokoena, has made the
 3 decision created precedent and it also opened a window for
 4 requests of similar favourable treatment from other VAT
 5 vendors because that's what we see now and we hear from the
 6 SARS officials that we deal with in terms of tax policy
 7 design.
 8 As a result now government will have to consider
 9 the provisions of the section 72 of the VAT Act that is in
 10 the next budget as well as other discretionary provisions
 11 available in other Tax Acts administered by SARS. It is
 12 also important to note that Momo has mentioned the issue of
 13 mining rehab funds because section 37A of the VAT, of the
 14 Income Tax Act makes provision for SARS to impose double
 15 penalties whenever a taxpayer has used mining rehab fund in
 16 a manner other than specifically mentioned in section 37A.
 17 That said we have not seen that. As a result
 18 last year we had to make changes in the section 37A of the
 19 Income Tax Act to take away the discretionary powers and to
 20 have a more transparent provision whereby the mining rehab
 21 funds, the mining rehab trust have to report to the DG of
 22 the National Treasury all their financials at the end of
 23 the financial year. So that is the - now we have to look
 24 at all the discretionary measures in the Tax Acts that are
 25 administered by SARS.

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1 MR KAHLA: Just coming back to this
 2 section 72 and the discretionary powers set out there and I
 3 think you've just made reference to the refunds to be made
 4 to the enterprise bank account and of course you allow for
 5 in the discretion, in the discretionary powers for dealing
 6 with anomalies, difficulties or incongruities as you've set
 7 out there. Now, I'm interested how you understand the
 8 correct application of that provision in an instance where
 9 for example an enterprise bank account has ceased to exist
 10 due to certain administrative action by another functionary
 11 of the state.
 12 For example if you've had a bank account frozen
 13 or closed how, what would have been the - how do the
 14 Treasury understand in terms of the provisions of the Act
 15 SARS would need to deal with an instance where a refund is
 16 properly assessed to be due and payable to the taxpayer but
 17 that taxpayer, due to determinations by another government
 18 authority, no longer has a bank account. How would that be
 19 understood in terms of the discretionary - is that
 20 something you believe is contemplated in the discretionary
 21 powers?
 22 COMMISSIONER: May I just add to that?
 23 The one thing the Act doesn't contemplate is that a
 24 taxpayer's bank accounts are all going to be closed down.
 25 So you can't use those bank accounts. Now that's not

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1 contemplated. It's a very unusual event. I know you're
 2 anxious to answer, Mr Momoniat. Can I just finish? But I
 3 mean you end up with that situation and as my colleague
 4 says assume for the moment the VAT refund is actually due.
 5 And so a decision is made. Well, what I want to
 6 know is, and I think my colleagues - what does one do if it
 7 is not permitted by the legislation but the amount is due
 8 because of this very unusual situation, never happened
 9 before that the taxpayer's accounts are closed down? So
 10 now two things happen in some of these refunds. One is
 11 that they go to another, the account of a related company
 12 but not a subsidiary. The other, it goes to an attorney's
 13 trust account. Now, what's wrong with those two things?
 14 MR MOMONIAT: So let me just remind you,
 15 Judge, we don't know anything more than what we read in
 16 newspapers or Daily Maverick about these payments. Okay.
 17 COMMISSIONER: Well, you can assume -
 18 MR MOMONIAT: So let's assume that that's
 19 the case. If it is that taxpayer firstly to correct
 20 Advocate Khala government did not instruct and does not
 21 tell banks who their customers are to be and there's no
 22 instruction that I'm aware of in government that said close
 23 X or Y's account. In fact when we have the FIC Amendment
 24 Act we pointed out we want everyone to have a bank account
 25 and even the crooked guys so at least the authorities can

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1 see what's happening. We don't want them to get out of the
 2 system. Secondly, I think the whole country -
 3 MR KAHLA: I accordingly modify my
 4 question.
 5 MR MOMONIAT: Yes no can I just say -
 6 [10:27] MR KAHLA: - the bank closing their
 7 account.
 8 MR MOMONIAT: Yes.
 9 COMMISSIONER: Forget about government
 10 instructing the bank can -
 11 MR MOMONIAT: Yes can I just point out
 12 the whole country knows that they still had an account with
 13 the Bank of Baroda and in fact they took out court action
 14 to prevent the closure, so I would firstly doubt that the
 15 accounts were even closed and 2, say don't those officials
 16 read newspapers? And do they not know what's happening?
 17 And if they did not know, the Minister of Finance took out
 18 a court case against Oakbay. Related to that Oakbay case
 19 we pointed out in detail all the information that we had as
 20 government. We also brought out, the FIC had given the
 21 Minister a certificate on transactions. And let me say
 22 because of that I wrote to the Commissioner two emails at
 23 different points to say this is out in the public domain.
 24 I trust that you now know about it. I know you cannot tell
 25 me what you do about it but at least they couldn't say they

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1 didn't know, okay.
 2 So if this account wasn't put as a high risk
 3 already they surely have risk profiling within SARS, they
 4 could check about the bank account and so on so I'm just
 5 throwing doubt that they did, I'm saying they did have a
 6 bank account, if you go by news reports. The FIC, the
 7 court case also I think may not have referred, there was
 8 input even by the Bank of Baroda and others, so it was all
 9 out there in the court records. But let Yanga answer
 10 because I agree, assuming that now your accounts are all
 11 closed and so on, it is reasonable that you then are able
 12 to pay in another way but you need to then do it properly.
 13 There needs to be paperwork, I would presume you've checked
 14 why the accounts have been closed because I would suspect
 15 maybe some of those VAT refunds are also being fraudulently
 16 requested if there's such a record of, if the banks are
 17 closing down your accounts, left, right and centre because
 18 I promise you I think banks like people who come and do
 19 business with them, but if they're closing your accounts
 20 the bigger question is why? And indeed -
 21 COMMISSIONER: What you do is prove that
 22 it is all properly audited and it is due. I'd understand
 23 what they -
 24 MR MOMONIAT: Yes okay, so then it would
 25 be -

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1 COMMISSIONER: Perhaps for that company
 2 one must look carefully at whether you should be paying
 3 refunds.
 4 MR MOMONIAT: Yes.
 5 COMMISSIONER: But assuming that you're
 6 obliged to, it's been audited and so forth.
 7 MR MOMONIAT: I'm saying there needs to
 8 be a, then yes, we do need to pay it and the way I
 9 understand it the law does allow that the way Yanga, you
 10 can come in, I'm not a lawyer but, and if it doesn't allow
 11 for it, yes, we need to factor that in. But I would say
 12 there needs to be strong internal control systems and
 13 procedures within SARS and were those even exercised? And
 14 all I'm saying is nobody can say they didn't know who they
 15 were dealing with.
 16 COMMISSIONER: No of course not. But if
 17 I may just add one thing.
 18 MR MOMONIAT: Ja.
 19 COMMISSIONER: The thing about bank
 20 accounts with VAT, the reason why there's a strict rule
 21 that you must pay into the vendor's bank account is so that
 22 you're not paying to a fraudulent account. Somebody can't
 23 come in and say pay to my account instead of the vendor's
 24 account. But again make the assumption that this is not a
 25 fraudulent account, i.e. that Oakbay, we'll use Oakbay,

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1 everyone knows it's Oakbay, Oakbay we know has said to whom
 2 the money is owed, assume, has said I want it in that
 3 account. So it's not some third party who's diverting it
 4 somewhere. And if that is the principle behind the law
 5 that says pay it into that bank account, well there is no
 6 fraud taking place, one knows that. You've got indemnities
 7 for example and you know that it's coming from the right
 8 source. Then you see where the difficulty lies. You've
 9 got an amount owing, you know that it's not going to be
 10 diverted to the wrong account and the law doesn't assume,
 11 allow you to pay it because all the bank accounts have been
 12 closed and assume Bank of Baroda is not one of the accounts
 13 that you can pay to. You'll see the difficulty. And it's
 14 a question I've asked. All you say is correct, one must be
 15 very prudent, but at the end of the day SARS must pay even
 16 to drug lords if they're entitled to money back. I'm not
 17 saying these were drug lords, but you know what I mean. So
 18 what would you say to that?
 19 MS MPUA: I would say that in applying
 20 your discretion, you look at aggravating circumstances as
 21 well as mitigating factors. So if the bank account is
 22 closed, if maybe I was a SARS official in this scenario but
 23 I'm not, if the bank account is closed, first of all you
 24 ask why is the account closed, irrespective of whether the
 25 VAT refund has been assessed and it is due, but you look at

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1 the mitigating and aggravating factors. Is it really
 2 necessary for me to pay this VAT refund now? And what else
 3 -
 4 COMMISSIONER: It's due and payable.
 5 MS MPUA: It's due and payable yes, in
 6 terms of SARS but now you are making a discretionary
 7 decision. So hence I'm saying that you have to look at the
 8 aggravating circumstances. What will be, what precedent am
 9 I setting in doing this, more especially if it's happening
 10 for the first time and the amount is big and you are
 11 accelerating a VAT refund of this particular taxpayer
 12 whereas other VAT refunds are not yet paid. There is that
 13 report in the media. So those are, to me, that's why I'm
 14 saying that those are the aggravating circumstances and
 15 mitigating factors when you apply your discretionary powers
 16 that you have to consider.
 17 COMMISSIONER: Now I know you can say all
 18 these principles. I want to know what decision you would
 19 have made?
 20 MR MOMONIAT: Judge, what I would do,
 21 every year we amend the tax laws, okay? They should have
 22 come to us because if legally they cannot pay then they
 23 either needed a change in the law and we would have fast-
 24 tracked it, given this difficulty, etcetera, okay?
 25 COMMISSIONER: I understand.

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1 MR MOMONIAT: But - yes.
 2 COMMISSIONER: But you can't say to me,
 3 look, I owe you money but wait, I'll change the law before
 4 I pay it. You know if you owe me the money he must pay it.
 5 It's like my butcher expects me to pay him if I earn money.
 6 But there it is, anyway. You can see there would be a
 7 conundrum there. I mean I understand all your points. You
 8 can actually launder money through the VAT system.
 9 MR MOMONIAT: Yes.
 10 COMMISSIONER: So all of those things, my
 11 only question is assuming that it's legitimate refund,
 12 assuming that you cannot pay it, that it's not been
 13 fraudulently diverted into the wrong account. There is a
 14 problem I think you can see.
 15 MR MOMONIAT: Yes. But I would refer you
 16 also - I'm agreeing, Judge, I'm agreeing -
 17 COMMISSIONER: Or the attorney's bank
 18 account, sorry.
 19 MR MOMONIAT: That if it's legitimate and
 20 it needs to be paid we will need to deal with this
 21 loophole. We've never had that and the problem is every
 22 year we change our tax years a lot, okay, but, and we would
 23 have done so, and we will do so etcetera just as we were
 24 doing the financial sector regulation bill, now an Act
 25 which regulates the financial sector and we've put in a

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1 provision, which we're still expanding on because we think
 2 everybody does have a right to a bank account, even if
 3 you're a drug lord, okay?
 4 COMMISSIONER: Ja.
 5 MR MOMONIAT: So that, and some countries
 6 have a basic banking law. But as I said in this case the
 7 Minister of Finance was having this case, it was very clear
 8 that he still had bank accounts. I had, and I will make
 9 those emails available, written to the Commissioner to say
 10 watch this, here's the case, etcetera. So there was ample
 11 documentation to read. And in fact to my surprise, twice
 12 within six months or so of each other the Commissioner
 13 said, it's the first time I heard of it.
 14 So I sent an email to Kosie Louw sometime in 2017
 15 to say the Minister's taken this case, we have this FIC
 16 certificate which is out in the public domain. I'm
 17 bringing it to your attention, they have these rehab funds
 18 and SARS, will you make sure that they're not broken any
 19 tax laws? And of course if they have you are aware that
 20 you can, not just take back the 28% deduction but you can
 21 impose a penalty up to, a further 28 times 2 so 74% would
 22 have been taken away and that's revenue for SARS, okay.
 23 The issue then is in February Kosie Louw had already left,
 24 Minister Gordhan had a meeting, it was, the Commissioner
 25 himself wasn't there but the CFO at the time was acting

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1 and, Matsobane, and he, I mentioned it at that meeting that
 2 I had written and have they looked at that? Immediately
 3 after the meeting I wrote an email to him which I CCd to
 4 Commissioner Moyane to say this came up and whatever
 5 because the Commissioner said no, he doesn't know,
 6 something like Kosie Louw didn't tell him, it's the first,
 7 his words were something like, "it's the first I've heard
 8 of this, okay?" In my mind I thought don't you read
 9 newspapers? But okay it's the first you heard. But now
 10 you know. So now that you know I hope you do the right
 11 thing and act.
 12 Then Minister Gigaba had a meeting in October
 13 2017 where at that meeting I raised this matter again and
 14 he said at the meeting he doesn't know about it, it's the
 15 first time he's hearing, okay? That same day or a day
 16 after, I got back the emails and I wrote it to the
 17 Commissioner and I see the, and I sent him the previous
 18 email that I had sent. So I certainly didn't get that
 19 there's any enthusiasm to act and they're not collecting
 20 the money and here's money to be found, but there was no
 21 enthusiasm to collect this money so that's why I'm saying
 22 if we take all of these facts and I provide those emails, I
 23 think it will put a new light on this specific case. And
 24 of course the very reason why this Commission was
 25 appointed, I guess, is because we as Treasury can't go into

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1 these matters and our frustration was there's a series of
 2 bad news and SARS can't come out and present a credible
 3 explanation and this is impacting directly on tax morality.
 4 And so this is a leadership that's actually destroying SARS
 5 by not acting immediately. And I've said this in
 6 Parliament, if you are running SARS, we're not just clean
 7 and seem to be clean, you need to be cleaner than clean,
 8 whatever I mean by that. If you're not it's going to
 9 impact on tax morality and that has huge consequences for
 10 the country.
 11 MR KAHLA: Just a follow on
 12 clarification, if I may, Judge. And I'm putting aside the
 13 facts, I don't want to get to the facts around whether
 14 there were or not there were no accounts. Am I
 15 understanding the Treasury to be accepting that in the
 16 event of the absence of an enterprise bank account, it is
 17 within the contemplation of section 72 for SARS to exercise
 18 a discretionary power on how to then transfer a refund that
 19 is due and payable outside of an enterprise. And we're
 20 putting aside now whether or not there was a Bank of Baroda
 21 account, let's put aside the facts on this, I'm just more
 22 interested in the legal principle. You're faced with a
 23 situation where there is no bank account, let's take that
 24 as objectively fact, is the Treasury accepting that under
 25 section 72 SARS has the discretionary power to find a

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1 solution to dealing with that?
 2 MS STEINBERG: And may I add something
 3 before you answer. It's something that puzzles me. I've
 4 come to understand that SARS is, what it describes as
 5 amoral when it comes to tax collection. They don't care
 6 who you are, they want to get as much revenue as they can.
 7 So as we said they collect money from gangsters and drug
 8 lords and I accept that. However when it comes to paying
 9 out money as opposed to collecting it, SARS could become a
 10 very easy way to launder money. You overpay in the first
 11 instance or you use these VAT refunds. Now accepting that
 12 SARS is amoral and should be amoral and drug dealers should
 13 be able to do business with SARS, is there anything in the
 14 whole nexus of legislation that would stop SARS not from
 15 collecting but from paying out money to taxpayers who are
 16 known to be possible money launderers for example?
 17 MR MOMONIAT: Madam, she's our legal
 18 eagle, so –
 19 MS MPUA: Okay. Thank you. First of
 20 all I think when you are a registered taxpayer you've got
 21 equal rights as any other taxpayer in the tax system, so if
 22 you are a registered taxpayer SARS will apply all the equal
 23 rights to any other taxpayer irrespective of who you are.
 24 That is the first thing. Now coming to the issue of using
 25 72 and whether 72 can be used are, I think when you apply

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1 your discretionary powers you're going to apply based on
 2 your judgment and I want to say in my judgment one would
 3 ask that is payment of VAT give, arise to difficulties
 4 anomalies regarding the application of the provisions of
 5 this Act? That's what I would ask that. Is the payment of
 6 a VAT refund, give rise to that statement? And in my
 7 opinion – as lawyers we can have five opinions in one room.
 8 If there are lawyers there in the table I would say no.
 9 And in those scenarios is that now is it urgent? How
 10 urgent it is when the bank account are closed, meaning that
 11 the money is still within the country and everything, so
 12 meaning that the money is still within the jurisdiction of
 13 South Africa, the banks accounts are closed, meaning that
 14 the money is still here. So if the money is still within
 15 the state at SARS the money is still within South Africa,
 16 so that's what I would apply in my circumstances.
 17 MR KAHLA: But it's not SARS' money.
 18 MS MPUA: Yes, it's not SARS' money,
 19 yes.
 20 MR MOMONIAT: Can I just add –
 21 COMMISSIONER: But Mr Momoniat, I don't
 22 think you should go too far down this line but I think the
 23 point you make is a good one, although I'm not allowed to
 24 express any views apparently before we get to the end, and
 25 that is it's a matter of perception. If you pay out money

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1 to, in an unusual way to people who are notorious and it's
 2 in the newspapers and it's suggested that there is
 3 something funny going on, you'd better explain it if you
 4 want to keep tax morality up.
 5 MR MOMONIAT: Yes.
 6 COMMISSIONER: That's really the point
 7 you're making.
 8 MR MOMONIAT: And I –
 9 COMMISSIONER: Even if you are entitled
 10 to do it. The press is saying this is indicating some
 11 collusion between SARS and the taxpayer. Well you'd better
 12 explain it.
 13 MR MOMONIAT: And Judge, can I say, you
 14 see in a normal situation what would happen is if there is
 15 a legal problem, they would come and talk to us.
 16 COMMISSIONER: Exactly.
 17 MR MOMONIAT: They would say is section
 18 72 appropriate, because I'm not sure whether it is
 19 appropriate or not. And we would have to see paperwork.
 20 We'd have to see, we'd get legal opinion, etcetera. We are
 21 not running a spaza shop, okay, so the point is that –
 22 COMMISSIONER: I'm not sure that you're
 23 not over here.
 24 MR MOMONIAT: That, so the first thing we
 25 would want to see is all the legal opinions within SARS on

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1 this matter so we'd apply our mind before we'd consider
 2 whether for future, we may not solve this problem, the law
 3 needs to be changed and we should go to Parliament or not.
 4 So you know we have our own checks and balances before laws
 5 are put in, but ja. So maybe –
 6 COMMISSIONER: Maybe can I come back to
 7 another, can I come to another point with you? Maybe
 8 you're coming to it in due course but this co-operative,
 9 the Constitution requires co-operative governance at the
 10 end of the day, forget about any other law.
 11 MR MOMONIAT: Yes.
 12 COMMISSIONER: But how do you see the
 13 relationship between the Commissioner and the Finance
 14 Minister? And who has the final say, as it were? I want
 15 to take another example. We know in the public domain
 16 there's been reports of some conflict between the Minister
 17 and the Commissioner on I think it was the payment of
 18 bonuses for example. The Minister said at the time of
 19 austerity you shouldn't be paying that, and they were paid
 20 anyway. Should the Minister have the final say on that?
 21 Should the Commissioner have the final say on that? Are
 22 you coming to deal with that? You want to deal with it
 23 later or now?
 24 MR MOMONIAT: I can deal with it now or
 25 later but I wanted to just make one point is not only was I

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1 think what Yanga is saying was the money paid out to
 2 another trust, but the money was paid to a foreign account
 3 as well, so, if news reports are correct. So did help with
 4 illicit, did SARS help with illicit flows out of South
 5 Africa, you know is a question.
 6 COMMISSIONER: Ja, it may or may not be –
 7 MR MOMONIAT: And certainly when it comes
 8 to the issue of illicit flows and looking at how the
 9 declining capacity at the LBC and I think at customs and
 10 excise, and Chris will come in to show on the revenue, the
 11 actual revenue story as we saw it and our analysis, I think
 12 that there didn't seem to be the political will within SARS
 13 to deal with illicit financial flows outside of South
 14 Africa.
 15 MS STEINBERG: Judge, before we move onto
 16 the next topic can we just tie some things up here?
 17 COMMISSIONER: Certainly.
 18 [10:47] MS STEINBURG: Mr Momoniat when you
 19 introduced this topic you spoke about a more general
 20 problem with legal policy within SARS. Now we've had
 21 testimony in that regard and I'd like to hear your view,
 22 perhaps it's Ms Mputa's view from your side, but the
 23 testimony we've had is that the legal departments in SARS
 24 are in great trouble and it manifests in two ways. The one
 25 is in the quality of litigation. But also in the number of

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1 cases that come through have dried up for SARS to fight.
 2 But the other and I think this is where Treasury would come
 3 in, is that the development of legal policy of precedence,
 4 of how best to use the legislation, the relatively new Tax
 5 Administration Act, that in the last few years work around
 6 that has stopped, all but stopped and I wonder if you could
 7 talk from Treasury's side about that more generally.
 8 MR MAGAJANE: I think let's -
 9 MS MPUA: You've got the size and
 10 capacity to implement that.
 11 MR MAGAJANE: Okay get to it but let
 12 Yanga refer to that.
 13 MS MPUA: Okay currently I think there
 14 are two components at SARS. There's a component regarding
 15 legal and policy division which is based in head office.
 16 Those people don't do audits. They are, remember as tax,
 17 as Treasury we are not in the tax administration so we work
 18 with them co-operation regarding the anti-avoidance schemes
 19 that are there because they deal with rulings and then
 20 there is a SARS maybe large business centre whereby they
 21 deal with audits, difficult audits like your transfer
 22 pricing, your anti-avoidance measures. So what we have
 23 seen over the past year is that we have to introduce a lot
 24 of anti-avoidance measures based on BEPS recommendation in
 25 line with the BEPS recommendation. So when we introduce

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1 these measure -
 2 MS STEINBERG: Won't you justify define
 3 BEPS for those -
 4 MS MPUA: Base Erosion and Profit
 5 Shifting.
 6 MS STEINBERG: Thank you.
 7 MS MPUA: South Africa is one of the 100
 8 countries that are part of the inclusive framework on BEPS.
 9 So it also includes other African countries. So we need
 10 to, there are international minimum standards that we have
 11 to introduce in our legislation and then there is BEPS 15
 12 action points. So over the past years we've been making
 13 changes in the legislation in line with BEPS
 14 recommendation. What we'll find, when, and then we have
 15 annual workshops to discuss the amendments in the
 16 legislation. So what taxpayers will say during workshops
 17 is that they question the introduction of difficult
 18 specific anti-avoidance measures and the SARS capacity to
 19 implement these measures. One would say that that may be
 20 true because maybe some of the staff at LBC have left, we
 21 know that is a fact. But the other point that taxpayers
 22 may not want this and then they can use that as a, as some
 23 sort of a statement, an argument so if they don't want some
 24 of the anti-avoidance measures so one would be careful with
 25 that. But those has come out strongly over the past years

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1 and then for instance we'll introduce specific anti-
 2 avoidance measures for dividend stripping rules as share
 3 buy backs and testers will say that maybe there is no need
 4 for you to introduce these specific anti-avoidance measures
 5 because SARS has got, in the Income Tax Act there are
 6 general anti-avoidance rules, the GAAR rules that SARS can
 7 use to attack any abusive scheme. So that has been the
 8 signal we've been getting from the workshops when we do the
 9 tax amendments annually.
 10 MS STEINBERG: Sorry that hasn't answered
 11 my question. My question is from your side, we've heard
 12 evidence that there is actually a crisis in the legal
 13 department here in SARS and I'm asking from your side
 14 whether you see that or whether you would disagree with
 15 that.
 16 MS MPUA: What I can say is that in
 17 terms, remember there's litigation department then there's
 18 audit and then there's, and the number of cases. In terms
 19 of the number of cases, for instance in terms of transfer
 20 pricing, that's what we heard from taxpayers, we still have
 21 to get, ask numbers from SARS. We are, for instance before
 22 2015 if you talk about audit cases, before 2015 there was a
 23 reasonable number of audited cases for transfer pricing.
 24 But after 2015 that number we have not seen from SARS.
 25 MS STEINBERG: You don't have a number?

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1 MS MPUA: We don't have a number.
 2 MR MOMONIAT: It's because it's gone down
 3 to zero.
 4 MS MPUA: I don't know, what I'm saying
 5 we have not seen that because before 2015 there was a
 6 presentation in Parliament whereby they show the number of
 7 audited transfer pricing cases, the number of experienced
 8 people in the TP unit and the amount of tax that can be
 9 collected from the audited transfer pricing cases. But now
 10 we don't have that number.
 11 MS STEINBERG: So there's less
 12 transparency?
 13 MS MPUA: I do not want to say there is
 14 less transparency but I don't know if the, there can be a
 15 certain amount of audited cases. Maybe the questions that
 16 to say that the number of cases have dropped, maybe that
 17 goes to that statement.
 18 PROF KATZ: Can I just ask on that.
 19 Would they have reported that to Treasury or to Parliament?
 20 MS MPUA: Currently Parliament normally
 21 is going to answer, we do, there is a committee for illicit
 22 financial flows. I think Momoniat has got the slides.
 23 MR MOMONIAT: Ja.
 24 MS MPUA: Regarding the reporting.
 25 PROF KATZ: The thrust of the question in

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1 answer to Advocate Steinberg's question that you don't have
 2 it, did Treasury ever have it or was it these kinds of
 3 statistics given to Parliament?
 4 MR MOMONIAT: So maybe the DG can answer
 5 because they do meet with the Minister and it may be that
 6 at those meetings such reports may have been presented.
 7 But it also gets to another issue that I raise. That under
 8 the guise of confidentiality SARS has become more and more
 9 opaque about reporting any other matters and I do think and
 10 one of our suggestions on governance reforms is to be clear
 11 what confidentiality is related to taxpayer affairs but
 12 that shouldn't mean that the way SARS is run, a lot of
 13 these shouldn't be reported on, on a regular basis and I
 14 think that from our perspective certainly the people who we
 15 deal with from the legal side who are involved on policy
 16 the same people are there, they're not in an Exco.
 17 Fortunately they haven't left and so we still have a good
 18 relationship there. When it gets to the legal people who
 19 do auditing, settlements and so on, that's where I suspect
 20 that you, that the units are not functional but as I said
 21 we don't get information on SARS's internal structures but
 22 when you see a lot of these problems clearly it's in the
 23 follow-up on taxpayers and what happens there's a problem
 24 and to the point where, if we can just go to my early
 25 slides, where I was, I was making the point that you know

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1 we certainly - before this, the one with the dataset. The
 2 thing that we notice is that, and our procurement officer
 3 will come later, he might be here already. Okay. But they
 4 have their own information source which and what it relates
 5 to is, is there's a whole usage of legal firms, you know
 6 Hogan Lovells I think it's called MFS or MMM Attorneys,
 7 okay. It looks to me and as we were dealing with issues
 8 we're finding that nobody at SARS legal side knows about
 9 these issues. I would think that it would be interesting
 10 to see was there any internal correspondence with these
 11 units because when, they say it's client confidentiality
 12 but nothing stops the acting Commissioner now in saying
 13 what was the correspondence, how did they secure their
 14 services. When they came up with reports what was the
 15 correspondence between. But the more curious question is
 16 why wasn't it done through their lawyers in the Treasury
 17 when we have our own internal lawyers who look at issues
 18 and if they do need to get information we do it through
 19 their offices, right. I mean it would be very unusual if
 20 the DG contacts lawyers himself, has his own relationship
 21 for issues. It's like his personal lawyer and the legal
 22 structures within the organisation are bypassed and
 23 certainly I've seen evidence of that and if you look at all
 24 these contracts I would want to see what were they paid,
 25 was the procurement done properly, why were internal people

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1 not consulted or even unaware, it does look like it was
 2 only the Commissioner and one or two people around him who
 3 dealt with these services.
 4 PROF KATZ: Sorry just to -
 5 MS STEINBERG: Two -
 6 PROF KATZ: Ja.
 7 MS STEINBERG: Two things. We, I asked
 8 the procurement officer to come in because I have specific
 9 questions to ask him about the contract with Bain which is
 10 the subject of this, one of the subjects of this week's
 11 hearing and perhaps we can attend to that when he takes the
 12 stand and I've forgotten my second point. So Professor
 13 Katz, why don't you rescue me?
 14 PROF KATZ: May I just ask leave aside
 15 we're going to get to governance and a lot of this is going
 16 to go to governance. But in past Commission, just to
 17 answer Advocate Steinberg's question. Would these, would
 18 this kind of information ever have been given to Treasury
 19 by SARS or is it only the current administration that
 20 doesn't?
 21 MR MAGAJANE: You know it would not
 22 necessarily come through from, you know even now in my, I
 23 mean I'm a DG now in the last year and I would not ask or
 24 even, this kind of information cannot come to me or doesn't
 25 come to me because there's no need in the way we work. But

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1 I would expect that in, by just going what the former
 2 Commissioner Magashula's you know, the issue that Advocate
 3 Steinberg read, those kind of, the information that would
 4 have come through that, without the details because by the
 5 way even the Minister of Finance would not necessarily get
 6 to know the details. It would be, I'll give you an
 7 example. It would be that we have arrested or customs
 8 people confiscated so much worth of diamonds at the
 9 airport. That's it, as to from who we wouldn't get those
 10 details. So it would be those kinds of statistics and such
 11 information would have come through but again it would be
 12 interesting to go back into history because those reports
 13 were there, at least, I mean I know they used to come with
 14 thick, big files for each meetings and make them available
 15 to the Minister's office. So but I wouldn't for sure say
 16 that that information would be -
 17 PROF KATZ: I suppose this is all going
 18 to arise when we discuss governance? Should this be
 19 compulsory information that flows from SARS to Treasury?
 20 MS STEINBERG: Mr Momoniat, as I
 21 remembered my second point, we had testimony from somebody
 22 from Debt Management, Mr Nannoolal about, partly about the
 23 functioning of legal counsel within SARS. His affidavit
 24 says that while there are layers and layers and layers of
 25 approvals to get through in order to brief attorneys and

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1 counsel in fact the decision is simply made by the head of
 2 legal counsel at the end of the day who can or cannot take
 3 into account those layers and layers of decisions. So that
 4 certainly is something that is being flagged and that we
 5 need to look into.
 6 COMMISSIONER: Sorry I forget, I think
 7 the testimony was such that the legal structures of that is
 8 so dysfunctional that there's sometimes a danger of
 9 prescription because they can't get authority to institute
 10 proceedings.
 11 MS STEINBERG: That's correct, Professor
 12 Katz, this is a separate point. It's about how legal firms
 13 and counsel get appointed and -
 14 COMMISSIONER: So I'm not sure that it's
 15 a matter that we should pursue so much here. There will be
 16 an inquiry into that. Don't extend our terms of reference
 17 please. It's wide enough.
 18 MR MOMONIAT: The President does.
 19 MS STEINBERG: Judge should we move onto
 20 the -
 21 COMMISSIONER: Don't ask us to
 22 investigate things that are in our terms of reference. Ask
 23 us to extend it.
 24 MS STEINBERG: Well it all does go to
 25 governance.

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1 COMMISSIONER: No I understand that. I
 2 mean, you know we've been here for three months, we've
 3 heard of lots of difficulties and we'll look into them all.
 4 MS STEINBERG: Judge, should we go onto
 5 the point that you raised?
 6 COMMISSIONER: What is the time?
 7 MS STEINBERG: The time is 11.
 8 COMMISSIONER: Do you think we can have a
 9 15 minute break?
 10 MS STEINBERG: I think we can.
 11 [INQUIRY ADJOURNS INQUIRY RESUMES]
 12 [11:24] COMMISSIONER: Mr Momoniat, just for your
 13 guidance, you know, I've glanced through your slides and
 14 saw a presentation that was given to Advocate Steinberg I
 15 think yesterday evening. I've glanced through that. At
 16 the moment I'm not sure that we should concentrate too much
 17 on detail. You know, we have to report to the President
 18 by, in a month's time and finally in three months' time and
 19 a lot of these detail we will, you know, looking at and
 20 will continue to look at but what concerns me at the moment
 21 and I think the rest of the panel is, I mean, I'm sure you
 22 know of a lot of the evidence that has been heard here and
 23 there are worrying aspects of it. But certainly my
 24 greatest concern at the moment is to have a, form a view on
 25 how SARS should be governed and how it is being governed.

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1 I think that's a very major thing as far as tax collection
 2 is concerned for the present and the future. And a lot of
 3 the other detail will, you know, there's some overlapping
 4 with -
 5 MR MOMONIAT: Yes.
 6 COMMISSIONER: But let's not go down the
 7 road of too much detail.
 8 MR MOMONIAT: Okay.
 9 COMMISSIONER: And let's talk about that
 10 broader principle of what is in fact happening in SARS and
 11 what should be happening in SARS. It might be that it's
 12 being governed well and we'll have answers to all of that
 13 in due course but that we'll weigh up but try and just bear
 14 in mind that my primary concern at the moment is that
 15 because it's - you're still wanting to collect tax like
 16 from now.
 17 PROF KATZ: That's just a small
 18 clarification on that and what you regard as an appropriate
 19 governance model for SARS.
 20 MR MOMONIAT: Yes, okay.
 21 PROF KATZ: You will have seen that Judge
 22 Davis' committee made recommendations. Our committee some
 23 time ago, autonomy, what it means, all of those issues if
 24 possible should be addressed.
 25 MR MOMONIAT: Okay.

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1 MS STEINBERG: So should we move onto
 2 that issue now?
 3 COMMISSIONER: I think it would be
 4 helpful.
 5 MR MOMONIAT: So then we move on to this
 6 here.
 7 MS STEINBERG: I think you must turn on
 8 your mic, Mr Momoniat. Turn on the mic.
 9 MR MOMONIAT: So okay, so I think let me
 10 just start by saying that, you know, we don't have an
 11 official Treasury view on how to proceed. Part of it is we
 12 are awaiting proposals from the Commission. And we were in
 13 fact on the point of publishing amendments to the SARS Act
 14 and I'll come to those on budget day. So Minister Gigaba
 15 had in his budget speech talked about the introduction of
 16 this bill. He then decided to withhold the bill but I'll
 17 come to that and go through what we considered the urgent
 18 proposals that we wanted to put through.
 19 I think the key question that we have and that
 20 we've certainly seen in the last few months in trying to
 21 hold say the Commissioner accountable and SARS accountable
 22 is that, you know, I always say it's like the Public
 23 Finance Management Act which I was quite involved in. We
 24 did legislation just after '94 only having good scenarios,
 25 like a good Minister, a good DG. We thought people would

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1 be so outraged if it went to Parliament Parliamentarians
 2 would not tolerate any corruption. Okay.
 3 I think what we learnt was actually you could
 4 have a bad Minister. You could have a bad President. You
 5 could have a bad DG. You could have Parliamentarians who
 6 actually didn't exercise their oversight very vigorously.
 7 And so the system whilst it still got information out like
 8 through the audit process we did not stress test our
 9 legislation in the hubris of 1994 and after and one of the
 10 Commissioners sitting next to you may also have been,
 11 members of the panel, may also have been a co-conspirator.
 12 But we kind of, you know, in today's language we
 13 didn't stress test the legislation for bad scenarios. So
 14 if we were to do the PFMA again I think we would have
 15 stronger measures to say what you do when things really
 16 fall apart, you need to have something. And I think in the
 17 same vein though I did not have anything to do with the
 18 SARS Act at the time, 1997, or in developing it but it had
 19 a similar kind of approach that it took.
 20 A lot came from the Katz Commission and I say
 21 this subject to correction but even though we dealt with
 22 appointment processes we didn't deal with how do you deal
 23 with a bad Commissioner. Okay. And even now when I know
 24 the President has suspended the Commissioner we, I know
 25 that as government we've relied on legal precedents that

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1 were set say around Masetla and so on to say that that
 2 automatically gives the President the right to suspend and
 3 so on.
 4 So I think the big question for us is what's
 5 clear is that the Commissioner is too powerful. The SARS
 6 Act is written where everything vests in the Commissioner,
 7 everything, the structure, the bonuses, etcetera. And even
 8 when the Auditor-General found that the bonuses payments
 9 were irregular I think he found on the basis that that was
 10 the practice previously between the Minister and the
 11 Commissioner.
 12 And in this case the Commissioner just went ahead
 13 without getting the approval of Minister Gordhan at the
 14 time. And of course SARS had its own - the Commissioner
 15 had his own legal opinions that he was coming and he wanted
 16 to take even the Auditor-General to court. Now, let me say
 17 we would never want to take the Auditor-General to court.
 18 These are important institutions and that itself was
 19 astounding. So the first question that we want to look at
 20 is the powers of the Commissioner. I think the second
 21 point -
 22 COMMISSIONER: Sorry, I want to interrupt
 23 you at that point because that is where I'm coming to and
 24 that is this. I believe that you cannot divide power. It
 25 vests somewhere eventually.

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1 MR MOMONIAT: Yes.
 2 COMMISSIONER: Now, you might say, well,
 3 what do we do if we've got a bad Commissioner? Now, your
 4 suggestions I think is that appointment should be by the
 5 Minister of Finance. And I say what happens if you have a
 6 bad Minister of Finance. And both are appointed
 7 essentially by the President. Now, so it seems to be
 8 impossible to decide where the power should rest because
 9 ultimately it will always rest with the President. And
 10 what one is looking for is only checks and balances.
 11 MR MOMONIAT: Yes.
 12 COMMISSIONER: So the checks and balances
 13 to me are the important ones.
 14 MR MOMONIAT: Yes.
 15 COMMISSIONER: As I read your document
 16 last night and I may be wrong, your only real suggestion
 17 was, well, change appointment to the Minister of Finance
 18 and there's very little about checks and balances there.
 19 I'm interested in the checks and balances.
 20 MR MOMONIAT: Yes, no, and remember we
 21 were only trying to deal with the urgent provisions and I
 22 want to say upfront we don't have the answers to it as we
 23 speak because we, we've looked at Judge Davis' report and
 24 but I will deal with it. Let me just deal with it.
 25 I think the first - but I think it's as you quoted, as

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1 Advocate Steinberg quoted, I think you quoted Minister
 2 Gigaba or I think you said it, Judge, that if you don't
 3 have mature people then we're in trouble.
 4 And I think what I get to later is that the way
 5 we appoint, and it's not a problem that's specific to SARS,
 6 we've got very poor appointing mechanisms. Okay.
 7 Certainly I look at the National Prosecuting Authority. I
 8 think you have the same problem. I think Judge Moseneke a
 9 few years ago raised the issue that we have a Constitution
 10 that's perhaps been written for Madiba as President.
 11 There's no checks and balances.
 12 So how do you ensure that even basic fit and
 13 proper tests are done? How do you ensure how experience
 14 gets taken into account? I know the DG here, chief of
 15 staff, had some insight to even the process for appointing
 16 the Commissioner. And you can see that there's almost no
 17 process currently and the very basic checks would've said
 18 whether X or Y is good enough for the job. So if the state
 19 were just to be able to deal with the question of fit and
 20 proper and criteria, the experience, etcetera and have a
 21 more robust process with public hearings and so on I think
 22 that alone could - and not public hearings I want to
 23 emphasise to choose a person but once the President
 24 appoints should Parliament have a power of veto okay,
 25 almost like in the US where you have a nomination and then

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1 the President knows that if I make a bad appointment
 2 information will come out and some parliamentary committee
 3 will obviously raise serious issues. Okay. So I mean that
 4 could be the type of check and balance that we could have.
 5 But I want to come back to - you want to come in on that.
 6 MR MAGAJANE: Let me come in there,
 7 Judge. I think it's important. I deliberately right at
 8 the beginning said the Commissioner is just like a DG
 9 because I was actually putting a phrase that I was going to
 10 end up on this point. Why am I saying that? I am saying
 11 that because as a DG I know the President has got a final
 12 say in terms of my appointment or cabinet. Can the
 13 Minister remove me or can the DG, I mean, can the
 14 President?
 15 Who should be removing me? Is it the President
 16 or the Minister? And there was a system and a structure
 17 that appoints a DG in government. And that process even if
 18 the President has got a final say the department who
 19 process that - because I don't think when the Act says the
 20 Commissioner is appointed by the President that it is
 21 actually the President who should be writing the advert,
 22 who should be getting all those 100 plus or 200, you know,
 23 himself and go through.
 24 There is a process behind that and I guess as a
 25 matured system he's the one that understands that when the

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1 President appoints it's actually a system that appoints,
 2 that finally the President in his capacity as President can
 3 sign off on. Because reality is that as a DG the post is
 4 advertised. We all know about it. Everyone is
 5 interviewed, I mean, applies. Short listings happen. A
 6 panel of ministers sit and interview you and make a
 7 recommendation to the President.
 8 Maybe for Commissioner type appointments and
 9 maybe other specialised, call it DGs for now because of
 10 their particular specific role could be a variation but not
 11 fundamentally removing it from what's generally acceptable.
 12 So that's what I say and then because I've seen it, I've
 13 seen it when this happened, when a Commissioner does not
 14 see himself as part of that that it becomes issues about
 15 leave.
 16 COMMISSIONER: About?
 17 MR MAGAJANE: Leave, a leave. Who
 18 authorises your leave?
 19 COMMISSIONER: Ja.
 20 MR MAGAJANE: If there's an immature
 21 system that actually became at the end where the issue is
 22 that who signs off the leave - it's not that Minister. I'm
 23 going to take my leave form to the President. Maybe we
 24 need to get those details. I don't know because I was not
 25 directing that office. But you find that those things came

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1 up in the open in terms of when and how does a Commissioner
 2 applies for leave. There's small little issues.
 3 Who appoints the acting Commissioner? Is it the
 4 President? But practice, and that's where our challenge is
 5 as a country, I mean, we - and Momo is right. What we have
 6 done, all it was based on good, you know, Minister, good
 7 DG, good President, good everything without
 8 institutionalising some of the arrangements because the
 9 reality here is that it made sense for a Commissioner to be
 10 in line or talking or engaged to the Minister of Finance
 11 and obviously, you know, the decorum that establishes that
 12 relationship is quite important. It was there.
 13 But it only makes sense that there's an approval
 14 process and I've seen such memos where a Commissioner
 15 previously would've written to the Minister of Finance,
 16 request to be on leave, request to go on an international
 17 tour, request or recommend that so and so should act and
 18 then it's up to the Minister to - but now that at some
 19 point in this relationship in the last few years broke
 20 completely down in terms of who appointed who. I'm not
 21 accountable to this Minister. I was appointed by the
 22 President and which really put a clock in the system and
 23 that, and that's where my point, that's where as DG of
 24 finance I'm - that affected my revenue streams.
 25 PROF KATZ: But can I make, sorry, can I

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1 make just one observation? Forgive my saying this.
 2 MR MAGAJANE: Yes.
 3 PROF KATZ: I have one disagreement with
 4 you on equating the position of the Commissioner to a DG.
 5 In status all of that, yes, but there's one very big
 6 difference in a Commissioner and that's the Commission that
 7 I had to chair when we looked at autonomy at SARS if
 8 there's political interference in the operations of a
 9 Commissioner of taxes that is really very, very
 10 unfortunate. It's much worse if it happens there with the
 11 power to tax people and that than if it happens elsewhere.
 12 So I just want to make three observations.
 13 One, the method of appointment is important.
 14 Two, the checks and balances while the incumbent is
 15 operating to try and balance autonomy with the problems of
 16 political interference. And three, the method of removal.
 17 And I think those three have to form a sensible
 18 relationship, method of appointment, checks and balances
 19 during operation and method of removal. But what we were
 20 very concerned about in the Commission that I had the
 21 privilege to chair and while we emphasised autonomy is that
 22 political interference in the operations of a SARS could be
 23 quite serious.
 24 COMMISSIONER: May I just add to that
 25 because I think the middle point is the one that concerns

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1 me most. We can talk about appointment, talk about removal
 2 but if you're going to have autonomy you've got someone in
 3 there for a fixed period. And what happens if that person
 4 goes as they use the word in the revenue, rogue? In other
 5 words is there no one that he or she should be accountable
 6 to? Is there no block upon the abuse of the power? That's
 7 the central one, that's the one I'm most concerned about.
 8 Now, Judge, you know, for example, you know, in the
 9 judiciary they say, well, there's no interference. But the
 10 fact is that judge are accountable to an Appeal Court for
 11 example and another one so it's very difficult for a judge
 12 to get out of hand. Judge Davis talks about a board and
 13 the board having some clout. You talk about deputy DGs.
 14 MR MAGAJANE: Commissioners.
 15 COMMISSIONER: Deputy Commissioners.
 16 Because again the point you make, I mean, the DG at the end
 17 of the day must take instructions from the Minister. So
 18 there's that control over the DG and so it's different in,
 19 you know, you're not appointed for a fixed period with
 20 nobody to report to. Now, do you have any views on Judge
 21 Davis' board for example?
 22 MR MAGAJANE: Thanks. Momo will talk
 23 about that. Just maybe let me clarify. I agree with Prof
 24 Katz completely in terms of your three categories. Maybe I
 25 was too simplistic in terms of saying it's just an ordinary

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1 DG. The reality here is that it must be totally
 2 independent, no influence by, you know, by the Minister
 3 concerned. But I'm just saying in terms of a day to day
 4 workable engagement and relationship that decorum must be
 5 there between how I relate to a Minister so that we are
 6 able to - but in terms of the things that you mentioned
 7 they are quite important.
 8 And I think the accountability is at the heart of
 9 this. If in your words, Judge, if the Commissioner or, you
 10 know, gets roped into that how then do we - I'm of the view
 11 and I think we've shared this with Momo that there must be
 12 a layer of accountability whether it's an advisory panel or
 13 whether it's a board, whatever it is, where we can keep the
 14 Commissioner accountable and the same decorum that is
 15 required of the Commissioner should be the same one
 16 required of this board or panel of advisory board or
 17 whatever.
 18 PROF KATZ: But now does that mean that
 19 the aboard should be able to veto what the Commissioner
 20 does, override what the Commissioner does?
 21 MR MOMONIAT: Ja, let me -
 22 PROF KATZ: Sorry, Momo, just before
 23 answering that with respect take the board. With the board
 24 powers there's two spheres that - once again just to try
 25 and define properly would the board's powers only be on

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1 operational issues, taking leave, giving bonuses, or
 2 getting involved in how the Commissioner makes decisions on
 3 tax matters?
 4 MR MOMONIAT: So let me deal, let me - if
 5 I may just go through all the issues. I think just let's
 6 deal with autonomy, okay.
 7 [11:44] I think that and Prof Katz I think in the 1994
 8 report which I think was an outstanding report and
 9 certainly developed, I think this world, laid the basis for
 10 this world-class institution. The concept of autonomy came
 11 up, in our Constitution as you know better than me there's
 12 a concept of independence. Now what's the difference
 13 between autonomy and independence? And can we, I think to
 14 the extent that when there are recommendations we will need
 15 to go into more detail on what we mean by autonomy. And it
 16 does get into how do you make decisions on tax matters?
 17 And I want to just use an example, like of the South Africa
 18 Reserve Bank. It does have a board. Yes it has private
 19 shareholders and that has become an issue itself. But the
 20 Governor chairs the board and the board does not get
 21 involved in monetary policy, it only deals with the first
 22 set of issues that you've asked on operational issues,
 23 audit committee, remuneration, etcetera. I think that it
 24 is important for any board to at least know that there's
 25 integrity in whatever processes, that there's integrity in

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1 the settlement process, there's integrity in, that people
 2 are fit and proper, they take lifestyle audits, all of
 3 those things, okay. They should certainly not get involved
 4 in deciding the tax matters of particular individuals but
 5 for example if there are stories that the Gupta family has
 6 been treated in a particular way. We need to find a
 7 mechanism, I'm not sure whether it's the board or it's the
 8 tax ombud but someone who can investigate and see is it
 9 true and hope that it's not true, and to take corrective
 10 measures more quickly, okay.
 11 So we don't have the answers and we can certainly
 12 develop a proposal much more but coming back to the issues
 13 you raise. So the first issue is what's the process of
 14 appointment, okay? So let me get to the first point. I'm
 15 saying we need to know what do we mean by autonomy, okay?
 16 That needs to be clarified because it's not. To the extent
 17 that the power is there and whilst you do want the
 18 Commissioner to make the ultimate decisions, there are
 19 processes that get followed when you make decisions and
 20 what's the, and that needs to be spelled out I think more
 21 clearly. So when we are saying that there are Deputy
 22 Commissioners, you see we had the same issues now when we
 23 were looking at setting up the so-called Twin Peaks
 24 financial regulators where the financial sector conduct
 25 authority.

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1 What we said is let's start with the appointment
 2 process. How do you try and introduce road blocks, or not
 3 road blocks, speed bumps to make sure that the wrong things
 4 don't happen? So we get an expert panel to come up with
 5 the names and propose a short list to the Minister and I
 6 guess Judge, I don't know how the JSE works but the
 7 President can't initiate a set of names, it's got to be
 8 names that finally get, you people apply, anyone can apply
 9 and the President can tell anybody to apply, but you have a
 10 panel that goes through the list, does the fit and proper,
 11 checks for expertise, the criteria set out, can give the
 12 President two or three names, we can decide on those
 13 numbers. That is one way to check that at least the
 14 process of appointment actually works better, and I think
 15 we need that in the law.

16 Secondly, I think that once they make an
 17 appointment we are saying most decisions should be made
 18 collectively by the Commissioner and Deputy Commissioners
 19 on tax issues to the extent that the Commissioners get
 20 involved. They will delegate lower down but if issues come
 21 up, is having just one person deciding not a problem? Yes,
 22 the Commissioner will have the, if they split can have the
 23 two votes or whatever, I don't have the answer but I'm
 24 saying for the day to day issues on tax affairs and whether
 25 refunds should be paid, surely it's better to get three or

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1 four people making that decision and each must know that
 2 they are then in a sense liable for the decisions that they
 3 make, okay. So that would be one form of check and
 4 balance.

5 There's other measures of checks and balances
 6 that we need to look at. Obviously what and how they
 7 report to not just the Minister but if you had a board,
 8 what are the reportable or material issues that they have
 9 to report on? And that gets to the board. If you had a
 10 board what will it do? Yes it can look at the operational
 11 issues, it can look at the integrity of the process. I
 12 would argue that it should be like the SARB that whilst it
 13 may not be in line with King for governance I think that
 14 the Commissioner should chair the board but you should have
 15 a few non-executives who are on and when there's issues,
 16 certain issues it's the non-executives who decide,
 17 including when there's any investigation. If you look at
 18 the way the SARS Act has worked like with the Kroon
 19 committee and so on clearly we need to relook at those and
 20 when I look at the 2003 amendments there was an issue of
 21 Minister appointing a committee the Parliamentarians felt
 22 that would undermine autonomy. So these are issues that we
 23 need to develop further. And so I agree that we need to
 24 have more checks and balances once the Commissioners are
 25 appointed and I think that a board in the form that I'm

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1 suggesting, which would have the Commissioner and Deputy
 2 Commissioners plus non-execs could be a way of dealing with
 3 it.

4 I think it was felt that the original advisory
 5 board, I think it was Judge Corbett who first shared it
 6 that it was purely advisory, it had a role to play in the
 7 first period but then that there was no use for it. But
 8 Trevor Manual used to say some of these things you need as
 9 an umbrella for a rainy day, when you have a problem. And
 10 for me if you did have a board would it not have been able
 11 to deal with the problems that we've seen in the last two
 12 years quicker and more decisively? I don't know but that's
 13 a question that I have. We don't have the answers. Lastly
 14 I would say certainly we need to then have the power to
 15 suspend and fire, okay, and that needs to spell –

16 COMMISSIONER: But doesn't the President
 17 have that?

18 MR MOMONIAT: No, but I think that the
 19 issue in these things is always you don't want the
 20 President to fire someone just because say the tax, the
 21 Commissioner is getting into your tax affairs, okay. How
 22 do you guard against that? Should you have a committee of
 23 inquiry headed by a Judge, but somewhere in a process
 24 that's I would say less onerous than just generic law that
 25 you have, and in this case for example, I guess we're

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1 following largely the Masetla judgment and so on and the
 2 power seems to be just implicit. There's no clause that
 3 says what you need to do.

4 So again we don't have the answers but we're
 5 saying this needs to be done. Can I also say, just to get
 6 to the slide you had, I think that the technical
 7 appointment, I think we agree with Judge Davis that you do
 8 have a Minister who's in charge of expenditure and revenue
 9 and if you look at the Constitution only the Minister of
 10 Finance can introduce money bills and money bills are both
 11 tax bills and appropriation bills. And there's an
 12 intrinsic link between revenue and expenditure. I mean if,
 13 in this instance the President's not going to worry about
 14 revenue every day, he's got to worry about the country
 15 obviously. You need a Minister who's dedicated to this
 16 function, who can call the Commissioner and hold the
 17 Commissioner him or she to account on revenue collection,
 18 as I think the DG outlined, that would even be done in
 19 normal times. If that link is broken I think that we are,
 20 we will be in trouble. I think that we can deal with the
 21 checks and balances but at the moment do we look at the
 22 role of the tax ombud? Should they have stronger powers
 23 and the power to initiate certain investigations? You've
 24 got obviously the Davis Tax Committee which is advisory and
 25 on policy issues. The Minister said to me we've got three

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1 judges and you are the third judge now around the entire
 2 tax process. So again we don't have answers but I think
 3 the question is what should they report on, as a matter of
 4 routine? What are the material issues that they need to
 5 report on? And coming back to the earlier issue of what
 6 would Commissioners report to the Minister? I think that
 7 in these issues, even the DG I would imagine, if you had to
 8 put in law what he's got to report on, really it will be
 9 limiting and it will be a tick box exercise.

10 But the DG knows what issues are material and if
 11 the DG doesn't know – any DG okay – doesn't know what's
 12 material to report to the Minister, that talks about their
 13 own judgment and whether they're really fit and proper for
 14 their own job. But you kind of realise what's material.
 15 In this instance to me you have a situation where there
 16 were lots of material issues, you know. The FIC says
 17 Makwakwa, there are suspicious transactions. For four
 18 months the Commissioner keeps quiet. He doesn't tell the
 19 Minister. I'm not sure if he told the President and if he
 20 told the President would it have made any difference at the
 21 time? So for four months he keeps quiet. He apparently –

22 COMMISSIONER: Perhaps not go down that
 23 line if you don't mind.

24 MR MOMONIAT: Yes. For four months he
 25 doesn't tell his Exco.

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1 COMMISSIONER: Let's not go down that
 2 route.

3 MR MOMONIAT: Okay.

4 COMMISSIONER: Ja.

5 MR MOMONIAT: So the issue is what's
 6 material and what's said and how do you then respond, once
 7 you have any material input, so –

8 COMMISSIONER: Look, I understand all of
 9 that and I think the principles, you're articulating –

10 MR MOMONIAT: Okay, I'll move on.

11 COMMISSIONER: But no, I just want to say
 12 one thing. You see you talk about accountability and of
 13 course all of those things should occur. But ultimately
 14 some person is going to make a decision.

15 MR MOMONIAT: Yes.

16 COMMISSIONER: Now all I want to know
 17 from you, are you suggesting that the board should be the
 18 ultimate decision-maker if there is a board, or do you say
 19 that the board is there to just restrain the Commissioner
 20 but the Commissioner must have the final say? And are you
 21 saying as far as appointment is concerned that the Minister
 22 of Finance should appoint, are you suggesting that it
 23 should be only after a process? I think that's what you're
 24 saying. I don't have a difficulty with that.

25 MR MOMONIAT: I'm saying that –

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1 MR KAHLA: And maybe just before you, I
 2 want to tag onto the Judge's question, and perhaps it would
 3 help if you could clarify to us the workings and indeed the
 4 statutory authority of the board of the Reserve Bank. And
 5 I'm more particularly interested in knowing whether it has
 6 any role in the constitutional mandate of the Reserve Bank,
 7 for example relating to monetary policy, or is it simply
 8 assisting the board, I mean the Reserve Bank in its other
 9 responsibilities that have no bearing on the constitutional
 10 mandate, because it would be important as you answer that,
 11 for us to understand that would you be seeking to have the
 12 board constrain the powers of the Commissioner in the
 13 exercise of his statutory, his or her statutory obligations
 14 under, within the tax administration framework or are you
 15 looking for something else? And I link this also to the
 16 point you've also raised around the Commissioner being
 17 tagged along with one or two or another Commissioner or so
 18 in making decisions. And I'm still not, it's not clear to
 19 me of what moment is that, if you've got all the other
 20 checks around the Commissioner acting consistent with the
 21 law, why must he be subjected to a syndication of his
 22 powers?

23 MR MOMONIAT: Ja look, I think the
 24 question is a very difficult one and I think we should
 25 explore both options, okay, and look at the pros and cons

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1 more systematically. But my gut feel is that you want to
 2 go towards the Reserve Bank model where the Governor's
 3 powers are unfettered when it comes to monetary policy and
 4 the board has no role to play. But in this instance I
 5 think that there are other offices like the tax ombud or,
 6 and the question is can we sharpen their powers on
 7 specifics when a taxpayer feels aggrieved in whatever way,
 8 how do you deal with it? Can a tax ombud play a role?
 9 Yes, currently. But what you can't do currently is if you
 10 say family X or person X has been treated favourably, it's
 11 still between SARS and person X and other taxpayers can't
 12 come in. Now can the tax ombud then go into that case or
 13 is it the board, okay? I think the board can look at the
 14 integrity of the process but once you're going to, to
 15 actually find out you have to get into the files of
 16 taxpayer X and perhaps the ombud's office is better -

17 PROF KATZ: Can I just add one dimension,
 18 forgive me. When we talk about the relationship between
 19 the Finance Minister and the Commissioner, I think there's
 20 different dimensions. We heard from you this morning how
 21 the whole process of the running of the country, the
 22 financial management of the country depends on borrowing,
 23 tax, expenditure, the relationship between it and that's
 24 fundamentally the responsibility of the Minister of
 25 Finance. So an important part of that is tax collection so

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1 that part of it, surely the Minister in that regard has to
 2 have a fundamental say, because it goes to the whole
 3 management of the country's financial system. The tax
 4 collection is an important cog of it. So in that part of
 5 it, I'm not talking about how the Commissioner administers
 6 tax, how he exercises his discretion, where the Tax Act
 7 says on capital gains, if in the opinion of the
 8 Commissioner, clearly that's of a different. I'm talking
 9 in the running of the country's monetary financial system.
 10 This is an important cog of it. It has to be the
 11 responsibility of the Minister, surely.
 12 COMMISSIONER: Well before he says it
 13 surely, and can I add another different view?
 14 PROF KATZ: Ja.
 15 COMMISSIONER: Then you can think of both
 16 of them. If you're going to have autonomy at all it means
 17 that the Commissioner must have a fixed term. That I'm
 18 sure we would agree on. Now as far as taxpayers are
 19 concerned, I agree that boards can't get involved in that
 20 kind of thing. But if you look at the organisation, take
 21 this organisation at the moment where we've heard a lot of
 22 evidence, we may reject it all but that's another matter,
 23 of low morale, there's this whole question of this
 24 operating model, is it working or not working? And assume
 25 the Commissioner says I'm not going to do anything about

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1 that, and assume that that is clearly not the right thing,
 2 does your board step in and override him? I'm interested
 3 at the moment, these other ones, tax ombudsman's powers I
 4 think is not all that difficult to deal with, but when
 5 you're talking about running the organisation, who runs it,
 6 the board or the Commissioner?
 7 MR MAGAJANE: It's a fine line between
 8 the board and the Commissioner running because then again
 9 we have to go back to the board and its responsibilities
 10 and it's the board and its powers and duties, and we have
 11 to define those and explain those in detail. And also
 12 explain in detail in call it the new responsibilities of
 13 this new Commissioner that you're trying to build as to
 14 what is that that they do on a day to day basis insofar as
 15 their accountability to the board, their accountability to
 16 Parliament and what the relationship exists between the
 17 board and the Minister as a collective, not the board and
 18 the Commissioner as a collective in relation to the
 19 Minister, in terms of what Professor Katz is saying because
 20 the Minister's responsibility and the PFMA is very clear in
 21 terms of what Treasury and the Minister of Finance is the
 22 head of the Treasury anyway in terms of the law, build on
 23 the revenue and expenditure we've got responsibilities. So
 24 you cannot divorce the Minister of Finance and his role and
 25 in the board in terms of what role they should play insofar

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1 as not limiting the responsibilities of the Minister to
 2 only certain minor responsibilities but obviously having
 3 all the confidentiality, all the autonomy in place. Is it
 4 the new system that you have to build in? But I think
 5 removing myself from this conversation and understanding
 6 what it took for us to build a SARS from what it was to
 7 what it became, from being a revenue of, what did we used
 8 to call it, Inland Revenue, to becoming a SARS that was
 9 competent that we are all proud of. Let's look at that and
 10 what worked and we can pick and choose what worked what
 11 worked in terms of building or defining a new set of
 12 responsibilities for the board, for the Commissioner and
 13 for the Minister of Finance and not in any way interfere
 14 with issues of autonomy and actually enhance accountability
 15 including the role of the Presidents insofar as hiring and
 16 firing because this is not new.
 17 [12:04] It has worked for many years, it has worked for
 18 many years and for other reasons that I don't know things
 19 that had fallen apart.
 20 COMMISSIONER: DG, can I just interrupt
 21 you? You're quite right. The rules of the game haven't
 22 changed, what has changed is that you had a Minister and a
 23 Commissioner who worked together, they seemed to work
 24 together very well. So you know it's no good just changing
 25 the rules, the rules didn't prevent it working like that

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1 and the rules haven't changed –
 2 PROF KATZ: With respect can I just say
 3 Mr Momoniat has hit the nail, there is a distinction
 4 between an independence and autonomy. What we had in mind
 5 on autonomy was to take SARS out of the public service
 6 Commission, that was the real reason for it, so that they
 7 could hire people, hire premises and be competitive and run
 8 a good business organisation. That was really what
 9 autonomy was about, no impact on independence. Now I see
 10 the board as an administrative board that helps on the
 11 administration, it's a business board. It's got nothing to
 12 do with the functions, the tax functions of the
 13 Commissioner. So we can really start drawing together
 14 threads, autonomy means the thing I've said, independence
 15 independent of politicians and administrative
 16 accountability for the administrative functions of the
 17 Commissioner to a board. But not these tax discretions and
 18 all of that.
 19 COMMISSIONER: You know we could have a
 20 debate going for a long, long time on this and we're going
 21 around and sort of circling the problem, but not solving
 22 it. I wonder if we should continue this, unless if you
 23 think there's something else to say otherwise I wonder if
 24 the Treasury could just think about this and if you want to
 25 just put in a short memorandum to us if you think you've

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1 now found the answer. Would that be okay?

2 MR MOMONIAT: No, Judge, I think that

3 would be fine. I mean look we've done some research, we've

4 looked at other jurisdictions. We could give you a more

5 comprehensive note. I'm not sure we've got the answers,

6 but I think we - Professor Katz outlined it. I think

7 that's been our thinking.

8 COMMISSIONER: No I'm sure, that's

9 correct. It's a matter of now getting to the detail.

10 MR MOMONIAT: But I just want to say

11 though, the question you asked, the rules didn't change,

12 the people change yet it was a very different outcome and

13 that for me is the interesting question. How do you deal

14 with bad outcomes?

15 COMMISSIONER: Yes.

16 MR MOMONIAT: So we need more what we

17 call preventative type arrangements, checks and balances

18 that could help and really when the problem's there you

19 need a quicker mechanism for exit because SARS is really

20 far too important to have a prolonged fight going on.

21 COMMISSIONER: By the way we haven't yet

22 found the bad outcome, so we have to look at potentially

23 bad outcomes.

24 MR MOMONIAT: Yes okay.

25 PROF KATZ: Can I make one for light

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1 relief? During CODESA a friend of mine from Russia came

2 and he said his mother told him that the best constitution

3 is a benevolent tsar. The worst constitution is a

4 malevolent tsar.

5 COMMISSIONER: But anyway and the other

6 thing I don't know if one should concentrate too much on

7 what they do in New Zealand and the UK. You know my

8 feelings is greater political accountability there and that

9 makes a very fundamental difference I think. I mean

10 governments get voted out of power there.

11 MR MOMONIAT: Can I just add one other

12 point, Judge? I think it's also important that there's

13 more clarity on who comprises the Exco -COMMISSIONER:

14 Yes.

15 MR MOMONIAT: - of SARS and how they are

16 appointed because I think that if you take the Exco of SARS

17 you're going to have - if you look at tax collection today

18 especially with individuals. It's really an IT driven

19 process. So who is your head of IT also becomes a big

20 consideration. A person won't be a tax expert, but they

21 would know what is possible. Similarly chief legal

22 counsel, you know we may need and we do it in a submission

23 that those are areas that we need to look at how even how

24 they are appointed irrespective of the Commissioner and the

25 others.

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1 COMMISSIONER: I quite agree with you, by

2 the way, that it's a thing I think that is I think in our

3 minds and that is it's not just a matter of looking at the

4 leader, but the leadership -

5 MR MOMONIAT: Yes.

6 COMMISSIONER: - is what one should be

7 looking at more broadly than just the leader.

8 MR MOMONIAT: And as important when they

9 leave I mean do we know the reasons, you know, the CFO left

10 last year, there's no reasons.

11 COMMISSIONER: Well there is a reason

12 maybe you do not know it, but -

13 MR MOMONIAT: But the point is that there

14 should be a way that the Minister at least gets informed,

15 perhaps sees the person who's exiting, has a one on one.

16 You know I think those are necessary, a lot of those

17 certainly is not known to some of us.

18 COMMISSIONER: Well I think a lot of what

19 you are saying is you want to avoid the secrecy of the

20 process.

21 MR MOMONIAT: Yes.

22 COMMISSIONER: I mean there should be a

23 lot more transparency and you might solve more of these

24 problems.

25 MR MOMONIAT: And SARS often you get the

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1 impression that the tax confidentiality was used against

2 people and to threaten them if they ever speak on this it's

3 like they're going to end up in hell.

4 MS MASILO: Just one question. I think

5 my observation in all of this which may not be correct, is

6 that SARS was not accountable to Treasury for anything in

7 the past few years. Is that correct?

8 MR MOMONIAT: Well remember we said

9 upfront nobody is accountable to us, to any public entity,

10 but they were not accountable to the Minister really.

11 That's the issue, but I don't know if -

12 MR MAGAJANE: Yes it will differ, like

13 what I did for instance last year you know based on my

14 office as DG of the Treasury insofar as the cuts that were

15 exercised across the whole of government, we cut the budget

16 of SARS. And it then called for an engagement between

17 myself, probably finance team and SARS and SARS

18 Commissioner on that. And then this time around there was

19 again another conversation between us, myself and the

20 Commissioner of SARS, acting Commissioner with management.

21 And I'm able to say it's not about accountability, it's a

22 management thing, I'm saying and I will do it for any other

23 department, by the way. We look at some expenditure line

24 and say no, no, no you cannot be budgeting for this. Let's

25 for an example say they might have budgeted for say 500

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1 million or 750 million for bonuses and I say look I mean
 2 and I know there might not be guidelines, I say you want
 3 you know your budget to be increased, why don't you reduce
 4 your bonus line by 200 million per year for the next three
 5 years. Then we're finding each other, but if the
 6 relationship whereby it's in a budget framework discussion
 7 for budget for next year, so when you look at it it's not
 8 like they're accountable, but in that way I'm able to
 9 exercise the authority of the Treasury and saying no, no,
 10 no you can only you know – your IT program, you want to
 11 change all computers everywhere in the country and you
 12 budgeted a billion for it. Why don't you do it, you know,
 13 per year, spend 200 million per year for the next three
 14 years. It's that kind of an engagement and relationship.
 15 Now when you look at it the Minister of Finance is not part
 16 of it, it's the Treasury in terms of those three, four
 17 categories that I said. Treasury will interact with SARS
 18 at various levels. So in that way I take advantage because
 19 in the budget discussion because at the end of the day you
 20 have to make that transfer. And in that way again it is
 21 between ourselves and SARS and not necessarily the Minister
 22 of Finance exercising his authority over SARS and that's
 23 not relationship.
 24 MR MOMONIAT: Just, Chair, we also just
 25 flagged I think this slide which shows you how, you know

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1 how massive bonus increases –
 2 COMMISSIONER: No I quite agree with you,
 3 I mean there should be broader principles than that. It's
 4 one of the problems, by the way, we're told with audits.
 5 They've got to get through a number of audits to get a
 6 bonus. So I mean who's going to audit a major corporation
 7 when they can audit 100 personal taxpayers. But can I just
 8 ask you, I think we should leave it here, but I wouldn't
 9 mind you providing us with a short memorandum and you say
 10 that well I don't think or not sure that we'll be able to
 11 give you answers. I wouldn't mind a direct recommendation
 12 from you as to what you say the answer should be rather
 13 than just a repetition of what we should look at as it
 14 were. If you can give us – if you could, you're not
 15 obliged to, but it would be helpful if you say this is how
 16 we say appointments should be made, governance within the
 17 five year period or whatever. Thank you very much.
 18 MS STEINBERG: Does this slide say that
 19 in 2014, 2015 there was a 41.26% increase in bonuses?
 20 MR MOMONIAT: Compared to the previous
 21 year, yes. And if you look at the – the surprising thing
 22 is also their numbers have been going down.
 23 MS STEINBERG: Ja.
 24 MR MOMONIAT: So I mean and this our
 25 colleague Vivian Wilson, may know it better. We hardly as

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1 tax policy focus on these issues, but I think the issues
 2 for us is even in judging whether a Commissioner is
 3 successful you can't just have one metric to say if they
 4 collect the revenue then they get bonuses on the one hand.
 5 There should be other factors that get taken into account
 6 as well. And secondly these numbers I think are
 7 interesting and it does suggest that perhaps you win
 8 loyalty because you give people big bonuses even though the
 9 revenue shortfall started. And Chris will come in on the
 10 revenue story as soon as you like, Judge, but he would show
 11 that you know compared to previous years, except for when
 12 you had a recession in 2009 generally revenue always, not
 13 every year, but generally was always better than initially
 14 budgeted. And our problem was we were always revising
 15 upwards, come the last four years there's a break. We are
 16 now only doing, revising downwards because they're
 17 collecting less. And in fact we are forced to also
 18 increase taxes just so that they collect more. And the old
 19 mantra used to be that you know let's widen the base and
 20 you lower the rate, that just fell apart. But now we just
 21 increase taxes.
 22 PROF KATZ: But with respect, over
 23 generous, over aggressive bonuses for tax collectors has
 24 its own philosophical problems.
 25 MR MOMONIAT: Yes which is, I guess what

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1 you're trying to say, Professor Katz, that you don't want
 2 them to err on the side that they tax people so heavily
 3 just to reach their target.
 4 PROF KATZ: Exactly, precisely.
 5 MR MOMONIAT: And that has an economic
 6 impact. But if we can go onto the revenue slides because I
 7 think we were requested on that.
 8 MR KAHLA: Just before you move on that I
 9 just want to understand. I mean that's a significant
 10 growth, was it ever explained, what was behind that? And
 11 maybe as you answer that if you could also just address me
 12 on the approval process firstly in respect of the scheme as
 13 well as payment under the scheme.
 14 MR MAGAJANE: Yes you see I would explain
 15 with my, again very vague knowledge when I was Chief of
 16 Staff. There would have been an independent panel of some
 17 kind you know, yes, Judy Parfitt used to be on the – what
 18 were they doing?
 19 MS MASILO: Remuneration Committee.
 20 MR MAGAJANE: Yes it was the Remuneration
 21 Committee that would have decided on the policy framework
 22 for bonuses. That will be the one that would have been
 23 recommended, the amounts to be paid, etcetera. And then
 24 that comes to the Minister of Finance for approval. And
 25 then including the Minister of Finance approval for your

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1 Exco, chief officers, so sign and everyone would – and
 2 then, by the way, that would have – but again there would
 3 be a process again, a parliamentary process of an annual
 4 performance plan, strategic plan, you know, measurable
 5 objectives that should be met. etcetera. And again we
 6 must have an historical – to be quite fair for the process
 7 even before this one, we should have a long term
 8 understanding of what used to happen there that it could
 9 have been or it could be that even before '11, '12
 10 financial year, the early days. I'm talking now from the
 11 early 90s that maybe yes it was a measure of the target to
 12 be achieved that you will be paid a bonus on. That was it,
 13 if you have to go into the archives you'll pick up
 14 something like that. That says – but at some time it was
 15 based on measurable objectives in terms of where they are.
 16 They introduced something called the SARS for higher
 17 purpose in terms of the mantra that defined who they are.
 18 They were modernising big time, somewhere in the history of
 19 SARS they modernised from an IT modernisation point of view
 20 there were milestones that they had to achieve. And all
 21 those were a factor in terms of how much and when to get a
 22 bonus. If you reach this milestone that's it. Do you use
 23 the same milestone that you used last year for this new
 24 year, no.
 25 But again we then have to open ourselves and

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1 understand, if you have to really engage and use this bonus
 2 as an issue, just to be fair on the process then again you
 3 must understand what were the milestones agreed to the
 4 Minister upfront. And I have seen documents where even
 5 then there was clear understanding that we have agreed,
 6 there's a memo that the Minister approves these milestones.
 7 Come financial year end the memo that request the Minister
 8 to approve bonus we'll refer to that approval. Have we
 9 reached, have we not reached? Now it will always be an
 10 issue about the Minister and what he approves including the
 11 percentage by the way. There were times especially when we
 12 started introducing haircuts in the system from cutting
 13 budgets across the – that to show you know, on one hand you
 14 are cutting expenditure, on one hand you are not only
 15 cutting expenditure, you have to demonstrate in the
 16 entities. We used to say that at the time. The entities
 17 that report to the Minister of Finance should also show or
 18 demonstrate that they are – understand the fact that the
 19 economy is not doing well, understand that tax revenues are
 20 not coming through and show – and that must be reflected in
 21 the kind of bonuses they offer. That was applicable to
 22 ASB, FSB, SARS, DBSA, everyone, FIC included and the
 23 Minister of Finance. And if you look at all the
 24 submissions that at least I looked at from 2010 there would
 25 be a recommendation, the Minister of Finance would have a

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1 handwritten final approval.
 2 You know if it's 10% of your personal budget the
 3 Minister may say reduce it to 5% or 7%. And then SARS
 4 would go and work out what that means in terms of
 5 individual performances. Because the benchmark was the
 6 state, it was government at the time who say look you
 7 understand your autonomy is also government, but government
 8 can only be a maximum of 1.5% of payroll. And that's what
 9 we have to stay within. What justification and this is the
 10 kind of conversation I would have with my boss as Minister
 11 of Finance as I'm Chief of Staff in our office, our own
 12 space. And saying we're looking at SARS, I'm advising him
 13 with one or two other people and say it doesn't make sense
 14 when government is going that route then we are taking
 15 haircut and yet SARS is giving so much, reduce that. And
 16 then we kind of convince each other that is the right way
 17 to do it. Now in terms of what happened after that, it's
 18 very interesting. And a kind of defiance, call it that
 19 because at the time what the Minister of Finance said was
 20 it was clear defiance. And the fact that is the Minister
 21 of Finance authorised to approve or not approve bonuses.
 22 And that's where the issue is and it's interesting and I
 23 don't have the facts to know was it ever time when the 41%,
 24 Mr Katla, Advocate Katla came. I don't think so. I don't
 25 know, maybe we just have to get the details and say was

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1 that increase when the Commissioner at the time took it
 2 upon himself just to pay irrespective of the approval or
 3 not. It could be, I don't know. I don't have the memo in
 4 front of me.
 5 PROF KATZ: Thank you ja. Carry on.
 6 MS STEINBERG: Can we move onto another
 7 topic. I'd like to talk about an aspect of the Auditor-
 8 General's report and how it relates to Treasury. It flows
 9 from the discussion about accountability. Judge and Panel,
 10 I'm going to lead a chain of evidence. Would you mind
 11 hearing that evidence and then –
 12 COMMISSIONER: We would hear any evidence
 13 that is worthwhile and helpful.
 14 MS STEINBERG: Thank you.
 15 PROF KATZ: You're saying we mustn't
 16 interrupt.
 17 MS STEINBERG: It would be more valuable
 18 to hear it first and then ask your questions. One of the
 19 Auditor-General's findings in the 2016, 2017 report is that
 20 – it's paragraph 29 on page 85. Consistency of draft
 21 annual report information and achieved targets. And he
 22 finds according to the draft annual report that's SARS's
 23 draft annual report, page 29 Revenue Performance. Overall
 24 revenue performance in 2016, 2017 paragraph 1 states,
 25 "despite challenge and economic conditions SARS collected

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1 the revised estimated target which represents a 6.9% growth
 2 in total tax revenue from 2015, 2016." We noted that the
 3 draft annual report indicated that the revised estimated
 4 target was met while there is a difference of 300 million.
 5 Furthermore we noted that the media report dated 3rd of the
 6 4th 2017 stated that SARS did achieve their revised target.
 7 [12:24] The risk that the Auditor-General finds is a
 8 possible reputation risk based on misleading facts
 9 presented to the public. The risk, there is a risk of
 10 incorrectly paying bonuses to staff based on targets
 11 reached while evidence prove otherwise. In terms of
 12 internal control deficiency the Auditor-General finds under
 13 leadership management did not exercise adequate oversight
 14 responsibly regarding performance reporting as the
 15 information reported in the draft annual report and medium
 16 reports were not consistent with achieved targets. The
 17 recommendation management should ensure that the
 18 information reported in the draft annual report and
 19 communicated to the public is consistent with the achieved
 20 target."
 21 The Auditor-General then has a section called
 22 management comments where he says that in short, management
 23 announced preliminary revenue results on that day and they
 24 said they were preliminary and that this is normal
 25 procedure in SARS. He nevertheless finds that, it's a

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1 negative finding and that the draft annual report should be
 2 updated to ensure that the accurate number is reflected and
 3 in fact the target as he calls it or the estimate as we
 4 should call it was not in fact met. Now we have had three
 5 separate submissions from people within SARS on this topic
 6 and what we have pieced together is this. SARS issued a
 7 media statement on the 3rd of April which says SARS
 8 announces the preliminary outcome of revenue collections
 9 for 2016/17 stating that the revenue collection amounted to
 10 1.144 trillion which is fractionally above the estimated
 11 target. At the time the statement was made it was clear
 12 that the revenue collected was far below the revised
 13 estimate, that 300 million. The figure did not take into
 14 account various items that amounted to 302 million. For
 15 example the UIF collection that are not actually part of
 16 the revenue but is simply collected by SARS but flow out
 17 the following day as it happened. The SARS employees that
 18 were aware of the above financial position were put under
 19 an embargo by the Commissioner and were prohibited from
 20 sharing the actual collection figures. There's also detail
 21 to show why this is, was not in line with the practice of
 22 previous years where previously the estimated figure took
 23 into account the non-revenue monies collected.
 24 On 11 April once the numbers had settled and were
 25 no longer estimates the final reconciliation between the

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1 media statement and the statement of financial performance
 2 was communicated to the chief financial officer and the
 3 communication, we have the communication and this is where
 4 you come in. The March reporting was submitted to the
 5 National Treasury on 13 April 2017 showing the total tax
 6 revenue of 1.14 trillion which equates to a deficit of just
 7 over 300 million against the revised estimate target.
 8 Despite knowing that SARS did not meet the target the
 9 Commissioner continued to congratulate staff on meeting and
 10 exceeding the target and that's an internal new flash after
 11 the final figures were settled, congratulating staff on
 12 exceeding the target. There has not been any subsequent
 13 communication to SARS staff or to the media or to
 14 Parliament that SARS did not meet its target. We have the
 15 details here including the documents that were sent to
 16 Treasury in March. The question I want to put to you is,
 17 goes back to these questions of checks and balances and
 18 accountability. As far as I can see Treasury was aware of
 19 the misrepresentation but as far as I know public, the
 20 public and Parliament remain unaware of the
 21 misrepresentation and the Auditor-General suggest that
 22 bonuses could have been determined on the basis of the
 23 misrepresentation and I wonder if you could comment on
 24 that.
 25 MR MOMONIAT: Ja. Let me say, I call

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1 this the April Fool day issue, okay. You know on March 31st
 2 SARS used to have a big event, big screens, the last few
 3 days as they're working towards the revenue number, okay.
 4 Frankly from the perspective of the Treasury it's neither
 5 here or there that they under collect by 300 million or you
 6 know 1 billion or so. It's small in relation to the
 7 1.4 trillion that they collect and that's why we say this,
 8 I can see they need to drive SARS staff and hype people up
 9 but you know I think in the Treasury we've always been more
 10 sceptical that they reach something they see as a target to
 11 the last cent or bid and there's a bit of marketing on the
 12 1st of April to say we've reached it and whatever.
 13 The reality is we know in the Treasury it's only
 14 when the figures are audited that you can finally say that
 15 this, they're reached that target and to be honest I don't
 16 think 300 million will affect a bonus, whether you pay
 17 bonus or not because they're kind of more or less reached
 18 it. To the extent that they are deliberately distorting I
 19 think it's a problem of suppressing and certainly on the 1st
 20 of April we found the last few years that even the Minister
 21 was not told the number. Whereas by Midnight we would be
 22 getting emails, we would even go on March the 31st, I think
 23 you were there, even last year or this year. You know we
 24 would go to those functions just to show we stand behind
 25 SARS. I think even the Auditor-General, I mean obviously

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1 they don't focus on the way we would see management of
 2 revenue. So perhaps they're making a very strong point but
 3 given the amount I don't think it's a big deal. But it
 4 might affect the culture within SARS that certain info
 5 which proved inconvenient kind of just got deliberately
 6 ignored and the wrong impression is put out. I think when
 7 you see what Chris has, all these numbers ultimately are
 8 put out. Yes people don't say you know we exaggerated a
 9 little bit the announcements on the 1st and you can sort of
 10 get away with it because they are largely preliminary
 11 numbers and I remember this one, it was a discord UIF. Now
 12 I didn't know it was deliberate but that was the case.

13 Let me just give you another example. Last year
 14 we introduced the dividend tax or we increased it, sorry.
 15 They actually collected something like 6 billion just in
 16 February immediately after announcement. Obviously there's
 17 issues there that, especially if you're not a public or
 18 listed company you could gippo the system okay so that got
 19 scored as revenue and they just barely made the level that
 20 they wanted. But actually there would have been 6 down and
 21 this was complete, well not completely unanticipated but it
 22 was as a result of the budget announcement to increase the
 23 tax and all of it came up front. So you know when we do
 24 the analysis we're very sceptical of the press statement,
 25 what comes out. Our experts like Chris and so on look at

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1 it with a much harder hat and so on. So to cut a long
 2 story short I wouldn't put great store by the number and
 3 whether it had an impact on the bonuses but to the extent
 4 that numbers were deliberately suppressed or information
 5 kept that certainly is not something that should be the
 6 case.

7 MR MAGAJANE: But before, because this
 8 slide is very important in terms of -

9 MR MOMONIAT: Yes.

10 MR MAGAJANE: We're just explaining what
 11 it means. But let me give you a very practical situation
 12 which is a problem generally. End of year is 31st of March,
 13 save for 17/18, this year 31st of March that's when you know
 14 the financial year ends and the statement entities
 15 including SARS will have the 31st of May to submit the
 16 financials and the 31st of August to publish the annual
 17 report and that's the number we'll go by. Now and the 31st
 18 of August is quite important because it then, it's a report
 19 reporting on last year's performance. Then ask yourself
 20 when do most government departments and SARS pay bonuses.
 21 They pay bonuses before August. Mostly and we can double
 22 check the dates and the trends in the last ten years. So
 23 you pay when, before you have finally tabled your
 24 performance for the year and your questioning and questions
 25 in terms of what exactly, whether you've achieved or not.

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1 So in any way what we then tend doing, which is a problem
 2 in government and it's an area of reform that we must of
 3 course focus and concentrate on is that you even go to
 4 point of paying before the annual report is tabled that
 5 determines and you are questioned on it, whether you've
 6 achieved or not and by the way the Minister of Finance in,
 7 or any Minister for that matter should then sign off on
 8 this report. It could happen that two weeks or even months
 9 before the Minister of Finance signs off on your
 10 performance that you would have paid off your performance
 11 bonus for the year that's in question. So that in a way is
 12 an anomaly that I think the system must just recognise.
 13 But this slide is important to answer the second part of
 14 your question, in terms of whether targets are reached and
 15 is it a target because remember your first, your strategic
 16 plan which comes into place from 1st of April would be
 17 signed off based on a number that is your budget review
 18 number that is a target that's there which in this case
 19 becomes the original number that determines whether you've
 20 achieved or not, irrespective of whether that number is
 21 going to be revised in the year meaning in MTV time when
 22 it's revised downwards. In this case 993 for instance
 23 would have been your target in that 14/15 financial year.

24 I can imagine anyone including SARS for instance
 25 would have said we will pay bonus if you exceed that 993

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1 and because that 993 numbers comes in February, it's
 2 announced in February meaning it starts to be relevant from
 3 1st of April 2014 in that case. SARS strategic plan would
 4 also be relevant for 1st of April 2014 indicating in their
 5 plan that we want to reach that number. When you go back
 6 to that number the following year that number you should be
 7 looking at and not the number that is 983. So then when
 8 they then make their determination whether they've achieved
 9 or not anyone says oh no I have achieved my revised number
 10 but that's not the number that was used in the strategic
 11 plan because the number that should have been used was 993.
 12 So then your answer then becomes is it correct to base your
 13 number on 993 or 983, but let me ask Chris how the
 14 relationship works between those numbers and the red
 15 numbers because that's quite important for understanding.

16 MR AXELSON: I mean I must say we get the
 17 preliminary numbers from SARS. We always take them with a
 18 pinch of salt because we, they are changed and they are
 19 always changed. I mean it's the first I've heard that
 20 there was a different process then previous years which is
 21 worrying to me. But you know in terms of the number that,
 22 do Parliament know, do other people know whether the target
 23 has been met or not. We publish the audited figures. So
 24 Parliament certainly know that you know the revised
 25 estimate at budget was actually a bit better than the final

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1 audited outcome. But I mean just to carry on with what DG
 2 was saying. You know we don't think that's the correct way
 3 of looking at this at all anyway. This looks like a
 4 complicated slide but it's just to try and show you the
 5 process. If you look at the top panel, the dotted lines
 6 are our forecast for monthly revenues. So you can see that
 7 big spikes in June and there's another big spike in
 8 December which was the corporate returns and the red line
 9 is the actual and then the bottom portion that bar chart
 10 shows how much we've undershoot the forecast through the
 11 year. So for last year at the beginning, we made a
 12 forecast. Six months go by and then in the first red
 13 circle we're about 25 billion down in our forecasts. So we
 14 have a RAWC meeting. We all sit together. We discuss this
 15 and we revise the estimate of how much tax we will get, all
 16 the way down to 50.8 billion which is that very, very
 17 bottom dotted line. So we think we're going to, we're only
 18 25 billion now midway through the year but we think we're
 19 going to end 50 billion down and then we carry on through
 20 the year and then -
 21 COMMISSIONER: At the end of the day?
 22 MR AXELSON: Ja, at the end of the fiscal
 23 year and then at the second red circle we're about 39
 24 billion down at the time of the budget and then we revise
 25 the estimates again and we say well we think the full year

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1 we'll be down by about 48 billion. Now you see a lot of
 2 the statements have been made comparing to that very last
 3 estimate but if you look at that chart, I mean there's only
 4 a month and a half left to go in the year. So basically
 5 you're excluding the performance or the ability or the
 6 effectiveness of the institution for you know 10 and a half
 7 months and then you know we put a revised estimate which
 8 the DG has spoken about, we can't create excessively over
 9 optimistic targets you know for SARS, we need to have a
 10 best estimate because this number flows through to
 11 government expenditure. It flows through to our debt to
 12 DGP ratio. This is, it's looked at intensely by analysts
 13 to see whether we are being excessively over optimistic and
 14 it will affect the credibility of our publications and of
 15 government as a whole if we start making numbers up. So
 16 that's an estimate of what we really think we're going to
 17 achieve.
 18 So we don't think that it's useful to look at the
 19 final revised estimate with a monthly and a half to go.
 20 You've got to look at the full year of the estimates and
 21 that's where all these shortfalls come from. So if you
 22 look at, this is the chart just to show all our shortfalls.
 23 I mean compared to the budget in the previous years. So in
 24 2006/7/8 we had big surpluses, it was fantastic.
 25 Additional revenue that we'd never thought we would get,

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1 large 60 billion shortfall in 2009 and then small changes
 2 and then in the last few years we've had much bigger
 3 decreases in revenue. So, and I mean I think that's the
 4 main point that we're trying to make is that you need to
 5 look at these type of comparisons for effectiveness of the
 6 institution. Now the big point is here there could very
 7 well have been large reductions in the economy that weren't
 8 forecast. So actually you could have big shortfalls which
 9 are due to the economy. If the economy underperforms
 10 everybody thought the economy would do very well but it
 11 doesn't then SARS of course would collect less and I think
 12 that's the second part of the question. Shall I carry on
 13 with that or shall I -
 14 MS STEINBERG: It is probably is
 15 convenient. We had asked, Judge we had asked the Treasury
 16 to look at to what extent the projected shortfall and the
 17 previous shortfall can we accounted for by sluggish economy
 18 and to what extent it can be accounted for by subpar tax
 19 administration and tax collection and perhaps we can go
 20 into that.
 21 COMMISSIONER: Yes, that's fine. Can I
 22 just ask you one question at the outset on that though, are
 23 you able to give us a figure and say that figure, that
 24 portion of the 50 million was due to poor tax collection by
 25 SARS, I think the answer is no.

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1 MR AXELSON: Yes. I mean the answer is
 2 no.
 3 COMMISSIONER: Yes, the answer is no.
 4 MR AXELSON: Yes, the answer is no.
 5 COMMISSIONER: So I mean look you can't,
 6 we heard for example a gentleman, I recall his name is
 7 Cecil.
 8 MS STEINBERG: Cecil Morden.
 9 COMMISSIONER: Morden, dealing with that
 10 and I mean he, I'm sure a very thorough job and he couldn't
 11 come up with an answer and I don't think you would be able
 12 to come up with an answer.
 13 MR AXELSON: So there's a nice quote, I
 14 like from George Box, a statistician and he said all models
 15 are wrong. But some are useful.
 16 COMMISSIONER: Yes.
 17 MR AXELSON: And I think by doing this
 18 you can get an idea.
 19 COMMISSIONER: Okay.
 20 MR AXELSON: And at least the way that we
 21 think about what the impact of the economy will be.
 22 COMMISSIONER: Well can you just tell me
 23 your conclusion and then you'll tell us how you got there.
 24 MR AXELSON: Okay so well the conclusion
 25 is that it does look for some individual tax items that it

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1 was largely explained by the economy. If you look at
 2 import VAT, if you look at Customs duties we had forecast
 3 very large increases in nominal imports but actual imports
 4 were drastically lower in the actual year that happened.
 5 So there was a huge decrease in imports and then the taxes
 6 related to those imports were less and so you had big
 7 shortfalls in those. So that does look as if it is
 8 explained by the economy.
 9 [12:44] However for other tax instruments if you look at
 10 personal income taxes for example there was a very small
 11 change down in the wage bill which is the main determinants
 12 of personal income taxes. Yet there was very, very, very
 13 large shortfalls in personal income taxes. Now, a portion
 14 of that which I try and go into detail can be explained by
 15 things such as policy measures. We did a big retirement
 16 reform change. That was, probably cost a lot more than we
 17 put in our forecast. So even after taking out a big 7.5
 18 billion for retirement reform changes there is still
 19 unexplained drops in personal income tax collections that
 20 don't seem to be explained by changes in the tax base.
 21 COMMISSIONER: Approximately how much are
 22 you talking about there? Do you know?
 23 MR AXELSON: Well, so I mean the way we
 24 do it, the initial point estimate which is to be taken like
 25 all models as just a range is about 40% of the shortfall in

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1 the 2017/18 year according to this model which I've tried
 2 to be very transparent about isn't explained and it could
 3 be due to some other reason. Now, and this is the point
 4 where I'm trying to say that it's useful just to look at
 5 this to say, well, it is suggestive of something. It's
 6 certainly not definitive and we're not trying to be
 7 definitive here. But it does seem as if there's this
 8 disconnect. And if statements are made that it is
 9 certainly all because of the economy, you know, these type
 10 of models can help to say that, well, it actually doesn't
 11 look like that if you look at the underlying data.
 12 COMMISSIONER: Well, if you look at some
 13 of the evidence we've heard that people aren't putting in
 14 tax returns. I suppose that's an indicator too if it's
 15 correct. We'll still have to look at all of that.
 16 MR AXELSON: And that was the other tax
 17 instrument that does seem to be underperforming compared to
 18 what the tax base has done is domestic value added tax.
 19 And I think there were statements by some SARS officials
 20 that there had been a spike in the non-submission of
 21 returns for pay as you earn and for value added tax and
 22 that correlates with what we see here in terms of this
 23 data.
 24 And I mean, if you were ever going to check,
 25 well, how does SARS, how has their performance been in

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1 terms of the economy, you want to look at independent data
 2 and this is independent, you know, Stats SA calculated data
 3 on consumption. And value added tax is a tax on
 4 consumption. So now you're looking at a completely
 5 separate source and you're seeing how that's changed over
 6 the year and then you're looking at the collections for
 7 value added tax. And then that's the sort of approach that
 8 we were trying to use.
 9 PROF KATZ: Could I just ask one question
 10 on that? Advocate Steinberg said that the large business
 11 centre accounted for 30% of the tax take. The dismantling
 12 of that, how would this fit into, how would you estimate
 13 that impacted on tax collections?
 14 MR AXELSON: So that's quite difficult
 15 because I'm assuming that would relate more closely to
 16 corporate income taxes. Now, corporate income taxes is
 17 exceedingly volatile so personal income taxes is relatively
 18 stable. It's based on the wage bill and the wage bill
 19 doesn't change dramatically. Value added tax is based on
 20 consumption. Consumption doesn't change dramatically but
 21 profits of companies really do change dramatically. So
 22 we've, you know, in the work that we've done at a high
 23 level it doesn't look as if there is a huge problem with
 24 corporate income taxes from this high level. Now, I don't,
 25 you know, so it won't necessarily fit with those type of,

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1 well, those type of, that type of evidence on an individual
 2 basis. But it's, it could just be a shortfall of the model
 3 but we certainly can't say anything about that.
 4 COMMISSIONER: There's another tax that
 5 Mr Morgan talked about and that is excise on tobacco. Now,
 6 he suggested there's a problem there indicated in the
 7 figures. And I suppose there might well be if you've got
 8 no one inspecting the factories for example. Do your
 9 figures show anything significant as far as tax of tobacco
 10 is concerned?
 11 MR AXELSON: Yes.
 12 COMMISSIONER: I think this might also
 13 apply to liquor and -
 14 MR AXELSON: Yes, ja, so I've got a chart
 15 there which shows how - the red line is our, the red line
 16 is actual and then right at the end is just our forecast
 17 for the last year. Now, there has been a greater than 20%
 18 decrease in tobacco excise duties over the last year alone.
 19 So you can see the actual, you know, excise duties levelled
 20 off and then decrease.
 21 Now, as Mr Morgan said part of that is there was
 22 a - a tobacco manufacturer left the country so domestic
 23 excises would've gone down but this adds domestic and
 24 import. And you can just see there's - this shortfall, how
 25 can you explain that shortfall? You know, have 20% of

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1 people or has the prevalence of smoking decreased by 20% or
 2 has the prevalence of vaping which could be another
 3 suggestion for why you're not taxing it increased by 20%
 4 takeover? You know, in our view that's very unlikely. I
 5 mean, this does look in our view as if it is evidence of
 6 greater illicit tobacco which is just not being taxed.
 7 PROF KATZ: Could I, Advocate Steinberg,
 8 am I correct in saying that Randal Carolissen and Dr, what
 9 was his name -
 10 MS STEINBERG: Malovhele.
 11 PROF KATZ: Yes, both said, I'm using
 12 colloquially, that they didn't buy that the economy was a
 13 significant reason for the reduced tax take. Am I correct
 14 in -
 15 MS STEINBERG: You are correct.
 16 PROF KATZ: What do you say about that?
 17 MR AXELSON: So the work that we do does
 18 appear to show that that's true. So it doesn't look as if
 19 the economy was the full reason for the shortfalls. It
 20 looks as if there were other reasons. Now, that other
 21 reason might come out later as some tax policy change that
 22 we did that we didn't estimate correctly. You know, we
 23 can't say for sure but there certainly is evidence that it
 24 wasn't the full economy. I just want to point to one other
 25 issue that was discussed previously and it's the valued

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1 added tax refunds.
 2 This is data on the credit book which is
 3 published by SARS in their annual report. So it shows how
 4 much does SARS owe to taxpayers in VAT refunds. And if you
 5 look at - it's from 2012 onwards. If you look at increased
 6 18 to 21, 21 to 25 which was a 20% jump, 25 to 33 billion
 7 which was a 30% increase, so there was a 30% increase in
 8 how much SARS owed to taxpayers in VAT refunds. Now, we
 9 would've expected just a priori that those amount of
 10 refunds should grow by the value of VAT which was about
 11 7.5%.
 12 So a 30% increase is much higher. And if they
 13 now owe SARS that amount extra in effect it's saying that
 14 because it's done on a cash basis revenue has increased in
 15 that year. But if you look in later years it now decreases
 16 and, you know, SARS have done a lot of effort to then
 17 decrease their credit book for value added tax refunds. So
 18 now if you're actually decreasing the credit book in those
 19 later years it means you're actually giving out more money
 20 and actually the revenue collections are lower.
 21 So overall across the time period you're no
 22 better off but it's shifted income from the later years to
 23 the earlier years. So the later years actually look a
 24 little bit worse off than they would've normally but the
 25 earlier years look a little bit better. So even taking

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1 those, even - so we spent quite a bit of time trying to
 2 take these effects out and say, well, that's not SARS'
 3 fault in the later years to have higher VAT refunds. So
 4 you take that out and pretend that that's the same as an
 5 economic impact. And even after that there's still
 6 unexplained shortfalls.
 7 PROF KATZ: Right.
 8 MS STEINBERG: Mr Axelson, is there
 9 anything you'd like to add on this question?
 10 MR MOMONIAT: No, I was just going to say
 11 I think the other objective factor which we may not have
 12 here but is to look at their debt book as well. Those are
 13 objective factors which show you, I mean, that's not,
 14 shouldn't be linked to the state of the economy so whether
 15 that goes up or down or does it go up more than before or
 16 less than before it kind of can indicate an element of
 17 trying to play with the numbers.
 18 MS STEINBERG: The debt book has
 19 ballooned.
 20 MR MOMONIAT: Yes, which tells you that
 21 their capacity to collect is down presumably. Okay. And
 22 therefore how much do you attribute to that as a factor for
 23 not collecting the revenue? And just go back to your
 24 slide, the first one that you showed. Because I think, you
 25 know, the bars that you had -

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1 MR AXELSON: Oh, there on the shortfalls.
 2 MR MOMONIAT: Ja, I think if you look at
 3 - ja, that one. Ja. No, not this one.
 4 MR KAHLA: Whilst we're moving to those
 5 slides of course -
 6 MR MOMONIAT: So I just want to show - I
 7 think if you look at this, I suspect if you look at the ten
 8 years before 2006 you'll find the bars are all positive.
 9 Okay. So there's a long trend of SARS collecting much more
 10 and we can give you, maybe we can extend going backwards,
 11 okay. When 2009 comes up and 10 we get a shock. Obviously
 12 we're following the global financial crisis very carefully
 13 but that recession that you had in the world was almost a
 14 depression, not just a recession.
 15 Okay, and you know, one million people lost their
 16 jobs. Even though our, even though we did not have a
 17 financial sector crisis our banks, you know, were managed
 18 well and did not suffer. Okay. Because once Leeman went
 19 down it impacted immediately on European banks and so on.
 20 But despite - so the fall that could be explained, it was
 21 massive. We were in a deep recession. Then of course we
 22 recover the next two years.
 23 And okay, we have 12 billion. I must go back
 24 into it. But if you then see from 2015 there's consistent
 25 decline, revenue shortfalls, and that now has, seems to

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1 have become a pattern. And I think as Chris has said when
 2 we put our revenue projections the market is looking at it.
 3 You really can't gippo the system because analysts are
 4 looking at it and if they feel that we, you know, we are
 5 just playing with the numbers they will certainly, you
 6 know, you get punished in all kinds of other ways.
 7 MR AXELSON: Ja, so just to add on that
 8 point, I mean, we try and be very transparent with this
 9 process. You know, some commentators have looked at the
 10 buoyancy between year to year and they say Treasury -
 11 sorry, I'm just trying to find this slide there. Treasury
 12 has these excessively optimistic forecasts which will be
 13 very difficult for SARS to achieve, you know, and it's
 14 almost implying something there. But it's really not and,
 15 you know, we publish in the MTBPS which this slide is
 16 showing all our assumptions on every tax base, how we think
 17 it will react to the economy, our assumptions for the wage
 18 bill, you know, net operating surplus for corporate income
 19 tax, imports.
 20 So we're very open and transparent which I think
 21 leads to part of this being so ranking well in this budget
 22 index. But analysts can look at that and we hope that that
 23 information shows that we're not trying to do anything with
 24 these numbers. These numbers are too important, that we
 25 really are doing our best including through the raw process

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1 with these other institutions, with all the expertise that
 2 they bring in, just to create a best estimate and that's
 3 the main focus of what Treasury is trying to do with our
 4 revenue forecast.
 5 COMMISSIONER: Well, I suppose that's
 6 where the co-operation between SARS and Treasury plays a
 7 very important role is in fixing these figures and if you
 8 don't cooperate in doing that you get the figures wrong or
 9 different.
 10 MR AXELSON: Yes, and I mean SARS play a
 11 vital role in the RAWC that we talk about.
 12 COMMISSIONER: Yes.
 13 MR AXELSON: Because they have this
 14 expertise about what exactly is happening on the ground.
 15 You know, if a tobacco manufacturer leaves it has a huge
 16 impact on domestic excise duties and we would never know
 17 about it unless, you know, they were the ones seeing that
 18 type of information. So they play a critical part in the
 19 RAWC. That gives us a lot of information that we don't see
 20 as well as the SARB which they see a lot of information
 21 that we don't see.
 22 So an interesting little side note on this RAWC
 23 process is that the Reserve Bank did an analysis and looked
 24 at all our previous forecasts, you know, from the
 25 individual players in RAWC and they found that the margin

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1 of error of every individual player was higher than the
 2 actual RAWC outcome. So if any one individual player was
 3 going to forecast they would actually do worse than the
 4 RAWC itself and I think it's a fundamental reason for why
 5 we have that process.
 6 MR MOMONIAT: I should also just add,
 7 Judge, that in most years there'll be some once-off thing
 8 like I said with the dividends tax but more, a very rich
 9 taxpayer too or some settlement which one year gave quite a
 10 few billion. Okay. You can almost guess who it was but -
 11 because very few people are that rich. But you can -
 12 because there's an announcement in the JSE, someone selling
 13 their shares, this, that and boom, there's a once-off or
 14 some settlement. Okay. So that's just a factor to take
 15 into account. But it might be big, two, three, four
 16 billion, but it's still small in relation to the total to
 17 be collected.
 18 MS STEINBERG: Also we put this together
 19 with other evidence we've heard so Dr Malovhele for example
 20 showed declining compliance rates, particularly with PIT
 21 and CIT which tells its own story. We also have heard from
 22 many witnesses that SARS' enforcement teams particularly in
 23 terms of the illicit tobacco industry were closed down. So
 24 that again would tally with what Mr Axelson was saying
 25 about the hole in the revenue collection there. So I guess

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1 one can also form a picture that way.
 2 PROF KATZ: It would correlate in other
 3 words. They should correlate.
 4 MR MOMONIAT: Ja. And just coming back
 5 on the excise, I don't know if you showed the tobacco - ja,
 6 okay.
 7 COMMISSIONER: Okay, happy.
 8 MS STEINBERG: Happy.
 9 COMMISSIONER: Thank you very much. It's
 10 been very helpful and very informative.
 11 MS STEINBERG: Oh, we've got two more
 12 topics.
 13 COMMISSIONER: Oh, I see.
 14 MS STEINBERG: Ja.
 15 COMMISSIONER: You've got two more
 16 topics.
 17 MS STEINBERG: Two more. It is 1 o'clock
 18 so I'm not sure how we want to handle this.
 19 COMMISSIONER: What are the two other
 20 topics?
 21 MS STEINBERG: The two other topics are
 22 the procurement question and the border management
 23 authority bill.
 24 MR MOMONIAT: Yes. Okay. Can I say just
 25 on procurement our official for some reason is not able to

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1 come. Maybe we can get him in the next day or two. I
 2 don't think he'll be very long. So we're not going to deal
 3 with it. None of us here deal with -
 4 COMMISSIONER: Can I just have an idea?
 5 Procurement, what are you going to be telling us about
 6 procurement?
 7 MS STEINBERG: It's my questions. I have
 8 now the documents about Bain's procurement and there are
 9 questions that I'd like to put to the Treasury about the
 10 regularity or otherwise of certain steps in that process.
 11 So we do need the procurement specialist to be here.
 12 COMMISSIONER: Okay.
 13 MR MOMONIAT: And what, just when I did
 14 speak to him yesterday he said there were application, what
 15 they call expansions and exemptions.
 16 MR KAHLA: Exemptions.
 17 MS STEINBERG: Deviation.
 18 COMMISSIONER: Deviations.
 19 MR MOMONIAT: And so they would be able
 20 to talk to you about that. With regard to the border
 21 management authority I think what's been of concern,
 22 obviously on one hand you have customs capacity that is
 23 going down.
 24 MS STEINBERG: Mr Momoniat, if I can just
 25 stop you, not everyone has a context for this.

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1 MR MOMONIAT: Okay.
 2 MS STEINBERG: So perhaps you could just
 3 start by talking about what it is and the differences that
 4 it's going to bring into our legislative framework.
 5 MR MOMONIAT: Okay.
 6 COMMISSIONER: Are we going to do that
 7 after lunch did you say? I'm not quite sure.
 8 MR MOMONIAT: I can be very short.
 9 COMMISSIONER: When you say that, you
 10 know, is that it?
 11 MS STEINBERG: This is the last topic now
 12 so perhaps we should just hear it and then have a bit of a
 13 later lunch?
 14 COMMISSIONER: That's fine. Yes.
 15 MR MOMONIAT: So I think as you saw, even
 16 I saw Dr Carolissen's input about how this structuring
 17 happened, but let me go back to the Katz Commission. I
 18 think the big issue there was it brought in inland revenue
 19 and customs and excise. You had to - was it Commissioner
 20 for inland revenue and Commissioner for customs and excise.
 21 Customs and excise, I mean, I forget the figure now but
 22 we're looking at about R300 billion at least of revenue is
 23 collected through that customs and excise, import, VAT
 24 etcetera if you take all of these taxes together. There's
 25 been a kind of initiative that's been led in government to

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1 create a border management authority which we support for a
 2 more co-ordinated approach to the movement of people and
 3 goods and services coming in and out of our country.
 4 Where we've differed in this bill is, you know,
 5 SARS has a major initiative on customs modernisation which
 6 started a few years ago. There's about four Acts of
 7 Parliament that will replace the current customs and excise
 8 legislation and they are in the process of being
 9 implemented. So we've had issues then in Parliament about
 10 the breakup of this customs function from SARS and we've
 11 said it will break the revenue chain.
 12 It will bring risk up to R300 billion of revenue,
 13 okay, at its worst. And I think what we've also said is
 14 that there's been no proper study done. A lot of this has
 15 been driven from a security perspective rather than a
 16 revenue perspective and we've said that given the R300
 17 billion you would have, you would really increase the scope
 18 not just for evasion but I would submit even for all kinds
 19 of illegal activities and illicit flows could increase
 20 dramatically. This bill is up before the second half so
 21 Parliament, there has been a lot of issues.
 22 [13:04] It is also very funny that Minister Gigaba was
 23 proposing it on the one side when he was Home Affairs, then
 24 he was Minister of Finance. I'm not sure what his view is
 25 to this day whilst he was Minister of Finance and he's now

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1 back at Home Affairs. But I think that for us as a
 2 Treasury we think that there needs to be mandatory co-
 3 ordination between various agencies, but if this function
 4 is split, it's really not taken the implications of revenue
 5 into account and the scope for more evasion and it would
 6 disrupt the customs modernisation programme quite
 7 significantly and really there's no proper study that's
 8 been done as to why it should be broken up. Those who are
 9 advocating it I think, think oh but you don't collect
 10 money, the money comes through electronically, you don't
 11 collect much, it's like collecting money for passports and
 12 so on. It's nothing of the sort. It's what's behind the
 13 scenes, the underlying risk profile engines that SARS has
 14 to have and breaking that what they call vertical chain
 15 that will really cause problems. So all we've argued is
 16 that if the Minister and the Commissioner and certainly
 17 there was great total consensus with the Commissioner and
 18 ourselves that bill had huge implications for SARS and even
 19 went against the original Katz Commission proposals and
 20 that if we wanted to proceed on those lines it should at
 21 least be subject to a proper and rigorous evidence based
 22 approach. Our problem is when we go to committees like
 23 Home Affairs and so on in Parliament they look at it in a
 24 particular way and they're not looking at the broader
 25 implications, so that is a risk that we do face and

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1 something certainly I think as a Commission looks at
 2 because even with all the problems in SARS we're saying
 3 it's easier to fix up the customs and excise problem in
 4 SARS than split it up and fragment it and put it in other
 5 departments or agencies. I think there's greater risk if
 6 we were to do that and it would go against one of the
 7 fundamental reforms that the Katz Commission introduced and
 8 that led to I think the SARS that we knew in past years.

9 COMMISSIONER: Bringing customs into SARS
 10 you mean?

11 MR MOMONIAT: Yes, continuing that way.
 12 I think what, Dr Carolissen had an interesting point,
 13 pointing out though that the one raises 300 billion, the
 14 other raises 900 billion so even the head of Bay and head
 15 of customs and excise was a bit lopsided at the top, but
 16 you'll deal with Bain and why they came up with that. Just
 17 something I noted from his input. What we don't doubt is
 18 that customs and excise needs someone. Certainly the last
 19 person to head it from the Exco also resigned. What was
 20 Jad's surname?

21 MS STANLEY: Nicolatos.

22 MR MOMONIAT: Yes. And currently it's
 23 headed acting by Beyers Theron but that's also an area that
 24 needs certainty, particularly in the light of the political
 25 uncertainty that's been generated.

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1 PROF KATZ: May I ask a question? Mr
 2 Momoniat, has anyone suggested that since our report
 3 circumstances have changed to make our report wrong?

4 MR MOMONIAT: No, but they've said
 5 someone from your legal firm has given advice that it's
 6 constitutionally not a problem. Now of course we say
 7 constitutionally lots of things are possible. It doesn't
 8 mean therefore you should go ahead. I may still be, so
 9 that's the only argument that we've heard, okay.

10 PROF KATZ: Philosophically no one's said
 11 -

12 MR MOMONIAT: Nobody has said -

13 PROF KATZ: That our recommendations were
 14 wrong.

15 MR MOMONIAT: And let me say your
 16 recommendations were also endorsed by the Davis Tax
 17 Committee which commented on the legislation, so from the
 18 tax side there's been no move to say that shift is okay.
 19 But I want to emphasise we're not saying that we are
 20 against mandatory co-operation, we're saying that that's
 21 important. What we are saying that doesn't mean you've got
 22 to integrate entire systems and take it away from SARS
 23 because then you're dealing with the big scanners, you're
 24 dealing with SARS' ability to go and inspect when
 25 somebody's bringing in goods that they shouldn't be

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1 bringing in, it certainly will affect them operationally.
 2 They'll have to talk to another department. I think it's
 3 messy.

4 COMMISSIONER: Why, what does the
 5 rationale mean for, what rationale has been expressed for
 6 the proposed move?

7 MR MOMONIAT: I think it came about the
 8 need that you've got many authorities around on our
 9 borders. You've got certainly not just the customs
 10 officials, you've got police, you've got the defence force,
 11 you've got Department of Agriculture, you have lots of
 12 players and they need to work together. And the model is
 13 that you do need much more of a command and control system.
 14 So we don't have any issue with broadly what you need to
 15 do. But a lot of the fraud is not just what comes through
 16 the board, it's what comes through even electronically and
 17 certainly, and my knowledge on customs is dangerous but
 18 people sign forms or put their declarations well before
 19 they actually come. But on some of our borders people
 20 might just pitch up and if you want to reduce that fraud,
 21 and you know this could be people taking out diamonds
 22 illegally, it could be that they bring even diamonds from
 23 other African countries into South Africa to somehow
 24 legitimise it contrary to the Kimberley process. I mean
 25 there's a lot of issues and it would be worth asking the

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1 officials at SARS and customs could deal with these issues.
 2 They would be able to go into the nitty gritty, but
 3 certainly as a department, I think even at the risk of
 4 being very unpopular in Parliament we've gone and we've
 5 made the case and we can provide the documentation and the
 6 note on the risks that we face.

7 MS STEINBERG: We'd appreciate that. And
 8 we do have some input from SARS. We have some input both
 9 from the customs people but also from the enforcement side.
 10 We also heard from the South African Freight Association
 11 which I think deals with 90% of the goods that come across
 12 the border. They are horrified by the spill. What I
 13 understand from SARS is that what the 2014 Act introduced
 14 and modernised, the modernisation process was end to end
 15 supply chain visibility, both for SARS and for your
 16 importers and exporters and that's what makes the system
 17 work, both in terms of the speed of getting things across
 18 our borders but also in terms of our enforcements and
 19 collecting the right amounts that you do have this
 20 beforehand reporting and you have communication with other
 21 jurisdictions, so you know what's coming and going
 22 beforehand and then your risk engine tells you in advance
 23 what to stop in respect of under-declarations as well as
 24 possibly illicit goods. And the fear with this Act or this
 25 bill is that it will impair SARS' ability to have that

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1 visibility from start to finish and that will impact on, as
 2 I say enforcement as well as the efficiency of it. And we
 3 heard from the South African Freight Association that just
 4 the impact of more inspections, for example, over a
 5 particular period, was catastrophic for them and for the
 6 economy and this for them puts more of those kind of
 7 blockages in the system. So that's in brief what we have
 8 from SARS which I think is pretty much along the same lines
 9 as you're suggesting, is that right?
 10 MR MOMONIAT: Yes. And I think just one
 11 other issue as we're trying to fix up particularly the
 12 tobacco smuggling and the loss in revenue and so on, okay,
 13 I think that you certainly need a more co-ordinated process
 14 to deal with it. But part of our problem and I think the
 15 problems that aren't being looked at is you can put
 16 numerous reports to the Hawks, to the police, nothing
 17 happens, okay. Now perhaps that's getting into the area
 18 that the Zondo Commission needs to look at. Why are things
 19 not happening? Are the people so politically connected
 20 that they've been told that they shouldn't look. So I'm
 21 saying there's, it gets into very complex issues. I think
 22 SARS is good at looking at the issues, following through
 23 and we need to fix up the problems in SARS, but this does
 24 have consequences for trade, it has consequences on the
 25 criminal syndicates that are promoting this and not that I

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1 think that the tobacco industry that's even saying that
 2 they will get R7 billion more. There are vested interests
 3 even between the big tobacco and small tobacco that you've
 4 got to watch.
 5 COMMISSIONER: Well we did see a rather
 6 remarkable document. Anyway I don't think, it's not the
 7 appropriate time to raise that. Can we stop now for lunch?
 8 MS STEINBERG: We can.
 9 COMMISSIONER: And your procurement
 10 expert is coming –
 11 MR MOMONIAT: We'll make an arrangement
 12 and we'll let you know.
 13 COMMISSIONER: Thank you very much.
 14 MR MOMONIAT: The boss is here, he'll
 15 have to –
 16 MS STEINBERG: But not today, is that
 17 what I'm understanding?
 18 COMMISSIONER: Oh, not today?
 19 MS STEINBERG: So in other words we're
 20 closing up now.
 21 COMMISSIONER: Okay well now I can say
 22 thank you very much.
 23 MR MAGAJANE: No thank you very much
 24 Judge. The message from us is very clear and we are
 25 unequivocal about it that a well-functioning SARS for us is

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1 good for democracy and without it all the aspirations that
 2 we have as a country, we are all finished. And
 3 unfortunately we have the centre of ensuring that happens
 4 because if SARS is not collecting the country has to run,
 5 we'll be forced then to go and borrow for more. At 60%,
 6 other people are already beginning to argue that if Japan
 7 can go up to 200% debt to GDP, you as South Africa can go
 8 to, but that will be the end of our country. So that for
 9 me is a key issue that a well-functioning SARS is good for
 10 our democracy.
 11 MS STEINBERG: Can I thank you for the
 12 excellent submission that you gave and the boxes of
 13 documents that you also delivered, which I've been looking
 14 through. Thanks for your co-operation.
 15 MR MAGAJANE: You can make them all
 16 public if you want, so we don't have a problem.
 17 MS STEINBERG: Oh good. We'll put them
 18 up on the website.
 19 COMMISSIONER: Not the whole box of
 20 documents?
 21 MS STEINBERG: No but at least the
 22 submission.
 23 COMMISSIONER: Okay. Thank you.
 24 [INQUIRY ADJOURNED]
 25 .

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<p>1673:24 50.8 1671:16 500 1654:25 55 1555:19 56% 1555:20</p> <hr/> <p>6</p> <hr/> <p>6 1667:15,20 6.9 1663:1 60 1673:1 60% 1697:5 60.8 1555:12 63.3 1555:5 65 1581:1</p> <hr/> <p>7</p> <hr/> <p>7% 1661:3 7.5 1675:17 1680:11 70% 1581:1 72 1596:3 1597:5,13,18 1597:23 1598:9 1599:2 1609:17,25 1610:25,25 1612:18 74% 1607:21 750 1655:1</p> <hr/> <p>8</p> <hr/> <p>85 1662:20</p> <hr/> <p>9</p> <hr/> <p>90s 1659:11 90% 1694:11 900 1691:14 94 1577:16 1626:24 983 1670:7,13 993 1669:22,25 1670:1 1670:11,13</p>				
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