Media release

MTBPS - budgeting for effective enforcement does matter

Johannesburg, 25 October 2022 – On 26 October 2022 the Minister of Finance, Honourable Mr Enoch Godongwana, will table in Parliament his medium-term budget policy statement, or what is in essence the half-year financial performance review of the country. The plan and performance scorecard, so to speak, was tabled in February 2022 in Parliament and each year the public are invited to give input. This is a critical part of our “participative democracy model” as the Constitutional Court has stated, which means that South African citizens don’t just give politicians a blank check every 5 years, but are and should be directly involved throughout an elective cycle in the deciding and implementation of public policy and laws.

One of the matters highlighted by SAICA in its submission to Parliament, was the economic and societal risks we create through inappropriate budgeting as it relates to effective law enforcement. Our concerns have been expressed over a number of years, but a particular matter of focus for Budget 2022, was the lack of progress on interventions to address the findings of the Financial Action Task Force (FATF) and appropriations for law enforcement.

So, why focus on this?

Who is the FATF and why is South Africa involved with them? The FATF was created in 1989 as the global money laundering and terrorist financing watchdog and governments sign on voluntarily as members or observers. The purpose of FATF is to protect the integrity of the international monetary system and initially started with a focus on money laundering, then terrorist financing and then, in 2019, a new open mandate to address all matters that affect this system.

The benefit of membership is that a member country is mutually evaluated by other members and held in the same regard as to the protection of the monetary system, are subject to a lot less scrutiny and can access international money (or debt markets) more easily and cheaper and similarly, their banks can facilitate cross-border trade more easily and at a cheaper cost. It means that certain investors like foreign pension funds are allowed to invest in such countries and have an easier process and lower risk in doing so. This also makes our government debt cheaper, allowing for more spending on services that will benefit the people. However, as the members on an ongoing basis evaluate each other, those thought to be “dropping the ball” get onto the “grey or black list”, as the FATF calls it.

South Africa joined the FATF in 2003 and, to date, is the only African member country, with other African countries or blocks joining only as observers or associate members. In 2009 a FATF mutual evaluation found certain deficiencies and South Africa was required up to 2017 (i.e it took South Africa 8 years to sufficiently comply) to provide progress reports at each annual plenary. In October 2019, an onsite visit was conducted by the FATF to determine South Africa’s compliance with the 40 “standards”. Significant shortcomings were found and the report was tabled and accepted at the FATF plenary in October 2021. South Africa was given 12 months to correct the deficiencies, or risk being placed on the “grey list” effective from February 2023, when the next FATF plenary would sit.

Some of the 10 key findings included:

o Law enforcement lacked skills and resources to investigate and prosecute money laundering and terrorism financing.

o State Capture money laundering cases have been insufficiently pursued by law enforcement.

o Law enforcement has been generally good at recovering assets from money laundering, but for state capture cases very little recovery of proceeds has occurred, including from assets moved to other countries.

o Detecting and recovering cash proceeds from crime is a challenge.

o South Africa has since the last evaluation only prosecuted one person for terrorism financing, which was inconsistent with its risk profile.

o Law enforcement struggles to get accurate and up-to-date beneficial ownership data to combat money laundering and terrorism financing.

o South Africa is slow to provide mutual legal assistance for criminal cases and seeking international assistance is not a priority.

Given the strict deadlines and the severe consequences for the country and the economy, SAICA on 31 May 2022 presented to Parliament’s Standing Committee on Appropriations (SCoA) that we have seen very little progress in dealing with the matters the FATF had raised, with the deadline a mere 5 months away. What was clearly obvious is that most of the key recommendations dealt with challenges in law enforcement and not necessarily our legal framework. This conclusion was later affirmed by the acting Director General of Treasury to Parliament in his August 2022 briefing.

In this regard, SAICA submitted that the financing of the SAPS needed to be reconsidered given the proposed medium-term budget cuts, after inflation, but even more importantly, the Minister needed to finance the needs of the NPA to deal with corruption cases as a specific finding. The NPA Head, Adv. Shamila Batohi noted that the NPA needs at least another R1,7bn to be added to their current budget of R4,9bn to prosecute corruption cases. SAICA proposed that the Police VIP Unit’s (aka blue light brigade) budget be cut as it is not a high priority expense and merely looks after politicians and some dignitaries. SAICA proposed that it be halved from R3,4bn to R1,7bn and that would secure the funding the NPA required. It would also demonstrate that the government and the Minister was willing to prioritise the budget to address more important needs.

So, what has happened since then? Well, firstly the Minister and Parliament did not accede to SAICA’s request and politicians will continue to enjoy the same level of tax-free transport with blue lights and an entourage of guards. The NPA did not get their R1,7bn. The matter reported to the SCoA committee was in their report on 8 June 2022, though no recommendation was made.

However, on 15 June 2022, Treasury and the Financial Intelligence Centre (FIC) briefed the Standing Committee on Finance (SCoF) about urgent proposed amendments to the Financial Intelligent Centre Act (FICA) regulations and schedules to address the FATF grey listing concern. One of the key proposals was to expand reporting obligations of those listed as “accountable institutions” to include those who were Designated Non-Financial Businesses and Professions (such as accountants) and tracking cross-border financial flows. Worryingly, SCoF seemed unaware and concerned by the rushed approach taken and it seemed that the risks and consequences of grey listing by the FATF only dawned on the committee members for the first time during that briefing. This notwithstanding that the FATF process had begun in October 2019 and involved numerous government departments. A second bundle of amendment bills were released on 29 August 2022 to also address the FATF recommendations, this time looking at regulating beneficial ownership and terrorism financing by amending 5 different acts. This included matters from regulating trustees to directors of Non-Profit Organisations. Even the Police Minister joined in and has sought to introduce new anti-terrorism legislation to appease the FATF.

Where is all the legislation now? The General Laws Amendment Bill is still with the Standing Committee on Finance as B18-2022. Once SCoF is done it will be debated in the National Assembly and if passed, sent to the Select Committee and then on to the National Council of Provinces. Only after all these approvals will it be sent to the President for signature and enactment, meaning it may still take several months. The FIC Schedules are technically not Bills and seemed to have hit a legal snag with the National Credit Regulator that was to be resolved by the end of October 2022. The Select Committee has however on 14 October adopted a report on the legislation and submitted it to the National Assembly with the Chairperson noting that committee will commit to finalise the bill before the end of the year. The Police Ministers Protection of Constitutional Democracy Bill 15 of 2022 is with the Portfolio Committee on Police with comments being received on 28 September 2022. In summary, all three bills still have a few months to go.

So what now?

Responding to Parliament in September 2022, the Minister of Finance did not seem confident that South Africa could avoid grey listing and many private sector commentators have noted it as an impossibility. The recommendation seems to now focus on how quickly we can get out of grey listing. Therein lies the sting in the tail. To affirm Acting Treasury DG Ismail Momoniat’s sentiment, the law changes are the easy part. Demonstrating that we can investigate and enforce both the current and these proposed law changes and successfully prosecute people was the essence of the findings, yet that seems to be the exact matter we are procrastinating on, including funding a capacitated enforcement function and ensuring it is effective. It seems our Honourable Members have in fact made no proposals in this regard.

On 11 October 2022 Michael Appel published an article by Adv. Paul Hoffman that reiterates our initial point; it is not the legislation or statements of intent but actual enforcement and prosecution that will get us off grey listing. If that is true, on the eve of the Minister of Finance’s MTBPS, will he accede to what seems to be the low hanging fruit? Will he capacitate the NPA with the R1,7bn it asked for from the VIP “blue light” Unit that seems to have no benefit for all South Africans? Will it solve the problem definitively? Most probably not, but it will be one less excuse the NPA will have for its glacial pace of prosecutions and seems a very small sacrifice by our honourable politicians to avoid, or at least start the journey, to minimise the grey list economic damage we will see next year.

About SAICA

The South African Institute of Chartered Accountants (SAICA), South Africa's pre-eminent accountancy body, is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to more than 50 000 members and associates who are chartered accountants (CAs[SA]), as well as associate general accountants (AGAs[SA]) and accounting technicians (ATs[SA]), who hold positions as CEOs, MDs, board directors, business owners, chief financial officers, auditors and leaders in every sphere of commerce and industry, and who play a significant role in the nation's highly dynamic business sector and economic development.

Chartered Accountants are highly valued for their versatile skill set and creative lateral thinking, that's why all of the top 100 Global Brands employ Chartered Accountants.

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