

**SUBMISSION TO THE ZONDO COMMISSION OF INQUIRY**

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**The Tax Consequences of State Capture and reform proposals**

By the Alternative Information & Development Center  
*(Cape Town, South Africa)*

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## **About Alternative Information & Development Center (AIDC):**

AIDC was formed in 1996 in response to the democratic transition in South Africa and the new opportunities and challenges it brought those seeking greater social justice. Since then, AIDC has established itself as a leading source of research and information on themes of illicit financial flows, base erosion and profit shifting. AIDC has done extensive research on the issue of IFFs and BEPS. More precisely, it has undertaken case studies exposing the transfer mispricing and BEPS practices of transnational corporations. For instance, AIDC provided evidence to the Farlam Commission of inquiry that Lonmin PLC was shifting annually R250 million to a letterbox company in Bermuda. Working with the Black Sash, it has also shown how Net1 uses software licensing fees charged to its subsidiary Cash Paymaster Services as a profit shifting tactic.

Building on these case studies, AIDC has developed and publicised a comprehensive set of tax policy proposals to curb illicit financial flows, tax evasion and avoidance, money laundering and corruption. Such proposals support a broader agenda for enhanced tax justice, the reduction of inequality and the achievement of realising socio-economic rights in South Africa through the increase of public resources raised in a just and sustainable way. In this process, it has made submissions to various parliamentary committees such as the Davis Tax Committee and the Standing Committee on Finance and extensively engaged with local and international tax experts in exploring the best way to reform our tax system.

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## **Introduction:**

The current hearings of the Zondo Commission of Inquiry into State Capture are underway. Already the testimonies shared in front of the commission give us great insights into what's behind the current crisis facing the South African State and state institutions. This is made evident in the well-known fact that the state has failed to safeguard sustainable level of public finances, maintain the capacity of critical state institutions such as SARS all of which reduces the State's' capacity to deliver essential services to all South Africans.

One of the key focuses of these official investigative efforts have been in partnership with the Nugent Commission of Inquiry, to investigate how and why key units of the South African Revenue Services (SARS) have been dismantled, key officials expelled or sidelined and therefore its tax collection capacity eroded.

Our understanding of that particular element of the State Capture episode is that this is not a matter of (bad) individuals but a matter of weak institutions. This submission, without being exhaustive, aims to

- (1) evaluate the negative impact State Capture had on tax collection in South Africa in relation to declining revenue collection forecasts and in terms of declining revenues collected .
- (2) expose the major flaws of our tax institutions and the legal framework by highlighting the shortcomings of our tax agencies and their oversight mechanisms. The incapacity of such a web of interconnected institutions to resist and oppose the propagation of corruption and cronyism in its ranks had massive negative consequences on public coffers, this submission will therefore show why the current tax secrecy paradigm in which South Africa is entangled has prevented tax authorities, business interests and civil society organizations from playing their role in safeguarding normal tax collection mechanisms.
- (3) propose the implementation of several policy reforms that have the potential to prevent a similar crisis from recurring.

It is clear that the outcome of this commission of inquiry will heavily impact on how South African institutions are going to be reshaped in the future, this submission will therefore put more emphasis on the later part of the report which currently appears as more critical considering the extensive investigative work that has already been undertaken to uncover the impacts of State Capture and the forms it took when directly related to SARS and tax collection.

### **1 – Impact of State Capture on Tax Collection (Impact)**

#### **1.1 – Underperformance of revenue collection services (institutional collapse)**

By the end of 2014, J. Zuma, former president of South Africa, decided to appoint Tom Moyane as the new SARS commissioner. Following false allegations on the existence of a

so called *Rogue Unit* within SARS. An external contractor, Bain & Co, was tasked to propose a new restructuring model to overcome the supposed shortcomings of the current management structure. As highlighted in the report of the Nugent Commission, Bain & Co's objective was '*not interested in finding out why SARS was structured in the way it was structured. Its interest was in finding out enough to enable it to restructure SARS, whether that was needed or not*'.

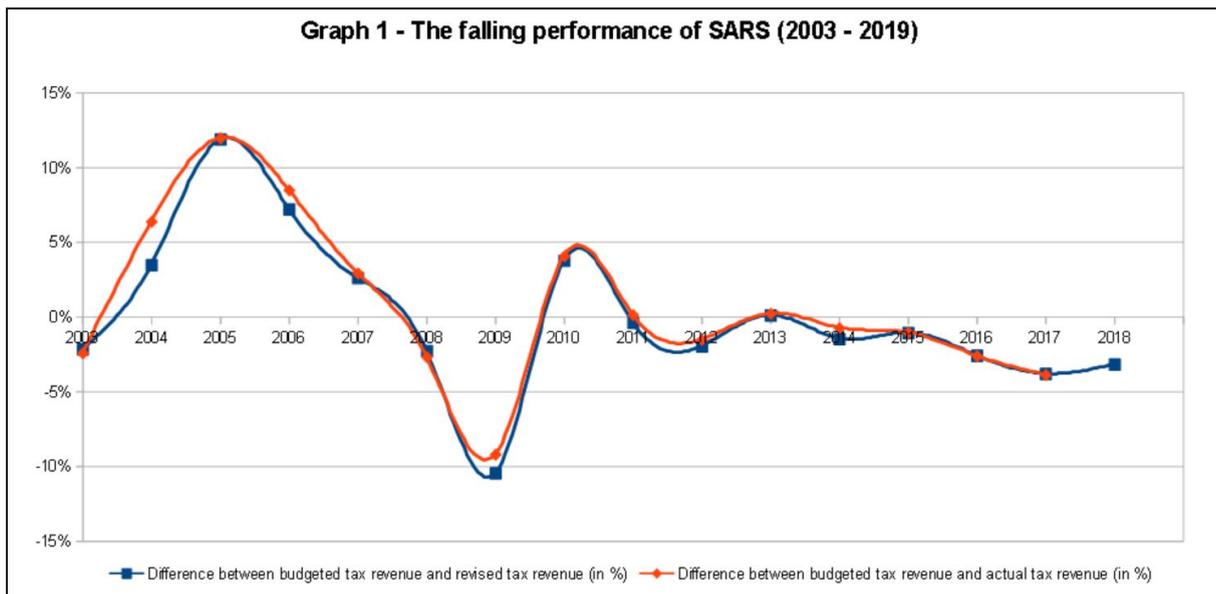
Implemented straight away without due consultation, the plan led to the dismantling and undermining of the following critical units with SARS:

- The dismantling of the Large Business Center and the Compliance Research Unit
- The splitting of the High Court Litigation Unit into inefficient and uncoordinated regional entities
- The disbanding of the Anti-corruption and Security Unit
- The disbanding of the National and Centralised Projects Unit

In all these cases, key senior managers and employees were either sidelined, disempowered or simply expelled from the tax authority. Many of them decided to quit as a result.

This loss of key skills within the organisations and the adoption of such an inefficient organisational structure also facilitated the centralization of decision making in the hands of a small number of senior employees. As mentioned in the Nugent Report, the restructuring de facto led Makwakwa to hold operational control of all taxpayers affairs.

As highlighted below (see graph 1<sup>1</sup>) the restructuring had dramatic consequences for tax collection figures in the following years.



<sup>1</sup> See statistical annexure for details. Source : National Treasury

Beyond the global economic depression episode of 2007 - 2009 that obviously led to underperformance, Graph 1 shows SARS had historically matched if not overperformed in relation to its tax revenue targets (red curb). However, underperformance has become the rule since 2014 onwards, with a deficit between planned and actual tax collection quickly widening from 2016.

Concretely, this has meant a net loss for South Africa public finances. The figure for the 5 years period 2014 - 2018 comes to R141 billion in nominal terms. In real terms (2019 rands), this amounts to R158 billion loss which means an average of R32 billion a year over the past 5 years without taking into account the accumulation of national debt bonds in private hands and the related interest payments<sup>2</sup>. In other words, over this 5 year span, the unplanned deficit linked to recurring tax undercollection had a bigger negative impact on public finances than the 2008 - 2009 undercollection linked to the global financial crisis of 2007.

When correlated to economic growth figures, this has meant that tax buoyancy fell from a ratio of 1.2 to a ratio of 1<sup>3</sup>, despite numerous tax increases during this period.

However, these figures don't fully reflect the total costs required dismantle state capture within SARS since future losses are not accounted for yet.

The institutional capacity of SARS has been severely hampered. For example, the inspection process went from 2 days in 2013 to 23 days currently and there is no quick fix.<sup>4</sup>

Similarly, the confidence of taxpayers in the institution has been critically reduced and a normal level of automatic compliance won't be reached for a few years. For instance, unfilled forms for PAYE returns went up from 16.1% to 31% (77% increase) between 2008/09 and 2017/18. **Idem for VAT** unfilled returns increasing from 20.9% to 38.8% (32% increase) over the period.<sup>5</sup>

Lastly, a 50% increase in SARS liabilities, from R85 billion to R135 billion in 2018 alone means that accounting tricks has been used to falsify overall tax collection figures in the past years by delaying repayments. Moreover, it illustrates that State Capture within SARS may have had consequences beyond diminishing tax collection figures.

## **1.2 – Underperformance of the economy (corruption)**

The State Capture episode has had a negative impact on the economic performance of the whole economy. First, as highlighted before by forcing taxpayers to cover the widening tax collection gaps either directly through additional taxes (increase in VAT by 1% point, in CIT and PIT) and indirectly through longer tax repayment delays (i.e. the increasing backlog in VAT refund payments).

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<sup>2</sup> See statistical annexure. Source: National Treasury of South Africa.

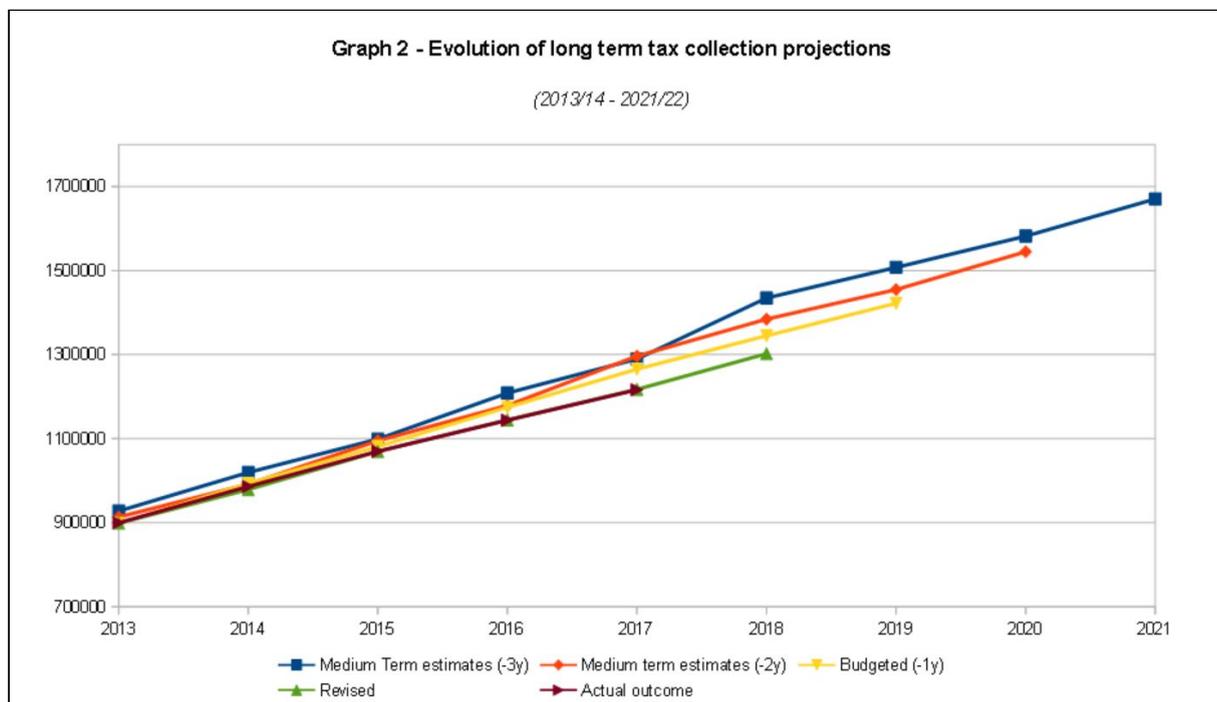
<sup>3</sup> Annexure 4 of the Nugent Commission of Inquiry

<sup>4</sup> Idem

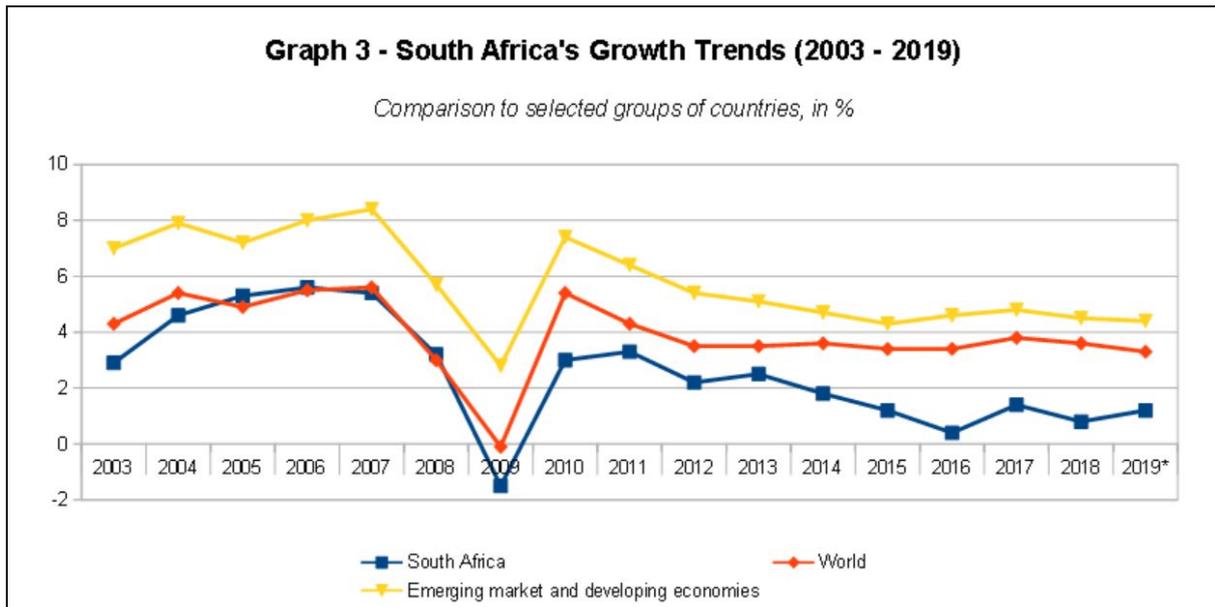
<sup>5</sup> Idem

Secondly, more generally, by depriving key economic sectors from sufficient resources and through the mismanagement of budget allocations, economic growth has suffered. Many public expenditure programs intended to unlock the growth potential of South Africa in the short-term (infrastructure development, public transportation) and long-term (dispensation of quality education and public health institutions) have not been realised due to unexplained delays, additional unplanned costs due to rampant corruption and a growing culture of non-delivery. As a result we see a growing gap between what is promised and implementation.

These are all consequences of the entrenchment of State Capture practices within State Institutions. As illustrated in Graph 2, state capture has had a major impact on tax revenues, to the extent that long-term revenue projections have been revised downward consistently year-on-year to match with lower than expected economic growth. This is particularly worrying knowing that before 2014 the modification of such projections were only marginal. For 2018 alone, the revision between the 3 year projection and the budgeted tax revenue (-1year) was of almost R90 billion and revised tax collection figures tend to indicate this gap could well reach R135 billion.



Of course, many elements can impact such projections, including growth trends internationally. This is because South Africa is dependent on exporting commodities, therefore its internal growth figures will vary widely according to international growth trends and changes in international demand. However, another concrete example of this growth gap linked to State Capture is visible in Graph 3. It shows how the gap between South Africa's and foreign growth trends has widened from 2013 onwards.



If before 2013, the structural growth gap compared with the rest of the world was only 0.7% points on average (2003-2012), in the next period (2013-2019) this gap widened to 2.3% on average. This has direct consequences for tax collection figures.

## 2 – The need to deepen our understanding of the shortfalls of the current tax architecture

### 2.1 – The inadequacy of the Nugent Commission recommendations and the dysfonctionnement political oversight

The creation of a specific commission of inquiry into State Capture looking specifically at SARS has been a great decision. It has allowed to move quickly to unveil State Capture in this crucial institution to fasten its institutional reconstruction. The removal of Tom Moyane as head of SARS and the appointment of a new commissioner was a critical start in this process. This important step amongst others aimed at restoring SARS capacity illustrates the commission's intent to decisively deal with state state capture in SARS.

These interventions are both critical and very much welcome. In addition, the recommended prosecution of Bains & Co and the recovery of certain legal litigation costs, the review of procurement mechanisms, the reemployment of former senior employees and the restoration of key units not least on illicit trade are all critical moves.

It is also encouraging to see the push to:

- resolve the VAT backlog,
- review tax settlement rules,
- strengthen review mechanisms and audit protocols
- restore a good working relation with other prosecuting and compliance bodies.

The implementation of these measures can go a long way towards mitigating against future attempts to compromise state institutions. However, these recommendations have a major limitation in that they rely predominantly on internal mechanisms to root out mismanagement and corruption.

In fact, only three recommendations look outside of the agency to strengthen its oversight:

- The implementation of new appointment policies, not least for the position of SARS commissioner
- The creation of an high level integrity unit to deal with the most sensitive cases
- The creation of an advisory executive committee including the deputy commissioner and a newly appointed Inspector-General.

These measures imply the following: by increasing transparency in the appointment of key roles within the agency and creating a number of committees whose members' role will be to exercise an outside oversight role, the capture of SARS will be made more challenging.

The assumption here is that by increasing the number of people overseeing SARS activities and choices, the risk of capture by a small political faction will greatly decrease. However, this is not a foolproof measure either because it doesn't take into account the fact that all these positions are ultimately filled by person occupying a political mandate. The risk of recreating of patronage networks does exist. This is especially true in a country were one political party has been hegemonic at a national level for over 20 years. The implementation of these additional oversight bodies will of course mean that it will take a longer time for a political faction to place people in these many positions but it doesn't make it impossible.

The question is therefore what kind of mechanisms can be implemented to prevent the capture of such institutions by a network of senior civil servants in conjunction with a section of a ruling political class.

## **2.2 - The inefficiency of private/market regulation and the role of corporate enablers**

The first path often explored when it comes to external independent oversight is to look at the market as an independent network of entities whose constant competition drive brings them towards increased efficiency. A pure market-related reasoning would therefore lead us to think that if there are a few bad apples, like everywhere else, then the market based on the model of the survival of the fittest will necessarily weed out these non-cooperative dishonest players. The underlying argument of this narrative is that corruption is an exception and will soon be eliminated due to the competition within the market. Can this implies we can rely on the market to perform regular audits and inspections?

The Zondo Commission of Inquiry illustrates on the contrary that it is not just a few bad apples, but many private companies that benefited from State Capture. Most of them, such as Gartner - the IT provider of SARS headed by politically-connected persons and their

affiliates, benefitted from existing tenders between SOEs and State departments, through overpriced non-competitive and rigged tender procedures.

Other companies, such as Bains & Co., and KPMG, the auditing firm that made the now infamous 'Rogue Unit' report, benefited in another way. They also benefit from overpriced contracts and tenders, but this time their role wasn't to provide a public service. Instead their role is to create legitimacy for certain senior public employees and politicians through the implementation of specific reforms aimed at entrenching patronage networks in key State institutions.

The only conclusion here is that once again, contrary to the notion that market mechanisms of oversight are independent, neutral and fair it facilitated corruption rather than stopping it. State Capture is nothing but a public-private partnership where private interests, driven by their thirst for profits, have accepted the need to break the law or to circumvent it to advance their corrupt self-interests.

In this context, we have to recognize the failure of the market as an efficient control mechanism. Unfortunately, as we have witnessed, the market doesn't deter corrupt entities from using unlawful methods to boost their profits. At best as I have said, private interests may not be breaking the law, but they do seek loopholes, ways and means to assist in the subverting of the law. For this reason, private entities should not be seen as potential instrument for overseeing state institutions, but as potential enablers of corruption and State Capture.

### **2.3 - The impossible independent people's oversight**

This leaves us with no option but to explore the role civil society organisations and the general public at large can play to stop these malpractices from taking place. Civil society organisations, such as research centers and research institutes, non-profit organisations, the media, trade unions and popular movements can play a much more effective oversight role than private institutions and compromised statutory bodies have played.

This is because civil society organisations offer guarantees that none of the institutions offer because their interest is to serve their popular constituency by ensuring institutions are transparent, accountable and well functioning. Rather than allowing for the development of corruption and mismanagement, their interest lies in mitigating and fighting corruption. If of course there are also cases of corruption and mismanagement within these structures, the mere fact that they can hardly benefit from public money coupled with the abundance of such entities, means that if tax information is open for them to look at, they are not likely to hide anything suspicious. On the contrary revealing such information will build up their notoriety and ease their funding activities. The important role of CSO's has also been demonstrated in the role the media, NGOs, academics and popular movements have played in being amongst the first to expose the rise of state capture playing a decisive role in unveiling the biggest scandal of corruption in post-Apartheid South Africa.

It is therefore important to implace measures that ensures that CSO's are able to play their important role of ensuring that public officials in state institutions are held to account. In this way CSOs and the general public can play a critical role in ensuring better tax compliance nationally by pointing out negligent taxpayers or worse, those benefiting from State institutions' complacency and/or incapacity. The problem is that CSOs role is hampered by existing legislation.

Chapter 6 of the Tax Administration Act, confidentiality of information is compulsory. SARS is bound by a confidentiality provision (Sec. 69 – Secrecy of Taxpayers and general disclosure) that does not allow it to reveal any personal or commercial tax data. This section also imposes on SARS that all of its agents take an oath not to reveal confidential information under any circumstances not planned for under the act. In other words, tax information as defined by section 68 of the same act, as any *information related to the operations of SARS, including an opinion, advice, report, recommendation, or an account or consultation, discussion or deliberation*, is shielded from disclosure and dealt with behind closed doors.

At first sight, such a system may seem legitimate: people and taxpayers have a right to privacy, it is therefore normal that their tax information is not exposed publicly. Not only that, but false allegations of tax fraud could also be a powerful tool for political forces to discredit their political opponents and hamper the South African democracy. In any case (the argument goes) such confidentiality should not be a problem considering that tax authorities have access to this information and can therefore exercise scrutiny over any potential fraud.

But as previously shown such system has a huge flaw. It relies on the fundamental assumption that people heading tax authorities are committed in good faith to the public interest and will therefore do anything in their power to stop corruption, tax avoidance and illicit financial flows. The recent dismantling of critical units in SARS has shown on the contrary that this is not the case. Capture of State institutions will always be possible as long as there isn't sufficient pressure from CSO's and the general public to force SARS and other oversight bodies to do their job properly.

One of the major challenges for strong popular oversight is the difficulty to access reliable information on taxpayers due to the confidentiality of such information. Currently CSOs rely on benevolent whistleblowers that too often risk their career (and sometimes their life) to expose scandals. As a result it takes too long for this information to be made public, all of which helps to explain why impunity is the rule and not the exception today.

In other words, our current tax secrecy culture represents a huge barrier, that artificially protects the powerful and the wealthy from scrutiny. Popular scrutiny first, because people and people's organisations can't access information and state scrutiny because there is no public pressure on State institutions to ensure that they do not to cover-up corruption cases.

The extent of our current tax secrecy culture is particularly obvious when looking at the Personal Access to Information Act (PAIA – Act 2 of 2000). This piece of law should be the angular stone that allows the fourth pillar of a democratic society, the media, to play a more effective role in ensuring accountability. However, in spite of the fact that there is a

constitutional right of access to information, it doesn't allow the public to access tax information of personal taxpayers from SARS since the information is considered confidential. In fact, its section 46 de facto excludes SARS from being a potential source of information for CSOs.

When it comes to private companies the way the act is drafted makes it very unlikely and extremely lengthy for an interested third party to access the relevant tax information. Such companies can indeed argue that releasing such information would be economically harmful in that it would lead to the disclosure of trade secrets. In this case again, in spite of the existence of a constitutional right to information, it is extremely hard in effect for people and CSOs to prove that they are entitled to access companies' tax information. This de facto means it is extremely difficult for them to expose potential corruption scandals of SARS officials or to prove the existence of tax avoidance and tax evasion schemes.

### **3 – Tax transparency as a key tool to rebuild tax consensus (policy proposals)**

#### **3.1 – Implementing tax transparency for individuals**

##### **a – A huge potential to limit corruption and complacency**

To combat these multiple and harmful effects of tax secrecy in South Africa, numerous possibilities exist. A first major step toward tax transparency would be to make individual tax returns public.

Currently, and as mentioned before, personal tax information is considered to be confidential and any release of such information would be considered as a violation of people's privacy.

As explained, this allows the perpetuation of corruption by not allowing journalists to investigate and normal citizens to exercise peer control on each other. There is a strong risk in South Africa, where patronage networks have existed within tax authorities, that politically connected persons will use their influence to avoid thorough scrutiny. Transparency would therefore limit the room for complacency.

##### **b – Scope of disclosure: the possibility to call for national tax transparency?**

Regarding the scope of such measure a debate exists. A first possibility would be to target only politically exposed persons. In other words, politicians, or any candidate running for a public mandate, but also government's members, MPs, top-income earners, senior managers of SOEs, main senior public employees as well as political party and union leaders.

This proposal is attractive since it offers a balance between the public importance of a person on one the side, and a person's right to privacy on the other side. The more important a person is, the more power his or her function carries, the less legitimate would be any form of tax privacy for him or her.

However, the challenge is to determine what the threshold for disclosure would be. If all the categories of person mentioned above should obviously face such a disclosure obligation, what about their family members? How close would one need to be to fall in the scope of such disclosure? Would for instance the cousin or the nephew of a politician fall into the scope of such a measure? And what about the shareholders and top management of companies where public funds have been invested?

Faced with this tricky question, the alternative is therefore to make public not only a selected few tax returns, but to make tax transparency the rule. Everyone would have their tax return public and this would boost tax compliance overall. This would prevent any attempt to potentially circumvent such a disclosing mechanism by recruiting middle man in your close social circle. Those could be selected on purpose to avoid the disclosure of their annual revenues.

This proposal can seem radical. However, in a post-state capture context, it seems that in order to re-establish people's confidence in our tax system, this might well be the best way to rebuild trust. Such public accountability will go a long way in protecting South Africa from corruption, cronyism, and against other forms of illegitimate personal enrichment.

### **c - A concrete example: the Scandinavian example**

Critics will oppose that such measure is both unfeasible and dangerous as it will create an environment of suspicion and distrust.

However, example of such broad tax transparency systems already exist. In Northern European countries such as Norway and Sweden, personal tax returns have been made public every year for a very long time already. In the case of Norway, it started as soon as 1814, when tax authorities started to publish the tax contribution of each taxpayer as well as their taxable income and net asset hold. Such system was implemented to build confidence in the State by ensuring that everyone contributes fairly to public coffers. The idea has been to build overtime a culture of compliance with all citizens.

On a slightly different note, such information also proves to be extremely useful in curbing growing wage inequalities as well as in contributing toward reducing the gender pay gap because it has been much easier for social justice organisations to argue for reforms that reduce inequalities by having such information available. In a South African context, such system would be extremely powerful to tackle, beyond corruption and cronyism, the massive income gaps that exist.

### **d – Disclosure mechanisms**

Concretely, this would mean creating a registry accessible to all. A first way would be to make such registry accessible in key public institutions such as municipality offices where any citizen, journalist or independent researcher could walk in to consult the records. That was how it was done until recently in Norway.

Another method is to list this information online and allow everyone to access it through a few clicks.

Both methods could coincide to make sure even people without access to the internet can access such information.

Of course a balance has to be found between the accessibility of information, and the risk of its illegitimate use. For instance, such tax information was often taken advantage of by advertising companies, or used by social media platforms to inform people about the revenues of their friends and colleagues. Some kids were also bullied because of their parents incomes. In order to avoid such illegitimate use, Norway has implemented a system that deter such illegitimate uses. It is possible to access any tax data, you simply need to log on to a governmental platform with your own taxpayer details first. Then, except if you are a journalist, the consultation of any tax return will lead to a notification being sent to the person whose tax return is looked at. He or she would then know who did so. This system allows people to check situations that they feel are abnormal, without leading to a generalized stalking system.

A temporary solution could be to disclose them in stages. The first year to disclose the most important tax return (politicians, celebrities, top income earners, etc.) and to extend the list every year in order to reach total tax transparency in a two to three year time span. Not only would this make the system acceptable for South African citizens by seeing their representatives complying first, but it would also allow to proof test the disclosure platform before it hosts everyone's information.

In terms of calendar, It could be released all at once as Norway currently does, or by following a tax calendar, as Sweden does, where lists of politicians and top-income earners are released at different dates to the tax returns of normal citizens.

In order to guarantee the desired outcome (increase in automatic compliance from wealthy and politically connected individuals), such access should as well be free of cost to erase any deterring cost for potential scrutiny.

### **3.2 –Tax transparency and beneficial ownership data**

#### **a – Benefits of public registry of beneficial ownership:**

Beyond looking at revenues, another important step to uncover corruption and misuse of public resources, is to make sure people can know who owns what in South Africa. In other words, to create registries of beneficial ownership.

This is important, first because it guarantees beneficiaries of public tenders will be publicly known, thereby limiting the temptation for politicians and elected representatives to favor their kins and inner social circle. Then because it will ensure the relatives of such decision-makers won't become rich overnight unnoticed. If they suddenly acquire land or other ownership titles people will be able to know and question the means by which such new properties were acquired.

In the same way the publication of people's tax return will deter cronyism, this will allow civil society organisations, citizens and journalists to enquire into tax fraud schemes and corruption scandals. It will also facilitate and incentivise SARS to spot and stop fraud schemes. The risk for such institution to come under public scrutiny for not taking action being too high, people's political pressure will ensure dubious cases are thoroughly enquired into.

Beyond its positive impact on tax collection and compliance, public registries of beneficial ownership will also have two additional advantages. First, they will facilitate the planning, pre-assessment and implementation of future tax reforms, notably the implementation of a potential net wealth tax.

A second positive impact will be to facilitate the fight against tax evasion and IFFs worldwide: by making it easy to enquire into the real ownership patterns of multinational companies, it will avoid that individuals benefiting from tainted money can launder it in South Africa through the use of shell companies or a family trusts.

#### **b – Targeted entities**

Concretely, any asset, land, trust or company based or operating in South Africa would be listed alongside its beneficial owners. Speaking about beneficial ownership here simply means that such database would not list companies, legal entities or fake middle men as the only owners. On the contrary the physical person who ultimately owns the assets or properties, and not the shell company or trust that usually appears, will have its name listed in such a database.

#### **c - Disclosure mechanisms**

Currently, several databases collate such information even though incompletely.

First, internationally, tax authorities rely on the Common Reporting Standard to exchange ownership information between jurisdictions. It will soon lead to an automatic exchange of such information between most jurisdictions worldwide and could well be the basis to create registries of beneficial ownership by extending its scope.

An alternative would be to base the creation of such registries on the CIPC, the Company and Intellectual Property Commission that already lists online some of the information needed when it comes to companies. It has major drawbacks since it doesn't reference

ownership of land neither of specific corporate forms such as trusts, and since it doesn't look at beneficial ownership per se but simply frontline ownership. However it could be enhanced overtime to become a proper public registry of beneficial ownership.

Similarly to tax return databases mentioned previously, such registries will need to be accessible easily, both online and in physical places for people to walk in. It is important the access to such data must be free of cost and the data available be readily updated to fulfill their intended effect.

### **3.3 – Tax transparency for multinational companies**

#### **a – The need to assess corporate real economic activities**

The last main step to take in order to avoid State Capture from repeating itself and more generally to root out corruption in South Africa's public institutions is to force private companies to be tax transparent as well.

One of the main lesson from State Capture was that corruption mainly takes place as a result of what we qualify as a public-private partnership: in order to loot out public coffers, corruption will rely on tenders and public contracts to extract public wealth towards private interests. However, when it comes to sending this money abroad, they will rely on accounting tricks, what they qualify as being 'tax planning', to offshore the profits they register in South Africa. This results in massive illicit financial flows (IFFs) out of South Africa every year. The Global Financial Institute estimates that between 4 and 10% of our GDP is offshored every year using such tricks. If not all of those flows are linked to corruption directly, some of it being the illegitimate offshoring of legitimate local profits, there is still a case for a better oversight of such flows.

To be able to address this problem effectively, South Africa will need to force companies, especially multinational ones, to better explain, and disclose, how they report their economic activities for tax purposes.

Since multinational companies artificially overprice inputs and underprice the sales of their South Africans subsidiaries to foreign counterparts, they manage to squeeze their local South African tax base. For SARS to stop these methods, two things are needed. First transparency standards needs to be improved and this step is already underway. MNCs now have to comply with the new Country-by-Country reporting standards that will force them to document their transfer pricing policies and to report how their productive assets and workforce are distributed worldwide. In conjunction with stricter transfer pricing rules, this can be used very effectively by SARS to stop IFFs.

However, a second step is missing: one's need to tackle the lack of political will to stop the financial outflows. This shortfall can be both understood as the translation of a lack of capacities at SARS, but it can equally be considered as the result of corruption and networks of patronage. Our understanding is that once again it is only public scrutiny that will avoid

such complacency for repeating itself: our call is therefore for such country-by-country reporting data to be made public instead of being the sole privilege of SARS officials.

### **b – Targeted companies**

A threshold set by the OECD international tax forum (BEPS forum) has decided to impose Country-by-Country, subsidiary by subsidiary reporting to all companies with a turnover of more than €750 millions (~R12 billion).

We believe this threshold is way too high and recommend instead a new threshold to be set between R1bn and R2bn of annual turnover worldwide, leaving only really small businesses with the option not to complete the full reporting.

### **c – Disclosure mechanisms**

Concretely, very little needs to take place to make this information available. The reporting is already implemented. All that needs to change is the accessibility of such information: an easily accessible database must be created to make available this data to the public for potential scrutiny.

## **SUMMARY OF FINDINGS**

As exposed in this submission, important steps towards the rebuilding of State's capacities in the field of tax collection have already either been implemented, or are already on the verge of being implemented following the recommendations of the Nugent Commission of Inquiry.

As underlined in part 2 of this document, these measures come nevertheless with a substantial drawback: they don't take into account the capacity of political patronage network to re-establish themselves and their capacity to slowly undermine the newly established or soon to be established SARS overseeing bodies.

South African citizens and civil society organisations have played a crucial role in uncovering State Capture in South Africa and their role must be acknowledged. Better, their place of critical democratic informal institutions must be recognized and alongside such recognition must come reforms that facilitate their work.

South African can't afford once again to have scandals of this scale taking place for so long, civil societies and active citizens must therefore become the early-warning systems of our democracy.

We therefore encourage the Zondo Commission of Inquiry to include the following in its final recommendations:

- The establishment in steps of a national records accessible both online and in municipalities building where all South African citizens tax returns will be available

- The creation of a public registry of beneficial ownership for all types of companies, land and assets in South Africa
- The publication in an easily accessible database of all large companies operating in South Africa of their Country-by-Country, subsidiary-by-subsidary reports.

## STATISTICAL ANNEXURE:

**Table 1: Estimated and actual national tax collection figures  
(2003/04 - 2019/20)**

<i>in R millions</i>	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Medium Term estimates (-3y)</b>	273122	313211	368720	398608	453726	558106	659820	777948	793667
<b>Medium term estimates (-2y)</b>	288708	338046	364449	414154	501670	606870	711481	720935	721477
<b>Budgeted (-1y)</b>	310025	333694	372774	456786	556562	642269	659304	647850	741620
<b>Revised</b>	303318	345261	417050	489662	571063	627693	590425	672200	738735
<b>Actual outcome</b>	302508	354980	417334	495515	572815	625100	598705	674183	742651
	2012	2013	2014	2015	2016	2017	2018	2019	
<b>Medium Term estimates (-3y)</b>	818298	927960	1019620	1098955	1208720	1289711	1434737	1507553	
<b>Medium term estimates (-2y)</b>	827310	913610	991830	1095100	1179199	1296477	1384399	1454795	
<b>Budgeted (-1y)</b>	826401	898004	993650	1081275	1174788	1265488	1344965	1422208	
<b>Revised</b>	810150	899000	979000	1069700	1144382	1217307	1302201		
<b>Actual outcome</b>	813826	900013	986295	1069983	1144081	1216464			

**Source:** National Treasury

**Reading:** In blue is the data collected from the same document: budget review 2017/18. All the data has been collated that way using Budget Review over a 18 years period.

**Table 2 : Difference between budgeted tax revenues and revised/actual tax collection for the same budget year (2003/04 - 2018/19)**

<i>in %</i>	2003	2004	2005	2006	2007	2008	2009	2010
Difference budgeted tax revenue - revised tax revenue	-2.16	3.47	11.88	7.20	2.61	-2.27	-10.45	3.76
Difference budgeted tax revenue - actual tax revenue	-2.42	6.38	11.95	8.48	2.92	-2.67	-9.19	4.06
<i>(continuation)</i>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Difference budgeted tax revenue - revised tax revenue	-0.39	-1.97	0.11	-1.47	-1.07	-2.59	-3.81	-3.18
Difference budgeted tax revenue - actual tax revenue	0.14	-1.52	0.22	-0.74	-1.04	-2.61	-3.87	

Source: National Treasury

**Table 3: Inflation trends (2012 - 2019)**

<i>in %</i>	2012	2013	2014	2015	2016	2017	2018	2019 <sup>2</sup>
HDI CPI RATE	5.6	5.7	6.1	4.6	6.4	5.3	4.7	5.2
HDI CPI Index (100 = December 2016)	78.4	82.9	88	92	97.8	103	107.8	113.4

<sup>2</sup>: Estimate

Source: SARB.

**Table 4: Accumulated tax undercollection figures, in real term and in 2019 rands (2012 - 2018)**

<i>in R million</i>	2012	2013	2014	2015	2016	2017	2018*	Total
In real terms	-12575.0	2009.0	-7355.0	-11292.0	-30707.0	-49024.0	-42764.0	-151708.0
In 2019 rands	-18188.8	2748.1	-9477.9	-13918.6	-35605.0	-53974.0	-44985.5	-173401.8

\*: Calculated against revised target, not actual tax collection figure

Source: National Treasury (Budget date); SARB (Inflation data)