ADDRESS BY THE COMMISSIONER OF THE

SOUTH AFRICAN REVENUE SERVICE MR OUPA MAGASHULA

ON THE OCCASION OF THE 30TH ANNIVERSARY GALA DINNER OF

THE SOUTH AFRICAN INSTITUTE FOR PROFESSIONAL ACCOUNTANTS

12 JULY 2012

Introduction

Mrs Shirley Olsenn : Chairperson of the SAIPA Board,

Mr Shahied Daniels : CEO of SAIPA

The Board, Management and Members of SAIPA

Distinguished Guests,

Ladies and Gentlemen

I want to thank SAIPA for inviting me to address you and to celebrate this auspicious occasion with you. Congratulations to SAIPA for achieving this milestone of 30 years.

South Africa and the world are very different places today than they were in 1982 when your institute was founded. Back then PW Botha was President and Nelson Mandela was in jail…and would be for another eight years.

There was no internet, only one or two TV channels, and no cell phones. The only affordable computer most people had any access to was a Sinclair ZX81 on which you could play ping pong with two lines and a moving dot!

30 years later and 99% of all tax returns will this year be submitted electronically including via cell phones and our new mobile App!

Back then I am sure you would also have been hard pressed to find someone in SAIPA foreseeing a black head of South Africa's tax authority giving a speech at your 30th anniversary! And I assure you, that back then as a young university student studying a BSc at UCT, the thought of one day giving such a speech was not in my wildest imaginings!

But it just goes to show that nothing is impossible…and nothing stays the same forever!

The role of tax professionals in a changing world

Ladies and gentlemen, the effects of the global recession sparked by the subprime crisis and the short-sighted practices of banks in the USA continued to be felt around the world.

The importance of good corporate governance and greater transparency has been thrown into the spot light more than ever before by this crisis. The failure of governance – and in particular the excessive risk appetite of foreign financial institutions – plunged economies around the world into the most severe economic crisis in living memory.

Here at home the economic downturn has resulted in 1 million jobs being lost in South Africa and approximately R225bn of reduced tax revenue, of which R175bn is directly attributable to shrinkage in Corporate Income Tax.

For the past three years, analyses of the factors which precipitated the global collapse and proposed measures to prevent its repeat have focused almost exclusively on corporate governance and the mitigation of risk.

You would have thought that the corporate world would have learned some lessons about how greed and the unchecked pursuit of profits can do great harm not only to companies but even countries and, indeed the entire world.

Yet amazingly, even as taxpayers around the globe continue to bear the brunt of bail-outs and austerity measures for poor judgement and in some cases illegal activities by those who should have known better, reports continue to surface of illegal manipulations of intra-bank lending rates to boost profits of a major international bank.

The Euro zone crisis is yet another example for the need for accountability and conduct that promotes responsible behaviour. As we know what happened in Greece resulted from a systematic erosion of its tax base through tax evasion and non-compliance with tax laws over many years.

Ladies and gentlemen, accounting professionals such as yourselves have a key role to play in leading the claw-back to a higher morality and responsibility by corporates and citizens.

You are uniquely placed to advise not only on tax and accounting risks but wider reputation risks which expose not only the organisation itself but our interconnected world to the consequences of risky behaviour.

One of the ways in which professionals such as you can, and must, fulfil this responsibility is in guiding corporate decision-makers in the development and pursuit of a socially-aware and morally grounded policies and practices.

I mentioned earlier that corporate governance has been at the forefront of introspection regarding the current global crisis and the spotlight has fallen on company boards and directors for their failure to manage risk effectively. Yet frequently, those tasked with corporate governance were either ill-informed or ill-equipped to perform this function adequately.

In today's environment corporate tax departments should not operate in isolation from boards and business units without strategic input or oversight. Companies should give consideration to having a board member as their public officer to ensure that board level involvement in tax matters is maintained.

To help guide boards in meeting their fiduciary duties regarding tax risk, various tax administrations have shared questions that finance directors and board members should ask themselves to ensure they understand the tax risks facing their organisation. I too am asking these questions of senior executives. Allow me to highlight some of them:

- Are the amounts of tax your clients are paying and the pattern of payment in line with current and previous business results?
- Is there anything to indicate that your client's business results and tax payments are lower than would be suggested by economic conditions and the performance of others in their sector?
- If your clients are consistently reporting losses, are these real economic losses? Is there a material difference between the losses reported for accounting purposes and the losses claimed for tax purposes? If so, can this be satisfactorily explained?
- Are there any areas of major disagreement between your clients and the tax authority?

I also like to add the following question related to specific transactions which I believe is critical to help distinguish between legitimate tax planning and overly aggressive avoidance:

- Is the transaction unnecessarily complex and is there an economic benefit to a transaction beyond the tax benefit?

Towards greater tax morality

Ladies and gentlemen, I am not always very popular among professional associations such as yourselves when I talk about tax morality.

In SARS, we have for many years promoted the notion that there is a moral component to tax compliance and this has seen us at odds with some tax and accounting professionals who insist that tax is a cost to be reduced wherever possible and that loopholes are there to be exploited.

I know too that there is stiff competition in the accounting profession…and that you are under pressure to deliver results and profits to your clients. But these profits should and must be sustainable and reflective of the truth. I don't know how much profit Barclays made from manipulating interest rates but you can bet it pales into insignificance against the equity that has been wiped off their market capitalisation over the past week or two.

I am conscious of the fact that in order to achieve a shift in the way we interact with both taxpayers and their advisers, we need to collaborate to bring it about. There is a need for regular dialogue to ensure that we understand the difficulties that we each experience in trying to ensure that the spirit of the law is not forgotten when it is being interpreted and applied. Too often, tax and accounting professionals are quick to bring to our attention instances when a particular provision of the law creates practical difficulties for their clients. Very few, however, bring it to our attention when they have identified a loophole in the law, choosing rather to exploit it.

Then, ladies and gentlemen, there is the vexed question of tax professionals' morality and standing with regards their own tax affairs.

Our relationship with the sector may not always have been very friendly but it does make for interesting times. Tax practitioners, in particular, I know were quite upset earlier this year when my boss, the Minister of Finance, mentioned the high levels of non compliance amongst tax practitioners.

We do recognise that tax practitioners play a vital role in any tax administration and encourage their clients to be tax compliant through correct interpretation of the law. On the other hand, there is cause for concern if their personal tax compliance is not up to standard. The Minister of Finance, in his Budget Speech was referring to the fact that tax practitioners in their personal capacity are indebted to SARS to the tune of R260 million whilst at the same time having 18 000 outstanding returns.

As an association SAIPA members account for 3 700 or just over 10% of the 35 000 registered practitioners. Of the outstanding debt amount referred to by the Minister, R29 million is owed by around 968 practitioners affiliated to SAIPA. Of this, 80% is owed by fewer than 100 SAIPA practitioners.

With regard to outstanding returns SAIPA members have 3 403 outstanding returns. Of the outstanding returns 1 131 pertains to outstanding reconciliations for PAYE.

Non-compliance by trusts and companies linked to SAIPA members is also a key area of concern for SARS – and I hope for SAIPA It has been determined that tax practitioners could be linked to 107 611 companies and trusts. Of these, more than 7000 companies and almost 4000 trusts could be linked to SAIPA members.

Our records show that there are almost 6000 income tax returns outstanding by trusts linked to your members and almost 19 000 company returns. In addition, the total outstanding debt to SARS for these companies and trusts is over R186 million.

Of course, many may be dormant or inactive helping to explain the high number of outstanding returns, however there does not appear to be similarly credible reasons for the non compliance attached to the outstanding debt.

On the positive side, it is worth noting that the level of non-compliance is higher among non-affiliated practitioners…or conversely that those linked to SAIPA and other recognised associations have generally higher levels of compliance with SARS.

Associations like SAIPA were quick to react to these revelations and met with both myself and the Minister in an effort to identify and resolve the non compliance which brings the sector into disrepute. At SARS, we understand that the situation needs to be addressed both from our side and that of the Associations and we have tried different approaches to try and address the issue. SARS clearly emphasised the significance of this sector as a key focus area in our compliance programme that we launched earlier this year.

The theme that SAIPA has adopted for this important anniversary event is that of "Accounting as a catalyst for change" – resonates with SARS and our drive for increased compliance through vigilance and partnering with associations like yours to ground the philosophy of fiscal citizenship.

The SARS Compliance Programme and tax practitioners

Ladies and gentlemen, on 1 April the Minister and I unveiled the new SARS Compliance Programme which highlights seven areas we will focus on over the next five years to build compliance.

One of these focus areas will be the tax and trade intermediary profession. Specifically we plan to focus on 3 areas predominantly:

1. improving the personal compliance levels of practitioners that are non compliant
2. improving the registration process of practitioners
3. identifying practitioners that have been assisting their clients to be non compliant

With regard to the first focus area we have instituted 2 projects that would focus on improving the compliance levels of non compliant practitioners. It is our intention to fast track the cases for non compliant practitioners. The same procedures would be followed as we would for normal taxpayers with the only exception that they would be attended to sooner rather than later.

As to the second focus area, last week two very important legislative milestones were reached. The first was the promulgation of the Tax Administration Act, 2011. The second was the publication of draft legislation relating to a new model for regulating the tax profession.

Ladies and gentlemen, these both have far-reaching implications both for SARS and for yourselves as accounting and tax professionals.

The new Tax Administration Act

Ladies and gentlemen, the first legislative milestone last week was the promulgation of the Tax Administration Act. I am not going to go into great detail on this as most of you are probably more familiar with its contents that I am and have been involved in the lengthy consultation and drafting phase of this over the past six or seven years.

I would like to take this opportunity to thank SAIPA and its members for their valuable contribution to this process. The consultation and engagement phase of the legislative process is not simply paying lip-service to stakeholder engagement. Your inputs, comments and even criticisms of the various drafts of the Bill have helped to shape and mould it into a robust piece of legislation that both protects the rights of honest taxpayers and provides SARS with the tools to combat non-compliance.

A Phased Approach to Regulating the Tax Profession

Ladies and gentlemen, one of the challenges we face is that only about 55% of practitioners registered with SARS are registered with any professional body leaving nearly half with no oversight or accountability. As I pointed out earlier, we are mindful that those without affiliation tend to be less compliant in their own tax affairs according to our statistics.

At this stage the legislation allows all and sundry to register as practitioners without meeting any significant criteria including:

- qualifications
- personal compliance
- continuous development
- conduct

For this reason, we are seeking to revive our plans for the regulation of practitioners over two phases in the coming years with the first phase being outlined in the Draft Tax Administration Amendment Bill published last week.

It is hoped that the new proposals will pave the way to allow the public to place a lot more trust in practitioners as they would need to abide by stricter requirements allowing them to ply their trade as practitioners. It is further hoped that the new requirements will allow taxpayers to take their practitioners to task regarding the advice and service they provide if it is not up to scratch.

The first phase will be the compulsory registration of tax practitioners with a recognised controlling body such as SAIPA. The second phase will be the establishment of an independent regulatory board for tax practitioners, as previously proposed. The second phase will begin with a review of the success or otherwise of the first phase eighteen months after its implementation.

The proposal for the first phase hinges on two requirements. The first is the existing requirement that tax practitioners register with SARS. The Tax Administration Act already modifies this requirement to provide that a tax practitioner may not be registered if he or she has been removed from a professional body for serious misconduct or convicted of a crime involving dishonesty in the preceding five years.

The second is a new requirement for all tax practitioners to register with a recognised controlling body. A recognised controlling body is either a tax practitioners' association that has been recognised by SARS or a directly relevant statutory regulator, such as the Independent Regulatory Board for Auditors.

SARS will review the minimum qualifications and experience requirements, continuing professional education requirements, code of ethics and conduct and disciplinary code and procedures of a professional association seeking recognition.

To ensure sustainability and credibility, professional associations should have a 1 000 members upon either application or within a year to cater for new associations.

A structured process for revoking an association's recognition if it does not follow through on its commitments will be provided for, so as to give SARS the tools to deal with subsequent non-compliance.

The range of misconduct that may be reported by SARS to a recognised controlling body in terms of section 241 of the Tax Administration Act, the successor to section 105A of the Income Tax Act, 1962, will also be expanded to cover additional tax specific misconduct.

Finally, in order to deal with the cases where a professional association lacks the capacity (or will) to take effective disciplinary action, provision will be made for the Minister to appoint a panel of retired judges or persons of similar stature and competence to hear cases of misconduct reported by SARS on behalf of the association. The costs of the appointment will be borne equally by the association and SARS.

Ladies and gentlemen, this first phase is a golden opportunity for a professional association such as SAIPA to both expand its membership and to enhance its relevance and regulation of the industry.

Conclusion

Ladies and gentlemen, I mentioned at the start of this address that much has changed in South Africa in the past 30 years – including appointing the first African head of SARS!

However, much remains to be achieved in transforming our country and our industry if we are to build a sustainable, equitable and compliant society. Your conference is titled "Accounting as a catalyst for change". While strides have been made in growing your membership and in ensuring it reflects the demographics of our country, a great deal of work remains both in SAIPA and in the accounting industry in general to empower and transform this industry and make it more representative. Statistics reveal that out of the 33,000 chartered accountants in the country, (Black) Africans make up only 7 percent of that population.

Ladies and gentlemen, you and I share a great deal in common. We are both the butt of frequent jokes – not usually very flattering – about tax and accounting, and I know that we both share a passion for South Africa and its long term success.

Tax compliance is the bedrock of that long term success. As tax professionals and professional taxmen and women, we are not adversaries or combatants (although it sometimes feels like it).

We can and should be partners in achieving our ambitions for this country we love.

We are at an interesting stage in the development of the country and its economy. Whilst we want to empower and uplift, we are also deeply concerned with accountability and delivery. This is a road that, as South Africans, we must travel together.

At SARS we are committed to working with organisations like SAIPA to achieve our vision of tax morality and fiscal citizenship. You, as accountants and tax practitioners, are vital partners in the journey towards ensuring that we continue to deliver as responsible citizens. I challenge you this evening to “be the change you want to see in the world” for yourselves and your clients.

Thank you