

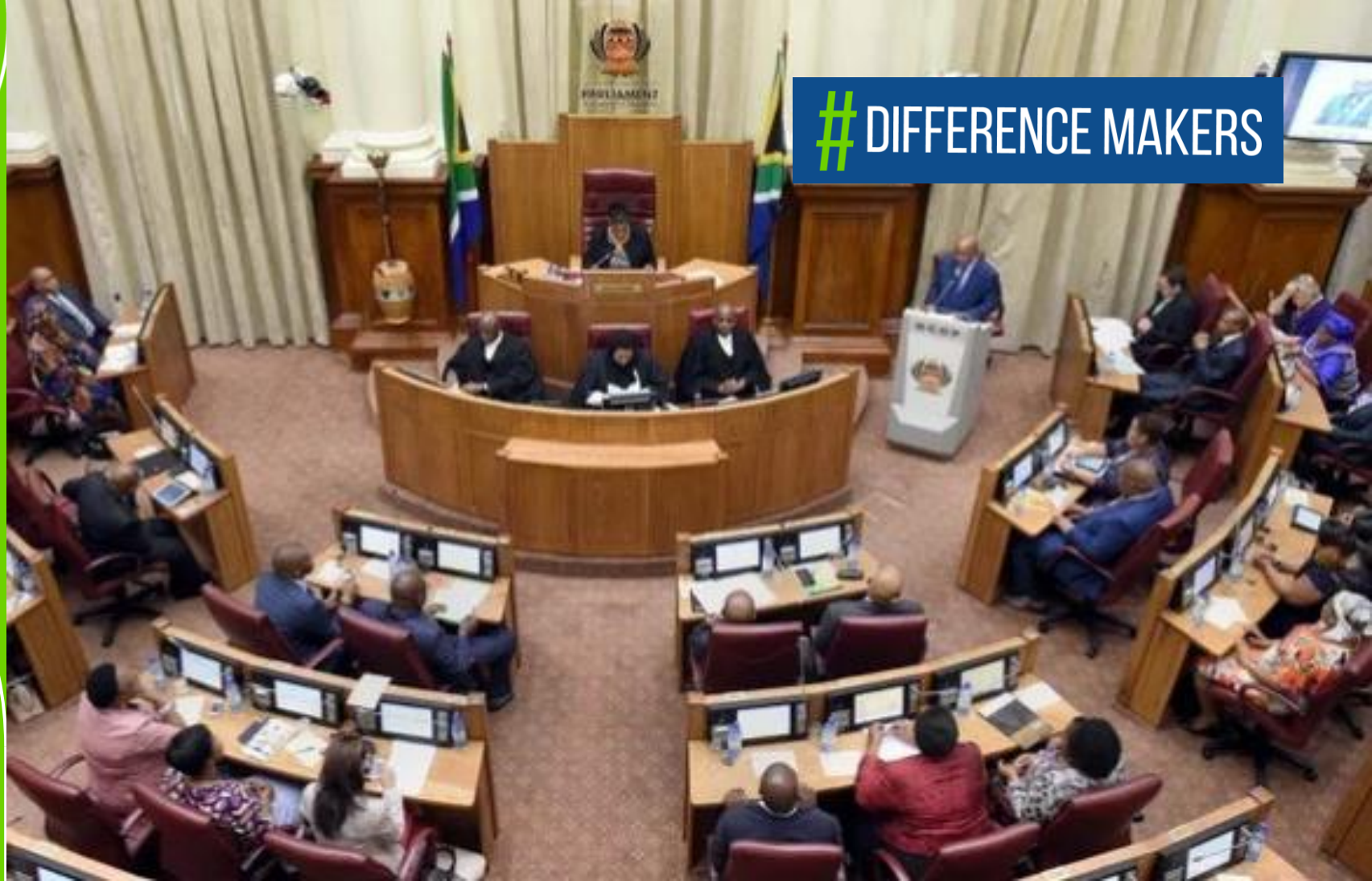
PUBLIC HEARINGS

Standing Committee on Finance

2025 Draft TLAB and TALAB

Lesedi Seforo & Pieter Faber

22 October 2025



#DIFFERENCE MAKERS



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- Form requirements for court processes
- Section 18A examination certificates

DUE PROCESS MATTERS

 CA(SA)  AGA(SA)  AT(SA)



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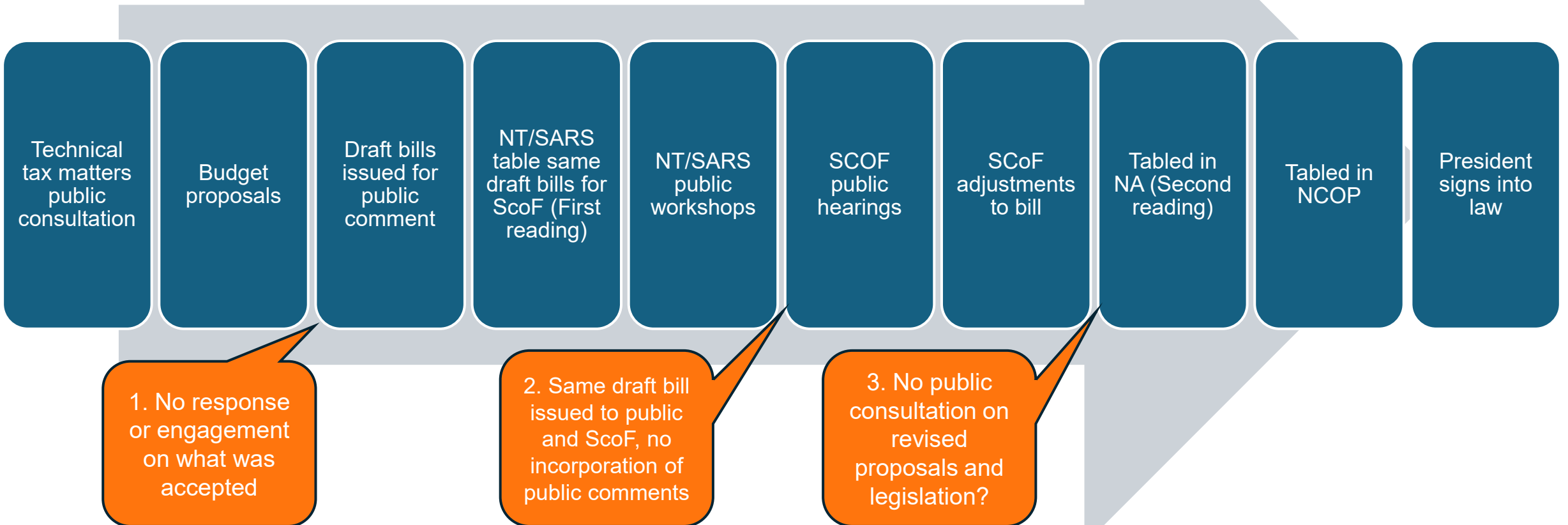


PRINCIPLES

- “Our constitutional democracy has essential elements which constitute its foundation; **it is partly representative and partly participative**. These two elements reflect the basic and fundamental objective of our constitutional democracy. (*Matatiele Municipality v President of the Republic of South Africa*)
- A **reasonable opportunity to participate** in legislative affairs ‘must be an opportunity **capable of influencing the decision to be taken**’. (*Mogale v Speaker of the National Assembly*)
- Whether a **legislature has acted reasonably** in discharging its duty to facilitate public involvement will depend on a number of factors. The **nature and importance of the legislation and the intensity of its impact** on the public are especially relevant. (*Doctors for Life International v Speaker of the National Assembly*)
- Public participation applies to **both Parliament in the legislative space and the Executive** in policy formulation. (*Electronic Media Network Ltd v e.tv (Pty) Ltd*)

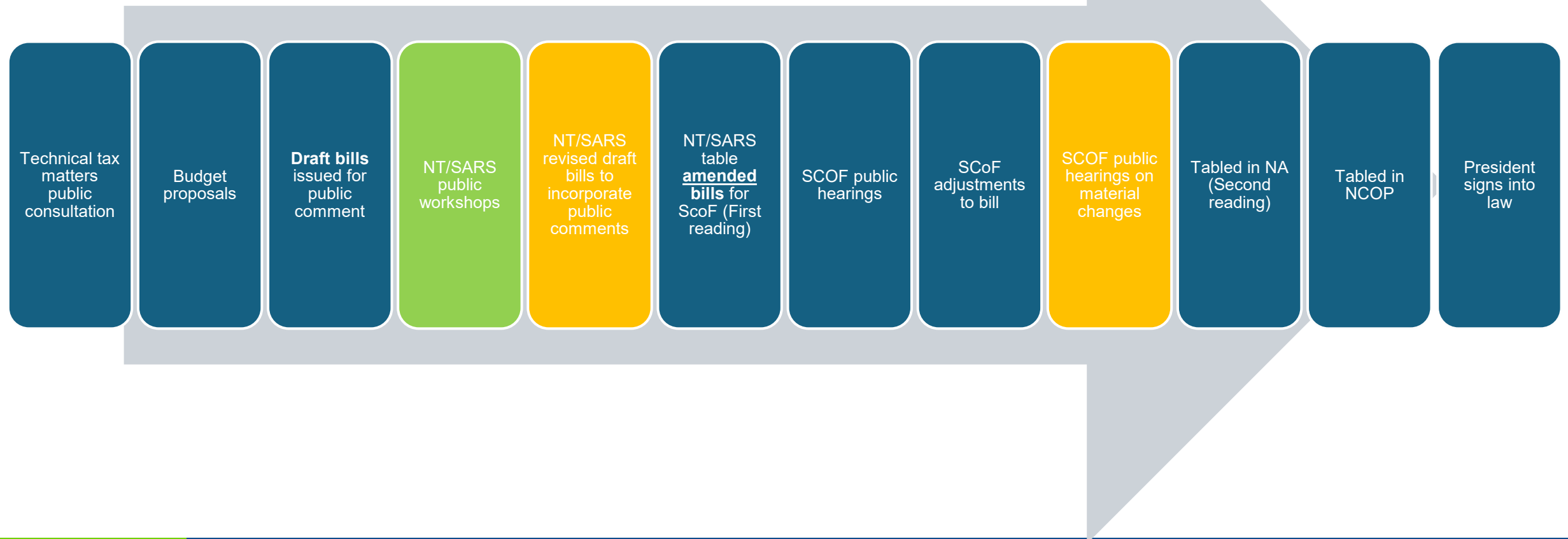
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PROCESS AS WE UNDERSTAND IT



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RECOMMENDATION



PUBLIC CONSULTATION

“CHATHAM HOUSE” CONCERNS

- We **commend Treasury and SARS** for their ongoing efforts to consult
- We **support having a regular platform** to engage NT/SARS openly and frankly on concerns / proposals / policy thoughts
- **Tax Bills Public Engagement:** NT request not to reveal or record discussion, not just identity of speakers
- **Appropriateness** to public concerns on current tax bills issued publicly and public feedback from NT/SARS

RECOMMENDATIONS

- SCoF engage NT and SARS on their public engagement principles as to publicly released documents
- NT and SARS create separate platform(s) to have more confidential and robust engagements on particularly future positions with stakeholders
- NT and SARS publicly state and record what policy rationale underpins a proposal or results in rejection of public comment at public workshops on publicly released draft bills

POLICY MATTERS



CA(SA) AGA(SA) at-AT(SA)

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MINISTER'S POWERS

CONCERNS

- Refer **SAICA submissions** in 2016, 2018 and 2025 on our legal concerns and current jurisprudence on the matter of the Executive having primary legislative powers
- On 27 April 2025 the Minister of Finance conceded to a judgement of the Western Cape High Court and
 - Suspended the announcement of the VAT rate increase
 - Set aside the resolutions of Parliament on the adoption of the 2025 Fiscal Framework
- The Minister noted in affidavit that his legal advice contradicts the applicants as to the nature and legality of the “temporary legislative” powers afforded
- The matter was never legally resolved, just politically.
- **QUESTION REMAINS: Is Parliament lawfully conferring primary legislative powers on the Minister i.e. it cannot functionally ‘unscramble a tax rate change egg’ and therefore has no power of revision?**

MINISTER'S POWERS

RECOMMENDATION

- Parliament use the current legislative cycle to correct any deficiency as to the powers afforded the Minister to set tax rates
- Tax rate increases are a significant risk for 2026 onwards per Budget 2025. Avoid delays to Budget process due to litigation
- Parliament review other constitutional concerns with tax and tax administrative laws as raised by the judiciary and public, including SAICA.

TECHNICAL MATTERS

ents - Tax Acts, Regulations and

Amendment Bill 2025 16 August 2025
Memorandum on the Draft Taxation Laws Amendment
Laws Amendment Bill of 2025 16 August 2025
Regulations on Domestic Reverse Charge 18 August
Memorandum - Domestic Reverse Charge Mechanism
The Objects of Talab 2025 16 August 2025
Memorandum - Export Regulation 16 August 2025
16 August 2025

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FOREIGN PENSION EXEMPTION

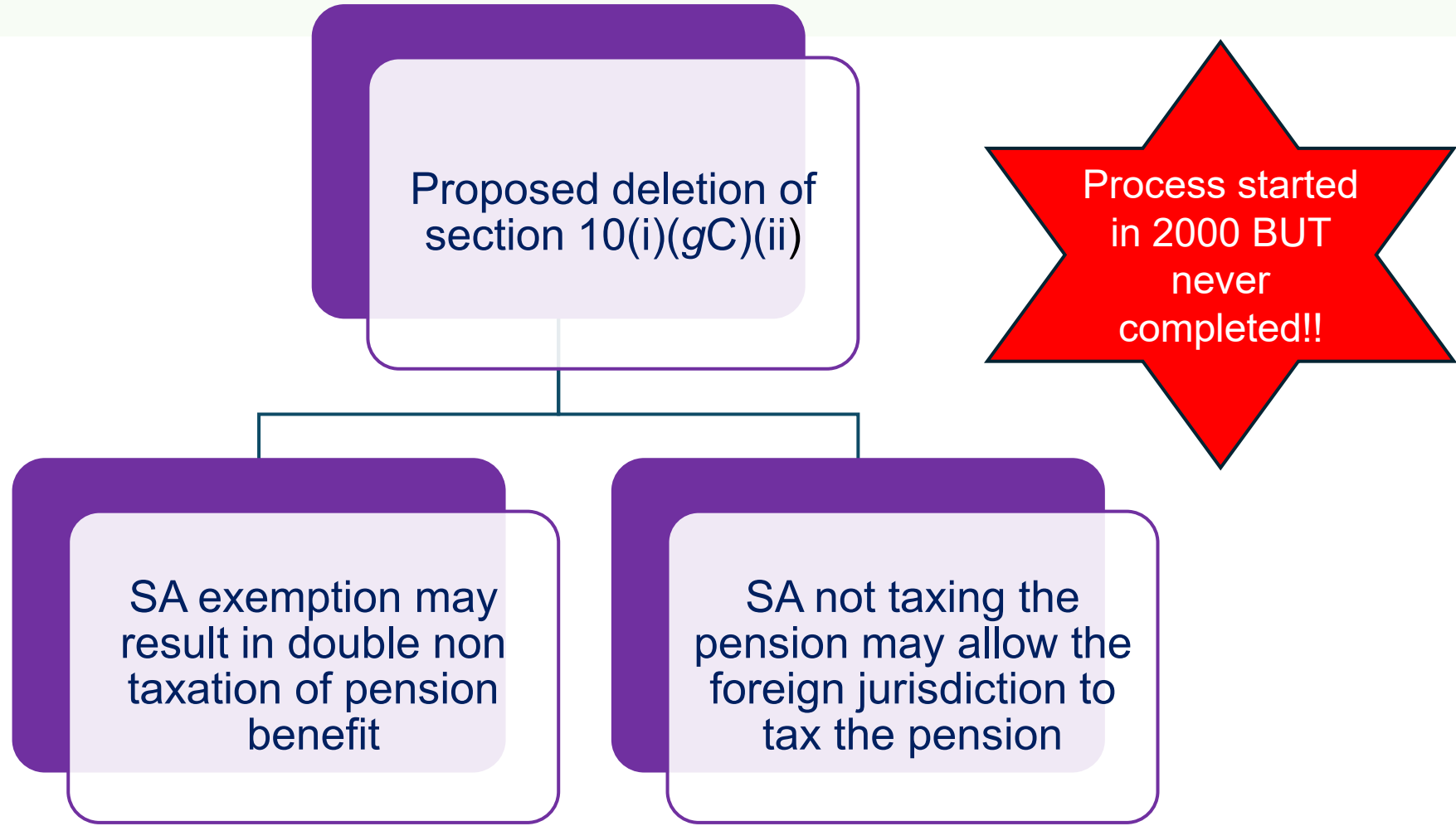


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EXEMPTION ON FOREIGN RETIREMENT FUND BENEFITS

Section 10(1)(gC)(ii) – ITA



EXEMPTION ON FOREIGN RETIREMENT FUND BENEFITS

Section 10(1)(gC)(ii) – ITA

CONCERNS



Non-resident retirees
choosing to settle in SA



SA tax regime vs foreign tax
regime



Will the full withdrawal be
taxable in SA???

EXEMPTION ON FOREIGN RETIREMENT FUND BENEFITS

Section 10(1)(gC)(ii) – ITA



RECOMMENDATIONS

1. Postpone the proposal until NT has conducted the necessary review as stated in 2000
2. If the proposal is maintained – do not tax the portion of the pension or annuity which represents the after-tax contributions or growth.
3. If the proposal is maintained – defer the effective date by 3 years (as was proposed by NT in 2000) to enable pensioners to factor in the reduction to their pensions.

VAT EXEMPTION AND DEREGISTRATION OF SCHOOLS



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VAT EXEMPTION AND DEREGISTRATION OF SCHOOLS

Sections 9(14), 12(h) and 40E – VAT Act

The current VAT regime applicable to schools **exempts from VAT supplies** that are:

- i. **Educational** services
- ii. **Incidental or subordinate** supplies made **to learners** if **consideration** in the form of school fees, lodging or board.

Supplies or part supplies **outside of the above** made by schools were **considered taxable** supplies.

The EM states that the policy intent was as follows:

*Further the policy intent was always to **exclude schools from the VAT net** and having regard to the changes in the manner in which the educational services are provided and charged for, the **amendment seeks to provide clarity that these services are all exempt.***

VAT EXEMPTION AND DEREGISTRATION OF SCHOOLS

Sections 9(14), 12(h) and 40E – VAT Act

CONCERNS

- Proposal impacts **public and private schools** as s8(2) VATA includes rights to school property
- EM seems to suggest that there was lack of clarity on the application of subsection (i) and (ii) as relates to VAT exemption for schools
 - Schools unnecessarily registered for VAT
- State funding is usually insufficient – necessitates the need for schools to supplement this funding with school fees
 - problem schools face rather relates to supplies that wholly or partly fall outside of the exemption clauses – mostly related to supplementary funding
 - Need for additional funding is what necessitates the need for VAT registration

Desire for
compliance

Proposed amendment by insertion of section 12(h)(iv) will make all supplies VAT exempt irrespective of their nature

Policy
change

VAT EXEMPTION AND DEREGISTRATION OF SCHOOLS

Sections 9(14), 12(h) and 40E – VAT Act

RECOMMENDATIONS

- Timing is the key issue. Proposal be withdrawn until engagement with the affected schools has been completed and SARS have quantified the expected liability for schools for SCoF.
- Public school impact to be clarified and quantified
- Impact of policy change on other supplies (e.g. welfare activities, trade competitive supplies etc) to be considered

VAT EXEMPTION AND DEREGISTRATION OF SCHOOLS



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DELIVERY OF NOTICE IN LEGAL PROCEEDINGS

Section 11 – Tax Admin Act

The proposed amendment provides: “The *notice or any process* by which the *legal proceedings* referred to in subsection (4) are instituted, must be served [at the address specified by] in the *form and manner as the Commissioner may prescribe by public notice.*”

- According to the EM – there is a need for this to align to other processes of “internal” service
- This section is merely a courtesy notification of court proceedings to enable SARS to be aware of pending litigation and efficiently direct it internally
- The prescribed form and manner is open to abuse and may be prohibitive, further delaying access to court as seen in “invalid objections”.

DELIVERY OF NOTICE IN LEGAL PROCEEDINGS

Section 11 – Tax Admin Act

RECOMMENDATIONS

- Proposal should be withdrawn
- SARS suffers no detriment or risk of abuse, just taxpayers. Courts are capable of taking appropriate action and cost for abuse.
- Should it be decided to proceed with the proposal, principles of section 36 Constitution should be expressly followed and applied as this is a limitation of section 34 of the Constitution



Not merely an administrative alignment – **Constitutional issue:** impacts access to court and due process

CERTIFICATE OF EXAMINATION



CA(SA) AGA(SA) at AT(SA)

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CERTIFICATE OF EXAMINATION

Section 18A(2B) – ITA

CONCERNS

- Necessary assurance required by SARS to ensure Public Benefit Organisations use ring-fenced monies as intended by policy
- Proposal does not address the most problematic issue – comfort level prescribed in the law
 - **Requires 100% substantive testing** to provide the required comfort level
 - No international or local assurance standard as applied in practice at a reasonable cost provides the comfort level and assurance SARS currently seeks
 - Requires assurance of application for prescribed purpose of monies after the fact without proxy procedure

CERTIFICATE OF EXAMINATION

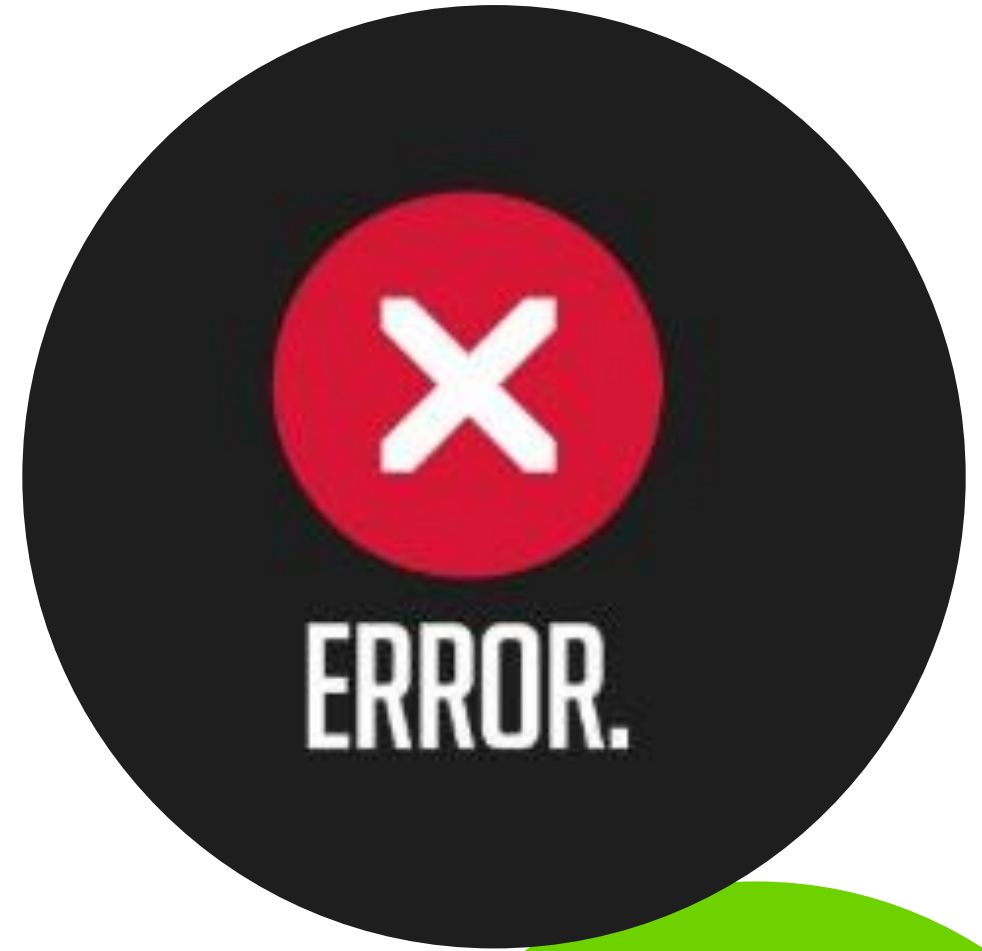
Section 18A(2B) – ITA

RECOMMENDATIONS

- Amend the section to enable reasonable and appropriate assurance. **Current amendment does not achieve this.**
- Empower and compel SARS to prescribe the procedure to be applied for the relevant comfort level it seeks to be achieved. This will ensure consistent assurance for SARS and lowers costs for Public Benefit Organisations.
- Prescribed procedure should cater for larger and smaller organizations



BONA FIDE INADVERTENT ERROR



CA(SA) AGA(SA) at- AT(SA)

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BONA FIDE INADVERTENT ERROR

Section 222 – Tax Admin Act

CONCERNS

- Proposed – “*bona fide* inadvertent error” defence from section 222(1) – imposes a strict liability standard for the imposition of understatement penalties (USP)
 - Safe harbour against UPS for honest mistakes now lost
 - 2 taxpayers who both made a bona fide error could have different USP – USP percentage under USP table in section 223 is the only variable
- Proposed amendments are a direct legislative response intended to override the principles established by the Supreme Court of Appeal
 - SARS is moving the goal posts
- A system that automatically imposes a penalty such as the USP based on a monetary trigger without any initial inquiry into the taxpayer's culpability is arguably procedurally unfair and irrational

BONA FIDE INADVERTENT ERROR Section 222 – Tax Admin Act

RECOMMENDATIONS

Taxpayer conduct
offends public
interest = penalty

Punitive measures
should correlate to
the degree of fault

Judicial outcome of
SCA decision should
not be neutralised

USP should be
based on how the
error was made

Proposal should be
withdrawn

THANK YOU

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