

Standing Committee on Finance

Public Hearings

8 & 9 October 2024

Presented by:

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PUBLIC CONSULTATION PROCESS



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Public consultation and broader tax policy matters

The next 5 years – opportunities

ISSUES FOR CONSIDERATIONS – 7TH PARLIAMENT

Standing Committee on Finance Function

f. The Standing Committee should broaden its focus beyond the consideration and approval of the fiscal framework, revised fiscal framework and passing money and tax administration Bills. Instead, it should prioritize continuous oversight of the fiscal framework throughout the year, getting quarterly reports from NT, and SARS where relevant, on fiscal policy implementation, adherence to fiscal rules, debt management and borrowing activities, revenue generation and policy, and other related issues

g. Incoming Committee and support staff should undergo induction training on the original revenue and tax administration laws that are amended annually. This training should be facilitated by experts from organizations such as SARS and National Treasury and other experts, providing participants with a thorough understanding of the tax legislation framework and technical intricacies involved. By investing in capacity-building initiatives of this nature, the Committee can ensure robust scrutiny and processing of money Bills

h. The Committee should adopt a more inclusive approach to consultation by engaging with civil society, statutory and Constitutional institutions, academics, and other stakeholders throughout the government's budgetary cycle, rather than limiting consultations to specific periods during the national budget and the MTBPS. By involving stakeholders at various stages of the budget cycle and throughout the year, the Committee can enhance the quality of its deliberations and promote more informed decision-making.



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Public consultation and broader tax policy matters

The next 5 years – opportunities

CONCERNS

- **Siloed approach** to Parliamentary oversight amongst committees
- No ongoing forum where public/private sectors can regularly discuss **key, long-term, strategic, tax policy** matters.
- **No private sector induction training component** to have a balance view as Parliament represents the people, not the Executive.

RECOMMENDATION

- We support more **continuous monitoring AND monitoring in whole process** from SCoF to SCoA to SCOPA (SAICA: 2022 & 2024)
- Create an ongoing **Fiscal Consultative Forum** to discuss these matters.
- ADD **private sector inputs** and views to Parliamentary Induction Program

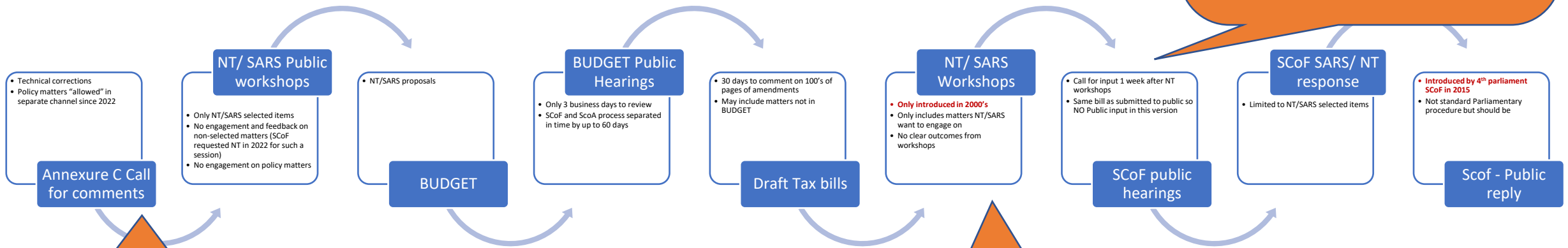


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Public consultation and broader tax policy matters

Public Consultation process – Participative Democracy



"Not only were they entitled to have their say, they could expect that attention would be given to their representations"
 Minister of Health and Another v New Clicks South Africa (CCT 59/2004) [2005] ZACC

All interested parties, not only those whose rights stand to be adversely affected, are entitled to know what government is doing, and as concerned citizens, to have an appropriate say
 Merafong Demarcation Forum and Others v President of the Republic of South Africa (CCT 41/07) [2008] ZACC

"Public involvement cannot be meaningful in the absence of a willingness to consider all views expressed by the public"
 Merafong Demarcation Forum and Others v President of the Republic of South Africa (CCT 41/07) [2008] ZACC

Public consultation and broader tax policy matters

Public Consultation process – SAICA 2017

PROCEDURAL CONCERNS

EFFECTIVE PUBLIC PARTICIPATION – PMG SURVEY

Sufficient time

- Avg actual for parliament: 17 working days
- Avg expected: 30 days
- SCoF draft RMAARLB actual: 4.5 working days

Being heard

- 30% felt submissions considered
- 37% felt was not taken seriously
- 80% No feedback
- Active engagement by committee creates positive view

PROCEDURAL CONCERNS

EFFECTIVE PUBLIC PARTICIPATION – PMG SURVEY

Impediments to participate

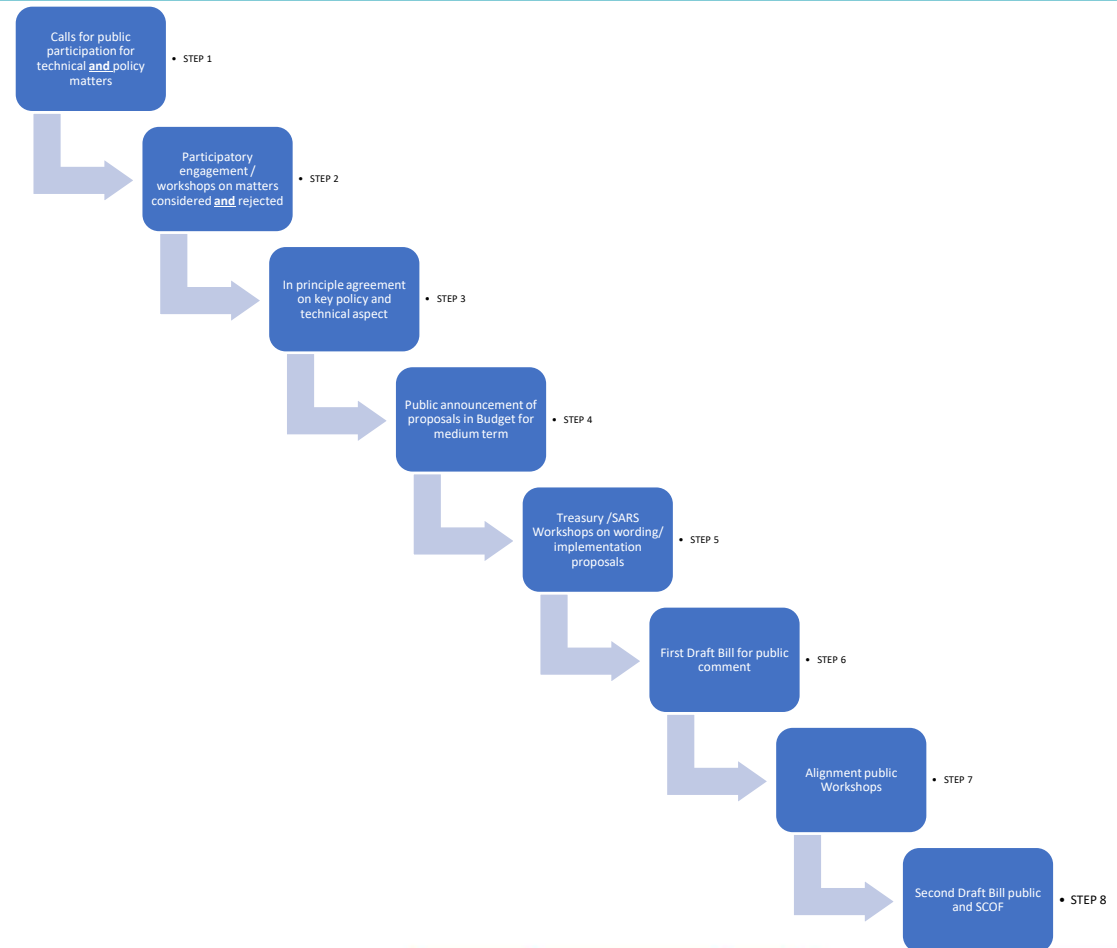
- 51% - Lack of time
- 36% - Lack of funding
- 32% - Lack of capacity
- 19% - Insufficient knowledge of policy

Public consultation and broader tax policy matters

The next 5 years – opportunities

RECOMMENDATION

- Review the flow and time-lines applied
- SCoF should review bill AFTER updated by NT with public engagement outcomes
- NT/SARS to respond in writing to ALL submissions raised, whether they accept them or not, to create public record of outcomes



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**PROPOSALS
WELCOMED**

TECHNICAL AMENDMENTS

WE SUPPORT:

1. Measures aimed at curbing abuse of the Employment Tax Incentive.
2. Non-attorneys able to represent taxpayers in Tax Court – clarified.
3. New electric and hydrogen-powered vehicles investment allowance.



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PROPOSALS WITH CONCERNS

TECHNICAL AMENDMENTS

TLAB – Input VAT claims

TLAB – Relaxation of assessed loss limitation rule

TLAB – Foreign exchange transactions & assessed losses

GMTB – Draft Global Minimum Tax Bill, 2024



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Input VAT claims

Section 16 VAT Act

Currently, VAT vendors can claim input VAT any time within 5 years of being entitled to claim.

PROPOSED AMENDMENT



VAT vendors can only claim input VAT when first became entitled to claim.

**** ALL INDUSTRY, LARGE AND SMALL BUSINESS OPPOSES THIS PROPOSAL ****

RECOMMENDATION



WHY THE CHANGE?

1. VAT vendors claim after 5 years. **Illegal.**
2. Vendors might lose track of which tax invoices were deducted previously. Risk of deducting input VAT twice.

Input VAT claims

Section 16 VAT Act

CONCERNS

SAICA submission pages 18 to 22.

1. Some businesses delay claiming if it will lead to a VAT refund.

Soapbox  **INSIDER GOLD**

Delayed Vat refunds from Sars?

Legal recourse available to businesses.

By Andre Daniels 15 Oct 2022  00:41

PERSONAL FINANCE FINANCIAL PLANNING

VAT and refunds: Are they getting better?

2. Must re-submit prior VAT returns, leading to more VAT audits. **More admin, not less!**
3. SARS capacity to handle all these re-submissions?
4. **Fix e-Filing** – cannot increase input VAT to correct a previous return.
5. Tougher for small businesses (often miss claiming all input VAT when first entitled)

Don't initially have proper tax advice.

Input VAT claims

Section 16 VAT Act

RECOMMENDATION

1. Withdraw proposal for further consultation.
2. SARS to provide more data to clarify in which circumstances this is happening and how much of an issue.
3. SARS to provide more clarity on how it will procedurally deal with this proposed process and impact on other sections like disputes, prescription, error correction etc.



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Assessed Losses – Removal of limitation

Section 20 Income Tax Act

Loss limitation rule will not apply to companies being liquidated, deregistered or wound-up.



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Department:
National Treasury
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CONCERNS

1. It takes more than one year to shut down.
2. May still earn passive income but not trading during that time. What then?
3. Does not deal with voluntary liquidations, deregistrations and winding up.

Proposal should cover both voluntary and involuntary.



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Assessed Losses – Removal of limitation

Section 20 Income Tax Act

RECOMMENDATION

Remove trade requirement for all years when company is in liquidation, deregistration, winding-up.



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Assessed loss rules and exchange differences on foreign exchange transactions

Section 24I Income

INITIAL REQUEST

- FOREX losses should be deducted whether taxpayer trading or not. **Why?**
- FOREX gains are taxed but losses cannot be deducted if taxpayer not trading. **Fair?**

CURRENT PROPOSAL

- A net FOREX loss will not be deductible in year incurred.
- Will only be carried forward to next year instead.
- This applies whether trading or not.



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Assessed loss rules and exchange differences on foreign exchange transactions

Section 24I Income

RECOMMENDATION

- We recommend reverting to the initial request:
 - FOREX losses should be deducted whether taxpayer trading or not.
 - FOREX gains are taxed but losses cannot be deducted if taxpayer not trading



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Global Minimum Tax Bill, 2024

Retrospective legislation

Effective 1 January 2024 and applies to Fiscal Years beginning on or after that date.

CONCERNS

1. Affected companies with 31 Dec 2024 financial year-ends already subject to the tax before the law is finalised and assented by parliament.
2. A fundamental principle of our law is a presumption against the retrospective application of legislative enactments.
3. The law must be **certain** and accessible so that people can regulate their affairs accordingly.



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Global Minimum Tax Bill, 2024

Retrospective legislation

RECOMMENDATION

Delay effective date to 1 January 2025.



MATTERS NOT IN THE BILLS

MATTERS NOT IN THE BILLS

Improve legislative process

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2024¶

68. → In addition to the various matters mentioned above, there are other areas of importance that we feel should have been considered in the 2024 DTLAB and the DTALAB. These include the following and are briefly discussed below:¶

- a. → Constitutionality of various provisions in the legislation¶
- b. → VAT refunds¶
- c. → Information gathering (Chapter 5 of the TAA) – Verification process¶
- d. → Section 104 of the TAA – Decisions subject to objection¶
- e. → Section 190(2) of the TAA – Refunds of excess payments¶
- f. → Section 252 – 255 of the TAA – Electronic delivery of documents¶

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2024¶

167. → In addition to the various matters mentioned above, there are other areas of importance that we feel should have been considered in the 2024 DTLAB and the DTALAB. These include the following and are briefly discussed below:¶

- a. → Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie¶
- b. → Home office allowances¶
- c. → Penalty for exceeding assigned carbon budget¶

RECOMMENDATION

1. Refer to proposals on consultation process
2. Should Parliament as the legislator and representative of the people, ask for matters outside bills as well?



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Thank you!

Siyabonga!

Dankie!

Kea Leboha!