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BY E-MAIL: taxpolicyproposals@treasury.gov.za

Dear Mr Axelson

TAX POLICY SUBMISSION – CHAPTER 4 OF THE 2027 BUDGET REVIEW

1. We herewith present our written submission on the request for the policy matters for the Budget 2027, on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee (NTC), as set out in Annexure A.
2. Our submission includes a combination of representations, ranging from serious concerns about the impact or effect of certain provisions to simple clarification or suggestions for potentially ambiguous provisions, in relation to either **existing sections or the latest proposed amendments** to various sections of the Income Tax Act, No. 58 of 1962 (the ITA), the Value Added Tax Act, No 89 of 1991 (the VAT Act), and the Tax Administration Act, No. 28 of 2011 (the TAA), as contained in the Taxation Laws Amendment Act, 2025 (TLAA2025) and the Tax Administration Laws Amendment Act, 2025 (TALAA2025), respectively.
3. **Where a previous public or formal response has been provided by National Treasury**, we have noted and considered National Treasury's responses on our **prior year submissions**. Where no response has been provided or the consideration by National Treasury was still unclear or we still believe it to be in the public interest, we have included such matter again.
4. To make it easier for National Treasury to navigate the document, we have indicated **NEW** submissions not previously raised in the table of contents.



5. We welcome any engagement with National Treasury on why we believe the relevant proposals would be in the interests of South African fiscal policy or in creating alignment between tax policy and legislation/practice.
6. As always, we thank National Treasury and SARS for the on-going opportunity to participate in the development of the South African tax law and policy.

Yours sincerely

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ANNEXURE A

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CATEGORY – INCOME TAX: INDIVIDUALS, EMPLOYMENT AND SAVINGS

Section 23(m) & 23(b) – Home office allowances and disallowance of interest paid (submission originally made in 2022)

1. In previous [Annexure C submissions](#), we have requested clarity on the deductibility of the portion of interest (on a bond) that is attributable to a taxpayer's home office; viz, whether the deductibility of such interest in terms of section 24J means that section 23(m) will not apply to prohibit this deduction.
2. We are of the view that section 11(x) does not include section 24J and thus that interest expenditure incurred in respect of a home office should be allowed as a deduction and not be prohibited by section 23(m)(iv). SARS, however, holds the opposite view, as indicated in Interpretation Note 28 (Issue 3).
3. What we can agree on is that SARS' approach does not seem to accord with the basic principles or current policy relating to deductible expenditure for trade income, creating a disparity in the tax system by taxing the whole "trade" capital gain of the home office whilst having disallowed the largest expense relating to the trade income expense pertaining to the home office.
4. We have also proposed various legislative amendments concerning home-office deductions, to reflect the remote working culture that has emerged in a post-COVID world. NT proposed a discussion document to be published in 2022 on a personal income tax regime for remote work.
5. However, the document is yet to be published.
6. Based on Pnet's latest Job Market Trends Report, after an initial decline, the work-from-home trend is on the increase and seems to be embedded in working environments across all industries.¹
7. We therefore urge NT to begin engagements with industry on this matter.

Fourth Schedule: Paragraph 1 – "Provisional taxpayer" (NEW)

Legal nature

8. In terms of paragraph 1 of the Fourth Schedule to the ITA, a "provisional taxpayer" is defined as, broadly, any person other than a company who derives income other than remuneration, subject to specified exclusions and thresholds.
9. The definition and related penalty regime appear to create a prospective compliance obligation that may only be capable of final determination after the year of assessment has ended. This could create uncertainty for taxpayers and may result in penalties being imposed retrospectively in circumstances where the taxpayer could not reasonably have known, during the year, that they would fall within the definition.

Factual description

¹ <https://businesstech.co.za/news/business/866931/big-work-from-home-shift-in-south-africa-2/>

10. The current wording of the “provisional taxpayer” definition requires individuals to determine, during the year of assessment, whether they fit the definition, and must therefore register and submit provisional tax returns. However, for some categories of income, the taxpayer’s status can only be confirmed once the actual receipts, accruals, deductions, exemptions and thresholds for the year are known.
11. This is particularly relevant where an individual receives modest non-remuneration income, such as rental income, interest, investment income or occasional income, and where the final taxable position depends on related expenses, exemptions or thresholds that may only be determinable at year end.
12. For example, an individual who lets a property for R5 000 per month may not know during the year whether they will ultimately be regarded as a provisional taxpayer, because the outcome will depend on the expenses incurred and the taxpayer’s overall taxable position. SARS may nevertheless determine the provisional taxpayer status retrospectively and impose penalties after the fact.
13. Another example is a recent retiree. Whilst working, due to only earning remuneration income, they would not have met the definition of provisional taxpayer. On retirement, their retirement lumpsum is invested and they earn investment income and for the first time, may fall within the provisional taxpayer definition. They are often completely unaware of this until they receive a notice from SARS as to the provisional taxpayer status, after their first tax return as a retiree.
14. The rule of law requires that tax obligations be framed in terms that are clear, certain, and capable of compliance. A framework that expects taxpayers to anticipate future facts before knowing whether they are subject to an obligation introduces uncertainty and exposes the regime to legal challenge.
15. The Constitutional Court has consistently held that legislation and administrative action must be rational and fair. Penalties imposed retrospectively are unreasonable where taxpayers acted prudently on the information available during the year and could not, on any objective basis, have foreseen that provisional tax obligations would arise in that year of assessment.
16. The penalty system adds to the uncertainty because penalties may be based on facts that only become clear after the taxpayer was required to act. Penalties should be linked to conduct that was clearly non-compliant at the time, not to a later determination of status.
17. This approach undermines voluntary compliance and appears unfair, especially for taxpayers with small or irregular non-remuneration income who may not have been able to determine during the year that they fell within the provisional tax system – due to lack of sufficient information at the filing due date.
18. From a SARS perspective, uncertainty in the trigger for provisional taxpayer status may increase disputes, remission requests and administrative costs. Clearer rules would support certainty, improve compliance, and reduce the number of penalty disputes arising from good-faith uncertainty.
19. A clearer framework would also assist tax practitioners in advising clients consistently and would better align the provisional tax regime with principles of legality, administrative fairness and proportionality.

20. Comparable estimated-tax systems in other jurisdictions generally rely on objective facts, such as prior-year liability, actual detection of relevant income, or revenue authority notices, instead of requiring taxpayers to predict a future status without sufficient information at present.
21. In the United Kingdom, payments on account are generally linked to prior-year self-assessment liability. In Australia, PAYG (pay as you go) instalments are commonly administered through instalment notices once relevant income is identified, based on the latest return/assessment. In Canada, instalment obligations are generally linked to prior-year tax payable exceeding prescribed thresholds taking into account the liability for the prior two years.
22. These examples demonstrate that estimated-tax systems can preserve revenue collection objectives whilst basing compliance obligations on known or objectively determinable facts.

The nature of taxpayers impacted

23. Individual taxpayers who fall within the provisional taxpayer definition due to modest non-remuneration income, which is not easily determinable at a provisional tax filing due date – that is, the exclusion (dd)(B)(BB) to the provisional taxpayer definition.

Proposal

24. Clarify that provisional taxpayer status should be determined with reference to objective facts known or reasonably determinable during the year of assessment.
25. Provide that no administrative non-compliance or understatement-related penalty should be imposed for a first year in which provisional taxpayer status becomes apparent only after year end.
26. Introduce a safe-harbour rule for individuals with small, irregular or uncertain non-remuneration income.
27. Permit registration and first provisional filing without penalty once it becomes reasonably apparent that the taxpayer will fall within the definition.
28. Amend the definition or related provisions so that taxpayers are not required to comply with obligations that depend on future facts that are not objectively determinable at the relevant time.
29. Proposed wording: *Where an individual becomes a provisional taxpayer solely by reason of income other than remuneration that could not reasonably have been anticipated or objectively determined during the relevant year of assessment, no penalty should be imposed for failure to register or submit a provisional tax return for that year, provided that the taxpayer regularises their position within a reasonable period after becoming aware of the obligation.*
30. Alternatively, SARS should issue administrative guidance confirming the circumstances in which penalties will be remitted where provisional taxpayer status was not reasonably ascertainable during the year.
31. The concern is consistent with the rule-of-law requirement that legal obligations must be

clear and capable of compliance. It is also consistent with administrative-law principles requiring SARS to act reasonably, fairly and rationally when imposing penalties.

Seventh Schedule: Paragraph 7 – Right of use of motor vehicle (*submission originally made in 2021*)

Legal nature

32. Where an employer provides an employee with the right of use of a motor vehicle, a taxable fringe benefit arises in the hands of the employee and is included in gross income in terms of paragraph (i) of the gross income definition in the ITA).
33. The taxable benefit is quantified in terms of paragraph 2(b) and 7 of the Seventh Schedule to the ITA.
34. Paragraph 7 of the Seventh Schedule stipulates that where an asset has been acquired by an employee, the value of the taxable benefit shall be the difference between the value of the asset less any consideration given by the employee.

Factual description

35. As a cost saving measure it is fairly common practice for an employer to provide the use of a company motor vehicle to a group of expatriate employees working temporarily in South Africa, rather than providing a different motor vehicle to each employee.
36. In terms of paragraph 2(b) of the Seventh Schedule to the ITA, a taxable benefit will be deemed to have been granted to an employee where the employer has provided the employee with the right of use of any motor vehicle for private or domestic purposes, either free of charge or for a consideration which is less than the value of such use.
37. Paragraph 7(2) of the Seventh Schedule to the ITA provides that the cash equivalent of the value of the taxable benefit, is the value of the private use of the vehicle, less any consideration given by the employee for the use thereof.
38. The legislation does not currently provide for the apportionment of the taxable benefit arising from the private use of the vehicle in the hands of each employee who has the use of the vehicle.
39. Consequently, the full value of the taxable benefit is taxed in the hands of each employee. Tax is therefore collected by SARS from each employee on the private use of the same vehicle, regardless of the fact that the access that each employee has to the vehicle for private use is limited to its availability of the vehicle at the time.
40. The taxable benefit for each month that the motor vehicle is used by the employee (other than a vehicle acquired in terms of an operating lease) is calculated by multiplying the determined value of the motor vehicle, as determined by the Minister by Regulation by a percentage (3.5% or 3.25%) depending upon whether or not the vehicle was acquired with a maintenance plan.
41. The legislation appears to assume that the use of a motor vehicle will be allocated by an employer to a single employee, rather than to a group of employees to use collectively. Consequently, the legislation does not provide for the apportionment of the taxable benefit where the use of a company motor vehicle is provided to a group of employees and to

ensure that the full value of the vehicle is only taxed in full as a taxable benefit once in total.

The nature of taxpayers impacted

42. Employees receiving the collective right to use a company vehicle including employees of multinationals seconded to render services in South Africa temporarily.

Proposal

43. A paragraph, similar to paragraph 9(5) should be included under paragraph 7 allowing the Commissioner to make an equitable determination in this regard.

CATEGORY – DOMESTIC BUSINESS TAXES

Section 22 – Amounts to be taken into account in respect of values of trading stock *(submission originally made in 2024)*

Legal Nature

44. Section 22(1)(a) of the Act provides that the closing stock to be included in the income
45. of a taxpayer is the cost price of the trading stock, less such amount as the Commissioner of SARS (Commissioner) may think just and reasonable as representing the amount by which the value of such trading stock has been diminished by reason of damage, deterioration, change of fashion, decrease in market value or for any other reason satisfactory to the Commissioner.
46. SARS has issued Interpretation Note 140 (“IN”), presumably to replace Practice Note 36.
47. The IN confirmed the principles established by the below-mentioned cases, being:
 - The cost price of the goods and not the actual or anticipated market value is the benchmark against which any claim for the diminution in value is to be measured.
 - A claim for a diminution of cost price must be based on events that exist at the end of the year of assessment or events that are known with reasonable certainty will occur in the following year of assessment.
 - There will only be scope for a diminution of cost price if the events in question have led to the cost price of the goods ceasing to be a proper measure of their value.
 - The use of NRV to determine the value of closing stock under section 22(1)(a) is inconsistent with the principles that underpin the Act.

Factual description

48. Following the decisions in *C:SARS v Volkswagen SA (Pty) Ltd* (1028/2017) [2018] ZASCA 116 (19 September 2018) the Supreme Court of Appeal (SCA) and *C:SARS v Atlas Copco South Africa (Pty) Ltd* (834/2018) [2019] ZASCA 124, there is significant uncertainty around stock obsolescence provisions.
49. The SCA in *C:SARS v Atlas Copco* confirmed its findings as per the Volkswagen case and while the court’s findings do not require taxpayers to value each and every item individually, there needs to be a method to writing down its stock and a taxpayer should be able to substantiate this method sufficiently.
50. Both cases confirmed that obsolescence provisions that are aligned with accounting principles do not necessarily meet the requirements of section 22(1)(a).
51. The report on the efficiency of South Africa’s corporate income tax system prepared by

the Davis Tax Committee confirms the internationally accepted principle that corporate tax has to comply with all the principles of a good tax system, being fairness, **simplicity**, **certainty**, and efficiency (our emphasis).

52. There is currently significant uncertainty in relation to the determination of the NRV as contemplated by section 22(1)(a).
53. Unfortunately, the IN does not alleviate the uncertainty and does not **simplify** the application of section 22(1)(a). The draft IN is an oversimplification of the application of section 22(1)(a).
54. It is important to note that the amount by which closing stock is reduced to arrive at NRV constitutes a timing difference as the exact same amount that is included in gross income in year 1, is deducted from gross income in the very next year as opening stock.

The nature of taxpayers impacted

55. Taxpayers who have stock held and not disposed of at the end of the year.

Proposal

56. To clarify and simplify the tax policy regarding stock obsolescence, we recommend that stock obsolescence provisions that are aligned to accounting principles, are also accepted for purposes of section 22(1)(a), similar to the alignment of doubtful debt allowances as per section 11(j) of the Act.
57. We believe there is no incentive for companies to overstate the stock obsolescence provision for accounting purposes given the short term timing nature of any deferral.
58. Most taxpayers with material amounts invested in inventory are also audited. The obsolescence provision amount is included in the audits, which should provide some assurance to SARS that the provision is reasonable.

Section 23N – Limiting interest deductions in respect of reorganisation and acquisition transactions *(submission originally made in 2025)*

Legal nature

59. The application date for the proposed amendment to section 23N of the Act which in effect reduces the interest deduction cap from 49% of EBITA to 30% is nearing implementation date (01 January 2027).
60. Despite the significant impact which this may have on legitimate corporate transactions and funding arrangements, National Treasury has not conducted any formal engagement with affected stakeholders, raising concerns about procedural fairness and compliance with principles of transparent tax policymaking.

Factual description

61. The 2024 Draft Tax Laws Amendment Bill initially proposed aligning section 23N with section 23M by replacing the variable formula (49%) with a fixed percentage (30%).

62. Stakeholder comments highlighted that this change would materially impact acquisition and reorganisation transactions, especially in a high-interest rate environment. In response, National Treasury postponed the effective date from 2025 to 2027 but retained the core amendment.
63. To date there has been no consultation with or workshops held with impacted taxpayers and no indication has been provided as to when this can be expected, despite the complexity and economic implications of the change.

The nature of taxpayers impacted

64. Corporate taxpayers involved in mergers, acquisitions, and group reorganizations under sections 45, 47, and section 24O.
65. Financial Institutions which provide structured acquisition financing solutions;
66. Large corporates and listed entities that rely on debt-funded transactions for strategic growth.
67. Tax advisors and legal practitioners who require certainty for transaction planning.

Proposal

68. National Treasury should initiate formal stakeholder engagement (public workshops, written submissions, and industry consultations) prior to the 01 January 2027 effective date.
69. Engagement should address:
- The economic impact of the 30% cap in current interest rate conditions;
 - Potential introduction of deferral mechanisms similar to section 23M;
 - Grandfathering provisions for transactions concluded before the effective date.
70. If meaningful engagement cannot be completed in time, it is recommended that further postponement of the effective date is considered to ensure sufficient time is provided to address the implications of the amendment.

Fourth Schedule: Paragraph 19(3) (NEW)

Legal nature

71. In terms of paragraph 19(3) of the Fourth Schedule, the Commissioner may require any provisional taxpayer to justify the provisional tax estimate submitted by that taxpayer, or to provide details of income, expenses, or other relevant information. If the Commissioner is not satisfied with the estimate, he or she may adjust it to an amount considered reasonable.
72. Such an adjustment is final and cannot be challenged through objection or appeal.

Factual description

73. Taxpayers may submit provisional estimates in good faith, based on information available at the time of determining the estimate. The Commissioner may nevertheless increase these estimates under paragraph 19(3).
74. In recent years, SAICA has received a growing number of complaints on this issue. Some SARS officials have required taxpayers to adjust provisional estimates up to the actual year-end figures, even where the submitted estimate was already close to the final liability. In certain cases, SARS has requested full annual financial statements and insisted that the provisional estimate be aligned with the final tax liability reflected therein. This practice overlooks the fact that the law requires an estimate at a point in time, based on the information reasonably available when the estimate is made.
75. At present, taxpayers cannot object to or appeal against such adjustments, even where they believe the increase is excessive or based on incomplete information.
76. Whilst there is an opportunity to request a review of the decision to adjust in terms of section 9 of the TAA, there is no defined process in practice to facilitate this and no timeline in the legislation for finalisation of such cases.
77. In addition, if unsuccessful, the only remedy would be to take the matter to the High court on review – an option that is not feasible for many taxpayers.
78. This leaves taxpayers with limited to no remedy, undermines confidence in the system, and may result in penalties or compliance flags that cannot be challenged.

The nature of taxpayers impacted

79. All taxpayers (individuals, trusts, companies), that are required to make provisional tax estimates and payments.

Proposal

80. SAICA proposes an amendment to paragraph 19(3) to read as follows:

*“The Commissioner may call upon any provisional taxpayer to justify any estimate made by the provisional taxpayer in terms of sub-paragraph (1), or to furnish particulars of the provisional taxpayer’s income and expenditure or any other particulars that may be required, **as was available or reasonably available to the taxpayer at the time of determining the estimate**, and, if the Commissioner is dissatisfied with the said estimate, he or she may increase the amount thereof to such amount as he or she considers reasonable, which increase of the estimate is not subject to objection and appeal.”*

81. In addition, a new provision should be added to provide that should an adjustment to the estimate be made by the Commissioner, SARS must issue written reasons for this, ensuring transparency and accountability.

CATEGORY – INTERNATIONAL TAX

Section 9A – Blocked foreign funds *(submission originally made in 2024)*

Legal nature

82. Section 9A of the Act provides that where an amount received by or accrued to any person,
- which is required to be included in the income of that person;
 - but cannot be remitted to South Africa ("SA") during that year due to currency restrictions or other limitations imposed by the laws of the country where the amount originated, then such amount may be deducted from the income of that person for that year.
83. This section offers relief to SA taxpayers, in that the amount that cannot be remitted to SA in these circumstances is not subject to income tax in the year of assessment during which it arose.
84. Because the **laws of another country** may have sanctioned or restricted such monies from being transferred to SA, instead of the laws of the country in which the amount originated, the current legislation becomes onerous for SA taxpayers. That is, SA taxpayers cannot rely on the relief provided in section 9A of the ITA in these circumstances.
85. It is possible that SA taxpayers made strategic choices to invest in certain specific countries before the sanctions are imposed by the laws of another country.

Factual description

86. For a variety of strategic reasons, many SA taxpayers invest globally to reach new markets and sources of income, diversify sources of income, lessen reliance on local markets, create a worldwide presence etc.
87. However, income generated by SA taxpayers from the countries in which they have invested may not be remitted to SA due to various reasons. There are numerous reasons why income earned in such countries might be prohibited, or blocked from being repatriated i.e., the limitations may be due to sanctions, regulatory agreements, governments, and courts.
88. The article "*Countries Sanctioned by the US and Why?*" from Investopedia dated July 06, 2024, reports that the United States of America ('US') alone sanctioned more than 20 nations as of June 2023, including Russia and nations mostly in the Middle East and Africa.
89. According to the report, the US imposes sanctions on these nations for a variety of reasons, including transgressions of international law, aiding terrorism, unfair economic practices, or issues pertaining to the environment or climate change. Different kinds of sanctions reported include sectoral, commodity-specific, financial, and trade limitations, to name a few.

90. In such a case, the prohibition on repatriation is not imposed by the country in which the amount arose, but by another country (i.e. the US). As such, section 9A does not apply.

The nature of businesses impacted

91. All taxpayers with an international presence and provide goods/services to recipients in foreign jurisdictions, whose funds have been blocked from repatriation to SA as a result of another nation's laws, regulations or sanctions.

Proposal

92. It is submitted that section 9A should be broadened to provide relief in instances where the funds may not be remitted to SA due to limitations or restrictions imposed by the laws of another country, other than the laws or restrictions of the country in which the money originated.
93. In addition, the legislation should be broadened to provide relief in instances where the funds may not be remitted to SA due to sanctions imposed by any country.

Section 9D – Review of the current Controlled Foreign Companies regime (*submission originally made in 2022*)

Factual description

94. As part of our submission to National Treasury concerning the proposed amendment to the meaning of “foreign business establishment” per the 2023 draft Taxation Laws Amendment Bill, SAICA and other stakeholders called for the withdrawal of the amendment pending the Constitutional Court’s judgment in the case between the CSARS and Coronation Investment Management SA (Pty) Ltd.
95. This was duly accepted by National treasury (NT) and the proposed amendment has been withdrawn.
96. We also suggested in our submission that NT should review South Africa’s CFC legislation against similar regimes in other jurisdictions in order to align our legislation to international best practice, including considering the recommendations of the OECD’s BEPS Action Plan 3, the impact of the pending OECD Pillar 2 Global Minimum tax, and the extent that the current legislation is administratively burdensome for most taxpayers.

The nature of taxpayers impacted

97. South African taxpayers subject to section 9D of the Act.

Proposal

98. We recommend once again that NT should review South Africa’s CFC legislation against similar regimes in other jurisdictions in order to align our legislation to international best practice.

CATEGORY – VALUED ADDED TAX

Section 1 & 2(1)(o) – Financial Services – definition of “cryptocurrency” *(submission originally made in 2024)*

Legal Nature

99. The issue, acquisition, collection, buying, selling or transfer of ownership of any cryptocurrency is deemed to be a ‘financial service’ in terms of section 2(1)(o) of the VAT Act.

Factual description

100. The concept ‘cryptocurrency’ is not defined in the VAT Act. At the time when section 2(1)(o) was introduced by the *Taxation Laws Amendment Act, 2018* it was proposed that a definition of “cryptocurrency” be included in the VAT Act and the ITA in order to avoid confusion and to provide clarity. However, in its response to these comments to the Standing Committee on Finance in Parliament, SARS and National Treasury stated that the proposal regarding the inclusion of a definition of “cryptocurrency” is not accepted, adding that a definition of “cryptocurrency” in both the VAT and ITAs is not necessary since “there is a general understanding of the meaning of cryptocurrencies”.²
101. The word “cryptocurrency” in the definition of “financial instrument” in section 1 of the ITA was however replaced with effect from 20 January 2021 with the term “crypto asset”. The reason for the amendment was to bring the ITA in line with the proposed adoption of a uniform definition of crypto assets within the South African regulatory framework.³ The VAT Act was not amended accordingly.
102. If one applies the guidance of our courts in relation to statutory interpretation, then the ordinary meaning of the word “cryptocurrency” must be assigned thereto, unless the ordinary meaning results in an absurdity. Secondly, the word must be considered in the context in which it appears, and regard must be had to the purpose of the section in which it appears.
103. The word “cryptocurrency” is defined by various dictionaries to mean the following:
- a. *Cambridge Dictionary*: “a digital currency produced by a public network, rather than any government, that uses cryptography to make sure payments are sent and received safely.”
 - b. *Merriam Webster Dictionary*: “any form of currency that only exists digitally, that usually has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new

² Final Response Document on Taxation Laws Amendment Bill, 2018 and Tax Administration Laws Amendment Bill, 2018 (Based on hearings by the Standing Committee on Finance in Parliament) 17 January 2019

³ *Explanatory Memorandum on the Taxation Laws Amendment Bill, 2020*, at clause 2

units, and that relies on cryptography to prevent counterfeiting and fraudulent transactions.”

c. Oxford Learner’s Dictionary: “any system of electronic money, used for buying and selling online and without the need for a central bank.”

104. Unfortunately, the normal meaning of the word “cryptocurrency” does not provide clarity in relation to the various types of crypto assets which currently exist and which may loosely be understood to be a form of digital currency, simply because they can be traded or exchanged for goods or services.
105. An Intergovernmental Fintech Working Group (“**IFWG**”) was established in 2016 between National Treasury, the South African Reserve Bank, the Financial Services Board (now the Financial Sector Conduct Authority), and the Financial Intelligence Centre. The National Credit Regulator and SARS joined the IFWG in 2019. The objectives of the IFWG are the testing of innovative products and services against regulation or legislation within predefined parameters and timeframes.⁴ The Crypto Assets Regulatory Working Group of the IFWG published a consultation paper on policy proposals for crypto assets on 16 January 2019, and a position paper on crypto assets on 16 April 2020, which was updated on 11 June 2021.
106. The latest position paper of the Crypto Assets Regulatory Working Group of the IFWG recognises that various naming conventions have been adopted, including ‘digital tokens’, ‘digital assets’, ‘crypto tokens’ and ‘crypto assets’. The Working Group stated that, despite the various terminology used, the crypto phenomenon is commonly based on decentralised technology such as blockchain and distributed ledger technology. The definitions used generally focus on its electronic nature, its potential role as a medium of exchange, and its perceived role as a representation of value. The position paper stipulates further that, consistent with the international preference, the term ‘crypto assets’ is preferred in the South African context as it encapsulates and extends to these functions. Furthermore, the term “crypto assets” is seen as a broader, or ‘umbrella’, term for different crypto asset tokens which may be classified into three types:⁵
 - d. Exchange or payment token:* These are tokens designed to be used as a means of exchange or payment for buying goods and services. Some users also utilise it for investment purposes.
 - e. Security token:* These tokens provide rights such as ownership, the repayment of a specific sum of money, or entitlement to a share in future profits.
 - f. Utility token:* These tokens can be redeemed for access to a specific *product* or service that is typically provided using a distributed ledger technology platform.
107. The term “crypto assets” is therefore a broad term which includes all digital products based on decentralised technology such as blockchain and distributed ledger

⁴ https://www.ifwg.co.za/Pages/IFWG_Regulatory_Sandbox.aspx#:~:text=The%20Intergovernmental%20Fintech%20Working%20Group.within%20predefined%20parameters%20and%20timeframes

⁵ IFWG Crypto Assets Regulatory Working Group *Position Paper on Crypto Assets* 11 June 2021

technology. Both the Organization for Economic Co-operation and Development⁶ and the Australian Taxation Office⁷ consider the term “crypto assets” to encompass both fungible and non-fungible tokens. It is submitted that the same would apply in South Africa.

108. Non-fungible tokens can be defined as a one-of-a-kind digital asset, stored on a blockchain, which assigns ownership when placed in the blockchain, that cannot be replaced by any other token or cryptocurrency and that is implemented through a smart contract. The “non-fungible” characteristic means these tokens cannot be exchanged because they are exclusive cryptographic assets, with unique identification codes and metadata that cannot be replicated.⁷ A non-fungible token is generally used to record ownership in an asset and represents an ownership interest in a tangible or intangible asset.⁸
109. Non-fungible tokens can be used as a payment mechanism when acquiring goods or services. However, when the non-fungible tokens are applied as payment, the value of such token is generally converted to fiat currency first, and it is then the fiat currency that is applied as payment. The non-fungible tokens themselves are therefore not used as a digital currency for making online payments.
110. Furthermore, cryptocurrencies can be distinguished from a non-fungible token. Cryptocurrencies are fungible in their nature as their holders are willing to exchange them for any other cryptocurrency regardless of the serial number to which it belongs and because the unit itself is not relevant. Non-fungible tokens are per definition non-fungible, which means the unit is the most relevant aspect and cannot be traded or exchanged at equivalency. Non-fungible tokens do not share the nature of cryptocurrencies or other digital currencies as they are not configured as currencies nor treated as fungible goods.⁹
111. Moreover, the value of cryptocurrencies is determined by supply and demand for the cryptocurrency itself. The value of asset-backed non-fungible tokens is determined by the price of the underlying asset. Accordingly, the issue of a non-fungible token, should not be a “cryptocurrency” as contemplated in section 2, but it is nevertheless a crypto asset.¹⁰ This creates uncertainty as to whether the term “cryptocurrency” in section 2(1)(o) should be widely interpreted to mean all types of crypto assets, or whether it should be limited to fungible tokens specifically designed to be used as a means of exchange or payment for buying goods and services.
112. There is unfortunately not a general understanding of the meaning of “cryptocurrency” as originally stated by SARS and National Treasury when section 2(1)(o) was introduced into the VAT Act. The term could include various types of tokens, fungible and non-

⁶ OECD, *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Public Consultation Document* (2022)

⁷ <https://www.ato.gov.au/individuals-and-families/investments-and-assets/crypto-asset-investments/what-are-crypto-assets>

⁸ Laura Alarcón Díaz, *European Union - The VAT Treatment of NFTs in the European Union*, International VAT Monitor, 2023 (Volume 34), No. 2 at paragraph 2.1

⁹ <https://www.ato.gov.au/individuals-and-families/investments-and-assets/crypto-asset-investments/what-are-crypto-assets>

¹⁰ Botes, MC, *Juta's Value Added Tax*. Juta and Company (Pty) Ltd at p 2-16B

fungible, as is evident from the latest position paper of the Crypto Assets Regulatory Working Group of the IFWG.

113. The recently issued SARS draft Guide on the Taxation of Crypto Assets specifically does not deal with the VAT consequences related to cryptocurrency. Refer to SAICA's [submission](#) in this regard.

The nature of taxpayers impacted

114. Persons issuing, acquiring, collecting, buying, selling or transferring the ownership of any cryptocurrency.

Proposal

115. In order to avoid confusion and to provide clarity regarding what is envisaged by section 2(1)(o), we propose that a definition of "cryptocurrency" be included in section 1(1) or section 2(2) of the VAT Act, and that the term be limited to exchange or payment tokens, being tokens designed to be used as a means of exchange or payment for buying goods and services, as classified by IFWG Crypto Assets Regulatory Working Group.

Section 15 – Accounting basis – cash basis for SMEs *(submission originally made in 2022)*

Legal Nature

116. Section 15(1) directs that vendors account for VAT on the invoice basis, while section 117. 15(2) provides for an exception to this rule, allowing specific vendors the option of accounting for VAT on the payments basis. This group of vendors includes natural persons with taxable supplies of less than R2.5 million during the preceding (or coming) 12 months [section 15(2)(b)].

Factual Description

118. The below extract from the SARS VAT404 Guide provides some well-known reasons for this concession by government:

A few advantages and disadvantages of the payments basis of accounting are set out in the table below.

Advantages	Disadvantages
• Suitable for small businesses. • Advantageous when the vendor allows lengthy periods of credit. • Facilitates cash flow.	• May deduct VAT only after payments made to suppliers. • More difficult to implement accounting systems to manage, administer and calculate accurately (for example, reconciliation with income tax returns and adjustments).

119. The above shows government's awareness of the cash flow difficulties faced by small businesses, which are partially caused by the fact that **they are often paid months after** invoicing customers. Some of these customers include government departments, municipalities and state-owned entities¹¹.
120. These businesses are often placed in the very unfortunate position of having to choose between tax compliance and paying their overhead expenses, which are often "more pressing" as failure to settle these may threaten the very existence of these businesses.
121. With the success rate of small businesses currently being as low as it is, it is incumbent on government to provide the necessary assistance needed to address some of the difficulties faced by the small business sector, since it is well recognized that this sector is crucial to the economic success of any nation.
122. Though some small businesses may choose to trade as sole proprietorships, many others choose to trade as juristic persons.
123. Through the insertion of section 15(2)(a)(viii) into the VAT Act¹², the legislature has previously shown that it is willing and able to aid a business' VAT-related cash flow constraints by extending the payments basis to include the South African Broadcasting Corporation (SABC).
124. The Explanatory Memorandum on the Taxation Laws Amendment Bill, 2015¹³ noted the following in this regard:
125. *Under normal VAT rules, the SABC should account for output tax on the earlier of an issued invoice (i.e. on issued TV license notices) or payment made for the supply. However, there is a high level of non-payment of TV license fees by television owners. The VAT requirement to account for output tax on an invoice basis on the revenue it might not be able to collect, places a significant financial constraint on the SABC.*
126. If a multi-billion rand corporation can be strained by habitual and known late payments, the impact on SME's is much greater. Extending the payments basis to the rest of the small business sector would be keeping in line with this legislative sentiment.

The nature of taxpayers impacted

127. Small businesses trading as juristic persons.

¹¹<https://www.dpme.gov.za/publications/Reports%20and%20Other%20Information%20Products/70008-20200630%20Research%20on%20Late%20Payment%20of%20SMMes%20V03.pdf>

¹² Taxation Laws Amendment Act No. 25 of 2015

¹³ <https://www.sars.gov.za/wp-content/uploads/Legal/ExplMemo/LAPD-LPrep-EM-2015-01-Explanatory-Memorandum-on-the-TLA-Bill-29-of-2015.pdf>

Proposal

128. Section 15(2) should be amended to include juristic persons with taxable supplies not exceeding R5 million. Extending the payments basis to juristic persons will provide parity with natural persons.
129. A concomitant amendment may also be necessary to section 15(2A)(iii) as the continued rationale of the per invoice limit seems to have disappeared as reflected in the removal of various local government and entities from this requirement. There is also already a total annual supply limitation. To add to this challenge, the R100 000 per invoice limit has not been amended **since its insertion in 1997**. It is proposed that it be deleted or at least significantly increased.

CATEGORY – CARBON TAX

Annual license and registration renewals *(submission originally made in 2025)*

Legal nature

130. Carbon tax in South Africa is considered as an environmental levy under the Customs and Excise Act, 1964 (CEA). Rule 54FD.02 requires carbon taxpayers (or licensees) operating emissions-generating facilities equal to or above the legislated carbon tax threshold to submit an application to SARS to obtain a *consolidated license* for each of its emissions facilities as its *customs and excise manufacturing warehouse* for the generation of emissions liable to carbon tax under the Carbon Tax Act, 2019 (CTA).
131. Upon registration, carbon taxpayers are required to complete and submit the following list of documents:
 - SARS form DA185 application;
 - SARS form DA185.4B2 annexure;
 - Signed resolution or cover letter on company letterhead requesting approval in respect of the license registration or renewal;
 - Supporting documentation in relation to the carbon taxpayer comprising,
 - A certified copy of the registration certificate for the entity;
 - Board resolution for the appointment of the public officer of the entity;
 - Certified copies of identity documents for individuals responsible for the management or control of the entity (e.g. trustees or board of directors);
 - Confirmation of the taxpayer's existing tax registration numbers;
 - Confirmation of the South African bank account of the entity;
 - Confirmation of the physical address of the entity; and
 - A power of attorney granting authority for the individual submitting the application on behalf of the entity.

132. Under the CEA, licences are valid until 31 December of each year and an application for renewal must be submitted to SARS 30 days prior to expiry (*by 30 November each year*) in order to avoid any penalties and interest for late submission. As part of the license application, license holders are required to submit any changes in particulars to their profiles that is currently registered with SARS.
133. Renewal license applications are completed on SARS DA185 and DA185.4B2 forms and manually submitted to SARS at a local branch. Where there has been *no changes* to the taxpayer or licensee registration details, then certain supporting documentation is not required to be re-submitted.
134. Renewal license applications are to be accompanied by supporting documentation and submitted in person at the SARS Excise Registration and Licensing Hub at the Alberton branch whereby the manual paper-based documents are to be handed in to a Customs & Excise Document Inspector. The SARS official would confirm receipt in writing and issue the taxpayer with the relevant approved paper-based license for the renewal period. There is no license fee payable to SARS in respect of this license renewal application process.

Factual description

135. Environmental levies were introduced to address government's objectives to preserve the environment, reduce pollution and to give effect to certain international treaties on climate change and pollution. Chapter VA of the CEA read with its related Rules is dedicated to the administration of the environmental levies, including the CTA.
136. The annual license renewal process places a significant administrative burden on carbon taxpayers where there has been absolutely no change in their particulars.

The nature of taxpayers impacted

137. Carbon taxpayers.

Proposal

138. We recommend that the requirement for annual re-registration or annual licensing renewal be removed where there has been *no changes* in any particulars of the carbon taxpayer (or registered licensee) registered with SARS, There is *no license fee payable* to SARS in respect of carbon tax manufacturing warehouses and as such the removal of this administrative action will not result in any loss to the fiscus.
139. Alternatively, we propose that the license validity period be *extended* from one year to three years to alleviate the administrative burden for both taxpayers and SARS.
140. The above proposals would reduce the overbearing compliance burden placed on carbon taxpayers to submit annual licenses and the associated administrative costs for SARS officials in capturing renewed license applications for taxpayers who had *no changes* to their previously submitted particulars.

CATEGORY – TAX ADMINISTRATION ACT (TAA)

Tax practitioner regulatory model (NEW)

Legal nature

141. SAICA supports the regulation of the tax practitioner industry to enhance standards and ensure accountability in relation to both taxpayers and the government, as this is in the public interest.
142. SAICA has, however, raised concerns over many years regarding the current tax practitioner regulatory model, including the inherent conflicts that exist in this model.
143. We are also cognisant of the financial concerns National Treasury has as to alternative models.

Proposal

144. See attached the proposal that SAICA has submitted to National Treasury on 5 December 2025. We request a formal response to this submission.

Chapter 2 – New Part G: Taxpayer Bill of Rights (submission originally made in 2021)

Legal nature

145. Currently SARS and taxpayers' rights are contained in the TAA. The SARS Service Charter also stipulates a taxpayer's rights and obligations as well as the service time frames that a taxpayer can expect from SARS.

Factual description

146. Despite the above, SARS does not necessarily always comply with the procedures outlined in the TAA (see the Office of the [Tax Ombud's Systemic Investigations Report](#)) or in the [SARS Service Charter](#). Due to the long time periods and exorbitant costs involved in addressing these deficiencies, only a few taxpayers have challenged SARS' non-compliance in court.
147. As many taxpayers are not well acquainted with the TAA, crystallising taxpayers' rights in a document would help raise public awareness of taxpayers' rights as well as SARS' legal obligations.

The nature of taxpayers impacted

148. All taxpayers interacting with SARS.

Proposal

149. A Taxpayers' Bill of Rights that is binding on SARS should be included in a separate chapter (Part G) of the TAA. SAICA's TAA sub-committee is currently doing research on the international best practice to assess what would be the best solution for the South

African context and is willing to share the findings with the National Treasury.

Section 26 – Third party returns – expand across other areas/industries (*submission originally made in 2024*)

Legal nature

150. Section 26 authorises SARS to require third party returns by means of public notice. This forms a critical element in SARS achieving its 9 Strategic Objectives, including specifically the objectives of increasing and expanding the use of data; modernisation; ease of compliance; and detection of non-compliance.

Factual description

151. Third party reporting and associated pre-population of taxpayer returns uses modern data collection tools to improve ease of compliance, and make non-compliance more difficult. There are various areas where third party returns are effectively used.
152. However, there are other areas or industries where the use of third party data could be valuable.
153. Legal industry: Advocates would traditionally fall into the category of “referral advocates”, who do not see clients directly, but rather act under the instructions of an attorney. This means that, for most advocates, there is a convenient source of third-party data available, held by the relevant attorneys, which may be useful to enhance tax compliance within the legal industry.
154. Medical industry: Medical aids hold significant amounts of third party data in relation to income paid to various medical practitioners, either by the medical aid itself, or by the medical aid’s client (the patient) directly. It appears that this type of data may be useful to enhance tax compliance within the medical industry.

The nature of businesses impacted

155. Whereas all taxpayers are positively impacted by increasing tax compliance and associated revenues for the fiscus, the specific businesses impacted by this proposal are: the legal industry; and the medical industry.

Proposal

156. Legal industry: SARS should extend the third party reporting requirements to the legal industry, as regards all payments made by attorneys to advocates. The amounts reflected on these IT(3) forms should be pre-populated in the relevant advocate’s income tax returns, as is the case currently for IRP5 data. Attorneys should be required to separately report this line item of expenditure in their own tax returns, to facilitate verification of this data. SARS could also consider using this data as the basis for minimum provisional tax payments, and/or implementing a withholding tax system for payments made by attorneys to advocates. For example, a withholding tax rate of 25%

may be appropriate, as this is aligned to tax rates for “non-standard employment”, and it allows for the fact that advocates would have certain tax-deductible expenditure.

157. Medical industry: SARS should investigate the practicality and usefulness of extending the third-party reporting requirements to the medical industry, for example requiring medical aids to issue IT(3) certificates in respect of medical practitioners, for payments made by the medical aid to that medical practitioner or paid directly by the underlying patient to that medical practitioner (and reported to the medical aid).

Section 164: Payment of tax pending outcome of write-off or compromise applications **(NEW)**

Legal nature

158. Chapter 14 of the TAA deals with the write-off and compromise of tax debts, granting SARS the legal authority to either permanently cancel (‘write-off’) or partially settle (‘compromise’) tax debts in cases where recovery is not possible, uneconomical, or where fairness and equity demand relief.
159. In terms of section 164 of the TAA, a taxpayer may request a senior SARS official to suspend the payment of all or part of a tax due under an assessment if the taxpayer disputes or intends to dispute the related liability; or the taxpayer intends to request or requests SARS to make a reduced assessment in terms of section 95(6).
160. There is currently no allowance for a taxpayer to request a suspension of payment in an instance where an application was made for write-off or compromise.

Factual description

161. SAICA often receives complaints from members regarding the amount of time taken for SARS to respond to applications for debt compromise or write-off.
162. Whilst SARS does, in practice, generally not take collections steps once an application is made, this is not provided for in the legislation, and the taxpayer is effectively at the mercy of the SARS official dealing with the case. There have been a few cases where SARS has taken collection steps while the taxpayer is awaiting the outcome of the application.
163. In our view this undermines the purpose of debt relief, as if the taxpayer could afford to make payment or have funds taken from the bank account, no application for relief would have been made.

The nature of taxpayers impacted

164. All taxpayers who have applied for a debt compromise or write-off.

Proposal

165. It is proposed that section 164 be extended to allow for a request for suspension of payment of tax debt in respect of which an application for a debt compromise or debt write-off has been made.

Chapter 17 – Criminal offences (submission originally made in 2021)

Legal Nature

166. Section 234 contains a list of criminal offences wilfully committed by a person and also includes a list of requirements that if a person wilfully or negligently fails to do these, will be considered a criminal offence.

Factual description

167. Currently, a SARS official falsely communicating information to the Tax Ombud (lying or misrepresenting facts) does not constitute a criminal offence. Neither is the lying by a SARS official to get a search warrant a criminal offence. The only remedy afforded to the taxpayer is to approach the Public Protector.
168. In terms of section 28(1) of the Criminal Procedure Act 51 of 1977, if a policeman lied to get a search warrant, it would be a criminal offence of perjury.

The nature of taxpayers impacted

169. All taxpayers submitting complaints to the Tax Ombud or subjected to a search warrant where a SARS official has lied or misrepresented facts.

Proposal

170. A similar offence and sanction to that in the Criminal Procedures Act should be included in the TAA or Chapter 17 of the TAA should be amended to include as a criminal offence a SARS official that lies or makes misrepresentations to the Office of the Tax Ombud or to get a search warrant.
171. Consideration should also be given to compulsory publication of SARS disciplinary cases (similar to what SAICA does with its members) on a no name basis which the Office of the Tax Ombud could review.
172. This would certainly improve SARS' public image and build trust with taxpayers that SARS does in fact apply consequence management.

Section 240 – Exceptions to tax practitioner registration (submission originally made in 2024 with **NEW additions in 2026)**

Background

173. Tax practitioner regulation was introduced in 2002 and expanded in 2013 to enhance the professionalism of tax professionals, to provide for the reporting of unprofessional

conduct by tax practitioners and for matters connected therewith.

174. One of SARS' main reasons for introducing tax practitioner regulation was, purportedly, to protect taxpayers from being exploited by unscrupulous individuals.
175. The first phase of regulation essentially became a "license to trade" regime with registration of individuals with SARS the only requirement.
176. This was then expanded to including registration with statutory or recognised controlling bodies (RCB), since 2013 – effectively requiring individuals to fulfil certain education and experience requirements before being allowed to register as a tax practitioner.
177. Despite the registration requirement being in place for more than a decade, unfortunately, 'ghost' tax practitioners continue to freely operate. These 'ghost' tax practitioners are sometimes referred to as tax preparers and provide tax services outside of the regulatory framework. They often facilitate this by submitting tax returns directly on their taxpayer-clients eFiling profiles with no indication that the return was completed by someone other than the taxpayer.
178. Many of these 'ghost' tax practitioners may charge contingency fees – that is, a percentage of the tax refund or saving secured, which in some cases may be invalid.
179. Despite recognised controlling bodies raising concerns about 'ghost' tax practitioners since the inception of the regulatory model, this seems to continue unabated with no clear indication as to what is being done to decisively address this.
180. There is growing uneasiness amongst registered tax practitioners who feel undermined by SARS' inability to address this issue, which is negatively impacting taxpayers, tax practitioners and ultimately, the fiscus.

Legal nature

181. Section 240(1) of the TAA provides that every natural person who provides advice to another person with respect to the application of a tax Act; or completes or assists in completing a return by another person, must register with or fall under the jurisdiction of an RCB and register with SARS as a tax practitioner in the prescribed form and manner and within the prescribed timeframes.
182. Subsection (2) provides for circumstances in which such individuals, even though providing tax services, are not required to register as tax practitioners.
183. Paragraph (c) in particular, provides that there is no requirement to register as a tax practitioner if the person only 'provides the advice as an incidental or subordinate part of providing goods or other services to another person'.

Factual description

184. In our view, the term 'incidental or subordinate part' of providing goods or services to another person is potentially open for abuse or misinterpretation as to what extent of

services may constitute incidental or subordinate tax services. This also differs to paragraphs (a); (b) and (d) which are, in our view, clear in terms of requirements exempting one from the obligation to register.

185. Depending on how paragraph (c) is interpreted by each individual, there may well be instances where what is considered 'incidental or subordinate' by the individual providing such services, may breach the requirements of what SARS would consider incidental/subordinate, if it had to apply tests that it deems appropriate. Unfortunately, there is no clear guidance on this – further increasing the risk of misinterpretation or misuse.
186. It may well be that this potential loophole creates more opportunity for 'ghost' tax practitioners to continue to freely operate.
187. There may be instances where a tax practitioner would outsource certain tax guidance. If an individual considers the facts of a particular tax matter and gives advice, for a fee, on the correct tax treatment, that individual should generally be registered – that is, even where the advice is given to the taxpayer's registered tax practitioner rather than directly to the taxpayer.
188. Advice given genuinely for no consideration should remain exempt. However, advice included in a paid webinar, subscription or support service may not be free merely because there is no separate charge. Giving advice to a registered tax practitioner is also not automatically work done under that tax practitioner's direct supervision.

The nature of taxpayers impacted

189. All persons who provide tax advice to another person or completes/assists another person in completing a return

Proposal

190. We propose that SARS reconsider the wording of Section 240(2)(c) or alternatively, repeal this subsection in its entirety.
191. In this way, there would be no opportunity for abuse as any individual providing any tax service would be required to register as a tax practitioner, unless one of the other three requirements in subsection 2 have been met.

CATEGORY – REGULATIONS AND TAX THRESHOLDS, REBATES & EXEMPTIONS

Regulations to be issued in terms of the Ninth Schedule of the Income Tax Act (submission originally made in 2025)

Legal Nature

192. Non-profit organisations play a significant role in society as they undertake a shared responsibility for the social and development needs of the country thereby relieving the financial burden, which otherwise falls on the State¹⁴.
193. Tax benefits are designed to assist non-profit organisations by augmenting their financial resources and providing them with an enabling environment in which to achieve their objectives. The organisation will, however, only be exempt from income and related taxes if it is specially approved for this purpose by the Commissioner (as a PBO) and if it complies with the requirements and conditions (public benefit activities) as set out in the ITA, particularly the Ninth Schedule of the Act.
194. Thus approved PBOs have the privilege and responsibility of spending public funds, which they derive from donations or grants, in the public interest on a tax-free basis.
195. A taxpayer making a bona fide donation in cash or of property in kind to a section 18A-approved organization (Ninth Schedule – Part II), is entitled to a deduction from taxable income if the donation is supported by the necessary section 18A receipt issued by the organization.
196. SARS is, however, becoming very strict in the interpretation of the Ninth Schedule requirements, particularly in respect of paragraph 1(p)(iii) of Part I of the Ninth Schedule. This paragraph states that an entity can apply for PBO tax exempt status if it intends to provide training, support/assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister of Finance by way of regulation.

Factual Description

197. Despite this section being enacted in 2003, these regulations have, **almost 20 years later**, not yet been published.
198. The effect of this is that the SARS Tax Exemption Unit (TEU) states that it does not have the discretion to consider an application under para 1(p)(iii) insofar the regulations have not been published.

¹⁴ Tax Exemption Guide for Public Benefit Organisations in South Africa
<http://www.samemonfoundation.co.za/SARSTax.pdf>

199. Thus, the TEU cannot grant PBO and section 18A status under para 1(p)(iii) of the Ninth Schedule insofar as it relates to the provision of loans to micro enterprises, until such time as the Minister of Finance has issued the regulations as stated in paragraph 1(p)(iii) of Part I and II of the Ninth Schedule.
200. According to the TEU, section 30C dealing with SBFES was inserted into the Act to deal specifically with the provision of funding.
201. Section 30C was introduced because tax relief was previously only afforded to funders of SMMEs if monies were invested through a venture capital company (VCC) or if approved by the Commissioner as a PBO. Any activity provided to SMMEs that did not fall under the VCC regime or PBO legislation therefore did not qualify for relief under the ITA¹⁵.
202. Section 30C contains the prescribed requirements an entity must comply with to qualify for and retain approval as a SBFE so as to enjoy partial exemption under section 10(1)(cQ) of the Act.
203. The result of the above is that any taxpayer that wishes to provide public benefit activities and funding to SMMEs on the most economic basis, will have to set up two separate legal entities, each holding different exemption statuses – one exempt in terms of the Ninth Schedule (for all activities other than funding provided to micro enterprises), and one in terms of section 30C (for funding to SMMEs).
204. The TEU is also unwilling to provide dual registration (both in terms of the Ninth Schedule and section 30C) within one entity, despite the undertaking by an entity to ringfence the various activities and to keep separate accounting records. Furthermore, these entities will be restricted in relation to what SMME they can support as it is all dependent on the size (and industry) of the SMME as defined in the ITA as explained in paragraph 14 above.
205. Taking the above into account, the tax incentives for PBOs appear to be out of alignment with how businesses want to operate, that is, in an efficient and cost-effective manner. We even have come across an example where the Competition Commission has ruled that a Fund needs to be established by one of the companies to provide training, assistance as well as loan funding to SMMEs.
206. Yet, due to the requirements in the income tax legislation, two different entities will need to be established to achieve this requirement, resulting in less money being available for loan funding to the SMMEs.

¹⁵ <https://www.sars.gov.za/wp-content/uploads/Legal/Drafts/LPrep-Draft-2021-76-Draft-Tax-Exemption-Guide-for-Small-Business-Funding-Entities-16-September-2021.pdf>



The nature of taxpayers impacted

207. PBOs and SMMEs.

Proposal

208. We urge the Minister of Finance to urgently issue the regulations as stipulated in paragraph 1(p)(iii) of the Ninth Schedule (Part I and II).

209. We, however, request that the paragraph 1(p)(iii) of Part I and II of the Ninth Schedule be expanded to provide for loans to SMMEs not just micro businesses as currently provided for in the legislation.

210. The reason for this is because a major challenge in the growth of SMMEs (and not just micro enterprises) is access to funding due to their inherent risk and lack of collateral together with the fact that they often lack the necessary training and commercial skills to manage and develop the business.

211. Without this change, entities will only be able to assist 'micro businesses' as defined in the ITA (being those with, inter alia, a qualifying turnover of R1 million or less).

Eleventh Schedule to the Income Tax Act – Government Grants exempt from normal tax (submission originally made in 2025)

Legal Nature

212. Government under its economic, industrial and fiscal policy have engaged in providing select persons or activities "grants" from the fiscus to incentivise and expand certain activities or persons within the economy.

213. However, in many instances fiscal and economic policy is not aligned as only certain of the grants have been exempt from tax.

214. In 2011 an attempt was made to align the policy intent and rationale to the various income tax provisions with the enactment of section 12P of the ITA and the repeal of various other exemption provisions.

215. Section 12P of the Act exempts, from normal tax:

"...any amount received by or accrued to a person as a beneficiary of a government grant if that government grant—

(a) is listed in the Eleventh Schedule; or

(b) is identified by the Minister by notice in the Gazette for the purpose of exempting that government grant with effect from a date specified by the Minister in that notice..."

216. A strange feature of section 12P was that it applied a narrow criteria for exemption.

217. By 2014 Government realised that not all government grants it wanted to exempt in fact fell within the new narrower meaning of “government grant” since the exemption was limited only to grants from national, provincial or local government.
218. The policy rationale of this approach was unclear, given the nature and intent of grants from government and by implication any organ of state, which is also funded by government.
219. This lack of alignment seemed to be realised in 2014 and the previously deleted s10(1)(y) was retrospectively reinserted into the Act in 2015 since it had a much broader concept of government grant.
220. Section 10(1)(y) exempts, from normal tax:

*“any government grant or government scrapping payment received or accrued in terms of any programme or scheme which has been approved in terms of the national annual budget process and has **been identified by the Minister by notice in the Gazette** with effect from a date specified by the Minister in that notice (including any date that precedes the date of such notice) for purposes of this paragraph”*

(own emphasis)

221. However, both these provisions still rely on either the Eleventh Schedule or a Ministerial list as to which grants receive tax exemption.
222. Recipients who receive grants from government for programmes that are not in the Eleventh Schedule or the Ministerial list, are taxed on such grants even though it is government’s intention to incentivise these recipients.
223. In addition, grants received from other organs of state are excluded from s12P.
224. In addition, this exclusion results in “round tripping” of tax money, which is cost-inefficient and also makes these government grant programmes inefficient.

The nature of taxpayers impacted

225. Recipients of the above-mentioned grants.

Proposal

226. We therefore propose that all government grants received from any organ of state be exempt from tax to avoid the round-tripping fiscal resources. Should a “qualifying list” approach remain, the Minister of Finance and other Ministers such as the Minister of Trade and Industry and organs of state should, on an annual basis, align the list of grants provided by the state and these should all be exempt from tax and be subject to the s12P limitation on claiming deductions or allowances.

Non-adjustment of various tax thresholds, exemptions and limits (submission originally made in 2025, with 2026 **NEW** additions)

Legal nature

227. SAICA and other stakeholders have for many years requested that NT increase the amounts of various exemptions, thresholds and rebates.
228. NT accepted this submission and subsequently adjusted the relevant amounts in the appropriate legislation.
229. However, not all the threshold and exemption amounts requested by stakeholders were increased. These include the following:

Item	Legislative provision	Amount	Last increased
Small business Corporation gross income	Section 12E(4)(a)(i) ITA	R20 million	2013
Wear & tear allowance for "small" items	Section 11(e)	R 7 000	2009
Long-service awards fringe benefit	Para 5(2)(b), 7th Schedule ITA	R5 000	2002
Estate Duty exemption	Section 4A(1), Estate Duty Act	R3,5 million	2011
Tax-free Investment aggregate contribution limit	Section 12 ITA	R500 000	2015
Skills Development Levy exemption threshold	s4(b), SDL Act, No. 9 of 1999	R500 000	2005
Retirement fund lump sum withdrawal benefits / severance benefits tables	Schedule 1 of the Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Act, No. 19 of 2023	Retirement fund lump sum withdrawal and severance benefits tax brackets	2023

The nature of taxpayers impacted

230. All taxpayers.

Proposal

231. It is therefore submitted that NT adjust the aforementioned amounts in line with inflation.

Tax exemption of Political Candidates

Legal nature

232. South Africa has since democracy operated its political system on the basis that only political parties could contest elections and result in appointing elected officials in both the direct and proportional system.
233. However, in 2023, the Constitutional Court¹⁶ in *New Nation Movement* held that independent candidates could in fact stand for office separate from a political party and that the Constitution allowed such in respect of the 200 regional seats. The court ordered Parliament to correct this matter.

¹⁶ *New Nation Movement NPC v President of the Republic of South Africa* [2020] ZACC 11; 2020 (6) SA 257 (CC); 2020 (8) BCLR 950 (CC) (*New Nation II*)



234. However, section 10(1)(cE) currently only exempts the receipts and accruals of a political party registered with the IEC and not any independent candidate so registered.
235. It is unclear whether this was an oversight since the New Nations judgement or whether there was a specific policy rationale to discriminate against the funding of such political activities

The nature of taxpayers impacted

236. All independent candidates contesting elections or are elected, are registered with the IEC and who receive funds in the course of seeking or holding political office.

Proposal

237. It is proposed that section 10(1)(cE) be expanded to align to the Constitutional Court's judgement as to who may hold political office and conduct political activities and exempt the funding activities of such persons.