27 November 2025

Mr. Allan Wicomb and Ms. Sepanya
Parliament Standing Committee on Finance
90 Plein Street
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8001

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Dear Sir and Madam

STANDING COMMITTEE ON FINANCE: SECOND PUBLIC HEARINGS ON THE ANNUAL TAX BILLS 2025

The South African Institute of Chartered Accountants (SAICA) herewith presents its comments and submissions on the 2025 Taxation Laws Amendment Bill and Tax Administration Laws Amendment Bill ("the tax bills") published by Minister Godongwana on 12 November 2025.

We welcome that the Standing Committee on Finance (SCoF) has initiated a second round of hearings given the significant differences between the draft bills and the tabled bills. We retain our proposals below as to how the public participation process could be changed to make the process more valuable to Parliament and enable more time for Parliament to consider input. We hope that these will be considered for the 2026 bills.

We have set out our detailed submission in Annexures A-C having considered the responses from SARS and National Treasury to our first submission. Below are the key matters and concerns that we wish to engage with ScoF on, as well as explanations as to why these matters are important to us.

A. Public Consultation process

Currently a draft Bill is issued by National Treasury for public consultation **and the same** draft Bill is to brief ScoF and submitted to ScoF to do its public participation hearings. Our understanding of the legislative process is that a "draft bill" is the draft that is submitted to Cabinet and also approved by the State Law Advisor. Once it is tabled in the National Assembly for "first reading" and allocated to a committee like ScoF, it becomes a bill.

Following public engagements, ScoF can either by itself or from input/request from SARS or National Treasury accept, reject or revise the draft and submit the "second reading" bill to the National Assembly.

We continue to express concerns with this process.

As the draft bill submitted to ScoF is the same draft bill that was issued for public engagement by National Treasury, **the benefit of public consultation has never been considered nor incorporated in either the Cabinet/State Law Advisor version or the ScoF version of the bill**. Therefore, unless ScoF reruns the original Treasury engagements in the same technical detail, it will not have the same benefit from such engagement, given its process limits oral engagements to a few minutes and the technical nature of the various matters may make it difficult for non-specialists to follow points raised on written submission only. **This process is therefore inefficient for the public and honorable members of Parliament** and results in ScoF engaging the public on proposals that SARS or Treasury have either already decided to withdraw, will withdraw or significantly amend.

In our first submission on the draft bills to ScoF on the process, we note the lack of public participation on the changes between the draft bills and tabled bills. **We welcome ScoF hosting a second round of hearings to engage the public on the changes made from the draft bills**. However, it should be noted that under the current process, where **material changes can occur as done by ScoF**, **the public in fact never gets the opportunity to be consulted on the proposals as considered for adoption in the ScoF amended version**.

SAICA hopes that ScoF will engage National Treasury and SARS and also review its own processes as relates to public participation and consultation in the policy formulation stage as well as the legislative process. Our recommendation to enhance the process is as follows:

1. National Treasury and SARS, where challenges are anticipated on specific proposals as noted in the budget, consults the public on the policy rationale and initial proposals they intend to implement in legislation. This is so they can identify policy and principle concerns and alternatives.
2. National Treasury and SARS, after having received Cabinet and State Law Advisor input, issue a **draft bill** for open and transparent public consultation, explaining, where required, the policy rationale to the public of any proposals.
3. National Treasury and SARS revise the draft bill with matters they deem appropriate following public participation input
4. National Treasury and SARS table the **revised bill** as a bill for first reading to National Assembly for assignment to ScoF.
5. ScoF holds **first public consultation process** on the revised bill
6. **ScoF makes proposed amendments to bills** for second reading and if there are material changes, holds **further public consultation process** on such changes.

B. Lack of Transparency in Consideration of Submissions

ScoF has previously noted that, in principle stakeholders, should at least know why National Treasury have not incorporated their representations, even if the stakeholder disagrees. National Treasury annually invites the public to submit matters for consideration for Annexure C of the Budget which is titled "***Additional tax policy and administrative adjustments***", usually followed by 2 days of workshops and discussions to unpack such proposals. **There currently does not appear to be a publicly available record confirming that all matters submitted by stakeholders have been duly considered by National Treasury and the Minister for inclusion in or exclusion from the Budget Review presented to Parliament in the following year.** As a result, stakeholders are left uncertain as to whether the exclusion of certain matters reflects a deliberate policy or legislative decision, or whether such matters fall entirely outside the scope of the relevant policy framework.

This is particularly important given that National Treasury has taken a firm and public position that it will not include in the draft tax bills matters raised outside of the published draft tax bills, even where such matters were raised as policy or administrative proposals for the Budget Review.

SCoF has previously noted, stakeholders who invest time and effort into making submissions should reasonably expect a brief explanation as to why their proposals were accepted or rejected. We do, however, acknowledge and appreciate that **National Treasury facilitated a follow-up engagement on 3 November 2022 ("Recurring Tax Proposals")** in response to concerns we raised with the ScoF, however this was an ad hoc event which was not repeated.

This matter was raised in our first submission but was not addressed in the NT response. We request ScoF to engage National Treasury on the matter so that it properly informs the public why it has considered a technical correction or policy matter and not included it in the budget or tax bills for the following year.

C. Constitutionality of Ministerial powers to change tax rates

As indicated in our Budget 2025 submissions, SAICA raised concerns in 2016, 2018 and 2025 as to the constitutionality of these provisions as they, in many instances, represent permanent and temporarily rate changes.

This is due to, as ScoF has previously acknowledged, the inability of Parliament to months after the fact in reality reverse transactional taxes such as VAT, leaving Parliament with no alternative but to accept such changes. This makes such powers primary legislative powers even with the hypothetical "12 month Parliamentary confirmation condonation rule".

There are also numerous cases that have been decided since 2018 on this principle, and we believe clearly articulate that such **final primary legislative powers for the Executive are in fact unconstitutional**. We however do note that the Minister in 2025 indicated in his 2025 replying affidavit that his legal advice notes that such powers are in fact constitutional, though no clear legal basis seemed to be provided for this position nor any distinction made as to why the relevant case law does in fact not apply.

Budget 2025 and its 3 versions created much angst and additional cost with various persons, partly driven by the litigation around this matter. **Notwithstanding our first submission, it does not seem that Parliament has taken a position or course of action.** SAICA recommends that ScoF revisit its position and takes its own legal advice on the constitutionality of the Minister's powers, utilising the current legislative process to correct any concerns, to avoid similar future legal disputes disrupting the budget approval process.

D. Key technical submissions

Our submission below notes our concerns on the below listed proposals. However, following National Treasury's responses to the ScoF hearings, we note in addition as follows:

- **VAT exclusion of Schools**
  The deferral of payment to 2027 is welcomed.

  However, there seems to be many practical considerations and challenges with the proposal that requires further consideration. The mechanism to achieve removing schools from the VAT system may invariably mean that these schools stay in the VAT system until the end of 2027. National Treasury have not alleged that this is an urgent matter and even the anticipated collections are postponed to 2027. We continue to recommend that the proposal be withdrawn for further engagement with the industry as to the practical implementation of the proposal to ensure an efficient transition of schools out of the VAT system.

- ***Bona fide* inadvertent error**
  This proposal still seeks to circumvent "fault" as a requirement for the additional understatement penalty to apply, as set by the courts recently, moving it to a section that does not require the existence of fault, merely a numerical adjustment. This is contrary to the principles of why people should be sanctioned with **additional "fault behaviour" penalties by the state**.

- **Form requirements for court proceedings**
  The proposal of moving the requirement of a form to another section does not change the impact of the proposal.

  Access to court is a constitutional right and imposing obstacles should be done with much care and after section 36 of the Constitution has been duly applied to justify such limitation. This is even recognised by the preamble to a similar legislation[2] as relates to litigation against the State. **When it comes to litigation initiated by taxpayers against SARS**, SARS already has the benefit of receiving 10 days' notice of the intended litigation (the rest of government only gets this for debt collection matters) and can also dictate to taxpayers where/to whom such notice must be filed.

  This already sufficiently limits the normal rules of litigation and gives SARS ample opportunity to review and avoid unnecessary litigation. SARS seeks to force taxpayer litigants to disclose, as yet unknown facts and information, to enable/allow such litigants to access courts. This risks overreach and the use

of this “form requirement” to stop litigation occurring, by unilaterally declaring non-compliance with its internal requirements for taxpayers to access the court for relief. A similar risk is currently experienced as relates to “invalid objections” as internal review process by SARS. SAICA submits this matter is properly left to the court rules and proceedings. Any abuse would be properly sanctioned by the courts to the benefit of SARS.

Please do not hesitate to contact us should you have any queries in relation to our submission. Yours sincerely

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Chairperson: National Tax Committee

Dr Muneer Hassan
Deputy: National Tax Committee

Pieter Faber
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Lead: Tax Advocacy (Administrative Law)

The South African Institute of Chartered Accountants

[2] Institution of Legal Proceedings against certain Organs of State Act 40

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ANNEXURE A

TAXATION LAWS AMENDMENT BILL 2025

INCOME TAX ACT

Section 1 – Amending the definition of 'remuneration proxy' (Clause 1(1)(f))

1. We submit that the proposal to include the prior year's exempt foreign remuneration into the definition of "remuneration proxy" would likely result in a prejudice to the taxpayer (employee) in the following year when they return to RSA.

2. This is because foreign remuneration is generally earned in a foreign currency, which in most cases is valued much higher than our local currency. A taxpayer's ability to qualify for exemptions in respect of certain fringe benefits that rely on the application of the "remuneration proxy" is otherwise artificially distorted (increased) in the year that they return to South Africa, resulting in exempt fringe benefits potentially being taxable for that one year.

5. Submission: It is therefore submitted that this proposed amendment be withdrawn.

6. We also note that the draft EM states that the amendment is applicable to "foreign employment income exemption under section 10(1)(o)(ii)", whereas the actual amendment to the proviso in the TLAB refers to section 10(1)(o) in its entirety, which then also includes section 10(1)(o)(i). The policy intent per the draft EM and the amendment per the bill is not aligned.

7. Submission: Should this proposed amendment be included in the final legislation, it is submitted that oversight/error be rectified to insert "(ii)" to ensure that this amendment does not result in both subsections (i) and (ii) of section 10(1)(o) being included in the term remuneration proxy.

Sections 18A and 20 – Clarifying the ordering of set-off of balance of assessed losses and certain deductions (Clause 19)

35. With effect from 2023, section 20 of the Income Tax Act was amended to limit the set-off of assessed losses to 80% of taxable income. Simultaneously, deductions such as those under section 18A (e.g. donations) are limited with reference to taxable income. However, uncertainty has arisen regarding the ordering of these limitations—specifically, whether deductions or assessed losses should be applied first in calculating taxable income.

36. To address this, the 2025 Taxation Laws Amendment Bill proposes to clarify that deductions are applied first, and the assessed loss limitation is applied last. This ensures that the 80% limitation is applied to the taxable income after all other deductions have been considered.

37. The proposed amendment states that it will come into effect on the date of promulgation of the 2025 Taxation Laws Amendment Act. This raises a concern in that the substantive rules limiting the use of assessed losses to 80% of taxable income have already been in effect since 2023. The current amendment is merely clarifying the ordering of existing limitations, not introducing a new limitation.

38. Therefore, applying the clarification only from the date of promulgation could create inconsistencies in the application of the law between 2023 and the promulgation date which may result in:

- Retrospective uncertainty for taxpayers who have already filed returns based on their interpretation of the ordering;
- Potential disputes with SARS over assessments for prior years;
- A misalignment between the policy intent (which has been in place since 2023) and the legal effect of the clarification.

39. National Treasury has rejected these points[1], noting that *the intention of the proposal is to be forward looking. Some years of assessment have come to pass with tax returns having been assessed and finalised. It is deemed preferable that no taxpayers are required to reopen any assessments*.

40. While the point is taken that no taxpayers are required to reopen any assessments, our concern is mainly that SARS will seek to reopen these assessments through the audit/dispute process. Both SARS and taxpayers should therefore not be able to reopen previous assessments.

39. Submission: It is therefore still submitted that the effective date of the proposed clarification be aligned with the effective date of the original assessed loss limitation, i.e., 1 January 2023, or at the very least, apply to all years of assessment commencing on or after 1 January

Section 24I – Gains or losses on foreign exchange transactions – preference shares (Clause 23)

41. The proposed amendment to include "preference shares" as an exchange item, in our view, would have been premised on it being akin to "debt" as was proposed in the recently-withdrawn amendments section 8E (Hybrid Equity Instruments).

42. The withdrawal of that proposed amendment was due to numerous commentators having "raised concerns with National Treasury and SARS that the current broad wording in the draft TLAB in relation to this proposal will effectively eliminate preference shares as a viable means of financing" as noted in the NT media release dated 3 September 2025.

42. Submission: It is for similar reasons that we believe this amendment also needs be withdrawn until such time as further public consultations are had in this regard.

43. Including preference shares as an exchange item subject to the taxing of foreign exchange gains and losses would be highly detrimental and hinder genuine business transactions which rely on preference share funding.

Section 24I – Refining deferral of exchange difference rules on debt between related companies (Clause 23(1)(j))

46. The proposed amendments to subsection 24I(10A) appear to be entirely superfluous.

47. This is because the definition of 'realised' in para (a) of subsection 24I(1) it clearly includes

[1] Draft Response Document on the 2025 Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2025 Draft Taxation Laws Amendment Bill and 2025 Draft Tax Administration Amendment Bill

a part settlement of an exchange item i.e. "*when and to the extent to which payment is received or is made*".

48. Hence, where a debt is partly realised, section 24I(10A)(b) applies, by necessary implication, to the part of the debt that was realised. Therefore, section 24I(10A)(b) is already clearly not an 'all or nothing' section that only applies once the entire debt has been settled or otherwise no longer meets the requirements for deferral. Hence, the proposed incorporation of the words 'realised in part' are more conducive to creating confusion than leading to clarity.

49. Furthermore, where a debt is wholly or partly settled, the words following subitem (b)(ii)(bb) already clearly set out how the amount to be included in or deducted from income is to be calculated.

50. Submission: There is no need to set this out in the formula that proposed in Clause 23(1)(j).

Section 42 – Clarifying the rollover relief for listed shares in an asset-for-share transaction (Clause 28)

51. The section 42 tracing rule, whereby the company acquiring the listed shares 'steps into the shoes' of the disposer of the shares from the perspective of the amounts and dates of incurral of expenditure and the capital or revenue nature of the holding, and has to account for the disposer's base cost as its CTC, is currently problematic where the acquiring company has to apply it, i.e. if the 35%/25% listed company holding requirements or 90 day requirements are not met.

52. In particular, it is unclear how the acquiring company is meant to obtain this information from the disposer where the disponer is unwilling to share it.

53. In terms of the proposal, if shares are acquired from a disposer who holds 20% or more of the shares in the listed company, this information will in effect have to be obtained from the disposer, thus exacerbating this issue.

54. Submission: It is submitted that current exclusion from the tracing rule is a useful, practical solution to the problem and should be retained.

VALUE ADDED TAX ACT

Section 7(4) – Change in the VAT rate

The legal nature of the problem

55. Section 7(4) of the VAT Act has not been amended despite the various constitutional issues raised by way of court applications by 2 political parties and the fact that the "unfettered power" granted to the Minister of Finance ('the Minister') in terms of this section resulted in the Budget Speech being delayed (Budget 1.0), withdrawn (Budget 2.0) and determined by a court to be procedurally invalidly passed in Parliament resulting in Budget 3.0 being the final version being revised by way of a "temporary" amendment to this section.

56. The withdrawal of the amendment to the increase in the VAT rate was initially announced by way of a media statement issued on 24 April 2025 by National Treasury, which is technically not permitted in terms of the legislation. However, the media statement indicated that

"*the Minister of Finance has written to the Speaker of the National Assembly to indicate that he is withdrawing the Appropriation Bill and the Division of Revenue Bill introduce the Rates and Monetary Amounts and the Amendment of Revenue Laws Bill (Rates Bill)…",* and additionally states that *"the Minister of Finance expects to introduce a revised version of the Appropriation Bill and Division of Revenue Bill within the next few weeks".*

57. It is highlighted that such a withdrawal primarily to *"withdraw the announcement of the VAT rate change"* is currently not provided for in the tax law or other applicable legislation/regulation. Additionally, the Western Cape High Court Division of South Africa handed out its judgement on 27 April 2025 wherein it was held that –

"The Minister of Finance's announcement on 12 March 2025 made under section 7(4) of the Value-Added Tax Act 89 of 1991, whereby the Value-Added Tax (Tax) rate was adjusted as follows 'the adjustment of the first 0.5% percentage point increase in the VAT rate will take effect on 1 May 2025 and the second 0.5% percentage point increase will take effect on 1 April 2026' is suspended pending the passing of legislation regulating the VAT rate or the final determination of Part B whichever is occurs first".

58. A further media statement was issued by National Treasury which stated that –

*"Today the **Minister of Finance Mr Enoch Godongwana agreed to a court order suspending his decision of 12 March 2025** to increase the VAT rate by 0.5 percentage points.*

*The Minister of Finance and main respondents in the matter, the Democratic Alliance and the Economic Freedom Fighters (EFF), **agreed to have the matter settled out of court**, and the Western Cape High Court subsequently ratified the agreement on 27 April 2025.*

Minister Godongwana welcomes the court order, as it is entirely consistent with his announcement on 23 April 2025 to suspend the VAT increase. Having already announced the withdrawal, the Minister felt that he would no longer have cause to continue with the court case.

The context to the suspension of the increase is set out in an affidavit filed earlier on Sunday by the Minister in response to the Democratic Alliance's ("the DA") supplementary affidavit filed on 25 April 2025.

Whilst the substance of the Minister's responding affidavit was to reply to the most contentious points raised by the DA in its submission, a secondary, equally important purpose was to further clarify the rationale behind the proposed increase to VAT, its subsequent withdrawal, and the procedural context that should determine the future processes."

59. To date the only legislative amendment made in this regard is detailed below as extracted from the "revised" Rates And Monetary Amounts And Amendment Of Revenue Laws Bill reissued on 24 April 2025 at Section 1: clause 13 –

"Pre-emption of increase of rate in terms of Value-Added Tax Act 89 of 1991, announced by Minister of Finance in national annual budget of 2025
13. (1) Despite—
(a) section 7(4) of the Value-Added Tax Act, 1991; and
(b) the announcement by the Minister of Finance on 12 March 2025 in the national annual budget, contemplated in section 27(1) of the Public Finance Management, 1999 (Act No. 1 of 1999), the alteration of the VAT rate specified in section 7 of the Value-Added Tax Act,

1991,does not come into effect.
(2) Subsection (1) is deemed to have come into effect on 1 May 2025."

60. The above **amendment only deals with the 2025 annual Budget**. The 2025 Draft Tax Bills issued on 16 August 2025 and the revised Draft Tax Bills tabled on 12 November 2025 do not contain any amendments to section 7(4) nor has the Court made any ruling on Part B (constitutionally of section 7(4)) of the above mentioned case, hence **there still remains great legal uncertainty as to the legal process should the Minister decide to increase the VAT rate in the 2026 annual budget or any annual budget thereafter**.

61. The country experienced an unprecedented 3 Budget Speech events in the current year.

62. The immediate effect of the increase in this rate of tax by way of announcement by the Minister in the Budget Speech on the effective date announced being 1 May 2025 caused great uncertainty and instability for the country's economy with urgent court applications being lodged to suspend such announcement and render the relevant legislation unconstitutional.

63. Without any amendment to section 7(4) of the VAT Act, this uncertainty can recur and thus requires immediate attention.

Impact on businesses

64. During the period of uncertainty (i.e. 19 February 2025 to 24 April 2025) businesses as well as software providers spent significant and unnecessary resources updating their systems in anticipation of the rate change being effective from 1 May 2025.

65. Businesses also sought advice from tax professionals to ensure compliance with the VAT transitional provisions as contained in the VAT Act. This professional advice was a secondary cost to businesses which resulted in wasteful expenditure that would otherwise have been budgeted for other capital or working capital expenditure.

66. Tax professionals also spent significant time on drafting and publishing newsletters/articles as well as providing training to clients and other businesses by way of seminars/webinars to ensure that businesses were ready for this change and not fall foul of non-compliance or any errors in understanding the transitional VAT rate change provisions.

67. According to the media statement issued by National Treasury on 24 April 2025 the following view is expressed:

"There are many suggestions, however some of them would create greater negative consequences for growth and employment and some of them, while worthwhile, would not provide an immediate avenue for further revenue in the short term to replace a VAT increase."

68. Following the Minister's Medium Term Budget Policy, many tax professional commentators from various fields of expertise, taxation, economists etc., have issued publications indicating that a VAT increase is highly likely in the next year or 2 as South Africa still faces a major shortfall in revenue in order to achieve its economic goals.

69. The above possibility is also evident as noted in the media statement issued by National Treasury on 27 April 2025 where it is stated that –

"Minister Godongwana maintains that his initial budget proposal of 12 March 2025 was constitutional and appropriate given the limited options available to balance fiscal

sustainability with service delivery needs."

"For the benefit of the broader public and in the interests of setting the record straight, the Minister wishes to highlight the most salient points covered in the responding affidavit, which are as follows:

- *Following the Speaker's letter of 21 April 2025, it became clear the VAT increase lacked the necessary political support. The Ministry subsequently announced plans to introduce legislation maintaining VAT at 15% from 1 May 2025.*
- *While proposed reluctantly, the VAT increase was considered less detrimental to economic growth and employment than alternatives examined by National Treasury.*
- *The withdrawal creates a medium-term revenue shortfall of approximately R75 billion, necessitating decreased government expenditure with likely impacts on service delivery."*

70. Without the court ruling on the constitutionality of section 7(4), the power granted to the Minister, compounded by the section remaining unchanged [save for the abovementioned amendment that only makes reference to the announcement made on 12 March 2025], this legislation remains a contentious issue should the Minister decide to increase the VAT rate in the 2026 annual budget or any year thereafter,.

71. Submission: It is recommended that National Treasury address this great uncertainty rather than wait for an outcome from the Court with regard to Part B to ensure that we do not have such a major contentious issue in upcoming annual budgets.

Exemption & deregistration of Schools for VAT – Section 12(h)(clause45), Section 8(2H), Section 9(14) & Section 40E

72. We continue to welcome National Treasury's policy intent to assist schools with easier compliance.

73. The deferral of the liability for schools on the "exit VAT" to 2027 is also welcomed and so is the clarification by addition of the welfare activities as a continued taxable supply.

74. We however have some practical concerns – we believe that the short notice of this proposal will disadvantage schools and maintain the compliance burden well beyond 2027.

75. Submission: We submit that given the below practical challenges, that the proposal in full be deferred to 2027. Given the awareness schools will have about the exit charge, we do not believe it is a large risk to the fiscus as to any schools abusing such deferral, as it would be at most a 12 month deferral. As relates non- CAPEX supplies, these will have matching outputs.

Change on 1 Jan 2026

76. VAT compliance is done in a period which is usually 2 months. This period can either be equal months to a calendar year i.e. Jan/Feb or unequal months e.g. Feb/Mar.

77. The change of taxable supplies to non-taxable supplies for unequal months means that for taxable supplies and inputs must be recorded for only half the period (no recording for the other half). This is particularly burdensome as it impacts on the apportionment calculation in claiming inputs for the half period in addition to the normal apportion calculation based on use.

78. Furthermore, we also request clarity on the impact on presold goods. For example, if a school sold goods that are taxable supplies in August 2025, which parents paid for, and then ordered the goods which were only supplied and invoiced in February 2026, will the school be able to claim the input VAT given it paid the output VAT on the sale given the 5 year rule limitations etc. and the new provision

in section 40E?

79. Submission: It would seem more appropriate to make the last period the last day of the VAT period ending on or after 1 Jan 2026 if the proposal is not deferred to 2027. In addition, clarity is sought as to the claiming of inputs for historical supplies.

Future deemed supplies

80. The new section 9(14) VATA states:

40. (1) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (13) of the following subsection: "(14) The supply of goods or services, which is deemed to be made by any vendor as contemplated in section 8(2E) or 8(2H), shall be deemed to take place when and to the extent that any payment in terms of the agreement or regulation, as contemplated in section 8(2E) or 8(2H), is due, prescribed or is received, whichever is the earliest.".

81. Under normal circumstances, the "exit VAT" would be payable in the last period that the Commissioner has determined before deregistration[2]. However no deregistration is possible if there is outstanding debt.

> **Top Tip:** SARS cannot finalise a cancellation of registration as a VAT vendor until all the outstanding liabilities and obligations in terms of the VAT Act have been resolved or settled.

82. Section 8(2H) read with section 9(14) means that the "Exit VAT" shall be deemed a taxable supply in 2027. Accordingly the school will not only have to submit zero VAT returns for 2026, it will also have to continue to submit returns in 2027 for these deemed supplies.

83. Only after all the debt is settled in 2027 or later in 2028 etc. will SARS be able to cancel the registration.

Who does deregistration?

84. Cancellation for a VAT registration can be initiated by the school or the Commissioner where the vendor does not meet the conditions for registration i.e. it does not make any taxable supplies.

85. However, in both instances it is CSARS that determines whether the cancellation of registration will be done and which period will be the last period.

86. There has been no indication in the SARS response whether schools have to apply on 1 January 2026 when it stops making taxable supplies and then await an outcome, following the process of negotiating the "exit VAT" payment terms or whether the CSARS will commence the process.

Section 54(2C) – Clause 48

87. The highlighted grammatical error below should be addressed.

[2] Cancellation of VAT registration (Deregistration) | South African Revenue Service

48. (1) Section 54 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion of subparagraph (ii) of subsection (2B)*(a);*

(b) by the substitution for subsection (2C) of the following subsection:

"(2C) For the purposes of this Act, where gold is supplied as contemplated in section 11 (1) *(f)* or where gold or silver is exported from the Republic in the circumstances contemplated in paragraph *(a)* or *(d)* of the definition of 'exported' in section 1(1) and, in the case of gold, in accordance with section 12 of the of the Precious Metals Act, 2005 (Act No. 37 of 2005), by an agent who is acting on behalf of another person who is the principal for the purposes of that supply and—

(a) the agent is a registered vendor; and

(b) the principal is a resident of the Republic and a registered vendor,

the agent must obtain and retain documentary proof as is acceptable to the Commissioner: Provided that the agent will—

(aa) not be required to provide the principal with copies of the documentary evidence as prescribed; and

ANNEXURE B

TAX ADMINISTRATION LAWS AMENDMENT BILL 2025

INCOME TAX

Section 18A – Certificate (Clause 19)

Section 18A(2B)

1. We note that in the draft response document from National Treasury, dated 3 November 2025 (the response document), it was agreed that the wording clarification required would be addressed However, the proposal regarding the level of assurance required in the "certificate" was partially accepted.

2. Whilst we are in agreement that the partial amendment does, to some extent, address the concerns raised, it does not address the main concern regarding the assurance sought.

3. The new wording in the TALAB proposes:

   Section 18A of the Income Tax Act, 1962, is hereby amended—(a) by the substitution for subsections (2B) and (2C) of the following subsections: "(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must obtain and retain [an audit] a certificate containing such information as the Commissioner may prescribe by public notice and confirming the reasonable satisfaction of a registered tax practitioner that all donations received or accrued in that year of assessment in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).

   (2C) The accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for the department which issued any receipts in terms of subsection (2), must on an annual basis submit [an audit] a certificate to the Commissioner containing such information as the Commissioner may prescribe by public notice and confirming the reasonable satisfaction of the officer or authority that all donations received or accrued in the financial year in respect of which receipts were so issued, were utilised in the manner contemplated in subsection (2A)."

4. The TALAB changes the wording to now accommodate the prescribing of the procedure by SARS notice. However, it does not amend the actual assurance level sought namely that 100% of the donations must still be traced as to having been used for a PART II activity, the latter after the fact and that is what the tax practitioner would need to have reasonable satisfaction with.

5. We still do not believe that this is economical or practical and that the actual assurance

sought should also be in the new proposed notice.

6. Submission: It is proposed that section 18A(2B) and 2(C) be amended as follows:

7. (2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must obtain and retain [**an audit**] a certificate of examination issued by a registered tax practitioner, who has performed the procedures as the Commissioner may prescribe by public notice and report the relevant findings of the examination in such certificate, for the year of assessment, [**confirming that all donations received or accrued in that year of assessment in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A)**].

8. (2C) The accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for the department which issued any receipts in terms of subsection (2), must on an annual basis submit [**an audit**] a certificate of examination, of the procedures performed and report the relevant findings of the examination in such certificate, for the year of assessment, as the Commissioner may prescribe by public notice [**confirming that all donations received or accrued in the financial year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).”]**

TAX ADMINISTRATION ACT

Section 11 – Delivery of notice in legal proceedings involving the CSARS (Clause 15)

4. The proposed amendment is now to section 11(4) as opposed to section 11(5) and provides: *“Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner, unless the applicant has given the Commissioner at least 10 business days written notice, in the prescribed form, of the applicant’s intention to institute the legal proceedings.”*

5. We note that our comments on the proposed amendment to section 11(5) per the Draft TALAB 2025 were stated as partially accepted but were in fact not accepted. The movement of the proposal from section 11(5) to 11(4) does not alter the impact and concern as it still limits the access to court by creating a “pre court barring procedure” or another high court application.

6. SARS states:

   The purpose of the proposed amendment is to prescribe a specific format for this notice i.e. the relevant information to be contained in the notice to streamline SARS operational processes.

7. This process is not inserted as per its original Constitutional purpose of giving government another opportunity to avoid litigation, it would seem to be inserted to instead give SARS the power to “block access” to court until “*relevant information*” has been provided.

8. A taxpayer who resists SARS seeking additional “relevant information” as improper in court proceedings, would now have to first approach a court to review SARS decision as to the form before it can bring its main application for relief sought e.g. reviewing a decision by the Commissioner that is not subject to objection and appeal.

9. This in our view exceeds the bounds of the reasonability of this constitutional right limitation.

10. This remains a Constitutional concern and, in our view, neither ScoF nor SARS and Treasury have approached this amendment accordingly. This provision is already significantly wider than is applicable to the rest of government where it only applies to debt and claims against the state, and not all litigation.

11. The concern remains that the prescribed form of giving notice to the Commissioner, in the circumstances, may be prohibitive and may further delay access to court, as our members have noted in relation to Rule 7 of the Dispute Rules under section 107, TAA.

12. Submission: We submit that any requirements as to completing the form that are considered necessary by SARS and agreed to by ScoF as reasonable should be inserted into the legislation itself and not at the discretion of SARS in a form.

Section 222 – ‘Bona fide inadvertent error’ (Clause 21)

13. The proposed deletion of the "*bona fide* inadvertent error" defence from section 222(1) effectively imposes a strict liability standard for the imposition of understatement penalties (USP). Currently, this defence serves as a critical safe harbour against imposition of USP for honest mistakes or good faith errors arising from reliance on professional advice, acknowledging that not all errors arise from culpable behaviour.

14. Under the proposed framework, the SARS auditor will no longer be concerned with the taxpayer's *mens rea* or the reasonableness of their conduct for the errors. Instead, the imposition of the USP becomes automatic if the quantum of the error exceeds the objective threshold for a ‘substantial understatement’.

15. The consequence of this is that should the understatement exceed this objective test, no defence would be available to avoid the imposition of an USP. The only variable is the percentage USP imposed under the USP table in section 223.

16. This means that two taxpayers who both made *bona fide* inadvertent errors could have different USP imposed. The taxpayer that has the understatement not exceeding the substantial understatement threshold would be able to rely on the defence and not have any USP imposed. The taxpayer that exceeds the threshold would have USP imposed of at least 25%, despite the circumstances being the same. The criteria on whether a taxpayer can rely on the defence should be applied consistently regardless of the quantum of the understatement.

17. In the case of, *Lance Dickson Construction CC v Commissioner for the South African*

Revenue Service, the interpretation was as below:

"13. It follows that in circumstances where an alleged understatement of tax has occurred, a three-phase process is contemplated by the Legislature. Firstly, SARS must consider whether the understatement constitutes an "understatement" as defined in s221 of the TAA. If it does, SARS must then consider whether the understatement results from a "bona fide inadvertent error". If such an error is established, that is the end of the inquiry, and no understatement penalty may be levied. However, where there is no such error, SARS is then required to identify the appropriate behavioral category under which the taxpayer's conduct allegedly resorts in terms of the table set out in section 223 before it can impose a penalty."

18. The proposed amendment is in contradiction of this interpretation by the courts.

19. Submission: We submit that penalties should only apply when the conduct of the taxpayer offends the public interest. It should not be used as an instrument to collect additional taxes when innocent mistakes are made.

20. The proposed amendments represent a move away from imposing USPs based on *how* the taxpayer made errors to *the quantum* of the understatement arising from the taxpayer errors. It is submitted that such a standard is inequitable and inappropriate as a gateway for whether USP is justified.

Proposed amendments to neutralise judicial trend of protecting taxpayers who act in good faith and rely on professional advice

21. It appears that the proposed amendments are a direct legislative response intended to override the principles established by the Supreme Court of Appeal (SCA) in *Commissioner for the South African Revenue Service v Thistle Trust* and *Coronation Investment Management SA (Pty) Ltd v CSARS*.

22. In these cases, the SCA confirmed that a taxpayer can consciously and deliberately adopt a specific tax position based on professional advice, be proven wrong in the law, and still not be liable for an USP because their actions were not taken in bad faith.

23. SARS is in effect moving the goalposts by avoiding the more objective criteria as set out by the courts and replacing it by more subjective criteria of SARS' 'satisfaction' as to when a *bona fide* inadvertent error exists.

24. This will also have an impact on the evidentiary burden on the taxpayer in contesting the imposition of such penalties.

25. Submission: The proposed amendment is designed to neutralise the judicial outcome of these SCA decisions. While Parliament has the authority to amend legislation, doing so to remove an interpretation confirmed by these decisions significantly weakens taxpayer rights and creates a more adversarial compliance environment.

A constitutional challenge: The right to fair administrative action

26. The imposition of a penalty (including the USP) by SARS is an administrative action and is therefore subject to section 33 of the Constitution which guarantees the right to administrative action that is lawful, reasonable, and procedurally fair.

27. 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 and further violates the *audi alteram partem* principle.

28. That said, we welcome the proposed exclusion from the defence in section 223 of reliance on the Commissioner being "satisfied" as to the taxpayer's behaviour being *bona fide* and inadvertent.

29. However, the burden still lies with the taxpayer having to take steps to request the remittance of the penalty and to our understanding, there would still be a requirement for the taxpayer to evidence that an error constitutes a 'bona fide inadvertent error' per the SARS interpretation of such. The burden of proof would still lie with the taxpayer as well as the resources that will need to be employed to request the remission.

30. Submission: The proposed amendments unjustifiably infringe taxpayer rights and the *audi alteram partem* principle, and results in a potential conflict of interest.

Fairness in penalties versus fairness in tax

31. There is no overarching principle of equity in the imposition of tax, and the courts must apply the letter of the law.

32. However, it is critical to distinguish between the imposition of a tax and the imposition of a punitive penalty such as the USP.

33. A tax is a non-penal, statutory liability. A penalty such as the USP is a sanction intended to punish blameworthy conduct.

34. Submission: While there may be no fairness in the *calculation of a tax liability*, the principles of justice and fairness must apply to the *imposition of the USP*. Punitive measures demand proportionality and a direct link to the degree of fault of the transgressor.

35. To subject a taxpayer who has made an honest and non-negligent error to the same penalty regime as one who was grossly negligent is fundamentally unfair. The proposed amendments erode this distinction by treating the USP as an automatic financial consequence rather than a considered sanction for culpable behaviour.

36. We propose that the amendment be reconsidered, in light of the above.

MATTERS NOT ADDRESSED IN TALAB 2025

OTHER MATTERS THAT WE BELIEVE SHOULD HAVE BEEN CONSIDERED IN THE 2025 TALAB

37. In addition to the various matters mentioned above, there are other areas of importance that we feel should have been considered in the 2025 DTALAB, as raised in prior years including our 2024 DTALAB submission. 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

Constitutionality of various provisions in the legislation

38. SAICA has over the years expressed its concerns over the constitutionality of powers provided to either the Commissioner of SARS (CSARS) or NT. Examples of these include:
    a) The constitutionality of the default judgment procedures in terms of section 172 -176 of the TAA (see SAICA's 2020 TLAB submission dated 20 October 2020 and the Annexure C 2021 Budget Review submission dated 23 November 2020) where SARS argues that these procedures fall outside of judicial oversight and are thus not subject to judicial review;
    b) the removal of the requirement of "wilfulness" from certain statutory offences that could result in selective or arbitrary prosecution by SARS (see SAICA's Annexure C 2021 Budget Review submission dated 23 November 2020); and
    c) the powers of CSARS to prescribe the List of Qualifying Physical Impairment and Disability Expenditure (see SAICA submissions https://saicawebprstorage.blob.core.windows.net/uploads/resources/SAICA_submission_on_List_of_qualifying_disability_expenses.pdf dated 24 May 2019 and 31 May 2021) allowing CSARS to determine what is tax deductible or not.

39. Added to this list is NT's power in terms of section 10(1)(r) as discussed in the previous SAICA submissions. Section 10(1)(r) of the Income Tax Act affords NT the power to declare free of tax, any gratuity (other than a leave gratuity) received by or accrued to any person from public funds upon his retirement from any office or employment, or from funds of the Land and Agricultural Bank of South Africa upon his retirement as a member of the board of the said bank.

40. Submission: In all the above examples, CSARS or NT have been given the power to provide relief from taxation. It is submitted that this power is unconstitutional and invalid as only Parliament may, in terms of the Constitution, levy taxes.

41. Secondary legislation that prescribes tax deductible expenditure would therefore also be legislation of a "money bill" subject to section 77 of the Constitution and which the Executive must excuse itself to allow the legislative authority of the Legislator - meaning that the Executive does not have the power to change the legislation and the proposed changes in the secondary legislation would need to follow the normal legislative process allowing the legislator (Parliament) to consider public comments before approving any changes to the law.

42. These sections should be revisited to ensure that Parliament approves the levying (or not) of taxes in these particular circumstances.

VAT refunds

43. In 2020 various concerns, including those raised by SAICA, were raised with SARS, NT and Parliament, regarding the delay in the payment of VAT refunds by SARS. Unfortunately, this situation is still problematic in many cases.

44. Submission: In order to protect taxpayer rights, legislative changes should be introduced to provide that –

- a VAT audit must be completed within a maximum period of six months, provided that the taxpayer submits information and documents to SARS timeously;
- SARS' requests for relevant material must be clearly relevant to the audit at hand and not overly broad and onerous;
- while that audit is conducted, SARS may not continuously roll out further audits until the audit for the original periods has been finalised;
- only the VAT refunds for the original audit periods may be withheld;
- SARS at the outset must set a deadline with the taxpayer for the audit finalisation;
- any extension of the audit must be supported by a full motivation for the extension; and
- once the audit is finalised, SARS must issue an assessment within one month from the date of finalisation; and
- interest on VAT refunds withheld for the period exceeding 21 days from the verification or confirmation of banking details is payable without the taxpayer having to request such payment.

45. A further concern is that SARS cannot make any part payments of VAT refunds withheld. The taxpayer must provide security for 100% of the VAT withheld. A part refund is not possible.

46. Submission: Part payment of VAT refunds should be allowed where the taxpayer cannot provide security for 100% of the VAT withheld.

Verification process – Information gathering (Chapter 5 of the TAA)

47. Chapter 5 of the TAA addresses information gathering and, in its title, sets out 4 processes and states that the chapter covers the "General rules for inspection, verification, audit and criminal investigation".

48. However, on closer inspection of the Chapter 5 guidelines, no rules are set out for verification.

49. Procedurally this has become untenable as SARS practice has become to use verification as the catch all process from "desk audits, to verification to even forensic audits".

50. In practice and substance none of these procedures differ from "field audits", other than in scope.

51. The primary reason why the practice is untenable is that SARS does not abide by fair administrative practices and seem to make up the rules of these catch-all processes as it goes along.

52. SARS is a creature of statute and should operate within the confines of that statute, while balancing its powers with the rights of taxpayers. Employing practices and tactics that have no defined empowering legislation seems to be outside that scope as merely relying on a single undefined word does not justify SARS's actions in this regard.

53. However, it must be acknowledged that SARS does require various information gathering processes to be legislated, but such processes should be defined and constitute fair administrative practices, such as is the case for inspections, field audits and criminal investigations.

54. Submission: It is submitted that Chapter 5 of the TAA should be expanded and additional sections inserted that define what a "verification" is and what SARS processes fall thereunder. It should also identify and insert the relevant taxpayer rights and fair administrations provisions, similar to what occurs in the remainder of Chapter 5. This includes giving notification and reasons for commencement, protection of taxpayer rights regarding the reasonability of requests, compelled feedback after certain time periods and the notification of completion of the verification and its outcomes.

Decisions subject to objection – Section 104 of the TAA

55. In *Barnard Labuschagne Inc v CSARS & MoF CASE NO: 23141/2017 (15 May 2020)* the judge states the following in his judgement at [70]:

> *"In my opinion, the fact that SARS allocated payments incorrectly and subsequently, made a decision to recover a debt based on an incorrect amount, was a legitimate reason for the applicant to have raised an objection. I find the applicant's contention opportunistic and mischievous as the applicant was bent over backwards to confer to itself its own jurisdiction to hear its dispute and thereby disregarding the dispute*

resolution mechanism as set out in the TAA."

56. We have reviewed the relevant provisions of the TAA including section 104 and section 3 of the Income Tax Act and find no remedy of objection to SARS making incorrect account entries or allocations.

57. Submission: To effect the remedy that the honourable judge was of the impression exists in the TAA, we propose the insertion of a new section 104(2)(d) TAA which gives the taxpayer the right to object against any entry on the taxpayer's account added by SARS which does not properly reflect an assessment or payment or other entry in law and for which SARS has refused to reverse.

Refunds of excess payments – Section 190(2) of the TAA

58. The TAA currently provides that SARS may not authorise a refund until such time that a verification, inspection, audit or "criminal investigation" has been finalised.

59. In some cases, these verifications, inspections, audits and "criminal investigations" by SARS take months or years to finalise.

60. However, it remains unclear what the term "criminal investigation" entails and whether it will be applied per taxpayer or include entire industries etc.

61. The legislation must clarify whether "criminal investigation" referred to is in respect of a person against whom there is confirmed evidence of a crime committed and whether this crime was reported to the South African Police Service (SAPS) and a SAPS case number been obtained.

62. As SARS impacts taxpayer rights by withholding refunds, lack of legislative clarity in this regard should not continue. An example is the 2019 investigation of an entire industry, the agriculture sector, followed by a blanket withholding of refunds.

63. The verification, inspection, audit or criminal investigation in the section should refer to the specific refund in question and not any refund, as required in section 190(2).

64. As was evidenced in the Tax Ombud's 2019 report on Systemic Issues at SARS, one of the issues identified was that refunds for one period were being withheld whilst an audit/verification was in progress for another period. As stipulated in section 190(2), withholding of the refund should be relevant to the period under audit or investigation and not to unrelated periods. This mostly applies to VAT refunds.

65. A taxpayer currently has no recourse against this administrative decision made by SARS and SARS is also not compelled to provide reasons for the decision to withhold the refund.

66. Though not part of this specific matter, we have also previously raised concerns with SARS' involvement in the criminal justice system, how constitutional rights are protected and how powers are given within the constitutional mandate. This ranges from search and seizure, sanction, overlap of civil and criminal investigations, who decides on criminal investigation and prosecution if not SAPS and the NPA and who oversees the legality of all these processes as they are outside of the jurisdiction of the Independent Police Investigative

Directorate.

67. In regard to criminal intelligence-gathering, which is part and parcel of criminal investigations, we note in the 2017 OECD report that SARS claims it conducts no criminal intelligence-gathering activities at a covert level[3]. SARS doing investigations and then also paying and sourcing counsel for NPA matters essentially puts SARS on equal footing with the historical Scorpions unit.

68. Submission: "Criminal investigation" for the purposes of withholding refunds should be defined and limited to a particular taxpayer and a reasonable timeline of 30 days in which SARS must finalise the verification, inspection, audit and criminal investigation relating to the specific refund should be included.

69. The administrative decision made by SARS should be subject to objection and appeal.

70. To ensure that SARS does not turn into a quasi Scorpions Unit, it should ensure that its actions do not overlap with those of the NPA and SAPS whose role it is to follow up on criminal matters and who have the prosecution rights in this regard.

Electronic delivery of documents – Section 252 – 255 of the TAA

71. Sections 251 and 252 of the TAA state that delivery of notices, documents or other communication is regarded as having been delivered if it is:

> (d) sent to the person's last known electronic address, which includes—
>
> (i) the person's last known email address;
>
> (ii) the person's last known telefax number; or
>
> (iii) the person's electronic address as defined in the rules issued under section 255(1).

72. The section 255 rules at paragraph 3(2) state that delivery will occur for electronic filing communications when SARS correctly submits it on the users electronic filing page.

73. We note the judgment in *SIP Project Managers (Pty) Ltd v CSARS (Case No: 11521/2020)*

clarifying the law that 'correctly submitted' means 'when the user can access it'.

74. This judgment is welcomed as it aligns the law of delivery for electronic filing pages to that of other electronic communications under the same rules.

75. Of concern was, as held in the judgment, that the applicant's version that the letters were not sent on the dates reflected therein remains accordingly unchallenged, and there can be no *bona fide* dispute of fact on this point.

[3] https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles-first-edition-63530cd2-en.htm

76. This has been our members' experience as well.

77. It is pertinent to note that in section 1 TAA "date of assessment" means -

(a) in the case of an assessment by SARS, the date of the issue of the notice of assessment;
…

78. The law may now be clear that date of issue for the purpose of section 252-255 and the rules is not the "letter date" or even the date that SARS adds something in the back end, but rather the date that the taxpayer can access to it on his eFiling profile.

79. Submission: Though the law is now clear, it remains a problem in practice that SARS' letters are dated before the taxpayer can access them and that SARS calculates the days from the date of the letter or when uploaded on the backend and not from date that the taxpayer is able to access it on eFiling.

80. It is submitted that the solution lies in the draft section 255 TAA rules that were issued in 2016 and never implemented, where it was proposed in a new clause 4(2)(a)(iii) that[4]:

81. *(2) A SARS electronic filing service must—*

(a) provide a registered user with the ability to—
(iv)nominate an alternative electronic address to which the SARS electronic filing service must deliver a notification of the submission of an electronic filing transaction by SARS to the registered user's electronic filing page.

82. It will then be easy to align the "date of delivery" as being the date when the email notification entered the communicators system, which is again aligned to what the rule already states for other SARS electronic communications.

83. This will also address taxpayers' long held concern that eFiling is not a proper or appropriate notification method and will avoid taxpayers being subject to SARS' sporadic "other notifications", like SMS etc. which only work in respect of certain products and services.

[4] https://www.sars.gov.za/wp-content/uploads/Legal/Drafts/LAPD-LPrep-Draft-2016-24-Draft-Replacement-Rules-for-Electronic- Communication-under-Section-255-of-the-TAA-15-March-2016.pdf