

Ref:776685

12 September 2025

National Treasury Policy Department and Ms Adele Collins
National Treasury / South African Revenue Service

Per email: 2025AnnexCProp@treasury.gov.za
2025legislationcomments@sars.gov.za
acollins@sars.gov.za

Dear National Treasury and Ms Collins

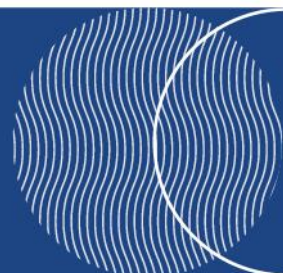
SAICA COMMENTS ON THE DRAFT 2025 TAX ADMINISTRATION LAWS AMENDMENT BILL

The National Tax Committee (NTC), on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make a submission to the National Treasury (NT) and the South African Revenue Service (SARS) on the 2025 Draft Tax Administration Laws Amendment Bill (DTALAB).

Our submission has addressed amendments to the following tax Acts –

- The Income Tax Act, 58 of 1962, as amended (the Income Tax Act);
- The Customs and Excise Act, 91 of 1964 (the C&E Act);
- The Value Added Tax Act, 89 of 1991, as amended (the VAT Act);
- The Tax Administration Act, 28 of 2011, as amended (the TAA); and
- The Promotion of Access to Information Act, 2 of 2000, as amended (PAIA)

We have set out our comments on the above in detail in **Annexure A**.



On a more general note, we wish to raise the following points:

1. **Public Consultation**

SAICA has long raised concerns regarding Treasury's practice of not consulting on the draft proposals before issuing a draft bill, but more problematic before tabling a version in Parliament. In 2025, this practice was again highlighted in the process leading up to the retraction of the section 8E proposals. The Minister noted: *"Any future proposals on structural changes to the taxation of hybrid equity instruments will follow a consultative process with all stakeholders to identify a balanced tax approach that takes into consideration the concerns of both stakeholders and government before draft tax legislation is published"*.

We agree with the Minister but maintain this principle applies to all the Budget proposals as reflected in the draft tax bills. As we have previously submitted, the practice of tabling draft legislation in Parliament without having considered public consultation inputs results in amendments through the parliamentary hearing process or forcing the public to raise matters in Parliament that Treasury have already considered making adjustments to. This is wasteful of both Parliament and the public's time and undermines the credibility of a public participation process.

2. **Lack of Transparency in Consideration of Submissions**

There does not appear to be a publicly available record confirming that all matters submitted by stakeholders have been duly considered by National Treasury (NT) and the Minister for inclusion in or exclusion from the Budget Review. 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.

3. **Repetition of Submissions Due to Uncertainty**

In the absence of clarity regarding the outcome of their submissions, stakeholders are compelled to resubmit the same proposals in the hope of eventually receiving a definitive response from NT. As Parliament 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 NT facilitated a follow-up engagement on 3 November 2022 ("Recurring Tax Proposals") in response to concerns we raised with the Standing Committee on Finance (ScoF).

4. **Timing and Quality of Engagement**

We respectfully submit that engagement on matters not intended for inclusion in the draft bills should occur prior to the release of such bills. This would ensure that the Minister

has had the opportunity to fully consider which proposals merit inclusion. Furthermore, the current process does not account for the correction of technical errors, including typographical mistakes, which undermines the overall quality and credibility of the legislative drafting process.

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

Tarryn Atkinson
Chairperson: NTC

Dr Muneer Hassan
Deputy Chairperson: NTC

Pieter Faber
Head: Taxation

Somaya Khaki
Lead: Tax Advocacy (Administrative Law)

The South African Institute of Chartered Accountants

ANNEXURE A:

Contents

SAICA COMMENTS ON THE DRAFT 2025 TAX ADMINISTRATION LAWS AMENDMENT BILL	2
INCOME TAX	6
Section 18A – Audit certificate (Clause 3)	6
CUSTOMS AND EXCISE	9
Section 40 – Changes to bills on entry other than by vouchers (Clause 8)	9
Insertion of Chapter XB – Voluntary disclosure programme (Clause 10)	9
VALUE ADDED TAX	9
Section 1 – VAT real-time reporting (Clause 11)	9
TAX ADMINISTRATION ACT	13
Section 11 – Delivery of notice in legal proceedings involving the CSARS (Clause 15)...	13
Section 222 – ‘Bona fide inadvertent error’ (Clause 21)	14
OTHE MATTERS THAT WE BELIEVE SHOULD HAVE BEEN CONSIDERED IN THE 2025 DTALAB	17
Constitutionality of various provisions in the legislation	17
VAT refunds	18
Verification process – Information gathering (Chapter 5 of the TAA)	19
Decisions subject to objection – Section 104 of the TAA	19
Refunds of excess payments – Section 190(2) of the TAA	20
Electronic delivery of documents – Section 252 – 255 of the TAA	21

ANNEXURE A

DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL, 2025

INCOME TAX

Section 18A – Certificate of examination (Clause 19)

Section 18A(2B)

1. The amendments to provide clarification are welcomed. However, the issue as explained in our previous submissions, means this amendment does not amend the most problematic aspect, which is the **comfort level** prescribed in law which will be critical to achieve the clarity sought.
2. Section 18A of the Income Tax Act contains an assurance provision to provide **comfort to SARS** at a **specified comfort level** in an **assurance statement** that certain things have occurred as required by the carrying out of **prescribed testing/examinations**.
3. The **assurance statement** is currently called an “audit certificate” and it is proposed in the draft bills that it be called “a certificate of examination”. No technical difference is dependent on this change, and it merely removes any taxpayer confusion that this assurance requirement is not in any way related to the statutory audit.
4. The specified comfort level that is prescribed in law is “confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A). Therefore, 100% testing is required for the SARS comfort sought.
5. The prescribed assurance statement must therefore provide 100% comfort by confirmation (i.e. prescribed testing method) in relation to a historical outcome – i.e. that an amount for which a section 18A certificate was issued, was used as prescribed in section 18A(2A) which includes usage for a public benefit activity as per the 9th Schedule.
6. SARS, in Interpretation Note 112 (IN112), sets out an example of what it expects as relates to the procedure to be followed to obtain the comfort level prescribed – namely:
 - A description of the work performed that formed the basis for the confirmation provided. For example, the extent of the person’s examination of the books of account and of the documents from which the books of account were written up.
 - Whether the entries in those books and documents disclose the true nature of the transactions in so far as may be ascertained by that examination, and how the linkage between the funds for which a section 18A receipt was issued and the application of those funds to carry on Public Benefit Activities in Part II was tested.
 - Details of the local or international standards and regulations, if applicable, under which the examination was conducted.

- Confirmation that the person issuing the audit certificate obtained sufficient and appropriate evidence in support of the confirmation provided.
7. It is proposed in the draft bill that the assurance statement shall now provide “containing such information as the Commissioner may prescribe by public notice” which invariably is a **welcomed attempt to codify IN112**.
 8. It is, however, evident that the proposed amendments do not address the core and ongoing concern regarding the comfort level sought and the fact that it is not financially viable to follow any recognised or prescribed standard in obtaining such a high comfort level. As in IN112, merely stating that “appropriate work” must be done creates misalignment and less clarity of the expectation. As previously submitted, we are of the view that currently no international or local assurance standard as applied in practice at a reasonable cost provides the comfort level and assurance SARS currently seeks.
 9. For example, PBO X buys KFC to provide poverty relief by feeding the poor and needy. In its financial records it would have credited Revenue with the section 18A donations and debit bank with the cash. It will credit bank and debit the poverty relief account by capturing the receipt from KFC and writing an annotation as to what it did.
 10. An independent person must now, at a minimum (following some standard):
 - Decide whether to adopt an assurance standard or not (e.g. ISRS 4400 Agreed upon procedures).
 - Evaluate whether the assurance standard will provide the assurance mandated in the legislation.
 - Evaluate whether the cost limitation to perform the engagement and risk are acceptable and tolerable.
 - Perform substantive testing on a 100% basis:
 - Validate section 18A certificate amount and details;
 - Verify Bank account receipt matching such details;
 - Verify invoice for KFC expense;
 - Validate proper capturing of KFC invoice;
 - Validate annotation in general Ledger that the purpose of the expense was listed in 9th Schedule;
 - Verify through examination of other evidence that the annotation is correct e.g. attendance registers of the poor and needy with appropriate information such as ID numbers or signed declarations of no or limited income etc;
 - Exercise professional judgement and conclude whether the validated transaction flow, verified annotation of purpose and other evidence confirm that the traced monies were indeed used for the relevant qualifying purpose.

NOTE: roll forward of section 18A funds received in a previous period will not fall in the above as it's not the same “year of assessment” which is a fundamental issue that also needs to be addressed.

11. We agree that the object of the procedures must still seek to provide some form of

assurance that the money received in terms of section 18A was used as required. However, the level of assurance sought as in the current legislation is impractical. We submit that connecting the prescribed procedure to the level of assurance as relates the application of the funds would be better articulated in the notice.

12. Submission: It is submitted that to ensure clarity on what has to be reported and what procedure has to be followed (not just what information must be validated) whilst balancing the cost of such engagement, SARS should prescribe the procedure to be applied for the relevant comfort level it seeks to be achieved and that the assurance statement aligns to such process outcome. This can be determined in a public consultation process on the relevant notice and via input from relevant stakeholders as to how to practically apply the process to ensure section 18A funds are used as intended in law and to avoid abuse.
13. It is submitted that this would create a more consistent outcome for SARS officials to then evaluate the assurance statement findings in the certificate of examination, to help them determine whether they are comfortable with the findings as relates the taxpayer's compliance. Thus, the content of the certificate AND how its confirmation was compiled will be standardised and will be a better comparative as to the assurance provided to SARS.
14. It is proposed that section 18A(2B) and (2C) be amended as follows:
15. (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 person independent from the public benefit organisation, institution, board or body, who has performed the procedures and reported 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 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)].**
16. (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)."]**

CUSTOMS AND EXCISE

Section 40 – Changes to bills on entry other than by vouchers (Clause 8)

17. Whilst the formalisation of this process by means of SARS issuing Rules for alternatives to vouchers of correction is positive on the basis that there would be more certainty, there are concerns that the limitation of SARS' discretion will allow for less flexibility for taxpayers.
18. Similarly, the proposed timeframes may cause problems for taxpayers – similar to how the limits on the timeframes for disputes can sometimes be problematic in practice.
19. Submission: engagement with relevant stakeholders when drafting the rules could alleviate some of these concerns if taken into account in the Rules implemented. We propose that SARS arrange workshops to engage, whilst still in the drafting phase.

Insertion of Chapter XB – Voluntary disclosure programme (Clause 10)

20. The proposed insertion of Chapter XB to provide for a Voluntary Disclosure Programme (VDP) within the customs space is a welcomed, positive development.
21. We note that “duty” for the purpose of “underpayment” required for the VDP, includes VAT on importation of goods into South Africa. However, it is unclear whether if there is an underpayment and non-compliance, the taxpayer would only need to initiate a customs voluntary disclosure which would cover the matters related to VAT such as VAT interest and VAT penalties.
22. As we understand it, although the current ‘informal’ customs VDP allows the taxpayer to pay the underpaid VAT amount using a voucher of correction, the VDP process is split because two different pieces of legislation (the Customs and VAT Acts) are to be applied.
23. Submission: Clarification is required as to whether the proposed Chapter XB will cater for customs duties, excise duties and the value-added tax (VAT) paid on these customs declarations and that there will be no need to make a separate voluntary disclosure for the VAT payments made on the customs declarations.

VALUE ADDED TAX

Section 1 – VAT invoicing (Clause 11)

4. The Explanatory Memorandum quotes from the Budget Review as follows:
“Over the period ahead, SARS intends to review the VAT administrative framework to simplify and modernise the current system, in consultation with all affected parties.”
5. As we understand it, these proposed amendments set the scene for the implementation of VAT real-time reporting – part of SARS' modernisation strategy to address the tax gap and achieve voluntary compliance within the VAT space.

6. Whilst we see this as a positive, future development, there are various factors that need to be considered before this can be a viable reality.

Global Lessons from eInvoicing Implementation: Complexity, Cost, and Scalability Challenges

7. When comparing to other countries that have implemented eInvoicing or are in the process of implementation, it is quite clear that the complexity and cost burden needs to be considered.
8. Countries that have implemented eInvoicing have done so using a phased approach which is aimed initially at large taxpayers with planned roll out to medium and smaller businesses. Other countries have postponed implementation which reflects the challenge and costs of rolling out this system.
9. The problem with the phased approach is that the revenue authorities are running both systems, which is costly as both systems need to be maintained and supported. The other issue worth noting is that very few countries that have implemented it at the large business level have managed to implement it down to medium and smaller businesses due to the associated complexities and costs.
10. Below is a quick snapshot of the status of countries that have implemented a phased approach and those that have delayed implementation, which further highlights the costs and complexities.
11. Despite the fact that this has been implemented across larger taxpayers, it has not yet been implemented for SMEs.

Country	Rollout Strategy	Current Status	Challenges Noted	Scalability to SMEs
Nigeria¹	Phased: Large taxpayers first (N5bn+ turnover)	Launched 1 August 2025	Early-stage rollout; future expansion planned	Planned but not yet implemented
Tanzania¹	Existing system; expansion proposed in 2025/26 budget	Partially implemented for some taxpayers	Budget proposal to expand to SMEs	In progress
Egypt¹	Phased: Large businesses first	Partially implemented since April 2022	Multiple delays; not yet fully rolled out	Delayed due to complexity
South Africa	Proposed; under consultation	Not yet implemented	Cost, complexity, dual-system maintenance risks	Scalability concerns for SMEs

¹ [E-Invoicing Mandates Across Africa: Key Changes and Digital Tax Trends - VATabout](#)

Country	Rollout Strategy	Current Status	Challenges Noted	Scalability to SMEs
United Kingdom²	Long-term strategy for automation	Strategy outlined for 2030	Early-stage planning; no formal rollout yet	Unknown
France³	Phased by business size and sector. B2G mandatory.	Postponed to 1 September 2026	Twice delayed; integration and readiness issues	Scalability delayed
Italy⁴	Phased approach: started with B2B and large taxpayers	Fully implemented for B2B and B2G, but happened over a number of years	High compliance costs; system complexity	Partial – SMEs included after several years

12. As can be seen from the above, even first world countries are grappling with full implementation of eInvoicing, with some having put the process on hold. Despite the fact that this has been implemented across larger taxpayers, it has not yet been implemented for SMEs.
13. With South Africa, as an emerging developing economy and with a current revenue gap, in our view, it may not be feasible to fully implement the real-time reporting in the near future and it may be more sensible to focus on other aspects in the interim – while more research and planning is done to fully understand the needs of the South African market. For example, tax incentives encouraging medium and smaller businesses to invest and expand further thereby growing the economy.

14. Submission: We propose that further research is done and extensive consultation with stakeholders across the board be held to better understand the implications of the proposal, the specific challenges each sector may face and to come up with solutions on how to address each of these, before any enabling legislation is promulgated. SAICA and other stakeholders would be willing to collaborate in this regard.
15. A Socio-Economic Impact Assessment System (SEIAS) should be conducted to consider:
- incremental costs for independent software vendors (ISVs) and SMEs;
 - the burden for imported ERPs with limited local roadmap support; and
 - benefits and potential unintended consequences (e.g., cash-flow impacts of clearance/CTC).
16. A phased rollout could potentially be implemented in the following way:
- Start with business to government (B2G) and/or large taxpayers on a voluntary basis;
 - Expand by segment only after readiness is demonstrated; and
 - Publish milestones and a minimum 24–36-month lead time before any mandatory stage,

² <https://www.taxadvisermagazine.com/article/e-invoicing-and-real-time-reporting-opportunity-shaped-burden>

³ <https://ec.europa.eu/digital-building-blocks/sites/spaces/DIGITAL/pages/467108885/eInvoicing+in+France>

⁴ <https://ec.europa.eu/digital-building-blocks/sites/spaces/DIGITAL/pages/467108890/eInvoicing+in+Italy>

aligning with global trends.

17. If the plan is to proceed regardless, it would be beneficial for SARS and NT to facilitate engagement early on in the process to fully understand the environment, challenges and proposals that would contribute to successful implementation within realistic timelines for implementation, including a phased approach as referred to in SARS' VAT Modernisation Paper.
18. The following should be engaged on with relevant stakeholders:
 - a) That the initial regime will be voluntary and network-based, as contemplated in the Bill, with no single-platform lock-in.
 - b) That delegated compliance through certified providers will be fully recognised.
 - c) That any move toward mandatory phases will follow transparent SEIAS, published technical specifications, and adequate lead time.
 - d) It is noted that many South African businesses may be willing to modernise. The right interoperability design, phasing, and open governance will unlock the benefits of real-time VAT reporting without repeating past failures or imposing disproportionate costs.

Funding and transition risks for independent software vendors and enterprises running foreign-developed ISVs, as well as funding concerns for small, medium enterprises

19. It is early days, but it seems that the current proposed model does not address funding or transition risks for independent software vendors (ISVs) and for enterprises running foreign-developed ERPs that may not prioritise a South Africa-only build. Without careful design, there is a risk of high integration costs and slow adoption – outcomes that previously derailed similar efforts for example, for third-party reporting.
20. Further, from an individual vendor perspective – that is, especially in the SME space, many of them may currently be using manual systems. For them to migrate to the type of system that would interface with the SARS system may seem impossible from a resourcing perspective and would be a barrier to these entities complying with eInvoicing mandates.

21. Submission: We propose that further research is done and extensive consultation with stakeholders across the board be held to better understand the implications of the proposal, the specific challenges each sector may face and to come up with solutions on how to address each of these, before any enabling legislation is promulgated. SAICA and other stakeholders would be willing to collaborate in this regard.
22. Consideration to be given to the possibility of implementing the incentivised or subsidised electronic fiscal devices, as adopted by other African countries – and referenced in SARS' VAT Modernisation Paper.
23. This would especially assist the SME sector, which currently lacks sufficient support.

Another possibility is for NT/SARS to consider providing a no-cost web portal/utility for SMEs, manual edge cases, and contingency scenarios, ensuring compliance without forcing ERP change for low-volume users in the early phases. It is our understanding that many jurisdictions provide free tools alongside the network model.

Further practical considerations:

24. Allowing for standard structured invoice payloads exchangeable through access points, instead of mandating deep Enterprise Resource Planning (ERP) rewrites at launch, could potentially simplify implementation and reduce initial time and cost investment. It is understood that internationally, early phases emphasise interoperability and network connectivity over immediate full ERP refactoring, due to the resources required for the latter.
25. Early publication of specifications and test assets, including publication of the message schema, code lists, validation rules, error catalogue, certification criteria and an open sandbox as soon as possible after the Bills process, would assist software developers to certify more quickly.
26. It should be codified that the interoperability framework is open, non-discriminatory and vendor-neutral, with no single gatekeeper and with clear obligations on certified providers for uptime, security, privacy, and portability.

TAX ADMINISTRATION ACT

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

27. The proposed amendment provides: *“The notice or any process by which the legal proceedings referred to in subsection (4) are instituted, must be served [at the address specified by] in the form and manner as the Commissioner may prescribe by public notice.”*
28. We note that SARS in the Draft Memorandum on the Objects of the TALAB explains that the need for this is to align to other processes of service. However, this is merely (courtesy) notification of court which is already currently used as a precursor process.
29. We submit that there is much concern that the prescribed form and manner 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.
30. Submission: We submit that this proposal be deleted or alternatively that any requirements that are considered necessary by SARS be inserted into the legislation itself and not at the discretion of SARS.
31. It is further submitted that this is not merely an administrative alignment but significantly impacts on access to court and due process.

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

32. 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.
 33. 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'.
 34. 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.
 35. 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.
 36. 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."
 37. The proposed amendment is in contradiction of this interpretation by the courts.
- | |
|---|
| <ol style="list-style-type: none"> 38. <u>Submission:</u> 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. 39. The proposed amendments represent a move away from imposing USPs based on <i>how</i> the taxpayer made errors to <i>the quantum</i> 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

40. 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*.
41. 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.
42. 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.
43. This will also have an impact on the evidentiary burden on the taxpayer in contesting the imposition of such penalties.

44. 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

45. 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.
46. 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.
47. Further, the taxpayer's reliance on the defence in section 223 relies on the Commissioner being "satisfied" as to the taxpayer's behaviour being *bona fide* and inadvertent.
48. It is difficult to see when the Commissioner would be satisfied given the narrow view adopted by SARS in the SARS *Guide to Understatement Penalties* (Issue 2) that:
"... it seems likely that the only errors that may fall within the bona fide inadvertent class are typographical mistakes – but only properly involuntary ones."
49. The proposed amendments create an inherent conflict of interest and an evidentiary burden which is impossible to meet. The Commissioner is positioned as both accuser and arbiter and collection pressures are extremely high.

50. 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

51. There is no overarching principle of equity in the imposition of tax, and the courts must apply the letter of the law.
52. However, it is critical to distinguish between the imposition of a tax and the imposition of a punitive penalty such as the USP.
53. A tax is a non-penal, statutory liability. A penalty such as the USP is a sanction intended to punish blameworthy conduct.

54. 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.
55. 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.
56. We propose that the amendment be reconsidered, in light of the above.

MATTERS NOT ADDRESSED IN DTALAB 2025

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

57. 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

58. 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.
59. 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.

60. 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.

61. 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.
62. These sections should be revisited to ensure that Parliament approves the levying (or not) of taxes in these particular circumstances.

VAT refunds

63. 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.

64. 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.

65. 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.

66. 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)

67. 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”.
68. However, on closer inspection of the Chapter 5 guidelines, no rules are set out for verification.
69. 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”.
70. In practice and substance none of these procedures differ from “field audits”, other than in scope.
71. 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.
72. 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.
73. 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.

74. 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

75. 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.

76. 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.

77. 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

78. 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.
79. In some cases, these verifications, inspections, audits and “criminal investigations” by SARS take months or years to finalise.
80. However, it remains unclear what the term “criminal investigation” entails and whether it will be applied per taxpayer or include entire industries etc.
81. 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.
82. 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.
83. 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).
84. 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.
85. 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.
86. 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.

87. 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 level⁵. SARS doing investigations and then also paying and sourcing counsel for NPA matters essentially puts SARS on equal footing with the historical Scorpions unit.

88. 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.
89. The administrative decision made by SARS should be subject to objection and appeal.
90. 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

91. 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).
92. 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.
93. 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’.
94. 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.
95. 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

⁵ <https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles-first-edition-63530cd2-en.htm>

be no *bona fide* dispute of fact on this point.

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

97. 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;

...

98. 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.

99. 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.

100. 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) that⁶:

101. (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.

102. 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.

103. 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.

⁶ <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>