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Submission File

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National Treasury / South African Revenue Service

Per email: 2025AnnexCProp@treasury.gov.za
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Dear National Treasury and SARS

SAICA COMMENTS ON THE DRAFT 2025 TAXATION LAWS AMENDMENT BILL

The National Tax Committee, 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 Finance on the 2025 Draft Taxation Laws Amendment Bill (DTLAB).

Our submission has addressed amendments to the following tax Acts –

- The Income Tax Act, 58 of 1962, as amended (the Income Tax Act);
- The Value Added Tax Act, 89 of 1991, as amended (the VAT Act); and
- The Carbon Tax Act, 15 of 2019, as amended (the CTA)

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 problematically) 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 of 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 public participation process.

2. There does not appear to be a public record that confirms those matters, submitted by stakeholders, have all been considered by NT and the Minister for inclusion in/exclusion from the Budget Review. As is self-evident, this results in stakeholders having no sense as to whether matters not included in the Budget Review are not a current policy or legislative imperative or whether or not within the relevant policy at all.
3. Without this certainty of outcome, stakeholders repeat submissions in the hope of an eventual clear position or outcome from NT. As Parliament noted, if stakeholders take the time to make submissions, they can expect a short explanation as to why matters were considered or not. We do however acknowledge that NT did accommodate a follow-up engagement for the first time on 3 November 2022 ("Recurring Tax Proposals") following our concerns expressed to ScoF on this matter.
4. However, we submit that this engagement on the matters that will not be addressed in the bills should occur before the bills are released to ensure that the Minister has properly applied his mind as to what should or should not have been included in the Bills. It also does not explain why technical errors, including spelling mistakes, are not corrected.

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

Yours sincerely

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ANNEXURE A

DRAFT TAXATION LAWS AMENDMENT BILL 2025

INCOME TAX ACT

Section 1 – Refining the definitions of ‘pension preservation’ and ‘provident preservation’ fund (Clauses 1(1)(d) and (e))

1. The EM states that the purpose of the proposed amendments is to clarify that a non-resident member is allowed to make a once-off withdrawal without having to meet the uninterrupted three-year non-residency requirements.
2. However, the wording does not seem to achieve this because the insertions in the wording of the definitions follow on immediately after the uninterrupted three year non-residency requirement – thus making them also subject to the same three year non-residency requirement.

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

3. 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.
4. This is because foreign remuneration is generally earned in a foreign currency, which in most cases is valued much higher than our local currency. Further, expatriate/secondment packages are loaded with specific benefits such as home flights, accommodation, school fees etc, which are taxed on the foreign payroll. These benefits fall away once the expatriate returns to RSA.
5. 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.

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

7. 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 draft 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 draft legislation is not aligned.

8. 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 7(5) and 25B – Taxation of trusts and beneficiaries (Clauses 3 and 25)

9. Whilst the policy rationale is understood with regards to the change to section 7(5) being only applicable where there is a resident donor, the removal of the words “*subject to section 7*” from section 25B(1) creates uncertainty.
10. We note that this “*subject to section 7*” wording contained in section 25B(1) assisted in determining the ordering of the taxing of income that vested in a beneficiary in terms of the conduit principle and confirmed in SARS Interpretation Note 114 that section 7 is applied prior to the conduit principle.
11. The complete removal of this wording now raises uncertainty as to the ordering of the taxing provisions in terms of whether one is to apply section 7 prior to or after section 25B.
12. The intended amendments are presumably only intended to apply to situations where a person was a resident at the time the donation, settlement or other disposition was made. This is in accordance with the generally accepted interpretation of section 7(8) of the Act.
13. However, this is not clear from the wording of the amendment, especially when viewed in conjunction with the words ‘or the change in residence of that person’.

14. Submission: For clarity, it is submitted that the amendment to section 7(5) should be reworded as follows:

15. *“If any person has made any donation, settlement or other disposition which is subject to a stipulation or condition, whether made or imposed by such person or anybody else, to the effect that **[the beneficiaries thereof or some of them shall not receive]** the income or some portion of the income thereunder shall not be received by or accrue to the beneficiaries thereof or some of them until the happening of some event, whether fixed or contingent, and the person who made the donation, settlement or other disposition was a resident at the time the donation, settlement or other disposition was made, so much of any income as would, but for such stipulation or condition, in consequence of the donation, settlement or other disposition be received by or accrue to or in favour of the beneficiaries, shall, until the happening of that event, **[or]** the death of that person or the change in residence of that person, whichever first takes place, be deemed to be the income of that person.”*

Sections 9D and 9H – Controlled Foreign Companies and the cessation of residency (Clause 11(1)(a))

16. Section 9H, which section triggers an ‘exit charge’, provides that in the context of a controlled foreign company (“CFC”) that when a CFC ceases to be a CFC, it is deemed to have disposed of all its worldwide assets on the date immediately before the date it ceases to be a CFC.
17. NT is of the view that under the current wording of section 9H read with section 9D, a CFC may avoid the exit charge under section 9H as it is treated as a resident when determining

the normal tax variable element of the comparable tax exemption. As a result, NT proposes to clarify and strengthen the interaction between “net income” of CFC rules in section 9D and ceasing to be a CFC rules in section 9H by specifically including the taxable income resulting from the application of section 9H(3)(b) in the taxable income of a CFC for purposes of the comparable tax exemption.

18. It is therefore proposed that paragraph (i)(aa) of the further proviso to section 9D(2A) of the ITA be amended to add the normal tax resulting from the application of section 9H(3)(b) of the ITA to the normal tax that would have been payable had the controlled foreign company (“CFC”) been a resident.
19. Sections 9H(4) to 9H(6) provide that the exit charge triggered in section 9H(3)(b) will not apply to the CFC in certain circumstances. It is unclear from the current proposed amendment to section 9D whether these provisions are taken into account when determining the taxable income of the CFC for purposes of the comparable tax exemption. It would make sense that if the exit charge triggered by section 9H(3)(b) is excluded from the CFC’s ‘net income’ for imputation purposes because of the application of sections 9H(4), (5) or (6), that it similarly be excluded from the CFC’s taxable income for purposes of the comparable tax exemption.

20. To solve this issue, it is submitted that the words in bold below be added to the proposed amendment so that it reads thus:

21. "(aa) aggregate amount of taxes on income payable to all spheres of government of any country other than the Republic by the controlled foreign company in respect of the foreign tax year of that controlled foreign company is at least 67,5 per cent of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year: Provided that the taxable income of the controlled foreign company must be increased by the taxable income resulting from the application of section 9H(3)(b), read with sections 9H(4) to 9H(7); or"

22. Another matter worth highlighting is that even though the intention of the proposed amendment is including the exit charge arising from the deemed disposal into the tax net, the impact of the current wording is that all the taxable income arising from the CFC’s normal trading activities, (which would ordinarily be exempt due to the application of the high-tax exemption) is also brought into the tax net as a result of the deemed disposal.

23. Submission: To address this, it is submitted that the current comparable tax exemption should be separated into two distinct calculations, the first calculation to apply to the taxable income of the CFC arising from normal trading activities, and the second should apply separately to the deemed disposal or exit charge.

Section 10(1)(gC)(ii) – Exemption on foreign retirement fund benefits (Clause 12(1)(b))

24. The EM lists two main issues with the current exemption:

- i. Firstly, that the fact that SA grants an exemption may result in double non-taxation of the pension in cases where the foreign jurisdiction either does not tax the pension or where SA is granted exclusive taxing rights in terms of a double tax treaty.

The EM states that this ‘undermines’ SA’s residence-based system of taxation and leads to revenue forgone to the fiscus. We question the principle why SA should tax an amount simply because another jurisdiction does not. With regard to the residence basis of taxation, although it is true that SA tax residents are generally subject to tax in SA on their worldwide income, there are various exceptions to this rule – for example, section 10(1)(o), which grants an exemption for remuneration earned offshore in various situations.

The reality is that South Africa is not a pure residence-based system and, it must be added, there are few, if any, pure residence-based tax systems in the world.

- ii. Secondly, the EM claims that where a double tax treaty grants SA exclusive taxing rights, SA not taxing the pension may allow the foreign jurisdiction to tax the pension.

The EM claims that this ‘misalignment’ results in the SA fiscus forgoing revenue that it is entitled to collect. However, double tax treaties such as that between SA and the UK grants SA exclusive taxing rights to pensions and annuities received or accruing to SA residents for services rendered in the UK. The UK is prohibited from taxing the pension or annuity in these circumstances.

25. There are three main issues that must be borne in mind concerning the section 10(1)(gC)(ii) exemption.
26. Firstly, the existence of this exemption is a major benefit for non-resident retirees, many of whom have chosen to settle in SA.
27. This point was noted in the Explanatory Memorandum to the Revenue Laws Amendment Bill of 2000 that introduced section 10(1)(gC) into the Act, and it remains valid today.
28. The withdrawal of this exemption may encourage these individuals to emigrate to a more favourable jurisdiction where the income is not taxed, and discourage potential retirees from settling in SA in future.
29. Secondly, there is a vast difference between the tax regime applicable to a South African retirement fund and a foreign retirement fund.
30. In the case of a South African retirement fund, the fiscus suffers a loss at the point of contribution, by affording a deduction for contributions. No such deduction is granted in the case of a foreign retirement fund. Because of the deduction for contributions to South African retirement funds, it makes sense that the withdrawal of amounts from the fund should be subject to South African income tax. However, in the case of a foreign retirement fund, because there was no loss to the fiscus at the point when the contributions were made, neutrality is achieved by not taxing withdrawals.
31. Thirdly, the removal of the exemption will not result in the full amount of withdrawals becoming taxable in South Africa.
32. This is because at least portion of the foreign pension withdrawals, represented, at minimum, by contributions made to the fund by the retiree over time, will be capital in nature and will therefore not fall into the definition of ‘gross income’ in section 1 of the Act.

33. It is unreasonable to expect proof of these contributions to be available over periods that may date to the 1960s in the case of many retirees but, on the other hand, it is grossly unfair to subject an amount to income tax that represents a person's own contribution to a fund.
 34. This principle is recognised in the case of purchased annuities, where section 10A of the Act grants an exemption for a person's own contributions.
 35. The deletion of the exemption will have an immediate impact on those retirees that are already in receipt of annuity income. These taxpayers are reliant on this income and have planned their retirement many years ago, based on the legislation in place at the time. Many of these taxpayers will have no way at this late stage of their lives to adjust or increase their income to cover the unplanned tax that would be deducted. This could result in such taxpayers being unable to satisfy their own expenses.
36. Submission: We therefore submit that the proposal to delete section 10(1)(gC)(ii) should be withdrawn.
 37. If the exemption is removed, a mechanism should be developed to estimate the portion of the pension or annuity that represents the person's own contributions to the fund over time, which contributions should not be taxed.
 38. We further submit that the effective date for the proposed amendment should be 24 months after the promulgation of the 2025 tax Bill, in order to give the affected taxpayers sufficient time to plan for, and adjust to, the anticipated tax on their foreign retirement benefits.

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

39. 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.
40. To address this, the 2025 Draft 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.
41. 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.
42. 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.

43. Submission: It is 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 2023.

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

44. 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).
45. 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.

46. 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.

47. 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)(h))

48. The proposed amendments render the wording ambiguous and at best, highly confusing. Given the alignment to IFRS, the concepts as used in the IFRS standards e.g. IAS 1 & IAS 5 such as non-current assets and non-current liabilities should be used. The wording should be amended to read as follows, for clarity:

49. Submission:“(aa) or any portion thereof does not represent for that person a non-current asset or a non-current liability for the purposes of financial reporting pursuant to IFRS; and”.

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

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

51. This is because the definition of 'realised' in para (a) of subsection 24I(1) it clearly includes a part settlement of an exchange item i.e. "when and to the extent to which payment is received or is made".

52. 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.

53. 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.

54. 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)

55. 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 incurrals 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.

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

57. 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.

58. 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

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

VAT Exemption for Schools

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

- i. Educational services

- ii. Incidental or subordinate supplies made to learners if consideration in the form of school fees, lodging or board.
60. Supplies or part supplies outside of the above made by schools were considered taxable supplies.
61. The EM states that the policy intent was as follows:
Further the policy intent was always to exclude schools from the VAT net and having regard to the changes in the manner in which the educational services are provided and charged for, the amendment seeks to provide clarity that these services are all exempt.
62. The EM seems to suggest that there was lack of clarity on the application of subsection (i) and (ii) and that supplies falling within those provisions were being treated as taxable supplies and therefore schools, including public schools, were unnecessarily registering for VAT.
63. It is also a reality that [school infrastructure](#) is underfunded and that running costs funded by the state are also inadequate, ranging from R301 to R1754 per pupil, annually, seldom enough to in many instances pay annual municipal charges of the school .
64. Certain schools supplement such state funding with school fees and even in such cases it may not be sufficient to provide quality education.
65. Section 36(1) of the Schools Act states that:
“A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the state in order to improve the quality of education provided by the school to all learners at the school”
66. It is our understanding that the problem schools face rather relates to supplies that wholly or partly fall outside of the exemption clauses in the VAT Act and were mostly related to additional funding initiatives or capital outlay to generate such funding, for example hosting of public markets/festivals or leasing of school property (e.g. Schools Act allows for with MEC approval).
67. We understand that it is this need for additional funding outside the exemption and schools’ desire to be tax compliant that has driven the need and practice to register for VAT.
68. The proposed amendment by insertion of section 12(h)(iv) will make all supplies VAT exempt irrespective of their nature i.e. broadening rather than clarifying the scope of the exemption. **This is a significant policy change as to how the VAT principles apply by exempting these entities as opposed to specific supplies.**
69. It is unclear if this policy change was properly considered by Treasury.
70. SAICA currently does not have a view for or against such policy change and we would have to get more information on the operational cost side (i.e. whether it really does create trade disadvantages) and the capital cost side (i.e. does the effective spreading of the VAT input cost have a funding complication).
71. **Submission:** We submit that the proposal be withdrawn until engagement with the affected schools has been done and Treasury have properly considered the impact of the change in policy on the VAT system.

Forced VAT Deregistration for Schools

72. The more practical impact issue is that of the liability for output VAT on the forced deregistration.
 73. The EM states that relief will be provided as follows:
To provide relief to institutions that are required to deregister by introducing section 8(2H) along with new time of supply rules in relation to any such arrangement by the introduction of section 9(14).
 74. Section 8(2H) prescribes merely 12 months to recover the VAT on the deemed VAT output on goods not disposed of, or for which no input was claimable i.e. stock on hand and infrastructure used to make taxable supplies.
 75. No data has been provided by SARS or Treasury as to the quantified impact of this proposal in total and this will also impact schools on a case-by-case basis.
 76. Where capital goods input VAT was claimed, the VAT cost when charging VAT on making taxable supplies would be payable over multiple years, even decades and this could be a significant amount. There is therefore an amount materiality and a time period concern.
 77. Treasury have proposed mitigating this issue by providing for “payment terms” in deeming the output VAT to occur over 12 months or an agreed longer period. Providing the SARS Commissioner, who is responsible to collect revenue under difficult fiscal circumstances, an unfettered discretion to determine longer payment seems unreasonable and raising the risk for legal dispute.
78. Submission: We submit that the proposal be withdrawn until the financial impact on schools has been determined. Furthermore, should the proposal proceed, more legislative considerations ought to be added to guide the decision of “payment terms” and that the minimum period be significantly increased subject to objective criteria of materiality e.g. where the output VAT exceeds a set percentage of a school’s annual core revenue.
 79. Alternatively, transitional provisions could be included to exempt schools that are registered for VAT from the deemed supply process in respect of assets already acquired. The subsequent sale of those assets would then be subject to normal VAT principles.

CARBON TAX ACT

Section 6 – Calculation of amount of tax payable (clause 58)

New formula introduced

80. The TLAB does not provide any clarity or guidance on the ordering of symbol “TP” representing the tax payable in the new formula when compared to symbol “X” in the existing formula which also represents the amount of tax payable.
81. As such, it is not clear whether the new formula overrides the existing formula as the tax payable in the tax period when actual emissions exceed the approved carbon budget.
82. Furthermore, it is unclear why the symbol “TP” is introduced and how this interacts with the existing symbol “X”.

83. Submission: It is submitted that the legislation be amended to clearly stipulate the ordering of the formulas contained in section 6 and plainly clarify the interaction between symbol “TP” and symbol “X” as to what amount is the final carbon tax payable.

Double taxation

84. The TLAB does not amend the current existing formula under section 6(1) to exclude the carbon tax payable determined under the new formula calculated on emissions exceeding the approved carbon budget.
85. As such, based on the TLAB amendments in its current form, actual emissions would be subject to a carbon tax rate under the existing formula at the lower rate as well as under the new formula at the higher rate resulting in a risk of double taxation for the taxpayer.

86. Submission: It is recommended that the current existing formulas in section 6 be amended to:
87. Determine emissions based on the lower of actuals or the DFFE approved carbon budget to ensure that there is no double taxation on the same emissions above carbon budget and that the tax-free allowances are only calculated on the portion of emissions allowable; or
88. Exclude the portion of actual emissions which exceed the approved carbon budget, as calculated under the new formula and taxed as the higher tax rate of R640/tCO₂e, such that there is no inference of double taxation.

Straight line annualising of emissions under the carbon budget

89. The DFFE provides for accounting of carbon budgets on an annual period and over a 5-year period i.e. the commitment period whereas carbon taxes are determined and paid annually on a calendar year (i.e. tax period).
90. The Explanatory Memorandum (“EM”) to the draft TLAB suggests this is to prevent a situation where the taxpayer may be required to make a once-off exorbitant carbon tax payment at the end of the 5 years and as such allows for smoothing of the tax liability over the 5 year period.
91. The example provided in the EM to the draft TLAB suggests that the 5-year carbon budget allocation will be annualised on a straight-line basis such that where emissions are above the carbon budget in a specific tax period, the company will be required to pay the higher tax on those emissions in that year.
92. However, on a cumulative basis over the 5-year period in the said example, the company is still within its carbon budget allocation for the commitment period yet there is no reversal or credit provided back to the company for the taxes paid in prior periods at the higher rate. This practice is procedurally unfair and infringes on the constitutional rights of the taxpayer.

93. Submission: Carbon emissions fluctuate year on year due to various factors therefore equalising of emissions on a straight line basis are not reflective of commercial practice.
94. The carbon budget, as defined in the CCA and regulations thereto, refers to a commitment period of 5-years to take into account fluctuations in emissions over a 5-year period. Strategic fluctuations in emissions may occur for example due to product demand or operational shut-downs in manufacturing plants.
95. It is therefore recommended that:
96. the higher tax rate of R640t/CO₂e in respect of emissions in excess of the carbon budget be determined at the end of the commitment period, *i.e. end of 5 years*, when the tax liability ultimately becomes due and payable; or
97. when a company emits below its allocated budget in one year, it should be able to carry forward that credit to offset higher emissions in subsequent years within the commitment period. This flexibility is essential for fair and accurate tax liability assessment.

1. YEAR	ACTUAL EMISSIONS* (t/CO ₂ e)	STRAIGHT-LINED CARBON BUDGET EMISSIONS (t/CO ₂ e)	EMISSIONS IN EXCESS OF CARBON BUDGET	COMMENTARY
Year 1	60,000,000	55,000,000	5,000,000	<i>Higher Tax rate used to calculate a 'penalty' tax payable for the annual carbon tax period.</i>
Year 2	57,000,000	55,000,000	2,000,000	
Year 3	54,000,000	55,000,000	0	
Year 4	51,000,000	55,000,000	0	
Year 5	47,000,000	55,000,000	0	
TOTAL	269,000,000	275,000,000	0	No higher tax rate applicable at the end of the commitment period

**If a taxpayers' approved Mitigation Plans are successfully carried out, actual emissions should ideally reduce year-on-year. Emissions may also be lower due to operational shut-downs.*

98. The above simplistic example clearly depicts how taxpayers would be unfairly penalised in the former years of a commitment period when overall still being within the approved carbon budget over the 5 year commitment period.
99. It should be noted that paragraph 8 of the Draft Technical Guidelines for the National Greenhouse Gas Carbon Budget and Mitigation Plan Regulations ("CBMP Regulations"), on page 80, specifically refers to the Annual Carbon Budget as the portion of the total

carbon budget allocation approved, annualised and disaggregated using a methodology employed at the discretion of each individual Data Provider.

100. In the example contained in the CBMP Regulations, it is clear that a Company would only be subject to compliance penalties in terms of the Carbon Tax Act if actual emissions exceeded the Carbon Budget at the end of the commitment period.

Section 14 – Limitation of sum of allowances (clause 60)

Ambiguity in the prescript section regarding tax-free allowances where emissions exceed the carbon budget

101. The TLAB does not provide any clarity or guidance on the ordering of symbol “TP” representing the tax payable in the new formula when compared to symbol “X” in the existing formula which also represents the amount of tax payable.
102. The EM to the draft TLAB 2025 states that it is *“agreed in principle that emissions within the carbon budget will be taxed at a lower rate (all tax-free allowances applicable) while emissions above the carbon budget will be taxed at a higher rate”*.
103. However, the new section to be inserted as section 14A specifically refers that where *“emissions are above the carbon budget as approved by the Department of Forestry, Fisheries and the Environment, no allowances contemplated in Part II in respect of a tax period will apply.”*

The phrasing of the language creates an eerie impression that tax-free allowances will not apply to all emissions when the carbon budget allocations have been exceeded.

104. Submission: If amendments are made to the existing formula, as discussed under point 1.3(b) above, then there would be no need for section 14A to be introduced.

Formula for fugitive emissions calculation

105. The draft TLAB proposes an amendment to the formulas used by companies to calculate their GHG emissions for fugitive emission activities under section 4(2)(b)(b) of the CTA. Amendments were made to the table contained in Schedule 1 to add in the new fugitive emission source categories for solid fuel transformation and coal- and gas-to-liquid fuels.
106. The draft TLAB proposes that the amendments are deemed to come into operation on 1 January 2024. As such, this would mean that the revised formulas in respect of fugitive emission activities calculated under section 4(2)(b)(b) of the CTA should have been used in the tax return submission for the 2024 tax period which was submitted and carbon taxes paid to SARS by no later than 29 July 2025.
107. Retroactive application of legislation undermines the rule of law and places the taxpayer in a precarious position to arrange their affairs to comply with legislation and to determine the correct amount of taxes due as seen in the judgement against taxpayers in *Pienaar*



Brothers (Pienaar Brothers (Pty) Ltd v the Commissioner for the South African Revenue Service and Another (87760/2014) [2017]).

108. Where taxpayers have not used the revised formulas in their 2024 tax return submissions and payments, this amendment may result in additional tax liabilities in respect of the 2024 tax period from an understatement of taxes which may further result in potential penalties and interest becoming due upon assessment as a result of this retroactive amendment.

109. Submission: It is recommended the effective date be revised so that the proposed amendments be deemed to come into operation on 1 January 2025 and applicable only for tax periods after that date.

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2025

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

- a. Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie
- b. Home office allowances

Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie

112. Section 8F the Income Tax Act deems interest in respect of a hybrid debt instrument or hybrid interest to be treated in a similar manner to the yields of an equity instrument. These rules disallow the deduction of interest paid and deem this interest to be an in specie dividend for the issuer of the instrument and an in specie dividend for the recipient.

113. Section 8F(3)(f) stipulates that an exclusion is triggered to the deeming rule when a registered auditor has certified the payment by a company of an amount owed in respect of that instrument that had been or was to be deferred by reason of the market value of assets being less than the amount of the liabilities.

114. In a [prior submission](#), we requested that National Treasury engage with IRBA on the proposed wording of the exclusion so that it aligns with the auditing standards framework and also as to what a registered auditor can do in such capacity as opposed to what is expected from management to do and verify which remains exclusive to them.

115. Unfortunately, there has been no progress in this regard.

116. Given the challenges of using a Registered Auditor to perform this function and at the same time providing SARS with sufficient comfort by an independent person, we make the below proposal.

117. Submission: Our proposal inserts an “Independent Registered Tax Practitioner” (as envisaged in section 223(3)(b) TAA) as the functionary to affirm the proposed objective criteria as SARS would be able to exercise regulatory control over him or her.

118. The legislation should be reworded as follows:

119. Insertion of a definition under section 8F(1) for “subordination agreement” as follows:

120. **‘subordination agreement’** means an agreement that is entered into in relation to an instrument which agreement defers the obligation to pay an amount so owed by a company on a date or dates falling within that year of assessment by reason of, inter alia but including, that obligation being conditional upon the market value of the assets of that company not being less than the amount of the liabilities of that company.

121. The proposed rewording of the carve out for section 8F(3)(f) is as follows:

(f) that constitutes a hybrid debt instrument –

(i) solely in terms of paragraph (b) of the definition of hybrid debt instrument;

(ii) is subject to or will be subject to a subordination agreement; and

(ii) where the taxpayer was in possession of a confirmation issued by an independent registered tax practitioner as envisaged in section 223(3)(b) of the Tax Administration Act 2011, that –

(aa) was issued by no later than the date the annual financial statements in respect of that year of assessment were signed;

(bb) confirms the existence of the subordination agreement in relation to that year of assessment; and

(cc) confirms that the subordination agreement came into existence subsequent to the end of that year of assessment or the end of any prior year of assessment.

Home office allowances

122. In the 2021 National Budget, NT announced an initiative to explore the new ways of working which were accelerated by the COVID-19 pandemic. This was to incorporate a review of home office deductions, travelling, the gig economy etc. It was clearly indicated that this was not a quick process and would likely span multiple years.

123. Despite one informal request for input into the home office deduction, and SARS inviting comments on the interpretation note relating thereto (see SAICA's comments on this in [2021](#) and [2022](#)), there has seemingly been no further progress on this initiative. No proposals were announced in the 2022 Budget and no draft amendments were proposed in either the 2021 legislative cycle or the current cycle on which comments have been invited.

124. Submission: SAICA is very supportive of this initiative and would like to actively participate in this process, however, clarity is needed on the policy direction that NT is considering in order for consultation to be valuable as well as estimated timing of implementation.

125. NT noted that it would issue a discussion paper on the matter to start the review of policy and legislation on home offices, however after 2 years nothing has been forthcoming and it is submitted that NT should commit to a date for this paper given the current significant change in how people work.

126. In the interim, our comments have not been considered and the strict requirements of section 23(b) still stand with no amendments/relaxations. We have also engaged with SARS on this matter, but their hands are tied as they need to comply with the requirements of the law, even if the legislation as they interpret it, leads to inequitable treatment (such as the denial of the interest deduction on a bond used to finance a home office – discussed in more detail below). We understand that this concern has been raised by SARS with NT, yet despite this, there are still no legislative amendments in the 2022 DTLAB in this regard.
127. Of most concern, is the disallowance of a tax deduction for the interest on a bond as this is usually the largest deduction for taxpayers that have a home office. The reason for disallowing this deduction, according to SARS, is that section 23(m) – a section that prohibits the deduction of certain expenses for salaried earners (other than a few expenses, such as those allowed in terms of **section 11(a)**, for example, the rent, repairs or other expenses incurred in respect of a home office that is allowed under section 23(b)) – does not allow the deduction of interest on a bond on a home office because the interest is deductible under **section 24J** and not section 11(a) as required in terms of section 23(m).
128. Section 23(m) only applies to expenditure, losses or allowances **contemplated in section 11** and which relate to any employment in respect of which the taxpayer derives any remuneration. This begs the question whether section 24J is a section ‘contemplated’ under section 11. If it is, then section 24J interest will be prohibited by section 23(m) as section 23(m) only allows interest deductible in terms of section 11(a) as a deduction (section 23(m)(iv)). If it is not, then section 24J interest will remain deductible as it is not prohibited by section 23(m)(iv) as it is not an expense contemplated in section 11 and thus the section 11(a) argument no longer applies.
129. SARS argues that section 24J is ‘**contemplated in section 11**’ by means of section 11(x). Section 11(x) states that there shall be allowed as a deduction from the income of a person ‘*any amounts which in terms of any other provision in this Part (encompassing section 5 to 37G), are allowed to be deducted from the income of the taxpayer*’. This section, according to SARS thus includes section 24J, as it is ‘contemplated in section 11’, even though it is not deductible under section 11.
130. However, it is our understanding that section 24J is a standalone deduction provision under Part I of Chapter II and is not reliant on section 11(x) as the ‘deduction’ section. Should this not be the case, then interest would be deductible under both section 24J and section 11(x), which clearly cannot be.
131. In addition to the above, it seems inequitable from a policy perspective, that a person renting a house with a home office, would be entitled to deduct the rental paid (allowed in terms of section 23(m)(iv)), yet a person who owns the house would not be able to deduct the interest on the bond.
132. Submission: We are of the view that section 11(x) does not include section 24J and thus this interest in respect of a home office should be allowed as a deduction and not be prohibited by section 23(m)(iv). Legislative clarity is urgently required in this regard as the



legislative interpretation concerns would impact various other section in the Income Tax Act as well.

133. We have also highlighted, in our previous submissions mentioned above, various other legislative concerns regarding the home office deduction and will not repeat them here, but we do urge NT to consider these as a matter of urgency.