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National Treasury / South African Revenue Service

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Dear National Treasury and SARS

SAICA COMMENTS ON THE DRAFT 2026 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 the 2026 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 raise the following points:

1. Public Consultation

SAICA has consistently raised concerns about NT's practice of issuing draft tax bills without prior consultation on the underlying proposals – and, more concerningly, tabling versions in Parliament before meaningful engagement has taken place. This issue was again evident in 2025 during the withdrawal of the section 8E proposals. At that time, the Minister committed that:

"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 welcome this commitment. However, we emphasise that the principle should apply to **all Budget proposals** reflected in draft tax bills.

Proceeding to Parliament without first considering public input may:

- Force stakeholders to raise issues in parliamentary hearings that NT has already contemplated.
- Result in avoidable amendments during the legislative process.
- Consume time for both Parliament and the public that could have been used more effectively.
- Undermine the credibility of South Africa's public participation framework.

We propose that NT consider embedding consultation at the proposal stage – i.e. before drafting legislation, similar to the way national and international standard setters engage stakeholders prior to releasing an exposure draft. This would ensure that the Minister has had the opportunity to fully consider which proposals merit inclusion and would allow for parliamentary hearings that focus on refining policy, as opposed to revisiting matters that could have been resolved earlier.

2. Lack of Transparency in Consideration of Submissions

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

This absence of transparency leaves stakeholders uncertain as to whether the omission of certain matters reflects:

- A deliberate policy or legislative decision, or

- An indication that such matters fall entirely outside the scope of the relevant policy framework.

We believe it would be helpful if NT could establish a clear mechanism to document and communicate how stakeholder submissions are evaluated, ensuring that exclusions are understood as intentional policy choices rather than procedural oversights.

3. Repetition of Submissions Due to Uncertainty

In the absence of clarity regarding the outcome of their submissions, stakeholders are often 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 at least a brief explanation as to why their proposals were accepted or rejected.

We do, however, acknowledge and appreciate NT's facilitation of a follow-up engagement on 3 November 2022 ("Recurring Tax Proposals"), which was in response to concerns we raised with the Standing Committee on Finance (ScoF).

We propose that NT consider formalising a transparent feedback mechanism that provides stakeholders with concise explanations of submission outcomes. This would reduce duplication, strengthen trust in the consultation process, and ensure that engagements such as the 2022 follow-up become the norm rather than the exception.

4. Quality of Drafting

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

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ANNEXURE A

DRAFT TAXATION LAWS AMENDMENT BILL 2026

INCOME TAX ACT

Section 6A – Additional medical expenses tax credit to members of restricted medical schemes (Clause 2(1)(*b*))

1. Section 1.2.2 of the Explanatory Memorandum (EM), in giving the reasons for the proposed change in legislation, states that "certain statutory medical schemes fall outside the regulatory oversight of the CMS" and that "members of these schemes" do not qualify for the medical tax credits.
2. This creates the impression that there are a wider variety of affected schemes than merely those included in the proposal, which is limited to arrangements established under the Intelligence Services Act.
3. Submission: If there are indeed other affected schemes then it is submitted that these should be included in the proposal. If this is not the case, then we recommend that the wording of the EM should be amended.

Section 31B – Introduction of domestic transfer pricing rules for Special Economic Zones (SEZs) (Clause 14)

4. SAICA welcomes the proposed amendment.
5. Submission: For the sake of simplicity, it is submitted that instead of a new section 31B, NT should use the wording of the new proposed s31B(a) and insert it after section 31(1)(a)(iv), thereby creating a new section 31(1)(a)(v). The normal consequences of section 31 would then follow.

Section 56 – Limiting the donations tax exemption rules where a spouse is a non-resident (Clause 17)

Necessity of the proposed amendment

6. We do not understand the rationale for the proposal.
7. It appears to us that National Treasury is not taking cognisance of the fact that section 9HB(5) of the ITA read with paragraph 38 of the Eighth Schedule to the ITA means that currently, **capital gains tax** rollover treatment would only apply if the **spouse** receiving the donation was **SA tax resident** (apart from the donation of assets constituting interests in SA immovable property, that would remain in the SA tax net when subsequently disposed of by a non-resident spouse).
8. Therefore, we do not understand how a "staggered" non-residency strategy would circumvent both donations tax and **capital gains tax,** as claimed in 1.4.2 of the EM.

9. In other words, once the one **spouse** had become **non-resident**, the donation of assets to the non-resident spouse would trigger **capital gains tax** under section 9HB(5) read with paragraph 38 of the Eighth Schedule. Although the asset base of the donor spouse would have been diminished by the donation for the purposes of calculation of the capital gains "exit charge" in section 9H, capital gains tax would already have been payable upon the donation of the asset by the donor spouse to the non-resident spouse in terms of section 9HB(5) read with paragraph 38 of the Eighth Schedule.

10. Paragraph 38(1) would apply in these circumstances because section 9HB would be deemed by section 9HB(5) not to apply.

11. On the other hand, under current law donations tax does not apply between spouses, whether they are resident or non-resident. Therefore, the strategy whereby non-residency of the spouses is **"staggered"** is clearly not a strategy to **avoid donations** tax between **spouses**. It must be a strategy to **avoid the capital gains tax exit charge** but, as explained above, it would not work in any event, due to the existence of section 9HB(5).

12. On the other hand, if the concern is tax avoidance by the splitting of the section 9H(2) 'exit charge' between spouses, by having one spouse donate assets to the other while they are both SA residents, then we note that paragraph 68 of the Eighth Schedule already addresses this situation.

13. <u>Submission</u>: We therefore suggest that the proposal be reconsidered.

Legitimate spousal arrangements

14. In addition to the above, the proposed wording is considerably broader than the stated abuse.

15. As currently drafted, the amendment would deny the spousal donations tax exemption and related roll-over relief in respect of any donation or transfer to a non-resident spouse, irrespective of whether the transaction forms part of an avoidance arrangement.

16. This would result in ordinary, legitimate cross-border marital arrangements being brought within the scope of the proposed amendment, including circumstances where an SA resident is married to a person who resides in and is taxed in another jurisdiction and where there is no tax-avoidance purpose.

17. The proposal therefore risks affecting legitimate cross-border families in the same manner as the avoidance arrangements it seeks to address.

18. <u>Submitted</u>: It is submitted that the measure should be more narrowly targeted through an appropriate purpose-based or connection-based test. For example, the rule could be limited to transfers made within a defined period before or after, or in contemplation of, the cessation of residence by either spouse.

19. This would better align the operative provision with the stated policy concern, while avoiding unintended consequences for ordinary cross-border marriages.

20. As an aside, we note the statement in the EM that the policy position is that spouses constitute a "single economic unit". This indicates a change in the current policy position as this principle of "single economic unit" is currently not applied consistently.

21. At present, in a marriage out of community of property, the income of each spouse is taxed separately, as if they were not married at all (other than for the limited anti-avoidance provisions in section 7(2)).

22. The single economic unit principle is thus not applied for income tax purposes.

23. Submission: However, if NT has changed its policy position, we recommend further public consultation as the impact goes beyond this amendment.

24. Even in the case of spouses who are married in community of property, trade income where the trade is carried on by only the one spouse is generally taxable in the hands of the spouse who carried on that trade, with non-trade income generally deemed to accrue equally to both spouses, in terms of section 7(2A).

25. If there was a change in the policy position that spouses constitute a single economic unit, all income should be deemed to accrue equally to both spouses.

26. Submission: Any new policy on whether there is a single economic unit should be applied consistently and would require significant amendments across all tax Acts.

27. If the proposal is to proceed, insofar as the wording is concerned, we suggest that the words "*on the date on which the donation takes effect*" be added immediately after the proposed insertions to both paragraphs (*a*) and (*b*), so as to read: "*if that spouse is a resident on the date on which the donation takes effect*".

28. In the absence of these words, it is unclear at which stage the residency of the recipient spouse should be tested.

VALUE ADDED TAX ACT

Section 18C – Leasehold improvements – (clause 34)

29. NT proposes extending the section 18C VAT mechanism to lessors that are not registered for VAT.

30. Under the proposal, where leasehold improvements made by a tenant become part of the leased property and are transferred to the lessor without consideration, a non-VAT registered lessor will be required to submit a prescribed declaration to SARS and account for the applicable VAT within 30 days after completion of the leasehold improvements.

31. Imposing a VAT-accounting and self-assessment obligation on a person who is not registered for VAT, and who may have no awareness of the VAT system at all, is conceptually anomalous and raises real questions of awareness, enforceability and penalty exposure for non-compliant lessors.

32. Submission: Clarity is required on how the obligation will be brought to the attention of non-vendor lessors, what the consequences of non-compliance are, and whether a *de minimis* or good-faith safeguard applies.

33. We further recommend that NT consider whether the 'claw-back' is better collected from the vendor-lessee's input position rather than imposed on an unregistered lessor.

34. Comprehensive guidance is also recommended prior to implementation of the amendment. This would include:

- Detailed guidance on declaration procedures, supporting documentation requirements, and payment processes for non-VAT registered lessors.
- Clarification regarding the determination of the completion date of leasehold improvements and the commencement of the 30-day compliance period.
- Consideration of a simplified reporting and payment mechanism to reduce the administrative burden on non-VAT registered property owners.

35. These measures would assist in achieving NT's policy objective while reducing uncertainty and promoting consistent compliance.

36. With regards to subsection 2(*a*) of the proposal, it is not clear what form is being referred to. At minimum, the purpose of the form should be stated in the subsection, to assist taxpayers in identifying it.

37. With regards to the drafting of the amendment, we suggest the following changes:

38. The definition of symbol "B" in the formula - we suggest the current wording of the proposal be replaced by the following:

39. ""B" represents the amount stipulated in the agreement as the value of the improvements or if no such amount is stipulated, the open market value of the improvements as stipulated in section 3".

40. Subsection 2:

41. "Where goods have been supplied as contemplated in section 8(29) to a lessor, not being a vendor, the lessor shall within 30 days…"

42. Subsection 2(*b*):

43. "(b) calculate the tax payable on the amount stipulated in the agreement as the value of the improvements or if no such amount is stipulated, the open market value of the improvements as stipulated in section 3."

Section 54(2B) Agents and auctioneers (Clause 35)

44. An electronic-services supply through an intermediary is currently treated as made by the intermediary *only where the parties* so agree[1].
45. In terms of the proposed amendment, it is deemed to be made by the intermediary *unless the parties agree otherwise in writing*. Further, it is also proposed that the principal and intermediary are jointly and severally liable, "*notwithstanding the agreement*" between the principal and the intermediary to opt out of the application of the deeming provision.
46. This change materially shifts VAT compliance risk onto intermediaries, such as platforms, app stores and marketplaces, by default, as they could be held jointly or severally liable for the VAT on transactions that are in essence those of the principal. It should therefore be clearly communicated to affected parties, particularly given policy shift from an 'opt-in' to an 'opt-out' regime.
47. Submission: If the proposed deeming rule is retained, it is submitted that the EM should clearly disclose the shift from an opt-in to an opt-out regime, together with the clear disclosure of the introduction of joint-and-several liability, so that affected intermediaries can properly assess the implications and make informed representations. This is particularly relevant where intermediaries facilitate electronic services supplies of multiple principals, which compounds the VAT risk for the intermediary.
48. A transitional period before the proposed 1 April 2027 commencement date should also be considered.

CARBON TAX ACT

Section 17A – Carbon budget compliance refunds (clause 59)

Alignment of annual carbon tax and multi-year carbon budgets

49. We support the proposed clarification of the carbon budget compliance refund mechanism.
50. The refund mechanism is important in addressing the structural mismatch between the annual carbon tax system and the multi-year nature of the carbon budget framework. A taxpayer may exceed its annualised carbon budget allocation in a particular tax period and pay tax at the higher rate but subsequently demonstrate compliance with its cumulative carbon budget over the relevant carbon budgeting period.
51. Section 17A therefore provides an important reconciliation mechanism by allowing amounts paid in earlier years to be refunded where cumulative compliance is subsequently demonstrated.

[1] Section 54(2B)(a) of the VAT Act

52. The effectiveness of this mechanism will, however, depend on the carbon budget framework being fully operational and on the timely and consistent administration of the framework by the Department of Forestry, Fisheries and the Environment (DFFE) and SARS.

53. The annual-versus-multi-year mismatch also carries financial-reporting consequences. Where carbon tax paid in an earlier year may later be refunded on a cumulative reconciliation, taxpayers face uncertainty regarding the provisioning and deferred tax treatment of amounts that may subsequently reverse. A clear and timely reconciliation mechanism therefore supports not only cashflow but also reliable financial reporting.

54. <u>Submission</u>: It is submitted that the final legislative and administrative framework should clearly prescribe how the section 17A refund mechanism will operate in practice, including the manner in which cumulative carbon budget compliance will be verified and the timing of any resulting refund.

Administrative timelines and interdepartmental delays

55. There is a material administrative dependency between the DFFE and SARS.

56. A taxpayer's ability to obtain the refund depends on DFFE's verification of its cumulative actual emissions and carbon budget compliance before the associated tax refund can be processed.

57. Delays in the DFFE verification process may therefore delay taxpayers' ability to obtain refunds, notwithstanding that they have submitted the required information timeously.

58. The potential impact is increased by the structure of the refund mechanism itself, under which refunds for the first two tax periods may only be claimed in year three and refunds relating to years three to five may only be claimed in year six. In addition, the proposed amendments do not clarify whether a technical correction will be made to section 17A(4)(*b*) to allow for a claim of a refund to be made in year 3 or year 6, respectively.

59. Taxpayers may therefore have significant amounts of carbon tax retained for an extended period before final reconciliation.

60. From a financial management perspective, the concern is that of working capital. Under the year-3 and year-6 claim structure, potentially material amounts of carbon tax may be retained for extended periods, and any delay in DFFE verification or SARS processing lengthens the period for which the capital is effectively trapped.

61. <u>Submission</u>: It is submitted that clear statutory, regulatory or administrative timeframes be established for the verification and refund process.

62. In particular, consideration should be given to prescribing a defined period within which DFFE must complete the required verification once all required information has been submitted by the taxpayer, and a defined period within which SARS must process and pay the resulting refund following completion of the DFFE verification.

63. An escalation mechanism should also be provided where either stage is not completed within the prescribed timeframe. Taxpayers should not be prejudiced by interdepartmental administrative delays outside their control.

64. It is further submitted that section 17A(4)(*b*) be amended to allow for the claims of any refund to be made in the respective years under sub-sections (2) and (3).

Alignment of taxpayer, carbon budget holder and emissions boundary

65. The carbon tax and carbon budget regimes do not necessarily apply using identical concepts of the responsible entity or emissions boundary. Across the broader regulatory framework, different concepts may apply to the carbon tax taxpayer, the carbon budget holder or data provider, facility-level reporting and operational control.

66. This issue is directly relevant to section 17A, as the refund mechanism depends on comparing cumulative actual emissions with the cumulative carbon budget allocated by DFFE. Where the taxpayer and carbon budget holder, or their respective emissions boundaries, do not align, uncertainty may arise regarding whether the statutory comparison can be made on a like-for-like basis and which entity is entitled to the refund.

67. Submission: It is submitted that NT, SARS and DFFE should provide clear guidance to ensure that the taxpayer to which section 17A applies can be clearly matched to the relevant carbon budget, that the emissions boundary used to determine carbon tax liability is appropriately aligned with the emissions boundary used to assess carbon budget compliance for refund purposes, and that any mismatch between legal entities, facilities or operational-control arrangements is addressed before the refund mechanism becomes operational.

Scope of emissions considered for carbon budget refund purposes

68. The carbon budget framework and the Carbon Tax Act may not cover identical emissions sources. In particular, the broader carbon budget framework may allow for the inclusion of emissions that do not form part of the carbon tax base.

69. This is relevant to the section 17A refund mechanism. If DFFE determines compliance against a carbon budget that includes emissions outside the Carbon Tax Act tax base, while the refund relates only to tax paid on emissions within the Carbon Tax Act, the two calculations may not be directly comparable.

70. For example, the voluntary inclusion of Scope 2 emissions in a carbon budget should not inadvertently affect a taxpayer’s entitlement to a refund of carbon tax paid on emissions that fall within the carbon tax base.

71. Submission: It is submitted that NT and DFFE should clarify that the emissions considered in determining entitlement to a carbon tax refund under section 17A must be appropriately aligned with the emissions that gave rise to the relevant carbon tax liability.

72. The inclusion of emissions outside the Carbon Tax Act tax base in a carbon budget should not inadvertently reduce, delay or otherwise affect a taxpayer’s entitlement to a refund of carbon tax paid on emissions falling within the tax base.

Interest on carbon budget compliance refunds

73. The proposed amendments clarify when carbon budget compliance refunds may be claimed, but do not expressly address the financial consequences associated with the period during which amounts ultimately determined to be refundable are retained.

74. The mechanism potentially requires taxpayers to wait until year three or year six before the relevant amounts can be refunded. There are two distinct timing considerations: the delay inherent in the statutory refund mechanism itself, and any additional delay caused by DFFE verification or SARS processing after the taxpayer has complied with the necessary requirements.

75. The latter is of particular concern, as taxpayers should not bear the financing cost associated with administrative delays outside their control.

76. Where interest is imposed on taxpayers in respect of underpayments, interest should equally accrue on amounts ultimately determined to be refundable. In the absence of such, compliant taxpayers effectively bear an unbudgeted financing cost arising from delays outside their control.

77. Submission: It is submitted that the final legislative and administrative framework should expressly address the treatment of interest on carbon budget compliance refunds.

78. At a minimum, interest at the applicable prescribed rate should accrue where a valid refund is not paid within the prescribed SARS processing period after the taxpayer has satisfied the requirements necessary to establish its entitlement to the refund.

79. NT should also consider whether interest should accrue for some or all of the period between the original payment of the higher carbon tax and the date on which the amount becomes refundable, taking into account the potentially significant period during which the taxpayer is deprived of the use of amounts ultimately determined to be refundable. To the extent that interest is considered, confirmation should be provided that any interest payable on approved carbon tax refunds *only unconditionally accrues* to the taxpayer for income tax purposes when the actual refund amount is paid by SARS.

Schedule 2 – Amendment of threshold for commercial/institutional activities – IPCC Code 1A4a (clause 40)

Replacement of installed-capacity threshold with emissions-based threshold

80. The DTLAB proposes replacing the existing 10 MW(th) threshold for commercial and institutional fuel combustion activities under Intergovernmental Panel on Climate Change (IPCC) Code 1A4a with an emissions threshold of 25 000 tCO_2e, with effect from 1 January 2026.

81. The EM notes that businesses have invested in backup diesel generators in response to load-shedding and electricity supply constraints, but that these generators are generally only operated during electricity supply interruptions. The existing capacity-based threshold may therefore result in a compliance burden that is disproportionate to the resulting carbon tax liability.

82. We support the proposed replacement of the installed-capacity threshold with an emissions-based threshold for IPCC Code 1A4a, as this more closely aligns the threshold with actual emissions from commercial and institutional fuel combustion activities.

83. The change from an installed-capacity threshold to an emissions-based threshold does, however, introduce practical administrative considerations. Installed capacity can generally be established in advance, whereas whether an emissions threshold

has been exceeded may only become apparent during, or towards the end of the relevant period.

84. Submission: It is submitted that SARS should issue clear guidance on:

85. when carbon tax registration and licensing obligations arise where an entity exceeds the revised emissions threshold after initially expecting to remain below it;

86. the transitional registration or deregistration treatment of taxpayers that were previously within the carbon tax regime because they exceeded the 10 MW(th) installed-capacity threshold, but that fall below the revised emissions-based threshold; and

87. the point in time at which an entity should assess whether it is likely to exceed the emissions threshold, given that emissions-based thresholds may only be confirmed late in the tax period, creating uncertainty for registration, budgeting and provisioning.

Interaction between revised 1A4a carbon tax threshold and GHG reporting requirements

88. The proposed amendment changes the threshold applicable to IPCC Code 1A4a under the Carbon Tax Act. It does not, however, amend the greenhouse gas reporting requirements administered by the DFFE.

89. Accordingly, an entity may continue to have an obligation to report greenhouse gas emissions to DFFE while no longer meeting the threshold for carbon tax purposes in respect of its 1A4a activities.

90. This distinction may create practical uncertainty for entities that have historically been both greenhouse gas reporters and carbon taxpayers by virtue of exceeding the existing 10 MW(th) installed-capacity threshold.

91. More broadly, the change highlights the potential misalignment between the entities and emissions boundaries used across the greenhouse gas reporting, carbon budget and carbon tax regimes, including the concepts of data provider, taxpayer, facility and operational control.

92. Submission: It is submitted that NT, SARS and DFFE should issue coordinated guidance clearly distinguishing the greenhouse gas reporting obligation from the carbon tax registration and licensing requirements under the revised 1A4a threshold.

93. The guidance should clarify the continued greenhouse gas reporting obligation where applicable, the effect, if any, of continued greenhouse gas reporting on carbon tax registration, and the registration, licensing and deregistration implications for entities that fall below the revised carbon tax threshold.

94. Where possible, the guidance should also align the responsible entities and applicable emissions boundaries across the respective reporting and tax regimes to reduce uncertainty and administrative duplication.

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2026

96. In addition to the various matters mentioned above, there are other areas of importance that we feel should have been considered in the 2026 DTLAB. These include the following and are briefly discussed below:

    i. Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie
    ii. Home office allowances

<u>Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie</u>

97. 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.

98. 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.

99. In a prior submission, we requested that NT engage with the Independent Regulatory Board for Auditors (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.

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

101. 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.

102. <u>Submission</u>: Our proposal inserts an "Independent Registered Tax Practitioner" (as envisaged in section 223(3)(*b*) of the TAA) as the functionary to affirm the proposed objective criteria as SARS would be able to exercise regulatory control over him or her.

103. The legislation should be reworded as follows:

104. Insertion of a definition under section 8F(1) for "subordination agreement" as follows:

105. ""**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.

106. 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

107. 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.

108. 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 have been announced as at August 2026 .

109. 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.

110. 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.

111. 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 2026 DTLAB in this regard.

112. 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*).

113. 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.

114. SARS argues that section 24J is '**contemplated in section 11'** by means of section 11(*x*). Section 11(*x*) states that there shall be <u>allowed as a deduction</u> from the income of a person "*any amounts which in terms of any other provision in this Part (encompassing section 5 to 37G), are <u>allowed to be deducted</u> 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.

115. 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.

116. 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.

117. <u>Submission:</u> 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 sections in the Income Tax Act as well.

118. 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.

ANNEXURE B

EXTRACT FROM SAICA'S 2021 ANNEXURE C SUBMISSION

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

<u>Legal Nature</u>

1. 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.

2. 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.

<u>Factual Description</u>

3. The work to be performed by an auditor in section 8F(3)(f) does not in our view currently fall within the Auditing Standards and Procedures, though registered auditors commonly used Agreed Upon Procedures (AUP), these do not technically accommodate the legislative requirement. The reasons for this are discussed next.

4. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. This is achieved by the expression of an opinion by the auditor on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework. In the case of most general purpose frameworks, that opinion is on whether the financial statements are presented fairly, in all material respects, or give a true and fair view in accordance with the framework. An audit conducted in accordance with ISAs and relevant ethical requirements enables the auditor to form that opinion. (Ref: Para. A1) (ISA 200. 3.)

5. The financial statements subject to audit are those of the entity, prepared by management of the entity with oversight from those charged with governance. ISAs do not impose responsibilities on management or those charged with governance and do not override laws and regulations that govern their responsibilities. However, an audit in accordance with ISAs is conducted on the premise that management and, where appropriate, those charged with governance have acknowledged certain responsibilities that are fundamental to the conduct of the audit. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities. (Ref: Para. A2–A11) (ISA 200.4.)

6. We also further refer to paragraph R950.6 of the IRBA Code of Professional Conduct which states that following:

“***A firm shall not assume a management responsibility related to the subject matter or subject matter information of an assurance engagement provided by the firm**. If the firm assumes a management responsibility as part of any other service provided to the assurance client, the firm shall ensure that the responsibility is not related to the subject matter or subject matter information of the assurance engagement provided by the firm*.”

7. Based on the information above, it is clear that obtaining a subordination agreement would be the responsibility of management and not at the instance of the auditor.

8. In accordance with the terms of engagement, the auditor has a responsibility to express an audit opinion on the clients’ financial statements. This responsibility does not extend to any other third parties unless agreed otherwise or required by law/regulation.

9. With this in mind, from an auditing point of view, management would generally only enter into a subordination agreement in the event of factual insolvency; an action that needs to be taken to, among other things satisfy the auditor in his/her assessment of going concern (a requirement contained in ISA 570, Going Concern). Furthermore, these subordination agreements are generally entered into between related parties, for example loans from group companies or loans from shareholders.

10. IRBA has thus indicated that the process was outside of the auditing standard processes (certification was well beyond an agreed upon procedure) and had requested that the legislation be worded within the existing auditing standards framework.

The nature of taxpayers impacted

11. Taxpayers entering into subordination agreements.

Proposal

12. National Treasury should 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.

13. The legislation could be worded such that, to the extent that a company is factually insolvent and a subordination agreement has been entered into, the portion of the subordinated loan required to make good the net asset deficit would fall outside the scope of section 8F but any balance of a subordinated loan in excess of the net asset deficit would be included within the scope of section 8F. This would then result in management only entering into subordination agreements in response to the factual insolvency of a company and not for any other tax avoidance purpose.

14. If this is not acceptable, an alternative option is explained below.

15. As explained above, the auditor currently has no obligation to SARS in the course of

a normal audit engagement. SARS will therefore have to make use of information that is already available as a result of the normal audit process and with the link between the subordination agreement and the auditor's assessment of going concern, this could be found in the following places:

1. The auditor's report:

a. The auditor may have qualified his opinion based on the going concern basis of accounting not being appropriate or inadequate disclosure around the material uncertainties relating to the going concern assumption;

b. The auditor may have included an emphasis of matter based on material uncertainty relating to going concern (please note that in terms of the new and revised auditor reporting requirements effective for periods ending on/after 15 December 2016), this will no longer be an emphasis of matter but will rather be included as a separate paragraph within the auditor's report);

c. In the new auditor's report (effective for periods ending on/after 15 December 2016), this may be included as a key audit matter.

2. In the management report:

This is issued by the auditor to the management of an entity. It would be assumed that if there is uncertainty relating to going concern, this will be included in such report.

[END]