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Parliament Standing Committee on Finance
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Dear Sir and Madam

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

The South African Institute of Chartered Accountants (SAICA) herewith presents its comments and submissions on the 2025 draft tax bills released by Minister Godongwana on the 16th of August 2025. We once again thank the Standing Committee on Finance (SCoF) for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges.

These bills represent the last part of the implementation of the proposals in Budget 2025 and, in principle, are represented in Chapter 3 (Fiscal Policy), Chapter 4 (Revenue trends and tax proposals) and Annexure C (Additional tax policy and administrative adjustments) to Budget 2025.

We have set out our detailed submission in Annexures A-C. Below are the key matters and concerns that we wish to engage with SCoF on, as well as explanations as to why these matters are important to us.

1. Public Consultation process

SAICA has over the years raised various concerns over the public consultation process and 2025 is no different. Over the last 2 decades Parliament and Treasury have made welcome adjustments to the process, but fundamental concerns remain. The obligation on both the Executive (as relates to policy and regulation) and Parliament (legislation) to ensure a participative democracy has been well documented in judgments of the Constitutional Court. This same court has also clarified over many judgements what this obligation entails and when it is not met.



As a country we should never forget the reason why the court and the Constitution impose such an obligation, namely that before our democracy, political representatives would make law and regulations without consulting the people and the communities impacted by these laws and regulations.

A: Treasury “Chatham House” rules public consultation process

National Treasury and SARS have over the last few years adopted a public consultation process whereby they instruct the public not to record or repeat discussions from these public consultations on draft legislation, as well as from identifying any speaker or participant. SAICA has previously proposed having a platform for policy and legislative proposal engagements where such discussions on future or theoretical proposals or matters are done on this basis to enable open and frank discussion by all parties to the discussion.

However, we believe the current approach in applying such narrow principles to public consultations on draft legislation for a current budget and fiscal year is not in the best interest of constructive consultation. The public must be able to hold National Treasury and SARS to what they state as the intended policy or process rationale and should also be able to engage ScoF on what was stated as the policy rationale as part of its public consultation process. Though National Treasury and SARS have no direct obligation to engage in a legislative public consultation process, they do (according to the courts) have such an obligation as relates policy and regulation, which are incorporated into and reflected in legislation and regulations.

We request that ScoF engage with National Treasury and SARS on this principle to enable open and transparent discussion on **current legislative proposals**. In addition we would welcome National Treasury creating a separate forum where open and “in confidence discussions” can be had on **future proposals** and where creative thoughts and solutions and contextual facts are not made public nor held against any person.

B: Draft bills vs Bills and effective public consultation

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

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

We continue to express concerns with this process.

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

Lastly, it should be noted that under the current process, where material changes can occur from the “first reading” due to this process, **the public in fact never gets the opportunity to be consulted on the proposals as considered for adoption in the “second reading”.**

The current process also raises questions as to how tabled bill proposals are to be removed/amended by National Treasury following public consultation etc. after tabling - as was done this year by the Minister of Finance’s proposed amendment to section 8E of the Income Tax Act, which was subsequently withdrawn by the National Treasury. In this instance, we agree with the Minister’s wisdom when he stated¹:

“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.”

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

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

¹ [2025090301 Media statement - Hybrid Equity Instrument.pdf](#)

5. ScoF holds public consultation process on the bill
6. ScoF makes proposed adjustments for second reading and if there are material changes, holds further public consultation process on such changes.

C: Lack of Transparency in Consideration of Submissions

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

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

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

We request ScoF to engage National Treasury on the matter so that it properly informs the public why it has considered a matter and not included it in the tax bills for the following year.

D: Constitutionality of Ministerial powers to change tax rates

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

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

condonation rule”.

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

Budget 2025 and its 3 versions created much angst with various persons, partly driven by the litigation around this matter. SAICA recommends that ScoF revisit its position and takes its own legal advice on the constitutionality of the Minister’s powers, utilising the current legislative process to correct any concerns, to avoid similar future legal disputes disrupting the budget approval process.

E: Key technical submissions

Our submission below notes our concerns on the below listed proposals. However, following National Treasury’s engagements, we note in addition as follows:

➤ **VAT exclusion of Schools**

This provision will also impact public schools due to the relevant provision impacting rights on CAPEX (i.e. school buildings and infrastructure used by schools and owned by government). Excluding a school as an entity is a policy change and not a mere tax supply change. This change means all supplies, including on other ‘for profit’ activities or welfare activities will be excluded. The timing of the proposal is the most problematic issue and should be deferred over multiple years. Lastly, we recommend to ScoF that SARS and National Treasury disclose to ScoF the total expected output VAT payable by public and private schools should this proposal be accepted, this to determine the scale of the financial impact.

➤ **Bona fide inadvertent error**

This proposal seeks to circumvent “fault” as a requirement for the understatement penalty to apply, as set by the courts recently, moving it to a section that does not require the existence of fault, merely a numerical adjustment. This is contrary to the principles of why people should be sanctioned with penalties by the state.

➤ **Foreign pensions**

The sudden implementation of the policy change noted in 2000 is not accompanied by the same impact research and phasing in proposals, that National Treasury undertook to do at that time. In addition National Treasury has not researched and proposed equity adjustments as it undertook in 2000

to ensure that foreign pensions which did not benefit from tax deductions are similarly pro rata excluded from the taxed amount to avoid double taxation.

➤ **Form requirements for court proceedings**

Access to court is a constitutional right and imposing obstacles should be done with much care and after section 36 of the Constitution has been duly applied to justify such limitation. This is even recognised by the preamble to a similar legislation² as relates to litigation against the State. **When it comes to litigation initiated by taxpayers against SARS**, SARS already has the benefit of receiving 10 days' notice of the intended litigation (the rest of government only gets this for debt collection matters) and can also dictate to taxpayers where/to whom such notice must be filed.

This already sufficiently limits the normal rules of litigation and gives SARS ample opportunity to review and avoid unnecessary litigation. SARS seeks to force taxpayer litigants to disclose, as yet unknown facts and information, to enable/allow such litigants to access courts. This risks overreach and the use of this "form requirement" to stop litigation occurring, by unilaterally declaring non-compliance with its internal requirements for taxpayers to access the court for relief. A similar risk is currently experienced as relates to "invalid objections" as internal review process by SARS. SAICA submits this matter is properly left to the court rules and proceedings. Any abuse would be properly sanctioned by the courts to the benefit of SARS.

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

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The South African Institute of Chartered Accountants

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

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ANNEXURE A

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. A taxpayer’s ability to qualify for exemptions in respect of certain fringe benefits that rely on the application of the “remuneration proxy” is otherwise artificially distorted (increased) in the year that they return to South Africa, resulting in exempt fringe benefits potentially being taxable for that one year.

5. <u>Submission</u> : It is therefore submitted that this proposed amendment be withdrawn.

6. We also note that the draft EM states that the amendment is applicable to “foreign employment income exemption under section 10(1)(o)(ii)”, whereas the actual amendment to the proviso in the 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.

7. <u>Submission</u> : 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.
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Sections 7(5) and 25B – Taxation of trusts and beneficiaries (Clauses 3 and 25)

8. 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.

9. 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.
10. 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.
11. 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.
12. 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’.

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

15. 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.
16. 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.
17. 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.

18. 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.

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

20. "(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"

21. 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.

22. 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))

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

- 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. In our view, the potential loss to the economy (and fiscus) if this exemption is removed, should discourage its deletion.

- 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.

24. There are three main issues that must be borne in mind concerning the section 10(1)(gC)(ii) exemption.
25. Firstly, the existence of this exemption is a major benefit for non-resident retirees, many of whom have chosen to settle in SA.
26. 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. It has encouraged many wealthy retirees to settle in SA and continues to do so. Most of these individuals are wealthy by SA standards and their investment and spend in SA provides much-needed economic benefits to the country – among other things in the form of taxes: VAT, capital gains tax, estate duty and income tax.
27. The withdrawal of this exemption would 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.
28. Secondly, there is a vast difference between the tax regime applicable to a South African retirement fund and a foreign retirement fund.
29. 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.
30. Thirdly, the removal of the exemption will not result in the full amount of withdrawals becoming taxable in South Africa.
31. 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.
32. 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.

33. 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.

34. Submission: We therefore submit that the proposal to delete section 10(1)(gC)(ii) should be withdrawn. Alternatively, 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.

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

35. With effect from 2023, section 20 of the Income Tax Act was amended to limit the set-off of assessed losses to 80% of taxable income. Simultaneously, deductions such as those under section 18A (e.g. donations) are limited with reference to taxable income. However, uncertainty has arisen regarding the ordering of these limitations—specifically, whether deductions or assessed losses should be applied first in calculating taxable income.
36. To address this, the 2025 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.
37. The proposed amendment states that it will come into effect on the date of promulgation of the 2025 Taxation Laws Amendment Act. This raises a concern in that the substantive rules limiting the use of assessed losses to 80% of taxable income have already been in effect since 2023. The current amendment is merely clarifying the ordering of existing limitations, not introducing a new limitation.
38. Therefore, applying the clarification only from the date of promulgation could create inconsistencies in the application of the law between 2023 and the promulgation date which may result in:
- Retrospective uncertainty for taxpayers who have already filed returns based on their interpretation of the ordering;
 - Potential disputes with SARS over assessments for prior years;
 - A misalignment between the policy intent (which has been in place since 2023) and the legal effect of the clarification.

39. 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)

40. 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).

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

42. Submission: It is for similar reasons that we believe this amendment also needs be withdrawn until such time as further public consultations are had in this regard.
43. Including preference shares as an exchange item subject to the taxing of foreign exchange gains and losses would be highly detrimental and hinder genuine business transactions which rely on preference share funding.

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

44. 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:

45. 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))

46. The proposed amendments to subsection 24I(10A) appear to be entirely superfluous.
47. This is because the definition of ‘realised’ in para (a) of subsection 24I(1) it clearly includes a part settlement of an exchange item i.e. “*when and to the extent to which payment is received or is made*”.
48. Hence, where a debt is partly realised, section 24I(10A)(b) applies, by necessary implication, to the part of the debt that was realised. Therefore, section 24I(10A)(b) is already clearly not an ‘all or nothing’ section that only applies once the entire debt has been settled or otherwise no longer meets the requirements for deferral. Hence, the proposed incorporation of the words ‘realised in part’ are more conducive to creating confusion than leading to clarity.
49. Furthermore, where a debt is wholly or partly settled, the words following subitem (b)(ii)(bb) already clearly set out how the amount to be included in or deducted from income is to be calculated.

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

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

51. The section 42 tracing rule, whereby the company acquiring the listed shares ‘steps into the shoes’ of the disposer of the shares from the perspective of the amounts and dates of incurral of expenditure and the capital or revenue nature of the holding, and has to account

for the disposer's base cost as its CTC, is currently problematic where the acquiring company has to apply it, i.e. if the 35%/25% listed company holding requirements or 90 day requirements are not met.

52. In particular, it is unclear how the acquiring company is meant to obtain this information from the disposer where the disposer is unwilling to share it.
53. In terms of the proposal, if shares are acquired from a disposer who holds 20% or more of the shares in the listed company, this information will in effect have to be obtained from the disposer, thus exacerbating this issue.

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

VALUE ADDED TAX ACT

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

VAT Exemption for Schools

55. 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.
56. Supplies or part supplies outside of the above made by schools were considered taxable supplies.
57. 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.
58. 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.
59. 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 .
60. Certain schools supplement such state funding with school fees and even in such cases it may not be sufficient to provide quality education.
61. 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"

62. 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 outlaid 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).
63. 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.
64. 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.**
65. It is unclear if this policy change was properly considered by Treasury.
66. 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).

67. 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

68. The more practical impact issue is that of the liability for output VAT on the forced deregistration.
69. 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).
70. 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.
71. 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.
72. 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.
73. 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. Giving 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.

74. 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.

CARBON TAX ACT

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

New formula introduced

75. 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.
76. 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.
77. Furthermore, it is unclear why the symbol “TP” is introduced and how this interacts with the existing symbol “X”.

78. 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

79. 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.
80. 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.

81. Submission: It is recommended that the current existing formulas in section 6 be amended to:
82. 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
83. 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

84. 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).
85. 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.
86. 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.
87. 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.

88. 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.
89. 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.
90. It is therefore recommended that:
91. 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
92. 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	Higher Tax rate used to calculate a 'penalty' tax payable for the annual carbon tax period.
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.*

93. 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.
94. 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.
95. 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

96. 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.
97. 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"*.
98. 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.

99. 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

100. 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.
101. 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.
102. 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]*).
103. 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.
104. 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.

ANNEXURE B

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 eInvoicing (Clause 11)

24. 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.”

25. 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.
26. 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

27. 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.
28. 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.

29. 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.
30. 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.
31. 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
Nigeria³	Phased: Large taxpayers first (N5bn+ turnover)	Launched 1 August 2025	Early-stage rollout; future expansion planned	Planned but not yet implemented
Tanzania³	Existing system; expansion proposed in 2025/26 budget	Partially implemented for some taxpayers	Budget proposal to expand to SMEs	In progress
Egypt³	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
United Kingdom⁴	Long-term strategy for automation	Strategy outlined for 2030	Early-stage planning; no formal rollout yet	Unknown
France⁵	Phased by business size and sector. B2G mandatory.	Postponed to 1 September 2026	Twice delayed; integration and readiness issues	Scalability delayed
Italy⁶	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

³ [E-Invoicing Mandates Across Africa: Key Changes and Digital Tax Trends - VATabout](#)

⁴ <https://www.taxadvisermagazine.com/article/e-invoicing-and-real-time-reporting-opportunity-shaped-burden>

⁵ <https://ec.europa.eu/digital-building-blocks/sites/spaces/DIGITAL/pages/467108885/eInvoicing+in+France>

⁶ <https://ec.europa.eu/digital-building-blocks/sites/spaces/DIGITAL/pages/467108890/eInvoicing+in+Italy>

32. 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.
33. 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.
34. 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.
35. A Socio-Economic Impact Assessment System (SEIAS) should be conducted to consider:
 - a) incremental costs for independent software vendors (ISVs) and SMEs;
 - b) the burden for imported ERPs with limited local roadmap support; and
 - c) benefits and potential unintended consequences (e.g., cash-flow impacts of clearance/CTC).
36. A phased rollout could potentially be implemented in the following way:
 - a) Start with business to government (B2G) and/or large taxpayers on a voluntary basis;
 - b) Expand by segment only after readiness is demonstrated; and
 - c) Publish milestones and a minimum 24–36-month lead time before any mandatory stage, aligning with global trends.
37. 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.
38. 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

39. 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.
40. 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.

41. 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.
42. 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.
43. 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:

44. 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.
45. 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.
46. 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)

47. 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.”*
 48. 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.
 49. 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.
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| <ol style="list-style-type: none"> 50. 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. 51. It is further submitted that this is not merely an administrative alignment but significantly impacts on access to court and due process. |
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Section 222 – ‘Bona fide inadvertent error’ (Clause 21)

52. 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.
53. 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’.
54. 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.
55. 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.
56. 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.”

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

58. Submission: We submit that penalties should only apply when the conduct of the taxpayer offends the public interest. It should not be used as an instrument to collect additional taxes when innocent mistakes are made.
59. The proposed amendments represent a move away from imposing USPs based on *how* the taxpayer made errors to *the quantum* of the understatement arising from the taxpayer errors. It is submitted that such a standard is inequitable and inappropriate as a gateway for whether USP is justified.

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

60. 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*.
61. 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.
62. 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.
63. This will also have an impact on the evidentiary burden on the taxpayer in contesting the imposition of such penalties.

64. 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

65. 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.
66. 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.
67. 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.
68. 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."
69. 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.

70. 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

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

74. 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.

75. 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.

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

ANNEXURE C

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2025

Draft Taxation Laws Amendment Bill

1. 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:

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

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

2. 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.
3. 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.
4. 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.
5. Unfortunately, there has been no progress in this regard.
6. 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.

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| <ol style="list-style-type: none">7. <u>Submission</u>: 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.8. The legislation should be reworded as follows:9. Insertion of a definition under section 8F(1) for “subordination agreement” as follows:10. ‘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. |
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11. 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

12. 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.
13. 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.

14. 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.
15. 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.

16. 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.

17. 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).
 18. 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.
 19. 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.
 20. 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.
 21. 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.
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| 22. | <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 section in the Income Tax Act as well. |
| 23. | 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. |

MATTERS NOT ADDRESSED IN DTALAB 2025

Constitutionality of various provisions in the legislation

1. 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:
 - 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;
 - 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
 - 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.
2. 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.

3. 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.
4. 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.
5. These sections should be revisited to ensure that Parliament approves the levying (or not) of taxes in these particular circumstances.

VAT refunds

6. 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.

7. 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.
8. 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.

9. 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)

10. 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”.
11. However, on closer inspection of the Chapter 5 guidelines, no rules are set out for verification.
12. 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”.
13. In practice and substance none of these procedures differ from “field audits”, other than in scope.
14. 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.
15. 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.

16. 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.

17. 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

18. 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.”

19. 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.

20. 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

21. 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.
22. In some cases, these verifications, inspections, audits and “criminal investigations” by SARS take months or years to finalise.
23. However, it remains unclear what the term “criminal investigation” entails and whether it will be applied per taxpayer or include entire industries etc.
24. 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.

25. 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.
 26. 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).
 27. 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.
 28. 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.
 29. 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.
 30. 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 level⁷. SARS doing investigations and then also paying and sourcing counsel for NPA matters essentially puts SARS on equal footing with the historical Scorpions unit.
31. 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.
 32. The administrative decision made by SARS should be subject to objection and appeal.
 33. 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.

⁷ <https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles-first-edition-63530cd2-en.htm>

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

34. 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).
35. 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.
36. 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'.
37. 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.
38. Of concern was, as held in the judgment, that the applicant's version that the letters were not sent on the dates reflected therein remains accordingly unchallenged, and there can be no *bona fide* dispute of fact on this point.
39. This has been our members' experience as well.
40. 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;*
...
41. 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.

42. 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.
43. 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) that⁸:
44. (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.
45. 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.
46. 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.

⁸ <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>