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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 2026

The South African Institute of Chartered Accountants (SAICA) herewith presents its comments and submissions on the call for comment on 15 September 2026 on the 2026 draft Taxation Laws Amendment Bill and draft Tax Administration Laws Amendment Bill ("tax bills") released by National Treasury on the 30th of July 2026. SAICA once again thanks 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 tax bills represent the last part of the implementation of the proposals in Budget 2026 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 2026.

We have set out our detailed submission in Annexures A – D2 setting out the key matters and concerns that we wish to engage with SCoF on for both the current year and previous years, as well as explanations as to why these matters are important to us.



- **ANNEXURE A** – Comments on the 2026 DTLAB
- **ANNEXURE B1** – TLAB matters not addressed from previous submissions
- **ANNEXURE B2** – Extracts from previous TLAB submissions on matters not addressed
- **ANNEXURE C** – Comments on the 2026 DTALAB
- **ANNEXURE D1** – TALAB matters not addressed from previous submissions
- **ANNEXURE D2** – Extracts from previous Budget and TALAB submissions on matters not addressed

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

1. Public Consultation

SAICA has consistently, including in 2024 and 2025, raised concerns about NT's practice of issuing draft tax bills without prior consultation on the underlying proposals¹ – and, more concerningly, tabling versions in Parliament before meaningful engagement has taken place. This issue was again evident in 2025 during the withdrawal of the section 8E proposals. At that time, the Minister committed that:

“Any future proposals on structural changes to the taxation of hybrid equity instruments will follow a consultative process with all stakeholders to identify a balanced tax approach that takes into consideration the concerns of both stakeholders and government before draft tax legislation is published”.

We welcomed this commitment and hoped that 2026 would be different. However, we emphasise that the principle should apply to **all Budget proposals** reflected in draft tax bills. Proceeding to Parliament without first considering public input may:

- Force stakeholders to raise issues in parliamentary hearings that NT has already contemplated and mitigated;
- Result in avoidable amendments during the legislative process;
- Consume time for both Parliament and the public that could have been used more effectively to focus on complex points of disagreement;
- Proceeding to Parliament before public input has been considered may create avoidable pressure on the legislative process and may weaken public confidence in the effectiveness of the participation framework.

Unfortunately, NT and SARS have again in 2026 proceeded on this basis. During the 2026 NT/SARS Tax Bills workshops held on 17-18 September 2026, this question was

¹ [Submission-to-SCoF-on-the-2025-draft-Taxation-Laws-Amendment-Bill-and-Tax-Administration-Laws-Amendment-Bill.pdf; 241009 SAICA comments to the 2024 Draft TLAB TALAB GMTB GMTAB Final.pdf](#)

again posed to NT. The context of these workshops is that NT & SARS seek clarity on some of the comments and in very few if any instance, is a formal response or position provided in response to the public comments from these consultations. Formal responses are limited to the much later Parliamentary consultation process.

NT Workshop: NT's response was that there will be no NT public consultation on any revisions to the 2026 draft tax bills, notwithstanding that it was conceded that various revisions would need to be made after the initial public consultation.

On 17 September 2026, the **Constitutional Court**² held and confirmed in relation to public consultation by NT and Parliament that:

- Parliament has a discretion to determine the public participation process, but it must be reasonable in that discretion;
- Reasonableness includes a reasonable opportunity to know about the issues and have an adequate say. The opportunity must be capable of influencing the decision to be taken;
- Parliament has already publicly indicated what is reasonable. Parliament, not stakeholders, must legally justify a departure from Parliament's Practical Guide for Members of Parliament and Provincial Legislatures (Practical Guide) and the Public Participation Framework for the South African Legislative Sector (Framework), including for timeframes³.
- Where material amendments are made to a bill, failure to take steps to involve the public in such amendment is not a reasonable measure. Even the insertion of a word that affects a specific group that is not semantic, is material. Reasonableness remains the requisite standard in determining materiality.
- Parliament cannot rely on "foreshadowed" processes conducted by the Executive. Parliament's obligation stands separate. This enables the public the opportunity to raise challenges experienced with other similar legislation to ensure it is not experienced with the legislation before Parliament.
- Parliament must consider all submissions.
- Where Parliament relies on NT to consider and respond to public comments, Parliament remains obligated to ensure there is evidence that all comments were reasonably considered by Parliament itself even if those comments were included in thematic summaries by NT. This would also apply to comments that NT state as "noted".

² [Premier of the Western Cape Government and Another v Speaker of the National Assembly and Others; City of Cape Town and Others v Speaker of the National Assembly and Others \[2026\] ZACC 37.pdf](#)

³ The public participation timelines are indicated on pg.51. This includes 5 weeks invitation notice of public hearings and also conducting a pre-education workshop 7 days before hearing <https://sals.gov.za/wp-content/uploads/simple-file-list/ppf.pdf>

SAICA has made the following proposals and raised the following concerns to NT as relates its public consultation process:

- NT consider embedding consultation at the proposal stage – i.e. before drafting legislation, similar to the way national and international standard setters engage stakeholders prior to releasing an exposure draft. This would ensure that the Minister has had the opportunity to fully consider which proposals merit inclusion and would allow for parliamentary hearings that focus on refining policy, as opposed to revisiting matters that could have been resolved earlier.
- Giving more timeous notification for the National Treasury workshops. An invitation to the workshops was distributed on Thursday, 10 September 2026 for workshops scheduled to take place on 17 and 18 September – essentially one week's notice. Respectfully, this is not considered sufficient time to plan and co-ordinate to ensure all necessary stakeholders are present for the engagement. We propose that going forward, the dates for the workshop be publicised together with the draft bills, in the same way that the dates for the Annexure C workshops are communicated.
- NT determines the workshop agenda in advance, and the agenda is generally distributed shortly before the workshop. Although additional matters may be raised during the engagement, the preselection of items may limit the extent to which concerns identified by all participants can be discussed. As a result, the workshops may not address every submission received.
- There does not appear to be any publicly available record confirming that all matters submitted by stakeholders for the Budget Review have been duly considered by NT and the Minister for inclusion in or exclusion from the tax bills. The Constitutional Court has now made a specific finding on this practice. This absence of transparency leaves stakeholders uncertain as to whether the omission of certain matters reflects:
 - A deliberate policy or legislative decision, or
 - An indication that such matters fall entirely outside the scope of the relevant policy framework.

We believe it would be helpful if NT could establish a clear mechanism to document and communicate how stakeholder submissions are evaluated, ensuring that exclusions are understood as intentional policy choices rather than procedural oversights. This should include reasoning as to why only certain submissions are discussed in the NT workshops.

- In the absence of clarity regarding the outcome of their submissions, stakeholders are often compelled to resubmit the same proposals in the hope of eventually receiving a definitive response from NT. As Parliament has previously noted, stakeholders who invest time and effort into making submissions should reasonably expect at least a brief explanation as to why their proposals were accepted or rejected. Parliament's direction in this regard resulted NT's facilitation

of a follow-up engagement on 3 November 2022 (“Recurring Tax Proposals”), however this was not repeated.

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

The above proposals and application of the Constitutional principles seek to ensure that Parliament, when relying on NT in its public participation process, does not fall short of the Constitutional obligation imposed on it.

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

Yours sincerely

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ANNEXURE A – COMMENTS ON THE 2026 DTLAB

DRAFT TAXATION LAWS AMENDMENT BILL 2026

INCOME TAX ACT

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

1. Section 1.2.2 of the Explanatory Memorandum (EM), in giving the reasons for the proposed change in legislation, states that “certain statutory medical schemes fall outside the regulatory oversight of the CMS” and that “members of these schemes” do not qualify for the medical tax credits.
2. This creates the impression that there are a wider variety of affected schemes than merely those included in the proposal, which is limited to arrangements established under the Intelligence Services Act.
3. NT Workshop: NT noted that this was to address specific intelligence medical schemes however it did not confirm whether other statutory medical schemes would face the same challenge.
4. Submission: If there are indeed other affected schemes then it is submitted that these should be included in the proposal. If this is not the case, then we recommend that the wording of the EM should be amended. Furthermore, the proposal requires that the impacted schemes comply with the CMS requirements, though it is unclear and NT should confirm if these schemes currently do comply.

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

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

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

Necessity of the proposed amendment

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

9. Therefore, we do not understand how a “staggered” non-residency strategy would circumvent both donations tax and capital gains tax, as claimed in 1.4.2 of the EM. In other words, once the one spouse had become non-resident, the donation of assets to the non-resident spouse would trigger **capital gains tax** under section 9HB(5) read with paragraph 38 of the Eighth Schedule. Although the asset base of the donor spouse would have been diminished by the donation for the purposes of calculation of the capital gains “exit charge” in section 9H, capital gains tax would already have been payable upon the donation of the asset by the donor spouse to the non-resident spouse in terms of section 9HB(5) read with paragraph 38 of the Eighth Schedule.
 10. Paragraph 38(1) would apply in these circumstances because section 9HB would be deemed by section 9HB(5) not to apply.
 11. On the other hand, under current law donations tax does not apply between spouses, whether they are resident or non-resident. Therefore, the strategy whereby non-residency of the spouses is “**staggered**” is clearly not a strategy to **avoid donations tax between spouses**. It must be a strategy to **avoid the capital gains tax exit charge** but, as explained above, it would not work in any event, due to the existence of section 9HB(5).
 12. On the other hand, if the concern is tax avoidance by the splitting of the section 9H(2) ‘exit charge’ between spouses, by having one spouse donate assets to the other while they are both SA residents, then we note that paragraph 68 of the Eighth Schedule already addresses this situation.
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| <ol style="list-style-type: none"> 13. <u>NT Workshop</u>: NT conceded that the relevant tax avoidance may already be covered by current anti avoidance provisions. 14. <u>Submission</u>: We therefore suggest that the proposal be reconsidered. |
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Legitimate spousal arrangements

15. In addition to the above, the proposed wording is considerably broader than the stated abuse.
16. As currently drafted, the amendment would deny the spousal donations tax exemption and related roll-over relief in respect of any donation or transfer to a non-resident spouse, irrespective of whether the transaction forms part of an avoidance arrangement.
17. This would result in ordinary, legitimate cross-border marital arrangements being brought within the scope of the proposed amendment, including circumstances where an SA resident is married to a person who resides in and is taxed in another jurisdiction and where there is no tax-avoidance purpose.
18. The proposal therefore risks affecting legitimate cross-border families in the same manner as the avoidance arrangements it seeks to address.

19. Submission: It is submitted that the measure should be specifically targeted through an appropriate purpose-based or connection-based test. For example, the rule could be limited to transfers made within a defined period before or after, or in contemplation of, the cessation of residence by either spouse. This would better align the operative provision with the stated policy concern, while avoiding unintended consequences for ordinary cross-border marriages.

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

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

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

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

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

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

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

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

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

VALUE ADDED TAX ACT

Section 18C – Leasehold improvements – (clause 34)

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

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

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

33. NT workshop: SARS indicated that it had already started developing an administrative process similar to that used for imported services.
34. Treasury/SARS also accepted that the legislation requires a clearer empowering provision requiring submission of the form. Wording similar to the imported-services provisions was being considered.
35. Although procedural guidance may resolve some concerns, there was no final resolution regarding whether the compliance burden is proportionate for small or unsophisticated non-vendors.
36. As relates to stakeholder concerns of how the non-vendor would value the improvements from their perspective, However, Treasury/SARS acknowledged that:
- the value to the lessor may differ from the cost to the lessee;
 - bespoke improvements may have little or no comparable market value;
 - the concept needs clearer explanation; and
 - further guidance may be required in the explanatory memorandum or a SARS guidance document.
37. Submission: The current proposal and comparison does not recognise the current challenges already experienced by both SARS and non-VAT vendors as relates imported services. No cost benefit study seems to underpin this proposal. Neither the current nor proposed non-vendor inclusions have an automated VAT trigger which results in non-compliance through lack of awareness.
38. Clarity is required on how the obligation will be brought to the attention of non-vendor lessors, what the consequences of non-compliance are, and whether a de minimis or good-faith safeguard applies.
39. We further recommend that NT consider whether the 'claw-back' is better collected from the vendor-lessee's input position rather than imposed on an unregistered lessor.
40. Comprehensive guidance is also recommended prior to implementation of the amendment. This would include:
- a Detailed guidance on declaration procedures, supporting documentation requirements, and payment processes for non-VAT registered lessors.
 - b. Clarification regarding the determination of the completion date of leasehold improvements and the commencement of the 30-day compliance period.
 - c. Consideration of a simplified reporting and payment mechanism to reduce the administrative burden on non-VAT registered property owners.
41. These measures would assist in achieving NT's policy objective while reducing uncertainty and promoting consistent compliance.
42. With regards to subsection 2(a) of the proposal, it is not clear what form is being referred to. At minimum, the purpose of the form should be stated in the subsection, to assist taxpayers in identifying it.

43. With regards to the drafting of the amendment, we suggest the following changes:
44. The definition of symbol “B” in the formula - we suggest the current wording of the proposal be replaced by the following:
- “B” represents the amount stipulated in the agreement as the value of the improvements or if no such amount is stipulated, the open market value of the improvements as stipulated in section 3”.
45. Subsection 2:
- “Where goods have been supplied as contemplated in section 8(29) to a lessor, not being a vendor, the lessor shall within 30 days...”
46. Subsection 2(b):
- “(b) calculate the tax payable on the amount stipulated in the agreement as the value of the improvements or if no such amount is stipulated, the open market value of the improvements as stipulated in section 3.”

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

47. An electronic-services supply through an intermediary is currently treated as made by the intermediary *only where the parties* so agree¹.
48. In terms of the proposed amendment, it is deemed to be made by the intermediary *unless the parties agree otherwise in writing*. Further, it is also proposed that the principal and intermediary are jointly and severally liable, “*notwithstanding the agreement*” between the principal and the intermediary to opt out of the application of the deeming provision.
49. This change materially shifts VAT compliance risk onto intermediaries, such as platforms, app stores and marketplaces, by default, as they could be held jointly or severally liable for the VAT on transactions that are in essence those of the principal. It should therefore be clearly communicated to affected parties, particularly given policy shift from an ‘opt-in’ to an ‘opt-out’ regime.
50. NT workshop: Treasury explained that the earlier electronic-services framework did not immediately adopt a complete OECD-style full-liability model for platforms. International developments and greater platform willingness to comply now support further investigation of a more complete platform-liability model. However, SARS modernisation is a prerequisite because the current registration-verification system is not sufficiently live or reliable.

51. Officials acknowledged that responsibility had been shifted, partly in response to platform requests and because placing default liability on the platform may improve administrative control.

52. Stakeholders objected to an intermediary remaining jointly and severally liable where a valid agreement places the VAT obligation on the principal supplier.

53. They argued that, once the principal assumes responsibility, the intermediary should be treated in the same way as an ordinary agent rather than remaining exposed to the principal’s default.

54. NT accepted this concern. They indicated that the final legislation would be revised so that an intermediary would not remain jointly and severally liable where the principal validly undertakes to account for VAT.

55. Stakeholders requested a transitional period to allow existing contracts to be reviewed and amended. NT noted the concern.
56. Submission: If the proposed deeming rule is retained, it is submitted that the EM should clearly disclose the shift from an opt-in to an opt-out regime, together with the clear disclosure of the introduction of joint-and-several liability, so that affected intermediaries can properly assess the implications and make informed representations. This is particularly relevant where intermediaries facilitate electronic services supplies of multiple principals, which compounds the VAT risk for the intermediary.
57. A transitional period before the proposed 1 April 2027 commencement date should also be considered.

CARBON TAX ACT

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

Alignment of annual carbon tax and multi-year carbon budgets

58. We support the proposed clarification of the carbon budget compliance refund mechanism.
 59. The refund mechanism is important in addressing the structural mismatch between the annual carbon tax system and the multi-year nature of the carbon budget framework. A taxpayer may exceed its annualised carbon budget allocation in a particular tax period and pay tax at the higher rate but subsequently demonstrate compliance with its cumulative carbon budget over the relevant carbon budgeting period.
 60. Section 17A therefore provides an important reconciliation mechanism by allowing amounts paid in earlier years to be refunded where cumulative compliance is subsequently demonstrated.
 61. The effectiveness of this mechanism will, however, depend on the carbon budget framework being fully operational and on the timely and consistent administration of the framework by the Department of Forestry, Fisheries and the Environment (DFFE) and SARS.
 62. The annual-versus-multi-year mismatch also carries financial-reporting consequences. Where carbon tax paid in an earlier year may later be refunded on a cumulative reconciliation, taxpayers face uncertainty regarding the provisioning and deferred tax treatment of amounts that may subsequently reverse. A clear and timely reconciliation mechanism therefore supports not only cashflow but also reliable financial reporting.
63. NT workshop: The legislative amendment initially presented was principally a technical clarification. A reference to the “immediately preceding tax period” was removed because it did not accurately reflect the intended refund arrangement.
 64. Under the design described during the workshop:
 - Refunds relating to compliance in the first two years of the five-year carbon budget period could be claimed in year three.
 - Refunds relating to the subsequent years could be claimed in year six.
 - A final reconciliation covering years one to five could be performed in year six.
 65. Stakeholders proposed that relief should instead be available in the immediately

succeeding year, provided the relevant emissions remained within the applicable carbon budget allocation. The purpose was to prevent taxpayers from waiting several years to obtain the benefit of complying with their carbon budgets.

66. A possible revised approach received support in principle.
67. Submission: It is submitted that the final legislative and administrative framework should clearly prescribe how the section 17A refund mechanism will operate in practice, including the manner in which cumulative carbon budget compliance will be verified and the timing of any resulting refund.

Administrative timelines and interdepartmental delays

68. There is a material administrative dependency between the DFFE and SARS.
69. A taxpayer's ability to obtain the refund depends on DFFE's verification of its cumulative actual emissions and carbon budget compliance before the associated tax refund can be processed.
70. Delays in the DFFE verification process may therefore delay taxpayers' ability to obtain refunds, notwithstanding that they have submitted the required information timeously.
71. The potential impact is increased by the structure of the refund mechanism itself, under which refunds for the first two tax periods may only be claimed in year three and refunds relating to years three to five may only be claimed in year six. In addition, the proposed amendments do not clarify whether a technical correction will be made to section 17A(4)(b) to allow for a claim of a refund to be made in year 3 or year 6, respectively.
72. Taxpayers may therefore have significant amounts of carbon tax retained for an extended period before final reconciliation.
73. From a financial management perspective, the concern is that of working capital. Under the year-3 and year-6 claim structure, potentially material amounts of carbon tax may be retained for extended periods, and any delay in DFFE verification or SARS processing lengthens the period for which the capital is effectively trapped.

74. NT workshop: NT noted that there was collaboration between departments and SARS to ensure efficiency. Stakeholders noted that tax incentives reliant on alignment between SARS and another department mostly resulted in delays and protracted processes, raising concerns as to why this would be different.
75. The NT/SARS indicated that they would continue working to streamline the process, but no fixed verification or inter-agency processing periods were confirmed
76. Submission: It is submitted that clear statutory, regulatory or administrative timeframes be established for the verification and refund process. These could include MoU or SLA's between the government departments.
77. In particular, consideration should be given to prescribing a defined period within which DFFE must complete the required verification once all required information has been submitted by the taxpayer, and a defined period within which SARS must process and pay the resulting refund following completion of the DFFE verification.
78. An escalation mechanism should also be provided where either stage is not completed within the prescribed timeframe. Taxpayers should not be prejudiced by interdepartmental administrative delays outside their control.
79. It is further submitted that section 17A(4)(b) be amended to allow for the claims of any refund to be made in the respective years under sub-sections (2) and (3).

Interest on carbon budget compliance refunds

81. The proposed amendments clarify when carbon budget compliance refunds may be claimed, but do not expressly address the financial consequences associated with the period during which amounts ultimately determined to be refundable are retained.
 82. The mechanism potentially requires taxpayers to wait until year three or year six before the relevant amounts can be refunded. There are two distinct timing considerations: the delay inherent in the statutory refund mechanism itself, and any additional delay caused by DFFE verification or SARS processing after the taxpayer has complied with the necessary requirements.
 83. The latter is of particular concern, as taxpayers should not bear the financing cost associated with administrative delays outside their control.
 84. Where interest is imposed on taxpayers in respect of underpayments, interest should equally accrue on amounts ultimately determined to be refundable. In the absence of such, compliant taxpayers effectively bear an unbudgeted financing cost arising from delays outside their control.
85. Submission: It is submitted that the final legislative and administrative framework should expressly address the treatment of interest on carbon budget compliance refunds.
 86. At a minimum, interest at the applicable prescribed rate should accrue where a valid refund is not paid within the prescribed SARS processing period after the taxpayer has satisfied the requirements necessary to establish its entitlement to the refund.
 87. NT should also consider whether interest should accrue for some or all of the period between the original payment of the higher carbon tax and the date on which the amount becomes refundable, taking into account the potentially significant period during which the taxpayer is deprived of the use of amounts ultimately determined to be refundable. To the extent that interest is considered, confirmation should be provided that any interest payable on approved carbon tax refunds only *unconditionally accrues* to the taxpayer for income tax purposes when the actual refund amount is paid by SARS.

ANNEXURE B1 – TLAB matters not addressed from previous submissions

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2026

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

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

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

89. 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.
90. 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.
91. In a [prior submission](#), we requested that NT engage with the Independent Regulatory Board for Auditors (IRBA) on the proposed wording of the exclusion so that it aligns with the auditing standards framework and also as to what a registered auditor can do in such capacity as opposed to what is expected from management to do and verify which remains exclusive to them.
92. Unfortunately, we are not aware of any progress in this regard.
93. 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.

94. Submission: Our proposal inserts an “Independent Registered Tax Practitioner” (as envisaged in section 223(3)(b) of the TAA) as the functionary to affirm the proposed objective criteria as SARS would be able to exercise regulatory control over him or her.
95. The legislation should be reworded as follows:
96. Insertion of a definition under section 8F(1) for “subordination agreement” as follows:
97. “**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.

98. The proposed rewording of the carve out for section 8F(3)(f) is as follows:
99. “(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
 - (iii) 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

99. 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.
100. Despite one informal request for input into the home office deduction, and SARS inviting comments on the interpretation note relating thereto (see SAICA’s comments on this in 2021 and 2022), there has seemingly been no further progress on this initiative. No proposals have been announced as at August 2026.

101. 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.
102. 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.

103. In the interim, our comments have not yet been considered, and the strict requirements of section 23(b) still stand with no amendments/relaxations. We have also engaged with SARS on this matter, but their hands are tied as they need to comply with the requirements of the law, even if the legislation as they interpret it, leads to inequitable treatment (such as the denial of the interest deduction on a bond used to finance a home office – discussed in more detail below). We understand that this concern has been raised by SARS with NT, yet despite this, there are still no legislative amendments in

the 2026 DTLAB in this regard.

104. 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).
 105. 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.
 106. 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.
 107. 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.
 108. 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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| <ol style="list-style-type: none"> 109. <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 required urgently in this regard as the legislative interpretation concerns would impact various other sections in the Income Tax Act as well. 110. 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. |
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ANNEXURE B2 – Extracts from previous TLAB submissions on matters not addressed

EXTRACT FROM SAICA'S 2021 ANNEXURE C SUBMISSION

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

Legal Nature

1. Section 8F the Income Tax Act deems interest in respect of a hybrid debt instrument or hybrid interest to be treated in a similar manner to the yields of an equity instrument. These rules disallow the deduction of interest paid and deem this interest to be an *in specie* dividend for the issuer of the instrument and an *in specie* dividend for the recipient.
2. Section 8F(3)(f) stipulates that an exclusion is triggered to the deeming rule when a registered auditor has certified the payment by a company of an amount owed in respect of that instrument that had been or was to be deferred by reason of the market value of assets being less than the amount of the liabilities.

Factual Description

3. The work to be performed by an auditor in section 8F(3)(f) does not in our view currently fall within the Auditing Standards and Procedures, though registered auditors commonly used Agreed Upon Procedures (AUP), these do not technically accommodate the legislative requirement. The reasons for this are discussed next.
4. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. This is achieved by the expression of an opinion by the auditor on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework. In the case of most general purpose frameworks, that opinion is on whether the financial statements are presented fairly, in all material respects, or give a true and fair view in accordance with the framework. An audit conducted in accordance with ISAs and relevant ethical requirements enables the auditor to form that opinion. (Ref: Para. A1) (ISA 200. 3.)
5. The financial statements subject to audit are those of the entity, prepared by management of the entity with oversight from those charged with governance. ISAs do not impose responsibilities on management or those charged with governance and do not override laws and regulations that govern their responsibilities. However, an audit in accordance with ISAs is conducted on the premise that management and, where appropriate, those charged with governance have acknowledged certain responsibilities that are fundamental to the conduct of the audit. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities. (Ref: Para. A2–A11) (ISA 200.4.)
6. We also further refer to paragraph R950.6 of the IRBA Code of Professional Conduct which states that following:

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

7. Based on the information above, it is clear that obtaining a subordination agreement would be the responsibility of management and not at the instance of the auditor.
8. In accordance with the terms of engagement, the auditor has a responsibility to express an audit opinion on the clients' financial statements. This responsibility does not extend to any other third parties unless agreed otherwise or required by law/regulation.
9. With this in mind, from an auditing point of view, management would generally only enter into a subordination agreement in the event of factual insolvency; an action that needs to be taken to, among other things satisfy the auditor in his/her assessment of going concern (a requirement contained in ISA 570 (revised), Going Concern). Furthermore, these subordination agreements are generally entered into between related parties, for example loans from group companies or loans from shareholders.
10. IRBA has thus indicated that the process was outside of the auditing standard processes (certification was well beyond an agreed upon procedure) and had requested that the legislation be worded within the existing auditing standards framework.

The nature of taxpayers impacted

11. Taxpayers entering into subordination agreements.

Proposal

12. National Treasury should engage with IRBA on the proposed wording of the exclusion so that it aligns with the auditing standards framework and also as to what a registered auditor can do in such capacity as opposed to what is expected from management to do and verify which remains exclusive to them.
13. The legislation could be worded such that, to the extent that a company is factually insolvent and a subordination agreement has been entered into, the portion of the subordinated loan required to make good the net asset deficit would fall outside the scope of section 8F but any balance of a subordinated loan in excess of the net asset deficit would be included within the scope of section 8F. This would then result in management only entering into subordination agreements in response to the factual insolvency of a company and not for any other tax avoidance purpose.
14. If this is not acceptable, an alternative option is explained below.
15. As explained above, the auditor currently has no obligation to SARS in the course of

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

1. The auditor's report:

- a. The auditor may have qualified his opinion based on the going concern basis of accounting not being appropriate or inadequate disclosure around the material uncertainties relating to the going concern assumption;
- b. The auditor may have included an emphasis of matter based on material uncertainty relating to going concern (please note that in terms of the new and revised auditor reporting requirements effective for periods ending on/after 15 December 2016), this will no longer be an emphasis of matter but will rather be included as a separate paragraph within the auditor's report);
- c. In the new auditor's report (effective for periods ending on/after 15 December 2016), this may be included as a key audit matter.

2. In the management report:

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

ANNEXURE C – Comments on the 2026 DTALAB

DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL, 2026

INCOME TAX

Paragraph 1 of Fourth Schedule – Definition of “provisional taxpayer” (Clause 1)

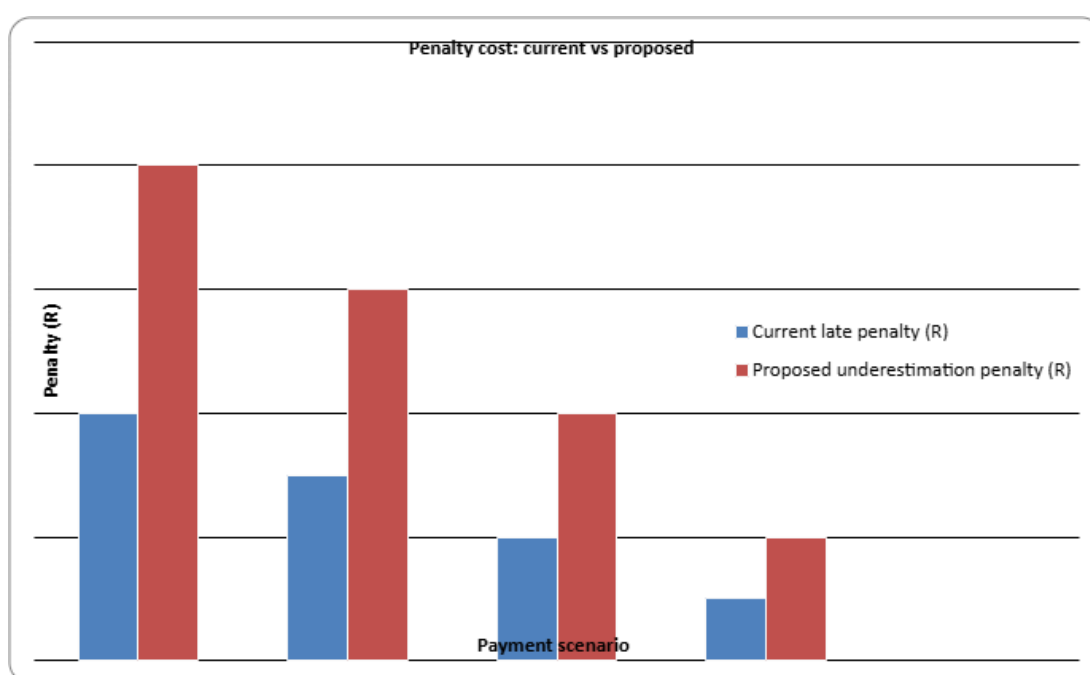
1. The proposed amendment inserts paragraph (hh): “a company that is **fully exempt** from normal tax under sections 10(1)(cA), 10(1)(d)(ii) or 10(1)(t)(ix)”. The Explanatory Memorandum (EM) (paragraph 2.1), however, states that the intended beneficiaries include “*certain partially exempt entities*” and section 10(1)(cA)(ii) bodies are precisely that: exempt only up to a threshold or excluding trading income. Read literally, the word ‘fully’ excludes from relief the very cA(ii) bodies the reform is aimed at, defeating its purpose.
2. NT Workshop: This matter was not added to the agenda and was not addressed.
3. Submission: Delete ‘fully’ or replace it with wording that captures both fully and partially exempt entities in the listed categories, so that the operative text matches the stated intent.

Paragraph 20 of Fourth Schedule (Clause 3)

4. Clause 3(1)(c) deems a provisional tax estimate to be equal to the amount actually paid in respect of it, or nil where no payment was made. The consequence is that a taxpayer who submits a perfectly accurate estimate but fails to pay is treated as having estimated a nil liability and so becomes liable for the 20% underestimation penalty rather than the lower late-payment penalty. The provision converts a payment default into an estimation penalty by legal fiction.
5. This proposed amendment effectively removes reliance on the “basic amount” if payment is late, even if the estimate submitted was accurate.
6. The two different penalty regimes seek to address two different objectionable conducts, the one is to dissuade and recover financial loss through lateness by a penalty and interest, the other is to penalise inaccurate information through low estimates. This proposal conjoins the purpose.
7. SARS is essentially seeking to address a late payment and debt concern by conjoining the issue with the more egregious transgression of inaccurate estimates.
8. This results in misalignment with the rest of the Pay-As-You-Earn (PAYE) and VAT ‘late payments’ penalty regime which attracts a 10% penalty. Provisional tax late payments will effectively attract a 20% penalty, creating inconsistency across tax types.
9. There is currently a late payment penalty and interest payable for late payments of provisional tax, so taxpayers are penalised and the state compensated in addition for the

time loss of money. This proposal significantly increases the penalty.

Scenario	Paid by due date	Payment by due date (R)	Unpaid amount (R)	Current late penalty (R)	Current interest (R)	Current total cost (R)	Proposed deemed estimate (R)	Proposed underestimation penalty (R)	Proposed total cost (R)	Incremental burden (R)
No payment	0%	-	R 1,000,000	R 100,000	R 25,890	R 125,890	-	R 200,000	R 225,890	R 100,000
25% paid	25%	R 250,000	R 750,000	R 75,000	R 19,418	R 94,418	R 250,000	R 150,000	R 169,418	R 75,000
50% paid	50%	R 500,000	R 500,000	R 50,000	R 12,945	R 62,945	R 500,000	R 100,000	R 112,945	R 50,000
75% paid	75%	R 750,000	R 250,000	R 25,000	R 6,473	R 31,473	R 750,000	R 50,000	R 56,473	R 25,000



10. In terms of the effective date, the provision is deemed to have come into operation on **25 February 2026**. Retroactivity in the fixing of a rate or threshold is problematic; retroactively imposing a *penalty* is a materially stronger rule-of-law objection. It seeks to punish taxpayers for conduct that was not subject to that penalty at the time they acted and for which a lesser penalty applied.
11. This results in retroactive additional penalties and interest on the penalty for provisional tax estimates already submitted since 25 February 2026 and most probably already paid, though late.
12. NT Workshop: In the NT workshop held on 18 September, SARS noted its view that retrospective application is permissible in the circumstances, citing case law where courts had accepted retrospective clarifications in tax legislation. SARS maintained that without backdating, taxpayers who had deliberately lodged estimates without intending to pay

could escape sanction for the current year, undermining the integrity of the provisional tax system. SARS further noted that retrospective application to the date of announcement was appropriate to prevent abuse. They also noted that this was a legislative intervention, not administrative action, and since it was not a criminal sanction, section 35(3) of the Constitution would not apply.

13. SARS conceded that not all late payments are done with the intention to avoid or defer tax compliance. It presented no evidence that such stated intention was a significant practice as relates to late payments.
14. SARS also conceded that the proposal undermines the current penalty structure of the Tax Administration Act by imposing a “conduct/behaviour penalty” as an administrative penalty.

15. South African courts distinguish between:

- **retroactive legislation**, which changes the legal consequences of a transaction or conduct after it was completed (retrospectivity in the strong sense⁴); and
- **retrospective legislation**, which operates in the future but takes past facts or circumstances into account (retrospectivity in the weak sense).

16. SAICA disagrees and SARS had to concede that the matter is not retrospective but retroactive.

17. The general presumption against retrospectivity and retroactivity is captured by our courts⁵ as legal principle and the courts state the purpose being (own emphasis):

“That legislation will affect only future matters and not take away existing rights is basic to notions of fairness and justice which are integral to the rule of law, a foundational principle of our Constitution. Also central to the rule of law is the principle of legality which requires that law must be certain, clear and stable.³² Legislative enactments are intended to “give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.”³³”

18. SARS sought to defend its position in the NT workshop by relying on the High Court judgement in Pienaar Bros⁶. However even there it was clear that:

- Retrospective unjust laws or those passed without required rationality or legality will not pass Constitutional muster;
- SARS Commissioner accepted that there may be circumstances in which

⁴ [National Director of Public Prosecutions of South Africa v Carolus and Others \(162/99\) \[1999\] ZASCA 101; \[2000\] 1 All SA 302 \(A\); 2000 \(1\) SA 1127 \(SCA\); 1999 \(2\) SACR 607 \(SCA\) \(1 December 1999\)](#)

⁵ [Veldman v Director of Public Prosecutions \(Witwatersrand Local Division\) \(CCT19/05\) \[2005\] ZACC 22; 2007 \(3\) SA 210 \(CC\); 2007 \(9\) BCLR 929 \(CC\); 2006 \(2\) SACR 319 \(CC\) \(5 December 2005\)](#)

⁶ [Pienaar Brothers \(Pty\) Ltd v Commissioner for the South African Revenue Service and Another \(87760/2014\) \[2017\] ZAGPPHC 231; \[2017\] 4 All SA 175 \(GP\); 2017 \(6\) SA 435 \(GP\); 80 SATC 1 \(29 May 2017\)](#)

retrospective legislation will offend the **Constitution**

19. In SAICA's view, applying the penalty retroactively, raises significant legality and rationality concerns. The proposal will not only penalise taxpayers who have the additional intention that SARS seeks to penalise, but all late payments. It would impose an additional consequence on estimates already submitted and, in some cases, paid late, without distinguishing between deliberate non-compliance and delays arising from cash-flow constraints, payment-system failures or other causes. SARS has not yet provided evidence demonstrating the prevalence of the conduct that the proposal seeks to address. Such evidence would assist Parliament in assessing whether retroactive application is justified, rational and proportionate.
 20. Furthermore, the proposed addition of a "conduct penalty" inserted as an additional administrative penalty undermines the scheme of the Tax Administration Act. The whole purpose of that Act was to correct the conflicting rules under other acts creating a simplified uniform tax operational framework. In this regard the TAA specifically separates penalising pure administrative non-compliance from intentional or negligent conduct, the latter which it subjects to harsher sanction.
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| <ol style="list-style-type: none"> 21. <u>Submission:</u> As there is already a sanction and interest for late payment of provisional tax, this proposal should be withdrawn, especially if no evidence of widespread conduct based on the relevant intention is provided by SARS. 22. Should Parliament consider it just and reasonable to proceed, the penalty should be amended to exclude instances of late payment that does not have the relevant intention SARS seeks to penalise. 23. Should Parliament consider it just and reasonable to proceed, the penalty should be inserted as a stand-alone conduct penalty and not as an administrative non-compliance penalty, alternatively the current administrative penalty regime should be amended to add an incremental penalty should specific conduct accompany the action of late payment. |
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CUSTOMS AND EXCISE

Amendment of section 54D of the Customs and Excise Act: Carbon budget compliance refunds – alignment of refund timeframes (Clause 7)

24. The DTALAB proposes amending section 54D of the Customs and Excise Act to provide that, notwithstanding the ordinary period for claiming refunds under that Act, carbon tax refunds must be claimed in accordance with the timeframes contemplated in section 17A of the Carbon Tax Act.
25. The EM explains that this amendment is necessary because carbon tax refunds are administered under the Customs and Excise Act, which ordinarily has a two-year prescription period, whereas section 17A provides for carbon budget compliance refunds at later stages of the five-year carbon budgeting period.

26. We support the proposed amendment to ensure that the ordinary Customs and Excise refund prescription period does not prevent taxpayers from claiming carbon budget compliance refunds within the timeframes contemplated in section 17A of the Carbon Tax Act.
27. However, the effective administration of these refunds will nevertheless depend on coordination between the Department of Forestry, Fisheries and Environment (DFFE) and SARS. Delays in DFFE verification may in turn delay the processing of the refund by SARS.
28. The practical concern for taxpayers is that of working capital, as amounts ultimately refundable may be retained for extended periods pending DFFE verification and SARS processing. Effective coordination and defined processing timeframes are therefore important not only administratively but also from a cash-flow management perspective.

29. NT Workshop: This matter was discussed in detail, with NT acknowledging the concerns and committing to considering the matter further.
30. Submission: We recommend that the administrative framework accompanying the amendment clearly provide for:
 31. the process by which DFFE verification will be communicated to SARS;
 32. a defined timeframe within which SARS must process the refund once the requirements of section 17A have been satisfied;
 33. the treatment of a claim where DFFE verification is delayed for reasons outside the taxpayer's control; and
 34. the payment of interest where a valid refund is not processed within the prescribed SARS processing period.
35. This will ensure that the intended alignment of the refund prescription provisions is effective in practice and that taxpayers are not prejudiced by interdepartmental administrative delays.

Related implementation issue – appeal process where DFFE verification affects a section 17A refund

36. In addition to the prescription and processing issues arising from the proposed amendment to section 54D, SAICA considers that the interaction between the DFFE and SARS appeal processes should be clarified to ensure that the section 17A refund mechanism can operate effectively in practice.
37. The section 17A refund mechanism depends on DFFE's verification of a taxpayer's cumulative actual emissions and carbon budget compliance before SARS can process the associated carbon tax refund.
38. SAICA acknowledges that appeal mechanisms exist under both the customs and excise

and environmental regulatory frameworks. In relation to SARS decisions concerning carbon tax, the internal administrative appeal process is contained in [Part A of Chapter XA of the Customs and Excise Act \(sections 77A to 77H\)](#).

39. In relation to carbon budget decisions, the [Draft National Greenhouse Gas Carbon Budget and Mitigation Plan Regulations](#) provide that appeals are expected to be dealt with in terms of section 36 of the [Climate Change Act](#). Section 36 in turn refers to the appeal process contemplated in section 43(4) of NEMA.
40. It is, however, unclear whether this environmental appeal route is intended to apply where a taxpayer seeks to challenge DFFE's verification of cumulative actual emissions or carbon budget compliance for purposes of establishing entitlement to a refund under section 17A of the Carbon Tax Act.
41. The uncertainty arises because the underlying verification is undertaken by DFFE, while the resulting refund is administered by SARS under the Customs and Excise framework. A taxpayer may therefore potentially need to challenge the underlying DFFE determination while also preserving its rights in relation to any SARS decision concerning the refund.
42. It is also unclear how an appeal against the DFFE verification would affect SARS's processing of the refund, including:
 - whether SARS would suspend or defer its decision while the DFFE appeal is pending,
 - how the applicable refund and appeal time periods would operate during that process, and
 - what the position would be where the DFFE determination is subsequently revised or overturned.

43. NT Workshop: This matter was not specifically discussed at the workshop.
44. Submission: We recommend that National Treasury, SARS and DFFE provide clear, coordinated guidance on the appeal and dispute-resolution process applicable where a taxpayer challenges the DFFE verification or determination relevant to a section 17A refund.
45. In particular, the guidance should clarify:
 - whether the appeal mechanism contemplated in the Draft National GHG Carbon Budget and Mitigation Plan Regulations, read with section 36 of the Climate Change Act and section 43(4) of NEMA, is expected to apply to a DFFE verification or determination made for purposes of section 17A;
 - how such a DFFE appeal interacts with the internal administrative appeal procedures applicable to SARS decisions under Part A of Chapter XA of the Customs and Excise Act;
 - whether SARS must suspend or defer its refund decision while the underlying DFFE appeal

or review is pending;

- how the taxpayer's refund and appeal rights, including any applicable prescription periods and procedural time limits, are preserved while the DFFE determination is under challenge; and
 - the treatment of the refund where the DFFE determination is subsequently revised or overturned.
46. Clear guidance on these matters would provide taxpayers with certainty regarding the appropriate appeal pathway and reduce the risk of duplicated proceedings or procedural prejudice arising from the interaction between the DFFE and SARS processes.

TAX ADMINISTRATION ACT

Section 190 – Bank screening of refunds (Clause 11)

47. The proposed amendment seeks to extend the banks' obligations to not only screen refunds deposited but also refunds that 'will be' deposited into a bank account. It is notable that whilst the wording refers to screening of amounts deposited, it is understood that it is both the amount and taxpayer's bank account which is screened, which is a misalignment with the proposed text.
48. If this is not the case, it is not clear how the bank will foresee amounts that 'will be' deposited and the related EM does not provide guidance on this.
49. The proposal is also likely to give rise to practical and operational concerns for both financial institutions and taxpayers. In particular:
- Whilst not part of the proposed amendment, the concept of "reasonable suspicion" in the current version of the legislation is not clearly defined and may already result in inconsistent application across financial institutions.
 - The proposal is likely to increase compliance and monitoring costs for financial institutions as systems and processes are enhanced to identify and report potentially suspicious transactions.
50. NT Workshop: SARS noted that the term "reasonable suspicion" was discussed with the banks when this was introduced into the legislation and clarity was sought as to how banks would apply this. Understandably the banks were not willing to share too much detail as this would be akin to SARS sharing its risk rules – which would create the opportunity for fraud – i.e. if the public were aware of the processes in place to identify fraud. For this reason, no clarification was included in the law and the banks would apply their own internally determined processes to comply with this section.
51. The issue regarding the distinction between screening of account vs screening of deposit was not discussed.

52. Submission: The wording of the legislation should reflect the process in practice – i.e. screening of the account and deposit vs just screening of the deposit.
 53. We recommend that NT and SARS provide some guidance on the practical implementation of the wording “reasonable suspicion” and the proposal before its effective date.
 54. This guidance should include:
 - clear criteria and objective indicators to help banks determine when “reasonable suspicion” exists;
 - detailed operational guidance on reporting procedures, including documentation requirements, timelines and escalation processes; and
 - a mechanism for taxpayers to obtain information and resolve matters promptly where transactions have been delayed or reported in error.
 55. We further propose that a limited liability provision be added to limit the liability of the banks to SARS in the performance of this function on behalf of SARS.
 56. Providing greater certainty regarding the scope and operation of the reporting obligation will support the policy objective of combating tax offences while minimising unintended consequences for taxpayers and financial institutions.
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57. Whilst not specific to the amendment itself, we wish to raise our concerns about the apparent lack of transparency with respect to the process and agreement between SARS and banks in this regard. There have been instances in the past where ‘special stoppers’ have been placed on refunds due or refunds paid have been reversed. In such cases, there is no communication between SARS and taxpayers, and SARS instructs the bank not to inform its client. For the latter there seems to be no legal basis in law (i.e. an unlawful instruction and possibly a breach by the bank of its contractual obligations to its client). It is only when the taxpayer or tax practitioner follows up on an outstanding refund that they may be informed that a stopper is in place. With long waiting times for appointments, this may exacerbate the issue and prevent timely resolution. To note, there are also special stoppers placed directly by SARS.
 58. With respect to bank stoppers, if it is indeed the account being ‘screened’ by the bank before a refund is released by SARS, then SARS would not suffer any harm as refunds would only be payable once all the boxes have been ticked. As such, it would appear that any instruction(s) not to keep the taxpayer in the loop may be, arguably, both unlawful and unjustified.
 59. We understand that where a bank stopper is in place, the bank may inform the taxpayer of what transpired, after the event. However, it is not clear what level of detail is shared. This is not necessarily the case with SARS ‘special stoppers’.
 60. SAICA has raised concerns for many years, however, the issue remains where taxpayers

are kept in the dark with no clear process to resolve the matter. In some instances, the special stoppers were due to a system error and therefore unjustified in those cases.

61. In the minutes of a SARS national stakeholder meeting (27 October 2022), SARS representatives noted that “in terms of section 195A, SARS can instruct the bank to hold the funds or in terms of section 195B, SARS can issue notice to the bank and pull the money back from the bank account. This process leads to verification and SARS do acknowledge that they are not notifying the taxpayers about this process but this needs to be fixed. SARS is working on ensuring that the taxpayer is notified of this process.” (Note, references should be 190(5A) and 190(5B)).
 62. Despite this commitment, the challenge remains. Even where the stoppers have been unjustified and the refund released, it seems that there is no adequate communication to taxpayers as to what resulted in the stopper or reversal.
 63. Whilst we appreciate that it is not always possible to communicate the process to taxpayers especially where fraud is detected, once the refund has been paid to the rightful taxpayer, there should be an obligation from SARS to communicate what transpired and reassure the taxpayer as to the process.
 64. SAICA is of the view that the withholding or delay of a tax refund constitutes adverse administrative action for which SARS should provide the affected taxpayer with timely notice and sufficient reasons. This would enable the taxpayer to understand the basis for the action and, where necessary, take appropriate steps to protect or enforce its rights.
 65. A further concern is that there is no transparency with respect to what the bank is communicating to SARS in relation to the taxpayer. In principle and following due process, the taxpayer should be entitled to be made aware of such information, even immediately after the fact so that it can enforce any rights it may have. SARS’ concern that unscrupulous taxpayers will ‘work out’ what SARS is asking and why these questions are being asked does not justify this perceived non-transparent approach to tax administration.
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| <ol style="list-style-type: none"> 66. <u>NT Workshop</u>: SARS noted that it believes that the current ‘communication’ is sufficient in the circumstances. Three different scenarios were referred to in relation to withholding of refunds: 67. <i>Verification letter issued, refund withheld while verification is in progress</i>: SARS argues that communication is already sufficient because where the refund is withheld due to a verification/audit, the taxpayer is already aware of the process and should thus assume that the refund is being withheld until this is finalised. It is our understanding that SARS may update the taxpayer via eFiling in the refund status window which would indicate that the refund is withheld due to a verification in process, which, if it is noted that this is the cause of the delay, may constitute sufficient communication. 68. <i>Suspicious transaction flagged independently by the bank – i.e. amounts that ‘will be’ deposited as communicated to the bank</i>: In this scenario, the bank itself identifies a suspicious transaction and blocks it, and given that SARS itself had not identified any risk, |
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there would have been no communication to the taxpayer. SARS noted that in these circumstances, the funds are only frozen for two days. If SARS agrees there is a risk, a verification/audit will follow and the taxpayer would be informed at that point. SARS believes that this minimal time lag does not warrant other communication. However, this is not deemed sufficient. Taxpayers, it is proposed, should be told not only that SARS is withholding, but that the action is causally linked to a bank flag. Without this, taxpayers cannot know whether the suspicion arose from SARS or the bank, nor can they challenge the basis of the flag.

69. *Post-deposit freeze (after the refund has been deposited but then blocked by the bank):* In this scenario, SARS has not identified any specific risks and therefore no process was initiated to review the refund. The taxpayer sees the refund reflected but cannot access it due to a bank freeze. In this instance, SARS would identify there is an issue and initiate a verification at which point the taxpayer would be aware that a verification is in progress and should reasonably assume that this would impact the timing of the refund payment – i.e. SARS sees no need for separate communication. SAICA maintains that leaving communication solely to the bank is inadequate – SARS should be required to notify taxpayers when a refund is blocked, even if the trigger came from the bank. Taxpayers, it is submitted, should not be left in the dark about whether the block is due to SARS, the bank, or another regulatory requirement. Specifically, both SARS and the bank should communicate the causal reason for the freeze. That is, taxpayers should be told whether the freeze is due to a SARS order, verification, or third-party appointment.
70. The *Devlin Cash and Carry* case established that bank correspondence and reasons for flagging refunds form part of SARS' record of decision in judicial review, underscoring the need for a causal link in communication. Taxpayers should be told whether SARS or the bank triggered a hold, and why, to enable proper recourse. SARS has indicated that further clarification will come from the courts and has, for now, maintained that current processes are adequate. In our view, until the matter is appealed and clarified, SARS should apply the precedent already set.
71. Submission: We propose that a legal compulsion be introduced to ensure that SARS communicate to taxpayers following the withholding or delay due to screening of a refund, that specifically states the reason for such action to the affected taxpayer immediately following such action.
72. A SARS request should not prevent the bank informing the taxpayer immediately after the fact, and this should be included as a legislative safeguard.
73. It is also necessary to put safeguards in place to prevent misuse of fraud detection provisions for system errors, which undermines transparency and accountability.

Section 229 – Interest remission as part of voluntary disclosure programme (VDP) (Clause 14)

74. The proposed new section 229(2) is welcomed.
75. It seeks to make provision for a voluntary-disclosure applicant to apply simultaneously for

remission of interest, addressing the *second issue* of the Constitutional Court's decision in *Commissioner for SARS v Medtronic International Trading*. The *first issue* that a concluded VDP agreement cannot be varied, is left unaddressed; the EM acknowledges that only the second aspect is dealt with.

76. With respect to the proposal that this amendment will apply in respect of VDP applications received on/after 1 March 2026, this may have the effect of disadvantaging taxpayers who applied on/after 1 March but reached settlement agreements before promulgation of the amendment Act.
 77. For example, SARS could have received applications for voluntary disclosure relief for two taxpayers (A and B) on or after 1 March 2026. SARS and Taxpayer A may have concluded an agreement with SARS before promulgation date, but after the effective date (with interest remission not considered), whereas Taxpayer B may still be awaiting agreement and will presumably still have the opportunity to amend the application to include a request for interest remission in terms of the legislative amendment. There may also be applications made before 1 March 2026, where no agreement has been reached and this proposal would then not be available to this kind of taxpayer (say, Taxpayer C).
 78. Given that the proposed amendment and current legislation is silent on variations to agreements, there appears to be no remedy to Taxpayer A in such circumstances. With respect to Taxpayer C, the application would have been made before the effective date, but there would still be no opportunity to request the interest remission even though no agreement has been signed by promulgation of the proposed amendment. This could result in unfair treatment between taxpayers based on the timing of applications and settlement agreements.
79. NT workshop: The SARS VDP unit clarified that where applications were made on or after 1 March 2026, such applications would be 'ring-fenced'. If an agreement was reached before promulgation date, the agreement would include a clause that any request for interest remission would be revisited and an addendum drafted post-promulgation date. The SARS VDP unit further clarified that if the request for remission of interest was not made at the time of the VDP application, there would be no opportunity for a second or amended application to be made to include the interest remission request. It was further clarified that any interest accumulating between the application and agreement date would be considered in the request for remission.
 80. SARS argued that taxpayers had no expectation that where an agreement is signed pre-promulgation date, since SARS would not be empowered to remit at that stage, any interest due must be paid to SARS until remitted in which case it would be refunded.
 81. SAICA noted its concerns that taxpayers who applied in good faith before the effective date, but whose agreements were only finalised later, could be unfairly excluded from relief. Clarification is thus required as to the scope of the amendment to ensure that transitional arrangements are fair and consistent.
 82. Referring to the Medtronic International Trading case, which the Constitutional Court decided in December 2024, we note that SARS' original position was that interest could

not be considered at all under the VDP process. This was challenged in earlier proceedings, where one of the courts dismissed SARS' stance and held that nothing in law prevented SARS from considering interest remission at the application stage. The Constitutional Court ultimately narrowed the position, confirming that once a VDP agreement is concluded, taxpayers cannot revisit it to seek remission of interest.

83. SARS view, pre this outcome was that it cannot look at interest remission at all as part of the VDP process. Some taxpayers may still have the perception that this is the case and may not have sought remission on this basis and would now be excluded from this on the basis that they did not include such a request in an application made on/after 1 March 2026 but prior to promulgation of the amendment.
84. SARS explained that the Constitutional Court's Medtronic judgment (20 December 2024) had two distinct findings. First, once a VDP agreement has been concluded, it cannot be revisited. Second, the Court held that SARS could not consider an interest waiver under the existing framework. SARS emphasised that the current legislative proposal is a narrow intervention aimed only at addressing the second leg of the judgment – reopening the door to allow interest remission requests at the application stage. SARS further noted that the drafting of the proposed amendment is deliberately framed to align as closely as possible with the Constitutional Court's reasoning, while correcting the anomaly the Court itself identified. SAICA cannot verify the second point from the judgement.
85. Submission: SAICA remains of the view that taxpayers who applied for relief on/after 1 March 2026 or even before this (where no agreement has yet been finalised), but did not include a request for interest remission in that application, should be given an opportunity to do so before the agreement is finalised. It is SAICA's opinion that SARS, in their assumption, are incorrect that taxpayers had no expectation that SARS could remit interest under the VDP as that is exactly what Medtronic had asked which SARS refused based on its understanding of the law. We do not believe the court addressed this part of the law, which is what the proposed amendment is seeking to clarify.

ANNEXURE D1 – TALAB matters not addressed from previous submissions

MATTERS NOT ADDRESSED IN DTALAB 2026

OTHER MATTERS THAT WE BELIEVE SHOULD HAVE BEEN CONSIDERED IN THE 2026 DTALAB

1. In addition to the various matters mentioned above, there are other areas of importance that SAICA are of the view should have been considered in the 2026 DTALAB, as raised in prior years including our 2025 DTALAB submission. These include the following and are briefly discussed below:
 - a) Constitutionality of various provisions in the legislation
 - b) VAT refunds
 - c) Information gathering (Chapter 5 of the TAA) – Verification process
 - d) Section 104 of the TAA – Decisions subject to objection
 - e) Section 190(2) of the TAA – Refunds of excess payments
 - f) Section 252 – 255 of the TAA – Electronic delivery of documents

Constitutionality of various provisions in the legislation

2. 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 below (refer to relevant extracts in Annexure B).
 - a) The constitutionality of the default judgement procedures in terms of section 172 -176 of the TAA (see SAICA's [2020 TLAB submission](#) dated 20 October 2020 and the [Annexure C 2021 Budget Review](#) submission dated 23 November 2020) where SARS argues that these procedures fall outside of judicial oversight and are thus not subject to judicial review;
 - b) the removal of the requirement of "wilfulness" from certain statutory offences that could result in selective or arbitrary prosecution by SARS (see SAICA's [Annexure C 2021 Budget Review](#) submission dated 23 November 2020); and
 - c) the powers of CSARS to prescribe the List of Qualifying Physical Impairment and Disability Expenditure (see SAICA submissions https://saicawebprstorage.blob.core.windows.net/uploads/resources/SAICA_submission_on_List_of_qualifying_disability_expenses.pdf dated [24 May 2019](#) and [31 May 2021](#)) allowing CSARS to determine what is tax deductible or not.
3. 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 said bank.

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

VAT refunds

7. 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.
8. 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 thereof;
 - 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.
9. A further concern is that SARS is unable to make any part payments of VAT refunds withheld as the legislation currently doesn’t allow for this, even if the taxpayer is able to provide partial security.

10. The requirement is for the taxpayer to provide security for 100% of the VAT refund withheld, before SARS will similarly pay 100% of the refund. There is no mechanism to allow for a partial refund, and such rigidity can have significant consequences for businesses that may rely on payment of refunds for cash flow purposes.

11. Submission: In cases where a taxpayer can provide partial security, there should be allowance for SARS to refund an amount proportionate to that security.

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

12. 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”.
13. However, on closer inspection of the Chapter 5 guidelines, no rules are set out for verification.
14. Procedurally this has become untenable as SARS practice has become the use of verification as the catch all process, covering “desk audits, verification and even forensic audits”.
15. In practice and substance none of these procedures differ from “field audits”, other than in scope.
16. The primary concern is that the current verification processes create uncertainty for taxpayers, as the procedures are not always applied in a consistent or transparent manner. This lack of clarity and consistency undermines the principles of fair tax administration.
17. 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’ actions in this regard.
18. 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 in the case of inspections, field audits and criminal investigations.

19. 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 administrative 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

20. 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.”

21. 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.

22. 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) in the 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

23. 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.
24. In some cases, these verifications, inspections, audits and “criminal investigations” by SARS take months or even years to finalise.
25. However, it remains unclear what the term “criminal investigation” entails and whether it will be applied per taxpayer or include entire industries etc.
26. The legislation should 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.
27. As SARS appears to impact 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 due.
28. 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).
29. 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.

30. 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.
 31. 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, sanctions, overlap of civil and criminal investigations, who decides on criminal investigation and prosecution if not SAPS and the National Prosecuting Authority (NPA), and who oversees the legality of all these processes as they are outside of the jurisdiction of the Independent Police Investigative Directorate.
 32. In regard to criminal intelligence-gathering, which is part and parcel of criminal investigations, we note in the 2017 Organisation for Economic Co-operation and Development (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, it is submitted, may put SARS on equal footing with the historical Scorpions unit.
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| <ol style="list-style-type: none"> 33. <u>Submission</u>: "Criminal investigation" for the purposes of withholding refunds should be defined and limited to a particular taxpayer, clarifying how it differs to the process of the NPA. Given that SARS intends to retain the criminal investigation process, a reasonable timeline within which SARS must finalise the verification, inspection, audit and criminal investigation relating to the specific refund should also be included. 34. The administrative decision made by SARS should be subject to objection and appeal. 35. To ensure that SARS does not turn into a <i>quasi</i>-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. |
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Electronic delivery of documents – Section 252 – 255 of the TAA

36. 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).
37. 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.
38. We note the judgement 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*".
39. This judgement is welcomed as it aligns the law of delivery for electronic filing pages to that of other electronic communications under the same rules.
40. Of concern was, as held in the judgement, that the applicant's version that the letters were

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

not sent on the dates reflected therein remains accordingly unchallenged, and there can be no *bona fide* dispute of fact on this point.

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

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

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

43. 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 it on his e-Filing profile.

44. 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 e-Filing.

45. 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:

46. *"(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."

47. 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.

48. This will also address taxpayers' long held concern that e-Filing 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> 40

ANNEXURE D2 – Extracts from previous Budget and TALAB submission on matters not addressed

EXTRACT FROM SAICA'S 2020 TLAB SUBMISSION

1. We have noted with concern the judgment in *Barnard Labuschagne Inc v CSARS & MoF* CASE NO: 23141/2017 (15 May 2020).
2. Of much concern was both SARS and NT arguments that the tax default judgment procedure is one outside of judicial oversights and therefore is not subject to judicial review.

This concern is increased in that both SARS and NT at the inception of the TAA and subsequent to the *Stellenbosch Legal Aid Clinic* case⁹ on garnishee orders dismissed concerns raised by the public, including at SCoF, that the provision 172 -176 TAA were unconstitutional on the basis that it was subject to the very same judicial oversight it denied existed in the *Barnard* case.

3. What is very clear is that these sections are in fact falling short of the Constitutional requirements set out in by the Constitutional Court in the Stellenbosch case namely at:

"[63] The Constitutional Court has emphasised the general principle that there must be judicial oversight where an applicant seeks an order to execute against or seize control of the property of another person. This principle has been reiterated in a number of Constitutional Court judgments."

[108] Finally, I need to comment on the second judgment's revolutionary approach to execution. On that approach it means that from now onwards execution against movable and immovable property must involve judicial oversight.

[129] It has been established in the jurisprudence of this Court that execution of court orders is part of the judicial process.[58] It requires judicial oversight. Though previous cases dealt with debtors' homes,[59] the principle underlying them was that judicial oversight of the execution process against all forms of property is constitutionally indispensable. Clearly then, the fundamental principles relating to the proscription against self-help flowing from the section 34 right of access to courts apply, with equal force, to the execution process. I would therefore affirm the breadth of the High Court's approach.

[132] The broader approach takes fuller account of the harsh effects in the absence of judicial oversight, acknowledging that they threaten the livelihood and dignity of low-income earners, a distinctly vulnerable group in our society.

4. It was noted that the judge in the *Barnard* case did not subject his views and judgement to the principles of the Constitutional Court and merely narrowly focussed on the procedure at hand, notwithstanding that the taxpayer argued a constitutional point.

⁹ University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC v University of Stellenbosch Legal Aid Clinic and Others; Mavava Trading 279 (Pty) Ltd and Others v University of Stellenbosch Legal Aid Clinic and Others (CCT127/15) [2016] ZACC 32; 2016 (6) SA 596 (CC); (2016) 37 ILJ 2730 (CC); 2016 (12) BCLR 1535 (CC) (13 September 2016)

5. Submission: It is submitted that NT and SARS review these provisions relating to default judgement to bring them within the scope of the Constitution and add amendments to the current DTALAB20.
6. Similarly, a review of the agency appointment process should be reviewed to ensure that the fair administrative principles can and are adhered to in line with this judgment.

EXTRACT FROM SAICA'S 2021 BUDGET REVIEW COMMENTS

Section 234 – Removal of requirement of “wilfulness” from certain statutory offences

Legal Nature

1. The original proposal made by NT was to remove the requirement for “wilful misconduct” (i.e. intent) in relation to tax criminal offences. The reason provided for this is that the NPA finds it too difficult to prove intention in criminal tax matters.
2. Rather than do away with intent entirely, National Treasury has now categorised the offences into those for which intent or negligence is required and those for which intent is required.
3. The first category will include aspects of non-compliance that strike at key duties that the tax system’s broad application depends on, such as failing to register, submit returns, pay over tax that has been collected from a third party and so on.
4. The second category will include aspects of non-compliance where the nature of the non-compliance is such that the requirement of intent is implied, such as issuing a false document, obstructing or hindering a SARS official, assisting another person to dissipate their assets to impede tax collection and so on.
5. The maximum penalty of a fine or two years’ imprisonment will remain, and it will be left to the presiding officer to decide what sentence or sanction is appropriate on conviction, considering all the aspects of a case, though the offence will remain a criminal conviction with significant consequences. These impacts include employment prospects, international travel, business opportunities etc.

Factual Description

6. The concern we have is that these changes result in the criminalisation of simple cases of negligence i.e. sanction is divorced from the nature of the crime. In this regard, criminalising administrative errors does not appear to be proportionate in relation to the transgression, considering for example the case of a taxpayer not updating registered details timeously.
7. Whilst SARS may choose not to prosecute for administrative ‘mistakes’, the legislation gives SARS the power to do so, should it so wish. This leads to another Constitutional concern of arbitrary prosecution.

8. SARS in response to this matter on TALAB19 noted that it doesn't prosecute, whereas the NPA does. This response ignores the fact that without SARS seeking prosecution by laying a charge with the SAPS or NPA under section 234 which, as with section 235, will exclusively be done by SARS, no criminal prosecution would occur. SARS is therefore instrumental in the process of prosecuting criminal offences.
9. This is in stark contrast to legislation such as POCA and FICA where there is a compulsion to report such criminal activities and we fail to understand why SARS would not want to compel complaints that result in prosecutions for criminal actions given its stated strategy.
10. SARS and National Treasury's stance in this matter seems to indicate an inclination that SARS wants to reserve the right who to prosecute for reasons that it feels should not be subject to public scrutiny.
11. This means that where you have 3 taxpayers who have committed the exact same criminal tax offence, a SARS official has a discretion to do nothing, to impose a civil sanction or to lay a compliant for a criminal sanction without any objective legal requirements as to how he/she decided on such sanction.
12. SARS has noted that they would not want to effect a prosecutorial process with all administrative transgressions and would like to have a discretion. This approach is misguided for criminal matters, and the solution rather lies in ensuring that only actions that are extremely objectionable to society should be criminalised.
13. The argument of SARS seems to indicate and support our view that the list of offences in section 234 TAA has not been appropriately considered.
14. It is a matter we have raised with SCoF before and has become even more important with these amendments.

The nature of businesses impacted

15. All taxpayers.

Proposal

16. The purely administrative instances of non-compliance should merely be subject to civil sanction or only criminalised for repeat offenders who, through their conduct, show a pattern of intent to undermine the *fiscus*.
17. Sections 234 – 237 of the TAA should include the compulsion to lay a charge for prosecution with SAPS and NPA. These entities will then, in their investigative and

prosecutorial frameworks, re-evaluate evidence gathered of the alleged crime and measure such evidence against the prescribed standard of proof.

EXTRACT FROM SAICA'S 2021 SUBMISSION: COMMENTS ON THE LIST OF QUALIFYING PHYSICAL IMPAIRMENT AND DISABILITY EXPENDITURE

Constitutionality of CSARS power to prescribe the List of Qualifying Physical Impairment and Disability Expenditure

- 1 We highlight once again SAICA's concerns, as raised in our submission to SARS on 24 May 2019, regarding the discretion afforded to the Commissioner of SARS in relation to the list of qualifying expenses.
- 2 SARS indicates that the list of qualifying disability expenditure is an "[interpretation of] the tax provisions governing these expenses within the wording of the legislation and tax policy intention." This statement is unfortunately patently incorrect.
- 3 Paragraph (c) of the definition of "Qualifying Medical Expenditure" in section 6B to the ITA is explicit that it is expenditure "prescribed" by the Commissioner.
- 4 It is secondary legislation arising from a power delegated to the Commissioner to prescribe what expenditure qualifies as disability expenditure. The result is that the Commissioner is given the power to decide what disability expenditure qualifies for the medical tax credit. This power is entirely unfettered, save for the requirement that the expenditure must be necessarily attached to the disability.
- 5 The Commissioner has therefore been given the delegated power to provide relief from taxation.
- 6 It is submitted that this delegated power is unconstitutional and invalid (and so is the list of qualifying expenditure prescribed in terms of this delegated power) having regard to the judgment in the case of *South African Reserve Bank and Another v Shuttleworth and Another* (CCT194/14, CCT199/14) [2015] ZACC 17. Only Parliament, may, in terms of the Constitution, levy taxes.
- 7 At para 42 the judgment states:

*"A blissful starting point would be to affirm that the power to tax residents is an incident of, and subservient to, representative democracy. The manner and the extent to which national taxes are raised and appropriated must yield to the democratic will as expressed in law. It is the people, through their duly elected representatives, who decide on the taxes that residents must bear. An executive government may not impose a tax burden or appropriate public money without due and express consent of elected public representatives. That authority, and indeed duty, is solely within the remit of the Legislature. This accords with this Court's decision in *Fedsure*, as well as the Canadian Supreme Court decision in *Eurig Estate*. Both cases hold that the primary object of the limits on how to raise national taxes or appropriate revenue, as our Constitution does in*

relation to a money Bill, is to ensure that there is “no taxation without representation”. It is plain that in our jurisdiction a decision or law that purports to impose a tax will be invalid to the extent of its inconsistency with the limits imposed by the Constitution or other law.”

- 8 The court at [40] also reaffirms that it is not only legislation that levies a tax in the narrow sense that is the subject of Constitutional prohibition to the Executive and the court states:

“A Bill before the National Assembly is a money Bill if it imposes “national taxes, levies, duties or surcharges”.⁴⁹ However, the term “money Bill” covers more than just the raising of taxes, levies, duties or surcharges. It includes a Bill that appropriates money,⁵⁰ or that abolishes, reduces or grants exemptions from taxes, 51 or that authorises direct charges against the National Revenue Fund.”

- 9 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.
- 10 Plainly, section 6B, insofar as it relates to the prescription of what constitutes disability expenditure, is unconstitutional and invalid.

- 11 Submission: SAICA proposed to National Treasury that legislative changes be made to ensure that section 6B is brought within the ambit of Parliament. However, as Parliament did not amend the legislation, we urge SARS to be cautious of straying too far into policy and ensure that the list, as currently relevant to enable the tax credit, is sufficiently extensive to, at a minimum, meet the policy objective.
- 12 We trust that SARS will support our efforts to bring this legislation within the ambit of the Constitution.