04 November 2025

Draft Response Document on the 2025 Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2025 Draft Taxation Laws Amendment Bill and 2025 Draft Tax Administration Amendment Bill

(Based on hearings by the Standing Committee on Finance in Parliament)

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1. BACKGROUND

1.1. PROCESS AND PUBLIC COMMENTS

The National Treasury and South African Revenue Service (SARS) published the 2025 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Rates Bill) on Budget Day on 12 March 2025. Public workshops were held on 4 April to discuss the comments submitted. The Rates Bill was introduced on 24 April 2025 via prior notice of its introduction published in Government Gazette No 52567 of 24 April 2025. The 2025 Rates Bill contains rates adjustments made in the 2025 Budget.

The 2025 Draft Taxation Laws Amendment Bill (TLAB) and 2025 Draft Tax Administration Laws Amendment Bill (TALAB) were published for public comment on 16 August 2025.

The National Treasury and SARS briefed the Standing Committee on Finance (SCoF) on the 2025 Draft Tax Bills on 17 September 2025. Subsequently, oral presentations by taxpayers and tax advisors on the 2025 Draft Tax Bills were made at hearings held by the SCoF on 21 and 22 October 2025.

Today, on 4 November 2025, National Treasury and SARS present to the SCoF the Draft Response Document on the 2025 Draft TLAB, TALAB and Rates Bill. The 2025 Draft Response Document contains a summary of draft responses from National Treasury and SARS officials to the public comments received and proposed steps to be taken in addressing the key issues raised during SCOF public hearings and NT and SARS stakeholder consultation workshops held on 22 and 23 September 2025.

National Treasury and SARS received written comments from 65 organisations and 6 individuals (list of commentators provided in Annexure A).

Once the responses are considered by SCoF, they will be presented to the

Minister for approval, including to approve consequential amendments to the 2025 Draft Tax Bills prior to the formal introduction/tabling by the Minister in Parliament.

1.2. POLICY ISSUES AND RESPONSES

Provided below are the responses to the key issues raised by the public in respect of the 2025 Rates Bill and the 2025 Draft Tax Bills in the form of written submissions as well as during the public hearings. These comments will be considered in finalising the 2025 Draft Tax Bills to be tabled.

1.3. SUMMARY

This response document includes a summary of all the written comments received on the 2025 Draft Tax Bills published for comment on 12 March 2025 and 16 August 2025 as well as a summary of all the written and oral presentations made during public hearings held by the SCOF on 1 July 2025.

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2025 Rates and Monetary Amounts and Amendment of Revenue Laws Bill

2. CUSTOMS AND EXCISE: INCREASE IN THE EXCISE DUTY TOBACCO

(Main reference: Part 2A of Schedule No 1 to the Customs and Excise Act: Clause 4 & Schedule II, Part 1 of the Draft Rates Bill)

2.1. Increase in excise duty on tobacco

In the 2025 Budget and the current Rates Bill, a proposal was made to increase the excise duty on tobacco by 4.75 per cent for cigarettes and cigarette tobacco; and by 6.75 per cent for pipe tobacco and cigars for 2025/26.

Comment: This excise increase has placed the excise incidence on cigarette's Most Popular Price Category ("MPPC") at 45.6% compared to a targeted incidence of 40% as per the National Treasury's excise policy. The total tax incidence on the MPPC is currently at 58.64% against the background of falling consumer affordability and unprecedented levels of illicit trade. Ideally, there should be an excise freeze on cigarettes or a major fiscal intervention in South Africa to assist in bringing the illicit trade problem under control. The current cigarette excise increase has unfortunately widened the gap between the lowest priced products at the bottom of the legal market and illicit products. Calls on National Treasury to be cautious that, in the context of severe financial pressure on consumers over several years, the excise increases on cigarettes (which took effect in March 2025) will make legal cigarettes less affordable to consumers, who continue to migrate to the illicit cigarette market at an alarming rate.

Response: Noted. National Treasury proposed an increase just in line with expected inflation and has done so for the past three financial years. In last year's submissions, National Treasury was commended for continuing with a balanced approach on cigarette excise increases in the 2024/25 fiscal year and that the cigarette excise increase (which took effect in February 2024) has helped curtail the widening of the gap between the lowest priced products at the bottom of the

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legal market and illicit products. The inflationary excise increases have taken into consideration the impact of COVID19 measures and that revenue has not recovered to pre-covid levels, however, there has been some improvement in revenue in 2024/25 compared to the previous financial year.

2.2. Increase in excise duty on alcohol products

In the 2025 Budget Review and the current Draft Rates Bill, a proposal was made to increase excise duties on alcoholic beverages by 6.75 per cent for 2025/26.

Comment: Beer excise as a percentage of the weighted average retail price has increased from 21.8% in 2020 to an estimated 25.3% in 2025, exceeding Treasury's own guideline target of 23% for beer. This demonstrates that excise increases have outpaced both inflation and retail price growth, creating a compounding burden on consumers and producers.

Response: Noted. However, as National Treasury previously indicated, excise duties are implemented to reduce consumption, and this can only happen if there is a pass-through of the excise duty increases. The fact that excise duty increase outpace retail price growth means that the industry is not passing through the excise adjustment to have the intended effect through the price mechanism. Therefore, if the price increases are kept lower than excise rate increases, it is inevitable that the incidence will be exceeded.

Comment: Limit the 2026/27 excise increase to projected CPI inflation (currently forecast at 4.3%) and implement automatic CPI indexation from 2027/28 onwards. This would create a predictable, fair, and investment-friendly tax regime.

Response: Noted. Tax policy decisions entail balancing difficult trade-offs to raise revenue and address externalities in an equitable, efficient, and sustainable manner to support government’s development objectives. Responding to these demands requires appreciation of the long-term tax policy context and the role of tax policy in the overall fiscal strategy.

Comments: What mechanisms are in place to ensure that excise tax increases do not disproportionately affect low-income consumers, who may already be burdened by inflation and cost-of-living? That is whether the policy approach is becoming more

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regressive or have social equity considerations been made in the excise adjustment?

What empirical evidence supports the claim that increased excise taxes will significantly reduce alcohol abuse, rather than simply shifting consumption patterns from formal to informal markets? That is, an understanding of whether price increases will lead to healthier outcomes rather than cause unintended consequences like the growth of illicit trade.

Has Treasury conducted a comprehensive economic impact assessment on how higher excise taxes will affect employment, small businesses, and the broader value chain in the beer industry, i.e. the long-term economic effect of multiple short-term above inflation increases.

Is Treasury open to exploring differentiated excise increases that incentivise lower-alcohol content beverages, rather than applying blanket increases? This could serve to better align industry and the public health goals of the Department.

What is Treasury's response to concerns that frequent or steep excise increases create uncertainty for business planning and pricing strategies across the beer value chain and the need for predictability and stability in all spheres of fiscal policy.

Has Treasury benchmarked its proposed excise increases against international best practices, particularly in economies with similar socio-economic profiles? Which global norms mimic the way in which excise duties are increased in South Africa or could they potentially be overreaching?

Response: Noted. A tax is progressive if the relative tax burden increases as income increases and thus falls mainly on the high-income households; and it is regressive if the relative tax burden declines as income increases and thus falls mainly on the low-income households. Consumption taxes and excise duties are by nature regressive since they are levied on specific products and are not based on the level of incomes. This is especially true for products consumed by low-income households because they spend a larger proportion of their income on these products compared to high income households.

Economic literature has already established that there is an overall negative

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relationship between quantity demanded for alcoholic beverages and prices, whereas there is generally a positive relationship with income for normal goods. Therefore, excise duties and pricing policies, and incomes are important determining factors for alcohol affordability and consumption. But it is also important that consumption is not shifted to illicit markets, therefore complementary non-tax and enforcement measures are implemented and more still needs to be done to strengthen enforcement.

Regarding the question of a comprehensive economic impact assessment on higher excise taxes, it is important to highlight that the Rates Bill deals with an adjustment to the already existing excise duties rates and is not a new policy initiative.

Applying a differentiated excise duty structure is part of the reform proposals contained in the discussion paper published last year for public comment and it is intended to incentivise lower-alcohol content beverages. National Treasury has since received valuable input and suggestions that will be consulted on before adoption.

South Africa uses the Medium-Term Expenditure Framework (MTEF) system for medium-term planning and budgeting. This framework is a government planning tool that sets a three-year spending plan, aligning annual budgets with long-term fiscal and development goals. Therefore, there is no way that tax rates cannot be assessed (and adjusted) annually based on the revenue needs of the fiscal framework. Hence, all the tax instruments in the tax system are available for consideration as revenue raising options.

Every jurisdiction that applies excise duties on alcohol products has its own national circumstances to consider when adjusting excise duties. Some, that apply specific excise duties, prefer to index the adjustment to inflation. It should however be noted that an inflationary adjustment maintains the *status quo* with regards to keeping the real value of the tax constant over time. The excise duty rates increase proposal in the budget considers all other factors, including the requirements of the fiscal framework and the reasons the excise duties are implemented in the first place.

Comments: Call for a CPI-related adjustment for all alcohol categories and ensure that any future adjustments are aligned with the CPI rate. This will provide policy certainty, encourage investments, and allow proper strategic planning.

The tax incidence for wine is already at the target level of 11%, as recommended in the current policy framework (2014) - for an industry under severe financial strain. Any further increases in cost pressure will be consequential for wine producers, particularly small producers.

The blanket statement that excise reduces affordability and consumption over time does not reflect the reality of our country, considering the growing availability and access to illicit, nor does it reflect the research shared with the National Treasury. A more nuanced approach is needed, as raising excise does not address the underlying drivers of harmful alcohol consumption (misuse/ abuse).

Further increases will widen the gap between legal and illicit pricing, feeding the growth of illicit trade and organized crime, creating further costs to society.

> *Response:* Noted. Tax policy decisions entail balancing difficult trade-offs to raise revenue (and address externalities) in an equitable, efficient, and sustainable manner to support government's development objectives. Responding to these demands requires appreciation of the long-term tax policy context, and the role of tax policy in the overall fiscal strategy. National Treasury acknowledges that although raising alcohol excise taxes may reduce general alcohol consumption levels, provided general prices increase, it has to be complemented by other non-tax measures to adequately address excessive consumption or abuse of alcohol.

Comments: The minister has amended the excise rate on spirits from R274.39/Litre AA to R292.91/Litre AA which is an increase of 6.75%. The increase was in effect 4.05 percentage points above the prevailing headline consumer price inflation (CPI) rate of 2.7% (Stats SA) at the time that the increase became effective in February this year.

> *Response:* Noted. The policy has been consistent with regards to adjustment of excise duties with expected inflation as a minimum. At the time of the March

budget, the inflationary outlook from the macro forecast was estimated at 4.7 per cent for 2025/26 as indicated in Table 3.1 "*Macroeconomic performance and projections*" of the 2025 budget review.

Comments: According to National Treasury's own analysis, the average retail prices for legal products in South Africa are approximately 51% higher across on and off trade channels (NT page 31).

Response: Noted. National Treasury was quoting and acknowledging a study by Transnational Alliance to Combat Illicit Trade (2019) focusing on 'Illicit trade in South Africa: *Challenges and Solutions'*, where it was estimated that in South Africa the average retail prices per litre were 51 per cent higher across on and off trade channels.

Comments: Treasury also acknowledges that "above-inflation excise duty adjustments have resulted in higher tax incidence across all alcohol categories, particularly for spirits" (NT page 24). Increasing the excise rate further above CPI therefore exacerbated the problem of illicit trade by widening the price gap between legal and illegal products. This not only undermines compliant industry participants but also results in substantial revenue losses to the fiscus, estimated at R16.5 billion per annum.

Response: Noted. Even though there has always been higher than inflationary increases in excise duties, the upward revision to the guideline incidence in Budget 2015 ensured that annual excise duty increases are still within the range. However, since the retail prices have not kept pace with excise increases, the guideline incidence has been exceeded. Furthermore, National Treasury acknowledges the problem of illicit trade and is concerned as it undermines government's health and excise policy objectives.

Comments: The current situation also highlights the uncertainty created by the coexistence of the 2014 excise policy and the pending 2024 policy, on which stakeholders provided input earlier this year. With the end of 2025 approaching and the 2026 Budget cycle imminent, request that National Treasury provides policy certainty by outlining the next steps and consultation timelines for the implementation of the 2024 excise policy.

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Response: Not accepted. This comment conflates unrelated issues. The current alcohol excise review process underway has nothing to do with what is currently contained in the Rates Bill. Furthermore, stakeholders were informed that there will not be any structural changes implemented without prior consultation with stakeholders.

National Treasury will be hosting workshops with stakeholders on the inputs received on the review, with the first workshop planned for 6 November 2025. It has been indicated to all the stakeholders that there will be more workshops that will follow to focus on different aspects of the alcohol tax review.

Comments: Request that National Treasury considers making no further excise duty adjustments for spirits to support efforts by the industry and government to reduce illicit trade.

Response: Noted. Tax policy decisions entail balancing difficult trade-offs to raise revenue (and address externalities) in an equitable, efficient, and sustainable manner to support government's development objectives. Responding to these demands requires appreciation of the long-term tax policy context and the role of tax policy in the overall fiscal strategy.

2.3. Increase in excise duty on Electronic Nicotine & Non-nicotine Systems

In the 2025 Budget and the current Draft Rates Bill, a proposal was made to increase excise duties on electronic nicotine and non-nicotine delivery systems, colloquially referred to as vaping, in line with expected inflation of 4.75 per cent for 2025/26.

Comments: Embrace Tobacco Harm Reduction as an effective tobacco control strategy by levying the appropriate level of excise duties on New Category Nicotine Products (such as vaping and Heated Tobacco Products). As previously noted to National Treasury, based on detailed analysis performed by BATSA and also separately by Oxford Economics, we remain of the view that the new rate of R3.18 per ml is far too high in the South African context and may have unintended consequences in the medium to long term. The University of Pretoria has also noted that the excise on e-cigarette liquid appears to exceed a risk-based rate.

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Response: Noted. As was previously indicated, the excise duty on vaping was introduced in June 2023 at an introductory rate comparable to other rates applied in other jurisdictions. However, this is still a relatively new area of excise taxation and will be reviewed over time to account for any concerns and new developments.

2.4. Illicit trade in excisable products

Comments: South Africa now has one of the highest illicit cigarette trade levels in the world at up to 74.5% of the total cigarette market in South Africa in 2024. If excise continues to increase and the low enforcement levels in the market remain the same then, based on the current trend, the legal tobacco industry will all but disappear and the tobacco tax base will be lost.

Illicit cigarettes are currently selling to the end consumer for as little as R5.00 for a packet of 20, where the Minimum Collectable Tax (MCT) alone is R26.22, and research shows that it is not commercially viable for a legal supply chain to sell a packet of 20 cigarettes to the end consumer for under R36.97 when considering reasonable margin assumptions.

What is important to note is that 3rd party research is showing that overall cigarette consumption (i.e. licit and illicit) has continued to grow year-on-year since the tobacco sales ban, mainly as a result of illicit trade.

This worsening of the illicit trade problem will no doubt raise overall tobacco consumption in South Africa, undermining the Harm Reduction agenda of tobacco legislation and fiscal policy based on public health considerations. It will also result in another year where the government receives less taxes, in real terms, from the tobacco industry despite overall tobacco consumption increasing.

Respectfully call for full appreciation of the effect that illicit trade is having on the legal tobacco industry when National Treasury models the Budget.

Response: Noted. National Treasury acknowledges the problem of illicit trade and is concerned about it as it undermines government's health and excise policy objectives. Since the 2023 Budget, the excise duty for cigarettes and tobacco

have only been adjusted by inflation having considered the challenges in the industry since COVID19 and its impact on revenue collection.

SARS is implementing a number of compliance measures including collaborating with other law enforcement agencies. Furthermore, in seeking to address the problem, additional budget resources have been allocated to SARS to rebuild enforcement capacity and improve tax compliance.

Comment*: *Alcohol Products

Comments: A further crisis impacting the industry is the large and growing market for illicit alcohol, which provides consumers with access to more affordable alternatives, possibly with more associated harm, especially invulnerable communities. These come in the form of sugar-fermented beverages (known as Ales), which benefit from not paying the total excise rate-per the correct tariff determination-and thus provide a viable alternative to wine (and other categories) for financially constrained consumers. The potential harm to these communities is a matter of grave concern.

Significant increases in the excise tax rate increase the price gap between low-priced wine and sugar-fermented ales (currently at ± 62%) and pose the risk of particularly consumers of lower-end alcohol switching from the formal market to the illicit market for alcohol, thereby not only reducing government tax income but also invalidating the rate hike's aim of reducing harm related to alcohol consumption.

National Treasury refers to SARS as an 'illicit fighter' (our interpretation) implementing compliance measures and collaborating with law enforcement. Still, they might lose sight of the unintended consequences of fuelling it with legal market price increases (raising excise above the CPI rate).

The fiscal cost is immense: the illicit alcohol trade cost the country an estimated R16.5 billion in lost revenue in 2024--13 times the amount Treasury expects to raise from above-inflation excise increases in 2025/26. Tackling the illicit trade will advance Treasury's goals of reducing harmful consumption while securing sustainable revenue growth.

When prices rise faster than incomes, people can afford fewer goods and services.

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Cheaper goods, including illicit and black- market products, become more attractive. Without improved law enforcement, more regulations (including higher excise taxes) in the legal market are unlikely to have the desired impact.

The UN has called out the threat of the growth in illicit trade globally and emphasised how this stands in direct contrast to the global Sustainable Development Goals (SDGs), endangering all aspects of the SDGs and threating the rule of law. The growth of illicit trade undermines efforts to reduce poverty, provide decent jobs and achieve economic growth.

This announcement appeared to be in direct contradiction to the sentiment expressed by National Treasury in its excise policy framework paper which was published in November 2024. The paper correctly identified illicit alcohol trade as a serious and growing concern, noting that “the problem of illicit economy or trade is a serious global issue requiring greater and concerted attention to curb both its supply and demand”.

Response: Noted. National Treasury acknowledges the problem of illicit trade and that it undermines government’s public health (including some the sustainable development goals) and excise revenue objectives. All the role-players, such as the revenue administration, law enforcement, regulators, business, and communities at large, need to coordinate efforts and resources to effectively address this challenge.

SARS, as the administrator of excise taxes, is working on strengthening its capacity to deal with the illicit economy. Furthermore, additional budget resources have been allocated to SARS to rebuild enforcement capacity and improve tax compliance. As indicated in the 2025 budget review, in the financial year 2025/26, SARS will focus on addressing the tax gap to improve revenue collection. This will be done by improving taxpayer compliance and trade facilitation by leveraging artificial intelligence and data science.

In 2020/21, after the onset of the COVID-19 pandemic, excise duty revenue declined substantially due to various levels of lockdown and sales restrictions on alcohol products, and general economic activity restrictions.

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Comment: Additional Source Allocated to SARS

Comments: We are encouraged by the government's commitment to strengthening SARS through additional funding, which will be crucial in combating illicit trade in the tobacco sector. Combined with strengthening the ability of the law enforcement bodies to investigate and prosecute complex economic crimes, this should enable National Treasury to recoup some of the R28 billion in uncollected tobacco taxes that will be lost to the illicit trade this fiscal year. This is a significant figure that amounts to R110 million lost a day, for every working day in the year.

It is critical that SARS deploys these additional resources with a focus on the primary problem – which is large illicit factories on South African soil. What is needed is robust enforcement action that should include placing customs officers, with body cameras, at every factory to monitor compliance around the clock. Important to note is that in the 2019/2022 Fiscal Year, SARS placed customs officials in all cigarette factories for a 3-month period. This simple action by SARS resulted in 1.06 billion additional cigarettes being declared to SARS when compared to the prior year, which at the 2019 excise and VAT rates amounted to at least R1.02bn returning to the fiscus.

National Treasury should closely monitor the additional funding which has been given to SARS to ensure that it is correctly utilised and is focused on areas that generate the highest level of tax collections and compliance for the funding deployed (again, based on the 2019 test case, placing customs officials in all cigarette factories around the clock will immediately generate billions in tax collections for very little government spend and will ensure full compliance in the industry);

Encourage SARS to implement a track-and-trace system in South Africa for cigarettes and vaping products. This system should be fully digitalised and should allow for interoperability with the different Southern African Customs Union ("SACU") markets and trade blocs such as the European Union, strengthening the ability of the Authorities to enforce and ultimately clamp down on illicit trade.

Response: Noted. SARS has been provided with additional resources to increase

enforcement capacity and tax compliance. National Treasury indicated to the Committee that it will engage with SARS on the recent additional allocations to support efforts to ensure that the funding is effectively directed towards strengthening compliance and revenue collection.

The proposal to implement a track-and-trace system will be considered in that context, especially to address the concerns on the proliferation of illicit products in the market. SARS is implementing a number of compliance measures including collaborating with other law enforcement agencies to address issues in the tobacco supply chain.

Comment: Introduce into the Customs and Excise Act 91 of 1964 ("the Act"), through a primary legislation change, a Minimum Retail Price ("MRP") point of R37 per pack of 20 cigarettes to achieve effective enforcement and to address retail tax compliance. This change should not take place as part of the excise policy framework review (as previously noted by National Treasury in a response to BATSA's proposals) but rather through an amendment to the Act. A primary legislation change will allow all stakeholders to provide support (through detailed public consultation) to National Treasury as to why the proposed price point is too high or too low.

Response: Noted. National Treasury agrees, in principle, with the Minimum Retail Price ("MRP") or Minimum Unit Price (MUP) measure and will consider the feasibility of its implementation.

2.5. Other Administrative matters

Comment: Reconsider the Budget proposal for the adjustment to tobacco excise duties to take effect from 1 April in future years in order to ease the administrative burden. Given the anti-forestalling rules for cigarettes, this will add to, and not ease, the administrative burden for cigarette manufacturers. In addition, the anti-forestalling rules in their current form will become unworkable in practice and cause an absurdity in law if not amended.

Response: Noted. National Treasury will work with SARS to ensure that the industry specific issues are addressed. There are consequential amendments required both in primary and subordinate legislation including a review of the anti-

forestalling provisions.

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3. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

3.1. Amending the definition of "remuneration proxy"

(Main reference: Definition of "remuneration proxy" in section 1(1) of the Act: Clause 1(1)(f) of the Draft TLAB)

Current definition excludes foreign employment income exempt under section 10(1)(o)(ii) in the prior tax year, resulting in an understated amount of remuneration proxy in the current year of assessment. This exclusion creates unintended tax advantages and inconsistent treatment for taxpayers in multiple contexts, including but not limited to formula valuation based, fringe benefit calculations. It is proposed that section 1(1) is amended to include exempt foreign employment income when determining the amount of remuneration proxy for the current tax year.

Comment: Inclusion of prior year exempt foreign income in the remuneration proxy may inflate fringe benefit values for returning expatriates, leading to unfair tax outcomes, and undermining equity, especially where foreign remuneration includes location-specific allowances. Retain the current definition and use South African remuneration as the base for proxy calculation. Therefore, the proposal should exclude foreign income to avoid distortion.

Response: Not accepted. The inclusion of both domestic and foreign employment income in the remuneration proxy ensures consistent and equitable treatment of all taxpayers, regardless of income source. Excluding foreign employment income would create disparities and undermine fairness in the application of the proxy. Employers may, however, apply a gross-up mechanism to mitigate any adverse tax impact on affected employees.

Comment: The proposed change unfairly penalises South Africans working abroad. Foreign remuneration is typically higher due to cost-of-living and other factors. Using foreign income as a proxy undermines horizontal equity and discourages tax residency. Ensure alignment with the policy intent to avoid penalising returning residents. Upon return to SA, use first-month SA remuneration as a fairer proxy.

Response: Not accepted. The inclusion of both domestic and foreign employment income in the remuneration proxy ensures consistent and equitable treatment of all taxpayers, regardless of income source. Excluding foreign employment income would create disparities and undermine fairness in the application of the proxy. Employers may, however, apply a gross-up mechanism to mitigate any adverse tax impact on affected employees.

Comment: Delay implementation and allow for further consultation.

Response: Not accepted. This is not a policy change, but a technical amendment intended to align the application of the remuneration proxy with fairness and equity considerations. The inclusion of foreign employment income previously exempt under section 10(1)(*o*)(ii) in the relevant year of assessment ensures consistent treatment of all taxpayers who received remuneration, as defined in the Fourth Schedule, for purposes of determining the remuneration proxy.

Comment: Exclude section 10(1)(*o*)(i) as it is not intended for this amendment. Section 10(1)(*o*)(i), which exempts remuneration for ship crew members and officers, is included in the DTLAB but that is not the intention as stipulated in the Explanatory Memorandum (EM) accompanying the DTLAB.

Response: Not accepted. Remuneration attributable to ship crew members and officers, as provided for under section 10(1)(*o*)(i) forms part of the proposal. The policy objective applies to all employees receiving remuneration that was previously exempt under section 10(1)(*o*). The contents of the final EM will be aligned with the TLAB.

3.2. Clarifying the inclusion of an amount assigned to a non-member spouse

(Main reference: Paragraph 2 of the Second Schedule to the Act: Clause 31 of the Draft TLAB)

Current tax legislation does not make provision for retirement fund interests assigned to a non-retirement fund member spouse upon the dissolution of a marriage under the tenets of a religion.

In 2024, the Pensions Fund Act was updated to recognise amounts assigned to a non-member spouse upon dissolution of marriage under the tenets of a religion.

Proposal is to amend paragraph 2(1)(*b*)(iA) of the Second Schedule to the Income Tax Act, to expressly include amounts assigned to a non-member spouse upon dissolution of a marriage under the tenets of a religion.

Comment: Paragraph 2(1) of the Second Schedule amendment to (iA) to allow for divorces according to 'tenets of religion'. Recommend that the effective date of 1 March 2026 be changed retrospectively to 1 September 2024, to align with the effective date of the introduction of this provision in the PFAA 2024.

> *Response:* Accepted. The effective date will be aligned with the amendments introduced by the Pension Funds Amendment Act, 2024, and will come into effect on 1 September 2024.

3.3. Reducing the threshold for ring-fencing of assessed losses

(Main reference: Section 20A of the Act: Clause 20 of the Draft TLAB)

Losses from activities that are not genuine businesses, such as losses arising from hobby or non-commercial activities can currently be used to reduce tax on other income such as salary income, giving some taxpayers an unfair advantage

Section 20A currently applies only to taxpayers in the top marginal tax bracket (45%). Taxpayers below this threshold increasingly benefit from losses from these activities to reduce their taxable income

Government proposes to lower the marginal tax bracket threshold in section 20A(1) to start from 39%, so ring-fencing applies to more taxpayers engaged in suspect trades as listed in section 20A(2).

Comment: This proposal reduces a tax benefit that encourage savings and inhibits the growth of the middle-income group in a country with poor savings. Why restrict an avenue of savings*?*

> *Response:* Not accepted. Certain taxpayers continue to utilise assessed losses

to offset against other income streams, such as salary income, thereby reducing their overall tax liability. This creates an unfair tax advantage for taxpayers who utilise assessed losses from secondary trades to shelter remuneration income. To correct this imbalance, the proposal introduces an adjustment to align the section 20A(2) income threshold with the 39% marginal tax rate. This ensures that all taxpayers who benefit from using assessed losses to reduce salary income are subject to the ringfencing rules.

Comment: This proposal unfairly impacts middle-income taxpayers and discourages entrepreneurship and "side hustles". Retain the current threshold or replace it with a fixed monetary value. Introduce sector-specific carve-out rules. Consider safe harbour thresholds, rebuttable presumptions, *de minimis* rules, and transitional relief.

Response: Not accepted. Existing legislated safeguards remain, specifically the three out of five year escape clause and the ability to set off losses against future income from the same trade, ensuring genuine businesses are not unfairly penalised.

3.4. Reinstating the exemption for child maintenance payments

(Main reference: Section 10(1)(*u*) of the Act: Clause 12(1)(*c*) of the Draft TLAB)

Child maintenance payments funded from after-tax income are currently taxed in the hands of the recipient, even though they are intended solely for the upbringing and welfare of the child. The exemption for ordinary child maintenance was inadvertently removed in 2008/2009, creating an anomaly in the tax system. Maintenance payments should not be income for the recipient and taxing them contradicts the original policy intent.

Government proposes to amend section 10(1)(*u*) to restore the exemption so that child maintenance payments funded from after-tax income remain tax neutral for the recipient.

Comment: Broad support for reinstating the exemption. However, a retrospective application is required to correct historical anomalies.

Response: Not accepted. The intention of this proposal is to take a forward-looking approach. Several years of assessment have already been completed and finalised. It is therefore preferable that taxpayers are not required to reopen any previously assessed periods.

3.5. Clarifying payment of death benefits

(Main reference: Section 1(1) of the Act: Clause 1(*h*) of the Draft TLAB)

The current wording of the definition of the savings component could be interpreted to mean that when a member of a retirement fund dies, the lump sum payment from the savings component will be taxed as ordinary income, unlike the other components.This creates unfair and inconsistent outcomes for nominees or dependants who receive the deceased member's benefits.

Government proposes to amend the Income Tax Act so that, on death, the full value in the vested, retirement, and savings components can be paid as a lump sum and is subject to the tax rates applicable to retirement fund lump sum benefits. Beneficiaries can choose a lump sum or annuity without added tax exposure.

Comment: “Nominee” and “dependant” are not defined in the Income Tax Act. Substitute the reference to "nominee or dependent" with "beneficiary as defined in the Pension Funds Act", wherever it appears.

Response: Not accepted. The Income Tax Act is aligned to the application of the meaning of "nominee" or "dependant" in the Pension Funds Act. This proposal clarifies the payment of death benefits and is aligned with section 37C of the Pension Funds Act which refers to both nominee and dependant in respect of the distribution of death benefits payable by a retirement fund. The income tax provision is only enabling the person making the election to receive the savings component value in cash on death.

3.6. Cross-border tax treatment of retirement funds

(Main reference: Section 10(1)(*g*C)(ii) of the Act: Clause 12(1)(*b*) of the Draft TLAB)

Foreign retirement benefits received by SA tax residents are currently exempt under section 10(1)(gC)(ii), which can result in double non-taxation or forfeiture of South Africa's exclusive taxing rights under double tax treaties, leading to revenue losses to the fiscus.The exemption is intended to prevent double taxation, but in most cases, it is misaligned with residence-based principles.

The deletion of section 10(1)(gC)(ii) is proposed so that foreign retirement benefits received by SA tax residents are taxed, ensuring consistency with double tax treaties and the residence-based system.

Currently SA tax residents who receive a private pension from another country such as Germany are currently taxed in those countries, yet the DTA grants SA the taxing rights. This amendment would in principle then shift the tax to SA and then no tax would be paid in the other country. The intention is not to create double tax.

Comment: South Africa risks losing its appeal as a retirement destination. Many expats and foreign retirees contribute to the economy through consumption and VAT. The repeal could discourage skilled professionals and retirees from settling in South Africa.

Comment: Repealing section 10(1)(gC)(ii) will result in double taxation of foreign retirement benefits. Contributions to foreign funds are often made from after-tax income and may not have received tax relief abroad. Taxing the full withdrawal in South Africa is unfair and inconsistent with the EET model applied to local retirement funds.

Comment: Stakeholders propose retaining the exemption “as is” or applying it only to pre-2026 retirees, introducing partial exemptions (e.g., exempting after-tax contributions or the first R1.25 million annually), treaty-based relief or alignment with section 10(1)(*o*)(ii), and deferring the effective date by three years.

Response: Partially accepted. The amendment is withdrawn. Although National

Treasury is still concerned that South Africa is giving up its taxing rights on foreign pensions and that the law creates instances of double non-taxation. To find a balance between the need for protection of South Africa's taxing right under DTA's, the technical nuances of retirement taxation regimes of several countries and the role of many expats and foreign retirees' contribution to the economy, government will initiate a renewed consultative process with stakeholders to identify a balanced approach that both addresses the stakeholder concerns raised and aligns with government's commitment to prevent double non-taxation.

3.7. Refining the definitions of 'pension preservation' and 'provident

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

Response: Partially accepted. The wording will considered to refer to a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021: Provided that the three years or longer restriction must not apply to (a) the withdrawal by the member of the amount referred to in paragraph (c); or (b) an amount transferred by the member in terms of paragraph 2(1)(c) of the Second Schedule to this fund.

4. INCOME TAX: GENERAL BUSINESS TAX

4.1. Extending the anti-avoidance rules dealing with third-party backed shares

(Main reference: Section 8EA of the Act: Clause 7 of the draft TLAB)

The Act includes anti-avoidance rules for third-party backed shares—those with dividends guaranteed by a third party through enforcement rights. If a person holds such a share during any tax year, any dividends or foreign dividends received are treated as taxable income for that person.

The third-party backed share rule applies when dividends are received and the share qualifies as third-party backed during the tax year. However, certain structures allow holders to waive enforcement rights before receiving dividends, effectively bypassing the rule. This prevents the anti-avoidance provision from applying in the following year.

> *Example:* Company A issued preference shares to Bank A with a 5-year term and a 2% yield, payable at maturity. Bank A held a third-party guarantee from Company H but waived its enforcement right in year four. This waiver meant the shares no longer qualify as third-party backed in the final year, allowing the accumulated dividends to be paid without triggering anti-avoidance rules.

Government proposes tightening anti-avoidance rules by amending section 8EA to cover cases where a holder or a connected person can enforce third-party obligations, during that year of assessment or prior years. If such rights exist, any dividends received on the share must be treated as taxable income. This aims to prevent avoidance through dispensable enforcement rights.

Comment: The proposed change means that once a share is classified as a third-party backed share, it will always remain so. However, enforcement rights might be waived for various corporate reasons unrelated to avoiding taxes. As such, the proposed changes should be more targeted.

> *Response:* Not accepted. By applying the rule to any year of assessment because such a right previously existed, it ensures a consistent treatment and closes a clear loophole by aligning the tax treatment with the actual economic substance of avoidance schemes rather than their artificial and temporary created facts-and-circumstances to which the anti-avoidance measures otherwise would not have applied.

Comment: The proposed amendment to section 8EA(3) of the Income Tax Act removes the 2024 clarification that underlying operating company shares can be disposed off and the proceeds used to pay accrued dividend within the 90-day safe harbour. Instead, any amounts used to discharge such arrears will now fall outside

the safe harbour’s protection. However, it is requested that the 2024 clarification to settle all outstanding dividends before redemption should remain explicitly stated in paragraph (a) of section 8EA(3) of the Income Tax Act.

Response: Accepted. The use of the underlying operating company shares for the settlement of outstanding preference share dividends prior to redemption is a valid and necessary commercial practice. Accordingly, the current wording in the proviso to paragraph (a) of section 8EA(3) of the Income Tax Act, which allows the use of sale proceeds to settle accumulated preference dividends, will remain unchanged.

4.2. Refining the definition of “hybrid equity instrument”

(Main reference: Section 8E of the Act: Clause 6 of the Draft TLAB)

Some financial products involving preference shares are being created such that they look and act like loans, even though they're legally considered shares.
In general, section 8E seeks to stop this by taxing these preference shares as if they were loans, buts the law only applied to those with a term of three years or less.
It has come to Government’s attention that institutions are getting around this rule by creating preference shares with a term just over three years (e.g. three years and one day).

To close this loophole, government proposed that if a financial product is treated as a loan for accounting purposes, it will also be treated as a loan for tax purposes, regardless of its term.

This proposed amendment was withdrawn on 3 September 2025.

4.3. Clarifying the ordering of set-off of balance of assessed losses and certain deductions

(Main reference: Sections 18A and 29A of the Act: Clauses 19 and 26 of the Draft TLAB)

Since the introduction of the assessed loss restriction rule in 2023, there has been uncertainty regarding the ordering of the set-off of the balance of assessed losses and deductions for donations and transfers from policyholder funds of long-term insurers.

Government proposed that amendments be introduced to clarify the ordering of these deductions in calculating taxable income. Taxpayers should apply the limitation of a deduction from taxable income determined before the application of the said deduction and before setting off any balance of assessed losses contemplated in section 20 of the Act and the assessed loss limitation rules apply last (after all deductions have been taken into account).
Taxable income should be calculated by:

- determining the deduction limit of 10 per cent of taxable income before the set-off of a balance of assessed loss under section 20(1)(a)(i) of the Act; and
- determining the transfer deduction before the deduction under section 18A and the setoff of a balance of assessed loss under section 20(1)(a)(i) of the Act.

Comment: Commentators welcomed the proposal as it improves clarity.

Response: Noted.

Comment: commentators questioned why mining companies were excluded and whether this was intentional.

Response: Accepted. The exclusion of mining companies was an oversight and the draft legislation will be changed accordingly.

Comment: Given that the proposal is merely clarifying the application of the

legislation, a commentator recommended that the effective date of the proposed clarification be aligned with the effective date of the original assessed loss limitation.

Response: Not accepted. The intention of the proposal is to be forward looking. Some years of assessment have come to pass with tax returns having been assessed and finalised. It is deemed preferable that no taxpayers are required to reopen any assessments.

4.4. Clarifying the determination of contributed tax capital

(Main reference: Section 8G of the Act: Clause 10 of the Draft TLAB)

In 2017, an anti-avoidance rule was introduced to limit the notional Contributed Tax Capital (CTC) value when a new South African holding company is interposed between a foreign parent and its SA subsidiary. It adjusts the consideration for share issuance if used to acquire shares in a group company, aligning it with the target company's existing CTC. It essentially prevents resident companies from artificially inflating CTC to enable non-resident group entities to avoid dividends tax.

The rule may unintentionally restrict legitimate equity-based transactions involving minority shareholders. The original concern was that such restructurings often lack real asset movement or capital funding.

To accommodate legitimate group financing, it is proposed that section 8G exclude equity transactions where a foreign company subscribes for shares in a South African holding company, and the funds are used to buy shares from independent minority shareholders in a group subsidiary.

Comment: Whilst the proposed relaxation is welcomed, it still does not fully address its impact on various other legitimate commercial arrangements.

Response: Not accepted*.* The anti-avoidance provisions in question will not be further relaxed. Section 8G of the Income Tax Act is an anti-avoidance measure designed to safeguard the fiscus and the integrity of the application of the notional tax concept of 'contributed tax capital'. The current proposal already introduces

a carefully considered exception to this rule and strikes an appropriate balance between corporate flexibility and government's need to prevent potential abuse and is therefore considered sufficient in its present form.

4.5. Reviewing asset-for-share and amalgamation transactions involving collective investment schemes

(Main reference: Section 41, definitions of a "company", "equity share"; section 42, definitions of "asset-for-share", "qualifying interest" and section 44 of the Act: Clauses 27, 28 & 29 of the Draft TLAB)

Collective Investment Schemes (CISs) allow investors to pool resources into diversified portfolios. For tax purposes, CISs are treated as flow-through entities, meaning income earned (such as interest or REIT dividends) is passed directly to investors, who then declare it in their tax returns.

Capital Gains Tax (CGT) is not triggered when a CIS sells assets; instead, CGT applies when investors sell their units. The Income Tax Act also includes roll-over relief provisions, such as section 42 for asset-for-share transactions and section 44 for amalgamations, which defer tax during corporate restructurings to support legitimate business transitions.

The current tax rules for CISs and corporate restructurings have unintentionally enabled tax avoidance, particularly when investors transfer appreciated shares to a CIS without triggering Capital Gains Tax. By using asset-for-share transactions under section 42, investors receive CIS units while deferring tax on unrealised gains.

At issue is that tax is deferred until the investor sells their CIS units, or potentially avoided through untaxed CIS distributions. This creates a mismatch compared to direct share sales, where CGT is paid upfront.

To curb unintended tax avoidance and promote fairness, it's proposed that sections 42 and 44 no longer apply to share transfers involving Collective Investment Schemes (CISs). This change aims to prevent the deferral or escape of Capital Gains Tax when CISs acquire and later dispose of shares.

Comment: There are legitimate commercial reasons for asset-for-share transactions involving listed shares, such as regulatory-driven transfers, changes in management companies, or restructuring for efficiency. The proposed blanket denial of roll-over relief, in our view, fails to account for these scenarios. Under section 99 of CISCA Act, CIS portfolios can be merged with investor consent and Financial Sector Conduct Authority (FSCA) approval. ASISA's July 2024 Guidelines outline key reasons: merging portfolios within the same scheme (pure amalgamation), or transferring portfolios between management companies (onboarding/offboarding). Other amalgamations may also be initiated by management companies.

> *Response*: Partially accepted. The amendments to section 44 will be withdrawn, however, amendments to section 42 will go ahead with the objective of preventing the misuse of section 42 rollover relief, in cases where investors benefit from asset-for-share transactions to avoid CGT.

Comment: We recommend that a distinction be drawn between 'closely held' and 'widely held' CIS's. With the aim to balance regulatory oversight, commercial viability and policy intent it is proposed that roll-over relief should be retained for widely held schemes subject to regulatory oversight (such as FSCA policies), as these are less likely to be used for avoidance purposes.

> *Response*: Partially accepted. Given that there is no definition of 'closely held' and time constraints to consider such a limitation for asset for share transactions it is proposed that the amendment to section 42 be effective as of 1 January 2027 to allow for further consultation in 2026.

Comment: The proposed amendments to sections 41 and 42 wouldn't result in an income tax liability for tax-exempt investors. However, they would trigger Securities Transfer Tax (STT) liability for the CIS portfolio, since the existing exemption under section 8(1)(a)(i) would no longer apply—impacting all current investors in the CIS portfolio.

> Response: Accepted. An STT exemption for *in specie* transfers to portfolios of CISs will be included in the TLAB and the effective date will also be delayed to 1

January 2027.

Comment: The definition of 'company' in section 41 is proposed to come into operation on 1 March 2026 and applies to years of assessment commencing on or after that date. However, the remaining amendments reference 1 January 2026. As such, we request that the effective date of the amendments to sections 41, 42 and 44 be aligned and come into operation on 1 March 2026 and apply to transactions concluded on or after that date.

Response: Accepted. The effective dates will be aligned.

4.6. Clarifying the rollover relief for listed shares in an asset-for-share transaction

(Main reference: Section 42 of the Act: Clause 28 of the Draft TLAB)

The Act includes roll-over provisions that defer tax on gains or recoupments during corporate reorganisations. In share-for-share transactions, relief is granted when shareholders exchange equity in a target company for newly issued shares in an acquiring company, subject to anti-avoidance rules.
These provisions ensure the acquiring company inherits the target shares with the same tax character and cost as held by the original shareholders. However, a special regime introduced in 2010 for listed shares allows the acquiring company to treat such shares as acquired at market value, simplifying compliance and removing the need to trace historical tax attributes from numerous minority shareholders.

At issue is that current legislation does not clearly and effectively address government's policy intent that the special relief regime in terms of tax character and tax cost of each listed target share, should be applied by the acquiring company, on listed target equity shares obtained from each target company shareholder that holds less than 20 per cent of the listed shares in the target company before the

transaction.

It is proposed that legislation be amended to clearly align with the original policy intent and resolution of the practical tracing problem that the special relief regime for listed shares be limited only to listed target equity shares acquired from disposing target shareholders holding less than 20 per cent of the listed equity shares in the target company before the transaction.

Comment: While the proposed limitation of rollover relief to shareholders holding less than 20% of listed shares is supported, concern remains that the unchanged 35%/25% acquisition threshold continues to create practical challenges in identifying the nature and cost of listed company shares. This undermines the effective application of rollover relief where the minimum shareholding is not achieved. It is therefore proposed that the 35%/25% minimum shareholding requirement be removed to improve practical implementation.

> *Response*: Not Accepted. The 35%/25% threshold functions as a clearly legislated quantitative test to determine whether the rollover relief applies and therefore remains appropriate in ensuring the policy intent that the provision targets corporate transactions of sufficient scale to justify relief.

Comment: The proposed effective date, being years of assessment commencing on or after 1 January 2026, may create practical difficulties where parties to the same transaction have different year-ends. This could result in inconsistent application of the amendment between counterparties. It is therefore recommended that the effective date be determined with reference to the date on which the transaction is entered into, rather than by reference to a year of assessment.

> *Response:* Accepted. Effective date will be amended to have proposed changes rather apply to transactions entered into on or after 1 January 2026.

4.7. Refining and clarifying the elements of the interest limitation rules to enhance certainty

(Main reference: Section 23M of the Income Tax Act: Clause 22 of the draft TLAB)

Since the changes to strengthen the interest limitation rules were introduced with effect from 2022, there has been uncertainty regarding their application – primarily with respect to the definition of "interest", which was expanded relative to section 24J.

The definition was expanded to reduce opportunities to disguise interest as other types of payments economically equivalent to interest, which could enable circumvention of the rules. However, it was accepted that this can be cumbersome for calculating "adjusted taxable income", which requires adding back interest deductions and deducting interest income to arrive at what could be termed "taxable EBITDA". While the interest limitation rules only apply to interest that meets the two criteria (the presence of a controlling relationship and corresponding interest income not being fully taxable), the adjusted taxable income calculation included all interest, including third-party interest. This means that all forex differences were included in the adjusted taxable income calculation, even if they had no link to underlying debt where the interest is subject to these rules. This concern was raised in submissions from taxpayers and during the Annexure C workshops held towards the end of 2024.

The proposals sought to reduce complexity by proposing that interest expense and interest income adjustments to arrive at "adjusted taxable income" be limited to interest as contemplated in section 24J. As an example, there would be no need to include a forex difference in respect of a loan from an independent bank into this calculation.

The proposals also sought to make it clear that a forex difference will only be tested for limitation if the exchange item is linked to debt for which the interest payments are subject to section 23M. Furthermore, such forex differences will be subject to the interest limitation rules regardless of whether there is an accrual for the creditor or not.

The intended revisions also expanded the carve out for back-to-back lending if a transaction meets the existing criteria for direct lending.

Comment: Several commentators acknowledged the clarification intent but noted that there is still uncertainty and requested clear and predictable rules.

Response: Noted. Government acknowledges this concern and has the same desire. The intention of the proposals was in response to taxpayer requests for reducing complexity. While it is recognised that having two definitions for interest

is not ideal, it is difficult to have one definition and retain the policy intent.

Comment: Some commentators requested that interest retain the section 24J definition rather than including forex differences and other amounts economically equivalent to interest.

Response: Not accepted. In line with the OECD recommendations, the National Treasury discussion document on interest limitation rules, and the intent to strengthen the rules to limit circumvention, the policy intent to include amounts economically equivalent to interest remains.

Comment: There is a disconnect between interest subject to the limitation and interest adjustments to determine limitation.

Response: Accepted. While the intent was to reduce complexity for taxpayers by reducing the extent of adjusting taxable income, it does make sense to at least include the amounts subject to the limitation in the adjusted taxable income calculation. It now includes any amount of interest contemplated in section 24J plus additional amounts subject to the interest limitation rules. Consequently, it excludes, for example:

- any forex differences that are not linked to underlying debt where interest thereon is subject to section 23M;
- any amounts incurred or accrued under any "interest rate agreement" as defined in section 24K(1) if there is no controlling relationship or the amount accrued to the creditor is taxed in full;
- any finance cost element of a finance lease if there is no controlling relationship or the amount accrued is taxed in full;

An example will be included in the final explanatory memorandum to enhance certainty.

Comment: The carve out for direct lending and the proposal to enable a carve out for indirect lending only caters for common law interest as one of the criteria relate to the interest rate.

Response: Accepted. To achieve a full carve out, the focus will be on the debt owed in respect of which the acceptable interest is determined. For example, if the first criterion is satisfied and the interest rate charged on the debt is less than the official interest rate plus 100 basis points, any related forex difference in respect of that debt will also be carved out of section 23M.

Comment: The proposed amendments to limit the application of certain elements of section 23M to section 24J interest refer to interest "contemplated" in section 24J, leading to confusion. Interest is defined in section 23M with reference to interest as "defined" in section 24J. While section 24J contains a definition of interest, it also provides that accrual amounts are deemed to be amounts of interest, meaning that interest as defined in section 24J and interest contemplated in section 24J are not necessarily the same.

> *Response:* Noted. The amendments to "adjusted taxable income" and to subsections (2) and (3) focus on amounts taken into account in determining taxable income. Therefore, references to interest contemplated in section 24J would be the interest as determined under section 24J.

Comment: The proposed amendment to para (i)(aa) of section 23M(2) (i.e. the insertion of "other than interest contemplated in paragraph (c) of the definition of interest in subsection (1)") is unnecessary and may lead to confusion.

> *Response:* Not accepted. The purpose of excluding amounts taken into account in determining taxable income in terms of section 24I(3) and (10A) is for the reason that there is no corresponding amount accrued to or incurred by the creditor in the foreign currency.

Comment: the effective date for the proposal is stated as 1 January 2026 in the draft TLAB while EM states years of assessment commencing on or after 1 April 2026, which need to be aligned.

> *Response:* Accepted. The amendments are to take effect for years of assessment commencing on or after 1 January 2026.

Comment: This amendment should take effect from the date that forex differences were included in the definition of "interest".

> *Response:* Not accepted. The intention of the proposal is to be forward looking. Some years of assessment have come to pass with tax returns having been assessed and finalised. It is preferable that no taxpayers are required to reopen any assessments.

5. INCOME TAX: TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS

5.1. Aligning the tax treatment of dividends with the accounting treatment by a covered person

(Main reference: Section 24JB of the Income Tax Act: Clause 24 of the Draft TLAB)

Section 24JB of the Act was introduced to address the tax treatment of financial instruments, as the rules governing income tax and financial accounting had significantly diverged. In summary, “covered persons” are required to incorporate fair value measurements and all other amounts in respect of financial assets and financial liabilities under International Financial Reporting Standards (IFRS) directly into their taxable income or loss within the same year of assessment.

It has come to Government’s attention that “covered persons” are investing in shares and receiving dividends to hedge positions in financial liabilities such as equity linked notes where the payments are deductible for tax. The shares are also disclosed at fair market value. It is proposed that to achieve matching in tax treatment, dividends accruing on those hedges should be taxed on the fair market value basis as income. That would also align the tax treatment of those dividends with the financial accounting treatment of dividends received.

Comment: The draft Explanatory Memorandum does not explain the abuse that National Treasury has become aware of, or how this relates to the application of hedge accounting. For these reasons we recommend that the legislation defines the concept of a “hedging instrument” in order to ensure tax certainly as to which instruments reference is made to.

> *Response:* Noted. The draft Explanatory Memorandum will be updated to reflect that the main issue was to achieve matching in tax treatment of dividends accruing on hedges and that the reference to hedge has the normal meaning of hedge and not the hedge accounting hedge.

Comment: We believe there is no need to change section 24JB to address National Treasury's concern. If the issue the Government identified is not already covered by

section 10(1)(k) or 10B, then those sections should be updated instead. This will help keep things fair between different types of taxpayers.

Response: Not accepted. The issue is only with respect to section 24JB instruments where the dividend exclusion is narrowed in order to achieve a matching tax treatment for the covered persons.

5.2. Anomaly in the Act relating to capital distributions by collective investment schemes

(Main reference: Paragraph 61 and new paragraph 82A of the Eighth Schedule to the Act: Clauses 35 and 36 of the Draft TLAB)

Since 1 January 2010, unit trusts follow the "conduit principle," meaning income earned by the fund—like interest, dividends, rental or other types of income—is passed directly to investors and taxed in their hands, if distributed by the fund. Despite the move to the "flow-through" adjusted trust system on 1 January 2010, there is a specific area where the law is not clear, i.e. "capital distributions." These are payments made by a unit trust to its investors that come from the fund's “capital”, rather than from its income or trading profits from selling investments.

This lack of clarity can lead to confusion for both investors and tax authorities. It creates uncertainty about how such payments should be taxed, potentially leading to inconsistent treatment or unintended tax outcomes. The current law does not prevent such distributions, but it does not provide clear guidance on their tax implications.

To address a gap identified in the December 2024 Discussion Document, National Treasury proposed adjusting the base cost of participatory interests in CISs when capital distributions occur. However, feedback highlighted that CISs lack access to investors’ base cost data, making this impractical. A simpler alternative is to treat all capital distributions as capital gains. While this may result in earlier tax liabilities for some, it simplifies administration and allows investors to cover the tax from the distributed amounts. Therefore, it is proposed that all capital distributions be regarded as capital gains.

Comment: We support the proposal in the National Treasury Discussion Paper of applying a reduction of base cost to capital distributions. There is no reason why CISs and their Management Companies should not be in a position to apply a reduction of base cost, since these entities are already required to track investors' base cost in order to perform the requisite IT3 reporting.

Response: Noted. It is re-iterated that feedback received from the December 2024 Discussion Document highlighted that CISs lack access to investors' base cost data, making this impractical – that is where a simpler alternative to treat all capital distributions as capital gains originated from.

Comment: It is suggested that the wording of paragraph 82A be aligned with that of paragraph 76B(3) for consistency and certainty.

Response: Accepted. Refinement will be made to the wording to clarify that "amount of distribution" is in respect of the year of assessment in which that distribution accrues to that holder.

5.3. Tax treatment of first loss after capital (FLAC) instruments as defined in the Financial Sector Regulation Act, 2017

(Main reference: Sections 8F and 8FA of the of the Income Tax Act: Clauses 8 and 9 of the Draft TLAB)

In line with the international prudential standards, South Africa has introduced First Loss After Capital (FLAC) instruments, as defined in regulations issued under the Financial Sector Regulation Act (2017). These instruments are designed to absorb losses and convert to equity during a bank's resolution, ensuring that the costs of failure are borne by shareholders and creditors rather than the public.

To support South Africa's resolution framework, especially the use of FLAC instruments, a more aligned tax policy is needed. Sections 8F and 8FA of the Income Tax Act may complicate their issuance. It is proposed that FLAC instruments and tier capital be excluded from these anti-avoidance rules to maintain interest deductibility, in line with global standards.

Comment: It is requested that the exemptions contained in section 19 and paragraph 12A of the Eighth Schedule, should be extended to all FLAC instruments. In addition, it is requested that unlisted FLAC instruments issued by a controlling company of a bank should also be excluded from interest withholding tax, on the basis that the issuance of such instruments is a regulatory requirement and serve a wider national purpose to ensure stability of the overall financial system and the economy as a whole.

Response: Not accepted. The requested exclusions are contrary to the tax policy principles underlying the concession and withholding tax provisions. The amendments are aligned with instruments that constitute tier1 or tier 2 capital instruments.

5.4. Reviewing asset-for-share and amalgamation transactions involving collective investment schemes

(Main reference: Sections 41, 42 and 44 of the of the Income Tax Act: Clauses 27, 28 and 29 of the Draft TLAB)

Collective Investment Schemes (CISs) allow investors to pool resources into diversified portfolios. For tax purposes, CISs are treated as flow-through entities, meaning income earned (such as interest or REIT dividends) that are distributed by CISs is passed directly to investors, who then declare it in their tax returns.

Capital Gains Tax (CGT) is generally not triggered when a CIS sells assets; instead, CGT applies when investors sell their units. The Income Tax Act also includes roll-over relief provisions, such as section 42 for asset-for-share deals and section 44 for amalgamations, which defer tax during corporate restructurings between groups of companies to support legitimate business transitions.

The current tax rules for CISs and corporate restructurings have unintentionally enabled tax avoidance, particularly when investors transfer appreciated shares to a CIS without triggering Capital Gains Tax. By using asset-for-share transactions under section 42, investors receive CIS units while deferring tax on unrealised gains. At issue is that tax is deferred until the investor sells their CIS units, or potentially

avoided through untaxed CIS distributions.

This creates a mismatch compared to direct share sales, where CGT is paid upfront. To curb unintended tax avoidance and promote fairness, it's proposed that sections 42 and 44 no longer apply to share transfers involving Collective Investment Schemes (CISs). This change aims to prevent the deferral or escape of Capital Gains Tax when CISs acquire and later dispose of shares.

Comment: There are legitimate commercial reasons for asset-for-share transactions involving listed shares, such as regulatory-driven transfers, changes in management companies, or restructuring for efficiency. The proposed blanket denial of roll-over relief, in our view, fails to account for these scenarios. Under section 99 of CISCA Act, CIS portfolios can be merged with investor consent and Financial Sector Conduct Authority (FSCA) approval. ASISA's July 2024 Guidelines outline key reasons: for merging portfolios within the same scheme (pure amalgamation), or transferring portfolios between management companies (onboarding/offboarding). Other amalgamations may also be initiated by management companies.

> *Response:* Partially accepted. The amendments to section 44 will be withdrawn. However, amendments to section 42 will go ahead with the objective of preventing the misuse of section 42 rollover relief, in cases where investors are party to asset-for-share transactions to avoid CGT.

Comment: We recommend that a distinction be drawn between 'closely held' and 'widely held' CIS's. With the aim to balance regulatory oversight, commercial viability and policy intent it is proposed that roll-over relief should be retained for widely held schemes subject to regulatory oversight (such as FSCA policies), as these are less likely to be used for avoidance purposes.

> *Response:* Partially accepted. Given that there is no definition of 'closely held' and time constraints to consider such a limitation for asset for share transactions it is proposed that the amendment to section 42 be effective as of 1 January 2027 to allow for further consultation in 2026.

Comment: The proposed amendments to sections 41 and 42 would not result in an

income tax liability for tax-exempt investors. However, they would trigger a Securities Transfer Tax (STT) liability for the CIS portfolio, since the existing exemption under section 8(1)(a)(i) would no longer apply—impacting all current investors in the CIS portfolio.

Response: Accepted. A STT exemption for *in specie* transfers to portfolios of CISs will be included in the TLAB and the effective date will also be delayed to 1 January 2027.

Comment: The definition of 'company' in section 41 is proposed to come into operation on 1 March 2026 and applies to years of assessment commencing on or after that date. However, the remaining amendments reference 1 January 2026. As such, we request that the effective date of the amendments to sections 41, 42 and 44 be aligned and come into operation on 1 March 2026 and apply to transactions concluded on or after that date.

Response: Accepted. The effective dates will be aligned.

6. INCOME TAX: BUSINESS INCENTIVES

6.1. EXTENSION OF THE UDZ TAX INCENTIVE SUNSET DATE

(Main reference: Section 13*quat* of the Act: Clause 18 of the Draft TLAB)

The Urban Development Zone (UDZ) tax incentive was introduced in 2003 to promote the maintenance and further development of 16 designated inner cities within selected municipalities. The UDZ tax incentive was designed to encourage property investment in central business districts (CBDs) and to address the problem of urban decay in these CBDs through the promotion of investment in urban renewal.

Since its introduction, the UDZ tax incentive has undergone several legislative amendments to extend both the sunset date and UDZ incentive structure to allow for greater uptake. The incentive currently has a sunset date of 31 March 2025. An online survey was conducted as part of the review. The information gathered from the online survey and SARS microdata is insufficient to draw conclusive findings

regarding the effectiveness of the incentive. Further research is required, particularly to source and evaluate municipal data on the uptake of the incentive.

Based on the above, it is proposed that the UDZ tax incentive be extended for another five years, to allow sufficient time for consultations with municipalities as part of the comprehensive review, which will determine the future of the incentive.

Comment: Commentators welcomed the extension of the sunset date.

Response: Accepted.

6.2. INVESTMENT ALLOWANCE IN RESPECT OF BUILDINGS, MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES USED IN DOMESTIC PRODUCTION OF BATTERY ELECTRIC AND HYDROGEN-POWERED VEHICLES

(Main reference: Section 12V of the Act: Clause 17 of the Draft TLAB)

In 2024, Government introduced a tax incentive to support investment in the local production of battery electric vehicles (BEVs) and hydrogen-powered vehicles (HPVs). This measure is intended to facilitate the transition of South Africa’s automotive industry from mainly producing Internal Combustion Engine (ICE) vehicles to a dual platform that includes the production of electric vehicles EVs. This shift is necessary to secure South Africa's key export markets, such as the EU and UK, which have announced plans to ban the sale of new ICE vehicles by 2035, as well as to address environmental concerns and meet emission reduction commitments under the Paris Agreement.

The tax incentive complements a broader package of measures designed to support the automotive industry’s transition to producing BEVs and HPVs. Additional measures are implemented by the Department of Trade, Industry and Competition (DTIC) through the Automotive Investment Scheme (AIS). The AIS provides 35 per cent grant support for component and tooling manufacturers as well as battery assemblers. Manufacturers of BEVs and HPVs are eligible for a 20 per cent cash

grant in addition to the tax incentive.

Under the tax incentive, manufacturers of BEVs and HPVs may claim a 150 per cent accelerated depreciation allowance on qualifying capital expenditure incurred in South Africa. Eligible assets include buildings, new and unused machinery, plant, implements, and articles (including supporting structures) provided they are used in the production of BEVs and HPVs. The incentive applies to assets brought into use between 1 March 2026 and 29 February 2036.

It has come to Government's attention that the term 'motor vehicle manufacturer' may be interpreted broadly to include the entire vehicle manufacturing value chain (including component manufacturers) and all types of vehicles powered by electricity or hydrogen fuel cells (i.e. golf carts).

Comment: Commentators welcomed the clarification

> *Response:* Accepted.

Comment: Some commentators requested that the incentive be made available to component manufacturers (CMs) since they will likely also need to modify their production lines.

> *Response:* Noted. The tax incentive was intended to complement the 20 percent cash grant offered by the Department of Trade, Industry and Competition (DTIC) through the Automotive Investment Scheme (AIS) to manufacturers of electric vehicles. The tax incentive was not extended to CMs as they will receive a higher cash grant of 35 per cent. Furthermore, if OEMs invest in EV manufacturing capacity, there will be an increase in demand for relevant components, which together with the cash grant should provide sufficient incentive for CMs to modify their production lines.

7. INTERNATIONAL TAX

7.1. Refining the definition of "equity share"

(Main reference: Definition of an “equity share” in section 1 of the Income Tax Act: Clause 1 of the Draft TLAB : Clause 1 of the Draft TLAB)

An “equity share” as currently defined in the Act, refers to “dividends” and “returns of capital”, which are terms that are both defined in the Act. The definitions of “dividend” and “return of capital”, both only make reference to an amount that is transferred by a resident company that constitutes a dividend or a return on capital.

Under the current wording of the "equity share" definition, shares in a foreign company appear to be excluded and cannot be regarded as equity shares.

It is proposed that the definition of equity share be updated to cater for foreign dividends and foreign returns of capital as was the intention all along.

Comment: It is submitted that the proposed effective date of 1 January 2026 is not appropriate, but that the amendment should be made retrospective to 1 April 2012.

Response: Accepted. The effective date will be changed to 1 April 2012.

7.2. Interaction between sections 6quat and 23(m)

(Main reference: Sections 6*quat* and 23(*m*) of the Income Tax Act: Clauses 2 and 21 of the Draft TLAB)

Section 23(*m*) limits deductions related to employment, but must be read with section 11(*x*), which permits deductions allowed elsewhere in Part I of Chapter II of the Act. This broader interpretation includes section 6quat(1C), which allows deductions for foreign taxes paid to non-South African governments when calculating taxable income.

Section 23(*m*) currently excludes section 6*quat*(1C) from its list of exceptions, which prevents employees earning remuneration from claiming foreign tax deductions. However, from a tax policy perspective, this restriction is seen as inappropriate, since resident taxpayers should be allowed to deduct foreign taxes paid.

Comment: An effective date is required to be inserted into the TLAB. It is suggested

that this should be for years of assessment commencing on or after 1 March 2025 rather than 1 March 2026 as proposed, given that such a deduction is only made upon the submission of a return.

Response: Not accepted. The current effective date stipulated in the TLAB is the date of promulgation. Accordingly, taxpayers will be able to apply this provision immediately upon its enactment into law.

7.3. Interaction of controlled foreign company rules in section 9D with section 9H

(Main reference: Section 9D of the Income Tax Act: Clause 11 of the Draft TLAB)

Section 9D of the Act serves as an anti-avoidance provision aimed at preventing South African residents from avoiding tax through passive investments in controlled foreign companies or diverting income to controlled foreign companies.

Section 9H of the Act, that triggers an ‘exit charge’, provides that when a resident ceases to be a resident or a CFC ceases to be a CFC, it is deemed to have disposed of its worldwide assets on the date immediately before the date it ceases to be a resident or CFC.

Government has identified that the current wording of sections 9H and 9D may fail to trigger an exit charge when a CFC loses its status. This is due to the wording of the “comparable tax exemption,” which can reduce the CFC’s net income to zero if sufficient foreign tax is paid.

It is proposed that paragraph (i)(aa) of the further proviso to section 9D(2A) of the Act be amended to add the normal tax resulting from the application of section 9H(3)(b) of the Act to the normal tax that would have been payable had the CFC been a resident.

Comment: Sections 9H(4) to 9H(6) provide that the exit charge triggered in section 9H(3)(b) will not apply to the CFC in certain circumstances. It is proposed that section 9H(3)(b) be read with sections 9H(4) to 9H(7).

Response: Noted. It is an interpretation issue, as section 9H(3)(*b*) will not be applicable if section 9H(4) to (7) apply.

Comment: The comparable calculation must be determined not only under South African law but also (hypothetically) under foreign law. So the comparablr would be the actual taxes suffered by the CFC in its country of residence plus the capital gains tax (or other tax) it would have hypothetically suffered on a disposal (as envisaged in section 9H) after taking into account relevant exemptions vs the hypothetical tax that would be suffered had the CFC been South African tax resident plus the section 9H charge.

Response: Not accepted. No exit charge is imposed in the foreign jurisdiction and due to the foreign company losing CFC status, South Africa will no longer be able to apply CFC rules to that company.

Comment: The proposed amendment is to come into effect on 31 December 2025 and is proposed to apply to foreign tax years of controlled foreign companies ending on or after that date. The effect is therefore that the proposed amendment may apply retrospectively to transactions that have already occurred in the 2025 year of assessment. We propose that the amendment apply to foreign tax years commencing on or after 1 January 2026.

Response: Not accepted. Residents will only be taxed after the TLAB has been processed.

7.4. Taxation of trusts and their beneficiaries

(Main reference: Sections 7(5) and 25B of the Income Tax Act: Clauses 11 and 25 of the Draft TLAB)

Income received by a trust may be taxed in the hands of the donor, beneficiary, or the trust itself, depending on the situation. The flow-through principle ensures that distributed income retains its original nature and is taxed in the hands of the actual recipient. Additionally, attribution rules may apply to tax the donor if the donor contributed assets to the trust under specific conditions.

In 2023, amendments were made to the rules relating to the taxation of trusts and their beneficiaries. The intention is that the flow-through principle should be limited to resident beneficiaries. As a result, income vested in or distributed to non-residents is taxed in the trust. The main reason for that policy is that Government found it challenging to identify and collect taxes from non-residents in whom the income is vested or distributed. The current wording in the Act does not meet this objective and, in some instances, may still be interpreted to include non-resident beneficiaries and donors.

It proposed that the Act be amended to ensure that the flow-through and attribution principles only apply to income received by or accrued to resident beneficiaries and resident donors.

Comment: The rationale behind the proposed deletion of the phrase “subject to the provisions of section 7” from section 25B(1) of the Income Tax Act remains unclear. National Treasury is requested to confirm that removing this phrase will not alter the current interaction between sections 7 and 25B.

Response: Accepted. Changes will be made to make section 25B subject to section 7(2) to (8).

7.5. Refining deferral of exchange difference rules on debt between related companies

(Main reference: Section 24I of the Income Tax Act: Clause 23 of the Draft TLAB)

Section 24I(10A) allows deferral of foreign exchange gains or losses on long-term intercompany debt not classified as current under IFRS. Introduced in 2012, its goal is to simplify compliance and reduce income volatility from unrealised forex movements.

Government has noted that some taxpayers delay realising exchange items to avoid triggering deferred foreign exchange gains, distorting taxable income and revenue timing. Additionally, applying section 24I(10A) poses challenges when loans are written off and no longer appear in financial statements, creating uncertainty around asset classification and continued deferral eligibility.

It is proposed that where an exchange item is not recognised for financial reporting purposes, exchange differences in respect of that exchange item should not qualify for deferral. In relation to the deferring of exchange differences, it is proposed that the policy be reconsidered so that deferred exchange differences are triggered on the portion of an exchange item realised during the year of assessment.

Comment: The proposed amendment to include “preference shares” as an exchange item would have been premised on it being akin to “debt” as was proposed in the amendments section 8E (Hybrid Equity Instruments), hence the withdrawal of that proposed amendment which was due to “numerous commentators have raised concerns with National Treasury and SARS that the current broad wording in the DTLAB in relation to this proposal will effectively eliminate preference shares as a viable means of financing” as noted in the NT media release dated 3 September 2025. Accordingly, this amendment needs also be withdrawn until such time as further public consultations are undertaken in this regard.

Response: Comment misplaced. The amendments to the definitions of “realised”, “ruling exchange rate” and “transaction date” are not related to the withdrawn amendments to section 8E. However, they are amendments relating to an amendment in 2024 that was aimed at closing a mismatch that resulted in a tax leakage as exchange differences on debt obligations are taxable under section 24I of the Act while the exchange differences in respect of preference shares as defined in section 8EA are not taxable under section 24I of the Act as there was no exchange item.

Comment: The proposed wording of paragraph (c) refers to symbol “D”, being either a positive or negative amount. The formula, however, does not contain the symbol “D”. It would appear from the formula that symbol “D” is represented by “ER” in the formula.

Response: Noted. The provision will be reworded.

Comment: It remains unclear whether the symbols “DG” and “DL,” which are intended to represent amounts deferred from prior years, also encompass current

year figures. Furthermore, “G” and “L” appear to denote current year amounts that—absent the proposed amendment—would not be included in or deducted from income, or would only be recognised upon full realisation of the exchange item. Given the ambiguity regarding whether these gains or losses pertain to the current or prior year, it is uncertain why “G” would be subtracted from “DG” or “L” from “DL.”

Response: Noted*.* The provision will be reworded.

Comment: The proposed amendment to section 24I(10A) has been worded in negative terms. Currently, exchange differences arising from trade debtors, trade creditors or short- term debts between connected persons are not targeted for deferral. The policy intent was to defer exchange differences in relation to long term debts.

Response: Accepted*.* This is not the intended purpose behind the amendment; a correction will be made to the TLAB. The reason for the formulation is to exclude items that are not recognised as assets or liabilities for IFRS.

8. VALUE-ADDED TAX

8.1. Reviewing the definition of insurance

(Main reference: Definition of “insurance” in section 1(1) of the VAT Act: Clause 40 the Draft TLAB)

The definition of “insurance” in section 1(1) of the VAT Act means insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or law, and includes reinsurance; and “contract of insurance” includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance, provided that nothing in this definition shall apply to any insurance specified in section 2 of the VAT Act.

In the matter of *Capitec Bank Limited v Commissioner for the South African Revenue Service (CCT 209/22) [2024] ZACC 1* (the Court case), the Constitutional Court ruled that the supply of insurance for no consideration by the appellant is still a taxable

supply, or at least partly a taxable supply, despite the fact that the appellant provided the insurance free of charge when it granted a loan to a customer. The implication is that the provision of "free" credit cover gives a lender in the same position as the appellant, a competitive advantage over other lenders who specify that the customer obtains credit insurance.

In light of the decision in the Court case, it is proposed that the definition of "insurance" be revised to specifically include the requirement that a premium be charged.

Comment: The word "premium" is not defined in the VAT Act and may be interpreted in various ways.

Response: Accepted. The word "premium" will be defined.

Comment: The amendment does not address issues where free insurance cover is provided as part of an insurance contract, and it does not address payment holidays.

Response: Accepted. The definition of "premium" will address these issues.

8.2. Supply of educational services

(Main reference: new sections 8(2H), 12(*h*)(iv) and 40E and amendments to section 12(*h*)(i) and (ii)): Clauses 41(a), 45 and 48 of the Draft TLAB)

The supply of educational services by an educational institution is exempt from VAT in terms of section 12(h)(i) of the VAT Act. Section 12(h)(ii) of the VAT Act further exempts from VAT the supplies made by an educational institution solely or mainly for the benefit of its leaners or students of goods or services (including domestic goods and services) that are necessary for and subordinate and incidental to the supply of services referred to in section 12(h)(i) of the VAT Act, if such goods or services are supplied for consideration in the form of school fees, tuition fees or payment for lodging or board and lodging.

Government was approached by several school governing bodies, requesting that all the supplies made by basic education institutions (schools) be exempt for VAT

purposes since the calculation of the apportionment percentage for input tax claims and the administration costs to comply with the VAT Act have been costly and cumbersome for schools. In response to this request a meeting was held with the relevant parties to discuss the request. Consequently, it is now proposed to amend the VAT Act to exclude all supplies by schools (basic educational institutions) from the VAT net.

As a result of this, basic education institutions that are currently on register will become liable to deregister for VAT (as of the effective date, in terms of section 8(2) of the VAT Act). This will trigger a VAT liability, based on the input tax previously claimed. It is hence proposed that those institutions be given a concession to pay over the VAT liability in twelve equal monthly instalments or in so many instalments as the Commissioner may decide in terms of the newly introduced section 8(2H).

Since this extension of the period to make payment does not change the time of supply under section 8(2), it would result in penalties and interest being due when the extended period is allowed. Consequently, a new section 9(14) is now proposed, and the time of supply will be deemed to take place as when each payment is due, prescribed or paid under such payment arrangements, thereby protecting the schools from the interest and penalties.

As a further protection for schools, it is further proposed that a new section 40E be introduced to ensure that past assessments that have been finalized for the periods prior to 1 January 2026 are not re-opened either by SARS or the vendor. However, with regard to past assessments that have not been finalized, applications may be made to SARS to consider reviewing the assessment. However, the review of such assessment may not result in a refund paid to the vendor. Further, no new assessment may be issued by SARS in this regard.

Comment: More time is required to accurately assess the impact of the change in use adjustment that needs to be made on input tax previously claimed. This may result in unintended hardships that schools and parents will suffer because the VAT liability upon deregistration has not been budgeted for.

Response: Partially accepted. The proposal will be amended to provide for the

exit VAT liability to only begin from 1 January 2027 (one year later), thereby giving schools more than 12 months to prepare their finances in this regard.

Comment: Consider the impact of the proposed amendment on the schools that also provide "welfare activities".

Response: Accepted*.* The extension of the exemption on the supplies by the schools will not extend to any "welfare activities", provided that such schools apply to SARS for a ruling in this regard.*.*

8.3. Reviewing the VAT treatment of airtime vouchers supplied in South Africa for exclusive use in an export country

(Main reference: new sections 8(31), 10(30) and 11(2)(Za) of the VAT Act: Clauses 41(c) and 43 of the Draft TLAB)

It has come to government's attention that there are distributors that are situated in the Republic that supply airtime vouchers to consumers in the Republic. However, these vouchers cannot be utilised in the Republic. The telecommunications suppliers are non-residents, and the vouchers are given by the consumers to their family members or friends outside the Republic, where the airtime can be used. In most instances, the distributors would have entered into contracts with the telecommunications suppliers and are providing a service to such suppliers, for which the local distributor either keeps a margin or a commission. The infrastructure to make and receive calls/use data for which the airtime vouchers are sold is situated outside the Republic. It is evident that the telecommunication services can only be consumed outside the Republic.

In the past, the Commissioner for the South African Revenue Service (the Commissioner /SARS), issued decisions in terms of section 72 of the VAT Act whereby only the margin / commission in relation to distribution services of the airtime vouchers in the Republic were subjected to VAT at the standard rate in terms of section 7(1)(*a*) of the VAT Act and the remainder of the value was attributed to telecommunication services to be provided outside of the Republic, the supply of which was zero-rated.

However, with the amendment to section 72 of the VAT Act on 21 July 2019, the Commissioner is unable to renew the above or issue new decisions under section 72 of the VAT Act to zero-rate the supply of the airtime vouchers used in an export country due to the facts that the –

- zero-rating provisions do not permit the zero-rate to be applied to the supply of airtime vouchers that can only be used outside the Republic; and
- granting of such requests will result in a change in the rate of tax from standard rated to zero rated, thus resulting in a reduction in the liability for VAT.

It is proposed that provision be made in the legislation to subject only the deemed distribution services in the Republic to VAT at the standard rate, where the local distributors sell the vouchers for a profit, without a contract with the telecommunications supplier.

Comment: Distributors do not always sell for profit, others sell for distribution fee or commission, and the service is an exported service to the telecommunications suppliers, and as such, should be zero-rated, as the distribution services are rendered to a non-resident who is in an export country at the time of rendering of the distribution services.

Response: Accepted. The supply of the above distribution service will be zero-rated under a new section in section 11(2). The value of airtime vouchers will be out of scope for VAT purposes since the place of consumption is outside the Republic.

8.4. Low value importation of goods

(Main reference: Paragraphs 1(v) and 2 of Schedule 1 of the VAT Act: Clause 51 of the Draft TLAB)

In terms of section 13(3) of the VAT Act, proviso to section 38(1) of the Customs and Excise Act, No. 91 of 1964 ("the Customs and Excise Act") and paragraph 1(v) of

Schedule 1 of the VAT Act, goods of a value of R500 or less (and books below R100) for customs duty purposes, are exempt from the VAT imposed under section 7(1)(*b*) of the VAT Act, provided that no customs duty is payable in terms of Schedule 1 of the Customs and Excise Act.

The above has created the uneven playing field between domestic and offshore suppliers of these low value goods, especially where the provisions of the VAT Act are concerned. It is proposed that the threshold be removed to level the playing field.

Comment: The proposal is welcomed, but there is a concern regarding the delayed implementation (date to be determined by the Minister) of this proposal as the foreign companies continue to thrive at the expense of local companies. The proposal is that the amendment be effective much sooner.

Response: *Not accepted.* SARS are required to amend the IT systems to cater for this amendment. The amendment can only be practically applicable once this is done.

8.5. Clarifying the VAT treatment in respect of payments made under the national housing programme (NHP)

(Main reference: Section 8(23) of the VAT Act: Clause 41(b) the Draft TLAB)

Section 8(23) of the VAT Act provides that a vendor shall be deemed to supply services to any public authority or municipality to the extent of any payment made to or on behalf of that vendor in terms of the National Housing Programme (NHP). Section 11(2)(*s*) of the VAT Act provides for a zero rating of services where the services are deemed to be supplied to a public authority or municipality in terms of section 8(23) of the VAT Act. The supply of a dwelling under a rental agreement is an exempt supply in terms section 12(*c*)(i) of the VAT Act and as such, input tax deductions are denied.

The history of the legislative changes to section 8(23) and 11(2)(*s*) of the VAT Act, resulted in different VAT interpretations, uncertainties and unintended fiscal leakage (in effect vendors inadvertently extended the scope of the zero rating to, amongst

others, exempt supplies of rental stock and then consequentially deducted input tax on these supplies). These uncertainties, especially in relation to the treatment of exempt rental stock where input tax is not allowed as a deduction have once again been highlighted with the announcement during the 2024 Budget Cycle when it was announced that clarifying amendments will be made in the VAT Act.

It is proposed that reference to "a national housing programme contemplated in the Housing Act" be deleted from section 8(23) and replaced with the words "Housing Subsidy Scheme referred to in section 3(5)(*a*) of the Housing Act".

*Comment: C*onsider the impact that this amendment will have on the existing rental housing projects.

Response: Partially accepted. The zero-rating did not apply to the rental stock since these were always exempt supplies. However, as a protection measure for taxpayers, it is proposed that a further amendment be introduced to ensure that past assessments that have been finalized for the periods prior to 1 April 2026 are not re-opened either by SARS or the vendor. However, with regard to past assessments that have not been finalized, applications may be made to SARS to consider reviewing the assessment. However, the review of such assessment may not result in a refund paid to the vendor. Further, no new assessment may be issued by SARS in this regard.

Comment: There is no clarity on what constitutes a "housing subsidy scheme". This needs to be defined in the VAT Act.

Response: Not Accepted. The Department of Human Settlements are empowered in this regard, to maintain a list of housing programmes that are considered to be part of the "housing subsidy scheme". The VAT Act will piggy-back off that list.

9. CARBON TAX

9.1. Electricity price neutrality – Renewable energy premium deduction and electricity levy repeal

(Main reference: Section 6(2) of the Carbon Tax Act 15: Clause 58 of the draft TLAB)

Electricity generators can reduce their carbon tax liability by deducting the payment of the electricity generation levy and the renewable energy premium built into the electricity tariff for power purchases under the Renewable Energy Independent Power Producers Programme and from other producers.

This concession addresses concerns about double taxation and provides high emitters including electricity generators with sufficient time to transition to low carbon sources and energy efficiency measures. It is available until 31 December 2025.

It is proposed to extend the commitment to electricity price neutrality until 2030 to assist consumers. This seeks to limit the potential adverse impacts of the carbon tax on poor and low-income households and facilitate the just transition. This will be achieved by repealing the electricity generation levy imposed in terms of the Customs and Excise Act and applying the carbon tax only on combustion emissions from 2026.

The carbon tax will replace the electricity generation levy and electricity generators can continue to deduct a portion of the renewable energy (RE) premium from their carbon tax liability for the difference between the carbon tax and electricity levy liabilities.

Comment: The proposal to extend the electricity price neutrality commitment to 2030 was supported by some stakeholders. The concerns around the impacts of higher electricity prices and the Eskom-municipality debt crisis were raised.

Comment: Some stakeholders were of the view that the carbon tax in addition to the electricity generation levy should be payable by electricity generators and the proposal to extend the electricity price neutrality commitment to 2030 was not supported. Reference is made to the introduction of competition into the electricity market in terms of the Electricity Regulation Amendment (ERA) Act. There is a view that the carbon tax will play an important role in levelling the playing field between different generation options and influencing dispatching decisions towards lower

carbon, clean electricity generation. Additional electricity generation capacity is expected, and the carbon tax will provide an important incentive for generation choices and dispatching decisions made by electricity generators, and electricity allowed onto the grid by the National Transmission Company of South Africa.

Response: Noted. Government proposed the extension of the electricity price neutrality commitment until 31 December 2030 after considering public comments on the 2024 Carbon Tax Discussion Paper. There were concerns about the potential adverse impacts of higher electricity prices and on low-income households and energy intensive companies. The proposal provides an additional three years for investments in independent generation capacity and stabilisation of electricity prices to ensure the financial sustainability of Eskom. With the introduction of independent power generation capacity, the proposal to bring electricity generators into the carbon tax net aligned with the implementation of the ERA Act will be considered. Further research and policy analysis will be conducted by the National Treasury on the potential impact of proposals submitted by stakeholders.

9.2. Carbon budget allowance

(Main reference: Section 12 of the Carbon Tax Act 15: Clause 58 of the draft TLAB)

The carbon budget tax-free allowance of five percent was implemented for the voluntary carbon budget phase from 2016 to 2024. The allowance seeks to encourage companies to participate in the voluntary carbon budgets system of the Department of Forestry Fisheries and the Environment (DFFE) and provide emissions data to government. It was envisaged that the mandatory carbon budget system will come into effect, once the Climate Change Act is operationalised and the carbon budget and greenhouse gas mitigation plan regulations are gazetted by the DFFE. In the 2023 Budget, the carbon budget allowance was extended until 31 December 2024 due to delays with the finalisation of the Climate Change Bill and implementation mandatory carbon budget system.

It is proposed to extend the carbon budget allowance for the voluntary carbon budget system until 31 December 2025. It was proposed that this allowance falls away with implementation of the mandatory system as provided for in Section 27 of the Climate

Change Act (No 22 of 2024).

Comment: The extension of the carbon budget allowance to December 2025 was welcomed. Some stakeholders supported the removal of the carbon budget allowance.

Response: Accepted.

Comment: Some stakeholders suggested an extension of the carbon budget allowance by an additional year to 31 December 2026 to allow for the carbon budget and mitigation plan regulations to be finalised. There was a proposal for the carbon budget allowance to continue for those who fall below the emissions threshold for the mandatory carbon budget system and continue to participate in the voluntary system.

Response: Not accepted. The carbon budget allowance of 5 per cent will be replaced by an equivalent increase in the carbon offset allowance. The 2025 Budget proposed an increase of the carbon offset allowance by 5 percentage points from 5 to 10 per cent for process and fugitive emissions and from 10 to 15 per cent for combustion emissions, effective from 1 January 2026. This will help to stimulate domestic carbon market activities under the carbon tax and provide an economic and financial incentive for low carbon investments and technology innovation over the short to medium term. Companies that participate in the voluntary carbon budgeting system can access the carbon offset allowance and reduce their carbon tax liability.

9.3. Carbon budget - higher tax rate on emissions above the budget

(Main reference: Section 5 of the Carbon Tax Act 15: Clause 58 of the draft TLAB)

In the 2023 Budget, government proposed a higher tax rate of R640/tCO_2e on emissions above the carbon budget allocated to companies. This seeks to promote compliance with the mandatory carbon budget of the Department of Forestry Fisheries and the Environment (DFFE).

The 2024 Budget proposed that the higher tax rate on emissions above the carbon budgets will be legislated once the Climate Change Bill is enacted and the DFFE

gazettes the relevant regulations.

The Climate Change Act was enacted in July 2024 and the draft National Carbon Budget and Mitigation Plan Regulations, alongside the declaration of the List of Greenhouse Gases and Activities and associated Technical Guidelines were published in the government gazette on 1 August 2025 (Gazette No 53103).

Since the Climate Change Act has come into effect and the relevant regulations have been gazetted by the DFFE, it is proposed that a higher tax rate of R640/tCO_2e is applied to emissions above the carbon budget.

It is proposed that the higher tax rate and related amendments will come into effect on the date to be published by the Minister of Finance in a notice in the government gazette. This will be aligned with the implementation date of the carbon budget and mitigation plan regulations determined by the Minister of Forestry Fisheries and the Environment.

a. *Annualised versus 5 year accounting period for application of higher tax rate*

Comment: Several stakeholders submitted comments on the accounting period for application of the higher tax rate. There were two main proposals from stakeholders as summarised below.

Option 1: Support for annualised budgets with a crediting mechanism for fluctuations within a carbon budgeting period. For example, where there are exceedances within a budgeting period and the penalty is paid to SARS however over the 5 year period a company would have complied with or met the allocated carbon budget. A refund and / or crediting mechanism should be considered. Clarity was also requested on the legal basis for providing credits or refunds in terms of the Customs and Excise Act.

Option 2: Application of the higher tax rate on emissions exceeding the allocated carbon budget at the end of the 5-year commitment period. Reference is made to the DFFE Technical Guidelines which states that the penalties apply only if the carbon budget is exceeded at the end of the commitment period.

Response: Accepted*.* In principle, an entity should be entitled to a refund where carbon budgets are complied with over a 5-year period. For example, where there are exceedances within a budgeting period and the penalty is paid to SARS, a company would be entitled to a refund if it complies with the allocated carbon budget over the 5-year period. In the customs and excise environment, refunds can be set of against the account and systems and account changes would be necessary. The current prescription in the Customs and Excise Act is for two years and amendments to the carbon tax are proposed to allow refunds where a company complies with the allocated 5-year carbon budget.

Option 2. Not accepted. Due to the potential for a large carbon tax liability at the end of the 5-year commitment period especially for small and medium enterprises.

b. *Coverage of the carbon budget (Scope 1,2 and 3 emissions)*

Comment: Carbon budgets and mitigation plan regulations could provide for voluntary reporting of scope 2 and 3 emissions. Clarity required on whether companies that report scope 2 and scope 3 emissions could qualify for the carbon budget allowance. There is a request that the carbon tax act clarifies that only scope 1 emissions is subject to the carbon tax and higher tax rate.

Response: Not accepted. The Carbon Tax Act covers scope 1 direct greenhouse gas emissions defined in section 1 and 4 of the act and covering activities listed in Schedule 2. Scope 2 and 3 emissions are not defined and outside the scope of the act. The DFFE is conducting work on Scope 2 and 3 emissions and amendments will be made to the Greenhouse Gas Emission Reporting Regulations to cater for mandatory reporting of scope 2 emissions. Scope 2 and 3 emissions may only be considered for inclusion in the mandatory carbon budgeting system in the 2nd or 3rd commitment period. Amendments to the Carbon Tax Act are not necessary.

c. *Requests for deferment of the Carbon Budget (CB) amendments:*

Comment: Some stakeholders were of the view that the amendments to the carbon tax act relating to the carbon budgets should be deferred until the DFFE finalises and publishes its regulations on the CBs and mitigation plans. In the absence of these regulations, stakeholders are of the view that it would not be possible to accurately assess the potential implications of the proposed amendments. It was suggested that the amendments should be deferred until the CBs and mitigation plans regulations are finalised i.e. 1 January 2027. Other stakeholders were of the view that no penalties for exceeding the budget should be applied beyond the existing carbon tax framework and recommended a withdrawal of the carbon budget higher tax rate subject to engagement with stakeholders.

Response: Not accepted. There have been extensive consultations on the voluntary and mandatory carbon budgeting system by the DFFE. This entailed consultations on the framework and methodology for determining carbon budgets which was approved by Cabinet and the carbon budget and mitigation plan regulations. The scope of the draft carbon budget and mitigation plan regulations were subject to stakeholder consultations at industry association and company level (see table 1 below).

The DFFE is already engaging sectors on the mandatory carbon budget allocations, and sectors and companies are encouraged to participate and engage the department in this process. Option 1, 2 and 3 to defer and withdraw the amendments to apply the higher penalty tax rate for non-compliance with the carbon budget are therefore not supported. The draft amendments provide for the implementation of the higher tax rate only once the DFFE finalises the regulations, after which a notice specifying the effective date for the higher carbon tax rate will be published by the Minister of Finance in the government gazette.

Table 1: Carbon Budget and Mitigation Plan Regulation Consultations

Date	Meeting/Information Session/Workshop	Venue	Key Attendees
11-Dec-2023	Carbon Budget And Mitigation Plan Regulations	DFFE Conference	NGO Stakeholder Engagement

		Centre	
13-Feb-2024	Carbon Budget And Mitigation Plan Regulations	DFFE Conference Centre	Multi-stakeholder Engagement
18 Sep 2024	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Clay Brick Association
25 Sep 2024	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Minerals Council - Coal Mining
07 Nov 2024	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Aviation Sector
13 Nov 2024	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Lime Production
21 Nov 2024	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Hydrogen sector
18 Sep 2025	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Ferro Alloys Producers Association
23 Sep 2025	Carbon Budget And Mitigation Plan Regulations sector meeting	Online	Food, Beverage and logistic

Comment: There were requests for tax free allowances, such as the carbon offset allowance to be applied to emissions above the carbon budget. Some stakeholders strongly opposed the use of carbon offsets under the carbon tax and the carbon budgeting system.

Response: Not accepted. The criteria for determining carbon budgets are already set out in the Climate Change Act. The carbon budget to be allocated to an entity will factor in, among others, the projected economic growth of the sector and mitigation potential. Additional allowances including the offset allowance are not necessary.

d. *Electricity price neutrality commitment and deduction*

Comment: Stakeholders requested clarity on whether the electricity price neutrality commitment including the renewable energy premium deduction will apply to the carbon tax liability where an entity's emissions exceed the allocated carbon budget.

There was an assumption that the penalty rate will therefore not apply to electricity combustion emissions. Some stakeholders were of the view of the electricity price neutrality commitment should be extended to the mandatory carbon budgeting system and allowed as a deduction.

Response: Not accepted. It was clarified in the NT stakeholder consultation workshop on the draft TLAB that the electricity price neutrality commitment and the renewable energy premium deduction will not apply to the higher carbon tax payable on emissions above the allocated carbon budget . The carbon budget allocated to an entity will take into account the socio-economic impacts of imposing the carbon budget; the best available science, evidence and information; the best practicable environmental options available and alternatives that could be taken to mitigate the emissions of greenhouse gas emissions; national strategic priorities; the alignment of the carbon budgets with the national greenhouse gas emissions trajectory; and progress on the implementation of the greenhouse gas mitigation plans. Additional support measures are therefore not necessary.

e. *General comments:*

Comment: Some stakeholders were of the view that there would be double taxation of the same emissions under the carbon tax and the carbon budget non-compliance mechanism. There was a request for clarity on the interaction between formula for calculating the carbon tax payable for the existing carbon tax and carbon budget non-compliance.

Response: Not accepted*.* The carbon tax is a market-based instrument which puts a price on greenhouse gas emissions and provides incentives for behaviour change while the carbon budget is a command-and-control instrument that sets a limit on emissions for key emitters. The instruments are complementary and seek to ensure price and emission reduction certainty. There is no envisaged interaction between the carbon budget and the carbon tax in the first mandatory phase of the carbon budgets.

Comment: Industry stakeholders were of the view that the carbon tax rates are too

high and requested clarity how the higher tax rate was determined. Requested modelling to be conducted to assess the impacts of the higher tax rate on industry.

Comment: Other stakeholders including NGOs, academia and other stakeholders were of the view that the carbon tax rate is too low to effect the desired behaviour change and ensure compliance with the carbon budget. The tax rate is not aligned with the Paris Agreement targets to limit warming to 1,5degC below pre-industrial levels. A higher tax rate is needed and annual adjustments to the tax rate by at least inflation should be considered.

Response: Noted. The carbon tax rates required to comply with the global targets to reduce emissions and meet net zero commitments under the Paris Agreement range from US$46 in 2025 to US$ 90/tCO_2e in 2030 based on reviews conducted by the National Business Initiative in 2021/22 of average international carbon prices. The carbon price estimates for South Africa are US$ 25 in 2025, and US$40 in 2030 without tax free allowances. Various modelling studies were conducted, which show that the carbon tax with a gradual phasing down of the tax-free allowances under the carbon tax will contribute towards meeting South Africa's emissions commitments.

The proposed higher tax rate of R640/tCO_2e (around US$35) is aligned with the lower bound of the carbon pricing levels required to meet the Paris agreement goals and serve as a deterrent for non-compliance with the carbon budgets. It gives effect to the polluter pays principle and a progressive carbon tax design. If companies do not invest in lower carbon and energy efficient technologies aligned with their mitigation plans, they would face a higher tax rate for emissions above the budget. Where companies invest in lower carbon technologies and comply with the carbon budgets allocated to them, they will face zero penalties.

The overall financial impact on companies will depend on the stringency and level of the carbon budget allocated. The carbon budget allocations will be determined by the DFFE in line with the carbon budget allocation methodology.

9.4. Sequestration deduction

(Main reference: Section 6 of the Carbon Tax Act: Clause 58 of the draft TLAB)

During stakeholder consultations, the industry proposed that the sequestration deduction should also apply to timber grown and supplied by third parties, especially informal growers who supply wood to processing mills. The Paper Manufacturers Association of South Africa (in collaboration with the Sustainable African Forest Assurance Scheme) developed a methodology to accurately measure and report the carbon stored. This methodology was reviewed and accepted by the Department of Forestry, Fisheries and the Environment (DFFE) in September 2024.

This aligns with the department's existing Monitoring, Reporting, and Verification (MRV) Tool for carbon emissions sequestration and ensures that third-party timber sequestration meets all the necessary standards for reporting in the forestry sector.

It is proposed to expand the carbon sequestration deduction for the paper and pulp sector to include timber supplied by third parties, provided that the sequestration is measured and verified according to the newly approved protocol.

Comment: The sequestration deduction was broadly supported by stakeholders. There were some suggestions to strengthen measurement reporting and verification (MRV) procedures. Stakeholders requested that the administration and registration process should be streamlined to minimise the administrative burden on small-scale growers, including:

- Development of a centralised registration portal for verification of third-party growers
- A risk based tiered verification approach for registration of third-party growers
- Annual self-certification with random audits to ensure compliance and data integrity.

Response: Partially accepted. In terms of the third-party registration, the South African Greenhouse Gas Emission Reporting System (SAGERS) will be enhanced to enable third-party timber growers to register their plantations. After the system enhancement, third-party growers will be able to capture key information such as their name, harvested area, proportion of harvest purchased, total harvest volume, and geospatial location references.

The department will initiate discussions with the Paper Manufacturers Association of South Africa (PAMSA) to explore the integration of a risk-based, tiered verification approach into the existing protocol. This will be guided by the approved protocol and aligned with ISO 14001 standards, with further engagement planned with the sector to develop clear guidance and implementation strategies.

The DFFE supports the introduction of an annual self-certification process, subject to the condition that third-party growers are registered with Sustainable African Forest Assurance Scheme (SAFAS) on the Value Based Platform system. Under section 6(1)(c), the sequestered emissions (S) must be certified and verified by the DFFE for a specific tax period. An additional requirement for the sequestration deduction to be approved by the DFFE and the department confirms the specific amount of sequestered emissions in writing is proposed. This document can be submitted to SARS by the taxpayer to claim the deduction.

9.5. Aligning schedule 1 of the carbon tax act emission factors

(Main reference: Schedule 1 of the Carbon Tax Act: Clause 61 of the draft TLAB)

In 2023, the DFFE approved country-specific tier 2 emission factors for natural gas and coal fuel types to be used by data providers for estimating and reporting stationary and non-stationary fuel combustion emissions. In May 2024, the department approved the country specific CO_2 emission factor of 54 891kg/TJ and net calorific value of 0.000033141TJ/m^3 for methane rich gas for the 2025 to 2027 GHG emission reporting cycles. There were requests from stakeholders for the inclusion of the DFFE approved tier 2 emission factors for natural gas and coal in Schedule 1 of the Act. To align with the DFFE approved factors, changes to the carbon dioxide emission factors and net calorific values for coal, natural gas and methane rich gas contained in Schedule 1 are proposed.

Comment: There was a suggestion to align the Schedule 1 emission factors with the DFFE approved country specific emission factors and to apply the 2024 DFFE approved emissions factors and net calorific values for natural gas. Stakeholders were of the view that the emission factor for methane rich gas should be updated and

aligned with the latest DFFE approval.

Response: Accepted. The TLAB amendment was aligned with the emission factors and NCVs approved by the DFFE in 2023. In 2024, the department approved changes to the country-specific tier 2 emission factors for natural gas and methane rich gas through a letter to stakeholders signed in May 2024. It is proposed to amend the draft TLAB to align the emission factors for natural gas and net calorific values with the DFFE approved factors for the 2025 to 2027 GHG emission reporting cycles:

- Natural gas - CO_2 emission factor of 55 664kg/TJ and NCVs in the range of 0,0410 to 0.0527TJ/tonne
- Methane rich gas – Change in the lower bound of the NCV range to 0.0368TJ/tonne

Response: Partially accepted. The DFFE, NT and SARS discussed the department's process for approving changes to tier 2 emission factors and alignment with the Budget and TLAB process for effecting changes to Schedule 1 of the Carbon Tax Act. There is a delay of at least 12 months between the changes to factors effected for emissions reporting and the carbon tax given the Budget, TLAB and parliamentary process. It is proposed to amend the Carbon Tax Act to allow the Minister of Finance to adjust the emission factors and other factors in Schedule 1 of the Carbon Tax Act by way of a regulation. The changes to the emission factors will be aligned with the DFFE approval process and the amendments will be ratified in the following year through the TLAB ensuring parliamentary oversight.

9.6. Fugitive emissions calculation formulas

(Main reference: Section 4 of the Carbon Tax Act 15: Clause 58 of the draft TLAB)

Section 4(2)(b)(b) of the Carbon Tax Act provides the formulas to be used by companies to calculate their greenhouse gas emissions for fugitive emission activities and the respective carbon dioxide equivalent emission factors to be applied.

It is necessary to clarify the formula to be used by taxpayers to accurately calculate the CO_2e factors for some of the solid fuel transformation emission activities namely, coke, biochar, charcoal production, and the coal and gas to liquid.

It is proposed to apply the formula used for oil and natural gas activities to coke, biochar, and charcoal production (per charcoal produced) activities.

For the charcoal production (fuel wood input) and coal and gas to liquid activities, are presented in kilogram of greenhouse gas per terajoule (kgGHG/TJ) and tonne of greenhouse gas per terajoule of total output or input (tGHG/TJ), respectively. Two new formulas are proposed to convert the emission factors to tonnes for the charcoal and coal and gas to liquid fuel activities.

Comment: There was a request to change the implementation date to 1 January 2025 due to concerns about companies facing additional interest and penalties for the 2024 carbon tax returns.

Response: Not accepted*.* The emission factors to be used by companies to determine the carbon dioxide equivalent emission factors for calculating fugitive emissions and the inclusion of the new solid fuel transformation activities were amended in the 2024 Budget and Taxation Laws Amendment Act. There were no changes are made to the emission factors.

The emissions declarations in the 2024 tax returns to SARS should not result in any changes to the carbon tax liability of the companies as the factors did not change. The request from the stakeholder to change the implementation date to 1 January 2025 is questionable. The stakeholder was requested to provide an example of companies and activities where this could result in changes to the 2024 tax returns submitted to SARS as motivation for the proposed change in the implementation date. The information was not provided by the stakeholder.

9.7. Diesel refund

(Main reference: Note 6(b)(i) in Schedule 6 Part 3 of the Customs and Excise Act)

In 2000, government implemented the diesel refund system to provide full or partial

relief for the General Fuel Levy (GFL) and the Road Accident Fund (RAF) levy to primary sectors. The rationale for the relief is to protect the international competitiveness of these sectors and ensure the equitable tax treatment of non-road users.

The qualifying on-land activities are farming, mining and forestry.

- On-land activities qualify for 40 per cent refund of the GFL and 100 per cent refund of the RAF levy.
- Onshore farming, mining and forestry businesses qualify for a refund of the GFL and RAF levy for 80 per cent of eligible diesel fuel purchases.

The 80:20 policy of the diesel refund system was aimed at minimising potential abuse of the system and deemed that 20 per cent of the diesel used is non-eligible for the rebate.

Government proposes to apply the refund for all eligible diesel purchases declared to SARS and align with the original policy intent. This will provide additional relief of about R1 billion to taxpayers.

Comment: The proposed amendments as detailed in the draft Explanatory Memorandum recommend eliminating the reference to 80% eligibility; however, the terminology and implementation of a 100% refund lack consistency throughout the amendment. The following is recommended in relation to the amendment:

- The nature of the proposed omission is ambiguous due to the absence of the closing bracket. It is recommended that the wording be revised for improved readability, for example, by using "eligible purchases" as specified in 1(aa).
- The example calculation still references 80%. It is recommended providing clarification regarding the revised treatment.

Response: Accepted. The draft Explanatory Memorandum will be corrected to align with the Budget proposal. The 80 per cent limit will be removed and the EM will be clarified to confirm that the diesel refund will apply to 100 per cent of eligible purchases.

Comment: Some stakeholders commended the proposal; however, the following

uncertainties were raised:

- Definition and verification of eligibility: The phrase "eligible diesel purchases declared to SARS" lacks operational clarity. It is not clear whether SARS will accept the full volume of purchases claimed as "eligible" without adjustment, or whether there will still be a standardized apportionment applied (such as the previous 80:20 principle). The current drafting is subjective interpretation.
- Discretion in the classification of non-qualifying use: In the current system, certain uses (e.g., diesel used in transport of empty trucks back from the market) are automatically considered non-qualifying. Under the new proposal, it is unclear whether SARS will continue to enforce such distinctions rigidly or rely on taxpayer declarations without standard thresholds.

Response: Noted. The proposed amendment to the diesel refund system is to apply the refund to 100 per cent of the eligible purchases. The current eligibility criteria on qualifying purchases will remain in place with the proposed amendment to the diesel refund system. To help streamline and simplify the administration of the diesel refund system, SARS intends to implement the new system in the second half of 2026. Some amendments to the current system will be implemented from 1 April 2026.

General

Comment: There were requests for public comments and written submissions to be made available to all stakeholders.

Response: Noted. The National Treasury will request permission from respondents to publish the written submissions on the National Treasury website.

Comment: Following the publication of the 2024 Carbon Tax Discussion Paper, some stakeholders expressed support for the phasing out of the tax-free allowances and strengthening of the effective carbon tax rate to promote behaviour change. There was a request for the schedule to reduce allowances. To address concerns about potential adverse impacts of the carbon tax, some stakeholders suggested that revenues from the carbon tax should be recycled to provide temporary assistance to emissions intensive and trade exposed industries for jobs and competitiveness.

Response: Noted. The 2025 Budget announced the intention to retain the basic tax-free allowance until 31 December 2030. The discussion paper proposed to reduce this allowance from 2027. Given concerns about the availability of low-carbon technologies, energy costs, competition, load-shedding and logistical challenges, the National Treasury announced its intention to consult with the Department of Forestry, Fisheries and the Environment, the Presidential Climate Commission and others on the options to reduce the basic tax-free allowance from 1 January 2031.

2025 Draft Tax Administration Laws Amendment Bill

10.TAX ADMINISTRATION LAWS AMENDMENT BILL

10.1. Clarifying the meaning of audit certificate issued by public benefit organisations

(Main reference: Section 18A of the Income Tax Act: Clause 3 of the draft TALAB)

Comment: The assurance statement is currently called an “audit certificate” and it is proposed that it be called “a certificate of examination”. No technical difference is dependent on this change, but it does remove any taxpayer confusion that this assurance requirement is in any way related to a statutory audit and is welcomed.

Response: Noted. The terminology will be refined to further improve clarity.

Comment: The amendment does not amend the most problematic aspect, which is the comfort level prescribed in law which will be critical to achieve the clarity sought. The specified comfort level that is prescribed in law is “confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A)”. This requires that the prescribed assurance statement must provide 100% comfort that an amount for which a section 18A certificate was issued, was used as prescribed.

Although it is agreed that the object of the procedures must still seek to provide some form of assurance that the money received in terms of section 18A was used as required, the level of assurance sought in the current legislation is impractical and not financially viable. We are further of the view that currently no international or local assurance standard as applied in practice at a reasonable cost provides the comfort level and assurance SARS currently seeks.

It is proposed that to ensure clarity on what has to be reported and what procedure has to be followed (not just what information must be validated) whilst balancing the cost of such engagement, SARS should prescribe the procedure to be applied for the relevant comfort level it seeks to be achieved in a public notice, and that the assurance statement must align to such process outcome. This can be determined in a public consultation process on the relevant notice and input from relevant stakeholders how to practically apply the process to ensure section 18A funds are used as intended in law and to avoid abuse.

Response: Partially accepted. It is proposed that the level of assurance be relaxed from a 100% assurance to a reasonable satisfaction standard. Adopting a reasonable satisfaction standard will align SARS's expectations with established approaches, reduce the compliance burden on section 18A-approved entities, and enhance the practicality and consistency of certification processes.

Clarification will be added that the certificate providing this level of assurance must be issued by a registered tax practitioner as there has been debate as to how to interpret "independent person". Provision is made for the Commissioner to prescribe such additional information that may be required for purposes of the certificate by public notice. Guidance with respect to the standard of reasonable satisfaction will be set out in a revised Interpretation Note to provide a degree of flexibility in this regard.

CUSTOMS AND EXCISE

10.2. Providing for a simplified entry regime for the entry of goods imported or exported for purposes of express delivery

(Main reference: Section 38 of the Customs and Excise Act: Clause 7 of the draft TALAB)

Comment: Procedures and rules should be made public for comment before implementation. SARS should provide accountability mechanisms for compliance. Simplification should not weaken revenue collection.

> *Response:* Noted. The rules under new section 38(7) will be published for public comment. Providing for a simplified entry regime will strengthen revenue collection since the relevant registrants or licensees will be subject to legislated requirements and conditions.

Comment: Persons registered or licenced and involved in express door-to-door international transportation must be accredited as Authorised Economic Operators (AEOs).

> *Response:* Noted. This proposal will be considered during the drafting of the rules.

Comment: The effort to modernise and simplify tax administration is welcomed and the simplified customs entry regime for express deliveries is supported, as it benefits SMMEs in logistics and e-commerce.

> *Response: Noted.*

Comment: Confirmation is requested that section 38(1) of the Customs Act together with the rules will be amended to incorporate, for instance, the universal categorization of goods in four (4) distinct categories: Correspondence and documents, low value consignments below a specified de minimis threshold for which no duties and taxes are collected, low value dutiable consignments (simplified goods declaration), and high value consignments (full goods declaration).

> *Response:* Noted. Section 38(1) sets out the standard position for entry of goods and further excludes submission of bills of entry for certain goods with the permission of the Controller, for example goods of no commercial value. A document other than a bill of entry will be required for the release of these types of goods.

The insertion of new subsection (7) establishes the enabling legislative framework for simplified entry and release of express consignments. These consignments will be express consignments for door-to-door delivery not exceeding a certain value determined by the Minister and the Minister of Trade and Industry. Detailed processes, including consideration of categories of goods and thresholds, will be prescribed in rules that will be published for public comment.

10.3. Creating flexibility in relation to timing of adjustment of a bill of entry effected in a manner prescribed by the Commissioner

(Main reference: Section 40 of the Customs and Excise Act; Clause 8 of the draft TALAB)

Comment: The proposed amendment is welcomed for addressing practical challenges in complex transactions. The current process is unclear and administratively burdensome, especially for refunds due to transfer price adjustments. The requirement of a voucher of correction for each bill of entry is seen as onerous. There is further a lack of clarity on extension criteria and timelines for reporting and refunds. SARS should allow consolidated reporting and provide clear, fair, and consistent guidance to avoid uncertainty and compliance burdens.

Response: Noted. The proposed amendment only relates to creating flexibility in respect of adjustments made in a manner of adjustment prescribed by the Commissioner. Whilst it is possible to submit adjustments in the form of a voucher of correction without delay, the same cannot be said for instances where the Commissioner determines another manner of adjustment of a bill of entry, for example in the case of transfer pricing adjustments. The proposed amendment makes it possible for the Commissioner to prescribe different timeframes in such cases.

The rules for the adjustment of bills of entry where customs value declared is affected by transfer pricing adjustments are currently in the public comment phase. Comments received are being considered.

Comment: We request clarity on the timeframe and the scope of customs documents to be used for these adjustments other than a voucher of correction.

> *Response:* Noted. The rules for the adjustment of bills of entry where customs value declared is affected by transfer pricing adjustments are currently in the public comment phase and comments received are being considered.

Comment: Whilst the formalisation of this process by means of SARS issuing rules for alternatives to vouchers of correction is positive on the basis that there would be more certainty, there are concerns that the limitation of SARS' discretion will allow for less flexibility for taxpayers. The proposed timeframes may cause problems for taxpayers.

Engagement with relevant stakeholders when drafting the rules could alleviate some of these concerns if taken into account in the Rules implemented. We propose that SARS arrange workshops to engage, whilst still in the drafting phase.

> *Response:* Noted. The rules are currently in the public comment phase. Comments received are being considered and workshops may be arranged depending on the nature of the comments received.

10.4. Use of waste or scrap remaining after the manufacturing from any goods entered for processing

(Main reference: Section 75 of the Customs and Excise Act; Clause 9 of the draft TALAB)

Comment: Commentator requests clarity on operational aspects, timelines, reporting obligations, and VAT implications of the proposed amendment.

> *Response:* Noted. The application and applicable requirements of the rebate item to be created in Schedule No. 3, to enable the use of waste or scrap remaining after the manufacturing from any goods entered in terms of the provisions of a rebate item in Schedule No. 3, will be dealt with in the new item. This will be published for comment by ITAC together with guidelines for the item.

10.5. Insertion of Chapter XB to provide for a Voluntary Disclosure Relief Programme for customs and excise

(Main reference: Proposed sections 77Z – 77ZH of the Customs and Excise Act; Clause 10 of the draft TALAB)

Comment: The Voluntary Disclosure Programme is a positive compliance tool and should be permanent, with digital accessibility through SARS eFiling.

> *Response:* Noted. The programme does not have an expiry date and SARS is planning to modernise the relevant systems.

Comment: The proposed insertion of Chapter XB to provide for voluntary disclosure relief within the customs space is a welcomed, positive development.

We note that "duty" for the purpose of "underpayment" required for relief includes VAT on importation of goods into South Africa. However, it is unclear whether if there is an underpayment and non-compliance, the taxpayer would only need to initiate a customs voluntary disclosure which would cover the matters related to VAT.

> *Response:* Noted. As stated by the commentator, "underpayment of duty" includes VAT and excise duties and thus only one voluntary disclosure in terms of the Customs and Excise Act should be made. This is also made clear by the proposed amendment to section 227 of the Tax Administration Act.

Comment: The eligibility for voluntary disclosure relief is dealt with in section 77ZA, and individuals are excluded from relief if notified of audits, investigation related to underpayment. It might be useful to specify conditions under which the Commissioner may allow applications despite pending audits, investigations, or enforcement actions for greater transparency.

> *Response:* Comment misplaced. The policy position is that customs and excise voluntary disclosure relief must follow the Tax Administration Act programme to the extent possible. Section 77ZA(4) sets out the conditions under which the Commissioner may grant applications under these circumstances, similar to section 226(2) of the Tax Administration Act.

Comment: The requirement that applicant for voluntary disclosure relief must simultaneously apply for tariff, value, or origin determination is burdensome and may cause delays.

Response: Accepted. Clause 77ZA(6) requiring a simultaneous application for a tariff, value or origin determination will be deleted.

Comment: We recommend broadening the eligibility criteria for voluntary disclosure relief in section 77ZB*(b)* and propose the following wording:
"… Except where in the opinion of the Commissioner exceptional circumstances exist and on good cause shown, the VDP involves an underpayment which has not occurred within five years of a previous disclosure of a similar underpayment by the applicant".

Response: Not accepted. The requirements for a valid customs and excise disclosure follows the requirements provided for in the Tax Administration Act as closely as possible. The Tax Administration Act contains a requirement in section 227*(b)* that the disclosure must "involve a 'default' which has not occurred within five years of the disclosure of a similar 'default' by the applicant or a person referred to in section 226 (3)". This ensures that repetitive defaults are not condoned and provides clarity to applicants.

Comment: In terms of section 77ZD(1)*(b)* "An assessment, a re-assessment and a determination of the amount owing in terms of subsection (1)*(a)* is not subject to an administrative appeal in terms of Chapter XA.". This limits the applicant's rights in terms of provisions of the Promotion of Administrative Justice Act, 3 of 2000.

Response: Not accepted. This provision was included to align the process with the voluntary disclosure process in the Tax Administration Act. An applicant cannot apply for relief and then, when it is granted, dispute the steps taken to grant the relief.

Comment: In terms of section 77ZE(1) the Commissioner may withdraw the relief provided for in the voluntary disclosure agreement if an applicant failed to disclose

a matter that was material for purposes of making a valid voluntary disclosure as set out in section 77ZB. Specify criteria that qualify as "material matter disclosure failures" to guide assessments of provisions for withdrawal and reinstatement of relief.

Response: Not accepted. The wording of this provision is similar to the wording in section 231 of the Tax Administration Act. Section 77ZB deals with what is required for a valid disclosure and it follows that any information coming to light that affects any of the criteria mentioned in this section would be material.

10.6. VAT Modernisation Project

(Main reference: Sections 1 and 74 of the Value-Added Tax Act; Clauses 11 and 14 of the draft TALAB)

Comment: Whilst we welcome a change to the tax system, we are of the view that the proposed system will one, be exceptionally costly, two, would have substantial delays in its implementation and three, will not necessarily address all of the issues. Our approach would not be for a system of matching of invoices by way of an e-invoicing and an e-reporting system where the rest of the world has delayed such implementation due to various challenges. The risk that is being addressed by the VAT modernisation is VAT input and refund fraud. Both of these issues can be eliminated by the removal of VAT inputs and hence the removal of VAT refunds. This would allow the Minister of Finance to reduce the VAT rate from 15% to about 6% with modelling being done by SARS on actual VAT output disclosure on the basis of nil inputs.

Response: Noted. The proposal would represent a reversal from the international trend away from sales taxes to value-added taxes and would have to be considered in the light of the various factors that informed the decision to implement a value-added tax in South Africa. It has been noted for further review and consideration by National Treasury.

Comment: The VAT Modernisation Project must ensure that compliance systems remain affordable, user-friendly, and inclusive of smaller businesses without advanced accounting systems.

Response: Noted. SARS will be engaging with a wide variety of stakeholders in implementing this system.

Comment: As we understand it, these proposed amendments set the scene for the implementation of VAT real-time reporting – part of SARS' modernisation strategy to address the tax gap and achieve voluntary compliance within the VAT space. Whilst we see this as a positive, future development, there are various factors that need to be considered before this can be a viable reality. These include global lessons, economic assessment, funding and transition risks, and other practical considerations.

Response: Noted. The proposed amendments provide the initial building blocks for a voluntary e-reporting system. SARS is planning to publish a consultation paper that will form the basis for wide consultation and will address the categories of comments above. It is anticipated that the consultation paper will be released before the end of the financial year and will form the basis for further collaborative engagement to develop a world-class VAT administration system that is suited for South Africa's circumstances.

10.7. Prescribed format for notice to Commissioner of intention to institute legal proceedings

(Main reference: section 11 of the Tax Administration Act; clause 15 of the draft Bill)

Comment: There is much concern that the prescribed form and manner may be prohibitive and may further delay access to court. It is proposed that this proposal be deleted or alternatively that any requirements that are considered necessary by SARS be inserted into the legislation itself and not at the discretion of SARS. It is further submitted that this is not merely an administrative alignment but significantly impacts on access to court and due process and should it be decided to proceed with the proposal, the principles of section 36 of the Constitution should be expressly followed and applied as this is a limitation of section 34 of the Constitution.

Response: Partially accepted. The notice precedes the normal court proceedings

and is intended to allow SARS to address issues before the parties engage in costly litigation. The purpose of the proposed amendment is to prescribe a specific format for this notice i.e. the relevant information to be contained in the notice to streamline SARS operational processes. A critical point to note is that the courts retain the discretion to set a matter down for hearing even if no notice has been provided or SARS considers the notice inadequate, so the courts remain the final decision makers with respect to access to court.

The currently proposed amendment of section 11(5) will be deleted, as it may give rise to the impression that the intention is to regulate legal proceedings that are the subject of the High Court Rules. Instead, it is proposed that the amendment be made in section 11(4) which only deals with the notice to the Commissioner of an applicant's intention to institute proceedings.

10.8. Inspecting the premises and activities of an enterprise that submits a voluntary VAT registration application.

(Main reference: Section 45 of the Tax Administration Act; Clause 16 of the draft Bill)

Comment: VAT registrations already face significant delays. Risk that expanded powers could worsen bottlenecks instead of improving timelines. Implement safeguards to prevent inspection delays in VAT registration. Ensure additional capacity for inspections across VAT registrations, employment tax incentive (ETI) applications and section 18A Public Benefit Organisations approvals. The goal should be to strengthen fraud prevention without compromising efficiency in the registration processes.

Response: Noted. The proposed inspections of premises in respect of which an application for registration for value-added tax has been received, is already something that has been operationalised by prior arrangement with taxpayers. Inspections are not standard procedure for all registration applications. A tiered approach through system risk rules is followed by SARS and if anomalies or mismatches are picked up by the system, SARS firstly requests clarification from the applicant. It is only if the matter is not resolved that it is routed for validation of the existence of the enterprise.

No amendment is proposed to the SARS Service Charter to extend the 21 business days turn-around time for VAT registrations. Hence, no impact on SARS timelines is anticipated, even if an inspection is required.

10.9. Textual correction: Readily apparent undisputed error

(Main reference: Section 93 of the Tax Administration Act; Clause 18 of the draft Bill)

Comment: Section 93 is designed to resolve clear, non-debated mistakes without invoking the full Chapter 9 dispute process. The proposed amendment has the unintended consequence that more matters that are non-controversial today would be pushed into the objection and appeal channel, increasing the administrative burden for SARS and taxpayers, prolonging refunds and undermining the very efficiency rationale behind section 93. Furthermore, the Memorandum of Objects states that this is a technical correction. If there is no policy intent to narrow relief, the wording of section 93(1)*(d)* should remain as it currently reads in order to preserve the efficient resolution of clearly undisputed errors.

Response: Accepted. The proposed amendment was aimed to be a textual correction but after consideration it seems that the proposed wording may have unintended consequences. The proposed amendment will be withdrawn and reintroduced at a later stage, should a textual correction still be required after further review.

10.10. Suspension of payment where a taxpayer intends to dispute an assessment

(Main reference: Section 164 of the Tax Administration Act; Clause 19 of the draft Bill)

Comment: We welcome the amendment but note with concern that the SARS eFiling system continues to systematically reject submissions where taxpayers indicate their intention to dispute and so we ask that this Committee ensures that the eFiling system is amended in line with the law, both in terms of the issue of intending to

dispute and second of all, to take into account this proposed amendment.

Response: Noted. SARS is not aware of an outright rejection of applications for suspension of payment in instances where a taxpayer has noted its intention to dispute the tax. The system is designed in such a manner that where a stand-alone suspension of payment is applied for, the suspension is automatically revoked if no dispute is lodged within 80 business days after the date of assessment. SARS is however aware of isolated instances where the suspension of payment was revoked earlier than the 80 business-day period. The matter is receiving attention and will be rectified.

10.11. Clarifying "bona fide inadvertent error" for purposes of understatement penalties

(Main reference: Sections 222 and 223 of the Tax Administration Act; Clauses 21 and 22 of the draft Bill)

Comment: The proposed deletion of the "*bona fide* inadvertent error" defence from section 222(1) effectively imposes a strict liability standard for the imposition of understatement penalties (USP). Currently, this defence serves as a critical safe harbour against imposition of USP for honest mistakes or good faith errors arising from reliance on professional advice, acknowledging that not all errors arise from culpable behaviour.

Under the proposed framework, the SARS auditor will no longer be concerned with the taxpayer's *mens rea* or the reasonableness of their conduct for the errors. Instead, the imposition of the USP becomes automatic if the quantum of the error exceeds the objective threshold for a 'substantial understatement'.

The consequence of this is that should the understatement exceed this objective test, no defence would be available to avoid the imposition of an USP. The only variable is the percentage USP imposed under the USP table in section 223.

This means that two taxpayers who both made *bona fide* inadvertent errors could have different USP imposed. The taxpayer that has the understatement not

exceeding the substantial understatement threshold would be able to rely on the defence and not have any USP imposed. The taxpayer that exceeds the threshold would have USP imposed of at least 25%, despite the circumstances being the same. The criteria on whether a taxpayer can rely on the defence should be applied consistently regardless of the quantum of the understatement.

Response: Not accepted. The removal of the term '*bona fide* inadvertent error' from section 222(1) does not dispense with or otherwise alter the culpability that is required to impose an understatement penalty. Section 222(2) provides that SARS must apply the highest applicable understatement penalty percentage in accordance with the table in section 223 to each shortfall occasioned by an understatement. The table lists behaviours that are sanctioned progressively in ascending order of culpability from item (i) (substantial understatement), where culpability is lowest, to item (vi) (intentional tax evasion), where culpability is highest.

Correctly applied, the commentator's example of the two taxpayers who made *bona fide* inadvertent errors, one exceeding and the other not exceeding the substantial understatement threshold, serves to illustrate the operation of the understatement penalty regime. Presuming a standard case with amounts of say R2 million and R25 000 involved, both taxpayers will incur a penalty at a penalty percentage of 25% in circumstances where they did not take reasonable care in completing their return, 50% in circumstances where they did not have reasonable grounds for the tax position that they took in their return, and 100% if they were grossly negligent.

However, if the taxpayer with the R25 000 understatement took reasonable care when completing their return and had reasonable grounds for the tax position that they took, they will not incur a penalty because their behaviour does not fall within the understatement penalty percentage table. In this regard, it is well established that reliance on professional advice prior to taking a tax position is generally regarded as reasonable. In this way, honest mistakes and good faith errors that have reasonably been made whether based on professional advice or otherwise, do not incur a penalty.

Far from being advantaged, a taxpayer with a R2 million understatement must demonstrate that they exercised additional due diligence. They will incur a penalty of 10% even though they took reasonable care in completing their return and had reasonable grounds for the tax position that they took. This is because substantial understatement is the only behaviour in the understatement penalty percentage table that is applicable in the circumstance. Although it could therefore be said that such a penalty functions on a strict liability basis, this is not strictly speaking true as it is also the only penalty that is subject to remission. Currently, a taxpayer subject to such a penalty can request SARS to remit the penalty if they took the additional precaution of disclosing the underlying arrangement to SARS, whether in their return or by other means prior to its submission; and pre-emptively based their tax position on an opinion that meets the requirements of section 223(3). Accordingly, a taxpayer can avoid a substantial understatement penalty when they take a tax position by adhering to these requirements.

The purpose of the introduction of *bona fide* inadvertent error was to provide relief to those taxpayers who, notwithstanding having taken reasonable care in completing their returns, have made an understatement that exceeds the substantial understatement threshold. As an entry level requirement, it has however blurred the lines between what is a *bona fide* error as opposed to a reasonable one and has thereby undermined the proper functioning of the understatement penalty percentage table and has effectively rendered section 223(3) a dead letter. As it is clear from a contextual reading of the legislation that the introduction of *bona fide* inadvertent error was never intended to excuse culpable behaviour, the proposed amendment seeks to restore this original intent.

The amendment therefore proposes to move the term from section 222(1) to section 223(3) to specifically provide relief as it pertains to substantial understatements resulting from a *bona fide* inadvertent error made during return completion, the only penalty that currently functions on a basis analogous to that of strict liability.

Comment: We submit that penalties should only apply when the conduct of the taxpayer offends the public interest. It should not be used as an instrument to collect

additional taxes when innocent mistakes are made.

> *Response:* Comment misplaced. The behaviour that offends the public interest is contained in the table in section 223, and its application as explained above, ensures that penalties only apply to such behaviour and not to innocent mistakes that have reasonably been made.

Comment: While there may be no fairness in the *calculation of a tax liability*, the principles of justice and fairness must apply to the *imposition of the USP*. A penalty such as the USP is a sanction intended to punish blameworthy conduct. Such punitive measures demand proportionality and a direct link to the degree of fault of the transgressor. To subject a taxpayer who has made an honest and non-negligent error to the same penalty regime as one who was grossly negligent is fundamentally unfair. The proposed amendments erode this distinction by treating the USP as an automatic financial consequence rather than a considered sanction for culpable behaviour.

> *Response:* Comment misplaced. The understatement penalty regime has, from its inception, maintained proportionality by only punishing understatements arising from the behaviours listed in the table in section 223(1), and by sanctioning these behaviours progressively in ascending order of culpability. This has the important consequence that even when the term *bona fide* inadvertent error is removed from section 222(1) as proposed, taxpayer behaviour that does not constitute a behaviour listed in the table, falls the be excluded from the understatement penalty regime.

Comment: The proposed amendment is designed to neutralise judicial trend of protecting taxpayers who act in good faith and rely on professional advice. It appears that the proposed amendments are a direct legislative response intended to override the principles established by the Supreme Court of Appeal (SCA) in *CSARS v Thistle Trust* and *Coronation Investment Management SA (Pty) Ltd v CSARS*.

In these cases, the SCA confirmed that a taxpayer can consciously and deliberately adopt a specific tax position based on professional advice, be proven wrong in the law, and still not be liable for an USP because their actions were not taken in bad

faith.

While Parliament has the authority to amend legislation, doing so to remove an interpretation confirmed by these decisions significantly weakens taxpayer rights and creates a more adversarial compliance environment. It furthermore undermines legal certainty. It is proposed that the current wording of section 223 be retained, and judicial precedent be upheld.

Response: Comment misplaced. The proposed amendments do not undermine whatever legal certainty these cases have provided. Moving *bona fide* inadvertent error from section 222(1) to section 223(3) does not in any way change the meaning of the term, it merely sets the term as a remission criterion for substantial understatement to facilitate the proper functioning of the understatement penalty regime. Upon amendment as envisaged, taxpayers who have incurred a penalty for substantial understatement are free to rely on their interpretation of Thistle and Coronation to substantiate remission. As it is well established that reliance on professional advice is generally regarded as reasonable, a taxpayer who does so and as a result, makes an understatement that does not exceed the threshold of substantial understatement, will not incur a penalty. As an example, see *Thistle Trust v CSARS [2024] ZACC 19* in the Constitutional Court.

Comment: The proposed amendments unjustifiably infringe taxpayer rights and the *audi alteram partem* principle, and results in a potential conflict of interest. The imposition of a penalty (including the USP) by SARS is an administrative action and is therefore subject to section 33 of the Constitution which guarantees the right to administrative action that is lawful, reasonable, and procedurally fair. A system that automatically imposes a penalty such as the USP based on a monetary trigger without any initial inquiry into the taxpayer's culpability is arguably procedurally unfair and irrational and further violates the *audi alteram partem* principle.

Response: Comment misplaced. Section 222(2) requires that SARS imposes the highest applicable understatement penalty percentage in accordance with the table in section 223. As the table lists behaviours in ascending order of culpability, SARS cannot impose an understatement penalty automatically but must inquire into the taxpayer's culpability to determine the appropriate penalty, if any.

As section 222(1) requires that the taxpayer must pay a penalty if a behaviour finds application, SARS has no discretion in circumstances where substantial understatement is the only applicable behaviour. Although it could therefore be said that such a penalty does not constitute administrative action and functions on a strict liability basis, a taxpayer can currently avoid a substantial understatement penalty when they take a tax position by pre-emptively adhering to the requirements of section 223(3). The introduction of *bona fide* inadvertent error was never intended to excuse culpable behaviour, so the proposed amendment merely seeks to move the term from section 222(1) to section 223(3) to specifically provide relief as it pertains to substantial understatements resulting from such an error during return completion, the only penalty that currently does function on a basis analogous to strict liability.

The imposition and also the decision not to remit an understatement penalty, is in accordance with section 224, subject to objection and appeal. Here the burden of proof as to the facts on which the understatement penalty was imposed is on SARS. Objection provides an opportunity for the taxpayer to state their case, and appeal involves a complete judicial rehearing of the issues in dispute and the ability for the judicial officer to make the decision anew, including as it pertains to understatement penalties.

Comment: Further, the taxpayer's reliance on the defence in section 223 relies on the Commissioner being "satisfied" as to the taxpayer's behaviour being *bona fide* and inadvertent. It is difficult to see when the Commissioner would be satisfied given the narrow view adopted by SARS in the SARS *Guide to Understatement Penalties* (Issue 2) that:

"*… it seems likely that the only errors that may fall within the bona fide inadvertent class are typographical mistakes – but only properly involuntary ones*."

SARS is in effect moving the goalposts by avoiding the more objective criteria as set out by the courts and replacing it by more subjective criteria of SARS' 'satisfaction' as to when a *bona fide* inadvertent error exists, without clear guidelines.

Response: Partially accepted. The notion that the requirement of SARS' satisfaction is a subjective criterion is seemingly rooted in pre-constitutional administrative law. The current position was described as follows in *Walele v the City of Cape Town and others* 2008 (11) BCLR 1067 (CC), paragraph 60:

> *"In the past, when reasonableness was not taken as a self-standing ground for review, the City's ipse dixit could have been adequate. But that is no longer the position in our law. More is now required if the decisionmaker's opinion is challenged on the basis that the subjective precondition did not exist. The decisionmaker must now show that the subjective opinion it relied on for exercising power was based on reasonable grounds."*

However, in order to address the concern raised, the wording of the proposed amendment to section 223(3) will be amended to remove the requirement that SARS must be satisfied that a *bona fide* inadvertent error exists, thereby aligning it with the current wording of section 222(1) where a *bona fide* inadvertent error is currently placed.

Comment: Whilst the Act seeks to impose an onus upon SARS to show the behaviour, this is totally undermined by the amendment to section 222 and the removal of the exclusion of the *bona fide* inadvertent error. There will thus be no ability for a taxpayer to exercise their rights to enforce SARS meeting the onus and as such, the balance of power has been dramatically changed by this amendment so as to totally undermine the legislative intent to impose an onus upon the Commissioner.

Response: Not accepted. Section 102(2) provides that the burden of proving the facts on which SARS based the imposition of an understatement penalty, is upon SARS. The amendments do not propose that *bona fide* inadvertent error be removed, merely that it be moved from section 222(1) to section 223(3) to specifically serve as a criterion for remission of a substantial understatement, and do not disturb the burden on SARS.

Furthermore, whether an understatement results from a *bona fide* inadvertent error is uniquely within the taxpayer's knowledge. This was acknowledged in ITC 1959

85 SATC 35, paragraph 40 where the Court said the following:

> *"I do not accept the appellant's contention that prior to levying the USP, SARS had a duty to satisfy itself that the understatement did not result from a bona fide inadvertent error. The appellant's assertion amounts to turning the burden of proof set out in s 102(2) of the TAA on its head. The burden remains with the appellant to prove that the interest expense is deductible and hence no understatement of its income. In the event <u>the appellant had provided evidence that the understatement was due to an inadvertent bona fide error</u>, in terms of s 221, it would not be competent for the respondent to levy the USP. The appellant led no such evidence.".*

It is also noted that in *Purlish Holdings (Pty) Ltd v CSARS* 81 SATC 204 (SCA), the Supreme Court of Appeal was unable to find that the understatement resulted from a *bona fide* inadvertent error as the taxpayer had not adduced evidence to this effect.

Comment: The proposal is framed as a clarification but is, in substance, a material change to remove the availability of the defence in many more cases. This raises uncertainty and risks inconsistent application in audit and dispute contexts.

Response: <u>Not accepted</u>. In cases where a substantial understatement is the only behaviour attributable to the understatement, the proposed amendments do not remove the available defences or undermine whatever legal certainty case law has provided. Where a substantial understatement is not at issue, taxpayers who do not display culpability will avoid an understatement penalty on this basis.

Comment: Limits the defence to "substantial understatement" cases only, excluding smaller errors and narrowing taxpayer protections.

Response: <u>Comment misplaced</u>. As discussed above, "smaller errors" will be judged in accordance with the table in section 223 as the regime clearly intended and will not incur a penalty if reasonable.

Comment: The proposed amendment disadvantages smaller taxpayers who may

not afford formal tax opinions. It is proposed that mandatory tax opinions for minor or clerical errors be avoided.

Response: Comment misplaced. Substantial understatement is defined in section 221 as "*a case where the prejudice to SARS or the fiscus exceeds the greater of five per cent of the amount of 'tax' properly chargeable or refundable under a tax Act for the relevant tax period, or R1 000 000*". The remission criterion in section 223(3) which does not form part of the proposed amendments, ensures that additional due diligence is exercised where such significant amounts are involved, which includes basing the tax position on an opinion that adheres to the criterion in the current section 223(3).

In cases were understatements resulting from the taking of a tax position do not meet the threshold of substantial understatement, the taxpayers need not adhere to this higher standard, they must merely have reasonable grounds for their tax position to escape a penalty. Smaller taxpayers may obtain guidance from various reliable sources, including SARS, if they are unsure whether they have reasonable grounds for the tax position that they want to take.

The proposed amendment that sets *bona fide* inadvertent error as a remission criterion for substantial understatement is specifically aimed at affording relief to taxpayers who have as a result of reasonable minor or clerical errors during the return completion process, incurred a penalty for substantial understatement.

Comment: Replace category or exception of *bona fide* inadvertent error with a seventh category of behaviour being reasonable care taken which would have a nil understatement penalty. This is in essence what the *bona fide* inadvertent error exemption provided.

Response: Partially accepted. As discussed above, an understatement penalty can only be imposed if the taxpayer's conduct amounts to one of the behaviours listed in the table in section 223. The wording of section 222(1) of the Tax Administration Act will be amended to make this clear.

10.12. ADDITION OF A NEW CLAUSE: PROPOSED AMENDMENT OF SECTION 3 OF THE INCOME TAX ACT

Section 24(2A) was inserted by section 13 of the Taxation Laws Amendment Act, 2022, and provides that in the case of a lay-by agreement as contemplated in section 62 of the Consumer Protection Act, 2008, the Commissioner may make an allowance in respect of all amounts which are deemed to have accrued under such agreement, but which have not been received by the end of the taxpayer's year of assessment. Any allowance made by the Commissioner shall be included in the income of the taxpayer in the immediately following year of assessment. At the time of its insertion, section 24(2A) was not included in section 3(4) of the Act which stipulates which decisions taken by the Commissioner are subject to objection and appeal under Chapter 9 of the Tax Administration Act, 2011. The proposed amendment aims to correct this oversight by making the allowance determined by the Commissioner subject to objection and appeal.

10.13. ADDITION OF A NEW CLAUSE: PROPOSED AMENDMENT OF SECTION 2 OF THE GLOBAL MINIMUM TAX ADMINISTRATION ACT

The proposed amendment to section 2 inserts a registration requirement in line with other tax Acts and makes a technical correction to provide for the consistent use of terminology.

ANNEXURE A: LIST OF COMMENTATORS

1. AJM
2. Association for Savings and Investment South Africa (ASISA)
3. Banking Association South Africa (BASA)
4. BDO Tax Services (Pty) Ltd
5. Bowmans
6. British American Tobacco South Africa (BATSA)
7. Business Unity South Africa
8. Chartered Institute for Business Accountants (CIBA)
9. Cliffe Dekker Hofmeyr Inc
10. COSATU
11. Deloitte & Touche
12. Department of Transport
13. Department of Trade, Industry and Competition
14. ENSafrica
15. Ernst & Young (EY)
16. Future Growth
17. Government Employees Pension Fund
18. Independent Municipal and Allied Trade Union (IMATU)
19. Institute of Retirement Funds Africa NPC (IRFA)
20. KPMG
21. Metal Concentrators SA
22. Mineral Council South Africa (MCSA)
23. Motus
24. MTN South Africa
25. MWEB

26. National Association of Automotive Component and Allied Manufacturers (NAACAM)
27. NWU
28. Office of the Tax Ombud (OTO)
29. Old Mutual
30. PetroSA
31. PKF Durban
32. PwC
33. Richards Bay Industrial Development Zone Company SOC Ltd (RBIDZ)
34. South African Insurance Association (SAIA)
35. South African Institute of Chartered Accountants (SAICA)
36. South African Institute of Professional Accountants (SAIPA)
37. South African Iron and Steel Institute (SAISI)
38. Shepstone and Wylie Attorneys
39. SNG Grant Thornton
40. South African Institute of Taxation
41. Southern African Venture Capital and Private Equity Association
42. State Security Agency (SSA)
43. Stonehage Fleming Financial Services
44. Sun International
45. Sydney Mtsweni
46. Takealot Group
47. Telkom
48. The Digital Council Africa (DCA)
49. The Fuels Industry Association of South Africa
50. The South African Property Owners Association

(SAPOA)

51. The University of Stellenbosch (SU)
52. Towers Watson
53. Toyota South Africa
54. University of Cape Town (UCT)
55. Unicus Tax Specialists SA
56. Universities South Africa (USA)
57. University of the Free State (UFS)
58. University of Pretoria (UP)
59. UWC Finance Dept
60. VAT IQ
61. Vodacom
62. Webber Wentzel
63. WITS University
64. Yellow tree
65.

Individuals

1. Adv Annemie Triegaardt
2. Jacques Potgieter
3. Johan Coetzer
4. Kobus van den Bergh
5. Prof Philip Haupt
6. Sydney Mtsweni