2025 DRAFT TAX BILLS & RATES BILL

Presentation to the Standing Committee of Finance

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Date: 04 Nov 2025

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National Treasury
REPUBLIC OF SOUTH AFRICA

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2025 RATES BILL

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Rates Bill

- Government proposes to increase excise duties on alcoholic beverages, tobacco products, and vaping devices, with rates ranging from 4.75% to 6.75%. An ad valorem excise duty tax-free cap for smartphones valued at R2 500 or less will be introduced from 1 April 2025. The inflationary increase of the health promotion levy will be cancelled on the same date.
- The Bill proposes to extend the urban development zone tax incentive to 31 March 2030 and adjust the Employment Tax Incentive formula from 1 April 2025, allowing a 60% claim on wages below R2 500. It also increases the carbon tax cost recovery quantum for liquid fuels to 0.99c/litre from 1 January 2025.

Increase in excise duties: Tobacco

- **General Comments:**
- 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
- 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.
- 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.

Increase in excise duties: Tobacco (2)

- ***Response:***
- 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 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 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.

Increase in excise duties: Alcohol

- **General Comments**:
- 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.
- 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.

Increase in excise duties: Alcohol

- **General 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.
- A more nuanced approach is needed, as raising excise does not address the underlying drivers of harmful alcohol consumption (misuse/ abuse).

Increase in excise duties: Alcohol (3)

- ***Response***:
- 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.
- 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.
- National Treasury acknowledges that although raising alcohol excise taxes may reduce general alcohol consumption levels, provided general prices increase, it also requires to be complemented with other non-tax measures to adequately address excessive consumption or abuse of alcohol.

Illicit trade: Tobacco

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

Illicit trade: Tobacco (2)

- **General comments:**
- 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
- 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
- Encourage SARS to implement a track-and-trace system in South Africa for cigarettes and vaping products
- Introduce into a Minimum Retail Price ("MRP") point of R37 per pack of 20 cigarettes to achieve effective enforcement and to address retail tax compliance.

Illicit trade: Alcohol

- **General 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
- 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
- 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.
- When prices rise faster than incomes, people can afford fewer goods and services. Cheaper goods, including illicit and black- market products, become more attractive

Illicit trade: Tobacco & Alcohol

- ***Responses***:
- National Treasury acknowledges the problem of illicit trade and is concerned about it as it undermines government's health and excise policy objectives.
- Since 2023 Budget, the excise duty for cigarettes and cigarettes tobacco have only been adjusted by inflation having considered the challenges in the industry since COVID19 and it impact of revenue collection.
- SARS is implementing several compliance measures. Furthermore, additional budget resources have been allocated to SARS to rebuild enforcement capacity and improve tax compliance

Illicit trade: Tobacco & Alcohol (2)

- ***Responses:***

- National Treasury committed to the Committee that it will engage with SARS regarding the recent additional allocations to support efforts to ensure that the funding is effectively directed toward strengthening compliance and revenue collection.
- National Treasury will consider the Minimum Unit Price (MUP) measure and the feasibility of its implementation.

Other related issues

- **Comments**:
- Reconsider the Budget proposal for the adjustment to tobacco excise duties to take effect from 1 April in future years
- Given the anti-forestalling rules for cigarettes, this will add to, and not ease, the administrative burden for cigarette manufacturers.

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

Other related issues (3)

- **Comment**:
- 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.
- ***Responses***:
- 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

2025 DRAFT TAXATION LAWS AMENDMENT BILL

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Individuals, Savings and Employment

- Reducing the threshold for ring-fencing of assessed losses
- Cross-border tax treatment of retirement fund benefits

Reducing the threshold for ring-fencing of assessed losses from 45% to 39% marginal tax rate

- **Comment:** This proposal reduces a tax benefit that encourage savings inhibits the growth of middle-income group in a country with poor savings. Why restrict an avenue of savings?
- ***Response:*** *Not accepted.* This creates an inequitable tax advantage for taxpayers who use assessed losses from suspect trades to offset remuneration income. To address this imbalance, the proposal adjusts the income threshold to commence at the 39% marginal tax rate instead of 45%.

Reducing the threshold for ring-fencing of assessed losses from 45% to 39% marginal tax rate (2)

- **Comment:** The proposal unfairly harms middle-income earners and discourages side hustles. Instead, retain the current threshold, introduce sector-specific carve-outs, or consider safe harbour thresholds and transitional relief.

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

Cross-border tax treatment of retirement funds

- Foreign retirement benefits received by SA tax residents are currently exempt under domestic law, which can result in double non-taxation or forfeiture of South Africa's exclusive taxing rights under double tax treaties (DTA), leading to revenue losses to the fiscus.
- **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.

Cross-border tax treatment of 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.

INCOME TAX ACT: BUSINESS GENERAL

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Income Tax: Business (General)

- Extending the anti-avoidance rules dealing with third-party backed shares
- Refining the definition of “hybrid equity instrument”
- Reviewing asset-for-share and amalgamation transactions involving collective investment schemes
- Refining and clarifying the meaning of “interest” to enhance certainty

Extending the anti-avoidance rules dealing with third-party backed shares (Clause 7 of the draft TLAB: section 8EA of the Income Tax Act)

- 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.

Extending the anti-avoidance rules dealing with third-party backed shares (2)

- **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 reasons unrelated to avoiding taxes.
- ***Response:*** Not accepted. By applying the rule to any year of assessment because such a right previously existed, it ensures 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 have applied.

Withdrawn amendment – Refining the definition of "hybrid equity instrument"

- On 3 September, Minister of Finance retracted the proposed amendment to section 8E (Refining the definition of ‘hybrid equity instrument’) as numerous commentators raised concerns with National Treasury and SARS that the current broad wording in relation to this proposal would effectively eliminate preference shares as a viable means of financing.
- To avoid a negative impact on current financing, the Minister of Finance, decided to retract the proposal.

Reviewing asset-for-share and amalgamation transactions involving CISs (Clauses 28 & 29 of the draft TLAB: sections 42 & 44 of the Income Tax Act)

- 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.
- **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.

Reviewing asset-for-share and amalgamation transactions involving CISs (2)

- ***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 individual investors initiate asset-for-share transactions to avoid CGT.
- **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 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.

Reviewing asset-for-share and amalgamation transactions involving CISs (2)

- ***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.

Refining and clarifying the elements of the interest limitation rules to enhance certainty (Clause 22 of the draft TLAB: section 23M of the Income Tax Act)

- It is proposed:
  - That the s24J definition of interest be used to determine "adjusted taxable income"
  - To make it clear that the objective is to first test which debt should be focused on for the limitation of interest, before adding additional elements, such as forex differences
  - That back-to back lending arrangements be eligible for carve-out if they meet the criteria
- **Comment:** There is a disconnect between interest subject to the limitation and interest adjustments to determine limitation.
- ***Response*:** Accepted. Additional technical comments & more detailed responses in word response document.

INCOME TAX : : BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

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Anomaly in the Act relating to capital distributions by collective investment schemes (Clauses 35 & 36 of the draft TLAB: paragraphs 61 & 82A of the Income Tax Act)

- The current tax law lacks clear guidance on how to treat "capital distributions" from a fund that is still operating. There’s no specific rule for capital payments made during a fund’s ongoing operations.
- **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 year of assessment in which that distribution accrues to that holder.

TAX INCENTIVES

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Additional deduction for domestic production of battery electric and hydrogen-powered vehicles (Clause 17 of the draft TLAB: section 12V of the Income Tax Act)

- It is proposed that the term ‘motor vehicle manufacturer’ be defined as a manufacturer of light motor vehicles under paragraph (i) of the definition of ‘final manufacturer’ in terms of Automotive Production and Development Programme Phase 2 (APDP 2), including ‘heavy motor vehicles’ as referred to in the Customs and Excise Act.
- **Comment:** Some commentators requested that the incentive be made available to component manufacturers (CMs) since they will also likely need to modify their production lines.

Additional deduction for domestic production of battery electric and hydrogen-powered vehicles (2)

- ***Response:*** *Noted*. The tax incentive was intended to complement the 20 per cent 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.

INCOME TAX: INTERNATIONAL

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Income Tax: International

- Interaction of controlled foreign company rules in section 9D with section 9H
- Taxation of trusts and their beneficiaries
- Refining deferral of exchange difference rules on debt between related companies

Interaction of controlled foreign company rules in section 9D with section 9H (Clause 11 of the draft TLAB: section 9D of the Income Tax Act)

- 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 sections 9H(4) to (7) apply.

Taxation of trusts and their beneficiaries (Clauses 3 & 25 of draft TLAB: sections 7(5) & 25B of the Income Tax Act)

- It is proposed that the Act be amended to ensure that the flow-through and attribution principles 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).

Refining deferral of exchange difference rules on debt between related companies (Clause 23 of the draft TLAB: section 24I of the Income Tax Act)

- It is proposed that exchange differences on items not recognised for financial reporting should no longer qualify for deferral. Also, deferred exchange differences should be triggered on the portion of the item realised within the assessment year.
- **Comment:** The distinction between "DG"/"DL" and "G"/"L" remains unclear, particularly regarding whether they include current-year amounts. This ambiguity raises questions about the rationale for offsetting "G" against "DG" or "L" against "DL." Clarification would be helpful to ensure consistent interpretation.
- ***Response:*** Partially accepted. The formula will be reworded.

Global Minimum Tax (section 2 of The Global Minimum Tax Act, 2024)

- **Comment:** Given the scope of the administrative guidance to the GloBE Model Rules and Safe Harbours, there is a view that South Africa's Multinational Enterprises with their first fiscal year starting before 30 June 2024 should be able to rely on this guidance from their first returns submitted if they elect to. In this regard, section 2 should be amended so that GLoBE Model Rules released before the start of the fiscal year and published until 31 December 2025 may be applied at the election of a Multinational Enterprise.
- ***Response*:** Accepted. The June 2024 guidance can be used for fiscal years commencing on or after 1 January 2024.

VALUE-ADDED TAX ACT 89 OF 1991

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Reviewing the definition of insurance (Clause 40 of the Draft TLAB: definition of "insurance" in s1(1) of the VAT Act)

- In light of the Capitec Bank Limited v SARS case, it is proposed that the definition of "insurance" be revised to include the requirement that a premium be charged.

- **Comment:** The 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.

Supplies of educational services (Clauses 41(a), 42, 45 & 48 of the Draft TLAB: sections 8(2H), 12(*h*)(i), s12(*h*)(ii), s12(*h*)(iv) & 40E of the VAT Act)

- It has come to government's attention, through requests from basic education institutions, that they face a financial and administrative burden in respect of costs of compliance if required to register for VAT.
- **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.

Supplies of educational services (2)

- ***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 the any “welfare activities”.

Supplies of educational services (3)

- ***Example:*** In the event a school builds an aquatic centre for R30 million exclusive of VAT the VAT amount charged will be R 4 500 000. The amount deductible by a school will be calculated as follows on the basis that no school could have an apportionment ratio greater than 2%.
  - VAT charged R 4 500 000.00
  - VAT deductible @ 2% R 90 000.00
  - The application of section 8(2) would only apply to the extent that input tax was deducted.

Supplies of educational services (4)

- ***Example(cont.):*** With regard to school uniforms. As non-VAT vendors, there would be no difference in the cost to parents despite the trapped VAT cost as depicted in example below:

	Vendor	Non-vendor
Cost of uniform	R 575	575
VAT input	R -75.00	0
Total	R 500	R 575
Mark - up 20%	R 100	R 115
	R 600	R 690
VAT output	R 90.00	0
Cost to parent	R 690	R 690

Supplies of educational services (5)

- ***Example(cont.):***
  - As can be seen by the example, the view that there would be a higher cost to parents is misplaced.
  - Furthermore, the schools would no longer incur compliance costs paid to consultants to ensure their compliance with legislation.
  - The schools, which like any other vendor that exits the VAT system, will be liable to repay the VAT deducted on retained assets, to the extent of the input tax previously claimed.
  - Based on the VAT returns seen by SARS, schools, if applying the default turnover method of apportionment should be entitled to claim an average of 2% of input tax.
  - However, as observed by SARS, some schools claimed 20% in input tax deductions, by applying methods of apportionment that were not approved by SARS, as required in the VAT Act, where a ruling is required in section 17(1).
  - As mentioned, 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.

Low value importation of goods (Clause 51 of the Draft TLAB: paragraphs 1(v) and 2 of schedule 1 of the VAT Act)

- It is proposed that the current VAT exemption thresholds for low-value imported goods be removed to ensure a level playing field between domestic and offshore suppliers.
- **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.

Clarifying the VAT treatment in respect of payment made under the National Housing Programme (Clause 41(b) of the Draft TLAB: s8(23) of 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:** Consider the impact that this amendment will have on the existing rental housing projects.

Clarifying the VAT treatment in respect of payment made under the National Housing Programme (2)

- ***Response:*** Not accepted. The zero-rating did not apply to the rental stock since these were always exempt supplies. The amendment will 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 finalised, 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.

Clarifying the VAT treatment in respect of payment made under the National Housing Programme (3)

- **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.

CARBON TAX ACT 15 OF 2019

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Electricity price neutrality – Renewable energy premium deduction and electricity levy repeal (Clause 58 of the draft TLAB: Section 6(2) of the Carbon Tax Act)

- It is proposed to extend electricity price neutrality until 2030 by repealing the electricity generation levy and applying the carbon tax only on combustion emissions from 2026. Electricity generators may continue to deduct a portion of the renewable energy premium from their carbon tax liability.
- **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.

Electricity price neutrality – Renewable energy premium deduction and electricity levy repeal (2)

- **Comment:** Some stakeholders were of the view that the carbon tax in addition to the electricity generation levy should be payable by Eskom. 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 Act (ERA). 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.

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

- ***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 on low income households and energy intensive companies.
- The proposal provides an additional three years for investments in additional generation capacity and stabilisation of electricity prices to ensure the financial sustainability of Eskom. With the introduction of independent power generation capacity, the proposal for electricity generators to face a net carbon tax 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 the proposals submitted by stakeholders.

Carbon budget – carbon tax higher tax rate (Clause 58 of the draft TLAB: Section 5 of the Carbon Tax Act)

- Following the enactment of the Climate Change Act and gazetting of related regulations, it is proposed that a higher carbon tax rate of R640/tCO_2e apply to emissions exceeding the carbon budget. The effective date will be aligned with the implementation of the carbon budget and mitigation plan regulations, as determined by the Minister of Forestry, Fisheries and the Environment, and published by the Minister of Finance.
- **Comment:** Several stakeholders submitted comments on the accounting period for application of the higher tax rate. There were two main options from stakeholders as summarised below.

Carbon budget – carbon tax higher tax rate (2)

- 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 .

Carbon budget – carbon tax higher tax rate (3)

***Response*:**

- Option 1: 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 two-years and an amendment would be required for purposes of carbon tax.
- 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.

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.

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

- **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 carbon tax 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.

Requests for deferment of the carbon budgets 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 be not 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.

Requests for deferment of the carbon budgets amendments (2)

- ***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 in the Response Document).

Requests for deferment of the carbon budgets amendments (3)

- ***Response:*** Not accepted.
- The DFFE is 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.

Requests for deferment of the carbon budgets amendments (4)

- **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.

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 not apply to electricity combustion emissions. Some stakeholders were of the view that the electricity price neutrality commitment should be extended to the mandatory carbon budgeting system and allowed as a deduction.

Electricity price neutrality commitment and deduction

- ***Response:*** Not accepted. It was clarified that the electricity price neutrality commitment including 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 emission of greenhouse gases; 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.

General carbon budgets 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.

General carbon budgets comments

- **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 at least by inflation should be considered

General carbon budgets comments

- ***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 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.

General carbon budgets comments

- 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 ensures 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.

Carbon budget allowance (Clause 59 of the draft TLAB: Section 12 of the Carbon Tax Act)

- The carbon budget tax-free allowance of five percent was implemented for the voluntary carbon budget phase from 2016 to 2024.
- 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.

Carbon budget allowance (Clause 59 of the draft TLAB:Section 12 of the Carbon Tax Act)

- **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:** Other 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.

Carbon budget allowance (Clause 59 of the draft TLAB:Section 12 of the Carbon Tax Act)

- ***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 fugitive and process emissions and from 10 to 15 per cent for combustions emissions from 1 January 2026. This will help to stimulate domestic carbon market activities under the carbon tax and provide an important economic and financial incentive for low carbon investments and technology innovation in the short to medium term. Companies that participate in the voluntary carbon budgeting system can access the carbon offset allowance and reduce their tax liability.

Sequestration deduction – extension to third party timber production (Clause 58 of the draft TLAB: Section 6 of the Carbon Tax Act)

- 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:

Sequestration deduction – extension to third party timber production (2)

- 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.

Sequestration deduction – extension to third party timber production (3)

- 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.

Sequestration deduction – extension to third party timber production (3)

- The DFFE supports the introduction of an annual self-certification process, subject to the condition that third-party growers are registered with the 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.

Aligning schedule 1 of the carbon tax act emission factors (Clause 61 of the draft TLAB: Schedule 1 of the Carbon Tax 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 net calorific value for methane rich gas factors should be updated and aligned with the latest DFFE approval.

Aligning schedule 1 of the carbon tax act emission factors (2)

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 - CO2 emission factor of 55 664kg/TJ and NCV range 0.0410 - 0.0527 TJ/Tonne
- Methane rich gas – NCV range 0.0368 -0.0473 TJ/Tonne

Aligning schedule 1 of the carbon tax act emission factors (3)

Response: 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 values 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.

General Comments

- **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.

General Comments

- **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.

General Comments (2)

- **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.

DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL, 2025

Presentation to the Standing Committee on Finance

national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Clarifying the meaning of audit certificate issued by public benefit organisations (Clause 3 of the draft TALAB: section 18A of the Income Tax Act)

- Some uncertainty exists about interpretation of term “audit certificate”.
- Proposed that term is replaced with “certificate of examination” and additional requirement that certificate be issued by independent person is added.
- Further proposed that Commissioner be empowered to prescribe minimum information that must appear on certificate by public notice, similar to section 18A(2)(a) prescribing requirements for valid certificate.

Clarifying the meaning of audit certificate issued by public benefit organisations (2)

- **Comment**: No technical difference dependent on proposal that "audit certificate" be called "certificate of examination". Removes any taxpayer confusion that it is related to statutory audit and is welcomed.
- ***Response***: Noted. The terminology will be refined to further improve clarity.
- **Comment**: Amendment does not address most problematic aspect, namely comfort level prescribed in law i.e. 100% comfort that amount for which section 18A certificate was issued, was used as prescribed. The level of assurance sought in current legislation is impractical and not financially viable.

Clarifying the meaning of audit certificate issued by public benefit organisations (2)

- **Comment (cont.):** SARS should prescribe procedure to be applied for relevant comfort level it seeks. This can be determined in public consultation process on relevant notice and input from relevant stakeholders how to practically apply process to ensure section 18A funds are used as intended in law and to avoid abuse.
- ***Response***: Partially accepted. The proposed legislation will be relaxed from 100% assurance to reasonable satisfaction standard. Clarification will be added that certificate providing this level of assurance must be issued by registered tax practitioner as there has been debate as to how to interpret "independent person".
- Provision is made for Commissioner to prescribe additional information that may be required for purposes of certificate by public notice. Guidance with respect to standard of reasonable satisfaction will be set out in revised Interpretation Note to provide a degree of flexibility.

Clarifying the meaning of audit certificate issued by public benefit organisations (3)

- **Comment (cont.)**: SARS should prescribe procedure to be applied for relevant comfort level it seeks. This can be determined in public consultation process on relevant notice and input from relevant stakeholders how to practically apply process to ensure section 18A funds are used as intended in law and to avoid abuse.
- ***Response:*** Partially accepted. The proposed legislation will be relaxed from 100% assurance to reasonable satisfaction standard. Clarification will be added that certificate providing this level of assurance must be issued by registered tax practitioner as there has been debate as to how to interpret "independent person".
- Provision is made for Commissioner to prescribe additional information that may be required for purposes of certificate by public notice. Guidance with respect to standard of reasonable satisfaction will be set out in revised Interpretation Note to provide a degree of flexibility.

Customs and excise voluntary disclosure programme (Clause 10 of draft TALAB: new sections 77Z to 77ZH of Customs and Excise Act)

- Insertion of Chapter XB in Customs and Excise Act provides for voluntary disclosure relief for customs and excise. Persons benefiting from "underpayment" of duty may voluntarily disclose such underpayment in exchange for undertaking by Commissioner not to institute criminal proceedings and to grant further relief as set out in Chapter.
- "Underpayment" defined as non-payment or underpayment of duty due to submission of inaccurate or incomplete information, or non-submission of information to Commissioner, and includes claiming any rebate, refund or payment or setting-off any amount to which claimant was knowingly not entitled.
- Also includes "underpayments" of VAT on importation of goods as well as VAT on goods manufactured in Republic which are subject to excise duty, environmental duty or health promotion levy.

Customs and excise voluntary disclosure programme (2)

- **Comment:** Voluntary Disclosure Programme should be permanent, with digital accessibility through SARS eFiling.
- ***Response:*** Noted. Programme does not have expiry date and SARS is planning to modernise relevant systems.
- **Comment**: Proposed insertion of Chapter XB to provide for voluntary disclosure relief within customs space is a welcomed, positive development. Noted that "duty" for 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 matters related to VAT.

Customs and excise voluntary disclosure programme (3)

- ***Response***: Noted. As commentator states, “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.

VAT Modernisation Project (Clauses 11 and 14 of draft TALAB: sections 1 and 74 of Value-Added Tax Act)

- Value-Added Tax (VAT) Modernisation Project was announced by Minister in 2023 Budget Review. Aims to enhance South Africa's VAT administrative framework.
- As first phase, proposed amendments insert relevant definitions that will form pillars of VAT Modernisation Project. Also allows for expansion of Minister's regulatory powers to make regulations prescribing model and requirements for participation by vendors in voluntary e-reporting system.

VAT Modernisation Project (2)

- **Comment**: System will be exceptionally costly, have substantial delays in its implementation and not necessarily address all issues. Risk that is being addressed by VAT modernisation is VAT input and refund fraud. Both issues can be eliminated by removal of VAT inputs and hence removal of VAT refunds. This would allow Minister of Finance to reduce VAT rate from 15% to about 6%.
- ***Response***: Noted. Proposal would represent reversal from international trend away from sales taxes to value-added taxes and would have to be considered in light of various factors that informed decision to implement value-added tax in South Africa. It has been noted for further review and consideration by National Treasury.

VAT Modernisation Project (3)

- **Comment:** 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 wide variety of stakeholders in implementing this system.
- **Comment:** Proposed amendments set scene for implementation of VAT real-time reporting – part of SARS' modernisation strategy to address tax gap and achieve voluntary compliance within VAT space.
- Whilst seen as a positive, future development, various factors need to be considered before this can be viable reality. These include global lessons, economic assessment, funding and transition risks, and other practical considerations.

VAT Modernisation Project (4)

- ***Response***: Noted. Proposed amendments provide initial building blocks for voluntary e-reporting system. SARS plans to publish consultation paper before end of financial year that will form basis for wide consultation and address categories of comments above.
- Consultation paper will form basis for further collaborative engagement to develop a world-class VAT administration system suited for South Africa's circumstances.

Prescribed format for notice to Commissioner of intention to institute legal proceedings (Clause 15 of draft TALAB: section 11 of Tax Administration Act)

- Section 11(4) requires applicant to, unless court otherwise directs, provide at least 10 business days prior notice to Commissioner of applicant’s intention to institute legal proceedings in High Court against Commissioner.
- Proposed amendment will enable Commissioner to prescribe specific form for this notice i.e. relevant information to be contained in notice in order to streamline SARS operational processes.
- **Comment:** Concern raised that prescribed form and manner may significantly impact access to court and due process. If SARS proceeds with amendment, principles of section 36 of Constitution should be expressly followed and applied as this amounts to limitation of section 34 of Constitution.

Prescribed format for notice to Commissioner of intention to institute legal proceedings (2)

- ***Response:*** Partially accepted. This notice precedes normal court proceedings. Allows SARS to address issues before parties engage in costly litigation. Purpose of amendment to prescribe specific format for this notice i.e. relevant information to be contained in notice to streamline SARS operational processes.
- Current proposed amendment of section 11(5) will be deleted, as it may give rise to impression that intention is to regulate legal proceedings that are subject of the High Court Rules. Instead, proposed amendment will be made in section 11(4) which only deals with notice to Commissioner of applicant's intention to institute proceedings.
- *Critical point:* Courts retain discretion to set matter down for hearing, even if no notice was provided or SARS considers notice inadequate, and remain final decision makers with respect to access to court.

Inspecting the premises and activities of a person (Clause 16 of draft TALAB: section 45 of Tax Administration Act)

- To mitigate risks in e.g. VAT registration process, registration for employment tax incentives and approval for tax privileged status, SARS may require site inspection to verify enterprise's business address exists and premises are suitable for conducting activities of enterprise. Proposed that section be expanded to include inspections for these purposes.
- **Comment:** VAT registrations already face significant delays. Risk that expanded powers could worsen bottlenecks instead of improving timelines, and hence safeguards must be implemented to prevent inspection delays in VAT registration, e.g. additional capacity for inspections. Goal should be to strengthen fraud prevention without compromising efficiency in the registration processes.

Inspecting the premises and activities of a person (2)

- ***Response:*** Noted. Proposed inspections of premises for VAT registrations already operationalised by prior arrangement with taxpayers. Inspections are not standard procedure for all registration applications.
- SARS follows tiered approach through system risk rules. If anomalies or mismatches are picked up by system, SARS first requests clarification from applicant and. if matter is not resolved, matter routed for validation of existence of enterprise.
- No impact on SARS timelines is anticipated, even if inspection is required. No amendment proposed to SARS Service Charter to extend 21 business days turn-around time for VAT registrations.

Suspension of debt – assessment based on an estimate (Clause 19 of draft TALAB: section 164 of Tax Administration Act)

- Proposed amendment aims to clarify that taxpayers who intend to or has requested reduced assessment by submitting a return (e.g. in the case of a disagreement with an auto-assessment), may apply for suspension of payment.
- **Comment:** Amendment welcomed. However, concern is noted that SARS eFiling system continues to systematically reject submissions where taxpayers indicate their intention to dispute. Committee requested to ensure that eFiling system is amended in line with law.

Suspension of debt – assessment based on an estimate (2)

- ***Response:*** Noted. SARS not aware of outright rejection of applications for suspension of payment where taxpayers have noted intention to dispute. Where stand-alone suspension of payment is applied for, SARS system designed to automatically revoke suspension if no dispute lodged within 80 business days after date of assessment
- However, SARS is aware of isolated instances where suspension of payment was revoked earlier than 80-business days period. Matter is receiving attention and will be rectified.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (Clauses 21 & 22 of draft TALAB: sections 222 & 223 of Tax Administration Act)

- The proposed amendment aims to clarify the scope and application of a "bona fide inadvertent error" by explicitly linking it with "substantial understatement", which is not based on behaviour but rather an objective calculation (prejudice exceeding the greater of 5% tax properly chargeable/refundable or R1 million).
- **Comment:** Proposed deletion of "bona fide inadvertent error" defence from section 222(1) effectively imposes a strict liability standard for imposition of understatement penalties (USP).
- Currently, defence serves as 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.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (2)

- **Comment (cont.)** Under proposed framework, SARS auditor will no longer be concerned with taxpayer's mens rea or reasonableness of taxpayer's conduct for errors. Instead, imposition of USP becomes automatic if quantum of error exceeds objective threshold for 'substantial understatement'.
- Means that two taxpayers who both made bona fide inadvertent errors could have different USP imposed.
- Taxpayer with understatement exceeding substantial understatement threshold can rely on defence and not have USP imposed.
- Taxpayer that does not exceed threshold would have USP imposed of at least 25%, despite circumstances being the same.
- Criteria whether taxpayer can rely on defence should be applied consistently regardless of quantum of understatement.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (3)

- ***Response:*** Not accepted. Removal of term 'bona fide inadvertent error' from section 222(1) does not dispense with or otherwise alter culpability required to impose a USP.
- Section 222(2) provides that SARS must apply highest applicable understatement penalty percentage in accordance with table in section 223 to each shortfall occasioned by an understatement.
- 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, commentator's example of two taxpayers who made *bona fide* inadvertent errors, one exceeding and other not exceeding substantial understatement threshold, serves to illustrate operation of understatement penalty regime.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (4)

- ***Response (cont.):*** Presuming a standard case with amounts of R2 million and R25 000 involved, both taxpayers will incur penalty at 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 tax position taken in their return, etc.
- However, if taxpayer with R25 000 understatement took reasonable care when completing return and had reasonable grounds for tax position taken, taxpayer will not incur USP as *their behaviour does not fall within understatement penalty percentage table*. In this regard, well established that reliance on professional advice prior to taking tax position 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 penalty.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (5)

- ***Response (cont.):*** Far from being advantaged, taxpayer with R2 million understatement must demonstrate that additional due diligence was exercised.
- Taxpayer will incur 10% penalty even though reasonable care is taken in completing return and reasonable grounds exist for tax position taken. This is because the "substantial understatement" behaviour apples.
- Currently, taxpayer subject to this penalty can request remittance if taxpayer:
  - took additional precaution to disclose underlying arrangement to SARS (whether in return or by other means) prior to its submission; and
  - pre-emptively based tax position on opinion that meets requirements laid down in section 223(3).
- Accordingly, taxpayer can avoid substantial understatement penalty when they take a tax position adhering to these requirements.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (6)

- ***Response (cont.):*** Purpose of introduction of bona fide inadvertent error was to provide relief to taxpayers who, despite taking reasonable care in completing returns, made an understatement that exceeds the substantial understatement threshold.
- As an entry level requirement, it has blurred lines between what is bona fide error as opposed to reasonable one and has undermined proper functioning of understatement penalty percentage table. Proposed amendment seeks to restore this original intent.
- Amendment therefore proposes to move 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.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (7)

- **Comment:** SARS in effect moving goalposts by avoiding more objective criteria set out by courts and replacing it by more subjective criteria of SARS' 'satisfaction' as to when *bona fide* inadvertent error exists, without clear guidelines.
- ***Response:*** Partially accepted. Notion that requirement of SARS' satisfaction is subjective criterion seemingly rooted in pre-constitutional administrative law.
- However, in order to address concern raised, proposed wording of amendment to section 223(3) will be amended to remove requirement that SARS must be satisfied that *bona fide* inadvertent error exists, thereby aligning it with current wording of section 222(1) where *bona fide* inadvertent error is currently placed.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (8)

- **Comment:** Proposed amendment designed to neutralise judicial trend of protecting taxpayers who act in good faith and rely on professional advice.
- Appears that proposed amendments are direct legislative response intended to override principles established by SCA in CSARS v Thistle Trust and Coronation Investment Management SA (Pty) Ltd v CSARS.
- In these cases, SCA confirmed that taxpayer can consciously and deliberately adopt a specific tax position based on professional advice, be proven wrong in law, and still not be liable for an USP because their actions were not taken in bad faith.
- Parliament has authority to amend legislation but doing so to remove an interpretation confirmed by courts significantly weakens taxpayer rights, undermines legal certainty and creates adversarial compliance environment.

Clarifying "*bona fide* inadvertent error" for purposes of understatement penalties (9)

- ***Response:*** Comment misplaced. 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 but rather sets term as remission criterion for substantial understatement to facilitate proper functioning of understatement penalty regime.
- Upon amendment as envisaged, taxpayers who have incurred a USP 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.

Clarifying “*bona fide* inadvertent error” for purposes of understatement penalties (10)

- **Comment:** Replace category or exception of bona fide inadvertent error with seventh category of behaviour being reasonable care taken which would have a nil understatement penalty. This is in essence what bona fide inadvertent error exemption provided.
- ***Response:*** Partially accepted. As discussed, USP can only be imposed if taxpayer’s conduct amounts to one of behaviours listed in table in section 223. However, wording of section 222(1) will be amended to make this clear.

Thank You