SAIT | Summit Place Business Park | Building 3, Ground Floor
221 Garsfontein Road | Menlyn | South Africa | 0081

www.thesait.org.za

12 September 2025

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
Pretoria
0181

Via email: National Treasury (2025AnnexCProp@treasury.gov.za); and
SARS (2025legislationcomments@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2025: CUSTOMS AND EXCISE TAX

Dear Colleagues,

We attach the comments from the SAIT Customs and Excise Tax Technical Work Group (**WG**) on the proposals contained in the draft Taxation Laws Amendment Bill, 2025 (**DTLAB**).

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate.

Please do not hesitate to contact us should you need further information.

SAIT Customs and Excise Tax Technical Work Group

All references to the legislation are to the Customs and Excise Act. Act 91 of 1964 (the Act), and proposals contained in the draft Tax Administration Laws Amendment Bill (DTALAB)

1. Diesel Refunds

1.1 Government Proposal

1.1.1 Government implemented the diesel refund system in 2000 to provide full or partial relief for the General Fuel Levy (GFL) and the Road Accident Fund (RAF) levy to primary sectors. It seems the government wants to change the policy **to include all eligible purchases** to simplify the process and offer more financial relief.

1.2 WG response

1.2.1 It is not clear whether 80% of eligible purchases will change to 100%. We understand that the 80:20 policy of the diesel refund system was aimed at minimizing 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.

1.2.2 We request clarification on the diesel refund calculation

2. Customs entry regime (Express Delivery Goods)

[Applicable provision: Section 38 of the Customs Act]

1.1. Government Proposal

1.1.1. The amendment aims to create easier customs rules for importing and exporting goods meant for express door-to-door delivery. It allows the Commissioner to set rules about value limits for these goods. However, section 38(1) of the Customs Act needs to be revised together with new rules to incorporate the current customs processes related to the processing of eCommerce goods.

1.2. WG response

1.2.1. We request confirmation 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:

1.2.1.1. *Category 1*: Correspondence and documents; No commercial value, not subjected to duties and taxes, immediate release on the basis of a consolidated declaration that may be oral or written (a manifest, a waybill or an inventory of such items);

1.2.1.2. *Category 2:* Low value consignments below a specified de minimis threshold for which no duties and taxes are collected, and immediate clearance and release

against a manifest, a waybill, a house waybill, a cargo declaration, or an inventory of items;

1.2.1.3. *Category 3:* Low value dutiable consignments (simplified goods declaration); goods above de minimis, but below full declaration value threshold, dutiable, and the use of a simplified declaration, or release against a manifest with subsequent simplified clearance, and the like;

1.2.1.4. *Category 4:* High value consignments (full goods declaration); Consignments not falling under the three categories described above and includes consignments containing goods that are subject to restrictions. Normal release and clearance procedures, including payment of duties and taxes, apply.[1]

2. Adjusted Bills of Entry - Flexibility for VOCs

[Applicable provision: Section 40 of the Customs Act]

2.1. Government Proposal

2.1.1. The amendment to section 40 of the Customs Act enhances flexibility for adjusting bills of entry, allowing the Commissioner to specify both the method and timeframe for adjustments, including those related to transfer pricing and amended invoices for bulk exports. For instance, to enable the Commissioner to prescribe the timeframe for adjustment of a bill of entry in a manner other than by the submission of a voucher of correction.

2.2. WG response

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

3. Providing for a customs and excise voluntary disclosure programme

[Applicable provision: Insertion of Chapter XB to the Customs Act]

3.1. Government Proposal

3.1.1. Proposed Chapter XB allows voluntary disclosure of duty underpayments under the Customs Act, providing relief from criminal charges and outlining eligibility, requirements, and agreements with the Commissioner.

3.2. WG response

3.2.1. We request clarification whether the proposed Chapter XB will cater for customs duties, excise duties and the value-added tax (VAT) paid on these customs declaration and that there will be no need to make a separate voluntary disclosure for the VAT payments made on the customs declarations. We request clarification

[1] (reference: online: https://www.sars.gov.za/media-release/changes-to-customs-import-system/ ; Date: 9/09/2025)

on whether the underpayment and non-compliance will be covered by one single customs VDP application and that, for instance, VAT interest and VAT penalties will be covered by the customs voluntary disclosure and the customs VDP application alone? Our understanding is the current customs informal VDP practice is that although the tax payer addresses the underpaid VAT amount using a customs voucher of correction, the VDP process is split because two different legislations (Customs and VAT Acts) are involved. So, will the formal customs VDP proposal mean this is overcome and the entire underpayment will be covered under the customs legislation.

3.2.2. We set out below further considerations related hereto:

3.2.3. **Section 77ZA(4)(b): Circumstances in which persons subject to audit, investigation or enforcement actions qualify to apply for voluntary disclosure relief.**

3.2.3.1. The wording "*the application would be in the interest of good customs and excise administration and the best use of the Commissioner's resources*" is vague and open to interpretation as to what would constitute "*good customs and excise administration*" and what would be the "*best use of the Commissioner's resources*".

3.2.3.2. We acknowledge that the Commissioner would be required to apply his or her discretion to whether a VDP should be entertained where SARS has initiated an audit, investigation or enforcement action, however the requirements should not be subject to arbitrary consideration by a delegate of the Commissioner.

3.2.3.3. Based upon our understanding of the intended spirit of the clause, we therefore suggest consideration of the following as an alternate:
"…

(b) the application would be in the interest of good management of the customs and excise systems, overall fairness and the best use of the Commissioner's resources"

3.2.4. Section 77ZA(6): Circumstances in which persons subject to audit, investigation or enforcement actions qualify to apply for voluntary disclosure relief.

3.2.4.1. The wording "*An applicant must when submitting an application in terms of this subsection, simultaneously submit an application for a tariff, value or origin determination depending on the circumstances, in a manner and containing the information as may be prescribed by the Commissioner by rule*" does not provide for VDPs where the disclosure is based on other factors and is therefore restrictive.

3.2.4.2. For example, where a trader has not complied due to a Registration, Licensing or Accreditation ("RLA"), systemic issues such as failures on SARS' e-filing platform and similar matters, no tariff, value or value determination is warranted.

3.2.4.3. In our view, non-compliance in these areas is often due to SARS' own inefficiencies and poor service delivery. The VDP should allow for disclosures in these circumstances, particularly where the delay or failure is beyond the applicant's control.

3.2.4.4. As a result, we propose the following recommended wording:

"An applicant must when submitting an application in terms of this subsection, where appropriate simultaneously submit an application for a tariff, value or origin determination depending on the circumstances, in a manner and containing the information as may be prescribed by the Commissioner by rule.
OR

An applicant must when submitting an application in terms of this subsection, where such application relates to a tariff, valuation or origin matter, simultaneously submit an application for a tariff, value or origin determination depending on the circumstances, in a manner and containing the information as may be prescribed by the Commissioner by rule

3.2.5. Section 77ZB(b): Requirements for valid voluntary disclosure.

3.2.5.1. (b) *involves an underpayment which has not occurred within five years of a previous disclosure of a similar underpayment by the applicant*" unduly restricts access to the VDP and discourages voluntary compliance insofar as the applicant identifies several areas of non-compliance. We do, however, agree that access should be limited and not open-ended.

3.2.5.2. We recommend broadening the eligibility criteria and propose the following:
"…

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"

3.2.6. Section 77ZD(1)(a)(ii)(b): Voluntary disclosure relief agreement following granting of relief

"…

(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.*"

3.2.6.1. It is our view that any decision taken by the Commissioner is subject to the provisions of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") and this clause appears to limit the applicant's rights. We do not agree with this clause.

3.2.6.2. Our recommendation is therefore as follows:

"*Any person to whom an assessment, a re-assessment and a determination of the amount owing in terms of subsection (1)(a) is made, and insofar as that person is aggrieved by such assessment, a re-assessment and a determination, may lodge an administrative appeal in terms of Chapter XA.*"

3.2.7. Section 77ZD(2)(d)(ii): Voluntary disclosure relief agreement following granting of relief

"…

not impose any administrative penalty in terms of this Act on the applicant for any breach of this Act arising from the underpayment, excluding a penalty imposed for late payment…"

3.2.7.1. Often, non-compliance is, in our view, attributable to SARS' inefficiencies and as such it would be unfair to impose late payment penalties in these circumstances. (For example, RLA delays as mentioned previously.) Therefore, provision should be made for relief including late payment penalties in certain circumstances.

3.2.7.2. We recommend broadening the eligibility criteria and propose the following:

"…

not impose any administrative penalty in terms of this Act on the applicant for any breach of this Act arising from the underpayment, including a penalty imposed for late payment"

4. Section 3: Any duty imposed, or power conferred on the Commissioner may be performed or exercised by the Commissioner personally or by an officer or any other person under a delegation from or under the control or direction of the Commissioner.

[Applicable provision: Section 4 of the Customs and Excise Act]

4.1. Government proposal

4.1.1. Section 4 of the Customs and Excise Act is extremely powerful and can have far-reaching consequences. While we acknowledge that the Commissioner for the South African Revenue Services requires support from another organ of state or another institution and we acknowledge the need for this support.

4.1.2. However, Customs and Excise matters are complex and general understanding of the concepts and requirements is limited beyond the realm customs and excise officers and therefore as such, the unchecked delegation of powers to other organ of state or institution can ONLY be in the duties and powers conferred on the

Commissioner in terms of the Customs and Excise Act and in respect of a specific purpose as set out in the Act and the Rules thereto.

4.1.3. Delegating Customs powers to SAPS officers thereby bypassing warrant requirements, is problematic and may lead to abuse of power. The delegation of power should be regulated according to the Customs and Excise Act. The power delegated should relate only to the Customs and Excise Act.

4.2. Recommendation

4.2.1. We recommend to also insert more clarity in the wording as per the following proposal:

> "*(1)(a) Any duty imposed or power conferred on the Commissioner <u>in terms of this Act</u> may be performed or exercised by the Commissioner personally or by an officer or any other person under a delegation from or under the control or direction of the Commissioner....*"

5. Proposed insertion of section 75(21A) in the Customs and Excise Act, to provide for duties and VAT to be paid on sellable waste and scrap that remain after a manufacturing activity under the 3rd or 4th Schedules to the Act.

5.1. Background

5.1.1. The proposed amendment presents challenges when the waste/scrap was never cleared/entered on a bill of entry and may/need not be entered/cleared separately on a bill of entry, in accordance with the General Rules of Interpretation (**GRI**) of Schedule No 1 to the Act. For ease of explanation, we will use gold dore bars imported under rebate item 470.03/02.00 in Schedule No 4 to the Act, for further refining and subsequent export.

5.1.2. Although Gold dore bars contain mostly gold, they contain small quantities of silver, platinum group metal (**PGMs**), lead, etc (referred to as "waste elements" for purposes of this document). At the time of importation, the complete dore bars (including the waste elements contained therein) are entered on the bill of entry under the appropriate tariff heading for gold dore bars and only the value of the gold content is declared. In accordance with the GRI (and based on tariff determination issued by the office of the Commissioner for SARS), the waste elements cannot and need not be entered on separate lines on the bill of entry.

5.1.3. During the refining process, the gold is separated from the waste elements and 99.99% pure gold bars are produced and subsequently exported. For purposes of this document, the gold can be ignored.

5.1.4. Some of the waste elements may be collected by the refiner, and when sufficient quantities are available, these elements (mostly silver and PGMs) are sold for export or in the local market.

5.1.5. The proposed insertion of section 75(21A) in the Act seeks to impose a liability to pay customs duty (N/A in this example) and [import] VAT on the waste elements when they are sold locally.

5.2. Problem Statement

5.2.1. If the same goods were cleared duty paid, it would result in a different treatment from a customs duty and VAT point of view compared to goods entered under rebate of duty. See below for a comparison.

Duty Paid entry					
Product	***Cus Value***	***Cus duty***	***Import VAT liability***	***Local sale value***	***Local sales VAT***
Gold	R 1,000.00	R -	R 165.00	R -	R -
Silver	R -	R -	R -	R 100.00	R 15.00
PGMs	R -	R -	R -	R 100.00	R 15.00
Lead	R -	R -	R -	R 50.00	R 7.50
	R 1,000.00	R -	R 165.00	R 250.00	R 37.50
Rebate entry (eg 470.03)					
Product	***Cus Value***	***Cus duty***	***Import VAT liability***	***Local sale value***	***Local sales VAT***
Gold	R 1,000.00	R -	R 165.00	R -	R -
Silver	R 100.00	R -	R 16.50	R 100.00	R 15.00
PGMs	R 100.00	R -	R 16.50	R 100.00	R 15.00
Lead	R 50.00	R -	R 8.25	R 50.00	R 7.50
	R 1,250.00	R -	R 206.25	R 250.00	R 37.50

5.2.2. In both examples the waste elements remain in South Africa, yet the proposed amendment will result in the rebate user to be placed at a disadvantage compared to an importer who entered the goods “Duty Paid” (ie import VAT liability of R206.25 vs R165.00).

5.2.3. The proposed process of passing a voucher of correction to exclude the waste elements from the rebate entry and to pass a new duty paid entry to clear the waste elements is not in line with the GRI, which requires the goods to be cleared in a very specific manner at the time of importation. Also, since the waste elements cannot be linked to a specific bill of entry, which entry(ies) must be adjusted by the VOC? Given the GRI, such a VOC may also result in the entry no longer being valid, as per the provisions of section 40(1)(b) of the Act.

5.2.4. The customs valuation treatment of the waste elements when it is sold locally is challenging. Due to the nature of the refining process, it is impossible to link the waste elements to any specific bill of entry (ie it is not traceable). The local sales price can also not be used, given the specific provisions of section 65(9) of the Act.

5.2.5. For the same reasons as above, the proposed alternative of destroying the waste elements under customs supervision is challenging, as there is no import bill of entry to which the waste elements can be linked.

5.3. Proposed solution

5.3.1. We propose that SARS engages with industry (rebate users, customs advisors, etc) to develop a workable solution. For example, if the waste is only subject to VAT (ie no customs duties are due) and the rebate user is registered for VAT, there is no prejudice to the fiscus if import VAT is not paid on the waste elements (which is in any event the case if the gold dore bar is cleared "Duty Paid", since VAT is charged by the rebate users on the local sale of waste elements and accounted for in their VAT returns.

5.3.2. Where the waste is subject to customs duty, a different solution may be required. But bear in mind that a "Duty Paid" entry as described above would result in no customs duties or import VAT being collected on the waste in any event. The proposed amendment would therefore result in an unfair/unequal dispensation based purely on whether goods are entered "Duty Paid" or for use under rebate of duty.

5.3.3. Although we used a very specific example, the same challenges could arrive in the broader mining industry where minerals are extracted from imported ore/products containing minerals, and potentially also in other manufacturing industries.

End.