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: PERSONAL AND EMPLOYMENT TAXES (NDIVIDUAL, SAVINGS AND EMPLOYMENT)

Dear Colleagues,

We attach the comments from the SAIT Personal & Employment Taxes 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 Personal & Employment Tax Technical Work Group

All references to the legislation are to the Income Tax Act, No. 58 of 1962 (the Act), and proposals contained in the draft Taxation Laws Amendment Bill (DTLAB)

1. Amending the definition of "remuneration proxy"

[Applicable provisions: Definition of "remuneration proxy" in section 1(1) of the Income Tax Act, No. 58 of 1962 ("the Act")]

1.1 Government Proposal

1.1.1 Per the proposal, as we understand it, individuals who qualified for the foreign employment income exemption under section 10(1)(o)(ii) of the Act in the previous year of assessment would have a reduced remuneration proxy in the current year of assessment. Because exempt income is not included in the remuneration proxy calculation, this can unintentionally result in the reduced the valuation of certain fringe benefits. From a horizontal equity perspective, this gap results in inconsistent tax treatment for similarly situated taxpayers.

1.1.2 It is proposed that the definition of "remuneration proxy" be revised to incorporate income that was exempt under section 10(1)(o)(ii) in the previous year of assessment. This change would provide a more accurate representation of a taxpayer's true economic activity and support the underlying purpose of the remuneration proxy concept.

1.2 WG response

1.2.1 The remuneration proxy concept affects, in particular, bursaries and scholarships provided to relatives of employees and fringe benefits relating to residential property acquired by or used by employees (including loans for acquiring such properties). The effect of this proposal is that employees who received exempt income from foreign services in a prior year of assessment would have an increased "remuneration proxy" in the subsequent tax year, resulting in higher taxable values for fringe benefits or in the employee no longer qualifying for exemptions that they previously could claim. It is not clear whether this proposal will have a significant impact. The WG considered the proposal and no specific concerns (other than those indicated above) were raised.

2. Clarifying the inclusion of an amount assigned to a non-retirement fund member spouse under religious tenets

[Applicable provision: Paragraph 2(1)(*b*)(iA) of the Second Schedule to the Act]

2.1. Government Proposal

2.1.1. The Pension Funds Act was amended to recognise the transfer of retirement fund interests to non-member spouses based on religious principles, reflecting respect for cultural and religious practices in asset division after divorce. However, the Act has not been updated accordingly. Specifically, paragraph 2(1)(b)(iA) of the Second

Schedule to the Act does not clearly cover such transfers, creating uncertainty in their tax treatment. Government proposes amending the Act to accommodate court-ordered divisions of retirement fund assets under religious tenets.

2.1.2. Consequently, it is proposed that paragraph 2(1)(b)(iA) of the Second Schedule to the Act be amended to include the assignment of retirement fund amounts to non-member spouses under the tenets of a religion.

2.2. **WG response**

2.2.1. This item was considered by the WG and was met with general agreement. No concerns were raised, indicating alignment with the proposed amendment.

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

[Applicable provision: Section 20A(2) of the Act]

3.1. Government Proposal

3.1.1. Government has become aware that some taxpayers, who fall below the top marginal tax rate, are increasingly using so-called "suspect" trading activities to generate losses and reduce their taxable income.

3.1.2. Currently, section 20A of the Act applies only to individuals taxed at the highest marginal tax rate. As a result, taxpayers under this threshold are still able to avoid tax by offsetting losses that would otherwise be subject to ring-fencing, since section 20A(2) only applies when both the income level and type of trade meet certain criteria.

3.1.3. To address this issue, Government proposes lowering the taxable income threshold in section 20A(2). This change would allow the ring-fencing rules to apply to a broader group of individuals who repeatedly claim losses from suspect trades, thereby curbing avoidance, improving compliance, and safeguarding the tax base.

3.2. WG response

3.2.1. As we understand the proposal, it seeks to refine the anti-avoidance provisions by curbing the ability of certain taxpayers to offset losses from particular trades — often labelled as "suspect trades" — against their taxable income. The rationale, as outlined in the draft explanatory memorandum, is to close loopholes that may be exploited to reduce overall tax liability without a reasonable prospect of commercial viability in the affected trades. This proposal forms part of National Treasury's broader objective to limit the perceived abuse of assessed losses, particularly in relation to trades that have come under scrutiny for their potential to facilitate tax avoidance among higher-income individuals and to offset business losses against other income in a manner deemed aggressive or opportunistic.

3.2.2. The WG considered the proposed amendment aimed at reducing the threshold for the application of the ring-fencing rules under section 20A of the Act.

3.2.2.1. **Concerns Raised**

3.2.2.1.1. Upon further consideration of this proposed amendment, members expressed a number of reservations about the proposal. We proceed to set these out below.

3.2.2.1.2. **Disproportionate and unintended impact on *Middle-Income* taxpayers:** The amendment, as currently framed, risks capturing genuine business activities operated by individuals in the middle-income tax brackets (specifically the 39% tax bracket, as proposed). Many such taxpayers have experienced sustained losses due to prevailing economic conditions rather than through intentional tax structuring. Without appropriate safeguards or thresholds, the amendment may have the unintended effect of penalising legitimate entrepreneurial efforts., which are intended to supplement their current income. Many of these taxpayers operate legitimate small-scale enterprises or "side hustles" that have experienced losses due to genuine economic factors—such as during the COVID-19 pandemic and the like—rather than due to intentional tax avoidance. This is further exacerbated by the fact that the PIT tax tables have not been adjusted for a third year in a row. The proposed amendment penalises risk averse individuals who remain in salaried employment while building up a business as an entrepreneur compared to individuals who incur losses after resigning to start a business fulltime. The latter individuals can claim their business losses without being subjected to section 20A.

3.2.2.1.3. **Verification Burden:** This proposal also raises additional practical consequences of automatic SARS verification triggers or onerous verification requests. WG members have highlighted that the amendment could subject taxpayers — especially those earning below the highest tax bracket and lacking professional tax advisory support — to complex and burdensome verification processes when claiming assessed losses. Concerns were raised regarding the interaction between the proposed changes and SARS' risk engine. Specifically, once a taxpayer triggers the three-out-of-five-year loss limitation rule, or if taxpayers have losses from their businesses and are in the 39% bracket ,their tax return may be flagged for automatic verification. This could impose significant compliance burdens on taxpayers who do not typically engage tax practitioners and who may struggle to meet documentary requirements, particularly where losses are genuine and due to market forces.

3.2.2.1.4. **Equity and Administrative Fairness:** The *prima facie* blanket tightening of provisions could unfairly penalise compliant taxpayers, while failing to adequately distinguish between abusive and genuine business activities. While the policy intent is understood, we believe that the proposed amendment lacks sufficient differentiation between high-risk tax planning and *bona fide* trading activity. Expanding the application of section 20A without a corresponding carve-out mechanism or threshold (for genuine economic “side hustles”) risks undermining tax equity and could place undue pressure on taxpayers already financially constrained.

3.3. Recommended proposal

3.3.1. While we appreciate the objective and rationale regarding closing tax loopholes, this should be balanced with the need for administrative fairness and proportionality in application. To this end, we propose that:

3.3.1.1. SARS and the National Treasury should instead target higher-income earners where more aggressive tax planning is likely to occur (and is occurring subject to the identification), rather than broadening the net in a way that risks capturing ordinary taxpayers who are engaging in legitimate additional economic activities.

3.3.1.2. In addition to the above, we would welcome if both the SARS and the National Treasury were to share examples or data illustrating the problematic behaviour they have identified, essentially providing greater clarity on the perceived "mischief" which is intended to be addressed by the proposed amendment. This would allow stakeholders to better evaluate the proportionality and necessity of the measure and propose more targeted solutions.

3.3.1.3. We further propose that consideration should be given to narrowing the scope of automatic verification to higher-income individuals or to those operating trades with identifiable risk characteristics, rather than applying the rules broadly across the additionally proposed income levels.

3.3.2. Notwithstanding the broadening of this net, and understanding of the rationale, we set out the following specific proposals that can be utilised to mitigate any unintended effects and to assist taxpayers (engaged in genuine business activities) in demonstrating the genuine commercial rationale of their activities — without triggering disproportionate compliance burdens:

- *Safe harbour thresholds*: Introduce thresholds under which trades are presumed to have a valid commercial rationale — for example, based on trade value or profit margin — unless evidence suggests otherwise.
- *Rebuttable presumption of commerciality*: Apply a rebuttable presumption in favour of trades that are conducted at arm's length and properly documented in accordance with commercial viability standards.
- *De Minimis rules for routine trades*: Exclude or streamline the review of low-value, routine trades that occur as part of ordinary business operations, using *de minimis* thresholds or simplified procedures.
- *Transitional relief period:* Implement a transitional period during which penalties are suspended, provided taxpayers can demonstrate a good faith effort to comply with the new framework.

4. Reinstating the exemption for child maintenance payments funded from after-tax income

[Applicable provisions: Section 10(1)(*u*) of the Act]

4.1. Government Proposal

4.1.1. Child maintenance payments made from after-tax income have been treated as taxable income in the hands of the recipient since 2009. While it is appropriate, in line with section 23(a) of the Act, that the payer is not allowed to deduct these payments, taxing the recipient creates a misalignment in the tax treatment. These payments are not intended to benefit the recipient personally but rather serve as financial support for the child's upbringing and welfare. As such, including them in the recipient's taxable income does not align with the intended purpose of the tax system.

4.1.2. To address this inconsistency, Government proposes amending the Act with effect from 1 March 2026 and which will apply to years of assessment starting on or after that date, to exempt child maintenance payments made from after-tax income from tax in the hands of the recipient.

4.2. WG response

4.2.1. The WG considered the proposed amendment and expressed full support. The proposal is welcomed on the basis that the proposal is appropriate, both in terms of fairness and legislative consistency at that the proposed change represents a welcome correction of a long-standing anomaly in the tax treatment of child maintenance payments. The proposed change will ensure these payments are treated fairly and consistently.

5. Clarifying payment of death benefits

[Applicable provision: Definition of "savings component" in section 1(1) of the Act]

5.1. Government proposal

5.1.1. Government has become aware that, upon a member's death, lump sum payments made from the savings component to nominees or dependants are currently being taxed as savings withdrawal benefits—meaning they are treated as ordinary income in the hands of the recipient. This differs from the treatment of death benefits from the vested and retirement components, creating inconsistency in the tax treatment of death benefits across the three components.

5.1.2. Government intends to align the tax treatment of all components to ensure consistency. The proposal is to allow nominees or dependants to choose between receiving a lump sum or annuity payments without facing adverse tax consequences. To achieve this, it is proposed that the Act be retrospectively amended to take effect from 1 September 2024 to clarify that lump sum death benefits paid from any component—vested, retirement, or savings—will qualify as retirement fund lump sum benefits and be taxed at the more favourable lump sum tax rates.

5.2. WG response

5.2.1. The WG expressed unanimous support for the amendment. Members agreed that the amendment is appropriate and reflects a pragmatic response to both stakeholder input and the evolving needs of fund members. It was also noted that the industry has likely begun to implement the necessary administrative processes in anticipation of the change, following prior consultation and the Revenue Laws Amendment Bill, 2025.

5.2.2. Overall, the group welcomed the amendment as a logical and necessary progression in retirement reform, with no objections raised.

6. Cross-border tax treatment of retirement funds

6.1. Government proposal

6.1.1. The tax treatment of foreign retirement benefits and cross-border pensions has been a longstanding concern. As far back as the 2013 Budget Review, Government recognised the complexity of tax issues arising from South African residents working abroad and foreign residents working in South Africa, noting the need for a more coherent framework. While various provisions have addressed these issues over time, they have largely evolved in an *ad hoc* manner. The 2022 and 2024 Budget Reviews reaffirmed the need to reassess current exemptions and ensure fair, consistent taxation of foreign retirement fund income received by South African tax residents.

6.1.2. Currently, section 10(1)(gC)(ii) of the Act provides a blanket exemption for such foreign retirement fund benefits, but this presents two key issues. Firstly, it can result in double non-taxation—where neither South Africa nor the foreign country taxes the benefit—undermining South Africa's residence-based tax system and leading to revenue loss. Secondly, where a double tax agreement gives South Africa exclusive taxing rights, the exemption means these rights are not exercised, allowing the foreign country to tax income it otherwise would not be permitted to tax, again resulting in lost revenue for the South African fiscus.

6.1.3. To address these concerns, it is proposed that section 10(1)(gC)(ii) be repealed, so that foreign retirement fund benefits received by South African residents are taxed in line with South Africa's residence-based system and its treaty rights. The amendment will take effect from 1 March 2026 and will apply to years of assessment starting on or after that date.

6.2. WG response

6.2.1. The WG considered this proposal in great depth, and two categories of affected individuals were potentially identified:

6.2.1.1. **Returning South African tax residents:** Many South African expatriates who contributed to foreign retirement funds while employed outside South Africa may have done so on the understanding — based on the long-standing exemption in section 10(1)(gC)(ii) — that such benefits would not be subject to further taxation upon their return. The repeal of this provision would result in these individuals essentially facing double taxation on retirement income funded with after-tax contributions, which is not consistent with the exempt-exempt-taxed ("EET") model applicable to South African retirement fund benefits. This policy shift is likely to discourage repatriation, particularly among skilled professionals with global retirement portfolios.

6.2.1.2. **Foreign individuals seeking to retire in South Africa:** South Africa has increasingly become a retirement destination for foreign nationals seeking cost-effective and high-quality retirement living. However, subjecting foreign pension income to full taxation upon tax residency in South Africa significantly reduces the attractiveness of South Africa for this cohort. Unlike other retirement-friendly jurisdictions that offer tax neutrality or partial exemptions for foreign pensions, the proposed amendment would introduce a barrier to inward migration of retirees, which may have economic implications for foreign direct investment, service sector growth and the broader economy. In addition, the proposal could result in both contributions and withdrawals from foreign funds being taxed without relief, undermining neutrality and fairness.

6.3. Recommended proposal

6.3.1. The WG recommends that further consideration be given to:

6.3.1.1. **Transitional relief or a grandfathering mechanism** be introduced to protect individuals who, under the existing legislative framework, contributed to foreign retirement funds on the assumption that the resulting benefits would qualify for exemption. Such a mechanism would preserve legitimate expectations, provide certainty and mitigate the retrospective impact of the proposed repeal of the exemption.

6.3.1.2. **Carve-out or preferential treatment for lump sum distributions** from foreign retirement funds, as opposed to pensions or annuity income, to ensure consistency with the tax treatment of South African retirement fund lump sum benefits, which are taxed according to a separate table of tax rates. If this is not done, lump sum benefits from foreign retirement funds will be taxed as normal income which is an inequitable outcome. Additionally, consideration should be given to introducing a specific exemption applicable to pensions, annuities and lump sum benefits from foreign retirement funds to exclude any contributions made out of after-tax income from taxation. This would avoid the risk of effective double taxation.

6.3.1.3. **Clarification on the application of existing legal frameworks**, particularly the interaction between the proposed amendment and current provisions of inter alia the Eighth Schedule to the Act and the application of Double Taxation Agreements (DTAs) requires further clarification. In particular, attention should be given to situations where employer contributions to a foreign retirement fund have already been subject to tax in the country of source, as this may give rise to inequitable outcomes under a pure residence-based taxation model.

6.3.1.4. **Extension of the effective date of this amendment to 1 March 2027** in light of the significance of this amendment to many pensioners in order to allow them to consider the impact on their personal tax position.

7. Miscellaneous

7.1. WG response to the employees' tax registration

7.1.1. In previous DTLAB cycles, National Treasury and SARS had proposed amendments to the paragraph 2 of the Fourth Schedule to the Act.

7.1.2. We note that the withholding obligations for non-resident employers were amended from a PAYE perspective with the result that non-resident employers with a permanent establishment in South Africa are required to register for PAYE purposes and deduct PAYE. However, the matter that was raised pertaining to the misalignment of the SDL and UIF provisions with the Fourth Schedule, has not been satisfactorily resolved. In our view, there remains a lack of clarity on this matter.

7.1.3. For ease of reference, we set out our comprehensive submission in Annexure A to this document. We request that clarification be provided in this regard.

7.2. Proposed amendments to the Fourth Schedule regarding employer registration for groups of companies

7.2.1. In Annexure C to the 2025 Budget Review, it was stated that the provisions of the Fourth Schedule to the Income Tax Act would be reviewed to determine if they should be amended to allow for one nominated employer for a group of companies or an employee share scheme trust within a group of companies to apply to be registered as the employer for purposes of employees' tax withholding and payment, return submissions and IRP5 generation on behalf of multiple companies in a group. We note that no such amendment has been included in the DTLAB. We request that clarification be provided in this regard.

<u>End.</u>