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12 September 2025

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
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Via email: National Treasury (2025AnnexCProp@treasury.gov.za); and
SARS (2025legislationcomments@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2025: TAX ADMINISTRATION AND DISPUTE MANAGEMENT TECHNICAL WORK GROUP

Dear Colleagues,

We attach the comments from the SAIT Tax Administration and Dispute Management Technical Work Group (**WG**) on the proposals contained in the draft Tax Administration Laws Amendment Bill, 2025 (**DTALAB**).

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 Tax Administration and Dispute Technical Work Group

All references to the legislation are to the Tax Administration Act (the Act) and proposals contained in the draft Tax Administration Laws Amendment Bill (DTALAB)

1. Amendment to Section 45 – SARS Inspections for VAT Fraud

1.1 WG response

1.1.1 SARS has proposed an expansion of its powers to conduct inspections aimed at verifying the absence of VAT fraud. While the proposed amendment is acknowledged as necessary, concerns have been raised regarding its potential impact on VAT registration timelines in practice.

1.1.2 VAT registrations are already subject to significant delays. It is hoped that the proposed amendment will contribute to improved processing times rather than introduce additional bottlenecks. As such the WG suggested that appropriate safeguards are put in place to ensure that the expanded inspection powers do not further delay the VAT registration process.

1.1.3 It is hoped that there would be more capacity to conduct inspections if necessary for VAT registrations, employment tax incentive (ETI) registration and section 18A public benefit organisation applications or qualifications.

2. Amendment to Section 164 – Suspension of Payment and Reduced Assessments

2.1. WG response

2.1.1. The proposed amendment to Section 164 recognises the interplay between reduced assessments and the suspension of payment provisions. The WG acknowledged this as a positive development, but several technical and practical concerns were raised, as highlighted below:

2.1.2. The amendment introduces complexity in the timing of requests for reduced assessments, objections, and suspension of payment (SOP). For example, after a verification audit, a taxpayer typically has 30 business days to apply for SOP if they intend to dispute the assessment. However, the process for requesting a reduced assessment (especially for estimated assessments) is governed by a separate 40-day period, and objections may have an 80-day extension.

2.1.3. Furthermore, the amendment seems to be aimed solely at estimated assessments and does not cater for reduced assessment applications in general where there are delays by the South African Revenue Service to these requests.

2.1.3.1. By way of example, a taxpayer misses the initial notice to submit information and receives an estimated assessment. They may intend to request a reduced assessment but are unsure whether they can suspend payment while gathering the necessary documentation. The payment date on the estimated assessment will arrive sooner than the deadline to submit a request for a reduced assessment. The misalignment between the SOP, reduced assessment, and objection timelines creates uncertainty and potential financial risk.

2.1.4. To this end, the WG recommends that SARS leverage its recent investments in digital infrastructure—such as eFiling enhancements—to automate and streamline the request process for reduced assessments and their corresponding SOP. We look forward to an upgraded eFiling which allows the full dispute process and the request for reduced assessments process for all types of taxpayers, together with their corresponding SOP applications which can also be submitted on eFiling. As always, SARS guidance documents on new eFiling processes are appreciated.

2.1.5. The WG further noted that currently, requests for reduced assessments—especially for companies and trusts—are handled manually, often requiring direct email communication with SARS officials. This manual process is viewed inefficient and prone to delays. Requests for reduced assessments are currently processed manually, often requiring direct email correspondence with SARS officials. The WG cautions that the planned rollout of this functionality to a broader taxpayer base will be implemented efficiently, with the SOP process fully integrated into the system.

2.1.6. We further request that SARS and National Treasury provide clear guidance for estimated assessments, *bona fide* errors, and other common scenarios, ensuring taxpayers can suspend payment while resolving disputes.

2.1.7. We also request that Treasury consider broadening the SOP provisions to make it applicable to all reduced assessment applications where SARS is not bound to a timeframe within which to finalise these applications often leading to cases where debt collections are pursued regardless of the merits of the matter or that it will be granted under the general reduced assessment provisions.

3. Amendment to Section 222/223 – Bona Fide Inadvertent Error and Substantial Understatement

3.1. Background

3.1.1. Under the current provisions of section 223 of the Tax Administration Act, the bona fide inadvertent error defence operates as a broad exclusion applicable to any understatement. It serves as a critical safeguard for taxpayers who, despite being unable to justify their position under the behavioural categories listed in the Act, have made a genuine and unintentional error. This defence has been upheld by the courts in landmark cases such as *CSARS v Coronation* and *Thistle Trust v CSARS*, where it was confirmed that taxpayers acting in good faith—particularly when relying on professional advice—should not be penalised for understatement if their tax position is later found to be incorrect.

3.2. WG response

3.2.1. The amendment links bona fide inadvertent error as a defence only to 'substantial understatement' penalties, effectively narrowing its application and changing the landscape for taxpayerrelief. The WG expressed concern that this change limits taxpayer defences and contradicts recent case law. The below concerns and comments were expressed:

3.2.2. For purposes of emphasis: the below comments (up to and including point 3.2.2.7)

have also been included in the SAIT submission as emanating from the submission of one of our stakeholders:

3.2.2.1. The proposed amendments contradict the policy considerations underpinning the understatement penalty regime. Understatement penalties are intended to punish culpable conduct on a sliding scale (the greater the culpability, the more severe the penalty, both in terms of the applicable behaviour categories and the increased penalty amounts for obstructive conduct and repeat cases) – with the exception of the 10% "substantial understatement" behaviour, which is tied to a monetary threshold which, in the legislator's view, is sufficiently material to warrant a "nominal" penalty by virtue of the severity of the monetary prejudice to SARS and the *fiscus*.

3.2.2.2. For this reason, an incorrect statement or omission in a return which prejudices SARS or the *fiscus* which is the result of a *bona fide* inadvertent error falls outside of the understatement penalty regime, because the conduct is not culpable – although the taxpayer has disclosed an incorrect tax position, whether through a simple typographical error or an incorrect interpretation or application of the law based on a genuinely held and reasonable opinion, the taxpayer's conduct is reasonable and not culpable.

3.2.2.3. Other jurisdictions which feature understatement penalty regimes are similarly structured:

3.2.2.3.1. In Australia, a false or misleading statement (for example, in a tax return, activity statement or amendment request) that results in a shortfall amount will attract a percentage-based penalty (the severity of which is determined in accordance with the culpability of the underlying taxpayer behaviour, unless, *inter alia,* the taxpayer or its authorized representative took reasonable care in making the statement.

3.2.2.3.2. In Practice Statement Law Administration (PSLA) 2012/5, the Australian Taxation Office (ATO) explains the concept of reasonable care with reference to Miscellaneous Taxation Ruling MT 2008/1:

3.2.2.3.2.1. the 'reasonable care test' requires an entity to make a reasonable and genuine attempt to comply with obligations imposed under a taxation law. This means taking into account all actions leading up to the making of the statement.

3.2.2.3.2.2. the fact that a false or misleading statement was made does not automatically mean there was a failure to take reasonable care. An entity should be presumed to have taken reasonable care unless the facts or reasonable inferences suggest otherwise. There must be evidence that the entity's attempt to comply has fallen short of the standard of care that would reasonably be expected in the circumstances before they are liable to a penalty.

3.2.2.3.2.3. Factors to be assessed in determining reasonableness of the taxpayer's conduct include the integrity of compliance processes and systems, the complexity of the transaction or position, whether the error was

inadvertent (examples include an isolated transposition mistake or a data entry error which was not the result of systematic issues), and for mistakes in interpreting the law or the facts and law, **if reasonable enquiries were made**, including whether the entity conducted a level of enquiry commensurate with the risk of the decision and their resources, and whether reasonable reliance was placed on reasonable tax advice obtained on the tax position adopted.

3.2.2.3.2.4. In the United States of America, understatement penalties are imposed unless one of the defences in section 6662(2)(B) of the Internal Revenue Code is raised. Understatement penalties will be mitigated where the taxpayer proves that there was substantial authority for that treatment; or where the tax treatment of a transaction was adequately disclosed and there was a reasonable basis for the tax treatment (the Taxpayer Advocate has interpreted this to mean, *inter alia,* that the taxpayer can demonstrate that it took professional advice confirming its tax position).

3.2.2.4. Presumably, the proposed amendment is based on the understanding that where a taxpayer has taken advice and can demonstrate that it has adequate internal controls and systems in place, the taxpayer's conduct is reasonable even if there is an error in a submission to SARS that results in an "understatement" as defined.

3.2.2.5. However, the reality faced by taxpayers in practice is that SARS officials interpret section 222 very narrowly. Specifically, a view that is frequently expressed by SARS auditors in practice is that any disagreement with SARS' interpretation of the law amounts to unreasonable conduct (even where the taxpayer in in possession of advice from reputable independent advisors confirming its tax position is arguable), or more concerningly, that the "intentional" or "deliberate" adoption of a tax position through expression of a legal opinion (again, even when supported by reasonable reliance on reasonable advice issued by a reputable, independent tax practitioner) which SARS disagrees with amounts to an unreasonable tax position, or even recklessness.

3.2.2.6. These unreasonable assessments lead to an unnecessary proliferation of disputes between SARS and taxpayers, but perhaps even more concerningly, where the quantum of the penalty does not justify litigation or the taxpayer is a small business or individual, taxpayers are compelled to pay penalties even where the basis for their imposition is significantly flawed and unreasonable.

3.2.2.7. The protection offered to taxpayers by the "*bona fide* inadvertent error" exclusion in its current form, as clarified by the Supreme Court of Appeal, should not be altered unless there is express confirmation in a binding publication that SARS will not regard errors arising from reasonable reliance on advice obtained from a reputable independent practitioner, and errors which materialize notwithstanding a taxpayer's best efforts in maintaining adequate internal controls as culpable, with due regard to factors such as the taxpayer's compliance history, the complexity of the legislation and underlying facts, and the common law standard of reasonableness.

3.2.2.8. The WG expressed concern that the proposed amendment reintroduces an the

underlying ambiguity regarding what qualifies as a "bona fide inadvertent error", that was resolved by the SCA. To this end, it was noted that linking two unclear concepts does not resolve the uncertainty inherent to either. Historically, SARS has adopted a strict interpretation of this term. Previous guidance, which is no longer authoritative, provided limited examples—such as typographical errors—but even these are not consistently accepted in practice.

3.2.2.9. The proposed restriction of the defense to cases involving substantial understatements effectively excludes taxpayers who make bona fide errorsabove the monetary threshold (e.g., more than R1 million) from accessing this relief. In our view, this significantly limits a taxpayer's ability to challenge an understatement penalty, outside of disputing SARS's interpretation of the taxpayer's conduct. The concern is particularly relevant for smaller taxpayers or for errors that, while genuine, are not substantial in monetary terms.

3.2.2.10. The proposed amendment further introduces a requirement that SARS must be "satisfied" that an error is both *bona fide* and inadvertent. This is viewed as highly restrictive and could potentially be unworkable in practice, given the historically strict interpretation of these terms. There is concern that, under the current approach, it is unlikely that SARS would readily accept such errors as *bona fide* or inadvertent, effectively rendering relief inaccessible.

3.2.2.11. In addition, in accordance with public law principles, the Commissioner's subjective satisfaction must be established with reference to objective factors. These are not outlined in the draft legislation. If SARS' discretion is to be retained, the jurisdictional factors informing the positive or negative exercise of this discretion must be set out in the legislation so that taxpayers are able to understand the threshold their conduct must meet in order for SARS to be satisfied that an error is *bona fide* and inadvertent. This will also assist SARS officials to take reasonable, lawful and procedurally fair decisions by providing a similar level of certainty to that established by the SCA's interpretation of the "*bona fide* inadvertent error" exclusion in *Coronation* (buttressed by the Constitutional Court's obiter statements in *Thistle Trust*), as to the factors informing the exercise of their discretion in deciding whether or not an error is *bona fide* and inadvertent.

3.2.2.12. The WG also noted that the proposed amendment appears to contradict recent case law—including amongst others *Thistle Trust* and *Coronation*—where courts have interpreted the *bona fide* inadvertent error defense more broadly. This proposed amendment may undermine these judicial precedents by effectively removing the ability of taxpayers to rely on a defense, even in cases where they have followed a reasonable process, obtained professional advice and acted in good faith. This could significantly limit taxpayers' ability to contest penalties, despite having taken responsible and informed steps. Additionally, this may potentially give rise to uncertainty and an undesirable increase in disputes between SARS and taxpayers, in circumstances where the requirements for conduct to constitute a *bona fide* inadvertent error were clearly established by the SCA.

3.2.2.13. The proposed amendment appears to link the availability of the defense for substantial understatement to the possession of a formal tax opinion. The WG

noted that this requirement is impractical, particularly for smaller taxpayers who may not typically obtain tax opinions for routine transactions. Genuine errors may still occur during the filing process and imposing this condition could create an undue administrative and cost burden for taxpayers with limited resources.

3.2.2.14. Additionally, we are of the view that the proposed amendment aims to remove the behavioural element from the defense, making it applicable only where a substantial understatement is determined through an objective calculation. This shift would effectively exclude genuine, good-faith errors from qualifying for relief, thereby increasing the risk of penalties for compliant taxpayers who rely on professional advice.

3.2.2.15. The WG also emphasised that, in line with guidance from higher courts, the onus should remain on SARS to prove the taxpayer's behaviour when imposing penalties. Concerns were raised that the current framework undermines principles of fairness and natural justice, as taxpayers may be unable to rely on their subjective intent or reasonable efforts if they fall outside the "substantial understatement" threshold. This could result in penalties being applied even where there is no willful non-compliance

3.3. Recommendations

3.3.1. To this end, the WG has proposed the following recommendations:

3.3.1.1. The current provisions of section 223 remain unchanged and that the judicial interpretations established in the *Coronation* and *Thistle Trust* cases be upheld. These rulings provide a balanced and fair approach to the application of understatement penalties, recognising the importance of taxpayer intent and good-faith reliance on professional advice.

3.3.1.2. The defence of bona fide inadvertent error should be de-linked from 'substantial understatement'.

3.3.1.3. The requirement for a formal tax opinion should not be mandatory for all errors, especially minor or clerical mistakes.

3.3.1.4. Ensure that genuine errors by smaller taxpayers are not penalised simply due to quantum thresholds.

3.3.2. Given the complexity of tax law, there is a strong view that the proposed amendment effectively removes access to a meaningful defence, leaving taxpayers with little recourse—even in cases where errors are made in good faith.

3.3.3. We reiterate that the proposed amendment undermines legal certainty and introduces a punitive approach that may discourage taxpayers from engaging with professional advisors or making reasonable tax disclosures. Retaining the existing framework ensures that penalties are applied proportionately and only in cases of negligence, recklessness, or bad faith.

4. Miscellaneous: Introduction of ADR at an earlier stage in the tax dispute

process

4.1.1. The amendment to introduce the alternative dispute resolution (ADR) at an earlier stage in the tax dispute process—specifically, during the objection phase was noted and welcome. While this amendment was initially proposed to streamline dispute resolution and alleviate pressure on SARS's resources, there appears to be some uncertainty about its implementation.

4.1.2. It was noted that, although the enabling provisions may already exist within the TAA, the corresponding rules necessary to operationalise this change have not yet been issued. This raises concerns regarding the progress of this initiative and whether it remains an active objective of SARS or if it has been deprioritized at this stage.

4.1.3. We therefore respectfully request clarity on the status of these proposed amendments . If implemented effectively, early ADR could play a significant role in resolving disputes more efficiently, reducing the backlog of cases, and ultimately increasing revenue collection for the fiscus by bringing matters to conclusion more swiftly. We encourage SARS to provide an update on the timelines and development of the rules necessary to support this initiative.

End.