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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
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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: VAT TECHNICAL WORK GROUP

Dear Colleagues,

We attach the comments from the SAIT VAT Technical Work Group (**WG**) on the proposals contained in the draft Taxation Laws Amendment Bill, 2025 (**DTLAB**) and the Draft Tax Administration Law Amendment Bill (**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 VAT Technical Work Group

All references to the legislation are to the Value-Added Tax, 1991 (VAT Act) and proposals contained in the draft Taxation Laws Amendment Bill (DTLAB)

1. Debit and credit notes relating to a going concern as per section 8(25)

[Applicable provisions: Section 21(1)(*d*)(ii) of the VAT Act]

1.1 Government Proposal

1.1.1 Section 21(1)(d)(ii) of the VAT Act does not permit the issuance of debit or credit notes by a transferee in cases where goods or services are returned following the transfer of an enterprise as a going concern under section 8(25) of the VAT Act, read with sections 42 or 45 of the Income Tax Act. This is because the provision only applies to transactions concluded under section 11(1)(e) of the VAT Act, despite section 8(25) deeming the transferor and transferee to be the same person for VAT purposes. As a result, there is a legislative gap that prevents proper VAT treatment for returns in certain corporate restructuring scenarios.

1.1.2 As such the National Treasury proposes to amend section 21(1)(d)(ii) of the VAT Act to include transactions under section 8(25), thereby allowing the transferee to issue debit and credit notes where goods or services originally supplied by the transferor are returned.

1.2 WG response

1.2.1 The WG deliberated on the amendment relating to credit notes issued in the context of a going concern. Notwithstanding this it was noted that there are circumstances where a credit note may be issued even after a business has been taken over, such as when parties agree to reduce or increase the consideration by agreement. In certain instances, parties may choose not to write off the full amount, as doing so would require initiating debt recovery processes. In these instances, at times, it is mutually agreed to settle on an increased or reduced amount

1.2.2 The WG recommends that the final legislation should accommodate these scenarios, allowing the recipient of the business to issue a credit back in abovementioned cases. Through this WG, we have previously raised similar concerns through a submission, which we propose be reconsidered by National Treasury and SARS.

2. Reviewing the scope of the intermediary provisions

[Applicable provision: Section 54(2B) of the VAT Act]

2.1. Government Proposal

2.1.1. Intermediaries often facilitate the sale of electronic services on behalf of both foreign and local (South African) suppliers. However, under the current provisions of section 54(2B) of the VAT Act, intermediaries are only permitted to account for VAT as agents when acting on behalf of non-resident principals. This limitation creates significant administrative complexity for intermediaries operating large marketplace platforms that invoice South African customers on a consolidated basis for supplies from both local and foreign suppliers. The requirement to distinguish

between local and foreign suppliers for VAT purposes imposes a considerable compliance burden.

2.1.2. As such the National Treasury is proposing that the scope of the intermediary provisions be expanded to include supplies made on behalf of local suppliers. This amendment would streamline VAT administration for intermediaries and improve efficiency in the digital marketplace environment.

2.2. **WG response**

2.2.1. The WG acknowledged this proposed amendment and the wholistic review of the scope of the intermediary provisions. On the basis that it appears that the market practices already reflect the changes being proposed, we suggest that the amendment should be made retrospective.

2.2.2. In the event that retrospective application is not feasible, we strongly recommend that the amendment be implemented as soon as possible to align with current market behaviour as opposed to the suggested implementation date on 1 April 2026. Since the principal and the intermediary have the option to elect under section 54(2B), determining an effective date of 01 January 2026, would not result in any adverse impact on taxpayers in general.

2.2.3. Section 54(2B)(b) imposes a joint and several liability on the intermediary as well as the principal, for performing the duties of the principal or the intermediary under the VAT Act and paying the tax imposed in respect of the taxable supplies made under the written agreement as envisioned by section 54(2B)(a).

2.2.4. The current approach to joint and several liability between the intermediary and the principal has the potential to create significant operational confusion. Where both parties can be held simultaneously accountable, there is a risk of overlapping compliance efforts and uncertainty in the allocation of VAT obligations. To mitigate these challenges and provide clarity in practice, it is recommended that the intermediary be regarded as solely responsible for fulfilling VAT requirements in the first instance. Only if the Commissioner is satisfied that the intermediary has failed to discharge its obligations should the liability revert to the principal. This delineation would foster greater certainty for all parties involved, streamline administrative processes, and support more effective oversight by SARS. It is important to note that this delineation would only be applicable where supplies are made through an intermediary as defined. Therefore, these transactions would by implication be ringfenced and limited to transactions where the intermediary facilitates the supply of electronic services and is responsible for issuing the invoice and collecting payment for the supply.

2.2.5. To examine this recommendation, it is useful to consider the approach within the context of the employer-employee relationship as outlined in the Fourth Schedule of the Income Tax Act, 1962 (Act No. 58 of 1962). The initial responsibility for withholding and remitting employees' tax (PAYE) lies with the employer, with specific recourse provisions included in the legislation if the employer fails to withhold PAYE. The joint and several liability provision in section 54(2B)(b) does not currently delineate when the intermediary or principal will be held accountable. While the intent behind joint and several liability is acknowledged, it may create

ambiguity concerning where primary responsibility lies. A legislative structure, with a defined allocation of responsibilities, will promote clarity, reduce administrative uncertainty, and support efficient compliance processes by SARS. Section 54(2B)(b) should therefore outline a clear framework specifying the circumstances under which each party may be held responsible.

2.2.6. A useful comparative perspective can be drawn from international approaches to VAT liability for online marketplaces. In some jurisdictions, where an electronic interface such as a marketplace, platform, or portal facilitates the supply of goods or services, the platform, under certain circumstances, is deemed to be the supplier for VAT purposes and assumes primary responsibility for collecting and remitting VAT on transactions it enables. By assigning primary responsibility on a single, centralised entity, this model eliminates operational ambiguities and the potential for overlapping compliance efforts that can arise under a joint and several liability framework.

3. Reviewing VAT rules dealing with documentary requirements for silver exports

[Applicable provision: Section 54(2C) of the VAT Act]

3.1. Government Proposal

3.1.1. Refineries primarily refine and smelt "precious metals," as defined in the VAT Act, including ore received from multiple customers (depositors or principals) for subsequent sale or export. In the case of silver—similar to gold—the refining and smelting process causes the metal to lose its original identity, making it difficult to attribute the final product to a specific depositor. This presents challenges for depositors in obtaining the required documentary evidence to apply the VAT zero-rating on a transaction-by-transaction basis. In many cases, refineries also act as agents in the sale or export of silver on behalf of depositors.

3.1.2. Currently, section 54(2C) of the VAT Act applies only to the export of gold under agency arrangements. Given the comparable practical challenges faced with silver, and recognising the existing reporting and recordkeeping requirements, it is proposed that this provision be extended to cover the exportation of silver by an agent on behalf of a principal.

3.2. WG response

3.2.1. The WG is aligned with this proposed amendment.

4. Reviewing the VAT treatment of testing services supplied to non-residents who are outside the Republic at the time of the supply, where services are supplied directly in connection with movable property situated in the Republic

[Applicable provisions: New sections 11(1)(*x*) and 11(2)(*z*) of the VAT Act]

4.1. Government Proposal

4.1.1. Under the current provisions of section 11(2)(l) of the VAT Act, testing services—such as clinical trials conducted in South Africa for non-resident clients—do not qualify for zero-rating due to strict interpretation of the requirements. Specifically, the phrase “directly in connection with” implies that services involving the testing of

goods (including medical devices or pharmaceuticals) are linked to movable property, thereby triggering the exclusion under subparagraph (ii). Additionally, tests performed on individuals located in South Africa at the time the services are rendered fall under the exclusion in subparagraph (iii). Although the resulting clinical reports are consumed offshore by the non-resident clients, the supply of these services does not currently qualify for zero-rating. These challenges similarly affect testing services conducted on other goods such as aircraft, machinery, and weapons.

4.1.2. To resolve these issues and support the global competitiveness of South African service providers, it is proposed that a new section 11(2)(z) be introduced to zero-rate the supply of testing and reporting services rendered to non-resident clients. In addition, a new section 11(1)(x) is proposed to zero-rate the goods used in the course of providing such testing services.

4.2. WG response

4.2.1. At the outset we would like to acknowledge and welcome this proposed amendment as this has been a longstanding challenge, and it is encouraging to see that progress is now being made in this regard.

4.2.2. The WG has raised the following comments and/or concerns:

4.2.2.1. We have examined the treatment of testing services supplied to non-residents who are outside the Republic at the time of supply, particularly when services are supplied directly in connection with movable property. Concerns were raised about the qualifications for zero-rating, specifically the requirement that the foreign person must not be a resident or a vendor. It was noted that this could prevent zero-rating in cases where the foreign person is a vendor, but the testing services are unrelated to goods sold. However, the rationale behind these qualifications was queried and we recommend that the promulgated legislation clarify the intended mischief being addressed, for further clarity.

4.2.2.2. Additionally, concerns were expressed about linking the zero-rating of services to the supply of goods, especially in cases where goods are destroyed during testing or are not owned by the service provider. It is warranted that technical issues may arise from this linkage and in these instances. Further clarity is required in this respect.

4.2.2.3. We also recommend that a definition of “testing services” be included in the VAT Act in order to avoid any interpretational issues and also to avoid any misuse of the provision by vendors incorporating other services within the ambit of testing services.

5. Reviewing the definition of “insurance”

[Applicable provision: Section 1(1) Definition of the VAT Act Definition of “insurance]

5.1. Government proposal

5.1.1. In light of the recent *Capitec Bank Limited* court decision, it is proposed that the definition of "insurance" be amended to explicitly include the requirement that a premium is charged.

5.2. WG response

5.2.1. As we understand it, the intention and wording of the legislation is to ensure that premiums represent a meaningful economic consideration, commensurate with the risk being insured.

5.2.2. Notwithstanding this, the WG expressed significant concern that the current wording, which requires only the payment of a "premium", is overly broad and susceptible to abuse. In our view, the essence of a contract of insurance is not merely the payment of a premium, but the existence of a regulated insurance relationship, typically governed by amongst others the Insurance Act. Currently many arrangements—such as indemnities and guarantees—may superficially resemble insurance but lack the regulatory oversight and consumer protections associated with genuine insurance contracts. Under the current draft wording, a premium could be any amount, even a nominal sum such as one rand or one cent. In our view, this creates a loophole whereby parties could structure transactions to meet the technical definition without reflecting the economic substance of genuine insurance arrangements.

5.2.3. We are of the view that if the definition is too broad this exposes great risk of economic distortion if the definition is not sufficiently robust. For example, parties may structure transactions to claim input tax deductions on nominal premiums, only to account for output tax when indemnities are paid. This could result in unintended tax benefits and undermine the integrity of the VAT system. Therefore, we strongly recommend that the definition be tightened to require a "commercial" or "open market" premium, or at the very least an "economic consideration", to prevent circumvention of the policy intent.

5.3. Recommendations

5.3.1. We propose to align the definition of insurance in the VAT Act with that in the Insurance Act. This would require that only contracts provided by registered insurers, as defined in the Insurance Act, qualify as insurance for VAT purposes. Such an approach would provide clarity and consistency, and would prevent the inclusion of indemnities, guarantees, and other arrangements that do not meet the regulatory standards for insurance.

5.3.1.1. Stemming from the above it is to be noted further that there are many arrangements where parties provide indemnities or guarantees and are called upon to make payments in the event of loss or damage. These arrangements may superficially resemble insurance but lack the regulatory oversight and consumer protections associated with genuine insurance contracts. Further reiterating the importance of linking the VAT definition to the Insurance Act, the legislation would ensure that only *bona fide* insurance contracts are covered

5.3.2. We wish to express support of the policy objective of clarifying the definition of "insurance" for VAT purposes and agree that this is an important step toward

ensuring alignment with regulatory standards and reflecting the economic substance of genuine insurance arrangements. However, to ensure that the revised definition is both effective and practicable, it is recommended that industry stakeholders be consulted extensively. Further engagement with experts in the insurance sector will help ensure that the definition does not inadvertently exclude legitimate products or arrangements, and that it remains workable in practice. This WG remains at your disposal to achieve this purpose.

5.3.3. Essentially, we recommend that the legislation be amended in a manner that prevents abuse, enhances legal certainty for both taxpayers and administrators and upholds the integrity of the VAT system.

6. Clarifying the VAT treatment of temporary letting of residential properties
[Applicable provision: Section 18D of the VAT Act]

6.1. Government proposal

6.1.1. Per the draft Explanatory Memorandum, it is proposed that the VAT treatment of the temporary letting of residential properties under section 18D of the VAT Act and consequential sections of this Act, be reviewed and updated.

6.2. WG response

6.2.1. The WG noted that the amendments appear to bring in a new subsection to cater for the deduction of unclaimed input tax when a deemed supply is made under section 18(1). The WG has no specific comments relating hereto and further recommends that industry experts be consulted to better understand the background and implications of this amendment.

7. Supplies of educational institutions
[Applicable provision: New sections 8(2H), 12(*h*)(iv) and 40E and sections 12(*h*)(i) and (ii)]

7.1. WG response

7.1.1. The WG has noted the following commentary:

7.1.1.1. The WG acknowledges that the result of the will result in the deregistration of schools as VAT vendors, effectively removing them from the VAT net. This exemption applies broadly to all supplies made by schools, regardless of the nature of the goods or services. The intention is to simplify compliance for schools and recognise their role as providers of a critical public good.

7.1.1.2. The WG raised stern concern that the proposed amendment will have an impact on input tax refunds for capital expenditure previously claimed by schools. When a school is deregistered, it may be required to repay input tax claimed on assets that are still in use. The process of quantifying and identifying these adjustments is complex and may exceed the administrative capacity of many schools. The group recommended considering a once-off exemption from the adjustment requirements under section 8(2H), to avoid undue hardship for schools that have claimed input tax on capital assets.

7.1.1.3. The exemption of all school supplies from VAT could result in economic distortion, particularly in relation to tuck shops and uniform sales. For example, a school tuck shop selling uniforms or snacks may be able to offer lower prices than a local retailer, as the school is not required to charge VAT on its margin. This could disadvantage local businesses and create an uneven playing field. The group acknowledged that the distortion may be limited to the margin component but recommended that the potential impact be monitored.

7.1.1.4. The group discussed the possibility that schools may seek to structure their activities to maximise the benefits of the exemption. For example, a school could establish a separate entity to carry out commercial activities, which would remain subject to VAT. The school could then charge rent to the entity for use of its facilities, potentially creating VAT leakage. The group recommended that the legislation include anti-avoidance provisions to prevent abuse of the exemption.

7.1.1.5. The exemption is justified on the grounds that schools provide a critical public good—education—and should not be burdened with VAT compliance on their ancillary activities. The WG supported the policy rationale, noting that the exemption will create consistency and reduce complexity for schools. However, it was also recognised that affluent schools, which have claimed significant input tax on capital expenditure, may benefit disproportionately from the exemption.

7.2. Recommendations

7.2.1. We propose the following recommendations:

7.2.1.1. Consider a once-off exemption from the adjustment requirements under section 8(2H) for schools being deregistered, to avoid undue hardship and administrative complexity.

7.2.1.2. Monitor the impact of the exemption on local businesses, particularly in relation to tuck shops and uniform sales, and consider further amendments if significant distortion arises.

7.2.1.3. Design the exemption to ensure that it does not create unintended windfalls for affluent schools, and that the benefits are distributed equitably across the education sector.

7.2.1.4. Engage with schools, governing bodies, and tax practitioners to ensure that the exemption is workable in practice and does not create unintended barriers or compliance burdens.

8. Clarifying the VAT treatment in respect of payments made under the national housing programme

[Applicable provision: Section 8(23) of the VAT Act]

8.1. Government proposal

8.1.1. To address the current confusion surrounding the application of the zero-rating under section 11(2)(s) of the VAT Act, it is proposed that section 8(23) be amended to more precisely define the qualifying housing programme. Specifically, it is recommended that the reference to "a national housing programme contemplated in the Housing Act" be deleted and replaced with "Housing Subsidy Scheme referred to in section 3(5)(a) of the Housing Act." This amendment will serve to narrow the scope of the zero-rating and ensure greater clarity and consistency in its application.

8.2. WG response

8.2.1. The amendments relating to payments under the National Housing Programme were reviewed by the WG, which noted that the changes move away from rental stock, focusing instead on 'RDP' housing supplied free of charge or at below market value.

8.2.2. The WG raised concerns about the impact on the rental stock market, as developers may no longer be entitled to input tax deductions and further recommends that the proposed amendment address these potential impacts to avoid unintended consequences for the industry.

9. Clause 13: Amendment of section 45

9.1. Government proposal

9.1.1. Per the DTALAB, section 45 provides that the Commissioner will be liable to pay interest on a delayed refund, unless one of the specific conditions listed in the proviso to section 45 applies. The proposed amendment expands these conditions and provides that no interest will be paid on a delayed refund, where a vendor has not complied with the provisions of section 44(3)*(d)* or *(e)* of the Act.

9.2. WG response

9.2.1. The WG discussed the proposed amendment to section 45, which would require written confirmation of banking details for interest on delayed refunds. Concerns were raised that this may be an additional hurdle for taxpayers and recommended that the existing amendment aligning with the Tax Administration Act provisions that are to be promulgated to avoid unnecessary complications in interpretation.

10. VAT modernisation project

The WG discussed the introduction of this modernisation project. While this is a welcome introduction, concerns were raised about the timing and the need for in depth industry consultation before this project is rolled out. The WG recommended that further engagement with stakeholders be undertaken before implementing these regulations.

End.