South African Institute of Taxation

Presentation on the:

- Draft Taxation Laws Amendment Bill, 2025; and
- Draft Tax Administration Laws Amendment Bill, 2025

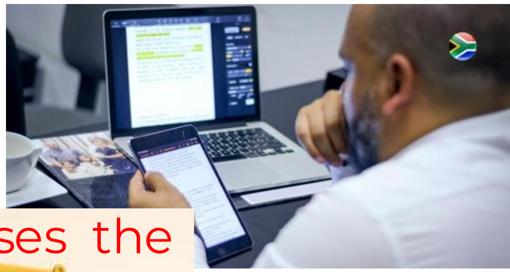
to the

Standing Committee on Finance and the Select Committee on Finance

October 2025

YOUR KEY TO THE TAX COMMUNITY

SA's Global Retirement Appeal Diminishes with Section 10(1)(gC) Repeal



South Africa risks losing its appeal as a retirement destination and misses the opportunity of expanding its tax base

2013 → 2022 → 2024 → 2025

- The removal of the **section 10(1)(gC)(ii)**, exemption which exempts -foreign retirement funds from South African tax, poses significant challenges for returning South African tax residents and foreign retirees settling in the country. Individuals who relied on this exemption now face the risk of **double taxation**, as their retirement income could be taxed both abroad and locally. This change undermines South Africa's **exempt–exempt–taxed (EET)** retirement model, creating uncertainty and potential unfairness for expats with global retirement portfolios.

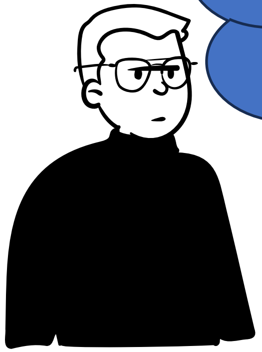
- Beyond the technical implications, by taxing foreign pensions without relief, South Africa risks **discouraging the repatriation of skilled professionals** and **reducing its attractiveness** for foreign retirees. This policy shift could lead to a **loss of foreign direct investment (FDI)**, slower growth in the service sector, and a diminished tax base.

- Removing relief for foreign retirement funds undermines South Africa's competitive edge as a retirement destination and deviates from global norms of **tax neutrality**, making our country less appealing to internationally mobile talent and retirees.

Recommendation:

- **Transitional Relief or Grandfathering Mechanism**: To protect individuals who contributed to foreign retirement funds under the current legislative framework, a transitional relief or grandfathering mechanism should be introduced—*<u>preserving legitimate expectations, ensuring certainty, and mitigating the retrospective impact of the proposed repeal of the exemption.</u>*

- **Preferential Tax Treatment for Foreign Retirement Benefits:** To ensure fairness, lump sum distributions from foreign retirement funds should be taxed similarly to South African retirement lump sums. Without this, they risk being taxed as ordinary income. *<u>A specific exemption should also be considered to exclude after-tax contributions from further taxation and prevent double taxation.</u>*



- What data supports NT's claim of revenue loss?
- Has NT modelled the impact on migration and investment?
- How will SARS handle foreign fund contribution histories?

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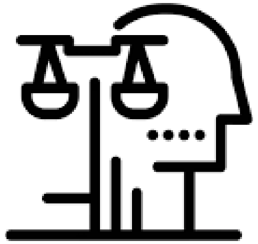
Side Hustles Face Tax Reality Check: Threshold Reduced

The proposal aims to tighten anti-avoidance rules by preventing taxpayers from offsetting losses from "*suspect trades*" against taxable income, aligning with National Treasury's broader effort to curb perceived abuse of assessed losses and aggressive tax planning.

- **With no reprieve from frozen income tax bracket** for the third consecutive year - middle-income taxpayers face a disproportionate burden under the proposed amendment,—**even where losses stem from genuine economic hardship rather than tax avoidance**.
    - **Equity and Administrative Fairness:** The blanket tightening of section 20A risks penalising compliant taxpayers by failing to distinguish between abusive tax planning and genuine entrepreneurial activity. Without carve-outs or thresholds for small-scale "side hustles," the amendment could undermine tax equity and disproportionately burden financially constrained individuals
    - **Target the Real Risk, Not the "Hustle":** While closing loopholes is valid, fairness demands focus on high-income aggressive tax planning—not sweeping rules that burden ordinary taxpayers with legitimate side businesses. Clear examples from SARS and Treasury would help justify the scope and avoid unnecessary verification for low-risk individuals.
    - **Mitigating Unintended Impact: Practical Safeguards:** We propose introducing safe harbour thresholds, rebuttable presumptions, and *de minimis* rules to protect small-scale trades.



The proposed amendments may create unfair distortions for legitimate trades – operating in genuinely declining economic conditions.

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Controversial amendments to section 8E

A seemingly simple fix has **far-reaching consequences**. Preference share funding schemes are essential for **tax neutrality**, not tax avoidance. Removing them would be **detrimental to BEE transactions** and undermine funding structures designed for fairness. This approach contradicts government's stated goal of **empowering black South Africans**, as it risks making empowerment deals harder to finance and less viable.

- **Retrospective Application:** The amendments will apply to all existing preference share funding transactions, not just new ones. This <u>*undermines legal certainty*</u> and the legitimate expectations of investors and corporates who <u>*structured deals in reliance on the law as it stands*</u>.
- **Severe Impact on BEE and Transformation:** Preference share funding is essential for BEE transactions, enabling black ownership and transformation. <u>*The changes will make BEE deals significantly more expensive and may halt new empowerment transactions, directly contradicting government's transformation objectives.*</u>
- **Economic and Investment Consequences:** The amendments will increase the cost of capital for all equity acquisitions, discourage investment, reduce M&A activity, and harm economic growth. South Africa's competitiveness as an investment destination will be damaged.
- **Overbroad and Technically Problematic:** <u>The new definitions are extremely broad and rely on IFRS accounting standards, which are not designed for tax policy</u>. Many ordinary commercial instruments will be caught unintentionally, creating uncertainty and compliance risks.
- **Constitutional and Legal Risks:** There is a real risk of successful legal challenge if enacted as is.

We welcome the withdrawal of this proposed amendment in the 2025 DTLAB cycle. However, we request and endorse meaningfully

Recommendations

- Is this a policy shift by National Treasury?
- **Grandfathering of Existing Transactions**: The new rules should only apply to new preference share funding after the effective date.
- **Carve-Outs for BEE and Strategic Transactions**: Explicit exemptions for BEE and other public interest deals.

Protecting Taxpayers who act in Good Faith (*section 222/223 amendment*)

Current Safeguard

- The **bona fide inadvertent error** defence protects taxpayers who make genuine, unintentional mistakes—especially when relying on professional advice.
- Affirmed by courts in **Coronation** and **Thistle Trust**, Woolworth Holding case this defence ensures penalties are reserved for **culpable conduct**, not honest errors.

Proposed Change

- Limits the defence to **"substantial understatement"** cases only, excluding smaller errors and narrowing taxpayer protections.
- Introduces vague criteria requiring SARS to be "satisfied" that an error is bona fide and inadvertent, without clear guidelines.

Risks & Concerns

- **Contradicts case law** and undermines legal certainty.
- **Disadvantages smaller taxpayers** who may not afford formal tax opinions.
- **Increases disputes** and discourages voluntary compliance.
- ***Removes behavioural context****, penalising taxpayers even when acting reasonably and in good faith.*

Recommendations

- **Retain current Section 223** and uphold judicial precedent.
- **De-link the defence** from the "substantial understatement" threshold.
- **Avoid mandatory tax opinions** for minor or clerical errors.
- **Clarify SARS discretion** with objective criteria to ensure fairness and transparency.

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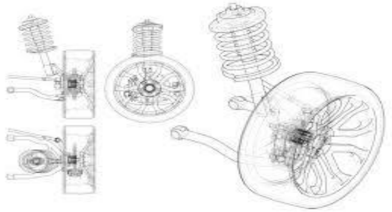
Additional deduction for domestic production of battery electric and hydrogen-powered vehicles



- The incentive is limited to **original equipment manufacturers**, excluding component manufacturers. While this aligns with current policy intent, excluding component makers—critical to vehicle production—**could hinder their ability to invest in electric and hydrogen technologies, slowing industry transformation**.

- Although component manufacturers currently benefit from DTIC-administered cash grants (20–25% of qualifying investment), extending the tax incentive would offer a 150% allowance—**enhancing competitiveness across the sector**.

- We recommend that the National Treasury consider future inclusion of component manufacturers and clearly communicate any eligibility constraints to avoid ambiguity. While a 150% tax allowance extension may not be fiscally viable now, we recommend exploring future inclusion to boost sector competitiveness.

- Supporting component manufacturers ***strengthens the entire vehicle manufacturing ecosystem***. It enables them to expand capacity and keep pace with **original equipment manufacturers** as they scale up for electric and hydrogen technologies.

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The SARS inspections

Section 45 Amendment: SARS Inspections for VAT Fraud

Intent

- Expand SARS powers to inspect and verify the absence of VAT fraud during registration.

Concerns

- VAT registrations already face significant delays.
- Risk that expanded powers could worsen bottlenecks instead of improving timelines.

Recommendations

- Implement safeguards to prevent inspection delays in VAT registration.
- Ensure additional capacity for inspections across:
    - VAT registrations
    - Employment Tax Incentive (ETI) applications
    - Section 18A Public Benefit Organisation approvals.

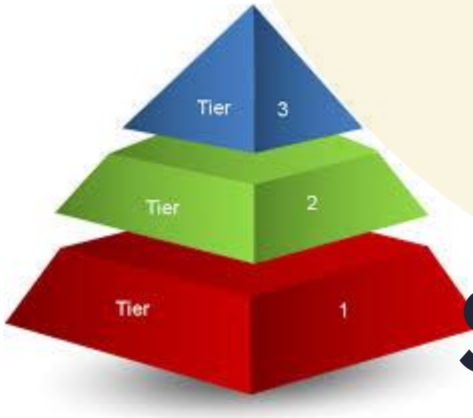
Goal: Strengthen fraud prevention without compromising efficiency in registration processes.

Reordering Rules: Attribution Errors May Cost Beneficiaries Twice

- Removing the phrase “*subject to section 7*” from section 25B of the Income Tax Act **disrupts the established attribution framework that ensures income is taxed in the hands of the appropriate party.**
- Section 7 is a cornerstone of anti-avoidance, and its removal from section 25B could:
  - **Disorder Tax Liability**: It may cause trusts or resident beneficiaries to be taxed first, even when attribution should apply—leading to double taxation or mismatches in timing and jurisdiction.
  - **Impact Resident Beneficiaries:** The change doesn’t only affect non-residents; it also alters how distributions to resident beneficiaries are treated, creating uncertainty.
  - **Create DTA Conflicts**: Deeming income taxable in South Africa without clear attribution could conflict with double tax agreements (DTAs), especially where beneficiaries or donors are tax resident elsewhere and unable to claim relief.
  - **Increase Litigation Risk**: Recent case law underscores the importance of clear attribution rules. Removing this clarity could result in disputes and administrative burdens.

Proposed changes to sections 7(5) and 25B seek to restrict flow-through treatment to SA residents, citing enforcement issues with non-residents the current wording may still capture non-residents, creating **uncertainty and potential double taxation**

Removing “*subject to section 7*” from section 25B disrupts the attribution/ tax order between trusts and beneficiaries, risks double taxation and may potentially increase litigation—without aligning capital gains treatment or clarifying intent



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Roll-Over Relief & Restructuring: Listed Shares, CIS Transactions & Amalgamations

Why This Matters:
The amendment, as drafted, risks **penalising legitimate transactions**, **creating uncertainty**, and **undermining investment flows**, contrary to the goal of equitable tax enforcement

1. Undermines Certainty and Trust

- Transactions previously approved by SARS through **private rulings** may now be invalidated.
- Businesses lose confidence in the stability of tax law, discouraging compliance and investment.

2. Overly Broad Application

- Blanket denial of relief captures **legitimate commercial transactions**, such as:
  - *Regulatory-driven transfers.*
  - Changes in management companies.
  - Industry consolidations or restructuring for efficiency.

3. Investor Impact

- Repeal of section 44 CIS mergers triggers **CGT** for investors on decisions made by asset managers—events **outside investor control**.
- Creates **tax costs for non-tax commercial reasons**, harming investor confidence.

4. Market Efficiency Risk

- Could discourage **capital market activity** and **CIS restructuring**, reducing flexibility and competitiveness.

Recommendations

- **Retain roll-over relief for widely held CIS** subject to regulatory oversight (e.g., FSCA policies).
- **Carve out regulatory-driven transactions** (e.g., FSCA-mandated transfers) to avoid unnecessary CGT events.
- **Distinguish between closely held and widely held CIS** to target avoidance without harming legitimate transactions.
- **Engage in further consultation with industry stakeholders** to ensure clarity and commercial viability

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VAT SECTION 12H

We support the intent of the amendment to exempt all supplies by schools from VAT aims to simplify compliance and recognise education as a public good. However, **significant practical and economic challenges** arise:

- The proposed **Compliance Burden on Schools**
  - Schools must calculate and repay VAT previously claimed—an **administratively complex process** beyond the capacity of many institutions.
- **Financial Hardship:** Repayment obligations could impose **unexpected costs**, particularly on smaller schools with limited resources.
- **Economic Distortion:** VAT-free tuck shops and uniform sales may **undercut local businesses**, creating an uneven playing field.
- **Risk of Abuse:** Schools could restructure activities to exploit the exemption, leading to **VAT leakage**.
- **Unequal Benefit:** Affluent schools that claimed large input VAT refunds on capital projects stand to gain disproportionately, **widening inequality**.

Why This Matters:

- Without safeguards, the amendment could **increase compliance costs**, **create market distortions**, and **introduce loopholes**, undermining the policy's intent to simplify and support education.
- The proposed amendment could shift many activities of higher education institutions to exempt status, complicating VAT registration and input tax claims.
- Universities may lose significant income streams and be forced to cease being VAT vendors and deregister for VAT, further complicating financial management. Already financially strained and under funded universities may even be required to claw back previously deducted VAT as outlined in section 8(2).

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Refining the definition of ‘equity share’ to cater for transfers to foreign companies

Recommended Fix

- Apply the amendment **retrospectively to 2012**, or
- Treat it as a **clarification**, not a substantive change.

The amended definition may potentially create uncertainty and potentially disqualifying taxpayers from the receipt of key tax reliefs—such as the capital gains participation exemption, section 10B dividend exemption, and intra-group rollover relief in the CFC context.

- This could retroactively affect taxpayers since 2012, undermining policy intent and creating compliance risks.
    - ➢ We recommend that the amendment be applied retrospectively or *clarified as a technical correction to preserve continuity and fairness.* Additionally, the reference to “return of capital” should be limited to foreign shares to avoid conceptual ambiguity, as South African shares are already constrained by contributed tax capital rules.
    - ➢ Without retrospective correction, South African taxpayers with foreign shareholdings may face unintended tax liabilities and lose access to long-standing exemptions—impacting cross-border investment, tax certainty, and alignment with international norms.

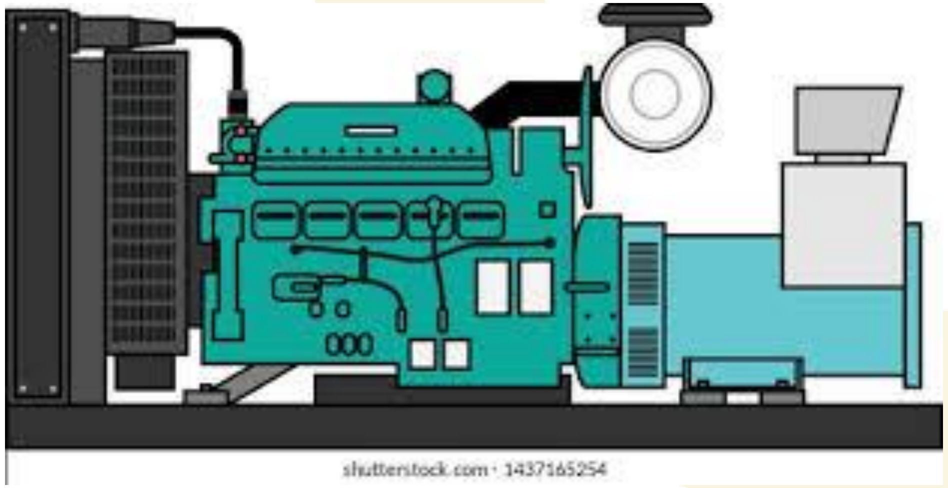
Clarifying the definition supports South Africa’s competitiveness and ensures the tax system remains fair and administratively sound.

Diesel refunds

Diesel Refund Reform: From 80:20 to 100% Relief – this is welcomed

- **Current Policy**: Only 80% of diesel purchases qualify for a refund; 20% assumed for non-qualifying use.
- **Proposed Change:** Full refund on eligible diesel volumes declared to SARS—aligned with original intent.
- **Impact:** Simplifies administration and delivers circa R1 billion in relief to qualifying taxpayers.

    - *Legislative Update: Amend Note 6(b), Schedule 6, Part 3 of the Customs and Excise Act, but draft wording needs clarity as 80% references still appear in examples.*
    - *Change only noted in explanatory memo, not in DTLAB.*
    - *Implement from April 2026.*



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THANK YOU

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