South African Institute of Taxation

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

www.thesait.org.za

28 November 2025

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS,
299 Bronkhorst Street
PRETORIA
0181

Via email: **National Treasury** (AnnexCProposals@Treasury.gov.za);
SARS (2026LegislationComments@sars.gov.za)

RE: ANNEXURE C PROPOSALS: SAIT VAT TECHNICAL WORK GROUP

We attach the Annexure C proposals from the SAIT VAT Technical Work Group (the WG), as it pertains to technical proposals for possible inclusion in Annexure C of the 2026 Budget Review.

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.

Yours sincerely

SAIT VAT Technical Work Group

Unless otherwise indicated, all references to legislative sections refer to those in the Value-Added Tax, No. 89 of 1991 (the VAT Act)

1. Sale of a going concern

[Applicable provisions: sections 8(7) and 11(1)(e) of the VAT Act]

1.1 Background

1.1.1 Section 8(7) provides that the disposal of a business as a going concern, or part thereof which is capable of separate operation shall for the purposes of this Act be deemed to be a supply of goods made in the course or furtherance of such enterprise, (emphasis added). Section 11(1)(e) makes provision for the zero rate to apply in respect of the disposal of a business as a going concern, subject to the conditions envisaged in that section and section 11(3).

1.2 The legal nature of the problem and a detailed factual description of the problem

1.2.1 Where one or more of the conditions of section 11(1(e) are not complied with, the zero rate does not apply. In this instance, it is our view that one should consider the correct VAT treatment of each component part of the assets and liabilities disposed of. This will result in standard rate VAT being payable on goods or services used wholly or partly for taxable (i.e. enterprise) purposes, no VAT being payable on goods or services used solely for purposes of non-taxable supplies, since these fall outside the scope of section 7(1)(a), and financial services such as debtors, shares etc. will be exempt from VAT in terms of section 12(a).

1.2.2 However, since section 8(7) deems all of the said components to be the supply of goods for purposes of the Act, ambiguity exists with regard to financial service assets, which are, in terms of section 2, deemed to be financial services. Hence the two sections contradict one another.

1.3 Proposal

1.3.1 It is our understanding that the original purpose of section 8(7) was most probably to reference such transactions to section 11(1)(e) and (p), both dealing with goods, despite the fact that the business being disposed of may also consist of services. A similar deeming provision is included in section 8(26), which deems both the goods and services to be supplied under a warranty agreement to be services, for purposes of section 11(2)(v).

1.3.2 Based on the above, we propose that section 8(7) be amended to replace the reference to “for the purposes of this Act” with “for purposes of section 11(1)”.

2. Refunds of output tax excessively paid

[Applicable provisions: Sections 190 of TAA and 44(3)(c) of the VAT Act]

2.1 Background

2.1.1 Sections 190(1)(a) and (b) of the TAA provides that SARS must pay a refund if a person is entitled to a refund, including interest thereon under section 188(3) of:

(a) an amount properly refundable under a tax Act and if so reflected in an assessment; or

(b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment.

2.1.2 Section 44(3)(c) of the VAT Act provides that the Commissioner shall not make a refund under Chapter 23 of the TAA, unless the Commissioner is satisfied that any amount of output tax claimed to be refundable to a vendor will, if such amount has been borne by any other person, in turn be refunded by the vendor to such other person.

2.2 The legal nature of the problem

2.1.1 The refund envisaged in section 190(1)(a), in the case of VAT, deals with a VAT return submitted by a vendor which reflects a refund due to the vendor. These refunds are generally scrutinized by SARS by way of verifications and if satisfied, refunded automatically to the vendor.

2.1.2 However, in the event where a vendor erroneously paid excessive output VAT due to e.g. an error in transposition of an amount included in a VAT return, or a vendor has charged standard rate VAT erroneously on a non-taxable supply or a zero-rated supply, no process exists in terms of which the vendor can apply for a refund, especially where vendors are not registered at the LBC and does not have a dedicated relationship manager.

2.1.3 Some years ago, there was a short window period where a vendor could request a correction return (i.e. if SARS did not issue a verification letter in respect of the tax period concerned) and was able to reduce the amount of output tax previously declared.

2.1.4 This process allowed SARS to satisfy itself that the refund claimed is in fact due to the vendor, before the refund is processed. Currently, output tax cannot be reduced nor input tax increased, by way of correction returns. Vendors are further, in terms of section 16 of the VAT Act, not permitted to claim any excess output tax paid as input tax in a subsequent return. As a result, vendors are effectively prevented to claim VAT overpaid, since no process or facility exists to formally claim the refund from SARS.

2.3 Proposal

2.3.1 It is proposed that section 190 of the TAA be amended to provide that the vendor must claim the refund in the form and manner prescribed by the Commissioner in a public notice and that SARS issues a public notice to provide the form and means to claim such refunds from SARS. Furthermore, we propose that an assessment remain open for amendment—both for input and output—until the applicable submission deadline is reached. This would allow taxpayers to make any necessary corrections up to the due date, i.e., close of business on the last weekday of the month.

3 Section 95 of the Tax Administration Act, No. 28 of 2011

3.1 Background

3.1.1 Section 95(1)(c) of the TAA provides that SARS may issue assessments based on an estimate where the vendor does not submit a response to a request for relevant material under section 46, in relation to the taxpayer, after delivery of more than one request for such information. Subsection (4) provides that the making of an assessment under subsection (1) does not detract from the obligation to submit a return or the relevant material.

3.1.2 Subsection (5) provides that an assessment under subsection (1)(a) or (c) is only subject to objection and appeal if SARS decides not to make a reduced or additional assessment after the taxpayer submits the return or relevant material under subsection (6).

3.1.3 Subsection (6) provides that the taxpayer, in relation to whom the assessment under subsection (1)(a) or (c) has been issued may, within 40 business days from the date of assessment, or a longer period as the Commissioner may prescribe by public notice, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material.

3.1.4 Subsection (7) provides that if reasonable grounds for an extension are submitted by the taxpayer, a senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the relevant period referred to in section 99(1) or 40 business days, whichever is the longest. Subsection (8) provides that if SARS decides not to make a reduced or additional assessment as requested under subsection (6), the date of the assessment made under subsection (1)(a) or (1)(c), for purposes of Chapter 9 (i.e. dispute resolution mechanisms), is extended to the date of the written notice of the decision. (emphasis added)

3.1.5 The provision in the TAA for estimated assessments in the case where a vendor fails to timeously submit relevant material requested is understood to solicit vendors to submit the material in order for SARS to give effect to its mandate to administer the tax laws.

3.2 The legal nature of the problem

3.2.1 From the said provisions it is evident that SARS may issue an estimated assessment where a vendor has been requested at least twice, to provide relevant material. It often happens that a vendor does not submit the relevant material timeously when SARS issues a verification request.

3.2.2 Our experiences are that SARS often issues a reminder, and then issues an estimated assessment before the deadline by when the vendor is required to submit the relevant material. In other instances, the relevant material requested by SARS is requested to be submitted in Excel format. Once the Excel documents are uploaded, same automatically converts into PDF documents, which leads to SARS requesting the information again as the alignment etc are thrown out upon PDF conversion. In such cases, our experience is that despite vendors contacting SARS on various alternative channels (i.e. SARS connect, emails, etc.) to make arrangements to submit the information requested to a SARS office or to seek assistance to submit same to SARS via e-mail, information submitted in this manner is simply ignored by SARS.

3.2.3 It is further our experience that SARS' treatment of estimated assessments is inconsistent. In most cases it is not clear from the assessment if it is an estimated

assessment or an additional assessment. What clouds the matter even further, is that the assessment informs the vendor that if the vendor is not in agreement with the assessment, the vendor may object, which pre-supposes that it is an additional assessment, since section 95(5) clearly provides that a vendor cannot object to an estimated assessment.

3.2.4 However, where the vendor prepares an objection to deal with the matter and to attach the relevant material requested to the objection, they find that no segment exists on SARS' e-filing system to submit the objection. This seems to suggest that the assessment was in fact an estimated assessment. Where the vendor then uploads the relevant material again to request a reduced assessment, as envisaged in section 95(5), same is ignored and no reduced or revised assessment is processed by SARS.

3.2.5 Again, since no direct contact can be made with the SARS officials who deal with the matter, vendors are unable to escalate the matter to a senior SARS official where the 40-business day period will or has lapsed, as envisaged in section 95(7). This in turn suggests, by virtue of section 95(8), that the vendor may still object to the assessment, albeit that it is unable to do so via SARS' e-filing. In some cases the only remedy remaining is to give SARS written notice that the vendor intends to take legal action against SARS, as envisaged in section 11 of the TAA. This is very costly and tedious processes, often causing severe cash flow difficulties to vendors and are not conducive to proper tax administration and it contravenes taxpayers' rights.

3.2.6 With reference to the 2024-2025 annual report issued by the Office of the Tax Ombud, it is evident that the majority of complaints received relate to delays in refunds and verification requests that resulted in estimated assessments. Further, the Office of the Tax Ombud also flagged non-meritorious assessments by SARS as a serious issue. It stated that 71% of assessments are conceded or partially conceded by SARS during the objection phase. In addition, 92% of appeals were conceded which went through the entire appeal process. This places a substantial burden on both Taxpayers and SARS due to the cost and time involved in finalizing these matters.

3.3 Proposals

3.1.1 We propose the following amendments to section 95 of the TAA:

(a) To provide that an estimated assessment should clearly be marked as such and that the assessment informs the vendor that it could request a revised assessment within 40 days by submitting the relevant material, as envisaged in section 95(7);

(b) To provide for relevant material requested by SARS to be submitted via a different channel where same cannot be submitted via the SARS e-filing portal and to provide for such arrangement to be made in the form and manner to be published by SARS in a public notice;

(c) To introduce a subsection which provides that a vendor may request an extension of the said 40 business day period from a senior SARS official in the form and manner prescribed by SARS in a public notice and that SARS issues such a public notice;

(d) To make provision that SARS must respond in writing to a vendor who has requested a revised assessment envisaged in section 95(7) to

enable the taxpayer to understand why the information provided is not sufficient. These grounds should be communicated to the taxpayer when SARS informs the taxpayer of its decision as envisaged in section 95(5) and (8).

3.1.2 Accordingly, with reference to paragraph 3.2.6 and 3.3 above, we propose the following amendments to section 95 of the TAA:

(a) to include a subsection which provides that SARS must inform the taxpayer of its decision as envisaged in section 95(5) by issuing a document containing reasons for the proposed estimated assessment.

(b) where the taxpayer submitted the requested information and SARS makes the decision not to reduce the estimated assessment SARS must provide the taxpayer with the grounds for not reducing the estimated assessment to enable the taxpayer to adequately respond to these grounds in its objection.

(c) Upon receipt of the notification referred to in point (a) above, the taxpayer must within 21 business days of delivery of the document, or further period requested by the taxpayer which may be allowed by SARS, respond in writing to the facts and conclusions set out in the document.

(d) We believe that the above will result in a substantial reduction in non-meritorious assessments as the taxpayer will be granted an opportunity to respond to the findings of SARS, in the verification process, prior to such assessments being raised;

(e) The above is also aligned with the intent of the Promotion of Administrative Justice Act, 2000.

4 Section 11(2)(k) of the VAT Act

4.1 Background

4.1.1. Section 11(2)(k) of the VAT Act provides that the zero-rate applies to the supply of services where *'the services are physically rendered elsewhere than in the Republic or to a customs controlled area enterprise or an SEZ operator in a customs controlled area.'*

4.1.2. Given the construct of the provision it follows that the zero-rate finds application to services physically rendered:

- Elsewhere than the Republic; or
- To a customs-controlled area enterprise (CCAE); or
- To an SEZ operator in a customs-controlled area

4.2. Problem statement

4.2.1. Services rendered to a CCAE can be zero-rated even though the services are physically rendered outside the customs-controlled area.

4.2.2. Having regard to Interpretation Note 31 (IN31) and Interpretation Note 40 (IN40) it seems that the intention of the legislator is that the zero-rate will only apply if the services to the CCAE is rendered inside the customs-controlled area which is contrary to the wording of the legislation.

4.3. Proposal

4.3.1. It is suggested that the legislation be clarified if it is the intention that the zero-rate only applies to services rendered to a CCAE physically inside a customs-controlled area.

4.3.2. Alternatively, if the intention is that services to a CCAE is zero-rated even if it is rendered outside a customs-controlled area, then IN31 and IN40 should be amended accordingly.

5. Section 8(24)

5.1. Background

5.1.1. Section 8(24) provides that a vendor, being a customs controlled area enterprise or an SEZ operator, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period approved in writing by the Controller: Provided that this subsection shall not apply where those movable goods are supplied by the customs controlled area enterprise or SEZ operator, prior to the expiry of the relevant prescribed time period: Provided further that this subsection shall not apply to—

(a) goods that are deemed to have been imported under paragraph (i) of the proviso to section 13 (1); or
(b) goods to which section 18 (10) previously applied.

5.2. Problem statement

5.2.2. In circumstances where a vendor removes his own goods as envisaged by section 8(24) and is deemed to make a supply of such goods, the vendor has to account for an output tax liability. If the goods are used by the vendor in its enterprise outside the CCA, the legislation does not contain a provision whereby the vendor can claim the VAT paid due to section 8(24) as an input tax deduction.

5.3. Suggestion

5.3.1. The legislation should be amended to either:

- allow the vendor an input tax deduction to the extent that the goods subject to section 8(24) are used for taxable purposes; or
- a further proviso should be added where the deemed supply of section 8(24) does not find application to the extent that the goods are used for enterprise purposes.

6. Drop shipment exports // Documentary evidence

6.1. Background

6.1.1. The zero-rate of VAT finds application to goods exported, subject to adherence to section 11(3) read with Interpretation Note 30 (IN30) in respect of so-called direct exports.

6.1.2. There are instances where South African vendors sell goods to an export client and the goods are shipped from outside of South Africa directly to the export country, so-called drop shipments. In these instances, the South African vendor acquires goods outside South Africa, sell same to an export customer and has it

shipped directly to the export customer.

6.1.3. IN30, paragraph 8.3.2 acknowledges similar supplies in the context of sales on the high seas, but it still envisages that the goods originate from an export from South Africa as it requires export customs documentation (paragraph 6 of IN30):

> *'In instances where a vendor sells movable goods situated outside the Republic, for example, a sale on the high seas, and the vendor consigns or delivers those movable goods to the recipient at an address in an export country, the supply of the movable goods is subject to VAT at the zero rate under section 11(1)(a)(i), read with paragraph (a) of the definition of "exported" in section 1(1). In this instance, "at an address in an export country" includes consignment or delivery of the movable goods to the recipient on board a ship while on the high seas. The vendor must obtain and retain the required documentary proof as stipulated in 6. In addition to the documentation required in 6, proof that the movable goods were situated outside the Republic at the time of supply must also be obtained and retained by the vendor, for example the applicable customs documentation proving the export.*
>
> *In the event that such movable goods are subsequently imported into the Republic by the recipient, VAT on importation will be levied under section 7(1)(b).'*

6.2. The legal nature of the problem

6.2.1. Where a vendor makes export supplies that are drop shipments (i.e. delivery from an export country to another export country), the generally accepted documentation as prescribed in IN30 does not find application, i.e.:

- Export customs documentation from South African will not be available as the goods are never in South Africa;
- Proof that the vendor engaged with and paid the cartage contractor. Dependent on the arrangement between the non-resident Seller of the goods outside of South Africa (i.e. the person from whom the South African vendor acquires the goods which is on-supplied) and the South African vendor, the latter may not have a contract with the cartage contractor nor have proof of payment to the cartage contractor.

6.2.2. The IN does not provide clarity regarding what is acceptable to prove that the goods were situated outside South Africa at the time of supply, apart from the example that customs documentation proving export from the export country is to be provided.

6.3. **Proposal**

6.2.3. IN30 should specifically address drop shipments.

6.2.4. As noted above, the South African vendor will not be able to adhere to the below requirements and these should be removed as requirements in support of the zero-rate:

- Will not have export documentation from South Africa as the goods are never in South Africa;
- Dependent on the transport arrangement with the non-resident from whom the South African vendor acquires the goods, the South African vendor will not have a contract and/or proof of payment for transport.

6.2.4.4. Documentary evidence that may be required includes the following:

- Invoice from the non-resident supplier to the South African vendor for the goods that is the subject matter of the drop shipment;
- Export documentation from the non-resident country to the South African vendor's recipient in the export country;
- Recipient's order or contract between recipient and South African vendor;
- Zero-rated tax invoice from South African vendor;
- Proof of payment for goods supplied.

7. LBMA Bullion banks and VAT registration

7.1. Background

7.1.1. Precious metal trading (particularly gold and silver) is a large component of South Africa's export trades. To this end, the majority of gold mined in South Africa is ultimately exported albeit it through bars, Krugerrands or other forms of gold.

7.1.2. For purposes of international trade of gold and silver the London Bullion Market Association (LBMA) is the international trade association representing the global Over The Counter (OTC) bullion market, and defines itself as 'the global authority on precious metals'. The LBMA Gold and Silver Price benchmarks are the global benchmark prices for gold and silver delivered in London, and are administered by ICE Benchmark Administration Limited (IBA).

7.1.3. Only gold and silver bars that meet the LBMA's Good Delivery standards are acceptable in the settlement of a Loco London contract – where the bullion traded is physically held in London. LBMA owns and manages the Good Delivery Lists for both gold and silver. In the Loco London Market, precious metals are traded directly between two parties, without the involvement of an exchange. This system depends on all the bars having exactly the same specification. The requirements for a Good Delivery listed bar (of approximately 400 troy ounces for gold and 1,000 troy ounces for silver) cover:

- Fine ounce weight
- Purity
- Physical appearance (including marking and surface quality).

7.1.4. No other refined gold or silver products produced by accredited refiners fall within the scope of the Good Delivery Lists.

7.1.5. The LBMA's members include refiners, banks and trader firms. Being an LBMA member means the organization adheres to high standards of quality, ethics, and transparency in the global precious metals market. Membership is a sign of reputation and trust within the industry, which helps to raise standards and foster integrity in the global precious metals supply chain.

7.1.6. In South Africa, Rand Refinery (Pty) Ltd is the only LBMA refinery. As result it facilitates LBMA Good Delivery gold/silver sales to LBMA member financial institutions.

7.1.7. These LBMA financial institutions acquire gold/silver physically located in South Africa. Generally the metal will be sold to them by the depositor (mine), via Rand Refinery that acts in an agent capacity. The gold/silver will either be exported to the LBMA member (once refined and cast in bars or other form) or it may be sold

to another non-resident LBMA member prior to export. Irrespective, the gold/silver will always remain in the custody of Rand Refinery (Pty) Ltd until it is exported.

7.1.8. As previously noted to SARS, Rand Refinery has various:

- audit trails to mass balance metal intakes and exports, and
- reporting to a number of governmental institutes regarding metal trades

thus providing comfort around the metal in its custody and tracking thereof from receipt of the initial deposit to export.

7.2. The legal nature of the problem

7.1.1. Where a non-resident LBMA member sells the gold/silver whilst it is physically located in South Africa and in the custody of Rand Refinery (the metal may still be refined or unallocated prior to being cast in specified bars, etc.), albeit that it will be exported, such LBMA member conducts an 'enterprise' as defined in section 1(1) and is liable for VAT registration.

7.1.2. Given that:

- The gold/silver is always in the custody of Rand Refinery until it is exported to a LBMA member or its client;
- On a daily basis LBMA members trade amongst themselves in gold/silver;
- The gold/silver that LBMA financial institutions supply will be exported from South Africa, i.e. the gold/silver does not enter the local South African market;
- There are various checks and balances within Rand Refinery as the only LBMA refinery in South Africa that provides comfort with the mass balancing of deposits and exports.

7.1.3 It is suggested that an exclusion to the definition of 'enterprise' be inserted whereby the supply of gold/silver by non-resident, non-vendor LBMA members be excluded from said definition. This will have the effect that sales by non-resident LBMA members of gold situated in the Republic, which will be exported, will not be subject to VAT. Equally, any VAT which such LBMA members may incur in respect of such activities, will not be claimable as input tax.

7.3 Proposal

7.3.1 It is suggested that the definition of 'enterprise' be amended as follows:

7.3.1.1 Where a person is a LBMA member but neither a resident of the Republic, nor a registered vendor and that person supplies gold or silver held at an LBMA refinery, to a person who is not a resident of the Republic, that activity by the LBMA member shall be deemed not to be the carrying on of an enterprise, notwithstanding the fact that the goods supplies are physically located in South Africa at the time of supply.

8. Precious metals time to export by sea

8.1 Background

8.1.1 Interpretation Note 30 (IN 30), paragraph 5.2(b) and Regulation 316, paragraph 15(2)(b) provides that:

- *The supply of precious metals which are to be exported from the Republic **via air** must be exported within a period of 30 days from the date of the export release as per the "Release Instruction" received from the recipient/ qualifying purchaser acquiring the precious metal*. (own emphasis).

8.2 The legal nature of the Problem

8.2.1 Precious metals are stockpiled in South Africa for various reasons prior to being exported and the general time rules to export do not apply to precious metal exports. This matter has previously been considered and amendments were introduced whereby the time period in which to export precious metals was amended to be 30 days from date of the Release Instruction. However, as noted the said rule only applies in respect of exports by air.

8.2.2 Precious metals, particularly those of a lower value, are stockpiled until larger quantities may be exported. Also, where these precious metals are a by-product of other mined precious metals (e.g. silver that is contained in the primary gold ore), it takes longer before a sufficient quantity to export has been stockpiled. In these instances the exports may be by sea and not air. Given that the current wording only applies to exports by air, whenever an export is by sea the general timing provisions must be considered which provisions do not make sufficient allowance for the time required to export.

8.3 Proposal

8.3.1. We propose that IN30, paragraph 5.2(b) and Regulation 316, paragraph 15(2)(b) be amended to also include exports by sea.

9. Definition of "enterprise", flash title supplies & direct exports

9.1. Background

9.1.1. Effective 1 January 2023, proviso (xiv) was introduced to the definition of 'enterprise' in section 1(1) of the VAT Act.

9.1.2. This proviso excludes from the definition of 'enterprise' any qualifying purchaser that acquires and on-supplies goods on a 'flash title' basis in respect of goods that are exported under the so-called indirect export provisions, unless the qualifying purchaser requests to be VAT registered.

9.2. Problem statement

9.2.1. The noted exclusion from the definition of 'enterprise' is limited to persons that engage in goods that are exported under the so-called indirect export provisions.

9.2.2. Where a non-resident person continuously or regularly acquires goods in South Africa and supplies same under flash title supplies for export and the goods are exported by the South African vendor (or its cartage contractor) under the so-called direct export provisions to the non-resident's customer, the non-resident has to register for VAT as it carries on an enterprise.

9.2.3. It is evident that there is a disparity between whether or not a non-resident person that acquires and supplies goods on a flash title basis for export has a VAT registration liability. This disparity is purely based on whether the export is a

direct or indirect export.

9.3. Proposal

9.3.1. It is proposed that proviso (xiv) be amended to make the exclusion also applicable to direct exports.

10. Interpretation Note No.31 (issue 4) - requirement to obtain proof of payment in respect of zero-rated supplies

10.1. Background

10.1.1. Section 11(1) and section 11(2) of the VAT Act provide for the application of the zero rate to the supply of certain goods and services. In order to substantiate the application of the zero rate, section 11(3) of the VAT Act requires a vendor to obtain and retain certain documentation as is acceptable to the Commissioner.

10.1.2 The Commissioner exercised the discretion afforded to it in section 11(3) by issuing two Interpretation Notes namely Interpretation Note 30 (IN30) and Interpretation Note 31 (IN31).

10.1.3 Item A of Table A in Interpretation Note 31 (issue 4) (**IN31(4)**) which refers to the documentation required for the application of the zero rate under a "direct export" of goods requires compliance with paragraph 6 and 8 of Interpretation Note 30 (issue 3) (**IN30(3)**).

10.1.4 IN30(3), similar to IN31(4), includes specific time periods within which the supporting documentation to substantiate the zero rate is required to be obtained.

10.1.5 The importance of these time periods is that failure to obtain the documentation within the required time period requires a vendor to make an output tax adjustment.

10.1.6 IN30(3) was amended in 2014 and introduced, amongst others, certain exceptions to the requirement to obtain proof of payment in respect of the applicable zero-rated supply (paragraph 7(d) of IN30(3)). These exceptions include, for example, where extended payment terms are in place between the vendor and recipient, where there is a shortage of foreign currency to effect payment and where specific approval from the Reserve Bank has been obtained not to have the funds remitted to the supplying vendor.

10.1.7 We interpret this to mean is that despite the vendor not complying with the requirement to obtain proof of payment, a VAT adjustment would not be required provided the vendor complied with all other documentary requirements within the required time period.

10.2 The legal nature of the problem

10.2.1 Although IN30(3) was amended to include the exceptions to the requirement to obtain proof of payment, IN31(4) does not include these exceptions. This creates disparity between the proof of payment requirement for direct exports of goods (reflected in IN30(3)) and other types of zero-rated supplies of goods and services.

10.2.2 It is submitted that many of the circumstances listed in paragraph 7(d) of IN30(3) find application to other zero-rated supplies of goods and services since the payment in respect of the supplies could follow similar arrangements and face similar limitations.

10.2.3 The result is that vendors are required to apply for VAT rulings from SARS

specifically in relation to proof of payment which exhausts the resources of both the taxpayer and SARS without any benefit.

10.3 Proposal

10.3.1 It is proposed that the similar exceptions found in paragraph 7(d) of IN31(3) be introduced in IN31(4) to ensure consistency between the proof of payment requirements for direct export of goods and other zero-rated goods and services.

11. Bullion Metal location (loco) swaps (not derivatives or any financial instrument)

11.1. Background

11.1.1 The gold and silver bullion market consists of a physical market where gold / silver bullion is transferred between entities and a so-called paper gold / silver market which involves the trading in claims to physical golds / silver. Bullion is the term used to refer to physical metal and it may be allocated or unallocated.

11.1.2 The below deals with gold / silver bullion location swaps (loco swaps). Hence the swaps discussed below relates to swaps of physical metal and not swaps entered into as a financial instrument, i.e. no paper gold / silver.

11.1.3 Given the risks and costs involved in the transportation of precious metals, it is common practice to enter into location swaps.

11.1.4 Essentially, Person A has precious metal located in Germiston (loco Germiston) and Person B has precious metal located in London (loco London).

11.1.5 Person A requires precious metal in London and Person B requires precious metal in Germiston. Rather than transporting the precious metal, the parties agree to enter into a location (loco) swap of the precious metal. (A loco swap is an agreement to exchange equivalent quantities of metal in two separate locations.) The effect hereof is that Person A swaps its loco Germiston with Person B's loco London and vice versa. Hence Person A ends up with precious metal in London and Person B with precious metal in Germiston.

11.1.6 Per the LBMA website lbma.org.uk, a swap is explained as below:

> *A Loco (location) swap is an agreement to exchange equivalent quantities of metal in two separate locations. One location will almost invariably be London. The other could be a variety of places but perhaps most commonly will be Zurich.*
>
> *The trade is booked as the purchase of metal in one location and the sale of an equivalent amount in another. The price differential will be a reflection of the demand for metal in each location, but at its simplest, may be nothing more than the cost of shipping the metal into London, plus refining costs if appropriate.*

11.1.7 Examples of bullion loco swaps:

11.1.7.1 Loco swap to settle debt

11.1.7.1.1. A South African mine obtained finance from a non-resident financier. The terms of the finance agreement requires the mine to settle the finance by way of future metal produced. (Generally these are referred to as streaming agreements.) The gold may be sold by the mine and the funds used to settle the payment or the non-resident financier requests that the mine provides it with gold in London.

11.1.7.1.2. In the latter instance the mine will request the refinery to facilitate an arrangement whereby the mine settles its repayment in bullion in London.

11.1.7.1.3. The refinery will approach a bullion bank that has a gold account (account that records physical bullion holdings) with it in South Africa and being a bullion bank it will also have an account in London. The mine's gold will be transferred from the mine's account to the bullion bank's Germiston account with the purpose of facilitating a Germiston for London loco swap. The bullion bank will swap the Germiston gold for London gold with the result that the mine has gold in London. This gold is then utilised to settle the mine's repayment with its financier in London.

11.1.7.2. Bullion swap to obtain gold in Germiston

11.1.7.2.1 A non-resident who has gold in London requires gold in Germiston for purposes of having the gold processed in a specific form. The non-resident will also have a gold bullion account in South Africa with the refinery.

11.1.7.2.1 As explained above, a bullion bank with bullion accounts in both Germiston and London will be approached for purposes of the bullion loco swap. The non-resident will transfer its physical gold to the bullion bank in London and the bullion bank will swap between its London and Germiston accounts. The gold will then be transferred from the bullion bank's Germiston account at the refinery to the gold account of the non-resident. The refinery will perform the requested value-added services and the gold will subsequently be exported as instructed by the non-resident.

11.2 Problem statement

11.2.1 It is evident that the swap of physical bullion constitutes a barter transaction. Since ownership in the bullion passes from one person to another, the respective supplies of bullion constitute "sales" as defined. As a result, although the bullion located in the Republic is not exported from the Republic, but corresponding bullion is acquired outside the Republic and delivered (i.e. by constructive delivery) to the counter party outside the Republic, the gold delivered outside the Republic meets the requirement of "exported". Hence this transaction should be zero rated. As far as the gold in the Republic is concerned, this will be physically exported or removed from the Republic by a non-resident LBMA member. If the proposal dealing with the exclusion of non-resident LBMA members is accepted, this transaction will not be subject to VAT.

11.3 Proposal

11.1.3 Location swap of bullion that is constructively delivered outside the Republic, should specifically be included in the definition of "exported" by virtue of e.g. expanding paragraph (a) of the definition by specifically including constructive delivery of bullion through a swap by a member of the LBMA. This will specifically permit the South African entity to apply the zero-rate.

12. **VAT Rate change – Section 7(4) of the Value Added Tax Act**

12.1 **Background**

12.1.1 Section 7(4) provides that: "*If the Minister makes an announcement in the national annual budget contemplated in section 27(1) of the Public Finance Management, 1999 (Act No. 1 of 1999), that the VAT rate specified in this section is to be altered, that alteration will be effective from a date determined by the Minister in that announcement, and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months*." (Emphasis added). The wording in this section has been the same since the inception of VAT. The wording thus provides that the rate change announcement by the Minister of Finance will apply for a period of 12 months from the effective date of the rate change, but the announcement is subject to Parliament passing legislation. This interpretation has the effect that should Parliament not pass legislation to give effect to the rate change, the announcement becomes void and of no force.

12.1.2 This interpretation supports the supremacy and democratic principles of Parliament, which is the institution responsible for legislation and legislative amendments, and not individual Ministers.

12.2 **Legal nature of the problem**

12.2.1 The 2025 budget speech, where a VAT rate increase was announced with effect from 1 April 2025, highlighted the below noted problem in the wake of the question around the legality of the announcement.

12.2.2 Following the Western Cape High Court decision (Case No. 2025-045530), where the court found the resolutions of the National Assembly and the National Council of Provinces invalid, vendors who were required to account for the higher rate of VAT were required to refund the excess VAT to its recipients and to re-claim the amounts from SARS. Of greater significance, is the fact that vendors spent billions of Rands in training, upgrading of systems and educating/dealing with complaints from clients. These initiatives were necessary since the transitional provisions contained in section 67A are not aligned with the accounting treatment or the timing rules provided for in section 9 and are further quite complex for vendors, who are not tax specialists. These provisions further require a tremendous amount of human intervention on transaction level, which increase the risk of non-compliance, hence the training needs. It is therefore submitted that such disruptive circumstances should be avoided at all costs since same are hugely costly to business and harmful to the fiscus.

12.2.3 Nevertheless, both National Treasury and SARS contended that the announcement of the rate increase by the Minister will remain binding for at least a year, with or without Parliament legislating for same. It thus seems that the wording of section 7(4) lends itself to another interpretation which suggests that a rate change announcement by the Minister becomes effective from the date announced and will continue to be in force until Parliament decides not to legislate the rate change. This interpretation will no doubt be even more disruptive to business, and potentially SARS.

12.3 **Proposal**

12.3.1 In order to provide clarity, it is proposed that the section be amended to make it clear that unless Parliament legislates for the rate change and the effective date thereof, the announcement of the rate change by the Minister will become null and void in its entirety.

12.3.2 Should the first proposal not be acceptable, we would in the alternative propose that the section be amended to provide clarity as to whether a rate change announced by the Minister will:

- remain effective for an entire 12-month period regardless of the fact that Parliament does not legislate for it, or
- be effective only until Parliament decides not to legislate for it.

12.3.3. Lastly, further consideration should be given to establishing a reasonable timeframe from when the new rate is legislated to when it is effective, thus allowing vendors enough time to prepare for a rate change.

13. Increase of the VAT registration threshold

[Applicable provisions: sections 23(1)(a) of the VAT Act]

13.1.1 Background

13.1.2 Section 23(1)(a) of the Value-Added Tax Act 89 of 1991 requires a person to register compulsorily for VAT if the total value of taxable supplies exceeds R1 million in any 12-month period.

13.1.3 This threshold was last amended with effect from 1 March 2009, when it was increased from R300,000 to R1 million. Since then, there has been no further adjustment, despite significant structural changes in the South African economy, sustained inflation, and evolving compliance burdens faced by small and medium enterprises (SMEs).

13.1.4 Over the past 16 years:

- Cumulative inflation has exceeded 120% (2009–2025).
- The real value of the threshold has eroded substantially.
- SMEs face increasingly high compliance costs relative to turnover.
- The effective “size” of a business required to register has shifted materially downward, capturing businesses that were never intended to fall under compulsory VAT.

13.1.5 The purpose of the threshold is to balance revenue protection with administrative feasibility, and to ensure that small businesses are not overburdened by VAT compliance obligations that exceed their administrative capacity. The absence of adjustment in the face of substantial inflation undermines that policy objective and marks a sharp departure from the established legislative pattern of revising the threshold every 8–10 years.

13.1.6 Historical pattern summary:

Period	Years in between	Threshold	Inflation (approx.)	Comment
1991-1999	8 years	R150,000 - R300,000	82%	Threshold doubled to restore real value
1999-2009	10 years	R300,000 - R1,000,000	82%	Large upward revision as part of SME reform
2009-2025	16 years	R1,000,000 (unchanged)	120%+	No adjustment; longest period of stagnation and significant real erosion

13.1.7 The historical record confirms that the threshold was never intended to remain static and has always been adjusted when inflation and economic pressures required it.

13.2 Legal nature of the problem

13.2.1 The prolonged failure to adjust the compulsory VAT threshold has resulted in a substantial departure from the original legislative intent of section 23(1)(a) of the VAT Act. The economic and administrative impacts are significant and increasingly distortive. We set out a few of these impacts below:

13.2.1.1 Real erosion and misalignment

13.2.1.1.1 *The* current threshold of R1 million represents only 46% of its 2009 real value. This means that enterprises substantially smaller than those originally targeted are now compelled to register solely due to nominal turnover increases driven by inflation, not genuine growth.

13.2.1.2 Disproportionate compliance burdens on SMEs

13.2.1.2.1 Compliance costs are disproportionately high for SMEs which undermine profitability and growth potential.

13.2.1.3 Deviation from established legislative practice:

13.2.1.3.1 Prior adjustments were made when inflation reached levels comparable or lower than the inflation accumulated since 2009. The failure to adjust the threshold in 16 years:

- contradicts established legislative precedent,
- undermines the purposive interpretation of section 23(1)(a), and
- weakens the VAT system's fairness and neutrality.

13.3 Proposal

13.3.1 To restore alignment between legislative intent, economic conditions, and administrative capacity, the following reform are recommended:

13.3.1.1 Immediate adjustment of the compulsory VAT registration threshold to reflect cumulative inflation since 2009. Based on inflation data, this would place the updated threshold in the range of R2.2 million to R2.5 million. This adjustment would:

- restore the threshold's real value,
- reduce disproportionate compliance burdens on micro and small enterprises, and
- improve administrative efficiency.

End.