

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case no:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

MINISTER OF FINANCE

First respondent

COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE

Second respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Third Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL
OF PROVINCES**

Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HELEN ZILLE

declare under oath:



I INTRODUCTION

- 1 I am Chairperson of the Federal Council of the Democratic Alliance, the applicant, a registered political party which in terms of its Constitution has legal personality and the power to sue and be sued, with its head office at 16 Mill Street, Oranjezicht, Cape Town, 8001.

- 2 I am authorised to bring this application on the DA's behalf.



- 3 The facts contained in this affidavit are within my knowledge, unless otherwise stated or appears from the context, and are true and correct. Some of the facts are within the public record. Legal submissions are made on the advice of the DA's legal representatives.
- 4 This is an application, in Part A, to urgently:
- 4.1 set aside fundamentally flawed decisions taken by the National Assembly and National Council of Provinces on 2 April 2025 to adopt the fiscal framework;
 - 4.2 remit the matter back to the Standing Committee on Finance and Select Committee on Finance for reconsideration; and
 - 4.3 prevent the coming into force of unlawful executive fiats that purport to raise the VAT rate contrary to the will of Parliament
- 5 And then, in Part B, to declare unconstitutional the legislative provision that purports to grant the Executive the power to amend the VAT rate (Part B).
- 6 The Minister of Finance presents the budget speech to Parliament in February of each year shortly after the State of the Nation Address. The purpose of the budget speech is for the Minister to lay out Treasury's proposals for the expenditure of public funds, as well as to set out proposed changes to fiscal and taxation legislation – including taxes.
- 7 Following the budget speech, committees of Parliament debate the Minister's proposals. Parliament votes to adopt the fiscal framework which sets out the State's expected expenditures and revenues for the financial year ahead. It then considers and adopts the various pieces of legislation that raise, divide and allocate national revenue.



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- 8 As the Court will know, the 2025 national budget was initially delayed by three weeks due to an impasse that arose within the Government of National Unity concerning the Minister's proposal to hike the VAT rate.
- 9 The Minister initially wanted to impose a 2% VAT hike.
- 10 The VAT hike was not (and still is not) acceptable to the DA. Further, opposition parties in Parliament – including the EEF and MKP – have publicly opposed any VAT hikes. Civil society and the labour movement has similarly opposed any hike to the VAT rate. No party in Parliament (even it appears the ANC) as of now seems to support a VAT hike anymore.
- 11 The reason is simple. An increase in the VAT rate impacts everyone: South Africans no matter their economic status will face adversity since the price of most goods will rise dramatically. The increase will result in greater food insecurity and pressures on ordinary people.
- 12 After three weeks of political negotiations, the impasse in the GNU could not be resolved.
- 13 In the face of this impasse, the Minister nonetheless in his budget speech on 12 March 2025, announced a VAT hike of 0.5% in the present financial year, and an additional 0.5% in the next financial year. The fiscal framework he proposed also include these VAT hikes.
- 14 The first increase is set to come into effect on 1 May 2025.
- 15 The National Assembly and NCOP on 2 April 2025 resolved to adopt the fiscal framework as proposed by the Minister. They also made a (non-binding)



recommendation that the Minister should take 30 days to reconsider raising VAT and find other sources of revenue.

16 However, in law, that recommendation has no effect. It will not stop the VAT increase from coming into effect on 1 May 2025 – which is in any event 28 days from the date the fiscal framework was adopted.

17 The National Assembly's and National Council of Provinces' (NCOPs) resolutions to adopt the reports containing and the fiscal framework are fatally irregular and unlawful.

17.1 The underlying reports accepted by the National Assembly and NCOP had been unlawfully adopted by the National Assembly's Standing Committee on Finance and NCOP's Select Committee on Finance ("the Committees"), and were themselves unlawful.

17.2 In terms of the Money Bills and Related Matters Act 9 of 2009 ("Money Bills Act"), after the Minister of Finance proposes the fiscal framework to Parliament, it must be referred to the Committees.

17.3 The Committees are then obliged to hold public hearings on the fiscal framework and, within 16 days after the tabling of the national budget or as soon as reasonably possible thereafter, report to the National Assembly or the National Council of Provinces, as the case requires, on the fiscal framework.

17.4 Section 8(4) provides that the Committees' *"report[s] must include a clear statement accepting or amending the fiscal framework."*

17.5 The Standing and Select Committees' reports, which the National Assembly and NCOP resolved to adopt on 2 April 2025, are unlawful for three reasons.



- 17.6 First, the Committees did not vote on the wording of the final report. The Committees simply considered the framework clause by clause, without a final version that set out a clear statement. A clear statement accepting or amending the fiscal framework and revenue proposals was never put to the Committees for final adoption, and never appeared in the version of the report that the Committees considered. The statement to the effect that the framework was accepted was only inserted after the meeting was over.
- 17.7 Second, as a discrete issue, while the reports contain a statement which accepts the fiscal framework, this can hardly be described as “clear”, since the reports appear to elsewhere “*recommend*” that the Minister “*facilitates the receipt of substitute revenue proposals*” to replace a VAT increase. The reports therefore do not comply with the requirements of section 8(4). The Committees ought to have amended the reports themselves; not “accepted” them while taking issue with a core component (the VAT increase).
- 17.8 If the Committees were not satisfied with the fiscal framework (which is the case), then they were required by section 8(4) to amend the framework. They could not effectively adopt the framework while making (non-binding) recommendations that its proposals on revenue – such as the VAT hike – be amended.
- 17.9 Third, the adoption of the fiscal framework was the product of a material error of law, and the taking into account of irrelevant considerations, in that members of the Committees, and Action SA in particular, acted under the misapprehension that recommending the reconsideration of the VAT increase would result in the VAT hike being halted.
- 17.10 The reports are therefore unlawful and invalid.

- 17.11 The resolutions of the National Assembly and NCOP adopting these reports are therefore unlawful and unconstitutional. They must be declared invalid and set aside. Since it is the resolutions of the National Assembly and NCOP to adopt the report that has a final effect, those are the decisions challenged by the DA in this case. The DA is not required also to challenge the Committees' resolutions separately.
- 17.12 This relief is urgent. If the budget process continues, it will be tainted by this illegality. South Africa's economy cannot afford uncertainties about whether its budget was adopted lawfully or not. The matter needs to be resolved swiftly so that a lawful process may be undertaken.
- 18 If Parliament believes that the VAT hike will not happen because of its non-binding recommendations, it is mistaken. As of now, and as matter of law, the VAT hike will go into effect on 1 May 2025.
- 18.1 In fact, as demonstrated by the Committee reports, the majority in Parliament appears dead set against a VAT hike.
- 18.2 But the hike will come into effect by virtue of Ministerial fiat.
- 18.3 The Minister has said so. In this regard, I attach a News24 report as **DA0**, where (after the fiscal framework was adopted by Parliament) the Minister is reporting as stating that the VAT increase has not been removed. And he is right.
- 18.4 VAT is imposed in terms of section 7(1) of the Value-Added Tax Act 89 of 1991 ("**the VAT Act**"). It provides both for the imposition of the tax as well as the rate of tax:

“Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;
- (b) on the importation of any goods into the Republic by any person on or after the commencement date; and
- (c) on the supply of any imported services by any person on or after the commencement date,

calculated at the rate of 15 per cent on the value of the supply concerned or the importation, as the case may be.”

18.5 The Minister relies on section 7(4) of the VAT Act. It purports to give him the power to change the VAT rate for an entire year without Parliament’s approval. Section 7(4) provides:

“If the Minister makes an announcement in the national annual budget ... 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.”

18.6 In other words, in terms of section 7(4), the Minister through mere announcement can amend the VAT rate for an entire year.

18.7 And that will occur on 1 May 2025, even though Parliament has purported to recommend that an alternative source of revenue be found.

18.8 The VAT increase, if it goes into effect, is irreversible in two senses.

18.8.1 One, it cannot be undone by Parliament in that year. Undoing the VAT increase would require Parliament to pass a money bill, which only the Minister can introduce. The consequence of parliamentary inaction is that the VAT increase will remain in effect for 12 months.

- 18.8.2 Two, the VAT paid by ordinary consumers can never be returned to them. While it would be possible to adjust the VAT liability of vendors, they are merely collecting VAT for SARS that is paid by the people to whom they provided goods or services. It is practically impossible to repay VAT paid by consumers, even if it was unlawfully collected.
- 18.9 Section 7(4) is patently unconstitutional:
- 18.10 First, the VAT rate is set in section 7(1) itself. Section 7(4) allows the Minister to amend that provision. The power to amend legislation is a plenary power, that Parliament may not delegate to the executive.
- 18.11 Second, it affords the Minister a power to impose an irreversible tax.
- 18.11.1 That is a power that is reserved by our Constitution exclusively for Parliament.
- 18.11.2 This is contrary our Constitution; the power to raise taxes vests solely in Parliament.
- 18.11.3 The manner in which national taxes are raised and appropriated must accord with the democratic will as expressed in law. It is the people, through their duly elected representatives, who decide on the taxes that the public must bear.
- 18.11.4 The executive has no constitutional power to impose a tax burden or appropriate public money without due and express consent of elected public representatives.
- 18.11.5 The Constitutional Court has, repeatedly, held that this power and duty is solely within the remit of elected legislative bodies. Indeed,

I am advised that it is regarded as a fundamental and founding principle of modern democracy that there should be “*no taxation without representation*”, and that the executive branch of government should not itself be entitled to raise revenue for its operation, but should be dependent on the taxing power of a democratically accountable parliament.

18.12 The Minister’s decision itself is also constitutionally invalid:

18.12.1 Once this Court declares section 7(4) of the VAT Act to be unconstitutional and invalid, it follows that there was never any valid legislative authority for the Minister’s impugned decision, and that the impugned decision falls to be set aside.

18.12.2 Moreover, and in any event, even if this Court were to find that section 7(4) of the VAT is constitutionally valid, the Minister cannot lawfully increase taxes where he *knows* in advance of his decision that a majority in Parliament will not support the increase.

19 Against this background, the DA approaches this Court in two-parts.

19.1 In **Part A**, brought urgently, the DA seeks orders (i) setting aside the adoption of the fiscal framework by Parliament and remitting the framework to the Committees, and (ii) suspending the operation of the Minister’s decision to increase the VAT rate pending the final determination of Part B.

19.2 **Part B** is a constitutional challenge to section 7(4) of the VAT Act and the Minister’s decision to increase VAT, as announced on 12 March 2025.

20 Part A is brought urgently because:

20.1 Parliament has adopted a fiscal framework unlawfully. But it would be highly disruptive for the DA to bring an application to challenge the decision to adopt the fiscal framework in the ordinary course. It would mean that, for many months, the lawfulness and status of South Africa's budget would be uncertain, but would nevertheless be implemented. It would also mean that the court faced with the challenge to the decision to adopt the fiscal framework in due course would have little option, even if it found the framework to be unlawful, and given that half the financial year would have passed, to exercise its remedial discretion under section 172(1)(b) of the Constitution not to set aside the decision aside. The only way in which the DA can therefore obtain effective relief in relation to the fiscal framework is by way of an urgent application.

20.2 As regards the suspension of the operation of the Minister's decision to increase the VAT rate, while Parliament has set its face against a VAT hike, the first 0.5% increase will as of now go into effect on 1 May 2025.

20.2.1 Taxes will then be imposed on the public by executive fiat and will have to be paid for at least 12 months.

20.2.2 Even if after 12 months Parliament does not give effect to the increase in legislation, the taxes paid during the period will not be recoverable by those who ultimately paid them.

20.2.3 Without interim interdictory relief, the Minister's decision will impose an irreversible and unconstitutional tax on effectively everyone in South Africa.



20.3 The DA – and those it represents – will not obtain effective relief in the ordinary course.

21 The remainder of this affidavit is structured as follows:

21.1 **Part II** describes the parties;

21.2 **Part III** sets out the pertinent facts;

21.3 **Part IV** addresses the constitutional invalidity of Parliament’s adoption of the fiscal framework;

21.4 **Part V** explains why s 7(4) is unlawful and invalid;

21.5 **Part VI** addresses the illegality of the Minister’s decision;

21.6 **Part VII** justifies the Part A relief,

21.7 **Part VIII** explains why Part A is urgent; and

21.8 **Part IX** deals with the relief sought in Part B.

II PARTIES

22 The DA is a political party. It is the second largest party in the National Assembly, governs the Western Cape, and is represented in all the provincial legislatures. It is part of the GNU.

23 In terms of its constitution, the DA is committed to a number of principles, including “*the supremacy of the South African Constitution and the rule of law*”, “*the separation of legislative, executive and judicial power*”, and “*representative and accountable*”

government elected on the basis of universal adult suffrage". Parliament's resolutions are unlawful. The Minister's decisions and s 7(4) are inconsistent with those principles. They violate the Constitution, ignore the line between the executive and the legislative branches, and undermine the right of elected representatives to set taxes.

- 24 The DA therefore brings this case acting in its own interest, in the interests of its members, in the interests of persons who are unable to litigate on this issue, and in the public interest in terms of section 38(a), (b), (d) and (e) of the Constitution.
- 25 The First Respondent is the **MINISTER OF FINANCE (the Minister)**, who is cited in his official capacity and is the member of the Executive responsible for National Treasury, with his address in Cape Town at 3rd Floor, Room 309, 120 Plein Street, CAPE TOWN. As I explain below, relief is sought against the Minister in two-parts concerning his recent decision to increase the value-added tax (VAT) rate, in terms of section 7(4) of the VAT Act.
- 26 The Second Respondent is the **COMMISSIONER OF THE SOUTH AFRICAN REVENUE SERVICE (the Commissioner)**. SARS' Cape Town office is at 17 Long Street Cape Town. The Commissioner is cited as SARS is responsible for implementing the VAT Act and collecting VAT pursuant to its provisions. The Commissioner is already represented by attorneys.
- 27 The Third Respondent is the **SPEAKER OF THE NATIONAL ASSEMBLY**, elected in terms of section 52 of the Constitution, and located at Parliament Buildings, Parliament Street, Cape Town. The Speaker is cited in an official capacity as the senior parliamentary office-bearer responsible for the business of the National Assembly.
- 28 The Fourth Respondent is the **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**, elected in terms of section 64 of the Constitution, located at Parliament

Buildings, Parliament Street, Cape Town. The Chairperson is cited in an official capacity as senior parliamentary office-bearer responsible for the business of the National Council of Provinces.

29 The Third and Fourth Respondents together represent Parliament in terms of section 42(1) of the Constitution.

30 In light of the urgency of this case, service will be effected by email.

III PERTINENT FACTS

31 The facts are matters of public record and will be well-known to the Court.

32 To set the political context, after the 2024 elections, the 400 seats in the National Assembly are held by the following parties:

32.1 GNU (287 seats)

32.1.1 ANC (159)

32.1.2 DA (87)

32.1.3 IFP (17)



32.1.4 PA (9)

32.1.5 VF+ (6)

32.1.6 UDM (3)

32.1.7 Al Jama-ah (2)

32.1.8 Good (1)

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- 32.1.9 PAC (1)
- 32.1.10 RISE Mzansi (2)
- 32.2 Opposition (113 seats)
 - 32.2.1 MK (58)
 - 32.2.2 EFF (39)
 - 32.2.3 ATM (2)
 - 32.2.4 UAT (1)
 - 32.2.5 ActionSA (6)
 - 32.2.6 ACDP (3)
 - 32.2.7 BOSA (2)
 - 32.2.8 NCC (2)

The budget speech and VAT hike

- 33 The 2025 Budget Speech was scheduled initially for 19 February 2025. At the last moment on the day, the Speaker of the National Assembly announced that Parliament had acceded to a request by the executive to postpone the Budget Speech.
- 34 The reason for the postponement was that the GNU had not reached sufficient consensus on the various proposals that the Minister sought to make in the Budget Speech.
- 35 The DA, in particular, objected to the proposed 2% VAT hike as being an unsustainable tax increase that would disproportionately impact the most vulnerable people in South

African society. The DA has alternative budget proposals that would not require a VAT increase. One of the DA's primary proposals is to properly capacitate and resource SARS, so that it is able to collect taxes that are already owed but have not been paid or collected.

36 Despite attempts within the GNU, the political impasse could not be resolved in the three-week period following the postponement of the budget speech.

37 On 12 March 2025, the Minister in his official Budget Speech announced a VAT increase of 0.5 percentage points in 2025/26 and of 0.5 percentage points in 2026/27. In this regard I attach:

37.1 An extract of the 2025 Budget Review published by Treasury as **DA1** dealing with the increase;

37.2 An extract of the Minister's Budget Speech as **DA2**.

38 On internal page 38 of the Budget Review (DA1), the Minister announced that "[t]he first 0.5 percentage point increase in the VAT rate will take effect on 1 May 2025".

39 I note that in the Budget Review and in his Budget Speech, the Minister states that the "Government proposes" to increase VAT. That is not accurate in two respects.

39.1 First, the GNU has not reached sufficient consensus on the issue. So the increase is not of the Government. It is an increase imposed only by Treasury and the Minister.

39.2 Second, the increase is no mere "proposal".

39.2.1 The Minister's section 7(4) power is not simply to *propose* an amendment to the VAT rate: it is a power to *change* the rate.

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39.2.2 I return to this matter below when addressing the constitutionality of the provision.

39.2.3 As a factual matter, SARS takes the view that the increase will go into effect. In an FAQ document issued on 13 March 2025 (extracts of which are attached as **DA3**), SARS states that: “*The standard rate of VAT will change from 15% to 15.5% on 1 May 2025 (the effective date)*”.

40 In an attempt to soften the blow, the Minister also proposed marginally increasing the list of items that are zero-rated for VAT – that is, items where VAT is charged at zero per cent.

41 A number of political parties in Parliament oppose the VAT increase:

41.1 The DA is a principal objector.

41.2 The EFF has indicated strong opposition.¹

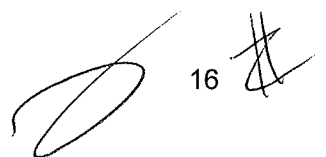
41.3 The MKP has even called for a national shutdown in opposition to the increase.²

41.4 Action SA also does not support a VAT hike (as I shall show below).

42 On 12 March 2025, when the Budget Speech was made by the Minister, it was absolutely clear that a majority of the National Assembly would not support the VAT increase.

¹ See <https://dfa.co.za/news/politics/2025-03-12-julius-malema-accuses-government-of-deceptive-vat-increase-plans-in-2025-budget/>.

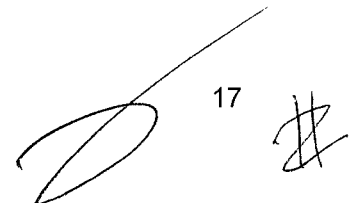
² See <https://www.polity.org.za/article/mkp-says-vat-increase-a-declaration-of-war-calls-for-national-shutdown-2025-03-14>



- 43 The labour movement and civil society also oppose the VAT increase.
- 43.1 SADTU and COSATU have each expressed concerns about the increase. COSATU's President said that a VAT "*increase will just slash the little income that people are relying on.*"³
- 43.2 The Budget Justice Coalition – a group of civil society organisations⁴ – has urged Parliament to reject the VAT increase.
- 44 A copy of the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (dated 12 March 2025) is attached as **DA4**. Clause 5 of the Draft Bill will amend section 7(1) of the VAT Act to provide for a VAT rate of 15.5%, which is deemed to have come into operation on 1 May 2025. Clause 6 of the Draft Bill amends section 7(1) of the VAT Act to provide for a VAT rate of 16%, which is deemed to have come into operation on 1 April 2026.
- 45 In order to prevent this unlawful increase coming into effect, the DA, through its attorneys, has addressed correspondence to the Minister and the Commissioner.
- 46 The DA's first letter (**DA5**) was sent to the Minister shortly before the Budget Speech on 12 March 2025.
- 46.1 The DA explained that it is opposed to any increase in the VAT rate and that it intends to vote against such an increase at every possible stage.
- 46.2 It pointed out that the Minister was aware that a majority of political parties in the National Assembly had indicated that they will oppose any increase to the

³ See <https://www.power987.co.za/featured/sadtu-and-cosat-condemn-vat-hike-amid-rising-costs/>, <https://www.news24.com/news24/southafrica/news/watch-vat-increase-will-just-slash-the-little-income-people-are-relying-on-cosat-president-20250312>

⁴ Including the Public Service Accountability Monitor, Section27, Alternative Information and Development Center (AIDC), Equal Education, Equal Education Law Centre, Children's Institute, Studies in Poverty and Inequality Institute, Institute for Economic Justice and the Dullah Omar Institute.

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VAT rate. Any money bill he would introduce to seek such an increase will not be passed by Parliament.

46.3 The letter also emphasised that the decision to increase the VAT rate is one for Parliament alone and pointed out that the purported conferral by section 7(4) of the power on the Minister to increase the VAT rate prior to a decision by Parliament is manifestly unconstitutional.

46.4 The DA nonetheless demanded that, should the Minister increase the VAT rate, he must set the date on which the increase will take effect as the date on which the President brings into force legislation giving effect to that announcement.

46.5 That would, at least in practice, respect Parliament's constitutional role to impose taxes.

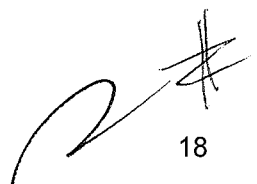
46.6 The DA explained that setting the date earlier would be an abuse of the Minister's power as it would be done knowing that the proposed increase would not be approved by Parliament.

46.7 The letter recorded the DA's intention to litigate if necessary.

47 The Minister has never responded to this letter.

48 On 178 March 2025, the DA's attorney addressed a further letter to the Minister and the Commissioner (**DA6**).

48.1 The DA explained that the VAT increases for 2025/2026 and 2026/2027, are reflected in the fiscal framework the Minister tabled as part of the budget (see internal pages 7-8 of the Budget Review, DA1).



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48.2 The letter confirmed that the Minister invoked the power in s 7(4) of the VAT Act to make the changes.

48.3 In terms of section 7(4), merely as a result of the Minister's announcement, the increase in the VAT rate "*will be effective from [the] 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.*"

48.4 The DA stated again that section 7(4) is patently unconstitutional for the reasons canvassed elsewhere in this affidavit.

48.5 The DA also recorded that it wishes to ensure that the proposed VAT increase the Minister has announced for 1 May 2025 does not come into effect.

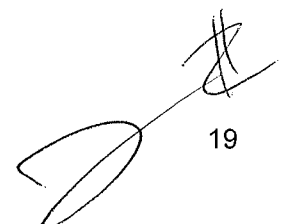
48.6 It repeated that it expected that Parliament will not adopt a fiscal framework that includes the proposed increase.

48.7 The DA recorded its understanding of section 7(4), namely that if Parliament refuses to adopt the proposed 0.5% increase (including by rejecting the increase in the fiscal framework), it should not come into effect:

"If Parliament does not adopt the proposed 0.5% increase when it considers the fiscal framework, then the increase cannot come into effect. Parliament would in those circumstances have indicated that it will not pass legislation giving effect to the proposed increase within 12 months. The manifest purpose of the proviso to s 7(4) is that an amendment to the VAT rate cannot come into effect if Parliament will not pass legislation to approve it."

48.8 The DA asked the Minister and the Commissioner whether they share its understanding of the meaning of section 7(4).

48.9 The DA then recorded that—

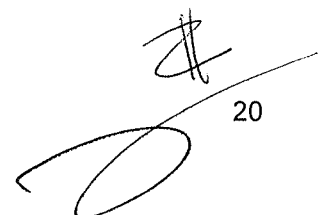


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“If the Minister and/or the Commissioner are of the view that the 0.5% increase will come into effect on 1 May 2025 even if, prior to that date, Parliament has refused to adopt a fiscal framework that includes that increase, then the DA will consider whether urgently to approach the appropriate court to prevent the proposed increase coming into force.”

- 48.10 The DA sought a response by Thursday 20 March 2025.
- 49 Only SARS responded by that date (**DA7**). Its attorneys contended that SARS “*is not in a position to respond in accordance with the aforementioned time line, as [SARS] is still considering its position*”. This is surprising in light of the FAQ document released by SARS and the indisputable fact that SARS will need to prepare for any increase, and thus will need to take a view on this issue to do so. Despite this undertaking, the Commissioner has still not responded to the DA’s request.
- 50 The Minister has not responded at all. But his public comments reported in DA0 demonstrate that he takes the view that the increase will come into effect.
- 51 The DA thus believes that the Minister and SARS each take the view that the effect of s 7(4) is that the VAT increase would come into effect whether or not Parliament had voted in favour of the fiscal framework. They will no doubt confirm their position in answering this application.
- 52 I note that the Chairperson of Parliament’s Standing Committee on Appropriations received legal advice on this issue from its Constitutional and Legal Services Office (**DA8**). Adv Jenkins, a Senior Parliamentary Legal Advisor, opined as follows:

“The question whether amendments to the fiscal framework and the revenue proposals will prevent the increase of the rate of VAT commencing on 1 May 2025, the answer is, in my opinion, negative. The coming into operation of the increase in the rate of VAT on 1 May 2025 is supported by section 7(4) of the Value-Added Tax Act. To undo the operation of that provision, it would be necessary to introduce a Bill that abolishes or reduces, or grants exemptions from the increase in the rate of VAT.”



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Parliament's unlawful adoption of the fiscal framework

- 53 Things came to a head on 1 April 2025 when the Committees sitting jointly considered the fiscal framework and whether to adopt it. By that stage there was still no agreement on the fiscal framework. Nor was there any agreement on whether a VAT hike should in fact go into effect.
- 54 I do not attach a transcript of the meeting – which lasted 8 hours – but the full recording can be accessed online at <https://www.youtube.com/live/OjM7O0kB8As>.
- 55 Effectively, what happened in the meeting was that Action SA made a proposal that instead of the Committees amending the fiscal framework, they should make recommendations that the VAT increase (and income tax bracket increases) should be reconsidered by the Minister and Treasury, and that alternative sources of revenue be established. The proposal was to give the Minister 30 days to do so.
- 56 It appears that Action SA believes that its proposal has the effect of suspending the VAT increase. In this regard, I attach a media statement by the party released on 1 April 2025 as **DA9.1** in which it contends that its proposal “*ensured the proposed 0.5 percentage point increase in Value-Added Tax (VAT) for the 2025/26 financial year has been effectively scrapped*”. Another media statement released on 2 April 2025 (**DA9.2**) is to the same effect.
- 57 That is incorrect as a matter of law. There is nothing stopping the Minister's decision to increase VAT going into effect (28 days after the fiscal framework was adopted). The Minister himself has said so.
- 58 During the course of the marathon meeting, a final report was never put before the Committees for adoption. Nor was the question ever directly posed to the Committees

whether they accepted or amended the fiscal framework. The Committees simply considered the framework, clause by clause, without a final version of the report setting out a clear statement whether the framework was adopted or amended (as required by the Money Bills Act). The clear statement accepting or amending the fiscal framework and revenue proposals was never put to the committee for final adoption.

59 In this regard:

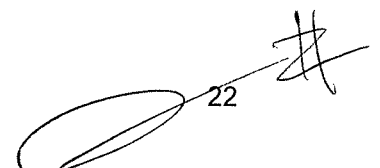
59.1 I attach as **DA10.1** the draft report (which I refer to as **Version 1**) which was provided to Select Committee members with the Agenda to be discussed at the 1 April 2025 meeting. There is no clear statement accepting or amending the fiscal framework in this draft.

59.2 Then, during the meeting, amendments to each part of the report were proposed by various members of the Committees. In some instances, different proposals were made. These were apparently recorded by administration.

59.3 But the proposals or the amendments in written form were never shared with Committee members.

59.4 This is why in fact, it was entirely unclear to those present what was being voted on in the meeting. They were asked to vote on the adoption of a report. However, throughout the meeting, members of the Committees called for an updated version of the report, in order to know exactly what they were being asked to adopt.

59.5 So the Committee members were never apprised of what they were being asked to adopt.

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- 60 The Joint Committee meeting ended at around 6pm. A draft report – apparently adopted by the NCOP Select Committee on Finance – was then circulated by Mr Nkululeko Mangweni, the secretary of the Select Committee, at 20h12 on 1 April 2025. I attach a copy of the draft report as **DA10.2** (I refer to this as **Version 2**).
- 61 The last two paragraphs of the draft report read as follows:
- “Having considered the 2025 Fiscal Framework and Revenue Proposals, the Select Committee on Finance accepts the 2025 Fiscal Framework and Revenue Proposals
- The DA, MKP and EFF accepted the fiscal framework with amendments.”
- 62 I emphasise that the first time the statement of acceptance appeared in a draft report provided to the Select Committee members was in this draft Version 2. In other words, in the draft that was sent *after* the meeting was over.
- 63 In response to the draft report, Mr Henni Britz, the DA representative on the Select Committee, stated that he did not agree with the last two paragraphs, and particularly where it stated that “*The DA, MKP and EFF accepted the fiscal Framework with amendments.*”
- 64 Mr Britz explained that this was not the position of the DA placed on record at the meeting, and that the DA explicitly did not accept the fiscal framework. He asked Mr Mangweni to rectify the report to reflect the correct position. I attach this correspondence as **DA11**.
- 65 Mr Mangweni responded apologising for the misrepresentation, and queried whether the position had been properly captured in a revised draft. In reply, Mr Britz reiterated



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that the second last paragraph was still not correct, in that all parties had proposed amendments, which should be reflected in the report. The fiscal framework had not been adopted as presented. I attach this correspondence as **DA12**. That draft report (**Version 3**) differed again from Versions 1 and 2

66 The final reports that were on the ATC (Announcements, Tablings and Committee Reports) for 2 April 2025 were only provided to members of the Committees and to parties in Parliament during the course of the morning on 2 April 2025 – the same day that the Houses sat to vote, and the day after the reports were ostensibly adopted by the Committees. The Select Committee report that appeared on the ATC had further amendments and differed from Versions 1, 2 or 3.

67 The final reports that served before the National Assembly and NCOP are attached as **DA13**.

68 Page 35 of the report of the Standing Committee (page 170 of the ATC states the following:

“Having considered the 2025 Fiscal Framework and Revenue Proposals, the Standing Committee on Finance accepts the 2025 Fiscal Framework and Revenue Proposals.

The DA, MKP and EFF reject the report.”

69 Page 35 of the report of the Select Committee (page 205 of the ATC) states the following:

“Having considered the 2025 Fiscal Framework and Revenue Proposals, the Select Committee on Finance accepts the 2025 Fiscal Framework and Revenue Proposals.

The DA, MKP and EFF accepted the fiscal Framework with amendments.”

70 There are three fundamental difficulties with these statements.

- 71 First, the Committees were never actually asked to consider whether they accepted or amended the 2025 Fiscal Framework and Revenue Proposals. They were simply asked whether they adopted the report. So the statement in the reports that the Committees accepted the 2025 Fiscal Framework and Revenue Proposals is false.
- 72 Second, and relatedly, the version of the report that was tabled before the Committees never contained the statement "*Having considered the 2025 Fiscal Framework and Revenue Proposals, the Select Committee on Finance accepts the 2025 Fiscal Framework and Revenue Proposals*". That statement was only inserted into the draft report circulated on the evening of 1 April 2025, after the meeting. So when the members of the Committees voted on the report that was in front of them (which as I have said was Version 1), the one thing they were *not* thereby doing was accepting the 2025 Fiscal Framework and Revenue Proposals.
- 73 Third, the position of the DA is incorrectly and inconsistently reflected. Despite Mr Britz's repeated attempts, the report of the Select Committee persisted in recording that the DA had accepted the fiscal framework with amendments, in circumstances where it had simply voted to reject the report (that being the only question posed). The Chairperson in fact believed that the Committee could either accept or reject the report without amendments.
- 74 In confirmation of these facts, I deliver together with this affidavit, confirmatory affidavits deposed to by:
- 74.1 Mr Henni Britz, a DA representative on the Select Committee on Finance; and
- 74.2 Ms Wendy Alexander, a DA representative on the Standing Committee on Finance.
- 75 These facts cannot be seriously disputed.




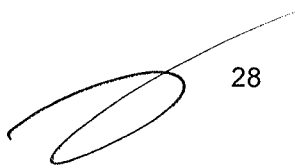
- 76 To further demonstrate this, I attach marked **DA14** a letter addressed to the Speaker by the EFF which record the same problems.
- 77 Crucially, the most important part of the report – a clear statement about whether to adopt or amend the fiscal framework – was never formally considered by the Committees. This is a clear and peremptory requirement of the Money Bills Act.
- 78 This constitutes a fundamental and fatal procedural failure. It renders the process as a whole patently unlawful.
- 79 The DA's Chief Whip addressed a letter to the Speaker in the morning of 2 April 2025 pointing this all out (**DA15**), and a similar letter was addressed to the NCOP Chairperson (**DA16**). The DA requested the Speaker and NCOP Chair to withdraw the reports from consideration in the Houses and for the reports to be sent back to the Committees.
- 80 The Speaker responded (**DA17**). She stated the following:
- “The Report of the Standing Committee on Finance on the 2025 Fiscal Framework and Revenue Proposals, dated 1 April 2025, as contained in the Announcements Tablings and Committee Reports (ATC) publication of the same date, provides a clear statement on page 35 that the Standing Committee on Finance accepts the 2025 Fiscal Framework and Revenue Proposals. That is what section 8(4) of the Money Bills and Related Matters Act requires.
- I am advised that the draft report was formally adopted by the Standing Committee. Before adoption, amendments to the report were considered and those agreed were then included in the final report. This included the clear statement as required by section 8(4) of the Money Bills and Related Matters Act.”
- 81 The Speaker was advised incorrectly. The report – with the statement – was not voted on by the members of the Committees in the meeting. A vote on a report, where draft amendments have alleged been recorded during the course of an 8 hour meeting, is meaningless if Committee members are not provided the version of the report with those amendments.
- 82 The NCOP Chairperson addressed a similar letter (**DA18**).

- 83 The National Assembly and the NCOP House sittings commenced at 14h00 on 2 April 2025.
- 84 The DA, MKP and EFF all requested the Speaker to remove the matter from the order paper for the day, and for the matter not to be voted on in light of the serious procedural problems in the Standing Committee's adoption of the report on 1 April 2025. The Speaker refused this request.
- 85 After a three-hour debate, a vote was held in the National Assembly.
- 85.1 The parties who voted in favour of the framework were the ANC, IFP, PA, ActionSA, UDM, Rise Mzansi, BOSA, AI Jamah-ah, PAC, UAT and GOOD.
- 85.2 The parties who voted against were the DA, MKP, EFF, FF Plus, ACDP, ATM and the UAT.
- 86 The final tally was 194 votes for and 182 against, with no abstentions (some MPs were absent from the sitting of the House).
- 87 Similarly, in the NCOP 7 Provinces for, 1 against (the Western Cape) and there was 1 abstention (KwaZulu-Natal).

IV PARLIAMENT'S RESOLUTIONS ARE UNLAWFUL AND INVALID

- 88 The decisions of the National Assembly and the NCOP to adopt the reports of the Committees are unlawful and invalid. This is for three separate reasons.

- 89 First, in terms of section 8(4) of the Act, the Committees must accept or amend the fiscal framework and provide a clear statement to that effect. The Committees never complied with this requirement. They neither considered nor formally adopted a resolution to accept or amend the fiscal framework. House Rule 166(3)(a) further states that a report of a Committee must be formally adopted by the Committee. This applies to the entirety of the report and also, in this case, to the most essential part referred to in section 8(4) of the Act.
- 90 The Speaker of the National Assembly, the Chairperson of the National Council of Provinces, and many of the members of both Houses, were evidently led to believe that the Committees had voted to accept the fiscal framework. The votes that followed in the respective Houses were premised upon, and fatally infected by, this erroneous belief.
- 91 Second, the manner in which the reports themselves are framed is irregular. While the reports say in one place that the fiscal framework was adopted, elsewhere the reports make various recommendations. The Standing Committee report says this:
- “6.29. The Committee recommends that the Minister of Finance facilitates the receipt of substitute revenue proposals from the committee, together with corresponding expenditure savings, that will form the basis of an alternative revenue proposal instead of the proposed 0.5 percentage point increase in VAT for the 2025/26 financial year, effective 1 May 2025, in respect of which the committee has expressed serious concerns.
- 6.30. Furthermore, the committee recommends that the alternative revenue proposals and expenditure savings to balance the R28 billion shortfall which must effectively suspend the proposed increases be finalised and submitted by the committee to process within 30 days for consideration and adoption of this report by the house.”
- 92 The Committees cannot, on the one hand, adopt the fiscal framework – which includes a VAT hike – and then, on the other, recommend that the Minister make proposals to dispense with that VAT hike. Section 8(4) required the Committees, in those circumstances, to amend the fiscal framework by identifying such other revenue sources, and by amending the VAT hike.



- 93 These irregularities on the part of the Committees render unlawful the final decisions taken by the National Assembly and NCOP to adopt the reports and the fiscal framework.
- 94 Third, the Committees and the National Assembly and the NCOP also took into account irrelevant considerations and committed a material error of law. In particular, they acted under the misapprehension that adopting the reports would not result in the VAT hike going into effect on 1 May 2025. In particular, Action SA, whose proposal it was not to amend the fiscal framework but to recommend the reconsideration of the VAT increase, and whose participation and votes were crucial to the final outcome, plainly believes (wrongly) that the VAT hike has been halted.
- 95 For these reasons, the decisions are unlawful and invalid. They are reviewable and must be declared invalid and set aside, whether under the principle of legality or section 6(2)(d), (e)(iii) and (i) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

V SECTION 7(4) IS UNCONSTITUTIONAL

- 96 To repeat, section 7(4) provides:

"If the Minister makes an announcement in the national annual budget ... 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."

- 97 The provision empowers the Minister to "alter" the VAT rate legislated in section 7(1) by mere announcement in the annual budget.

98 On its plain terms, section 7(4) allows the Minister, through a mere announcement, to amend the provisions of the body of a statute and in doing so to impose higher taxes (or to lower taxes).

99 This is demonstrated by the provisions of the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (DA4) which propose amendments to section 7 of the VAT Act to give effect to the Minister's increase:

"(1) Section 7 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the words following paragraph (c) of the following words:

'calculated at the rate of **[15]** 15.5 per cent on the value of the supply concerned or the importation, as the case may be.'

(2) Subsection (1) is deemed to have come into operation on 1 May 2025."

100 While the Minister's amendment to the VAT rate is "subject to" Parliament approving it within 12 months, the tax increase will, as a legal and practical matter, be irreversible.

100.1 This is because of the nature of VAT as a tax.

100.2 VAT is an indirect tax on the consumption of goods and services. It raises revenue by requiring certain enterprises to register and to charge VAT on the taxable supplies of goods and services. Those enterprises become vendors, and effectively act as government's agents in the collection of VAT. They add the prevailing VAT rate to the price of their goods or services, which they then pay over periodically to SARS.

100.3 A vendor's VAT liability for a tax period is calculated having regard to all the output tax and input tax in that particular tax period. Vendors are entitled to claim refunds on amounts paid in excess of their liability. There is, however, no similar right on the part of consumers of goods, who are not VAT vendors,

and who merely pay VAT as part of the price of goods and services, to claim VAT refunds.

100.4 VAT is calculated on the value of each successive step as goods move from hand to hand along the commercial production and distribution chain from their original source to their ultimate purchaser. Tax at the VAT rate is calculated at each step and is paid at that time. As goods move along the distribution chain, everyone making up the sales chain is first a recipient, then a supplier.

100.5 Being a tax on added value, VAT is not levied on the full price of a commodity at each transactional delivery step it takes along the distribution chain. It is not cumulative but merely a tax on the added value the commodity gains during each interval since the previous supply.

100.6 How this works is that a supplying vendor, when calculating the VAT payable on the particular supply, simply deducts the VAT that was paid when the particular goods were supplied to it in the first place. The ultimate purchaser or user is the party who pays the VAT.

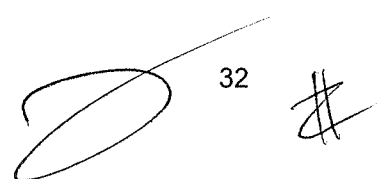
100.7 To take a simple practical example.

100.7.1 VAT is charged on baby formula.

100.7.2 The producer of the baby formula pays the VAT on the raw materials it acquires from its suppliers.

100.7.3 The producer would then sell the baby formula to wholesalers and charge VAT on the sale amount. The producer would deduct the VAT they charge from that charged by the raw material suppliers.

- 100.7.4 The wholesaler would sell the baby formula to retailers. It would charge the retailers VAT and deduct the VAT it paid to the producer.
- 100.7.5 Finally, the retailer would sell the baby formula to the end-consumer and charge VAT.
- 100.7.6 The end-consumer would in effect be the party paying the VAT component of the baby formula.
- 100.7.7 If the VAT rate was increased for 12 months by 0.5%, end-consumers would be paying 0.5% more for the baby formula.
- 100.8 While a VAT vendor who has paid an undue amount to SARS may potentially be able to claim a refund, the same is not true of an ordinary consumer. A consumer who, over a 12-month period, has paid 0,5% percentage points more on taxable goods than she was required to pay, cannot claim that money back. She would have paid it every time she made a purchase from a provider of goods and services, and would not have paid it directly to SARS, but to the VAT vendors themselves.
- 100.9 Therefore, even if the increase lapses after 12 months, it would be practically impossible for all end-consumers (who do not submit VAT returns and cannot charge or claim VAT) to claim back the taxes paid over in that period.
- 101 The effect of the proviso is also extremely limited – it only affects the *duration* of the Minister's unfettered power to amend legislation and impose taxes:
- 101.1 On its terms, s 7(4) provides that the increase "*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.*" That can only mean that the increase applies for 12 months no matter what, but if



Parliament does not pass legislation amending the VAT Act to give effect to the increase within 12 months, the increase lapses.

- 101.2 If Parliament does nothing, or refuses to pass legislation proposing the increase, the increase will still last for 12 months.
- 101.3 Parliament is also powerless to introduce legislation that could circumvent the effect of s 7(4) because only the Minister can introduce money bills, and any legislation that amended the power to raise revenue would be a money bill.
- 101.4 Even if Parliament did not pass legislation within 12 months, the Minister could re-introduce the same increase the next year. It would apply for the next 12 months and Parliament would *still* be powerless to stop it (save by a vote of no confidence in the government).
- 102 As I indicated above, the DA previously proposed an alternative interpretation in correspondence to the Minister and the Commissioner. That interpretation would mean that if Parliament expressed a clear intention not to approve the proposed increase – for example by adopting a fiscal framework that excluded it – the increase would not take effect or would lapse. Having taken further legal advice, the DA has been advised that this interpretation is not a plausible reading of s 7(4).
- 103 Section 7(4) is patently unconstitutional.
- 104 First, the Constitutional Court has repeatedly held that the power to amend the provisions of the body of an Act of Parliament is (a) plenary legislative power and (b) as such one that cannot be delegated to the executive. That is precisely what section 7(4) does. The effect of “altering” the VAT rate is to amend s 7(1). That is why the Bill the Minister has introduced amends s 7(1) to change the rate from 15% to 15.5%. That is simply not permitted by the Constitution.

- 105 Second, the constitutional power to impose taxes lies with Parliament and not the executive. Parliament cannot delegate a power to the executive to impose an irreversible tax. The Minister's decision to amend the VAT rate is to raise more revenue. He said so directly in the budget speech.
- 106 I am advised that there are a number of provisions that, like section 7(4) of the VAT Act, empower the Minister to change the tax rate from a date determined in the budget speech announcement, subject to parliament passing legislation giving effect to that announcement. Those provisions may also be unconstitutional. Their existence is irrelevant to the constitutionality of s 7(4).
- 107 While the constitutionality of those provisions is not before this Court, it is important to highlight the central respect in which VAT is different from other taxes:
- 107.1 Where the Minister determines that there shall be an increase, for example, in the income tax rate, the capital gains tax rate or the dividend tax rate, subject to Parliament passing legislation within 12 months, and Parliament does *not* pass such legislation, any taxpayer who paid tax during the preceding 12 month period at the increased rate would be entitled to claim a refund from SARS. That is, because the application of the increase was always "*subject to*" the passing of legislation giving effect to it, the Minister's increase would be deemed not to have been properly imposed, taxpayers would have paid a tax that was not due, and they would be entitled to be refunded by SARS.
- 107.2 But VAT is different. For all the reasons set out above, if Parliament does not pass legislation giving effect to the Minister's determination, the VAT already paid by consumers at the rate determined by the Minister cannot be repaid, and is retained by the fiscus. The upshot is that a tax would have been

imposed by the Minister for that period, without legislative approval, which could never be undone. It is therefore self-evidently a tax unconstitutionally imposed by the executive.

108 As section 7(4) is unconstitutional, the Court is obliged to make a declaration of constitutional invalidity in terms of section 172(1)(a).

VI THE MINISTER'S DECISION TO HIKE VAT IS UNLAWFUL AND INVALID

109 The DA also challenges the validity of the Minister's 12 March 2025 announcement to increase VAT by 1% over the course of two years.

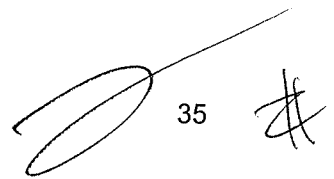
110 First, the Minister's decision is entirely premised on section 7(4) of the VAT Act. Once that provision has been declared invalid, it follows that the Minister's decision is also unconstitutional. It is reviewable in terms of the principle of legality, and / or section 6(2)(i) of the Promotion of Administrative Justice Act 3 of 2000.

111 Second, and as a discrete ground of review, the Minister's decision is also unauthorised under the terms of the provisions and is an abuse of his powers in law.

111.1 Section 7(4) says that the alteration to the VAT rate is "subject to Parliament passing legislation giving effect to that announcement within that period of 12 months".

111.2 If the Minister is aware that a majority of Parliament does not support the tax increase and will not do so, then it is unlawful and an abuse for him to push ahead with the increase.

111.3 His decision is therefore reviewable in terms of the principle of legality and / or section 6(2)(a)(i), (e)(i) and (ii), and (i) of PAJA.



112 The Court must declare invalid and set aside the Minister's decision.

VII RELIEF SOUGHT IN PART A

113 In relation to prayer 1 of the notice of motion:

113.1 The decisions by the National Assembly and NCOP to adopt the fiscal framework were premised on the patently unlawful reports of the Committees. The decisions must be declared invalid and set aside.

113.2 This aspect is for final relief. As I have said, the DA does not anticipate that the true facts about what happened in the Committee meeting will be disputed by anyone under oath.

113.3 This relief is sought urgently, and in advance of the determination of the constitutional challenge in Part B of the application. If the decision to adopt the fiscal framework is declared invalid and set aside, parliament will have an opportunity afresh, by means of a lawful and proper process, to determine whether to adopt the fiscal framework, including the VAT hike.

114 In relation to the relief sought in prayers 2 and 3 in respect of the VAT increase, it is interim in nature:

114.1 The constitutional challenge to section 7(4) of the VAT Act and the review of the Minister's decision to raise VAT cannot be finalised before 1 May 2025. This is both because any declaration of invalidity made by this Court in respect of section 7(4) will be subject to confirmation by the Constitutional Court, and because, I am advised, courts are reluctant to determine the constitutionality of legislation on an urgent basis.

- 114.2 For this reason, the DA seeks interim relief pending the final determination of Part B. The DA seeks primary suspension relief pertaining to the VAT hike and, to the extent necessary interdictory relief:
- 114.2.1 An order suspending the coming into effect of the Minister's decisions, pending the outcome of Part B;
- 114.2.2 To the extent necessary, an order interdicting the Commissioner from collecting VAT at the unlawfully increased rate, pending the outcome of Part B.
- 114.3 In the DA's view, if it obtains a suspension, it does not also require an interdict against SARS. It seeks that relief only if the Court determines it is necessary.
- 114.4 I have been advised that the standard for the primary, suspension relief is the interests of justice. The standard for the second, interdictory relief is the *OUTA* standard for interdicts preventing the exercise of public power.
- 114.5 As the factors that this Court will consider in determining the interests of justice overlap with the *OUTA* factors, I consider those four factors to explain why both a suspension and, if necessary, an interdict should be granted.

Prima facie right

- 115 The DA has demonstrated a number of *prima facie* rights that will be irreversibly affected without interim relief.
- 116 First, is the right of the public not to be taxed without representation. In other words, the public has a right to be taxed only in terms of legislation adopted by the deliberative

body of Parliament. If the Minister's VAT hike goes into effect on 1 May 2025 while Part B winds its way through the courts, effectively every person in South Africa will pay increased taxes on goods that can never be recovered. And this will occur even though Parliament has set its face against a VAT hike.

117 Second, the DA has strong prospects in succeeding in the constitutional challenge against section 7(4) and the Minister's decision. The provision and the power it grants to the Minister sets its face against a core constitutional principle – namely that it is for elected deliberative bodies to impose taxes, not the executive. And it also allows the direct amendment of a section of a statute.

118 Third, the VAT increase will also infringe on a number of fundamental constitutional rights.

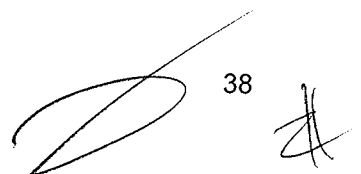
118.1 Basically all goods will become immediately more expensive overnight on 1 May 2025.

118.2 In light of South Africa's socio-economic realities, there are millions of poor and working class families who will struggle even more to be able to purchase groceries and other important goods like medicines. Their rights of adequate and reasonable access to food and healthcare protected by section 27(1) of the Constitution will be harmed retrogressively by the VAT hike.

Irreparable harm

119 The rights pleaded by the DA and the public stand to suffer irreparable prejudice and harm.

120 I have explained in paragraph 100, as a legal and practical matter any VAT hike is irreversible. The end-consumers – who are the parties who actually pay for the VAT –



will never be able to claim it back, even if section 7(4) is struck down by the Constitutional Court in future and the Minister's decision set aside.

121 It is not difficult to see why this is so. Any individual will buy a number of goods over the course of 12 months with VAT. It would simply be impossible for the State to repay everyone the 0.5% extra paid by them during that 12 month period.

122 The harm sought to be avoided – the payment of an unconstitutional VAT hike – can never be reversed once the hike goes into effect.

Balance of convenience

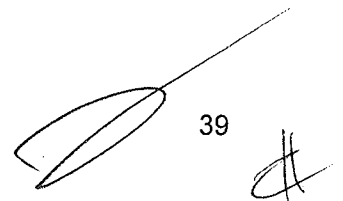
123 In assessing the balance of convenience, the DA's first submission is that the *OUTA* principle does not apply for two reasons:

123.1 Its primary relief is a suspension, not an interdict.

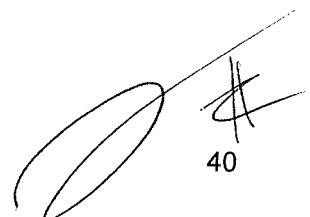
123.2 Even for an interdict, *OUTA* requires the Court to show restraint and only grant interdicts in the clearest of cases where the interdict sought would intrude into the exclusive terrain of another branch of Government. The Minister in this case is not exercising a function that falls within the executive's terrain at all. Instead, he has exercised a power and duty that is the sole responsibility of Parliament in our constitutional structure.

123.3 And finally, the DA asserts various constitutional rights of the public which will clearly be irreparably violated without interim relief.

124 The Minister and SARS may seek to argue that halting the VAT increase will be calamitous for South Africa, and that because of this the balance of convenience would militate against an interdict being granted.



- 125 There is a simple answer to this type of argument. It concerns the very nature of the power to raise taxes.
- 126 South Africa's Government no doubt needs to make hard choices about its public finances as well as its mandates for service delivery in various sectors of society. The Government will have to debate, negotiate and find solutions to the intractable problem that South Africa simply does not have enough public money to achieve all goals that all different political parties and their constituents aspire towards. Concessions will need to be made. Perhaps some public projects will need to be scaled back.
- 127 These choices that must be made are ultimately ones to be made by the body in our constitutional order that is representative of the public, and has the constitutional authority to raise and allocate revenue – Parliament.
- 128 The Minister cannot replace Parliament in these choices. If there is genuinely no other option but to raise VAT – or any other alternative source of revenue – then that is a decision for Parliament to make. There is nothing stopping parliament from adopting fiscal legislation quickly, if that becomes necessary. It did so under far larger constraints during the Covid-19 pandemic.
- 129 Since Parliament can act and adopt legislation if it is truly necessary to raise VAT, there is no irreparable harm to the Minister or the public, if an interdict is granted against his decision.
- 130 Weighed against this is the very real harm that the public will suffer without interim relief.
- 131 In any event, even if this Court were to find that the principle in *OUTA* applies, this is precisely the clearest of cases. Section 7(4) is plainly and self-evidently unconstitutional.



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And the impact on consumers of not granting interim relief would be severe and irreversible.

No alternative remedy

132 The DA sought to avoid the need for approaching the Court by addressing letters to the Minister. That has proven ineffective.

133 The DA has no other effective remedy other than asking for interim relief from the Court.

VIII PART A IS URGENT

134 The DA cannot wait for a hearing in the ordinary course to obtain relief.

135 In relation to the fiscal framework:

135.1 For the reasons set out in this affidavit, Parliament has acted irregularly and unlawfully in purporting to adopt the fiscal framework. The Speaker, the Chairperson of the NCOP, and many members of parliament evidently believed that the Committees had voted to accept the fiscal framework, when they in fact had not. And the upshot is that parliament has unlawfully adopted a framework in which it has at once recommended to the Minister that he come up with different revenue raising solutions to a VAT hike.

135.2 The fiscal framework must be reconsidered by the Committees. They must pertinently consider whether to accept or amend the fiscal framework. And if they want the Minister to come up with different revenue raising solutions, then they must make amendments to that effect.

- 135.3 The central reason that this must happen as a matter of urgency is that the fiscal framework is a plan – a blueprint for how government will raise money, how much money it will raise, how it will spend money, and how much money it will spend. Plans do not exist for the sake of it. They exist to be implemented.
- 135.4 And so if this Court does not intervene, steps will be taken to implement the fiscal framework. The Minister of Finance will introduce legislation to raise, divide and allocate national revenue, in order to give effect to the revenue proposals in the annual budget.
- 135.5 It would be highly disruptive for the DA to bring an application to challenge the fiscal framework in the ordinary course.
- 135.6 First, it would mean that, for many months, the lawfulness and status of South Africa's budget would be uncertain, but would nevertheless be implemented. South Africa's economy simply cannot afford to have that degree of uncertainty over the budget for that length of time.
- 135.7 Second, it would mean that the application would likely only be heard and determined halfway through the financial year. A court faced with that amount of water under the bridge would likely be inclined to exercise its remedial discretion under section 172(1)(b) of the Constitution not to set aside the decision to adopt the fiscal framework, notwithstanding its clear unlawfulness, simply to avoid the fiscal disruption of setting aside the budget at such a late stage.
- 135.8 An urgent application is therefore the only means by which the DA can obtain effective relief.



- 135.9 .The DA and the country therefore cannot wait for a hearing in the ordinary course.
- 135.10 The budget needs to be finally and lawfully approved as a matter of urgency.
- 136 In relation to the interim relief:
- 136.1 The VAT increase will become effective on 1 May 2025.
- 136.2 Opposed dates on the Semi-Urgent Roll are available only after October 2025. As explained, if the Minister's VAT hike goes into effect on 1 May 2025, and this application is only heard in October or later, almost every person in South Africa will pay increased taxes on goods that can never be recovered.
- 136.3 Simply put, therefore, the DA cannot obtain relief at a hearing in the ordinary course.
- 136.4 The DA did not approach this Court earlier:
- 136.4.1 It has approached the Court the day after Parliament purported to adopt the fiscal framework. It could not have come any sooner and did not delay at all. The DA held out hope that parliament would not adopt the fiscal framework, and that, on the strength of that decision, the VAT increase would not be implemented.
- 136.4.2 Notably, the Minister and SARS had not responded to its correspondence enquiring whether they would implement the increase if Parliament rejected the fiscal framework. It was therefore not clear, until after the vote on the fiscal framework, that this litigation would be necessary.

136.4.3 The DA was hopeful it would negotiate an agreement within the GNU that would render Part A of this litigation unnecessary. It was unable to do so. That only became clear when Parliament yesterday adopted the fiscal framework, but made (non-binding) recommendations concerning the VAT increase.

IX RELIEF SOUGHT IN PART B

- 137 There are five parts to the relief the DA seeks in Part B.
- 138 First, this Court must, in terms of s 172(1)(a) make an order declaring section 7(4) constitutionally invalid.
- 139 Second, this Court must also make an order that the Minister's VAT hike is unconstitutional and invalid, and reviewing it and setting it aside.
- 140 Third, the declaration that s 7(4) is unconstitutional and invalid must, in terms of s 167(5) and 172(1)(a) of the Constitution, be referred to the Constitutional Court for confirmation.
- 141 Fourth, the declaration should only have retrospective effect to 1 March 2025. There was one previous increase to the VAT rate in terms of s 7(4) in 2018 from 14% to 15%. If the default position is applied and the order is fully retrospective, it would undo that increase as well. The DA does not seek that. It only seeks to prevent the present increase from coming into force.
- 142 Fifth, since the declaration of invalidity in respect of section 7(4) will be subject to confirmation by the Constitutional Court, the DA asks in terms of section 172(2)(b) of the Constitution, that the interim order from Part A apply pending the Constitutional

Court's determination of the confirmation proceedings. The Minister's determination should remain suspended pending the final determination of Part B.

X CONCLUSION

143 The DA asks for relief in terms of the notice of motion.


HELEN ZILLE

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at Cape Town on this the 3rd day of April 2025 the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.


COMMISSIONER OF OATHS
DESIGNATION

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